

OPERATING PROCEDURES OF THE BOARD OF TRUSTEES OF THE MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

ARTICLE I

Names and Address

The name of the organization is the Morris K. Udall and Stewart L. Udall Foundation (the "Foundation"). The physical location and mailing address of the Foundation is 130 South Scott Avenue, Tucson, Arizona 85701-1922.

ARTICLE II

Purpose

A. Purpose of the Foundation. The U.S. Congress established the Foundation as an independent agency of the Executive Branch in 1992 to honor Morris K. Udall's 30 years of service in the U.S. House of Representatives. In 2009, Congress enacted legislation to honor Stewart L. Udall and add his name to the Foundation. The Foundation's authorizing legislation is codified as Title 20, Chapter 66, of the United States Code, 20 U.S.C. §5603, *et seq.* Now known as the Morris K. Udall and Stewart L. Udall Foundation, the purposes of the Foundation, as set forth in the founding legislation, are to:

1. Increase awareness of the importance of and promote the benefit and enjoyment of the Nation's natural resources;
2. Foster a greater recognition and understanding of the role of the environment, public lands and resources in the development of the United States;
3. Identify critical environmental issues;
4. Establish a program for environmental policy research and environmental conflict resolution and training;
5. Develop resources to train professionals properly in environmental and related fields;
6. Provide educational outreach regarding environmental policy;
7. Develop resources to train Native American and Alaska Native professionals in health care and public policy, by conducting management and leadership training of Native Americans, Alaska Natives, and others involved in tribal leadership, by providing assistance and resources for policy analysis, and by carrying out other appropriate activities; and,
8. Establish the United States Institute for Environmental Conflict Resolution to assist in the implementation of the National Environmental Policy Act by providing assessment,

mediation, and other related services to resolve environmental disputes involving federal agencies and instrumentalities.

B. Operating Procedures for the Board of Trustees. These Operating Procedures constitute the principles and procedures that the Foundation's Board of Trustees shall utilize in carrying out its duties and responsibilities of supervising and directing the Foundation and set forth the Board's expectations concerning the Foundation's Executive Director and General Counsel. The Operating Procedures also set forth the Board's expectations for periodic reporting to the Board by the Directors of the Foundation, the Native Nations Institute at the University of Arizona, the Udall Center for Studies in Public Policy at the University of Arizona, and the Morris K. Udall and Stewart L. Udall Archives at the Special Collections of the University of Arizona Libraries. These Operating Procedures are intended to be consistent with 20 U.S.C. §5603, *et seq.*, and any other applicable federal law. In the event of conflict between these Operating Procedures and federal law, federal law controls and these Operating Procedures shall be interpreted and applied in accordance with such federal laws.

ARTICLE III

Board of Trustees

A. Duty and Responsibilities. The Foundation is subject to the supervision and direction of the Board of Trustees (Board). It is the Board's role and duty to appoint the Executive Director and other senior management staff as provided for in these Operating Procedures; fix the compensation of the Executive Director and up to four additional senior management staff; approve the organizational structure for the staff of the Foundation; approve the Foundation's budget; arrange for an annual financial audit; set policies, including internal controls, for the conduct and management of the agency's finances, personnel, and programs to be implemented by staff; and approve the strategic directions and priorities for the Foundation.

B. Board Eligibility and Composition. The Board has thirteen Trustees, eleven of whom are voting members of the board. As set forth in the enabling legislation, the membership of the Board is comprised of:

1. Two Trustees, appointed by the President, with the advice and consent of the Senate, after considering the recommendation of the Speaker of the House of Representatives, in consultation with the Majority and Minority Leaders of the House of Representatives;
2. Two Trustees, appointed by the President, with the advice and consent of the Senate, after considering the recommendation of the President pro tempore of the Senate, in consultation with the Majority and Minority Leaders of the Senate;
3. Five Trustees, not more than three of whom shall be of the same political party, appointed by the President with the advice and consent of the Senate, who have shown leadership and interests in:

- a. the continued use, enjoyment, education, and exploration of our Nation's rich and bountiful natural resources, such as presidents of major foundations involved with the environment; or
 - b. the improvement of the health status of Native Americans and Alaska Natives and in strengthening tribal self-governance, such as tribal leaders involved in health and public policy development affecting Native American and Alaska Native communities;
4. The Secretary of Interior, or Secretary's designee, who shall serve as a voting ex officio member of the Board, but shall not be eligible to serve as Chairperson;
 5. The Secretary of Education, or the Secretary's designee, who shall serve as a voting ex officio member, but not be eligible to serve as Chairperson;
 6. The President of the University of Arizona who shall serve as a nonvoting, ex officio member, and shall not be eligible to serve as Chairperson; and
 7. The chairperson of the President's Council on Environmental Quality, who shall serve as a nonvoting, ex officio member and shall not be eligible to serve as chairperson.

C. Term of Office. The term of office of each appointed Trustee is six (6) years. However a Trustee may serve after the expiration of the Trustee's term until a successor has been confirmed.

D. Vacancies. A Trustee appointed to fill a vacancy shall serve for the remainder of the term for which the Trustee's predecessor was appointed and shall be appointed in the same manner as the original appointment before that vacancy occurred.

E. Officers. The Officers of the Board shall consist of a Chair, Vice Chair, Secretary, and such other Officers as the Board deems necessary to carry out the duties of the Board as prescribed by statute and these Operating Procedures. The election of Officers is for the administrative convenience of the Board. Notwithstanding the election of Officers, all Trustees share in the duties and responsibilities of the Board and are equally entitled to access to the staff, books and records of the Foundation as may be necessary to fulfill their duties and responsibilities.

1. **Chair.** The Chair shall be selected by majority vote of the Trustees from eligible voting members who are nominated by the President pursuant to 20 U.S.C. §5603(b)(1)-(3). The Chair shall have such powers as are necessary to perform such duties as the Board may prescribe including, but not limited to:
 - a. Regularly interacting with the Executive Director and other senior staff of the Foundation or other staff members as the Board Chair deems necessary;
 - b. Day-to-day supervision of the Executive Director and senior staff of the Foundation and of the direction of the programs of the Foundation;

- c. Representing the Foundation before Congress and other agencies of the Executive Branch as well as Indian tribes and state and local governments as necessary to carry out the purposes of the Foundation; and,
 - d. Establishing, with Board approval, ad hoc committees outside of the standing committees to address Foundation needs as they arise, the Board Chair to be a voting, ex officio member of each such committee.
2. **Vice Chair.** The Vice Chair shall carry out the duties of the Chair in the absence or incapacity of the Chair, or if the office of Chair is vacant, shall accede to the position of Chair and continue in that position until the expiration of the Chair's term of office, and shall otherwise carry out such duties as the Chair may assign from time-to-time.
 3. **Secretary.** The Secretary shall maintain minutes and records of Board proceedings. The staff of the Foundation shall assist the Secretary in the maintenance of the minutes and records of Board proceedings.
 4. **Other Officers.** The Board may elect such other Officers as it deems appropriate to carry out such duties as the Board designates.
 5. **Elections and Terms.** Officers of the Board shall be elected by majority vote at the first meeting in 2013 after the meeting at which these Operating Procedures are adopted and shall serve for terms of four (4) years. Officers may be removed from office at any time for failure to perform their duties by a vote of a majority of the Board then serving. Vacancies in any office may be filled by a majority vote of the Board at any meeting of the Board. Officers newly elected as a result of a vacancy shall serve for the remainder of the term of the Officers they replace,
 6. **Limitations on Officers.** No officer shall hold more than one (1) office at a time. No Officer may serve for more than eight (8) consecutive years in the same office.

F. Executive Committee. The Board may form an Executive Committee, consisting of the Chair, Vice Chair, and up to four other Trustees as the Board may designate by majority vote, all of whom shall serve on the Executive Committee for terms of four (4) years, subject to removal at any time by vote of a majority of the Board for failure to perform the duties of a member of the Executive Committee. Vacancies on the Executive Committee may be filled by a majority vote of the Board at any meeting of the Board. The formation of an Executive Committee is for the administrative convenience of the Board. Notwithstanding the formation of an Executive Committee, all Trustees share in the duties and responsibilities of the Board and are equally entitled to access to the staff, books and records of the Foundation as may be necessary to fulfill their duties and responsibilities.

1. **Meetings.** The Executive Committee may meet in person, telephonically, or in any other manner agreed by the Board and transact business with a simple majority of Executive Committee members. The Executive Committee shall meet at the discretion of the Chair.

The federal rules and rules of these Operating Procedures concerning Board proxies and the laws governing open meetings shall apply to Executive Committee meetings in which the Executive Committee is conducting business on behalf of the Board.

2. **Functions.** Between regularly scheduled meetings of the Board, the Executive Committee, as required by the Chair, will provide guidance regarding Board policies, make interim decisions necessary to implement Board policies and decisions, and develop proposals for Board consideration. The Executive Committee may not adopt policies, procedures, or regulations for the Board or the Foundation without the approval of the Board. The Executive Committee shall also be responsible for evaluating the performance of the Foundation's Executive Director, any Deputy Executive Directors, and the General Counsel. The Executive Committee shall report to the Board at its next meeting on any actions taken by the Executive Committee prior to that meeting for consideration and ratification by the full Board. The Executive Committee is authorized to act on behalf of the Board when business matters: (1) of an urgent nature are pending and the timely assembly of a quorum of the Board is not possible; (2) of a routine business nature are pending, such as disbursements for necessary expenses, allocating funds for special work, provided such amount shall not exceed the budget allowance for such work as previously approved by the Board; or require a position be stated on a general policy matter, or (3) are referred to them by the Board. The Executive Committee may refer matters brought before it to the proper committee of the Board, which it may designate, or to the Board.

G. Travel and Subsistence Pay. Trustees shall serve without pay, but in accordance with federal laws shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Board.

H. Former Trustees. Former Trustees who have provided contact information to the Foundation will generally be invited to attend the Board's regular meetings at their own expense, and participate in discussions held in open session. Former Trustees shall not be entitled to vote on matters before the Board or to engage in official business on behalf of the Board or the Foundation. At the request of the Board, Former Trustees may perform volunteer services for the Foundation and be reimbursed for travel expenses directly related to such service, subject to approval of the reimbursement by the Board. Any such reimbursement must comply with 5 U.S.C. § 5703.

ARTICLE IV

Conflict of Interest and Other Ethical Requirements

A. Governing Law. Trustees are Special Government Employees (SGE's). They are required to comply with certain criminal conflict of interest statutes (18 U.S.C. §§ 201-209) and the Standards of Ethical Conduct for Executive Branch Employees, as codified at 5 C.F.R. Part 2635. Some of these provisions apply differently to SGEs. The Office of Government Ethics has published a comprehensive summary explaining how these provisions, Executive Branch financial disclosure requirements, and certain other legal authorities apply to SGEs.

1. 18 U.S.C. § 201 prohibits the giving or receipt of anything of value or promise of the same to a Trustee to induce such Trustee to do or omit to do any act in violation of his or her public duty.
2. 18 U.S.C. § 202 defines the term Special Government Employee (SGE).
3. 18 U.S.C. § 203 prohibits a Trustee from receiving, agreeing to receive or soliciting compensation for representational services, rendered either personally or by another, before any court or federal agency or other specified federal entity in connection with any particular matter in which the United States is a party, or has a direct and substantial interest. Section 203 applies not only to representational services provided by the Trustee personally, but also to services provided by another person with whom the Trustee is associated, provided the Trustee shares in the compensation for such services, as in partnership income or profit-sharing arrangements. This does not preclude a Trustee from acting, with or without compensation, as an agent or attorney for the Trustee's spouse; child; or for any other person for whom the Trustee serves as a guardian, executor, administrator, trustee, or other personal fiduciary, except in matters in which the Trustee has participated personally and substantially as a Board member through decision, approval or disapproval, recommendation, advice or otherwise. *Note that this statute only applies to a Trustee in relation to a particular matter involving a specific party or parties and in which the Trustee has participated personally and substantially as a Board member through advice, decision, approval, disapproval, recommendation or otherwise.*
4. 18 U.S.C. § 204 prohibits a Trustee, other than in the discharge of his official duties, from prosecuting a claim against the United States, acting as an agent or attorney for another prosecuting a claim against the United States, or receiving as consideration for assistance for same, any gratuity, or share of or interest in such claim; or from acting as an agent or attorney for anyone before any department, agency, court, or military tribunal in connection with any covered matter in which the United States is a party or has a direct or substantial interest. The term "covered matter" means any judicial or other proceeding, application, contract, claim, investigation, charge, arrest or any other particular matter. This does not preclude a Trustee from acting, with or without compensation, as an agent or attorney for the Trustee's spouse; child; or for any other person for whom the Trustee serves as guardian, executor, administrator, trustee, or other personal fiduciary, except in matters in which the Trustee has participated personally and substantially as a Board member through decision, approval or disapproval, recommendation, advice or otherwise. *Note that this statute only applies to a Trustee in relation to a covered matter involving a specific party or parties and in which the Trustee has participated personally and substantially as a Board member through advice, decision, approval, disapproval, recommendation or otherwise; or, which is pending in the agency the Trustee is serving.*
5. 18 U.S.C. § 205 prohibits a Trustee from personally representing anyone before any court, federal agency, or any other entity in connection with any particular matter in which the United States is a party or has a direct and substantial interest, whether or not the Trustee receives compensation for the representational activity. *Note that this statute*

only applies to a Trustee in relation to a particular matter involving a specific party or parties and in which the Trustee has participated personally and substantially as a Board member through advice, decision, approval or disapproval, recommendation or otherwise.

6. 18 U.S.C. § 207 imposes restrictions on post-employment activities including various prohibitions on representing others in connection with particular matters in which the Trustee has participated personally and substantially as a Board member through advice, decision, approval or disapproval, recommendation or otherwise.

7. 18 U.S.C. § 208 prohibits a Trustee from participating personally and substantially in the Trustee's official capacity in any particular matter in which, to the Trustee's knowledge, the Trustee or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

8. 18 U.S.C. § 216 establishes the penalties for violations of §§ 203, 204, 205, 207 and 208, which include imprisonment of not more than one year or a fine, or both; and for willful violation, a penalty of imprisonment of up to five years or a fine, or both.

9. 5 C.F.R. Part 2635 - Standards of Ethical Conduct for Executive Branch Employees generally applies the provisions of Title 18 of the United States Code by:

- a. Placing restrictions on gifts from outside sources;
- b. Placing restrictions on gifts from subordinates to superiors;
- c. Generally prohibiting participation by a Trustee in particular matters if that Trustee knows that the matter is likely to affect his or her financial interest, that of a member of his or her household, or others with certain specified business relationships; or if in the Trustee's judgment, persons with knowledge of the facts would question his or her impartiality, except when a waiver has been specifically given to the Trustee in advance of the participation in the particular matter;
- d. Restricting participation in matters affecting the financial interests of someone with whom the Trustee is seeking future employment, under certain specified circumstances;
- e. Prohibiting the use of public office for private gain;
- f. Restricting service as an expert witness and in certain fundraising activities; and,
- g. Requiring annual confidential financial disclosures by a Trustee.

10. Definitions with Respect to These Statutes and 5 C.F.R. Part 2635

a. *“Personal and Substantial.* To participate personally means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate substantially means that the Trustee’s involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement or involvement in an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of that effort. While a series of peripheral involvements may be insubstantial, a single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, a Trustee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.” 5 C.F.R. § 2635.402(b)(4).

b. *“Imputed interests.* For purposes of 18 U.S.C. § 208(a) the financial interest of the following persons will serve to disqualify a Trustee to the same extent as if they were the Trustee’s own interest: (i) the Trustee’s spouse; (ii) the Trustee’s minor child; (iii) the Trustee’s general partner; (iv) an organization or entity the Trustee serves as an officer, director, trustee, general partner or employee; and (v) a person with whom the Trustee is negotiating for or has any arrangement concerning prospective employment.” 5 C.F.R. § 2635.402(b)(2)

c. *“Direct and Predictable Effect.* A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may occur even though it does not occur immediately. A particular matter will not have an effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on the financial interest only as a consequence of its effect on the general economy does not have a direct effect within the meaning of this definition. A particular matter will have a predictable effect if there is a real, as opposed to a speculative, possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.” 5 C.F.R. § 2635.402(b)(1)

d. *“Particular Matter.* This term encompasses only matters that involve deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons. A matter is covered by these ethics rules even if it does not involve formal parties and may include government actions such as proposed legislation or policy-making that is narrowly focused on the interests of such a discrete and identifiable class of persons. The term particular matter does not extend to the consideration or adoption of broad policy options that are directed to the interests of large and diverse groups of persons.”

Particular matters include but are not limited to Board proceedings, action on applications of any nature, requests for a ruling or a determination by the Board, contracts, claims, charges, and controversies before the Board. 5 C.F.R. § 2635.402(b)(3)

11. Exception with Respect to Conflicts of Interest. Trustees who are serving by operation of law as the Chair of the Council of Environmental Quality, the Secretary of the Department of Education, the Secretary of the Interior or their designees, do not have a prohibited conflict of interest if they take official action on matters as a Federal employee sitting as Trustee for the Foundation because the Foundation is also a federal agency. These Trustees owe a fiduciary duty to the Federal Government and there is no conflicting obligation between their duties as Trustees and their duties as federal officials in another agency of the federal government.

B. Implementation.

1. Trustees are responsible for notifying the Board Chair (or, in the case of the Board Chair, the Vice Chair) and the Foundation Designated Agency Ethics Official (usually the General Counsel) of any potential conflict of interest or appearance thereof, or other ethical issues relating to the statutes and regulations, of which the Trustee becomes aware.
2. The Board Chair and/or Designated Agency Ethics Official may, from time to time, request of the Trustees information concerning business, personal or other relationships that the Trustees, either directly or through an imputed interest, may have with third parties that have dealings with the Foundation. Trustees will respond to such requests as soon as is practicable.
3. Trustees shall comply with all directives of the Board Chair and/or the Designated Agency Ethics Official with regard to matters involving potential conflicts of interest or other ethical issues, including any directive by which a Trustee is to be recused from activities or from voting on Board matters to avoid or cure a potential or actual conflict of interest or to resolve another potential ethics issue.

C. Waivers for Conflicts of Interest or the Appearance Thereof. Because Congress and other agencies recognize that there are occasions when a conflict of interest or an appearance of a conflict of interest is de minimis, or is outweighed by the needs of the Government for an employee or official to act, waivers may be granted by the appropriate authorized federal official, which for Trustees is the White House Counsel to the President. Waivers for Trustees with potential conflicts of interests may be granted in accordance with the special waiver provisions outlined in 18 U.S.C. § 208, and 5 C.F.R. § 2635.402, § 2635.502, § 2635.605, and § 2640.301. A waiver may also be granted in an individual matter involving specific parties where impartiality may be questioned. A Trustee may be authorized to participate in the matter after careful evaluation of the given situations and issues requiring the waiver. A waiver is only valid if all of the following criteria are met:

1. The waiver is granted before a Trustee engages in a potentially prohibited activity.
2. The Trustee has made a full disclosure of the nature and extent of the Trustee's disqualifying financial interest, how it relates to the nature and circumstances of the particular matter or matters and all other relevant facts.
3. A specific determination has been made that the Trustee's interest is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect.
4. The waiver is issued in writing. If practicable, the Office of Government Ethics will be consulted formally or informally prior to the granting of each waiver. A copy of each waiver granted will be forwarded to the Director of the Office of Government Ethics.

D. Financial Disclosure. All Trustees are required to file a financial disclosure statement on Form SF 450 with the Foundation's Ethics Officer on or before February 15th of each year unless a prior extension is granted, or, in the case of ex officio members of the Board who are also federal employees, with their respective Designated Agency Ethics Official, with a copy provided to the Foundation's Ethics Officer. Any Trustee who has failed to timely file their annual disclosure statement shall not attend or participate in any meeting of the Board of Trustees or any committee of the Board until such time as the required financial disclosure statement has been filed.

E. Ethics Training. All Trustees are required to undertake annual ethics training in the manner prescribed by the Chair. Training may be electronic (Web-based) or live at a Board Meeting, or both.

ARTICLE V

Meetings

A. Regularly Scheduled Meetings. The Board shall conduct at least two meetings each year at such time and place as determined by the Board.

B. Purpose. At such regularly scheduled meetings, Foundation staff shall report on:

1. The operations of the Foundation, and its progress towards meeting the statutory requirements mandated by Congress in 20 U.S.C. § 5603-§ 5609;
2. The Foundation's programs including:
 - a. The U.S. Institute for Environmental Conflict Resolution
 - b. Scholarships
 - c. Fellowships
 - d. Internships
 - e. Parks in Focus

- f. Grants to the Udall Center for Studies in Public Policy at the University of Arizona; one report to include a work plan to be approved by the Board
 - g. The Morris K. Udall and Stewart L. Udall Repository at the University of Arizona Libraries Special Collections, one report to include a work plan to be approved by the Board
 - h. The Program for Environmental Policy Research and Environmental Conflict Resolution and Training at the Udall Center for Public Policy
 - i. The Native Nations Institute, one report to include a work plan to be approved by the Board
3. The Morris K. Udall and Stewart L. Udall Trust Fund;
 4. The Environmental Dispute Resolution Fund;
 5. Finances and status of internal controls of the Morris K. Udall Foundation; and.
 6. Such other business as may come before the Board.

C. Open Meetings. Meetings of the Board shall generally be open, except for Executive Sessions as designated by the Chair in consultation with the Board and in compliance with the Government in the Sunshine Act, 5 U.S.C. § 552b (the Sunshine Act). Discussions regarding matters authorized by the Sunshine Act to be conducted in meetings closed to the public shall be held in Executive Session. Members of the public may, with permission of the Chair, make oral comments to the Board at an open meeting. The Chair may determine in advance of a meeting to exclude oral public comment.

D. Notice. The Chair shall provide Trustees with at least fifteen (15) days written notice of any meeting of the Board. The notice need not specify the business to be transacted at the meeting. The notice shall be deemed given upon email or facsimile transmission; or if sent by overnight mail or delivery service twenty-four (24) hours after deposit with the delivery service; or if sent by regular mail, three (3) days after deposit with the U.S. Postal Service, postage paid. Notice of a meeting may be waived at any time in writing or by attendance without objection by the person entitled to notice. This Notice shall not replace or limit the obligations of the Board with respect to the notice requirements of 5 U.S.C. § 552b, above.

E. Quorum. A majority of the entire Board shall constitute a quorum. The physical, telephonic, or other virtual presence of six (6) voting Trustees shall constitute a quorum for transacting business at any meeting. If, due to vacancies on the Board, fewer than six (6) members would constitute a majority, a majority of then-serving, voting Trustees shall constitute a quorum. Every act or decision made by a majority of the Trustees present (in person or virtually) and voting at a meeting at which a quorum is present shall be regarded as an act of the Board. The Board may continue to transact business at a meeting at which a quorum is initially present notwithstanding the subsequent absence of a Trustee, as long as any action is approved by at least a majority of the quorum required for that meeting.

F. Use of Virtual Technology. Use of new virtual technology for purposes of any meeting shall be approved in advance by the Board of Trustees

G. Virtual-only Meetings. Virtual meetings are defined as telephone, video conference, e-mail, list serve, or other means of virtual communication whereby one or more Trustees participate remotely in an officially-called meeting of the Board. Electronic meetings may be used for either regular or special meetings of the Board.

1. **Notice.** All Board members must be properly notified of meetings held only via virtual technology in conformity with Article V (D) of these Operating Procedures. Additionally all members must have access to devices that permit them to fully participate in such meetings.
2. **Sunshine Act.** Board meetings held only by virtual means shall be arranged and conducted so as to comply with the Sunshine Act as applicable.

H. Proxies. Trustees may vote by proxy. A proxy must be cast by another Trustee and must be in writing. The proxy must be provided to the Trustee casting the vote prior to any vote. Proxy votes may not be used for the purpose of establishing a quorum.

I. Action without a Meeting. Subject to any limitations imposed by the Sunshine Act, any policy or action that may be approved or taken at a Board meeting may be taken or approved without a meeting if all voting Trustees consent in writing (e-mail constitutes “in writing”).

J. Votes. Unless all Trustees consent to the approval of any matter pending before the Board, all actions of the Board shall be taken by a formal Board Resolution, duly seconded and adopted by a majority of the Trustees voting in person or by proxy.

ARTICLE VI

Executive Director

A. Purpose. The Board shall select and appoint an Executive Director who is responsible for the overall administration of the Foundation and who will manage the day-to-day business operations and Foundation staff. The Executive Director shall be the chief executive officer of the Foundation and shall implement and carry out the mission and functions of the Foundation, subject to the supervision and direction of the Board.

B. Roles and Responsibilities. The Executive Director’s responsibilities and objectives shall be set by the Board, and the Executive Director shall execute these directives and any other functions as the Board prescribes. Specific tasks relating to the Board shall include, but not be limited to:

1. Reporting to the Board on progress toward the statutory requirements mandated by Congress for the Foundation;

2. Assisting the Board Chair in organizing the regularly scheduled Board meetings, and any subsequent non-scheduled additional Board meetings and meetings of the Executive Committee;
3. Preparing an orientation and transition program for newly selected Board members;
4. Maintaining regular contact with the Chair and Vice Chair, outside of the regularly scheduled Board meetings, to seek direction and to report on the work of the Executive Director and fully apprise them of any issues of concern affecting the Foundation or any of its programs;
5. Ensuring that the programming priorities outlined in Article V (B) (1-5) of these Operating Procedures comply with the funding allocation provisions in 20 U.S.C. § 5605, § 5606, and the auditing and expenditure provision in § 5607, § 5607a; and,
6. Preparing communications and responses for the Chair on any Congressional inquiry directed to the Foundation or any Trustee.
7. Preparing and filing monthly written reports with the Board regarding the work of the Executive Director and notifying the Board of any issues that may require the attention of or action by the Board.

C. Selection. The Board Chair shall appoint a selection committee when the position of Executive Director for the Foundation becomes vacant. The selection committee shall represent a cross section of the Board's membership, and be headed by the Board Chair. The selection committee shall conduct a search for a qualified Executive Director and recommend a candidate to the full Board of Trustees for approval by a majority vote of the Board.

D. Compensation. The Executive Director shall be compensated at a rate determined by the Board in accordance with 5 U.S.C. § 5383.

E. Evaluation. The performance of the Executive Director shall be evaluated annually by the Board Chair, who shall report to the Board no less than annually on the Executive Director's management of the operations and staff of the Foundation.

Article VII

Directors

The Executive Director may determine that it is appropriate for the Foundation to employ one or more Directors to ensure the efficient management of the personnel, funds and programs of the Foundation, as set forth in the management structure of the Foundation to be approved by the Board.

1. In that event, the Executive Director shall recruit and hire qualified individuals for such positions with the input of the Board Chair and Vice Chair.
2. Any employee serving in such a position shall be supervised by the Executive Director with review by the Board Chair.
3. Each Director shall file quarterly written reports with the Board regarding their work, or, at the Board's discretion, shall present four written reports (supplemented, as agreed with the Executive Director, with oral reports at the Board meetings), and shall promptly and fully apprise the Executive Director and the Board of any issues that arise that may require the Executive Director's or the Board's attention or action.
4. The Finance and Operations Director shall always include in the Quarterly Report an update on the status of the Internal Controls of the Foundation.
5. The Board may request additional reports from any Director at any time; and the Directors are encouraged to bring any other matter of importance to the Board's attention at any time.

ARTICLE VIII

General Counsel

A. Purpose. The Board shall select and appoint an attorney to serve as the General Counsel to manage the day-to-day legal affairs of the Foundation. The General Counsel shall support and assist the Executive Director and staff of the Foundation and shall ensure that the programs and activities of the Foundation are conducted in conformity with all applicable laws and regulations. The General Counsel shall be supervised by the Executive Director, and shall also be subject to the direction of the Board, and shall:

1. Maintain regular contact with the Chair and Vice Chair, outside of the regularly scheduled Board meetings, to seek direction and to report on the work of the General Counsel and issues of concern to the Foundation; and,
2. Prepare and file monthly written reports with the Board Chair regarding the work of the General Counsel, as well as promptly and fully apprising the Executive Director and the Board of any issues that may require the Executive Director's or the Board's attention or action.

B. Evaluation. The performance of the General Counsel shall be evaluated annually by the Executive Director, with the input of the Board Chair and Vice Chair, and the evaluation shall be reported to the Board no less than annually.

ARTICLE IX

Fiscal Year

Definition. The Congressional fiscal year shall serve as the fiscal year of the Foundation.

ARTICLE X

Parliamentary Authority

Usage. The rules contained in the current edition of *Robert's Rules of Order Newly Revised*, shall govern the Board in all cases to which they are applicable and in which they are not inconsistent with these Operating Procedures and any special rules of order the Board may adopt.

ARTICLE XI

Amendment of Operating Procedures

A. Amendment by the Board. These Operating Procedures may be amended at a meeting of the Board by a two-thirds (2/3) vote of the Trustees present in person or by virtual means, provided prior notice of the proposed amendment has been submitted in writing to each Trustee at least ten (10) days prior to the meeting, and that said amendments do not conflict with any provision of 20 U.S.C. §§ 5601 et seq. or any other federal law applicable to the Foundation. The notice required by this section of the Operating Procedures can be sent by United States Mail, e-mail, fax, or by providing notice that a proposed change has been posted to the Trustee Website, and shall contain the language of the amendment and an explanation for each proposed amendment.

B. Corrections to the Operating Procedures. Minor corrections of spelling, punctuation, and grammar may be made without amending the Operating Procedures, provided that such corrections do not alter the meaning of the Operating Procedures in any way. The date such corrections are made shall be entered into the list of Operating Procedures revisions, which shall be kept by the Secretary and shall be available for inspection by any Trustee.

C. Adoption. The original Operating Procedures were adopted at a regularly scheduled and properly noticed meeting of the Board on November 9, 2012, by a vote of 10 in favor and 0 opposed.

D. Effective Date. Unless otherwise provided by these Operating Procedures, amended Operating Procedures shall become effective on the date of their adoption.

E. Amendment Date. Amendments to the Operating Procedures (hereinafter known as "1st Amendment") as reflected above were adopted at a regularly scheduled and properly noticed meeting of the Board on April 16, 2015, by a vote of 9 in favor, 0 opposed and 0 abstaining.