

SUPPORTING STATEMENT  
(PART A AND B)

RENEWAL OF INFORMATION COLLECTION REQUEST

For the

Morris K. Udall and Stewart L. Udall Foundation (Udall Foundation)  
John S. McCain III National Center for Environmental Conflict Resolution  
(National Center)

Environmental Conflict Resolution Services Participant Questionnaires  
(Control Number 3320-0003, Expired 2015)

March 2024

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## A. JUSTIFICATION

### 1. Circumstances that Make the Collection of Information Necessary.

The Morris K. Udall Foundation was established by the U.S. Congress in 1992 as an independent executive branch agency to honor Morris K. Udall's lasting impact on this Nation's environment, public lands, and natural resources, and his support of the rights and self-governance of Native Americans and Alaska Natives. In 2009, Congress enacted legislation to also honor Stewart L. Udall for his half century of distinguished national leadership in environmental and Native American policy. The agency is known today as the Morris K. Udall and Stewart L. Udall Foundation (Udall Foundation) and is headquartered in Tucson, Arizona.

The 1998 Environmental Policy and Conflict Resolution Act (P.L. 105-156) established the U.S. Institute for Environmental Conflict Resolution as a program of the Udall Foundation to assist parties in resolving environmental, public lands, and natural resources conflicts nationwide that involve Federal agencies or interests. In 2019, Congress enacted legislation to reauthorize the Udall Foundation and to amend the enabling legislation by renaming the U.S. Institute for Environmental Conflict Resolution as the John S. McCain III National Center for Environmental Conflict Resolution (P.L. 116-94).

The Udall Foundation is authorized by Congress to:

- Award [Scholarships](#), [Fellowships](#), and [Internships](#) for study in fields related to the environment and to Native Americans and Alaska Natives in fields related to health care and Tribal public policy.
- Connect youth to the Nation's public lands and natural resources to foster greater understanding, appreciation, stewardship, and enjoyment of those lands and resources through photography, positive outdoor experiences, and environmental education through the [Stewart L. Udall Parks in Focus® Program](#).
- Provide funding to the [Udall Center for Studies in Public Policy](#) to conduct policy research and outreach on the environment and related themes.
- Provide funding to the [Native Nations Institute for Leadership, Management, and Policy](#), a program of the Udall Center, for research, education, and outreach on Native American and Alaska Native health care issues and Tribal public policy issues.
- Provide funding through the Udall Center to [The University of Arizona Libraries, Special Collections](#) to serve as the repository for the papers of Morris K. Udall and Stewart L. Udall and other such public papers as may be appropriate and assure such papers' availability to the public.
- Provide impartial collaboration, consensus-building, training, and conflict resolution services on a wide range of environmental, natural and cultural resources, Tribal, and public lands issues, conflicts, and disputes involving the Federal Government through the [John S. McCain III National Center for Environmental Conflict Resolution](#) (National Center).

The enabling legislation for the Udall Foundation establishes that it is the purpose of the Udall Foundation, in part, to:

*establish as part of the Foundation the John S. McCain III National Center for Environmental Conflict Resolution to assist the Federal Government in implementing section 4331 of title 42 by providing assessment, mediation, and other related services to resolve environmental issues, conflicts, and disputes involving agencies and instrumentalities of the United States.*

The National Center's evaluation program serves several purposes:

1. To assess the effectiveness and quality of its services and to generate ongoing improvements in its levels of service.
2. To fulfill its statutory responsibilities.
3. To support the development of evaluation capabilities in environmental collaboration and conflict resolution at other federal agencies.
4. To evaluate and report annually on its progress in meeting its strategic goals, strategic objectives, and performance goals, as required by the Government Performance and Results Modernization Act of 2010.
5. To contribute data on progress toward achieving its performance and financial goals, as reported to Congress and the public in the Udall Foundation's *Annual Financial Report*.

The National Center provides services to help participants resolve specified types of environmental conflicts (e.g., those involving a federal agency or interest and affecting the environment, natural resources, or public lands). Consensus building or dispute resolution services are typically provided following a conflict assessment and include assistance with convening the appropriate parties and providing an appropriate neutral assessor (facilitator or mediator) to help the participants work toward and reach an agreement. These services are provided by agency staff alone or in concert with third-party neutrals under contract to the agency. The evaluation of the Situation/Conflict Assessment program area will provide the basis for improving and enhancing assessment services.

The information collections (ICs) used for this program are being consolidated under a single Information Collection Request (ICR). All will be separate ICs under ICR 3320-0003. These ICs are:

- National Center for Environmental Conflict Resolution Assessment Evaluation – Requester Questionnaire (former 3320-0003);
- Mediation Services Participant Questionnaire (Agreement Seeking) (former 3320-0004);
- Facilitated Meeting/Workshop Services (former 3320-0007);
- ECR Support Services Evaluation – Requester Questionnaire (former 3320-0009); and
- National Center for Environmental Conflict Resolution Facilitated Process Evaluation – Participant Questionnaire (former 3320-0010).

These collections are necessary to evaluate the performance of the services established by the Udall Foundation's enabling legislation, referenced above, the Government Performance and

Results Act of 1993 (GPRA), the Government Performance and Results Modernization Act of 2010, and Executive Order No. 13450, Improving Government Program Performance.

## 2. How, by Whom, and for What Purpose the Information is to Be Used.

As part of the evaluation process for the National Center's services, one questionnaire will be administered for each service evaluated. The questionnaire will go to either the key initiating organization/participant (hereafter, "requester") that initiated the request for the conflict assessment process or to the participants at the conclusion of the process. Only the questionnaire relevant to the process will be used and it will only be administered once per respondent for each process. The responses to these questionnaires have historically been used to measure and report on performance and to comply with Government Performance and Results Modernization Act of 2010 requirements as data reported to OMB in the Udall Foundation's *Annual Performance Report* and *Annual Financial Report*.

Requesters/participants will be asked to complete a questionnaire after the service has concluded. Requesters/participants will be asked to evaluate the facilitator/mediator and the effectiveness of the service. Data and information from this questionnaire will also be used to determine whether progress was made on key issues. A design overview is contained in Attachment B.

These evaluations support the National Center's program evaluation and have the practical utility of supporting achievement of the National Center's goals and continuous improvement of service delivery. These goals are to assist parties in resolving federal environmental disputes in a timely and constructive manner; to increase the appropriate use of ECCR, particularly within the federal government; to improve the ability of federal agencies and other interested parties to engage in ECCR effectively; and to promote collaborative problem solving and consensus building during the design and implementation of federal environmental policies to help prevent and reduce the incidence of future environmental disputes.

The National Center's evaluation results have and will continue to be made available to program administrators, users, practitioners, and researchers who are interested in learning what factors most influence successful outcomes in specific situations.

## 3. Collection Technology

The questionnaires will be administered electronically (e.g., via SurveyMonkey) at the conclusion of each session. The responses collected are incorporated into the performance data reported to Congress annually in the Udall Foundation's Performance and Accountability Report (PAR). The PAR is made available to the public on the Udall Foundation's website:  
<https://udall.gov/AboutUs/BudgetAndPerformance.aspx>.

#### 4. Duplication

No other source currently exists that can be used to obtain information on the quality of National Center environmental conflict resolution services.

#### 5. Impact on Small Businesses or Other Small Entities

Although some of the requesters/participants will be small entities, most will be government employees and individuals. Moreover, the total number of expected respondents per year is estimated to be relatively small (See Section 12). The questionnaires will be administered electronically, which should modestly reduce respondent burden. Individuals will not be requested to complete a questionnaire more than once, and therefore the number of times an individual is requested to complete a questionnaire cannot be reduced.

#### 6. Consequences of Not Conducting Collection

Evaluation of these services would not be possible without the information that can be obtained only by administering questionnaires to all requesters/participants. Only descriptive information about the services is available from other sources (e.g., the number of events and number of participants). Such information cannot be used as a surrogate for program/service quality and cannot substitute for information obtained through surveys of users and participants.

With respect to the frequency of information collection, the information will be collected only once for each event. The frequency cannot be further reduced without negatively impacting the value of the data.

#### 7. Special Circumstances of Information Collection

This ICR does not require respondents to:

- report information to the Agency more often than quarterly;
- prepare a written response to a collection of information in fewer than 30 days after receipt of a request;
- submit more than an original and two copies of any document; or
- retain records for more than three years.

Nor will information be collected in a manner:

- connected with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- requiring use of a statistical data classification that has not been reviewed and approved by OMB;
- requiring a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies

- that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- requiring proprietary, trade secret or other confidential information unless the Agency can demonstrate that it has procedures to protect the information's confidentiality to the extent permitted by law.

## 8. Federal Register Notice

A comprehensive Federal Register Notice was published on September 15, 2023, at 88 FR 63630. It opened a 60-day public comment period. The notice described in detail the need for and use of the information. The notice also provided access to copies of the proposed questionnaires via the Udall Foundation website (<https://www.udall.gov/ICR>). No comment(s) were received in response to the 60-day public comment notice.

On March 28, 2024, a second Federal Register Notice was published to announce that the National Center forwarded no information requests to OMB. The second notice opened a 30-day public comment period.

## 9. Payment/Gifts to Respondents

The collection of information does not provide any payment or gift to respondents.

## 10. Confidentiality Protocols

No identifying information is collected from respondents on the evaluations and no identifying information is maintained or associated with individual responses. Respondents are informed as part of the evaluation process that the responses are confidential and no identifying information is recorded.

## 11. Justification of Questions of a Sensitive Nature

This information collection request (ICR) does not involve collecting any information of a sensitive nature or any information commonly considered private.

## 12. Hours Burden of the Collection of Information

The burden estimate assumes a professional and related labor rate of \$63.45 per hour based on March 2023 data from the Bureau of Labor Statistics. The estimate assumes one response per respondent and an average of between 5 minutes (or 0.083 hours) and 18 minutes (or 0.3 hours) per survey.

| <b>Information Collection</b>                                            | <b>No. of Respondents</b> | <b>No. of Responses per Respondent</b> | <b>Average Burden per Response (in hours)</b> | <b>Total Annual Burden (in hours)</b> | <b>Average Hourly Wage Rate<sup>1</sup></b> | <b>Total Annual Respondent Cost</b> |
|--------------------------------------------------------------------------|---------------------------|----------------------------------------|-----------------------------------------------|---------------------------------------|---------------------------------------------|-------------------------------------|
| Assessment Evaluation – Requester Questionnaire (0003A)                  | 50                        | 1                                      | 0.083                                         | 4.16                                  | \$63.45                                     | \$263.95                            |
| Mediation Services Participant Questionnaire (Agreement Seeking) (0003B) | 40                        | 1                                      | 0.3                                           | 12                                    | \$63.45                                     | \$761.40                            |
| Facilitated Meeting/ Workshop Services (0003C)                           | 400                       | 1                                      | 0.083                                         | 33.33                                 | \$63.45                                     | \$2,114.15                          |
| ECR Support Services Evaluation – Requester Questionnaire (0003D)        | 25                        | 1                                      | 0.083                                         | 2.08                                  | \$63.45                                     | \$131.98                            |
| Facilitated Process Evaluation – Participant Questionnaire (0003E)       | 250                       | 1                                      | 0.2                                           | 50                                    | \$63.45                                     | \$3,172.50                          |

### 13. Estimate of Total Annual Cost Burden

There are no capital or start-up costs.

### 14. Annualized Costs to the Federal Government

Costs are estimated using a \$120/hour labor rate for the Udall Foundation employee who will be conducting the activities. It is assumed that it will take three minutes per questionnaire to administer the collections and five minutes per questionnaire to conduct data entry and verification activities. Additional time is assumed for reporting, oversight, and supplies to administer these assessment activities.

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<sup>1</sup> The burden estimate assumes a professional and related labor rate of \$63.45 per hour based on March 2023 data from the Bureau of Labor Statistics.

| <b>Evaluation of the Training Processes - Agency Cost (Annualized)</b> |                           |                          |             |                     |                    |
|------------------------------------------------------------------------|---------------------------|--------------------------|-------------|---------------------|--------------------|
| Questionnaire/Activity                                                 | Minutes per Questionnaire | Number of Questionnaires | Total Hours | Labor Rate per Hour | Cost               |
| <i>Administer Questionnaires</i>                                       |                           |                          |             |                     |                    |
| Participants End of Process                                            | 3                         | 765                      | 38.25       | \$120.00            | \$4,590.00         |
| <i>Data Entry and Verification</i>                                     |                           |                          |             |                     |                    |
| Participants End of Process                                            | 5                         | 765                      | 63.75       | \$120.00            | \$7,650.00         |
| <i>Analysis and Reporting</i>                                          |                           |                          |             |                     |                    |
| Case-level Reporting                                                   |                           |                          | 60          | \$120.00            | \$7,200            |
| Program-level Reporting                                                |                           |                          | 40          | \$120.00            | \$4,800.00         |
| <i>Oversight</i>                                                       |                           |                          |             |                     |                    |
| Project Manager                                                        |                           |                          | 50          | \$120.00            | \$6,000.00         |
| <i>Supplies</i>                                                        |                           |                          |             |                     | \$50               |
| <b>TOTAL</b>                                                           |                           |                          |             |                     | <b>\$30,290.00</b> |

#### 15. Reasons for Program Changes/Adjustments

Five collections that previously had separate control numbers have been consolidated into a single control number (3320-0003) with multiple information collections under the single control number. There is a change to the estimated burden change due to a change in agency estimate and updating to more current labor rates. The overall number of questions in each questionnaire/collection remains the same, the estimated total number of respondents has been calibrated to targets in the Udall Foundation's Strategic Plan.

#### 16. Plans for Tabulation and Publication

To comply with the Government Performance and Results Act, the agency is required to produce an *Annual Performance Plan (Performance Budget)*, linked directly to the goals and objectives outlined in the agency's five-year *Strategic Plan*. The agency is also required to produce an *Annual Performance and Accountability Report*, evaluating progress toward achieving its performance commitments. Results of evaluating training services will be included in the agency's *Annual Performance and Accountability Report*. Simple summaries and tabulations of information will be used.

#### 17. Display of Expiration Date for OMB Approval

The OMB approval number and expiration date will be displayed on each evaluation questionnaire.

## 18. Explanations to "Certification for Paperwork Reduction Act Submissions"

This collection of information is in full compliance with the provisions of the "Certificate for Paperwork Reduction Act Submissions".

## **B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

### 1. Respondent Universe and Sample Size/Selection Methods

There will be no sampling; all completed responses will be evaluated. For the Assessment Evaluation – Requester Questionnaire, there are expected to be 20 Federal Respondents; 10 State, Local, and Tribal Government Respondents; 10 Private Sector Respondents; and 10 Individual or Household Respondents. For the Mediation Services Participant Questionnaire (Agreement Seeking) there are expected to be 10 Federal Respondents; 10 State, Local, and Tribal Government Respondents; 10 Private Sector Respondents; and 10 Individual or Household Respondents. For the Facilitated Meeting/ Workshop Services there are expected to be 100 Federal Respondents; 50 State, Local, and Tribal Government Respondents; 100 Private Sector Respondents; and 100 Individual or Household Respondents. For the ECR Support Services Evaluation – Requester Questionnaire, there are expected to be 10 Federal Respondents; 5 State, Local, and Tribal Government Respondents; 5 Private Sector Respondents; and 5 Individual or Household Respondents. For the Facilitated Process Evaluation – Participant Questionnaire there are expected to be 100 Federal Respondents; 50 State, Local, and Tribal Government Respondents; 50 Private Sector Respondents; and 50 Individual or Household Respondents. An overall response rate target above 87% is expected given that respondents will be asked to complete the evaluation questionnaire in person at the conclusion of the event.

### 2. Procedures for the Collection of Information

There will be no sampling. All responses will be tabulated and included in the evaluation of the scoring.

### 3. Methods to Maximize Response Rates

All requesters/participants are asked to provide responses to the questionnaire immediately upon the conclusion of the service. This increases the response rate and accuracy because the responses are close in time to the event(s) being evaluated.

### 4. Testing Procedures

No testing procedures or methods will be used.

## 5. Contact Information

Agency Contact:

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[www.udall.gov](http://www.udall.gov)

## List of Appendices

Statutes and Regulations Authorizing the Collection of Information

Appendix A. Udall Foundation Enabling Legislation, 20 USC Ch. 66

Appendix B. Government Performance and Results Act of 1993 (GPRA) and  
Government Performance and Results Modernization Act of 2010 (Relevant portions)

Appendix C. Ex. Ord. No. 13450. Improving Government Program Performance

## **APPENDIX A:**

### **20 USC Ch. 66: MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION**

#### **§5601. Findings**

The Congress finds that—

- (1) for three decades, Congressman Morris K. Udall has served his country with distinction and honor;
- (2) Congressman Morris K. Udall has had a lasting impact on this Nation's environment, public lands, and natural resources, and has instilled in this Nation's youth a love of the air, land, and water;
- (3) Congressman Morris K. Udall has been a champion of the rights of Native Americans and Alaska Natives and has used his leadership in the Congress to strengthen tribal self-governance;
- (4) it is a fitting tribute to the leadership, courage, and vision Congressman Morris K. Udall exemplifies to establish in his name programs to encourage the continued use, enjoyment, education, and exploration of our Nation's rich and bountiful natural resources;
- (5) the Foundation—
  - (A) since 1995, has operated exceptional scholarship, internship, and fellowship programs for areas of study related to the environment and Native American tribal policy and health care;
  - (B) since 1999, has provided valuable environmental conflict resolution services and leadership through the National Center (previously known as the United States Institute for Environmental Conflict Resolution); and
  - (C) is committed to continue making a substantial contribution toward public policy in the future by—
    - (i) playing a significant role in developing the next generation of environmental and Native American leaders; and
    - (ii) working with current leaders to improve decisionmaking on—
      - (I) challenging environmental, energy, and related economic problems; and
      - (II) tribal governance and economic issues;
- (6) Stewart L. Udall, as a member of Congress, Secretary of the Interior, environmental lawyer, and author, has provided distinguished national leadership in environmental and Native American policy for more than 50 years;
- (7) as Secretary of the Interior from 1961 to 1969, Stewart L. Udall oversaw the creation of 4 national parks, 6 national monuments, 8 national seashores and lakeshores, 9 recreation areas, 20 historic sites, and 56 wildlife refuges; and
- (8) it is fitting that the leadership and vision of Stewart L. Udall in the areas of environmental and Native American policy be jointly honored with that of Morris K. Udall through the foundation bearing the Udall name.

#### **§5602. Definitions**

For the purposes of this chapter—

- (1) the term "Board" means the Board of Trustees of the Foundation established under section 5603(b) of this title;

- (2) the term "Center" means the Udall Center for Studies in Public Policy established in 1987 at the University of Arizona, and includes the Native Nations Institute;
- (3) the term "collaboration" means to work in partnership with other entities for the purpose of—
- (A) resolving disputes;
  - (B) addressing issues that may cause or result in disputes; or
  - (C) streamlining and enhancing Federal, State, or tribal environmental and natural resource decision-making processes or procedures that may result in a dispute or conflict;
- (4) the term "eligible individual" means a citizen or national of the United States or a permanent resident alien of the United States;
- (5) the term "environmental dispute" means a dispute or conflict relating to the environment, public lands, or natural resources;
- (6) the term "Foundation" means the Morris K. Udall and Stewart L. Udall Foundation established under section 5603(a) of this title;
- (7) the term "institution of higher education" has the same meaning given to such term by section 1001(a) of this title;
- (8) the term "National Center" means the John S. McCain III National Center for Environmental Conflict Resolution established pursuant to section 5605(a)(1)(B) of this title;
- (9) the term "Nation's parks and wilderness" means units of the National Park System and components of the National Wilderness Preservation System;
- (10) the term "Native Nations Institute" means the Native Nations Institute for Leadership, Management, and Policy established at the University of Arizona in 2001;
- (11) the term "State" means each of the several States, the District of Columbia, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federal States of Micronesia, and the Republic of Palau (until the Compact of Free Association is ratified); and
- (12) the term "Trust Fund" means the Morris K. Udall and Stewart L. Udall Trust Fund established in section 5606 of this title.

#### §5603. Establishment of Morris K. Udall and Stewart L. Udall Foundation

##### (a) Establishment

There is established as an independent entity of the executive branch of the United States Government, the Morris K. Udall and Stewart L. Udall Foundation.

##### (b) Board of Trustees

The Foundation shall be subject to the supervision and direction of the Board of Trustees. The Board shall be comprised of thirteen trustees, eleven of whom shall be voting members of the Board, as follows:

- (1) Two Trustees, shall be 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 Minority Leader of the House of Representatives.

(2) Two Trustees, shall be 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, shall be appointed by the President with the advice and consent of the Senate, who have shown leadership and interest 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) in 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 the Interior, or the 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 of the Board but shall not be eligible to serve as Chairperson.

(6) The President of the University of Arizona shall serve as a nonvoting, ex officio member and shall not be eligible to serve as chairperson.

(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

(1) In general.—The term of office of each member of the Board shall be six years, except that—

(A) in the case of the Trustees first taking offices—

(i) as designated by the President, one Trustee appointed pursuant to subsection (b)(2) and two trustees appointed pursuant to subsection (b)(3) shall each serve two years; and

(ii) as designated by the President, one Trustee appointed pursuant to subsection (b)(1) and two Trustees appointed pursuant to subsection (b)(3) shall each serve four years; and

(iii) as designated by the President, one Trustee appointed pursuant to subsection (b)(1), one Trustee appointed pursuant to subsection (b)(2), and one Trustee appointed pursuant to subsection (b)(3) shall each serve six years;

(B) 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 for that vacancy was made; and

(C) a Trustee may serve after the expiration of the Trustee's term until a successor has been chosen.

(d) Travel and subsistence pay

Trustees shall serve without pay, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Board.

(e) Location of Foundation

The Foundation shall be located in Tucson, Arizona and the District of Columbia.

(f) Executive Director

(1) In general

There shall be an Executive Director of the Foundation who shall be appointed by the Board. The Executive Director shall be the chief executive officer of the Foundation and shall carry out the functions of the Foundation subject to the supervision and direction of the Board. The Executive Director shall carry out such other functions consistent with the provisions of this chapter as the Board shall prescribe.

(2) Compensation

The Executive Director of the Foundation shall be compensated at a rate determined by the Board in accordance with section 5383 of title 5.

§5604. Purpose of Foundation

It is the purpose of the Foundation to—

- (1) increase awareness of the importance of and promote the benefit and enjoyment of the Nation's natural resources;
- (2) foster among the American population 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 at the Center and a program for environmental conflict resolution and training at the National Center;
- (5) develop resources to properly train professionals in the environmental, natural resource, conflict resolution, and related fields;
- (6) provide educational outreach regarding environmental policy;
- (7) develop resources at the Native Nations Institute to properly train Native American and Alaska Native professionals in health care and public policy, by providing education to and conducting management and leadership training of Native Americans, Alaska Natives, and others involved in tribal leadership, providing assistance and resources for policy analysis, and carrying out other appropriate activities.; 1
- (8) establish as part of the Foundation the John S. McCain III National Center for Environmental Conflict Resolution to assist the Federal Government in implementing section 4331 of title 42 by providing assessment, mediation, and other related services to resolve environmental issues, conflicts, and disputes involving agencies and instrumentalities of the United States; and
- (9) complement the direction established by the President in Executive Order No. 12988 (61 Fed. Reg. 4729; relating to civil justice reform).

§5605. Authority of Foundation

(a) Authority of Foundation

(1) In general

(A) General programming authority

The Foundation is authorized to identify and conduct, directly or by contract, such programs, activities, and services as the Foundation considers appropriate to carry out the purposes described in section 5604 of this title, which may include—

- (i) awarding scholarships, fellowships, internships, and grants, by national competition, to eligible individuals, as determined by the Foundation and in accordance with paragraphs (2), (3), and (4), for study in fields related to the environment or Native American and Alaska Native health care and tribal policy;
- (ii) funding the Center to carry out and manage other programs, activities, and services; and
- (iii) other education programs that the Board determines are consistent with the purposes for which the Foundation is established.

(B) John S. McCain III National Center for Environmental Conflict Resolution

(i) In general

The Foundation shall—

- (I) establish the John S. McCain III National Center for Environmental Conflict Resolution as part of the Foundation; and
- (II) identify and conduct such programs, activities, and services as the Foundation determines appropriate to permit the Foundation to provide assessment, mediation, collaboration, training, and other related services to resolve—
  - (aa) environmental disputes; and
  - (bb) Federal, State, or tribal environmental or natural resource decision-making processes or procedures that may result in a dispute or conflict that may cause or result in disputes.

(ii) Geographic proximity of conflict resolution provision

In providing assessment, mediation, collaboration, training, and other related services under clause (i)(II) to resolve environmental disputes, the Foundation shall consider, to the maximum extent practicable, conflict resolution providers within the geographic proximity of the conflict.

(2) Scholarships

(A) Scholarships shall be awarded to outstanding undergraduate students who intend to pursue careers related to the environment and to outstanding Native American and Alaska Native undergraduate students who intend to pursue careers in health care and tribal public policy.

(B) An eligible individual awarded a scholarship under this chapter may receive payments under this chapter only during such periods as the Foundation finds that the eligible individual is maintaining satisfactory proficiency and devoting full time to study or research and is not engaging in gainful employment other than employment approved by the Foundation pursuant to regulations of the Board.

(C) The Foundation may require reports containing such information, in such form, and to be filed at such times as the Foundation determines to be necessary from any eligible individual awarded a scholarship under this chapter. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, approved by the Foundation, stating that such individual is making satisfactory progress in, and is devoting essentially full time to study or research, except as otherwise provided in this subsection.

(3) Fellowships

Fellowships shall be awarded to—

(A) outstanding graduate students who intend to pursue advanced degrees in fields related to the environment and to outstanding Native American and Alaska Native graduate students who intend to pursue advanced degrees in health care and tribal public policy, including law and medicine; and

(B) faculty from a variety of disciplines to bring the expertise of such faculty to the Foundation.

(4) Internships

Internships shall be awarded to—

(A) deserving and qualified individuals to participate in internships in Federal, State and local agencies or in offices of major environmental organizations pursuant to section 5604 of this title; and

(B) deserving and qualified Native American and Alaska Native individuals to participate in internships in Federal, State and local agencies or in offices of major public health or public policy organizations pursuant to section 5604 of this title.

(5) Parks in focus

The Foundation shall—

(A) identify and invite the participation of youth throughout the United States to enjoy the Nation's parks and wilderness and other outdoor areas, in an education program intended to carry out the purpose of paragraphs (1) and (2) of section 5604 of this title; and

(B) provide training and education programs and activities to teach Federal employees, natural resource professionals, elementary and secondary school educators, and others to work with youth to promote the use and enjoyment of the Nation's parks and wilderness and other outdoor areas.

(6) Specific programs

The Foundation shall assist in the development and implementation of programs at the Center—

(A) to provide for an annual meeting of experts to discuss contemporary environmental issues;

(B) to conduct environmental policy research; and

(C) to promote dialogue with visiting policymakers on environmental, natural resource, and public lands issues.

(7) Repository

The Foundation shall provide direct or indirect assistance from the proceeds of the Trust Fund to the Center to maintain the current site of the repository for the papers of Morris K. Udall and Stewart L. Udall and other such public papers as may be appropriate and assure such papers' availability to the public.

(8) Coordination

The Foundation shall assist in the development and implementation of a Program for Environmental Policy Research and Environmental Conflict Resolution and Training to be located at the Center.

(9) Native Nations Institute

The Foundation shall provide direct or indirect assistance to the Native Nations Institute from the annual appropriations to the Trust Fund in such amounts as Congress may direct to conduct research and provide education and training to Native American and Alaska Native professionals and leaders on Native American and Alaska Native health care issues and tribal public policy issues as provided in section 5604(7) of this title.

(b) Udall Scholars

Recipients of scholarships, fellowships, and internships under this chapter shall be known as "Udall Scholars", "Udall Fellows", and "Udall Interns", respectively.

(c) Program priorities

(1) In general

The Foundation shall determine the priority of the programs to be carried out under this chapter and the amount of funds to be allocated for such programs from the funds earned annually from the interest derived from the investment of the Trust Fund, subject to paragraph (2).

(2) Limitations

In determining the amount of funds to be allocated for programs carried out under this chapter for a year—

(A) not less than 50 percent of such annual interest earnings shall be utilized for the programs set forth in paragraphs (2), (3), (4), and (5) of subsection (a);

(B) not more than 17.5 percent of such annual interest earnings shall be allocated for salaries and other administrative purposes; and

(C) not less than 20 percent of such annual interest earnings shall be appropriated to the Center for activities under paragraphs (7) and (8) of subsection (a).

(d) Donations

Any funds received by the Foundation in the form of donations or grants, as well as any unexpended earnings on interest from the Trust Fund that is carried forward from prior years—

(1) shall not be included in the calculation of the funds available for allocations pursuant to subsection (c); and

(2) shall be available to carry out the provisions of this chapter as the Board determines to be necessary and appropriate.

#### §5606. Establishment of Morris K. Udall and Stewart L. Udall Trust Fund

(a) Establishment of Trust Fund

There is established in the Treasury of the United States a trust fund to be known as the "Morris K. Udall and Stewart L. Udall Trust Fund" to be administered by a Foundation. The Trust Fund shall consist of amounts appropriated to it pursuant to section 5609(a) of this title and amounts credited to it under subsection (b).

(b) Investment of Trust Fund assets

(1) In general.—It shall be the duty of the Secretary of the Treasury to invest, at the direction of the Foundation Board, in full the amounts appropriated to the Trust Fund. Such investments shall be in public debt securities with maturities suitable to the needs of the Trust Fund. Investments in public debt securities shall bear interest "at rates determined by the Secretary of the Treasury taking into consideration the current

average market yield on outstanding marketable obligations of the United States" of comparable maturity.

#### §5607. Expenditures and audit of Trust Fund

##### (a) In general

The Foundation shall pay from the interest and earnings of the Trust Fund such sums as the Board determines are necessary and appropriate to enable the Foundation to carry out the provisions of this chapter, including a reasonable amount for official reception and representation expenses, as determined by the Board, not to exceed \$5,000 for a fiscal year.

##### (b) Audit by Government Accountability Office

The activities of the Foundation and the Center under this chapter may be audited by the Government Accountability Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. Representatives of the Government Accountability Office shall have access to all books, accounts, records, reports filed and all other papers, things, or property belonging to or in use by the Foundation and the Center, pertaining to such federally assisted activities and necessary to facilitate the audit.

#### §5607a. Environmental Dispute Resolution Fund

##### (a) Establishment

There is established in the Treasury of the United States an Environmental Dispute Resolution Fund to be administered by the Foundation. The Fund shall consist of amounts appropriated to the Fund under section 5609(b) of this title and amounts paid into the Fund under section 5607b of this title.

##### (b) Expenditures

The Foundation shall expend from the Fund such sums as the Board determines are necessary to establish and operate the National Center, including such amounts as are necessary for salaries, administration, the provision of mediation and other services, and such other expenses as the Board determines are necessary, including not to exceed \$1,000 annually for official reception and representation expenses.

##### (c) Distinction from Trust Fund

The Fund shall be maintained separately from the Trust Fund established under section 5606 of this title.

##### (d) Investment of amounts

###### (1) In general

The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals.

###### (2) Interest-bearing obligations

Investments may be made only in interest-bearing obligations of the United States.

###### (3) Acquisition of obligations

For the purpose of investments under paragraph (1), obligations may be acquired—

(A) on original issue at the issue price; or

(B) by purchase of outstanding obligations at the market price.

###### (4) Sale of obligations

Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(5) Credits to Fund

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

§5607b. Use of the National Center by Federal agency or other entity

(a) Authorization

A Federal agency may use the Foundation and the National Center to provide assessment, mediation, collaboration, or other related services in connection with a dispute or conflict related to the environment, public lands, or natural resources, or with a Federal, State, or tribal process or procedure that may result in a dispute or conflict.

(b) Payment

(1) In general

A Federal agency may enter into a contract and expend funds to obtain the services of the National Center.

(2) Payment into Environmental Dispute Resolution Fund

A payment from an executive agency on a contract entered into under paragraph (1) shall be paid into the Environmental Dispute Resolution Fund established under section 5607a of this title.

(c) Notification and concurrence

(1) Notification

An agency or instrumentality of the Federal Government shall notify the chairperson of the President's Council on Environmental Quality when using the Foundation or the National Center to provide the services described in subsection (a).

(2) Notification descriptions

In a matter involving two or more agencies or instrumentalities of the Federal Government, notification under paragraph (1) shall include a written description of—

(A) the issues and parties involved;

(B) prior efforts, if any, undertaken by the agency to resolve or address the issue or issues;

(C) all Federal agencies or instrumentalities with a direct interest or involvement in the matter and a statement that all Federal agencies or instrumentalities agree to mediation, collaboration, and dispute resolution; and

(D) other relevant information.

(3) Concurrence

(A) In general

In a matter that involves two or more agencies or instrumentalities of the Federal Government (including branches or divisions of a single agency or instrumentality), the agencies or instrumentalities of the Federal Government shall obtain the concurrence of the chairperson of the President's Council on Environmental Quality before using the Foundation or National Center to provide the services described in subsection (a).

(B) Indication of concurrence or nonconcurrence

The chairperson of the President's Council on Environmental Quality shall indicate concurrence or nonconcurrence under subparagraph (A) not later than 20 days after receiving notice under paragraph (2).

(d) Exceptions

(1) Legal issues and enforcement

(A) In general

A dispute or conflict involving agencies or instrumentalities of the Federal Government (including branches or divisions of a single agency or instrumentality) that concern purely legal issues or matters, interpretation or determination of law, or enforcement of law by one agency against another agency shall not be submitted to the Foundation or National Center.

(B) Applicability

Subparagraph (A) does not apply to a dispute or conflict concerning—

- (i) agency implementation of a program or project;
- (ii) a matter involving two or more agencies with parallel authority requiring facilitation and coordination of the various Government agencies; or
- (iii) a nonlegal policy or decisionmaking matter that involves two or more agencies that are jointly operating a project.

(2) Other mandated mechanisms or avenues

A dispute or conflict involving agencies or instrumentalities of the Federal Government (including branches or divisions of a single agency or instrumentality) for which Congress by law has mandated another dispute resolution mechanism or avenue to address or resolve shall not be submitted to the Foundation or National Center.

(e) Non-Federal entities

(1) Non-Federal entities, including state and local governments, Native American tribal governments, nongovernmental organizations and persons, as defined in section 1 of title 1, may use the Foundation and the National Center to provide assessment, mediation, or other related services in connection with a dispute or conflict involving the Federal government related to the environment, public lands, or natural resources.

(2) Payment into the environmental dispute resolution fund.—Entities utilizing services pursuant to this subsection shall reimburse the National Center for the costs of services provided. Such amounts shall be deposited into the Environmental Dispute Resolution Fund established under section 5607a of this title.

(f) Agency management or control

Use of the Foundation or National Center to provide independent and impartial assessment, mediation, or other dispute or conflict resolution under this section shall not be considered to be the establishment or use of an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).

§5608. Administrative provisions

(a) In general

In order to carry out the provisions of this chapter, the Foundation may—

(1)(A) appoint such personnel as may be necessary to carry out the provisions of this chapter, without regard to the provisions of title 5 governing appointments in the competitive service; and

(B) fix the compensation of the personnel appointed under subparagraph (A) at a rate not to exceed the maximum rate for employees in grade GS-15 of the General Schedule under section 5332 of title 5, except that up to 4 employees (in addition to the Executive Director under section 5603(f)(2) of this title) may be paid at a rate determined by the Board in accordance with section 5383 of title 5.

(2) procure or fund the Center to procure temporary and intermittent services of experts and consultants as are necessary to the extent authorized by section 3109 of title 5, but at rates not to exceed the rate specified at the time of such service for level IV of the Executive Schedule under section 5315 of title 5;

(3) prescribe such regulations as the Foundation considers necessary governing the manner in which its functions shall be carried out;

(4) accept, hold, solicit, administer, and utilize donations, grants, and gifts, both real and personal, for the purpose of aiding or facilitating the work of the Foundation;

(5) accept and utilize the services of voluntary and noncompensated personnel and reimburse such personnel for travel expenses, including per diem, as authorized by section 5703 of title 5;

(6) enter into contracts, grants, or other arrangements or modifications thereof, to carry out the provisions of this chapter, and such contracts or modifications thereof may, with the concurrence of two thirds of the members of the Board of Trustees, be entered into without performance or other bonds, and without regard to section 6101 of title 41;

(7) to rent office space in the District of Columbia and Tucson, Arizona, or their environs; and

(8) make other necessary expenditures.

(b) The Institute

The authorities set forth above shall apply to the National Center established pursuant to section 5607a of this title and to the activities of the Foundation under section 5604(7) of this title.

#### §5609. Authorization of appropriations

(a) Trust Fund

There is authorized to be appropriated to the Trust Fund \$2,000,000 for each of fiscal years 2020 through 2023 to carry out the provisions of this chapter.

(b) Environmental Dispute Resolution Fund

There is authorized to be appropriated to the Environmental Dispute Resolution Fund established by section 5607a of this title \$4,000,000 for each of fiscal years 2020 through 2023, of which—

(1) \$3,000,000 shall be used to pay operations costs (including not more than \$1,000 for official reception and representation expenses); and

(2) \$1,000,000 shall be used for grants or other appropriate arrangements to pay the costs of services provided in a neutral manner relating to, and to support the participation of non-Federal entities (such as State and local governments, tribal

governments, nongovernmental organizations, and individuals) in, environmental conflict resolution proceedings involving Federal agencies.

(c) Training of professionals in health care and public policy

There is authorized to be appropriated to carry out section 5604(7) of this title \$12,300,000 for the 5-fiscal year period beginning with the fiscal year in which this subsection is enacted.

# APPENDIX B: GOVERNMENT PERFORMANCE AND REPORTING ACT

## (Relevant Portions)

**Title 31 United States Code, Chapter 11, as of: 12/23/2022**

### **§1115. Federal Government and agency performance plans**

(a) Federal Government Performance Plans.—In carrying out the provisions of section 1105(a)(28), the Director of the Office of Management and Budget shall coordinate with agencies to develop the Federal Government performance plan. In addition to the submission of such plan with each budget of the United States Government, the Director of the Office of Management and Budget shall ensure that all information required by this subsection is concurrently made available on a website described in section 1122 and updated periodically, but no less than annually. The Federal Government performance plan shall—

- (1) establish Federal Government performance goals to define the level of performance to be achieved during the year in which the plan is submitted and the next fiscal year for each of the Federal Government priority goals required under section 1120(a) of this title;
- (2) identify the agencies, organizations, program activities, regulations, tax expenditures, policies, and other activities contributing to each Federal Government performance goal during the current fiscal year;
- (3) for each Federal Government performance goal, identify a lead Government official who shall be responsible for coordinating the efforts to achieve the goal;
- (4) establish common Federal Government performance indicators with quarterly targets to be used in measuring or assessing—
  - (A) overall progress toward each Federal Government performance goal; and
  - (B) the individual contribution of each agency, organization, program activity, regulation, tax expenditure, policy, and other activity identified under paragraph (2);
- (5) establish clearly defined quarterly milestones; and
- (6) identify major management challenges that are Governmentwide or crosscutting in nature and describe plans to address such challenges, including relevant performance goals, performance indicators, and milestones.

(b) Agency Performance Plans.—Not later than the first Monday in February of each year, the head of each agency shall make available on a public website of the agency, and notify the President and the Congress of its availability, a performance plan covering each program activity set forth in the budget of such agency. Such plan shall—

- (1) establish performance goals to define the level of performance to be achieved during the year in which the plan is submitted and the next fiscal year;
- (2) express such goals in an objective, quantifiable, and measurable form unless authorized to be in an alternative form under subsection (c);
- (3) describe how the performance goals contribute to—
  - (A) the general goals and objectives established in the agency's strategic plan required by section 306(a)(2) of title 5; and

- (B) any of the Federal Government performance goals established in the Federal Government performance plan required by subsection (a)(1);
  - (4) identify among the performance goals those which are designated as agency priority goals as required by section 1120(b) of this title, if applicable;
  - (5) provide a description of how the performance goals are to be achieved, including—
    - (A) the human capital, training, data and evidence, information technology, and skill sets required to meet the performance goals;
    - (B) the technology modernization investments, system upgrades, staff technology skills and expertise, stakeholder input and feedback, and other resources and strategies needed and required to meet the performance goals;
    - (C) clearly defined milestones;
    - (D) an identification of the organizations, program activities, regulations, policies, operational processes, and other activities that contribute to each performance goal, both within and external to the agency;
    - (E) a description of how the agency is working with other agencies and the organizations identified in subparagraph (D) to measure and achieve its performance goals as well as relevant Federal Government performance goals; and
    - (F) an identification of the agency officials responsible for the achievement of each performance goal, who shall be known as goal leaders;
  - (6) establish a balanced set of performance indicators to be used in measuring or assessing progress toward each performance goal, including, as appropriate, customer service, efficiency, output, and outcome indicators;
  - (7) provide a basis for comparing actual program results with the established performance goals;
  - (8) a description of how the agency will ensure the accuracy and reliability of the data used to measure progress towards its performance goals, including an identification of—
    - (A) the means to be used to verify and validate measured values;
    - (B) the sources for the data;
    - (C) the level of accuracy required for the intended use of the data;
    - (D) any limitations to the data at the required level of accuracy; and
    - (E) how the agency will compensate for such limitations if needed to reach the required level of accuracy;
  - (9) describe major management challenges the agency faces and identify—
    - (A) planned actions to address such challenges;
    - (B) performance goals, performance indicators, and milestones to measure progress toward resolving such challenges; and
    - (C) the agency official responsible for resolving such challenges; and
  - (10) identify low-priority program activities based on an analysis of their contribution to the mission and goals of the agency and include an evidence-based justification for designating a program activity as low priority.
- (c) Alternative Form.—If an agency, in consultation with the Director of the Office of Management and Budget, determines that it is not feasible to express the performance goals for a particular program activity in an objective, quantifiable, and measurable form, the Director of

the Office of Management and Budget may authorize an alternative form. Such alternative form shall—

(1) include separate descriptive statements of—

(A)(i) a minimally effective program; and

(ii) a successful program; or

(B) such alternative as authorized by the Director of the Office of Management and Budget, with sufficient precision and in such terms that would allow for an accurate, independent determination of whether the program activity's performance meets the criteria of the description; or

(2) state why it is infeasible or impractical to express a performance goal in any form for the program activity.

(d) Treatment of Program Activities.—For the purpose of complying with this section, an agency may aggregate, disaggregate, or consolidate program activities, except that any aggregation or consolidation may not omit or minimize the significance of any program activity constituting a major function or operation for the agency.

(e) Appendix.—An agency may submit with an annual performance plan an appendix covering any portion of the plan that—

(1) is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

(2) is properly classified pursuant to such Executive order.

(f) Inherently Governmental Functions.—The functions and activities of this section shall be considered to be inherently governmental functions. The drafting of performance plans under this section shall be performed only by Federal employees.

(g) Preparation of Performance Plan.—The Performance Improvement Officer of each agency (or the functional equivalent) shall collaborate with the Chief Human Capital Officer (or the functional equivalent), the Chief Information Officer (or the functional equivalent), the Chief Data Officer (or the functional equivalent), and the Chief Financial Officer (or the functional equivalent) of that agency to prepare that portion of the annual performance plan described under subsection (b)(5) for that agency.

(h) Definitions.—For purposes of this section and sections 1116 through 1125, and sections 9703 and 9704, the term—

(1) "agency" has the same meaning as such term is defined under section 306(f) of title 5;

(2) "crosscutting" means across organizational (such as agency) boundaries;

(3) "customer service measure" means an assessment of service delivery to a customer, client, citizen, or other recipient, which can include an assessment of quality, timeliness, and satisfaction among other factors;

(4) "efficiency measure" means a ratio of a program activity's inputs (such as costs or hours worked by employees) to its outputs (amount of products or services delivered) or outcomes (the desired results of a program);

(5) "major management challenge" means programs or management functions, within or across agencies, that have greater vulnerability to waste, fraud, abuse, and mismanagement (such as issues identified by the Government Accountability Office as high risk or issues identified by an Inspector General) where a failure to perform well could seriously affect the ability of an agency or the Government to achieve its mission or goals;

- (6) "milestone" means a scheduled event signifying the completion of a major deliverable or a set of related deliverables or a phase of work;
- (7) "outcome measure" means an assessment of the results of a program activity compared to its intended purpose;
- (8) "output measure" means the tabulation, calculation, or recording of activity or effort that can be expressed in a quantitative or qualitative manner;
- (9) "performance goal" means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate;
- (10) "performance indicator" means a particular value or characteristic used to measure output or outcome;
- (11) "program activity" means a specific activity or project as listed in the program and financing schedules of the annual budget of the United States Government; and
- (12) "program evaluation" means an assessment, through objective measurement and systematic analysis, of the manner and extent to which Federal programs achieve intended objectives.

#### **§1116. Agency performance reporting**

- (a) The head of each agency shall make available on a public website of the agency and to the Office of Management and Budget an update on agency performance.
- (b)(1) Each update shall compare actual performance achieved with the performance goals established in the agency performance plan under section 1115(b) and shall occur no less than 150 days after the end of each fiscal year, with more frequent updates of actual performance on indicators that provide data of significant value to the Government, Congress, or program partners at a reasonable level of administrative burden.
  - (2) If performance goals are specified in an alternative form under section 1115(c), the results shall be described in relation to such specifications, including whether the performance failed to meet the criteria of a minimally effective or successful program.
- (c) Each update shall—
  - (1) review the success of achieving the performance goals and include actual results for the 5 preceding fiscal years;
  - (2) evaluate the performance plan for the current fiscal year relative to the performance achieved toward the performance goals during the period covered by the update;
  - (3) explain and describe where a performance goal has not been met (including when a program activity's performance is determined not to have met the criteria of a successful program activity under section 1115(c)(1)(A)(ii) or a corresponding level of achievement if another alternative form is used)—
    - (A) why the goal was not met;
    - (B) those plans and schedules for achieving the established performance goal; and
    - (C) if the performance goal is impractical or infeasible, why that is the case and what action is recommended;
  - (4) describe the use and assess the effectiveness in achieving performance goals of any waiver under section 9703 of this title;

- (5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management;
  - (6) describe how the agency ensures the accuracy and reliability of the data used to measure progress towards its performance goals, including an identification of—
    - (A) the means used to verify and validate measured values;
    - (B) the sources for the data;
    - (C) the level of accuracy required for the intended use of the data;
    - (D) any limitations to the data at the required level of accuracy; and
    - (E) how the agency has compensated for such limitations if needed to reach the required level of accuracy; and
  - (7) include the summary findings of those program evaluations completed during the period covered by the update.
- (d) If an agency performance update includes any program activity or information that is specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and is properly classified pursuant to such Executive Order, the head of the agency shall make such information available in the classified appendix provided under section 1115(e).
- (e) The functions and activities of this section shall be considered to be inherently governmental functions. The drafting of agency performance updates under this section shall be performed only by Federal employees.
- (f) Each fiscal year, the Office of Management and Budget shall determine whether the agency programs or activities meet performance goals and objectives outlined in the agency performance plans and submit a report on unmet goals to—
  - (1) the head of the agency;
  - (2) the Committee on Homeland Security and Governmental Affairs of the Senate;
  - (3) the Committee on Oversight and Governmental Reform of the House of Representatives; and
  - (4) the Government Accountability Office.
- (g) If an agency's programs or activities have not met performance goals as determined by the Office of Management and Budget for 1 fiscal year, the head of the agency shall submit a performance improvement plan to the Office of Management and Budget to increase program effectiveness for each unmet goal with measurable milestones. The agency shall designate a senior official who shall oversee the performance improvement strategies for each unmet goal.
- (h)(1) If the Office of Management and Budget determines that agency programs or activities have unmet performance goals for 2 consecutive fiscal years, the head of the agency shall—
  - (A) submit to Congress a description of the actions the Administration will take to improve performance, including proposed statutory changes or planned executive actions; and
  - (B) describe any additional funding the agency will obligate to achieve the goal, if such an action is determined appropriate in consultation with the Director of the Office of Management and Budget, for an amount determined appropriate by the Director.
- (2) In providing additional funding described under paragraph (1)(B), the head of the agency shall use any reprogramming or transfer authority available to the agency. If after exercising such authority additional funding is necessary to achieve the level determined appropriate

by the Director of the Office of Management and Budget, the head of the agency shall submit a request to Congress for additional reprogramming or transfer authority.

(i) If an agency's programs or activities have not met performance goals as determined by the Office of Management and Budget for 3 consecutive fiscal years, the Director of the Office of Management and Budget shall submit recommendations to Congress on actions to improve performance not later than 60 days after that determination, including—

- (1) reauthorization proposals for each program or activity that has not met performance goals;
- (2) proposed statutory changes necessary for the program activities to achieve the proposed level of performance on each performance goal; and
- (3) planned executive actions or identification of the program for termination or reduction in the President's budget.

## **APPENDIX C: Executive Order No. 13450 Improving Government Program Performance**

**Ex. Ord. No. 13450. Improving Government Program Performance** (Nov. 13, 2007, 72 F.R. 64519):

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 305 and 306 of title 5, sections 1115, 1116, and 9703 of title 31, and chapter 28 of title 39, United States Code, and to improve the effectiveness and efficiency of the Federal Government and promote greater accountability of that Government to the American people, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the Federal Government to spend taxpayer dollars effectively, and more effectively each year. Agencies shall apply taxpayer resources efficiently in a manner that maximizes the effectiveness of Government programs in serving the American people.

Sec. 2. *Definitions.* As used in this order:

(a) "agency" means:

(i) an executive agency as defined in section 105 of title 5, United States Code, other than the Government Accountability Office; and

(ii) the United States Postal Service and the Postal Regulatory Commission;

(b) "agency Performance Improvement Officer" means an employee of an agency who is a member of the Senior Executive Service or equivalent service, and who is designated by the head of the agency to carry out the duties set forth in section 5 of this order.

Sec. 3. *Duties of Heads of Agencies.* To assist in implementing the policy set forth in section 1 of this order, the head of each agency shall, with respect to each program administered in whole or in part by the agency:

(a) approve for implementation:

(i) clear annual and long-term goals defined by objectively measurable outcomes; and

(ii) specific plans for achieving the goals, including:

(A) assignments to specified agency personnel of:

(1) the duties necessary to achieve the goals; and

(2) the authority and resources necessary to fulfill such duties;

(B) means to measure:

(1) progress toward achievement of the goals; and

(2) efficiency in use of resources in making that progress; and

(C) mechanisms for ensuring continuous accountability of the specified agency personnel to the head of the agency for achievement of the goals and efficiency in use of resources in achievement of the goals;

(b) assist the President, through the Director of the Office of Management and Budget (Director), in making recommendations to the Congress, including budget and appropriations recommendations, that are justified based on objective performance information and accurate estimates of the full

costs of achieving the annual and long-term goals approved under subsection (a)(i) of this section; and

(c) ensure that agency Internet websites available to the public include regularly updated and accurate information on the performance of the agency and its programs, in a readily useable and searchable form, that sets forth the successes, shortfalls, and challenges of each program and describes the agency's efforts to improve the performance of the program.

*Sec. 4. Additional Duties of the Director of the Office of Management and Budget.*

(a) To assist in implementing the policy set forth in section 1 of this order, the Director shall issue instructions to the heads of agencies concerning:

(i) the contents, and schedule for approval, of the goals and plans required by section 3 of this order; and

(ii) the availability to the public in readily accessible and comprehensible form on the agency's Internet website (or in the Federal Register for any agency that does not have such a website), of the information approved by the head of each agency under section 3 of this order and other information relating to agency performance.

(b) Instructions issued under subsection (a) of this section shall facilitate compliance with applicable law, presidential guidance, and Office of Management and Budget circulars and shall be designed to minimize duplication of effort and to assist in maximizing the efficiency and effectiveness of agencies and their programs.

*Sec. 5. Duties of Agency Performance Improvement Officers.* Subject to the direction of the head of the agency, each agency Performance Improvement Officer shall:

(a) supervise the performance management activities of the agency, including:

(i) development of the goals, specific plans, and estimates for which section 3 of this order provides; and

(ii) development of the agency's strategic plans, annual performance plans, and annual performance reports as required by law;

(b) advise the head of the agency, with respect to a program administered in whole or in part by the agency, whether:

(i) goals proposed for the approval of the head of the agency under section 3(a)(i) of this order are:

(A) sufficiently aggressive toward full achievement of the purposes of the program; and

(B) realistic in light of authority and resources assigned to the specified agency personnel referred to in section 3(a)(ii)(A) of this order with respect to that program; and

(ii) means for measurement of progress toward achievement of the goals are sufficiently rigorous and accurate;

(c) convene the specified agency personnel referred to in section 3(a)(ii)(A) of this order, or appropriate subgroups thereof, regularly throughout each year to:

(i) assess performance of each program administered in whole or in part by the agency; and

(ii) consider means to improve the performance and efficiency of such program;

(d) assist the head of the agency in the development and use within the agency of performance measures in personnel performance appraisals, and, as appropriate, other agency personnel and planning processes; and

(e) report to the head of the agency on the implementation within the agency of the policy set forth in section 1 of this order.

*Sec. 6. Establishment and Operation of Performance Improvement Council.* (a) The Director shall establish, within the Office of Management and Budget for administrative purposes only, a Performance Improvement Council (Council), consistent with this order.

(b) The Council shall consist exclusively of:

(i) the Deputy Director for Management of the Office of Management and Budget, who shall serve as Chair;

(ii) such agency Performance Improvement Officers, as determined by the Chair; and

(iii) such other full-time or permanent part-time employees of an agency, as determined by the Chair with the concurrence of the head of the agency concerned.

(c) The Chair or the Chair's designee, in implementing subsection (d) of this section, shall convene and preside at the meetings of the Council, determine its agenda, direct its work, and establish and direct subgroups of the Council, as appropriate to deal with particular subject matters, that shall consist exclusively of members of the Council.

(d) To assist in implementing the policy set forth in section 1 of this order, the Council shall:

(i) develop and submit to the Director, or when appropriate to the President through the Director, at times and in such formats as the Chair may specify, recommendations concerning:

(A) performance management policies and requirements; and

(B) criteria for evaluation of program performance;

(ii) facilitate the exchange among agencies of information on performance management, including strategic and annual planning and reporting, to accelerate improvements in program performance;

(iii) coordinate and monitor a continuous review by heads of agencies of the performance and management of all Federal programs that assesses the clarity of purpose, quality of strategic and performance planning and goals, management excellence, and results achieved for each agency's programs, with the results of these assessments and the evidence on which they are based made available to the public on or through the Internet website referred to in subsection (d)(iv);

(iv) to facilitate keeping the public informed, and with such assistance of heads of agencies as the Director may require, develop an Internet website that provides the public with information on how well each agency performs and that serves as a comprehensive source of information on:

(A) current program performance; and

(B) the status of program performance plans and agency Performance and Accountability Reports; and

(C) consistent with the direction of the head of the agency concerned after consultation with the Director, any publicly available reports by the agency's Inspector General concerning agency program performance;

(v) monitor implementation by agencies of the policy set forth in section 1 of this order and report thereon from time to time as appropriate to the Director, or when appropriate to the President through the Director, at such times and in such formats as the Chair may specify,

together with any recommendations of the Council for more effective implementation of such policy;

(vi) at the request of the head of an agency, unless the Chair declines the request, promptly review and provide advice on a proposed action by that agency to implement the policy set forth in section 1 of this order; and

(vii) obtain information and advice, as appropriate, in a manner that seeks individual advice and does not involve collective judgment or consensus advice or deliberation, from:

(A) State, local, territorial, and tribal officials; and

(B) representatives of entities or other individuals.

(e)(i) To the extent permitted by law, the Office of Management and Budget shall provide the funding and administrative support the Council needs, as determined by the Director, to implement this section; and

(ii) the heads of agencies shall provide, as appropriate and to the extent permitted by law, such information and assistance as the Chair may request to implement this section.

Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an agency or the head thereof; or

(ii) functions of the Director relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law (including laws and executive orders relating to the protection of information from disclosure) and subject to the availability of appropriations.

(c) In implementing this order, the Director of National Intelligence shall perform the functions assigned to the Director of National Intelligence by the National Security Act of 1947, as amended ([former] 50 U.S.C. 401*et seq.*) [now 50 U.S.C. 3001 *et seq.*], consistent with section 1018 of the Intelligence Reform and Terrorism Prevention Act (Public Law 108–458), and other applicable laws.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, or entities, its officers, employees, or agents, or any other person.