

RESOLUTION OF THE  
BUDGET AND FINANCE COMMITTEE  
OF THE NAVAJO NATION COUNCIL

24<sup>TH</sup> NAVAJO NATION COUNCIL - First Year, 2019

AN ACTION

RELATING TO BUDGET AND FINANCE COMMITTEE; ADOPTING AND  
APPROVING THE AMENDED AND RESTATED DEFERRED COMPENSATION PLAN  
FOR POLITICAL APPOINTEES AND COUNCIL DELEGATES OF THE NAVAJO  
NATION EFFECTIVE APRIL 1, 2019

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation established the Budget and Finance Committee ("BFC") as a Navajo Nation Council standing committee and as such empowered BFC to promulgate policies and regulations concerning wages, expenditure reimbursement, and fringe benefits for Navajo Nation officials and employees. 2 N.N.C. §§ 164(A)(9), 300(A), 301(B)(8).
- B. The Navajo Nation Council ("Council") created and implemented a comprehensive deferred compensation plan for elected and appointed Tribal officials and authorized the Chairman of the Navajo Tribal Council with the approval of the Budget and Finance Committee of the Navajo Nation Council to develop, implement and administer the plan, pursuant to Navajo Tribal Council Resolution CF-21-73.
- C. The Navajo Nation may, in its sole discretion, amend the Deferred Compensation Plan, defined below, at any time or from time to time, in whole or in part, pursuant to Section 5.1 of the Deferred Compensation Plan.

SECTION TWO. FINDINGS

- A. The Budget and Finance Committee, under the authority delegated in CF-21-73, initially adopted the Deferred

Compensation Plan for Certain Employees of the Navajo Tribe effective January 1, 1973 pursuant to BFMY-41-73.

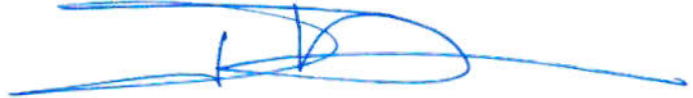
- B. The Council and the Budget and Finance Committee then adopted the Deferred Retirement Plan for the Council Members of the Navajo Tribe effective October 1, 1982 (separating the deferred retirement plan from the deferred compensation plan), pursuant to BFAU-160-82 and CD-87-82.
- C. The Budget and Finance Committee the adopted the Deferred Compensation Plan for Political Appointees and Council Delegates of the Navajo Nation, Amended and Restated as of January 1, 2006 (the "Deferred Compensation Plan") (merging the Deferred Compensation Plan for Certain Employees of the Navajo Tribe effective January 1, 1973 with the Deferred Retirement Plan for the Council Members of the Navajo Tribe effective October 1, 1982), pursuant to BFMA-09-08.
- D. The Deferred Compensation Plan Administration Committee has now approved and recommended to the Budget and Finance Committee the adoption and approval of the Restated Deferred Compensation Plan for Political Appointees and Council Delegates of the Navajo Nation, which amends Sections 1.1, 1.5, 1.8, 1.9, 2.1, 2.2, 5.5, and A1, pursuant to DCP-04-18, attached as **Exhibit A**. However, Section 1.1 was previously amended in BFMA-10-18, and currently reflects the requested changes in DCP-03-18 and DCP-04-18.
- E. The Budget and Finance Committee, pursuant to its authorities under 2 N.N.C. § 301(B)(8) and (13), its delegated authority under CF-21-73, and the authority of the Navajo Nation pursuant to Section 5.1 of the Deferred Compensation Plan, finds it is in the best interest of the Nation to approve and adopt the Amended and Restated Deferred Compensation Plan for Political Appointees and Council Delegates of the Navajo Nation, effective as of April 1, 2019, attached as **Exhibit B**.

### SECTION THREE. APPROVAL

The Budget and Finance Committee hereby approves and adopts the Amended and Restated Deferred Compensation Plan for Political Appointees and Council Delegates of the Navajo Nation, effective as of April 1, 2019, attached as **Exhibit B**.

**CERTIFICATION**

I, hereby, certify that the foregoing resolution was duly considered by the Budget and Finance Committee of the Navajo Nation Council at a duly called meeting held at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 4 in favor and 0 opposed, this 2<sup>nd</sup> day of July 2019.



Jamie Henio, Chairperson  
Budget and Finance Committee

Motion: Honorable Jimmy Yellowhair  
Second: Honorable Elmer P. Begay





**RESOLUTION OF THE DEFERRED COMPENSATION PLAN  
ADMINISTRATION COMMITTEE OF THE NAVAJO NATION**

Approving and Recommending to the Budget and Finance Committee of the Navajo Nation Council the Adoption and Approval of the Restated Deferred Compensation Plan for Political Appointees and Council Delegates of the Navajo Nation, Including Amendments to: Article 1, Sections 1.1, 1.5, 1.8, and 1.9; Article 2, Sections 2.1 and 2.2; Article 5, Section 5.5; and Appendix A, Section A1.

**WHEREAS:**

1. The Deferred Retirement Plan for Members of the Navajo Nation Council became effective as of October 1, 1982. The Deferred Compensation Plan for Political Appointees of the Navajo Nation became effective as of January 1, 1973. Effective January 1, 2006, the Deferred Retirement Plan for Members of the Navajo Nation Council and the Deferred Compensation Plan for Political Appointees of the Navajo Nation were merged and the merged document was titled the Deferred Compensation Plan for Political Appointees and Council Delegates of the Navajo Nation (hereinafter the "Plan"); and
2. Pursuant to 2 N.N.C. § 301(B)(8), the Budget and Finance Committee has the power to promulgate policies and regulations concerning fringe benefits for Navajo Nation officials and employees; and
3. Pursuant to Navajo Tribal Council Resolution CF-21-73, and pursuant to Section 1.1 of the Plan document, the Deferred Compensation Plan Administration Committee is authorized to oversee the general administration of the Plan; and
4. Pursuant to Section 5.1 of the Plan document, the Nation may, in its sole discretion, terminate, suspend, or amend this Plan at any time or from time to time, in whole or in part; and
5. The Deferred Compensation Plan Administration Committee has determined that it is in the best interest of the Nation and Plan Participants to amend and restate the Plan document by amending language in: Article 1, Sections 1.1, 1.5, 1.8, and 1.9; Article 2, Sections 2.1 and 2.2; Article 5, Section 5.5; and Appendix A, Section A1.

**NOW THEREFORE BE IT RESOLVED THAT:**

The Deferred Compensation Plan Administration Committee of the Navajo Nation hereby approves amending the following sections of the Plan document: Article 1, Sections 1.1, 1.5, 1.8, and 1.9; Article 2, Sections 2.1 and 2.2; Article 5, Section 5.5; and Appendix A, Section A1.

The Deferred Compensation Plan Administration Committee hereby recommends to the Budget and Finance Committee of the Navajo Nation Council the adoption and approval of a restated Plan, which includes the amendments in "Exhibit A" attached hereto.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Deferred Compensation Plan Administration Committee of the Navajo Nation at a duly called meeting at Window Rock, (Navajo Nation) Arizona, at which a quorum was present and the same was passed by a vote 3 in favor, 0 opposed and 1 abstained, this 15th day of March, 2018.

  
Seth Damon, Chairperson  
Deferred Compensation Plan Administration Committee  
NAVAJO NATION

Motion: Dr. Sharon Begay-McCabe

Second: Dwight Witherspoon, Vice Chairperson

xc: RPAC file  
NN Retirement Services: Resolution file  
Budget and Finance Committee



**EXHIBIT "A"****DEFERRED COMPENSATION PLAN FOR POLITICAL APPOINTEES AND  
COUNCIL DELEGATES OF THE NAVAJO NATION****Article 1****DEFINITIONS****Section 1.1: Committee**

Committee means the ~~Retirement~~ Deferred Compensation Plan Administration Committee of the Navajo Nation, which has been delegated authority through the Navajo Nation Council to administer this Plan.

(a) The Committee shall consist of the following individuals:

1. The Chair~~man~~person, Budget and Finance Committee;
2. The Vice Chair~~man~~person, Budget and Finance Committee;
3. The Controller, Office of the Controller, Division of Finance;
4. The Director, Department of Personnel Management;
- ~~5.~~ 5. The Director, Division of Community Development; and
- ~~5-6.~~ The Chief Justice, Navajo Nation Supreme Court.

(b) The Committee shall have the authorities necessary to administer the Plan and to interpret, construe and apply all of the Plan provisions on behalf of the Nation consistent with the terms of the Plan and applicable laws and regulations.

(c) The Committee may adopt rules and procedures to assist it in the administration of the Plan.

**Section 1.5: Participant**

'Participant' means an Elected Member or Political Appointee who is eligible to participate in this Plan. Professional at-will employees shall not be eligible to participate in this Plan.

**Create new Section 1.8: Professional at-will employee**

"Professional at-will employee" means an employee of the Executive, Legislative, and Judicial Branch who serves at the pleasure of another Navajo Nation official or employee, and who is therefore exempt from the "just cause" requirement in the Navajo Preference in Employment Act at 15 N.N.C. § 604(B)(8). Professional at-will employees shall not be eligible to participate in this Plan.

**Section 1.8, defining "Service" shall be renumbered as Section 1.9.**



## Article 2

## AMOUNT AND FORM OF BENEFIT

**Section 2.1: Contributions**

For each Political Appointee who is a Participant, the Nation shall make contributions equal to 10%, or such other amount as set by Navajo law, of the Participant's non-deferred cash compensation attributable to his Service as described in Section 1.8 to the Deferred Compensation Fund described in Article 4, at regular intervals to be determined by the Committee. With regard to Political Appointees under employee sanctions, if the Nation withholds a portion of the Appointee's salary, the Nation shall make contributions to the Deferred Compensation Fund in an amount equal to 10% of the Political Appointee's total salary prior to the withholding.

**Section 2.2: Distribution of Benefits**

"Subject to the provisions of Section 2.4, and in accordance with relevant sections of the Internal Revenue Code at 26 U.S.C. § 409A et seq. and the corresponding federal regulations at 26 CFR 1.409A-1, all benefits to which a Participant is entitled shall be distributed as follows:

- (a) For each Political Appointee who is a Participant, all benefits under the Plan shall be distributable to the Participant (or his designated beneficiary) only when the Participant ceases to be a Political Appointee as a result of termination, loss of reappointment, or death, and has had a bona fide "separation from service" with the Nation. An employee's "separation from service" with the employer, is defined in the federal Regulations at 26 CFR 1.409A-1(h)(1)(i) and 26 CFR 1.409A-1(h)(1)(ii). Following a termination, loss of reappointment, or death, the former Political Appointee (or in the event of death, either the Plan beneficiary or executor of the estate) is obligated to: notify the Plan Administrator of the separation; provide a final Personnel Action Form approved by the Department of Personnel Management (if former Political Appointee); and submit required forms requesting distribution of Plan benefits. Subject to the selection options described in Section 2.4, such distribution shall be made as soon as practicable upon no sooner than 45 days and within 90 days, if practicable, of the date the former Political Appointee (or in the event of death the Plan beneficiary or executor)'s cessation of employment as a political appointee provided required notice to the Plan Administrator. , subject to the Selection options described in Section 2.4. If a former Political Appointee becomes reemployed by the Nation within said 90-day period, at a level more than 20 percent of the average level of services performed over the immediately preceding 36-month period, it shall be presumed that there was no bona fide separation from service with the Nation.
- (b) For each Elected Member who is a Participant, all benefits under the Plan shall be distributable to the Participant (or his designated beneficiary) only when the Participant ceases to be a member of the Navajo Nation Council or hold office as President or Vice President as a result of resignation, removal, loss of re-election, or death, and has had a bona fide "separation from service" with the Nation. An employee's "separation from service" with the employer, is defined in the federal Regulations at 26 CFR 1.409A-1(h)(1)(i) and 26 CFR 1.409A-1(h)(1)(ii). Following an Elected Member's resignation, removal, loss of re-election, or death, the Elected Member (or in the event of the Member's



death, either the Plan beneficiary or executor of the estate) is obligated to notify the Plan Administrator of the separation, and submit required forms requesting distribution of Plan benefits. ~~Subject to the selection options described in Section 2.4, s~~Such distribution shall be made ~~as soon as practicable no sooner than 45 days and within 90 days, if practicable,~~ of the date the former Elected Member (or in the event of death, the Plan beneficiary or executor) provided required notice to the Plan Administrator. ~~upon the Elected Member's cessation of membership on the Navajo Nation Council or office as President or Vice President, subject to the Selection options described in Section 2.4.~~ If a former Elected Member becomes reemployed by the Nation within said 90-day period, at a level more than 20 percent of the average level of services performed over the immediately preceding 36-month period, it shall be presumed that there was no bona fide separation from service with the Nation.

- (c) According to 26 CFR 1.409A-1(h)(1)(i), "[a]n employee separates from service with the employer if the employee dies, retires, or otherwise has a termination of employment with the employer." Pursuant to 26 CFR 1.409A-1(h)(1)(ii), "[w]hether a termination of employment has occurred is determined based on whether the facts and circumstances indicate that the employer and employee reasonably anticipated that no further services would be performed after a certain date or that the level of bona fide services the employee would perform after such date...would permanently decrease to no more than 20 percent of the average level of bona fide services performed...over the immediately preceding 36-month period[.]"

## Article 5

### MISCELLANEOUS

#### Section 5.5

This Plan and actions taken in the administration of this Plan shall be governed by ~~the Navajo Nation and federal~~ laws and regulations ~~of the Nation~~. This plan shall be administered in accordance with relevant sections of the Internal Revenue Code at 26 U.S.C. § 409A et seq. and the corresponding federal regulations at 26 CFR 1.409A-1. The Plan Administrator is authorized to override a Plan provision if necessary to comply with the federal Code and Regulations, but shall provide written notification to the Committee within 10 business days and shall explain such decision.

## Appendix A

### Section A1: Eligibility

Non-elected employees in the following employment categories shall become participants under the Plan as of its effective date, February 15, 1989, or ~~at~~ such later date as they become included in one of ~~such~~ these categories:

- (a) Key staff employees serving at the pleasure of the President of the Navajo Nation, which includes Division Directors, ~~but not~~ and Acting Division Directors after 90 days of Acting status.





**DEFERRED COMPENSATION PLAN FOR POLITICAL APPOINTEES  
AND COUNCIL DELEGATES OF THE NAVAJO NATION**

Effective January 1, 1973

Amended and Restated as of ~~January 1, 2006~~ April 1, 2019

## **EXHIBIT B**

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## **EXHIBIT B**

### **DEFERRED COMPENSATION PLAN FOR POLITICAL APPOINTEES AND COUNCIL MEMBERS~~DELEGATES~~ OF THE NAVAJO NATION**

#### **PREAMBLE**

The purpose of the Deferred Compensation Plan for Political Appointees and Council Delegates of the Navajo Nation as set forth herein is to provide severance benefits for (a) elected members of the Navajo Nation Council, and the President and Vice President of the Navajo Nation and (b) certain employees who serve at the pleasure of the President of the Navajo Nation, the Speaker of the Navajo Nation Council, or the Navajo Nation Council.

The Deferred Retirement Plan for Members of the Navajo Nation Council originally became effective as of October 1, 1982. The Deferred Compensation Plan for Political Appointees of the Navajo Nation originally became effective as of January 1, 1973. Effective January 1, 2006, the Deferred Compensation Plan for Political Appointees of the Navajo Nation ~~is~~was merged with the Deferred Retirement Plan for Members of the Navajo Nation Council. The merged plan is herein titled the Deferred Compensation Plan for Political Appointees and Council Delegates of the Navajo Nation (hereinafter referred to as the "Plan"). The Plan is intended to be a nonqualified deferred compensation plan under Internal Revenue Service rules and to comply with Internal Revenue Code Section 409A of the American Jobs Creation Act of 2004.

Effective April 1, 2019, the Plan is amended and restated. The restatement of the Plan shall incorporate all amendments adopted since the Effective Date and through ~~January 1, 2006~~April 1, 2019.

## **EXHIBIT B**

### **ARTICLE 1**

### **DEFINITIONS**

#### **1.1 Committee**

“Committee” means the Deferred Compensation Plan Administration Committee of the Navajo Nation, which has been delegated authority through the Navajo Nation Council to administer this Plan.

(a) The Committee shall consist of the following individuals:

1. The Chairperson, Budget and Finance Committee;
2. The Vice Chairperson, Budget and Finance Committee;
3. The Controller, Office of the Controller, Division of Finance;
4. The Director, Department of Personnel Management;
5. The Director, Division of Community Development; and
6. The Chief Justice, Navajo Nation Supreme Court.

(b) The Committee shall have the authorities necessary to administer the Plan and to interpret, construe and apply all of the Plan provisions on behalf of the Nation consistent with the terms of the Plan and applicable laws and regulations.

(c) The Committee may adopt rules and procedures to assist it in the administration of the Plan.

#### **1.2 Elected Member**

“Elected Member” means a member of the Navajo Nation Council, including the Speaker, and the President and Vice President of the Navajo Nation.



## **EXHIBIT B**

### 1.3 Effective Date

“Effective Date” is January 1, 1973. The Plan is amended and restated as of ~~January 1, 2006~~April 1, 2019.

### 1.4 Nation

“Nation” means the Navajo Nation, a sovereign Indian tribal government.

### 1.5 Participant

“Participant” means an Elected Member or Political Appointee who is eligible to participate in this Plan. Professional at-will employees shall not be eligible to participate in this Plan.

### 1.6 Plan

“Plan” means the Deferred Compensation Plan for Political Appointees and Council Delegates of the Navajo Nation.

### 1.7 Political Appointee

“Political Appointee” means an employee of the Nation whose employment is determined by the Committee to be at the pleasure of the President, the Speaker or the Navajo Nation Council. Appendix A contains a list of job positions that constitute a political appointment.

### 1.8 Professional At-Will Employee

“Professional at-will employee” means a managerial employee of the Executive, Legislative, and Judicial Branch, such as a Program Manager, who serves at the pleasure of another Navajo Nation official or employee, and who is therefore exempt from the

## **EXHIBIT B**

“just cause” requirement in the Navajo Preference in Employment Act at 15 N.N.C. § 604(B)(8). Professional at-will employees shall not be eligible to participate in this Plan.

### 1.9 Service

“Service” for a Political Appointee means a Participant's years of employment which is determined by the Committee to be at the pleasure of the President, the Speaker or the Navajo Nation Council.

“Service” for a Council Delegate means a Participant's years of office on the Navajo Nation Council.

“Service” for the President and Vice President means a Participant's years of office as the President or Vice President.

### 1.92.0 Gender

The masculine gender where appearing in the Plan will be deemed to include the feminine gender, and the singular may include the plural, unless the context clearly indicates the contrary.



## **EXHIBIT B**

### **ARTICLE 2 AMOUNT AND FORM OF BENEFIT**

#### **2.1 Contributions**

For each Political Appointee who is a Participant, the Nation shall make contributions equal to 10%, or such other amount as set by Navajo law, of the Participant's non-deferred cash compensation attributable to his Service as described in Section 1.8 to the Deferred Compensation Fund described in Article 4, at regular intervals to be determined by the Committee. With regard to Political Appointees under employee sanctions, if the Nation withholds a portion of the Appointee's salary, the Nation shall make contributions to the Deferred Compensation Fund in an amount equal to 10% of the Political Appointee's total salary prior to the withholding.

For each Elected Member who is a Participant, the Nation shall make contributions equal to 20%, or such other amount as set by Navajo law, of the Participant's nondeferred cash compensation attributable to his Service as described in Section 1.8 to the Deferred Compensation Fund described in Article 4, at regular intervals to be determined by the Committee.

#### **2.2 Distribution of Benefits**

Subject to the provisions of Section 2.4, and in accordance with relevant sections of the Internal Revenue Code at 26 U.S.C. § 409A et seq. and the corresponding federal regulations at 26 CFR § 1.409A-1 et seq., all benefits to which a Participant is entitled shall be distributed as follows:

- (a) For each Political Appointee who is a Participant, all benefits under the Plan shall be distributable to the Participant (or his designated beneficiary) only when the Participant ceases to be a Political Appointee as a result of termination, loss of reappointment, or death, and has had a bona fide

## **EXHIBIT B**

“separation from service” with the Nation. An employee’s “separation from service” with the employer, is defined in the federal regulations at 26 CFR §§ 1.409A-1(h)(1)(i) and (ii). Following a termination, loss of reappointment, or death, the Political Appointee (or in the event of death, either the Plan beneficiary or executor of the estate) is obligated to: notify the Plan Administrator of the separation; provide a final Personnel Action Form approved by the Department of Personnel Management (if a former Political Appointee); and submit required forms requesting distribution of Plan benefits. Subject to the selection options described in Section 2.4, provided the Participant is otherwise eligible for distribution of benefits, sSuch distribution shall be made as soon as practicable upon no sooner than 45 days and within 90 days, if practicable, of the date the former Political Appointee’s cessation of employment as a political appointee, (or in the event of death, the Plan beneficiary or executor) provided required notice to the Plan Administrator, subject to the Selection options described in Section 2.4. If a former Political Appointee becomes reemployed by the Nation within said 45 to 90-day period, or prior to distribution of benefits, at a level more than 20 percent of the average level of services performed over the immediately preceding 36-month period, it shall be presumed that there was no bona fide separation from service with the Nation.

- (b) For each Elected Member who is a Participant, all benefits under the Plan shall be distributed to the Participant (or to his designated beneficiary) only when the Participant ceases to be a member of the Navajo Nation Council or hold office as President or Vice President as a result of resignation, removal, loss of re-election, or death, and has had a bona fide “separation from service” with the Nation. An employee’s “separation from service” with the employer is defined in the federal regulations at 26 CFR §§ 1.409A-1(H)(1)(i) and (ii). Following an Elected Member’s resignation, removal, loss of re-election, or death, the Elected Member (or in the event of the Member’s death, either the



## **EXHIBIT B**

Plan beneficiary or executor of the estate) is obligated to notify the Plan Administrator of the separation, and submit required forms requesting distribution of Plan benefits. Subject to the selection options described in Section 2.4, provided the Participant is otherwise eligible for distribution of benefits, sSuch distribution shall be made as soon as practicable no sooner than 45 days and within 90 days, if practicable, of the date the former Elected Member (or in the event of death, the Plan beneficiary or executor) provided required notice to the Plan Administrator. upon the Elected Member's cessation of membership on the Navajo Nation Council or office as President or Vice President, subject to the Selection options described in Section 2.4. If a former Elected Member becomes reemployed by the Nation within said 45 to 90-day period, or prior to distribution of benefits, at a level more than 20 percent of the average level of services performed over the immediately preceding 36-month period, it shall be presumed that there was no bona fide separation from service with the Nation.

- (c) According to 26 CFR § 1.409A-1(h)(1)(i), “[a]n employee separates from service with the employer if the employee dies, retires, or otherwise has a termination of employment with the employer.” Pursuant to 26 CFR § 1.409A-1(h)(1)(ii), “[w]hether a termination of employment has occurred is determined based on whether the facts and circumstances indicate that the employer and employee reasonably anticipated that no further services would be performed after a certain date or that the level of bona fide services the employee would perform after such date...would permanently decrease to no more than 20 percent of the average level of bona fide services performed...over the immediately preceding 36-month period[.]”

### **2.3 Amount of Benefit**

The lump sum benefit payable under the Plan will equal the accumulation of the contributions pursuant to Section 2.1, credited with cumulative investment earnings and losses.

## **EXHIBIT B**

### 2.4 Selection of Benefits

#### (a) Default Selection

If no selection is made, a Participant will be deemed to have selected a lump sum benefit payable in accordance with Section 2.2 to be distributed upon the Participants' cessation of employment as a Political Appointee, President or Vice President or cessation of membership on the Navajo Nation Council.

#### (b) Selection Options for Political Appointees

After appointment or reappointment, but prior to the start of a Political Appointee's appointment or reappointment, a Political Appointee who is a Participant shall have the option of selecting the form of benefit and the time of distribution with respect to contributions made on his behalf during his upcoming appointment and the earnings thereon. Once a selection has been made, it may only be changed in accordance with the provisions of sub-section 2.4(e).

#### (c) Selection Options for Council Members and the President and Vice President

After election or reelection, but prior to the start of a Council Member's term or the President or Vice President's term, a Council Member or the President and Vice President who is a Participant shall have the option of selecting the form of benefit and the time of distribution with respect to contributions made on his behalf during his upcoming elected term and the earnings thereon. Once a selection has been made, it may only be changed in accordance with the provisions of sub-section 2.4(e).

#### (d) Distribution Dates

A Participant making a selection under subsection 2.4(b) or 2.4(c) may select to receive a distribution on one of the following dates:



## **EXHIBIT B**

- (1) Upon cessation of employment as a Political Appointee, President or Vice President or cessation of membership on the Navajo Nation Council, subject to the constraint that the Participant must have separated from service with the Navajo Nation; or
- (2) A specific date in the future, subject to the constraint that the Participant must have ceased employment as a Political Appointee, President or Vice President or ceased membership on the Navajo Nation Council before such date, and must have separated from service with the Navajo Nation; or
- (3) A specific age in the future, subject to the constraint that the Participant must have ceased employment as a Political Appointee, President or Vice President or ceased membership on the Navajo Nation Council before such age, and must have separated from service with the Navajo Nation.

For purposes of an optional form of benefit selected under subsection 2.5(b), a separate distribution date under this subsection 2.4(d) shall be applied to the portion of a Participant's account payable under subsection 2.5(b)(1) and to the portion of the Participant's account payable under subsection 2.5(b)(2). Notwithstanding the above, as soon as practicable, upon cessation of employment as a Political Appointee, President or Vice President or cessation of membership on the Navajo Nation Council, a Participant shall receive a portion of his account as a lump sum that shall be equal to the lesser of \$20,000 or the contributions made on behalf of the Participant attributable to his first elected term or appointment.

Selection made by a Participant under subsection 2.4(d)(2) or 2.4(d)(3), when such Participant has not ceased employment as a Political Appointee, President or Vice President or ceased membership on the Navajo Nation

## **EXHIBIT B**

Council before the selected date or age, shall be deemed null and void.

(e) **Change of Selection**

A Participant may change the form of benefit and time of distribution selected when all of the following requirements are met:

- (1) The form of benefit initially selected is in the form of a lump sum distribution; and
- (2) The change in selection must be made at least one year prior to the date of the Participant's date of distribution specified in his current selection. For a selection where the scheduled date of distribution is the Participant's cessation of employment as a Political Appointee, President or Vice President or cessation of membership on the Navajo Nation Council, the change in selection must be made at least one year prior to such cessation of employment or cessation of membership; and
- (3) The selection must defer the date of distribution to a date that is at least five years beyond the date of distribution specified in the Participant's current selection.

Any change in selection that does not satisfy all of the provisions of this subsection 2.4(e) shall be considered null and void.

(f) **Initial Benefit Election as of December 31, 2005**

Subject to the provisions of Section 2.5 and subsection 2.4(d), a Participant who is currently serving in his second or later term of appointment or election may select one of the optional forms of benefit and time of distribution with respect to benefits accrued through December 31, 2005. Such selection shall have been made in writing on or before December 31, 2005. A selection made

## **EXHIBIT B**

under this subsection 2.4(f) may be changed only as provided under subsection 2.4(e).

### **2.5 Form of Benefit**

The optional forms of benefit payment are set forth below:

- (a) The Participant may receive a lump sum benefit equal to the amount credited to the Deferred Compensation Fund on his behalf together with any cumulative investment earnings and losses.
- (b) The Participant may receive:
  - (1) A portion of his lump sum benefit; and
  - (2) Level monthly payments shall be paid in the amount selected by the Participant until the Participant's account is exhausted.



**ARTICLE 3**  
**PAYMENT OF DEATH BENEFITS**

- 3.1 Upon the death of a Participant, his beneficiary shall receive an amount equal to the balance held on his behalf at the time of his death, MINUS all payments he has received.
- 3.2 Immediately upon participation in the Plan, a Participant shall designate a beneficiary or beneficiaries to receive the remaining account balance, subject to applicable community property laws, he has accumulated under the Plan in the event of the death of the Participant. Such designation shall be made on forms and in accordance with procedures established by the Committee. The Participant may change the designation of his beneficiary under the Plan at any time by filing a new designation.

If no such designation is in effect at the time of the death of the Participant, the beneficiary shall be the living spouse of the Participant or if the Participant does not have a living spouse, then the estate of the Participant.

**ARTICLE 4**  
**DEFERRED COMPENSATION FUND**

- 4.1 The Nation shall establish a Deferred Compensation Fund (hereinafter "Fund") to serve as a depository of contributions by the Nation for deferred compensation benefits pursuant to the provisions of the Plan. Custody of funds in the Fund shall be placed in the hands of a bank to be designated by the Budget and Finance Committee of the Nation. The Budget and Finance Committee reserves the right, from time to time, to designate a successor bank or banks to act as custodian of the Fund subject to delivery of an appropriate resolution to the bank being replaced as custodian.
- 4.2 Full title of all amounts credited in the Fund to Participants not yet qualified for a benefit distribution (together with investment earnings and losses thereon) shall be fully and unconditionally vested in the Nation until the Participant qualifies for a benefit distribution under the Plan.
- 4.3 Nothing contained in this Plan and no action taken pursuant to the provisions of this Plan shall create or be construed to create a trust of any kind, or a fiduciary relationship between the Nation and a Participant, his designated beneficiary, or any other person. Any funds that may be invested under the provisions of this Plan shall continue for all purposes to be part of the general funds of the Nation and no person other than the Nation shall by virtue of the provisions of this Plan have any interest in such funds. To the extent that a Participant acquires a right to receive payments from the Nation under the Plan, such right, if any, shall be no greater than the right of any unsecured general creditor of the Nation.
- 4.4 Amounts in the Fund will be invested by the bank having custody of the Fund pursuant to an investment program to be recommended by the Navajo Nation Investment Committee and the Committee and approved by the Budget and Finance Committee. Such investment program may include Participant-directed investments.

The bank having custody of the Fund shall, at all times, comply with Navajo Nation

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June 5, 2007

## **EXHIBIT B**

Investment Policies and maintain records that will readily yield each Participant's share of the market value of the Fund arising from amounts deposited in the Fund to his credit.

- 4.5 Any administrative fees charged by the bank having custody of the Fund shall be paid through investment earnings of the Fund on the basis of an agreed upon formula approved by the Committee.



**ARTICLE 5**  
**MISCELLANEOUS**

- 5.1 The Nation may, in its sole discretion, terminate, suspend or amend this Plan at any time or from time to time, in whole or in part. However, no amendment or suspension of the Plan will affect a terminated Participant's right or the right of a beneficiary to continue to receive a benefit in accordance with this Plan as in effect on the date such Participant commenced to receive a benefit under this Plan.
- 5.2 This Plan is deemed to be unfunded and the Nation will make Plan benefit payments solely on a current disbursement basis.
- 5.3 To the maximum extent permitted by law, no benefit under this Plan shall be assignable or subject in any manner to alienation, sale, transfer, collateral, claims or creditors, pledge, attachment, or encumbrances of any kind.
- 5.4 Each Participant shall receive a copy of this Plan and a summary description of the investment program and the Committee will make available for inspection by any Participant a copy of the rules and procedures used by the Committee in administering the Plan.
- 5.5 This Plan and actions taken in the administration of this Plan shall be governed by the Navajo Nation and federal laws and regulations of the Nation. This Plan shall be administered in accordance with relevant sections of the Internal Revenue Code at 26 U.S.C. § 409A et seq. and the corresponding federal regulations at 26 CFR § 1.409A-1 et seq. The Plan Administrator is authorized to override a Plan provision if necessary to comply with the federal code and regulations, but shall provide written notification to the Committee within 10 business days and shall explain such decision.
- 5.6 Nothing contained in this Plan and no action taken pursuant to the provisions of this Plan shall be construed to waive the sovereign immunity of the Nation.

**APPENDIX A**  
**DEFERRED COMPENSATION PLAN FOR CERTAIN EMPLOYEES**  
**OF THE NAVAJO NATION**

A1. Eligibility

Non-elected employees in the following employment categories shall become participants under the Plan as of its effective date, February 15, 1989, or ~~as~~ such later date as they become included in one of ~~sueh~~these categories:

- (a) Key staff employees serving at the pleasure of the President of the Navajo Nation which includes Division Directors upon confirmation by Council, ~~but not and~~ Acting Division Directors after 90 days of Acting status.
- (b) Employees serving at the pleasure of the Speaker of the Navajo Nation Council.
- (c) Employees serving at the pleasure of the Navajo Nation Council, upon confirmation by Council.

Before entrance into the Plan, the eligibility of all participants under the Plan must be confirmed by majority vote of the Deferred Compensation Plan Administration Committee.

Effective January 1, 2006, application for admittance to the Plan must be submitted to the Deferred Compensation Plan Administration Committee within thirty (30) days of the employee's hire or transfer date into a Plan eligible position and must, at a minimum, include: (1) an executed Personnel Action Form filed with the Department of Personnel Management indicating Plan eligibility; (2) a statement signed by the employee's supervisor as to the employee's eligibility for benefits under the Plan; and (3) proof that the employee's position is budgeted for fringe benefits under the Plan.

## **EXHIBIT B**

The Deferred Compensation Plan Administration Committee may, but is not required to, waive the thirty (30) day requirement for good cause shown.



## BUDGET AND FINANCE COMMITTEE

2 July 2019  
Regular Meeting

### VOTE TALLY SHEET:

**Legislation No. 0153-19:** An Action Relating to Budget and Finance Committee; Adopting and Approving the Amended Restated Deferred Compensation Plan for Political Appointees and Council Delegates of the Navajo Nation Effective April 1, 2019 *Sponsored by Raymond Smith, Jr., Council Delegate*

*Main Motion: Jimmy Yellowhair*

*Second: Elmer P. Begay*

*Vote: 4-0, Chairman not voting*

### Vote Tally:

Jamie Henio		
Jimmy Yellowhair	yea	
Raymond Smith Jr.	yea	
Elmer P. Begay	yea	
Amber K. Crotty		
Nathaniel Brown	yea	

Absent: Amber K. Crotty



Jamie Henio, Chairman  
Budget & Finance Committee



Peggy Nakai, Legislative Advisor  
Budget & Finance Committee