

**Government of Guam
Annual Leave Lump Sum Payments**

**Performance Audit
October 2002 through April 2011**

**OPA Report No. 11-08
October 2011**



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EXECUTIVE SUMMARY
Government of Guam Annual Leave Lump Sum Payments
OPA Report No. 11-08, October 2011

Public Law (P.L.) 27-106 in October 2004 lowered the limit on accumulated annual leave from 480 to 320 hours. Employees could transfer up to 100 hours to sick leave, but would either have to use or lose any remaining excess. Our audit found that the 320-hour cap has forced many employees to use existing policy to salvage their excess leave hours by “resigning artificially.” That is, they resign on paper, draw a lump sum payment for their unused annual leave then rescind the resignation. They never truly leave government service. The practice is common and the Department of Administration’s Human Resources (DOA HR) Division routinely processes resignations and lump sum payment requests if the required documents are in order. We found that 51 employees drew 65 lump sum payments totaling \$302,280 under even more questionable circumstances.

\$11.1 Million in Annual Leave Lump Sum Payments Issued

Between October 1, 2002 and April 30, 2011, 2,699 employees from 37 line agencies received annual leave lump sum payments totaling \$11.1 million (M). However, we are not confident that \$11.1M is accurate. Management’s lack of monitoring over the hours claimed and the rates and pay codes recorded casts doubt on the calculations.

Of the \$11.1M, the bulk, \$10,126,361, was paid to 2,505 employees who resigned, retired, were terminated, or passed away. The remaining \$1,007,031 was paid to 194 employees as follows:

- Consistent with law, \$307,589 was paid to 66 employees who transferred to another department who filled new positions; \$140,443 to 20 employees who filled new positions within the same department; and \$75,319 to 24 employees who filled the same positions and moved to another department;
- After a change in administration, \$181,400 was paid to 47 unclassified employees who resigned their appointments and returned to their previous jobs; and
- Questionably, \$302,280 was paid to 51 employees who resigned artificially.

We found no law authorizing annual leave lump sum payments to government employees who did not physically vacate their position. Since the 51 employees resigned temporarily and only on paper, we question their receipt of \$302,280 lump sum payments.

\$302,280 Paid To 51 Employees with Artificial Resignations

Of the 51 employees, 29 were classified and 22 were unclassified employees. The classified employees drew 41 lump sum payments totaling \$165,867 from 12 agencies while the unclassified employees drew 24 lump sum payments totaling \$136,413 from seven agencies.

Since the merit process applies to classified positions, those 29 employees who resigned temporarily should not have been able to do so without some sort of higher endorsement. Even if their resignations were immediately or subsequently canceled, the processing of annual leave lump sum payments should have stopped.

The 22 unclassified employees were cabinet level employees whose entitlement to, requests for and amounts of lump sum payments were issued beyond the changes in administration in January 2003 and 2007; and mayors in January 2003, 2005, 2007, and 2009. Therefore, we question why these lump sum payments were issued. For example:

- A department director resigned from his position effective April 26, 2008, and cancelled the resignation effective April 26, 2008. Despite the cancellation, this employee received a lump sum payment of \$13,680 for 320 annual leave hours. On September 30, 2009, this employee again resigned from his position, only to be rehired on October 1, 2009 for the same position in the same department. The employee again received another lump sum payment of \$13,680 for 320 annual leave hours for a total of \$27,360.
- Another director resigned and cancelled the resignation effective April 26, 2008, but received the lump sum payment of \$13,680 for 320 annual leave hours.
- Similarly, a deputy director resigned on September 30, 2009, only to be rehired in the same position and department on October 1, 2009, and received the lump sum payment of \$13,680 for 320 annual leave hours.

Conclusion

We found 51 employees artificially resigned and drew 65 lump sum payments totaling \$302,280. Rather than having to practice resigning on paper only and to avoid leave forfeiture, we urge agency heads to encourage personnel to take annual leave on a regular basis to prevent exceeding the 320 threshold. Consistent with the DOA Personnel Rules and Regulations, supervisors share the responsibility of monitoring employees' annual leave and employees are expected to submit reasonable estimates for use of their leave during the current year for scheduling purposes.

Management Response

DOA management generally concurred with the findings noted and provided some points of clarification, which were incorporated in the report as deemed appropriate. However, we disagree with DOA HR's position that the re-employment for classified employees is "non-competitive" pursuant to DOA's Personnel Rule 4.502 because the law specifies that former classified employees may be hired "at their former position if they apply for the same or comparable job in the same department."

Doris Flores Brooks, CPA, CGFM
Public Auditor



Introduction

This report presents the results of our review of the Government of Guam's (GovGuam) payments to unclassified and classified employees for unused annual leave from October 1, 2002 to April 30, 2011. This audit was conducted in response to a request from a Senator in the 31st Legislature to determine if payments of unused annual leave through resignation are a current practice by the previous administration or by GovGuam in general.

Our audit objective was to determine whether annual leave lump sum payments were paid in accordance with Guam laws. The scope, methodology and prior audit coverage are detailed in Appendices 2 and 3, respectively.

Background

The Department of Administration's (DOA) divisions of Accounts, Payroll, Human Resources (HR) and the Treasurer of Guam manage GovGuam's finances and employment and pay policies. The Payroll Division processes the regular bi-weekly pay checks for line agency employees and special payment requests for such things as retroactive, advance and annual leave lump sum payments, etc. Annual Leave is paid time off that employees earn on a pro-rated basis.

Title 4 §4109 of Guam Code Annotated (G.C.A.) defines which employees are entitled to annual leave and how many leave hours, based on length of service, they would earn each bi-weekly pay period. The law allows employees who quit government service to receive a lump sum payment for their unused annual leave.

In August 1981, Public Law (P.L.) 16-23 limited the accumulation of annual leave to 480 hours. In October 2004, P.L. 27-106 reduced the limit to 320 hours and continued to allow employees to transfer up to 100 excess hours to their sick leave balance. Those with more than 320 leave hours prior to February 28, 2003 could carry over the excess to use before retiring or leaving government service. At the time of retirement or termination of service, the remainder of excess leave, if any, would be lost.

Before limits were set, GovGuam employees did not lose their accumulated annual leave. The limitation of annual leave accumulation to 480 hours and the more recent reduction to 320 hours forced employees to use, lose, or find ways to utilize their leave benefit. Many resorted to "resigning on paper." That is, they resigned, drew a lump sum payment for their unused annual leave then returned to the job they just left. In short, the whole process was only on paper; they never physically left government service.

The typical reasons to resign on paper are:

- 1) Simply to draw a lump sum payment with no intention of actually leaving government service (i.e., cancellation of resignation).
- 2) To move from a classified position to accept an unclassified gubernatorial appointment in the same or another agency. Generally, such appointees would seek a lump sum payment for the annual leave they already accrued in the classified ranks.
- 3) Leaving a gubernatorial appointment, whether by choice, dismissal, or as a courtesy to a new governor, and returning either to a previously held classified position or to an appointment in the new administration.
- 4) For other reasons, such as to pay medical expenses, make payments to creditors to avoid bankruptcy, pay for children's college tuition, and to avoid property foreclosures.¹

¹ These four reasons were supplied by DOA's HR division based on their experience working with line departments and employees, even though the reasons are not explicitly cited on the personnel action forms.

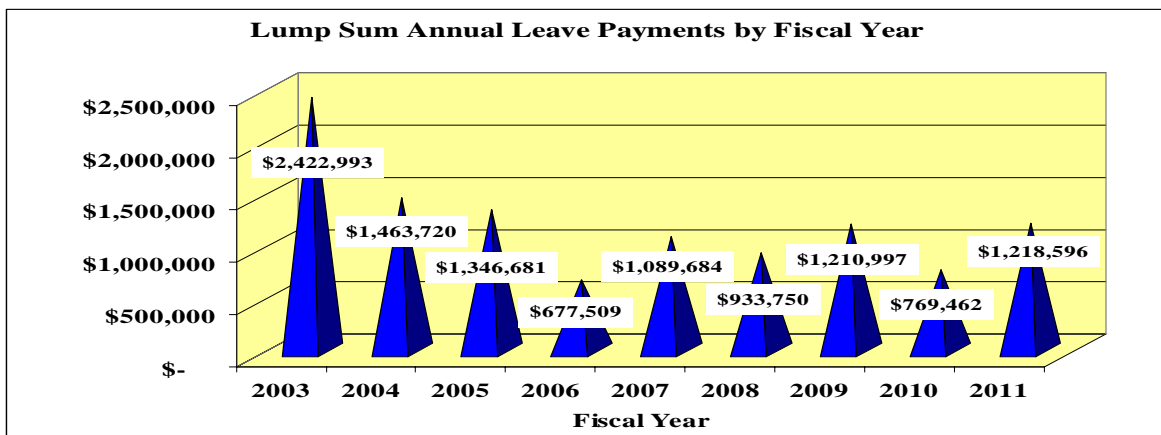
Results of Audit

Between October 1, 2002 and April 30, 2011, 37 line agencies paid \$11.1 million (M) in annual leave lump sum payments to 2,699 employees. Of the total amount, \$10,126,361 was paid to employees who retired, passed away, transferred to autonomous agencies or were terminated or left government service (See Table 1 for payment totals). The remaining \$1,007,031 was paid to 194 employees as follows:

- \$523,351 was paid consistent with law to 108 employees who transferred to other agencies or positions. Of this amount:
 - \$307,589 was paid to employees who moved to a new position in another department;
 - \$140,443 to employees who filled new positions within their department; and;
 - \$75,319 to employees who filled same positions but moved to another department;
- \$181,400 was paid to 47 employees who submitted courtesy resignations from their unclassified appointments and returned to their former positions following the changes in administration in January 2003, 2005, 2007 and 2011; and
- \$302,280 was for 65 questionable lump sum payments to 51 employees who “resigned on paper” and never actually vacated their positions. Of the 51, 29 were classified employees who drew \$165,867 and 22 were unclassified employees who drew \$136,413.

DOA HR interprets “separation from government service” as a technicality and processes resignations, hiring and annual leave lump sum payments requests routinely, so long as the proper documents and required signatures are in order.

\$11.1 Million in Annual Leave Lump Sum Payments



Note: FY 2011 annual leave lump sum payment information is as of April 30, 2011.

The highest amount paid out on annual leave lump sum payments was \$2.4M in Fiscal Year (FY) 2003, coinciding with the election of a new governor. A change in administration again in 2011 and rates established by the new Hay Study² are reflected in the pay outs through April 30, 2011. See graph above.

Table 1: Lump Sum Payments by Fiscal Year

Fiscal Year	Employee Count	Total Payments	Payment Count
2003	540	\$ 2,422,993	559
2004	325	\$ 1,463,720	328
2005	403	\$ 1,346,681	416
2006	249	\$ 677,509	253
2007	320	\$ 1,089,684	325
2008	286	\$ 933,750	288
2009	390	\$ 1,210,997	403
2010	236	\$ 769,462	241
2011 (as of April 30)	284	\$ 1,218,596	288
<u>TOTAL:</u>		<u>\$ 11,133,392</u>	<u>3,101</u>

While some employees received as many as six lump sum payments, the majority of individual payments were well under the \$30,000 range. Only five lump sum recipients received exceptional amounts (Table 2).

Table 2: Lump Sum Payments Breakdown by Threshold

Threshold	Employee Count	Checks Issued	Total Amount
\$60,001 - \$70,000	2	8	\$ 127,735
\$50,001 - \$60,000	0	0	\$ -
\$40,001 - \$50,000	3	6	\$ 134,866
\$30,001 - \$40,000	6	17	\$ 201,061
\$20,001 - \$30,000	40	87	\$ 935,510
\$15,001 - \$20,000	52	76	\$ 891,085
\$10,001 - \$15,000	137	199	\$ 1,709,759
\$ 5,001 - \$10,000	550	668	\$ 3,796,471
\$ 2,501 - \$ 5,000	562	617	\$ 2,074,995
\$ 0 - \$ 2,500	1,347	1,423	\$ 1,262,311
<u>TOTAL:</u>	<u>2,699³</u>	<u>3,101</u>	<u>\$ 11,133,432</u>

² In September 2010, the former Governor authorized the implementation of the new Hay Study. However, in January 2011, the new Governor rescinded the implementation effective January 30, 2011.

³ Although the total employee count is 3,033, we extracted 334 from this number since some employees received annual leave lump sum payments in multiple fiscal years. Therefore, net employee count who received lump sum payments is 2,699.

Of the 2,699 lump sum payment recipients, the two in the highest payment bracket were classified employees who served as cabinet members. Together they received a total of \$127,735, as follows:

- A department director, the highest recipient of lump sums, received four payments totaling \$66,604, as chronicled below.
 1. On August 29, 2003, the employee received \$25,564 for 810 hours. We did not question this payment because the individual left the classified ranks to accept a cabinet appointment. Secondly, the 320-hour limitation took effect in October 2004.
 2. This employee resigned his position effective April 26, 2008, but withdrew the resignation the same day. Although he did not resign, he received a lump sum payment of \$13,680 for 320 annual leave hours. We question this payment because the processing of the lump sum payment should have ceased when the resignation was canceled.
 3. The employee again resigned on September 30, 2009 only to be rehired on October 1, 2009 to the same position in the same department. He received another lump sum payment of \$13,680 for 320 annual leave hours. We question this payment because it did not coincide with a gubernatorial election and the customary submission of courtesy resignations by appointees.
 4. On December 31, 2010, he received \$13,680 for 320 hours, which was not questioned because his employment situation changed as a result of a change in administration.

- A deputy director, the second highest recipient, received four payments totaling \$60,772, as detailed below.
 1. The first payment was on August 6, 2004 for \$22,176 for 798 unused annual leave hours. We did not question this payment because this individual also was drawn from the classified ranks and appointed to a cabinet position. The 320-hour limit took effect in October 2004.
 2. Like the department director, this employee resigned his position on April 26, 2008 and received \$11,235 in lump sum payment. The data provided by DOA HR did not indicate when this employee was rehired, but he remained employed.
 3. Similar to the department director, this individual resigned on September 30, 2009 and was rehired to his former position on October 1, 2009, after receiving \$13,680 for 320 annual leave hours. We question this payment because it did not coincide with a gubernatorial election and the customary submission of courtesy resignations by appointees.
 4. On December 31, 2010, the deputy director received \$13,680 for 320 hours. This payment was not questioned for the same reasons stated for the department director above.

Nine recipients received lump sum payments in the bracket of \$30,000 - \$60,000. Of the nine, two were elected officials. Discussions on the lump sum payments follow:

- Lump sum payments totaling \$49,979 were issued upon the death of a classified employee in January 2008 for 695 hours. We did not question these payments because Guam law authorizes payments for unused annual and sick leave to designated beneficiaries for deceased employees.⁴
- The two elected officials drew annual leave lump sum payments totaling \$42,232 and \$39,889, respectively, at the end of their term. On January 3, 2003, the first official received \$33,232 for 768 hours of leave. The second official received \$31,388 for the same number of leave hours. Three days later, on January 6, they each received a second payment of \$9,000 and \$8,501, respectively, for an additional 208 leave hours each. We did not question these payments as these elected officials received the lump sum payments at the end of their term. The 320-hour limit took effect in October 2004.
- Another department director received a total of \$30,020 annual leave lump sum payments. We did not question these payments as the individual transferred to another department as described below.
 1. On September 14, 2007, the official was transferred to head another agency, effective September 17, 2007. He received \$10,330 for 320 hours.
 2. On September 12, 2008, he was transferred again to head a different agency, effective October 1, 2008. He received \$9,360 for another 320 hours.
 3. On November 20, 2009, he moved to an autonomous agency and received \$10,330 for yet another 320 hours of unused annual leave.

Top 10 Agencies that Issued Annual Leave Lump Sum Payments

The top 10 entities paid \$8M (71%) in annual leave lump sums. The top five were the Mayors’ Council, the Governor’s office, the departments of Public Works (DPW), Public Health and Social Services (DPHSS), and Office of the Attorney General (OAG), totaling \$5,713,513. See Table 3.

Table 3: Lump Sum Payments by Agency

	Agency	Total Amount	% of Amount	Employee Count
1	Mayors’ Council	\$ 1,437,518	13%	402
2	Office of the Governor	\$ 1,339,294	12%	355
3	DPW	\$ 1,265,980	11%	330
4	DPHSS	\$ 1,132,589	10%	261
5	OAG	\$ 538,132	5%	135
	Subtotal, Top 5 Agencies:	\$ 5,713,513	51%	1,483

⁴ 4 G.C.A. § 7101.

	Agency	Total Amount	% of Amount	Employee Count
6	Guam Police Department (GPD)	\$ 538,082	5%	131
7	Department of Revenue & Taxation (DRT)	\$ 522,353	5%	87
8	DOA	\$ 451,899	4%	85
9	Department of Mental Health and Substance Abuse (DMHSA)	\$ 387,126	3%	139
10	Department of Corrections (DOC)	\$ 378,881	3%	106
	Subtotal, Top 10 Agencies:	\$ 7,991,854	71%	2,031
	Other 27 Agencies, Subtotal:	\$ 3,141,538	29%	668
	TOTAL:	\$ 11,133,392	100%	2,699

Payroll Management’s Lack of Monitoring Over Inputted Information

The hours for annual leave lump sum payments are supposed to be verified either by DOA’s Chief Payroll Officer or Payroll Supervisor. After the payroll is processed, a “demand run report” listing special payment requests is generated for the Chief Payroll Officer or Payroll Supervisor’s review. In addition, labor cost distribution reports are generated and provided to the agencies. However, the labor cost distribution reports do not detail the hourly rate or number of hours paid per pay code (i.e., regular, annual leave, sick leave, overtime, etc.) per employee.

We noted in a previous audit that a former agency head received an annual leave lump sum payment of \$6,768 after vacating an unclassified position and returning to a classified position. Instead of inputting the pay code as annual leave lump sum pay, the payroll technician entered “regular pay” into the AS400 system. Thus, the payment was not captured as a lump sum annual leave payment. This occurred because payroll technicians have the autonomy to process and approve timesheets and special payment requests without review by the Chief Payroll Officer or the Payroll Supervisor.

The data provided to us from the AS400 was filtered through the annual leave lump sum payment code. The Chief Payroll Officer told us that payroll technicians are responsible for ensuring that employee hours recorded in the AS400 system match those on timesheets and special payment requests.

Payroll management’s lack of monitoring payroll information inputted in the AS400 increases the risk for errors and pay code misclassifications. Thus, we are not confident that \$11.1M is the total of all annual leave lump sum payments.

Lump Sum Payments Consistent with Law

Consistent with P.L. 27-106’s limitation, DOA Payroll made no lump sum payments for more than 320 hours after October 2004. Of the \$11.1M expended during our audit period:

- \$10,126,361 was legitimately paid to employees who left government service;
- \$523,351 was paid consistent with law to 108 employees who transferred to other agencies or positions;

- \$181,400 was paid to 47 unclassified employees who resigned and returned to their classified positions after a change in administration; and
- \$302,280 was questionably paid to 51 employees who artificially resigned.

\$523,351 Lump Sum Payments Due to Transfers

Title 4 G.C.A. § 4109(e) authorizes an employee who transfers to another government position to take his or her earned annual leave in cash or have it credited to the balance of the new position. Details surrounding the lump sum payments to the 108 employees who transferred to other agencies and/or positions, consistent with the law, are as follow:

- 75 payments totaling \$307,589 was paid to 66 employees who moved to another department to fill a new position;
- 22 payments totaling \$140,443 was issued to 20 employees who moved into new positions within their department; and
- 24 payments totaling \$75,319 was issued to 24 employees who filled same positions but moved to another department.

\$181,400 Lump Sum Payments Due to Change in Administration

DOA’s HR Records Manager indicated that the practice of going in and out of service is more common among unclassified employees who are not subject to most personnel merit system rules.

Traditionally, when a new administration takes office, gubernatorial appointees -- from directors to messengers -- are expected to submit courtesy resignations to the new governor, although some may be asked to stay on in the same position. Additionally, appointees drawn from the classified ranks often return to their former positions after having "served at the pleasure of the Governor."

We identified 47 Executive Branch and Mayors’ Council employees in this category and found that \$181,400 in lump sum payments were made to them after administration changes following the elections of 2002, 2004, 2006 and 2008. Refer to Appendix 4 for further details. Of the \$181,400:

- 43 Mayors’ Council employees received 44 lump sum payments totaling \$122,840; and
- Four Executive Branch officials received lump sum payments totaling \$58,560.

Similarly, lump sum payments for unused annual leave are paid to senators and the legislative staff at the end of every two-year legislative term, even if incumbents are reelected and legislative staff remains in their same positions.

\$302,280 Paid to 51 Employees with Artificial Resignations

In our analysis, the 51 employees who resigned artificially just to draw lump sum annual leave payments did so unethically. Rather than forfeit their excess leave hours, they took advantage of the technicality allowing them to resign on paper and draw lump sum leave

payments without really quitting their jobs. We found no law authorizing government employees to resign temporarily. Thus, with no true separation from government service, we question the legitimacy of making lump sum payments to employees who only “resign on paper.” Of the 51, 29 classified employees received \$165,867 and 22 unclassified employees received \$136,413. Refer to Appendix 5 for details of the \$302,280 by agency and employee classification.

29 Classified Employees Received \$165,867

Of the 51 who resigned artificially, 29 were classified. They drew 41 lump sum payments totaling \$165,867 from 12 agencies. Seven employees cancelled their resignations, but still collected \$36,355 in lump sum payments.

Although the Records Manager explained that classified employees can return to their former position if available and at the discretion of the appointing authority, 4 G.C.A. § 2108 specifically states:

*“Former classified employees of government of Guam who were in good standing at the time of resignation may be hired at not less than the salary they earned at their former position **if they apply** for the same or comparable job in the same department. This re-employment credit privilege must be exercised within a four year period. (Emphasis added)”*

It is clear that employees who resign must reapply, but before they can, their previous position must be certified vacant and announced. It is also quite clear that those who resigned temporarily did not go through the competitive and merit process because they were “rehired” only a day or two after resigning.

It is inconceivable that, within only a day or two, an agency can submit a certified vacancy request to DOA HR, which in turn must publicly announce the vacancy, receive applications over a specified timeframe, certify a list of eligible applicants and await the requesting agency to interview candidates and select someone for the job.

Technically, the 29 employees forfeited their jobs, but since they did so only on paper, their agencies essentially collaborated in sidestepping the competitive and merit system process. For those employees whose resignations were immediately or subsequently canceled, the processing of annual leave lump sum payments should have stopped.

The most notable of the classified employees who received lump sums are as follows:

- A Mayors’ Council employee received six lump sum payments totaling \$29,548 between 2004 and 2010. Although the Personnel Action form indicated “Resignation,” the employee did not actually have a true break in service. Table 4 below illustrates the dates of resignation, rehire and lump sums this individual received.

Table 4: Lump Sum Payments to Employee #1

	Resignation Date	Reemployment Date	Annual Leave Hours	Hourly Rate	Lump Sum Amount	Check Issued
1	24-Sep-04	27-Sep-04	425	\$18.99	\$8,071	8-Oct-04
2	31-Dec-04	3-Jan-05	36	\$18.99	684	25-Feb-05
3	8-Dec-06	11-Dec-06	320	\$21.05	6,736	12-Dec-06
4	25-Apr-08	28-Apr-08	320	\$21.05	6,736	2-May-08
5	12-Dec-08	15-Dec-08	136	\$21.79	2,963	19-Dec-08
6	27-Nov-09	30-Nov-09	200	\$21.79	4,358	4-Dec-09
TOTAL:			1,437		\$29,548	

- A division head resigned on April 23, 2010, received a lump sum payment of \$9,974 for 320 leave hours the same day but returned to the same classified position on April 26, 2010. The employee had a balance of 40 hours of annual leave. The employee subsequently retired in October 2010 and received \$4,769 of lump sum payment for 153 hours of unused annual leave.
- A classified employee received a lump sum payment of \$12,554 for 302 hours. The employee's separation on September 29, 2006 was characterized as retirement and the subsequent appointment was listed as cancellation on September 30, 2006.

We urge agency heads to encourage personnel to take annual leave on a regular basis to prevent exceeding the 320 threshold, rather than perpetuate the practice of artificial resignation to avoid leave forfeiture. Consistent with DOA Personnel Rules and Regulations, supervisors share the responsibility of monitoring employees' annual leave and employees are expected to submit reasonable estimates for use of their leave during the current year for scheduling purposes.

22 Unclassified Employees Received \$136,413

Of the 51 employees who resigned artificially, 22 were unclassified employees who drew 24 lump sum payments totaling \$136,413 from seven agencies. Of this total, \$39,980 was issued to 10 employees despite having withdrawn their resignations. These employees worked for the executive administration and the Mayors' Council. However, we question these lump sum payments because they were *not* made after administration changes following the elections of 2002, 2004, 2006 and 2008. For example:

- A department head resigned from his position effective April 26, 2008, and cancelled the resignation effective April 26, 2008. Despite the cancellation, this employee received a lump sum payment of \$13,680 for 320 annual leave hours. On September 30, 2009, this employee again resigned from his position, only to be rehired on October 1, 2009 for the same position in the same department. The employee again received a lump sum payment of \$13,680 for 320 annual leave hours.

- Another department head resigned and cancelled the resignation effective April 26, 2008, but received the lump sum payment of \$13,680 for 320 annual leave hours.
- A deputy director resigned on September 30, 2009, only to be rehired in the same position and department, and received the lump sum payment of \$13,680 for 320 annual leave hours.

Prohibition of Partial Cash Out of Annual Leave Balance

In May 2001, the Civil Service Commission's (CSC) Administrative Counsel issued a legal opinion regarding the issue, stating *"the applicable law allows an employee to cash in a portion of his/her annual leave and to retain the balance of the annual leave when the employee transfers to another agency..."* In September 2004, the Attorney General's Office (AGO) issued a contrary opinion, stating *"4 G.C.A. § 4109(e) contain no language giving the employee the ability to determine how much of the leave he is to receive in cash and how much is to be transferred."*

Consistent with the AG's opinion, HR's practices has been to authorize either the transfer or cash out of the employee's entire accrued annual leave balance. We were unable to determine if there were any partial cash outs of annual leave from the data provided.

Increased Annual Earnings from Lump Sum Payments

According to the GovGuam Retirement Fund Director, annual leave lump sum payments are considered "non-base pay," along with overtime, hazard, night differential, etc. For those employees under the Defined Benefit (DB) plan who opted for the inclusion of "non-base pay", such payments are added to their annual earnings. The calculation of retirement annuity is based on the three highest annual earnings.

Conclusion

Prior to 1981, GovGuam employees could accumulate annual leave without forfeiture. P.L. 16-23 limited the accumulation of payable annual leave to 480 hours. P.L. 27-106, in October 2004, further reduced the number to 320 hours. Both laws allowed 100 excess hours to be credited to sick leave at the end of each fiscal year. Upon retirement or separation from government service, any excess leave would be lost.

Between October 1, 2002 and April 30, 2011, 37 agencies paid \$11.1M in annual leave lump sum payments to 2,699 employees. Of these, we questioned the 65 lump sum payments totaling \$302,280 issued to 51 employees who artificially resigned: 29 classified employees drew \$165,867 and 22 unclassified employees drew \$136,413. DOA HR loosely interprets “separation from government service” as a technicality and routinely processes requests for annual leave lump sum payments if all required signatures are in order. However, the 51 employees did not truly separate from government service.

Artificial resignation for drawing lump sum unused annual leave payments is a common practice throughout GovGuam. While not illegal, we believe the practice is unethical and we urge agency heads to encourage personnel to take annual leave on a regular basis rather than resort to resigning on paper to avoid forfeiting leave credit or exceeding the 320 threshold. Consistent with the DOA Personnel Rules and Regulations, supervisors should monitor employee annual leave accumulation and employees should submit reasonable estimates for use of their leave during the current year for scheduling purposes. The FY 2010 government-wide financial audit reported an annual leave liability of \$24.7M for line agency employees. By regularly using annual leave, employees may help reduce this liability.

Management Response & OPA Reply

A draft report was transmitted to the Department of Administration in October 2011 for their official response. A draft report was also provided to the Committee on Appropriations, Taxation, Banking, Insurance, Retirement, and Land Chairman in response to the audit request. We met with the Senator and DOA officials in October 2011, who generally concurred with our report.

The DOA Director provided a management response on October 27, 2011 in which there was general concurrence with the findings noted in our report. The response also provided some points of clarification, which were incorporated in the report as deemed appropriate. However, we disagree with DOA HR's position that the re-employment for classified employees is "non-competitive" pursuant to DOA's Personnel Rule 4.502 because the law specifies that former classified employees may be hired "at their former position if they apply for the same or comparable job in the same department." Refer to Appendix 7 for DOA's official management response.

We appreciate the cooperation and assistance shown by the Department of Administration Human Resources and Payroll divisions, and the Legislature.

OFFICE OF PUBLIC ACCOUNTABILITY



Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1:
Classification of Monetary Amounts

	Questioned Costs⁵
\$11.1 Million in Annul Leave Lump Sum Payments.....	\$ -
Top 10 Agencies that Issued Annual Leave Lump Sum Payments.....	\$ -
Lack of Payroll Management’s Monitoring Over Inputted Information...	\$ -
\$302,280 Paid To 51 Employees with Artificial Resignations.....	\$ -
\$523,351 Lump Sum Payments Due to Transfers Consistent with Law...	\$ -
\$181,400 Lump Sum Payments Due to Change in Administration	\$ -
Questionable Payments of \$302,280.....	\$ 302,280
Prohibition of Partial Cash Out of Annual Leave Balance.....	\$ -
Increased Annual Earnings from Lump Sum Payments.....	\$ -
	<u>TOTAL: \$ 302,280</u>

⁵ Payments determined to be improper based on available legal criteria.

Appendix 2:
Scope and Methodology

Our audit objective was to determine whether the lump sum payments of unused annual leave are in accordance with Guam laws. The scope of this engagement is from October 1, 2002 through April 30, 2011, and other periods deemed necessary. We did not review lump sum payments made to employees prior to their taking annual leave, as permitted in 4 G.C.A. § 4111 (Prepaid Annual Leave).

Our methodology included gaining an understanding of the policies, procedures, applicable laws and regulations pertaining to the lump sum payment of unused annual leave government-wide. We also interviewed pertinent officials from the Department of Administration's Human Resources and Payroll divisions and the Legislature.

Because HR's Personnel Management Information System (PMIS) is not currently linked with the AS400 Financial System, we matched the notification of personnel action for those employees who separated (resignation or termination) as provided by DOA HR with the listing of annual leave lump sum payments issued by DOA Payroll. This process enabled us to identify employees who separated from government service and were immediately reemployed due to transfers, change in administration and artificial resignations.

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 and perform the assessment to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. The evidence obtained provides a reasonable basis for our assessment and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

Appendix 3:
Prior Audit Coverage

In July 1997, the Department of the Interior Office of Inspector General issued Audit Report No. 97-I-1051, *Follow-up of Recommendations Concerning Personnel and Payroll Practices, Legislative Branch, Government of Guam*. The follow-up report found that the Guam Legislature had implemented only one of the 10 recommendations made in the OIG's February 1991 audit report, "*Personnel and Payroll Practices, Legislative Branch and Other Elected Officials, Government of Guam*" (No. 91-I-372). Findings noted included:

1. Senators continued to accrue annual leave despite the recommendation to cease this practice and senators were not charged leave when they were absent. For example, a senator in the 23rd Legislature was absent from his job for at least 70 consecutive workdays (560 hours), but was not charged any leave for that time period.
2. Legislative employees accrued annual leave at the maximum rate of eight hours per pay period regardless of their length of service, contrary to 4 G.C.A. § 4109(a), due to a modification on the accrual rate for senators and legislative employees through the Standing Rules.
3. Senators and legislative employees would be entitled to the lump-sum payment only if they were not reelected or otherwise employed by the government. This position was supported by a January 1989 memorandum issued by Guam's Attorney General, which stated that there was no separation from government employment if an official was reelected.

\$181,400 Lump Sum Payments Due to Change in Administration

Rank	Agency	# of Payments	Total Payments
1	BBMR	1	\$ 28,013
2	BSP	1	\$ 11,571
3	GOV	1	\$ 10,515
4	GOV	1	\$ 8,461
5	MCOG	1	\$ 7,088
6	MCOG	1	\$ 6,733
7	MCOG	2	\$ 6,445
8	MCOG	1	\$ 4,192
9	MCOG	1	\$ 4,192
10	MCOG	1	\$ 4,192
11	MCOG	1	\$ 4,192
12	MCOG	1	\$ 4,140
13	MCOG	1	\$ 3,459
14	MCOG	1	\$ 3,459
15	MCOG	1	\$ 3,222
16	MCOG	1	\$ 3,222
17	MCOG	1	\$ 3,222
18	MCOG	1	\$ 3,222
19	MCOG	1	\$ 3,222
20	MCOG	1	\$ 3,222
21	MCOG	1	\$ 3,222
22	MCOG	1	\$ 3,222
23	MCOG	1	\$ 3,222
24	MCOG	1	\$ 3,222
25	MCOG	1	\$ 3,222

\$181,400 Lump Sum Payments Due to Change in Administration

Rank	Agency	# of Payments	Total Payments
26	MCOG	1	\$ 3,222
27	MCOG	1	\$ 3,222
28	MCOG	1	\$ 3,222
29	MCOG	1	\$ 3,222
30	MCOG	1	\$ 3,182
31	MCOG	1	\$ 3,102
32	MCOG	1	\$ 3,061
33	MCOG	1	\$ 2,438
34	MCOG	1	\$ 1,859
35	MCOG	1	\$ 1,772
36	MCOG	1	\$ 1,646
37	MCOG	1	\$ 1,571
38	MCOG	1	\$ 1,370
39	MCOG	1	\$ 1,007
40	MCOG	1	\$ 865
41	MCOG	1	\$ 826
42	MCOG	1	\$ 778
43	MCOG	1	\$ 725
44	MCOG	1	\$ 604
45	MCOG	1	\$ 604
46	MCOG	1	\$ 519
47	MCOG	1	\$ 483
	<u>TOTAL:</u>	<u>48</u>	<u>\$ 181,400</u>

\$302,280 Lump Sum Payments with Artificial Resignations


	Agency	Employee Count	Classified Employees	Pymts. to Classified	Unclassified Employees	Pymts. to Unclassified	# of Payments	Total Amount
1	MCOG	14	10	\$ 72,288	4	\$ 13,963	26	\$ 86,251
2	DRT	5	3	\$ 20,960	2	\$ 41,040	6	\$ 62,000
3	GOV	12	0	\$ -	12	\$ 47,710	13	\$ 47,710
4	DOA	4	3	\$ 22,054	1	\$ 13,680	4	\$ 35,734
5	ATTY. GENERAL	3	3	\$ 17,102	0	\$ -	3	\$ 17,102
6	GEPA	2	2	\$ 12,426	0	\$ -	2	\$ 12,426
7	DPHSS	1	0	\$ -	1	\$ 11,042	1	\$ 11,042
8	DPW	2	2	\$ 0,880	0	\$ -	2	\$ 10,880
9	LT. GOV	1	0	\$ -	1	\$ 8,461	1	\$ 8,461
10	CSC	1	1	\$ 7,421	0	\$ -	1	\$ 7,421
11	DOC	1	1	\$ 971	0	\$ -	1	\$ 971
12	DMHSA	1	1	\$ 796	0	\$ -	1	\$ 796
13	DYA	2	1	\$ 160	1	\$ 517	2	\$ 677
14	BSP	1	1	\$ 593	0	\$ -	1	\$ 593
15	DOL	1	1	\$ 216	0	\$ -	1	\$ 216
	TOTAL:	<u>51</u>	<u>29</u>	<u>\$ 165,867</u>	<u>22</u>	<u>\$ 136,413</u>	<u>65</u>	<u>\$ 302,280</u>

\$302,280 Lump Sum Payments with Artificial Resignations

Rank	Agency	# of Payments	Total Payments
1	MCOG	6	\$ 29,548
2	DRT	2	\$ 27,360
3	GOV	2	\$ 17,786
4	MCOG	4	\$ 16,550
5	DRT	1	\$ 13,680
6	DOA	1	\$ 13,680
7	ATTY. GENERAL	1	\$ 12,554
8	DRT	1	\$ 11,626
9	DPHSS	1	\$ 11,042
10	DOA	1	\$ 9,974
11	LT. GOV	1	\$ 8,461
12	CSC	1	\$ 7,421
13	DPW	1	\$ 7,024
14	MCOG	4	\$ 6,809
15	DOA	1	\$ 6,784
16	GOV	1	\$ 6,493
17	GOV	1	\$ 6,446
18	GEPA	1	\$ 6,250
19	GEPA	1	\$ 6,176
20	DRT	1	\$ 5,917
21	GOV	1	\$ 5,732
22	DOA	1	\$ 5,296
23	MCOG	2	\$ 4,744
24	GOV	1	\$ 4,683
25	MCOG	1	\$ 4,413
26	MCOG	1	\$ 4,192
27	MCOG	1	\$ 4,192
28	ATTY. GENERAL	1	\$ 3,970
29	GOV	1	\$ 3,913
30	DPW	1	\$ 3,856

\$302,280 Lump Sum Payments with Artificial Resignations

Rank	Agency	# of Payments	Total Payments
31	MCOG	1	\$ 3,587
32	MCOG	1	\$ 3,498
33	DRT	1	\$ 3,418
34	MCOG	1	\$ 3,046
35	MCOG	1	\$ 1,991
36	MCOG	1	\$ 1,771
37	MCOG	1	\$ 1,036
38	DOC	1	\$ 971
39	MCOG	1	\$ 874
40	GOV	1	\$ 840
41	DMHSA	1	\$ 796
42	BSP	1	\$ 593
43	ATTY. GENERAL	1	\$ 579
44	DYA	1	\$ 517
45	GOV	1	\$ 485
46	GOV	1	\$ 336
47	GOV	1	\$ 336
48	GOV	1	\$ 336
49	GOV	1	\$ 324
50	DOL	1	\$ 216
51	DYA	1	\$ 160
	<u>TOTAL:</u>	<u>65</u>	<u>\$ 302,280</u>

Office of

LIHESLATURAN GUAM
HAGÁTÑA, GUAM
The People

Chairman
Committee on Appropriations,
Taxation, Banking, Insurance,
Retirement, and Land

Member
Committee on Education

Member
Committee on
Municipal Affairs,
Aviation, Housing, and
Recreation

Member
Committee on Labor, the
Public Structure,
Public Libraries, and
Technology

Mina'Trenta Na Liheslaturan Guåhan

Senator vicente (ben) c. pangelinan (D)

October 28, 2010

Doris Flores Brooks, Public Auditor
Office of Public Accountability
Suit 401 DNA Building
238 Archbishop Flores Street
Hagåtña, Guam 96910

RECEIVED OFFICE OF PUBLIC ACCOUNTABILITY DATE: <u>10/28/10</u> TIME: <u>12:45</u> BY: <u>mm</u>
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RE: Request for Performance Audit of Government of Guam Employees' Cashing Out of Unused Annual Leave

Håfa Adai Mrs. Brooks,

The Committee on Appropriations, Taxation, Banking, Insurance, Retirement, and Land (Committee) requests the Guam Office of Public Accountability (OPA) perform and provide the results of a performance audit of the Department of Administration (DOA) payroll records and personnel files. The results of the performance audit should identify those classified and unclassified employees who have resigned and have subsequently received payment of their unused annual leave as well as to report whether or not DOA's current practice of cashing out unused annual leave is allowed by Guam law.

The Committee requests the audit period reflect whether or not payment of unused annual leave through resignation is current practice in this administration or if it is a current practice by the government of Guam in general. If it is the former, the Committee requests that the audit period be for fiscal years 2003 to 2010. If it is the latter, the period requested is fiscal years 1995 to 2010. The Committee suggests for the OPA to determine the audit period and requests that the decision be reported to the Committee.

In addition, the Retirement Fund will report to the Committee with the following information:

1. All notices of employment separation from DOA between 2003 to 2010;
2. Name;
3. Date of birth;
4. Start date of employment;
5. Start date of Defined Benefits Plan;
6. Termination date of Defined Benefits Plan;
7. Start date of Defined Contribution Plan;
8. For each of the last 8 years, the individual's annual salary and any annual leave cash out; and
9. Projected annuity calculation if individual was to retire as of September 30, 2010.

324 W. Soledad Ave. Suite 100, Hagåtña, Guam 96910
Tel: (671) 473-(4BEN) 4236 - Fax: (671) 473-4238 - Email: senbenp@guam.net

Appendix 6:
Senator's Audit Request Letter

Page 2 of 2

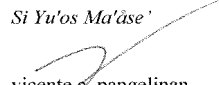
Letter to Doris Flores Brooks

Page 2

The Committee expects to receive this report from the Retirement Fund no later than November 19, 2010 and will forward the information to you for your review to expedite the audit process.

It is important for the administering of government of Guam employees' annual leave to be administered based on existing law. With recent, less than transparent reporting of the lump sum cash payouts of annual leave, it is imperative that such issues be clarified. We hope to receive your findings by November 30, 2010 in order for the Legislature to consider this matter during the current term and before the next administration takes office.

Si Yu'os Ma'åse'


vicente c. pangelinan
Senator

Enclosures: October 28, 2010 letter to Government of Guam Retirement Fund
 June 7, 2010 letter to DOA
 June 24, 2010 letter from DOA
 October 25 Pacific Daily News article



Eddie Baza Calvo
Governor
Ray Tenorio
Lieutenant Governor

GOVERNMENT OF GUÅHAN
(GUBETNAMENTON GUÅHAN)
DEPARTMENT OF ADMINISTRATION
(DIPATTAMENTON ATMENESTRASION)

DIRECTOR'S OFFICE
(Ufisinan Direktot)
Post Office Box 884 * Hagåtña, Guam 96932
TEL: (671) 475-1101/1250 * FAX: (671) 477-6788



Benita A. Manglona
Director
George A. Santos
Deputy Director

OCT 27 2011

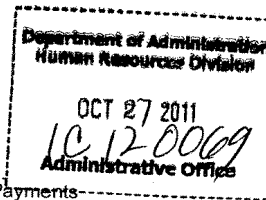
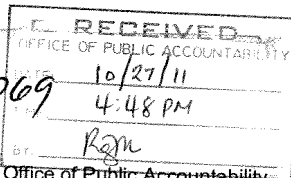
HRD NO.: 06-12-0069

MEMORANDUM

To: Public Auditor, Office of Public Accountability

From: Director, Department of Administration

Subject: Government of Guam Annual Leave Lump Sum Payments
RE: Performance Audit



Buenas yan Háfa Adai! I would like to thank you for the opportunity to provide a response to the findings of your performance audit conducted on the above subject matter. Herein, I have provided feedback based on our department's experience with personnel actions being administered in this manner. Overall, I agree with the facts you have presented and the occurrence of the withdrawal of annual leave in lump sum payments upon the execution of resignation actions; and subsequent cancelation of those actions or reemployment to the position previously held by the incumbent. I understand that the discretion for authorizing such actions lie with each department and agency head. As a matter of policy, I do not practice this within the Department of Administration. There are a few statements and some clarification that I wish to offer after receiving feedback from the divisions involved with this performance audit. They are as follows:

Payroll Branch (DOA Chief Payroll Officer):

DOA Chief Payroll Officer's response to Page 9 of the OPA Performance Audit, Annual Leave Lump Sum Payments:

Annual Leave Lump Sum payments are subject for audit by the Payroll Supervisor before it is processed. After audit, the Payroll Supervisor certifies the final Annual Leave Balance to be paid and is handed back to the Payroll Technician to be keyed in the AS400 Payroll System for processing. A Labor cost distribution report is generated after each payroll process. This report is provided to agency administrative Officers to monitor their labor expenditures. DOA Payroll concurs that there is a need to generate a separate report listing for Annual Leave Lump Sum Payments not limited to the Chief Payroll Officer and Payroll Supervisor to review but also for Agency Certifying Officers.

With regards to pay code misclassifications, DOA payroll admits that there is a small window of clerical error that exists. However, steps are being taken to correct and close this window by strengthening security input controls for Payroll technicians. All Special Payment requests are now subject to DOA Appointing Authority's Approval, Chief Payroll Officer and Payroll Supervisor's clearance before it is forwarded to the Payroll technician for processing.

HRD NO. OG-11-
Government of Guam Annual Leave Lump Sum Payments
Re: Performance Audit

Human Resources Division:

The Human Resources Division would like to offer additional statements to your findings and some clarification of points presented in your findings. They are as follows:

- In our experience working directly with the line departments and their employees reasons for “artificial resignations” don’t stem from the risk of forfeiting leave, but typically to withdraw retirement benefits for any of the following reasons (not a comprehensive list):
 - Medical expenses
 - Payment of creditors
 - College Tuition
 - Property Foreclosures
- Page 10, under the heading *\$181,400 Lump Sum Payments Due to Change in Administration*, we would like to clarify that the practice of going in and out of government service is **not necessarily common** in the government of Guam, but more so with unclassified employees.
- The HRD would also like to clarify the interpretation of 4 GCA §2108 in relation to Rule 4.502. The action of being “re-employed” in the government pursuant to Rule 4.502 is actually a “non-competitive” action. We believe your interpretation of the law without looking at Rule 4.502 is misleading and that a department does not have to announce for a position that is being filled by a “re-employment” of a former employee to a position they previously held. Our office does not see this as a “scheme” to sidestep the merit process. This rule has been used in other instances in a similar fashion without question as to its application; and done so in compliance with all applicable laws, rules, and regulations.
- Page 13 under *Increased Annual Earnings from Lump Sum Payments*. Please note that the non-base inclusion option is no longer available to employees. This was discontinued some time between May 1992 and July 1993. Also, any separation where an employee withdraws their retirement contribution and subsequently is reemployed, the employee must be covered under the new Defined Contribution (DC) plan. Although this practice can enhance an employee’s annuity, it would only apply to those employees who elected non-base inclusion of which the number of employees is minimal.

In conclusion, I thank the Office of Public Accountability for working closely with our department. We have no major disagreements with the facts that are presented in this report. The assumptions that have been drawn seem fair with the exception of a few statements which we have offered clarifying statements for. Dângkolo na Agradesimiento!


BENITA A. MANGLONA

