DATE: May 7, 2020

TITLE OF RESOLUTION: An action relating to law and order, budget and finance, and NABIK ‘ÍYÁTI’ committees, and the Navajo Nation Council; waiving 12 N.N.C. §§ 301 et seq.; enacting the “Navajo Nation CARES Fund Act” by amending Title 12 of the Navajo Nation Code and establishing “the Navajo Nation CARES Fund” to be comprised of the nation’s share of the Coronavirus Relief Fund received from the United States pursuant to Title V of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”)

PURPOSE: This resolution, if approved, will enact the Navajo Nation CARES Fund Act which establishes the framework for the appropriation and expenditure of Coronavirus Relief Fund dollars received from the U.S. pursuant to the CARES Act.

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.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – Second Year, 2020
INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0115-20

AN ACTION
RELATING TO LAW AND ORDER, BUDGET AND FINANCE, AND
NAABIK’IYÁTI’ COMMITTEES, AND THE NAVAJO NATION COUNCIL;
WAIVING 12 N.N.C. §§ 301 ET SEQ.; ENACTING THE “NAVAJO NATION
CARES FUND ACT” BY AMENDING TITLE 12 OF THE NAVAJO NATION
CODE AND ESTABLISHING “THE NAVAJO NATION CARES FUND” TO BE
COMPRISED OF THE NATION’S SHARE OF THE CORONAVIRUS RELIEF
FUND RECEIVED FROM THE UNITED STATES PURSUANT TO TITLE V OF
THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT
(“CARES ACT”)

BE IT ENACTED:

Section One. Authority
A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §
102(A).
B. The Navajo Nation Appropriations Act states that “[f]unds received in excess of the
initial or current revenue projection shall be deposited into the General Fund unless
otherwise designated by the Navajo Nation Council.” 12 N.N.C. § 820(K).
C. The Naabik’iýáti’ Committee is a standing committee of the Navajo Nation Council with the responsibility to hear proposed resolution(s) that require final action by the Navajo Nation Council. 2 N.N.C. § 164 (A)(9).

D. The Budget and Finance Committee is a standing committee of the Navajo Nation Council with the enumerated powers to review and recommend to the Navajo Nation Council the budgeting, appropriation, investment and management of all funds and to promulgate rules and regulations relative to contracting and financial matters. 2 N.N.C. §§ 300 (B)(1) and (2).

E. The Law and Order Committee is a standing committee of the Navajo Nation Council with the enumerated power to review and make recommendations to the Navajo Nation Council on proposed amendments to enactments to the Navajo Nation Code. 2 N.N.C. § 601 (B)(14).

Section Two. Findings


B. On March 11, 2020, the Navajo Nation Commission on Emergency Management, with the concurrence of the Navajo Nation President and Vice President, declared a Public Health State of Emergency on the Navajo Nation due to the presence of COVID-19 in areas surrounding the Navajo Nation. Resolution No. CEM 20-03-11.

C. The Navajo Nation Department of Health has issued Public Health Emergency Orders including: Order No. 2020-001 dated March 18, 2020 (declaring the outbreak of COVID-19 and limiting mass gatherings); Order No. 2020-002 dated March 19, 2020 (quarantining the Chilchinbeto Community); Order No. 2020-003 dated March 20, 2020 (ordering individuals living on the Navajo Nation to stay home and shelter in place except for essential activities, prohibiting visitors to the Navajo Nation, and
closing all businesses on the Navajo Nation except essential businesses); Order No. 2020-004 dated March 29, 2020 (implementing a daily curfew from 8:00 p.m. to 5:00 a.m. for all Navajo Nation residents, extending the shelter in place order, and further limiting public gatherings); Order No. 2020-005 dated April 5, 2020 (implementing a 57-hour weekend curfew on April 10-13); Order No. 2020-006 dated April 16, 2020 (extending the weekend curfew for April 17-20 and April 24-27, and closing Navajo Nation essential businesses during curfew hours); Order No. 2020-007 (requiring face masks in public); and Order No. 2020-008 dated April 29, 2020 (extending the weekend curfew to May 11). The Navajo Nation Office of the President and Vice President issued Executive Order 002-20 on March 31, 2020 (closing all Navajo Nation offices except essential personnel through April 21); and Executive Order 003-20 on April 21, 2020 (extending the closure order to May 17, 2020).

D. As of May 5, 2020, the Navajo Nation Health Command Operations Center has confirmed a total of 2474 COVID-19 cases on the Navajo Nation and 73 related deaths.


F. 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. were 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.

G. On April 22, 2020, the U.S. Treasury issued "Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments" (hereinafter "Treasury's Guidance") related to the permissible uses of the Coronavirus Relief Fund. Exhibit B.
Examples of eligible expenditures and ineligible expenditures are included in Treasury's Guidance.

H. Under the CARES Act, the Department of the Treasury Inspector General has authority for monitoring and oversight of the receipt, disbursement, and use of the Coronavirus Relief Fund. A Tribal government’s use of the funds for ineligible purposes will become a debt owed to the federal government and the federal government is authorized to recoup the ineligible funds from the Tribal government. In addition, the Tribal government must return unexpended funds to the U.S. Treasury.

I. The Secretary of the Treasury, in consultation with the Secretary of the Interior and Indian Tribes, was tasked with establishing the methodology to determine the exact amount any one Tribal government would receive based on the Tribal government’s increased expenditures relative to aggregate expenditures in Fiscal Year 2019 and on May 5, 2020, the U.S. Treasury issued the document entitled "Coronavirus Relief Fund Allocations to Tribal Governments," which described the methodology used for distributing the $8 billion to Tribal governments, attached as Exhibit C.

J. On May 5, 2020, the U.S. Departments of Treasury and Interior issued the press release entitled, “Joint Statement by Treasury Secretary Steven T. Mnuchin and Secretary of the Interior David L. Bernhardt on Distribution of Coronavirus Relief Fund Dollars to Native American Tribes,” which announced that on or about May 5, 2020, the U.S. Treasury would distribute 60% of the $8 billion, or $4.8 billion, to Tribal governments, attached as Exhibit D.

K. The Navajo Nation’s share of the $4.8 billion from the Coronavirus Relief Fund initially distributed from the U.S. Treasury on or about May 5, 2020 is six hundred million five hundred fifty-nine thousand five hundred thirty dollars and ten cents ($600,559,530.10). The Navajo Nation CARES Fund Act applies to this initial distribution and to any subsequent distributions by the U.S. Treasury from the Coronavirus Relief Fund.

L. The CARES Act expressly provides that Coronavirus Relief Fund shall be used to cover only those costs that are necessary expenditures incurred due to the public health emergency with respect to COVID-19 and related purposes. The Navajo Nation
Council therefore acknowledges and designates, if necessary, pursuant to its authorities in 12 N.N.C. §820(K), that the Coronavirus Relief Funds that the Navajo Nation receives from the United States under Title V of the CARES Act are not projected revenues within the meaning of the Navajo Nation Appropriations Act, 12 N.N.C. §§800 et seq., and other provisions of the Navajo Nation Code; and shall not be deposited into the Nation’s General Fund, but instead shall be deposited into the Navajo Nation CARES Fund. Because the funds are not projected revenue, they shall not be subject to any provisions of the Navajo Nation Code that require a portion of funds to be set-aside and deposited into any other fund of the Navajo Nation.

M. The Navajo Nation Council finds it in the best interests of the Navajo Nation to enact the “Navajo Nation CARES Fund Act” by amending Title 12 of the Navajo Nation Code and establishing the “Navajo Nation CARES Fund” to be comprised of the Navajo Nation’s share of the Coronavirus Relief Fund received from the United States pursuant to Title V of the CARES Act.

N. The Navajo Nation Council further finds that because the Coronavirus Relief Fund can and shall only be used for expenditures through December 30, 2020, procurements expending these funds must be expedited, and that CARES Fund expenditures should not be subject to the Navajo Nation Procurement Act, 12 N.N.C. §§301 et seq., and its attendant regulations, and instead shall be governed by the “CARES Fund Expedited Procurement Rules and Procedures” attached as Exhibit E.

Section Three. Enacting the “Navajo Nation CARES Fund Act” and Establishing the “Navajo Nation CARES Fund”

The Navajo Nation hereby amends Title 12 of the Navajo Nation Code, 12 N.N.C. §§ 2501, et seq., as follows:

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TITLE 12. FISCAL MATTERS

CHAPTER 26. NAVAJO NATION CARES FUND ACT
§2601. Short Title
This Act shall be titled the “Navajo Nation CARES Fund Act.”

§2602. Establishment
There is established the “Navajo Nation CARES Fund” (hereinafter “Fund”).
A. The Navajo Nation hereby designates that the monies that the Navajo Nation has received and will receive from the United States from the Coronavirus Relief Fund pursuant to the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), P.L. No. 116-136, at Title V, §5001 (the “Coronavirus Relief Fund”) shall be deposited into the Fund.
B. Any monies deposited into the Fund shall be used exclusively and only as provided in this Chapter and in compliance with the permissible uses of the funds as set forth in the Coronavirus Relief Fund and CARES Act, the Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments issued by the U.S. Treasury on April 22, 2020, and any and all future rulemaking and regulations of the Department of the Treasury or the Department of the Interior.
C. The Fund shall be a continuing account and shall not lapse on an annual basis pursuant to 12 N.N.C. § 820(N).

§2603. Purpose
The purpose of the Fund is to serve as a depository into which the Coronavirus Relief Funds appropriated by the United States for the benefit of the Navajo Nation under Title V of the CARES Act are deposited, and from which the Navajo Nation appropriates funds exclusively and only for the uses specified in this Chapter.

§2604. Expenditures of the Fund
A. Any expenditure of the Fund shall be by an appropriation within the meaning of the Appropriations Act, 12 N.N.C. §§ 800 et seq., and accomplished through the approval of an Expenditure Plan(s) adopted by a two-thirds (2/3) vote of all members of the
Navajo Nation Council, subject to final action of the President of the Navajo Nation pursuant to 2 N.N.C. § 1005(C) (10), (11), and (12).

B. Expenditures of the Fund shall only be for eligible uses of the Coronavirus Relief Fund as defined in Title V of the CARES Act, which includes only those costs that:

1. are necessary expenditures incurred due to the public health emergency with respect to COVID-19;
2. were not accounted for in the Tribal budget most recently approved as of March 27, 2020;
3. are incurred from March 1, 2020 through December 30, 2020;
4. are eligible uses as defined in the Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments issued by the U.S. Treasury on April 22, 2020, which includes the following requirements:
   a. expenditures must be incurred “due to” the public health emergency which means that expenditures must be used for actions taken to respond to the public health emergency; these expenditures may include expenditures incurred to allow the Tribal government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures;
   b. expenditures must be “necessary”; the Department of the Treasury interprets this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Coronavirus Relief Fund payments; and
   c. expenditures may only be made to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020; a cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation with the budget; or (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.
d. expenditures must be for costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020; a cost is "incurred" when the responsible unit of government has expended funds to cover the cost.

5. The eligible uses as defined in any and all future rulemaking, rules, and regulations of the Department of the Treasury or the Department of the Interior related to the Coronavirus Relief Fund as appropriated by the U.S. Congress in Title V of the CARES Act.

§2605. Audit

The Controller shall keep records sufficient to demonstrate that the Coronavirus Relief Funds appropriated by the U.S. Congress to the Navajo Nation have been used in accordance with the CARES Act and §601(d) of the Social Security Act. The Fund shall be subject to an annual audited report by the Navajo Nation's independent auditor. The Navajo Nation Council and/or the Navajo Nation President may require an audit at any time. The Controller is responsible for providing any and all records required by the Department of the Treasury Inspector General. Pursuant to the CARES Act, Title V, the Department of the Treasury Inspector General has authority for monitoring and oversight of the receipt, disbursement, and use of the Coronavirus Relief Fund; and a Tribal government’s use of the funds for ineligible purposes will become a debt owed to the federal government, the federal government is authorized to recoup the ineligible funds from the Tribal government, and the Tribal government must return unexpended funds to the U.S. Treasury.

§2606. Amendments

This Act may be amended by a two-thirds (2/3) vote of the full membership of the Navajo Nation Council subject to action of the President of the Navajo Nation under 25 N.N.C. §221 (B).

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Section Four. Expenditure Plan Requirements and Administration

A. To be eligible to receive an appropriation of Coronavirus Relief Funds as defined in Title V of the CARES Act, Expenditure Plan(s) required by the Navajo Nation CARES Fund Act ("Act") shall, at a minimum, include provisions specifying the following:

1. The specific purposes for which the requested funds will be used and detailed explanation of how such uses satisfy the criteria for eligible costs specified in the Act;

2. Affirmation that the requested funds shall only be used for the purposes specified in the Act;

3. The Navajo Nation division, department, program, chapter, or entity to which the appropriations are assigned and allocated;

4. The Navajo Nation division, department, program, chapter, or entity that is responsible for managing and implementing or monitoring the Expenditure Plan;

5. The job title of the person or persons that will administer the Expenditure Plan and appropriated funds;

6. The mechanism for allocating the funding to Navajo Nation and external entities, programs, and projects through: direct funding; a memorandum of agreement ("MOA") executed by the President of the Navajo Nation; a grant agreement through a specific Navajo Nation department or program; or other mechanism;

7. The accounting and reporting requirements applicable to the funding;

8. The Standing Committee of the Navajo Nation Council with legislative oversight over the activity;

9. Affirmation that the administration, management, and implementation of the Expenditure Plan shall be consistent with the Act, this legislation, and other applicable laws and regulations of the Navajo Nation; and

10. If the recipient of the funding is a non-Navajo Nation government entity, an affirmation that the entity will indemnify the Nation for any expenditures deemed ineligible by the Department of Treasury Inspector General or other federal entity.

B. An Expenditure Plan may be approved by the Navajo Nation Council without detailed budget forms, provided the Navajo Nation division, department, program, chapter, or
entity to which the appropriations are allocated complies with the expedited budget procedures developed by the Office of Management and Budget and approved by the Budget and Finance Committee; in the event the entity to which appropriation(s) are allocated fails to comply with and complete the expedited budget procedures within fifteen (15) days of the date the Expenditure Plan becomes law, the funds allocated to that entity will revert back to the Navajo Nation CARES Fund.

Section Five. Waiving 12 N.N.C. §§ 301 et seq. and Adopting CARES Fund Expedited Procurement Rules and Procedures

To ensure Navajo Nation expenditures using Coronavirus Relief Funds are expended by December 30, 2020 as required by the U.S. Treasury and to prevent the Navajo Nation from being required to repay the U.S. Treasury for any ineligible uses of the funds, the Navajo Nation hereby waives the applicability of the Navajo Nation Procurement Act, 12 N.N.C. §§301 et seq., and its attendant regulations, to the expenditure of CARES Act funding; the expenditure of CARES Act funding shall instead be governed by the Navajo Nation CARES Fund Act, this legislation and the “CARES Fund Expedited Procurement Rules and Procedures” attached as Exhibit E.

Section Six. Prevailing Law

Notwithstanding any provision of Navajo Nation law to the contrary, the provisions of this legislation shall prevail and govern the appropriation and expenditure of funding from the CARES Fund.

Section Seven. Effective Date

This Act is effective upon its approval pursuant to 2 N.N.C. § 221(B).

Section Eight. Savings Clause

Should any provision of this legislation or the Navajo Nation CARES Fund Act (“Act”) 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 Action or Act which are not determined invalid shall remain the law of the Navajo Nation.

Section Ten. Directives

A. The Controller, with the support of the Attorney General, is directed to enter into a contract with a firm to provide consulting services in a capacity akin to an independent inspector general or auditor general to determine whether expenditures of the CARES Act funding are in compliance with the permissible uses of the appropriated funding as set forth in the Coronavirus Relief Fund and CARES Act, the Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments issued by the U.S. Treasury, the Navajo Nation CARES Fund Act and the applicable Expenditure Plan; to notify the Navajo Nation division, department, program, chapter, or entity to which the appropriations are allocated if any expenditures are ineligible under the CARES Act, etc.; and to provide written reports to the Naabik'íyáti' Committee and the President of the Navajo Nation of all ineligible expenditures.

B. The Office of Management and Budget is directed to develop expedited budget procedures, including forms, if necessary, for the expeditious expenditure of CARES Act funding for approval by the Budget and Finance Committee within ten (10) days of the enactment of this legislation.

C. The Office of the Controller, Department of Justice, Office of Management and Budget and Office of Legislative Counsel are directed to develop an Expenditure Plan template within ten (10) days of the enactment of this legislation.
maximum total compensation received by the officer or employee from the air carrier or contractor in calendar year 2019; and

(3) no officer or employee of the eligible business whose total compensation exceeded $3,000,000,000 for calendar year 2019 may receive during any 12 consecutive months of such period total compensation in excess of the sum of—

(A) $3,000,000,000; and

(B) 50 percent of the excess over $3,000,000,000 of the total compensation received by the officer or employee from the eligible business in calendar year 2019.

(b) TOTAL COMPENSATION DEFINED.—In this section, the term "total compensation" includes salary, bonuses, awards, and other financial benefits provided by an air carrier or contractor to an officer or employee of the air carrier or contractor.

SEC. 117. TAX PAYER PROTECTION.

The Secretary may receive warrants, options, preferred stock, debt securities, notes, or other financial instruments issued by recipients of financial assistance under this subtitle which, in the sole determination of the Secretary, provide appropriate compensation for the financial assistance provided by the Federal Government for the provision of the financial assistance.

SEC. 118. REPORTS.

(a) Before or later than November 1, 2020, the Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on Financial Services of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the financial assistance provided to air carriers and contractors under this subtitle, including a description of any financial assistance provided.

(b) UPDATE.—Not later than the last day of the 1-year period following the date of enactment of this Act, the Secretary shall update and submit to the Committee on Transportation and Infrastructure and the Committee on Financial Services and the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Banking, Housing, and Urban Affairs of the Senate the report described in subsection (a).

SEC. 119. COORDINATION.

In implementing this subtitle, the Secretary shall coordinate with the Secretary of Transportation.

SEC. 120. DIRECT APPROPRIATION.

Notwithstanding any other provision of law, the amounts authorized to be appropriated in this Act not otherwise appropriated, $22,000,000,000, are carry out this subtitle.

TITLE V—CORONAVIRUS RELIEF FUNDS

SEC. 501. CORONAVIRUS RELIEF FUND.

(a) In general. The Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after title V the following:

"TITLE VI—CORONAVIRUS RELIEF FUND" after title V the following:

"(a) Appropriation.—

"(1) In general.—Out of any money in the Treasury of the United States not otherwise appropriated, there is appropriated for making payments to States, Tribal governments, and units of local governments under this section, $150,000,000,000 for fiscal year 2020.

"(2) Reservation of funds.—Of the amount appropriated under paragraph (1), the amount that shall be reserved.

"(A) $3,000,000,000 for making payments to the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa; and

"(B) $8,000,000,000 of such amount for making payments to Territories.

"(3) AUTHORITY TO MAKE PAYMENTS.—

"(1) In general.—Subject to paragraph (2), not later than 30 days after the date of enactment of this Act, the Secretary shall prepare and submit to each State and Tribal government, and each unit of local government that meets the condition described in subparagraph (B), the amount determined under subparagraph (B) as a grant for purposes of this section for fiscal year 2020.

"(2) Tribal governments.—If a unit of local government of a State submits the certification required by subparagraph (B) for purposes of receiving a direct payment from the Secretary under this subsection, the Secretary shall reduce the amount determined for that State by the amount described in subparagraph (B).

"(B) AMOUNT DETERMINED.—

"(1) In general.—The amount determined under paragraph (1) for fiscal year 2020 is the amount of the grant under this section for fiscal year 2020 for each State that is based on increased expenditures of such State's government (or any governmental entity thereof), and determined in accordance with the requirements and directions set forth in the Coronavirus Relief Fund; and

"(2) Minimum payment.—

"(A) In general.—No State that is the 50th State determined under this subsection shall receive less than $1,250,000,000 for fiscal year 2020.

"(B) Pro rata adjustments.—The Secretary shall adjust on a pro rata basis the amount of the payments for each of the 50 States determined under this subsection without regard to subparagraph (A) to the extent necessary to comply with the requirements of subparagraph (A).

"(C) RELATIVE POPULATION PROPORTION AMOUNT.—For purposes of paragraph (1), the relative population proportion amount determined under this paragraph for a State for fiscal year 2020 is the product of—

"(A) the amount appropriated under paragraph (1) of title V for fiscal year 2020 that remains after the application of paragraph (3); and

"(B) the relative State population proportion (as defined in paragraph (4)).

"(D) RELATIVE REGIONAL PROPORTION AMOUNT.—For purposes of paragraph (3), the term 'relative regional proportion amount', means with respect to a State, the product of—

"(A) the population of the State; and

"(B) the total population of all States excluding the District of Columbia and territories specified in subsection (a)(2)(A).

"(E) RELATIVE LOCAL GOVERNMENT POPULATION PROPORTION AMOUNT.—For purposes of paragraph (3), the term 'relative local government population proportion amount', means with respect to a unit of local government, the amount equal to the product of—

"(A) 45 percent of the amount of the payment determined for the State under this subsection (without regard to this paragraph); and

"(B) the amount equal to the quotient of—

"(i) the population of the unit of local government; and

"(ii) the total population of the State in which the unit of local government is located.

"(F) DISTRICT OF COLUMBIA AND TERRITORIES.—The amount paid under this section to the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa shall be the amount equal to the product of—

"(A) the amount set aside under subsection (a)(2)(B) for such fiscal year; and

"(B) each such District's and territory's share of the combined total population of the District of Columbia and all such territories, as determined by the Secretary.

"(G) TRIBAL GOVERNMENTS.—The amount paid under this section for fiscal year 2020 to any Tribal government shall be the amount the Secretary shall determine, in consultation with the Tribal governments of the Interior and of the Tribes that is based on increased expenditures of such Tribal government (or any governmental entity thereof), and determined in accordance with the requirements and directions set forth in the Coronavirus Relief Fund for fiscal year 2020.

"(H) DATA.—For purposes of this subsection, the population of States and units of local governments shall be determined based on the most recent population estimates available from the Bureau of the Census.

"(i) USE OF FUNDS.—A State, Tribal government, and unit of local government may use the funds provided under a payment made under this section to cover only those costs of the State, Tribal government, or unit of local government that—

"(A) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); and

"(B) were not accounted for in the budget most recently approved as an account of this section for the State or government; and

"(C) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

"(i) INSPECTOR GENERAL OVERSIGHT REQUIREMENTS.—

"(1) OVERSIGHT AUTHORITY.—The Inspector General of the Department of the Treasury shall conduct oversight and monitor the receipt, disbursement, and use of funds made available under this section.

"(2) REQUIREMENT.—If the Inspector General of the Department of the Treasury determines that a State, Tribal government, or unit of local government has failed to comply with subsection (d), the amount equal to the amount of funds used in violation of such subsection shall be deposited into the general fund of the Treasury.

"(ii) APPOINTMENT.—Out of any money in the Treasury of the United States not otherwise appropriated, there is appropriated for the Office of the Inspector General of the Department of the Treasury to carry out oversight and recoupment activities under this section.

"(iii) AUTHORITY OF INSPECTOR GENERAL.—Nothing in this subsection shall be construed to diminish the authority of the Inspector General, including such authority as provided in the Inspector General Act of 1978 (5 U.S.C. App.).

"(k) Definitions.—In this section—

"(1) INDIAN TRIBE.—The term 'Indian Tribe' has the meaning given that term in section
DIVISION B—EMERGENCY APPROPRIATIONS FOR AGRICULTURE, FOOD AND SHELTER HEALTH RESPONSE AND AGENCY OPERATIONS

The following sums are hereby are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2020, and for other purposes, namely:

TITLE I
AGRICULTURAL PROGRAMS

OFFICE OF THE SECRETARY
For an additional amount for "Salaries and Expenses", $3,000,000,000, to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally, including necessary expenses for hire of personnel and services, payroll, travel, training, and other activities as necessary to meet public health emergencies or to respond to the ongoing effort to contain, mitigate, and control the Coronavirus Disease 2019 (COVID-19).

For an additional amount for "Emergency Assistance Program", $750,000,000, to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally: Provided, That the funding made available under this heading in this Act shall be used for conducting audits and investigations of projects and activities carried out with funds made available in this Act to the Department of Agriculture to prevent, prepare for, and respond to coronavirus, domestically or internationally: Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

For an additional amount for "Salaries and Expenses", $55,000,000, to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally, including necessary expenses for hire of personnel and services, payroll, travel, training, and other activities as necessary to meet public health emergencies or to respond to the ongoing effort to contain, mitigate, and control the Coronavirus Disease 2019 (COVID-19) domestically or internationally: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

DOMESTIC FOOD PROGRAMS

For an additional amount for "Food Safety and Inspection Service", $15,810,000,000, to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

For an additional amount for "Supplemental Nutrition Assistance Program", $15,510,000,000, to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

RURAL BUSINESS—COOPERATIVE SERVICE
RURAL BUSINESS PROGRAM ACCOUNT
For an additional amount for "Rural Business Program Account", $20,500,000,000, to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, for the cost of loans for rural housing development programs authorized by section 310B and described in subsection (a) of section 310B of the Consolidated Farm and Rural Development Act of 1996: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.
maximum total compensation received by the officer or employee from the air carrier or contractor in calendar year 2019; and (3) no officer or employee of the eligible business whose total compensation exceeded $3,000,000 in any calendar year 2019 shall receive any amount during any 12 consecutive months of such period total compensation in excess of the sum of

(A) $3,000,000; and

(B) 30 percent of the excess over $3,000,000 of the total compensation received by the officer or employee from the eligible business in calendar year 2019.

(b) TOTAL COMPENSATION DEFINED.—In this section, "total compensation" includes salary, bonuses, awards of stock, and other benefits provided by an air carrier or contractor to an officer or employee of the air carrier or contractor.

SEC. 4117. TAX PAYER PROTECTION.

The Secretary may receive warrants, options, preferred stock, debt securities, notes, or other financial instruments issued by recipient of financial assistance under this subtitle, which in the sole determination of the Secretary, provide appropriate compensation to the Federal Government for the provision of the financial assistance.

SEC. 4118. REPORTS.

(a) Not later than November 1, 2020, the Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on Financial Services of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the financial assistance provided to air carriers and contractors under this subtitle, including a description of any financial assistance provided.

(b) UPDATE.—Not later than the last day of the 1-year period following the date of enactment of this Act, the Secretary shall submit a report to the Committee on Transportation and Infrastructure and the Committee on Financial Services of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Banking, Housing, and Urban Affairs of the Senate the report described in subsection (a).

SEC. 4119. COORDINATION.

In implementing this subtitle the Secretary shall coordinate with the Secretary of Transportation.

SEC. 4120. DIRECT APPROPRIATION.

Notwithstanding any other provision of law, out of any amounts in the Treasury not otherwise appropriated, $32,000,000,000 to carry out this subtitle.

TITLE V—CORONAVIRUS RELIEF FUNDS

SEC. 5001. CORONAVIRUS RELIEF FUND.

(a) In general.—The Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after title V the following:

"TITLE V—CORONAVIRUS RELIEF FUND"

"SEC. 5001. CORONAVIRUS RELIEF FUND.

"(a) Appropriation.—

"(1) In general.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for making payments to States, Tribal governments, and units of local government under this section, $150,000,000,000 for fiscal year 2020.

"(2) RESERVATION OF FUNDS.—Of the amount appropriated under paragraph (1), that amount is appropriated to—

(A) $3,000,000,000 of such amount for making payments to the District of Columbia, the States of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa; and

(B) $8,000,000,000 of such amount for making payments to the States of Colorado, Hawaii, and Montana.

"(b) AUTHORITY TO MAKE PAYMENTS.—

"(1) IN GENERAL.—Subject to paragraph (2), not later than 30 days after the date of enactment of this Act, the Secretary shall pay each State and Tribal government, and each unit of local government that meets the conditions described in paragraph (2), the amount determined for such State, Tribal government, or unit of local government, for fiscal year 2020 under subsection (c).

"(2) Determination of amount.—(A) The amount determined under this subsection for each State, Tribal government, or unit of local government for fiscal year 2020 is the amount determined for such State, Tribal government, or unit of local government for fiscal year 2020 under subsection (c).

"(3) REPEAL.—The payment to each State, Tribal government, or unit of local government for fiscal year 2020 under this subsection is subject to the provisions of subsection (c).

"(c) PAYMENT AMOUNTS.—

"(1) IN GENERAL.—Subject to paragraph (2), the amount paid under this section for fiscal year 2020 to a State of the 50 States or the District of Columbia is the amount of fund provided under this section for fiscal year 2020 to the State under paragraph (1) for such fiscal year.

"(2) MINIMUM PAYMENT.—(A) In general.—No State that is 1 of the 50 States determined under this section for fiscal year 2020 to receive a payment under this section for fiscal year 2020 shall receive an amount less than $1,000,000,000.

"(B) PRO RATA ADJUSTMENTS.—The Secretary shall adjust on a pro rata basis the amount of the payments for each of the 50 States determined under this subsection without regard to paragraph (2) to the extent necessary to comply with the requirements of subparagraph (A).

"(d) RELATIVE POPULATION PROPORTION AMOUNT.—For purposes of paragraph (1), the relative population proportion amount determined under this paragraph for a State for fiscal year 2020 is the product of—

"(A) the amount appropriated under paragraph (1) of subsection (a) for fiscal year 2020 that remains after the application of paragraph (2) of such subsection; and

"(B) the relative State population proportion (as defined in paragraph (4)).

"(e) EXCLUSION OF PROPORTION DEFINER.—For purposes of paragraph (1)(B), the term ‘relative State population proportion’ means, with respect to a State, the quotient of—

"(A) the population of the State; and


"(B) the total population of all States (excluding the District of Columbia and territorities specified in subsection (a)(2)).

"(g) RELATIVE UNIT OF LOCAL GOVERNMENT POPULATION PROPORTION AMOUNT.—For purposes of subsection (b)(2), the term ‘relative unit of local government population proportion amount’ means, with respect to a unit of local government within a State, the amount equal to the product of—

"(A) 45 percent of the amount of the payment determined for the State under this subsection (without regard to this paragraph); and

"(B) the amount equal to the quotient of—

"(i) the population of the unit of local government; and

"(ii) the total population of the State in which the unit of local government is located.

"(h) DISTRICT OF COLUMBIA AND TERRITORIES.—The amount paid under this section for fiscal year 2020 to the District of Columbia or a territory in section 420(a)(2) of this title is the amount equal to the product of—

"(i) the amount determined for the District of Columbia or the territory; and

"(ii) the relative population proportion amount determined for the District of Columbia or the territory.

"(i) DEFINITIONS.—In this section:

"(1) INDIAN TRIBES.—The term ‘Indian tribe’ has the meaning given that term in section
DIVISION B—EMERGENCY APPROPRIATIONS FOR HEALTH, WELFARE, AND ECONOMIC SECURITY

The following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2020, and for other purposes, namely:

TITLe 1
AGRICULTURAL PROGRAMS

Office of the Secretary

For an additional amount for "Office of the Secretary", $9,500,000,000, to remain available until expended, to prevent, prepare for, and respond to coronavirus, domestically or internationally; including necessary expenses for salaries and expenses, including necessary expenses for salaries and expenses for supporting temporary and seasonal employees, and for support for agricultural producers impacted by coronavirus, including producers of specialty crops, producers that supply local food systems, including farmers markets, restaurants, and schools, and livestock producers, including dairy producers: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Office of Inspector General

For an additional amount for "Office of Inspector General", $760,000,000, to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally; including necessary expenses for salaries and expenses, including necessary expenses for salaries and expenses for support for agricultural producers impacted by coronavirus, domestically or internationally: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Animal and Plant Health Inspection Service

Salaries and Expenses

For an additional amount for "Salaries and Expenses", $55,000,000, to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally; including necessary expenses for salaries and expenses for support for agricultural producers impacted by coronavirus, domestically or internationally: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Marketing Services

For an additional amount for "Marketing Services", $25,000,000, to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally; including necessary expenses for salaries and expenses for support for agricultural producers impacted by coronavirus, domestically or internationally: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Food Safety and Inspection Service

For an additional amount for "Food Safety and Inspection Service", $3,000,000,000, to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally; including necessary expenses for salaries and expenses for support for temporary and seasonal employees: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

FARM PRODUCTION AND CONSERVATION PROGRAMS

FARM SERVICE AGENCY

For an additional amount for "Salaries and Expenses", $3,000,000,000, to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally; including necessary expenses for salaries and expenses for support for temporary and seasonal employees: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

RURAL DEVELOPMENT PROGRAMS

RURAL BUSINESS—COOPERATIVE SERVICE

RURAL BUSINESS PROGRAM ACCOUNT

For an additional amount for "Rural Business Program Account", $25,000,000,000, to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally; including necessary expenses for salaries and expenses for support for agricultural producers impacted by coronavirus, domestically or internationally: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

RURAL UTILITIES SERVICE

DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND PROGRAM

For an additional amount for "Distance Learning, Telemedicine, and Broadband Program", $25,000,000, to remain available until expended, to prevent, prepare for, and respond to coronavirus, domestically or internationally; including necessary expenses for salaries and expenses for support for agricultural producers impacted by coronavirus, domestically or internationally: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

DOMESTIC FOOD PROGRAMS

FOOD AND NUTRITION SERVICE

CHEL NUTRITION PROGRAM

For an additional amount for "Child Nutrition Programs", $8,000,000,000, to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally; including necessary expenses for salaries and expenses for support for temporary and seasonal employees: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

For an additional amount for "Supplemental Nutrition Assistance Program", $15,000,000,000, to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally; including necessary expenses for salaries and expenses for support for temporary and seasonal employees: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.
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, 2020.¹

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

**Necessary expenditures incurred due to the public health emergency**

The requirement that expenditures be incurred "due to" the public health emergency means that expenditures must be used for actions taken to respond to the public health emergency. These may include expenditures incurred to allow the State, territorial, local, or Tribal government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures.

Funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute. Although a broad range of uses is allowed, revenue replacement is not a permissible use of Fund payments.

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

**Costs not accounted for in the budget most recently approved as of March 27, 2020**

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

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

A cost is “incurred” when the responsible unit of government has expended funds to cover the cost.

**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.

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 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 expenditures

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.
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.

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2 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.

3 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.
Coronavirus Relief Fund
Allocations to Tribal Governments
May 5, 2020

The CARES Act reserves $8 billion from the Coronavirus Relief Fund (the Fund) for payments to Tribal governments and provides that the allocation of payments to Tribal governments is to be determined by the Secretary of the Treasury in consultation with the Secretary of the Interior and Indian Tribes.\(^1\)

*Consultation process*

In accordance with Treasury’s Tribal consultation policy, Treasury and the Bureau of Indian Affairs conducted two telephonic Tribal consultations with Tribal leaders and received written comments from Indian Tribes. Treasury also appreciates the submissions made by Indian Tribes in response to Treasury’s request for information.

*Allocation determination*

The CARES Act provides that the Tribal allocation is to be “based on increased expenditures of each such Tribal government (or a tribally-owned entity of such Tribal government) relative to aggregate expenditures in fiscal year 2019 by the Tribal government (or tribally-owned entity)” and “determined in such manner as the Secretary [of the Treasury] determines appropriate to ensure that all amounts” are distributed to Tribal governments.\(^2\)

Based on a reasonable assessment of the reliability, verifiability, and relevance of available data and after consulting with the Bureau of Indian Affairs and Indian Tribes, Treasury has determined that it is reasonable and appropriate to allocate payments based on a formula that takes into account population data, employment data, and expenditure data. This determination is also based on considerations of administrative feasibility—a particularly important factor in light of the need for prompt payment to Tribal governments to meet immediate needs.

By necessity and due to the statutory design, any allocation formula will yield only an estimate of increased eligible expenditures, and the statute therefore grants the Secretary discretion to devise a formula that the Secretary deems appropriate to ensure that all amounts are distributed to Tribal governments.\(^3\) It is of course unknown at present what a Tribal government’s increased expenditures will be over the course of the period beginning March 1, 2020, and ending December 30, 2020, during which expenses to be covered using payments from the Fund may be incurred.\(^4\) Treasury determined that it would not be appropriate to rely entirely on Tribal governments’ fiscal year 2019 expenditures in making allocations, e.g., by providing payments to each Tribal government based on a fixed percentage of such Tribal government’s fiscal year 2019 expenditures.

Treasury believes the allocation of payments should be focused on, to the extent administratively feasible, necessary expenditures that are due to the public health emergency, which are the only expenditures that may be made using payments from the Fund.\(^5\) Treasury observed wide variability in expenditures reported by Tribal governments that appears to be related to differences in the extent to which Tribes and tribally-owned businesses engage in business activities. Although Treasury interprets the CARES Act to permit the provision of certain economic support to affected businesses, not all business expenses will be eligible. Treasury expects that Indian Tribes with less extensive tribally-owned businesses (and therefore

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\(^1\) See section 601(e)(7) of the Social Security Act, as added by § 5001(a) of the CARES Act.

\(^2\) See id.

\(^3\) See id.

\(^4\) See id. at section 601(d)(3).

\(^5\) See id. at section 601(d)(1).
lower overall expenditures) will have a proportionately greater increase in eligible expenditures than those Tribes whose prior year expenditure amount would include expenditures associated with large tribally-owned businesses.

In contrast, Tribal population is expected to correlate reasonably well with the amount of increased expenditures of Tribal governments related directly to the public health emergency, such as increased costs to address medical and public health needs. The Federal government also has reliable and consistently-prepared data for this key variable, discussed further below, that permits payments to be made at this time. Given the importance of providing funding as soon as possible to Tribal governments to address health and human services costs and other costs directly related to COVID-19, Treasury has determined to distribute 60 percent of the $8 billion reserved for Tribal governments immediately based on population.

Treasury will distribute the remaining 40 percent of the $8 billion reserved for Tribal governments based on employment and expenditures data of Tribes and tribally-owned entities. The use of employment data is expected to correlate reasonably well with expenditures related to effects of the emergency, such as the provision of economic support to those experiencing unemployment or business interruptions due to COVID-19-related business closures. Data relating to expected increased expenditures is expected to correlate reasonably well with the variability in the per person costs of service delivery in different tribal environments. Treasury believes it is important to ensure that this data is as consistent across Tribal governments as possible and for that reason intends to request additional information in the near future from Tribal governments as to their employment and expenditures. Treasury intends to determine the specific weight given to employment and expenditure data after receiving such additional submissions. Final payments will be made after data on employment and expenditures are received, reasonably verified, and accounted for in the allocation formula.

Treasury determined that the total number of land acres held by the Tribal government and any tribally-owned entity would not provide a useful indicator of increased expenditures. Although the total number of land acres can indicate increased costs of providing services over a larger area, particularly in remote locations, there are some areas that are so sparsely populated that reliance on this factor likely would overstate the increased marginal costs of Tribal governments in these areas.

**Tribal population data**

For purposes of the payments based on Tribal population, Treasury will refer to the Tribal population data used by the Department of Housing and Urban Development (HUD) in connection with the Indian Housing Block Grant (IHBG) program. This population data is based on Census Bureau data, and Tribal governments are familiar with it and have already been provided the opportunity to scrutinize and challenge its accuracy.

The IHBG program allocation formula uses the American Indian and Alaska Native population count as determined by the Census of each Tribe’s “formula area.” Although the definition of “formula area” was developed by HUD for the specific context of the IHBG program, the formula area corresponds broadly with the area of a Tribal government’s jurisdiction and other areas to which the Tribal government’s

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6 The IHBG formula includes total American Indian and Alaska Native (AIAN) population as part of the needs component. The remainder of the IHBG formula will not be referenced by Treasury in making payments from the Fund.

7 See 24 C.F.R. §§ 1000.330(c), 1000.336.

8 See id. at § 1000.302.
provision of services and economic influence extend. The IHBG formula area is also useful because it incorporates adjustments to address overlapping jurisdictions.

The IHBG population data used by Treasury for the Fund allocation is available from HUD. For Indian Tribes not included in the IHBG population data, HUD provided population figures at Treasury’s request. Treasury will not include state-recognized Tribes that participate in the IHBG program but that are not Indian Tribes as defined by Title V of the CARES Act. Treasury will follow the IHBG practice of calculating a payment amount for each Tribal government based on single-race and then multi-race data and allocating the larger calculation amount for each Tribe.9

**Minimum payment amount**

The population-based allocation will assign a minimum payment of $100,000 to the smallest Indian Tribes as set forth in step 2, below. Only Tribal governments with a population of less than 37 will receive the minimum payment. The decision to apply a minimum payment to such Indian Tribes reflects the greater relative significance that variations in population would have at the low end of the range and the greater marginal costs that small Indian Tribes have in providing services to their people. The establishment of this minimum amount also reflects the clear desire expressed by a substantial number of Indian Tribes during the Tribal consultation process and is set at an amount that should allow funds to be used by Tribes of this size for eligible expenditures.

**Alaska Native corporations**

As previously stated, Treasury, after consultation with the Department of the Interior, has concluded that Alaska Native regional and village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act are eligible to receive payments from the Fund. Payments are not being made to the Alaska Native corporations at this time due to pending litigation.

**Population-based component of allocation formula**

The allocation will result from Treasury taking the following steps:

1. **Step 1.** Calculate the pro-rata payment for each Tribal government based on single-race and then multi-race data for each Tribe’s IHBG formula area, and use the larger result for each Tribal government.

2. **Step 2.** Assign a minimum payment of $100,000 to those Tribal governments that would otherwise receive less than that amount under step 1.

3. **Step 3.** For Tribal governments that would receive a payment greater than the minimum, a pro-rata reduction is made for those amounts above the minimum for each Tribe so that the total amount for all Tribes does not exceed $4.8 billion.

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10 Prior to 2000, the Census required a person to choose a single racial category. Starting in 2000, a person was allowed multiple responses. For example, a person with mixed ancestry could report that they were both AIAN and Asian. Since 2006, successive appropriations acts have directed HUD to run the IHBG formula twice—once counting the needs of all persons who report that they are AIAN, whether they say they are AIAN alone or AIAN in combination with some other race, and then again counting only the needs of persons who identify solely as AIAN. A Tribe’s allocation is based on the definition—either AIAN alone or the broader definition of multi-race AIAN—which provides it with a higher share of total funds. See, e.g., Further Consolidated Appropriations Act, 2020, Public Law 116-94, Div. H, Title II; 133 Stat 2534, 2985.
U.S. TREASURY DEPARTMENT
OFFICE OF PUBLIC AFFAIRS

Press Release: May 5, 2020
Contact: Treasury Public Affairs, (202) 622-2960

Joint Statement by Treasury Secretary Steven T. Mnuchin and Secretary of the
Interior David L. Bernhardt on Distribution of Coronavirus Relief Fund Dollars to
Native American Tribes

WASHINGTON – U.S. Secretary of the Treasury Steven T. Mnuchin and Secretary of the
Interior David L. Bernhardt today issued the following statement after agreeing on a path
forward to provide Coronavirus Relief Fund dollars to Native American Tribes:

“We are pleased to begin making $4.8 billion in critical funds available to Tribal governments in
all states,” said Secretary Mnuchin. “Our approach is based on the fair balancing of tribal
needs.”

“Thanks to President Trump and Secretary Mnuchin for working with Congress to pass the
CARES Act as historic financial support will now begin to be disbursed to Native Americans
battling the COVID-19 health crisis,” said Secretary Bernhardt. “I appreciate the Secretary of
the Treasury’s determination in providing a clear pathway to get these resources promptly
delivered.”

The path forward agreed to by the Secretaries will:

- Distribute 60 percent of the $8 billion to Tribes based on population data used in the
distribution of the Indian Housing Block Grant (IHBG), subject to a floor of
$100,000. This data is based on U.S. Census figures and is already familiar to Tribal
governments.
- Distribute the remaining 40 percent of the $8 billion based on the total number of persons
employed by the Indian tribe and any tribally-owned entity, and further data to be
collected related to the amount of higher expenses faced by the tribe in the fight against
COVID-19.
- Payment to Tribes will begin today based on the population allocation, and will take
place over several banking days. Amounts calculated for Alaska Native Claims
Settlement Act regional and village corporations will be held back until pending litigation
relating to their eligibility is resolved.
• Payments to tribes based on employment and expenditure data will be made at a later date. Treasury will work with Tribes to confirm employment numbers and seek additional information regarding higher expenses due to the public health emergency.

Treasury notes that the pending litigation has introduced additional uncertainty into the process of implementing the allocation and making payments to the Tribes, but Treasury is endeavoring to make payments of the remaining amounts as promptly as possible consistent with the Department’s obligation to ensure that allocations are made in a fair and appropriate manner.
§ 100. Purpose

The Navajo Nation Council has determined that because federal law provides that the Coronavirus Relief Funds shall be for expenditures only through December 30, 2020, Procurement using the CARES Fund must be expedited. To meet the urgent needs of the Navajo People and the Navajo Nation government related to the COVID-19 public health emergency, Procurements utilizing the CARES Fund shall be governed by the Navajo Nation CARES Fund Act and these Expedited Procurement Rules and Procedures, shall adhere to applicable federal procurement requirements, and shall not be subject to the Navajo Nation Procurement Act and its attendant Regulations.

§ 200. Applicability

A. Procurements funded through CARES Fund expenditures shall, and shall be pursuant to the Procurement rules and procedures (“CARES Fund Expedited Procurement”) outlined in this Act once all of the following criteria are satisfied:

1. Shall be used only when necessary for preparation, prevention, and/or response to the COVID-19 public health emergency consistent with guidance issued by the U.S. Department of Treasury, attached as Exhibit B to this Act;

2. The CARES Fund expenditures comply with the Navajo Nation CARES Fund Act and are authorized pursuant to an approved Navajo Nation Fund Expenditure Plan.

B. CARES Fund expenditures must be completed on or before December 30, 2020.

§300. Definitions.

A. “Bid” means an offer to perform a Contract for the provision of Services and/or Goods at a specified price.

B. “Bid Security” means a Bid bond or deposit submitted with a Bid, to guarantee to the Procuring Party that the Bidder, if awarded the Contract, will execute the Contract within a specified period of time and will furnish any bonds or other requirements of the Bid documents.
C. “Blanket Purchase Agreement” is a simplified method of filling anticipated repetitive needs for small quantities of Goods or Services by establishing "charge accounts" with qualified sources. Blanket Purchase Agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

D. “Construction” or “Construction-related” means anything related to and/or the process of building, altering, repairing, improving, renovating or demolishing any structure or building, or other improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

E. “Contract Performance Bond” means a surety bond issued to guarantee satisfactory completion of a project by a Contractor. A Contract Performance Bond must be issued in a form satisfactory to the Controller of the Navajo Nation, and underwritten by a surety company authorized to do business within the Navajo Nation in an amount equal to one hundred percent (100%) of the price specified in the Contract “Payment Bond” means a surety bond posted by a Contractor to guarantee that all its subcontractors and material suppliers for the project will be paid per their Contracts. A Payment Bond must be issued in a form satisfactory to the Controller of the Navajo Nation underwritten, and by a surety company authorized to do business within the Navajo Nation for the protection of all persons supplying labor and material to the Contractor or its subcontractor for the performance of the work provided in the Contract in an amount equal to one hundred percent (100%) of the price specified in the Contract.

F. “Contract” means all types of Navajo Nation agreements, reflecting mutual decisions, arrangements, or positions, regardless of what they may be called, for the Procurement of Goods, Services, or Construction or Construction-related activities. The term Contract does not include agreements, including prime Contracts and grants, between the Navajo Nation and federal, state, and local governments for the provision of governmental Services to Navajos and other persons within the Navajo Nation.

G. “Contractor” means any person having a Procurement Contract with a Division, Department, Office, or Program of the Navajo Nation.

H. “Designee” means an individual who is an authorized representative acting within the limits of authority.

I. “Fund Expenditure Plan” means a plan approved by the Navajo Nation Council pursuant to a Resolution approving an appropriation from the CARES Fund. A Fund Expenditure Plan must comply with the requirements set forth in the Navajo Nation CARES Fund Act and must explain how the appropriated CARES Fund monies will be managed and expended.
J. “Goods” means all moveable tangible items of personal property, such as materials, supplies, equipment, and commodities; printing and insurance; and may also include Services such as delivery, setup, installation, and/or warranties incidental to the Goods, costing not more than the lesser of (a) ten percent (10%) of the total cost of the Goods, or (b) $5,000.00.

K. “Maximum Feasible Price” means the estimated cost of the Good and/or Service being solicited. This Maximum Feasible Price establishes the highest amount of funds the Procuring Party is willing to expend on the Procurement, and restricts the price for which a Procurement can be made.

L. “May” denotes the permissive.

M. “Procurement” means buying, purchasing, renting, leasing, or otherwise acquiring any Goods, Services, and/or Construction. It also includes all functions pertaining to the acquisition of any such Goods, Services, and/or Construction.

N. “Procurement File” means a compilation of all documents related to a CARES Fund Procurement, detailing all of the actions taken in relation to the Procurement.

O. “Procuring Party” means any Division, Department, Office, Program, and non-LGA certified Chapter of the Navajo Nation.

P. “Public Notice” shall include publication on an official Navajo Nation website, publication in a print or online newspaper of general circulation, or publication in a print or online journal for the profession or trade relevant to the Goods and/or Services sought.

Q. “Purchase Order” means a Contract executed for Goods. All required Procurement and requisition procedures must be completed before a Purchase Order is issued. Only the standard Navajo Nation Purchase Order form, approved by the Navajo Department of Justice and the Office of the Controller, shall be used in Navajo Nation Purchase Order Procurements.

R. “Quotation” means a document submitted by an entity detailing their proposed delivery of a Good, Service, Construction, or Construction-related activity, including but not limited to price, quantity, delivery method, and time for completion.

S. “Scope of Work” means the Contractual terms describing Services to be performed. The Scope of Work should include, but not be limited to, any milestones, reports, deliverables, and end products that are expected to be provided by the Contractor, and may contain a timeline.
T. “Services” means the furnishing of labor, time, or effort by a Contractor, not involving the delivery of a specific end product other than reports which are incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

U. “Shall” denotes the imperative.

V. “Solicitation” means the process of seeking information, proposals, Bids, and/or Quotations.

W. “Source List” means a list maintained and published by the Business Regulatory Department of the Division of Economic Development, certifying Priority #1 and #2 entities and persons as defined and required by the Navajo Business Opportunity Act, 5 N.N.C. § 201 et seq.

X. “Division, Department, Office, or Program of the Navajo Nation” means any Department, Commission, Council, Board, Bureau, Committee, Institution, Legislative Body, Agency, Government Corporation, non-Local Governance Act (“LGA”) certified Chapter, or other establishment or official of the Executive, Legislative, or Judicial Branch of the Navajo Nation government. It does not mean an a LGA certified Chapter of the Navajo Nation, an Enterprise or Authority of the Navajo Nation.

§ 400. CARES Fund Expedited Procurement Rules and Procedures

Procurements utilizing the CARES Fund shall be governed by the following rules and procedures:

A. Compliance with the Navajo Business Opportunity Act.

1. To the fullest extent possible, the Procuring Party shall procure in a manner consistent with the Navajo Business Opportunity Act, 5 N.N.C. § 201 et seq., so that certified entities receive preference under CARES Fund Expedited Procurement.

2. The Procuring Party shall review the latest available Source List, compiled by the Business Regulatory Department of the Division of Economic Development, as their primary source for identifying entities certified under the Navajo Business Opportunity Act.

3. The Procuring Party may look beyond the Source List only when no certified entity can be found on the Source List to fulfill the required need. In such cases, the Procuring Party shall keep on file a copy of the Source List used to determine that no certified entity was available.
B. Construction and Construction-related activities.

1. Construction and Construction-related activities can only be conducted by those Navajo Nation Departments and Divisions vested with the power to engage in Construction and Construction-related activities, per Navajo law.

2. Bid Security shall be required for all Construction and Construction-related Contracts with an estimated price exceeding fifty thousand dollars ($50,000). A Procuring Party may require Bid Security for all Construction and Construction-related Contracts when the Contract price is estimated to be below fifty thousand dollars ($50,000) if the Procuring Party believes circumstances warrant such a requirement.

3. Bid Security shall be in an amount equal to at least ten percent (10%) of the Bid amount, and acceptable Bid Security is limited to an annual or one-time bond in a form satisfactory to the Controller of the Navajo Nation underwritten by a surety company authorized to do business within the Navajo Nation or the equivalent in cash, a bank certified check, or cashier’s check payable to the Navajo Nation.

4. A Contract Performance Bond and Payment Bond shall each be required for all Construction and Construction-related Contracts with an estimated price exceeding fifty thousand dollars ($50,000). The Contract Performance Bond and Payment Bond shall be delivered by the Contractor to the Procuring Party following award of a Contract and before commencement, and shall become binding upon the parties to the Contract upon execution of the Contract.

   a. A Contract Performance Bond shall be delivered in a form satisfactory to the Controller of the Navajo Nation, and underwritten by a surety company authorized to do business within the Navajo Nation in an amount equal to one hundred percent (100%) of the price specified in the Contract;

   b. A Payment Bond shall be delivered in a form satisfactory to the Controller of the Navajo Nation, and underwritten by a surety company authorized to do business within the Navajo Nation in an amount equal to one hundred percent (100%) of the price specified in the Contract.

5. The head of the Procuring Party's Department or the designated Chapter Official, with the concurrence of the Controller of the Navajo Nation or designee, may reduce the amount of the Contract Performance and Payment Bonds to fifty percent (50%) of the Contract price for each Bond only when:

   a. retention on the Contract is set at fifty percent (50%) or above; or
b. the Contractor provides an irrevocable letter of credit equal to at least fifty percent (50%) of the Contract price.

C. Solicitation.

1. Pre-Solicitation documentation
The Procuring Party shall create a Procurement File at the beginning of all CARES Fund Procurements, documenting all of the following:

a. A Navajo Nation Council Resolution appropriating funds from the CARES Fund for the proposed expenditure;

b. A Navajo Nation Fund Expenditure Plan permitting the proposed expenditure;

c. Creation of a Scope of Work detailing the required Good, Service, Construction or Construction-related Procurement, including, at minimum, a description of the quantity and type needed;

d. How the Good, Service, Construction, or Construction-related Procurement is necessary to prepare, prevent, or respond to the Navajo Nation’s public health emergency with respect to the COVID-19 virus;

e. Determination of a Maximum Feasible Price for the proposed Procurement based on budget constraints and an independent cost estimate, including but not limited to current market price, unit price from a previous purchase, prototype cost, or price from a vendor catalog or other published advertisement. This Maximum Feasible Price shall not be revealed to the public, including any respondents to the Solicitation, until a final award is made, Public revelation of the Maximum Feasible Price for a Solicitation shall result in the immediate cancellation of the Solicitation;

f. The criteria for evaluating responses to the Solicitation request, including price, qualifications, and time constraints, as applicable.

2. Manner of Solicitation

a. All Solicitations must detail all of the following, a copy of which shall be kept in the Procurement File:

i. The Good, Service, Construction, or Construction-related need required;

ii. What documents must be submitted as part of an entity’s response, along with any other submission details, including but not limited to page limits, and proof of certification under the Navajo Business Opportunity Act;
iii. Required insurance coverage, which must be developed in conjunction with the Risk Management Program. A memorandum, from the Risk Management Program, must certify that the insurance coverage required has been reviewed and approved by that office;

iv. Required Contract Performance and Payment Bonds for Construction and Construction-related Procurement, which must be developed in conjunction with the Risk Management Program, the Capital Projects Management Department of the Division of Community Development, and the Department of Justice for Executive Branch Procurement, the Office of Legislative Counsel for Legislative Branch Procurement, or the Chief Justice for Judicial Branch Procurement, and shall include the following:

   a. the closing date for receiving responses,

   b. the manner in which an interested entity can submit a response, including the following where the Procuring Party chooses to allow e-mail response submissions:

      i. Notice that the response must be copied to the Business Regulatory Department at mcheromiah@navajobusiness.com,

      ii. That the e-mail response title must state only the entity’s certified Priority status, followed by the title of the Procurement solicitation,

      iii. The body of email response shall only contain a copy of the entity’s Priority certificate, and

      iv. The details of the entity’s response, including but not limited to qualifications and price, shall be included in separate attachments to the email response;

   c. the evaluation criteria to be used in selecting a respondent for an award. This listing of evaluation criteria must not include the Maximum Feasible Price set by the Procuring Party, and if it does, shall result in immediate cancellation of the Solicitation;

   d. Notice that the Navajo Nation is not required to enter a Contract pursuant to the Solicitation, and may reissue a Solicitation for the
same Good, Service, Construction or Construction-related Procurement;

e. Notice that the Navajo Nation is a sovereign government and all Contracts entered into as a result for the Solicitation shall comply with the Navajo Nation law, rules and regulations, including the Navajo Preference in Employment Act, and applicable federal law, rules, and regulations;

b. Oral and Written Solicitation

   i. All Construction and Construction-related Solicitations must be in writing and require Public Notice.

   ii. All responses to Solicitations must be in writing, and included in the Procurement File.

   iii. The Procuring Party may solicit Quotations orally, if the Good and/or Service to be provided would not exceed a cost of twenty-five thousand dollars ($25,000). The Procuring Party must make and keep records of the oral Solicitation, which together with all responses received, shall be kept in the Procurement File.

   iv. The Procuring Party must solicit Quotation(s) in writing, if the Goods or Services, to be provided would exceed a cost of twenty-five thousand dollars ($25,000). The Procuring Party must keep records of the written Solicitation, which together with all responses received, shall be kept in the Procurement File.

c. Public Notice

   i. Public Notice shall be required for all Construction and Construction-related Procurement.

   ii. For non-Construction and non-Construction-related Procurement, no Public Notice shall be required if the cost to procure the Good and/or Service does not exceed one hundred thousand dollars ($100,000).

   iii. The Procuring Party shall give Public Notice of the Solicitation for a reasonable time, based on circumstances such as the urgency of the need and the size and complexity of the Procurement, prior to the closing date for receiving responses to the Solicitation.
iv. The Procuring Party shall also provide the Business Regulatory Department, of the Division of Economic Development with the following, as applicable:

   a. A copy of the solicitation issued;

   b. A copy of any public notices issued;

   c. A list of all entities notified of the procurement opportunity, including the date and manner of notification.

   The above-listed documents must be submitted to the Business Regulatory Department before the closing date for receiving solicitation responses.

d. Number of Solicitations Required

   i. For Procurements of Goods and/or Services costing less than twenty-five thousand dollars ($25,000), the Procuring Party shall solicit at least one (1) Quotation from vendors/Contractors customarily providing the Good and/or Service being procured.

   ii. For Procurements of Goods and/or Services costing less than seventy-five thousand dollars ($75,000), the Procuring Party shall solicit at least two (2) Quotations from vendors/Contractors customarily providing the Good and/or Service being procured.

   iii. For Procurements of Goods and/or Services costing more than seventy-five thousand dollars ($75,000) shall solicit at least three (3) Quotations from vendors/Contractors customarily providing the Good and/or Service being procured.

   iv. If the Procuring Party determines that it is in the Navajo Nation’s best interest, the Procuring Party may request additional and/or revised Quotations. Any such determination must be documented and included in the Procurement File.

e. Single Source Solicitation

   i. For Procurements of Goods and Services costing up to one hundred thousand dollars ($100,000), the Procuring Party may solicit from a single source if the Procuring Party determines the price to be fair and reasonable based on research, previous purchases, or experience, and satisfies the following:
ii. For purchases exceeding one hundred thousand dollars ($100,000), the Procuring Party may solicit from a single source if the Procuring Party, with the concurrence of the Division Head, determines that there is only one reasonably available source that can provide the type, quality, and quantity of Goods and/or Services sought, within the given time constraints. In determining whether only one source is reasonably available, the Procuring Party shall evaluate whether, in light of all circumstances surrounding the Procurement, it is reasonable and justifiable to procure without competition. Factors to consider include, but are not limited to whether:

a. there is a unique Procurement need;

b. one source is uniquely qualified to fulfill the Procurement need due to offering proprietary products, or Services specifically tailored to the Navajo Nation;

c. one source has specialized knowledge of Navajo Nation requirements and systems, as well as expertise serving the Navajo Nation;

d. one source has served the Navajo Nation in the past and that maintaining continuity in the provision of specific Goods, Services, Construction, or Construction-related activities by that vendor is in the best interest of the Navajo Nation;

e. The vendor’s location and delivery/Service area is in close proximity to the Navajo Nation, which would facilitate fast delivery of the required Good, Service, Construction, or Construction-related item;

f. no other Goods, Services, Construction, or Construction-related item will satisfy the Procurement request.

iii. The Procuring Party must document, in a memorandum concurred with by the Division Head, the reason for procuring from a single source, including why the chosen source is the only reasonably available choice. This memorandum shall be included in the Procurement File.

iv. Single source Solicitation of Construction or Construction-related Procurement
a. Construction or Construction-related Solicitation can only be done from a single source with written concurrence of the Head of the Procuring Party’s Division and the Department of Justice for Procurement by the Executive Branch, the Office of Legislative Counsel for Procurement by the Legislative Branch, or the Chief Justice for Procurement by the Judicial Branch.

b. The written concurrence detailed above must be in the form of a memorandum, and must detail the need for Construction or Construction-related single source Solicitation, showing at minimum, that there is no other practicable option. This memorandum shall be included in the Procurement File.

D. Evaluation of responses

1. The Procuring Party shall open and evaluate all responses received, in conjunction with the Business Regulatory Department of the Division of Economic Development, and in keeping with the Navajo Business Opportunity Act.

2. The Procuring Party shall document all of the following:

   a. The name, address, and contact information of all entities responding to the Solicitation; and

   b. The date and details of each response submitted, including price and all other factors to be used in evaluating responses.

E. Award

1. The Procuring Party shall select an entity with whom to negotiate a Contract based on the criteria previously enumerated in the Solicitation, and provide the details of the chosen entity’s response and the reason for selecting the entity to the Head of the Procuring Party’s Division for review and approval.

2. The Procuring Party must document the name, address, and contact information for the entity selected for Contract award, adding it to the Procurement File.

3. Following review and approval by the Head of the Procuring Party’s Division, the Procuring Party shall deliver an award letter to the chosen entity, and require that the chosen entity respond with a letter accepting or denying the Contract.
4. The award letter shall include language stating that the Navajo Nation is not bound to 
enter a Contract pursuant to the Solicitation, and may reissue a Solicitation for the same 
Good, Service, Construction or Construction-related Procurement.

5. The Procuring Party must document the approval by the Head of the Procuring Party’s 
Division, as well as the award letter and any response from the chosen entity, adding it 
to the Procurement File.

F. Contract

1. Once the required steps have all been completed for the Procurement in question, the 
Procuring Party shall develop a written Contract covering the Procurement identified 
in the Solicitation, compliant with Navajo Nation law. The Contract shall be developed 
in conjunction with the Department of Justice for all Executive Branch Procurement, 
the Office of Legislative Counsel for all Legislative Branch Procurement, and the Chief 
Justice for all Judicial Branch Procurement.

2. Purchase Orders may be used to Contract for the Procurement of Goods, but shall not 
be used to Contract for the Procurement of Services. Generally, when a Procurement 
involves both Goods and Services, a Service Contract shall be used. The Purchasing 
Section of the Office of the Controller, in consultation with the Navajo Nation 
Department of Justice, or Office of Legislative Counsel for Procurements involving the 
Legislative Branch, or the Chief Justice for Procurements involving the Judicial 
Branch, shall make the final determination of whether to classify the Procurement as a 
Procurement of Goods or a Procurement of Services. Draft contract packages shall be 
reviewed and deemed (in)sufficient by all the following offices, and within the 
following timelines, prior to execution of the contract:

   a. Within three (3) business days
      i. Division Director of the Procuring Party’s office;

      ii. The Department of Justice for Executive Branch 
          Procurement, the Office of Legislative Counsel for 
          Legislative Branch Procurement, or the Chief Justice for 
          Judicial Branch Procurement;

      iii. The Office of the Controller;

   b. Within two (2) business days

      i. The Office of Management and Budget;

      ii. The Business Regulatory Department.
3. The above submission must also include a copy of the Risk Management Program memorandum certifying that the insurance coverage required has been reviewed and approved by that office.

G. Blanket Purchase Agreements

1. Procurements utilizing Blanket Purchase Agreements shall follow the CARES Fund Expedited Procurement rules and procedures.

2. Blanket Purchase Agreements may be used for Procurement of Goods and/or Services in the 2020 and 2021 fiscal year, but may not exceed a completion date of December 30, 2020.

3. Blanket Purchase Agreements for Goods shall be treated as a Procurement for Goods, and Blanket Purchase Agreements for Services shall be treated as Procurement of Services, and both shall initially be procured and Contracted for in adherence to these CARES Fund Expedited Procurement Rules and Procedures.

4. Non Construction or Construction-related Blanket Purchase Agreements for Services shall be completed utilizing the Navajo Nation Standard Professional Services Contract, available through the Navajo Nation Department of Justice, and shall contain a scope of work broad enough to permit filling anticipated repetitive needs. The Procurement File for Blanket Purchase Agreements for Services shall include a memorandum detailing each request for Service fulfillment, and indicating that the request does not include a change in cost for the Agreement.

   a. Blanket Purchase Agreements for Construction or Construction-related services shall be completed utilizing the Construction contract appropriate for the Services contemplated, a decision to be made in conjunction with the Capital Projects Management Department of the Division of Community Development, and the Department of Justice for Executive Branch Procurement, the Office of Legislative Counsel for Legislative Branch Procurement, or the Chief Justice for Judicial Branch Procurement.

5. To the extent practicable, Blanket Purchase Agreements for Goods or Services of the same type should be placed concurrently with more than one qualified entity. All competitive sources be given an equal opportunity to furnish Goods or Services under Blanket Purchase Agreements.

6. At a minimum, Blanket Purchase Agreements shall contain the following provisions:
a. A statement that the chosen entity shall furnish the Goods or Services described, during a specified period and within a stipulated aggregate amount, if any;

b. A statement that the Navajo Nation is obligated only to the extent of authorized orders actually placed against the Blanket Purchase Agreement;

c. A detailed description of the required ordering, invoicing, and delivery procedures;

d. A statement that the Procuring Party or the Office of the Controller of the Division of Finance shall provide the chosen entity with a notice of individuals authorized to place orders under the agreement, identified by organizational component and the dollar limitation per order for each individual.

7. Once the required steps have all been completed for the Procurement in question, the Procuring Party shall develop a written Blanket Purchase Agreement, compliant with Navajo Nation law. The Blanket Purchase Agreement shall be developed in conjunction with the Department of Justice for all Executive Branch Procurement, the Office of Legislative Counsel for all Legislative Branch Procurement, and the Chief Justice for all Judicial Branch Procurement.

a. Draft Blanket Purchase Agreements shall be reviewed and deemed (in)sufficient by all the following offices, and within the following timelines, prior to execution of the contract:

i. Within three (3) business days

   1. Division Director of the Procuring Party’s office;

   2. The Department of Justice for Executive Branch Procurement, the Office of Legislative Counsel for Legislative Branch Procurement, or the Chief Justice for Judicial Branch Procurement;

   3. The Office of the Controller;

ii. Within two (2) business days

   1. The Office of Management and Budget;
2. The Business Regulatory Department.
   
b. The above submission must also include a copy of the Risk Management Program memorandum certifying that the insurance coverage required has been reviewed and approved by that office.

8. Orders against Blanket Purchase Agreements shall be placed only after prices are obtained. When concurrent Blanket Purchase Agreements for similar Goods or Services are in effect, orders shall be equitably distributed to the extent practicable. In those instances, where there is an insufficient number of Blanket Purchase Agreements for any given class of Goods or Services to assure adequate competition, the Procuring Party shall solicit Quotations from other sources.

9. Orders against Blanket Purchase Agreements shall only be made by individuals formally authorized to place orders and generally will be made orally, except that informal correspondence may be used when ordering against agreements outside the local trade area. Written orders may be executed on forms approved by the Office of the Controller within the Division of Finance.

10. Pre-existing Blanket Purchase Agreements shall not be used for Procurements utilizing the CARES Fund. Blanket Purchase Agreements utilizing the CARES Fund shall not be used with a different fund source, nor after December 30, 2020.

11. All details of Blanket Purchase Agreements, from Solicitation to Contract award and any recurring options, must be documented in a Procurement File.

H. Insurance

   The entity selected for award must provide proof of insurance coverage, as outlined above in this CARES Fund Expedited Procurement Rules and Procedures.

I. Payments

1. The payment procedures established by the Office of the Controller, Division of Finance shall be adhered to and shall not begin until Goods have been remitted and/or Services have been performed pursuant to the Contract and completed to the satisfaction of the Procuring Party.

2. The Procuring Party is responsible for filling out a Receiving Record form for Procurement of Services, available from the Office of Management and Budget, by stating exactly what Services were performed and completed, and that the completed Services are satisfactory to the Procuring Party.
a. The Procuring Party is responsible for filling out a Receiving Prints form for Procurement of Goods, available from the Office of the Controller, stating with specificity what Goods were received and that the Goods were deemed satisfactory and accepted by the Procuring Party.

3. The completed Receiving Record form and the Vendor's Invoices shall be submitted to Accounts Payable Section of the Office of the Controller of the Division of Finance for processing of payment. It is the responsibility of the Procuring Party to ensure entities are paid within a reasonable time period, by promptly submitting all invoices to the Office of the Controller of the Division of Finance.
MEMORANDUM

TO: Honorable Seth Damon, Speaker
24th Navajo Nation Council

FROM: Dana L. Bobroff, Chief Legislative Counsel
Office of Legislative Counsel

DATE: May 7, 2020

SUBJECT: AN ACTION RELATING TO LAW AND ORDER, BUDGET AND FINANCE, AND NABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; WAIVING 12 N.N.C. §§ 301 ET SEQ.; ENACTING THE “NAVAJO NATION CARES FUND ACT” BY AMENDING TITLE 12 OF THE NAVAJO NATION CODE AND ESTABLISHING “THE NAVAJO NATION CARES FUND” TO BE COMPRISED OF THE NATION’S SHARE OF THE CORONAVIRUS RELIEF FUND RECEIVED FROM THE UNITED STATES PURSUANT TO TITLE V OF THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (“CARES 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.
TITLE: An Action Relating to Law And Order, Budget And Finance, And Nablik’iyáti’ Committees, And the Navajo Nation Council: Waiving 12 N.N.C. §§ 301 et seq.; Enacting the “Navajo Nation CARES Fund Act” by amending Title 12 of the Navajo Nation Code and establishing “The Navajo Nation CARES Fund” to be comprised of the Nation’s share of the Coronavirus Relief Fund received from the United States pursuant to Title V of the Coronavirus Aid, Relief, And Economic Security Act (“CARES ACT”)