

UDALL FOUNDATION POLICY AND PROCEDURES REGARDING REASONABLE ACCOMMODATION

The Morris K. Udall and Stewart L. Udall Foundation (Udall Foundation) is an independent agency within the Executive Branch of the federal government. Accordingly, the Udall Foundation must, and will, comply with the rules and regulations required regarding requests for reasonable accommodation by employees or applicants.

1. Purpose. This policy implements Executive Order 13164 by establishing procedures to facilitate the provision of reasonable accommodations including the processing of requests for reasonable accommodation made by employees or job applicants with disabilities. This policy further fulfills the Udall Foundation's obligation to provide reasonable accommodations pursuant to the Rehabilitation Act of 1973, as amended.

2. Background. Section 501 of the Rehabilitation Act of 1973, as amended, requires each Federal agency to reasonably accommodate the known disabilities of qualified individuals with disabilities, unless to do so would cause undue hardship on the agency. On September 25, 2008, the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) amended the Americans with Disabilities Act (ADA) of 1990. These amendments became effective on January 1, 2009. The Equal Employment Opportunity Commission (EEOC) final regulations to implement the ADAAA were published in the Federal Register, 76 FR 16977, on March 25, 2011. This policy implements the provisions of the ADAAA and the EEOC's implementing regulations.

3. Scope and applicability.

a. 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.

b. This policy does not apply to contractors paid by third party vendors.

4. It is the Udall Foundation's policy to fully comply with the reasonable accommodation requirements of the Rehabilitation Act of 1973, as amended. The Udall Foundation is committed to providing reasonable accommodation in order to assure that qualified individuals with disabilities enjoy full access to equal employment opportunities at Udall Foundation, unless to do so would cause undue hardship on the agency.

As the Udall Foundation is a very small agency it does not have the resources to designate a Disability Program Manager or Specialist. As such, the Udall Foundation maintains a Memorandum of Understanding (MOU) with the Office of Human Resources Management and the Office of General Counsel of the General Services Administration (the GSA) to provide reasonable accommodation services, advice and support.

It is the policy of the Udall Foundation that all requests for reasonable accommodations will be coordinated with the GSA personnel assigned under the MOU to provide these services, advice and assistance to the Udall Foundation. Documentation of such coordination shall be maintained in the files related to such requests (including, as appropriate, the supervisor's file, the selection files, or files maintained by the Udall Foundation General Counsel or the Executive Director). Any deviations from the advice given by the GSA personnel must be explained and documented in the file.

The Udall Foundation will process a reasonable accommodation request and, where appropriate, provide reasonable accommodation in a prompt and fair manner. The Udall Foundation is also dedicated to improving the recruitment, promotion, and retention of qualified persons with disabilities by providing information and resources necessary to support the applicant/employee and to accomplish the agency's mission.

To properly implement this policy, the following information is provided as to the Roles and Responsibilities for implementation of the policy.

Requester (Employee or Applicant with a Disability):

- Informs his or her supervisor or higher-level manager in his or her supervisory chain of command of the need for an accommodation. (In the case of an applicant, the applicant should notify the person that contacts them regarding the hiring process.)
- Confirms an oral request for reasonable accommodation in writing, as soon as possible, using GSA Form 3676 or the equivalent.
- Cooperates fully and in good faith in the interactive process throughout the reasonable accommodation process (failure on the part of the employee or applicant to cooperate in the interactive process may result in a denial of the reasonable accommodation request);
- Promptly notifies the supervisor/manager in writing if representation (such as from a family member or medical provider, if the Requester prefers) is obtained, and provides the representative's contact information;
- Promptly provides any requested information, including medical information, about the disability, limitations, and need for accommodation.

GSA (provides the following services to the Udall Foundation pursuant to the MOU):

- Acts as the primary source for processing reasonable accommodation requests;
- Reviews requests from Udall Foundation employees and applicants for completeness; provides advice and consultation to the Udall Foundation regarding requests and accommodation needs;

- Reviews medical information to determine the sufficiency for accommodation under the law and requests medical documentation, if necessary.
- Obtains and evaluates documentation supporting an accommodation request (such as medical information) when the disability and/or need for accommodation is not obvious;
- Works with the employee's supervisor (or applicant's contact) to ensure that any accommodation, if appropriate, meets the individual's disability-related needs; does not remove essential job functions of the position, if feasible; and does not pose an undue hardship for the Udall Foundation;
- Works with applicants with disabilities who need accommodation to apply for or be interviewed for a job;
- Assists the Udall Foundation in making the final decision on each request.

Supervisor/Manager:

- Immediately forwards requests for reasonable accommodation to the GSA Representative (as soon as practicable, preferably within 2 business days);
- Clarifies with the individual whether a reasonable accommodation is requested if the nature of the initial communication is unclear;
- Coordinates with the Requester to confirm an oral request for reasonable accommodation in writing, as soon as possible, and provides GSA Form 3676 to the Requester for doing so;
- Maintains confidentiality of information received during the reasonable accommodation process;
- Engages in the interactive process in good faith;
- Communicates throughout the process with the Requester to determine what, if any, accommodations are available. Effective communication is particularly important 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;
- Provides the GSA Representative with any relevant information to determine the essential job functions of the applicant's or employee's job position; to learn 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;

- Is familiar with this Policy and these Procedures and coordinates with the GSA Representative assigned;
- Coordinates with the Udall Foundation General Counsel and other Udall Foundation management as necessary to ensure this policy is being followed as required;
- Keeps the Executive Director informed regarding the progress of the request;
- Maintains documentation of the process and complies with records management and reporting requirements;
- Makes the decision regarding a request for reasonable accommodation in consultation with the GSA Representative in accordance with the guidance outlined herein and consults with the Udall Foundation General Counsel and GSA before issuing any decision regarding the request for reasonable accommodation;
- Ensures that any approved and appropriate accommodations are provided in accordance with the required timeframes as reasonably possible. Further detailed information regarding the processes and procedures once a reasonable accommodation has been requested will be provided to the Requester by the supervisor/manager and the GSA representative;
- Maintains confidentiality of information received during the reasonable accommodation processing procedures;
- Tracks and reports all requests for reasonable accommodation and the disposition of those requests. Reports relevant data as required;
- Maintains a reasonable accommodation case file separate from the employee's official personnel folder;
- Assists 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 Agency to provide reasonable accommodation including job searches, if any, for reassignments;
- Works with or provides supporting information to the Udall Foundation General Counsel and Executive Director in addressing response to litigation, informal and formal complaints, grievances, and other inquires involving reasonable accommodation requests;
- Works with GSA personnel and the Udall Foundation General Counsel to prepare and issue the final decision letter and the appropriate GSA form to grant or deny the reasonable accommodation request;

- Notifies the Requester 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.

Avenues for Redress of Reconsideration Decision. 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. If the reconsideration official sustains the initial decision, the Requester may seek redress as follows:

a. Equal Employment Opportunity (EEO) Complaint. To file an EEO complaint, applicants for employment or employees must contact an EEO counselor within forty-five (45) calendar days of receiving the notice of denial of reasonable accommodation, pursuant to 29 C.F.R. Part 1614 by contacting their local EEO office representative for further information.

b. Administrative Grievance. Non-Bargaining Unit employees may file an administrative grievance pursuant to a notice of denial within fifteen (15) calendar days to a higher level management official in their supervisory chain. The employee should also inform the servicing HRD of the filing of a grievance.

c. Merit Systems Protection Board Appeals. To file a Merit Systems Protection Board (MSPB) appeal, employees should submit their appeal within 30 days of an appealable adverse action as defined by 5 CFR Part 1201.3. For more information, visit the website at www.mspb.gov.

d. Pursuant to receiving a notice of denial of reasonable accommodation, an employee may elect to file an EEO complaint, a grievance, or a MSPB appeal, but only one avenue of redress can be elected on the same matter.

Custody of Records. The Udall Foundation, as applicable, will be the official custodian of the official reasonable accommodation file. As soon as the process is completed, e.g., after the supervisor's final decision, if reconsideration is not sought, or after the reconsideration decision is issued, if reconsideration is requested, the GSA official in possession of the reasonable accommodation request file will submit the entire record including copies of the request, the decision, and the supporting documentation to the Udall Foundation. 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 training to supervisors and managers of the Udall Foundation, as requested and agreed upon by the Udall Foundation and GSA, notwithstanding the above-referenced MOU. GSA will provide training to supervisors and managers to adhere to the requirements and participate in GSA's Reasonable Accommodation training, as required, which will provide a basic understanding of legal requirements for providing reasonable accommodation under the Americans with Disabilities Act (ADA) and The Rehabilitation Act of 1973 for individuals with disabilities.

References

Office of Personnel Management (OPM)

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

FEBRUARY 2019 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>

See GSA Form 3676, Confirmation of Reasonable Accommodation, in the GSA Forms Library at <https://www.gsa.gov>; the version available when this policy is released is attached.