

RESOLUTION OF THE
NAABIK'ÍYÁTI' STANDING COMMITTEE
24th NAVAJO NATION COUNCIL -- Second Year, 2020

AN ACTION RELATING TO BUDGET AND FINANCE AND NAABIK'ÍYÁTI'
COMMITTEES; APPROVING THE REALLOCATION OF NAVAJO NATION CARES FUND
TO THE CARES FUND HARDSHIP ASSISTANCE EXPENDITURE PLAN

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. Navajo Nation Council Resolutions No. CJY-67-20 and CS-73-20 include that the progress of all approved Navajo Nation Cares Fund Expenditure Plan projects shall be reviewed by the Budget and Finance and Naabik'íyáti' Committees during the month of October 2020 and that the funding for any project that has not made enough progress to demonstrate that it will be fully completed by December 30, 2020, will be re-allocated to the Hardship Assistance Expenditure Plan through Naabik'íyáti' Committee. See CJY-67-20, Section Three (Q) and CS-73-20, Section Three (F).
- B. 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. 2 N.N.C. § 300 (B) (1).
- C. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council with the responsibility to coordinate all federal programs with other standing committees and branches of the Navajo Nation government to provide the most efficient delivery of services to the Navajo Nation. 2 N.N.C. § 700 (A) (4).

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 2020-025 are incorporated by reference into this resolution.
- C. As of October 20, 2020, the Navajo Nation Health Command Operations Center has confirmed 10,999 COVID-19 cases and 574 COVID-19-related deaths on the Navajo Nation. Confirmed COVID-19 cases and COVID-19-related deaths on the Navajo Nation have not subsided and continue to rise.
- 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 Funds", set aside \$8 billion in emergency aid for Tribal governments for the COVID-19 pandemic.
- E. The CARES Act provides 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 30, 2020.
- F. Pursuant to the U.S. Treasury "Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments" updated on September 2, 2020, attached as **Exhibit 1**, related to the permissible uses of the Coronavirus Relief Fund, for a CARES Act expense to have been "incurred" requires that services actually be performed and goods actually be received by December 30, 2020.
- G. 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.

- H. The Navajo Nation has enacted Resolutions No. CJN-46-20, CJN-47-20, CJY-67-20, CS-73-20 and CS-74-20 allocating the Nation's share of the U.S. Treasury's initial distributions of the Coronavirus Relief Fund.
- I. The Navajo Nation CARES Fund Hardship Assistance Expenditure Plan, attached as **Exhibit 2**, was enacted by CJY-67-20 and amended by CS-74-20 for the purpose of providing emergency financial assistance to enrolled Navajo members to address the financial burdens caused by the COVID-19 pandemic and the emergency public health orders.
- J. Navajo Nation Council Resolutions No. CJY-67-20 and CS-73-20 include that the progress of all approved Navajo Nation CARES Fund Expenditure Plan projects shall be reviewed by the Budget and Finance and Naabik'íyáti' Committees during the month of October 2020 and that the funding for any project that has not made enough progress to demonstrate that it will be fully completed by December 30, 2020, will be re-allocated to the Hardship Assistance Expenditure Plan through Naabik'íyáti' Committee. See CJY-67-20, Section Three (Q) and CS-73-20, Section Three (F).

SECTION THREE. APPROVING THE REALLOCATION OF NAVAJO NATION CARES FUNDS TO THE HARDSHIP ASSISTANCE EXPENDITURE PLAN

- A. The Navajo Nation hereby determines that the Navajo Nation CARES Fund projects listed below have not made enough progress to demonstrate that the respective project will be fully completed by December 30, 2020, and approves that the project funding shall be reallocated to the Navajo Nation CARES Fund Hardship Assistance Expenditure Plan:

Water Projects Expenditure Plan approved by Resolution No. CJY-67-20, specific projects set forth in **Exhibit 3** in the amount of \$ 40,961,416.

- B. The Office of Management and Budget and Office of the Controller shall take all steps necessary to ensure that the reallocation(s) set forth above shall be expeditiously added to the Hardship Assistance Expenditure Plan.
- C. The Office of Legislative Services shall update the Hardship Assistance Expenditure Plan to incorporate the reallocation(s) set forth above.

- D. Any remaining CS-73-20, CJY-67-20 and/or CJN-46-20 CARES Fund Expenditure Plan funds 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. Funds still encumbered as of December 15, 2020, shall be unencumbered and unobligated and automatically reallocated to the Hardship Assistance Expenditure Plan if the goods or services have not been delivered. The Office of Management and Budget and Office of Controller shall implement these reallocations without the need for further authorization.

SECTION FOUR. AMENDMENT

This Resolution may be amended by a two-thirds majority vote of the full membership of the Naabik'íyáti' Committee as recommended by the Budget and Finance Committee.

SECTION FIVE. EFFECTIVE DATE


This Resolution is effective upon its approval and certification pursuant to 2 N.N.C. § 189.

SECTION SIX. 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 Naabik'iyáti' Committee of 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 20 in Favor, and 00 Opposed, on this 30th day of October 2020.



Honorable Seth Damon, Chairman
Naabik'iyáti' Committee

10/30/2020
Date

Motion: Honorable Eugenia Charles-Newton
Second: Honorable Otto Tso

Chairman Seth Damon not voting



Coronavirus Relief Fund
Guidance for State, Territorial, Local, and Tribal Governments
Updated September 2, 2020¹

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 30, 2020.²

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. 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.

¹ 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 See Section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act.

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 30, 2020

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 30, 2020 (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 30, 2020, the failure of a vendor to complete delivery or services by December 30, 2020,

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 expenditures³

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.⁴
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.

³ In addition, pursuant to section 5001(b) of the CARES Act, payments from the Fund may not be expended for an elective abortion or on research in which a human embryo is destroyed, discarded, or knowingly subjected to risk of injury or death. The prohibition on payment for abortions 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. 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.

⁴ See 42 C.F.R. § 433.51 and 45 C.F.R. § 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 30, 2020.

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 30, 2020.

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 C.F.R. 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 30, 2020, 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 C.F.R. § 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 30, 2020, 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 30, 2020. 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 30, 2020, that relates to Fund expenditures incurred during the covered period, must report to the Treasury Office of Inspector General by the quarter ending September 2021 an estimate of the amount of such necessary administrative expenses.

**NAVAJO NATION CARES FUND
HARDSHIP ASSISTANCE EXPENDITURE PLAN¹**

I. PURPOSE:

The purpose of the Hardship Assistance Expenditure Plan is to allow for the use and expenditure of forty-nine million four hundred fifty-four thousand four hundred sixteen dollars (\$49,454,416) of Navajo Nation CARES Funds for emergency financial assistance to enrolled Navajo tribal members for purchasing Personal Protective Equipment, paying past due utility bills, rent, mortgages, isolation expenses, livestock- related expenses, education-related expenses incurred due to the COVID 19 pandemic, and other financial burdens caused by the COVID-19 pandemic and incurred since March 1, 2020. The expenditures set forth in this Expenditure Plan are necessary in order to relieve the financial burdens imposed on Navajo households, students, participants in the informal economy, and dependents by the pandemic and public health orders, but shall not exceed 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. Emergency financial assistance under this Expenditure Plan shall not be income based or restricted.

The federal CARES Act, Title V, 5001, entitled "Coronavirus Relief Funds" requires these funds be used to 1) cover costs that are necessary expenditures incurred due to the public health emergency with respect to the COVID-19; 2) were not accounted for in the budget most recently approved, as of March 27, 2020; and 3) incurred during the period that begins on March 1, 2020 and ends on December 30, 2020. Per the U.S. Department of Treasury's (Treasury) Guidance, dated May 4, 2020, eligible expenditures include expenses for general assistance for, including but not limited to, purchasing PPE, past due utilities, rent, isolation expenses and other financial burdens caused by COVID-19.

II. AFFIRMATION OF FUND USE

Any program, department, office or other entity receiving funding hereunder affirms that they will use these funds in accordance with the purposes set forth in Title V of the Coronavirus Aid, Relief, and Economic Security Act (the "federal CARES Act") as enacted by the United States Congress and found in Public Law 116-136 (2020).

IV. ADMINISTRATOR OF FUNDS

¹ As amended by Navajo Nation Council Resolution No. CS-74-20.

EXHIBIT 2

The Executive Branch, through the Office of the Controller, is responsible for administering the Expenditure Plan and shall develop eligibility criteria and an application and approval process ensuring that any funds disbursed comply with Title V of the CARES Act and Treasury guidance.

The Budget and Finance Committee, shall review, and if necessary, amend, then approve the eligibility criteria and approval process plan after recommendation of Health, Education, and Human Services Committee.

III. MONITORING

The Office of the Controller shall be responsible for overseeing and monitoring the expenditure of these funds.

V. MEANS OF FUNDING

The Expenditure Plan funds shall be released to the Office of the Controller once the Expenditure Plan is duly adopted and expedited budgets are implemented.

VI. ACCOUNTING AND REPORTING REQUIREMENTS

Title V CARES Act Funds, as appropriated by Congress and received by the Nation, are considered federal financial assistance received by the Navajo Nation for specified uses; and are subject to the restrictions outlined in the Treasury Guidance and as set forth in section 601(d) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act. The CARES Act has a CFDA No. 21.019; therefore, the funding received by the Nation is subject to GASB, Uniform Guidance/Super Circular guidelines, and the Single Audit Act and any other applicable rules, regulations, and guidance.

VII. OVERSIGHT COMMITTEE

The Health, Education, and Human Services Committee (HEHSC) and the Budget and Finance Committee (BFC) shall provide oversight as HEHSC has oversight over social services matters and BFC has oversight over externally restricted funding.

IX. AFFIRMATION OF ADMINISTRATION AND MANAGEMENT

The Office of the Controller and any entity receiving funding thereunder affirms it will administer, manage, and implement the funds allocated to it in this expenditure plan consistent with the federal CARES Act, the Treasury Guidance, as well as other applicable laws and regulations of the Navajo Nation.

EXHIBIT 2

DEPARTMENT OF WATER RESOURCES
Update for 10/27/2020

CARES ACT FUNDING (CIN-57-20)

Project	Appropriation Amount	Scope of Work	164 Review No.	Business Unit	Contract #	Contract Date	Contract Amount	Timeline
Cistern Projects	\$ 14,722,159.00	Ongoing - Teams completing designs for approximately 10 homes per week.	enter 164 Review beginning week of October 19th.	K201514				Construction of each cistern system may take up to two weeks. It is estimated that each system will cost approximately \$80,000 each. Construction of 50 units is estimated to cost \$4 million. <u>At this time it is estimated the remaining amount (\$10,772,159) will likely revert.</u>
Water Hauling Program - 2 trucks each agency	\$ 3,010,000	Yes - Purchase of Building and Trucks	No 164 Review. A purchase. Quotations being acquired.	K201514				First set of design drawings completed week of October 12th. Design of septic systems will be sent to NNEPA for review week of October 19th.
Water Hauling Program - 1 truck for 45 LGA Certified Chapters	\$ 4,550,000	Yes - Purchase of Trucks	No 164 Review. A purchase. Quotations being acquired. OR 16052 for \$929,832 for 8 potable water trucks.	K201514				Select vendors week of October 12. Enter purchases into system week of October 26th.
Fund DigDeep Proposal to assist 250 homes	\$ 1,007,300	Complete	15103 - Agreement for full amount.	K201514				Select vendors week of October 12. Start to enter purchases into system week of October 19th. Division of Community Development offer to assist with coordination with Chapters. OR being processed for first 8 potable water trucks. OOC requesting additional justification.
Water Treatment at Well Site for Water Haulers	\$ 600,000	Complete	No 164 Review. A purchase. Quotations being acquired.	K201514				Try to pay DigDeep by October 30th. 164 Packet reviewed by OOC on 10/16 and comments need to be addressed for further processing. Currently on hold to address comments.
Tohajiilee - Inside Chapter Distribution Improvement	\$ 500,000	Complete	Lone Mountain - 015247	K201514	new		\$ 500,000.00	Select vendors week of October 12. Enter purchases into system week of October 19th. Several units are part of Tolani Lake subrecipient agreement.
Thoreau - Baca Well Pumphouse and Water Supply Lines	\$ 1,000,000	Complete	Stewart Brothers-015259; SMA-015260; NECA - forthcoming on 10/23	K201514	SMA-C013597; SMA-C010854; NECA-new	SMA amendment #6; Stewart Bros CO#3; NECA-new	\$ 1,000,000.00	Lone Mountain 164 document reviewed and commented on by DOJ on 10/20. WMB working with contractor (SMA) to address comments. Comments addressed and document being taken back to DOJ on 10/27.
Eastern Navajo Water Pipeline Phases 2, 3 & 4	\$ 1,860,000	Complete	NECA CO#1-15248	K201514	NECA-C013620			Contract amendments sent to WMB on 9/26/20 and 10/7/20. SB and SMA 164 documents going to Business Regulatory on 10/13/20. Need 164 status update for 10/21 from WMB.
Newcomb Emergency Water Hauling Station	\$ 250,000	Cancelled. Expecting SOW by 10/16/20.		K201514				Contract amendment (NECA CO#1) initially sent to WMB on 10/3/20 but changes are needed to amendment. Amendment will be resent to WMB week of 10/19. Need to confirm if amendment was received by WMB and switched out. 164 doc was last at NNOOC as of 10/22.
Ramah Water System Upgrades	\$ 400,000		None yet.	K201514	new	new		Cancelled - Not going to meet CARES Act deadline. Revert \$250,000. Working with Dooley Construction Solutions for scope of work by 10/27.

Counselor - Lybrook System Upgrades	\$	250,000	Complete	SMA-015172	K201514	SMA-C08876	SMA amendment #16	\$	250,000.00	at _____ as of 10/21 but need to be switched out.
Torreón Fire Hydrants	\$	151,000	Complete	SMA-015172; NECA CO#2 (forthcoming)	K201514	SMA-C08876; NECA- (forthcoming)	SMA amendment #16; NECA Change Order #2	\$	151,000.00	SMA amendment resubmitted to WMB on 10/16/20. 164 packet at _____ as of 10/21 and need to confirm amendment was switched out. NECA CO#2 for Lybrook and Torreón hydrants will be submitted on 10/23/20.
Smith Lake Water Treatment	\$	575,000	Complete	forthcoming	K201514		SMA amendment #10; Stewart Bros CO#6			SMA amendment #10 for Smith Lake will be submitted by 10/13/20. Stewart Bros CO#6 for Smith Lake will be submitted on 10/26/20.
G80 water supply well	\$	3,900,000	CANCELLED - Does not meet CARES Act requirements		K201514					Cancelled. Revert \$3,900,000.
Halchita Treatment System	\$	300,000	Ongoing with NTUA	None yet.	K201514					Cancelled. Revert \$300,000. NTUA fully funded.
Cutter Lateral Startup	\$	500,000	Complete	NECA CO#1 _____	K201514	CO13620	NECA Change Order #1.			Contract amendment (NECA CO#1) sent to WMB on 10/3/20 but amended and will be sent week of 10/19/20. Need to confirm with WMB if amendment was received. Will obtain 164 Review # from WMB. Only using to purchase items that can be purchased and installed by December 30th. Large portion will be reverted, at least \$22,087,901.
Strategic Stockpile of Supplies for Water Projects	\$	32,087,901	Ongoing.		K201514					Purchases ongoing.
Livestock Windmill Repairs - Eastern Agency	\$	320,000	Complete	No 164 Review. A purchase. Quotations being acquired.	K201514					Purchases ongoing.
Livestock Windmill Repairs - Ft. Defiance Agency	\$	200,000	Complete	No 164 Review. A purchase. Quotations being acquired.	K201514					Purchases ongoing.
Livestock Windmill Repairs - Northern Agency	\$	80,000	Complete	No 164 Review. A purchase. Quotations being acquired.	K201514					Purchases ongoing.
Livestock Windmill Repairs - Chinle Agency	\$	810,000	Complete	No 164 Review. A purchase. Quotations being acquired.	K201514					Purchases ongoing.
Livestock Windmill Repairs - Western Agency	\$	160,000	Complete	No 164 Review. A purchase. Quotations being acquired.	K201514					Purchases ongoing.
Livestock Windmill Repairs, Storage Tanks and Stock Troughs - Former Bennett	\$	1,050,000	Complete	No 164 Review. A purchase. Quotations being acquired.	K201514					Purchases ongoing.
Purchase of Large Equipment for Drilling, Repairs and Related Work	\$	14,000,000	Complete	Separate listing available.	K201514					Purchases ongoing.
New Water Wells Fund	\$	200,000	Complete. Part of proposed subrecipient agreement with Tolan Lake Enterprise.	None yet.	K201514					Try to enter subrecipient agreement into 164 Review by October 19th.
Earthen Dam Rehabilitation - Eastern Agency	\$	320,000	Ongoing.	None yet.	K201514					Need environmental clearances. May not meet timeline. to expend all. BIA to provide information on possible EA and FONSI for areas.
Earthen Dam Rehabilitation - Ft. Defiance Agency	\$	320,000	Ongoing.	None yet.	K201514					Need environmental clearances. May not meet timeline. to expend all.

Earthen Dam Rehabilitation - Northern Agency	\$	320,000	Ongoing.	None yet.	K201514	Need environmental clearances. <u>May not meet timeline to expend all.</u>
Earthen Dam Rehabilitation - Chinle Agency	\$	320,000	Ongoing	None yet.	K201514	Need environmental clearances. <u>May not meet timeline to expend all.</u> Will inquire about Navajo Partition Lands Agricultural and Range Resources Management Plan provide environmental clearance.
Earthen Dam Rehabilitation - Western Agency	\$	320,000	Ongoing.	None yet.	K201514	Need environmental clearances. <u>May not meet timeline to expend all.</u>
Irrigation - Many Farms Diversion Dam	\$	150,000	Requires study and permits. May not meet CARES Act requirements.		K201514	Irrigation season ending. No time to incur expenses for beneficial use by December 30, 2020. Revert funds.
Irrigation - Captain Tom Dam repairs	\$	50,000	Requires study and permits. May not meet CARES Act requirements.		K201514	Irrigation season ending. No time to incur expenses for beneficial use by December 30, 2020. Revert funds.
Irrigation - Many Farms Agricultural Wells	\$	110,000	Requires study and permits. May not meet CARES Act requirements.		K201514	Irrigation season ending. No time to incur expenses for beneficial use by December 30, 2020. Revert funds.
Irrigation - Dennehotso Diversion Dam repairs	\$	65,000	Requires study and permits. May not meet CARES Act requirements.		K201514	Irrigation season ending. No time to incur expenses for beneficial use by December 30, 2020. Revert funds.
Irrigation - Chuska Lake Diversion Dam repairs	\$	300,000	Requires study and permits. May not meet CARES Act requirements.		K201514	Irrigation season ending. No time to incur expenses for beneficial use by December 30, 2020. Revert funds.
Two Grey Hills - Upper Blackhouse Valley Farms Irrigation Diversion Dam	\$	250,000	Requires study and permits. May not meet CARES Act requirements.		K201514	Irrigation season ending. No time to incur expenses for beneficial use by December 30, 2020. Revert funds.
Two Grey Hills - Tumble Down House Valley Farms Irrigation Rehab	\$	300,000	Requires study and permits. May not meet CARES Act requirements.		K201514	Irrigation season ending. No time to incur expenses for beneficial use by December 30, 2020. Revert funds.
Red Valley/Cove Irrigation Diversion Improvements	\$	155,000	Requires study and permits. May not meet CARES Act requirements.		K201514	Irrigation season ending. No time to incur expenses for beneficial use by December 30, 2020. Revert funds.
Kayenta Diversion Dam and Reservoir Rehabilitation Planning and Design	\$	200,000	Requires study and permits. May not meet CARES Act requirements.		K201514	Cancelled. Cannot use funds for planning and design only. Revert funds.
Sheepsprings Farms Irrigation System Improvement Project	\$	200,000	Requires study and permits. May not meet CARES Act requirements.		K201514	Irrigation season ending. No time to incur expenses for beneficial use by December 30, 2020. Revert funds.
Lake Powell to Shonto Irrigation Water Delivery Project	\$	200,000	Cancelled - Does not meet CARES Act requirements		K201514	Cancelled. Cannot use funds for planning and design only. Revert funds.
LCR Birdsprings Irrigation Feasibility Study	\$	200,000	Cancelled - Does not meet CARES Act requirements		K201514	Cancelled. Cannot use funds for planning and design only. Revert funds.
Long-Range Water Planning Tool	\$	222,500	Cancelled - Does not meet CARES Act requirements		K201514	Cancelled. Cannot use funds for planning only. Revert funds.
NDWR Assistance	\$	1,000,000	Complete	None yet. Mostly purchases.	K201514	Ongoing. try to expend all by December 30th.

Contract forthcoming to install tank. **More than half will be reverted, approximately \$498,856 for now.** Waiting for scope and budget. SMA amendment resent on 10/16/20 2020. 164 packet at _____ as of 10/21 but need to switched out. Need to confirm with WMB on status of 164 packet.

Plan to submit 164 Review by October 12th. Agreement with ABCWUA for construction is in 164 Review and going to OPVP on 10/21. Contract amendment is forthcoming from Souder-Miller & Associates to pay for easement and water fee. Some risk that project may not be completed by December 30th.

Try to pay NTUA by November 2nd. President signed on 10/26. Document taken to OOC on 10/26 for contract number.

Try to pay NTUA by November 2nd. President signed on 10/26. Document taken to OOC on 10/26 for contract number.

K201514

Planning to partially spend 997,712 on phase 1.

Whitehorse Lake - Sand Springs WSP \$

K201514

None yet.

2,000,000 Complete

Tohajiilee Albuquerque WSL \$

15041 K201514

18,635,000 Complete

NTUA Water and Wastewater \$

Obtained Scope of Work from NTUA on 10/12.
20,946,523
\$130,065,095 Complete

15255 K201514

NTUA/MECA Cisterns \$

Total

Reversion Estimates

Definite reversion (red font)	\$	6,852,500
NDWR Cisterns likely reversion (at least 50 percent)	\$	10,722,159.00
Earthen Dam potential reversion (50 percent)	\$	800,000.00
Whitehorse Lake Sand Springs reversion (at least 50 percent)	\$	498,856.0
Strategic Stockpile (potential reversion)	\$	22,087,901.0
Current total reversion estimate	\$	40,961,416

NAVAJO NATION

10/30/2020

Naa'bik'iyati' Committee Special Meeting

08:38:17 PM

Amd# to Amd#	Legislation 0261-20: Approving	PASSED
MOT Charles-Newton	the Reallocation of Navajo	
SEC Tso, O	Nation CARES Fund to the CARES	
	Fund Hardship Assistance...	

Yeas : 20

Nays : 0

Excused : 0

Not Voting : 3

Yea : 20

Begay, K	Daniels	Nez, R	Tso, D
Begay, P	Freeland, M	Slater, C	Tso, E
Brown	Halona, P	Smith	Tso, O
Charles-Newton	Henio, J	Stewart, W	Walker, T
Crotty	James, V	Tso, C	Yazzie

Nay : 0

Excused : 0

Not Voting : 3

Yellowhair	Begay, E	Wauneka, E
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Presiding Speaker: Damon