

**Government of Guam
Leave Sharing Program**

**Performance Audit
October 1, 2006 through September 30, 2009**

**OPA Report No. 10-05
September 2010**



Government of Guam Leave Sharing Program

**Performance Audit
October 1, 2006 through September 30, 2009**

**OPA Report No. 10-05
September 2010**

Distribution:

Governor of Guam
Lt. Governor of Guam
Speaker, 30th Guam Legislature
Senators, 30th Guam Legislature
Fire Chief, Guam Fire Department
Director, Department of Administration
Superintendent, Department of Education
Executive Director, Civil Service Commission
Director, Bureau of Budget and Management Research
Acting Attorney General, Office of Attorney General
Controller, Superior Court of Guam
U.S. Department of Interior
Office of Inspector General – Pacific Field Office
Guam Media via E-Mail



Contents

	Page
Executive Summary	1
Introduction.....	4
Background.....	4
Results of Audit	5
General Fund Leave Sharing Program Payments Total \$4.5M in Three Years	6
Legislation Provides GFD Inequitable Benefits	6
Leave Paid in Excess of Legislative Threshold	9
Potential for Dual Compensation for GovGuam Employees on Military Activation.....	11
Internal Control Deficiencies in Administering the Leave Sharing Program Effectively	13
Conclusion and Recommendations	16
Managements' Responses & OPA Reply.....	18
Appendices:	
1. Classification of Monetary Impact.....	19
2. Audit Scope and Methodology	20
3. Prior Audit Coverage	21
4. Government Agencies Utilizing Leave Sharing	22
5. AG's Opinion: GFD Leave Sharing Benefits	23
6. Leave Sharing Users Over 720 Hours	31
7. AG's Opinion: Leave Status of Military Employees	33
8. CSC Memo to Governor's Leave Sharing Committee	37
9. Leave Sharing Request Form	39
10. Summary of Leave Sharing Legislation	41
11. GFD Management Response	42
12. DOE Management Response	44
13. DOA Management Response.....	45
14. CSC Management Response.....	50



EXECUTIVE SUMMARY
Government of Guam Leave Sharing Program
Report No. 10-05, September 2010

The government of Guam's Leave Sharing Program is a benefit program available to classified government employees who have exhausted their leave, but need more time to care for a sick family member, attend to their own medical or personal needs, or who are called to military duty. The Program allows an employee to transfer earned sick or annual leave to another employee (the recipient) within any department or agency. Before the donated leave can be transferred and used, the recipient must first exhaust all sick and annual leave or any compensatory time they may have earned.

Our audit revealed that between fiscal years 2007 and 2009, 806 employees were paid for 252,263 hours of donated leave at a cost of \$4.5 million (M). Our audit did not include autonomous agencies, the Legislature, or the Judiciary. Employees from the Department of Education (DOE), our largest government entity, were paid the most leave sharing hours at 99,224 (39%). Guam Fire Department (GFD) ranked second with 24,359 hours (10%), of which, 7,594 were drawn for military deployment.

With the exception of firefighters, government employees generally work 80 hours per two-week pay period and when donated leave hours are used, such leave hours are compensated and reduced from the employee's leave bank on an hour-for-hour basis. In other words, the leave is deducted based on the same number of leave hours that were donated to them.

In contrast, during a normal two-week pay period, firefighters work five 24-hour shifts and are compensated for 120 hours. By law, for the normal two-week pay period, firefighters receive 106 hours of compensation at their regular hourly rate of pay and are compensated at 1½ times their regular hourly rate for hours in *excess* of 106. When on leave for five days, GFD uniformed personnel are compensated 106 hours, but are only assessed 45 hours of leave (9 hours of leave per day). The 61-hour difference between the 106 hours of compensation and the 45 hours of leave is categorized by Department of Administration (DOA) as "non-productive" time. We estimate that as much as \$558,742 was paid to GFD uniformed personnel for such "non-productive" time over the last three years.

The legislation that provides firefighters on leave with 61 hours of additional compensation per pay period is a benefit no other government employee enjoys. GFD management recognizes the inequity, as well as the negative effect it has on the department's budget, operations, and the morale of other non-uniformed personnel, but has been stymied by various law interpretations. The leave compensation for firefighters surpasses that of all other government employees and is inherently inequitable.

Additionally, although retirement contributions are not supposed to be drawn from shared leave as specified in 4 GCA § 4109.2(b), we found that GFD receives retirement contributions for all "non-productive" hours while participating in the leave sharing program. This is because DOA does not consider "non-productive" hours as transferred leave. However, we note that had it not

been for the transferred leave, the compensation of “non-productive” hours would not have occurred.

We questioned the interpretation of DOA and the Civil Service Commission (CSC) that the government intended to pay the additional 61 hours of compensation to GFD. It does not seem reasonable that the legislative intent was to give GFD the additional compensation as it is not fair, equitable, or prudent when compared to all other government of Guam employees. We did not calculate the cost of other forms of leave, although the same 61 hours of “non-productive” time is paid whether sick, annual, or other leave is taken.

We also found the following problematic conditions in the leave sharing program:

- Seven employees exceeded the 1,680-hour shared leave threshold for medical reasons, resulting in \$90,436 in questioned costs.
 - The Attorney General has opined that the legislative threshold is to be applied “per occasion”, even if it extends into the next fiscal or calendar year. DOA interprets “per occasion” to mean that the submission and approval of a new leave request (even for the same condition or situation) restarts the clock. This interpretation allowed five executive branch employees to exceed the threshold.
 - Additionally, although DOE interprets “per occasion” to mean separate and distinct reasons, DOE’s lack of oversight and system controls allowed two employees to exceed the threshold.
- There were 18,697 leave sharing hours used by 83 employees for military activation that cost the government of Guam approximately \$435,009 over the last three years. Although P.L. 26-134 intended for employees in the National Guard and Reserves to use the leave sharing program to avoid taking leave without pay when on deployment, it does not take into account that if activated more than 30 days, these employees receive their military pay as well as the leave compensation. Thus, the financial incentive for employees to volunteer for deployment is very appealing, and as a result, a number of employees appear to continuously volunteer for military duty rather than wait for their call to duty. In comparison, the U.S. federal government prohibits the receipt of both military and civilian pay during periods of military activation. In September 2009, the CSC Executive Director, recommended that the law be amended to terminate the ability of government employees to simultaneously draw government and military pay.
 - With 7,594 hours, GFD has the highest utilization of leave sharing hours for 28 employees on military deployment at a cost of \$118,285. However, we estimate that military activation for GFD firefighters cost the government an additional \$160,382 for approximately 10,294 hours of “non-productive” time.
- We found deficiencies in the design and operation of internal controls to ensure that leave sharing is administered properly, which resulted in additional questioned costs of \$511,202. Specifically, we found:
 - Lack of documentation of supervisory approval;
 - No justification for the use of donated leave;
 - Leave balances not exhausted;
 - Incorrect application of pay rates;
 - Retirement contributions did not cease;
 - Lack of reconciliation of leave sharing balances; and

- Lack of monitoring and reporting of leave sharing statistics.

Conclusions and Recommendations

Over the last three fiscal years, the Leave Sharing Program cost the government of Guam \$4.5M to administer. We believe the Leave Sharing Program is beneficial; however, the application and the interpretation of leave sharing benefits are not consistent and equitable for all government of Guam employees. In addition, proper management and better oversight are needed to ensure limitations on its usage to prevent excessive use or misuse and to enhance -- not impede -- the effectiveness and efficiency of government operations. As such, we recommend the following:

Guam Legislature:

- Amend the legislation regarding GFD compensation for all leave (leave sharing, sick, annual, etc.) to an hour-for-hour basis to ensure equality among all government employees;
- Take action to eliminate the potential for double compensation for military deployment; and
- Amend the leave sharing legislation to clarify the legislative intent on the application of established thresholds.

Attorney General:

- Review and clarify the meaning of “per occasion” with regard to the use of shared leave and the maximum limits set by law.

Department of Administration:

- Update leave sharing procedures to include administrative review and certification that recipients have fully depleted both annual and sick leave; and
- Amend the leave sharing affidavit to include a statement that no compensation, favors, or items of value were given in exchange for the use of donated leave.

Department of Administration and the Department of Education:

- Establish a communication and reconciliation protocol to ensure accurate leave balances are maintained for all employees; and
- Establish and implement controls to mitigate the risk of: (1) inaccurate adjustments and unreturned leave balances; (2) mandated leave caps being exceeded; (3) improper approval of leave sharing requests; and (4) incorrect application of pay rates.



Doris Flores Brooks, CPA, CGFM
Public Auditor



Introduction

This report presents the results of our audit of the government of Guam's Leave Sharing Program. The audit was initiated as part of the Office of Public Accountability's Annual Work Plan. We examined 28 line agencies administered by the Department of Administration (DOA) and the Department of Education (DOE), our largest government entity, which manages its own payroll. Our scope covered the period from October 1, 2006 through September 30, 2009. Our objectives were to:

1. Calculate the cost of the leave sharing program and its impact on government operations;
2. Determine whether the program is administered consistently and equitably and in accordance with applicable laws and regulations; and
3. Determine whether controls are in place to administer the program effectively.

The audit scope and methodology and prior audit coverage are detailed in Appendices 2 and 3, respectively.

Background

The Leave Sharing Program is a benefit available to classified government employees who have exhausted their leave but need more time to care for a sick family member, attend to their own medical or personal needs, or who are called to active military duty. Title 4 of the Guam Code Annotated (GCA) § 4109.2 allows an employee to transfer earned sick or annual leave to another employee (the recipient) within any department or agency for the purposes of a medical emergency or personal reasons. To qualify for drawing upon this donated leave, the recipient must first exhaust their own sick **and** annual leave or any compensatory time they may have earned before the donated leave can be transferred and used.

Program restrictions include the following:

- Participation in the leave sharing program cannot exceed 90 working days.
- A 90 working day extension may be granted if a certification from an attending physician is made within two weeks of the first 90 days. Such extensions are at the discretion of the recipient's agency head and require his or her approval.
- A final 30 working days may be granted if the need is medically endorsed, as well as approved by the recipient's agency head.

Results of Audit

Between October 1, 2006 and September 30, 2009, 806 line agency employees utilized 252,263 hours of donated leave time. The cost to the government of Guam amounted to \$4.5 million (M).¹ Of the total hours, 18,697 were drawn for military duty. We found 375 DOE employees utilized the most leave sharing hours with 99,224 hours (39%) totaling \$1.6M. Guam Fire Department (GFD) firefighters ranked second, with 24,359 hours (10%), amounting to \$958,721 for 51 employees.

As the largest government entity and employer, DOE's ranking is understandable, but GFD's ranking is more problematic. Firefighters work 24-hour shifts for five-days in a two-week pay period receiving compensation for a total of 120 hours. Pursuant to 4 GCA § 6219, firefighters are to be compensated for 106 hours at their regular hourly rate of pay, and shall be compensated at 1½ times the regular hourly rate for hours worked in excess of 106 hours per pay period. However, the same law also limits their leave assessment to no more than nine hours a day, or a maximum of 45 hours a pay period. Therefore, when firefighters go on leave for a two-week period, they are assessed leave for five days (45 hours), but are compensated for 106 hours for a difference of 61 hours. DOA categorizes this difference as "non-productive" hours. We estimated that GFD firefighters received \$558,742 in "non-productive" pay (or the 61-hour difference) and \$399,979 for the maximum 45 hour leave assessments per pay period over the three-year period of our audit scope. The total cost of firefighter compensation while on the leave sharing program was \$958,721.

Through various legislative interpretations firefighters have been provided with 61 hours of additional compensation per pay period. This is a benefit no other government employee enjoys. GFD management recognizes the inequity, as well as the negative effect it has on the department's budget, operations, and the morale of other non-uniformed personnel, but are stymied by various interpretations to make any changes.

Variations in the application of leave sharing policies and lack of oversight by DOA and DOE resulted in seven employees exceeding the maximum leave threshold and receiving excess compensation amounting to \$90,436. Additionally, we found deficiencies in the design and operation of internal controls to ensure that leave sharing is administered properly, which resulted in additional questioned costs of \$511,202. Specifically, we found:

- Lack of documentation of supervisory approval;
- No justification for the use of donated leave;
- Leave balances not exhausted;
- Incorrect application of pay rates;
- Retirement contributions did not cease;
- Lack of reconciliation of leave sharing balances; and
- Lack of monitoring and reporting of leave sharing statistics.

¹ This is only an estimate and does not include indirect costs or the incurred overtime resulting from personnel shortages. In addition, data provided by DOE was incomplete for FY 2007.

We also found that current law enables employees activated for military service to draw both their government salaries and military pay, a practice prohibited by the U.S. federal government for its employees.

General Fund Leave Sharing Program Payments Total \$4.5M in Three Years

Of the 806 employees who participated in the Leave Sharing Program between FY 2007 and FY 2009, 431 were from the line agencies administered by DOA and 375 were from DOE, which administers its own payroll. The line agency employees utilized 153,039 leave hours totaling \$2.3M, while the DOE employees utilized 99,224 hours totaling \$1.6M. We also estimate that an additional \$558,742 was paid to GFD uniformed employees for “non-productive” hours associated with leave usage. See table below for details.

Table 3: FY 2007 through FY 2009 Line Agencies & DOE Employees Leave Sharing Summary

Fiscal Year	Employee Count	Annual Leave		Sick Leave		Cumulative		
		Hours	Amount	Hours	Amount	Hours	Amount	
2009	361	22,528	\$352,793	56,335	\$892,645	78,863	\$1,245,438	
2008	380	26,177	\$405,234	64,470	\$994,685	90,647	\$1,399,919	
2007	343	23,602	\$364,108	59,150	\$937,754	82,753	\$1,301,862	
Subtotal	806²	72,308	\$1,122,135	179,955	\$2,825,084	252,263	\$3,947,219	
GFD “Non-Productive” Pay								\$ 558,742³
Total								\$4,505,961

GFD Utilized the Most Leave Sharing Hours

Excluding the DOE employees, over the last three years, 52% of all leave sharing hours was paid to employees from five departments. Specifically:

- **Guam Fire Department:** 51 employees were paid 24,359 hours -- 16% of all executive branch leave sharing hours during the audit period. Of the total, 7,594 hours were for military deployment.
- **Department of Public Health & Social Services:** 51 employees were paid 15,959 hours, or 10%.
- **Department of Public Works:** 39 employees were paid 14,074 hours, or 9%.
- **Guam Police Department:** 41 employees were paid 13,691 hours, for another 9%.
- **Department of Mental Health & Substance Abuse:** 26 employees were paid 10,923 hours, or 7%.

See Appendix 4 for the list of government agencies that were paid leave sharing.

Legislation Provides GFD Inequitable Benefits

The annual, sick, and leave sharing benefits afforded to uniformed GFD personnel surpass those provided to all other classified government of Guam employees and can only be viewed as inequitable. However, the inequity has come about through interpretations of law.

² This amount eliminates the double counting of employees who have taken leave in multiple years from FY 2007 through FY 2009.

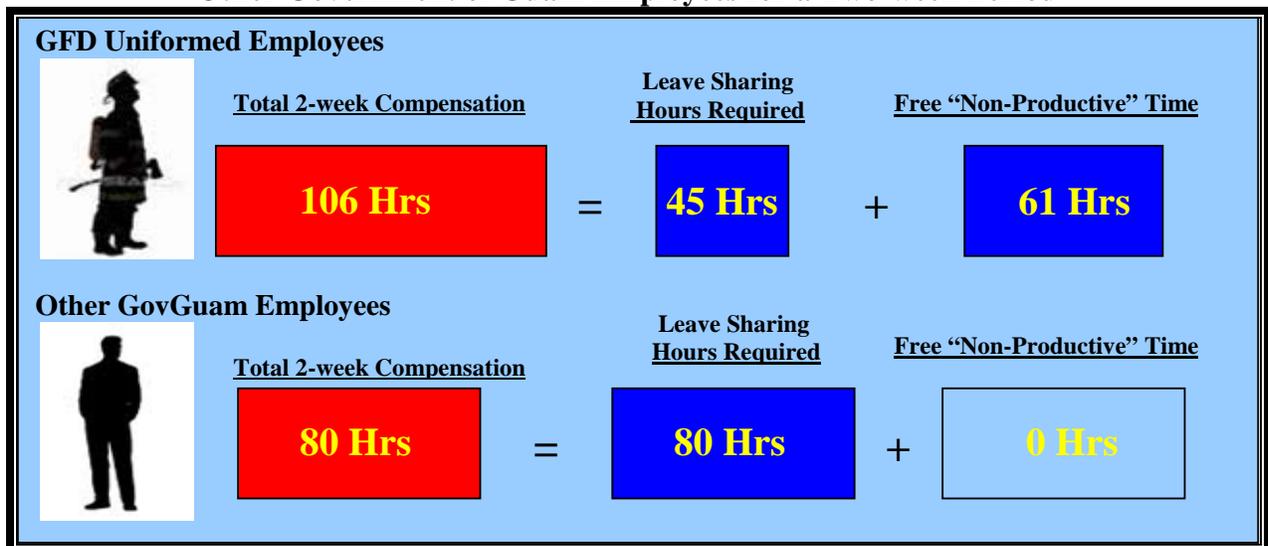
³ We extrapolated GFD’s “non-productive” costs by dividing each employee’s leave sharing hours by 45, to arrive at the number of possible pay periods, then multiplying that number by 61 hours and by the employee’s hourly rate.

GFD Compensated for More Than Donated Leave Hours

By law, GFD uniformed personnel on leave status are compensated 106 hours and cannot be assessed more than nine hours of leave per day. The limitation applies to all leave types and amounts to a maximum of 45 hours per pay period as firefighters normally work five days in a two-week period. The 61-hour pay period difference between the 106 hours paid and the 45-hour leave assessment is categorized by DOA as “non-productive” hours, referring to periods in which the employee is not performing any job-related duty, but still gets paid for the time. In substance, GFD uniformed personnel get paid even when eating and sleeping, while on vacation, military leave, or training. We estimate the department paid as much as \$558,742 for the 61 hours of “non-productive” time due to leave sharing. We did not calculate the cost of “non-productive” pay in other leave categories. This benefit is unique to firefighters and sanctioned in Title 4 GCA § 6219.

As such, there is a significant monetary incentive for GFD uniformed personnel to participate in the leave sharing program or to take regular annual or sick leave. Unlike firefighters, other employees on 24-hour operations, such as police and corrections officers and hospital personnel, are held to the same eight-hour workday standard and are subject to the same hour-for-hour leave assessment as other government employees. See illustration below.

Chart 1: Illustration of GFD Uniformed Employees’ Leave Sharing Compensation vs. Other Government of Guam Employees for a Two-week Period



In addition to inequitable compensation benefits, GFD personnel participating in the leave sharing program receive retirement contributions for their “non-productive” hours. In accordance with 4 GCA § 4109.2(b), “leave may not be transferred to another employee if as a recipient that employee intends to use it for credit towards retirement or accumulated leave...In no event shall transferred leave be converted to cash or retirement credit by the person to whom it is transferred.” DOA does not apply GFD’s “non-productive” hours as transferred leave, thus giving GFD personnel retirement credit. In contrast, all retirement contributions cease when all other government of Guam employees participate in the leave sharing program.

The law is silent on how the 61 hours of “non-productive” time is to be compensated to GFD uniformed personnel. DOA and CSC are of the position that uniformed personnel are entitled to be compensated 106 hours, although only 45 hours are assessed from their leave balances. We

questioned the interpretation of DOA and Civil Service Commission (CSC) that the government intended to pay the additional 61 hours of compensation to GFD. It does not seem reasonable that the legislative intent was to give GFD the additional compensation as it is not fair, equitable, or prudent when compared to all other government of Guam employees.

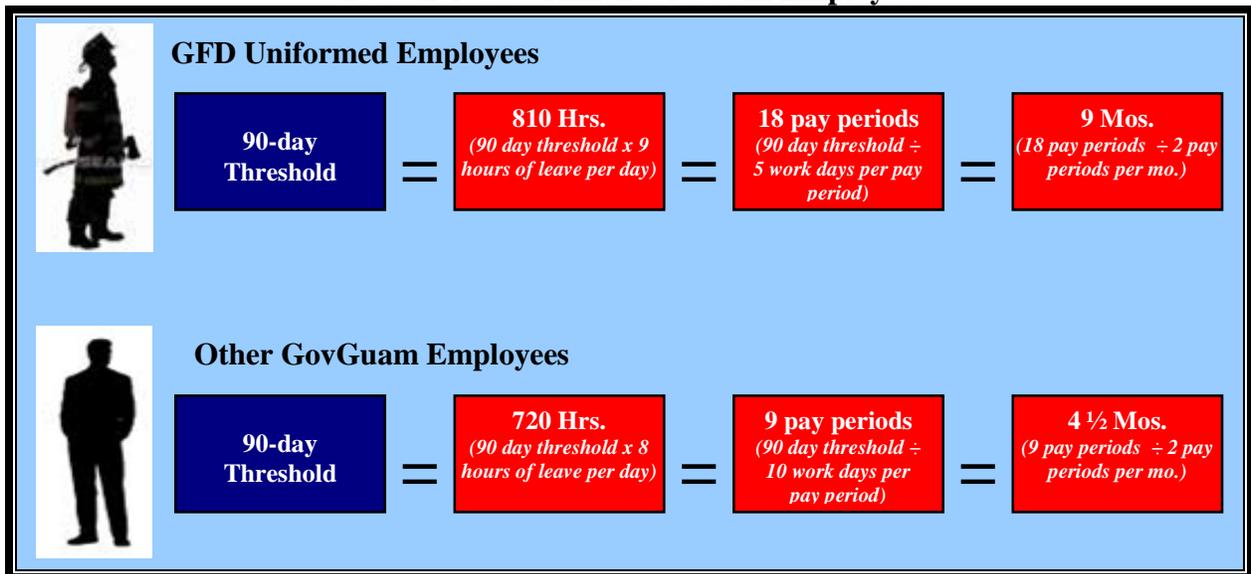
In an effort to curb leave sharing and control costs, the Fire Chief attempted to place firefighters on administrative detail, which would make them subject to the standard 80-hour pay period and hour-for-hour leave assessment. However, on February 10, 2010, in response to the legitimacy of the Chief’s effort, an Assistant Attorney General issued a memorandum stating that neither GFD nor DOA had authority to change a firefighter’s schedule to circumvent mandated personnel pay policies and that attempting to restrict employee benefits was contrary to law. See Appendix 5 for the Attorney General’s (AG) Opinion.

Still, we commend the Fire Chief’s proactive effort to mitigate leave sharing costs. Although the law provides firefighters this additional compensation, we question the equity of this unique benefit in consideration of other government of Guam employees.

Leave Sharing Period for GFD is Twice as Much as Other GovGuam Employees

Under 4 GCA § 4109.2 (b), participation in the leave sharing program may not exceed 90 working days. Again, the mandate applies to all employees but firefighters. For all other government employees, the 90-day cap equates to 720 hours, or enough paid leave for approximately nine pay periods or four months. The firefighters’ 24-hour-five-day work schedule per pay period makes the 90-day cap equal to 810 hours,⁴ or enough paid leave for approximately 18 pay periods or about 9 months. See illustration below.

Chart 2: Comparison of Leave Inequities between Uniformed GFD Personnel and Other Government of Guam Employees



⁴ For the 90-day cap, GFD compensation totals 1,908 hours: 810 leave sharing hours plus 1,098 “non-productive” pay (61 hours x 18 pay periods).

The firefighters’ access to greater leave times prompted the Fire Chief and GFD management to note the following concerns:

- Manpower shortages in critical areas, such as emergency medical response and search and rescue, put public safety at risk. GFD’s various divisions are required to be manned by no less than four personnel, but staff shortages due to leave sharing absences have forced the Fire Chief to shuffle employees in order to have at least three people on duty.
- The large amount of leave sharing hours used and paid significantly impacts the department’s budget. GFD must absorb the cost of the 61-hour “non-productive” pay for all uniformed personnel on leave every pay period, leaving the department with insufficient funds to hire needed uniformed personnel. GFD anticipates spending \$1.5M for paid leave for military deployment in FY 2010.
- The number of employees volunteering for military deployment is increasing. Morale among the remaining employees is diminishing accordingly. Employees who must cover for absent coworkers are overworked, forced to put in overtime, and are sometimes denied their own leave requests.

The additional 61 hours paid for “non-productive” time per pay period is too great an incentive for uniformed personnel to pass up. Many take advantage of it and take annual or sick leave or participate in leave sharing. We sent a letter to the AG seeking clarification on the calculation of leave for GFD uniformed personnel not in administrative positions. As of the date of this report, we have not received a response from the AG’s office. We recommend the Legislature amend the law regarding GFD leave compensation and bring it in line with the hour-for-hour basis to ensure equality among all government of Guam employees.

Leave Paid in Excess of Legislative Threshold

Applicable law specifies that government employees can utilize up to a maximum of 1,680 leave sharing hours with all benefits except retirement contributions. While the law stipulates that leave may not exceed 90 days (720 hours), an additional 120 days (960 hours) may be granted. Specifically, an additional 90 days may be granted if the need is medically certified within two weeks of the first 90 days. If necessary, a final 30 days may be granted for recovery time.

Of the 29 agencies we reviewed, we found that 75 employees exceeded the 90-day leave sharing cap. See Appendix 6 for details. Additionally, we found seven employees who exceeded the cap of 1,680 hours. DOA’s interpretation of the leave sharing guidelines resulted in five employees exceeding the 1,680 hour threshold and questioned costs of \$85,589. In addition, DOE’s lack of oversight allowed two employees to exceed the 1,680 threshold and resulted in additional questioned costs of \$4,846. See details in the table below.

Table 4: Top 7 Employees Utilizing Leave Sharing from FY 2007 through FY 2009

	Department	Total Hours	Total Value	Hours in Excess	Questioned Cost
Employee No. 1	Chamorro Land Trust Commission	3,424	\$ 64,610	1,744	\$ 32,909
Employee No. 2	Department of Revenue & Taxation	3,265	\$ 55,897	1,585	\$ 27,135
Employee No. 3	Bureau of Statistics & Plans	2,976	\$ 35,275	1,296	\$ 15,362
Employee No. 4	Department of Administration	2,344	\$ 34,818	664	\$ 9,863
Employee No. 5	Department of Education	1,990	\$ 26,457	310	\$ 4,121
Employee No. 6	Department of Education	1,737	\$ 22,085	57	\$ 725
Employee No. 7	Department of Parks & Recreation	1,705	\$ 21,851	25	\$ 320
	Total	17,441	\$ 260,993	5,681	\$ 90,436

The threshold was exceeded due in part to DOA's interpretation of the rules and the lack of monitoring and system controls. The Attorney General's Office interprets⁵ the 90-day limit to be applied "per occasion," whether or not the occasion extends into another fiscal or calendar year. DOA has interpreted "per occasion" to mean the submission of each request. For instance, if an employee returns to work on Tuesday and submits a leave sharing request for the same reason that prompted his or her absence on Monday, DOA restarts the clock on the 90-day limit.

DOE interprets "per occasion" to mean requesting leave for the same reason or condition. No matter how much time elapses between leave requests, the countdown from the maximum 1,680 hours continues. For instance, if an employee receives leave sharing hours for a heart condition then later returns to work, but is felled again by the heart condition, every hour of the employee's absence is counted toward the 1,680 hour cap. However, if the employee requests leave for an entirely different situation, a new cap count applies. We found that two DOE employees exceeded the cap because payroll technicians failed to properly monitor the leave program and lacked the automated system controls to aid their work.

DOA's interpretation and lack of monitoring and system controls permitted Employee No. 2 to be overpaid by \$29,344. The employee was on leave for 3,102 hours for a medical condition.⁶ Initially, the employee was not considered in violation of the program cap because it was thought that the employee returned to work from time to time, thereby restarting the clock each time. It was later discovered that the employee was cumulatively absent as accrued annual leave and sick leave hours were utilized at times donated leave was not used. As a result of exceeding the cap, the employee is required to repay the \$29,344 overpayment. DOA's application of the leave sharing cap, which is exacerbated by the lack of monitoring, lends itself to abuse or excessive usage. In August 2010, OPA sought legal clarification of "per occasion" from the Office of the Attorney General. As of the date of this report, a response has not been provided; therefore, we recommend that the AG review and clarify the meaning of "per occasion" with regard to the use of shared leave and the maximum limits set by law.

We recommend that DOA and DOE establish controls to prevent the maximum payment caps from being exceeded. DOA and DOE management should establish electronic notification controls within their respective payroll system which flag leave sharing hours paid to an employee totaling 720 hours, 1,440 hours, and 1,680 hours. Such electronic controls will provide management with additional tools needed to monitor excessive leave sharing requests and help prevent any leave sharing requests in excess of the caps.

In June 2010, OPA notified DOA, DOE, and CSC of the employees who exceeded the threshold for further review and corrective action. DOA's Chief Payroll Officer disagreed with our findings for the following reasons:

- Our data was overstated and inaccurate because our audit scope began at October 1, 2006, the start of FY 2007. P. L. 29-19, which amended the Leave Sharing Procedure, took effect on October 1, 2007 (FY 2008). Thus, the leave donations received prior to October 1, 2007 were subject to the old rule.

⁵ DOA03-0846 opinion dated October 6, 2004.

⁶ The repayment was calculated by DOA's payroll division in a post-audit review and differs from the amount presented in Table 4.

- In response, OPA provided a copy of P.L. 28-68, which makes October 1, 2006 the effective date of the 1,680-hour cap.
- We failed to consider that four out of the five employees identified as having exceeded the leave sharing cap went back to work before they reached the cap. As such, they were able to submit new leave donation requests and start the clock again. DOA would only confirm one of the five as having exceeded the cap. P.L. 29-19 capped leave donations, but did not state that it is cumulative of what was already received per fiscal year or per occasion.
- In response, OPA provided the Chief Payroll Officer a copy of an October 6, 2004 AG opinion defining “per occasion” as separate and distinct events.

As of the date of this report DOA maintains that their application and administration over the leave sharing program was in adherence with the “per occasion” basis per 4 GCA § 4109.2. We recommend the Legislature amend the leave sharing legislation to clarify the legislative intent on the application of the established thresholds.

Potential for Dual Compensation for Government of Guam Employees on Military Activation

P.L. 26-134 was intended to help National Guard personnel and Military Reservists avoid having to take leave without pay when engaged or activated for duty. The law was specific to government of Guam employees and did not apply to private sector or U.S. federal employees. In December 2002, the AG issued an opinion pointing out that the law did not take into account the fact that Guard and Reserve personnel activated for more than 30 days also receive military pay. Thus, activated reservists were not likely to lose their livelihood. In addition, the opinion also noted that it also has the effect of preventing GovGuam from replacing the activated member during the temporary activation because GovGuam must keep the funding going to the reservist, who is collecting a second salary in the field. See Appendix 7 for the AG’s opinion.

Consequently, the leave sharing program presents a significant financial incentive for members of the Guard and Reserves to volunteer for military duty rather than waiting for their call to service. Military deployment drew 83 employees from 15 departments and agencies from FY 2007 through FY 2009. They utilized 18,697 leave sharing hours at a cost of \$274,627. We estimate another \$160,382 in “non-productive” compensation was paid to firefighters on deployment. Over the last three years, the cost of leave sharing for military deployment totaled \$435,009. See Table 5 for details.

Table 5: Executive Branch Military Leave FY 2007 through FY 2009

Department	Number of Employees	Hours	Total Amount
Guam Fire Department	28	7,594	\$118,285
Department of Education	28	5,504	\$ 77,104
Guam Police Department	5	1,334	\$ 21,949
Department of Parks & Recreation	3	797	\$ 10,106
Department of Agriculture	3	794	\$ 10,399
Customs & Quarantine Agency	5	722	\$ 8,284
Office of Attorney General	3	600	\$ 8,467

Department	Number of Employees	Hours	Total Amount
Bureau of Statistics & Plans	1	466	\$ 7,018
Department of Public Works	1	440	\$ 6,361
Department of Public Health & Social Services	1	165	\$ 3,051
Department of Revenue & Taxation	1	136	\$ 1,958
Mayor's Council of Guam	1	80	\$ 827
Department of Administration	1	31	\$ 279
Bureau of Budget & Management Research	1	20	\$ 368
Chamorro Land Trust Commission	1	14	\$ 172
Subtotal	83	18,697	\$274,627
GFD "Non-Productive" Pay	0	10,294	\$160,382⁷
Total	83	28,991	\$435,009

The Uniformed Services Employment and Reemployment Rights Act (USERRA) provides that members of the Guard and Reserves cannot be deprived of their civilian jobs or denied any employment benefits on the basis of their membership. The law applies protection for all forms of military training and service, including voluntary or involuntary duty, in peace or wartime. Thus, all government of Guam employees who volunteer or are activated for duty are to be commended and supported for answering the nation's call to service and must not be denied any benefits available to their co-workers.

However, paid leave (through leave-sharing) because of military deployment is a local benefit, not required by USERRA, but is provided by the government of Guam. The provision of paid leave to activated employees who are also collecting military pay is a benefit that is not in the best interest of our taxpayers. This is a view shared by the CSC Executive Director, who in September 2009 called for action to amend the laws and terminate the ability of government employees to simultaneously draw two pay checks --government and military.

The extended time devoted to military service by uniformed GFD employees prompted the Fire Chief to seek advice as to whether deployed firefighters were in violation of 4 GCA § 4105 (d) (4), which allows government employees to take outside employment, provided it does not conflict with their government duties and work schedule.

We concur with the CSC's September 2009 recommendation to the Governor's Leave Sharing Committee to take appropriate action to amend the laws and terminate the ability of government employees to simultaneously draw government and military pay. See Appendix 8 for the memo.

Critical Positions Allowed Military Leave Sharing in Contrast to Similar Positions of the U.S. Federal Government

Unlike the U.S. federal government, the government of Guam allows employees in critical public safety positions (e.g. firefighters, paramedics, etc.) to join the guard and reserves, as well as to participate in the Leave Sharing Program for military purposes. The U.S. federal government prohibits part-time military membership for employees in critical positions. U.S. Federal fire

⁷ We extrapolated GFD's "non-productive" costs by dividing the total number of leave sharing hours by 45 to arrive at the number of possible pay periods leave sharing hours were taken. Then, we multiplied that number by 61 hours, which is the number of "non-productive" hours that could be compensated per pay period. This amount was then multiplied by the average rate utilized during leave sharing hours (\$118,285/7,594 hours or \$15.58).

departments do employ Guard personnel and Reservists, but not in “key positions” and under several restrictive provisions. The U.S. Department of Defense’s Directive 1200.7, requires federally employed members of the ready reserve to be screened at least annually to continue to meet those provisions. Section E2.1.1 of the directive states that if a reservist’s mobilization might have an adverse effect on the health, safety, or welfare of the community, the reservist may request exemption from the call of duty.

The Fire Chief stated that the increased use of leave sharing hours for military deployment jeopardizes GFD’s ability to ensure public safety and to respond rapidly to emergencies in the community. If GFD rules and regulations mirrored those of the U.S. federal government, reservists would not hold key positions or be able to forsake them if deployed. Similarly, implementing the CSC’s recommendation to amend the legislation allowing dual compensation eliminates the financial incentive for GFD reservists, especially those in critical positions, to volunteer for deployment. As such, we concur with CSC’s position and recommend the Legislature take action to eliminate the potential for double compensation for military deployment.

Internal Control Deficiencies in Administering the Leave Sharing Program Effectively

DOA administers the leave sharing program for all executive line agencies. The program requires a qualifying recipient and a willing donor. Additionally, 4 GCA § 4109.2 prohibits employees from offering or accepting money, favors, or items of value in exchange for their unused annual or sick leave. We observed that the current leave sharing request does not take into consideration this restriction; therefore, we recommend that DOA require, under penalty of perjury, verification that no compensation was exchanged in their leave sharing request form.

DOE has adopted the policies and procedures set forth by DOA. To request leave sharing, employees must complete DOA Form FCN 2-0-1 (see Appendix 9) and attach a notarized affidavit or other certification to prove the validity of the request for a minimum of five consecutive work days. Applicants must also obtain certification from their payroll supervisor that they meet the guidelines for qualification. Lastly, they must secure the approval of their agency head. To donate leave, employees must obtain their payroll supervisor’s certification that the amount of leave to be donated has been accrued and that the required one pay period of leave remains in the donor’s account. The DOA Director has discretion to approve donated leave for personal reasons (other than medical reasons). We observed that affidavits of validity are only required for the use of leave sharing for personal reasons.

We randomly selected the transactions of 19 individuals from DOA and 12 from DOE, to determine whether established internal controls were sufficient to ensure proper administration of the leave sharing program. All together, these individuals accumulated 659 leave sharing transactions between October 1, 2006 and September 30, 2009. Among these transactions, we found the following:

- Lack of Documentation
- Utilization of Leave Sharing Hours Not Justified
- Leave Balances Not Exhausted
- Incorrect Pay Rate Applied
- Retirement Contributions Did Not Cease

- Lack of Communication, Reconciliation, and Confirmation to Ensure Proper Recording of Transactions of Donor and Recipient Leave

Lack of Documentation

We found document deficiencies in 141 transactions (21%) to conclude that leave sharing was properly approved resulting in questioned costs of \$113,876. Certain required documents, such as the leave sharing request forms approved by both recipient and donor's supervisors, employee's leave form, doctor's certification (if applicable), military orders (if applicable), or other verification documents were missing.

Utilization of Leave Sharing Hours Not Justified

For those transactions we reviewed that had justifications, such as doctor's certifications or military orders, 18 did not support the leave period for which leave sharing hours were granted. As a result, \$18,576 in costs has been questioned in regards to these transactions. For example, for 10 transactions, we found that the same doctor's certification was attached to the leave sharing files for the payroll periods ending March 31, 2007 through August 4, 2007; however, the excuse was only valid until mid-March of 2007.

Leave Balances Not Exhausted

In September 2007, P.L. 29-19, Section 96 (b), amended the compensation and accrual of leave balances for those participating in the leave sharing program. Specifically, "the recipient must first exhaust all his accrued annual **and** sick leave and compensatory time for the purposes of a medical emergency *or* for personal reasons." The changes were reflected in 4 G.C.A. § 4109.2 (b). The DOA Director, cognizant of the changes in legislation, set out policy directive in DOA Organizational Circular No. 08-006 to ensure compliance with the leave sharing program requirements.

We tested 485 transactions and found that 116, or 24%, did not have fully exhausted leave prior to the approval of leave sharing. For example, we found individuals with sick leave balances as high as 2,519 hours and annual leave balances as high as 146 hours who participated in the leave sharing program. Additionally, the application of exhausting all leave was not consistently applied to all leave sharing recipients. Specifically, those who participated in the leave sharing program for military purposes were only required to exhaust their annual leave.

Although the DOA Director issued Circular 08-006, DOA's policy and procedures were not updated to reflect the changes made in P.L. 29-19. DOA's policy and procedures for the leave sharing program date back to 1997. Additionally, DOA relied on an outdated AG's opinion from 2004. As result, questioned costs totaling \$101,171 arose from the payment of leave hours to employees who did not deplete both their annual and sick leave balances as required by P.L. 29-19. Additionally, we found 295 transactions totaling \$275,092 which were missing documentation and for which we cannot ascertain whether the recipient had exhausted all leave prior to approval.

We recommend that DOA update leave sharing procedures to include administrative review and certification that recipients have fully depleted both annual and sick leave.

Incorrect Pay Rate Applied

In December 2007, all leave sharing hours were to be paid at the lower pay rate of the recipient or donor. Of 448 transactions tested, we found that 136 transactions totaling \$123,008 were

missing sufficient documentation to allow us to conclude whether or not the lower rate was used. For 19 transactions, the lower rate was not used, resulting in overpayments of \$1,213 to eight individuals.

Retirement Contributions Did Not Cease

Although retirement contributions are not supposed to be drawn from shared leave, we found seven transactions in which retirement contributions totaling \$494 did not cease during leave sharing. Additionally, GFD uniformed personnel receive retirement contributions for all “non-productive” hours while participating on leave sharing. We found a total of \$10,808 that was made in retirement contributions for the “non-productive” hours for three GFD recipients. This is because DOA does not consider “non-productive” hours as transferred leave. However, we note that had it not been for the transferred leave, the compensation of “non-productive” hours would not have occurred.

Lack of Communication, Reconciliation, and Confirmation to Ensure Proper Recording of Transactions of Donor and Recipient Leave

We found deficiencies in inter-department or agency communications and reconciliations between donor and recipient, which could result in inaccurate leave balances being maintained. Notices from recipient agencies to donor agencies occurred in only 172 transactions (26%) resulting in questioned costs of \$452,323. Communication is necessary for both the donor and his or her agency to be informed as to the action taken on a leave request and whether the recipient used all or only portion of the hours donated. Thus, payroll officers can make necessary and accurate adjustments to leave balances.

Neither DOA nor DOE prepare year-end summary reports for management, track the number of hours utilized, or monitor the cost of the program. Further, leave sharing hours are being processed between line agencies and autonomous agencies without clear communication and certification that the appropriate transaction has been accurately recorded. These exceptions occurred because accounting for leave balances and payroll exist throughout the government of Guam with decentralized systems. Payroll divisions who are responsible for the proper accounting of leave sharing hours are recording transactions independently, without proper reconciliations and year-end analysis. Further, there is a lack of monitoring of leave sharing hours, costs, and utilization. We recommend DOA and DOE:

- Establish a communication and reconciliation protocol to ensure accurate leave balances are maintained for all employees, and
- Establish and implement controls to mitigate the risk of, but not limited to: (1) inaccurate adjustments and unreturned leave balances; (2) mandated leave caps being exceeded; (3) improper approval of leave sharing requests; and (4) incorrect application of pay rates.

Conclusion and Recommendations

Our audit found the government of Guam Leave Sharing Program cost approximately \$4.5M from FY 2007 to 2009. There were 806 executive line agency employees that were paid a total of 252,263 hours of donated leave. Employees from the DOE, our largest government entity, were paid the most leave sharing hours at 99,224 (39%). The GFD firefighters ranked second, with 24,359 hours (10%), of which, 7,594 hours were drawn for military deployment.

The Leave Sharing Program is an important benefit for employees who, for medical, personal, or military reasons, require more time from work than what they have earned in sick or annual leave. However, the application and the interpretation of leave sharing benefits are not consistent and equitable for all government of Guam employees. Uniformed GFD employees are compensated for leave sharing hours at 106 hours per pay period, but are only assessed 45 hours of donated leave. We estimate as much as \$558,742 was paid over the last three years for the differential of 61 hours per period, which firefighters receive while on leave. Additionally, retirement contributions totaling \$10,808 was paid for “non-productive” hours while participating in the leave sharing program. In contrast, all retirement contributions cease when all other government of Guam employees participate in the leave sharing program. Conflicting laws and convoluted interpretations afford GFD leave sharing benefits that surpass all other classified employees. We find it unreasonable that the legislative intent was to give 61 hours of compensation in excess of 45 leave hours charged every time a GFD uniformed employee takes leave.

Although legislation has established program parameters and maximum leave thresholds, we found several instances where leave sharing hours were paid in excess of these thresholds due to varying interpretations and the lack of oversight and controls. For example, one employee under the Chamorro Land Trust Commission was on leave from February 2006. This employee utilized 3,424 hours of donated leave, or approximately 428 days, and received compensation totaling \$64,610.

Leave sharing for military activation has become common practice over the last three years as 83 government employees utilized 18,697 hours in leave sharing costing approximately \$274,627. This practice is due to legislation that allows for potential dual compensation through the leave sharing program. We have observed that while military deployment was included as an approved reason for utilizing leave sharing, it has placed a heavy strain on the government’s workforce. Along with the increase in work, there is heightening stress, lowered employee morale, and a drop in productivity. We estimate that \$435,009 was paid by the government of Guam for employees receiving dual compensation while participating in the leave sharing program for military activation.

Weaknesses in the administration of the Leave Sharing Program due to deficiencies in internal controls resulted in questioned cost of \$601,637. These include:

- Lack of proper oversight and/or adequate system controls,
- Insufficient evidence justifying leave sharing transactions and/or supervisory approval,
- Leave balances not exhausted,
- Application of incorrect pay rates,
- Retirements contributions paid during leave sharing, and

- Unreconciled leave sharing balances.

Improvements in controls are needed to properly manage and administer the Leave Sharing Program, to prevent excessive use or misuse, and to enhance -- not impede -- the effectiveness and efficiency of government operations. As such, we recommend the:

Guam Legislature:

- Amend the legislation regarding GFD compensation for all leave (leave sharing, sick, annual, etc.) to an hour-for-hour basis to ensure equality among all government employees;
- Take action to eliminate the potential for double compensation for military deployment; and
- Amend the leave sharing legislation to clarify the legislative intent on the application of established thresholds.

Attorney General:

- Review and clarify the meaning of “per occasion” with regard to the use of shared leave and the maximum limits set by law.

Department of Administration:

- Update leave sharing procedures to include administrative review and certification that recipients have fully depleted both annual and sick leave; and
- Amend the leave sharing affidavit to include a statement that no compensation, favors, or items of value were given in exchange for the use of donated leave.

Department of Administration and the Department of Education:

- Establish a communication and reconciliation protocol to ensure accurate leave balances are maintained for all employees; and
- Establish and implement controls to mitigate the risk of: (1) inaccurate adjustments and unreturned leave balances; (2) mandated leave caps being exceeded; (3) improper approval of leave sharing requests; and (4) incorrect application of pay rates.

Managements' Responses & OPA Reply

A draft report was transmitted to GFD, DOA, DOE and CSC on August 31, 2010 for their official response. In September 2010, we met individually with officials from these agencies to discuss the findings and recommendations. Based on a preliminary response from CSC, the draft report was slightly modified to include a discussion about the exhaustion of all leave prior to being approved for the leave sharing program. GFD, DOE and CSC generally concurred with the audit findings and supported the audit recommendations. See Appendices 11, 12, and 14, respectively, for their managements' response.

The DOA Director substantively agreed with three of the audit recommendations, will re-visit the recommendation on the leave sharing threshold pending the AG interpretation of law, and disagreed with one recommendation as follows:

1. DOA agrees with an amended legislation regarding GFD compensation for all leave (leave sharing, sick, and annual, etc.) to an hour for hour basis to ensure equality among all government employees. This has been a long standing concern of inequitable compensation.
2. DOA disagrees with the recommendation of eliminating the potential for double compensation of government of Guam employees who are uniformed service members availing to the leave sharing program for military reasons.
3. DOA will re-visit its interpretation of the "per occasion" provision, and also awaits a pending opinion from the Attorney General's Office as requested by the OPA.
4. DOA will amend the Leave Sharing Affidavit to include a statement that no compensation, favors, or items of value were given in exchange for the donated leave hours.
5. DOA already has existing control measures within the Leave Sharing Program. DOA will need to assess its controls, update and strengthen some of its weaknesses, as mentioned in the audit findings.

See Appendix 13 for DOA's management response.

The legislation creating OPA requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress of the implementation of the recommendations, and to endeavor to have implementation completed no later than the beginning of the next fiscal year. Accordingly, our office will be contacting DOA and DOE to establish target dates and titles of officials responsible for implementing the recommendations.

We appreciate the cooperation and assistance shown by the Chief and staff of the Guam Fire Department, the Director and staff of the Civil Service Commission, and the staff of the Department of Administration and Department of Education.

OFFICE OF PUBLIC ACCOUNTABILITY



Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1: Classification of Monetary Impact

Finding Area	Questioned Costs ⁸	Other Financial Impact ⁹
1 General Fund Leave Sharing Program Payments Total \$4.5M in Three Years		
GFD Utilized the Most Leave Sharing Hours	-	-
2 Legislation Provides GFD Inequitable Benefits		
GFD Compensated for More than Donated Leave Hours (61 hours of “Non-Productive” Time)	-	\$558,742
GFD Leave Sharing Benefits Extends Beyond the Established Legislative Maximum Threshold	-	-
3 Leave Paid in Excess of Legislative Threshold		
- DOA Employees Exceeding the Cap	\$85,589	-
- DOE Employees Exceeding the Cap	\$4,846	-
4 Potential for Dual Compensation for GovGuam Employees on Military Activation	-	\$274,627 ¹⁰
Critical Positions Allowed Military Leave Sharing in Contrast to Similar Positions of the U.S. Federal Government	-	-
5 Internal Control Deficiencies in Administering the Leave Sharing Program Effectively		
Lack of Documentation to Evidence Proper Supervisory Approval	\$113,876	-
Utilization of Leave Sharing Hours Not Justified	\$18,576	-
Leave Balances Not Exhausted	\$101,171	-
- Lack of Documentation to Determine Exhaustion of Leave Balances	\$275,092	-
Incorrect Pay Rate Applied	-	-
- Overpayments Due to Incorrect Pay Rate Applied	\$1,213	-
- Lack of Documentation to Determine Lower Pay Rate	\$123,008	-
Retirement Contributions Did Not Cease	\$494	-
- Retirement Contributions Paid on “Non-Productive” Hours while on Leave Sharing	-	\$10,808
Lack of Communication to Ensure Proper Recording of Transactions	\$452,323	-
Total Questioned Costs for Finding 4	\$511,202¹¹	
Totals	\$601,637	\$844,177

⁸ Cost that is questioned because of (a) an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds; (b) a finding that, at the time of the audit, such cost is not supported by adequate documentation; or (c) a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.

⁹ Other financial impact includes cost incurred as a result of GFD being compensated for “non-productive” time, GovGuam employees receiving dual compensation when on leave sharing for military activation due to legislation, and retirement contributions paid on “non-productive” hours while on leave sharing.

¹⁰ Costs incurred as a result of generous military leave sharing benefits totaled \$435,009; however, the \$160,382 is included with the \$558,742 identified under Finding 2: GFD Compensated More than Donated Leave Hours (61 hours of “non-productive” time).

¹¹ Some transactions had multiple deficiencies and were accounted for in multiple areas. Total questioned costs from our testing amounted to \$511,202.

Appendix 2:**Audit Scope and Methodology**

The audit scope included a review of laws, rules and regulations, policies, prior audit findings, associated costs (employee hours, transferred and donated amounts, and operational costs), and other information pertinent to the Leave Sharing Program for the 36-month period between October 1, 2006 and September 30, 2009. Our review did not include leave sharing for the autonomous agencies, the Judiciary, or the Legislature.

To accomplish our objectives, we performed the following:

- Identified OPA hotline tips relevant to the objectives of this engagement.
- Gained an understanding of the policies, procedures, applicable laws, and regulations pertaining to Leave Sharing Program.
- Interviewed key officials of DOA, DOE, GFD, and CSC.
- Compared government of Guam leave sharing benefits with those offered by the U.S. federal government.
- Analyzed data from DOA and DOE¹² to identify the agency that utilized the most leave sharing hours and to determine the overall impact to the operations of that agency.
- Tested the transactions of 31 individuals out of 806 employees who participated in the leave sharing program (19 from DOA and 12 from DOE) for compliance with established rules and regulations. These individuals combined had 659 leave sharing transactions from October 1, 2006 through September 30, 2009. The tests were also conducted to determine whether established internal controls were sufficient to ensure proper administration of the program.
 - In the three-year period ending September 30, 2009, 806 employees utilized 252,263 leave sharing hours. The 806 employees were grouped into four categories based on the total hours as illustrated below. Five samples were selected from each category, using Microsoft Excel's Statistical Analysis program. Detailed transactions for each individual selected were then requested from the respective agencies.

Category	Sample Size		
	DOA	DOE	Total
A. More than 1680 hrs.	5	2	7
B. 1440 hrs. - 1680 hrs.	4	5	9
C. 720 hrs. - 1440 hrs.	5	0	5
D. Less than 720 hrs.	5	5	10

We conducted this audit in accordance with the standards for performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America. These standards require that we plan our audit objectives and perform the audit 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.

¹² DOE did not provide leave sharing data from October 1, 2006 through April 27, 2007.

Appendix 3:
Prior Audit Coverage

OPA Report No. 09-03

In April 2009, OPA conducted a performance audit of the Chamorro Land Trust Commission Commercial Division, OPA Report No. 09-03, and found that the only employee in charge of the commercial division went on medical leave in February 2006 and is not expected to return to CLTC. This employee continued to receive his salary through donated leave sharing. The Director stated that because of leave sharing, he is unable to hire a replacement.

Baker Tilly Management Audit of the Guam Power Authority (GPA)¹³

In September 2009, an independent study found that there are 17 GPA employees that had significant amounts of leave sharing for military deployment which impacted staffing and productivity. As employees took leave, other employees provided backfill to get required work complete. GPA estimated that approximately \$250,000 was needed for FY 2009 military leave wages. The financial cost associated with military leave include three main categories: (1) Military Leave, (2) Leave Sharing for Military Personnel, and (3) Overtime. See table below for an example of calculating leave sharing cost:

Category of Wages	FY 2009 Cost
Military Leave	\$64,000
Leave Sharing for Military Personnel	\$84,000
Overtime	\$74,000 to \$148,000
Total Value of Military Wages	\$222,000 to \$296,000

¹³ Our audit did not include a review of leave sharing at autonomous agencies.

Appendix 4:
Government Agencies Utilizing Leave Sharing

Department		Employee Count	Total Hours	Total Value
1	Department of Education	375	99,224	\$ 1,647,683
2	Guam Fire Department	51	24,359	\$ 399,979
3	Department of Public Health & Social Services	51	15,959	\$ 231,451
4	Department of Public Works	39	14,074	\$ 222,984
5	Guam Police Department	41	13,691	\$ 178,192
6	Department of Mental Health & Substance Abuse	26	10,923	\$ 167,594
7	Department of Administration	20	8,071	\$ 133,816
8	Department of Revenue & Taxation	25	7,802	\$ 123,767
9	Office of the Attorney General	24	7,690	\$ 105,662
10	Customs & Quarantine Agency	20	6,783	\$ 96,482
11	Department of Corrections	19	5,476	\$ 74,788
12	Office of the Governor	20	5,077	\$ 80,308
13	Department of Parks & Recreation	9	4,487	\$ 60,063
14	Chamorro Land Trust Commission	3	3,722	\$ 68,164
15	Department of Integrated Services for Individuals with Disabilities	8	3,696	\$ 48,713
16	Bureau of Statistics & Plans	2	3,439	\$ 43,540
17	Agency of Human Resources Development	12	3,291	\$ 42,271
18	Department of Youth Affairs	14	3,158	\$ 44,020
19	Department of Agriculture	10	2,843	\$ 45,843
20	Guam Environmental Protection Agency	8	1,956	\$ 34,604
21	Department of Land Management	5	1,926	\$ 33,974
22	Mayor's Council of Guam	8	1,636	\$ 17,681
23	Department of Military Affairs	5	1,136	\$ 17,334
24	Guam Public Library System	2	624	\$ 6,130
25	Department of Labor	4	599	\$ 11,300
26	Bureau of Budget & Management Research	2	208	\$ 2,941
27	Guam Energy Office	1	180	\$ 1,661
28	Guam Public Broadcasting System	1	160	\$ 3,384
29	Civil Service Commission	1	80	\$ 2,893
Subtotal		806	252,263	\$ 3,947,219
GFD Non-Productive Pay				\$ 558,742
Total				\$ 4,505,961

Alicia G. Limtiaco
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

February 10, 2010

INFORMATION AND GUIDANCE (Confidential) Ref. LEG 09-0929

TO: Senator Frank B. Aguon
Fire Chief David Peredo

FROM: Assistant Attorney General

SUBJECT: Leave Sharing Benefits; Limiting Leave Sharing Benefits to Medical Leave;
Transferring Fire Fighter to Administrative position prior to Military Leave.

There are two related requests for assistance and guidance concerning leave sharing benefits, and the impact on the Guam Fire Department for use of leave sharing benefits by GFD employees taking leave for active duty military service.

Senator Aguon has asked:

Can government of Guam directors and administrators restrict government employee earned benefits or leave sharing benefits to deployed personnel, while other government employees continue to receive such earned benefits?

No. The Uniformed Services Employment and Re-Employment Rights Act prohibits this behavior by an employer. See discussion below.

Fire Chief David Peredo has asked:

Can I continue to disallow leave that is based on leave sharing where there is no justification of a medical necessity?

No. The personnel law for the government of Guam prohibits limiting leave sharing benefits to only medical leave. See discussion below.

Can DOA or GFD change the schedule of firefighters, when leave is requested, from a twenty four hours schedule (a one hundred and six hour pay period) to a normal administrative schedule of eight hours per day (an eighty hour pay period)?

No. The personnel law for the government of Guam prohibits the change in scheduling of firefighter hours as proposed by GFD. See discussion below.

Information and Guidance Memorandum
Ref: LEG/GFD 09-0929
Re: Leave Sharing for Military Leave; Transfer To Administrative Position prior to Leave
Page 2

Discussion:**I. Use of Leave Sharing As it Affects Guam Fire Department.**

The use of donated leave by employees (leave sharing) who go on active military duty as members of the Guam National Guard or a military Reserve unit has had an adverse financial impact on the Guam Fire Department ("GFD"). A large number of GFD fire fighters, 46 in 2009, have received donated leave through the leave sharing program and used this leave while on extended active military duty.¹ GFD has addressed this financial impact by implementing a policy of denying all employees the opportunity to use donated leave for anything but a medical necessity. This GFD policy has affected employees seeking to use donated leave through the leave sharing program for active military duty.

The negative impact of the leave sharing program on GFD is compounded by government personnel policy that provides that firefighters, who work a series of twenty-four hour shifts, are compensated for a 106 hour pay period, as opposed to the 80 hour pay period utilized for all other government of Guam employees. 4 GCA §6219 (a). As an administrative practice, an 80 hour pay period is equivalent to 10 workdays. For firefighters, a 106 hour pay period is equivalent to 5 workdays.

By law, leave sharing is limited to 90 work days. 4 GCA §4109.1 (b). For this reason, the calculation of work days is important when determining the limit an employee has to the use of shared leave for any given request. For all employees but firefighters, the 90 workdays of shared leave permitted is equivalent to receiving shared leave for 9 pay periods (about 4½ months of leave). For firefighters, the 90 workdays of shared leave per request is equivalent to receiving 18 pay periods of leave (about 9 months of leave). For this reason, a firefighter who goes on active military duty, and is donated leave sharing for ninety (90) work days, is actually provided paid leave for 18 pay periods, as opposed to paid leave for 9 pay periods as with all other government employees.

The impact of the leave sharing program is a concern of the Guam Fire Department because of the high number of employees who request leave for military services, when this leave is compensated through the leave sharing program. Because of the payroll and administrative process, firefighters can receive nine (9) months of leave through leave sharing for each request.²

¹ According to the Department of Administration, in fiscal year 2009, of 106 government of Guam employees who have been approved for military leave, forty six (46) of those employees were from the Guam Fire Department. The next highest department, at twenty six (26) employees was Department of Education. After those two departments, no other department or agency had more than 9 employees.

² A second financial impact for an agency, such as GFD, that receives a large amount of donated leave from outside agencies of the government, is that the money to pay for the donated leave does not follow the donated hours. A government employee from an outside agency, e.g., the Office of the Attorney General, can send donated leave to a firefighter, and GFD receives the leave time but does not receive the appropriated funds to pay for the leave, once it is taken.

Information and Guidance Memorandum
Ref: LEG/GFD 09-0929
Re: Leave Sharing for Military Leave; Transfer To Administrative Position prior to Leave
Page 3

II. Uniformed Services Employment and Re-Employment Rights Act.

The Uniform Services Employment and Re-Employment Rights Act ("USERRA") is the recent updating and amendment of federal law, initially enacted in 1941, to protect the employment rights of uniformed military personnel called to active duty. USERRA rights now

extend to National Guard and Reserve personnel called to duty, for both voluntary as well as involuntary service, and to include active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and funeral honors duty performed by National Guard or Reserve members. See 38 USC §§ 4301 – 4333.

USERRA intends to encourage an all-volunteer uniformed service and prohibits employment discrimination against those who serve or have served. Courts have followed the Supreme Court admonition that "[t]his legislation is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need." *Fishgold v. Sullivan Drydock and Repair Corporation*, 328 U.S. 275, 285, 66 S.Ct. 1105, 1111, 90 L.Ed. 1230 (1946). With regard to employment benefits and privileges, USERRA provides that servicemen and women returning to private life and private employment after service are to be treated equal to their fellow employees. This has been interpreted to mean that the military member returning to work after active service is to be treated, for purposes of employee benefits, as if they had been on leave like any other employee.

Title 38, section 4316 states, in relevant part:

"(b) (1) Subject to paragraphs (2) through (6), a person who is absent from a position of employment by reason of service in the uniformed services shall be--

(A) deemed to be on furlough or leave of absence while performing such service; and

(B) entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.

(2)...

(3) A person deemed to be on furlough or leave of absence under this subsection while serving in the uniformed services shall not be entitled under this subsection to any benefits to which the person would not otherwise be entitled if the person had remained continuously employed.

(4) Such person may be required to pay the employee cost, if any, of any funded benefit continued pursuant to paragraph (1) to the extent other employees on furlough or leave of absence are so required.

(5) ...

Information and Guidance Memorandum
Ref: LEG/GFD 09-0929
Re: Leave Sharing for Military Leave; Transfer To Administrative Position prior to Leave
Page 4

(6) ...”

This section has been interpreted to mean that an employer did not have to grant an employee returning to employment after serving in the uniformed services enhanced benefits or seniority, but rather, the same benefits and seniority that would have been granted to the employee had him or her gone on a non-military furlough or leave. *Rogers v. City of San Antonio*, 392 F. 3d 758 (5th Cir. 2004). In *Rogers*, 15 firefighters sued the city for compensation and lost wages after taking leave to serve on active duty in the military. The firefighters contended that they were denied opportunities to earn straight and overtime pay, extra vacation leave, vacation scheduling flexibility, and opportunities to secure unscheduled overtime work and job upgrades. The city contended that the firefighters were treated just like any other employee on leave; any employee on furlough or leave would have missed opportunities to earn straight and overtime pay, extra vacation leave, opportunities to secure unscheduled overtime work and other opportunities. *Rogers*, interpreting 38 USC 4316 (b) as applicable to this question, holds that an employee going onto active duty, and returning to work after active duty, is to be deemed on leave of absence or furlough and receive the same benefits as any employee in that circumstance. In accord is *Monroe v. Standard Oil*, 452 U.S. 549, 101 S.Ct. 2510, 69 L. Ed. 2d 226 (1981), interpreting the Vietnam era Veterans’ Readjustment Allowance Act, a predecessor to USERRA.

Government of Guam employees, whether they be firefighters, or not, when going on active duty in the armed forces, are to receive the same leave benefits as are provided by the government of Guam to any employee. These leave benefits need not be enhanced for employees going on active military duty, but the benefits can not be reduced either. GFD firefighters going on active military duty and utilizing shared leave must be treated like any other government of Guam employee going on leave and using shared leave benefits.

III. Leave Sharing Benefits for government of Guam Employees.

A leave sharing program has been established for government of Guam employees since 1993. See P.L. 22-10, codified at 4 GCA §4109.1. The program of providing leave sharing benefits for government employees has been revised on several occasions over the years. Public Law 22-140:5 removed certain restrictive provisions, expanding the availability of leave sharing between non-related employees from different departments. Public Law 26-134 amended the policy to specifically declare that the leave sharing program is intended to benefit employees going on active military duty for greater than 15 days, and limited the use of leave sharing for a participant to 90 work days. Public Law 27-29: V: 16 expanded the program to provide an additional 90 days of shared leave to an employee if a medical doctor certifies that the additional leave is needed for medical treatment or to recover from a medical illness. Public Law 28-068: IV: 105 and P.L. 29-019: VI: 96 further amended and expanded the leave sharing program regarding use of leave sharing in medical leave instances, and provided for a criminal penalty for the selling of accumulated leave to another employee through the leave sharing program. Public Law 27-158 amended 4 GCA §4109.5 to provide that teachers employed by the Department of Education who are members of the military reserves or the National Guard may participate in the leave sharing program solely for the purpose of leave required for military training or active duty.

Information and Guidance Memorandum
Ref: LEG/GFD 09-0929
Re: Leave Sharing for Military Leave; Transfer To Administrative Position prior to Leave
Page 5

Likewise, other benefits intended to support employees in the National Guard and the military reserves that go on active duty were enacted by the Guam Legislature. Public Law 22-54 added Section 4119 to Title 4 and provided for 15 days of paid leave for all employees of the government who are members of the military reserves or Guam National Guard on all days during which they are engaged in active military duty. Public Law 23-41 further clarified Section 4119 to provide that, in any given year, after an employee used the 15 days of military leave, the employee still on active duty shall elect annual leave or leave without pay for the remainder of the leave. Public Law 24-258 provided that an employee may carry over up to 15 days of unused military leave from one year to the next, resulting in the possibility that an employee with a 15 day carry over from the prior year, could have a total not to exceed 30 days of military leave in a given year.

There is a clear and unambiguous pattern of legislative action, beginning with P.L. 22-54, to provide members of the Guam National Guard and the military reserves with leave benefits for military active duty and with liberal access to the shared leave program, in order to expand paid leave for military active duty by government of Guam employees. In those enactments and amendments in which the legislature set out its intent or rationale, it is clear that the Legislature intended to support the national efforts to combat terrorism, and to support those government employees who serve in military units. The intent of the relevant legislative action is clear in this regard.

IV. Leave Sharing Can Not Be Limited To Use For Medical Purposes Only.

The leave sharing policy is legislatively mandated. It provides that an employee may use donated annual leave hours for personal leave. 4 GCA §4109.2 (b). The program works as follows. An employee advises his department of his intent to donate leave, annual leave or sick leave, to another identified employee, the recipient employee. The recipient employee can be employed in any government agency or department. Once the donating agency confirms that the donating employee has the requisite number of hours to donate, "the payroll supervisor *shall* notify the Payroll Division to transfer the approved number of hours to the recipient." *Id.* (Emphasis placed by legislature in the law.) The recipient employee's agency is notified of the availability of donated leave hours. Upon receipt of the notice of transfer of leave hours, the employee then submits a leave request. "The department head *shall* then approve the leave request." *Id.* (Emphasis placed by legislature in the law.)

The intent of the law is clear. There is no discretion granted to the department or agency head to limit the leave sharing program to only medical leave. Further, the leave sharing program is specifically intended for active duty military leave. "From time to time, classified employees ... have occasion to need leave for personal reasons ... At times like these, particularly when the employee needs time off ... in the case of the military reserves and National Guard members, being called to active duty in excess of fifteen (15) working days, the employee might be forced to take leave without pay." 4 GCA §4109.2 (a).

The practice of limiting the leave sharing program to use for medical leave only is contrary to law.

Information and Guidance Memorandum
Ref: LEG/GFD 09-0929
Re: Leave Sharing for Military Leave; Transfer To Administrative Position prior to Leave
Page 6

V. Transfer of Firefighters Prior To Leave.

As a result of the disparate impact of the leave sharing program on the Guam Fire Department due to the payroll policy of according fire fighters a 106 hour pay period, resulting in fire fighters receiving the effect of nine months of leave sharing, the Fire Chief has asked whether fire fighters can be transferred to an administrative position, an 80 hour pay period position, prior to taking leave that utilizes shared leave (presumably for active duty military leave). Without even analyzing the USERRA implications of this suggested action, the transfer of a fire fighter is either not permitted, or if involuntarily detailed, would not provide the remedy being sought.

Transfer of classified employees in the government of Guam is controlled by law and regulation. "No employee of a department, agency or instrumentality of the government of Guam may be involuntarily transferred to a position which is unrelated with respect to job duties and responsibilities to the position occupied by the employee before such transfer." 4 GCA §4116. Personnel Rules and Regulations ("Rules" or "Rule") have further denominated the circumstances within which an employee can be transferred.³ Under the heading of Non-Competitive Actions, the Rule for transfers, at Section 4.501, states:

"A. Intra-departmental and Inter-departmental

Upon the approval of the Appointing Authority (receiving department), employees may transfer within the same department or to another department when the following conditions are met:

1. the employee meets the minimum qualification requirements for the position which he seeks movement, including and assembled examination requirements.
2. **movement is within the same class of position, or from one class of position to another class of position having comparable duties and responsibilities and qualification requirements.**
3. any such transfer shall require **clearance of the Director and the consent of the employee.** The employee shall give the releasing department reasonable notice of the transfer. Prior approval for the transfer is not required by the releasing department. The releasing department cannot require the employee to resign.
4. any employee affected by this section shall not have affected adversely his government service, retirement credits, sick or annual leave and other fringe benefits normally granted to an employee of the government.
5. the appointing authority may require a transferred employee to serve a probationary period." (Emphasis added)

According to the Department of Administration there are only three positions within the fire fighter series that are truly administrative in nature. These positions are: Assistant Fire

³ The Personnel Rules and Regulations were updated and adopted by Executive Order 96-24.

Information and Guidance Memorandum
Ref: LEG/GFD 09-0929
Re: Leave Sharing for Military Leave; Transfer To Administrative Position prior to Leave
Page 7

Chief; Deputy Fire Chief; and Fire Chief. All other fire fighter positions have some administrative responsibilities, but are not administrative positions. Therefore, a transfer of a fire fighter to an administrative job would be to "a position which is unrelated with respect to job duties and responsibilities to the position occupied by the employee before such transfer." 5 GCA §4116. Further, it is not movement "within the same class of position, or from one class of position to another class of position having comparable duties and responsibilities and qualification requirements." Rules §4.501 (A) (2). Finally, such a transfer requires the consent of the Director of Administration and the consent of the firefighter. *Id.* at (A) (3).

Therefore, unless a firefighter consents to a transfer to an administrative position, and unless the Director of Administration approves of the transfer, a firefighter can not be transferred prior to taking personal leave that is supported by donated (shared) leave.

Finally, it may be asserted that the fire chief could detail a firefighter to an administrative position prior to taking personal leave. Detail assignments are permitted by the Rules. "A detail is the temporary assignment to meet management needs of an employee to another position or group of specific duties and responsibilities for a specified period with the employee returning to his regular duties at the end of the detail." Rules §4.506 (A). Details shall be made only for meeting the temporary needs of the department program such as addressing an emergency workload or unanticipated absences, pending the formal classification of a new position, or to replace an incumbent who is undergoing training. *Id.* at (B). Details are limited to ninety days; By express approval of the Director of Administration, a detail may be extended to an additional 90 days upon application. 4 GCA § 4117. Finally, pursuant to the Rules, employees detailed in excess of 30 days to a position having a lower pay grade, shall not have their pay adjusted to the lower pay. Rule §4.506 (I).

The detailing of a firefighter to an administrative position in order to circumvent the application of personnel law regarding pay to firefighters, under the circumstance of a firefighter's use of the shared leave policy, is contrary to the spirit, intent and proper application of personnel law and rules. Detailing of a firefighter in this circumstance is not the detailing of an employee "for meeting temporary needs of department or agency programs such as (1) emergency details – to meet emergencies occasioned by abnormal workload, change in organization, or unanticipated absences; or (2) pending description and formal classification of a new position; or (3) to replace an incumbent who is undergoing training." Rule 4.506 B.

Conclusion.

1. Government of Guam directors and administrators cannot restrict access to the use of leave sharing benefits to deployed personnel, while other government employees continue to receive such earned benefits. Government employees that go on active duty with the Guam National Guard or the Reserves must be treated the same as any government employee in exercise of leave benefits.
2. The Fire Chief can not continue to restrict the use of shared leave for only medical purposes and disallow the use of donated leave for personal purposes. Leave sharing benefits may not be restricted to instances of medical necessity, and shall be available to government employees for personal reasons, to include active duty military leave.

Information and Guidance Memorandum
Ref: LEG/GFD 09-0929
Re: Leave Sharing for Military Leave; Transfer To Administrative Position prior to Leave
Page 8

3. Neither the Department of Administration nor the Guam Fire Department can change the schedule of a firefighter, when leave is requested, from a twenty four hours schedule (a one hundred and six hour pay period) to an administrative schedule of eight hours per day (an eighty hour pay period). This is a personnel transfer that is not permitted if a fire fighter does not consent to the transfer. Further, to detail a fire fighter to an administrative position in order to circumvent personnel pay policy mandated by law is not permitted by personnel rules.


John M. Weisenberger

Appendix 6:**Leave Sharing Users Over 720 Hours**

Page 1 of 2

	Employee I.D.	Department	Total Hours	Total Value
1	7384	Chamorro Land Trust Commission	3,424	\$64,610
2	0664	Department of Revenue & Taxation	3,265	\$55,897
3	2361	Bureau of Statistics & Plans	2,976	\$35,275
4	2972	Department of Administration	2,344	\$34,818
5	3181	Department of Education	1,990	\$26,457
6	3673	Department of Education	1,737	\$22,085
7	2920	Department of Parks & Recreation	1,705	\$21,851
8	6932	Guam Fire Department	1,606	\$25,090
9	8593	Department of Public Works	1,544	\$27,452
10	5594	Department of Public Works	1,504	\$20,554
11	2747	Department of Public Health & Social Services	1,492	\$25,891
12	9079	Department of Mental Health & Substance Abuse	1,422	\$22,695
13	1993	Guam Police Department	1,405	\$11,420
14	5913	Guam Fire Department	1,370	\$24,133
15	9136	Department of Agriculture	1,356	\$17,011
16	6356	Department of Education	1,352	\$15,666
17	8122	Department of Education	1,332	\$14,915
18	5928	Department of Education	1,330	\$14,281
19	1372	Department of Public Works	1,306	\$20,143
20	9435	Department of Integrated Services for Individuals with Disabilities	1,228	\$17,791
21	0582	Department of Administration	1,225	\$23,258
22	6676	Department of Parks & Recreation	1,216	\$15,733
23	0083	Department of Mental Health & Substance Abuse	1,196	\$19,043
24	5988	Department of Mental Health & Substance Abuse	1,188	\$15,510
25	5797	Department of Public Works	1,170	\$19,805
26	5741	Guam Police Department	1,152	\$14,427
27	9899	Guam Fire Department	1,149	\$20,953
28	5204	Department of Education	1,108	\$13,309
29	7779	Department of Education	1,106	\$29,887
30	6318	Office of the Attorney General	1,092	\$9,820
31	0880	Guam Police Department	1,060	\$7,717
32	0391	Guam Fire Department	1,058	\$10,782
33	9699	Guam Fire Department	1,054	\$17,967
34	5964	Department of Public Works	1,015	\$16,930
35	8506	Department of Education	1,008	\$19,335
36	8072	Department of Education	994	\$19,788
37	3057	Department of Education	975	\$15,069
38	6489	Customs & Quarantine Agency	953	\$11,179
39	9580	Department of Mental Health & Substance Abuse	941	\$16,571
40	9222	Department of Mental Health & Substance Abuse	914	\$11,265
41	5380	Guam Fire Department	910	\$12,953
42	6574	Guam Fire Department	907	\$11,092

Appendix 6:
Leave Sharing Users Over 720 Hours

	Employee I.D.	Department	Total Hours	Total Value
43	1224	Department of Public Health & Social Services	896	\$14,740
44	2444	Guam Environmental Protection Agency	890	\$16,456
45	1424	Department of Youth Affairs	882	\$12,889
46	7559	Department of Education	880	\$8,975
47	4691	Department of Education	878	\$20,553
48	1860	Department of Integrated Services for Individuals with Disabilities	860	\$6,889
49	5725	Department of Education	859	\$11,696
50	1625	Guam Police Department	856	\$6,790
51	3295	Department of Public Works	855	\$12,799
52	7502	Guam Fire Department	853	\$13,435
53	6732	Agency of Human Resources Development	849	\$8,150
54	6916	Department of Education	838	\$21,591
55	0327	Guam Fire Department	834	\$14,762
56	8490	Office of the Attorney General	822	\$16,851
57	1765	Guam Fire Department	822	\$13,006
58	6398	Department of Education	818	\$13,196
59	4889	Guam Fire Department	810	\$12,942
60	3978	Department of Education	809	\$21,414
61	7859	Department of Public Health & Social Services	807	\$16,855
62	9138	Guam Fire Department	790	\$14,853
63	3157	Department of Public Health & Social Services	788	\$6,912
64	3624	Department of Education	786	\$19,033
65	2557	Department of Integrated Services for Individuals with Disabilities	781	\$11,204
66	0674	Office of the Governor	752	\$8,632
67	4135	Department of Public Works	749	\$7,123
68	8443	Office of the Attorney General	748	\$13,076
69	3401	Department of Education	746	\$16,695
70	4743	Department of Public Health & Social Services	744	\$10,317
71	5751	Office of the Attorney General	742	\$7,995
72	3715	Department of Education	732	\$10,966
73	2539	Department of Education	731	\$18,044
74	3660	Department of Education	722	\$20,229
75	7526	Department of Education	721	\$10,451



Carl T.C. Gutierrez
Maga'låhi
Governor

Uffisinar Hiniråt Abugao
Guåhan

Charles H. Trouman
Hiniråt Abugao, Atke
Attorney General, Acting

Madeleine Z. Bordallo
Tåñenne Gubetradora
Lt. Governor

Office of the Attorney General
Guam

December 30, 2002

Memorandum (Opinion) Ref: DOA 02-0742

To: Director, Department of Administration

From: Acting Attorney General

Subject: Leave Status of GovGuam Employees upon Activation by Guam National Guard

Hafa Adai!

Pursuant to your request, we address the following issue:

REQUEST No. 1: Are Department of Education teachers permitted to use sick leave for the purpose of serving on active duty with the National Guard or Armed Forces?

ANSWER: Yes, under P.L. 26-134.

REQUEST No. 2: Is the limit of 90 days for borrowed leave to be applied to an employee for their entire service as a GovGuam employee, or is the 90-day limit to be applied to each fiscal year?

ANSWER: The 90-day limit for donated leave applies to the "occasion" for which the employee must be absent.

REQUEST No. 3: How should the case of the employee who has exceeded his 90-limit for borrowed leave be handled?



Comunidade Now!

Suite 2-206E, Judicial Center Bldg., 128 W. A. O'Brien Drive, Hagåtña, Guam U.S.A. 96910
Phone: (671) 475-3324, Fax: (671) 472-6753 E-mail: law@mail.justice.gov.gu

¹⁴ AG Opinion addresses the state of 4 GCA § 4109.2 as of P.L. 26-134.

Memo (Opinion) to Director, DOA
Re: DOA 02-0742
December 30, 2002
Page 2 of 4

ANSWER: The employee who has exceeded his 90-day limit for borrowed leave is to be put on leave without pay.

REQUEST No. 4: Since P.L. 26-134 allows borrowing of sick leave for service in military service, what effect does this have on Department of Administration regulations which allow the borrowing of sick leave for purposes which do not include military service?

ANSWER: The provisions of P.L. 26-134 control. Sick leave may be donated and borrowed for military service, notwithstanding previous Department of Administration regulations which do not allow donations for that purpose.

STATEMENT OF FACTS:

Many Government of Guam employees are also members of the reserve components of the Department of Defense, such as the Guam Army National Guard and the Guam Air National Guard. Many such employees have been called into active duty. A reservist is granted fifteen days of "military leave" per year under 4 G.C.A. § 4119. As this Department has previously stated, the reservist may use annual leave or unpaid leave for the remainder of time that he is activated. See Opinion DOA 02-0447, July 17, 2002.

On September 17, 2002, the Guam Legislature passed a law permitting activated reservists to borrow up to 90 days of sick or annual leave from donors per year to cover the time that the reservist is activated. The "Legislative Statement" reflects that this measure was taken in order to avoid an activated reservist taking leave without pay. This does not take into account the fact that an activated reservist is paid a full time salary while activated. Therefore, no activated reservist loses his livelihood by virtue of his activation; he only loses his civilian job, but is simultaneously paid by his military command. Therefore, when the Guam Legislature allowed activated reservists to borrow up to 90 hours of leave, the reservist is actually being doubly paid. He is being paid by his GovGuam job by virtue of his borrowed leave, and he is also being paid by his military command, which in many cases is also the Territory of Guam. See Opinion, PCF-DOA-02-0447. In this way, P.L. 26-134 allowed activated reservists on Guam to be paid by two jobs while on active duty. It also has the effect of preventing GovGuam from replacing the activated member during the temporary activation, because GovGuam must keep the funding going to the reservist, who is collecting a second salary in the field.

Notwithstanding these anomalies, the law remains as of September 17, 2002, that activated reservists may borrow up to 90 days, and many are apparently doing so. This has caused some questions. The Director of Administration has asked whether teachers may avail themselves of the benefits of P.L. 26-134, and whether the 90 days is limited to a fiscal year. He has also asked what to do with those whose donated leave has exceeded 90 days, and finally whether Department of Administration regulations which prohibit the use of borrowed sick leave for anything other than a serious illness will prevail over P.L. 26-134, which allows the use of borrowed sick leave for military activations, where the member is collecting a second salary.

Memo (Opinion) to Director, DQA
Re: DQA 02-0742
December 30, 2002
Page 3 of 4

DISCUSSION:

I.

May teachers avail themselves of the donated sick leave benefits enacted by P.L. 26-134?

Public Law 26-134 does not differentiate between any types of employee for purposes of allowing 90 days of borrowed sick leave. Public Law 26-134 applies to "a government of Guam employee." Therefore, even though teachers earn "personal leave" in lieu of annual leave, and may be paid on a 21-week year, the fact remains that teachers are employees of the government of Guam. Therefore, they may take advantage of P.L. 26-134. A teacher may borrow up to 90 days of sick leave under P.L. 26-134.

II.

Is the 90-day limit for each fiscal year, each calendar year, or throughout the employee's career?

The "Legislative Statement" which precedes this law makes clear that the law is intended for the following "times like these:" "particularly, when the employee needs time off to take care of sick family members or in the case of the military reserves and National Guard members, being called to active duty." Therefore, the 90-day limit was placed on situations addressed in the law, specifically (a) when the employee cares for a sick family member, and (b) when the employee is called to active duty. From this, it is clear that the Legislature meant that the 90-day borrowing limit is per situation. The word used by the Legislature is "occasion." Therefore, if an employee is activated, he is entitled to borrow 90 days for that activation. If an employee needs to borrow sick leave to care for a sick family member, the 90-day limit applies to that situation, that *occasion*. The 90-day limit is per occasion, regardless of whether it extends into another fiscal or calendar year.

III.

How should the Department of Administration handle those who have exceeded the 90 working days and are continuing on borrowed leave?

Activated government of Guam employees who have exceeded 90 working days of borrowed leave are on leave-without-pay status. They are collecting a salary from his or her military command in any event, so there is no hardship on the employee that the employee did not anticipate; indeed many guardsmen make a higher salary as full time reservists. Their job is protected by both federal law and local law. 10 G.C.A. § 63500 provides that an activated Guam Guardsman's civilian employment cannot be adversely affected by his activation. If a government of Guam employee is borrowing leave while on active duty, and has exceeded 90 days of borrowed sick leave, he can only remain on pay status with his civilian job if he has sufficient annual leave, or military leave. See *Opinion* (a government of Guam employee who is activated into the armed forces may choose between annual leave and leave-without-pay as part of his protections under 10 G.C.A. § 63500). A government of Guam employee cannot continue to borrow sick leave from other government of Guam employees beyond 90 working days for the same occasion.

Memo (Opinion) to Director, DOA
Re: DOA 02-0742
December 30, 2002
Page 4 of 4

IV.

Since 4 G.C.A. §4108 and Personnel Rule 8.200 of the Personnel Rules and Regulations do not permit the donation of sick leave for the purposes set forth in P.L. 26-134, may the Department of Administration deny donated leave for employees who are activated in the military or national guard?

Section 4108 of Title 4 and Regulation 8.200 are the existing laws and regulations governing sick leave of government of Guam employees. Neither that statute nor the regulation address donated sick leave for any purpose. However, donated sick and annual leave is addressed in 4 G.C.A. §4109.2, which is the "Leave Sharing Program." This program has been in effect since 1993. Public Law 26-134 is merely a modification of the Leave Sharing Program to accommodate the situation where the employee is activated into military service. While the Personnel Rules and Regulations do not address donated leave, the law is still in place. It would not be appropriate to deny the use of sick leave for those employees who are activated into military service merely because the leave sharing program is not addressed in the Department of Administration Personnel Rules and Regulations. The law has been changed to allow activated government of Guam employees to borrow sick leave for their military service; the Department of Administration may not deny the use of borrowed leave for military service, unless the leave exceeds 90 days for the occasion.

This memorandum is informational only and is not issued as an opinion of the Attorney General. For a faster response to any inquiry about this memorandum, please use the reference number shown.

Dangkolo Na Agradesimento - Thank you very much!

Charles H. Troutman
CHARLES H. TROUTMAN

F:\AG_DATA\Solicitor\DATA\AK02-0742.001.txt



GOVERNMENT OF GUAM

CIVIL SERVICE COMMISSION
KUMISION I SETBISION SIBIT

7th Floor International Trading Center (ITC), Suite 709
Marine Corp Drive, Tamuning 96913
P.O. Box 3156 Hagatna, Guam 96932
Tel: 647-1855/57 Fax: 647-1867



CSC NO. 2009-86

September 22, 2009

TO: Governor's Leave-Sharing Committee
FROM: Naomi E. Lujan-Gonzales, Executive Director
SUBJECT: Report on Leave-Sharing Procedures
RE: Guam Fire Department

Buenas yan hafa adai!

This is in reference to our September 18, 2009 meeting regarding the leave-sharing procedures creating manpower and budget shortages at the Guam Fire Department, as well as other departments. It must first be established that the Civil Service Commission does not oversee the leave procedure programs, however, we respectfully offer our views on this matter.

In particular, it appears that 4 GCA § 4109.2(a) grants GovGuam employees with the right to transfer, receive, and use leave for *personal* reasons if they exhausted their leave to take care of family members, or for military reserves and National Guard members, if they are called to active duty in excess of 15 working days.

We concur, that the paid leave (through leave-sharing) due to absence because of military deployment is a local benefit not required by the Uniformed Services Employment and Reemployment Rights (USSERA), but that it is provided by the Government of Guam. It has also been established that federal law requires equal application of personnel rules to civilian and military reserve GovGuam employees. Because USSERA protects persons who serve or have served in the armed forces, reserves, National Guard, and other "uniformed services" from being discriminated against in employment based on past, present, or future military service, it is our position that to deny military reserve GovGuam employees leave-sharing entitlements afforded to civilian employees (i.e., participation in leave-sharing program), is discriminatory.

Leave-sharing, whether for medical or personal reasons, is an employee right and benefit that should not be denied arbitrarily to the employee by management if the employee meets all the conditions and criteria spelled out in 4 GCA § 4109.2(b) and consistent with other laws and personnel leave rules and policies. It appears that 4 GCA § 4109.2(b) provides clear guidelines and requirements for leave-sharing for *medical* reasons, but unfortunately clear guidelines and requirements are lacking for leave-sharing for *personal* reasons. The law is the law, the rules are the rules, and there is much danger and

question when applying "discretion" without any official guidelines (statutes, regulations/rules, case law) to set the parameters of the exercise of discretion. We understand the Guam Fire Department's fiscal predicament and manpower impact, but governing laws and policies must be abided to and discretion very cautiously exercised, if exercised at all. An important question to answer is if the language of 4 GCA § 4109.2 is clear enough to give the statute force and effect, or is the statute in question written so inadequately to give its intent force and effect. Or can the uncertainties of 4 GCA § 4109.2 be made certain/clear using the authority granted to the Department of Administration through 4 GCA § 4109.3 to implement and amend the leave-sharing program? ¹

The Commission wholly supports all uniformed military personnel. Nevertheless, we believe the benefit of providing paid GovGuam leave at the same time a military reservist is receiving federal pay for 15 days or more of active military duty is not in our taxpayers' best interests. Therefore, we recommend that appropriate action be taken to amend the laws of Guam to end such practices of GovGuam employees receiving federal military pay and local pay (through leave-sharing) simultaneously. In the alternative, if leave-sharing for military active duty in excess of 15 working days is to be allowed, then equitable and clear guidelines must be established.

The Commission is pleased to assist in this issue. Do not hesitate to speak with me about this or other matters. Si Yu'os Ma'ase.

Senseramente,



¹ 4 GCA 4109.3. **Implementation.** The Director of Administration shall maintain and from time to time amend the leave-sharing program for the Executive Branch pursuant to Section 1 of this Act to be implemented in the same manner as other personnel rules and regulations enacted pursuant to § 4105 of Title 4, Guam Code Annotated.

Leave Sharing Request Form

GOVERNMENT OF GUAM
DEPARTMENT OF ADMINISTRATION
ANNUAL LEAVE DONATION REQUEST FOR PERSONAL REASONS

	LEAVE RECIPIENT	LEAVE DONOR
1. EMPLOYEE NAME		
2. SOCIAL SECURITY NO.		
3. CLASS TITLE & PAYGRADE		
4. HOURLY RATE/SALARY		
5. AGENCY/DIVISION		

6. Donated Leave Period: FROM-TO: _____ Total Hours: _____ AL

7. Authorized Personal Reason(s): _____

I hereby certify that I have secured permission from my agency to use donated annual leave pursuant to the leave sharing procedures. This request is due to the above referenced personal reason(s) and will be used during the dates listed above in order to continue my compensation because my own accrued leave will be exhausted first before receiving the donated leave.

Certification of Leave: _____ Date: _____

Recipient's Signature

8. CERTIFICATION FROM LEAVE RECIPIENT'S CHIEF PAYROLL OFFICER

A. I certify that the employee requesting for donated leave has accrued the following hours to his/her leave account.

- ANNUAL LEAVE Balance: _____ PPE: _____
- COMPENSATORY TIME Balance: _____ PPE: _____

Chief Payroll Officer/Authorized Designee: _____ Date: _____

B. I hereby certify for the Recipient Agency listed above that this request meets the guidelines for donating annual leave pursuant to the leave sharing procedures. I authorize my agency to add the total hours donated above to the Recipient Employee listed.

Recipient's Appointing Authority: _____ Date: _____
(Please Print Name & Title)

9. CERTIFICATION OF LEAVE DONOR

A. I hereby certify that I am voluntarily donating leave hours on item 6 above and request that my Chief Payroll Officer transfer the above listed hours of my annual leave to the Leave Recipient listed above. I understand that a minimum of one pay period of balance will be retained in my leave account for my personal use.

Leave Donor's Signature: _____ Date: _____

B. I hereby certify that the Donor has accrued the amount of leave to be donated in addition to the required one pay period of leave which must remain in the Donor's leave account.

- ANNUAL LEAVE Balance: _____ PPE: _____

Chief Payroll Officer/Authorized Designee: _____ Date: _____

10. APPROVED DISAPPROVED

Director of Administration: _____ Date: _____

DOA HRD EMR (Initial/Date): _____

LVSH-PERS Amended: PL29-19 10/1/07(2)

**Appendix 9:
Leave Sharing Request Form**



AFFIDAVIT

THIS IS TO CERTIFY THAT, FOR THE PURPOSE OF RECEIVING DONATED LEAVE FOR A PERSONAL REASON, I AM INVOLVED IN ONE OF THE APPROVED REASONS FOR DONATED LEAVE LISTED BELOW:
(Check One)

- 1. Adopting a child or placing a child up for adoption.
- 2. Undergoing divorce or separation proceedings.
- 3. Death of a family member:
Name of Deceased: _____
Relationship to Employee: _____ Date of Death: _____
- 4. Undergo Cosmetic and/or voluntary surgery.
- 5. Temporary care of child or children until permanent child care arrangements can be made. (Child's Name & Age)
- 6. Take care of legal commitments.
- 7. Return to school, take additional training and other educational programs.
- 8. Temporary care of an elderly or physically/mentally disabled member of the family.
Name of Family Member: _____
Relationship to Employee: _____ Date of Birth: _____
- 9. OTHER: (Specify) _____

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING STATEMENT IS TRUE AND CORRECT.

EMPLOYEE'S SIGNATURE DATE

GUAM)
)
CITY OF AGANA) ss

On this _____ day of _____, before me, a Notary Public in and for Guam, personally appeared _____, and he/she acknowledged to me that he/she executed the foregoing instrument, as his/her voluntary act and deed for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC

< S E A L >

My Commission Expires:

Appendix 10:**Summary of Leave Sharing Legislation**

A leave program has been established for government of Guam of Guam employees since 1993, in Public Law (P.L.) 22-10, codified at 4 GCA § 4109.2. The program of providing leave sharing benefits for government employees has been revised on several occasions over the years.

P.L. 22-140 Section 5 removed certain restrictive provisions, expanding the availability of leave sharing between non-related employees from different departments. P.L. 26-134 amended the policy to specifically declare that the leave sharing program is intended to benefit employees going on active military duty for greater than 15 days, and limited the use of leave sharing for a participant to 90 work days.

P.L. 27-29 Part V Section 16 expanded the program to provide an additional 90 days of shared leave to an employee if a medical doctor certifies that the additional leave is needed for medical treatment or to recover from a medical illness.

P.L. 27-158 amended 4 GCA § 4109.5 to provide that teachers employed by the Department of Education who are members of the military reserves or the National Guard may participate in the leave sharing program solely for the purpose of leave required for military training or leave duty.

P.L. 28-68 Part IV Section 105 and P.L. 29-19 Part VI Section 96 further amended and expanded the leave sharing program regarding use of leave sharing in medical leave instances, and provided for a criminal penalty for the selling of accumulated leave to another employee through the leave sharing program.

P.L. 29-19 Section 96 (b), amended the compensation and accrual of leave balances for those participating in the leave sharing program. Specifically, “the recipient must first exhaust all his accrued annual and sick leave and compensatory time for the purposes of a medical emergency *or* for personal reasons.”



Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lt. Governor

GUAM FIRE DEPARTMENT
DIPATTAMENTON GUAFI GUAHAN



David Q. Peredo
Fire Chief

September 13, 2010

The Honorable Doris F. Brooks
Public Auditor
Office of Public Accountability
Suite 401, DNA Building
Hagatna, Guam 96910

Reference: Draft Audit Report – GovGuam Leaving Sharing Program

SUBJECT: GFD Response to Recommendations

Buēnās yan Hafa Adai, Public Auditor Brooks:

With reference to your August 31st letter and our meeting on September 2nd, I am happy to comment on the three recommendations contained on Page 15 of the draft audit report.

1. Legislature:

GFD fully agrees that the provision which allows leaving-sharing benefits must be consistent and equitable across-the-board for GovGuam employees as well as eliminating the potential for double compensation for military deployment.

2. Attorney General:

Again for consistency in applying the policy, GFD supports an opinion from the Attorney General defining and/or clarifying “per occasion” in administering leaving-sharing benefits.

3. Department of Administration and Department of Education

GFD supports amending the leaving-sharing affidavit to assure that no compensation or other consideration of value is given to the donor.

Appendix 11:
GFD Management Response

Page 2 of 2

*Memo to Public Auditor
GovGuam Leave-Sharing
September 10, 2010
Page 2 of 2

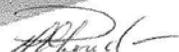
Also, we support the establishment of tight controls on administering the leave-sharing program to mitigate risk for inaccurate adjustments and unreturned leave balances; exceeding the mandated leave caps; improper approvals; and incorrect application of pay rates.

- *Because of the frequent, government-wide use of this benefit, GFD suggests that a separate section of the DOA administers the program as a primary and separate responsibility.*
- *We also suggest that training on the leave-sharing program be made mandatory for all levels of management including department directors and agency heads.*

As a patriotic island, we are proud that as many as 90 of our firefighters are in the military reserves and who are currently deployed or have been deployed to the war zones. However, with current financial constraints and inability to fund interim firefighters, *I support local legislation* that does not allow critical safety positions (such as firefighters, paramedics, etc) to be members of the guards or reserves. Such legislation would mirror the federal government firefighting service. Enactment on Guam would assure that the Guam Fire Department maintain the adequate staffing level required to fulfill its mission to the Community.

Thank you for the research and recommendations to make necessary changes to the leaving sharing program. I look forward to positive outcomes. *Si Yu'os Ma'ase.*

Sincerely yours,



David Q. Peredo
Fire Chief

Appendix 12:

DOE Management Response



Nerissa Bretania Underwood, Ph.D.
Superintendent of Education

**GUAM DEPARTMENT OF EDUCATION
OFFICE OF THE SUPERINTENDENT**

www.gdoe.net
P.O. Box D.E., Hagatña, Guam 96932
Telephone: (671)475-0457 or 300-1547/1536 • Fax: (671)472-5003
Email: nbunderwood@gdoe.net



September 20, 2010

Office of Public Accountability
Suite 401 DNA Building
238 Archbishop Flores St.
Hagatña, Guam 96910

Doris Flores-Brooks,

Upon review of the Draft Report of the Performance Audit conducted by your agency it appears that the Department of Education has two (2) issues that need to be addressed:

- 1) Leave sharing document deficiencies
- 2) Leave sharing threshold

Both these issues have been reviewed and addressed by the DOE Payroll Office.

With reference to the document deficiencies cited, Internal Operating procedures have been updated and disseminated to all Payroll staff. This is inclusive of a leave sharing checklist that has been implemented in order to reduce any possible future oversight. In addition, Standard Operating Procedures are being drafted in order to provide further guidance to all DOE employees for future use of leave donation.

With regards to the leave donation threshold issue, I understand that your office has requested an AG's opinion to clarify the definition and limitations of the 90-90-30 day threshold. Whenever the issue of leave donation threshold was in question Payroll had contacted the Department of Administration Human Resources Division for guidance. Payroll is awaiting the AG's response in order to incorporate it into the new Standard Operating Procedure for Leave Donation and remove any future confusion pertaining to this issue.

Should you have any further questions you may contact me at 300-1547.

Sincerely,


NERISSA BREATNIA UNDERWOOD, Ph.D.



Felix P. Camacho
Governor
Michael W. Cruz, M.D.
Lieutenant Governor

GOVERNMENT OF GUÅHAN
(GUBETNAMENTON GUÅHAN)
DEPARTMENT OF ADMINISTRATION
(DIPATTAMENTON ATMENESTRASION)
DIRECTOR'S OFFICE
(Ufisinan Direktot)

Post Office Box 884 * Hagatna, Guam 96932
TEL: (671) 475-1101/1250 * FAX: (671) 477-6788



Lourdes M. Perez
Director
Joseph C. Manibusan
Deputy Director

HRD No.: OG-10-1084

Doris Flores Brooks, CPA, CGFM
Public Auditor
Office of Public Accountability
Suite 401, DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

Subject: Response to Draft Audit Report

RE: Government of Guam
Leave Sharing Program

Buenas yan Hafa Adai!

We received your August 31, 2010 Draft Audit Report regarding the Government of Guam Leave Sharing Program for the Performance Audit period October 1, 2006 through September 30, 2009.

Upon review of the findings as identified within the draft audit report, we provide the following comments.

Legislation Provides GFD Inequitable Benefits

GFD Compensated For More Than Donated Leave Hours:

The intent of the Legislature is clear in that they hold employees occupying firefighter positions in a "class of their own" as evidenced by the provision that allowed for only 9 hours of leave to be deducted although on a 106 hour work schedule; the provision that allows for any hours worked beyond 106 to be paid at time and a half; and the provision of leave sharing that allows employees who are military reserves and National Guard members, being called to active duty in excess of fifteen (15) working days an opportunity to avail to the Leave Sharing Program of which firefighters ranked the highest number of hours under the Leave Sharing Program. As eloquently stated in AG Opinion Ref. LEG 09-0929:

"There is clear and unambiguous pattern of legislative action, beginning with P. L. 22-54, to provide members of the Guam National Guard and the military reserves with leave benefits for military active duty and with liberal access to the shared leave program, in order to expand paid leave for military active duty by government of Guam employees. In those enactments and amendments in which the legislature set out its intent or rationale, it is clear that the Legislature intended to support the national efforts to combat terrorism, and to support those government employees who serve in military units. The intent of the relevant legislative action is clear in this regard".

Although inequitable, allowed by law.

GFD Leave Sharing Benefits Extends Beyond The Established Legislative Maximum Threshold:

The application of the Leave Sharing Program Policies relative to firefighter work hours is administered according to the work schedule for firefighters although inconsistent with the provisions of 4109.2 (b). The administration of the leave sharing policy is backed by a legal opinion of the Attorney General's Office as quoted below:

"Government of Guam employees, whether they be firefighters, or not, when going on active duty in the armed forces, are to receive the same leave benefits as are provided by the government of Guam to any employee. These leave benefits need not be enhanced for employees going on active military duty, but the benefits can not be reduced either. GFD firefighters going on active military duty and utilizing shared leave must be treated like any other government of Guam employees going on leave and using shared leave benefits".

Leave Paid in Excess of Legislative Threshold

DOA's interpretation of "per occasion" differs from that of the OPA. We are re-examining our policy on this issue and also await a response from the Attorney General's Office as requested by the OPA.

We acknowledge the recommendations by the OPA regarding maximum payment caps from being exceeded. Payroll currently has controlled measures in place and will make adjustments for better control.

Potential for Dual Compensation for Government of Guam Employees on Military Activation

We disagree with OPA's interpretation of the legislative intent of P. L. 26-134. We quote the following from Section 1 of P. L. 26-134:

"*I Liheslaturan Guahan* recognizes that unlimited leave of absences are *not* feasible and one (1) method of helping our men and women in the Reserves and National Guard is to allow them to participate in the Leave Sharing Program." The leave sharing provisions provide in part, "Participation in the leave sharing program shall not exceed ninety (90) working days."

Furthermore we re-iterate the following statement within AG Opinion Ref. LEG 09-0929:

"There is clear and unambiguous pattern of legislative action, beginning with P. L. 22-54, to provide members of the Guam National Guard and the military reserves with leave benefits for military active duty and with liberal access to the shared leave program, in order to expand paid leave for military active duty by government of Guam employees. In those enactments and amendments in which the legislature set out its intent or rationale, it is clear that the Legislature intended to support the national efforts to combat terrorism, and to support those government employees who serve in military units. The intent of the relevant legislative action is clear in this regard".

The concern of the Fire Chief regarding the provisions of 4 GCA §4105 (4) may appear to be in conflict with other provisions that allows a government of Guam employee to avail to the leave sharing program for military purposes. But the membership of an employee in the United States Military does not bring the government of Guam or its employees into "disrepute". It is neither disgraceful nor disrespectful. It is but the complete opposite. But since this appears to be an area of concern we will request the Attorney General's Office clarification on this matter.

Critical Positions Allowed Military Leave Sharing In Contrast To Similar Positions Of The U. S. Federal Government:

While we support our nation's call for uniformed service members we agree with OPA's findings to some extent. However, we caution not to compare the government of Guam with that of the U. S. Federal Government. The scope of our jurisdiction is different and beyond comparison. If we restrict military participation to non-critical positions only within the Guam Fire Department, as an example then none of the uniformed employees would be eligible to join the U. S. Military. We don't have enough of them to deny such an honorable opportunity. Additionally, the current state of government of Guam salaries which is much too be desired, may have attributed to the enactment of dual compensation notwithstanding the shortfalls and missions of public safety departments and agencies. Moreover, let us not forget the United States Supreme Court's admonition that the provisions of USSERA are to be "liberally construed for the benefit of those who left private life to serve their country in its hour of great need." Lastly, it must be understood that federal employees are paid out of congressional appropriations by the same source as those in the military, hence creating dual compensation. Government of Guam employees are not similarly situated.

Internal Control Deficiencies in Administering the Leave Sharing Program Effectively

Lack of Documentation:

Although, Payroll admits that there might have been incomplete documentation provided when samples were requested, the OPA auditors at no time, made known to Payroll the lack of documents. DOA Payroll would have made an effort to provide or satisfy the OPA Auditor's requests if it were properly addressed. It was only when the draft report was submitted, thus revealing the insufficiencies of documents as an audit finding.

Once again, OPA Auditors did not inform Payroll that some of the requested samples were incomplete, in particular, the lack of employee service cards. Since the scope of the audit covers Fiscal Year 2007, DOA Payroll on October 2006 had since transitioned to an electronic form of service card which can be printed on demand. This matter could have easily been resolved prior to the results of the "draft audit finding".

Utilization of Leave Sharing Hours Not Justified:

When DOA receives leave sharing request forms, Recipient and Donor leave balances are certified and all required signatures are also verified. The intended purpose for the request for donated leave hours is also reviewed for eligibility. Supporting documents (medical certification, notarized affidavit or other prove of validity for the request) are also verified for completeness and proper justification. Requested dates are also verified.

You mentioned that some of the tested samples reflected the Recipient having leave balances that should have been exhausted. Based on current leave policies, certain purposes of personal reasons would not require the Recipient to exhaust all their accrued leave balances. The Recipient could not use their accrued sick leave for purposes of temporary care of child, going through a divorce or even military duty to name a few, however, they would only qualify for donated annual leave. DOA has approved and processed annual leave sharing requests, which did not require that the Recipient exhaust his/her accrued sick leave as well, therefore, the Recipient's request was deemed approved under the leave sharing program.

As per our discussion when our offices met on September 9, 2010 we explained the basis of our interpretation on the "exhaustion of all leave". We have prepared a request for AG opinion on this matter and we will inform your office upon receipt.

Incorrect Pay Rate Applied:

Verification of correct recipient rate by Payroll is available. This feature would have been made available to the OPA Auditors had an inquiry been made.

Three or four samples, revealed the Donor's rate of pay as lower than the Recipient. The Recipient was compensated at the higher rate of pay of which was an oversight on our part. This oversight has been addressed and corrected. Payroll has since established a feature within their system to flag such discrepancies should it occur.

Lack of Communication, Reconciliation, and Confirmation to Ensure Proper Recording of Transactions of Donor and Recipient Leave:

If the Donor is a line agency employee, Payroll upon receipt of approved leave sharing documents will deduct the total number of leave hours being donated from the Donor's leave bank. If the entire leave donated is not utilized by the Recipient from an autonomous agency it is incumbent upon the agency to notify our Payroll Office for reimbursement of unused donated leave. This protocol requires further review for better reporting and recording purposes.

DOA's Conclusion

The OPA's opinion of convoluted interpretations we find to be unfounded for the DOA does not and will not blatantly administer and or interpret laws without proper research and backing by a legal entity.

Moreover, it is not unconscionable that the Legislature would enact certain laws that would benefit certain classes of positions as evidenced in the laws addressed within this draft audit findings.

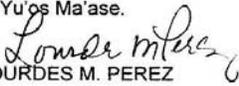
Furthermore, although we recognize the goal of performance audits, the DOA wishes to convey to the OPA that the findings of this draft audit report is not an overall reflection of the reputation that the Department of Administration stands by which is to uphold the requirements of the merit system, establish appropriate financial, accounting and procurement controls and the stability of management information systems.

We thank the OPA for their tenacity and attention to detail during the period of this audit review. We also acknowledge the recommendations provided in the draft audit findings as mentioned below:

1. DOA agrees with an amended legislation regarding GFD compensation for all leave (leave sharing, sick, and annual, etc.) to an hour for hour basis to ensure equality among all government employees. This has been a long standing concern of inequitable compensation.
2. DOA disagrees with the recommendation of eliminating the potential for double compensation of government of Guam employees who are uniformed service members availing to the leave sharing program for military reasons. There is a potential for violation of the provisions of the USSERA Act.
3. DOA will re-visit its interpretation of the "per occasion" provision, and also awaits a pending opinion from the Attorney General's Office as requested by the OPA.
4. DOA will amend the Leave Sharing Affidavit to include a statement that no compensation, favors, or items of value were given in exchange for the donated leave hours.
5. DOA already has existing control measures within the Leave Sharing Program. DOA will need to assess its current controls, update and strengthen some of its weaknesses, as mentioned in the audit findings.

Should you have any further questions, you may contact my office at 475-1221.

Si Yu'os Ma'ase.


LOURDES M. PEREZ



I GOBIETNON GUAHAN

**CIVIL SERVICE COMMISSION
KUMISION I SETBISION SIBIT**

7TH Floor International Trade Center (ITC), Suite 709
Marine Corp Drive, Tamuning 96913
P.O. Box 3156 Hagatna, Guam 96932
Tel: 647-1855/57 Fax: 647-1867
www.csc.guam.gov



CSC NO. 2010-52

September 15, 2010

To: Ms. Doris Flores Brooks, Public Auditor
Office of the Public Accountability

From: Naomi E. Lujan-Gonzales, Executive Director

Subject: **OPA Draft Audit Report on GovGuam Leave Sharing Program**

Hafa adai Public Auditor Brooks,

I am in receipt of your August 31, 2010 draft audit report on the Government of Guam Leave Sharing Program. I, along with Commission staff, also met with [REDACTED] your office on September 8, 2010 regarding the report.

I commend your office for producing a good and useful draft report. The Commission brought up a few matters of concern that it felt needed to be addressed before the report was finalized. In summary, they were:

1. Verification if all annual and sick leave and compensatory time were exhausted before partaking in the leave sharing program pursuant to 4 GCA § 4109.2;
2. DOA's Leave Sharing Procedures (effective 4/97) are outdated and thus there are conflicting terms between the procedures and 4 GCA § 4109.2(b);
3. Include PL 29-19 (effective 9/29/07) in the "Summary of Leave Sharing Legislation" as it amended 4 GCA § 4109.2(b) and included the restrictive language which requires exhausting all annual and sick leave and compensatory time before partaking in the leave sharing program for medical or personal reasons;
4. In the section "Summary of Leave Sharing Legislation," PL 22-10 was codified at 4 GCA § 4109.2 and not at § 4901 as stated;
5. The AG Opinion dated 12/30/02 addressed the state of 4 GCA § 4109.2 as of PL 26-134;
6. The existence of the AG Opinion dated 2/25/95 (Ref. DOL 92-1858) regarding the paying back of monies an employee was not entitled to;
7. Clarify the section "Scope and Methodology," sixth bullet point, to include the total number of Government of Guam employees, e.g., 31 of ? employees; and

8. Clarify the section "Scope and Methodology," sixth bullet point, regarding the referenced 789 employees; i.e., 31 out 789 employees?

The Commission is supportive of the preliminary report and would support the final report if the abovementioned concerns are addressed. Thank you for recognizing the importance of the Commission's input into this subject, especially in light of the Commission's mandate to investigate and report on conditions of government employment pursuant to 4 GCA § 4403(a). I look forward to receiving a final draft of the report. Should you have any questions or concerns, or if you would like further insight on the Commission's perspective, please feel free to speak with me at 647-1855/7. Un sen dangkolo na si Yu'os ma'ase.

Senseramente,

A handwritten signature in black ink, appearing to be "M. S. Jones" or similar, written in a cursive style.



I GOBIETNON GUAHAN

CIVIL SERVICE COMMISSION
KUMISION I SETBISION SIBIT
7th Floor, International Trade Center (ITC Bldg.)
Marine Drive, Tamuning 96913
P.O. Box 3156 Hagatna, Guam 96932



September 28, 2010

CSC NO. 2010-57

MEMORANDUM

FROM: Naomi E. Lujan-Gonzales
Executive Director

TO: Doris Flores Brooks, CPA, CGFM

SUBJECT: Updated Draft Audit Report
Re: Government of Guam, Leave Sharing Program

Buenas yan hafa adai;

This is to inform you that the Commission is in receipt of your draft report dated September 21, 2010, in regards to Leave Sharing.

We have reviewed your additional comments incorporating the Commission's concerns and thank you for considering our input.

If the Commission can be of any further assistance, please feel free to contact me, or Roland Fejarang, Personnel Management Administrator, at 647-1850 or 647-1855.

Senseramente,

Handwritten signature of Naomi E. Lujan-Gonzales.
Naomi E. Lujan-Gonzales



Government of Guam
Leave Sharing Program
Report No. 10-05, September 2010

MISSION STATEMENT

**To improve the public trust,
we audit, assess, analyze, and make recommendations
for accountability, transparency,
effectiveness, efficiency, and economy of the government of Guam
independently, impartially, and with integrity.**

VISION

Guam is the model for good governance in the Pacific.

CORE VALUES

Integrity

Independence

Impartiality

Accountability

Transparency

REPORTING FRAUD, WASTE, AND ABUSE

- **Call our HOTLINE at 47AUDIT (472-8348)**
- **Visit our website at www.guamopa.org**
- **Call our office at 475-0390**
- **Fax our office at 472-7951**
- **Or visit us at Suite 401, DNA Building in Hagåtña;**

All information will be held in strict confidence.