

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0087-22_

SPONSOR: Amber Kanazbah Crotty

TITLE: An Action Relating to the Naabik'iyáti' Committee and Navajo Nation Council; Allocating \$1,070,298,867 of Navajo Nation Fiscal Recovery Funds for Regional and Chapter Projects; Approving the Navajo Nation Fiscal Recovery Fund Regional and Chapter Projects Expenditure Plan

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0087-22

DATE: April 20, 2022

TITLE OF RESOLUTION: AN ACTION RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION COUNCIL; ALLOCATING \$1,070,298,867 OF NAVAJO NATION FISCAL RECOVERY FUNDS FOR REGIONAL AND CHAPTER PROJECTS; APPROVING THE NAVAJO NATION FISCAL RECOVERY FUND REGIONAL AND CHAPTER PROJECTS EXPENDITURE PLAN

PURPOSE: This resolution, if approved, will allocate \$1,070,298,867 of Navajo Nation Fiscal Recovery Funds for Regional and Chapters Projects with \$44,595,786 allocated to each Delegate Region.

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

5-DAY BILL HOLD PERIOD: Johnson
Website Posting Time/Date: _____
Posting End Date: 04-26-22
Eligible for Action: 04-27-22

Naabik'íyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – Fourth Year, 2022

INTRODUCED BY

 
Primary Sponsor

TRACKING NO. 0087-22

AN ACTION

RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION
COUNCIL; ALLOCATING \$1,070,298,867 OF NAVAJO NATION FISCAL
RECOVERY FUNDS FOR REGIONAL AND CHAPTER PROJECTS;
APPROVING THE NAVAJO NATION FISCAL RECOVERY FUND REGIONAL
AND CHAPTER PROJECTS EXPENDITURE PLAN

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 Council Resolution No. CJY-41-21, attached as **Exhibit A**, mandates that Navajo Nation Fiscal Recovery Fund ("NNFRF") Expenditure Plans be duly adopted by a two-thirds (2/3) vote of all members of the Navajo Nation Council and approved by the President of the Navajo Nation pursuant to 2 N.N.C. § 164 (A) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).
- C. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council with the delegated responsibility to hear proposed resolution(s) that require final action by the Navajo Nation Council. 2 N.N.C. § 164(A)(9).

SECTION TWO. FINDINGS

- 1 A. The World Health Organization (“WHO”) declared a Public Health Emergency of
2 International Concern related to the Coronavirus (“COVID-19”), a highly contagious and
3 sometimes fatal respiratory virus, on January 30, 2020; the U.S. Department of Health and
4 Human Services declared a Public Health Emergency related to the COVID-19 outbreak
5 on January 31, 2020; and the WHO declared a global pandemic due to COVID-19 on
6 March 11, 2020.
- 7 B. The Navajo Nation Commission on Emergency Management, with the concurrence of
8 Navajo Nation President Jonathan Nez, declared a Public Health State of Emergency on
9 the Navajo Nation on March 11, 2020, due to the COVID-19 outbreak. *See* Resolution No.
10 CEM 20-03-11, incorporated herein by reference. The Navajo Nation Department of
11 Health has subsequently issued numerous Public Health Emergency Orders. Public Health
12 Orders 2020-001 through 2021-020 are incorporated herein by reference. These Public
13 Health Emergency Orders are available at www.ndoh.navajo-nsn.gov.
- 14 C. The coronavirus pandemic of 2019 has caused large scale infections and loss of life
15 throughout the world, the United States, and the Navajo Nation. As of November 19, 2021,
16 the Navajo Nation Health Command Operations Center has confirmed 38,742 COVID-19
17 cases and 1,518 COVID-related deaths on the Navajo Nation. COVID-19-related variants
18 have recently emerged that threaten to increase these numbers and continue the pandemic’s
19 assault on the Navajo People.
- 20 D. The devastating effects of COVID-19 continue throughout the Navajo Nation and extend
21 beyond the health and life devastation to wide scale negative financial effects, such as
22 employment losses, business closures, food and housing insecurity, and other economic
23 disruptions.
- 24 E. In response to the pandemic, on March 11, 2021, United States President Joseph Biden
25 signed the American Rescue Plan Act (“ARPA”) into law. Section 9901 of ARPA
26 amended Title VI of the Social Security Act to add section 602, which established the
27 Coronavirus State Fiscal Recovery Fund, and section 603, which established the
28 Coronavirus Local Fiscal Recovery Fund (together the “Fiscal Recovery Funds” or “FRF”)
29 and provided \$362 billion for state, local, and tribal governments, including \$20 billion
30 specifically designated for tribal governments.

1 F. As of November 1, 2021, the United States Department of Treasury has allocated two
2 billion seventy-nine million four hundred sixty-one thousand four hundred sixty-four
3 dollars (\$2,079,461,464) to the Navajo Nation under the Fiscal Recovery Funds provisions
4 of ARPA. The Fiscal Recovery Funds are designed to build on and expand the relief
5 provided in the 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act),
6 Public Law 116–136, 134 Stat. 281 (2020), to mitigate and contain the spread of COVID-
7 19, and to respond to the health, social and economic impacts of COVID-19 suffered by
8 residents and businesses.

9 G. Pursuant to Section 9901 of ARPA, the Fiscal Recovery Funds are specifically intended
10 to:

- 11 1. respond to the COVID-19 public health emergency and its negative economic
12 impacts, including assistance to households, small businesses, and non-profits;
13 and/or aid to impacted industries such as tourism, travel, and hospitality;
- 14 2. respond to workers performing essential work during the COVID-19 public
15 health emergency by providing premium pay to eligible workers;
- 16 3. provide government services to the extent of the reduction in Navajo Nation
17 revenue due to the COVID-19 public health emergency, relative to revenues
18 collected in the most recent full fiscal year prior to the COVID-19 public health
19 emergency; and
- 20 4. make necessary investments in water, sewer, and/or broadband infrastructure.

21 H. The U.S. Department of Treasury (“Treasury”) has issued guidance requiring that the use
22 and expenditure of Fiscal Recovery Funds must fall under one of the four categories above
23 and that funding recipients must report each expenditure under one of the sixty-six (66)
24 “Expenditure Eligibility Categories” set forth in Appendix 1 to the U.S. Department of
25 Treasury’s Compliance and Reporting Guidance for State and Local Fiscal Recovery
26 Funds, attached herein as **Exhibit B**.

27 I. Pursuant to ARPA:

- 28 1. Fiscal Recovery Fund costs must be incurred by December 31, 2024, meaning
29 that the Navajo Nation must obligate FRF funds by that date. Treasury’s Final
30 Rule provides that “incurred” shall have the same meaning given to “financial

obligation” under the Uniform Guidance at 2 CFR 200.1: “*Financial obligations*, when referencing a recipient's or sub-recipient's use of funds under a Federal award, means orders placed for property and services, contracts and sub-awards made, and similar transactions that require payment”; and

2. The Fiscal Recovery Fund period of performance runs from March 3, 2021 until December 31, 2026, meaning that all FRF-funded projects must be completed and funds must be fully expended by December 31, 2026.
3. Costs incurred by the Navajo Nation prior to March 3, 2021 are not eligible.
4. Any funds not obligated or expended for eligible uses by the dates above in sections I (1) and (2) must be returned to Treasury, including any unobligated or unexpended funds that have been provided to sub-recipients and contractors as part of the award closeout process.

J. While its acceptance of Fiscal Recovery Funds obligates the Navajo Nation to comply with ARPA and other federal laws and regulations, the Navajo Nation can and will fulfill these obligations while retaining and exercising its sovereignty in allocating and disbursing Fiscal Recovery Funds.

K. On July 23, 2021, the Navajo Nation Council adopted Resolution No. CJY-41-21, attached as **Exhibit A**, establishing the Navajo Nation Fiscal Recovery Fund (“NNFRF”) into which the Navajo Nation’s allocation of \$2,079,461,464 has been deposited. In addition to establishing the NNFRF, CJY-41-21 also allocated two hundred forty-four million two hundred sixteen thousand four hundred fifty-one dollars (\$244,216,451) to fund de-funded CARES projects and to reimburse the Sihasín Fund and Unreserved Undesignated Fund Balance (“UUFB”) Fiscal Recovery Fund eligible projects.

L. CJY-41-21 also adopted an expenditure authorization and approval process for the allocation of funds from the NNFRF. In Section Four of CJY-41-21, the Navajo Nation Council mandated the Budget and Finance Committee to adopt application and review procedures, as well as an expenditure plan template, to be used by entities requesting Navajo Nation Fiscal Recovery Funds. In compliance with CJY-41-21’s mandate, the Budget and Finance Committee approved Resolution No. BFS-31-21 which established

1 mandatory Navajo Nation Fiscal Recovery Fund application procedures, forms, and an
2 expenditure plan template. BFS-31-21 is incorporated herein by reference.

3 M. To ensure the Navajo Nation's compliance with ARPA, Section Four of CJY-41-21 also
4 directed the Navajo Nation Department of Justice ("DOJ") to perform "an initial
5 determination of whether a NNFRF funding request satisfies the legal requirements of the
6 Fiscal Recovery Funds provisions of ARPA and applicable Navajo Nation laws,
7 regulations, and policies and procedures." Resolution No. BFS-31-21 incorporated DOJ's
8 initial determination into the mandatory NNFRF application procedures, forms, and an
9 expenditure plan template, which requires, among other things, identification of the entity
10 with Administrative Oversight over the Funding Recipient.

11 1. For purposes of the Navajo Nation Fiscal Recovery Fund, Administrative
12 Oversight means having the authority to monitor the implementation of an
13 approved FRF Expenditure Plan and the expenditure of awarded funds. The duties
14 of the entity with Administrative Oversight are set forth in Section Seven of the
15 FRF Procedures in exhibits 1 through 5 of BFS-31-21.

16 N. The Office of the President and Vice-President, in coordination with the Division of
17 Community Development ("DCD"), presented ARPA and Fiscal Recovery Fund
18 information at each of the five (5) Agency Council Meetings to hear from the Navajo
19 People concerning their needs and priorities for projects and/or services funded through
20 the NNFRF. In addition, DCD has met with Navajo Nation Chapters, individually and
21 collectively, on more than fifty (50) occasions to discuss NNFRF matters.

22 O. The Navajo Nation Council hosted twenty-six (26) Naabik'íyáti' Committee Work
23 Sessions, all open to the public, to hear from the Navajo People concerning their needs
24 and priorities for projects and/or services funded through the Navajo Nation Fiscal
25 Recovery Fund. In addition, Standing Committees of the Navajo Nation Council held
26 more than forty (40) committee meetings, all open to the public, that have included
27 NNFRF reports and infrastructure specific discussions.

28 P. The Navajo Nation Council and Office of the President and Vice-President concurred,
29 based on their respective public consultation efforts, that it was in the best interest of the
30 Navajo people to first enact a Navajo Nation Fiscal Recovery Fund Hardship Assistance

Expenditure Plan. To that end, the Navajo Nation Council adopted Resolution No. CD-62-21 providing \$557,000,000 in Hardship Assistance for Navajo members to mitigate the financial devastation caused by the COVID-19 pandemic. The President agreed with the Council and signed CD-62-21 into law on January 4, 2022.

- Q. The Navajo Nation Council has determined, based on their public consultation efforts, that it is in the best interest of the Navajo people and Navajo communities to next fund local and regional projects and enact a comprehensive Navajo Nation Fiscal Recovery Fund Expenditure Plan for Regional and Chapter Projects in the total amount of one billion seventy million two hundred ninety-eight thousand eight hundred sixty-seven dollars (\$1,070,298,867) to be divided equally between the twenty-four (24) Delegate Regions in the amount of forty-four million five hundred ninety-five thousand seven hundred eighty-six dollars (\$44,595,786) per Delegate Region as set forth in **Exhibit C**.

SECTION THREE. APPROVAL OF THE REGIONAL AND CHAPTER PROJECTS EXPENDITURE PLAN

- A. The Navajo Nation hereby approves and adopts the Navajo Nation Fiscal Recovery Fund Regional and Chapter Projects Expenditure Plan set forth herein and in **Exhibit C**.
- B. The Navajo Nation hereby approves total funding for the NNFRF Regional and Chapter Projects Expenditure Plan from the Navajo Nation Fiscal Recovery Fund in the total amount of one billion seventy million two hundred ninety-eight thousand eight hundred sixty-seven dollars (\$1,070,298,867) to be divided equally between the twenty-four (24) Delegate Regions in the amount of forty-four million five hundred ninety-five thousand seven hundred eighty-six dollars (\$44,595,786) per Delegate Region, as set forth in **Exhibit C**, and allocated through Delegate Region Project Plans approved by Navajo Nation Council resolution and signed into law by the President of the Navajo Nation pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).
- C. For purposes of the NNFRF and the Regional and Chapter Projects Expenditure Plan, "Delegate Region" shall mean all the Navajo Nation chapters, both LGA Certified and non-LGA chapters, and Townships, represented by a Navajo Nation Council delegate.

- 1 D. The 12 N.N.C. § 820 (O) 50-50 Chapter Distribution Formula does not apply to the
2 Regional and Chapter Projects Expenditure Plan and/or the Delegate Region Project Plans.
3 The 50-50 Formula only applies to appropriations intended for distribution to all Chapters
4 of the Navajo Nation. The Regional and Chapter Projects Expenditure Plan and Delegate
5 Region Project Plan funding will be allocated to the Navajo Nation Central Government,
6 specifically the Division of Community Development or other appropriation Navajo
7 Nation Division or Department, to implement the projects rather than directly to the
8 Chapters.
- 9 E. The Navajo Nation Central Government, specifically the Division of Community
10 Development or other appropriation Navajo Nation Division or Department, shall manage
11 and administer funds and Delegate Region Project Plans on behalf of Non-LGA-Certified
12 Chapters. The Navajo Nation Central Government may award funding to LGA-Certified
13 Chapters through sub-recipient agreements to implement and manage specific projects, but
14 shall maintain Administrative Oversight over such funding and Delegate Region Project
15 Plans.
- 16 1. LGA-Certified Chapters shall immediately return to the Office of the
17 Controller all Chapter Project Plan funds that remain unobligated and
18 unencumbered as of 5:00 p.m. on September 30, 2024.
- 19 2. LGA-Certified Chapters shall immediately return to the Office of the
20 Controller all Chapter Project Plan funds that remain unexpended as of 5:00
21 p.m. on September 30, 2026
- 22 F. Each Navajo Nation Council delegate shall select Fiscal Recovery Fund eligible projects
23 within their Delegate Region to be funded by the NNFRF Regional and Chapter Projects
24 Expenditure Plan through a Delegate Region Projects Plan. The total cost of projects
25 selected by each Delegate shall not exceed their Delegate Region distribution of forty-four
26 million five hundred ninety-five thousand seven hundred eighty-six dollars
27 (\$44,595,786) as set forth in **Exhibit C**.
- 28 G. The projects selected by each Navajo Nation Council delegate shall be compiled into a
29 Delegate Region Projects Plan for their respective Delegate Region and approved by
30 Navajo Nation Council resolution and signed into law by the President of the Navajo

1 Nation pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).

2 H. Delegates may select projects for their Delegate Region Projects Plan from the list of
3 projects, attached as **Exhibit D**, that have already been submitted to NNDOJ for an initial
4 eligibility determination and are not included in another enacted Expenditure Plan.
5 Delegates may also add region specific funds to other previously enacted Project or
6 Expenditure Plans. In addition, Delegates may also select projects that have *not* previously
7 been submitted to NNDOJ for an initial eligibility determination, including proposed FRF
8 chapter projects submitted to the Division of Community Development, although such
9 projects will have to have a NNDOJ eligibility determination before they can be approved
10 by the Navajo Nation Council.

11 I. The NNFRF Office, with the assistance of the Division of Community Development and
12 other necessary Executive Branch Divisions and Departments, shall assist each Council
13 Delegate in developing their respective Delegate Region Projects Plan, including the
14 applicable BFS-31-21 Appendix A and Appendix B forms and supporting documents, for
15 those projects that have not already received NNDOJ initial eligibility determinations.

16 J. The NNFRF Office shall, notwithstanding BFS- 31-21, act and sign in the place of the
17 respective Administrative Oversight Division and submit each project included on the
18 respective Delegate Region Projects Plan to NNDOJ for an initial eligibility determination
19 as required under CJY-41-21. NNDOJ shall be allowed five (5) work days, in addition to
20 BFS-31-21's five (5) days, to complete required initial eligibility determinations for
21 Delegate Region Projects.

22 1. The NNFRF Office shall not be required to submit projects to NNDOJ that
23 already have an initial eligibility determination, provided that there is no proposed
24 change in the project scope of work, eligibility category, and/or the amount of
25 funding requested for the project.

26 K. Each Delegate shall submit a comprehensive list of projects, including applicable BFS-31-
27 21 Appendix A, Appendix B, and supporting documents for those projects that have not
28 already received NNDOJ initial eligibility determinations, for their respective Delegate
29 Region, totaling no more than their Delegate Region allocation of \$44,595,786 set forth in
30 **Exhibit E**, to the NNFRF Office within ninety (90) days after this legislation is fully

1 enacted.

- 2 1. If the NNFRF Office has not received a comprehensive list of projects for a
3 Delegate Region, including Appendix A, Appendix B and supporting
4 documents for each project, within ninety (90) days after this legislation is fully
5 enacted, the total allocation for that Delegate Region shall automatically revert
6 to the Navajo Nation Fiscal Recovery Fund. Navajo Nation Council and
7 President of the Navajo Nation action shall not be required for the reversion.

8 L. All Delegate Region Project Plans shall be subject to the following requirements and
9 restrictions:

- 10 1. Delegate Region Projects shall fall under one of the allowable U.S. Treasury
11 Expenditure Eligibility Categories set forth in **Exhibit B**.
- 12 2. Delegate Region Projects Plans may include NNFRF-eligible projects for
13 programs to provide government services to Chapter members; to provide basic
14 PPE to Chapter members; to provide food, fuel, firewood assistance to Chapter
15 members negatively impacted by COVID-19; to construct projects such as
16 COVID-19 mitigation renovations to Chapter houses, housing renovations, and
17 house wiring; to plan and design projects; to hire consultants to assist with NNFRF-
18 eligible programs and projects; to hire PEP workers, student workers and other
19 temporary employees, or regular status employees to assist the Chapter
20 governments in carrying out NNFRF-eligible programs and projects. Delegate
21 Region Project Plans shall not include COVID-19 testing and vaccinations, or any
22 cash assistance for Chapter members such as a hardship assistance program.
- 23 3. All pre-construction related projects included in a Delegate Region Project Plans
24 shall be “project ready” meaning that a project’s planning and design work is able
25 to begin once funding is received, and the expedited timeframe in which the project
26 can be completed.
- 27 a. The Council Delegate, with the assistance of the NNFRF Office, shall
28 complete a separate Division of Community Development (DCD) project
29 evaluation form and supporting documents for each proposed pre-
30 construction related project which shall include project-site readiness, valid

land withdrawal and permitting approvals, as well as the anticipated timeframe during which the project will be completed.

- b. The NNFRF Office shall submit the fully completed form through the DCD Portal. If DCD is not the Administrative Oversight over the proposed project, the NNFRF Office shall also submit the project evaluation form and all supporting documents to the entity that will have Administrative Oversight over the proposed project.

- 4. Construction projects shall be “construction ready” meaning that a project’s planning and design work has been completed and construction is able to begin once funding is received, and the expedited timeframe in which the project can be completed.

- a. The Council Delegate, with the assistance of the NNFRF Office, shall complete a separate DCD project evaluation form for each proposed construction project which shall include project site readiness, valid land withdrawal and permitting approvals, as well as the anticipated timeframe during which the project will be completed.

- b. The NNFRF Office shall submit the fully completed form and all supporting documents through the DCD Portal. If DCD is not the Administrative Oversight over the proposed project, the NNFRF Office shall also submit the project evaluation form and all supporting documents to the entity that will have Administrative Oversight over the proposed project.

- 5. All proposed Delegate Region projects shall be sufficiently developed such that funding for the project(s) can be obligated and encumbered in the Nation’s Financial Management Information System (“FMIS”) by 5:00 p.m. on September 30, 2024, and fully expended by 5:00 p.m. on September 30, 2026 or such earlier dates as may be determined by resolution of the Navajo Nation Council. This generally requires NEPA, ROW, and design work to be sufficiently advanced such that these pre-construction tasks can be completed in time to execute construction contracts and encumber funds by 5:00 p.m. on September 30, 2024.

6. The Administrative Oversight entity for each project shall be responsible for making the determination whether the proposed Delegate Region project is “project-ready” or “construction-ready”. If a proposed project is not deemed project-ready or construction-ready, the project shall not be eligible for inclusion in a Delegate Region Project Plan.
 7. Each Delegate Region Project shall be subject to CJY-41-21’s NNDOJ initial eligibility determination.
 8. Each Delegate Region Project shall identify its Administrative Oversight entity and its Oversight Committee(s).
 9. Each Delegate Region shall be limited to a total of nine million one hundred fifty thousand dollars (\$9,150,000) of Revenue Replacement Projects (Expenditure Eligibility Categories 6.1: Provision of Government Services and 6.2 Non-federal Match for Other Federal Programs). The Office of the Controller may issue guidance that increases this amount in the next fiscal year.
 10. Delegate Region Projects shall not include Sanitation Deficiency Systems Service (“SDS”) included on the Indian Health Service 2022 SDS List, attached as **Exhibit E**, or on any prior year Indian Health Services SDS List.
 11. The Navajo Nation Council urges Delegate Region Project Expenditure Plans to include and prioritize Veteran Housing and other projects that will benefit Navajo veterans.
- M. The requirement in CJY-41-21, Section Three (F), to establish a contingency reserve for NNFRF Regional and Chapter Projects construction projects shall be implemented on a case-by-case basis through resolution(s) approved by the Navajo Nation Council and enacted pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).

SECTION FOUR. ADMINISTRATION OF NAVAJO NATION FISCAL RECOVERY FUND EXPENDITURE PLANS

- A. All entities receiving Navajo Nation Fiscal Recovery Funds, whether through an immediate allocation under CJY-41-21 or subsequently approved NNFRF Expenditure

1 Plan, shall comply with all Navajo Nation laws, policies, regulations, rules, and
2 procedures, specifically including, but not limited to, those governing the NNFRF and
3 the expenditure of such funds, and any additional terms set forth in a grant, sub-
4 recipient, or similar agreement.

5 B. Fiscal Recovery Fund costs must be incurred by December 31, 2024, meaning that the
6 Navajo Nation must obligate FRF funds by that date. For internal Navajo Nation purposes,
7 the term “obligated” is defined in BFS-31-21, Section Three on page 3 of Exhibits 1
8 through 5. Any NNFRF funds not obligated by the end of the third quarter of Fiscal Year
9 2024 shall be reported to the Naabik’íyáti’ Committee and are subject to reversion to the
10 NNFRF, by a resolution of the Naabik’íyáti’ Committee, and will then be available for
11 reallocation to other NNFRF Expenditure Plans pursuant to resolution(s) of the Navajo
12 Nation Council enacted pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10),
13 (11), and (12).

14 C. The Office of the Controller shall release Navajo Nation Fiscal Recovery Fund
15 Expenditure Plan funds to a funding recipient that is external to the Navajo Nation central
16 government, including Local Government Act certified chapters, Navajo Nation owned
17 entities, and other external entities, pursuant to the fund distribution schedule
18 recommended by the Navajo Nation government entity with administrative oversight and
19 approved by the Office of the Controller and included in a fully executed grant, sub-
20 recipient, or similar agreement deemed legally sufficient by the Navajo Nation Department
21 of Justice.

22 D. Awarded Navajo Nation Fiscal Recovery Funds shall only be obligated and expended on
23 projects and/or services, including need-based projects and services, that were included as
24 an immediate allocation under CJY-41-21 or are included in a NNFRF Expenditure Plan
25 approved and adopted by a Navajo Nation Council resolution enacted pursuant to 2 N.N.C.
26 § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).

27 E. All proposed modifications to an approved FRF Expenditure Plan or an approved FRF
28 Expenditure Plan budget shall comply with section 8 of exhibits 1 through 5 of BFS-31-
29 21. Any increase in funding for an approved FRF Expenditure Plan shall require approval
30 by a Navajo Nation Council resolution enacted pursuant to 2 N.N.C. § 164 (A)(17) and 2

1 N.N.C. §§ 1005 (C) (10), (11), and (12). Proposed modifications of Expenditure Plans
2 shall be submitted to the Navajo Nation Department of Justice (“DOJ”) for an eligibility
3 determination review to ensure the proposed modification will be an eligible use of FRF.
4 Modifications that change the purpose and intent of the Expenditure Plan or projects and
5 services within the approved Expenditure Plan or that substantially change the scope of
6 work of the Expenditure Plan shall require approval by the Navajo Nation Council. As set
7 forth in BFS-31-21, DOJ shall make the determination whether Navajo Nation Council
8 approval of the modification is required. After DOJ has reviewed the request for a
9 modification of an approved Expenditure Plan and determined that legislative approval is
10 not needed, or after the modification is approved by a Navajo Nation Council resolution
11 enacted pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12),
12 the Administrative Oversight entity acting on behalf of the Funding Recipient shall submit
13 a budget revision request to OMB, if needed. The Budget Instruction Manual provisions
14 regarding budget revision requests shall apply.

15 F. Awarded Navajo Nation Fiscal Recovery Funds, including cost savings, may be
16 administratively moved between projects and/or services included within the same
17 Expenditure Plan, as long as such projects and/or services share the same Expenditure
18 Eligibility Category. DOJ shall verify that the projects and/or services share the same
19 Expenditure Eligibility Category before any NNFRF funding is moved between projects
20 and/or services.

21 G. Awarded Navajo Nation Fiscal Recovery Funds, including cost savings, cannot be moved
22 between Expenditure Plans without approval by a Navajo Nation Council resolution
23 enacted pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).

24 H. Approved Expenditure Plans for need-based projects and services, such as Bathroom
25 Addition or Home Electricity Connection projects, may be administratively modified
26 without Navajo Nation Council action as long as the total funding awarded for the
27 Expenditure Plan is not increased and the new project or service is within the same
28 Expenditure Eligibility Category.

29 I. To add projects or services to an approved Expenditure Plan when such projects and/or
30 services are not need-based projects or services, shall require a DOJ initial eligibility

determination pursuant to BFS-31-21 and the addition must be approved through resolution by the Standing Committee(s) having oversight over the Expenditure Plan and the Budget and Finance Committee. If the new project and/or service increases the total funding awarded for the Expenditure Plan or does not share the same Expenditure Eligibility Category as the Expenditure Plan, BFS-31-21 must be fully complied with and the addition can only be added through Navajo Nation Council resolution enacted pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12) is required.

J. The Emergency Procurement provisions set forth in CJY-41-21, Section Ten, shall apply to all NNFRF Expenditure Plans enacted herein, as well as to all American Rescue Plan Act and Fiscal Recovery Fund procurements by the Navajo Nation and its entities.

K. All entities receiving Navajo Nation Fiscal Recovery Funds shall follow and apply Generally Accepted Accounting Principles (GAAP), as established by the Governmental Accounting Standards Board (GASB) for governmental entities and by the Financial Accounting Standards Board (FASB) for public and private companies and non-profits, in reporting, recording, and accounting for such Funds.

L. All non-governmental entities, including Local Governance Act certified chapters, who receive more than five hundred thousand dollars (\$500,000) of Fiscal Recovery Funds in anyone year shall obtain an annual audit in accordance with the Single Audit Act Amendments of 1996), OMB Circular A-133, the and the OMB Circular Compliance Supplement and Government Auditing Standards.

M. Fraud, misuse of funds, violation of applicable Navajo Nation or federal laws and regulations, non-compliance with FRF agreements governing grants or sub-awards, and false statements or claims by any individual or entity receiving or administering Navajo Nation Fiscal Recovery Funds may result in administrative, civil, or criminal sanctions and penalties, debarment and suspension, ineligibility for future Navajo Nation awards or business opportunities, and the Navajo Nation may pursue any other legal action or remedy available by law.

SECTION FIVE. REPORTING

- 1 A. All entities receiving Navajo Nation Fiscal Recovery Funds shall keep and maintain
2 accurate and complete financial data and records sufficient to demonstrate that the
3 Fiscal Recovery Funds appropriated by the U.S. Congress to the Navajo Nation have
4 been used by the reporting entity in accordance with the provisions of ARPA and timely
5 relay such reports and records to the administrative oversight, Office of Controller,
6 Office of Management and Budget, FRF Office, and legislative oversight as directed
7 in the grant or sub-recipient agreements if any, and when requested. Such reports and
8 records shall be maintained for at least seven (7) years after the project and/or service
9 has been completed. The Office of the Controller shall be responsible for compiling
10 and providing any and all records and financial reports required by the U.S. Treasury.
- 11 B. All entities receiving Navajo Nation Fiscal Recovery Funds through an approved
12 Expenditure Plan shall report the status of their NNFRF allocations to their respective
13 oversight committees at the end of each Fiscal Year quarter. The entity with
14 Administrative Oversight over the Expenditure Plan shall review the quarterly report
15 prior to its presentation and shall participate in the presentation to the oversight
16 committee(s).
- 17 C. The Executive Director of the NNFRF Office, with the assistance of the Office of the
18 Controller and Office of Management and Budget, shall report the status of all allocated
19 Navajo Nation Fiscal Recovery Funds and NNFRF Expenditure Plans to the Budget
20 and Finance and Naabik'íyáti' Committees at the end of each Fiscal Year quarter.

21 22 **SECTION SIX. EFFECTIVE DATE**

23 This legislation shall be effective upon its approval pursuant to 2 N.N.C. § 164 (A)(17) and 2
24 N.N.C. §§ 1005 (C) (10), (11), and (12).

25 26 **SECTION SEVEN. AMENDMENTS**

27 Amendments to this legislation shall only be adopted by a two-thirds (2/3) vote of all
28 members of the Navajo Nation Council and approval of the President of the Navajo Nation
29 pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).

1 **SECTION EIGHT. SAVING CLAUSE**

2 If any provision of this legislation is determined invalid by the Navajo Nation Supreme Court,
3 or by a Navajo Nation District Court without appeal to the Navajo Nation Supreme Court,
4 those provisions of this legislation not determined invalid shall remain the law of the Navajo
5 Nation.

6
7 **SECTION NINE. DIRECTIVES**

8 All Navajo Nation government programs, offices, and divisions, as well as Navajo Nation
9 owned entities, specifically including those programs, offices, divisions, and Navajo Nation
10 owned entities receiving Navajo Nation Fiscal Recovery Funds, shall prioritize the
11 implementation and completion of NNFRF projects and/or services.