

# **Corporate Compliance Without Enforcement?: Private Foundations and the Uniform Prudent Management of Institutional Funds Act**

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## **Abstract**

I examine the determinants of nonprofit corporate compliance with law using a large panel of over one million firm-years. Despite the almost total absence of any credible enforcement threat, I find widespread compliance. I exploit rolling state adoption of the Uniform Prudent Management of Institutional Funds Acts, which lifted some existing limits on firm spending, but which applied to some but not all firms within each state. This allows the use of triple-difference estimates that control for changes in local norms and economic conditions. Interacting the triple-difference factors with other predictors of compliance, I find no correlation between compliance and enforcement intensity, but some evidence that compliance is correlated with firm culture and reliance on accountants. I argue that my findings are among the first to discover compliance in the absence of a meaningful formal deterrence mechanism. Further, my findings have important implications for the governance of charitable organizations.

## 1.0 Introduction

Why do business entities comply with law? In most sophisticated contemporary accounts, corporate compliance is a complex process. Managers must acquire information about the expected costs of their alternatives, process that information in light of their existing values and norms, and then establish channels to convey their decision to line workers, who in turn must process the managers' signals, and so on (Coglianese & Kagan 2007, Langevoort 2002, Parker & Nielsen 2009).

While that much is common ground, commentators disagree considerably on the relative importance of different inputs. Sociologists and psychologists, for example, seem especially apt to discount the contribution of formal government sanctions, contending instead that compliance is a product mostly of the norms and preferences of corporate stakeholders and employees (Feldman 2007, Kagan, Gunningham, & Thornton 2011:40, Suchman & Edelman 1997:482–483, Vaughn 1998). Many lawyers, on the other hand, would echo the views of two respected scholars of administrative law, who remark that “There is little question that the ability to monitor compliance with legal requirements is a critical component of effective regulation” (Markell & Glicksman 2014).

In some respects, those who emphasize the role of formal deterrence are on solid empirical ground. A number of studies report that enforcement or anticipation of enforcement is a major driver of firm behavior, either directly or via experience-rated insurance systems (Ashby & Diacon 1996, Moore & Viscusi 1990, Toffel & Short 2008; see Vandenberg 2003 for an overview). It is not necessarily the case that it is the government's sanction itself that triggers compliance, but rather some collateral consequence that flows from sanction, such as fear that enforcement will expose the violators to negative judgment by peers (Karpoff, Lott & Wehrly (2005), Vandenberg 2003), cause conflict with important partners or other regulators (Coglianese & Kagan 2007), or damage the firm's reputation with customers or future investors (Anton et al. 1998, Arora & Cason 1996, Kagan, Gunningham, & Thornton (2011)). All of these are consistent with the standard economic model of deterrence, which explicitly incorporates notions such as reputational harm (Rasmussen 1996). That is, whatever the exact mechanism, government enforcement actions (if not severe formal penalties) are needed to drive compliance (Ayres & Braithwaite 1992, Braithwaite 2002, Coglianese & Kagan 2007:*xix*).

There is, however, a kind of selection bias problem in many of these studies, in the sense that for the most part they examine regimes in which government has chosen to implement a formal sanction system. Presumably the officials who set up and maintained these systems did so with some knowledge of how formal sanctions would perform. So enforcement works in settings where there are reasons to expect it will, but this does not tell us whether the deterrent effect of law is necessary in all cases. What about regimes in which officials chose not to establish sanctions? Is there still compliance?

Evidence on this front is remarkably thin. There are a few mixed-method studies in which survey respondents or interviewees state that fear of sanction was less important than other factors (Simpson et al. 2013, Paternoster & Simpson 1996, Ellis & Simpson 1995). Others find a mix of motivations (May 2004, Winter & May 2001; Etienne 2011:308 collects yet others). In two related studies, researchers also included regression analysis of variations in enforcement intensity (Braithwaite & Makkai 1991, Parker & Nielsen 2011). These latter two report that the severity of the government's sanction has little or no correlation with compliance, though both also find that the frequency of detection has a large impact.<sup>1</sup> As Vandenberg (2003) observes, the importance-of-detection finding is fully consistent with a theory that government enforcement, together with collateral consequences, is central to compliance.

This paper therefore aims to fill a major gap in the literature by examining firm compliance in a setting where, although formal enforcement mechanisms vary across firms and over time, they are minimal on average. Nonetheless, I find considerable evidence of compliance with unenforceable law. Measures of enforceability are uncorrelated with, or modestly negatively correlated with, compliance. Further, I find support for two major (and potentially complementary) alternative avenues of compliance: firm culture and the role of professional advisors.

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<sup>1</sup> A third study, Simpson, Garner, & Gibbs (2007), purports to find that enforcement has the perverse effect of encouraging violations. But, given the methodological limitations of the paper, it is hard to take these results at face value. As the authors acknowledge, they face a considerable endogeneity problem, as government regulators may be selecting for enforcement exactly those firms who are least likely to comply. The authors' only response is to control for some basic firm characteristics. A more accurate measure of the effect of enforcement on compliance would be to compare actual compliance against the violator firm's expected compliance outcome, if not for enforcement action. Further, to the extent that the positive correlation is real, it might simply be a bomb-crater effect (Kastlunger et al. 2009, Satterthwaite 2016), as the researchers look only two quarters after a given enforcement event.

In particular, I study the way in which private foundations, a form of philanthropic organization, have adapted to changes in state rules governing their spending practices. Most charities are organized as legal entities under the laws of some jurisdiction, and thereby opt into the bundle of default rules set out by state corporate or trust law. Often these bodies of law include many provisions specific to nonprofit firms.

My focus here is on state adoption of the Uniform Prudent Management of Institutional Funds Act (“UPMIFA”), a model law drafted by the American Law Institute and then passed into law in 49 states and the District of Columbia over the period 2006 through 2012. UPMIFA’s most important provision freed charitable corporations from a prior rule that restricted spending by so-called “underwater” firms—those whose investment assets had fallen below their nominal value when donated.

State nonprofit law is a fruitful context to study compliance because it offers an example of law without any meaningful likelihood of sanction for non-compliance. Few potential litigants have legal authority, or “standing”, to enforce state law against a noncompliant charity (Manne 1999). While state attorneys general comprise the majority of those with power to sue to enforce nonprofit rules, due to resource constraints and political disinterest American charitable organizations “operate largely without supervision by any state official” (Fremont-Smith 2004:2). The federal Internal Revenue Service has considerable power to oversee charities in many respects, but the spending rules embodied in UPMIFA have no federal parallel, and so the IRS has no authority to enforce them.

With some small exceptions, UPMIFA applies to firms organized as charitable corporations, but not to firms organized as trusts. I exploit this differential effect, together with UPMIFA’s rolling adoption across states over time, in a series of triple-difference regressions. Further, because I am able to draw on a very large panel of firm tax return data, spanning more than one million firm-year observations, I have the statistical power to include interactions between my triple-difference factors and possible drivers of firm compliance—in effect, a set of quadruple-difference regressions.

My basic finding is that UPMIFA’s lifting of firm spending restrictions indeed increases firm spending by between 4.5 and 5.0% in triple-difference regressions, on average. I bin firms by decile of their asset:historic dollar value ratio, and find that this spending effect is driven mostly by firms that were closest to the “underwater” line. I interpret these results as evidence of compliance: If firms were not

complying with the law just before UPMIFA, there would have been little reason for the loosening of legal restrictions to change their behavior.<sup>2</sup>

I test for, but find no evidence of, relationships between compliance behavior and measures of formal enforceability. Interactions between UPMIFA adoption, corporate status, and the number of full-time attorney-general staff assigned to nonprofit oversight in each state show that, if anything, enforcement resources are slightly negatively correlated with compliance. Similarly, I hand-collect and code state-law variations in the rights of charitable donors to sue donee firms, and interact these measures, as well, with my triple-difference factors. Again, there is perhaps a slight negative correlation between enforceability and compliance.

In contrast, I find evidence consistent with the theory that firm compliance is driven by firm culture and professional advice. Firms that admit on their tax returns to violating federal rules against self-dealing are also much less compliant with state spending law. Further, I find evidence that some firms exhibit a pattern of spending that is not exactly aligned with UPMIFA but consistent with related accounting rules, and this spending pattern becomes more pronounced as firms incur greater reported accounting fees. I cannot rule out the possibility that these two channels are ultimately driven in some sense by formal sanctions, but the scarcity of any sanction in this context at least makes a plausible case otherwise.

In short, I provide new evidence in the debate over the most important determinants of legal compliance. Unlike nearly every prior study, I employ a very large dataset with thousands of firms across many years. To be sure, there are advantages to small and qualitative studies, as well, but I would argue the literature is richer if it includes both approaches.

I also extend the existing literature by moving beyond the familiar contexts in which these questions are usually tested—environmental (e.g., see the overview in Glicksman & Earnhart 2007) and workplace safety. This allows for potentially new insights (see Kagan, Gunningham, & Thornton 2011 on the importance of testing compliance theory in diverse contexts), although of course it also raises questions about the extent to which philanthropic organizations are representative of compliance among, say, for-profit businesses. Perhaps philanthropists, by virtue of their public service mission, are necessarily more law-abiding? That is possible, but I would argue to the contrary in this context, where law is actually inhibiting

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<sup>2</sup> It might be argued that UPMIFA changed spending through a demonstrative or hortatory effect, rather than through a loosening of prior binding rules. The triple-difference design, however, should help account for this possibility, as any demonstrative effect could have also impacted managers of trusts.

the organization from pursuing its central mission, which is spending in support of its goals.

Finally, my findings also have some relevance for the nonprofit community, especially nonprofit law. Evidence that state laws affect meaningful charitable outputs is scarce and of uncertain reliability. Fisman & Hubbard (2005) and Desai & Yetman (2006) apply time-invariant indices of state rules, and report that these indices correlate with lower measures of firm agency costs. These papers, however, necessarily were not able to control for unobservable differences between states, and by virtue of being cross-sectional pools could not readily account for firm fixed effects.

Despite the absence of evidence, nonprofit commentators decry the crisis in nonprofit oversight, and call regularly for reform [ ]. My findings here imply that compliance is more extensive than others seem to assume, albeit of a different form. Future debate might fruitfully consider whether the compliance pathways I identify are consistent with a healthy nonprofit sector, and if not what might be done to build on them. Further, there is ongoing debate over the appropriate rate of spending for philanthropic organizations (Madoff & Reich 2016, Galle 2016). My results here show that state law can be an important policy lever in shaping foundation spending.

## **2. Background**

### **2.1 Statutory Background**

The spending and investment decisions of nonprofit firms are putatively governed by a complex web of state and federal law. Most charities are organized as legal entities under the laws of some jurisdiction, and thereby opt into the bundle of default rules set out by state corporate or trust law. Founders who dislike the state default can, at some cost, draft bespoke provisions to replace it.

In addition, to obtain favorable federal tax status, charitable organizations must meet a series of requirements set out in the tax code. Firms whose funding derives from a relatively concentrated group of donors generally face extra federal regulation under the so-called “private foundation” regime, although some entities (mainly schools, hospitals, and churches, and certain supporting organizations) are exempt from those rules.

Historically, state law strongly favored a presumption that assets given to charitable organizations should hold their value in perpetuity, and charitable

spending and investment rules were structured accordingly. A key rule supposedly safeguarding the charitable nest-egg was that charities could spend only out of “income.” At the time “income” was usually understood to exclude gains in appreciated assets, although there was some uncertainty about whether that was true for nonprofit corporations (Cary & Bright 1969). As a result, charities invested heavily in assets that paid rents, interest, or dividends, even though those investments rarely were the most profitable available (Gary 2007).

To illustrate, imagine that the Portals Foundation’s sole asset is a block of Portals Co. stock whose value at donation was \$100 million. The stock has appreciated to \$5 billion in current market value and paid this year a \$10 million dividend. Under the state law of the 1960’s, Portals Foundation would be limited to spending no more than \$10 million this year, despite its vast wealth and regardless of public need.

Commentators recognized the oddity of these rules and the distortions they caused, and pushed for reforms (Cary & Bright 1969). In 1972, the Uniform Management of Institutional Funds Act (“UMIFA”) effectively repealed the “income” spending limit for charities organized as corporations and a small number of trusts. As UMIFA § 2 states:

The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by Section 6.

Later, the Uniform Principal and Income Act of 1997 (“UPAIA”) granted charitable trusts the flexibility to define some realized gains as “income” for charitable expenditure purposes (UPAIA § 104). Most states adopted UPAIA by the early 2000’s, as detailed more completely in Table One, below.

UMIFA’s authors feared that granting new spending authority to charitable managers could threaten donors’ interest in maintaining a long-lasting institution (NCUSL 1972). UMIFA therefore introduced a new concept, “historic dollar value,” which it defined as the value at the time of donation of assets contributed to the organization’s endowment.<sup>3</sup> Firms were prohibited from spending out of this pool.

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<sup>3</sup> “Endowment” in this context is a term of art defined by the Act. Only assets contributed with the understanding that their expenditure would in some way be time-limited were covered by the historic dollar value limit. But the Act’s rules of construction provided that most funds would be

The figure was not formally adjusted for inflation,<sup>4</sup> though the Act encouraged organizations to protect the real purchasing power of their endowment by setting aside even more than the Act required.

This rule was well-intentioned but short-sighted. Let's return to the Portals Foundation. Suppose instead of gaining value, Portals' stock had fallen to \$50 million from \$100 million. Under UMIFA, Portals is theoretically authorized to sell off stock to pay for operations, but only if that sale would leave Portals still holding more than "historic dollar value," which here is \$100 million. Since Portals' endowment is worth less than historic dollar value, none of it can be sold. So, just as prior to enactment of UMIFA, Portals can spend money only to the extent that it has dividends or interest.<sup>5</sup> If Portals stock pays no dividends, then Portals Foundation is "underwater" (NCUSL 2006) and cannot spend.

Federal law compounded the problem of underwater charities. Again, firms that desire the most favorable federal tax status must comply with special provisions of the U.S. Tax Code. One of those provisions requires (albeit with some technical exceptions) that "private foundations" pay out roughly five percent of their investment assets within a year of the close of their fiscal year, or be subject to a substantial penalty (IRC § 4942). Underwater firms could be trapped between state law and this federal requirement.

The problem of underwater charities was a major motivator for the drafting of UPMIFA, the Uniform Prudent Management of Institutional Funds Act, in 2006 (Hechinger & Levitz: Wall Street Journal Feb. 11, 2009). The 2006 Act, among other provisions, granted covered firms the power to spend out of historic dollar value. Section 4(a) replaces the UMIFA spending language quoted above:

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.... In making a determination to

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covered. Funds that the board's managers decide on their own to set aside as an "endowment"—that is, as a pool of money to hold for the future rather than immediate spending—are not protected by the historic dollar value rule (Gary 2007).

<sup>4</sup> However, Rhode Island's version of UMIFA required that historic dollar value be adjusted for inflation.

<sup>5</sup> According to the UPMIFA drafters, nonprofit advisors were divided over whether UMIFA permitted a firm whose assets were below HDV to spend any money at all (NCCUSL 2006: UPMIFA Prefatory Note).



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...

That is, in place of the old bright-line rule, the 2006 Act added new guidance for firm managers on how best to decide when it was appropriate to spend the firm's endowment funds. This new freedom was widely hailed by industry experts (Simpson Thacher 2010:3, NACUBO 2009).

UPMIFA also included, apparently at the request of some state Attorneys General, a provision allowing states to set a soft cap on "prudent" spending out of endowment (Kroch 2009). The statute provides that expenditures in excess of seven percent of net assets are presumed imprudent, but that presumption is rebuttable.<sup>6</sup> About a dozen states enacted this provision, as summarized in Table One, below.

By its terms, UPMIFA does not apply to all charities. UPMIFA § 2(5) excludes "a fund held for an institution by a trustee that is not an institution" from its definition of "institutional funds" subject to the Act.<sup>7</sup> That is, as the Drafter's Comments explain, the Act governs "a trust organized and operated exclusively for charitable purposes, but only if a charity acts as trustee."<sup>8</sup> As the comments also note, this language mirrors the coverage of UMIFA. For the most part, trusts whose trustee is a charity do not file their own tax returns, but instead file together with the trustee (NACUBO 2011) and so do not appear in my sample.

Table One summarizes the enactment dates of UPAIA and UPMIFA, as well as the "donor standing" described in more section 3.1.

<Table One Here>

## 2.2 Hypothesized Effects of UPMIFA

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<sup>6</sup> Ohio has a five percent cap but presumes expenditures below that amount are prudent.

<sup>7</sup> For readers without legal training, a "trustee" is a person or entity with the legal authority to manage the funds of a trust on behalf of its beneficiaries. Typically the trustee is named in the documents establishing the trust.

<sup>8</sup> Noncharitable trustees consist mostly of banks and large financial firms. Charitable trusts managed by another charity are often established for the benefit of some class of persons who are served directly by the trustee charity. (See NASBO 2011; UMIFA Prefatory Note at 3 ("Also excluded is any trust managed by a professional trustee even though a charitable organization is the sole beneficiary.")). For example, Princeton University is the trustee of a charitable trust established to benefit students enrolled in foreign service-related courses at Princeton. As a result, the charitable trust with a charitable trustee typically does not file its own tax return, but instead is treated as a restricted gift held by the trustee, similar to the trustee's other endowment funds.

If corporate compliance with law were universal, the likely impact of UPMIFA would be straightforward. Clearly the lawyers who drafted UPMIFA wanted and expected it to allow firms to spend more when that was what the managers preferred. If firms were complying with UMIFA, the pre-UPMIFA law, then enactment of UPMIFA should, on average, increase spending.

The compliance literature does not offer a clear hypothesis for whether we should expect that firms complied with UMIFA. Again, much prior work finds that in a regime with meaningful formal government enforcement, compliance is correlated with the likelihood of detection. Some studies also find that the severity of the formal sanction is important, while the majority seem to conclude that collateral consequences of detection such as firm reputation and observable breaches of community norms for managers are more consequential (see Schell-Busey et al. for a meta-analysis).<sup>9</sup>

In any event, none of these factors would be likely to encourage much UMIFA compliance. State nonprofit law is largely unenforced or unenforceable. State attorneys general usually have the authority to bring enforcement actions, but generally lack resources and motivation to do so (Gary 1999, Manne 1999, Klick & Sitkoff 2008). Donors and beneficiaries, who might have a more direct interest in litigating, are often barred from bringing suit except in unusual circumstances (Fremont-Smith 2004:333-36), although recent developments have trended towards broader standing at least for donors to charitable trusts. A handful of states allow donors to sue corporate donees, as summarized in Table One.<sup>10</sup>

Some major compliance factors identified in prior literature also may be largely absent in the UMIFA/UPMIFA context. Modern regulatory states rely on non-state actors, such as outside monitoring by civil society, or self-regulation via industry codes of conduct, to supplement incomplete government enforcement (Parker & Nielsen 2009). Some firms comply with law because their managers share the goals and values the law embodies (Gunningham, Thornton & Kagan 2005). It is unlikely that UMIFA spending constraints fit these stories. Press and other watchdog attention to nonprofits is rare and focuses on major scandals

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<sup>9</sup> A possible exception to this consensus is Kagan, Gunningham, & Thornton (2011:40), who claim that “compliance generally is much better than the legal deterrence model would lead one to expect.” Their support for that statement is the 1991 study by Braithwaite & Makkai in which likelihood of detection was a key driver of compliance, and a 2005 study (Gray & Shadbegian 2005) in which 16% of firms were non-compliant in a setting with infrequent enforcement.

<sup>10</sup> Recent revisions to the Model Trust Code, enacted thus far only in a minority of states, grant settlor standing in many instances for contributors to charitable trusts (Bogert & Bogert 2014: § 415). Several suits seeking to extend this authority to corporations have failed (ALI 2011: Principles of the Law of Nonprofit Charitable Organizations § 670 Note (c)).

(Colinvaux 2011). To the extent that watchdogs hold relevant views, it is likely that they prefer to see the organization spend money on its mission.

If anything, managers' likely preference is for slower spending. As salaried employees with relatively little risk of being fired, it is in managers' financial interest to keep the firm in existence and out of bankruptcy. By reducing managers' dependence on new donations or other revenue streams, larger endowments also tend to increase managerial autonomy (Fisman & Hubbard 2005; see Galle & Walker 2014 for evidence). Managers may also derive personal satisfaction from managing a wealthier and larger firm, inclining them towards "empire building" rather than saving (Brooks 2005). And Frumkin et al. (2000) report survey evidence that managers maximize endowment over output because endowment is easier to measure.

Two other major factors identified by prior authors seem more plausible. One is organizational culture. While the term "culture" has a variety of shades of meaning in the literature, in general it is meant to refer to a shared set of values or expectations within the organization (Parker & Nielsen 2009). Culture may bind, among other pathways, through norms or via a tournament-like mechanism in which employees identify and attempt to emulate the set of behaviors that are rewarded within the organization (see Langevoort 2002 for a detailed review). Culture can have many sources, including laws, public expectations, and intentional or unintentional examples set by top management (Smith, Simpson Huang 2007, Suchman & Edelman 1997). For example, managers may comply with law because they believe in its legitimacy (Braithwaite 2003, Tyler 1990).

While some firm culture may be a reaction to existing law (Kagan, Gunningham, & Thornton (2011)), it need not be. For example, compliant culture might develop in a regulatory vacuum precisely in order to reduce political demand for greater enforcement.

Relatedly, professional experts can contribute to corporate compliance, especially professionals holding an official compliance role (Beckenstein & Gabel 1983, Gramling et al. 2004, Suchman & Edelman 1997). Even where law's bite is uncertain, professionals may press for compliance in order to elevate their own importance in the firm (Suchman & Edelman 1997:500). Professionals may also have peer norms to comply (Rock 1997). And outside professionals, such as auditors and attorneys, have financial incentives to maintain a reputation for probity even in contexts where the odds that noncompliance would be detected is low (Jackall 1988:108–111).

We therefore have several competing hypotheses. In one vision of corporate compliance, in which deterrence is primary, we should expect to see little change in foundation behavior as the law changes from UMIFA to UPMIFA. A more sociological view, in which non-deterrent factors are also important predictors of compliance, might expect to see compliance correlate with measures of compliant firm cultures, or with firm reliance on professionals. Indeed, several early commentators on UPMIFA mentioned the potentially important role of accounting standards in the statute's success (Gary 2007, Simpson Thacher 2010, Callan & Assocs. 2011).

It's worth mention that changes in spending are not necessarily the only source of evidence that UPMIFA's enactment affected firms. It is possible that underwater firms that sought to comply with UMIFA were able to maintain their preferred level of charitable activity, or close to it, through a combination of other tactics. Firms might smooth income through the use of reserve funds or borrowing. They might also adjust their portfolio to emphasize "income" that arguably would not be subject to spending restrictions if the firm were underwater.

Finally, UPMIFA included a pair of other reforms, along with some small administrative tweaks, in addition to its repeal of HDV limits. For one, UPMIFA granted firms greater flexibility in modifying the terms of restricted gifts to account for changed circumstances, although for larger gifts changes were subject to notice and approval by the state attorney general. For another, it restated in more detail the legal standard board members and managers must follow in managing institutional funds.

Neither change likely had observable effects on any spending, income smoothing, or portfolio choice. While the fund-management rules potentially would impact investment allocations, the drafters believed that this restatement made no significant substantive changes to prior law (NCCUSL 2006: 14).

### **3. Data**

Firm data derive from the National Center on Charitable Statistics Core-Private Foundations files. NCCS gathers its information from digitized tax returns filed annually by each registered firm, and I include data from 1989 through the most recent year available, 2013. The "Core" files include select data on every firm that files. An alternative database, the "Statistics of Income" files, draw more detailed information from a stratified sample of firms. For regressions involving attorney fees and accounting costs, I derive fee and cost data from the SOI, matching firms across the two sets of files by fiscal year and employer i.d. number.

“Private foundation” is a term of art in tax law, where it is defined (with some additional detail not relevant here) as an organization that receives the bulk of its funding from only a handful of sources. “Public charities,” in contrast, draw from a broad base of support. Private foundation status carries additional federal regulations, including a requirement to pay out five percent of net assets annually, as well as a small tax on net investment assets. Schools, hospitals, and religious organizations are automatically public charities regardless of their sources of funding.

In general, most organizations classified as a “private foundation” for tax purposes are engaged primarily in philanthropic giving, but some also directly perform substantial amounts of charity. These are known as “private operating foundations.” About 5.7% of my firm-year observations are private operating foundations. To facilitate comparison across firms, I omit these from the regression analysis.

For similar reasons, I also attempt to identify so-called “flow-through” foundations, which are firms whose donors do not retain assets in the firm from year to year. Since my central question is how firms spend their retained assets, including these firms in the regression would suggest a misleadingly high rate of average spending out of assets. I therefore define as “flow-through” a firm-year for which the firm spent more than 90% of its assets and income, and omit these from the regression analysis. About 6.5% of firm-year observations are in flow-throughs, some of which are also private operating foundations.

In all, I have 1,497,728 firm-year observations, and 964,664 for the period 2001 to 2013. The set of firm-years with matched attorney and accounting cost data is much smaller, at 150,653 observations. Unless otherwise noted, I report regressions utilizing the larger set of unmatched observations. After omitting private operating foundations and flow-through foundations, I have 1,326,233 observations, 851,000 between 2001 and 2013. There are 139,733 firm-years with attorney and accounting costs that meet these two screens.

The NCCS files are notoriously error-filled. Unleveraged firms, in particular, have few incentives to report their data accurately. I first follow several of the “cleaning” protocols suggested in prior literature, such as in Galle (2016), Heutel (2014) and Andreoni & Payne (2011). That is, I restate most negative balance sheet expenditures at their absolute value, and drop observations where category totals are less than the sum of their constituent parts (except in the case of total revenues, where investment returns can be negative). I also drop observations with negative

values for contributions, any gross asset value, or interest or dividend income. In total, I pare 744 observations through these steps. There are 60,620 firm-years for which firms report negative gross assets, or an asset value of one dollar, but also report large positive values in sub-classes of assets. I use the highest value of gross assets, securities, and noncharitable-use assets as my measure of firm assets.<sup>11</sup> I calculate firm age as the difference between the current fiscal year and the earlier of the reported date the firm was recognized as tax-exempt, or its first year appearing in the data.<sup>12</sup>

In addition, I smooth out middle-different states, entity forms, and ntee classifications.<sup>13</sup> In other words, if a single firm lists their state of incorporation as NC, NV, NC over a three-year period, I change the middle value to NC. The summary stats below reflect these changes. As Table Two illustrates, corporations and trusts are relatively similar, but corporations are a bit larger on average.

### **Table Two: Summary Statistics**

**<Table Two here>**

Notes: Dollar values in thousands of 2013 dollars. \*: millions of 2013 dollars

All of the legal data are hand-collected and coded. In addition to the UPMIFA enactment dates summarized in Table One, I also examine whether individual donors have the legal authority to sue a donee firm, a concept known as “standing to sue.” Standing to sue is uncommon, and varies across states and over time. In some cases, standing is conferred by judicial decision, while in others it is created by statute. Overall, donor standing is a minority position; Table One summarizes donor standing by state. In those states where donor standing exists, it usually is the result of adoption of the Uniform Trust Code, in which case coding is straightforward. Some judicial decisions, however, are difficult to interpret. For example, my reading of New York law is that donor standing was available as early as 1900, while many commentators believe that a 2001 decision was the first New York authority on that subject (e.g., [??] 2005). As described below, results involving donor standing are robust to several alternative coding decisions.

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<sup>11</sup> My results are robust to omitting these firms.

<sup>12</sup> Firms may obtain exemption retroactively, and therefore can file tax returns prior to official recognition of their tax-exempt status. Some firms may also reapply for recognition when they reorganize, and IRS records apparently report only the most recent recognition date.

<sup>13</sup> NTEE codes for a category of charitable activity, such as “health and hospitals” or “arts and music.”

Finally, I borrow data on the nonprofit enforcement resources deployed by each state's Attorney General from the survey in Jenkins (2007). Jenkins' survey was conducted shortly before the first state adoption of UPMIFA.

#### 4. Methodology

For the most part I investigate the determinants of firm spending, and in particular the impact of UPMIFA on spending decisions. As noted earlier, UPMIFA was adopted in different states at different times, and applied to corporations and not trusts. This allows for a straightforward triple-differences design, as in equation one:

$$S_{it} = \alpha + \beta_1 Upmifa_{st} * Corp_i + \beta_2 Upmifa_{st} + \beta_3 Corp_i + \beta_4 X_{it} + \lambda t + \gamma_i + \varphi_s + \omega(t * s) + \varepsilon_{st} \quad (1)$$

where  $S$  is log firm spending,  $Upmifa$  measures whether UPMIFA has been adopted in year  $t$  and jurisdiction  $s$ ,  $X$  is a vector of firm-level control variables, and  $i$  is an individual firm fixed effect.  $Corp$  is an indicator variable for whether a given firm is a corporation; to avoid the possibility of endogenous choice of entity form, I use the firm's entity classification in the year before UPMIFA adoption. The main coefficient of interest will be  $\beta_1$ , the interaction term between corporate status and UPMIFA adoption. Since about 3% of firms do relocate at some point in the sample, I include state effects as well as state-by-year interactions.<sup>14</sup>

In short, the main source of identification relies on a comparison of the difference in slopes between corporations and trusts in enacting states versus the difference in slopes in non-enacting states. This allows me to control nonparametrically for any unobservable factors that might be affecting the philanthropic sector in any given state and year. National or local factors that would undercut or inspire charitable expenditures, such as the financial crisis or natural disasters, should affect corporations and trusts alike; the interaction term measures the differences between them. To show the relative size of the treatment and control groups over time, Figure One, below, traces the share of firms subject to UPMIFA in my sample period.

<Figure One>

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<sup>14</sup> I test whether firms endogenously select a state based on the availability of UPMIFA rules. This is unlikely, since UPMIFA was adopted quickly and prior evidence (Jenkins 2007) suggests that firms do not jurisdiction-shop. In probit and fixed-effect panel linear probability models, I find no evidence that moving is correlated with the availability of UPMIFA in the new state but not the old one.

I control throughout for a handful of basic firm characteristics. Because portfolio allocation and spending may affect total assets, I use lagged assets as a control. To capture the quality / professionalism of management, I also control for officer compensation. Alternately, one could view officer compensation as a measure of the presence of agency costs. As a measure of pressure the firm may feel from outside scrutiny, I control for total liabilities. In addition, I control for whether the state enacted UPMIFA's optional spending cap, and whether it previously adopted the 1997 UPAIA for trusts.

Firm data are organized by fiscal year, not calendar year. To impose a uniform control for time effects, I generate a calendar-year equivalent for each firm based on the calendar year in which the majority of the fiscal year months fall; years ending in June were assigned to the previous calendar year. I deflate all dollar variables using the CPI-U index for the last month of the firm's fiscal year.

## **5.0 Results**

### **5.1 Does UPMIFA Matter?**

I first investigate the impact of UPMIFA on average firm spending. In the discussion that follows, I call these the "baseline" results. Columns one and two report a basic difference-in-differences regression comparing UPMIFA-enacting states against non-enacting states, with the sample limited to corporations. Columns three and four report the full triple-difference model. Columns two and four are weighted by mean firm assets.

Table Two: Baseline Effects of UPMIFA on Total and Charitable Expenditures in All Firms

<Table Two>

On average, UPMIFA increases spending, especially in the triple-difference model. In columns three and four, UPMIFA adoption coincides with a four to five percent average boost in spending, significant at the .1% level. Columns one and two, the DiD regressions, suggest a smaller effect, a bit short of significant at the 5% level. Since UPMIFA enactment coincided in many states with the onset of the financial crisis and recession, it is likely that the triple-difference model is more informative. That is, the economic downturn is masking some of the positive impact of UPMIFA in the DiD regressions, and this effect may not be fully controlled for with year effects; comparison of the corporate and trust trends helps to eliminate this mismeasurement.



Figure Two supports the triple-difference results. Both corporate and trust spending decline in the year after UPMIFA, in line with pre-enactment trends. But beginning in the first full fiscal year after UPMIFA, corporate spending trends sharply upwards relative to trusts. Figure Two also confirms that corporate and state spending followed parallel trends prior to the quasi-experimental treatment.

<Fig. 2>

I repeat this analysis for other possible outcome variables of interest, such as firm cash, debt, and share of assets held as stock. UPMIFA has no statistically significant effect on any of these variables.

## **5.2 Variations in Enforcement Oversight**

So the statute seems to have been effective at changing firm behavior, but why? Again, rational-actor or “bad man” models of compliance behavior might predict that the statute would be ineffectual, on the assumption that firms have no meaningful incentives to comply with governing state law. Thus, firms would have spent freely out of underwater funds either before or after the act. There is, however, some degree of variation in the extent to which firms are subject to enforcement oversight. This Section explores whether such variations can help to explain why UPMIFA had real effects.

### **5.2.1 Variations in Attorney General Staffing**

State law binds nonprofit firms through three primary avenues. Most importantly, board members or trustees can exert both direct control over operations and also generally have legal authority to sue on behalf of the organization if they are in the minority on a contested issue. Thus, private foundation donors typically reserve some board seats for themselves and their family members as a means of retaining ongoing oversight of the organization. I cannot observe in the tax return data what share of a given firm’s board is controlled by donors and their families.

I can, however, observe two other avenues for control. Traditionally the second in importance has been oversight by the state Attorney General, who has power in all states to bring suit to enforce state nonprofit law. Relatively little is known about how much effort state AG’s actually exert. In 2006, however, just at the beginning of the treatment period here, Garry Jenkins surveyed state AG offices on the full-time equivalent staffing levels they devoted to nonprofit oversight (Jenkins 2007).

I employ the results of the Jenkins (2007) survey to measure whether variations in AG enforcement explain the impact of UPMIFA. Of course, since the survey results represent only a single point in time, they are not varying within firms. Further, I cannot test whether AG effort might itself respond in some way to UPMIFA adoption. But I can interact AG staffing levels with corporate status and UPMIFA enactment to provide at least a tentative assessment of whether UPMIFA's effects are correlated with AG staffing.

I then use the margins command in Stata14 to compute the predicted marginal effect of UPMIFA enactment at each level of AG staffing, with a separate prediction at each level for corporations and for trusts. This produces a large number of coefficients, which are difficult to interpret in tabular form. Figure Three therefore plots the predicted results from a regression following column three of Table Two (triple differences, unweighted by firm assets), but also including AG staffing interactions with the triple-difference factor variables.<sup>15</sup>

<Figure 3>

Figure Three shows that, if anything, AG staffing is correlated with a diminished effect of UPMIFA. As we would expect, UPMIFA has no significant effect among trusts, whatever the AG staffing level. But the marginal spending impact of UPMIFA declines as AG resources increase.

While one could speculate about what might cause such a negative relationship, the evidence for the downward trend is thin. For the most part, the marginal effect in high-resource states is not statistically distinguishable from the effect in states with zero FTE AG office staff. Only the point estimates for 12 FTE staff and 20.5 FTE staff are significantly different from the point estimate for zero FTEs. These point estimates represent firms in three states: California and Pennsylvania at 12, and New York at 20.5. New York adopted UPMIFA very late in our sample, in 2010, at a time when many firms were largely recovered from the financial crisis and so the import of UPMIFA may have been diminished. Pennsylvania has not adopted UPMIFA at all.

In short, it makes more sense to focus mostly on the left half of Figure 3. Effects to the far right may be caused by idiosyncratic factors of individual states. In the more densely populated left half, there is no discernible increase in the effectiveness of UPMIFA among states with greater AG resources.

## **5.2.2 Variations in Donor Standing to Sue**

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<sup>15</sup> Results are essentially unchanged if I weight by firm assets.

Another way state law can bind nonprofit officers is if outsiders bring a lawsuit to compel compliance. A handful of states allow certain beneficiaries of the charity's mission to sue, if they possess some special interest distinct from that of the general public [(cites)]. However, all of the reported instances of this form of suit have arisen in the context of operating charities; there is no instance, to my knowledge, of grantee charities being allowed to sue a philanthropic organization. This body of law is therefore likely of little relevance to most foundations.

Foundation donors may also possess the legal right, or "standing," to sue. Until 2000, prior to promulgation of the Uniform Trust Code, donor standing was quite rare. In most states the UTC authorizes donor standing for trusts, however, not for corporations. North Carolina is the exception, authorizing donor standing by statute for all charities. Several courts have rejected litigant arguments that the UTC also authorizes donor standing for donors to corporations.

Courts in a handful of states have recognized donor standing. These states, however, include New York, California, Illinois, Delaware, and perhaps New Jersey.<sup>16</sup> Overall, about 21% of the firm-year observations occur in states with donor standing against corporations. Table One, above, summarizes donor standing by firm type and year.<sup>17</sup>

As with AG office resources, I interact an indicator for donor standing with the triple-difference factors, and use the margins command to produce a table of predicted marginal effects at each combination of the factors. For ease of interpretation, I depict these predicted effects graphically in Figure Four, below.

<Figure Four>

Once more, there is no evidence that greater enforceability—here, in the form of donor standing—correlates with greater compliance with the law. To the contrary, the impact of UPMIFA in states with donor standing for corporations is smaller and not distinguishable from zero. I test whether this outcome is driven by New York (for the reasons mentioned in 5.2.1., above) by repeating the regression and marginal effect computations without New York, to essentially the same result.

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<sup>16</sup> A trial court in New Jersey recognized donor standing in the litigation involving Princeton's Woodrow Wilson school, but that decision was later vacated by a settlement agreement between the parties. There is also 19<sup>th</sup>-Century authority holding that settlors of charitable trusts have standing to sue to enforce the terms of their gift, but that decision has not been cited in recent memory in New Jersey, and was described in 1950 as dictum (i.e., not binding precedent).

<sup>17</sup> There is some question whether donor standing in New York is best dated to 1900 or to 2001, the year the 1900 precedent was seemingly revived from desuetude. Either way, donor standing was established in New York before the enactment of UPMIFA.

Results are also unchanged in additional (untabulated) regressions using alternative possible coding for New York and New Jersey.<sup>18</sup>

Again, one may hypothesize about reasons why donor standing could actually diminish law compliance. In several of the relevant states, standing long predates the modern era, so it is probably not the case that states adopt donor standing in order to combat lawlessness. Another possibility is that agents dislike some forms of monitoring, such that monitoring actually crowds out voluntary compliance (Feldman 2011). I emphasize, though, that my results provide at best weak evidence of crowding out, as the confidence intervals for the marginal effects of UPMIFA in donor standing and non-standing states overlap.

### **5.3 Advisors and Firm Culture**

I next examine any available evidence that compliance, rather than being driven by external motivations such as the threat of sanction, instead depends on internal organizational factors. Again, my hypotheses are that the most plausible of these factors are firm culture and professional advice.

#### **5.3.1 Firm Culture**

Tax return data contain little direct information about firm culture. Private foundations are required to report, however, whether they engaged in certain transactions with so-called “disqualified persons,” including major donors and firm insiders. These transactions can subject the firm and the counter-party to sanctions if not “corrected,” which usually entails repaying any excess benefits the counter-party may have received. Firms that engage in these transactions and do not report them expose the signatories of the tax return—usually the organization’s executive director—to potential criminal prosecution for tax fraud. There is, in other words, a strong incentive to report, even if reporting may cause additional costs for the firm.

I use these reports of disqualified-person transactions a measure of a firm’s compliance culture. There are five distinct categories of prohibited transaction, including sales, loans, and transfer of cash or property. I code a firm as having high level of noncompliance if it reports that it violated two or more of these categories in a given year; about 1.8% of firm-years are non-compliant in this sense. I then conduct regression analysis in which I interact the noncompliance variable with the triple-difference factors. Since the two-category cutoff is somewhat arbitrary, for

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<sup>18</sup> To repeat, there is some legal uncertainty about when or even whether those two states changed their standing rules. I repeat the analysis using alternative dates of 1900 and 2001 for New York, and 1896, 2003, and never for New Jersey.

robustness I also interact the triple-difference factors with the total number of disqualified transaction categories reported.

Both approaches produce very similar results, but are difficult to interpret in tabular form. Figure Five plots the relationship between UPMIFA and the noncompliance indicator.

<Fig. 5>

Figure Five suggests that firms that tend not to comply with federal self-dealing rules also tended not to respond to UPMIFA. In the figure, federally-compliant firms show a statistically significant increase in spending after UPMIFA enactment, while noncompliant firms respond the same as the control group. Whatever internal controls or norms tend to encourage firms to comply with the Tax Code also appear to drive compliance with state spending rules.

### 5.3.2 Professional Advisors

It is possible that the unobserved “cultural” factors that explain parallel federal and state compliance behavior may be related to the firm’s formal compliance structure. A natural place to begin looking for predictors of legal compliance is legal advice. I therefore interact log legal fees with the triple-difference factors, and use the margins command to compute predicted marginal effects of UPMIFA at various points in the distribution of log legal fees. For ease of interpretation, Figure Six summarizes the results.

<Fig. six>

It does not appear from Figure Six that firms with higher legal costs are more compliant than others. Indeed, the median firm has legal fees of less than \$100, and firms below median are on average the most compliant. While there are relatively few firms on the right side of the graph, there is a discernible trend towards lesser compliance with UPMIFA among firms with greater fees.

Customized spending rules may explain the negative relationship between legal costs and UPMIFA compliance.<sup>19</sup> Again, UPMIFA is a default rule that firms can displace with appropriate drafting of the organizational documents. Firms with sophisticated (read: expensive) counsel may simply have opted out of the UMIFA

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<sup>19</sup> It is worth emphasizing that this is a trend in predicted marginal effects—that is, it is net of my controls, which include controls for firm assets and officer compensation. Thus, attorney fees are not simply picking up the effect of firm size.

regime before UPMIFA's enactment, such that UPMIFA has no impact on their spending.

I next consider the role of accounting advisors. In order to set the stage for this analysis, it is useful to examine the differential effects of UPMIFA across firms with different fiscal standing. Recall that, under UMIFA, firms were spending constrained to the extent that their investment assets were below "historic dollar value," or the nominal value of prior restricted gifts. "Underwater" firms are firms with a ratio of present investment assets to HDV of less than one.

I attempt to reconstruct an approximation of each firm's historic dollar value by summing gifts received during the sample period. My approximation is both under-inclusive and over-inclusive. It is under-inclusive, of course, because many firms received gifts before 1989. And it may be over-inclusive to the extent that some gifts received were unrestricted and so not subject to UMIFA spending limits.

Because response to UPMIFA may vary non-linearly with a firm's distance from being underwater, I bin firms by their asset:HDV ratio decile for the calendar year preceding UPMIFA adoption in their state. I then interact this decile with the triple-difference factors and compute the predicted marginal effects of UPMIFA for each bin. Figure Seven summarizes the results.

<Figure seven>

Across most of the distribution, the impact of UPMIFA on trusts is not statistically distinguishable from its effect on corporations. However, corporate spending is higher after UPMIFA, to a large and statistically significant degree, in the fifth decile.<sup>20</sup> Notably, this bin includes firms with an asset:HDV ratio of between .94 and 1.1: those that are just at the edge of being underwater. My binning analysis therefore provides further support for the proposition that the average increase in spending I report in Table Two is caused by UPMIFA.

What is perhaps more striking about Figure Seven, however, is the very large drop in spending as firms move leftwards from bin four. Bin four firms, on average, have asset:HDV ratios between .70 and .94. The drop occurs in both trusts and

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<sup>20</sup> For robustness, I also conduct the binning analysis using firm's asset:HDV ratio and asset:HDV ratio decile in 2006, the first year UPMIFA was adopted in any state. Results of this analysis are essentially the same as those reported in Figure six.

corporations. This is especially striking given that UMIFA, and its concept of historic dollar value, do not apply to most trusts.<sup>21</sup>

Accounting conventions could explain the drop in spending in bins one through three. The Financial Accounting Standards Board (“FASB”) requires nonprofit firms to track the “original value” of their “endowment funds” (FASB 124). In the event that the firm’s endowment is below original value, FASB apparently requires that new items of income be reported on the balance sheet as restricted funds, rather than as income available for expenditure. For instance, the Board stated in 1993 that when the firm has spent enough endowment funds to bring the funds below their original value, “the law requires repatriation from unrestricted assets of previously appropriated earnings” (FASB 117:¶ 132). The Board’s apparent basis for this position is the fiduciary obligation of both trustees and corporate board members to preserve the assets of a restricted gift in perpetuity, not UMIFA. Thus, the Board reiterated its interpretation in the wake of UPMIFA, declaring in mid-2008 that “There is [an] affirmative obligation to restore the endowment fund to its original value” (FASB 117-1:¶¶ A12, A13).

The obligation to restore would, if followed, produce a pattern in which firms with low asset:HDV ratio would have to set aside income to serve as endowment, curtailing spending. That, of course, is exactly the pattern we observe in bins one through three. Further, since the era of UPMIFA adoption coincides with the financial crisis, there is a strong correlation between UPMIFA adoption and drops in all firm assets. I argue, then, that the pattern in Figure Seven is caused by firms complying with the FASB directive in the wake of downward shocks in asset value.

To further test this hypothesis, I interact log accounting fees with the triple-difference factors, controlling for whether firms are underwater. I then compute the predicted marginal effects across the distribution of accounting fees, with separate predictions for firms that are underwater and not. Figure Eight summarizes the results.

<Fig. eight>

More than half of underwater corporations reduce their spending by a statistically significant amount. Firms with greater accounting costs reduce by a larger amount, while firms with under \$100 in accounting expenditures actually increase spending slightly. That is, firms without accounting advice don’t comply

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<sup>21</sup> However, there is some legal question whether sales of depreciated assets count as expendable “income” under the 1997 version of UPAIA.

with the FASB guidance, lending further support to the possibility that compliance behavior is largely driven by accounting conventions.<sup>22</sup>

A complication for this story is that UPMIFA's effect on underwater trust spending does not appear to vary with accounting expenditures, even though UPMIFA enactment is correlated with drops in asset values that should cause underwater trusts to be subject to the FASB guidance. Possibly UPMIFA enactment raises the salience of endowment spending limits for affected organizations, making managers more sensitive to guidance (see Etienne 2011 and Malloy 2003 for discussion of salience and compliance). It may be that all trusts respond relatively similarly because their decision environment is simpler, in that they do not need to sort out the possibly contrary effects of UPMIFA and the FASB guidance, but instead need only follow FASB. Alternately, it might be that trusts (but not corporations) with low accounting fees are more likely to be managed by a corporate agent, such as a bank, which itself applies the accounting rules. I cannot observe the identities of trustees or other outside managers in the tax data.

## **6.0 Conclusion**

Overall, I find evidence consistent with a story in which formal legal enforcement plays a relatively small role in firms' compliance decisions. Despite the general dearth of any significant deterrent, private foundations largely complied with state spending law. Only in the small fraction of firms, less than 2% overall, with reported failures to comply with federal law was there on average a measureable failure to comply with state law.

Further, variations in enforceability don't seem to predict compliance, lending support for theories that culture and professional advisors drive compliance in the foundation sector. Increased probability of enforcement was essentially uncorrelated with compliance, while compliance was correlated with a firm's reported compliance with federal law, and was arguably explainable in part by accounting rules and expenditures.

To be sure, culture and accounting advice may themselves derive in some sense from incentives created by law. Nonprofits may govern themselves in order to forestall greater public scrutiny, or because managers internalize legal norms. Firms may engage accountants in order to help them comply with federal law, and

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<sup>22</sup> It might be argued that the correlation between spending cuts and accounting fees might be explained by the endogeneity of spending and accounting choices. That is, firms may spend more on accounting in instances where they face larger pressure to cut spending. If so, however, we should expect to observe this effect in trusts as well as corporations, but that is not the case.



these accountants in turn may steer the firm towards complying with their own professional standards, including compliance with state rules and FASB guidance implementing them. My data do not allow for further testing of these possibilities. The point, however, is that a simpler cost-benefit analysis does not seem to be what drives compliance.

Is the foundation experience generalizable to other firms? Unlike most business organizations, foundations are not profit motivated and do not have a bottom-line incentive to avoid costly compliance. But managers who fail to attend to costs do jeopardize their jobs. Donors and managers also may have other preferences that fail to align with law, and my evidence here shows that, given the opportunity, firms close to the “underwater” line preferred to spend more than pre-UPMIFA law allowed. Admittedly, however, I cannot rule out the possibility that individuals who choose to work in the foundation sector are more “compliant” in some sense than others.

Some of the other lessons of my analysis are particular to the nonprofit field. I find that the nonprofit enforcement “crisis” may not be a crisis at all. To the extent that the small share of noncompliant firms raise serious social concerns, my findings suggest that the solution might be to further encourage internal controls, rather than ratcheting up outside monitoring. Arlen & Kraakman (1997) and Pfaff & Sanchirico (2000) sketch theoretical accounts of how regulators may offer relief from formal sanctions as a way of encouraging self-policing. Indeed, federal tax law already takes steps in this direction in its treatment of board procedures for setting executive compensation, although the exact details of that system likely need improvement (Galle & Walker 2015). Alternately, regulators may want to follow cooperative compliance methods for the bulk of firms while concentrating enforcement effort on the small subset of those with noncompliant cultures (Ayres & Braithwaite 1992).

My findings also show that state law has an important impact on how foundations manage their endowment over time. Reformers on that front have tended to focus on the federal minimum payout rules (Colinvaux 2016, Madoff & Reich 2016), but state law is also deserving of close attention.

## Tables

Table One: UPAIA, UPMIFA, and Donor Standing

State	UPAIA Year	UPMIFA Year	Donor Standing Year	State	UPAIA Year	UPMIFA Year	Donor Standing Year
AK	2003	2010		ND	1999	2009‡	2007*
AL	2001	2009	2006*	NE	2001	2007	2003*
AR	2000	2009	2005*	NH	2007	2008‡	2006*
AZ	2002	2008	2008*	NJ	2002	2009	1896* / 2003
CA	2000	2009‡	1962	NM	2001	2009‡	2003*
CO	2001	2008		NV	2003	2007‡	
CT	2000	2007		NY	2002	2010‡	1900
DC	2001		2004*	OH	2007	2009‡	2006*
DE		2007	2005	OK	1998	2007	
FL	2003	2012	2007*	OR	2004	2008‡	2005*
GA	2010	2008		PA	2002		2006*
HI	2000	2009		RI		2009‡	
IA	1999	2008	2008	SC	2006	2008	2005*
ID	2001	2007		SD	2007	2007	
IL		2009	2011	TN	2000	2007‡	2004*
IN	2003	2007		TX	2004	2007‡	
KS	2000	2008	2002*	UT	2004	2007‡	2004*
KY	2005	2010		VA	2000	2008	2012*
LA		2010	2008	VT	2012	2009	2009*
MA	2006	2009‡‡	2012*	WA	2003	2009	

MD	2000	2009‡		WI	2005	2009	
ME	2003	2009‡	2005*	WV	2000	2008	2011*
MI	2004	2009	2010*	WY		2009‡	2003*
MN	2001	2008					
MO	2001	2009	2005*				
MS	2013	2012					
MT	2003	2007‡					
NC	2004	2009	2005				

Notes: \*: Donor standing established for trusts only. ‡: UPMIFA enacted with optional spending cap. ‡‡: Spending cap prior to UPMIFA.

Table Two: Summary Statistics

Variable	All Firms		Corps		Trusts	
	Mean	SD	Mean	SD	Mean	SD
Contribs	438.7	14.7*	500.5	11.3*	348.2	19.6*
Tot Rev	994.8	22.7*	1.1*	17.9*	803.3	29.8*
Officer Comp	13.2	548.0	12.0	108.2	15.9	907.0
Tot Exp	610.4	15.0*	684.7	9.0*	500.3	22.1*
Stock	3.0*	86.4*	3.6*	86.3*	2.1*	88.9*
All Secur	4.2*	113*	4.9*	103*	3.2*	132*
Tot Asset	8.5*	197*	9.2*	144*	7.2*	267*
Tot Liab	311.6	23.8*	346.3	14.7*	261.3	34.8*
Age	15.8	15.0	15.4	14.9	17.0	15.0
Corp?	.64	.48	1	0	0	0
UPMIFA?	.22	.42	.24	.43	.21	.41
Share Stock	.71	.36	.73	.35	.68	.36
Donor Stand?	.23	.42	.21	.41	.28	.45
Noncompliant?	.018	.13	.016	.13	.021	.15
Leg Fee	13.6	99.4	15.8	107.6	9.1	81.1
Acctg Fee	11.7	32.2	14.0	36.2	7.4	22.1
Moved?	.028	.16	.021	.14	.042	.20
AG FTE	6.4	6.9	6.4	7.0	6.3	6.8

Dollar values in thousands of 2013 dollars. \*: Millions. Number of firm-years: 1,326,223. Legal and accounting fees data represent 139,735 firm-year observations.

Table Three

VARIABLES	(1)	(2)	(3)	(4)
Corporation?			-0.0780 (0.0594)	-0.0775 (0.0616)
UPMIFA?	0.0180* (0.00955)	0.0178* (0.00974)	-0.0180 (0.0126)	-0.0233* (0.0134)
Corp * UPMIFA			0.0459*** (0.0128)	0.0550*** (0.0138)
Assets	0.691*** (0.00444)	0.702*** (0.00421)	0.692*** (0.00457)	0.705*** (0.00418)
Liabilities	0.0361*** (0.00201)	0.0362*** (0.00203)	0.0339*** (0.00165)	0.0341*** (0.00168)
Spend Cap?	0.00479 (0.0128)	0.00869 (0.0132)	-0.00340 (0.0111)	-0.00147 (0.0116)
Officer Comp	0.100*** (0.00366)	0.0925*** (0.00365)	0.0991*** (0.00297)	0.0924*** (0.00295)
Observations	816,755	816,755	1,286,027	1,286,027
R-squared	0.345	0.346	0.343	0.346

Notes: Standard errors in (parentheses), clustered by state. All non-indicator variables logged. Columns one and two: corporations only. Regressions include state and year fixed effects; columns 3 and 4 include state by year effects. Columns two and four weighted by mean firm assets. \*:significant at the 6.5% level \*\*: significant at the 5% level \*\*\*: significant at the 1% level

Figures

Figure One: Share of Firms Subject to UPMIFA by Year

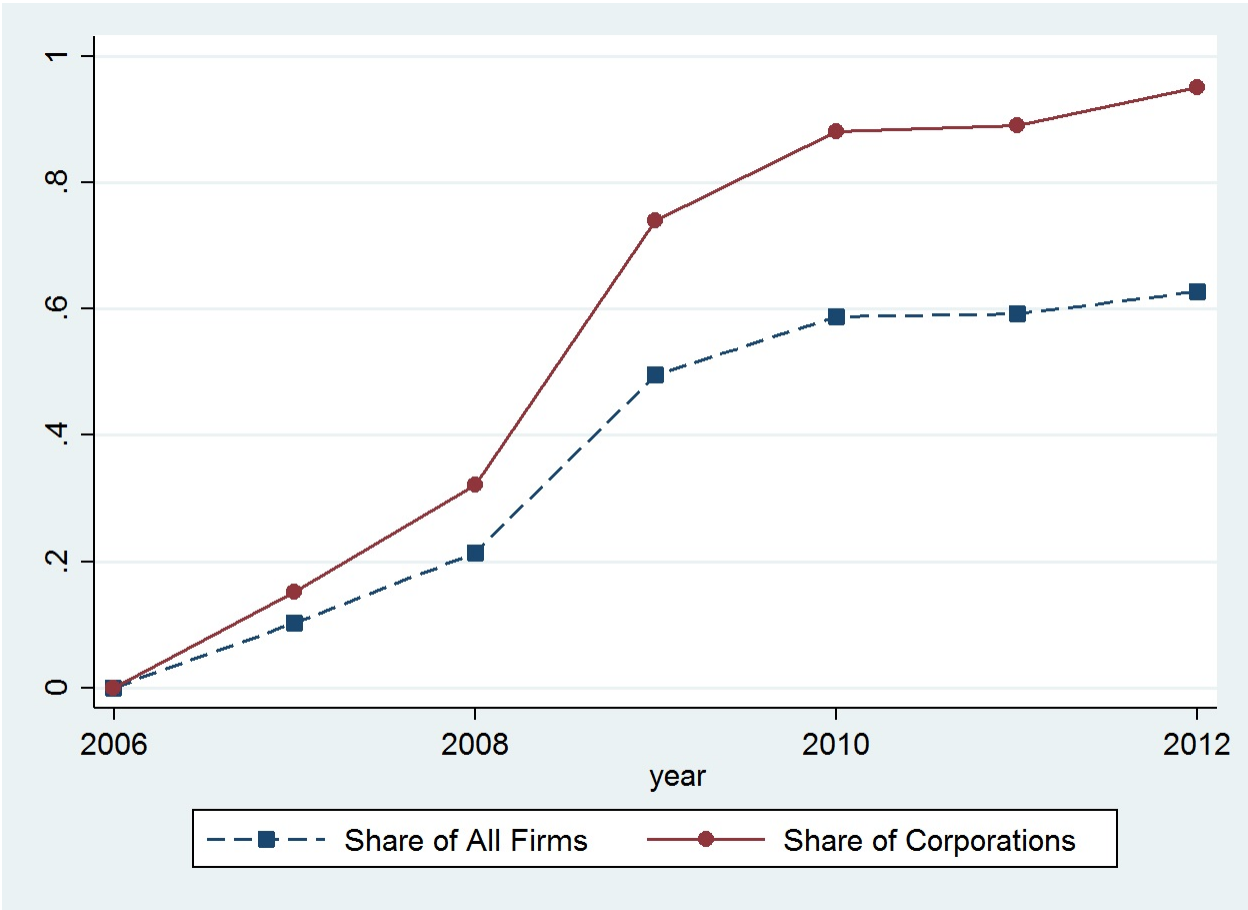


Figure Two: Mean Firm Spending by Years from UPMIFA Enactment

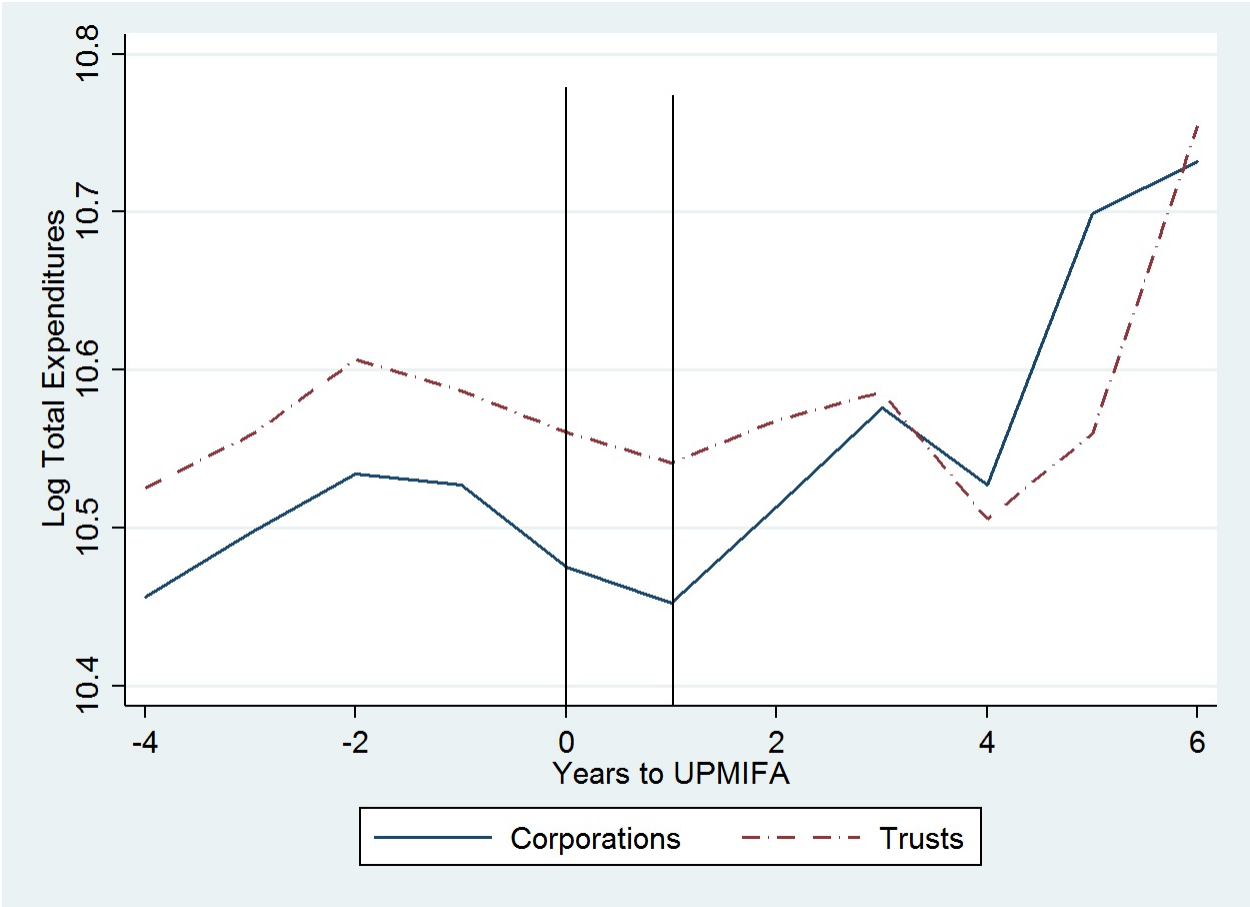


Figure Three

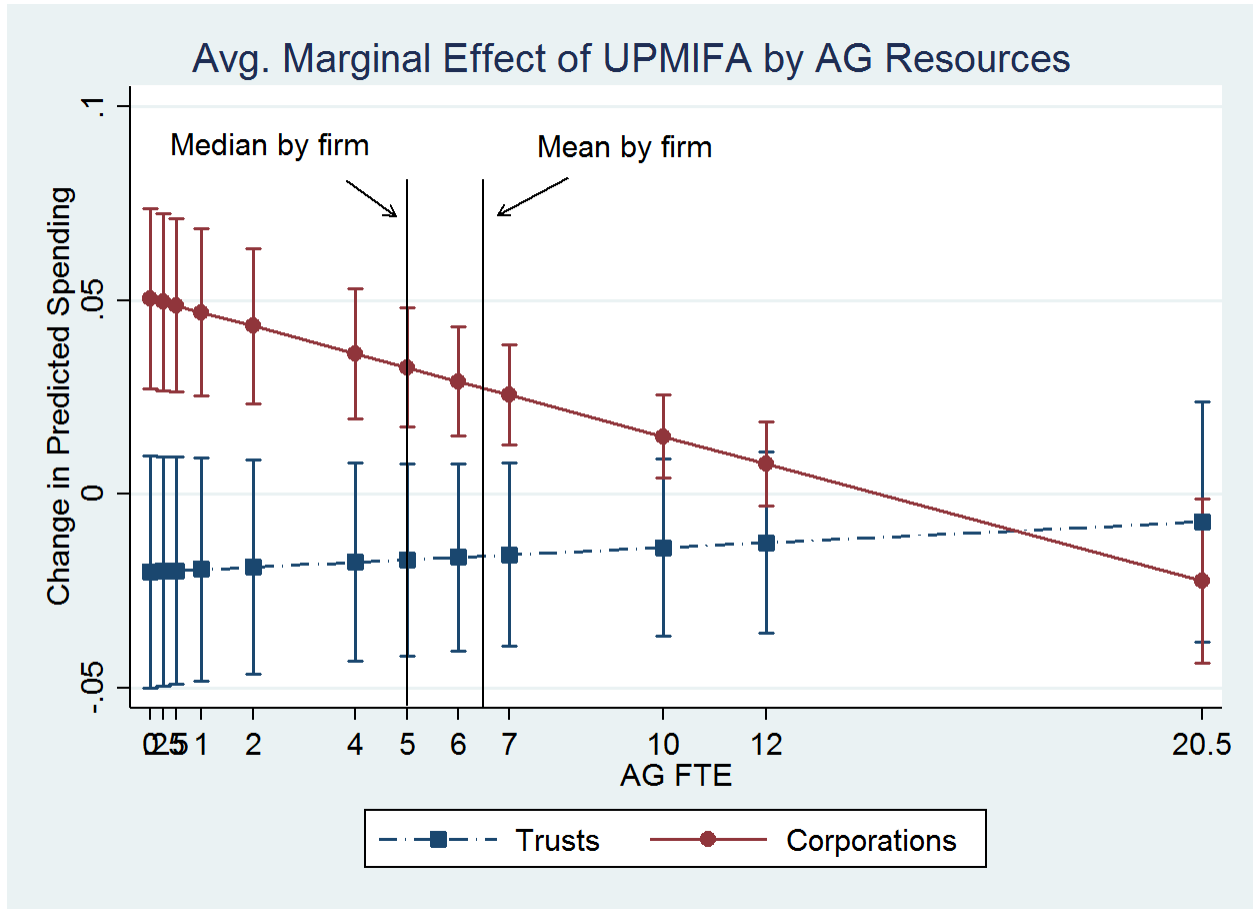




Figure Four

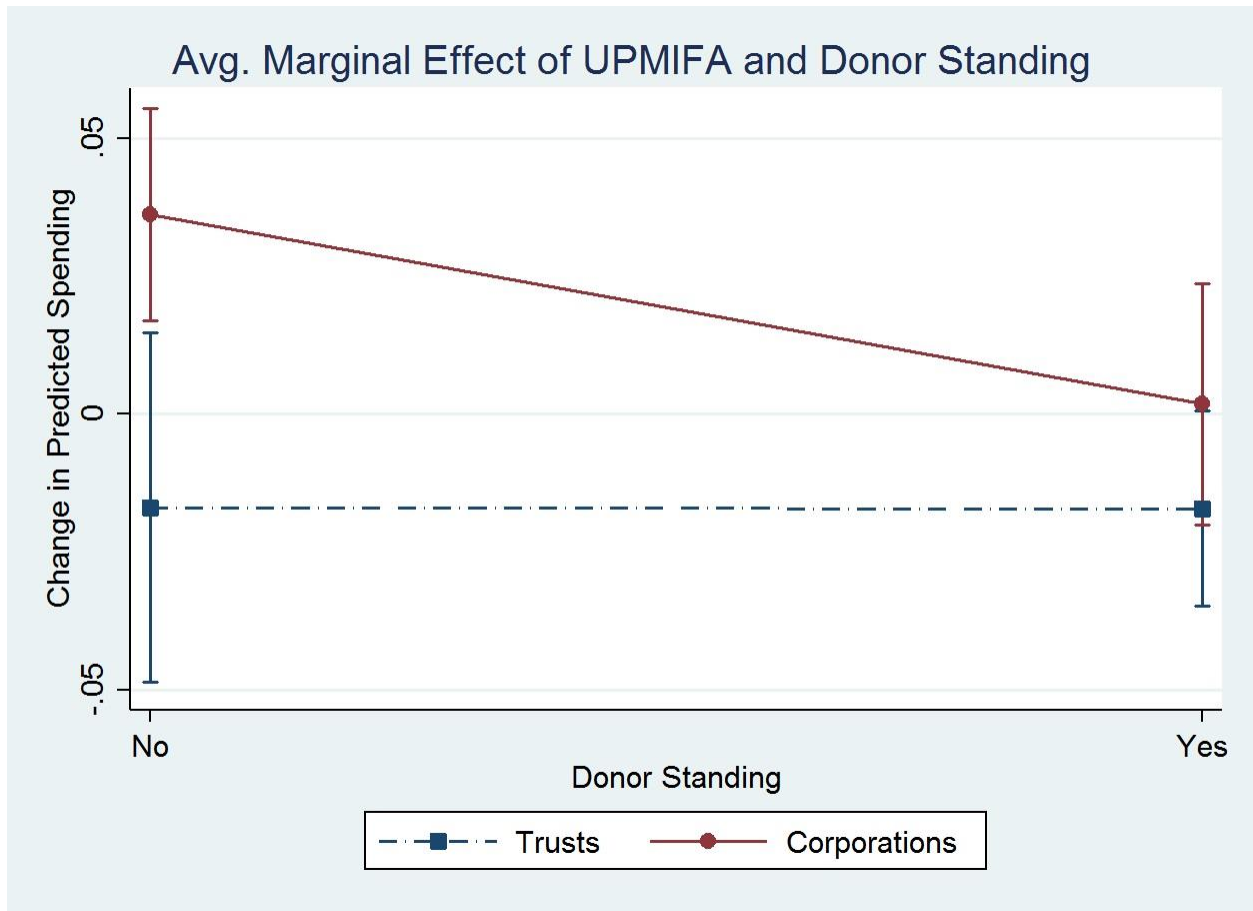


Figure Five

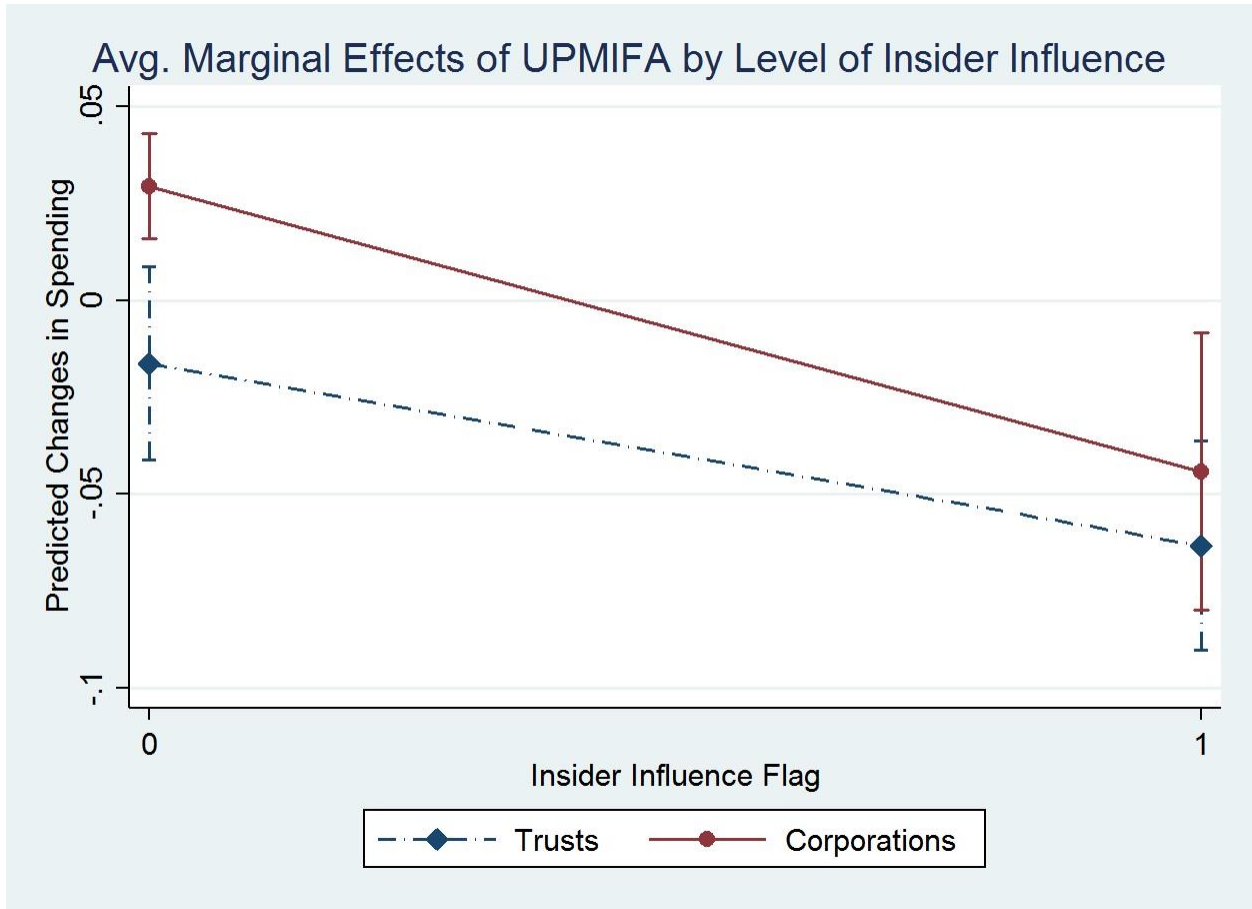


Figure Six

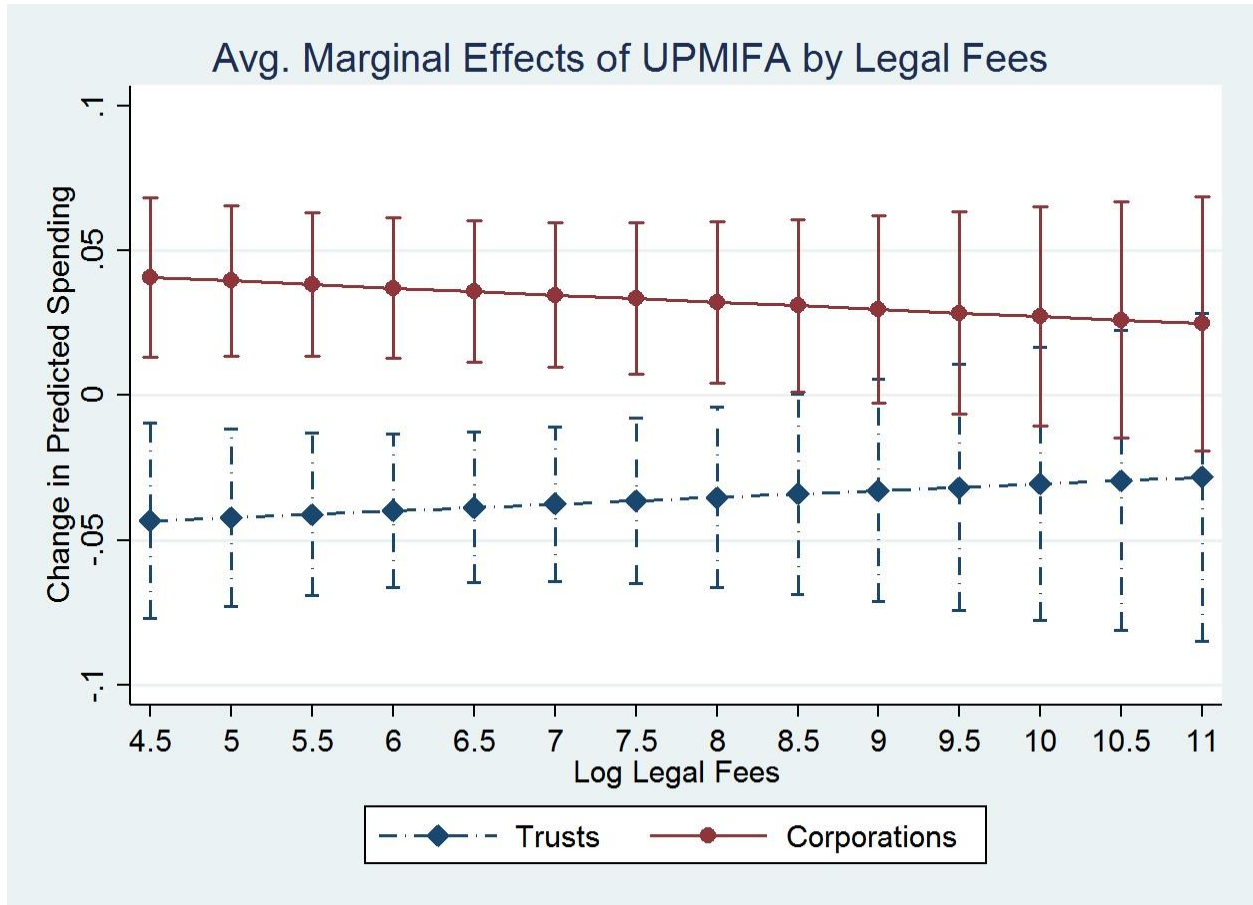


Figure Seven

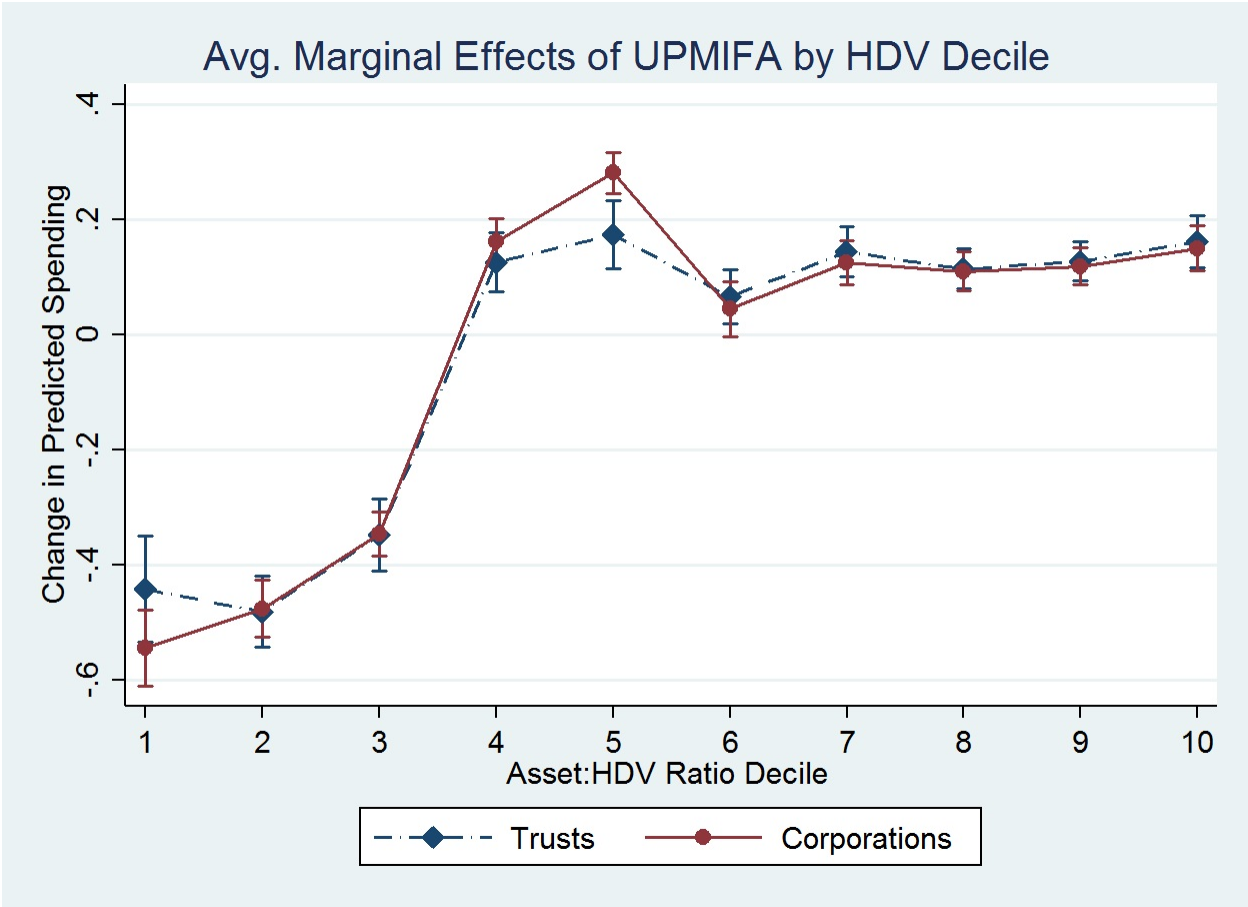
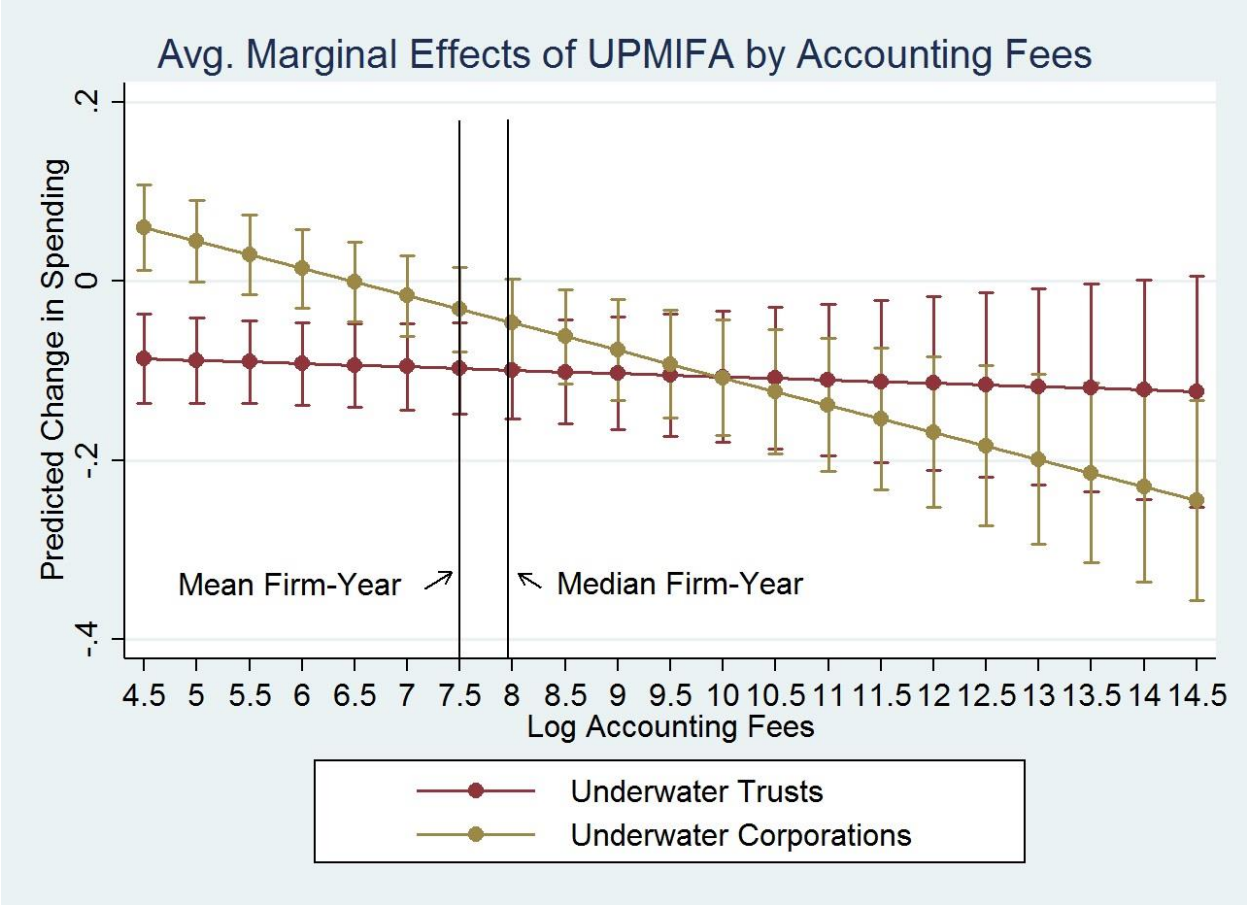


Figure Eight



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