



EXECUTIVE SUMMARY

Offices of the Governor and Lt. Governor's Employees' Pay Adjustments OPA Report No. 16-05, June 2016

At the request of the Vice Speaker of the 33rd Guam Legislature, we conducted an audit of the pay adjustments for the Offices of the Governor and Lieutenant (Lt.) Governor of Guam's (hereinafter collectively referred to as the Governor's Office) unclassified employees. Our audit found:

- In December 2014, retroactive pay adjustments effective January 26, 2014 were paid to 106 employees. Gross salaries for the 106 employees were \$566,180, plus the Government of Guam's (GovGuam) share of retirement contributions of \$168,570, Medicare taxes of \$7,953, and other deductions of \$146, for total payments of \$742,849.
- Between January 2015 and March 2015, five employees received second pay adjustments amending their initial December 2014 pay adjustments. These payments totaled \$51,419.
- In December 2015, the Attorney General (AG) opined that the December 2014 retroactive pay adjustments were illegal and this could be corrected either by repayment or Legislative action.
- The Department of Administration (DOA) established a receivable of \$742,840¹ for the December 2014 pay adjustments as of September 2015, but this should be adjusted for the five employees' additional pay adjustments, for a total receivable \$794,268.
- In December 2015, 68 employees still with the Governor's Office were given a "One Time Single Pay Period Salary Adjustment" totaling \$403,328 (inclusive of income tax withholdings of \$82,132 and Medicare taxes of \$5,591), plus the government's share of Medicare taxes of \$5,591, for a total one-time adjustment of \$408,919. Retirement contributions were not deducted.
- The December 2015 pay adjustment was the first time DOA was directed to process a one-time single pay period salary adjustment. Due to AS400 system limitations, DOA Payroll calculated most adjustments using **72 hours for one day** and one hour on another day at higher hourly rates for the period November 23 to 28, 2015. This was not consistent with the GG1 and was done so without informing the Governor's Office of this deviation.
- In a December 2015 radio interview, the AG stated that while she was not in support of the "spike" in the December 2015 pay adjustments, "there is nothing illegal about it."
- Of the 68 employees, 67 endorsed their checks to GovGuam to repay the December 2014 pay adjustments they received.
- The one-time pay adjustments of \$403,328 for these 68 employees were reflected in their 2015 Forms W-2. Therefore, these 68 employees were taxed twice- for the December 2014 retroactive pay adjustments and again for the December 2015 one-time pay adjustments.
- In February 2016, the Governor's Office issued letters to 37 individuals no longer employed with the Governor's Office, requesting repayment of their December 2014 pay adjustments.
- There are several areas that need of improvement regarding DOA's human resource and payroll processing of the Governor's Office pay adjustments.

See Table below for a summary of the December 2014 and December 2015 pay adjustments.

¹ There is an immaterial variance between DOA's accounts receivable of \$742,840 and the total December 2014 pay adjustments of \$742,849.

Governor and Lt. Governor's Employees' Pay Adjustments Summary

	December 2014 Pay Adj.	Plus Additional Adjustments	Total	December 2015 Pay Adj.
# OF EMPLOYEES	106	5	106	68
GROSS PAY	\$ 566,180	\$ 39,162	\$ 605,342	\$ 403,328
LESS EMP. DEDUCTIONS:				
WITHHOLDING TAXES	107,068	6,713	113,781	82,132
DB/DC RETIREMENT	29,547	1,958	31,505	-
MEDICARE	7,953	568	8,521	5,591
OTHER	787	-	787	-
TOTAL EMP. DEDUCTIONS	\$ 145,355	\$ 9,239	\$ 154,594	\$ 87,723
NET PAY	\$ 420,825	\$ 29,922	\$ 450,748	\$ 315,604
PLUS GOVT. CONTRIBUTIONS:				
DB/DC RETIREMENT	35,474	1,958	37,432	-
UNFUNDED LIABILITY	133,096	9,732	142,828	-
MEDICARE	7,953	568	8,521	5,591
OTHER	146	-	146	-
TOTAL GOVT. CONTRIBUTIONS	\$ 176,669	\$ 12,258	\$ 188,927	\$ 5,591
GRAND TOTAL	\$ 742,849	\$ 51,419	\$ 794,268	\$ 408,919

Double Taxation for 68 Employees: Income Tax Withholding and Medicare Taxes

Per IRS Publication 15 (2015), when an employer receives a repayment of wages paid in error during a prior year, the employer cannot make an adjustment for income tax withholding because the employee received and had use of those funds during the year. The December 2014 pay adjustments, income tax withholdings, and Medicare taxes were reported in the 106 employees' 2014 Forms W-2. The 68 employees' one-time pay adjustments in December 2015, withholding taxes, and Medicare taxes were reflected in their 2015 Forms W-2, although 67 employees endorsed their checks to GovGuam. These 68 employees were taxed twice for these pay adjustments.

Retirement Implications

Of the 106 employees with pay adjustments in December 2014, three were in the Defined Benefit retirement plan and 103 were in the Defined Contribution retirement plan. We recommend the Government of Guam Retirement Fund (GGRF) review and determine the effect of the December 2014 and December 2015 pay adjustments on the 106 employees' retirement annuities. In February 2016, DOA sent a letter to GGRF in an attempt to recover \$142,496 in retirement contributions for the 68 employees. We recommend DOA and GGRF reconcile the retirement contributions required for the December 2014 and 2015 pay adjustments.

Conclusion

While the December 2015 one-time pay adjustments for the 68 employees were applied as repayment for the December 2014 retroactive pay adjustments, these employees did not repay with personal funds. The 38 employees who left the Governor's Office will have to repay with their personal funds.

In summary, GovGuam paid out \$887,583 (\$794,268 in 2014 and \$408,919 in 2015 for the pay adjustments less \$315,604 for the net pay checks returned to GovGuam) for salaries and benefits to 106 Governor's Office employees. The AG is in the process of selecting a Special Prosecutor to review these pay adjustments.

We made three recommendations, one of which was to establish and implement control measures to prevent errors in processing pay adjustments.

Doris Flores Brooks, CPA, CGFM
Public Auditor