LEGISLATIVE SUMMARY SHEET
Tracking No. 0151-22

DATE: August 23, 2022

TITLE OF RESOLUTION: RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE, BUDGET AND FINANCE, AND THE NAABIK'IYATI' COMMITTEE; APPROVING THE DIVISION OF ECONOMIC DEVELOPMENT'S APPLICATIONS FOR THE STATE SMALL BUSINESS CREDIT INITIATIVE UNDER THE FENDERAL AMERICAN RESCUE PLAN ACT.

PURPOSE: This resolution, if approved, will authorize DED to apply for the SSBCI and delegate administration of SSBCI programs to third party entities.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: J Johnson
Website Posting Time/Date: 5:03pm; 08-23-22
Posting End Date: 08-28-22
Eligible for Action: 08-29-22

Resources & Development Committee
Thence
Budget & Finance Committee
Thence
Naabik'íyáti' Committee

PROPOSED STANDING COMMITTEE RESOLUTION

24th NAVAJO NATION COUNCIL – FOURTH YEAR, 2022

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0151-22

AN ACTION

RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE, BUDGET AND FINANCE, AND THE NAABIK'IYATI' COMMITTEE; APPROVING THE DIVISION OF ECONOMIC DEVELOPMENT'S APPLICATIONS FOR THE STATE SMALL BUSINESS CREDIT INITIATIVE UNDER THE FEDERAL AMERICAN RESCUE PLAN ACT.

Section One. Authority

A. Statements of policy, enactment of positive law, intergovernmental agreements, budget resolutions, and reallocations, must be reviewed and approved by resolution by the appropriate standing committee(s) and the Navajo Nation Council except as otherwise provided herein. 2 N.N.C. § 164 (A)

B. The Resources and Development Committee is a standing committee of the Navajo Nation Council and has oversight authority over the Navajo Nation Division of Economic Development ("DED"). 2 N.N.C. § 500(A); 2 N.N.C. § 501(C)(1). The committee has authority to "review and recommend to the Naabik'íyáti' Committee Intergovernmental Agreements and agreements between the Navajo Nation and any governmental entity relating to economic development [] for efficiency and timely comparison of those projects." 2 N.N.C. § 501(B)(12).

C. The Budget and Finance Committee is a standing committee of the Navajo Nation Council and has authority to "[a]uthorize, review, approve and accept agreements,

including contracts and grants, between the Navajo Nation and any federal, state or regional authority upon the recommendation of the standing committee which has oversight of the division, department or program which has applied for the agreement." 2 N.N.C. § 300(A); 2 N.N.C. § 301(B)(15).

D. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council and has authority to "coordinate all federal, county and state 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); 2 N.N.C. § 701(A)(4). Upon recommendation by the appropriate standing committee, the resolution shall be submitted to the Naabik'íyáti' Committee with amendments and committee reports. 2 N.N.C. § 164(A)(9).

E. The President or Vice-President of the Navajo Nation or their designee shall execute contracts or agreements pertaining to the Executive Branch. 2 N.N.C. § 222(A).

F. The Division Director of DED has the duty to "coordinate with the Resources and Development Committee of the Navajo Nation Council...to propose and encourage economic development." DED Plan of Operations § IV(A), approved by RDCO-055-19 (Oct. 16, 2019). The Division Director also has the power to "[r]ecommend, evaluate and plan the creation...of programs" and "[e]xecute such directives and authorities as may be directed and/or authorized by the appropriate authority of the Navajo Nation." DED Plan of Operations § IV(A)(1) and (10).

G. DED is authorized to "[s]eek federal, state, and conventional financing for commercial, industrial, and tourism projects and develop other economic programs to enhance economic activity within the Navajo Nation." DED Plan of Operations § V(H). This authority is consistent with the Division's objective to "monitor and administer grants and loans received for such projects." DED Plan of Operations § III(E).

H. DED also has the authority to "execute such directives as may be directed or authorized by the appropriate authority of the Navajo Nation consistent with Navajo and federal law." DED Plan of Operations § V(I).

Section Two. Findings

A. On March 11, 2021, United States President Biden signed Public Law 117-2, American Rescue Plan Act ("ARPA") into law. Section 3301 of ARPA amended and reauthorized the State Small Business Credit Initiative ("SSBCI"), which provided $10 billion to fund the SSBCI, including $500 million specifically allocated for Tribal governments. Approximately $15 million in technical assistance funding is reserved for Tribal governments to provide legal, accounting, and financial advisory services to businesses owned by socially and economically disadvantages individuals and very small businesses.

B. Through the United States Department of Treasury, SSBCI will fund state, territory, and Tribal government small business credit support programs, including capital access programs, loan participation programs, loan guarantee programs, collateral support programs, and venture capital programs ("other credit support programs").

C. To participate in the SSBCI program, Tribal governments were required to submit a Notice of Intent to apply ("NOI") by December 11, 2021. SSBCI requires Tribal governments to complete and submit an SSBCI capital application to the U.S. Department of Treasury by September 1, 2022. A separate SSBCI technical assistance application to the U.S. Department of Treasury may be submitted by December 9, 2022.

D. The Navajo Nation is expected to receive a Tribal allocation of approximately $90 million upon timely submission of the complete SSBCI capital application and approval by the U.S. Department of the Treasury. The Tribal allocation for technical assistance funding will be determined by the U.S. Department of Treasury after Tribal consultation and consideration of public comments in May 2022.

E. The Navajo Nation timely submitted a Notice of Intent on July 6, 2021. After the submission of the Notice of Intent, DED began development of a Navajo SSBCI Program (defined below) that supports Navajo-owned small businesses.

F. In the course of development, DED has outlined an administration strategy to involve third party entities to administer or provide technical assistance to support SSBCI programs ("Program Administrators") in order to both leverage the experience and build the capacity of these entities to serve the unique needs of Navajo business owners.

G. DED worked with Program Administrators to define the initial scope for Phase I of the Navajo SSBCI Program, pursuant to which DED will implement a loan guaranty and loan participation program ("Loan Program") through subrecipient agreements with the Program Administrators to facilitate borrowing by Navajo owned businesses, as set forth in the SSBCI Phase I Program Plan. **EXHIBIT A**

H. Upon the United States Department of Treasury's approval of the Navajo Nation's SSBCI application, and prior to distribution of SSBCI funds to the Navajo Nation, the parties must enter into an Allocation Agreement, which is anticipated to be in a form substantially similar to **EXHIBIT B.**

I. After successful implementation of the Loan Programs and further due diligence, DED anticipates it will later amend the SSBCI application to add capital access, venture capital, or collateral support programs in a phased-in approach, subject to approval by the U.S. Department of the Treasury ("Phased Program Development," together with the Loan Programs, the "Navajo SSBCI Program").

J. The Naabik'íyáti' Committee of the Navajo Nation Council has considered the Loan Program and the Phased Program Development and determined that it is in the best interest of the Navajo Nation to participate in the State Small Business Credit Initiative through the Navajo SSBCI Program, which will encourage and enhance economic development within the Navajo Nation.

Section Three. Findings

A. The Naabik'íyáti' Committee hereby designates the DED as the Implementing Entity and Technical Assistance Authorized Official for purposes of the SSBCI application, and approves and authorizes the DED to submit a capital application and a technical assistance application to the United States Department of Treasury to receive SSBCI funding to implement the programs outlined in **Exhibit A**, and further approves and authorizes the DED to amend the applications as necessary and appropriate for Phased Program Development.

B. The Naabik'íyáti' Committee hereby designates the DED to accept the SSBCI allocation and technical assistance funds on behalf of the Navajo Nation, to implement the Navajo

SSBCI Program, and affirms DED has the legal authority to enter into an Allocation Agreement with Treasury.

C. The Naabik'íyáti' Committee hereby authorizes and directs the DED to take any and all actions as necessary and appropriate to implement the Navajo SSBCI Program, including a technical assistance program, in a manner consistent with the federal SSBCI Program requirements.

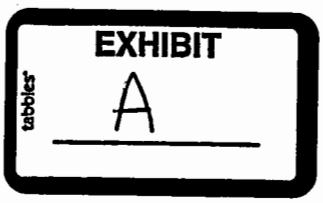


EXHIBIT A
NAVAJO SSBCI PROGRAM
Phase I – Navajo Nation Loan Guarantee Program (LGP)
and Loan Participation Program (LPP)

Program Overview

Division of Economic Development (DED) will implement a Loan Guarantee Program (LGP) and Loan Participation Program (LPP) for small business loans to Navajo business (majority owned and controlled by Navajo member(s) or the Navajo Nation) and businesses owned and controlled by socially and economically disadvantaged individuals (SEDI) (including businesses located on the Navajo Nation and certain qualifying businesses in the states of Arizona, New Mexico, Colorado, or Utah). Administration of the LGP and LPP may be delegated to third party administrators with experience sourcing, underwriting, and/or administering small business loans and commercial loans. The intent of both the LGP and LPP Program, in partnership with participating lenders, is to facilitate and provide credit support for several hundred small business loans to benefit tribal members and tribally owned businesses.

The LGP and LPP will include guidelines that address the following:

- Program eligibility requirements that shall ensure primary benefit to Navajo owned and Navajo Nation owned businesses, and may provide for benefit to other small businesses that clearly demonstrate substantial Navajo benefit, e.g., through significant employment opportunity for Navajo members.
- Minimum and maximum loan/investment amounts.
- Maximum percentage amount that guarantee will cover and operational standards for reserve fund.
- A plan to ensure a meaningful amount of lender capital is at risk, and SSBCI leverage requirements of at least 1:1 are met.
- Standard loan terms and processes for reviewing non-standard transactions.
- Sources for loan originations.
- Processes for negotiating and approving loan support terms.
- Processes for tracking and reporting loans made and guarantees issued.
- Kinds of and rates for fees that may be charged.
- Processes for monitoring compliance and performance of outstanding loans.
- Processes for addressing loan defaults or investment write-offs.

Technical Assistance

DED will directly and/or indirectly provide technical assistance to very small businesses (VSBs) and SEDI-owned businesses. The SSBCI technical assistance will provide legal, accounting, and financial advisory services to VSBs and SEDI-owned businesses applying for SSBCI capital programs. If indirectly, DED will contract with a third party to provide wrap-around services to meet the needs of VSBs and SEDI-owned businesses, especially those located in rural and underserved communities. Any third party technical assistance provider should have a developed network of Navajo owned and Navajo Nation owned businesses and a plan to maximize participation in the LGP and later phased SSBCI programs. The third party technical assistance provider will serve as an on-the- ground partner to create cycles of capital-ready applicants equipped to participate in the LGP, creating borrowers more adept to repay loans. The technical assistance provided in turn should create cycles of economic growth to benefit the Navajo Nation.

The plan for technical assistance will include guidelines that will address the following:

- How the technical assistance provider will provide legal, accounting, and/or financial advisory services to VSBs and SEDI-owned businesses applying for SSBCI capital programs.
- How the technical assistance funding may meet the needs of VSBs and SEDI-owned businesses in different communities.
- Reporting procedures for technical services provided.

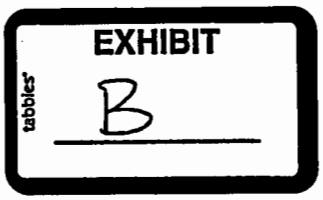


EXHIBIT B

U.S. Department of the Treasury
State Small Business Credit Initiative
Allocation Agreement

The American Rescue Plan Act of 2021 (ARPA) amended the Small Business Jobs Act of 2010, codified at 12 U.S.C. § 5701 *et seq.*, to reauthorize and provide $10 billion to fund the State Small Business Credit Initiative (SSBCI) as a response to the economic effects of the COVID-19 pandemic. SSBCI is a federal program administered by the U.S. Department of the Treasury (Treasury) that is intended to strengthen programs of eligible jurisdictions (states, the District of Columbia, territories, Tribal governments, and eligible municipalities) that support private financing to small businesses.

This Allocation Agreement establishes the terms and conditions for the undersigned participating jurisdiction (Participating Jurisdiction) to receive capital funds under the SSBCI.

Article I: Definitions

Section 1.1 Definitions.

Allocated Funds means all the federal funds that are awarded to the Participating Jurisdiction pursuant to 12 U.S.C. § 5702. Allocated Funds includes amounts under the Main Capital Allocation, SEDI Allocation, SEDI Incentive Allocation, and VSB Allocation. Initial eligible amounts under the SEDI Incentive Allocation are not considered Allocated Funds until Treasury determines that the Participating Jurisdiction has qualified for the funds under the standards set forth in the Capital Program Policy Guidelines.

Approved Application means the Participating Jurisdiction's SSBCI application for approval of a capital access program (CAP) under 12 U.S.C. § 5704 or other credit support program (OCSP) under 12 U.S.C. § 5705 that has been approved by Treasury, including any written information in connection therewith and any attachments, appendices, written supplements, or amendments thereto, submitted by the Participating Jurisdiction to Treasury.

Approved Program means each CAP or OCSP listed on Schedule A.

Capital Program Policy Guidelines means the SSBCI Capital Program Policy Guidelines, originally published on Treasury's SSBCI website on November 10, 2021, as it may be amended from time to time.

Contracted Entity means an entity that has a contractual arrangement (including through a memorandum of understanding or other agreement) with the Participating Jurisdiction or the Participating Jurisdiction's Implementing Entity for the implementation or administration of its capital program. This entity may be an authorized agent of the Participating Jurisdiction (including an entity or agency of the Participating Jurisdiction), or an entity selected and supervised by the Participating Jurisdiction (including an entity of another jurisdiction, a

nonprofit third-party, or a for-profit third-party such as an investment fund or loan fund). The Contracted Entity may be the entity that operates the SSBCI program.

Disbursement means a transfer of Allocated Funds by Treasury to the Participating Jurisdiction under this Allocation Agreement.

Implementing Entity means the specific department, agency, or political subdivision of the Participating Jurisdiction that has been designated to accept the Allocated Funds on behalf of the participating jurisdiction. The term "agency" includes government corporations and other entities authorized or supervised by the Participating Jurisdiction. The Implementing Entity may be the entity that operates the SSBCI program.

Main Capital Allocation means the funds described in 12 U.S.C. § 5702(b).

Program Income means gross income received by the Participating Jurisdiction that is directly generated by an SSBCI-supported activity or earned as a result of SSBCI Funds during the SSBCI program period. Program Income includes, but is not limited to, income from: fees for services performed that were funded or supported with SSBCI Funds; interest earned on loans made using SSBCI Funds; interest on SSBCI Funds not invested or lent to a small business; and returns on SSBCI-supported equity investments. Program Income does not include Returned Funds.

Recycled Funds means funds that (1) come to the Participating Jurisdiction in the form of Program Income, returned program services costs, repayment of principal, or return of invested capital (i.e., funds that have been previously loaned or invested), and (2) are expended, transferred, or obligated by the Participating Jurisdiction on new loans, investments, or other credit equity support.

Returned Funds means repayment of principal or return of invested capital (i.e., funds that have been previously loaned or invested).

SEDI Allocation means the funds described in 12 U.S.C. § 5702(d).

SEDI Incentive Allocation means the funds described in 12 U.S.C. § 5702(e).

SSBCI Funds means the sum of Allocated Funds and Recycled Funds.

VSB Allocation means the funds described in 12 U.S.C. § 5702(f).

Section 1.2 Rules of Interpretation.
The terms defined in Section 1.1 of this Allocation Agreement shall include the singular and the plural, if applicable. The words "herein," "hereof," "hereto," and words of similar import refer to this Allocation Agreement.

Article II: Allocation and Disbursements

Section 2.1 Allocation.
Subject to the terms and conditions hereof, Treasury will provide to the Participating Jurisdiction Allocated Funds in the aggregate amount not to exceed the sum of the amounts listed under "Potential Allocation" on Schedule A and any additional SEDI Incentive Allocation amounts allocated by Treasury to the Participating Jurisdiction.

Section 2.2 Disbursements of Allocated Funds via Electronic Funds Transfer.
Any Disbursements shall be made via electronic funds transfer by Treasury to the Participating Jurisdiction's account designated in the Approved Application by the Participating Jurisdiction.

Section 2.3 Cash Depositories.
The Participating Jurisdiction shall deposit and maintain Disbursements in a U.S. Government-insured interesting-bearing account whenever possible. The Participating Jurisdiction is not required to maintain a separate account for receiving and maintaining Disbursements. If the Participating Jurisdiction maintains a depository account in which Allocated Funds are commingled with other funds, the Participating Jurisdiction shall maintain on its books a separate subaccount for the Allocated Funds.

Section 2.4 Conditions Precedent for Disbursements.
As a precondition to the second and third tranche Disbursements of the Allocation listed in Schedule A, the Participating Jurisdiction shall deliver to Treasury a certificate signed on behalf of the Participating Jurisdiction by an Authorized Representative in substantially the form attached hereto as Annex A, and any supporting documentation requested by Treasury.

Section 2.5 Authority to Withhold Disbursements Pending Audit
Treasury may withhold any Disbursement pending the results of a financial audit. Treasury will notify the Participating Jurisdiction of its decision to withhold such Disbursement.

Section 2.6 Withholding or Suspending Disbursements.
Notwithstanding anything herein to the contrary, Treasury may, in its sole discretion, withhold or suspend any Disbursement if Treasury believes the Participating Jurisdiction may have failed to comply with any term or condition of this Allocation Agreement pending the final compliance determination by Treasury. Treasury will resume making Disbursements to the Participating Jurisdiction upon Treasury's determination that the Participating Jurisdiction is in compliance with all applicable requirements and has appropriately remedied any violation, unless Treasury exercises additional remedies under Article V.

Article III: Covenants and Agreements

Section 3.1 Compliance with Laws.
The Participating Jurisdiction shall, and shall cause any entities with which it designates or contracts to implement Approved Programs, including its Implementing Entity and Contracting Entities, to, comply with the SSBCI statute (12 U.S.C. § 5701 *et seq.*), as amended or replaced

from time to time, and Treasury's SSBCI regulations, guidance, and other requirements, as in effect from time to time.

Section 3.2 Nondiscrimination.
If the Participating Jurisdiction is not a Tribal government, the Participating Jurisdiction agrees to comply with statutes and regulations prohibiting discrimination, which include, but are not limited to:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and Treasury's implementing regulations at 31 C.F.R. Part 22;
(b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794);
(c) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Treasury's implementing regulations at 31 C.F.R. Part 23;
(d) Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 *et seq.*); and
(e) Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and Treasury's implementing regulations, 31 C.F.R. Part 28.

Section 3.3 Uses of SSBCI Funds, Returned Funds, and Program Income.
The Participating Jurisdiction shall only use SSBCI Funds, Returned Funds, and Program Income to carry out the Approved Programs. Without limiting the generality of the foregoing:

(a) The Recipient shall comply with the provisions of 31 U.S.C. § 1352, as amended, and with the regulations at 31 CFR Part 21.
(b) The Participating Jurisdiction shall not use any SSBCI Funds, Returned Funds, or Program Income to pay any costs incurred in connection with (i) any defense against any claim or appeal of the U.S. Government, any agency or instrumentality thereof (including Treasury), against the Participating Jurisdiction, or (ii) any prosecution of any claim or appeal against the U.S. Government, any agency or instrumentality thereof (including Treasury), which the Participating Jurisdiction instituted or in which the Participating Jurisdiction has joined as a claimant.
(c) The Participating Jurisdiction shall not use any SSBCI Funds, Returned Funds, or Program Income for loans, investments, and other credit or equity support to finance, in whole or in part, purposes prohibited by the SSBCI statute or Treasury's SSBCI regulations or guidance as in effect from time to time.

Section 3.4 Commencement of Performance.
The Participating Jurisdiction shall be fully positioned within 90 days after the effective date of this Allocation Agreement to act on providing the kind of credit or equity support that the Approved Program was established to provide using the Allocated Funds.

Section 3.5 Internal Control and Financial Management System Requirements.
The Participating Jurisdiction shall comply with the SSBCI statute and Treasury's regulations, and guidance related to internal control and financial management system requirements. The Participating Jurisdiction shall also comply with the standards for financial management systems, including internal control requirements, specified at 2 C.F.R. §§ 200.302 and 200.303. Notwithstanding the foregoing, the cash management requirements in § 200.305 shall not apply to the Participating Jurisdiction.

Section 3.6 Reported Data Usage.
The Participating Jurisdiction acknowledges that Treasury may perform and publish, or authorize others to perform and publish, program evaluation and other analyses based on the data reported to Treasury by the Participating Jurisdiction. The Participating Jurisdiction consents to such use and publication of the reported data, subject to applicable laws and regulations.

Section 3.7 Notices of Certain Material Events.
The Participating Jurisdiction shall promptly notify Treasury in writing in reasonable detail:

(a) if there has been any material adverse change in the condition, financial or otherwise, or operations of the Participating Jurisdiction that may affect the Participating Jurisdiction's Approved Programs;

(b) if the Participating Jurisdiction believes that any representation, warranty, certification, assurance, or any other statement of fact contained in this Allocation Agreement, including the incorporated Approved Application, or any statement set forth in any document, report, certificate, financial statement or instrument now or hereafter delivered to Treasury in connection with this Allocation Agreement and the Approved Programs, was inaccurate, false, incomplete, or misleading when made, in any material respect;

(c) if the Participating Jurisdiction believes that it has materially failed to comply with any term or condition contained in this Allocation Agreement; and

(d) if there are facts, events, or circumstances, real or anticipated, that may materially affect the Participating Jurisdiction's ability to comply with the terms and conditions of this Allocation Agreement or to carry out the Approved Programs; in this event, the Participating Jurisdiction must describe actions taken or contemplated to be taken to address the issue.

Section 3.8 Publication of Approved Program Contact Information
The Participating Jurisdiction agrees that Treasury may publish any e-mail contact information provided from time to time by the Participating Jurisdiction for each Approved Program listed in Schedule A.

Article IV: Representations and Warranties

The Participating Jurisdiction represents and warrants as of the date hereof and as of the date of each Disbursement that:

Section 4.1 Authority of Authorized Representative.
The Authorized Representative has all requisite power and authority to execute and deliver this Allocation Agreement.

Section 4.2 Due Authorization of Participating Jurisdiction.
The execution and delivery by the Participating Jurisdiction hereof, the consummation by the Participating Jurisdiction of all of the transactions contemplated hereby, and the performance by the Participating Jurisdiction of its obligations hereunder have been duly authorized by all necessary action on the part of the Participating Jurisdiction.

Section 4.3 Due Execution and Delivery; Binding Agreement.
This Allocation Agreement has been duly executed and delivered by the Participating Jurisdiction and constitutes a legal, valid, and binding obligation of the Participating Jurisdiction enforceable against the Participating Jurisdiction in accordance with its terms and conditions.

Section 4.4 No Conflicts.
The execution and delivery by the Participating Jurisdiction hereof, the consummation by the Participating Jurisdiction of the transactions contemplated hereby, and the performance by the Participating Jurisdiction of its obligations hereunder, do not and will not:

(a) conflict with or violate any existing law, regulation, or administrative or judicial decree or order; or

(b) conflict with, result in a breach of, or constitute a default under any existing agreement or other instrument to which the Participating Jurisdiction is subject or by which it is bound, other than any such conflict, breach, or default that could not reasonably affect the Participating Jurisdiction's performance of its obligations under this Allocation Agreement or its use of SSBCI Funds.

Section 4.5 Litigation.
There is no lawsuit or judicial or administrative action, proceeding, or investigation pending or threatened against the Participating Jurisdiction which is likely to have a material adverse effect on the ability of the Participating Jurisdiction to perform its obligations under this Allocation Agreement or the transactions contemplated hereby.

Section 4.6 Disclosure.
Neither this Allocation Agreement, nor the incorporated Approved Application, nor any other document or instrument delivered to Treasury by the Participating Jurisdiction related to this Allocation Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading. The Participating Jurisdiction has disclosed, in writing, to Treasury all facts that might reasonably be expected to result in a material adverse effect upon the Participating Jurisdiction's ability either to conduct its business or to carry out this Allocation Agreement and the transactions contemplated hereby. The Participating Jurisdiction has not knowingly and willfully made or used a document or writing containing any false, fictitious, or fraudulent statement or entry as part of its Approved Application or correspondence or communication with Treasury related to this Allocation Agreement.

Article V: Termination For Cause and Other Remedies

Section 5.1 General Events of Default.
Treasury, in its sole discretion, may find the Participating Jurisdiction to be in default in the event that either:

(a) Treasury determines that any representation, warranty, certification, assurance, or any other statement of fact contained in this Allocation Agreement, including the incorporated Approved Application, or any information or statement set forth in any

document, report, certificate, financial statement or instrument now or hereafter delivered to Treasury in connection with this Allocation Agreement or the Approved Programs, is inaccurate, false, incomplete, or misleading when made, in any material respect; or

(b) Treasury determines that the Participating Jurisdiction has materially failed to comply with any term or condition under this Allocation Agreement, including, but not limited to, the Participating Jurisdiction's failure to submit complete and timely quarterly reports or annual reports; the Participating Jurisdiction's failure to expend the SSBCI Funds, Returned Funds, and Program Income to carry out the Approved Programs; or the Participating Jurisdiction's failure expend the SEDI Allocation or VSB Allocation in the manner prescribed in Sections IV and V, respectively, of the Capital Program Policy Guidelines.

Section 5.2 Discretionary Remedies.
If Treasury determines that the Participating Jurisdiction is in default under Section 5.1 hereof, Treasury may, in its sole discretion, take any one or more of the following actions, subject to Section 5.5 hereof:

(a) withhold Disbursements pending the Participating Jurisdiction's correction of the default; or

(b) reduce, suspend, or terminate the commitment of Treasury to make Disbursements to the Participating Jurisdiction under this Allocation Agreement.

Section 5.3 Specific Events of Default.
Treasury shall find the Participating Jurisdiction to be in default in the event of a Treasury Inspector General audit finding of either:

(a) intentional or reckless misuse of Allocated Funds by the Participating Jurisdiction; or

(b) the Participating Jurisdiction having intentionally made misstatements in any report issued to Treasury.

Section 5.4 Mandatory Remedies.
If Treasury determines that the Participating Jurisdiction is in default under Section 5.3 hereof, Treasury shall take the following actions:

(a) in the case of an event of default under Section 5.3(a) hereof, recoup any misused Allocated Funds that have been disbursed to the Participating Jurisdiction; or

(b) in the case of an event of default under Section 5.3(b) hereof, terminate the commitment of Treasury to make Disbursements to the Participating Jurisdiction under this Allocation Agreement and find the Participating Jurisdiction ineligible to receive any additional funds under this Allocation Agreement.

Section 5.5 Prior Notice to Participating Jurisdiction of Exercise of Remedies.
Prior to exercising or imposing any remedy under Section 5.2(b), Treasury will, to the extent practicable, provide the Participating Jurisdiction with written notice of the determination under Section 5.1 and the proposed remedy. Treasury's written notice will give the Participating Jurisdiction 10 calendar days from the date of the notice to respond. Treasury may, in its sole discretion, also afford the Participating Jurisdiction 20 calendar days from the date of the notice to remedy the default. If the Participating Jurisdiction fails to respond or remedy the default, as

determined by Treasury in its sole discretion, within the applicable period, Treasury may, in its sole discretion, exercise the remedies set forth in its written notice. Nothing in this Allocation Agreement, however, provides the Participating Jurisdiction with any right to any formal or informal hearing or other proceeding not otherwise required by law.

Section 5.6 Un-enrollment and Replenishment.
The Participating Jurisdiction may submit a request to Treasury that a specific loan or investment previously made, or costs previously paid, by the Participating Jurisdiction using SSBCI Funds not be considered to have been made or paid with SSBCI Funds if (1) the Participating Jurisdiction or Treasury identifies a potentially noncompliant use of funds or (2) the Treasury Office of the Inspector General (OIG) identifies an instance of noncompliance or misuse not characterized as reckless or intentional. In this case, the Participating Jurisdiction shall follow the applicable procedures and requirements in Treasury's SSBCI regulations and guidance, including the Capital Program Policy Guidelines Section XII.

Article VI: General

Section 6.1 Entire Agreement.
This Allocation Agreement, which incorporates Schedule A and the Approved Application, constitutes the entire agreement and supersedes all other prior agreements, understandings, representations, and warranties, both written and oral, between the parties, with respect to the subject matter hereof.

Section 6.2 Notices.
All notices, requests, demands, consents, waivers, and other communications given under this Allocation Agreement shall be in writing and shall be mailed by postage-prepaid first-class mail, delivered by overnight courier service, or transmitted electronically via e-mail transmission to the addresses set forth in Schedule A. Either party may change its contact information set forth in Schedule A upon written notice given to the other party.

Section 6.3 Amendments.
This Allocation Agreement may be amended, modified, waived, supplemented, or terminated only by an instrument in writing duly executed by Treasury and the Participating Jurisdiction, except that Treasury may unilaterally amend this Allocation Agreement if required in order to comply with applicable federal law or regulation.

Section 6.4 Assignment.
The Participating Jurisdiction shall not assign or transfer its rights under this Allocation Agreement without Treasury's prior written consent.

Section 6.5 Successors.
This Allocation Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

Section 6.6 Cumulative Rights.
Each and every right, power, and authority under this Allocation Agreement shall be cumulative and in addition to every other right, power, and authority herein conferred, or now or hereafter existing at law or in equity, by statute or otherwise.

Section 6.7 No Election.
Each and every right, power, and authority, whether conferred in this Allocation Agreement or otherwise existing, may be exercised from time to time and as often and in such order as may be determined by Treasury, and the exercise or the beginning of the exercise of any right, power, or authority shall not be construed to be an election or a waiver of the right to exercise at the same time or thereafter any other right, power, or authority.

Section 6.8 Rights Confined to Parties.
Nothing expressed or implied herein is intended or shall be construed to confer upon, or to give, any person other than the Participating Jurisdiction or Treasury, and their respective successors and permitted assigns, any right, remedy, or claim under or by reason hereof, and all of the terms and conditions herein shall be for the sole and exclusive benefit of the Participating Jurisdiction, Treasury, and their respective successors and permitted assigns.

Section 6.9 No Waiver.
No delay or failure by Treasury in the exercise of any right, power, or authority under this Allocation Agreement shall impair any such right, power, or authority, or be construed to be a waiver of or acquiescence in such event, nor shall any abandonment or discontinuance of steps taken to exercise any right, power, or authority preclude any further exercise thereof.

Section 6.10 No Partnership.
Neither this Allocation Agreement, nor any part or provision hereof, nor the exercise by Treasury of any of its rights or authorities hereunder, shall evidence or establish, or be construed as evidencing or establishing, any partnership, joint venture, or similar relationship of Treasury with the Participating Jurisdiction.

Section 6.11 Severability.
Any provision of this Allocation Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 6.12 Headings.
The descriptive headings of the various articles and sections contained in this Allocation Agreement are for convenience only and shall not be deemed to affect the meaning or construction of the provisions herein.

Section 6.13 Counterparts.
This Allocation Agreement may be executed in any number of separate counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts will together

constitute the same agreement. In addition, this Allocation Agreement may be executed by electronic signature in accordance with the E-SIGN Act of 2000. Executed signature pages to this Allocation Agreement may be delivered by electronic mail (including pdf) to the addresses specified in Schedule A, and such electronic copies will be deemed as sufficient as if actual signature pages had been delivered.

Section 6.14 Effective Date.
This Allocation Agreement shall be effective as of the date of its execution by both parties.

IN WITNESS WHEREOF, this Allocation Agreement has been duly executed and delivered by the duly authorized representatives of the parties hereto.

U.S. Department of the Treasury

Signature: _____

Authorized Representative:
Title:
Date:

[Participating Jurisdiction]

Signature: _____

Authorized Representative:
Title:
Date:

SCHEDULE A

ADDITIONAL TERMS

Potential Allocation

Main Capital Allocation: [Insert] dollars ($[Insert])
SEDI Allocation: [Insert] dollars ($[Insert])
SEDI Incentive Allocation Initial Eligible Amount: [Insert] dollars ($[Insert])VSB Allocation: [Insert] dollars ($[Insert])
Total Allocation: [Insert] dollars ($[Insert])

Approved Programs

[Insert approved programs and e-mail contact information provided by Participating Jurisdiction]

Implementing and Contracted Entities

[Insert entities]

Contact Information of Parties

If to Treasury:

Address:	U.S. Department of the Treasury ATTN: State Small Business Credit Initiative Main Treasury Building Room 1310 1500 Pennsylvania Avenue, N.W. Washington, DC 20220
Telephone Number:	(866) 220-9050
E-mail address:	SSBCI_Information@treasury.gov

If to the Participating Jurisdiction:

Address:	[Insert Address]
Telephone Number:	[Insert phone number]
Facsimile Number:	[Insert fax number]
E-mail address:	[Insert email address]

ANNEX A

CERTIFICATION REQUIRED AS A CONDITION TO DISBURSEMENT

In connection with the State Small Business Credit Initiative (SSBCI) Allocation Agreement (Allocation Agreement), dated as of [ ], 2022, between the jurisdiction specified below (Participating Jurisdiction) and the U.S. Department of the Treasury, the undersigned hereby certifies that:

1. The Participating Jurisdiction is in compliance with all terms and conditions of the Allocation Agreement;
2. The representations or warranties made by the Participating Jurisdiction in the Allocation Agreement are true and correct as of the date hereof in all material respects;
3. The Participating Jurisdiction has expended, transferred, or obligated at least 80 percent of its prior tranche Disbursement of Allocated Funds for federal contributions to, or for the account of, the Participating Jurisdiction's Approved Programs, and each of these Approved Programs have delivered loans or investments to eligible businesses; and
4. I have authority to sign this certification on behalf of the Participating Jurisdiction.

Capitalized terms used but not defined herein have the respective meanings set forth in the Allocation Agreement.

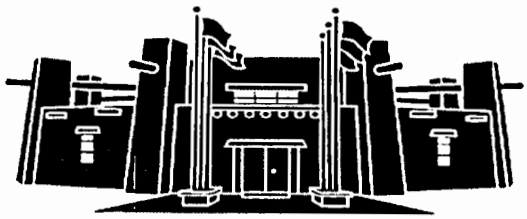
IN WITNESS WHEREOF, this Certificate has been duly executed and delivered as of the ____ day of _____, 20___.

[Participating Jurisdiction]

By: _____

Name:
Title:
Date:

Office of Legislative Counsel
Telephone: (928) 871-7166
Fax # (928) 871-7576



Honorable Seth Damon
Speaker
24th Navajo Nation Council

MEMORANDUM

TO: 24th Navajo Nation Council Delegate

FROM: for Loya M. Honaghaahnii Henderson
Office of Legislative Counsel

DATE: August 23, 2022

SUBJECT: RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE, BUDGET AND FINANCE, AND THE NAABIK'IYATI' COMMITTEE; APPROVING THE DIVISION OF ECONOMIC DEVELOPMENT'S APPLICATIONS FOR THE STATE SMALL BUSINESS CREDIT INITIATIVE UNDER THE FEDERAL AMERICAN RESCUE PLAN ACT.

I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION

LEGISLATION NO: _0151-22__ SPONSOR: Mark Freeland

TITLE: An Action Relating to the Resources and Development Committee, Budget and Finance, and the Naabik'íyáti Committee; Approving the Division of Economic Development's Applications for the State Small Business Credit Initiative Under the Federal American Rescue Plan Act

Date posted: August 23, 2022 at 5:03PM

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.*

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0152-22

SPONSOR: Honorable Mark A. Freeland

TITLE: An Action Relating to the Resources and Development Committee, Budget and Finance, and the Naabik'íyáti Committee; Approving the Division of Economic Development's Applications for the State Small Business Credit Initiative Under the Federal American Rescue Plan Act.

Posted: August 23, 2022 at 5:03 PM

5 DAY Comment Period Ended: August 28, 2022

Digital Comments received:

Comments Supporting	***None***
Comments Opposing	***None***
Comments/Recommendations	***None***

Legislative Tracking Secretary
Office of Legislative Services

August 29, 2022; 8:00 AM
Date/Time