

LEGISLATION SUMMARY SHEET

TRACKING NO. 0264-21

DATE: December 17, 2021


TITLE OF LEGISLATION: AN ACTION RELATING TO AN EMERGENCY AND THE NAVAJO NATION COUNCIL; REALLOCATING UNEXPENDED CARES FUNDS PREVIOUSLY ALLOCATED TO THE PHASE II HARDSHIP ASSISTANCE EXPENDITURE PLAN THROUGH RESOLUTION NO. CJN-35-21 TO HARDSHIP ASSISTANCE RECIPIENTS AGE 60 AND OVER

PURPOSE OF THIS LEGISLATION: to approve a reallocation of approximately \$16,000,000 in CARES Hardship Assistance Phase II funds to Eligible Elders age 60 and over; this is Emergency Legislation because the Navajo Nation faces the possible loss of these federal funds on the reversion date of December 31, 2021.

OLC No. 21-524-1

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL - Third Year, 2021

Introduced by:



(Prime Sponsor)

Tracking No. 0264-21

AN ACTION
RELATING TO AN EMERGENCY AND THE NAVAJO NATION
COUNCIL; REALLOCATING UNEXPENDED CARES FUNDS
PREVIOUSLY ALLOCATED TO THE PHASE II HARDSHIP ASSISTANCE
EXPENDITURE PLAN THROUGH RESOLUTION NO. CJN-35-21
TO HARDSHIP ASSISTANCE RECIPIENTS AGE 60 AND OVER

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102(A).
- B. Navajo Nation law governing proposed legislation that addresses an urgent matter, provides as follows: “[m]atters constituting an emergency shall be limited to the cessation of law enforcement services, and disaster relief services, fire protection services or other direct services required as an entitlement under Navajo Nation or Federal law, or [matters] which directly threaten the sovereignty of the Navajo Nation. Such an emergency matter must arise due to the pressing public need for such resolution(s) and must be a matter requiring final action by the Council.” 2 N.N.C. §164 (A)(16).
- C. This legislation is offered as an emergency resolution pursuant to 2 N.N.C. §164(A)(16) because the possible loss by the Nation of an estimated \$16 million in COVID-Coronavirus Relief Funds is a direct threat to disaster and COVID-19 relief services to the Navajo People,

1 and therefore constitutes a pressing public need requiring immediate resolution.

2
3 **SECTION TWO. FINDINGS**

4 A. On June 30, 2021 the Navajo Nation Council adopted Resolution No. CJN-35-21, which was
5 signed into law on July 2, 2021 by Navajo Nation President Jonathan Nez. **EXHIBIT A.**

6 B. CJN-35-21 established the “Navajo Nation CARES Fund Phase II Hardship Assistance
7 Expenditure Plan” that was funded by the remaining balance in the Navajo Nation’s first
8 “Hardship Assistance Expenditure Plan” account, which Plan was approved in Resolution No.
9 CJY-67-20, as amended by Resolution No. CS-74-20 (see also Naabik’íyáti’ Committee
10 Resolution No. NABIO-49-20 and Resolution No. NABID-63-20).

11 C. Despite the diligent efforts of the Office of the Controller (“OOC”) over the past several
12 months, approximately 7,500 applicants for Phase II Hardship Assistance funds who were
13 approved for payments and were mailed checks by the OOC have not yet cashed or deposited
14 them. These checks are now void and will not be honored by any bank or financial institution.
15 As a result, the OOC estimates that as of December 7, 2021 the total amount of outstanding
16 Phase II Hardship Assistance checks amounts to approximately \$8,200,000. **EXHIBIT B.**

17 D. Moreover, the OOC has only received approximately 30,000 applications for Phase II
18 Hardship Assistance instead of the 80,000 applications that OOC anticipated back in June
19 2021. **EXHIBIT C.**

20 E. Because of the thousands of uncashed checks and far fewer applications submitted, there now
21 remains an available balance in the Navajo Nation CARES Phase II Hardship Assistance
22 Expenditure Plan of approximately \$16 million. These funds are unexpended and are available
23 to the Navajo Nation for other CARES-eligible uses.

24 F. The CARES Act provides that payments from the Coronavirus Relief Fund may only be
25 used to cover costs that were incurred during the period that begins on March 1, 2020, and
26 ends on December 31, 2021.

27 G. Previous Treasury Guidance provided that costs were considered to be incurred when goods
28 are delivered and services are performed. On December 14, 2021, Treasury issued revised
29 guidance which clarified that a cost associated with a necessary expenditure incurred due to
30 the public health emergency is considered to have been incurred by December 31, 2021, if

1 the recipient has incurred an obligation with respect to such cost by December 31, 2021.
2 Treasury defines “obligation” for this purpose as an order placed for property and services
3 and entry into contracts, subawards, and similar transactions that require payment.
4 Recipients are required to expend their funds received from the Coronavirus Relief Fund to
5 cover these obligations by September 30, 2022. **EXHIBIT D.**

6 H. All Coronavirus Relief Funds, including all funds allocated to the Navajo Nation CARES
7 Phase II Hardship Assistance Expenditure Plan, must be obligated by **December 31, 2021** or
8 will revert to the federal government and be lost by the Navajo Nation.

9 I. To prevent the reversion and loss of these funds, the Navajo Nation must reallocate the
10 unobligated funds in the Navajo Nation CARES Phase II Hardship Assistance Expenditure
11 Plan.

12 J. The Navajo Nation Council has determined that all Hardship Assistance applicants (for both
13 Phase I and Phase II) who are age 60 and over have already demonstrated, in their applications
14 previously submitted to the OOC, a dire need for cash assistance to mitigate the devastating
15 effects of the COVID pandemic suffered by each of them and their families. Therefore, the
16 Council believes it to be in the best interest of the Navajo Nation to ensure that these Diné
17 elders receive additional Hardship Assistance at this time.

18 K. Because of the December 31, 2021 federal CARES Act deadline to incur costs by obligating
19 funds, the Navajo Nation Council must act quickly to reallocate the unobligated Hardship
20 Assistance funds and give the OOC enough time to prepare and issue checks for the new
21 payments approved in this legislation, so that all funds can be obligated by December 31,
22 2021.

23
24 **SECTION THREE. REALLOCATING UNEXPENDED CARES PHASE II HARDSHIP**
25 **ASSISTANCE FUNDS TO HARDSHIP ASSISTANCE FOR ELIGIBLE NAVAJO**
26 **ELDERS**

27 A. The Navajo Nation hereby approves the reallocation of all unexpended funds remaining in the
28 Navajo Nation CARES Phase II Hardship Assistance Expenditure Plan account to hardship
29 assistance for eligible elders, in view of their previously documented and continued needs due
30 to the COVID-19 public health emergency. OOC reports that the amount of unexpended funds

1 is approximately \$16,000,000.

2 B. A \$16,000,000 reallocation would provide approximately \$300 (three-hundred dollars) to
3 each enrolled Navajo Nation member age 60 and over who meets the following criteria
4 (“Eligible Elder”):

5 1. the elder previously submitted a CARES Hardship Assistance application to the OOC (for
6 either Phase I or Phase II) and such application was timely received by the deadline
7 established by OOC; and

8 2. the elder’s previous CARES Hardship Assistance application shows a birthdate of
9 December 31, 1961 or earlier date, and such date has been substantiated with a copy of the
10 elder’s Birth Certificate or CIB on file with the OOC; and

11 3. the elder was approved for a CARES Hardship Assistance payment (for either Phase I or
12 Phase II) and was issued a check by OOC.

13 C. Because OOC is still completing the CARES Hardship Assistance account reconciliation and
14 the exact amount of funds remaining in the account is not known at the time of approval of
15 this legislation, the \$16,000,000 figure noted in SECTION THREE (A) may change by
16 December 31, 2021. Therefore, the \$300 payment per Eligible Elder approved herein may be
17 prorated by the OOC as necessary if on December 31, 2021 the final amount of remaining
18 CARES Hardship Assistance funds does not total the \$16,000,000. In such case, the \$300
19 payment figure may be revised by the OOC so long as each Eligible Elder is paid the same
20 amount.

21 D. The reallocation approved in this legislation is considered an additional hardship payment to
22 each Eligible Elder, above and beyond any previous hardship payments or other assistance
23 already received by the elder; and any such prior payments shall not affect the elder’s
24 eligibility or approval for the additional hardship payment approved herein.

25
26 **SECTION FOUR. DIRECTIVES**

27 A. The Office of the Controller and the Office of Management and Budget, are hereby directed
28 to undertake any and all actions, as necessary and appropriate, to implement the reallocation
29 of CARES Phase II Hardship Assistance funds, as approved and explained in this legislation.

30 B. All Eligible Elders, so long as they meet the criteria set forth above in SECTION THREE A(1)-

1 (3), shall be issued a new hardship assistance check automatically by the OOC - they shall not
2 be required to submit any new or amended application, or any additional information, in order
3 to receive their new hardship assistance checks.

4 C. All new payments approved in this legislation shall be made to each Eligible Elder via check,
5 in accordance with the OOC's normal payment processing methods, which checks shall be
6 dated and issued by OOC no later than December 31, 2021. All checks shall be mailed to each
7 Eligible Elder as soon as possible after issuance by OOC, to the address shown on his/her
8 CARES Hardship Assistance application.

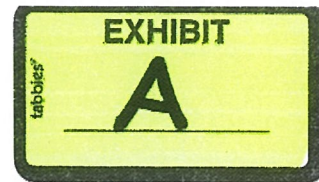
9 D. The OOC shall be responsible for administering and accounting for all payments to Eligible
10 Elders as described and approved herein. By the last day of the Navajo Nation Council's
11 Winter 2022 Session, the OOC shall present a verbal and written report to the Council as to
12 its implementation of the reallocation approved herein, including total payments issued by
13 OOC to Eligible Elders and all payments actually received and cashed by Eligible Elders, and
14 noting the balance of remaining funds in the CARES Hardship Assistance account as of the
15 date of such report.

16
17 **SECTION FIVE. EFFECTIVE DATE**

18 This legislation is effective upon its approval by the Navajo Nation Council pursuant to 2 N.N.C.
19 §221(B) and the Navajo Nation President's line-item veto authority under 2 N.N.C. §164(A)(17)
20 (see Reso. No. CS-68-20 and Reso. No. CJY-62-20).

21
22 **SECTION SIX. SAVING CLAUSE**

23 If any provision of this legislation is determined invalid by the Navajo Nation Supreme Court,
24 or by a District Court of the Navajo Nation without appeal to the Navajo Nation Supreme Court,
25 those portions not deemed invalid shall remain the law of the Navajo Nation.



CJN-35-21

RESOLUTION OF THE
NAVAJO NATION COUNCIL
24th NAVAJO NATION COUNCIL - THIRD YEAR, 2021

AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; ENACTING THE NAVAJO NATION CARES FUND PHASE II HARDSHIP ASSISTANCE EXPENDITURE PLAN; ALLOCATING NAVAJO NATION CARES FUND INVESTMENT EARNINGS THERETO

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A).
- B. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council with the responsibility to hear proposed resolution(s) that require final action by the Navajo Nation Council. 2 N.N.C. § 164(A)(9).
- C. The Budget and Finance Committee is a standing committee of the Navajo Nation Council with the enumerated powers to review and recommend to the Navajo Nation Council the budgeting, appropriation, investment and management of all funds and to promulgate rules and regulations related to contracting and financial matters. 2 N.N.C. §§ 300(B)(1) and (2).
- D. The Health, Education and Human Services Committee is a standing committee of the Navajo Nation Council empowered to provide legislative oversight on matters involving health, social services, and education. 2 N.N.C. § 400(C)(1).

SECTION TWO. FINDINGS

- A. The World Health Organization ("WHO") declared a Public Health Emergency of International Concern related to the outbreak of coronavirus (COVID-19), a highly contagious and sometimes fatal respiratory virus, on January 30, 2020; the U.S. Department of Health and Human Services declared a Public Health Emergency related to the COVID-19 outbreak on January 31, 2020; and the WHO declared a global pandemic due to COVID-19 on March 11, 2020.
- B. The Navajo Nation Commission on Emergency Management, with the concurrence of Navajo Nation President Jonathan Nez, declared a Public Health State of Emergency on the Navajo Nation on

March 11, 2020 due to COVID-19. Resolution No. CEM 20-03-11. The Navajo Nation Department of Health subsequently issued numerous Public Health Emergency Orders. Public Health Orders 2020-001 through 2021-011 are incorporated herein by reference.

- C. As of June 3, 2021, the Navajo Nation Health Command Operations Center has confirmed 30,847 COVID-19 cases and 1,322 COVID-19 related deaths on the Navajo Nation.
- D. The U.S. Congress on March 27, 2020, enacted the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) (the "CARES Act"), which, at Title V, § 5001, entitled "Coronavirus Relief Fund," incorporated herein by reference, set aside \$8 billion in emergency aid for Tribal governments for the COVID-19 pandemic.
- E. The CARES Act and Coronavirus Relief Fund were subsequently amended by the Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, incorporated herein by reference, to extend the deadline for Coronavirus Relief Fund expenditures from December 30, 2020 to December 31, 2021.
- F. The CARES Act, as amended by Division N, Title X, Section 1001 of the Consolidated Appropriations Act of 2021, provides that the Coronavirus Relief Fund shall be used to cover only those costs that:
 - a. are necessary expenditures incurred due to the public health emergency with respect to COVID-19;
 - b. are not accounted for in the Tribal budget most recently approved as of March 27, 2020; and
 - c. are incurred from March 1, 2020 through December 31, 2021.
- G. The U.S. Treasury on January 15, 2021 issued "Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments" ("Treasury Guidance") and "Coronavirus Relief Fund Frequently Asked Questions" ("Treasury FAQ"), attached as Exhibit 1.
- H. As of June 30, 2020, the Navajo Nation has received seven hundred fourteen million one hundred eighty-nine thousand six hundred thirty-one dollars and forty-seven cents (\$714,189,631.47) as the Nation's share of the U.S. Treasury's initial distributions of the Coronavirus Relief Fund.

- I. In August of 2020, the Navajo Nation Council recognized that immediately providing financial assistance to Navajo individuals and families who are facing financial hardship due to the COVID-19 pandemic and attendant public health orders was necessary to comprehensively combat the devastating effects of COVID-19, and it therefore adopted Resolution No. CJY-67-20, incorporated herein by reference, enacting the Navajo Nation CARES Fund Hardship Assistance Expenditure Plan.
- J. The purpose of the Navajo Nation CARES Fund Hardship Assistance Expenditure Plan enacted through Resolution No. CJY-67-20, was to immediately provide emergency financial assistance to Navajo tribal members for purchasing Personal Protective Equipment, paying past due utility bills, rent, mortgages, isolation expenses, livestock-related expenses, education-related expenses and other financial burdens created by the COVID-19 pandemic and the public health emergency orders.
- K. Resolution No. CJY-67-20 also established that the "progress of all [Navajo Nation CARES Act] Expenditure Plan funded projects shall be reviewed by the Budget and Finance and Naabik'iyáti' Committees during the month of October 2020 [and] the funding for any project that has not made enough progress to demonstrate that it will be fully completed by December 31, 2020, will be re-allocated to the Hardship Assistance Expenditure Plan through Naabik'iyáti' Committee resolution." CJY-67-20, Section Three (Q); see also CS-73-20, Section Three (F).
- L. Naabik'iyáti' Committee Resolution No. NABID-63-20, attached as Exhibit 2, which amended NABIO-49-20, approved that

"Any remaining CS-73-20, CJY-67-20 and/or CJN-46-20 CARES Fund Expenditure Plans not fully expended, not including encumbered and obligated funds, by November 20, 2020, regardless of recipient or intended recipient, shall be automatically reallocated to the Hardship Assistance Expenditure Plan. With the exception of funds allocated for Powerline projects; Solar projects; Water and Wastewater projects, including cisterns; Broadband and Telecommunication projects; COVID-19 decontamination and direct care projects, including contracts for services that directly mitigate the COVID-19 pandemic through isolation/quarantining, alternative care services, testing and contract tracing; and CARES Act administrative compliance costs, funds still encumbered as of December 22, 2020, shall be unencumbered and unobligated and automatically reallocated to the Hardship Assistance Expenditure Plan if the goods or services have not been delivered by that date. The Office of Management and Budget and Office of Controller shall

implement these reallocations without the need for further authorization." NABID-63-20, Section Three (D), and;

"Encumbered funds for Powerline projects; Solar projects; Water and Wastewater projects, including cisterns; Broadband and Telecommunication projects; and COVID-19 decontamination and direct care projects, shall be unencumbered and unobligated and automatically reallocated to the Hardship Assistance Expenditure Plan if the goods or services have not been delivered by 12:00 noon on December 28, 2020. The Office of Management and Budget and Office of Controller shall implement these reallocations without the need for further authorization." NABID-63-20, Section Three (E).

- M. In September of 2020, Resolution No. CJY-67-20 was subsequently amended by Navajo Nation Council Resolution No. CS-74-20 to increase Navajo Nation CARES Fund funding to the Hardship Assistance Expenditure Plan by forty-nine million four hundred fifty-four thousand four hundred sixteen dollars (\$49,454,416) and to increase the amount allocated to eligible Navajo members to no more than fifteen hundred dollars (\$1500) per person over the age of 18 years as of March 1, 2020 and five hundred dollars (\$500) per person under the age of 18 years as of March 1, 2020.
- N. By Resolution No. BFO-32-20, attached as Exhibit 3, the Budget and Finance Committee established eligibility criteria and a November 30, 2020, deadline to apply for Hardship Assistance. The approximately 300,000 enrolled Navajo members who met BFO-32-20's application deadline and eligibility criteria have received Hardship Assistance for a total distribution amount of \$319,532,034 which excludes those approximately 1,865 timely applications for which assistance payments have not been received by the applicant; and includes approximately 1,378 applications wherein exceptions are still being resolved, 208 for which checks are pending, and 279 for which mail has been returned and checks are pending reissuance.
- O. The Office of the Controller and Office of Vital Statistics have estimated that there are approximately 92,000 enrolled Navajo members who did not apply for Hardship Assistance by the November 30, 2020 deadline.
- P. As of June 14, 2021, the Hardship Assistance Expenditure Plan has been funded with a total of \$361,511,411 through CJY-67-20, CS-74-20, and the reallocations to the Hardship Assistance Expenditure Plan thereunder; and after funding applications received by the November 30, 2020 deadline in the total amount of \$319,532,034, the Plan has a current remaining balance of

\$41,979,377. The remaining balance will change if outstanding reallocations are received and earned investment income is added, and will ultimately decrease when Office of the Controller issues payments for the approximately 1,865 timely applications for which applicants have not yet received payment.

- Q. The Navajo Nation Council has determined that it is in the best interest of the Navajo Nation and the Navajo people to enact the Navajo Nation CARES Fund PHASE II Hardship Assistance Expenditure Plan, attached as Exhibit 4, to provide financial assistance to those eligible Navajo members who were impacted by the COVID-19 pandemic and public health orders but did not receive a distribution through the Hardship Assistance Expenditure Plan approved by Council Resolution Nos. CJY-67-20 and CS-74-20.

SECTION THREE. APPROVAL AND ADOPTION OF THE CARES FUND PHASE II HARDSHIP ASSISTANCE EXPENDITURE PLAN

- A. The Navajo Nation hereby approves and enacts the Navajo Nation CARES Fund PHASE II Hardship Assistance Expenditure Plan, attached as Exhibit 4, to be funded by the remaining balance of the Hardship Assistance Expenditure Plan, including the reallocation of unspent Navajo Nation CARES Fund per NABID-63-20, as approved by Council Resolution Nos. CJY-67-20 and CS-74-20.
- B. The Navajo Nation also hereby approves the allocation of all current and future Navajo Nation CARES Fund investment earnings to the PHASE II Hardship Assistance Expenditure Plan.
- C. The Office of the Controller shall be responsible for implementing and administering the PHASE II Hardship Assistance Expenditure Plan as set forth in Exhibit 4.
- D. Funds from the Coronavirus Relief Funds, as amended by the Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, are externally restricted funds and the Navajo Nation Appropriations Act, 12 N.N.C. §§ 800 et seq., as applicable to externally restricted funds, and unless excepted herein, shall apply to the PHASE II Hardship Assistance Expenditure Plan as set forth here. The detailed PHASE II Hardship Assistance Expenditure Plan budget shall not be subject to further legislative approval and shall, instead, be developed and implemented through expedited budget procedures.

SECTION FOUR. APPROVAL AND ADOPTION OF THE PHASE II HARDSHIP ASSISTANCE EXPENDITURE PLAN ADMINISTRATION

- A. The PHASE II Hardship Assistance Expenditure Plan shall be administered by the Office of the Controller under the oversight of the Budget and Finance Committee.
- B. The Office of Management and Budget and Office of the Controller shall ensure that the reallocations mandated by NABID-63-20 are immediately fully implemented.
- C. The Office of the Controller shall ensure that all funds allocated under the PHASE II Hardship Assistance Expenditure Plan are only expended for the purposes set forth in Exhibit 4; and that such funds are fully expended by December 31, 2021.
- D. Office of the Controller shall process payments for the approximately 208 applicants with checks pending, and the approximately 279 applicants for which mail was returned and checks are pending reissuance. Office of the Controller shall continue to attempt to resolve the approximately 1,378 applications with exceptions. The Phase 1 applicants that submitted their applications timely, but have not received their assistance payments, and have resolved the exceptions by 30 days after this legislation is signed by the President of the Navajo Nation, shall be awarded an amount comparable to that awarded to Phase 1 recipients. If the exceptions are not resolved by 30 days after this legislation is signed by the President of the Navajo Nation, the applications shall be denied and those Phase 1 applicants shall be eligible to reapply in PHASE II.
- E. The Office of the Controller shall establish, publish, and implement a sixty (60) day application period for eligible Navajos who have not previously received Hardship Assistance funds; the eligibility criteria and application forms for PHASE II Hardship Assistance Expenditure Plan funds shall be substantially the same as approved by BFO-32-20 unless recommended otherwise by the Health, Education and Human Services Committee or Budget and Finance Committee through resolution. Changes to the application for ease of understanding or legal sufficiency can be made without committee resolution when such changes are concurred to or recommended by the Navajo Nation Department of Justice, as long as such changes do not change the substance of the eligibility criteria.
- F. After the PHASE II Hardship Assistance application period has expired, the Office of the Controller shall pro-rate the distribution to all eligible applicants based on the total balance of the Hardship Assistance Expenditure Plan balance

and ensure that no applicant receives a distribution exceeding fifteen hundred dollars (\$1500) per person over the age of 18 years as of March 1, 2020 and five hundred dollars (\$500) per person under the age of 18 years as of March 1, 2020.

- G. Notwithstanding paragraph E above, those eligible Navajos who *timely* submitted their applications for Hardship Assistance pursuant to Resolution No. CJY-67-20 and have resolved all problems/issues/exceptions identified by the Office of the Controller by 30 days after this legislation is signed by the President of the Navajo Nation, but have not received their assistance check, shall be awarded funding comparable to the amount awarded to other CJY-67-20 recipients. If the exceptions are not resolved within 30 days after this legislation is signed by the President of the Navajo Nation, those applicants are eligible to reapply under Phase II.
- H. The funds allocated to the Office of the Controller under the PHASE II Hardship Assistance Expenditure Plan set forth herein shall be used exclusively and only for the permissible uses set forth in the following:
1. This Resolution and the PHASE II Hardship Assistance Expenditure Plan approved herein.
 2. The Coronavirus Relief Fund, as amended by the Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, which allows only those costs that:
 - a. are necessary expenditures incurred due to the public health emergency with respect to COVID-19;
 - b. are not accounted for in the Navajo Nation Fiscal Year 2020 Comprehensive Budget; and
 - c. are incurred from March 1, 2020 through December 31, 2021.
 3. Consistent with the eligible uses described in the Treasury Guidance, attached as Exhibit 1, which includes the following guidance:
 - a. expenditures must be incurred "due to" the public health emergency which means that expenditures must be used for actions taken to respond to the public health emergency; these expenditures may include expenditures incurred to allow the Tribal government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to

respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures;

- b. expenditures must be "necessary"; the Department of the Treasury interprets this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Coronavirus Relief Fund payments;
 - c. expenditures may only be made to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. A cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation with the budget; or (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation; and
 - d. expenditures must be for costs incurred during the period that begins on March 1, 2020 and ends on December 31, 2021. A cost is "incurred" when the responsible unit of government has expended funds to cover the cost.
4. Consistent with the eligible uses described in the U.S. Treasury Frequently Asked Questions (FAQ), attached as Exhibit 1.
 5. Consistent with the eligible uses as may be described in any and all future guidance, rules, or regulations of the Department of the Treasury or the Department of the Interior related to the Coronavirus Relief Fund.
 6. Consistent with Navajo Nation laws, rules and regulations.
- I. The PHASE II Hardship Assistance Expenditure Plan and expenditures made thereunder shall be governed by, and construed in accordance with, the laws and regulations of the Navajo Nation.

SECTION FIVE. AMENDMENT

This Resolution may be amended by a two-thirds majority vote of the Navajo Nation Council subject to action of the President of the Navajo Nation under 2 N.N.C. § 221(B) and the President's budget line-item veto authority set forth in 2 N.N.C. § 164(A)(17) pursuant to Resolution No. CS-68-20 and CJY-62-20.

SECTION SIX. EFFECTIVE DATE

This Resolution is effective upon its approval pursuant to 2 N.N.C. § 221(B) and the President's budget line-item veto authority set forth in 2 N.N.C. § 164(A)(17) pursuant to Resolution No. CS-68-20 and CJY-62-20.

SECTION SEVEN. SAVING CLAUSE

Should any provision of this legislation be determined invalid by the Navajo Nation Supreme Court, or a District Court of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those portions of the legislation which are not determined invalid shall remain the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 24th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 23 in Favor, and 00 Opposed, on this 25th day of June 2021.


Honorable Seth Damon, Speaker
24th Navajo Nation Council

June 30, 2021
DATE

Motion: Honorable Nathaniel Brown
Second: Honorable Rickie Nez

Speaker Seth Damon not voting




THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

Memorandum:

To: Honorable Jaime Henio, Chairperson
Budget and Finance Committee
Navajo Nation Council

From: 
Elizabeth Begay, Acting Controller
Office of the Controller

Date: December 7, 2021

Subject: Hardship CARES Status Report

The Office of the Controller respectfully submits to the Budget and Finance Committee the status of the Hardship CARES Assistance Program.

| | |
|---|-----------------------------|
| Available Budget | \$361,589,349 |
| Interest Income earned (as of 11/30/21) | <u>331,225</u> |
| Available for Hardship | <u>\$361,920,574</u> |

Total number of recipients to date:

| | | |
|-------------------------------------|---------------|-----------|
| 312,010 Navajos (adults and minors) | \$346,958,755 | H1 and H2 |
| Minors 85,253 = \$38,743,795 | | |
| Adults 226,757 = \$308,214,960 | | |

| | |
|-------------------------|-----------------------------|
| Total Available Balance | <u>\$ 14,961,819</u> |
|-------------------------|-----------------------------|

| | |
|--------------------------------------|------------------------|
| Pending Check run: | \$17,669,500 |
| 1. 5,942 recipients | \$6,441,000 |
| Minors = 2,472 = \$1,236,000 | |
| Adults = 3,470 = \$5,205,000 | |
| 2. 453 Babies born after 10/01/2020 | |
| 3. 5,256 problems with CIB | \$5,782,000 (estimate) |
| Minors 2,102 | |
| Adults 3,154 | |
| 4. 1,185 with no copy of CIB (est) | \$1,312,500 |
| Minors 465 | |
| Adults 720 | |
| 5. 3,610 wait list (no contact info) | |
| 6. 2,756 work-in progress | \$4,134,000 |

We calculated approximately \$2,707,681 deficit from the available balance to date.

In addition, there are approximately 7,500 outstanding checks amounting to \$8,200,000. This will be deemed unspent monies that may revert back to the US Treasury by December 31, 2021. We recommend any unspent monies budgeted for Hardship CARES Fund reallocated to small business assistance program before the CARES Fund expiration date.

If you should have any questions, you can contact me at tribal extension X6308. Thank you.

xc: OPVP




THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

Memorandum:

To: Luralene Tapahe, Principal Tribal Court Advocate
Office of Legislative Counsel

From: 
Elizabeth Begay, Acting Controller
Office of the Controller

Date: December 10, 2021

Subject: Emergency Legislation Needed to Prevent Loss of Unspent CARES
Fund Allocated to Hardship Assistance Program

This emergency legislation to allocate the previously utilized hardship dollars (previously expended) for checks that have gone uncashed and anticipated available budget from Hardship 2 assistance program.

There are many checks that have not been cashed from the Hardship program. These checks have a 90-day period from the date in which they were issued to be cashed. If not cashed, the individual will not be able to cash these checks as the bank will not accept them because they are deemed expired.

In addition, the Office of the Controller received approximately 30,000 Hardship 2 applications which is much less than the expected 80,000 applications. As a result, there will be available funds that will not be expended for the Hardship 2 assistance program.

The funds for this legislation will be utilized for hardship payments to individuals who are age 60 and over as of December 31, 2021.

This legislation is needed to authorize the use of these funds for this purpose. If the funds are not utilized by December 31, 2021, the amounts will need to be sent back to the US Treasury as un-used CARES funding.

If you should have any questions, you can contact me at tribal extension X6308. Thank you.



Coronavirus Relief Fund
Revision to Guidance Regarding When a Cost is Considered Incurred
December 14, 2021

The Coronavirus Aid, Relief, and Economic Security Act (CARES) Act established the \$150 billion Coronavirus Relief Fund (CRF). The CARES Act provides that payments from the CRF may only be used to cover costs that were incurred during the period that begins on March 1, 2020, and ends on December 31, 2021 (the “covered period”).¹

Treasury previously determined that, for a cost associated with the acquisition of a good or service or the acquisition of or improvement to real estate to be considered to have been incurred within the covered period, performance or delivery must have occurred during the covered period.

Although Treasury has considered the CRF to be a program designed for short-term needs of recipients to combat the virus and respond to the immediate effects of the pandemic, the public health emergency is still in effect, and state, local, and Tribal governments continue to be on the frontlines of the pandemic response. In addition, disruptions in supply chains have hindered recipients’ ability to obtain and put into use goods and equipment in a timely manner. These issues have been magnified in communities experiencing the Delta surge. Finally, given recent litigation, many recipients have not received their allocated payments from the CRF until the last few months.

In light of the foregoing, Treasury is now revising the guidance to provide that a cost associated with a necessary expenditure incurred due to the public health emergency shall be considered to have been incurred by December 31, 2021, if the recipient has incurred an obligation with respect to such cost by December 31, 2021. Treasury defines obligation for this purpose consistently with the Uniform Guidance definition in 2 C.F.R. 200.1 as an order placed for property and services and entry into contracts, subawards, and similar transactions that require payment.

Treasury’s reporting framework currently permits recipients to record their expenditures through September 30, 2022. The CRF’s eligible use is restricted to “necessary expenditures incurred due to” the COVID-19 public health emergency. Treasury currently expects that this expenditure deadline will provide a sufficient amount of time for recipients to expend their funds in accordance with the eligible uses of the CRF.

Treasury has made certain adjustments to its frequently asked questions to reflect this revision and will provide recipients subsequent updates as to how this change will be reflected in the CRF reporting requirements. The remainder of Treasury’s guidance remains in effect.

Consistent with Treasury’s revised interpretation above, the text of the section of Treasury’s guidance under the heading “*Costs incurred during the period that begins on March 1, 2020, and*

¹ See section 601(d)(3) of the Social Security Act (42 U.S.C. 801(d)(3)), as added by section 5001 of the CARES Act and as amended by section 1001 of Division N of the Consolidated Appropriations Act, 2021.

ends on December 31, 2021” has been revised. Treasury is also revising the answers to FAQs A.54 and A.58 to conform the responses to this new interpretation.

More Information

Questions regarding the Coronavirus Relief Fund can be sent to CoronavirusReliefFund@treasury.gov.

Treasury’s guidance regarding the use of funds is available here, subject to the revisions below: https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register_2021-00827.pdf.

Information about reporting and recordkeeping requirements related to CRF payments is available here: <https://oig.treasury.gov/cares-act>.

Revisions to Guidance

The revised provisions of Treasury’s guidance are as follows:

Costs incurred during the period that begins on March 1, 2020, and ends on December 31, 2021

The CARES Act provides that payments from the Fund may only be used to cover costs that were incurred during the period that begins on March 1, 2020, and ends on December 31, 2021 (the “covered period”).

A cost associated with a necessary expenditure incurred due to the public health emergency is considered to have been incurred by December 31, 2021, if the recipient has incurred an obligation with respect to such cost by December 31, 2021. Treasury defines obligation for this purpose as an order placed for property and services and entry into contracts, subawards, and similar transactions that require payment. Recipients are required to expend their funds received from the CRF to cover these obligations by September 30, 2022.

A.54 May Fund recipients upgrade critical public health infrastructure, such as providing access to running water for individuals and families in rural and tribal areas to allow them to maintain proper hygiene and defend themselves against the virus?

Yes, fund recipients may use payments from the Fund to upgrade public health infrastructure, such as providing individuals and families access to running water to help reduce the further spread of the virus. As required by the CARES Act, expenses associated with such upgrades must be incurred by December 31, 2021. Please see the discussion of the interpretation of “incurred” under the heading “*Costs incurred during the period that begins on March 1, 2020, and ends on December 31, 2021.*”

A.58 May payments from the Fund be used for real property acquisition and improvements and to purchase equipment to address the COVID-19 public health emergency?

The expenses of acquiring or improving real property and of acquiring equipment (*e.g.*, vehicles) may be covered with payments from the Fund in certain cases. For example, Treasury's initial guidance referenced coverage of the costs of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs, as an eligible use of funds. Any such use must be consistent with the requirements of section 601(d) of the Social Security Act as added by the CARES Act.

As with all uses of payments from the Fund, the use of payments to acquire or improve property is limited to that which is necessary due to the COVID-19 public health emergency. In the context of acquisitions of real estate and acquisitions of equipment, this means that the acquisition itself must be necessary. In particular, a government must (i) determine that it is not able to meet the need arising from the public health emergency in a cost-effective manner by leasing property or equipment or by improving property already owned and (ii) maintain documentation to support this determination. Likewise, an improvement, such as the installation of modifications to permit social distancing, would need to be determined to be necessary to address the COVID-19 public health emergency.

Payments from the Fund may only be used to cover costs that were incurred during the period that begins on March 1, 2020, and ends on December 31, 2021. Regarding this requirement, please see the discussion of the interpretation of "incurred" under the heading "*Costs incurred during the period that begins on March 1, 2020, and ends on December 31, 2021.*"

Finally, as with all costs covered with payments from the Fund, such costs must not have been previously accounted for in the budget most recently approved as of March 27, 2020, for the State, local, or Tribal government.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317-5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at Kerry.Dennis@irs.gov.

SUPPLEMENTARY INFORMATION: *Title:* Sales of Business Property.
OMB Number: 1545-0184.
Form Number: Form 4797.

Abstract: Form 4797 is used by taxpayers to report sales, exchanges, or involuntary conversions of assets used in a trade or business. It is also used to compute ordinary income from recapture and the recapture of prior year losses under section 1231 of the Internal Revenue Code.

Current Actions: There is no change in the paperwork burden previously approved by OMB. The forms are being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and farms.

Estimated Number of Respondents: 325,000.

Estimated Time per Response: 50 hours, 38 minutes.

Estimated Total Annual Burden Hours: 16,454,750.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 12, 2021.
Chakinna B. Clemons,
Supervisory Tax Analyst.
[FR Doc. 2021-00841 Filed 1-14-21; 8:45 am]
BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments

AGENCY: Department of the Treasury.
ACTION: Coronavirus Relief Fund program guidance.

SUMMARY: The Department of the Treasury (Treasury) is re-publishing in final form the guidance it previously made available on its website regarding the Coronavirus Relief Fund for States, tribal governments, and certain eligible local governments.

FOR FURTHER INFORMATION CONTACT: Stephen T. Milligan, Deputy Assistant General Counsel (Banking & Finance), 202-622-4051.

SUPPLEMENTARY INFORMATION: Section 601 of the Social Security Act, as added by section 5001(a) of Division A of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") established the Coronavirus Relief Fund (the "Fund") and appropriated \$150 billion for payments by Treasury to States, tribal governments, and certain local governments.

The Secretary of the Treasury has adopted this guidance for recipients of payments from the Fund pursuant to his authority under the Social Security Act to adopt rules and regulations as may be necessary to the efficient administration of the functions with which he is charged under the Social Security Act. 42 U.S.C. 1302(a). This guidance primarily concerns the use of payments from the Fund set forth in section 601(d) of the Social Security Act. Treasury's Office of Inspector General (OIG) will use this guidance in its audits of recipients' use of funds. Section 601(f)(2) of the Social Security Act provides that if the Treasury OIG determines that a recipient of payments from the Fund has failed to comply with the use of funds provisions of section

601(d), the amount equal to the amount of funds used in violation of such subsection shall be booked as a debt of such entity owed to the federal government.

The guidance published below is unchanged from the last version of the guidance dated September 2, 2020,¹ and the frequently asked questions document dated October 19, 2020,² each of which was published on Treasury's website, except for the following changes. The introduction of the guidance and frequently asked questions have been modified to reflect this publication in the **Federal Register**; the guidance and frequently asked questions have been revised throughout to reflect that the end date of the period during which eligible expenses may be incurred has been extended to December 31, 2021;³ footnote 2 of the guidance has been revised to reflect additional restrictions imposed by section 5001(b) of Division A the CARES Act; FAQ A.59 has been updated to correct the cross-reference to Treasury OIG's FAQs; and the application of FAQ B.6 has been clarified. Treasury is also adding to the guidance instructions regarding the return to Treasury of unused Coronavirus Relief Fund payments.

Administrative Procedure Act

The Administrative Procedure Act (APA) provides that the notice, public comment, and delayed effective date requirements of 5 U.S.C. 553 do not apply "to the extent that there is involved . . . a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." 5 U.S.C. 553(a). The rule involves a matter relating to public property, loans, grants, benefits, or contracts and is therefore exempt under the terms of the APA.

¹ As noted previously on Treasury's website, on June 30, 2020, the guidance provided under "Costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020" was updated. On September 2, 2020, the "Supplemental Guidance on Use of Funds to Cover Payroll and Benefits of Public Employees" and "Supplemental Guidance on Use of Funds to Cover Administrative Costs" sections were added.

² As noted previously on Treasury's website, on August 10, 2020, the frequently asked questions were revised to add Questions A.49-52. On September 2, 2020, Questions A.53-56 were added and Questions A.34 and A.38 were revised. On October 19, 2020, Questions A.57-59 and B.13 were added and Questions A.42, 49, and 53 were revised.

³ Section 1001 of Division N of the Consolidated Appropriations Act, 2021 amended section 601(d)(3) of the Social Security Act by extending the end of the covered period for Coronavirus Relief Fund expenditures from December 30, 2020 to December 31, 2021.

Dec. 31, 2021

fund REVERT

Regulatory Flexibility Analysis

The Regulatory Flexibility Act does not apply to a rulemaking when a general notice of proposed rulemaking is not required.

Paperwork Reduction Act

The final rule contains no requirements subject to the Paperwork Reduction Act.

Authority and Issuance

42 U.S.C. 1302(a).

Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments

The purpose of this document is to provide guidance to recipients of the funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). The CARES Act established the Coronavirus Relief Fund (the "Fund") and appropriated \$150 billion to the Fund. Under the CARES Act, the Fund is to be used to make payments for specified uses to States and certain local governments; the District of Columbia and U.S. Territories (consisting of the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands); and Tribal governments.

The CARES Act provides that payments from the Fund may only be used to cover costs that—

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
3. were incurred during the period that begins on March 1, 2020, and ends on December 31, 2021.¹

The guidance that follows sets forth the Department of the Treasury's interpretation of these limitations on the permissible use of Fund payments.

Necessary Expenditures Incurred Due to the Public Health Emergency

The requirement that expenditures be incurred "due to" the public health emergency means that expenditures must be used for actions taken to respond to the public health emergency.

¹ See Section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act and as amended by section 1001 of Division N of the Consolidated Appropriations Act, 2021.

These may include expenditures incurred to allow the State, territorial, local, or Tribal government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures. Funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute. Although a broad range of uses is allowed, revenue replacement is not a permissible use of Fund payments.

The statute also specifies that expenditures using Fund payments must be "necessary." The Department of the Treasury understands this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments.

Costs Not Accounted for in the Budget Most Recently Approved as of March 27, 2020

The CARES Act also requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. A cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.

The "most recently approved" budget refers to the enacted budget for the relevant fiscal period for the particular government, without taking into account subsequent supplemental appropriations enacted or other budgetary adjustments made by that government in response to the COVID-19 public health emergency. A cost is not considered to have been accounted for in a budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.

Costs Incurred During the Period That Begins on March 1, 2020, and Ends on December 31, 2021

Finally, the CARES Act provides that payments from the Fund may only be used to cover costs that were incurred during the period that begins on March 1, 2020, and ends on December 31, 2021 (the "covered period"). Putting this requirement together with the other provisions discussed above, section

601(d) may be summarized as providing that a State, local, or tribal government may use payments from the Fund only to cover previously unbudgeted costs of necessary expenditures incurred due to the COVID-19 public health emergency during the covered period.

Initial guidance released on April 22, 2020, provided that the cost of an expenditure is incurred when the recipient has expended funds to cover the cost. Upon further consideration and informed by an understanding of State, local, and tribal government practices, Treasury is clarifying that for a cost to be considered to have been incurred, performance or delivery must occur during the covered period but payment of funds need not be made during that time (though it is generally expected that this will take place within 90 days of a cost being incurred). For instance, in the case of a lease of equipment or other property, irrespective of when payment occurs, the cost of a lease payment shall be considered to have been incurred for the period of the lease that is within the covered period but not otherwise. Furthermore, in all cases it must be necessary that performance or delivery take place during the covered period. Thus the cost of a good or service received during the covered period will not be considered eligible under section 601(d) if there is no need for receipt until after the covered period has expired.

Goods delivered in the covered period need not be used during the covered period in all cases. For example, the cost of a good that must be delivered in December in order to be available for use in January could be covered using payments from the Fund. Additionally, the cost of goods purchased in bulk and delivered during the covered period may be covered using payments from the Fund if a portion of the goods is ordered for use in the covered period, the bulk purchase is consistent with the recipient's usual procurement policies and practices, and it is impractical to track and record when the items were used. A recipient may use payments from the Fund to purchase a durable good that is to be used during the current period and in subsequent periods if the acquisition in the covered period was necessary due to the public health emergency.

Given that it is not always possible to estimate with precision when a good or service will be needed, the touchstone in assessing the determination of need for a good or service during the covered period will be reasonableness at the time delivery or performance was sought, e.g., the time of entry into a procurement contract specifying a time

for delivery. Similarly, in recognition of the likelihood of supply chain disruptions and increased demand for certain goods and services during the COVID-19 public health emergency, if a recipient enters into a contract requiring the delivery of goods or performance of services by December 31, 2021, the failure of a vendor to complete delivery or services by December 31, 2021, will not affect the ability of the recipient to use payments from the Fund to cover the cost of such goods or services if the delay is due to circumstances beyond the recipient's control.

This guidance applies in a like manner to costs of subrecipients. Thus, a grant or loan, for example, provided by a recipient using payments from the Fund must be used by the subrecipient only to purchase (or reimburse a purchase of) goods or services for which receipt both is needed within the covered period and occurs within the covered period. The direct recipient of payments from the Fund is ultimately responsible for compliance with this limitation on use of payments from the Fund.

Nonexclusive Examples of Eligible Expenditures

Eligible expenditures include, but are not limited to, payment for:

1. Medical expenses such as:
 - COVID-19-related expenses of public hospitals, clinics, and similar facilities.
 - Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
 - Costs of providing COVID-19 testing, including serological testing.
 - Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
 - Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment.
2. Public health expenses such as:
 - Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
 - Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection

with the COVID-19 public health emergency.

- Expenses for disinfection of public areas and other facilities, e.g., nursing homes, in response to the COVID-19 public health emergency.
 - Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
 - Expenses for public safety measures undertaken in response to COVID-19.
 - Expenses for quarantining individuals.
3. Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.
 4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:
 - Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
 - Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
 - Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.
 - Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
 - COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
 - Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.
 5. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:
 - Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.
 - Expenditures related to a State, territorial, local, or Tribal government payroll support program.
 - Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.

6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

Nonexclusive Examples of Ineligible Expenditures²

The following is a list of examples of costs that would not be eligible expenditures of payments from the Fund.

1. Expenses for the State share of Medicaid.³
2. Damages covered by insurance.
3. Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

² In addition, pursuant to section 5001(b) of Division A of the CARES Act, payments from the Fund are subject to the requirements contained in the Further Appropriations Act of 2020 (Pub. L. 116-94) for funds for programs authorized under section 330 through 340 of the Public Health Service Act (42 U.S.C. 254 through 256). Section 5001(b) thereby applies to payments from the Fund the general restrictions on the Department of Health and Human Services' appropriations. Of particular relevance for the Fund, payments may not be expended for an abortion, for health benefits coverage—meaning a package of services covered by a managed health care provider or organization pursuant to a contract or other arrangement—that includes coverage of abortion, for the creation of a human embryo or embryos for research purposes, or for research in which a human embryo is destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.204(b) and 42 U.S.C. 289g(b). The prohibition on payment for abortions and health benefits coverage that includes coverage of abortion does not apply to an abortion if the pregnancy is the result of an act of rape or incest; or in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. These provisions do not prohibit the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds). These provisions do not restrict the ability of a managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State's or locality's contribution of Medicaid matching funds). Furthermore, no government which receives payments from the Fund may discriminate against a health care entity on the basis that the entity does not provide, pay for, provide coverage of, or refer for abortions. Except with respect to certain law enforcement and adjudication activities, no funds may be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography. No payments from the Fund may be provided to the Association of Community Organizations for Reform Now (ACORN) or any of its affiliates, subsidiaries, allied organizations, or successors. For the full text of these requirements, see Title V of Public Law 116-94 (133 Stat. 2605 *et seq.*), available at <https://www.congress.gov/116/plaws/publ94/PLAW-116publ94.pdf>.

³ See 42 CFR 433.51 and 45 CFR 75.306.

4. Expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds.

5. Reimbursement to donors for donated items or services.

6. Workforce bonuses other than hazard pay or overtime.

7. Severance pay.

8. Legal settlements.

Supplemental Guidance on Use of Funds To Cover Payroll and Benefits of Public Employees

As discussed in the Guidance above, the CARES Act provides that payments from the Fund must be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. As reflected in the Guidance and FAQs, Treasury has not interpreted this provision to limit eligible costs to those that are incremental increases above amounts previously budgeted. Rather, Treasury has interpreted this provision to exclude items that were already covered for their original use (or a substantially similar use). This guidance reflects the intent behind the Fund, which was not to provide general fiscal assistance to state governments but rather to assist them with COVID-19-related necessary expenditures. With respect to personnel expenses, though the Fund was not intended to be used to cover government payroll expenses generally, the Fund was intended to provide assistance to address increased expenses, such as the expense of hiring new personnel as needed to assist with the government's response to the public health emergency and to allow recipients facing budget pressures not to have to lay off or furlough employees who would be needed to assist with that purpose.

Substantially Different Use

As stated in the Guidance above, Treasury considers the requirement that payments from the Fund be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020, to be met if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a *substantially different use* from any expected use of funds in such a line item, allotment, or allocation.

Treasury has provided examples as to what would constitute a substantially different use. Treasury provided (in FAQ A.3) that costs incurred for a substantially different use would

include, for example, the costs of redeploying educational support staff or faculty to develop online learning capabilities, such as through providing information technology support that is not part of the staff or faculty's ordinary responsibilities.

Substantially Dedicated

Within this category of substantially different uses, as stated in the Guidance above, Treasury has included payroll and benefits expenses for public safety, public health, health care, human services, and similar employees whose services are *substantially dedicated* to mitigating or responding to the COVID-19 public health emergency. The *full amount* of payroll and benefits expenses of substantially dedicated employees may be covered using payments from the Fund. Treasury has not developed a precise definition of what "substantially dedicated" means given that there is not a precise way to define this term across different employment types. The relevant unit of government should maintain documentation of the "substantially dedicated" conclusion with respect to its employees.

If an employee is not substantially dedicated to mitigating or responding to the COVID-19 public health emergency, his or her payroll and benefits expenses may not be covered *in full* with payments from the Fund. A *portion* of such expenses may be able to be covered, however, as discussed below.

Public Health and Public Safety

In recognition of the particular importance of public health and public safety workers to State, local, and tribal government responses to the public health emergency, Treasury has provided, as an administrative accommodation, that a State, local, or tribal government may presume that public health and public safety employees meet the substantially dedicated test, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise. This means that, if this presumption applies, work performed by such employees is considered to be a substantially different use than accounted for in the most recently approved budget as of March 27, 2020. All costs of such employees may be covered using payments from the Fund for services provided during the period that begins on March 1, 2020, and ends on December 31, 2021.

In response to questions regarding which employees are within the scope of this accommodation, Treasury is supplementing this guidance to clarify

that public safety employees would include police officers (including state police officers), sheriffs and deputy sheriffs, firefighters, emergency medical responders, correctional and detention officers, and those who directly support such employees such as dispatchers and supervisory personnel. Public health employees would include employees involved in providing medical and other health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions, and other support services essential for patient care (*e.g.*, laboratory technicians) as well as employees of public health departments directly engaged in matters related to public health and related supervisory personnel.

Not Substantially Dedicated

As provided in FAQ A.47, a State, local, or tribal government may also track time spent by employees related to COVID-19 and apply Fund payments on that basis but would need to do so consistently within the relevant agency or department. This means, for example, that a government could cover payroll expenses allocated on an hourly basis to employees' time dedicated to mitigating or responding to the COVID-19 public health emergency. This result provides equitable treatment to governments that, for example, instead of having a few employees who are substantially dedicated to the public health emergency, have many employees who have a minority of their time dedicated to the public health emergency.

Covered Benefits

Payroll and benefits of a substantially dedicated employee may be covered using payments from the Fund to the extent incurred between March 1 and December 31, 2021.

Payroll includes certain hazard pay and overtime, but not workforce bonuses. As discussed in FAQ A.29, hazard pay may be covered using payments from the Fund if it is provided for performing hazardous duty or work involving physical hardship that in each case is related to COVID-19. This means that, whereas payroll and benefits of an employee who is substantially dedicated to mitigating or responding to the COVID-19 public health emergency may generally be covered in full using payments from the Fund, hazard pay specifically may only be covered to the extent it is related to COVID-19. For example, a recipient may use payments from the Fund to cover hazard pay for a police officer coming in close contact with members of the public to enforce public health or

public safety orders, but across-the-board hazard pay for all members of a police department regardless of their duties would not be able to be covered with payments from the Fund. This position reflects the statutory intent discussed above: the Fund was intended to be used to help governments address the public health emergency both by providing funds for incremental expenses (such as hazard pay related to COVID-19) and to allow governments not to have to furlough or lay off employees needed to address the public health emergency but was not intended to provide across-the-board budget support (as would be the case if hazard pay regardless of its relation to COVID-19 or workforce bonuses were permitted to be covered using payments from the Fund).

Relatedly, both hazard pay and overtime pay for employees that are not substantially dedicated may only be covered using the Fund if the hazard pay and overtime pay is for COVID-19-related duties. As discussed above, governments may allocate payroll and benefits of such employees with respect to time worked on COVID-19-related matters.

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes).

Supplemental Guidance on Use of Funds To Cover Administrative Costs

General

Payments from the Fund are not administered as part of a traditional grant program and the provisions of the Uniform Guidance, 2 CFR part 200, that

are applicable to indirect costs do not apply. Recipients may not apply their indirect costs rates to payments received from the Fund.

Recipients may, if they meet the conditions specified in the guidance for tracking time consistently across a department, use payments from the Fund to cover the portion of payroll and benefits of employees corresponding to time spent on administrative work necessary due to the COVID-19 public health emergency. (In other words, such costs would be eligible direct costs of the recipient). This includes, but is not limited to, costs related to disbursing payments from the Fund and managing new grant programs established using payments from the Fund.

As with any other costs to be covered using payments from the Fund, any such administrative costs must be incurred by December 31, 2021, with an exception for certain compliance costs as discussed below. Furthermore, as discussed in the Guidance above, as with any other cost, an administrative cost that has been or will be reimbursed under any federal program may not be covered with the Fund. For example, if an administrative cost is already being covered as a direct or indirect cost pursuant to another federal grant, the Fund may not be used to cover that cost.

Compliance Costs Related to the Fund

As previously stated in FAQ B.11, recipients are permitted to use payments from the Fund to cover the expenses of an audit conducted under the Single Audit Act, subject to the limitations set forth in 2 CFR 200.425. Pursuant to that provision of the Uniform Guidance, recipients and subrecipients subject to the Single Audit Act may use payments from the Fund to cover a reasonably proportionate share of the costs of audits attributable to the Fund.

To the extent a cost is incurred by December 31, 2021, for an eligible use consistent with section 601 of the Social

Security Act and Treasury's guidance, a necessary administrative compliance expense that relates to such underlying cost may be incurred after December 31, 2021. Such an expense would include, for example, expenses incurred to comply with the Single Audit Act and reporting and recordkeeping requirements imposed by the Office of Inspector General. A recipient with such necessary administrative expenses, such as an ongoing audit continuing past December 31, 2021, that relates to Fund expenditures incurred during the covered period, must report to the Treasury Office of Inspector General by the quarter ending September 2022 an estimate of the amount of such necessary administrative expenses.

Instructions for State, Territorial, Local, and Tribal Governments To Return Unused Coronavirus Relief Fund Payments to the Department of the Treasury

Fund: REVER

Any remaining amount of payments from the Fund not used for eligible expenses incurred during the covered period must be returned to Treasury in one of three ways, set forth below.

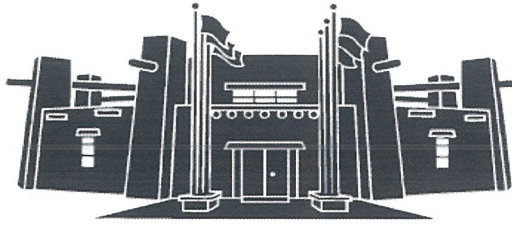
Please note that these instructions are for Fund recipients to return the balance of unused Fund payments to Treasury. If the Treasury Office of Inspector General determines that a Fund recipient has failed to comply with the use restrictions set forth in section 601(d) of the Social Security Act, the Fund recipient should follow the instructions provided by the Treasury Office of Inspector General for satisfaction of the related debt rather than following these instructions.

1. *Fedwire receipts*—Treasury can accept Fedwire payments for the return of funds to Treasury.

Please provide the following instructions to your Financial Institution for the remittance of Fedwire payments to the *Department of the Treasury*.


FEDWIRE INSTRUCTIONS

| Fedwire field tag | Fedwire field name | Required information |
|-------------------|--|--|
| {1510} | Type/Subtype | 1000 |
| {2000} | Amount | (enter payment amount) |
| {3400} | Receiver ABA routing number* | 021030004 |
| {3400} | Receiver ABA short name | TREAS NYC |
| {3600} | Business Function Code | CTR |
| {4200} | Beneficiary Identifier (account number) | 820010001000 |
| {4200} | Beneficiary Name | DEPARTMENT OF THE TREASURY |
| {5000} | Originator | (enter the name of the originator of the payment) |
| {6000} | Originator to Beneficiary Information—Line 1 | (enter information to identify the purpose of the payment) |
| {6000} | Originator to Beneficiary Information—Line 2 | (enter information to identify the purpose of the payment) |
| {6000} | Originator to Beneficiary Information—Line 3 | (enter information to identify the purpose of the payment) |



MEMORANDUM

TO: Hon. Delegate Eugene Tso
Law and Order Committee
24th Navajo Nation Council

FROM: 
Luralene D. Tapahe, Principal Advocate
Office of Legislative Counsel

DATE: December 17, 2021

SUBJECT: **AN ACTION RELATING TO AN EMERGENCY AND THE NAVAJO NATION COUNCIL; REALLOCATING UNEXPENDED CARES FUNDS PREVIOUSLY ALLOCATED TO THE PHASE II HARDSHIP ASSISTANCE EXPENDITURE PLAN THROUGH RESOLUTION NO. CJN-35-21 TO HARDSHIP ASSISTANCE RECIPIENTS AGE 60 AND OVER**

Per your request, the Office of Legislative Counsel has prepared the above-referenced proposed legislation and related summary sheet. Based on existing Navajo Nation law and other applicable laws, and upon review of all supporting documents submitted to OLC, this legislation as drafted is legally sufficient. However, as with any action of government, this legislation may be subject to review by the Navajo Nation courts in the event of proper legal challenge.

Please ensure that this legislation is precisely what you want. You are encouraged to review this proposed legislation to ensure that it is drafted to your satisfaction.

OLC has reviewed the appropriate standing committees' authorities to consider this legislation, based on the standing committees' powers and responsibilities set forth in Title 2 of the Navajo Nation Code. Based on its review, OLC has listed those committees in the title of this legislation. Nevertheless, the Speaker of the Navajo Nation Council may assign this legislation to committee(s) other than those shown in the title, pursuant to his authority under 2 N.N.C. §164(A)(5).

If you find this document unacceptable for any reason, please immediately contact me at the Office of Legislative Counsel (at extension 7166) and advise me of the changes you would like made to this proposed legislation. Thank you.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0264-21_

SPONSOR: Eugene Tso

TITLE: An Action Relating to an Emergency and the Navajo Nation Council; Reallocating Unexpended CARES Funds Previously Allocated to the Phase II Hardship Assistance Expenditure Plan Through Resolution No. CJN-35-21 to Hardship Assistance Recipients Age 60 and Over

Date posted: December 17, 2021 at 9:33PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

**Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586**

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*