



OFFICE OF THE PUBLIC AUDITOR

## **Government of Guam Retirement Fund**

# **Supplement to Government of Guam Retirement Fund's Fiscal Year 2000 & 2001 Report on Compliance and Internal Controls**

**OPA Report No. 04-02  
February 2004**

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**Supplement to Government of Guam Retirement Fund's  
Fiscal Year 2000 & 2001 Reports on Compliance and Internal Controls**

**Overview**

The Government of Guam Retirement Fund ("the Fund") has recently released its Independent Auditors' Report on Compliance and Internal Controls for the fiscal years ending September 30, 2000 and September 30, 2001. These reports are a required element of all financial statement audits conducted in accordance with Generally Accepted Government Auditing Standards. The audits were conducted by independent auditors, Burger & Comer ("Auditors").

The Fund was cited for 14 findings in 2000 and 24 findings in 2001. Many of these findings relate to weaknesses in the Fund's internal control system such as lack of verifications to ensure accuracy, no periodic physical inventory of fixed assets, no reconciliation of some general ledger accounts, and the Chairman of the Fund not signing annuity worksheets as required by statute. However, there were certain findings that raised major concerns and prompted further examination by the Office of the Public Auditor (OPA). The focus of this report is to expand on those findings.

Specifically, the findings addressed in this report are:

- Finding 2000-01: Miscalculation of Retirement Benefits;
- Finding 1999-01: Dual Participation; and
- Finding 2001-01: Verification of Disability Annuitants.

**Overall Conclusion**

**Finding 2000-01**

A retired elected official ("elected official") was allowed:

1. To once again become an active member of the Defined Benefits Plan after his election to another public office, contrary to 2 G.C.A. §1120(b).
2. To claim excluded service credit, contrary to 2 G.C.A. §1120(b) and 4 G.C.A. §8109.
3. To retroactively retire again to offset amounts owed to the Retirement Fund for excluded service credit with an enhanced annuity resulting from a higher salary in his new elected position. This action appears to be contrary to law. In addition, the Fund understated the amount owed by \$81,000.
4. To pay for the excluded service credit after his retirement date, which is contrary to 4 G.C.A. §8113.3. This excluded service credit and repayment of prior annuities received should have been \$171,000.

These actions were not authorized by the Retirement Fund Board of Trustees, but rather, solely by the former Director of the Retirement Fund.

### **Finding 1999-01**

An elected official who retired as a member of the Defined Benefits Plan was allowed to participate in the Defined Contributions Plan, which is contrary to 4 G.C.A. §8206.

### **Finding 2001-01**

A disability annuitant continued to receive over \$90,000 in disability annuities after returning to work, contrary to 4 G.C.A. §8127.

## **Specific Findings and Conclusions**

### **Finding 2000-01: Miscalculation of Retirement Benefits**

In Finding 2000-01, the Auditors reported that the Fund had miscalculated the annuity of an elected official who had been a member of the Defined Benefits Plan (DB Plan).

In 1989, after completing the requisite years of service to qualify for an annuity under the Fund, the Board of Trustees (“the Board”) approved the retirement application of the elected official who had been a member of the Guam Legislature.

In 1994, the same elected official was elected to another public office. In January of 1995, he requested that the Fund suspend his annuity and began making contributions again on the basis of his new employment as an elected official.

In November of 1995, the elected official rescinded active participation in the Fund and was refunded \$7,070, the payments he made to the Fund from January through October of 1995. For the same period, the Fund also paid him \$27,308 for the annuity he originally suspended and a \$1,000 cost-of-living allowance. Thereafter, the elected official simultaneously received his salary as an elected official, an annual base annuity of \$38,548, and supplemental retirement benefits through October 1999. The annuity and supplemental benefits were predicated on the elected official’s 1989 retirement.

An elected official who has retired from government service may continue to collect an annuity while serving in elected office. Authorization for a public official to simultaneously collect an annuity and the salary for his or her public office is found in 2 GCA § 1120(b). It provides:

Elected officials who have retired from the government of Guam and who are receiving retirement benefits from the Government or elected officials who are eligible to receive retirement benefits from the Government shall

not relinquish, forfeit, or have such benefits suspended during the periods such elected officials are holding their respective offices, provided, however, that such elected officials shall not be deemed active members of the retirement fund for purposes of such elected office service, and no deductions shall be made nor government contributions made on account of any salary they receive as such elected officials.

However, in order for a retired elected official to collect a Retirement Fund annuity based on years of service, while being paid a salary as an elected official, a retired elected official cannot again become an active member of the Fund.

The elected official in this case, however, went beyond the provisions of 2 G.C.A. § 1120(b). On October 22, 1999, the elected official submitted documentation to the Retirement Fund **to retire effective December 31, 1997, almost two years earlier in order to enhance his annuity based on the salary of the elected office for which he had not yet completed the term of office.**

According to information obtained from the Fund, the elected official's estimated annuity at this point was calculated based on his then annual salary of \$90,000 plus \$7,500 annual leave, a total of \$97,500.

As a result, the elected official's annuity increased from the initial base sum of \$38,548 calculated in 1989 to \$72,006 without COLA and supplemental annuity. The Fund allowed the enhanced annuity from January 1, 1998 to October 1999, to offset amounts owed for excluded service but began actual enhanced annuity payments to the elected official from November 1999. Thus, from November 1999, he was receiving his salary as an elected official and his enhanced annuity based on his first three years in office before he completed the term of office.

The decision for the Fund to pay the enhanced annuity was made **solely** by the then Director of the Fund, a power not given to him under 4 GCA § 8140. Instead, the law reserves the right to approve all requests for annuities to the Board of Trustees.<sup>1</sup> This decision by the former Director may make him liable for prosecution under 4 GCA § 8169 and, if it is determined that annuity payments to the elected official were part of an attempt to defraud the Fund, the Fund "shall have the right to recover any payments made under false representations."

As a result of the elected official's 1989 retirement, he was precluded by 2 GCA § 1120(b) from again becoming an active member of the fund when he took his new elected office in 1995.<sup>2</sup>

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<sup>1</sup> 4 G.C.A. §§8119, 8120, 8120.1, 8123, and 8139.

<sup>2</sup> In a letter responding to a question raised by the OPA, Carlsmith Ball LLP, as private counsel to the Retirement Fund, noted that "2G.C.A. §1120(b), which was added by Public Law No. 17-81:37, and the entire Title II applies to officials elected to the Legislature, and may not necessarily apply to officials elected to the Executive Branch." While the OPA respects counsel's suggestion, it must be noted that 2G.C.A. §1120(b) specifically refers to "the periods such elected officials are holding their respective offices." Although Carlsmith is correct that 2G.C.A. §1120(b) is a part of that portion of the Guam Code

Assuming, however, that it was possible for the elected official to regain active status as a member of the Fund by virtue of his election to another public office, there would still be serious questions about the calculations and methods that were employed by the Fund in permitting the elected official to enhance his annuity.

If his time in elected office from 1995 through 2002 were to be counted as service credit, then the annuity he chose to take in 1989 should have been suspended throughout the entire period he held the elected office.<sup>3</sup> The elected official as well as the employer should have been contributing to the Retirement Fund.<sup>4</sup>

The employee contributions for this period would have been \$68,400 and the government of Guam employer contributions, \$144,976. See **Appendix A** for what employee and employer contributions would have been for the entire eight years.

### **Recap of Timeline**

To recap the scenario of events, a summarized timeline of the events that transpired in this case follows:

- |                               |   |
|-------------------------------|---|
| January 1, 1989               | Elected official retires from the Guam Legislature and begins to draw an annuity from the Retirement Fund.  |
| November 1994                 | Elected official is voted into another public office.   |
| January 9, 1995               | Upon taking office, elected official opts to become a contributing member of the Retirement Fund again. His annuity is then suspended and he begins contributing to the Retirement Fund.  |
| November 1995                 | Official rescinds his participation as an active member of the Retirement Fund and is refunded his contributions of \$7,070, his payments to the Fund from January 1995 through October 1995. Additionally, for the same period, he is paid a lump sum amount of \$27,308, net of tax, for the annuity that he originally suspended and a \$1,000 cost-of-living allowance. |
| November 1995 to October 1999 | Elected official continues to receive his annuity based on his 1989 retirement.   |

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Annotated dealing with the Legislature, the emphasized words of §1120(b) suggest that the paragraph sweeps broad enough to encompass all persons who have opted to retire and then gain election to public office.

<sup>3</sup> 4 G.C.A. §8121

<sup>4</sup> 4 G.C.A. §8137

October 22, 1999 Elected official submits documentation to the Retirement Fund to retire effective **December 31, 1997 (almost two years earlier)** although he had already retired in 1989 and previously rescinded his contributing participation in the Retirement Fund's DB Plan.

November 1999 Elected official begins receiving an enhanced annuity based on his salary in his new elected position before completing his term in office.

These events were intended to enhance the elected official's annuity based on his higher salary as an elected official from January 1995 to December 1997 (3 years) under the guise of "excluded service credit." However, the elected official was never entitled to enhance his annuity because, as an elected official already retired from the government of Guam, he was not allowed to become an active member of the Fund under 2 G.C.A. §1120(b).

### **Claim to Excluded Service Credit**

The elected official decided to retire in November 1999 and effectuate a retroactive December 31, 1997 retirement date. The former Retirement Fund Director authorized this through the rule of excluded service credit.

4 G.C.A. §8109 allows a person who is required to become a member of the Fund as a condition of employment and who has performed service for which he rejected membership because he was employed for a definite agreed term, to claim credit for excluded service by paying to the Retirement Fund the contributions which would have been paid had such service not been excluded. Regular interest thereon from the date on which such contributions would have been made had such service not been excluded to the date of actual payment is also required.

Although the law does not specifically define "excluded services," the Fund has inferred it to mean those services rendered by an employee of the Government of Guam in any occupational classification for which no contributions were withheld because the employee had rejected or had been deemed ineligible for membership.<sup>5</sup> 4 G.C.A. §8113.3 as it existed in 1997 stated that all persons claiming credit for excluded services must make contributions for such credit **prior** to date of retirement.<sup>6</sup>

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<sup>5</sup> *Regulations Concerning Claims To Obtain Service Credit*, Chapter IX, §9.1; 4 G.C.A §§8105 (c) and 8106.

<sup>6</sup> This section of the Guam Code Annotated was in effect from August 1988 until it was repealed and re-enacted by Public Law 24-327 on January 4, 1999. As it stood prior to the enactment of PL 24-327, the law provided that "no credit for retirement authorized under this Act shall be recognized for retirement purposes until all employee and employer contributions are fully paid as herein provided." The current section is entitled, "Employer Shares for Employees Applying for Early Retirement Credit" and has no application to the facts involved in Finding 2000-01.

In 1999, the elected official was presented with two calculations that were prepared under the direction and authorization of the former Fund Director; one assumed that the elected official had retired retroactively on December 31, 1997, the other assumed a December 31, 1998 retirement. These calculations entailed the amounts the elected official owed the Retirement Fund for the contributions required to claim excluded service credit and repayment of annuities the elected official had already received. These amounts owed would be offset by the enhanced annuity the elected official would have earned from January 1998 through October 1999, had he re-retired in December 31, 1997.

We found several inconsistencies with the elected official's claim to excluded service credit with regard to 2 G.C.A. §1120(b) and 4 G.C.A. §8109:

1. Because the elected official was not an active member of the Fund and had no right to make contributions to the Fund, he had no right to accept or reject membership. Therefore, he had no right to claim excluded service credit.
2. The elected official's membership was not a condition of employment, therefore, he was ineligible to claim excluded service credit.
3. The elected official was allowed to suspend his annuities and re-participate in the DB Plan shortly after assuming elected office in 1995.
4. The initial act of accepting active membership in the Retirement Fund disqualified the elected official from claiming excluded service credit.

### **Retirement Fund Calculations**

The Retirement Fund calculations showed that if the elected official retired in December 1997, he would owe \$17,642 to the Retirement Fund for excluded service credit and repayment of the annuity he received for 1995 through 1997. If the elected official retired in December 1998, he would owe the Retirement Fund \$97,200 (See **Appendix D**). The higher payment in 1998 is a result of the offset of only one year of retroactive enhanced annuities instead of two years realized by retiring a year earlier.

The elected official opted for retirement in December 1997 and paid the Retirement Fund \$17,642 in November of 1999. In October of 1999, he was paid \$22,500 for unused annual leave. These events were approved only by the former Retirement Fund Director and bypassed the approval of the Retirement Fund's Board of Trustees required by 4 G.C.A. §8139(4).

To satisfy the requirements of 4 G.C.A. §8109 for excluded service credit, the Retirement Fund calculated:

- What the elected official should have been contributing to the Fund if he were a member from 1995 to 1997 (See **Table 1**),

**Table 1: Contributions Required for Excluded Service Credit**

1995	\$ 8,550.00
1996	\$ 8,550.00
1997	\$13,950.10
<b>Total</b>	<b>\$31,050.10</b>

- Added to that amount the sum of the annuity payments he received only from 1995 to 1997 (See **Table 2**),

**Table 2: Annuities Paid Out to Elected Official for 1989 Retirement**

1995	\$ 43,272.97
1996	\$ 42,472.89
1997	\$ 44,872.81
<b>Total</b>	<b>\$130,618.67</b>

- Used the retroactive enhanced annuity (See **Table 3**) to offset what the elected official needed to pay back,

**Table 3: Enhanced Annuity as of October 1999**

1998	\$ 78,968.96
1999	\$ 65,057.20
<b>Total</b>	<b>\$144,026.16</b>

- Arrived at an amount that he needed to pay back to the Retirement Fund (See **Table 4**).

**Table 4: Calculation of Retirement Benefit by Retirement Fund**

Enhanced Annuity for 1998 and 1999	\$ 144,026.16	See <b>Table 3</b>
Less: Benefits Paid from 1995 to 1997	\$ (130,618.67)	See <b>Table 2</b>
Less: Required Contributions if official wanted to retire after 1997 (3 Years' Worth)	\$ (31,050.10)	See <b>Table 1</b>
<b>**Equals Amount Official Owes Retirement Fund</b>	<b>\$ (17,642.61)</b>	

\*\*Elected official made a payment of \$17,642.34 intended to cover this difference.

Because a DB Plan annuity is computed on the average of the member's three highest annual salaries received during his years of credited service, retiring in December 1997 allowed the elected official to include his higher salary in his new office as his three highest annual salaries, resulting in an enhanced annuity (See **Table 3**). As of



November 1999, the elected official began receiving the enhanced annuity of \$77,544 compared to his previous years' 1998 annuity of \$43,973.

Although the elected official was not entitled to claim excluded service credit by virtue of 2 G.C.A. §1120(b) we found three issues that arise with these calculations:

1. The Retirement Fund's calculations described above do not consider that the elected official still continued to receive an annuity after 1997 (based on his 1989 retirement), but assume that the official retired in 1997 and never received an annuity after that. The years 1998 and 1999 should have been added to the calculation of benefits paid to the elected official that he owed the Retirement Fund. If these years were considered in the calculation, the elected official should have paid \$99,000 to the Retirement Fund for his December 1997 retirement, \$81,000 more than he was permitted to pay.
2. The calculations do not include the \$1,600 of interest due to the Retirement Fund for the three years of excluded service credit.

See **Appendix B** for calculations prepared by the OPA pertaining to this finding.

3. Assuming a credit for excluded service was allowable, the excluded service credit should have been paid before the retirement date, and a retroactive retirement should not have been permitted.<sup>7</sup> The excluded service credit could only have been used if the elected official retired after his November 1999 payment. Our calculations show that the elected official should have paid \$171,000 for excluded service credit to retire on December 31, 1999, based on the date (October 22, 1999) of his request to retire.

See **Appendix C** for OPA calculations of the elected official's excluded service credit.

The Fund did not receive the government of Guam's employer's contribution for the elected official for the years 1995 to 1997. The Fund claims that employer contributions are not required for excluded service credit. The Guam Code Annotated and Fund regulations are silent as to who is responsible for employer's contribution for excluded service credit. 4 G.C.A. §8113.3, as it existed in 1997, states that no credit for retirement shall be recognized for retirement purposes until all employee and employer contributions are fully paid.<sup>8</sup>

If the elected official had been making contributions to the Fund during the three years for which he claimed credit for, the government's employer's share would have been approximately \$51,000. (See **Appendix A**).

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<sup>7</sup> 4 G.C.A. §8113.3. See footnote 6.

<sup>8</sup> Repealed and re-enacted by Public Law 24-327 on January 4, 1999. See footnote 6.

## **Retirement Benefits for Certain Elected Position**

To determine if there were other officials elected to the same office that enhanced their annuity in the same manner, we examined the retirement file of an official who served in the same position immediately prior to the elected official in this case.

4 G.C.A. §8172 states that any person elected to this office may retire after completing the term of office with a pension of 50 percent of the annual salary or may elect to waive these benefits and opt for other retirement benefits for which the person may be eligible.

We did not note any retroactive retirement requests in the other elected official's file. The other elected official continued to receive his 50 percent pension based on his prior tenure in another elected position and retired in January 1995 after completing his term in another elected position. He has since been drawing his enhanced annuity after opting to retire with years of service instead of the benefits specifically provided to those elected to this office. This official and the government of Guam contributed to the Retirement Fund for those years.

### **Conclusion:**

Based on the evidence it appears the elected official:

- Was allowed to once again become an active member of the Retirement Fund despite 2 G.C.A. §1120(b).
- Was allowed to claim excluded service credit he was not entitled to.
- Retroactively retired to offset the amounts owed to the Retirement Fund for annuity payments he received from his 1989 retirement and excluded service credit with the enhanced annuity he would have received after his first three years in office.
- Was allowed to retroactively choose the more advantageous retirement scenario notwithstanding 4 G.C.A. §8113.3, which prohibits excluded service credit unless contributions for such credit are made prior to retirement date. This excluded service credit and repayment of prior annuities received should have been \$171,000.
- Disregarded repayment of \$81,000 for two years of annuities he received and interest in his payment to the Retirement Fund for excluded service credit.
- Retired with the enhanced annuity before completing his term of office.

The Retirement Fund Director was derelict in his fiduciary responsibility to protect the Retirement Fund from this action and by circumventing the approval of the Board of Trustees.

### **Finding 1999-01: Dual Participation**

The FY 2000 Compliance Report also lists findings that occurred in the prior year. These findings were included in the 2000 report because responses to the findings were recently obtained.

Finding 1999-01 of the FY 1999 Compliance Report relates to an elected official's participation in both plans administered by the Government of Guam Retirement Fund, the Defined Benefit Plan (DB Plan) and the Defined Contribution Retirement System (DC Plan).

The elected official, who retired under the DB Plan, was later elected to another office, and then became a participant in the DC Plan. 4 G.C.A. §8206 prohibits DB retirees who are re-employed by the government of Guam from becoming members of the DC Plan. They must suspend their annuities for the duration of their re-employment.

The elected official retroactively elected membership in the DC Plan in July 2000 for membership to have commenced on January 1, 1998, and made a payment of \$11,250 for his DC Plan contributions.

#### **Conclusion:**

The retired elected official was allowed to participate in both the DB Plan and the DC Plan, contrary to 4 G.C.A. §8206.

### **Finding 2001-01: Verification of Disability Annuitants**

In this finding, the Auditors reported that the Retirement Fund did not verify and monitor a disability annuitant. The member continued to receive his disability annuity after returning to work on October 1, 1999. However, 4 G.C.A §8127 states that if the person is engaged or is able to engage in gainful occupation, then payment of the disability annuity by the Fund shall be discontinued.

This person received in excess of \$90,000 in disability annuity payments that should have been discontinued. In response to the finding, the Retirement Fund has stated that it will seek legal counsel's opinion on the application of 4 G.C.A § 8127(b) regarding disability annuitants who return to the work force.

## Recommendations

In the compliance report, the Auditors recommended the following:

### **Finding 2000-01: Miscalculation of Retirement Benefits**

The Retirement Fund establish a policy or seek legislation clarifying a person's ability to alter their membership status and require the elected official to repay the \$81,000 that resulted from the incorrect calculation.

### **Finding 1999-01: Dual Participation**

The Retirement Fund obtain a legal opinion as to the propriety of a retiree participating in both the DB Plan and DC Plan.

### **Finding 2001-01: Verification of Disability Annuitants**

The Retirement Fund pursue collection of the \$90,000 in unwarranted disability annuity payments.

Based on our review, we recommend that the Retirement Fund management and Board of Trustees, in consultation with the Attorney General:

1. Take appropriate action regarding the propriety and legality of the official's retroactive retirement as of December 31, 1997, for which documentation and requests were not submitted until October 1999;
2. Take appropriate action to require the former elected official to pay the almost \$171,000 for excluded service credit and effectuate the retirement as of December 31, 1999 if it is determined that the retroactive retirement was not legal.
3. Determine whether the elected official can collect a higher annuity based on his elected salary prior to completing his term of office;
4. Determine if there is cause of action against the former Retirement Director for permitting the retroactive adjustment of an annuity without Board approval;
5. Determine if the elected official is obligated to pay the government of Guam's employer's contributions for the years of excluded service; and
6. Opine as to the applicability of 2 G.C.A. §1120(b)<sup>9</sup> to elected officials other than members of the Guam Legislature.

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<sup>9</sup> 2 G.C.A. §1120(b) states that elected officials who have retired from the government of Guam receiving retirement benefits shall not relinquish or suspend such benefits during the period that the elected officials are holding their respective offices. However, such elected officials shall not be deemed active members of the retirement fund and no deductions shall be made nor government contributions made on account of any salary they receive as elected officials.

We recommend the Retirement Fund Board of Trustees pursue collection of the \$90,000 in unwarranted disability annuity payments.

### **Management Response**

This report was provided to the management of the Government of Guam Retirement Fund for review and response. The Retirement Fund concurred with our findings and recommendations. See **Appendix E** for the Fund's complete response.

### **Limitations of Report**

This report does not provide conclusions involving legal determinations. This report contains only evidentiary conclusions based on documentation available during our review. This report has been released to the Governor of Guam, the Speaker and members of the 27<sup>th</sup> Guam Legislature, the Director and Board of Trustees of the Government of Guam Retirement Fund, and the Attorney General of Guam. This report is a matter of public record and its distribution is not limited.

The Director and staff of the Retirement Fund and the Office of the Attorney General contributed information that materially assisted the OPA in completing its work. Their cooperation is gratefully acknowledged.



Doris Flores Brooks, CPA, CGFM  
Public Auditor

**Appendix A:  
OPA Calculations of Employee and Employer Contributions for Entire 8 Years in  
Elected Office**

<b>Year</b>	<b>Base Salary</b>	<b>Employee Contributions Required (9.5%)</b>	<b>Government of Guam Employer Contributions</b>
1995	\$ 90,000	\$ 8,550	\$ 17,466
1996	\$ 90,000	\$ 8,550	\$ 16,740
1997	\$ 90,000	\$ 8,550	\$ 16,740
1998	\$ 90,000	\$ 8,550	\$ 16,740
1999	\$ 90,000	\$ 8,550	\$ 16,740
2000	\$ 90,000	\$ 8,550	\$ 17,935
2001	\$ 90,000	\$ 8,550	\$ 19,216
2002	\$ 90,000	\$ 8,550	\$ 23,400
<b>Total</b>	<b>\$ 720,000</b>	<b>\$ 68,400</b>	<b>\$ 144,976</b>

Total Employee and Government of Guam Employer's Contributions  
Required for 8 years: **\$213,376**

Total Government of Guam Employer's Contributions Required for 1995,  
1996, & 1997: **\$50,946**

<b>Fiscal Year</b>	<b>Government Contribution Rate</b>
1994	17.708%
1995	19.675%
1996	18.600%
1997	18.600%
1998	18.600%
1999	18.600%
2000	23.910%
2001	19.801%
2002	26.000%

**Appendix B:  
OPA Calculation of Elected Official's Retirement Benefit**

Figure 1	Figure 2	Figure 3	Figure 4
Annuities Paid Out to Elected Official for 1989 Retirement	Contributions Required for Excluded Service Credit	Interest Due for Excluded Service Credit	Enhanced Annuity as of October 1999**
1995 \$ 43,272.97	1995 \$ 8,550.00	1995 \$ 465.76	1998 \$ 78,968.96
1996 \$ 42,472.89	1996 \$ 8,550.00	1996 \$ 445.70	1999 \$ 65,057.20
1997 \$ 44,872.81	1997 \$13,950.10	1997 \$ 695.89	<b>Total \$144,026.16</b>
1998 \$ 43,972.73	<b>Total \$31,050.10</b>	<b>Total \$1,607.36</b>	
* 1999 \$ 35,893.77			
<b>Total \$210,485.17</b>			

\*Benefits paid as of 10/31/99. Enhanced annuities began 11/99. Total received in 1999 was \$49,701.09.

\*\*These amounts were derived directly from the Retirement Fund annuity worksheet for the elected official. 1999 figure represents 10 months of annuities till October 1999. The elected official's base annuity was estimated by the Retirement Fund at \$72,006.24.

<b>Calculation of Retirement Benefit by OPA</b>		
Enhanced Annuity from January 1998 through October 1999	\$ 144,026.16	See <b>Figure 4</b>
Less: Benefits Paid from 1995 to 1999	\$ (210,485.17)	See <b>Figure 1</b>
Less: Required Contributions if official wanted to retire after 1997 (3 Years' Worth)	\$ (31,050.10)	See <b>Figure 2</b>
Less: Interest Due for Excluded Service	\$ ( 1,607.36)	See <b>Figure 3</b>
Equals Amount Official Owes Retirement Fund	\$ (99,116.47)	
Official's Payment of \$17,642.34	\$ 17,642.34	
***Amount Official Owes Retirement Fund	<b>\$ (81,474.13)</b>	

\*\*\*The Retirement Fund's calculation did not consider the elected official's continuation of annuity payments, which is included in OPA's calculation.

**Appendix C:  
OPA Calculations for Elected Official's Excluded Service Credit**

**December 31, 1999 Retirement Date**

	<b>Annuities received</b>	<b>Contributions owed</b>	<b>Interest Due</b>	<b>Total</b>
1997	\$ 44,872.81	\$ 8,550.00	\$ 426.51	\$ 53,849.32
1998	\$ 43,972.73	\$ 8,550.00	\$ 408.16	\$ 52,930.89
1999	\$ 49,701.09	\$ 13,950.10	\$ 325.65	\$ 63,976.84
<b>Total</b>	<b>\$ 138,546.63</b>	<b>\$ 31,050.10</b>	<b>\$ 1,160.32</b>	<b>\$ 170,757.05</b>

December 31, 1999 would have been an appropriate retirement date since the elected official's decision to retire was made in October 1999 and he made payment for excluded service in November 1999.

**December 31, 1997 Retirement Date**

	<b>Annuities received</b>	<b>Contributions owed</b>	<b>Interest Due</b>	<b>Total</b>
1995	\$ 43,272.97	\$ 8,550.00	\$ 429.59	\$ 52,252.56
1996	\$ 42,472.89	\$ 8,550.00	\$ 411.11	\$ 51,434.00
1997	\$ 44,872.81	\$ 13,950.10	\$ 328.00	\$ 59,150.91
<b>Total</b>	<b>\$ 130,618.67</b>	<b>\$ 31,050.10</b>	<b>\$ 1,168.70</b>	<b>\$ 162,837.47</b>

A December 31, 1997 retirement date would have been possible if the official paid the excluded service credit prior to December 31, 1997. However, he had decided in October 1999 to retire and made payment in November 1999, almost two years after his retirement date.

**Appendix D:  
Calculations Prepared by Retirement Fund if Elected Official Retired on  
December 31, 1998**

*Retirement Annuity Entitlement @ November 1, 1999	\$ 65,723.20
Less: Retirement Annuity Due	\$ (131,318.43)
Less: Retirement Contributions Due	\$ ( 31,603.95)
<b>Balance Due – Retirement Fund</b>	<b>\$ 97,199.18</b>

\*January 1999 through October 1999 or ten-month period.



## **Appendix E: Management Response**

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GOVERNMENT OF GUAM  
**RETIREMENT FUND**  
STABILITY · SECURITY · REWARDS

Received by Office of the  
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2/4/04  
11:00AM

**Felix P. Camacho**  
*Governor*

**Kaleo S. Moylan**  
*Lieutenant Governor*

**Wilfred G. Aflague**  
*Director*

*Trustees:*

**Francisco B. Salas**  
*Chairman*

**Gerard A. Cruz**  
*Vice-Chairman*

**Stephen J. Guerrero**  
*Trustee*

**Rolenda Lujan Faasumalie**  
*Trustee*

**Katherine T.E. Taitano**  
*Trustee*

February 4, 2004

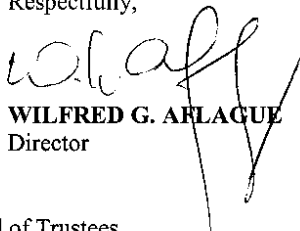
Doris Flores Brooks  
Public Auditor  
Office of the Public Auditor  
Suite 401, Pacific News Building  
238 Archbishop Flores Street  
Hagatna, Guam 96910

Dear Ms. Brooks:

The Fund has attached our response to your report "Supplement to Government of Guam Retirement Fund's Report on Compliance and Internal Controls Fiscal Years Ending September 30, 2000 and September 30, 2001 OPA Report No. 04-03 February 2004".

Please contact us here at the Fund at 475-8900 should you have any questions or comments.

Respectfully,

  
**WILFRED G. AFLAGUE**  
Director

cc: Frank Salas, Chairman Board of Trustees

424 Route 8  
Maite, Guam 96910  
Tel: 671.475.8900  
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## **Response to OPA Report No. 04-03 February 2004**

### **Finding 2000-01: Miscalculation of Retirement Benefits;**

The Fund has in place a procedure for the preparation and review of annuity benefit calculations. The finding referenced was the result of a deviation from established procedures and completed by individuals who held administrative and management positions in the computation, review, and approval of these benefits. This matter has been brought to the attention of our Board of Trustees for their review and action. We continue to review our policies and procedures to identify any potential weaknesses that may result in the reoccurrence of miscalculations.

### **Findings 1999-01: Dual Participation;**

The finding referenced has been discussed at length with the Board of Trustees and has been discussed with the Fund's Senate Oversight Chairperson. The Fund has proposed amendments to the existing language that present ambiguities in the membership and enrollment in the Defined Benefit Plan and Defined Contribution Plan. Legislation must be considered to address this issue.

### **Findings 2001-01: Verification of Disability Annuitants.**

The Fund is currently in the process of establishing procedures with the Department of Revenue and Taxation and the Social Security Administration, to access employment status information of current disability annuitants. This will allow the Fund to identify disability annuitants that may be in violation of their benefit status. This matter has been brought to the attention of our Board of Trustees for their review and action.

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