



Navajo Nation Council receives DOJ and Legislative Counsel guidance on allowable coronavirus relief funding costs

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WINDOW ROCK, Ariz. — The Naabik'iyáti' Committee of the 24th Navajo Nation Council began a series of work sessions Thursday aimed at establishing a unified understanding of immediate and longer-term priorities for the expenditure of federal Coronavirus Aid, Relief, and Economic Stimulus (CARES) Act funding.

The 24-member Naabik'iyáti' Committee, chaired by Speaker Seth Damon, heard from the Navajo Nation Office of Legislative Counsel and the Department of Justice Tax and Finance Unit, who presented an overview of the federal CARES Act and the Navajo Nation's own CARES Fund Act, which was approved by the Navajo Nation Council on Friday.

Chief Legislative Counsel Dana Bobroff explained that the Navajo Nation CARES Fund Act establishes a system for allocating the more than \$600 million in federal COVID-19 relief aid. Under the process, any number of expenditure plans can be developed by Navajo Nation programs, enterprises, chapters as well as non-governmental entities. Expenditure plans, once approved through legislation, would be subject to presidential line-item veto.

The Department of Justice further presented on the federal CARES Act, which was passed by the US Congress and signed into law by President Trump on Mar. 27, 2020. Under Title 5 of that act, \$8 billion was set aside for all tribes for coronavirus emergency aid. DOJ reported the Nation's share of the first distribution of tribal aid was \$600,559,530.10, which took place on May 5.

"There are three [federal] criteria and requirements, and we have to satisfy all three requirements," stated DOJ. "If the Nation expends Title 5 CARES funds for purposes or a project that does not meet all three requirements, the Nation will have to repay the federal government."

The federal guidelines impose a timeline for allowable COVID-19 costs that begin Mar. 1, 2020 and ends Dec. 30, 2020. "This is a use-it or lose-it situation, and the clock is ticking," said DOJ.

Treasury Guidance (Apr. 22, 2020)

After the federal CARES Act was enacted, the US Department of the Treasury published guidance on Apr. 22 titled "Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments." The Treasury guidance provided more detail to governments across the country regarding the three requirements.

The Navajo Nation's attorneys stated, "The Treasury guidance says the expenditure must be incurred 'due-to' the public health emergency, which means the expenditures must be used for actions taken to respond to the public health emergency." They continued by explaining that the Treasury guidance gives consideration to government officials, including the Navajo Nation's Executive, Legislative, and Judicial Branches, for determining eligible costs for using federal CARES Act funding.

The second federal requirement restricts eligible expenditures to costs that the Navajo Nation didn't plan for in its FY 2020 Comprehensive Budget, which was approved in Sep. 2019. An exception is made for line-items, like program supply budget line-items, are allowed if the costs were now going towards something substantially different, like personal protective equipment (PPE).

DOJ added that supplemental appropriations, like the \$4 million approved by the Navajo Nation Council in March and the \$2.4 million for the Division of Public Safety at Friday's special session, are eligible to be paid by the CARES funding because they were approved as emergency allocations.

Some examples of allowable costs included in the Treasury guidance include expenses to ensure safe distancing, technological improvements in connection with school closings, telework improvements for public employees, and other expenses reasonably necessary for the government to function. The guidance also disallows revenue replacement costs, like filling short-falls in revenue, and double-dipping in federal reimbursements.

The third requirement imposes a deadline on governments for incurring eligible costs of Dec. 30, 2020. A cost is incurred when funds are expended to cover the cost. "Currently, this is the law that we're dealing with," said DOJ.

Frequently Asked Questions

The Treasury Department also published a 36-item document on May 4 titled "Coronavirus Relief Fund Frequently Asked Questions." According to that document, governments are not required to submit proposed expenditures to the Treasury for approval. DOJ added that personnel costs for public health and public safety employees are eligible under federal CARES funding, emphasizing that costs must have been unplanned-for and unforeseen.

They emphasized that the Treasury states federal CARES funding cannot be used to replace lost government revenues. "Navajo leaders are discussing, right now, capital improvement projects, such as water, power, telecommunications, and so forth," said DOJ. They pointed out that the general answer is 'no,' funds are not for capital improvement projects. However, projects focusing on COVID-19 mitigation, response, and other measures can be allowed.

Oversight

DOJ explained that the Inspector General of the US Treasury is empowered to review and make determinations about the proper use of the federal CARES Act funding. Though this applies to all governments, including state, local, and county governments, DOJ pointed out that the Navajo Nation received a substantial portion of the allocation to Tribal nations and that council delegates need to be aware of a potential audit.

Expenditure Plan Template Draft

Chief Legislative Counsel Bobroff also presented a draft expenditure plan template during the overview. "Using a template will be much easier for Council and other leadership to compare various proposals," said Bobroff.

Under the proposed template, organizations will answer questions relating to requested amounts, activities, oversight agencies, funding administrator, and supporting documentation. Bobroff said the proposed expenditure plan template can be adapted for Navajo Nation programs for a similar funding process.

Delegate questions

The Naabik'iyáti' Committee asked questions to Chief Legislative Counsel and the DOJ attorneys regarding internal 'red-tape' and utilizing the funds for capital improvement projects involving water, electricity, and other projects.

Council Delegate Pernell Halona argued that residential waterlines should be considered an acceptable cost because large areas of the Navajo Nation don't have access to clean, running water. If they did, households would be able to more frequently wash hands and carry out cleaning activities without hauling

water. “To have the water, you need to have electricity or propane to keep the water hot. That’s also a necessity to keep your health, your hands washed and to clean everything. We’re asking if that’s enough to justify the waterlines and electrical lines that we need to be putting up,” said Delegate Halona.

DOJ restated delegate questions in one question, “The question is, ‘Can we use coronavirus relief funds for all our water projects and electricity and broadband projects?’ The answer is probably not.” However, it’s not a blanket answer, and the proposed expenditure plan template presented earlier will help Navajo leaders make the argument that each project is necessary to addressing the public health emergency.

DOJ provided the committee with the guidance that when it comes to the risk that the Inspector General of the US Treasury would adversely determine if a particular cost was allowable, the discussion by Navajo leaders on particular projects will help in those decisions.

A specific listing

Members of the Naabik’iyáti’ Committee discussed allowable and unallowable costs for federal CARES funding. DOJ restated that governments, including the Navajo Nation, are not required to submit expenditure plans to the Treasury for approval. While there are examples from the US Treasury, DOJ stated that an exhaustive list was not provided intentionally. “Treasury didn’t want to limit the possibilities, but they did want to give some guidance...for leadership to base their decisions on,” said DOJ.

Síhásin Fund projects

Because the Navajo Nation already has a listing of water projects intended to be addressed through the Navajo Nation Síhásin Fund, Navajo leaders have questioned whether those proposals are eligible expenditures. Since those projects are not expressly included in the FY 2020 Comprehensive Budget, DOJ acknowledged that an argument could be made that they are eligible. Of those projects, DOJ said it would be up to the Navajo Nation leadership to use its judgment with tools, like the proposed expenditure plan template, to make that determination.

“Are [Síhásin Fund projects] reasonably necessary in the reasonable judgment of leadership? Are they due to the COVID emergency? Are they part of a mitigation measure necessary to address COVID? Such as the CDC’s water washing and social distancing [guidelines],” stated DOJ. Chief Legislative Counsel Bobroff emphasized that each question that is part of the proposed expenditure plan template is intended to provide Navajo leaders with enough information to make decisions about allowable and unallowable expenses.

The discussion came to a close with recommendations from council delegates for presentations and information from Navajo Nation enterprises. The Naabik’iyáti’ Committee will continue discussions on CARES Act projects as the Navajo Nation awaits action by President Nez. The Navajo Nation CARES Fund Act, or Resolution No. CMY-44-20, was submitted to the Office of the President and Vice President for a period of ten days. If President Nez does not act on that resolution, it will become Navajo Nation law.

On May 22, the Naabik’iyáti’ Committee will hold its next work session to receive information on water projects, and on May 26, a work session will be held to review economic development projects.

The Navajo Nation Department of Justice Tax and Finance Unit is located in the Executive Branch of the Navajo Nation and is led by Assistant Attorney General Jana C. Werner, who provided the DOJ’s guidance with Principal Attorney Mel Rodis.

The Naabik’iyáti’ Committee is one of five standing committees of the 24th Navajo Nation Council, situated in the Legislative Branch. It is comprised of all 24 council delegates and is chaired by Speaker Seth Damon.

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