

May 24, 2021

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To: All Udall Foundation Employees
From: David Brown, Executive Director
Subject: Reasonable Accommodation Policy

This policy sets out the Udall Foundation's process and procedures for requesting reasonable accommodation under Section 501 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. § 791 *et seq.*; and Executive Order 13164. This policy also adheres to the January 2017 *EEOC Final Rule: Affirmative Action for Individuals with Disabilities in Federal Employment, Rehabilitation Act*, 29 C.F.R. § 79 1614.203, which codifies a variety of obligations placed on Federal agencies by management directives and Executive Orders.

This policy supersedes any previous Udall Foundation reasonable accommodation policies and guidance and is in effect at the time of issuance.

Background

The Udall Foundation, like all Federal agencies, must reasonably accommodate the known disabilities of qualified individuals. The Udall Foundation is committed to providing reasonable accommodation to ensure that qualified individuals with disabilities enjoy full access to equal employment opportunities at Udall Foundation, unless doing so would cause undue hardship to the agency. This policy applies to all Udall Foundation employees and applicants for employment with disabilities requiring reasonable accommodation, including employees sustaining job-related injuries and employees with temporary disabilities requiring a reasonable accommodation. It does not apply to contractors paid by third party vendors. The Udall Foundation makes its reasonable accommodation procedures available to all employees and job applicants in written and accessible formats as appropriate, such as in braille or large print.

The Rehabilitation Act of 1973 and additional subsequent laws, Executive Orders, and management directives specify how reasonable accommodation may be requested and provided. Federal agencies must also adhere to related affirmative action requirements including the adoption of employment goals for individuals with disabilities, the provision of personal assistance services (PAS) to certain employees with targeted disabilities, and other measures designed to improve recruitment, hiring, retention, and advancement of individuals with disabilities. For the Udall Foundation, the process for requesting PAS, determining whether PAS services are required, and the agency's right to deny PAS requests when posing an undue hardship are the same as for reasonable accommodation.

Because of its small size the Udall Foundation does not designate its own Disability Program Manager or Specialist; instead the agency has entered into a service level agreement (SLA) with the General Services Administration (GSA) that includes legal (General Counsel), Equal Employment Opportunity (EEO), and Reasonable Accommodation services. It is the policy of the Udall Foundation that all requests for reasonable accommodation will be coordinated with GSA personnel in accordance with the SLA, and that documentation of such coordination shall be maintained in appropriate agency files related to such requests. Any deviations from the advice given by GSA personnel must also be documented in the appropriate agency files.

Note that although distinguishable from requests for accommodation, requests for PAS will be initiated, processed, and otherwise addressed in the same manner as reasonable accommodations as described below.

Definitions

Covered entity: A covered entity is an employer, employment agency, labor organization, or joint labor management committee.

Qualified: The term qualified, with respect to an individual with a disability, means that the individual satisfies the requisite skill, expertise, education, and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position. Exceptions to this definition are defined in 29 C.F.R. § 1630.3.

Disability: Disability means, with respect to an individual, (i) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (ii) a record of such impairment; or (iii) being regarded as having such an impairment as described in 29 C.F.R. § 1630.2(l). This means that the individual has been subjected to an action prohibited by the Americans with Disabilities Act as amended because of an actual or perceived impairment that is not both “transitory and minor.” Disabilities may include but are not limited to (i) any physiological disorder or conditions, cosmetic disfigurement, or anatomical loss affecting one or more body systems, or (ii) any mental or psychological disorder such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Personal Assistance Services (PAS)

PAS are defined as "assistance with performing activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as a reasonable accommodation, including, for example, assistance with removing and putting on clothing, eating, and using the restroom." The regulations do not attempt to list every activity that might constitute PAS. For example, someone providing PAS might push a wheelchair or assist someone with getting into or out of a vehicle at the worksite.

Reasonable accommodation: Reasonable accommodation means (i) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such applicant desires; (ii) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performance, that enable an individual with a disability who is qualified to perform the essential functions of that position; or (iii) modifications or adjustments that enable a covered entity’s employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. Reasonable accommodation may include but is not limited to (i) making existing facilities used by employees readily accessible to and usable by individuals with disabilities, and (ii) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modifications of equipment or devices, appropriation adjustment or modifications of examinations, training materials, or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

Undue hardship: With respect to the provision of an accommodation, undue hardship means significant difficulty or expense incurred by a covered entity when considering factors such as (i)

the nature and net cost of the accommodation; (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; (iii) the overall financial resources of the covered entity and the number, type, and location of its employees and facilities; (iv) the type of operation or operations of the covered entity including the composition, structure, and functions of the workforce and the geographic separateness and administrative or fiscal relationship to the facility or facilities in question to the covered entity; or (v) the impact of the accommodation upon the operation of the facility including the impact on the ability of other employees to perform their duties and on the facility's ability to conduct business.

Initiating the Reasonable Accommodation Process – Employee or Applicant

An employee or job applicant may initiate a request for reasonable accommodation orally or in writing at any time. The individual requesting the accommodation need not have a particular accommodation in mind before making a request and may consult appropriate resources such as EEOC guidance and technical assistance documents to identify and evaluate possible accommodations. Furthermore, the request may be made not just by the individual with a disability but also by a family member, health professional, or other representative acting on the individual's behalf. Individuals requesting accommodation will act fully, interactively, and in good faith throughout the reasonable accommodation process; failure to do so may result in denial of the reasonable accommodation request.

Current employees should begin by orally requesting reasonable accommodation from their supervisor. Supervisors should recognize requests for reasonable accommodation consistent with the criteria outlined in 29 C.F.R. § 1614.203(d)(3)(i)(G) and clarify with the individual whether a reasonable accommodation is requested if the nature of the initial communication is unclear. Job applicants should make their requests to the designated agency official facilitating the job application process. The time limit for processing reasonable accommodation requests starts at the time the oral or written request is made. The requesting individual should indicate at the time of the request whether or not expedited processing is required, and on what basis, in accordance with the "Time Limits" section of this policy.

After receiving an oral request for reasonable accommodation, the Udall Foundation supervisor or designated agency official will provide GSA Form 3676 to the requesting individual. The individual shall complete GSA Form 3676 and submit it to the agency official to whom the original oral request for reasonable accommodation was made. The Udall Foundation will provide GSA Form 3676 in an accessible format upon request.

An individual requesting reasonable accommodation may track the processing of the request through their supervisor, in the case of a current employee, or the designated agency official in the case of a job applicant. Requests for updates on the processing and status of the request may be made orally or in writing and should be documented by the supervisor or agency official at the time the request is received.

An individual requesting reasonable accommodation will receive notification of a final decision from their supervisor, in the case of a current employee, or the designated agency official in the case of a job applicant. Contact information for all Udall Foundation employees is available at www.udall.gov and available in accessible format upon request.

If an individual requests reasonable accommodation that will be needed on a repeated basis (e.g., sign language interpreter, qualified reader), the request need only be made once. Once the accommodation is approved the first time the employee may obtain the accommodation in future instances by notifying the appropriate Udall Foundation official.

Medical Information

The Udall Foundation may require an individual requesting reasonable accommodation to provide, or have the individual's health professional provide, medical information sufficient to explain the nature of the individual's disability, his or her need for reasonable accommodation, and how the requested accommodation if any will assist the individual to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of the workplace.

Generally speaking, the Udall Foundation will not request medical information when the disability and the need for reasonable accommodation are obvious, or when the individual has already provided the agency with sufficient information to document the existence of a disability and his or her functional limitations.

Any requirement for the provision of medical information shall be communicated to the requesting individual by their supervisor, in the case of a current employee, or from the designated agency employee facilitating the job application process in the case of a job applicant. The Udall Foundation has the right to request relevant supplemental medical information if the first submission was insufficient. The Udall Foundation also has the right to have the individual's medical information reviewed by a medical expert of the agency's choosing, at the agency's expense.

There are limited situations under which an individual's medical information may be disclosed, in accordance with 29 C.F.R. § 1614.203(d)(3)(i)(L). In these situations medical information may be disclosed to:

- Supervisors and managers who need to know or may need to be told about necessary restrictions and accommodation(s);
- First aid and safety personnel, if the disability might require emergency treatment;
- Government officials investigating the agency's compliance with the Rehabilitation Act;
- Workers' compensation offices or insurance carriers;
- Agency EEO officials for the purposes of maintaining information records.

Where medical information is disclosed, the Udall Foundation will inform the recipients of the medical information about the confidentiality requirements attached to the information.

Processing Requests for Reasonable Accommodation – Udall Foundation

Upon receiving GSA Form 3676 the Udall Foundation supervisor or designated agency official will forward the reasonable accommodation request to the appropriate GSA official within two (2) business days. Subsequently the supervisor or designated agency official shall:

- Maintain confidentiality of information received during the reasonable accommodation process;
- Engage in the interactive process in good faith;
- Communicate throughout the process with the individual to determine what, if any, accommodations are available, especially in cases where the specific limitation or barrier is unclear, where an effective accommodation is not obvious, or where the parties involved are considering different possible reasonable accommodations;
- Provide GSA personnel with any relevant information to determine the essential job functions of the applicant's or employee's job position, the effects the applicant's or employee's disability limitations have on the job requirements, if the requested accommodation would be effective, if any accommodations are available, and what alternative accommodations may be available and effective;
- Coordinate with the Udall Foundation Executive Director, General Counsel, and other management as necessary to ensure this policy is being followed as required, and to keep management informed regarding the progress of the request;
- Work with or provide supporting information to the Udall Foundation Executive Director or General Counsel in response to litigation, informal and formal complaints, grievances, and other inquiries involving reasonable accommodation requests;
- Consult appropriate resources, such as EEOC guidance and technical assistance documents available on EEOC's public website, to identify and evaluate possible accommodations;
- Be the deciding official regarding the reasonable accommodation request;
- Work with GSA personnel to prepare and issue the final decision letter and the appropriate GSA form(s) to grant or deny the reasonable accommodation request;
- Maintain documentation of the process and comply with records management and reporting requirements, including by maintaining a reasonable accommodation case file separate from the employee's official personnel folder;
- Ensure that any approved and appropriate accommodations are provided in accordance with the required timeframes as reasonably possible.
- Assist with completion of the "Agency Certification of Reassignment and Accommodation Efforts", SF-3112D, when required for employees seeking disability retirement to certify efforts made by the Udall Foundation to provide reasonable accommodation including job searches, if any, for reassignments;
- Notify the individual of his or her right to seek informal resolution and reconsideration of that decision by the next higher-level supervisor as appropriate if any part of the request is denied.

Processing Requests for Reasonable Accommodation – GSA

GSA will act as the primary party for processing reasonable accommodation requests made to the Udall Foundation. In this capacity GSA will:

- Review requests from Udall Foundation employees and applicants for completeness;
- Provide advice and consultation to the Udall Foundation regarding requests and accommodation needs;
- Review medical information to determine the sufficiency for accommodation under the law and request medical documentation, if necessary.
- Obtain and evaluate documentation supporting an accommodation request, such as medical information, when the disability and/or need for accommodation is not obvious;
- Work with the employee's supervisor or applicant's contact to ensure that any accommodation, if appropriate, meets the individual's disability-related needs;
- Not remove essential job functions of the position, if feasible;
- Not pose an undue hardship for the Udall Foundation;
- Assist the Udall Foundation in making the final decision on each request.
- Track and report all requests for reasonable accommodation and the disposition of those requests, and report relevant data as required.

Reassignment

When appropriate the Udall Foundation will consider reassigning the individual requesting reasonable accommodation into a vacant position for which an employee is qualified, and not simply give permission to the individual to compete for such a position. Such reassignment is a qualifying reasonable accommodation when the agency determines that no other reasonable accommodation will permit an employee with a disability to perform the essential functions of his or her current position. Under such circumstances the Udall Foundation Executive Director will notify agency supervisors and other relevant employees how and where they are to conduct searches for available vacancies when considering reassignment as a possible reasonable accommodation. The Executive Director will identify the agency personnel who are responsible for conducting the searches and require these individuals to consult with the affected individual as necessary to determine whether there are limits on the search the employee would like the agency to conduct; whether the employee is qualified for a particular job; or whether the employee would need a reasonable accommodation to perform the essential functions of a new position.

Denials of Reasonable Accommodation

An employee or job applicant whose request for reasonable accommodation is denied by the Udall Foundation will receive written notice of such denial from the agency. The written notice will be issued at the time of denial and will explain the reasons for the denial and notify the employee or job applicant of any available internal appeal or informal dispute resolution processes, including as outlined below. This policy does not modify or replace statutory, regulatory, or administrative protections and procedures for individuals with disabilities who wish to challenge the denial of a request for reasonable accommodation.

Denials of requests for reasonable accommodation will include information about the individual's right to file an EEO complaint pursuant to 29 C.F.R. § 1614.106, and to invoke other statutory processes as appropriate. To file an EEO complaint, an individual must initiate contact with an EEO Counselor within 45 days of the denial, regardless of whether the employee or applicant participates in an informal dispute resolution process. The procedures for filing an EEO complaint are detailed in the Udall Foundation's EEO policies which are available on the agency Intranet and in accessible format upon request.

The individual may also opt to file a Merit Systems Protection Board (MSPB) appeal; employees or job applicants should submit their appeal within 30 days of an appealable adverse action as defined by 5 C.F.R. § 1201.3 and in accordance with the instructions available at www.mspb.gov. Pursuant to receiving a notice of denial of reasonable accommodation, an employee or job applicant may elect to file an EEO complaint or an MSPB appeal, but only one avenue of redress may be elected on the same matter.

Costs and Resources

The Udall Foundation will not deny requests for reasonable accommodation strictly on the basis of cost. Individuals with disabilities will not be excluded from employment at the Udall Foundation due to the anticipated cost of a reasonable accommodation, if the resources available to the agency as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation, would enable it to provide an effective reasonable accommodation without undue hardship. Agency officials who decide requests for accommodation or make hiring decisions will consider all resources available to the agency as a whole, including any centralized funds the agency may maintain for the purposes of reasonable accommodation.

Time Limits

The Udall Foundation shall either provide a reasonable accommodate or deny a reasonable accommodation request within sixty (60) days of receiving the initial oral or written request from the individual, absent any extenuating circumstances that preclude such timeline from being adhered to. The agency shall not be bound by this timeline if the requesting individual's health professional fails to provide needed documentation in a timely manner. If there is a delay either in processing a request for reasonable accommodation or in providing such accommodation, the agency will communicate the reason for the delay to the individual including any extenuating circumstances and, to the extent known, the date on which the agency expects to complete the process.

The Udall Foundation shall provide reasonable accommodation in accordance with the maximum timeline articulated in 29 C.F.R. § 1614.203(d)(3)(i)(M). Whenever possible, the agency will provide reasonable accommodation in less than the maximum time permitted under in order to avoid potential violations of the Rehabilitation Act. When all facts and circumstances known to the agency make it reasonably likely that the individual will be entitled to reasonable accommodation, but the accommodation cannot be provided immediately, the agency will

provide an interim accommodation that allows the individual to perform some or all of the essential functions of his or her job, if it is possible to do so without imposing undue hardship on the agency.

If the requesting individual indicates that the request requires expedited processing, the Udall Foundation official shall communicate this information to the appropriate GSA official at the time GSA Form 3676 is provided. The GSA official shall evaluate the basis for the expedited request and determine if it is appropriate and will not cause the agency undue hardship. Expedited processing for reasonable accommodation requests may be required if the accommodation is needed, for example: (1) to enable an individual with a disability to apply for a job; or (2) the accommodation is needed for a specific agency activity that is scheduled to occur shortly. The timeline for processing expedited requests for accommodation is thirty (30) days.

Information Tracking

The Udall Foundation, as applicable, will be the official custodian of the official reasonable accommodation file. As soon as the reasonable accommodation process is completed, and if reconsideration is not sought or after the reconsideration decision is issued, if reconsideration is requested, GSA will submit the entire reasonable accommodation record to the Udall Foundation General Counsel. The record shall include, at a minimum:

- The specific reasonable accommodation requested, if any;
- The job (occupational series, grade level, and agency component) sought by the requesting applicant or held by the requesting employee;
- Whether the accommodation was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment;
- Whether the request was granted (which may include an accommodation different from the one requested) or denied;
- The identity of the deciding official;
- If denied, the basis for such denial;
- The number of days taken to process the request.

The supervisor or designated agency employee shall also provide to the General Counsel all records that may be needed to determine whether the agency is complying with the nondiscrimination and affirmative action requirements imposed under Section 501 of 29 C.F.R. § 1614.203(d)(8). The General Counsel will make such records available upon request. All records will be maintained in accordance with the Privacy Act and CIO P 1820.1, GSA Record Maintenance and Disposition System.

Training

GSA will provide reasonable accommodation training to Udall Foundation employees and supervisors as requested and agreed upon by the Udall Foundation and GSA and in accordance with the agency's SLA. Such training will provide a basic understanding of legal requirements for providing reasonable accommodation under the Americans with Disabilities Act and the Rehabilitation Act for individuals with disabilities.

Resources

Office of Personnel Management (OPM)

<https://www.opm.gov/policy-data-oversight/disability-employment/reasonable-accommodations/>

Equal Employment Opportunity Commission (EEOC) Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act

<https://www.eeoc.gov/policy/docs/accommodation.html>

EEOC's *Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act* (July 27, 2000)

GSA Form 3676, Confirmation of Reasonable Accommodation, in the GSA Forms Library

<https://www.gsa.gov>