

THE NAVAJO NATION
LEGISLATIVE BRANCH
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LEGISLATION NO: _0264-21_

SPONSOR: Eugene Tso

TITLE: An Action Relating to an Emergency and the Navajo Nation Council; Reallocating Unexpended CARES Funds Previously Allocated to the Phase II Hardship Assistance Expenditure Plan Through Resolution No. CJN-35-21 to Hardship Assistance Recipients Age 60 and Over

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LEGISLATION SUMMARY SHEET

TRACKING NO. 0264-21

DATE: December 17, 2021

TITLE OF LEGISLATION: AN ACTION RELATING TO AN EMERGENCY AND THE NAVAJO NATION COUNCIL; REALLOCATING UNEXPENDED CARES FUNDS PREVIOUSLY ALLOCATED TO THE PHASE II HARDSHIP ASSISTANCE EXPENDITURE PLAN THROUGH RESOLUTION NO. CJN-35-21 TO HARDSHIP ASSISTANCE RECIPIENTS AGE 60 AND OVER

PURPOSE OF THIS LEGISLATION: to approve a reallocation of approximately \$16,000,000 in CARES Hardship Assistance Phase II funds to Eligible Elders age 60 and over; this is Emergency Legislation because the Navajo Nation faces the possible loss of these federal funds on the reversion date of December 31, 2021.

OLC No. 21-524-1

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL - Third Year, 2021

Introduced by:



(Prime Sponsor)

Tracking No. 0264-21

AN ACTION
RELATING TO AN EMERGENCY AND THE NAVAJO NATION
COUNCIL; REALLOCATING UNEXPENDED CARES FUNDS
PREVIOUSLY ALLOCATED TO THE PHASE II HARDSHIP ASSISTANCE
EXPENDITURE PLAN THROUGH RESOLUTION NO. CJN-35-21
TO HARDSHIP ASSISTANCE RECIPIENTS AGE 60 AND OVER

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. Navajo Nation law governing proposed legislation that addresses an urgent matter, provides as follows: “[m]atters constituting an emergency shall be limited to the cessation of law enforcement services, and disaster relief services, fire protection services or other direct services required as an entitlement under Navajo Nation or Federal law, or [matters] which directly threaten the sovereignty of the Navajo Nation. Such an emergency matter must arise due to the pressing public need for such resolution(s) and must be a matter requiring final action by the Council.” 2 N.N.C. §164 (A)(16).
- C. This legislation is offered as an emergency resolution pursuant to 2 N.N.C. §164(A)(16) because the possible loss by the Nation of an estimated \$16 million in COVID-Coronavirus Relief Funds is a direct threat to disaster and COVID-19 relief services to the Navajo People,

1 and therefore constitutes a pressing public need requiring immediate resolution.

2
3 **SECTION TWO. FINDINGS**

4 A. On June 30, 2021 the Navajo Nation Council adopted Resolution No. CJN-35-21, which was
5 signed into law on July 2, 2021 by Navajo Nation President Jonathan Nez. **EXHIBIT A.**

6 B. CJN-35-21 established the “Navajo Nation CARES Fund Phase II Hardship Assistance
7 Expenditure Plan” that was funded by the remaining balance in the Navajo Nation’s first
8 “Hardship Assistance Expenditure Plan” account, which Plan was approved in Resolution No.
9 CJY-67-20, as amended by Resolution No. CS-74-20 (see also Naabik’íyáti’ Committee
10 Resolution No. NABIO-49-20 and Resolution No. NABID-63-20).

11 C. Despite the diligent efforts of the Office of the Controller (“OOC”) over the past several
12 months, approximately 7,500 applicants for Phase II Hardship Assistance funds who were
13 approved for payments and were mailed checks by the OOC have not yet cashed or deposited
14 them. These checks are now void and will not be honored by any bank or financial institution.
15 As a result, the OOC estimates that as of December 7, 2021 the total amount of outstanding
16 Phase II Hardship Assistance checks amounts to approximately \$8,200,000. **EXHIBIT B.**

17 D. Moreover, the OOC has only received approximately 30,000 applications for Phase II
18 Hardship Assistance instead of the 80,000 applications that OOC anticipated back in June
19 2021. **EXHIBIT C.**

20 E. Because of the thousands of uncashed checks and far fewer applications submitted, there now
21 remains an available balance in the Navajo Nation CARES Phase II Hardship Assistance
22 Expenditure Plan of approximately \$16 million. These funds are unexpended and are available
23 to the Navajo Nation for other CARES-eligible uses.

24 F. The CARES Act provides that payments from the Coronavirus Relief Fund may only be
25 used to cover costs that were incurred during the period that begins on March 1, 2020, and
26 ends on December 31, 2021.

27 G. Previous Treasury Guidance provided that costs were considered to be incurred when goods
28 are delivered and services are performed. On December 14, 2021, Treasury issued revised
29 guidance which clarified that a cost associated with a necessary expenditure incurred due to
30 the public health emergency is considered to have been incurred by December 31, 2021, if

1 the recipient has incurred an obligation with respect to such cost by December 31, 2021.
2 Treasury defines “obligation” for this purpose as an order placed for property and services
3 and entry into contracts, subawards, and similar transactions that require payment.
4 Recipients are required to expend their funds received from the Coronavirus Relief Fund to
5 cover these obligations by September 30, 2022. **EXHIBIT D.**

6 H. All Coronavirus Relief Funds, including all funds allocated to the Navajo Nation CARES
7 Phase II Hardship Assistance Expenditure Plan, must be obligated by **December 31, 2021** or
8 will revert to the federal government and be lost by the Navajo Nation.

9 I. To prevent the reversion and loss of these funds, the Navajo Nation must reallocate the
10 unobligated funds in the Navajo Nation CARES Phase II Hardship Assistance Expenditure
11 Plan.

12 J. The Navajo Nation Council has determined that all Hardship Assistance applicants (for both
13 Phase I and Phase II) who are age 60 and over have already demonstrated, in their applications
14 previously submitted to the OOC, a dire need for cash assistance to mitigate the devastating
15 effects of the COVID pandemic suffered by each of them and their families. Therefore, the
16 Council believes it to be in the best interest of the Navajo Nation to ensure that these Diné
17 elders receive additional Hardship Assistance at this time.

18 K. Because of the December 31, 2021 federal CARES Act deadline to incur costs by obligating
19 funds, the Navajo Nation Council must act quickly to reallocate the unobligated Hardship
20 Assistance funds and give the OOC enough time to prepare and issue checks for the new
21 payments approved in this legislation, so that all funds can be obligated by December 31,
22 2021.

23
24 **SECTION THREE. REALLOCATING UNEXPENDED CARES PHASE II HARDSHIP**
25 **ASSISTANCE FUNDS TO HARDSHIP ASSISTANCE FOR ELIGIBLE NAVAJO**
26 **ELDERS**

27 A. The Navajo Nation hereby approves the reallocation of all unexpended funds remaining in the
28 Navajo Nation CARES Phase II Hardship Assistance Expenditure Plan account to hardship
29 assistance for eligible elders, in view of their previously documented and continued needs due
30 to the COVID-19 public health emergency. OOC reports that the amount of unexpended funds

1 is approximately \$16,000,000.

2 B. A \$16,000,000 reallocation would provide approximately \$300 (three-hundred dollars) to
3 each enrolled Navajo Nation member age 60 and over who meets the following criteria
4 (“Eligible Elder”):

5 1. the elder previously submitted a CARES Hardship Assistance application to the OOC (for
6 either Phase I or Phase II) and such application was timely received by the deadline
7 established by OOC; and

8 2. the elder’s previous CARES Hardship Assistance application shows a birthdate of
9 December 31, 1961 or earlier date, and such date has been substantiated with a copy of the
10 elder’s Birth Certificate or CIB on file with the OOC; and

11 3. the elder was approved for a CARES Hardship Assistance payment (for either Phase I or
12 Phase II) and was issued a check by OOC.

13 C. Because OOC is still completing the CARES Hardship Assistance account reconciliation and
14 the exact amount of funds remaining in the account is not known at the time of approval of
15 this legislation, the \$16,000,000 figure noted in SECTION THREE (A) may change by
16 December 31, 2021. Therefore, the \$300 payment per Eligible Elder approved herein may be
17 prorated by the OOC as necessary if on December 31, 2021 the final amount of remaining
18 CARES Hardship Assistance funds does not total the \$16,000,000. In such case, the \$300
19 payment figure may be revised by the OOC so long as each Eligible Elder is paid the same
20 amount.

21 D. The reallocation approved in this legislation is considered an additional hardship payment to
22 each Eligible Elder, above and beyond any previous hardship payments or other assistance
23 already received by the elder; and any such prior payments shall not affect the elder’s
24 eligibility or approval for the additional hardship payment approved herein.

25
26 **SECTION FOUR. DIRECTIVES**

27 A. The Office of the Controller and the Office of Management and Budget, are hereby directed
28 to undertake any and all actions, as necessary and appropriate, to implement the reallocation
29 of CARES Phase II Hardship Assistance funds, as approved and explained in this legislation.

30 B. All Eligible Elders, so long as they meet the criteria set forth above in SECTION THREE A(1)-

1 (3), shall be issued a new hardship assistance check automatically by the OOC - they shall not
2 be required to submit any new or amended application, or any additional information, in order
3 to receive their new hardship assistance checks.

4 C. All new payments approved in this legislation shall be made to each Eligible Elder via check,
5 in accordance with the OOC's normal payment processing methods, which checks shall be
6 dated and issued by OOC no later than December 31, 2021. All checks shall be mailed to each
7 Eligible Elder as soon as possible after issuance by OOC, to the address shown on his/her
8 CARES Hardship Assistance application.

9 D. The OOC shall be responsible for administering and accounting for all payments to Eligible
10 Elders as described and approved herein. By the last day of the Navajo Nation Council's
11 Winter 2022 Session, the OOC shall present a verbal and written report to the Council as to
12 its implementation of the reallocation approved herein, including total payments issued by
13 OOC to Eligible Elders and all payments actually received and cashed by Eligible Elders, and
14 noting the balance of remaining funds in the CARES Hardship Assistance account as of the
15 date of such report.

16
17 **SECTION FIVE. EFFECTIVE DATE**

18 This legislation is effective upon its approval by the Navajo Nation Council pursuant to 2 N.N.C.
19 §221(B) and the Navajo Nation President's line-item veto authority under 2 N.N.C. §164(A)(17)
20 (see Reso. No. CS-68-20 and Reso. No. CJY-62-20).

21
22 **SECTION SIX. SAVING CLAUSE**

23 If any provision of this legislation is determined invalid by the Navajo Nation Supreme Court,
24 or by a District Court of the Navajo Nation without appeal to the Navajo Nation Supreme Court,
25 those portions not deemed invalid shall remain the law of the Navajo Nation.