

# **Morris K. Udall and Stewart L. Udall Foundation**

## **Plan for Agency Operations in the Absence of Appropriations (October 2017/FY 2018)**

### **Background:**

#### **Mission:**

In 1992, Congress created the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (Udall Foundation).<sup>1</sup> In 1998, Congress amended the enabling legislation to create the U.S. Institute for Environmental Conflict Resolution as a program of the Udall Foundation.<sup>2</sup> Congress again modified the Udall Foundation's enabling legislation in 2000, authorizing the Foundation to provide management and leadership training, assistance and resources for policy analysis and other appropriate activities related to Native American health care and tribal leadership.<sup>3</sup> All of this authorizing legislation is codified at 20 U.S.C. §§ 5601-5609. Most recently, in 2009, Congress enacted legislation to recognize Stewart L. Udall through the Foundation, renaming it the Morris K. Udall and Stewart L. Udall Foundation.<sup>4</sup>

#### **Organizational Structure**

The Foundation is organized into two distinct program areas: Education programs and the U.S. Institute for Environmental Conflict Resolution. Each program area has a separate funding structure and will be impacted differently by the absence of appropriations. As of October 1, 2017, the Udall Foundation will be authorized 29 FTEs. As described below, the employees are funded either by annually appropriated funds, other than annually appropriated funds, or a mix of funding sources.

#### **Education Programs**

The Foundation is authorized to award scholarships, fellowships, internships and grants for educational purposes, as well as other programs necessary to perform its statutory purposes. These include:

- Scholarships for college undergraduates in two areas -1) to those who intend to pursue careers related to the environment and 2) Native Americans and Alaska Natives who intend to pursue careers in health care and tribal public policy.
- Internships, including awards to Native American and Alaska Natives, in federal, state and local agencies, or in offices of major public health or public policy organizations.
- Fellowships to graduate students pursuing advanced degrees in fields related to the environment and to outstanding Native American and Alaska native graduate students preparing for careers in health care and tribal public policy, including law and medicine.

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<sup>1</sup> Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992, Public Law 102-259.

<sup>2</sup> Environmental Policy and Conflict Resolution Act of 1998, Public law 105-156

<sup>3</sup> Omnibus Indian Advancement Act, Public Law 106-568, Section 817.

<sup>4</sup> Public Law 111-90

- The Parks in Focus® Program, which connects youth from underserved communities to nature through photography.
- Allocation of 20% of the current year’s interest earned from the Education Trust Fund (described more fully below) to the Udall Center for Studies in Public Policy at the University of Arizona to be used for various purposes including research on environmental policy, Native American and Alaska Native health care issues and tribal public policy issues.
- The Native Nations Institute (NNI), which is housed at the University of Arizona and serves as a self-determination, development, and self-governance resource for indigenous peoples. It provides assistance to tribes facing constitutional issues; research and analysis regarding policy decisions in such areas as intergovernmental relations, natural resource management, development of strategy, law enforcement, cultural affairs and social services; and customized executive education to senior leaders and managers of the Native Nations.

The Foundation’s Education programs are funded by the interest earned from investment (by the Secretary of the Treasury) of the Morris K. Udall and Stewart L. Udall Foundation’s Fund (Trust Fund). 20 U.S.C. § 5606. The Trust Fund is discussed more fully below

### **The U.S. Institute for Environmental Conflict Resolution**

The U.S. Institute for Environmental Conflict Resolution (U.S. Institute) provides collaboration and conflict resolution services such as assessment, mediation and training, to resolve environmental disputes involving the federal government. Congress has provided annual operating appropriations for the U.S. Institute every year since Fiscal Year 1999. The U.S. Institute is also authorized to collect and retain fees to reimburse the cost of the services it provides under the enabling legislation, which moneys (along with the annual appropriation) are deposited into the Environmental Disputes Resolution Fund (EDRF). 20 U.S.C. §§ 5607a and 5607b

### **Financial Structure**

The annual financial statements prepared by the Udall Foundation for OMB and Congress (and independently audited) combine the financial data for the Trust Fund and the EDRF. However, the Foundation’s annual appropriation designates funding separately for the Trust Fund and the U.S. Institute, and is deposited by the Department of the Treasury into the appropriate funds (the Trust Fund and the EDRF). The Secretary of the Treasury invests available balances from both funds in Treasury obligations. Following is an explanation of how the moneys in those funds may be utilized to fund Foundation programs.

### **Education Programs**

Congress established the Morris K. Udall Education Trust Fund with an initial appropriation and has added to the Trust Fund with additional appropriations in subsequent years. Except as described above for the Native Nations Institute (NNI), the appropriations for the Trust Fund are added to principal and invested, and only the income may be used to fund the Foundation’s Education programs. 20 U.S.C. §§ 5606, 5607 and 5609. The Foundation may also accept gifts to support its educational programs. 20 U.S.C. § 5608.

Since 2001, the Foundation has received annual Congressional authorization to transfer a portion of its Education Trust Fund appropriation to support the purposes of NNI. Typically, the Foundation Board of Trustees determines the transfer amount and the money is disbursed monthly to NNI to reimburse its actual, authorized expenses. A transfer in FY 2018 will be contingent upon a Congressional Trust Fund appropriation and transfer authorization, both of which were included in the Presidents FY 2018 Budget. A lapse in appropriations at the beginning of FY 2018 would delay the ability of the Board of Trustees to make such a transfer.

### **U.S. institute**

U.S. Institute appropriations remain available until expended and are used for annual operations. 20 U.S.C. §§ 5607a and 5609. In addition to appropriations, the U.S. Institute collects fees, primarily from federal agencies via inter-agency agreements. The Institute generally retains 20 - 30% of the amount received in fees in reimbursement for U.S. Institute staff hours expended; the remaining 70 – 80% is expended by contracting with private-sector neutrals to perform services on behalf of the Institute and its partners.

### **Plan for Agency Operations in the Absence of Appropriations:**

#### **Education**

The Education Programs, including the salaries of the staff administering each program, are paid entirely from the interest generated by the Trust Fund, grants and gifts. As a result, an absence of appropriations for the upcoming 2018 fiscal year will not impact the operation of the Education Programs, other than NNI. The Foundation's education programs will continue normal operations because there will not be a gap in the available funding. The Foundation education programs are operated using approximately three (3) FTE positions. These three (3) positions are funded entirely from the Trust fund, including one Director of Education and two Program Managers. The personnel so funded are therefore "exempt" from furlough, and will continue to perform their Education Program functions; no "shut down" of Education Programs will be required. In addition, the interest income from the Trust Fund is used to fund a portion of the salary of several employees with Foundation-wide responsibilities, in proportion to their work on Education/U.S. Institute matters, as discussed further below.

Until there is an appropriation designated for NNI, there will be no funds to transfer to NNI in FY 2018. The NNI employees are not employees of the federal government, so a lapse in federal appropriations will not require the furlough of NNI's staff, and will not affect NNI operations except insofar as the failure to transfer might impact NNI's financial position.

#### **U.S. Institute**

In the absence of appropriations, the U.S. Institute will not have sufficient funds to continue normal operations. Accordingly, to avoid the possibility of an Anti-Deficiency Act violation, the Institute will undertake an orderly shutdown of its operations, including instructions regarding ongoing projects. The Institute has approximately 40 active projects. Institute personnel provide direct services (not through a contracted third party neutral) for some projects; contracted third-party neutrals provide services under Institute oversight for other projects. The shutdown will be conducted as follows:

- In the week prior to the end of FY 17 (or the week before the lapse in FY 18 appropriations during FY 18) the Foundation’s management will review this shutdown plan with the Director of the U.S. Institute and the Udall Foundation D.C. Director.
- During the week prior to the end of FY 17 the Institute’s management will determine if there are any functions with a statutory deadline which would be impacted by a shutdown resulting from the lapse of appropriations, and whether, as a result, any tasks could be deemed exempt (dependent upon how long the shutdown would continue).
- Within the week prior to the end of FY 17, all Institute Program Managers (PMs) will be asked to identify whether any project for which they are responsible includes a deadline set by the statute enabling or governing that project; what that deadline is; how the PM and/or the contractor had intended to meet the deadline; and whether that deadline could be impacted by the absence of Institute employees due to the lapse in appropriations.
- PMs will also be asked to determine if any project involves the protection of safety or public health or property that would require continuing operations regardless of the lapse in appropriations. As a general matter, Institute projects do not involve protection of safety or public property, and no projects are expected to qualify for this exemption.
- Within the week prior to the end of FY 17, PMs will be asked to contact the projects’ stakeholders for any project involving direct services by Institute employees to notify them that, in the event of a government shutdown, no work would proceed on that project until funds are appropriated.
- Within the week prior to the end of FY 17, all PMs will be asked to identify the following information concerning Institute Programs where third party neutral services are under contract to properly determine if, and when, these contractors should be instructed to suspend operations. All contracts for these services (or task orders already issued against those contracts) have been fully funded with prior-year appropriated funds already obligated to the Foundation by its partner agencies prior to the end of FY 17. Accordingly, the basis for a direction to suspend operations would solely be to ensure the sensible use of taxpayer funds, and most contracts would not need to be suspended

For each contract, the PMs will be asked to determine:

- As all U.S. Institute contracts for these services was issued by the Institute directly or by a Department of Interior contracting officer (CO) through the Inter-Agency Agreement with the Department of the Interior, Interior Business Services Center, Acquisition Services Directorate, in Sierra Vista, AZ (IBC), each PM will coordinate with the IBC CO as to the CO’s plans for any required notification to a contractor for suspension of performance, including the information immediately below.
- For each contract or task order, the period of time covered by the existing obligated funds.
- Identification of a date after which the contractor (despite the availability of payment from prior-year funds) would not be able to effectively perform contractual duties

because such duties require the participation of federal employees who are likely to be unavailable due to the lapse in appropriations. This would include both the unavailability of Institute personnel and the unavailability of employees of participating federal agencies. The analysis should include which actions can be effectively performed without federal employee input and how that might impact the contractors' schedules. It would also include any directions which will be needed from the PM and the IBC CO. In particular, the PMs should identify whether the date after which work will not be effective (i.e., the date upon which the work should be suspended) will be within the next 1-5 days, or whether the contractor has sufficient alternate work to continue useful performance for a longer period of time.

- All contractors will be notified of the possibility of a shutdown and the unavailability of any federal employees to oversee or assist with the ongoing contracts. If the PM has decided that useful work can continue for a period of time in the absence of the federal employees, on October 1, 2017, the IBC CO (or the Foundation COR, if appropriate) will notify the contractor of the date on which the contractor is directed to suspend performance, should the shutdown continue past that date. For all contracts where the PM has determined that no useful work can continue in the absence of the federal employees, the contractor will be instructed (by the COR or the IBC CO) on October 1 to suspend operations until further notice and to direct all subcontractors to suspend operations.
- Institute management will designate an emergency contact person for Institute-related matters arising during the shutdown period.

#### **Positions funded by both Appropriated and Education Trust Fund moneys**

Based upon the duties of the position, several Foundation positions are funded through a mix of Foundation (Education Trust Fund) and Institute (annually appropriated) funds, based upon the Foundation's best estimate of the time they expend in each area. To ensure an orderly shutdown and in order to ensure the continued smooth operation of those Foundation operations which will continue, these positions will be authorized to continue work on a limited basis.

The positions and the estimated time and funding split are:

- Executive Director (20% Trust Fund/80% annually appropriated funds),
- Assistant to the Executive Director (50%/50%),
- The Director of Finance & Operations (CFO) (20%/80%),
- General Counsel (20%/80%),
- Senior IT Manager (20%/80%), and
- Financial Manager (10%/90%).

Some of these positions are mission critical and are therefore considered "essential". Additionally, to pay bills in a timely manner and to meet the requirements as set out in the Prompt Payment Act certain employees may be required to work additional time despite the funding mix and ratios.

This group of employees may be required to work up to a full day following the start of the lapse in appropriations to confirm that the shutdown plan has been fully implemented. After that, the Executive Director, the General Counsel and the Senior IT Manager will be authorized to work only up to the

percentage of their normal schedule covered by the Trust funds. The reduced schedules for the Executive Director and the General Counsel will be arranged as much as possible so to provide senior level coverage during normal business hours.

Because the Financial Manager handles human resources functions in addition to some institute financial matters which will need further processing after a shutdown, it is anticipated that she will work up to 20% of her normal hours, as necessary.

### **Shutdown process**

On the first business day of FY 17, all affected employees will report to work to implement an orderly shutdown of those Foundation operations not funded by other than annual appropriations. The orderly shutdown will include issuance of an appropriate Furlough Notice to all affected employees, as directed by the Office of Personnel Management and OMB. This notice will include how many hours (if any) the employee will be expected to work during the absence of appropriations, the reasons why such work is excepted and/or necessary, and the tasks to be completed.

An orderly shutdown will include ensuring that all contractors have been or will be of the need to realign their schedules for effective performance without federal employee input, and/or the date on which (if the lapse in appropriations continues) the contractor should suspend operations. Such communications must be conducted by the IBC CO, but Institute personnel will be needed for coordination. It is anticipated that ½ day will be sufficient for Institute personnel to implement the shutdown plan for the Institute unless the IBC CO requests additional time. If additional time is needed to complete the notifications to contractors and project participants, the minimum staff necessary to complete the notifications will continue working until the task is completed. It should be noted that the duration of the absence of appropriations may require “call back” of a PM to re-evaluate the initial analysis.

All hours will be closely monitored to ensure that the exempted staff and those whose “orderly shutdown” responsibilities extend beyond the first ½ day are performing only those duties authorized by this plan.

All personnel will post a standardized temporary automatic reply e-mail and a voice mail message to advise callers of the shutdown and to provide information concerning the designated emergency contact.

The Foundation has in place a communications tree for notifying all personnel in the event of emergency or other unusual event. Foundation management will review the communications plan with all affected staff to ensure that required notifications can be transmitted regarding the furlough status and return to work.

### **Designated contacts regarding the plan:**

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