

GOVERNMENT OF GUAM COVID-19 PAYROLL EXPENSES

PERFORMANCE AUDIT

March 14, 2020 through May 11, 2020

OPA Report No. 21-01
January 2021

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EXECUTIVE SUMMARY

Government of Guam COVID-19 Payroll Expenses OPA Report No. 21-01, January 2021



SOURCE: GOVGUAM.GOV

Our audit of the novel coronavirus (COVID-19) payroll expenses found that between March 14, 2020 and May 11, 2020, two Government of Guam (GovGuam) agencies utilized the Rule 8.406 double pay provision to compensate their employees, while 45 departments and agencies used the E.O. 2020-08 Differential Pay Policy. GovGuam employees were paid \$10.4 million (M) for differential, double, or other pay in response to the state of emergency due to COVID-19. This was in addition to the GovGuam employees' regular pay received during the closure and suspension of GovGuam services.

Specifically, we found:

- \$2.5M in double pay for GPA and GWA;
- \$2.0M in 25% differential pay for 26 departments and agencies with top three users: GFD, GMHA, and GPD;
- \$933 thousand (K) in 15% differential pay for 29 departments and agencies with top three users: GMHA, MCOG, and GDOE;
- \$568K in 10% differential pay for 42 departments and agencies with top three users PAG, GMHA, and DPHSS; and
- \$4.5M in Other Pay for 34 departments and agencies with top three users: GMHA, GWA, and GIAA.



GovGuam employees were paid \$10.4 million (M) for differential, double, or other pay (...)



In addition, we identified unclassified employees, including department and agency heads and certain elected officials, received COVID-19 related compensation as part of the differential pay policy. This would have been in violation of Title 4, Chapter 6, §6218.2 of the Guam Code Annotated (GCA), which prohibits bonus payments for unclassified employees. However, federal appropriations allowed the Governor to enforce a differential pay policy. There were 54 elected and appointed officials who received \$176K COVID-related compensation.

COVID-19 Relief Fund Grant

Under the Coronavirus Aid, Recovery and Economic Security (CARES) Act, the Federal Government directed \$118.0M to assist Guam during the COVID-19 pandemic. The CARES Act budget was based on the April 2020 U.S. Department of Treasury Guidance for State, Territorial, Local, and Tribal Governments and submitted to the Guam Legislature in May 2020. Of the \$118.0M, \$29.2M was budgeted for COVID-19 payroll expenses for public safety, public health, health care, and human services.

SOURCE: ANNA SHVETS



GPA and GWA Utilized Double Pay Provision

GPA and GWA were the only GovGuam agencies that utilized the Rule 8.406 double pay provision, while other GovGuam departments and agencies used the E.O. 2020-08 Differential Pay Policy. With \$2.5M in double pay, GPA spent \$1.5M and GWA spent \$1.0M. These payroll expenses for GPA and GWA were not paid out of or reimbursed by the COVID-19 Relief Fund Grant.

Guam Power Authority

GPA compensated 399 employees \$1.5M in double pay if they reported to work or teleworked. The GPA Authority Policy on Pandemic Influenza Preparedness and Response Plan stated that personnel working from home shall be compensated at their regular pay. Essential personnel on duty were to earn regular pay and overtime based on hours worked beyond the 40-hour workweek. GPA did not follow their policy. Therefore, we questioned the \$1.5M in double pay given to employees during this period.

Guam Waterworks Authority

GWA compensated 333 employees \$1.0M in double pay if they reported to work. Teleworking employees were compensated at their regular pay. GWA sought guidance from DOA and other GovGuam agencies on the conflicting provisions. However, there were

conflicts relative to the interpretation of the guidance. GWA ceased the double pay and tracked employee hours for the 10% differential pay when Pandemic Condition of Readiness 2 was declared in May 2020. However, GWA employees



GPA and GWA were the only GovGuam agencies that utilized the Rule 8.406 double pay provision (...)

were not paid the 10% differential because of numerous ongoing legal and legislative discussions.

Differential Pay Policy

E.O. 2020-08 implemented a Differential Pay Policy for employees working in support of the public health emergency, in areas necessary for the elimination or reduction of immediate threats to life, public health, or safety, and whose work could expose them to COVID-19. Depending on the level of potential COVID-19 exposure, the E.O. outlined three categories of differential pay: Category 1 at 25%, Category 2 at 15%, and Category 3 at 10%. Differential pay was paid out of the COVID-19 Relief Fund Grant for some agencies.

Figure 1: Breakdown of Differential Pay Categories

CATEGORY	AMOUNT	TOP THREE AGENCIES
CAT 1 (25%)	\$ 1,956,041	GFD, GMHA, GPD
CAT 2 (15%)	\$ 933,442	GMHA, MCOG, GDOE
CAT 3 (10%)	\$ 568,432	PAG, GMHA, DPHSS
TOTAL	\$ 3,457,915	

Other Pay

In addition to the double pay provision and differential pay policy, we also identified \$4.5M for other pay was utilized for 34 departments and agencies with top three users: GMHA, GWA, and GIAA. Examples of other pay include compensatory time off, overtime, and night differential.

Unclassified Employees Received COVID-Related Compensation

Unclassified employees, including department and agency heads and certain elected officials, received COVID-related compensation as part of the differential pay policy. This would have been in violation of 4 GCA §6218.2, which prohibits bonus payments. However, federal appropriations allowed the Governor to enforce a differential pay policy. In the 1978 case of *Wong v. Camina*, Congress can directly appropriate to GovGuam where the appropriation or grant does not provide for local legislative control nor the authority for the Guam Legislature to re-appropriate these funds. The U.S. Department of Treasury guidance for the CARES Act did not specify guidance regarding classified and unclassified employees' payroll expenses. Thus, 4 GCA §6218.2 would not be applicable to this situation.

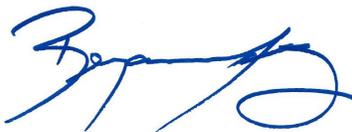
Subsequent Event

In November 2020, the Governor of Guam's legal counsel submitted the October COVID-19 Relief Fund report to the Guam Legislature. Of the \$25.7M COVID-19 budget related payroll expenses, \$16.4M was spent for executive branch agencies, the Judiciary, and GMHA. There is \$9.3M available as of October 31, 2020. These amounts do not include the compensation for autonomous or semi-autonomous agencies, unless otherwise budgeted. The COVID-19 Relief Fund was to be spent or encumbered by December 30, 2020. In December, the Consolidated Appropriations Act for 2021 extended the deadline to December 31, 2021.

Conclusion and Recommendations

There was an inconsistent use of legal authority for GovGuam employees' compensation during the state of emergency in March 2020. Due to the potential violations of legal statutes, we recommend the Office of the Attorney General review the:

- (1) Circumstances surrounding the application of the double pay provision for GPA and GWA and determine if reimbursement is necessary for employees that received double pay;
- (2) Circumstances surrounding the application of the compensatory leave credits for GWA and determine if reimbursement is necessary for employees that received this benefit; and
- (3) Payment of elected and appointed officials receiving COVID-related compensation and determine if reimbursement is necessary for employees that received additional pay.



Benjamin J.F. Cruz
Public Auditor

GLOSSARY OF ACRONYMS

Agency Name		Acronym	Agency Name		Acronym
1	Bureau of Budget & Management Research	BBMR	29	Guam Economic Development Authority	GEDA
2	Bureau of Statistics and Plans	BSP	30	Guam Educational Telecommunication Corporation	PBS Guam
3	Chamorro Land Trust Commission	CLTC			
4	Chief Medical Examiner	CME	31	Guam Election Commission	GEC
5	Civil Service Commission	CSC	32	Guam Environmental Protection Agency	GEPA
6	Customs and Quarantine Agency	CQA			
7	Department of Administration	DOA	33	Guam Fire Department	GFD
8	Department of Agriculture	AGR	34	Guam Homeland Security/Office of Civil Defense	GHS/OCD
9	Department of Chamorro Affairs	DCA			
10	Department of Corrections	DOC	35	Guam Housing and Urban Renewal Authority	GHURA
11	Department of Integrated Services for Individuals with Disabilities	DISID			
12	Department of Labor	DOL	36	Guam Housing Corporation	GHC
13	Department of Land Management	DLM	37	Guam International Airport Authority	GIAA
14	Department of Law (Office of the Attorney General)	OAG	38	Guam Legislature	Legislature
			39	Guam Memorial Hospital Authority	GMHA
15	Department of Military Affairs	DMA	40	Guam Police Department	GPD
			41	Guam Power Authority	GPA
16	Department of Parks and Recreation	DPR	42	Guam Preservation Trust	GPT
17	Department of Public Health and Social Services	DPHSS	43	Guam Public Library System	GPLS
			44	Guam Regional Transit Authority	GRTA
18	Department of Public Works	DPW	45	Guam Solid Waste Authority	GSWA
19	Department of Revenue and Taxation	DRT	46	Guam Visitors Bureau	GVB
20	Department of Youth Affairs	DYA	47	Guam Waterworks Authority	GWA
21	Government of Guam Retirement Fund	GGRF	48	Hagatna Restoration and Redevelopment Authority	HARRA
22	Guam Ancestral Lands Commission	GALC			
23	Guam Behavioral Health and Wellness Center	GBHWC	49	Judiciary of Guam	JOG
			50	Lieutenant Governor's Office	LT GOV
24	Guam Board of Accountancy	GBOA	51	Mayors' Council of Guam	MCOG
25	Guam Commission for Educator Certification	GCEC	52	Office of Public Accountability	OPA
			53	Office of Technology	OTECH
26	Guam Community College	GCC	54	Office of the Governor	GOV
27	Guam Department of Education	GDOE	55	Office of Veterans Affairs	VAO
28	Guam Developmental Disabilities Council	GDDC	56	Port Authority of Guam	PAG
			57	University of Guam	UOG



INTRODUCTION

This report presents the results of our performance audit of the novel coronavirus (COVID-19) payroll expenses for the Government of Guam (GovGuam) employees. We initiated this audit after concerns were raised by GovGuam employees and the public over GovGuam's recovery and response to the pandemic and the inequitable compensation of public employees.

Our audit objectives were to: (1) determine the legal statute(s) utilized for employee compensation; and (2) identify and quantify the compensation costs for GovGuam employees during the COVID-19 pandemic response.

Our audit objectives, scope, methodology, and prior audit coverage are detailed in Appendices 1 and 2.

Background

On January 30, 2020, the World Health Organization declared a Global Health Emergency with regard to the COVID-19 outbreak. The United States (U.S.) Health and Human Services Secretary declared a public health emergency on January 31, 2020 to aid the nation's healthcare community in responding to COVID-19. On March 13, 2020, U.S. President Donald Trump declared a national emergency over the COVID-19 outbreak in the continental U.S.

In response to the national and international declarations, the Governor of Guam ("Governor") declared a state of emergency as result of the COVID-19 outbreak through Executive Order (E.O.) 2020-03 on March

14, 2020. As part of this E.O., the Governor authorized overtime for non-exempt GovGuam employees and activated the National Guard by granting authorization to the Adjutant General to issue orders for



On January 30, 2020 the World Health Organization declared a Global Health Emergency (...)

personnel and equipment to protect life and safety, to continue essential public services, and to prevent undue loss and suffering.



E.O. 2020-08 Differential Pay

The Governor issued several directives to respond to the global pandemic on how GovGuam employees will be compensated for their involvement with the COVID-19 response. Specifically, the Governor issued E.O. 2020-08 in April 2020, relative to the establishment of a COVID-19 response differential pay policy. This policy is for employees working in support of the public health emergency and in areas necessary for the elimination or reduction of immediate threats to life, public health, or safety, and whose work could expose them to COVID-19.

The policy outlined compensation levels based on the potential COVID-19 exposure as follows:

- **CATEGORY 1.** Twenty-five percent (25%) pay differential to essential employees in the course of their duties are in direct contact or in close physical proximity to a population infected with or may be reasonably suspected to be infected with COVID-19. Such positions may include, but not limited to sworn public safety/law enforcement, health care providers and other positions performing essential critical mission duties;
- **CATEGORY 2.** Fifteen percent (15%) pay differential to essential employees in the course of their duties may incidentally come into contact with or close physical proximity to a population infected with or may be reasonably suspected to be infected with COVID-19. These employees may also be providing humanitarian services or direct public assistance to the general public;
- **CATEGORY 3.** Ten percent (10%) pay differential to essential employees whose positions do not allow them to telework and are mandated to perform their job duties at physical worksites pre-determined by their agency heads, required by the Government's response to the COVID-19 pandemic.

E.O. 2020-08 excluded agency directors, agency deputy directors, and unclassified employees working in the Office of the Governor and the Office of the Lieutenant Governor from this differential pay, except for instances where assigned duties require an exposure level risk defined in categories 1 or 2. See Appendix 3 for E.O. excerpts related to the COVID-19 response.



Department of Administration (DOA) Personnel Rules and Regulations Rule 8.406, Natural Disasters and Other Emergency Conditions

DOA Personnel Rules and Regulations Rule 8.406 allows employees to receive double their regular rate to provide essential services should the Governor declare a State of Emergency. Rule 8.406 in its entirety states:

- A. Excused absence with pay and without charge to leave shall be granted to employees when natural disasters or other emergency conditions create unsafe working conditions.
- B. Excused absence, for natural disaster or other emergency conditions, may be granted only when there has been an official proclamation of the hazardous conditions by Executive Order, or an equivalent announcement by the Governor.
- C. When the Governor declares a State of Emergency, the appointing authority shall determine whether affected facilities or portions thereof, which are located in the area covered by the Executive Order or proclamation, are to be closed.
- D. Except for those employees determined by the appointing authority to be necessary for providing essential services, employees shall be released from duty with pay, without charge to leave, for the period the facility is closed.



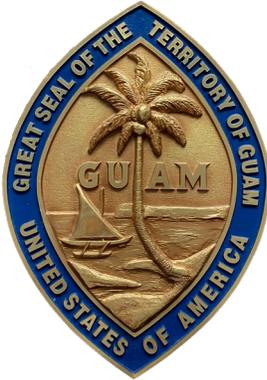
Attorney General (AG) of Guam Opinion on Applicability of Double Pay Provision in DOA Personnel Rules and Regulations Rule 8.406 to COVID-19 Public Health Emergency

In May 2020, the AG responded to a request from a Senator in the 35th Guam Legislature for a legal opinion on whether Rule 8.406 of the DOA Personnel Rules and Regulations required GovGuam to pay essential employees double their regular rate during the current state of public health emergency.

The AG opined that the circumstances whether an essential employee is to be compensated double their regular rate would be dependent on whether all criteria of 8.406 were met. The AG's opinion, through DOA's Rule 8.406, outlined the three criteria needing to be met. Specifically,

“Under Rule 8.406, an employee is entitled to receive double pay or compensatory leave credits when (1) the Governor has declared a state of emergency; (2) the facility that the employee works at is closed; and (3) the employee is still required to report to work in order to provide essential services.⁶ There is no question that the first criteria has been satisfied. However, the answer to whether the remaining criteria have been satisfied may not be as neatly packaged as desired, and will instead depend on an agency-by-agency determination of the particular circumstances regarding the operational status of each agency and the work status of the affected employee(s).

⁶Although it has no bearing on our interpretation of Rule 8.406, we have been unable to find any documented instances where government line agency employees who were required to remain on duty to provide essential services during a declared emergency were paid double pay under Rule 8.406.”



Applicable Laws, Regulations, and Policies

We found the following Guam Code Annotated (GCA) and Public Law (P.L.) citations applicable to the compensation of public employees and their response during a declaration of a state of emergency:

- Emergency Health Powers – 10 GCA Chapter 19
- Personnel Policy and the CSC – 4 GCA Chapter 4
- Compensation of Public Employees – 4 GCA Chapter 6
- DOA – 5 GCA Chapter 20
- GCC – 17 GCA Chapter 31
- GDOE – 17 GCA Chapter 3
- PBS Guam – 12 GCA Chapter 3
- GHC – 12 GCA Chapter 4
- GHURA – 12 GCA Chapter 5
- GIAA – 12 GCA Chapter 1
- GMHA – 10 GCA Chapter 80
- GPA – 12 GCA Chapter 8
- GRTA – 12 GCA Chapter 6
- GWA – 12 GCA Chapter 14
- GSWA – 10 GCA Chapter 51A
- OAG – 5 GCA Chapter 30
- PAG – 12 GCA Chapter 10
- UOG – 17 GCA Chapter 16
- CCU – 12 GCA Chapter 79

In addition, each autonomous agency has its own rules and regulations and/or compensation studies. However, they adopted DOA's personnel rules and regulations. See Appendix 4 for the applicable laws, regulations, and policies.



Of the \$118.0M, \$29.2M was budgeted for COVID-19 related payroll expenses for public safety, public health, health care, and human services.

\$29.2M Budgeted for COVID-19 Payroll Expenses

Under the Coronavirus Aid, Relief, and Economic Securities (CARES) Act, the Federal Government directed \$118.0 million (M) to assist Guam during the COVID-19 pandemic. A CARES Act budget was developed based on the April 2020 U.S. Department of Treasury Guidance for State, Territorial, Local, and Tribal Governments. The budget was submitted to the Guam Legislature in May 2020. Of the \$118.0M, \$29.2M was budgeted for COVID-19 related payroll expenses for public safety, public health, health care, and human services. See Table 1 for a budget breakdown.

**TABLE 1:
Breakdown of COVID-19 Payroll Expenses Budget**

DEPARTMENT/AGENCY	AMOUNT
Executive Branch Line Agencies	\$ 22,000,000
Judiciary, OAG, and OPA	3,990,000
GMHA	3,087,714
UOG	70,218
GVB	5,000
TOTAL	\$ 29,152,932

According to BBMR's Budget and Management Analyst Supervisor, the differential pay outlined in E.O. 2020-08 was paid out of the COVID-19 Relief Fund Grant for some agencies.



Breakdown of Pay Provisions

Our audit identified 48 line agencies and autonomous or semi-autonomous agencies paid differential, double, or other pay to their employees for the COVID-19 response. Of the \$10.4M COVID-related compensation, 13 autonomous and semi-autonomous entities incurred \$7.8M or 72% and 35 line agencies incurred \$3.0M or 28%. See Table 2 for a breakdown of the pay by categories.

TABLE 2:
Employee Compensation by Category

TYPE	CAT 1 (25%)	CAT 2 (15%)	CAT 3 (10%)	DOUBLE PAY	OTHER PAY	TOTAL
Autonomous and Semi-Autonomous Agencies	\$ 476,502	\$ 621,014	\$ 346,024	\$ 2,540,641	\$ 3,416,327	\$ 7,400,508
Line Agencies	1,479,539	312,428	222,408	-	1,035,013	3,049,388
TOTAL	\$ 1,956,041	\$ 933,442	\$ 568,432	\$ 2,540,641	\$ 4,451,340	\$ 10,449,895

See Appendix 5 for a complete listing of the departments and agencies.

RESULTS OF AUDIT

Our audit of the COVID-19 payroll expenses found that between March 14, 2020, and May 11, 2020, two GovGuam agencies utilized Rule 8.406 double pay provision to compensate their employees while 45 departments and agencies used E.O. 2020-08 Differential Pay Policy. GovGuam employees were paid \$10.4M for differential, double, and other pay in response to the state of emergency due to COVID-19. This pay was in addition to the regular pay that GovGuam employees continued to receive during the closure and suspension of GovGuam services.

Specifically, we found:

- 2.5M in double pay for GPA and GWA employees;
- \$2.0M in 25% differential pay for 26 departments and agencies with top three users: GFD, GMHA, and GPD;
- \$933 thousand (K) in 15% differential pay for 29 departments and agencies with top three users: GMHA, MCOG, and GDOE;
- \$568K in 10% differential pay for 42 departments and agencies with top three users: PAG, GMHA, and DPHSS; and
- \$4.5M in Other Pay for 34 departments and agencies with top three users: GMHA, GWA, and GIAA.

We also found that unclassified employees, including department and agency heads and certain elected officials received COVID-related compensation as part of the differential pay policy. This would have been in violation of 4 GCA §6218.2, which prohibits bonus payments for unclassified employees. However, federal appropriations allowed the Governor to enforce a differential pay policy. There were 54 elected and appointed officials who received \$176K in COVID-related compensation.

GPA, GWA Use Double Pay Provision Totaling \$2.5M

GPA and GWA were the only GovGuam agencies to utilize the Rule 8.406 double pay provision, while other GovGuam departments and agencies used the E.O. 2020-08 Differential Pay Policy. See Table 3 for the GPA and GWA COVID-related compensation breakdown.

**TABLE 3:
Breakdown of COVID-Related Compensation – Double Pay Provision**

	AGENCY	DOUBLE PAY	CAT 1 (25%)	CAT 2 (15%)	CAT 3 (10%)	OTHER PAY	TOTAL
1	GPA	\$ 1,508,263	\$ -	\$ -	\$ -	\$ 344,255	\$ 1,852,488
2	GWA	1,032,377	-	-	-	\$ 503,234	1,535,611
	TOTAL	\$ 2,540,641	\$ -	\$ -	\$ -	\$ 847,459	\$ 3,388,100

These payroll expenses for GPA and GWA were not paid out of or reimbursed by the COVID-19 Relief Fund Grant.

Guam Power Authority

GPA compensated 399 employees double pay to the tune of \$1.5M between March 14, 2020 to May 11, 2020 if they reported to work or teleworked. According to GPA, Rule 8.406 of the DOA Personnel and Rules and Regulations allowed paying employees double their regular rate due to the Governor's state of emergency. In addition, GPA compensated employees who were not required to report to work.

Pandemic Influenza Preparedness and Response Plan

On March 12, 2020, GPA updated its Authority Policy No. AP-069 Pandemic Influenza Preparedness and Response Plan by a 12-person committee¹. This plan was intended to identify critical/priority functions and operational guidelines to ensure the continued reliability of the island-wide power system in the event of an influenza pandemic. While specific guidance is provided for a pandemic influenza (flu), aspects may also be applied to all infectious diseases such as respiratory diseases caused by coronaviruses.

¹ The committee included the Safety Administrator, Assistant General Manager of Operations, Assistant General Manager of Administration, Manager of the Power System Control Center, Manager of Generation, Assistant Manager of Generation, Manager of Transmission and Distribution, Assistant Manager of Transmission and Distribution, Facilities Manager, Utility Services Administrator, Accountant III (Cash Management), and the Personnel Services Administrator.



Authority Policy No. AP-069 also outlined the employee's pay status, which reads:

During essential operations, when a state of emergency is declared and the General Manager has discontinued non-essential operations, personnel shall be compensated as follows:

1. *Essential personnel on duty shall earn regular pay and overtime based on hours worked beyond the 40-hour workweek.*
2. *Personnel who are assigned by their respective [Assistant General Managers] to work from home shall be compensated at their regular rate of pay.*
3. *Personnel not performing any duties and advised to stay away from work during essential operations may be required to utilize their own accrued leave in accordance with all applicable leave provisions unless otherwise guided by an emergency declaration.*

GPA did not follow the pay status outlined in Authority Policy No. AP-069 when it paid all GPA employees double their regular pay during the state of emergency. Employees assigned on duty or assigned telework were compensated for actual time (i.e., regular pay) in addition to administrative leave. Therefore, we questioned the \$1.5M double pay compensated to employees during this period.

Guam Waterworks Authority

GWA recognized that the emergency pay provisions, specifically DOA's personnel rules and regulations Rule 8.406, were primarily intended for short-term response and recovery, not a long-term public health emergency. The Governor's state of emergency declaration triggered the GWA emergency pay provisions. Non-essential employees were sent home for the duration of the public health emergency with normal working hours covered under administrative leave. Essential employees worked at their duty stations with working hours covered at double the regular rate or granted compensatory leave credits.

According to GWA, they utilized Rule 8.406 to compensate their employees who reported to their work site/duty stations during a declared state of emergency. GWA incurred \$1.0M in double pay for 333 employees during March 14, 2020 to May 11, 2020.

GWA sought guidance from DOA and other GovGuam agencies to obtain guidance on the conflicting provisions. However, there were conflicts relative to the interpretation of the guidance. Pandemic Condition of Readiness (PCOR) 2 was declared on May 14, 2020. At this time, GWA ceased the double pay and tracked employee hours for the 10% differential pay. In addition, GWA employees were not paid the 10% differential because of ongoing numerous legal and legislative discussions. The conflicts were not resolved until PCOR 2 was declared. For that reason, we question the applicability of the \$1.0M double pay.

\$2,540,641
QUESTIONED COSTS



We recommend the AG review the circumstances surround the application of the double pay provision and determine if reimbursement is necessary from employees who received the double pay.

AG’s Opinion on Applicability of Double Pay Provision

As elaborated in the AG’s opinion on the applicability of the double pay provision, an employee is entitled to receive double pay or compensatory leave credits when:

- (1) The Governor has declared a state of emergency;
- (2) The facility that the employee works at is closed; and
- (3) The employee is still required to report to work in order to provide essential services.

GPA and GWA met the first criteria as there was no doubt a declared a state of emergency occurred. There is also no question that power, water, and wastewater services are critical needs for the health and safety of Guam’s citizenry. Criteria three was met as the employees of the Operations Divisions/Sections of GPA and GWA would be required to report to work to provide essential services.

However, in regards to criteria two, it is unclear if GPA and GWA’s entire facilities, or portions of it, were closed. GPA’s Pandemic Influenza Preparedness and Response Plan outlined the responsibilities of mission-critical divisions and the need to be adequately staffed to perform essential business services to continue operations. GWA indicated that the application of Rule 8.406 was consistent with previous emergency declarations.

We were unable to verify the entire closure of the GPA and GWA facilities with the continuity of operations for power, water, and wastewater services in the Operations Divisions. We recommend the AG review the circumstances surrounding the application of the double pay provision and determine if reimbursement is necessary from employees who received the double pay.



26 Entities Receive 25% Differential Pay

E.O. 2020-08 granted a 25% differential pay to essential employees in the course of their duties who are in direct contact or in close physical proximity to a population infected with or may be reasonably suspected to be infected with COVID-19. Such positions may include, but not limited to sworn public safety/law enforcement, health care providers and other positions performing essential critical mission duties.

There were 26 GovGuam entities who availed of the 25% differential pay totaling \$2.0M. The top three users of the 25% differential pay were GFD, GMHA, and GPD. See Table 4 for a breakdown of the top three users of 25% Differential Pay and Appendix 6 for a complete list.

**TABLE 4:
Breakdown of 25% Differential Pay**

AGENCY	AMOUNT
GFD	\$ 531,885
GMHA	350,914
GPD	287,853
23 OTHER ENTITIES	785,389
TOTAL	\$ 1,956,041



There were 26 GovGuam entities who availed of the 25% differential pay totaling \$2.0M.



Guam Fire Department

GFD employees received the most in 25% differential pay, incurring \$532K in Category 1 COVID-related compensation. As a critical first-responder department, GFD maintained its operations to protect life and property from the perils of fire and other disasters. See Table 5 for a breakdown by position of the 25% pay differential.

**TABLE 5:
Breakdown of 25% Pay Differential by GFD Position**

	POSITION TITLE	HAZARD 25%	HAZARD 25% - OT RATE	TOTAL
1	FIREFIGHTER I	\$ 99,825	\$ 63,983	\$ 163,808
2	FIRE SERVICE SPECIALIST	79,602	48,402	128,003
3	FIREFIGHTER II	61,436	42,039	103,475
4	FIRE CAPTAIN	38,729	29,503	68,232
5	FIRE BATTALION CHIEF	11,229	9,335	20,564
6	8 OTHER POSITIONS	34,277	13,525	47,801
	TOTAL	\$ 325,098	\$ 206,787	\$ 531,885



Guam Memorial Hospital Authority

GMHA was the second highest user of the 25% differential pay incurring \$351K in Category 1 COVID-related compensation. To track eligibility and expenses, GMHA Information Circular 2020-100 (AMENDED) outlined the COVID Response Differential Pay eligibility to all department heads/supervisors and timekeepers. The 25% differential pay was granted to:

- All emergency room, employee health services, infection control employees, and patient couriers;
- All employees scheduled to work in a COVID Care area and whose duties required them to come within six (6) feet from a COVID patient or Person Under Interest (PUI); and
- All employees scheduled to respond to a COVID need (e.g., a transfer, a CODE, cleaning/maintenance service, etc.) whose duties require them to come within six (6) feet from a COVID patient or PUI.

Table 6 provides a breakdown by GMHA positions that made \$10K.

**TABLE 6:
Breakdown of 25% Pay Differential over \$10K by GMHA Position**

POSITION TITLE		CAT 1 (25%)
1	PHYSICIAN-EMERGENCY ROOM	\$ 53,730
2	STAFF NURSE I	34,874
3	RESPIRATORY THERAPIST II	25,420
4	STAFF NURSE II	25,387
5	HOSP STAFF NURSE II -CLINICAL I	21,689
6	HOSP STAFF NURSE II -CLINICAL II	19,553
7	EMERGENCY ROOM TECHNICIAN	17,670
8	PATIENT COURIER	16,420
9	PATIENT SERVICE REPRESENTATIVE	13,343
10	HOSPITAL PHARMACIST	11,122
11	HOSP ENVIRON SVCS TECH I	10,448
	60 OTHER POSITIONS	101,257
TOTAL		\$ 350,914



Guam Police Department

GPD was the third highest user of the 25% differential pay incurring \$288K in Category 1 COVID-related compensation. As a critical first-responder, GPD exists to serve the community by protecting life and property, by preventing crime, by enforcing laws, and by maintaining order for all citizens. See Table 7 for a breakdown by position over \$10K of the 25% pay differential.

**TABLE 7:
Breakdown of 25% Pay Differential by GPD Position**

POSITION TITLE		CAT 1 (25%)
1	POLICE OFFICER II	\$ 76,122
2	POLICE OFFICER III	62,063
3	POLICE SERGEANT I	51,845
4	POLICE OFFICER I	46,568
5	POLICE OFFICER (TRAINEE)	12,679
6	POLICE LIEUTENANT	12,042
	14 OTHER POSITIONS	26,535
TOTAL		\$ 287,853



SOURCE: GMHA.ORG

29 Entities Receive 15% Differential Pay

E.O. 2020-08 granted a 15% differential pay to essential employees if within their duties may incidentally come into contact with or close physical proximity to a populations infected with or may be reasonably suspected to be infected with COVID-19. These employees may also include providing humanitarian services or direct public assistance to the general public.

We identified 29 GovGuam departments and agencies who availed of the 15% differential pay totaling \$933K. GMHA, MCOG, and GDOE were the top three 15% differential pay users. Table 8 breaks down the top three users of 15% differential pay and Appendix 7 for a complete list.

TABLE 8:
Breakdown of Top Three Users of 15% Differential Pay

AGENCY	CAT 2 (15%)
GMHA	\$ 532,409
MCOG	79,651
GDOE	65,474
26 OTHER ENTITIES	255,908
TOTAL	\$ 933,442



We identified 29 GovGuam departments and agencies who availed of the 15% differential pay totaling \$933K.



Guam Memorial Hospital Authority

GMHA was the highest user of the 15% differential pay incurring \$532K in Category 2 COVID-related compensation. Eligibility to receive the 15% COVID Response Differential Pay was granted to:

- All Professional Support Services and Nursing Services employees; and
- All employees scheduled to work in a COVID Care area whose duties place them greater than six (6) feet apart from a COVID patient or PUI.

See Table 9 for a breakdown by position that made \$10K or more at the 15% pay differential.

**TABLE 9:
Breakdown of 15% Pay Differential over \$10K by GMHA Position**

POSITION TITLE		CAT 2 (15%)
1	STAFF NURSE II	\$ 67,232
2	STAFF NURSE I	67,116
3	HOSP STAFF NURSE II -CLINICAL II	33,639
4	HOSP STAFF NURSE II -CLINICAL I	25,462
5	HOSPITAL PHARMACIST	23,251
6	NURSE AIDE I	22,580
7	NURSE AIDE II	17,744
8	HOSPITALIST-INTERNAL MEDICINE	16,419
9	HOSPITAL UNIT SUPERVISOR	13,675
10	HOSP STAFF PHY-DIAGNOSTIC RADIOLOGY	12,955
11	WARD CLERK	10,819
12	PHYSICIAN - OB/GYN	10,500
	117 OTHER POSITIONS	211,017
TOTAL		\$ 532,409



Mayor’s Council of Guam

MCOG was the second highest user of the 15% differential pay, incurring \$80K in COVID-related compensation. MCOG provides assistance to the Mayors and Vice Mayors of all 19 municipalities who are the most direct front-line responders and representatives of our people. The Mayors and Vice Mayors provide services and responses and ensure that these services are equitably and promptly provided to all our residents. See Table 10 for a breakdown by position of the 15% pay differential.

**TABLE 10:
Top Five 15% Pay Differential by MCOG Position**

	POSITION TITLE	HAZARD 15%	HAZARD 15% - OT RATE	TOTAL
1	COMMUNITY MAINT. WORKER	\$ 22,197	\$ -	\$ 22,197
2	MAYOR	10,947	-	10,947
3	HOMEMAKER	8,164	-	8,164
4	MUNICIPAL CLERK	6,710	-	6,710
5	VICE MAYOR	5,883	-	5,883
	20 OTHER POSITIONS	25,372	378	25,750
	TOTAL	\$ 79,273	\$ 378	\$ 79,651



Guam Department of Education

In response to the Governor’s declaration of a state of emergency, GDOE closed all schools and non-essential offices to the public and required all non-essential employees to work from home. With the closure of schools, certain GDOE employees were activated to assist with the pandemic response:

- 42 school nurses assisted with the public health response;
- 10 school resource officers assisted with quarantine operations;
- 12 social workers assisted with contact tracing; and
- 359 GDOE staff members assisted with the Grab and Go Food Program at 11 school distribution sites.

See Table 11 for a breakdown by position of the 15% differential.

**TABLE 11:
Top Five 15% Pay Differential by GDOE Position**

POSITION TITLE		CAT 2 (15%)
1	TEACHER I ON CALL SUB PT	\$ 10,109
2	SCHOOL AIDE I	5,627
3	ELEM SCH PRINCIPAL	5,417
4	SCHOOL AIDE III	4,708
5	COOKS ASSISTANT	3,233
	47 OTHER POSITIONS	36,380
TOTAL		\$ 65,474



42 Entities Receive 10% Differential Pay

According to E.O. 2020-08, ten percent (10%) pay differential was granted to essential employees whose positions did not allow them to telework and were mandated to perform their job duties at physical worksites pre-determined by their agency heads, required by the Government’s response to the COVID-19 pandemic. We identified 42 GovGuam departments and agencies who availed of the 10% differential pay totaling \$568K. Through E.O. 2020-16, the Category 3 COVID-19 Response Differential Pay expired in June 2020. PAG, GMHA, and DPHSS were the top three users of the 10% differential pay. See Table 12 for a breakdown of the top three users of 10% Differential Pay and Appendix 8 for a complete list.

**TABLE 12:
Breakdown of Top Three Users of 10% Differential Pay**

AGENCY	CAT 3 (10%)
PAG	\$ 152,670
GMHA	144,806
DPHSS	53,347
38 OTHER ENTITIES	217,609
TOTAL	\$ 568,432



Port Authority of Guam

PAG remained open during the public health emergency to keep the supply chain flowing into Guam and throughout the region. It was determined that PAG employees would be utilizing Category 3, or 10% differential pay as outlined in E.O. 2020-08. All PAG employees received the 10% differential pay that totaled \$153K. PAG was the highest user of the 10% differential pay. See Table 13, for the top five compensated positions for Category 3 10 % Differential Pay in PAG.

**TABLE 13:
Top Five 10% Pay Differential by PAG Position**

POSITION TITLE		CAT 3 (10%)
1	EQUIPMENT OPERATOR	\$ 17,476
2	CARGO CHECKER	15,390
3	PORT POLICE	14,225
4	STEVEDORE	11,288
5	CRANE OPERATOR	8,893
	46 OTHER POSITIONS	85,397
TOTAL		\$ 152,670



Guam Memorial Hospital Authority

GMHA was the second highest user of the 10% differential pay incurring \$145K in Category 3 COVID-related compensation. The 10% differential pay was granted to all essential employees who did not meet Category 1 & 2 criterion. See Table 14 for the top GMHA five compensated positions for Category 3 10% Differential Pay.

**TABLE 14:
Top Five 10% Pay Differential by GMHA Position**

POSITION TITLE		CAT 3 (10%)
1	HOSP ENVIRON SVCS TECH I	\$ 11,720
2	MAINTENANCE WORKER	7,160
3	MEDICAL RECORDS CLERK	7,064
4	ADMINISTRATIVE ASSISTANT	5,086
5	ACCOUNTING TECHNICIAN I	4,970
	110 OTHER POSITIONS	108,805
TOTAL		\$ 144,806



Department of Public Health and Social Services

DPHSS was the third highest user of the 10% differential pay incurring \$53K in Category 3 COVID-related compensation. DPHSS is responsible for providing public health and social services program for the residents of Guam. See Table 15 for a breakdown for the DPHSS top five position titles that received 10% pay differential.

**TABLE 15:
Top Five 10% Pay Differential by DPHSS Position**

	POSITION TITLE	HAZARD 10%	HAZARD 10% - OT RATE	TOTAL
1	PROGRAM COORDINATOR IV	\$ 5,890	\$ -	\$ 5,890
2	PROGRAM COORDINATOR III	2,348	203	2,550
3	SOCIAL WORKER III	2,052	-	2,052
4	PROGRAM COORDINATOR II	1,628	314	1,942
5	HUMAN SERVICES PROGRAM ADMINISTRATOR	1,817	-	1,817
6	96 OTHER POSITIONS	38,885	210	39,096
	TOTAL	\$ 52,620	\$ 727	\$ 53,347

34 Entities Receive Miscellaneous Pay

GovGuam employees received other categories of COVID-related compensation to include compensatory time off, overtime, night differential, and DOC differential pay.

GovGuam incurred \$4.5M in COVID-related compensation for other pay. The top three users of other pay were GMHA, GWA, and GIAA. See Table 16 for the top three users of other pay and Appendix 9 for a list of all other pay recipients.

**TABLE 16:
Breakdown of Top Three Users of Other Pay Recipients**

AGENCY	OTHER PAY
GMHA	\$ 1,984,125
GWA	503,234
GIAA	379,391
31 OTHER ENTITIES	1,584,589
TOTAL	\$ 4,451,340

Guam Memorial Hospital Authority

GMHA incurred a total of \$2M of total payroll expenses in other pay. Other pay consisted of Call Back Pay Hours – Scheduled (\$35K), Certification Hours (\$240K), Dbl Time Nurses Hours (\$1K), Double Time Premium Hours (\$5K), EDU/NSQ Certification Hours (\$1K), HD - Hazard Duty 10% Hours (\$14K), Holiday Worked License x1.5 OV Hours (\$196K), ICU Diff Hours (\$10K), Incentive Pay Hours - 16% (\$513K), Night Differential Hours (\$252K), Overtime Premium Hours (\$228K), OVT-NURSES/AHPS (\$27K), Physician Admin Hours (\$158K), Retro Pay (\$32K), Weekend Differential (\$429K), and Workers Comp Hours (\$39K).

Guam Waterworks Authority

In addition to the \$1.0M in double pay, GWA incurred an additional \$503K for compensatory leave credits. According to GWA management, it was necessary to change compensation for employees required to report to their duty stations from double pay to regular pay and compensatory leave credit for each hour worked during the public health emergency. This was in accordance with GWA Personnel Rules and Regulations.

GWA incurred compensatory leave credits to sustain operations and avoid implementing more drastic cost containment measures, such as reduced hours or furloughs. This occurred from April 26, 2020 to when PCOR 2 was announced on May 11, 2020. See Table 17 for the amounts incurred for compensatory leave credits by division.

TABLE 17:
Top 5 Divisions Incurred for Compensatory Leave Credits

DIVISION		AMOUNT
1	6852 - FMES - Transportation	\$ 35,698
2	6930 - Maintenance	32,520
3	6220 - Information Technology	26,213
4	6830 - Line & Leak Repairs	21,794
5	6812 - Ground - Deepwell	21,045
	38 OTHER DIVISIONS	365,963
	TOTAL	\$ 503,234

As mentioned above, we were unable to substantiate the entire closure of the facilities where GWA employees worked, given the fact that there was a continuity of operations for water and wastewater services in the Operations Divisions/Sections. We questioned the applicability of the double pay provision and also question the application of compensatory leave credits totaling \$503K². We recommend the Attorney General of Guam review the circumstances surrounding the application of the compensatory leave credits and determine if reimbursement is necessary for employees that received this benefit.

² Compensatory leave credits totaled \$503,234. However, for the purposes of this report, we questioned credits incurred between March 14, 2020 and May 11, 2020.



SOURCE: GUAMAIRPORT.COM



Guam International Airport Authority

GIAA spent \$379K in other pay. Other pay consisted of \$378K in back-in overtime premium and \$1K in back-in overtime and back-in straight. During the state of emergency, GIAA followed the Section 7.404F within their GIAA Personnel Rules and Regulations to compensate overtime pay to all essential employees required to report to work. This was applied in addition to the differential pay provision established by E.O. 2020-08.

10 GovGuam Entities Had No COVID-Related Compensation

We confirmed with the following departments and agencies with no COVID-related compensation.

Entities with No Covid-Related Compensation

1. *Commission on Decolonization*
2. *Government of Guam Retirement Fund*
3. *Guam Ancestral Lands Commission*
4. *Guam Board of Accountancy*
5. *Guam Developmental Disabilities Council*
6. *Guam Economic Development Authority*
7. *Guam Housing and Urban Renewal Authority*
8. *Guam Legislature*
9. *Guam Preservation Trust*
10. *Office of Public Accountability*



Unclassified Employees Received COVID-related Compensation

Unclassified employees, including department and agency heads and certain elected officials, received COVID-related compensation as part of the differential pay policy. A 35th Guam Legislature Senator noted a potential violation of law with unclassified employees receiving compensation in addition to their regular salaries, as it is prohibited by 4 GCA §6218.2.

Title 4 GCA §6218.2 prohibits bonus payments for unclassified employees unless specified by law. Any person who authorizes a bonus payment in violation of this section shall be guilty of a misdemeanor. Bonus payments are sums authorized and/or paid to an unclassified employee that is separate and apart from and/or added to the base pay of such unclassified employee for any purpose.

However, federal appropriations allowed the Governor to enforce a differential pay policy and payroll expenses was deemed a permissible use of CARES funds. According to the OAG, the 1978 case of *Wong v. Camina* noted that Congress can directly appropriate to GovGuam where the appropriation or grant does not provide for local legislative control nor the authority for the Guam Legislature to re-appropriate these funds. The U.S. Department of Treasury did not specify guidance regarding classified and unclassified employees' payroll expenses in the CARES Act. Thus, 4 GCA §6218.2 would not be applicable to this situation.

During our review, multiple unclassified positions received COVID-related compensation. This included Mayors, Vice-Mayors, department and agency heads (i.e., Presidents, Executive Directors, Directors, Deputy Directors), and other unclassified employees.

Elected Officials

We confirmed the Governor, Lieutenant Governor, Attorney General, Public Auditor, and the 35th Guam Legislature senators did not receive COVID-related compensation. In addition, the following mayors and vice-mayor:

TABLE 18:
Mayors Who Did Not Receive COVID-19 Related Compensation

	POSITION	MUNICIPALITY
1	Mayor	Chalan Pago-Ordot
2	Mayor	Hagatna
3	Mayor	Inarajan
4	Mayor	Merizo
5	Mayor	Piti
6	Mayor ³	Yona
7	Vice-Mayor	Tamuning-Tumon-Harmon

These Mayors stated that in any other disaster, they would not receive this type of compensation and did not think it was prudent. They preferred to have the additional pay credited to their staff so they could receive pay commensurate with their duties as in any other disaster. We confirmed municipal staff received COVID-related compensation.

³ Position was vacant during our scope period.

The following 13 mayors and six vice-mayors received COVID-related compensation were:

TABLE 19:
List of Elected Officials Received COVID-Related Compensation

	POSITION	MUNICIPALITY	CAT 2 (15%)	CAT 3 (10%)	TOTAL
1	Mayor	Agana Heights	\$ 649	\$ -	\$ 649
2	Mayor	Agat	1,082	-	1,082
3	Vice-Mayor	Agat	981	-	981
4	Mayor	Asan-Maina	1,082	-	1,082
5	Mayor	Barrigada	1,082	-	1,082
6	Vice-Mayor	Barrigada	981	-	981
7	Mayor	Dededo	1,082	-	1,082
8	Vice-Mayor	Dededo	981	-	981
9	Mayor	Mangilao	433	-	433
10	Vice-Mayor	Mangilao	981	-	981
11	Mayor	Mongmong-Toto-Maite	1,082	-	1,082
12	Mayor	Santa Rita	-	721	721
13	Mayor ⁴	Sinajana	1,082	-	1,082
14	Vice-Mayor	Sinajana	981	-	981
15	Mayor	Talofofo	1,082	-	1,082
16	Mayor ⁵	Tamuning-Tumon-Harmon	1,082	-	1,082
17	Mayor	Umatac	1,082	-	1,082
18	Mayor	Yigo	779	-	779
19	Vice-Mayor	Yigo	981	-	981
TOTAL			\$ 17,479	\$ 721	18,200

⁴ Listed as Staff Assistant in the information provided by DOA.

⁵ Listed as a Municipal Clerk in the information provided by DOA.

The Santa Rita Mayor was the only elected official to receive the 10% differential pay, while the other mayors and vice-mayors received the 15% differential pay.

Lastly, we did not confirm if any members of the Consolidated Commission on Utilities or Guam Education Board received COVID-related compensation as they are not salaried positions.

Appointed Officials

We identified Presidents, Executive Directors, Directors, and Deputy Directors who received COVID-related compensation. We did not list other unclassified employees as we did not confirm their status with DOA. We identified the elected and appointed officials receiving COVID-related compensation in the amount of \$176K. See Appendix 10 for a listing of appointed officials that received additional COVID-related compensation.

Subsequent Event

In November 2020, the Governor of Guam's Legal Counsel submitted the October COVID-19 Relief Fund report to the Guam Legislature. Of the \$25.7M COVID-19 related payroll expenses budget, \$16.4M was spent for executive branch agencies, the Judiciary, and GMHA. There is \$9.3M available as of October 31, 2020. This does not include the compensation for other autonomous or semi-autonomous agencies. The COVID-19 Relief Fund was to be spent or encumbered by December 30, 2020. In December, the Consolidated Appropriations Act for 2021 extended the deadline to December 31, 2021. See Table 20 for the payroll expenses.

TABLE 20:
COVID-19 Related Payroll Expenses for Public Safety, Public Health, Health Care, Human Services

ENTITY	BUDGET	EXPENDITURES	AVAILABLE
Executive Branch Agencies	\$ 18,512,000	\$ 13,334,525	\$ 5,177,475
Judiciary	2,320,540	706,458	1,614,082
OAG	598,500	-	598,500
OPA	598,500	-	598,500
UOG	68,101	-	68,101
GMHA	3,638,231	2,402,303	1,235,928
GVB	5,000	-	5,000
TOTAL	\$ 25,740,872	\$ 16,443,286	\$ 9,297,586

CONCLUSION AND RECOMMENDATIONS

We found that between March 14, 2020 and May 11, 2020, there was a difference in the use of legal authority for the compensation of GovGuam employees during the state of emergency declared in March 2020.

Two autonomous agencies utilized the double pay provision, while 45 autonomous, semi-autonomous, and line agencies utilized the E.O. 2020-08 Differential Pay Policy. Although there was a COVID-19 budget of \$29.2M, not all GovGuam agencies were paid out of the COVID-19 Relief Fund for payroll expenses.

We questioned the double pay given to GWA and GPA employees. GPA's Authority Policy on a Pandemic Influenza Preparedness and Response Plan stated that personnel teleworking shall be compensated at their regular pay and essential personnel on duty would earn regular pay and overtime on hours beyond the 40-hour workweek. GPA did not follow their policy. Therefore, we questioned the \$1.5M double pay compensated to employees during this period. GWA's interpretation of Rule 8.406 conflicted with E.O. 2020-08. GWA employees were not paid the differential because of ongoing numerous legal and legislative discussions. As a result we questioned the \$1.0M double pay compensated to GWA employees.

We recommend the OAG:

- (1) Review the circumstances surrounding the application of the double pay provision for the GPA and GWA and determine if reimbursement is necessary for employees that received the double pay; and
- (2) Review the circumstances surrounding the application of the compensatory leave credits for the GWA and determine if reimbursement is necessary for employees that received this benefit.
- (3) Review the application of elected and appointed officials receiving COVID-related compensation and determine if reimbursement is necessary for employees that received this pay.

CLASSIFICATION OF MONETARY AMOUNTS

FINDING DESCRIPTION	QUESTIONED COSTS	POTENTIAL SAVINGS	UNREALIZED REVENUES	OTHER FINANCIAL IMPACT
GPA and GWA Used Double Pay Provision	\$ 2,540,641	-	-	-
26 Entities Received 25% Differential Pay	-	-	-	-
29 Entities Received 15% Differential Pay	-	-	-	-
38 Entities Received 10% Differential Pay	-	-	-	-
34 Entities Received Other Pay				
<i>Application of GWA Compensatory Leave Credits</i>	503,234			
10 GovGuam Entities Had No COVID-Related Compensation	-	-	-	-
Unclassified Employees Received COVID-Related Compensation	-	-	-	-
Total	\$ 3,043,875	\$ -	\$ -	\$ -

OPA MANAGEMENT LETTER AND RESPONSE

In December 2020, we transmitted a draft report to the Attorney General, CCU Chairman, GPA General Manager, GWA General Manager, DOA Director, BBMR Director, and MCOG Executive Director.

We received formal responses from the AG, the GPA General Manager, and the GWA General Manager via direct email to the Public Auditor as follows:

OAG Management Response: The AG acknowledged the recommendations and will contact GPA and GWA relative to their application of the double pay provision and compensatory leave credits. Recommendation three regarding the application of elected and appointed officials receiving COVID-related compensation was resolved. He further clarified established laws related to our findings.

GPA Management Response: The GPA General Manager noted that applying administrative leave was consistent with prior emergency declarations. Per GPA AP-069 Section IX (G), employees on duty or assigned telework were compensated for actual time (i.e., regular pay) in addition to administrative leave. GPA, through its counsel and through GWA's counsel, sought direction and clarification from both DOA and BBMR. However, no response was received. In addition, as the GPA worksites were deemed safe and fit for its employees to work, the COVID-19 differential pay set forth in E.O. 2020-08 did not apply.

GWA Management Response: The GWA General Manager stated that the conflict was that Rule 8.406 required the [double] pay when the criteria were met, while the E.O. required either 1.1x, 1.15x, or 1.25x pay depending on exposure. GWA sought to clarify whether the E.O. intended to suspend Rule 8.406 which would have eliminated the conflicting provisions. With no clarification provided, GWA Management chose to follow Rule 8.406, which would meet and exceed

the E.O. requirements. Choosing to follow the E.O. 2020-08 would have put GWA in a position of non-compliance with Rule 8.406.

GWA management applied Rule 8.406 consistent with how the rule has been applied by GWA during all prior emergency declarations. For example, upon declaration of Typhoon Condition of Readiness 2, GWA facilities are closed to the public, but GWA systems remain operational due to the critical nature of services provided.

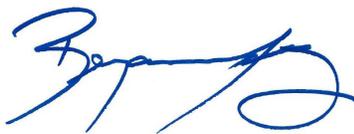
OPA Reply: As a result of the management responses received, details were modified in our report for accuracy. See Appendices 10 – 12 for the management responses in their entirety.

As of the date of this report, we did not receive management responses from the CCU Chairman, DOA Director, BBMR Director, and MCOG Executive Director.

The legislation creating OPA requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress in implementing the audit recommendations, and to endeavor to have implementation completed no later than the beginning of the next fiscal year. Accordingly, we will contact the Office of the Attorney General to provide target dates and title of the official(s) responsible for implementing the recommendations.

We appreciate the cooperation shown by all GovGuam autonomous, semi-autonomous, and line agencies during this audit.

OFFICE OF PUBLIC ACCOUNTABILITY



Benjamin J.F. Cruz
Public Auditor

Appendix 1: Objective, Scope, & Methodology

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Our audit objectives were to (1) determine the legal statute(s) utilized for employee compensation and (2) identify and quantify the compensation costs for GovGuam employees during the COVID-19 pandemic response.

The scope of our audit focused on COVID-19 payroll expenses from March 14, 2020 through May 11, 2020.

Methodology

To accomplish our objectives, we performed the following:

1. Conducted interviews with DOA officials and staff and obtained an understanding of the process for the payout of COVID-related compensation.
2. Reviewed payroll data from DOA, autonomous agencies, and semi-autonomous agencies from March 14, 2020 to May 11, 2020.
3. Confirmed information provided by DOA and other agencies.
4. Determined legal statutes applicable to GovGuam employees regarding compensation.
5. Identified and quantified GovGuam agencies that received COVID-related compensation and determined what type of pay was given to each agency.
6. Identified whether unclassified employees received COVID-related compensation.
7. Calculated the total amount and type of COVID-related compensation that had been paid out.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards, issued by the Comptroller General of the United States of America. Those standards require that we plan and perform the engagement to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 2: Prior Audit Coverage

OPA Report No. 20-04 PAG Unclassified Employees' Pay Raises and Bonuses

From FY 2012 through FY 2019, the PAG Board of Directors generally complied with the Open Government Law. We did not find any bonuses given to unclassified employees in our review of executive and general sessions as well as personnel action forms. However, we found that the Board of Directors:

- Discussed and decided on the hiring of the former General Manager in their December 2012 executive session;
- Were inconsistent in the ratification of the former General Manager's pay adjustments as well as the former Deputy General Managers' pay adjustments; and
- Did not conduct a formal performance evaluation for the former General Manager in 2018.

We also found that the discussion on the migration to the PAG compensation plan's 25th market percentile took place during working sessions that were not open to the public. We recommended that the Board of Directors consistently ratify all pay adjustments for PAG unclassified employees on a going-forward basis.

OPA Report No. 19-09 GPA and GWA Unclassified Employees' Pay Raises and Bonuses

From fiscal year (FY) 2015 through FY 2019, the Consolidated Commission on Utilities (CCU) did not comply with the Open Government Law when it discussed and decided on employees' salaries and bonuses during their executive meetings. Specifically, we found that the:

- CCU violated P.L. 33-123 when it gave bonuses to certain unclassified employees after February 2016;
- After the AG's April 23, 2019 opinion, most unclassified employees returned the voided salaries and bonuses provided by the CCU at its November 27, 2018 executive meeting, at the net amounts instead of the gross amounts;
- CCU did not conduct performance evaluations for GPA and GWA General Managers;

Appendix 2: Prior Audit Coverage

- CCU hired the former GWA Chief Financial Officer under a contract, but CCU and GWA could not provide the contract or procurement documents related to the employment; and
- Salary levels of GPA and GWA unclassified employees were inconsistent with CCU authorized pay range.

We recommended: (1) the AG to provide an opinion on each of the salary levels, adjustments, and bonuses made to unclassified employees that were effective between October 2013 and January 2019; (2) CCU to consult with GPA and GWA's Payroll Specialists as to how employees should return the salary increments and bonuses; (3) the AG to provide an opinion on how the employees should return the void salary increments and bonuses; and (4) CCU to consistently apply the agency-wide adopted pay scale.

OPA Report No. 14-05, Government of Guam Merit Bonus Program

From FY 2009 to FY 2013, GovGuam spent \$12.6M in retroactive merit bonus payments to over 4,200 current and former employees. Specifically, we found:

- Advice from agencies' respective legal counsels reflected differences of opinion relating to the statute of limitations for merit bonuses. As a result, periods of performance review entitled to retroactive merit bonus amongst agencies ranged from 3 to 23 years.
- Some agencies calculated a merit bonus off of the employee's current salary, not the increment salary, while some agencies did vice versa.
- Overall ratings terms used in agency performance evaluation forms varied and resulted in employees receiving merit bonuses if the rating given was interpreted to be equivalent to "superior". In instances where performance evaluations did not have a "superior" rating, the highest possible rating was considered equivalent to "superior" for merit bonus purposes.

We recommended that DOA follow through and submit their assessment and policy no later than September 30, 2015, but not without first seeking clarification on the merit bonus law from the AG. In October 2017, the former Public Auditor closed this recommendation as it was not implemented and no follow-up will be done by DOA.

Appendix 3: Executive Orders Related to the COVID-19 Responses

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E.O. 2020-03 – Relative to Declaring State of Emergency to Respond to Novel Coronavirus

In March 2020, the Governor of Guam signed and promulgated E.O. 2020-03, relative to declaring a state of emergency to respond to COVID-19. The Governor of Guam ordered the following:

- **Declaration of State Emergency.** A state of emergency pursuant to §19401 of Article 4, Chapter 19, Title 5, of the GCA is hereby declared for Guam as a result of the effects of **COVID-19** on the island.
- **Authorization for Overtime.** Authorization is given for the payment of overtime for non-exempt GovGuam employees, to work in excess of forty (40) hours a week to mitigate and respond to the effects of **COVID-19**. The Office of Civil Defense Administrator is authorized to determine the eligibility of overtime expenditures resulting from work performed by the government agencies, and approval from the Bureau of Budget Management & Research shall be obtained prior to incurring any overtime or expenses. Failure to obtain prior approval shall be grounds for denying reimbursement.

E.O. 2020-04 – Relative to Responding to Confirmed Cases of COVID-19

In March 2020, the Governor of Guam signed and promulgated E.O. 2020-04, relative to responding to confirmed cases of COVID-19. Effective immediately and through March 30, 2020, all non-essential GovGuam offices are closed and such services are suspended. Essential personnel shall be identified and contacted by their appropriate supervisors.

E.O. 2020-05 – Relative to Mandating Social Isolation, Lifting Restrictions on Health Care Licensure, and Clarifying Status of Non-Essential GovGuam Operations

In March 2020, the Governor of Guam signed and promulgated E.O. 2020-05, relative to mandating social isolation, lifting restrictions on health care licensure, and clarifying status of non-essential GovGuam operations. Per E.O. 2020-05, GovGuam is operating in a limited capacity. Some agencies are completely closed. Several agencies are

Appendix 3: Executive Orders Related to the COVID-19 Responses

operational, but closed to public access. Other agencies remain fully operational, including public access. All members of the public needing government services are asked to contact agencies and departments by email or phone. Regardless of operational status of an agency/department, all GovGuam employees remain on regular work status and are expected to report for duty within two hours from receiving notice from his/her supervisor.

E.O. 2020-08 – Relative to Establishing COVID-19 Response Differential Pay

In April 2020, the Governor of Guam signed and promulgated E.O. 2020-08, relative to establishing COVID-19 response differential pay. The Governor of Guam ordered the following:

The Director of the DOA or the equivalent of in the case of autonomous and semi-autonomous agencies, shall implement a COVID-19 Response differential pay policy for employees working in support of the public health emergency and in areas necessary for the elimination or reduction of immediate threats to life, public health, or safety, whose work could expose them to the coronavirus.

Such policy shall include the following:

- **CATEGORY 1.** Twenty-five percent (25%) pay differential to essential employees in the course of their duties are in direct contact or in close physical proximity to a population infected with or may be reasonably suspected to be infected with COVID-19. Such positions may include, but not limited to, sworn public safety/law enforcement, health care providers and other positions performing essential critical mission duties; or
- **CATEGORY 2.** Fifteen percent (15%) pay differential to essential employees in the course of their duties may incidentally come into contact with or close physical proximity to a population infected with or may be reasonably suspected to be infected with COVID-19. These employees may also be providing humanitarian services or direct public assistance to the general public; or

Appendix 3: Executive Orders Related to the COVID-19 Responses

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- **CATEGORY 3.** Ten percent (10%) pay differential to essential employees whose positions do not allow them to telework and are mandated to perform their job duties at physical worksites pre-determined by their agency heads, required by the Government's response to the COVID-19 pandemic.

Unclassified employees working in the Office of the Governor and the Office of the Lieutenant Governor, agency directors and deputy directors shall be excluded from this differential pay policy except for such instances where assigned duties require an exposure level risk defined in categories 1 or 2. The COVID-19 Response differential pay policy shall also include procedures to minimize the risk of further spreading COVID-19. The Director of DOA or the equivalent of, in the case of autonomous and semi-autonomous agencies, shall determine which employees are essential and must report as directed.

E.O. 2020-16 – Relative to Allowing Additional Activities during Pandemic Condition of Readiness 2 Differential Pay

In May 2020, the Governor of Guam signed and promulgated E.O. 2020-16, relative to allowing additional activities during Pandemic Condition of Readiness 2.

Effective Monday, June 1, 2020, all GovGuam offices, agencies, and departments shall recommence public operations. To the extent possible and where appropriate, agencies will encourage teleworking by employees. Unless otherwise instructed by their supervisors, all employees shall return to their physical worksites. GovGuam agencies will abide by the applicable Public Health Guidance in their operations. In addition, Category 3 of the Covid-19 Response Differential Pay plan established in E.O. 2020-08 shall expire. GovGuam employees not otherwise eligible for Categories 1 and 2 of the COVID-19 Response Differential Pay plan shall be compensated at their regular rate regardless of whether work occurs in their physical workplace or via telework.

Emergency Health Powers – Title 10 GCA Chapter 19

§19104. Definitions. {...} (m) A ‘public health emergency’ is an occurrence or imminent threat of an illness or health condition that:

- 1) Is believed to be caused by any of the following:
 - i) Bioterrorism;
 - ii) The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin;
 - iii) A natural disaster relative to an act of God caused by a typhoon, earthquake, tsunami, floor or intra-terrestrial collision;
 - iv) A chemical attack or accidental release; or
 - v) A nuclear attack or accident; and
- 2) Poses a high probability of any of the of following harms:
 - i) A large number of deaths in the affected population; or
 - ii) A large number of serious or long-term disabilities in the affected population;
 - iii) Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population. {...}

§19401. Declaration. A state of public health emergency may be declared by I Maga’låhen Guåhan [The Governor] upon the occurrence of a ‘public health emergency,’

Personnel Policy and the Civil Service Commission – 4 GCA Chapter 4

§4101.1. Responsibilities of the Director of Administration Regarding Personnel Policy of the Government. {...} (d) Maintain, post and keep current on the Department’s website a list of all classified and unclassified positions in the executive branch, including autonomous agencies and public corporations, showing the job description and pay range assigned to each position; {...}

§4102. Classified and Unclassified Services. (a) The unclassified service shall include the positions of:

- 1) Elective officials;
- 2) Judges;
- 3) Superior Court Marshal, chief clerk, chief probation officer and

- 4) court administrator of the Superior Court;
 - 4) Heads of agencies and instrumentalities and not more than one (1) secretary for each such officer;
 - 5) The first assistant, by whatever title denominated, to the heads of agencies and instrumentalities stated in paragraph (4) of this Subsection;
 - 6) Persons employed on a temporary basis;
 - 7) Members of boards and commission;
 - 8) Executive director of the Commissioner's Council;
 - 9) All offices and employment in the Executive Branch whose appointment are required to be confirmed by the Guam Legislature;
 - 10) All offices and employment made, by law, to be at the pleasure of any board, commission or officer;
 - 11) All legislative employees;
 - 12) Members of the Guam Gaming Commission;
 - 13) Physicians and health care administrators employed at the GMHA;
 - 14) With the exception of civilian non-uniformed positions, all positions in the Department of Military Affairs, including the Executive Secretary and Executive Services Coordinator.
 - 15) Employees of the Office of the Governor and Lieutenant Governor including off-island offices and Government House, as authorized in the applicable appropriation law.
 - 16) Property Management Officer at the DOC.
 - 17) Persons employed on a seasonal basis.
 - 18) Not more than one (1) Special Assistant each to the AG of Guam and the Public Auditor.
- (b) The classified service shall include all other positions in the government of Guam. {...}

Compensation of Public Employees – Title 4 GCA Chapter 6

§6102. UOG and GCC’s Merit Bonus Exception. {...} The only exception is for academic personnel of GCC and UOG which as institutions of higher education, must adhere to accreditation standards established by the appropriate accrediting bodies.

§6206.1. Limitation on Salaries of Director or Deputy Director. (a) If the salary level of a Director or Deputy Director, by whatever title

denominated, is not specifically set out in law but is set by a Board, Commission or other administrative body, that Board, Commission or other administrative body shall not set the salary level of a Director to exceed the current salary level of the Governor, and shall not set the salary level of a Deputy Director to exceed the current salary level of the Lieutenant Governor. This Section shall apply to all departments, agencies, corporations expending funds appropriated by the government of Guam or instrumentalities of the GovGuam, and whether or not the agency is a line, autonomous, or semiautonomous agency.

§6208. Government Attorneys Salaries. It is the intent of I Liheslatura that all full-time attorneys working for GovGuam, its agencies and instrumentalities (including autonomous agencies and instrumentalities), the Judiciary, and the Public Defender Service Corporation be paid according to the following schedule in order to make the pay received by full-time attorneys working for different departments and agencies more or less uniform. Therefore, all full-time attorneys now working for or later hired after the effective date of this Section by GovGuam, its agencies and instrumentalities (including autonomous agencies and instrumentalities), the Judiciary, and the Public Defender Service Corporation including classified, unclassified, and contract hire shall be paid according to the following schedule. However, no attorney working for GovGuam on effective date of this Act shall have his or her salary reduced by this schedule below. {...}

§6218.2 Prohibition on Bonus Pay for Unclassified Employees. No bonuses shall be authorized and/or paid in lump-sum, or otherwise, to unclassified employees of GovGuam unless so specified by law. Any person who authorizes a bonus payment in violation of this Section shall be guilty of a misdemeanor. For the purposes of this Section, bonuses or bonus payments shall mean sums authorized and/or paid to an unclassified employee that is separate and apart from and/or added to the base pay of such unclassified employee for any purpose.

Department of Administration – Title 5 GCA Chapter 20

§20106. General Powers & Duties of Director. As head of the Department, the Director (a) shall administer the Department; (b) shall exercise and discharge the power and duties of the Department through such

Appendix 4: Applicable Laws, Regulations, and Policies

divisions or other organizational units as he may establish pursuant to this Division or as otherwise provided by law; (c) shall enforce the provisions of this Division and of any other laws imposing any power, duty or other function upon the Department; and (d) may formulate and adopt rules necessary or proper for the internal administration of the department. {...}

Guam Community College – Title 17 GCA Chapter 31

§31106. Personnel Rules: Academic Personnel and Administrative Officers. Rules and regulations governing selection, compensation, promotion, performance evaluation and disciplinary action and other terms and conditions of employment affecting academic personnel shall be adopted by the board in accordance with 4 GCA §4104 and §4105. {...}

§31113. Employees. (a) With the exception of academic personnel and unclassified employees under 4102 and Chapter 2 of Title 4, GCA, all other employees of the College shall be classified employees. The employment of classified employees shall be governed by Title 4, GCA, and other applicable laws. The President shall serve the College on a contractual basis, and notwithstanding any other provision of law, shall be entitled to all benefits of GovGuam given to employees including being a member of the Retirement Fund. The term of the contract of employment between the President and the Board shall not be for longer than six (6) years, which term may be renewable any number of times. {...}

§31113. Employees. {...} (d) The Vice-President shall be compensated according to a salary schedule set by the Board of Trustees. {...}

Department of Education – Title 17 GCA Chapter 3

§3104. Qualifications for the Superintendent of Education and Deputy Superintendent of Education. {...} (d) In determining the salary of the Superintendent and Deputy Superintendent, the Board may consider: (1) salaries for similar positions in other United States school districts that have a similar number of students; (2) the complexity, in terms of problem solving, accountability and expertise of the job

compared to positions of a similar level in other government agencies; and (3) the complexity, in terms of the problem solving, accountability and expertise of the job compared to positions of a similar level in other education agencies within GovGuam.

Guam Educational Telecommunications Corporation – Title 12 GCA Chapter 3

§ 3104. General Powers, Termination Date. The Corporation shall have, and may exercise, the following general powers in carrying on the activities specified in §3103 of this Chapter: {...}

(i) To directly employ or contract, with regard to the provisions of the Personnel and Compensation Laws, for the services of such clerical, technical, production and other employees as may be necessary for the conduct of the Corporation, to delegate to them such powers and to prescribe for them such duties as may be deemed appropriate by the Corporation or as may be set by law, to fix and pay such compensation to them for their services as the Corporation may determine with regard to the provisions of GovGuam Personnel and Compensation Laws, to require bonds from such of them as the Corporation may designate, and to remove and discharge such employees and other clerical, technical and production personnel, likewise with regard to the provisions of personnel laws and regulations. {...}

Guam Housing Corporation – Title 12 GCA Chapter 4

§4104. General Powers: Termination Date. The Housing Corporation shall have, and may exercise, the following general powers in carrying on the activities specified in this Chapter: {...} (i) To appoint, pursuant to the provisions of the personnel rules adopted pursuant to 4 GCA §§4105 and 4106, such officers, agents, attorneys and employees, as may be necessary for the conduct of the business of the Housing Corporation; to delegate to them such powers and to prescribe for them such duties as may be deemed appropriate by the

Housing Corporation; to fix and pay such compensation to the for their services as the Housing Corporation may determine, without regard to the compensation laws and to require bonds from such of them as the Housing Corporation may designate, the premiums, therefore, to be paid by the Housing Corporation. Any member of said Board who is found by the Governor or his representative to be guilty of a violation of this Section shall be removed from office by the Governor and any appointee of said Board who is found by the Board to be guilty of a violation of this Section shall be removed from office by said Board. The Housing Corporation shall give due consideration to residents of Guam in the selection and promotion of its officers and employees.

**Guam Housing and Urban Renewal Authority – Title 12
GCA Chapter 5**

§5103. {...} The Board may employ an Executive Director of the Authority who shall serve at the pleasure of the Board, technical experts, such other officers, agents, and employees, permanent and temporary, as it may deem necessary, and shall determine their qualification, duties, tenure, and compensation. {...}

**Guam International Airport Authority – Title 12
GCA Chapter 1**

§1107. Executive Manager. (a) The Board shall appoint an Executive Manager, who shall be its chief executive officer. The Executive Manager shall serve at the pleasure of the Board, which shall fix his compensation. {...}

§1108. Treasurer, Comptroller, Attorney. {...} The Treasurer shall have custody of all monies of the Authority, and shall pay out such money only in accordance with the directions of the Board or as provided by Article 2 of this Chapter. {...}

Appendix 4: Applicable Laws, Regulations, and Policies

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§1112. Personnel. {...} The Executive Manager, the Treasurer, Comptroller and Attorney of the Authority are not classified employees. No person employed by the Authority on a limited term contract shall be a classified employee. All other employees of the Authority are classified employees.

Guam Memorial Hospital Authority – Title 10 GCA Chapter 80

§80110. Administrator and Chief Executive Officer. (a) The Board shall appoint an Administrator, who shall be its chief executive officer. The Administrator's duties and compensation, salary and endowments, shall be determined the Board. {...}

Guam Power Authority – Title 12 GCA Chapter 8

§8108. General Manager. (2) The Board shall fix the general manager's compensation, notwithstanding any provision of law. (p.7)

Guam Regional Transit Authority – Title 12 GCA Chapter 6

§6202. Executive Manager. (a) The Board may appoint an Executive Manager, who shall be its chief executive officer. The Executive Manager shall serve at the pleasure of the Board, and the Board shall establish the compensation. {...}

Guam Solid Waste Authority – Title 10 GCA Chapter 51A

§51A104. Powers and Duties of the Authority. The Authority shall have and exercise each and all of the following powers: {...} (21) (A) adopt rules and regulations governing selection, compensation, promotion, performance evaluation, disciplinary action and other terms and conditions of employment affecting certified technical and professional personnel, subject to the provisions of the Administrative Adjudication Act. (B) Such rules and regulations shall provide for the employment and retention of persons on the basis of merit, and shall include an orderly and systematic method of recruitment and the establishment of a list of qualified applicants. (C) Certified Technical and Professional personnel are defined as personnel employed by the Guam Solid

Waste Authority who are professional engineers, attorneys, and other licensed professionals. (D) Compensation for all other personnel shall remain consistent with compensation plans and pay scales as determined by law.

§51A106. General Manager (GM). {...} (b) The Board shall fix the General Manager's compensation, notwithstanding any other provision of law. The General Manager shall manage the construction, maintenance, operation and administration of business affairs of the Authority.

Guam Waterworks Authority – Title 12 GCA Chapter 14

§14106. General Manager. {...} (b) The Board shall fix the general manager's compensation, notwithstanding any other provision of law. {...}

Office of the Attorney General – Title 5 GCA Chapter 30

§ 30116. Compensation. (a) The Attorney General shall be compensated in twenty-six (26) equal installments for an annual salary based on ninety percent (90%) of the annual compensation of a judge of the Superior Court of Guam. {...}

§30121.2. Employment. (a) Pursuant to the provisions of §4105 of Title 4, GCA, the AG may establish rules and regulations governing selection, promotion, performance evaluation, demotion, suspension and other disciplinary action for the employees of the OAG. Until such time as the OAG adopts its own rules and regulations as provided herein, the rules and regulations adopted by DOA shall continue to apply to the OAG. {...}

Port Authority of Guam – Title 12 GCA Chapter 10

§10114. Adoption of the Personnel Rules and Regulations for Jose D. Leon Guerrero Commercial Port. {...} (2)
The Compensation and Classification Plan shall apply to all positions, classified and unclassified, within the Jose D. Leon

Appendix 4: Applicable Laws, Regulations, and Policies

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Guerrero Commercial Port, inclusive of the positions for Port Police Officers, notwithstanding the DOA's current study for Law Enforcements and Public Safety positions.

University of Guam – Title 17 GCA Chapter 16

§16110. President of the University. (a) The President shall be the executive head of the internal operating organization of the University and shall be responsible for the administration of the academic, business and services activities thereof. The Board acting upon recommendations from a Search Committee, by an affirmative vote of at least five (5) members, shall appoint the President of the University for a specified contractual term. The duties and compensation, salary and endowments, shall be determined by the Board. The President of the University shall serve as Executive Secretary of the Board.

Consolidated Commission on Utilities - Title 12 GCA Chapter 79

§79106. Compensation. Commissioners shall be compensated at the rate of One Thousand Dollars (\$1,000.00) per month for their services. All funds required for the operations of the Commission shall be obtained by subscription from the Authorities administered by the Commission, pursuant to such formula as the Commission shall devise. Commissioners shall not be eligible for GovGuam retirement or insurance benefits, or other benefits associated with GovGuam employment. Commissioners who are GovGuam retirees may serve on the Commission without giving up their retirement benefits.

**Appendix 5:
Listing of Government Agencies with COVID-Related Compensation**

Autonomous and Semi-Autonomous Agencies

FINDING DESCRIPTION	DIFFERENTIAL PAY					TOTAL
	CAT 3 (10%)	CAT 2 (15%)	CAT 1 (25%)	DOUBLE PAY	OTHER PAY	
Guam Community College	\$ 980	\$ -	\$ -	\$ -	\$ -	\$ 980
Guam Department of Education	6,264	65,474	77,194	-	71,575	220,507
Guam Election Commission	-	292	-	-	-	292
Guam Housing Corporation	1,236	-	10,633	-	-	11,869
Guam International Airport Authority	23,150	18,611	9,203	-	79,391	430,356
Guam Memorial Hospital Authority	144,806	532,409	350,914	-	1,984,125	3,012,254
Guam Power Authority	-	-	-	1,508,263	344,225	1,852,488
Guam Visitors Bureau	1,111	-	-	-	-	1,111
Guam Waterworks Authority	-	-	-	1,032,377	503,234	1,535,611
Hagatna Restoration and Redevelopment Authority	-	-	1,660	-	-	1,660
Judiciary of Guam	15,807	4,228	26,898	-	130,632	177,565
Port Authority of Guam	152,670	-	-	-	-	152,670
University of Guam	-	-	-	-	3,145	3,145
TOTAL	\$ 346,024	\$ 621,014	\$ 476,502	\$ 2,540,641	\$ 3,416,327	\$ 7,400,508

**Appendix 5:
Listing of Government Agencies with COVID-Related Compensation**

Line Agencies

FINDING DESCRIPTION	DIFFERENTIAL PAY				TOTAL
	CAT 1 (25%)	CAT 2 (15%)	CAT 3 (10%)	OTHER PAY	
Bureau of Budget and Management Research	\$ -	\$ -	\$ 3,707	\$ 253	\$ 3,960
Bureau of Statistics and Plans	847	-	1,436	108	2,391
Chamorro Land Trust Commission	1,007	352	219	-	1,578
Chief Medical Examiner	-	-	602	130	732
Civil Service Commission	-	-	259	-	259
Customs and Quarantine Agency	151,579	10,808	369	105,454	268,209
Department of Administration	-	2,391	27,450	13,739	43,580
Department of Agriculture	12,134	-	8,965	2,603	23,703
Department of Chamorro Affairs	-	468	178	1,668	2,315
Department of Corrections	151,542	4,342	30,110	311,865	497,859
Department of Integrated Services for Individuals with Disabilities	-	-	1,099	12	1,111
Department of Labor	836	373	7,016	158	8,383
Department of Land Management	-	1,271	1,489	-	2,760
Department of Law (Office of Attorney General)	3,568	575	9,117	-	13,260
Department of Military Affairs	457	-	8,845	96,120	105,422
Department of Parks and Recreation	4,233	4,296	2,979	1,682	13,190
Department of Public Health and Social Services	179,348	50,228	53,347	85,495	368,418
Department of Public Works	47,550	24,764	8,594	104,237	185,145
Department of Revenue and Taxation	377	3,513	15,128	3,200	22,218

**Appendix 5:
Listing of Government Agencies with COVID-Related Compensation**

FINDING DESCRIPTION	DIFFERENTIAL PAY				TOTAL
	CAT 1 (25%)	CAT 2 (15%)	CAT 3 (10%)	OTHER PAY	
Department of Youth Affairs	50,029	1,336	123	7,434	58,922
Guam Behavioral Health and Wellness Center	48,820	37,498	237	45,052	131,606
Guam Commission for Educator Certification	-	-	\$ 98	-	98
Guam Educational Telecommunications Corporation	-	-	1,825	-	1,825
Guam Environmental Protection Agency	-	-	1,806	9,295	11,101
Guam Fire Department	531,885	2,928	401	429	535,643
Guam Homeland Security/Office of Civil Defense	4,488	32,063	-	180,797	217,349
Guam Police Department	287,853	21,168	23,080	20,774	352,875
Guam Public Library System	518	243	252	1,714	2,726
Guam Regional Transit Authority	2,117	10,676	2,592	4,440	19,825
Guam Solid Waste Authority	352	11,641	628	263	12,884
Office of the Lieutenant Governor	-	274	78	-	352
Mayor's Council of Guam	-	79,651	5,829	7,403	92,882
Office of the Governor	-	4,551	87	-	4,637
Office of Technology	-	7,018	3,666	30,605	41,289
Veterans Affairs Office	-	-	796	82	879
TOTAL	\$ 1,479,539	\$ 312,428	\$ 222,408	\$ 1,035,013	\$ 3,049,388

Appendix 6:
List of 25% Differential Pay Recipients

	AGENCY	CAT 1 (25%)
1	GFD	\$ 531,885
2	GMHA	350,914
3	GPD	287,853
4	DPHSS	179,348
5	CQA	151,579
6	DOC	151,542
7	GDOE	77,194
8	DYA	50,029
9	GBHWC	48,820
10	DPW	47,550
11	JOG	26,898
12	AGR	12,134
13	GHC	10,633
14	GIAA	9,203
15	GHS/OCD	4,488
16	DPR	4,233
17	LAW	3,568
18	GRTA	2,117
19	HRRA	1,660
20	CLTC	1,007
21	BSP	847
22	DOL	836
23	GPLS	518
24	DMA	457
25	DRT	377
26	GSWA	352
	TOTAL	\$ 1,956,041

Appendix 7: List of 15% Differential Pay Recipients

	AGENCY	CAT 2 (15%)
1	GMHA	\$ 532,409
2	MCOG	79,651
3	GDOE	65,474
4	DPHSS	50,228
5	GBHWC	37,498
6	GHS/OCD	32,063
7	DPW	24,764
8	GPD	21,168
9	GIAA	18,611
10	GSWA	11,641
11	CQA	10,808
12	GRTA	10,676
13	OTECH	7,018
14	GOV	4,551
15	DOC	4,342
16	DPR	4,296
17	JOG	4,228
18	DRT	3,513
19	GFD	2,928
20	DOA	2,391
21	DYA	1,336
22	DLM	1,271
23	LAW	575
24	DCA	468
25	DOL	373
26	CLTC	352
27	GEC	292
28	LT GOV	274
29	GPLS	243
	TOTAL	\$ 933,442

Appendix 8: List of 10% Differential Pay Recipients

	AGENCY	CAT 3 (10%)
1	PAG	\$ 152,670
2	GMHA	144,806
3	DPHSS	53,347
4	DOC	30,110
5	DOA	27,450
6	GIAA	23,150
7	GPD	23,080
8	JOG	15,807
9	DRT	15,128
10	LAW	9,117
11	AGR	8,965
12	DMA	8,845
13	DPW	8,594
14	DOL	7,016
15	GDOE	6,264
16	MCOG	5,829
17	BBMR	3,707
18	OTECH	3,666
19	DPR	2,979
20	GRTA	2,592
21	PBS Guam	1,825
22	GEPA	1,806
23	DLM	1,489
24	BSP	1,436
25	GHS	1,236
26	GVB	1,111
27	DISID	1,099
28	GCC	980
29	VAO	796
30	GSWA	628
31	CME	602
32	GFD	401
33	CQA	369
34	CSC	259
35	GPLS	252
36	GBHWC	237
37	CLTC	219
38	DCA	178
39	DYA	123
40	GCEC	98
41	GOV	87
42	LT GOV	78
	TOTAL	\$ 568,432

Appendix 9: List of Other Pay Recipients

	AGENCY	OTHER PAY
1	GMHA	\$ 1,984,125
2	GWA	503,234
3	GIAA	379,391
4	GPA	344,225
5	DOC	311,865
6	GHS/OCD	180,797
7	JOG	130,632
8	CQA	105,454
9	DPW	104,237
10	DMA	96,120
11	DPHSS	85,495
12	GDOE	71,575
13	GBHWC	45,052
14	OTECH	30,605
15	GPD	20,774
16	DOA	13,739
17	GEPA	9,295
18	DYA	7,434
19	MCOG	7,403
20	GRTA	4,440
21	DRT	3,200
22	UOG	3,145
23	AGR	2,603
24	GPLS	1,714
25	DPR	1,682
26	DCA	1,668
27	GFD	429
28	GSWA	263
29	BBMR	253
30	DOL	158
31	CME	130
32	BSP	108
33	VAO	82
34	DISID	12
	TOTAL	\$ 4,451,340

List of Appointed Officials Who Received COVID-Related Compensation

AGENCY	POSITION	DIFF. PAY %	GROSS AMOUNT PER OPA
CLTC	Director	25%	\$ 1,007
		15%	352
CLTC SUBTOTAL			\$ 1,359
AGR	Deputy Director	ND	318
		25%	1,369
AGR SUBTOTAL			\$ 1,687
DOC	Director	25%	1,005
		15%	302
		10%	201
	Deputy Director	25%	819
		15%	273
		10%	182
DOC SUBTOTAL			\$ 2,781
DOL	Deputy Director	ND	17
		25%	836
		15%	228
DOL SUBTOTAL			\$ 1,081
OAG	Deputy Attorney General A	10%	46
	Deputy Attorney General B	10%	438
	Deputy Attorney General C	10%	478
OAG SUBTOTAL			\$ 962
DPR	Deputy Director	25%	1,772
		15%	1,921
DPR SUBTOTAL			\$ 3,693
DPHSS	Director	ND	\$ 37
		25%	\$ 535
	Deputy Director	ND	\$ 33
		25%	\$ 490
		15%	\$ 492
DPHSS SUBTOTAL			\$ 1,587

**List of Appointed Officials Who
Received COVID-Related Compensation**

AGENCY	POSITION	DIFF. PAY %	GROSS AMOUNT PER OPA
DPW	Executive Director	25%	\$ 638
		ND	\$ 107
		15%	\$ 77
		10%	\$ 102
	Deputy Director	ND	\$ 153
		15%	\$ 598
DPW SUBTOTAL			\$ 1,675
DYA	Director	25%	\$ 879
		15%	\$ 643
	Deputy Director	25%	\$ 1,031
		15%	\$ 532
DYA SUBTOTAL			\$ 3,084
GBHWC	Deputy Director	ND	\$ 92
		15%	\$ 1,222
GBHWC SUBTOTAL			\$ 1,314
PBS Guam	General Manager	10%	\$ 540
PBS GUAM SUBTOTAL			\$ 540
GFD	Fire Chief	25%	\$ 1,565
GFD SUBTOTAL			\$ 1,565
GHS/OCD	Office of Civil Defense Administrator	OT	\$ 19,020
		ND - OT	\$ 59
		25%	\$ 434
		15%	\$ 1,154
		25% - OT	\$ 599
		15% - OT	\$ 1,234
		ND	\$ 2
GHS/OCD SUBTOTAL			\$ 22,501
GHC	President	25%	\$ 6,562
GHC SUBTOTAL			\$ 6,562
GPD	Chief of Police	25%	\$ 1,565
GPD SUBTOTAL			\$ 1,565

**List of Appointed Officials Who
Received COVID-Related Compensation**

AGENCY	POSITION	DIFF. PAY %	GROSS AMOUNT PER OPA
GPA	Assistant General Manager, Eng and Tech Svs		\$ 7,110
	Assistant General Manager, Operations		\$ 15,894
	Assistant General Manager, Admin		\$ 13,567
	Chief Financial Officer		\$ 15,578
	Chief Info Technology Officer		\$ 21,132
	Interim Staff Attorney (CCU)		\$ 5,711
	Controller		\$ 16,165
GPA SUBTOTAL			\$ 95,158
GWA	Assistant Chief Financial Officer		\$ 3,601
	Controller		\$ 2,488
GWA SUBTOTAL			\$ 6,089
HARRA	Executive Director	25%	\$ 1,660
HARRA SUBTOTAL			\$ 1,660
MCOG	Executive Director	15%	\$ 285
MCOG SUBTOTAL			\$ 285
PAG	General Manager	10%	\$ 981
	Deputy General Manager, Operations	10%	\$ 775
	Deputy General Manager, Admin & Finance	10%	\$ 775
PAG SUBTOTAL			\$ 2,531
			\$ 157,678



Office of the Attorney General of Guam

590 S. Marine Corps Drive, Suite 901 ♦ Tamuning, GU 96913
671.475.3324 extension 5015 ♦ Fax 671.477.4703 ♦ Email ag@oagg Guam.org

Hon. Leevin Taitano Camacho
Attorney General of Guam

December 15, 2020

Benjamin J.F. Cruz
Public Auditor
Office of Public Accountability
238 Archbishop Flores Street
DNA Building, Suite 401
Hagatna, Guam 96910

Dear Public Auditor Cruz,

Thank you for meeting with my office regarding the draft Performance Audit of the Government of Guam COVID-19 Payroll Expenses from March 14, 2020 through May 11, 2020. I am writing to acknowledge that we reviewed and discussed the Office of Public Accountability's recommendations and indicated our office will proceed with the recommendations. As part of our review, we will contact Guam Power Authority and Guam Waterworks Authority and request information relating to their application of the double pay provision and compensatory leave credits.

You have also asked us to determine whether unclassified employees - including nurses, doctors and contact tracers at Guam Memorial Hospital Authority and the Department of Public Health and Social Services - must reimburse the government for any additional pay they received for responding to the COVID-19 public health emergency based on 4 GCA §6218.2. Although that section generally prohibits unclassified employees¹ from receiving bonuses,² the Organic Act of Guam and

¹ You limited your recommendation and analysis to elected and appointed officials, but 4 GCA §6218.2 applies to all unclassified employees, not just elected and appointed officials.

² It is unclear whether compensation for the increased risk of working with a population infected with or reasonably suspected to be infected with COVID-19 is accurately characterized as a "bonus."

established case law grant the governor authority over funds that Congress directly appropriates to the government of Guam.

In the 1978 case of *Wong v. Camina*, the District Court of Guam held that Congress can make appropriations directly to the government of Guam pursuant to 42 USCA § 1423j.³ "Where these appropriations or grants completely fund a specific purpose without the need of local funding, and where the appropriation or grant does not provide for local legislative control, there is no authority for the Guam Legislature to assume the responsibility for re-appropriating these funds."⁴ To our knowledge, *Camina* remains prevailing law.

Applying the holding in *Camina* to the facts as you've outlined, Congress enacted the Coronavirus Aid, Recovery and Economic Security (CARES) Act which directly appropriated funds to the government of Guam. The United States Department of Treasury issued guidance expressly identifying "[p]ayroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID19 public health emergency" as a permissible use of CARES Act funds.⁵ The CARES Act does not distinguish between payroll expenses for classified or unclassified employees. To the extent that the Organic Act, *Camina* and the express language and purpose of the CARES Act do not address your concerns, our office is currently involved in pending litigation which may clarify these issues.

We will keep you apprised of the outcome of the litigation and our efforts in working with GPA and GWA.

Sinseramente,



LEEVIN TAITANO CAMACHO
Attorney General

³ *Wong v. Camina*, 2 Guam Reports 132 (D. Guam 1978). For convenience, I have attached copies of the *Camina* decision

⁴ *Id.* at 133.

⁵ Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments (available at: <https://bit.ly/2We15cx>) (last visited Dec. 14, 2020).

Witness the Honorable Cristobal C. Duenas, Judge of the District Court of Guam.

Dated this 23rd day of January, 1978.

RUSSELL WONG, Deputy
Consumer Counsel, Petitioner

v.

DORIS CAMINA, Director
Bureau of Budget and Management Research
Respondent

Civil No. 78-001
District Court of Guam
January 24, 1978

- - - - -

DUENAS, Judge

FINDINGS OF FACT AND
CONCLUSIONS OF LAW; ORDER

Petitioner's petition for a writ of mandate directed against Doris Camina, Director, Bureau of Budget and Management Research, government of Guam, Respondent, came on regularly for hearing by the Court on January 23, 1978. The Petitioner was represented by Ronald J. Cristal, Assistant Attorney General and the Respondent appeared without representation. The court having reviewed the record, having heard the argument of counsel, and being fully advised in the premises, makes the following

[REDACTED]

FINDINGS OF FACT

1. U.S. Public Law 94-385 provides for an appropriation to fund grants for state offices of consumer services to be granted to the various states and territories.

2. The Petitioner, Deputy Consumer counsel, in his official capacity, applied for and was awarded a 100 percent federally funded grant in order to establish a Guam Office of Consumer Services.

3. Respondent, Director, Bureau of Budget and Management Research, has the duty to release and authorize the release of account numbers whereby Federal grant recipients can receive the money granted to them in their capacities as representatives of the government of Guam.

4. Petitioner has demanded the Respondent release said account number but respondent has refused to do so claiming that she is acting under the provisions of Guam P.L. 14-83 which prohibits the expenditure of Federal funds without an appropriation of the Guam Legislature.

5. Without the account number prayed for by Petition, Petitioner cannot receive the money appropriated and granted to Guam by the U.S. Department of Energy and without said money the Office of Consumer Services as described in Public Law 94-385 would not be able to function in Guam.

6. The Petitioner has no plain, speedy and adequate remedy at law.

Based on the Record, the Statutes and the foregoing findings of fact, the Court makes the following

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this cause under the provisions of Title 48, United States Code, §1424 as it arises under the laws of the United States and involves interpretation of United States law.

2. Section 1423j of Title 48, United States Code is paramount to local legislation and provides that the United States Congress can make appropriations directly to the government of Guam. Where these appropriations or grants completely fund a specific purpose without the need of local funding, and where the appropriation or grant does not provide for local legislative control, there is no authority for the Guam Legislature to assume the responsibility for reappropriating these funds.

3. United States Public Law 94-385 and the grant made thereunder by the U.S. Department of Energy to the government of Guam is for a specific purpose and fully funds that purpose without the need for local funding or local legislative control.

4. Petitioner is entitled to judgment directing the Respondent to lease and authorize the release of an account

number whereby Petitioner can receive the money appropriated and granted to Guam under Public 94-385.

ORDER: Let judgment be entered accordingly.

RUSSELL WONG, Deputy
Consumer Counsel, Petitioner

v.

DORIS CAMINA, Director
Bureau of Budget and Management Research
Respondent

Civil No. 78-001
District Court of Guam
January 24, 1978

- - - -

DUENAS, Judge

JUDGMENT

The above entitled action came on regularly to be heard on the 23rd day of January, 1978, Honorable Cristobal C. Duenas, Judge of said Court, presiding; the petitioner, Russell Wong, Deputy, Consumer Counsel, a public official, appearing and being represented by his attorney, Ronald J. Cristal, Assistant Attorney General, and Doris Camina, Director, Bureau of Budget and Management Research, a public official, appearing without counsel, whereupon the papers filed by the petitioner and the stipulation filed by the respondent and petitioner were received, the case having been argued and submitted to the Court for its decision and the Court having duly considered the matters submitted and the argument of counsel, and being fully advised in the premises, did render and file its Findings of Fact and Conclusions of Law, and, pursuant to said Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Guam P.L. 14-83 is null and void with respect to all grants and appropriations made by the United States to the government of Guam where the grant or appropriation provides one hundred percent of the funding for a specific project or purpose and which grant or appropriation makes no provision for local legislative control.



December 14, 2020

Benjamin J.F. Cruz
Public Auditor
Office of Public Accountability
Suite 401, DNA Building
238 Archbishop Flores Street
Hagatña Guam 96910

Reference: Draft Report – COVID-19 Payroll Expenses

Subject: GWA Response to Draft Report

Hafa Adai Mr. Cruz:

Thank you for the opportunity to review the referenced Draft Report and provide a response. GWA Management has the following comments to specific portions of the *Results of Audit* section of the Draft Report relating to GWA:

GWA also provided an Excel spreadsheet detailing the labor costs during the public health emergency, as well as a series of documents, including memoranda, personnel rules and regulations, executive orders, and even a recording of an employee town hall meeting, that ultimately led to their decision to utilize the double pay provision. According to these documents,

³ The committee included the Safety Administrator, Assistant General Manager of Operations, Assistant General Manager of Administration, Manager of the Power System Control Center, Manager of Generation, Assistant Manager of Generation, Manager of Transmission and Distribution, Assistant Manager of Transmission and Distribution, Facilities Manager, Utility Services Administrator, Accountant III (Cash Management), and the Personnel Services Administrator.

12

The highlighted statement above is not accurate. While GWA did conduct a town hall meeting, that event was used to convey and explain GWA's decisions and planned action regarding compensation during the long-term public health emergency to our employees. Neither the event, nor the feedback during the event, factored in to GWA Management's "decision to utilize the double pay provision." The series of documents provided described in the above statement were accurately attributed to GWA Management's decision making on the double pay provisions of our Personnel Rules and Regulations.

Although the Governor issued an E.O. that established a Differential Pay on April 5, 2020, and DOA provided further guidance on these measures, GWA's interpretation of Rule 8.406 against these measures identified a conflict that could not be reconciled. GWA did seek further guidance from DOA and other GovGuam agencies to obtain guidance on the conflicting provisions, however, the matters did not appear to be resolved by the time Pandemic Condition of Readiness 2 was declared on May 14, 2020. At that time, GWA ceased the double pay provision and started tracking employee hours for the 10% differential pay. However, GWA employees have not been paid the 10% differential because of ongoing numerous legal and legislative discussions.

Appendix 12: GWA Management Response

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Letter to Benjamin J.F. Cruz
Public Auditor
December 14, 2020
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While the above highlighted statement on page 13 of the Draft Report is factually accurate, it does not capture the specific conflict or GWA Management's ultimate decision. The conflict was that Rule 8.406 required the 2x pay when the criteria were met, while the E.O. required either 1.1x, 1.15x or 1.25x depending on exposure. GWA sought to clarify whether the E.O. intended to suspend Rule 8.406 which would have eliminated the conflicting provisions. With no clarification provided, GWA Management chose to follow Rule 8.406, which would meet and exceed the E.O. requirements, as opposed to choosing to follow the E.O., which would have put the Authority in a position of non-compliance with Rule 8.406.

Attorney General Opinion on Applicability of Double Pay Provision

As elaborated in the Attorney General of Guam's opinion on the applicability of the double pay provision, three criteria needed to be met in order to receive double pay or compensatory leave credits. The criteria included:

- (1) The Governor has declared a state of emergency;
- (2) the facility that the employee works at is closed; and
- (3) the employee is still required to report to work in order to provide essential services.

As stated in the AG's opinion, there was no doubt a declared state of emergency occurred, so GPA and GWA met the first criteria. There is also no question that power, water, and wastewater services are critical needs for the health and safety of Guam's citizenry, therefore, the employees of the Operations Divisions/Sections of GPA and GWA would be employees required to report to work in order to provide essential services, so criteria three was met.

It is, however, unclear if GPA and GWA determined if their entire facilities, or portions, were closed. In GPA's Pandemic Influenza Preparedness and Response Plan, they did outline the responsibilities of mission-critical divisions and the need for them to be adequately staffed to perform essential business services, which would require them to continue operations.

With regard to the above highlighted statement on Page 13 of the Draft Report, GWA Management believes it is important to note that the Authority's application of Rule 8.406 in this instance was consistent with how the rule has been applied by the Authority during all prior emergency declarations (e.g., upon declaration of Typhoon COR2, our facilities are closed to the public but GWA systems remain operational due to the critical nature of services provided). Without specifically pointing this out, the reader might be under the impression that GWA Management had no basis for decisions made to close GWA facilities around the island or allow facilities/systems to remain operational.

Guam Waterworks Authority

In addition to the \$1.0M in double pay for GWA employees, GWA incurred an additional \$503K for compensatory leave credits. According to GWA management, it was necessary to change compensation for employees required to report to work at their duty stations from the double pay to regular pay and compensatory leave credit for each hour worked during the public health emergency, in accordance with GWA Personnel Rules and Regulations.

The decision to convert to compensatory leave credits was necessary to sustain operations and avoid implementing more drastic cost containment measures such as reduced hours or furloughs.

Appendix 12: GWA Management Response

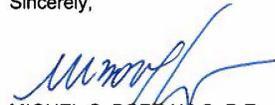
Page 3 of 3

Letter to Benjamin J.F. Cruz
Public Auditor
December 14, 2020
Page 3 of 3

GWA would like to point out that the above highlighted statement in the "Other Pay" section of the Draft Report does not reflect that GWA's Chief Financial Officer considered this decision as necessary and responsible cash management, with which GWA Management concurred.

Thank you for your office's hard work in completing this important audit. Should you have any questions regarding these comments, please feel free to contact me at mcbordallo@quamwaterworks.org or at 300-6845.

Sincerely,



MIGUEL C. BORDALLO, P.E.
General Manager



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O.BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

December 14, 2020

Mr. Benjamin J.F. Cruz
Public Auditor
Office of Public Accountability
Suite 401, DNA Building
238 Archbishop Flores Street
Hagåtña, Guam 96910
Via Mr. Vincent Duenas, Audit Supervisor, vduenas@guamopa.com

Re: OPA Draft Performance Audit re GovGuam COVID-19 Payroll Expenses
Guam Power Authority Comments

Dear Mr. Cruz:

Buenas yan Háfa Adai. Thank you for the opportunity to comment on your office's Draft Report re. *Government of Guam COVID-19 Payroll Expenses*, dated December 2020. The comments that follow specifically address pages 4, and 11-13 of the draft report.

Guam Power Authority's AP-069 *Pandemic Influenza Preparedness & Response* was drafted with significant influence of prior pandemics, with its main purpose to ensure the continued reliability of the island-wide power system during a pandemic event. While AP-069 addresses Employee Pay in situations where employee absenteeism reaches a certain threshold or a state of emergency is declared with restrictions or quarantine, procedural and pay structures outlined in DOA Personnel Rules & Regulations apply where an emergency is declared by the Governor of Guam, specifically DOA PRR Sections 8.406 & 7.404.

On March 14, 2020, Governor Leon Guerrero issued EO 2020-03 declaring a state of emergency as a result of the effects of COVID-19 on the island. The Governor subsequently issued EO 2020-04 on March 16, 2020, imposing a 14-day government shutdown effective that same day. GPA General Manager declared the 14-day shutdown in effect at GPA on March 16, 2020¹, ordering only essential employees to report per designated schedules. To further mitigate the potential spread of the coronavirus within the power utility, especially to mission-critical employees, access to utility facilities was closed to employees unless specifically approved by the division heads.

Upon the Governor's order of the Government of Guam-wide shut down on March 16, 2020 due to a state of emergency, all GPA employees were placed on administrative leave per DOA Personnel Rules & Regulations Section 8.406. Although GPA AP-069 does not specify that employees will be placed on administrative leave upon the Governor's declaration of a state of emergency, applying administrative leave was consistent with prior emergency declarations. Per AP-069 Section IX (G), employees on duty or assigned to telework were compensated for actual time (i.e., regular pay) in addition to administrative leave. GPA, through its counsel and through GWA's counsel, sought direction and clarification from both DOA

¹ GPA General Manager to All GPA Employees, *Coronavirus/COVID-19 – Notice of 14-Day Shutdown*, March 16, 2020

and BBMR², however no response was received. The confusion within the Government of Guam as it related to Emergency Pay was evident by the four (4) proposed bills proffered as of late May 29, 2020³.

The utility reopened its business services in May and administrative leave ceased⁴. By that time, GPA had implemented an adequate health monitoring process, increased cleaning and disinfecting, and physical protections for both its employees, customers, and vendors/contractors to mitigate the risk of virus transmission. As the GPA worksites were deemed safe and fit for its employees to work while abiding by the pandemic health safeguards, the COVID-19 differential pay set forth in EO 2020-08 did not apply.

Thank you again for the opportunity to comment. GPA is committed to be transparent and accountable to its ratepayers and the residents of Guam. Should you wish to discuss this matter further or need additional information, please contact me at jbenavente@gpagwa.com.

Si Yu'os Ma'ãse',


JOHN M. BENAVENTE, P.E.
for General Manager

Attachments:

1. GPA General Manager to All GPA Employees, *Coronavirus/COVID-19 – Notice of 14-Day Shutdown*, March 16, 2020
2. Email from J. Benavente to K. Clark, *Re. Pay Status*, March 26, 2020.
3. GPA General Manager to All Employees, *Reopening of the Utility (PCOR-2)*, May 8, 2020.
4. GPA General Manager to CCU, *Employee Payment Policy During Pandemic Period*, April 30, 2020.

² Email from J. Benavente to K. Clark, *Re. Pay Status*, March 26, 2020.

³ Legislative Bills No. 375-35 (COR), 358-35 (COR), 359-35 (COR), and 361-35 (COR).

⁴ GPA General Manager to All Employees, *Reopening of the Utility (PCOR-2)*, May 8, 2020.

Appendix 14: Status of Audit Recommendations

No.	Addressee	Audit Recommendation	Status	Action Required
1	Office of Attorney General	Review the circumstances surrounding the application of the double pay provision for the GPA and GWA and determine if reimbursement is necessary for employees that received the double pay.	OPEN	Please provide the target date and title of official(s) responsible for implementing the recommendation.
2	Office of Attorney General	Review the circumstances surrounding the application of the compensatory leave credits for the GWA and determine if reimbursement is necessary for employees that received this benefit.	OPEN	Please provide the target date and title of official(s) responsible for implementing the recommendation.
3	Office of Attorney General	Review the application of elected and appointed officials receiving COVID-related compensation and determine if reimbursement is necessary for employees that received this pay.	CLOSED	N/A

GOVERNMENT OF GUAM COVID-19 PAYROLL EXPENSES Report No. 21-01, January 2021

ACKNOWLEDGEMENTS

Key contributions to this report were made by:

Thomas Eladio Battung, Audit Staff
Andriana Quitugua, Auditor-in-Charge
Vincent Duenas, Audit Supervisor
Benjamin J.F. Cruz, Public Auditor

MISSION STATEMENT

To ensure public trust and good governance in the Government of Guam, we conduct audits and administer procurement appeals with objectivity, professionalism, and accountability.

VISION

The Government of Guam is a model for good governance with OPA leading by example as a model robust audit office.

CORE VALUES

Objectivity

To have an independent and impartial mind.

Professionalism:

To adhere to ethical and professional standards.

Accountability:

To be responsible and transparent in our actions.

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- Call our office at 475.0390
- Fax our office at 472-7951
- Or visit us at Suite 401 DNA Building in Hagåtña

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