

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA, & NORTHERN ISLANDS



COMMONWEALTH REGISTER
VOLUME 27
NUMBER 09

October 24, 2005

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Juan N. Babauta **DECLARATION OF A STATE OF DISASTER EMERGENCY:**
Governor

COMMONWEALTH UTILITIES CORPORATION

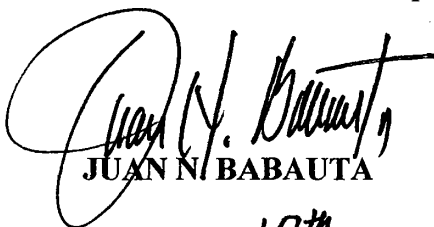
Diego T. Benavente **LACK OF POWER SEPTEMBER 2005.**
Lieutenant Governor

I, JUAN N. BABAUTA, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Natural Disaster Relief Act of 1979, do declare a continued State of Emergency for the Commonwealth of the Northern Mariana Islands (CNMI), with respect to the Commonwealth Utilities Corporation (CUC) and its inability to provide power generation service to the CNMI.

This Declaration of a State of Disaster Emergency is made after finding that the recommendations and justifications that existed for the Declaration of a State of Disaster Emergency on September 16, 2005 remain in existence and that emergency measures must remain in place in order to insure the safety of the people of the CNMI. Although Engine Number 8 is now online and in full operation after undergoing emergency replacement of its foundation bolts, Engine Numbers 3 and 4 at Power Plant I remain offline and are undergoing emergency repairs. See Power Generation Status Report dated October 16, 2005 (Attached). As such, I find that the threat or danger to the CNMI caused by the lack of 'back-up' or reserve power generation capacity, the continued need to initiate critical maintenance and repair of power generation facilities; and the uncertain financial condition of CUC and its ability to make all required fuel payments due to increased fuel costs, mandate the issuance of this State of Disaster Emergency Declaration.

I further find that this Declaration is necessary to insure the continued provision of power to critical CNMI public health and public safety facilities, the continued provision of electricity to our schools, homes, and work places, and the continued operation of our water and wastewater systems. This Declaration is to protect the health and safety of our children, our senior citizens, businesses, and all other CNMI residents and visitors.

The Declaration of State of Disaster Emergency dated May 19, 2005, the Renewal of the Declaration of State of Disaster Emergency dated June 19, 2005, the Declaration of State of Disaster Emergency dated July 18, 2005, the Declaration of State of Disaster Emergency dated August 17, 2005, the Declaration of State of Disaster Emergency dated September 16, 2005 and all memoranda, directives and other measures taken in accordance with such Declarations, therefore, shall remain in effect for an additional thirty (30) days unless I, prior to the end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of emergency has been lifted or has been extended for an additional period of thirty (30) days. A comprehensive report on the exercise of my authority during the State of Disaster Emergency will be transmitted to the presiding officers of the Legislature as soon as practicable.


JUAN N. BABAUTA

Dated this 17th Day of October 2005.



**GENERATION STATUS
AS OF OCTOBER 17, 2005**

Power Plant	Design MW	Available MW	Restriction %	Sched. Run hours for PMI	Run hours to-date	Overdue hours	Remarks
PP I							
D/E 1	7.27	6.5	89.4	36000	60,727	24,727	Operational
D/E 2	7.27	6.5	89.4	8,000	8,679	679	Operational
D/E 3	7.27	0.0	0.0	12000	20,701	8,701	Down due to crankpin seizure (8/1/05)
D/E 4	7.27	0.0	0.0	36000	44,690	8,690	Down due to crankpin seizure (7/16/05)
D/E 5	13.04	10.0	76.7	12000	26,933	14,933	Operational
D/E 6	13.04	10.0	76.7	4000	6,692	2,692	Operational
D/E 7	13.04	10.0	76.7	12000	26,888	14,888	Operational
D/E 8	13.04	10.0	76.7	2000	856		Operational
Total	81.24	53					
PP II							
D/E 1	2.5	1.6	64.0				Operational
D/E 2	2.5	0.0	0.0				Under Rehabilitation/waiting for parts
D/E 3	2.5	0.0	0.0				Under Rehabilitation/waiting for parts
D/E 4	2.5	0.0	0.0				For test run / defective Radiator
D/E 5	2.5	1.6	64.0				Operational
D/E 6	2.5	0.0	0.0				Governor problem (elect'l limit switch)
Total	15.0	3.2					
PP III							
D/E 1	1.5	0.0	0.0				Not operational
D/E 2	1.5	0.0	0.0				Not operational
D/E 3	1.5	0.0	0.0				Not operational
Total	4.5	0					
PP IV							
D/E 1	3.50	0.00	0.0				Down / Crankshaft problem
D/E 2	2.50	2.00	80.0				Operational
D/E 3	2.50	2.00	80.0				Operational
D/E 4	2.50	1.90	76.0				Operational
D/E 5	2.50	2.00	80.0				Operational
D/E 6	1.00	0.90	90.0				Operational
D/E 7	1.00	0.90	90.0				Operational
D/E 8	1.00	0.90	90.0				Operational
D/E 9	1.00	0.90	90.0				Operational
Total	17.50	11.50					
Grand Total	118.24	67.70					

Remarks:

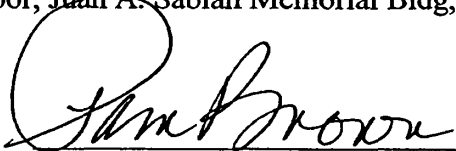
PUBLIC NOTICE OF EMERGENCY REGULATIONS AND NOTICE OF INTENT TO ADOPT RULES AND REGULATIONS REGARDING HUMANITARIAN AID FOR ABANDONED, UNEMPLOYED ALIENS

EMERGENCY: The Commonwealth of the Northern Mariana Islands, Office of the Attorney General (AGO) finds that under 1 CMC § 9104(b), the public interest requires the passage of regulations to implement a program to provide emergency short-term humanitarian aid to abandoned, unemployed alien workers. These regulations are promulgated as a necessary component of the administration of funds given to the Commonwealth by the United States Department of the Interior for Labor and Immigration Reform. The AGO further finds that the public interest mandates adoption of these regulations upon fewer than thirty (30) days notice, and that these regulations shall become effective immediately after filing with the Commonwealth Register subject to the concurrence of the Governor, and shall remain effective for 120 days.

REASONS FOR EMERGENCY: The United States Department of the Interior has granted the Commonwealth Office of the Attorney General funds for the purpose of providing humanitarian aid to abandoned alien workers. Effective October 1, 2005 Karidat, Social Service, an agency that has been providing emergency relief to abandoned workers, will no longer be administering that program. Therefore, it is necessary to immediately adopt these regulations to eliminate a lapse in providing short-term emergency assistance to persons in crisis due to abandonment and who are unable to provide adequate food or shelter for themselves.

INTENT TO ADOPT: It is the intent of the Attorney General to adopt these emergency regulations pursuant to 1 CMC § 9104(a)(1) and (2). Accordingly, interested persons may submit written comments on these emergency recommendations to Pamela Brown, Attorney General, or Kevin A. Lynch, Assistant Attorney General, Office of the Attorney General, Second Floor, Juan A. Sablan Memorial Bldg, Capitol Hill, Saipan MP 96950.

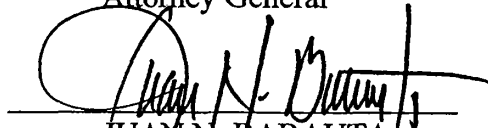
Submitted by:



PAMELA BROWN
Attorney General

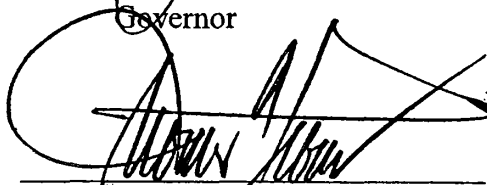
9/9/05
Date

Concurred by:


JUAN N. BABAUTA
Governor

9/9/05
Date

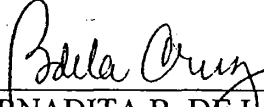
Received by:



THOMAS A. TEBUTEB
Special Assistant for Administration

9/12/05
Date

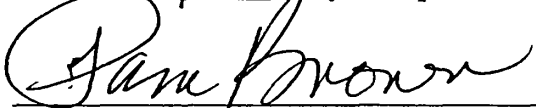
Filed and
Recorded by:


BERNADITA B. DE LA CRUZ
Commonwealth Register

9/12/05
Date

Pursuant to 1 CMC §2153, as amended by Public Law 10-50, the emergency rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this 9th day of September 2005


PAMELA BROWN
Attorney General

PUBLIC NOTICE

PROPOSED EMERGENCY REGULATIONS REGARDING HUMANITARIAN AID FOR ABANDONED, UNEMPLOYED ALIENS

This amendment is promulgated in accordance with the Administrative Procedure Act, 1 CMC § 9101, et seq. The Office of the Attorney General is adopting rules and regulations governing the provision of short-term humanitarian aid to abandoned alien workers.

Citation of

Statutory Authority:

The Office of Attorney General is authorized to promulgate regulations to implement the Nonresident Workers Relief Act, 3 CMC § 4701 *et seq.* by 3 CMC § 4702 and the transfer of Immigration-related matters to the Attorney General by Executive Order 03-01.

Short Statement of

Goals and Objectives:

These emergency regulations govern how, and to whom, short-term emergency financial assistance may be provided from funds received from the United States Department of the Interior for that purpose, and from other sources.

**Brief Summary of the
Proposed Regulations:**

These emergency regulations are promulgated to:

- (1) Give the Attorney General responsibility for administration of funds given to that office by the United States Department of the Interior for the purpose of providing financial assistance to abandoned, unemployed alien workers.
- (2) Establish criteria for eligibility for relief.
- (3) Establish the amount and length of time for which relief is available, and conditions that may accompany the granting of relief.

For Further

Information Contact:

Kevin A. Lynch, Assistant Attorney General, Office of the Attorney General, Second Floor, Juan A. Sablan Memorial Building, Capitol Hill, Saipan, MP 96950. (670) 664-2341(voice) or (670) 664-2349 (fax).

**Citation of Related
and/or Affected Statutes,
Rules and Regulations:**

None

Dated this 14 day of September 2005.

Submitted by:



PAMELA BROWN
Attorney General

HUMANITARIAN AID FOR ABANDONED, UNEMPLOYED ALIENS

I. These Regulations establish and govern the provision of short-term humanitarian aid to alien workers who have been abandoned by their employers and who have been unable to secure new temporary or permanent employment. Exclusive jurisdiction over this program is vested in the Attorney General or her or his designee. The Department of Labor shall work cooperatively with the Attorney General to provide information identifying eligible aliens and their employment status and in facilitating implementation of the program.

II. Definitions:

- a. *Abandoned*: A person is considered abandoned if her or his employer has left the jurisdiction or ceased business operations and any of the following circumstances exist;
 1. without fully compensating the worker(s) in full for all hours worked, or
 2. without following the procedures to be followed under the Alien Labor Rules and Regulations and employment contract for termination of employees due to reduction in force or cessation of business activity, and worker repatriation, or
 3. without providing to the worker (s) one-way airfare to the point of hire, or
 4. if the employer provided food and/or housing, without providing for adequate food and shelter for the worker(s) for a reasonable period of time following cessation of the business activity.
- b. *Alien worker*: A person whose most recent entry into the Commonwealth was for purposes of employment under Immigration Regulation 706 (K), or any person who falls within the definition of "Nonresident Worker" as defined in the Nonresident Workers Act, 3 CMC § 4412(i).
- c. *Humanitarian Aid*: Short-term assistance provided to an alien worker for food, other necessities, and shelter.
- d. *Voucher*: A monetary instrument issued by the Office of the Attorney General Humanitarian Aid Fund, not to exceed a sum certain, that identifies the person in whose favor the voucher is issued, that may be used for the purchase of food, other necessities, or housing. Vouchers are non-transferable and shall expire 30 days from their date of issuance. Vouchers may not be redeemed for cash or used for purchase of items other than food, other necessities, or housing.

III. The Fund:

There is a Fund administered by the Office of the Attorney General for the purpose of providing short-term humanitarian aid to abandoned alien workers. Expenditures from the Fund shall be made on a first-come-first served basis. The money in the fund shall come from sources identified by the Attorney General and shall not be

subject to reappropriation. Disbursements may be made by voucher redeemable at a specified location or locations, or may be made by cash or check.

IV. Eligibility determination:

Eligibility for humanitarian aid is based on need. The alien worker must show by proof acceptable to the Attorney General their status and eligibility for humanitarian aid. The Attorney General may perform such additional investigation into the worker's circumstances as is necessary to verify the status and request, and may ask the worker to provide such documents as may be necessary to a fair determination of eligibility. The Attorney General may require proof that the worker has actively been seeking work but has been unable to become employed.

V. Amount and conditions of grant:

The Attorney General may grant a worker not to exceed an aggregate total of \$200.00 for food, necessities, and housing allowance. The Attorney General may condition receipt of the aid upon the worker's promise to reimburse the Fund for moneys received in the event the worker becomes reemployed, or upon the worker's assignment of rights to an administrative or judicial award up to the amount of the humanitarian aid provided to the worker. Any such repayments shall be without interest.

Humanitarian aid is available only for emergency assistance.

The Attorney General may provide actual meals and/or lodging instead of a disbursement to the worker from the fund if warranted by the circumstances.

VI. Termination of Eligibility:

Humanitarian aid is available only one time, and only for a 30-day period from the first award. An application for aid is not subject to renewal.

VII. Other Eligible Persons:

The Attorney General may designate other persons eligible for humanitarian aid because of circumstances occurring outside the labor laws, such as foreign students abandoned by their sponsors, or other unusual circumstances as may from time to time arise. While the humanitarian aid program is intended primarily for short-term emergency assistance to alien workers, nothing shall prohibit the Attorney General from designating other persons or groups of persons as eligible for assistance based on need.

VIII. Miscellaneous:

1. Humanitarian aid may be denied to a person making a false statement or representation in connection with an original application or renewal application for humanitarian aid.
2. A person receiving similar assistance from another provider is not eligible for aid from the Office of the Attorney General.
3. A worker must attempt to become lawfully employed and thereby eliminate their need for aid.
4. Humanitarian aid may be denied to a person who, after receiving aid, uses the funds provided for purposes other than food and necessities and shelter.

**NOTISIAN PUBLIKU POT ENSIGIDAS NA REGULASION SIHA
YAN NOTISIAN INTENSION PARA U MA'ADOPTA I
AREKLAMENTO YAN REGULASION SIHA NI TINETEKI I
ASISTIMENTON UMANIDÁT PARA I MAN MA'ABADONA YAN
TI MAN MA'EMPLEA NA ESTRANGHERU SIHA**

ENSIGIDAS: I Commonwealth I Sankattan Siha Na Islas Marianas, gi Ofisinan I Abugâdu Henerât (AGO) masodda' na gi papa I lai 1 CMC Seksiona 9104 (b), I interes publiku marekomenda na I pãsan I regulasion siha para u establesi I progrãma pot para u probeniyi ensigidas asistimenton umanidât kada'da' na tiempo para I man ma'abandona yan ti man ma'emplea na hotnalerun estrangheru siha. Este na regulasion siha man ma'establesi tat kumo nisisãrio na pãtte gi fondun I atministrasion ni ma'entrega I Commonwealth ginen I United States Department of Interior para I Labor yan Immigration Reform. I Ofisinan I Abugâdu Henerât masodda mãs na I interes publiku ma'otden I inadoptasion este na regulasion siha menos di trenta (30) diha siha na notisia, ya este na regulasion siha debi di efektibu ensigidas des pues di mapolu gi Rehistran I Commonwealth sigun an makonfotma ni Gubietno, ya debi di u efektitibu para sientu bente (120) diha siha.

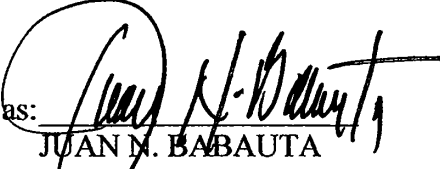
RASON PARA ENSIGIDAS: I United States Department of Interior a entrega I Ofisinan I Abugâdu Henerât gi Commonwealth fondu siha pot rason para u probeniyi asistimenton umanidât para I man ma'abandona yan ti man ma'emplea na hotnalerun estrangheru siha. I Ahensian Karidât un Setbisiun Sosiât a probeninyi ensigidas na asistimento para I man ma'abandona na emplião siempre ti a atministrerea eyu na progrãma efektibu Oktubre 1, 2005. Enao na, nisisãrio para u ma'adopta este na regulasion siha para u laknos I lapse a maprobeniyi ensigidas asistimenton umanidât kada'da' na tiempo para I petsona ni man gai pridikamento pot rason na man ma'abandona ya ti siña maprobeniyi siha namaisa nengkano' yan liheng.

INTENSION PARA U MA'ADOPTA: I intension I Abugâdu Henerât para u adopta este ensigidas na regulasion sigun I lai 1 CMC Seksiona 9104 (a)(1) yan (2). Des pues na an hãyi enteresao na petsona siña munahalom tinige' opinion pot este I ensigads na rekomendasion siha para as Pamela Brown, I Abugâdu Henerât, osino si Kevin Lynch, I Ayudãnten I Abugâdu Henerât, gi Ofisinan I Abugâdu Henerât, gi mina segundu na bibienda, gi as Juan A. Sablan Memorial Building, gi Capitol Hill, giya Saipan MP 96950.

Ninahalom as: _____
PAMELA BROWN
Abugâdu Henerât

Fecha

Kininfotme as:


JUAN N. BABAUTA
Gubietno

10/17/05
Fecha

Marisibe' as:



THOMAS A. TEBUTEB

Espesiât Na Ayudânte Para I Atministrasion

10/17/05
Fecha

Pinelo' yan

Marikot as:


BERNADITA B. DELA CRUZ
Rehistran I Commonwealth

10/17/05
Fecha

Sigun I lai 1 CMC Seksiona 2153, ni inamenda ni Lai Publiku 10-50, I ensigidas na regulasion siha ni man che'che'ton man ma'ina yan ma'aprueba pot para u fotma yan ligât suficiente ni Abugâdu Henerât I CNMI.

Mafecha este gi mina _____ na ha'âne gi Septiembre 2005.

PAMELA BROWN
Abugâdu Henerât

PUBLIKU HENERÁT

MAN MAPROPONE I ENSIGIDAS NA REGULASION SIHA NI TINETEK A I ASISTIMENTON UMANIDÁT PARA I MAN MA'ABADONA YAN TI MAN MA'EMPLEA NA ESTRANGHERU SIHA

Este na amendasion ma'establesi ya kinisiste ni I Administrative Procedures Act, I lai I CMC Seksiona 9101, et. seq. I Ofisinan I Abugádu Henerát a adadopta I areklamento yan regulasion siha ni ginibebietna I probensyon I asistimenton umanidát kada'da' na tiempo para I man ma'abandona yan ti man ma'emplea na hotnalerun estrangheru siha.

Annok I Aturidát

I Lai:

I Ofisinan I Abugádu Henerát ma'aturisa para u estblesi I regulasion siha para u enfuetsa I Nonresident Workers Relief Act, 3 CMC Seksiona 4701 et. seq. ginen 3 CMC Seksiona 4702 yan I man matransferi I asunton Immigrasion siha para I Abugádu Henerát ni Executive Order 03-01.

Kada'da' Na Mensáhe

Pot I Finiho yan

Diniseha Siha:

Este I Ensigidas na regulasion siha a gubietna háfa taimanu, yan háyi siña u probeniyi ni asistimenton salápe para kada'da' na tiempo ginen I fundo ni marisibe' ni United States Department of the Interior pot eyu na rason, yan ginen palu na sources.

Kad'da' Na Mensáhe

Pot I Man Mapropone

Na Regulasion siha: Este I Ensigidas Na Regulasion siha man ma'establesi para:

- (1) Para u ná'i' I Abugádu Henerát responsablidát ni I fundon atministrasion ni ma'entrega eyu na ofisina ginen I United States Department of the Interior pot rason na u probeniyi asistimenton salápe' para I man ma'abandona yan ti man ma'emplea na hotnalerun estrangheru siha.
- (2) Establesi criteria para I kuálifikasion para I asistimento.
- (3) Establesi I tutát yan tiempo para I man guaha na asistimento, yan kondision siha anai siha ma'aprueba I asistimento.

Para Mås Infotmasion

Ágang:

Si Kevin A. Lynch, Ayudánten I Abugádu Henerát, gi Ofisinan I Abugádu Henerát, gi Segundo na bibienda, gi Memorial Building Juan A. Sablan, gi Capitol Hill, giya Saipan, MP 96950. (670) 664-2341 (bos) osino (670) 664-2345 (fax)

**Annok I Man Achule'
Yan/pat Inafekta na
Lai, Areklamento yan
Regulasion siha: Tâya**

Mafecha este gi mina _____ na ha'âne gi Septiembre 2005

Ninahalom as:

PAMELA BROWN
Abugâdu Henerât

**ARONGOL TOULAP REEL ALLÉGHÚL GHITIPWOTCH KKA EBWE FILLÓ
REEL ALILLISHIR SCHÓÓL LÚGHÚL KKA RAA LIGHITAARELÓ ME RESE
SCHIWEL ANGAANG LO.**

GHITIPWOTCHOL: Bwulasiyool Sów Bwungúl Allégh (AGO) mellól Commonwealth Téél falúwasch Marianas e schungi bwe sáangi 1 CMC Tálil 9104(b), bwe llól tipeer toulap bwe rebwe ayoorá allégh kka ebwe ghitipwotchuw alillsil humanitarian aid ngáliir aramasal lúghúl kka raa lighitaareló nge rese schiwel angaang lo. Allégh kka re atéew nge e welepakk ngáli salaapial administrative iye e mwete ngáli Commonwealth sáangi United State Uniteds Department llól Interior ngáli Labor me Immigration Reform. Sów Bwungúl Allégh Lapalap (AGO) ebwal schungi bwe tipeer toulap bwe rebwe alléghúw fillóól Allégh kkaal iye essóbw luuló eliigh (30) ráálil yaal arongowow, me allégh kkaal nge rebwe ghitipwotchuw mwiril schagh yaar akkaté mellól Commonwealth Register kkapasal igha ebwe aléghéléghéló mereel Sów Lemelem, me ebwe fis ótol ebwughúw ruweigh (120) ráálil.

AWEWEEL GHITIPWOTCHOL: Depattamentool Interior mellól Commonwealth, e ngáalleer Commonwealth Bwulasiyool Sów Bwungúl Allégh Lapalap salaapi bwulul igha ebwe ayoorá humanitarian aid ngáliir schóókka aramasal lúghúl kka rese kke angaang lo. Sangi ótol Sarobwel 1, 2005 Karidat, Social Service, me Depattamento ye ekke atotoowow alillis ngáliir aramas kka rese angaang re ssóbw mwóghutáágheli progróoma yeel. Iwe, e ghi welepakk bwe rebwe fillóóy allégh kkaal bwelle igha rebwe atowowu laps kkaal reel sort-term emergency assistance ngáliir aramas kka re weires bwelle rese kke angaang me schóóka re weires reel mwungo me ngáre imweer.

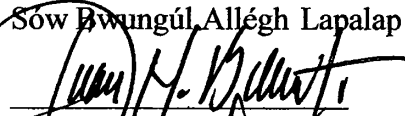
AGHIYEGHIL FILLÓÓL: Aghiyeghil Sów Bwungúl Allégh nge ebwe fillóóy alleghul ghitipwotcho kkaal bwelle 1 CMC Tálil 9104(a)(1) me (2). Schéeschéél, schóókka eyoor mángemángiir nge emmwel rebwe ischilong reel Pamela Brown, Sów Bwungúl Allégh Lapalap, me ngáre Kevin A. Lynch, Sów Alillsil Sów Bwungúl Allégh, aruwowal pwó, Juan A. Sablan Memorial Bldg, Capitol Hill, Seipel MP 96950.

Isaliyallong:

PAMELA BROWN
Sów Bwungúl Allégh Lapalap

Rál

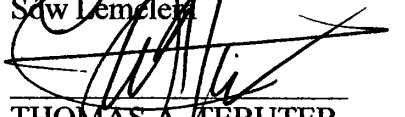
Alúghúlúgh:


JUAN N. BABUATA
Sów Lemelem

10/17/05

Rál

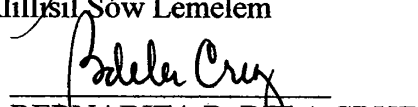
Mwir sáangi:


THOMAS A. TEBUTEB
Sów Alillisil Sów Lemelem

10/12/05

Rál

Ammwel sáangi:


BERNADITA B. DELA CRUZ
Commonwealth Register

10/12/05

Rál

Sáangi allégh ye 1 CMC Talil 2153, iye aa lliwel mereel Alléghúl Toulap 10-50,
ghitipwotchol allégh kkaal ikka e appasch nge raa takkal amweri allégheló mereel CNMI
Sów Bwungúl Allégh Lapalap.

Rállil ye _____ Ilól Maan 2005

PAMELA BROWN
Sów Bwungúl Allégh Lapalap

ARONGOL TOULAP
POWMOL ALLÉGHÚL GHITIPWOTCH KKAAL BWELLE ALILLISIIR
SCHÓÓY LUGHUL KKA RE LIGHITAARELO ME RESE SCHIWEL
ANGAANG LO

Lliwel yeel nge e akkaté bwelle reel Administrative Procedure Act, 1 CMC Tálil 9101, et seq. Bwulasiyool Sów Bwungúl Allégh Lapalap nge ebwe fillóóy allégh kkaal me ebwe lemelem alléghúl short-term humanitarin aid ngáliir schóóy angaang kka rese afalliir.

Akkatéél bwángil: Bwulasiyool Sów Bwungúl Allégh nge eyoor bwángil ebwe atééw allégh kkaal reel ebwe ayoora Nonresident Workers Relief Act, 3 CMC Tálil 4701 et seq. sáangi 3 CMC Tálil 4702 me alusul mwóghútúl Immigration ngáliir Sów Bwungúl Allégh Lapalap bwelle Akkááw Sów Lemelem 03-01.

Aweweel pomwol liiwel: Ghitipwotchol allégh kkaal nge ebwe apayu mwóghutul, me ngáli iyo reel short-term emergency financial assistance ye rebwe ngálleey salaapi mereel United State Depattamentool Interior bwelle reel yaar angaang me akkááw mwóghút.

Aweweel pomwol allégh: Ghitipwotchol allégh kkaal nge e akkaté ngáli:

- (1) Ngálleey Sów Bwungúl Allégh bwángil reel ebwe mwóghút ágheli fundo ye ebwe ngálleey Bwulasiyo iye e tooto mereel United States Department mellól Interior bwelle rebwe ayoora alillisil salaapi ngáliir schóókka rese afáliir, aramas kka schóókka rese kke angaang.
- (2) Ayoora criteria reel eligibility for relief.
- (3) Ayoora llapal me ótol reel tepeng ye rebwe ayoora, me kkapasal ye ebwe tabweey alillisil salaapi yeel.

Reel ammataf faingi:

Kevin A. Lynch, Sów Alillisil Sów Lemelem,
Bwulasiyool Sów Bwungúl Allégh, Aruwowal pwó,
Juan A. Sablan MP 96950. (670) 664-2341(voice)
me ngáre (670) 664-2349 (fax).

Akkatéél bwángil akkááw allégh: Esóór

Rállil ye _____ llól Maan 2005

Isaliyallong:

PAMELA BROWN
Sów Bwungúl Allégh Lapalap

**PUBLIC NOTICE OF EMERGENCY REGULATIONS AND NOTICE OF
INTENT TO ADOPT AMENDMENTS TO THE ALIEN LABOR
RULES AND REGULATIONS SECTION II and THE BUSINESS LICENSE
REGULATIONS.**

EMERGENCY: The Commonwealth of the Northern Mariana Islands, Department of Finance (DOF), Department of Labor (DOL) and Office of the Attorney General (AGO), find that under 1 CMC § 9104(b), the public interest requires the passage of regulations to allow, under certain circumstances, the transfer of business licenses within the garment industry. These regulations are promulgated pursuant to the authority given DOF and DOL under P.L. 14-82. DOF, DOL and AGO further find that the public interest mandates adoption of these regulations upon fewer than thirty (30) days notice, and that these regulations shall become effective immediately after filing with the Registrar of Corporations, subject to the approval of the Attorney General and the concurrence of the Governor, and shall remain effective for 120 days.

REASONS FOR EMERGENCY: On August 2, 2005, P.L. 14-82, which amends 4 CMC § 5611(c) to allow transfer of a business license within the garment industry under certain conditions, was enacted. The Legislature directed DOF and DOL to immediately promulgate emergency regulations to implement the Act. DOF, DOL and AGO find that the adoption of these regulations upon fewer than thirty (30) days notice is necessary because the authorizing Public Law directs that the regulations be promulgated on an emergency basis, and because DOF, DOL and AGO have determined that the existing prohibition on the transfer of business licenses within the garment industry is unnecessarily preventing expansion at a time when many other challenges threaten the survival of the industry. Accordingly, the DOF, DOL and AGO find that it is in the interest of the public to approve and adopt these regulations immediately.

INTENT TO ADOPT: It is the intent of the Office of Attorney General to adopt these emergency regulations, which will be added to the Alien Labor Rules and Regulations, Section II, as permanent, pursuant to 1CMC § 9104(a)(1) and (2). These provisions of these rules that deal with business licensing issues will also be added to the Business Licensing Regulations of the CNMI Department of Finance. Accordingly, interested persons may submit written comments on these emergency recommendations to Pamela Brown, Attorney General, Office of the Attorney General, Second Floor, Juan A. Sablan Memorial Bldg, Capitol Hill, Saipan MP 96950 or by fax to (670) 664-2349, or to Dr. Joaquin A. Tenorio, Secretary of Labor, Department of Labor, Afetnas Square Building, San Antonio, Saipan, MP 96950 or by fax to (670) 236-0990.

Submitted by:

Clyde Lemon

CLYDE LEMON
Acting Attorney General

10/7/05

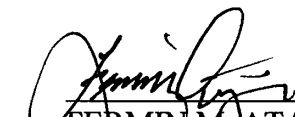
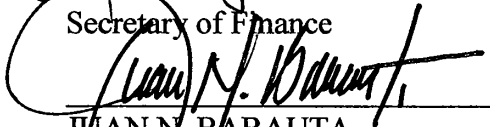
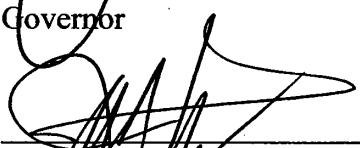
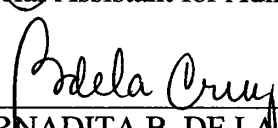
Date

Joaquin A. Tenorio

DR. JOAQUIN A. TENORIO
Secretary of Labor


10/07/05

Date

	 _____ FERMIN M. ATALIG Secretary of Finance	<u>10/12/05</u> Date
Concurred by:	 _____ JUAN N. BABAUTA Governor	<u>10/17/05</u> Date
Received by:	 _____ THOMAS A. DEBUTEB Special Assistant for Administration	<u>10/14/05</u> Date
Filed and Recorded by:	 _____ BERNADITA B. DE LA CRUZ Commonwealth Register	<u>10/17/05</u> Date

Pursuant to 1CMC §2153, as amended by Public Law 10-50, the emergency rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this 18th day of October, 2005.



CLYDE LEMONS
~~Acting~~ Attorney General

02

**PUBLIC NOTICE
EMERGENCY AMENDMENTS TO THE ALIEN LABOR
RULES AND REGULATIONS SECTION II
AND THE BUSINESS LICENSE REGULATIONS.**

This amendment is promulgated in accordance with the Administrative Procedure Act, 1 CMC § 9101, et seq. The Department of Labor, Department of Finance and Office of the Attorney General are amending the Alien Labor Rules and Regulations Section II that were published in the Commonwealth Register, Vol. 26, No. 06, June 24, 2004, and adopted in the Commonwealth Register, Vol. 26, No. 7, July 26, 2004, and the Business License Regulations of the CNMI Department of Finance, adopted in the Commonwealth Register, Vol. 21, No. 10, October 15, 1999.

Citation of

Statutory Authority: The Secretary of Labor is authorized to promulgate regulations regarding the requirements for employment of alien workers under 3 CMC § 4424(a)(1). The Secretary of Finance is authorized to promulgate regulations regarding the expenditure of public funds and the licensing of businesses under 1 CMC §§2553(l), 2557 and 4 CMC §5614. The Office of Attorney General is authorized to promulgate regulations for entry and deportation of aliens in the Commonwealth of the Northern Marianas pursuant to Executive Order 03-01 and 3 CMC § 4312(d).

Short Statement of

Goals and Objectives: The emergency amendments to the Alien Labor Rules and Regulations Section II and the Business License Regulations will encourage expansion of the garment industry at a time when many other challenges threaten the survival of the industry.

**Brief Summary of the
Proposed New Section:**

These emergency amendments to the Alien Labor Rules and Regulations Section II and the Business License Regulations are promulgated to eliminate the existing prohibition on the transfer of business licenses within the garment industry because it is unnecessarily preventing expansion at a time when many other challenges threaten the survival of the industry.

**For Further
Information Contact:**

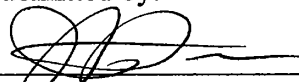
Dorothy E. Hill, Assistant Attorney General for the Department of Labor, Office of the Attorney General, telephone (670) 236-0900, (670) 236-0992, or Deborah Covington, Assistant Attorney General for the Department of Finance, Office of the Attorney General, telephone (670) 664-2341 or facsimile (670) 664-2349.

**Citation of Related
and/or Affected Statutes,
Rules and Regulations,
and Orders:**

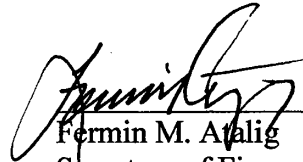
The emergency amendments affect the Alien Labor Rules and Regulations Section II and the Business License Regulations of the CNMI Department of Finance.

Dated this _____ day of October, 2005.

Submitted by:



Dr. Joaquin A. Tenorio
Secretary of Labor



Fermin M. Atalig
Secretary of Finance

**NOTISIAN PUBLIKU POT ENSIGIDAS NA REGULASION YAN
NOTISIAN INTENSION PARA U MA'ADOPTA I AMENDASION I
AREKLAMENTO YAN REGULASION HOTNALERUN
ESTRANGHERU SEKSIONA II yan I REGULASION LISENSIAN
BISNIS**

ENSIGIDAS: I Commonwealth I Sankattan Siha Na Islas Marianas, gi Dipåtamenton I Finance (DOF), Dipåtamenton I Labor (DOL) yan I Ofisinan I Abugao Heneråt (AGO), masodda na papa I lai 1 CMC Seksiona 9104 (b), I interes publiku manonombra I mapâsan I regulasion siha pot para u sedi, sigun I manera siha, I transferin I lisensian bisnis gi hâlom I industriian garment. Este na regulasion siha man ma'establesi sigun I aturidât ni ma'entrega I DOF yan I DOL papa I Lai Publiku 14-82. I DOF, DOL, yan I AGO masodda mâs na I interes publiku manonombra I inadoptasion este na regulasion siha gi menos di trenta (30) diha siha na notisia, ya debi di u efektibu este siha na regulasion ensigidas despues anai u mapolu' gi Rehistran I Koporasion, para I inapruuban I Abugâdu Heneråt yan I kinonfotmen I Gubietnu, ya u efektitibu esta siento-bente (120) diha siha.

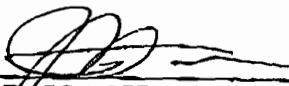
RASON I ENSIGIDAS: Gi Agostu 02, 2005, Lai Publliku 14-82, ni inamenda I lai 4 CMC Seksiona 5611 (c) pot para u sedi I trinansferin I lisensian bisnis gi hâlom I industriian garment sigun I kondision siha, ni ma'otdena. I Lehislatura hanonombra I DOF yan DOL para u ma'establesi ensigidas I regulasion siha pot para u ma'enfuetsa I Akto. I DOF, DOL yan AGO masodda' na I inadoptasion este na regulasion gi menos di trenta (30) diha siha na notisia na nisisârio pot rason I ma'aturirisa na Lai Publiku ha nombra na I regulasion siha u fan ma'establesi gi ensigidas na manera, ya pot I DOF, DOL yan AGO maditetmina na I prisente na prohibision gi trinansferin I lisensian bisnis gi hâlom I Industian Garment na tinisisârio u ma na guaha omentasion gi anai meggai siha otro na kumplikao siha ma'espânta I lina'la' I industria. Gi kinonsisten, I DOF, DOL, yan AGO masodda na I interes I publiku para u aprueba yan adopta este na regulasion siha ensigidas.

INTENSION PARA U MA'ADOPTA: I intension-niha I Ofisinan I Abugâdu Heneråt para u adopta este I ensigidas na regulasion siha, ni siempre man ma'omenta para I Areklamento yan Regulasion Hotnalerun Estrangheru, Seksiona II, petmanente, sigun I lai 1 CMC Seksiona 9104 (a)(1) yan (2). Este siha na probension este na regulasion siha man tineteka I para u fan malaknos na lisensian bisnis ya siempre man ma'omenta I Regulasion Lisensian Bisnis gi Dipåtamenton I Finance I CNMI. An hâyi enteresao na petsona siña munahalom tinige' opinion pot este I ensigads na rekomendasion siha para as Pamela Brown, I Abugâdu Heneråt, osino si Kevin Lynch, I Ayudânten I Abugâdu Heneråt, gi Ofisinan I Abugâdu Heneråt, gi mina segundu na bibienda, gi as Juan A. Sablan Memorial Building, gi Capitol Hill, giya Saipan MP 96950 osino fax guatto gi (670) 664-2349, osino as Dr. Joaquin A. Tenorio, I Sekritârion I Labor, gi Dipåtamenton I Labor, gi Afetnas Square Building, gi San Antonio, giya Saipan, MP 96950 osino fax guatto gi (670) 236-0990

Ninahalom as:

CLYDE LEMON
Acting I Abugádu Henerát

Date


DR. JOAQUIN A. TENORIO
Sekritárión I Labor

10/25/05
Date

FERMIN M. ATALIG
Sekritárión I Finance

Date

Kinonfómte as:

JUAN N. BABAUTA
Gubietnu

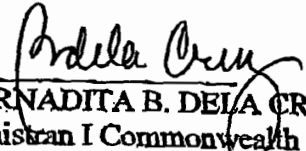
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Marisibe' as:

THOMAS A. TEBUTEB
Espisiát Na Ayudánte Para I Atministrasion

Date

Pine'lo yan Marikot as:


BERNADITA B. DELA CRUZ
Rehistrán I Commonwealth

10/17/05
Date

Sigun I lai 1 CMC Seksiona 2153, ni inamenda ni Lai Publiku 10-50, I ensigidas na areklamento yan regulasion siha ni man che'che'ton esta man ma'ina yan ma'aprueba pot para u fotma yan ligát suficiente ni Ofisinan I Abugádu Henerát I CNMI.

Mafecha este gi mina _____ na ha'áne gi Oktubre, 2005.

CLYDE LEMONS
Acting I Abugádu Henerát

NOTISIAN PUBLIKU
ENSIGIDAS NA REGULASION YAN NOTISIAN INTENSION
PARA U MA'ADOPTA I AMENDASION I AREKLAMENTO YAN
REGULASION HOTNALERUN ESTRANGHERU SEKSIONA II yan
I REGULASION LISENSIAN BISNIS

Este na amendasion man ma'establesi para u konsiste ni Administrative Procedures Act, lai 1 CMC Seksiona 9101, et. seq. I Dipattamenton I Labor, Dipattamenton I Finance yan I Ofisinan I Abugadu Henerat man ma'amemenda I Areklamento yan Regulasion Hotnalerun Estrangheru Seksiona II ni man mapublika gi Rehistran I Commonwealth, Baluma 26, Numiru 06, gi Junio 24, 2004, yan ma'adopta gi Rehistran I Commonwealth, Baluma 26, Numiru 07, gi Julio 26, 2004, yan I Regulasion Lisensian Bisnis gi Dipattamenton I Finance I CNMI, ma'adopta gi Rehistran I Commonwealth, Baluma 21, Numiru 10, gi Oktubre 15, 1999.

Annok I Aturidat I Lai: I Sekretarion I Labor ma'aturisa para u establesi regulasion siha ni tineteka I nisisidat siha para I ma'emplea na hotnalerun estrangheru siha papa I lai 3 CMC Seksiona 4424 (a)(1). I Sekretarion I Finance ma'aturisa para u establesi regulasion siha ni tineteka I gastun I salape' publiku yan I malisesensian I bisnis papa I lai 1 CMC Seksiona 2553 (1), 2557 yan 4 CMC Seksiona 5614. I Ofisinan I Abugadu Henerat ma'aturisa para u establesi regulasion siha para I entrada yan dipottasion I estrangheru siha gi Commonwealth I Sankattan Siha Na Islas Marianas sigun I Executive Order 03-01 yan 3 CMC Seksiona 4312 (d).

**Kada'da' Na Finiho
yan Diniseha:**

I Ensigidas na amendasion siha para I Areklamento yan Regulasion Hotnalerun Estrangheru Seksiona II yan I Regulasion Lisensian Bisnis siempre I sosohyo I omentasion I industrian garment gi anai meggai siha otro na kumplikao siha ma'espanta I lina'la' I industria.

**Kada'da' Na Mensahe
Pot I Man Mapropone
Na Seksiona:**

Este Ensigidas na amendasion siha para I Areklamento yan Regulasion Hotnalerun Estrangheru Seksiona II yan I Regulasion Lisensian Bisnis man ma'establesi pot para u malaknos I presente na prohibision gi trinansferin I lisensian bisnis gi halom I Industrian Garment na tinisisario u ma na guaha omentasion gi anai meggai siha otro na kumplikao siha ma'espanta I lina'la' I industria.

**Para Mâs Infotmasion
Âgang:**

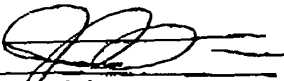
Si Dorothy E. Hill, Ayudânten I Abugâdu Henerât para I Dipâtamenton I Labor, gi Ofisinan I Abugâdu Henerât, numirun tilífon (670) 236-0900, (670) 236-0992, osino si Deborah Covington, Ayudânten I Abugâdu Henerât para I Dipâtamenton I Finance, gi Ofisinan I Abugâdu Henerât, numirun tilífon (670) 664-2341 osino fax gi (670) 664-2349.

**Annok I man Achule'
yan/pat Inafekta na Lai,
Areklamento, Regulasion
yan Otden siha:**

I Ensigidas na amendasion a afekta. I Areklamento yan Regulasion Hotnalerun Estrangheru Seksiona II yan I Regulasion Lisensian Bisnis gi Dipâtamenton I Finance I CNMI.

Mafecha este gi mina _____ na ha'âne gi Oktubre, 2005.

Ninahalom as:



DR. JOAQUIN A. TENORIO
Sekritârión I Labor

10/25/05
Date

FERMIN M. ATALIG
Sekritârión I Finance

Date

REGULATIONS IMPLEMENTING P.L. 14-82

I. Applicability and related regulations:

These regulations apply only to businesses receiving a transfer business license for purposes of garment manufacturing pursuant to 4 CMC § 5611 (c) as amended by P.L. 14-82. For purposes of reallocation of workers under 4 CMC § 5708, the procedures outlined in the Alien Labor Rules and Regulations § II.K regarding positions going into the Garment Pool due to a previous employer's reduction in force shall apply. When making the initial request for an allocation of alien workers, a new employer to whom a business license for garment manufacturing has been granted is excused from the requirement of filing the statement of user fees paid in the previous year as required by ALRR § II.K.1.f.2. This waiver shall apply until the new employer has filed user fees, at which time the regular requirements will resume.

II. Definitions.

- A. *Applicant*: A garment manufacturer who has applied for a transferred business license for the purpose of garment manufacturing under P.L. 14-82.
- B. *Transfer licensee*: A garment manufacturer who has been granted a transferred business license for the purpose of garment manufacturing by the Department of Finance ("DOF").
- C. *Financial assurance*: The financial assurances required under P.L. 14-82 can be met by the following financial arrangements:
 - 1. Establishment of a cash bond with the Department of Finance ("DOF");
 - 2. Establishment of an irrevocable standby letter of credit with an FDIC insured bank equal to 100% of the aggregate cost of repatriation of the nonresident workers employed by the transferee license holder;
 - 3. Establishment of an irrevocable letter of credit with an FDIC insured bank or a cash bond with the DOF equal to 50% of the aggregate cost of repatriation of the nonresident workers employed by the transferee license holder and provision of personal guarantees from all corporate owners for the remainder of repatriation costs; or
 - 4. Provision of a performance bond with an insurance provider authorized by the United States Treasury equal to 100% of the aggregate cost of repatriation of the nonresident workers employed by the transferee license holder.

All financial assurances are to be in a written format approved by the Office of the Attorney General.

- D. *Repatriation costs*: Repatriation costs shall be calculated based on the price quoted by a licensed travel agent within the Commonwealth of the Northern Mariana Islands ("Commonwealth") equal to the current cost of one-way transportation between each worker's original point of hire as specified in the employment contract and the location of the applicant's business within the Commonwealth. It shall be the applicant's responsibility to submit a letter on the letterhead of such a travel agent containing the quoted price to the Director of Labor ("DOL") along with the financial assurance.
- E. *Cash Bond*: Deposit with the Commonwealth "DOF" funds equal to full cost of repatriation (or 50% if supplemented by personal guarantees). Funds can be drawn upon for use by DOF should transfer licensee fail to compensate the Commonwealth for repatriation costs after demand for payment.
- F. *Performance Bond*: Terms of the Bond shall provide guarantee of performance by license holder for costs of repatriation of covered employees during one-year period from date of issuance should licensee fail to pay for repatriation upon demand for payment. Bond must be renewed annually on date of establishment.
- G. *Irrevocable Standby Letter of Credit*: Document issued by an FDIC insured bank stating that in the event the transfer licensee fails to comply with a court or administrative order demanding payment of repatriation costs, or a demand for payment of repatriation costs incurred by the Commonwealth, the bank will pay the claims of the Commonwealth within ten days of presentation of a demand for payment to bank.

III. Administration.

- A. Within fourteen (14) days of receiving a written finding from the DOF that the applicant has satisfied the conditions set forth in 4 CMC § 5701(b)(2)-(3), the applicant employer shall provide the DOL with proof that it has posted a financial assurance equal to the aggregate cost of repatriation of the nonresident workers employed by the applicant.
- B. In the event that a transfer licensee replaces one or more of its nonresident workers at the end of the contract period, or as a result of a consensual transfer, with a nonresident worker from a different point of hire, the transfer licensee shall deliver to DOL at the time it applies for a new employment permit proof that its financial assurance is sufficient to cover the difference in repatriation costs between the former and new worker. If the newly hired

worker is from the same point of hire as the worker being replaced, no additional financial assurance needs to be provided to DOL.

- C. If, at any time, a transfer licensee increases the number of nonresident workers it employs pursuant to lawful procedures set forth in Alien Labor Rules and Regulations Section II. K, the transfer licensee shall provide proof that it has increased the value of the financial assurance to cover the repatriation costs of these additional employees at the time it submits the required applications to the Department of Labor Processing Section. If a transfer licensee lawfully decreases the number of nonresident workers it employs, the Department of Labor shall allow the transfer licensee to reduce the value of the financial assurance in an amount equal to the repatriation costs calculated for the terminated nonresident worker(s) upon written proof that said nonresident worker(s) have left the Commonwealth or entered into a one-year contract with another employer, and have not been replaced by the transfer licensee.
- D. The financial assurance shall excuse the transfer licensee from its obligations under Alien Labor Rules and Regulations Section II. B. 5, only insofar as that provision requires the employer's bond to cover repatriation costs. Transfer licensees shall otherwise be bound by the employer bonding obligations set forth in Section II.
- E. The repatriation costs of all nonresident workers employed by a transfer licensee -- whether they are transferred to the company of the transfer licensee from an existing company, or are new hires from on-island or off-island -- shall be secured by a financial assurance described above in Section II.C .
- F. A transfer licensee that has posted a cash bond as a financial assurance that lacks funds necessary to repatriate one or more of its nonresident workers may recover that portion of the financial assurance intended to cover the cost of repatriating the departing worker(s) by providing DOL and DOF written documentation demonstrating:
 - (i) the identity and original point of hire of the departing nonresident worker(s);
 - (ii) that the applicant has fulfilled all of its contractual and other obligations to said departing worker(s); and
 - (iii) the amount previously provided to DOF to cover said worker(s) repatriation costs.

Within ten (10) days of receipt of satisfactory documentation, DOF shall return that portion of the assurance the applicant had provided on behalf of the specified worker(s).

G. Demand for Payment:

1. Within a reasonable time of determining that the Department of Labor has administrative jurisdiction over a complaint which may result in repatriation, the DOL or his designee may transmit a "Notice of Potential Claim" to the bonding company, bank holding the letter of credit and/or personal guarantors that shall indicate the approximate number of potential claims for repatriation involved in the complaint. Upon receipt of a Notice of Potential Claim the period for filing a claim shall be tolled.
2. If a transfer licensee is ordered to pay repatriation costs by a court or Administrative Hearing Officer, and fails to comply with the order, the DOL may transmit a "Notice of Claim" to the bonding company, bank holding the letter of credit, and/or personal guarantors.
3. Within ten (10) days of receipt of a Notice of Claim, the bonding company, bank holding the letter of credit and/or personal guarantors shall make payment sufficient to satisfy the Notice of Claim.
4. In matters in which the transfer licensee's obligations to repatriate are at issue, but the Department of Labor is not a party, such as an action arising under federal law, the employee may provide notice to the bonding company, bank holding the letter of credit, and/or personal guarantors using the procedures described above in Section II(G)(1)-(3). The bonding company, bank holding the letter of credit and/or personal guarantors are under the same obligation to cover valid claims brought by the employee as they are to cover claims brought by the Department of Labor.
5. Should the Department of Labor incur any repatriation costs associated with nonresident workers of a transfer licensee in the absence of a court or administrative order, the DOL or his designee shall provide notification to the transfer licensee of the costs incurred and a demand for payment. The notice shall identify the specific employee and costs incurred and provide an opportunity to the transfer licensee to examine or contest the charges and/or liability. Determination as to the validity of the charges will be made by DOL after consideration of any information presented by transfer licensee. Uncontested charges shall be considered as valid claims against the licensee and shall be paid in full within thirty days (30) of presentation to the licensee or within ten (10) days after determination by DOL of contested claims. Failure to pay within time periods identified provides the DOL grounds to make claims against any and all financial assurances provided by the transfer licensee.

IV. Coordination with Business Licensing Regulations

A. Issuance of Temporary License

1. 21-Day Temporary License. If the applicant cannot provide the requisite cash bond, irrevocable letter of credit or other form of financial assurance prior to the issuance of a transfer license because the company cannot hire employees without a business license, the Department of Finance may issue a temporary license valid for a period of 21 days upon payment of the payment of the temporary license fee. An applicant for a temporary license shall be granted such license no more than one time per applicant.
2. Expiration. The 21-day temporary license shall expire 21 calendar days after issuance and the licensee shall have no further right to conduct business under the temporary license. An applicant shall apply for the transfer license pursuant to P.L. 14-82, and submit proof of financial assurance within the 21-day temporary license period. If the applicant fails to timely apply for the transfer license within the 21-day period and submit all required supporting documentation, the license shall be denied, and such denial shall constitute final agency action.

B. Fees. An applicant for the transfer of a business license for the purpose of garment manufacturing, that otherwise meets all other requirements of PL 14-82, shall be subject to the following fees:

1. 21-Day Temporary License. If the applicant is applying for a 21-day temporary license, the applicant shall pay a \$15 processing fee for the temporary license. Prior to expiration of the 21-day temporary license, and proof of meeting all financial assurance requirements, the applicant will be entitled to apply for the license specified in 4 CMC §5611(c) as amended by PL 14-82 based upon the fee schedule contained in (2) or (3) of this section, as applicable.
2. Transferred Business License Revoked Or Ceased Operations. If the license of the prior licensee was revoked or the garment manufacturer has ceased operations and the term of the prior licensee's license has not expired, the applicant for the initial transfer license shall pay an amendment fee in accordance with §1201 of the Business License Regulations, Commonwealth Register, Vol. 21, No. 10, October 15, 1999.
3. Transferred Business License Not Renewed Or Lapsed. If the license of the prior licensee was not renewed or otherwise was permitted to lapse,

the applicant for the transfer of the initial transfer license shall be subject to the fees as provided in 4 CMC §5611(d).

4. Yearly Renewal. Once the applicant has received a transferred business license, yearly renewals shall be subject to the fees as provided in 4 CMC §5611(d).

C. Application Requirement The applicant for the transfer of a business license for the purpose of garment manufacturing shall submit an application that meets the requirements of §401 of the Business License Regulations. Furthermore, the applicant must meet all other conditions of the Business Licensing Regulations, as applicable.

D. Term of Transferred License

1. If the license for garment manufacturing was revoked or the garment manufacturer has ceased operations and the term of that license being transferred has not expired, the license issued to the applicant shall be valid through the term of the license that is being transferred. Renewal of the license shall be in accordance with Section 601 of the Business License Regulations.
2. If a license for garment manufacturing lapsed or was not renewed, the license shall be issued for a period of one year.

Example:

- i. Corporation "A" was the holder of a business license for garment manufacturing valid for the period January 2, 2005 through January 1, 2006. It ceased operations on May 10, 2005. Corporation "B" is applying for the transfer of Corporation "A's" business license. Provided that Corporation "B" meets all requirements of PL 14-82 and is able to obtain the transferred license, the license as transferred shall expire on January 1, 2006.
- ii. Corporation "C" was the holder of a business license for garment manufacturing that was valid for the period January 3, 2005 through January 2, 2006. Corporation "C" had its business license revoked on July 7, 2005. On August 20, 2005, Corporation "D" applies for the transfer of that license. Corporation "D" meets all requirements of PL 14-82 and is able to obtain the transferred license. The license is issued on August 25, 2005 and will expire after one year, or on August 24, 2006.

E. License Prohibited Under no circumstances shall the DOF allow the transfer of a license that had, prior to January 1, 2005, been revoked; not renewed; or otherwise permitted to lapse; or where the garment manufacturer ceased operations.

F. Section 701 of the Business License Regulations is amended to read as follows:
“A business license once issued is not transferable, however a business license for garment manufacturing may be transferred provided that the requirements imposed under 4 CMC §5611(c), as amended by PL 14-82 are met.”

PUBLIC NOTICE

PROPOSED AMENDMENTS TO REGULATION REGARDING PRAXIS REQUIREMENT FOR HEAD START TEACHERS AND COURSE AND CREDIT REQUIREMENTS FOR STUDENT PROMOTION AND GRADUATION

The Board of Education (Board) for the Commonwealth of the Northern Mariana Islands hereby notifies the general public of its intention to amend current regulations regarding the above items. The amendments are noted in the attached in strike through and italic format. Once finally promulgated, these regulations will amend Regulations 8114, 2525 and 6210.

Statutory Authority: The proposed amendments to PSS regulations are promulgated pursuant to the Board's authority as provided by Article XV of the CNMI Constitution, Public Law 6-10 and the CNMI Administrative Procedures Act.

Goals and Objectives:

PRAXIS: Recently, the Board adopted stringent requirements for all classroom teachers working for the Public School System. All teachers, no later than August of 2006, must:

- Possess a bachelor's degree or higher;
- Have attained full State Certification; and
- Demonstrate subject matter competency on a rigorous test (PRAXIS II).

This amendment to the Head Start regulation is to ensure that all Head Start classroom teachers meet the same requirements for passing PRAXIS I and II examinations as all other PSS teachers.

COURSE AND CREDIT REQUIREMENTS: Recently, the Board amended Regulation 2525 regarding course and credit requirements for promotion and graduation. Regulation 6210 addresses the instructional time required for elementary and secondary schools. The amendments proposed herein will ensure consistency between the two regulations. These amendments are part of the Board's continuing efforts to establish rigorous standards for student achievement in the CNMI.

Summary of Proposed Amendments: The proposed amendments will:

1. Ensure that the CNMI meets the definition of highly qualified teachers pursuant to the NCLB by requiring PRAXIS II, which meets the rigorous testing mandate.
2. Clarify that PRAXIS II and I are required for all classroom teachers, including those teachers in the Head Start Program.
3. Ensure that Regulation 6210 regarding instructional time is consistent with Regulation 2525 regarding course and credit requirements.
4. Add a World History Requirement and correct an error in the credit requirements for 11th and 12th grade Language Arts courses in Regulation 2525.


Citation of Related and/or Affected Board Regulations:

1. Board of Education Head Start Program Regulation 8114. CNMI Register History: Proposed 9/18/03; Adopted 1/22/04.
2. Board Regulation 2525. CNMI Register History: Proposed 6/19/01; Adopted 8/16/01; Proposed Amendment 6/20/05; Adopted 8/22/05.
3. Board of Education Regulation 6210. CNMI Register History: Proposed 6/19/01; Adopted 8/16/01; Proposed Amendment 1/29/02; Adopted 7/29/02.

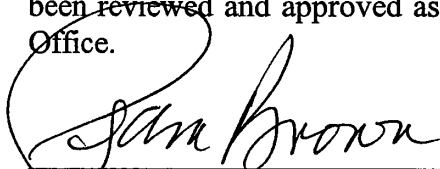
Contact Person: All interested persons may examine the proposed amendments and submit written comments, positions, or statements for or against the proposed amendments to the Chairperson, Board of Education, P.O. Box 1370 CK, Saipan, MP 96950, call 664-3727 or fax 664-3711 within thirty (30) calendar days following the date of the publication in the Commonwealth Register of these amendments.

Dated this 17th day of October 2005, at Saipan, Northern Mariana Islands.

BOARD OF EDUCATION

By: 
ROMAN C. BENAVENTE
Board of Education Chairperson

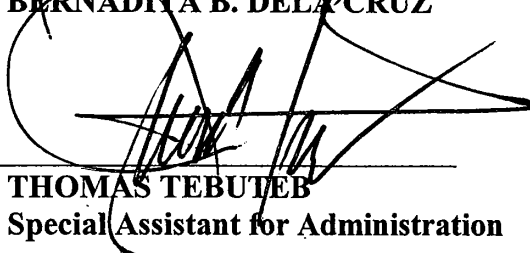
Pursuant to 1 CMC Section 2153, as amended by Public Law 10-50, the proposed amendments to Board of Education regulations, copies of which are attached hereto, have been reviewed and approved as to form and legal sufficiency by the Attorney General's Office.

PR 
PAMELA BROWN
CNMI Attorney General

Date: 10/21/05

Filed By: 
BERNADITA B. DELA CRUZ

Date: 10/21/05

Received By: 
THOMAS TEBUTEB
Special Assistant for Administration

Date: 10/21/05

NOTISIAN PUPBLIKU

I MAN MAPROPONE NA AMENDASION SIHA PARA I REGULASION NI TINETEKI I KUÁLIFIKASION (PRAXIS) I MA'ESTRA/MA'ESTRO SIHA GI HEADSTART YAN I LEKSION YAN NISISIDÁT KREDITU SIHA PARA I SUBIDA YAN MAGRADUAN I ESTUDIÁNTE SIHA

I Kuetpon i Edukasion para i Commonwealth I Sankattan Siha Na Islas Mariana ha notisia i publiku henerát pot i intension para hu ma'amenda i presente na regulasion siha ni tineteki i asunto ni ma'enlista gi sanhilo'. I che'che'ton na amendasion man manota gi fotman la'attelong na letra yan man maráya. Des pues di ma establesi, este na regulasion siha siempre ma amenda i Regulasion 8114, 2525 yan 6210.

Aturidát i Lai: I man mapropone na amendasion para i regulasion i Sisteman Eskuelan Publiku man ma'establesi sigun i aturidát i Kuetpon i Edukasion ni maprobeniyi ginen i Atikulu XV gi Lai Supremo (Constitution) i Commonwealth I Sankattan Siha Na Islas Marianas, Lai Publiku 6-10 yan i Akton Areklamenton i Atministrasion i CNMI.

Finiho yan Diniseha:

PRAXIS: Gi halacha, I Kuetpo ma'adopta la'rekto na nisisidát siha para todú I man ma'estro/ma'estra ni man macho'cho'chu gi Sisteman Eskuelan Publiku. Todú I man ma'estro/ma'estra, ántes di Agostu gi 2006, debi di:

- * Hu gai' Bachelor's Degree pat mas
- * Hu gai' Setifikasion Ustados; yan
- * Hu na'annok na kualifikao gue' para i rekto na eksaminasion.

Este na amendasion para i regulasion Head Start para u asigura na todú I man ma'estro/ma'estra gi Head Start u maganna parehu na nisisidát kuálifikasion yan eksaminasion PRAXIS I yan II yan I pumalu na man ma'estro/ma'estra siha gi Sisteman Eskuelan Publiku.

NISISIDÁT LEKSION YAN KREDITU SIHA: Gi halacha, I Kuetpo man ma'amenda i Regulasion 2525 ni tineteki i nisisidát leksion yan kreditu siha para i masubida yan magraduan i estudiánte siha. I Regulasion 6210 a sásangan i nisisidát i oran leksion para i elemtário yan ge'hilo na eskuela siha. I amendasion ni mapropone guine siempre konsiste gi entalo i dos na regulasion siha. Este na amendasion man pátte gi kontinuasion na cho'chu' I kuetpo pot para u establesi rekto na areklamento para i adulantaon I estudiánte siha gi CNMI.

Mensahen i Man Ma Propone na Amendasion siha: I man ma propone na amendasion siempre:

1. Hu asigura na i CNMI hu tattiyi i ma manifesta gi takhilo' na kuálifikasion i ma'estra/ma'estro sigun i No Child Left Behind (NCLB) ni ha nonombra i PRAXIS II, ya hu komple i rekto na eksaminasion ni ma màmánda.
2. Hu klarifika na i PRAXIS I yan II ha nonombra todú i man ma'estra/ma'estro siha, a enklulusu eyu I man ma'estro/ma'estra gi Prográman Head Start.
3. U na asiguro na I Regulasion 6210 ni tineteka I oran I leksion na konsiste ni Regulasion 2525 ni tineteka I nisisidát leksion yan kreditu.
4. U manaháлом I Nisisidát World History ya u mana dinanche' un linache' gi nisisidát kreditu para I mina onse (11th) yan dosse (12th) grádu gi leksion Language Arts gi Regulasion 2525.

Nota Pot i Man Tineteka osino Inafekta Na Regulasion i Kuetpo:

1. Kuetpon I Edukasion Prográman Head Start Regulasion 8114. I CNMI Register History: Mapropone gi 9/18/03; Ma'adopta gi 1/22/05.
2. Regulasion I Kuetpo 2525. I CNMI Register History: Mapropone gi 6/19/01; Ma'adopta gi 8/16/01; Mapropone I Amendasion gi 6/20/05; Ma'adopta gi 08/22/05.
3. Kuetpon I Edukasion Regulasion 6210. I CNMI Register History: Mapropone 08/16/01; Mapropone I Amendasion gi 1/29/02; Ma'adopta gi 7/29/02.

Petsona Para Ma Tonpadiset: Todú i man enteresao na petsona siña ma'eksamina i man mapropone na amendasion ya hu fan nahalom tinige' opinion, pusision, pat deklarasion kao hungan osino ha kokontra i mapropone na amendasion siha guatto i Kabiseyon i Kuetpo, Kuetpon i Edukasion, gi P.O. Box 501370 CK, Saipan, MP 96950, ágang i numiru 664-3727 pat fax gi 664-3711 gi halom trenta (30) dias siha gi kalendário des di i fechan i publikasion gi Rehistradoran i Commonwealth pot este man mapropone na amendasion siha.

Mafecha este gi mina 17th na ha'áne gi Oktubre 2005, giya Saipan, gi Sankattan Siha Na Islas Mariana.

KUETPON I EDUKASION

Ginen as: 
ROMAN C. BENAVENTE
Kabiseyon i Kuetpon i Edukasion

Sigun i Lai 1 CMC Seksiona 2153, ni inamenda nu i Lai Publiku 10-50, i mapropone na regulasion yan amendasion ni Kuetpon i Edukasion i kopia siha ni man ch'che'ton, esta man ma ina yan ma aprueba pot para u fotma yan suficiente ligat ginen i Ofisinan i Abugao Henerat.

GR

Ma'aprueba ginen as: _____

PAMELA BROWN
Abugao Henerat i CNMI

Fecha: _____

Marisibe' as: _____


THOMAS TEBUTEB

Espeiat Na Ayudante Para I Atministrasion

Fecha: 10/21/05

Pine'lo as: _____


BERNADITA B. DELA CRUZ
Rehistran i Commonwealth

Fecha: 10/21/05

ARONGOL TOULAP

POMWOL LLIWEL REEL ALLÉGHUL PRAXIS NGALIIR SCHÓÓY AFAL (MESTERA/MESTERU) MELLOL HEAD START ME COURSE ME CREDIT KKAAL NGALIIR ATEL MELEITEY REEL AWEWEEL PROMOTION ME GRADUATION

Mwiischil Imwal Rághefisch (mwiischil) Téel Falúw Kka Efáng Mellol Commonwealth ekke arongarawow aramas toulap reel yaar mángemáng igha ebwe ssiwel allégh kka ighila reel aweewe kka weiláng. Ssiwel kkaal nge e aghikkil llól sché kka e appasch (strike through me italic format). Ngare schagh e filló allégh kkaal iwe ebwe siwelilo Allégh kka 8114, 2525 me 6210.

Akkatéel Bwángil: Pomwol liiwel kkaal ngali alléghul PSS nge e akkatéwow sangi bwángil Mwiisch (Board) iye toowow mereel Article XV mellól Allégh Lapalap, Alléghul Toulap ye 6-10 me Allégh ye CNMI Administration Procedures Act.

Aweweel Allégh:

PRAXIS: Ese taaw yaar Mwiisch (Board) fillóy allégh ngaliir alongeer schóóy afal kka re kke angaang lló' Imwal Raghefischil Toulap (PSS) bwe essóbw lu sangi rál ye Ógosto 2006, nge alongeer school afal rebwe:

- Akkamwasch bachelor's degree me ngare llangeló,
- Amwuschi full state certification; me
- Kkaf llól asóssótol (PRAXIS II)

Lliwel yeel ngali alléghul Head Start nge alúghúlúgh bwe alongeer schóóy afal mellól Head Start nge eweewe reel mwóghutul kkof llól asóssót kka PRAXIS I me II eweey schagh afal kka PSS.

Course me Credit Requirement kkaal: Ese taaw yaal Mwiisch siweliló Allégh ye 2525 reel aweewel course me credit requirements kkaal reel promotion me graduation. Allégh ye 6210, nge e aweweey reel ótol akkawang (instructional time) sáangi tingórol elementary me secondary schools. Pomwol liiwel kka llól nge bwelle ebwe fil fengal allégh kka ruwoow. Liiwel kkaal nge eew mellól yaar Mwiisch amamaaw reel fischil yaar atel meleitey achievement mellól CNMI.

Aweweel Pomwol Lliwel Kkaal: Pomwol liiwel kkaal ebwe:

1. Alúghúlúgh bwe CNMI e toori faal aweewel highly qualified teachers, (schóóy afal re ghi kkof) sangi NCLB, reel tingorol PRAXIS II, iye fil ngali testing mandate.
2. Afatawaw bwe PRAXIS II me I nge allégh ngaliir alongeer schóóy afal, re bwal toolong schóóy afal kka llól Progrómaal Head Start.

3. Alúghúlúgh bwe Allegh ye 6210 reel ótol akkabwung nge e fil fengal me Allegh ye 2525 reel aweweel course me credit requirements.
4. Akkaschulong World History Requirement me awelaló rughul credit requirements kka ngaliir gróodo kka 11th me 12th mellól Language Arts courses llól Allégh ye 2525.


Akkatéel Bwángil Akkeew Allégh:

1. Sáangi, Allégh ye 8114 mellól Progrómaal Head Start, Mwischil Rághefisch reel CNMI Registrar, re pomwoli wóól 9/18/03, nge aa filló wóól 1/22/04.
2. Sáangi Alléghúl Mwiisch ye 2525 mellól CNMI Registrar re pomwoli wóól 6/19/01, nge aa filló wóól 8/16/01, Pomwol lliwel wóól 6/20/05, nge aa filló wóól 8/22/05.
3. Sáangi Alléghúl Mwiisch ye 6210, mellól CNMI Registrar re pomwoli wóól 6/19/01, nge aa filló wóól 8/16/01, Pomwol lliwel wóól 1/19/02, nge aa filló wóól 7/29/02.

Reel Ammataf Faingi: Alongeer schóokka re tipeli, emmwel bwe rebwe ipiiy pomwol lliwel kkaal nge raa isisilong jaar mángemáng ngali Samwolul Mwiischil Raghefisch reel P O Box 1370 CK, Seipel MP 96950, faingi 664-3727 me ngare fax ye 664-3711 llól eliigh (30) rál, sáangi rallil akkatewow mellól Commonwealth Register reel lliwel kkaal.

Rállil ye 17th llól Oktubre 2005, Seipel, falúw kka Efang Marianas.

Mwiischil Raghefisch

Sáangi: 
 Roman C. Benavente
 Samwoolul Mwiischil Raghefisch

Sáangi allegh ye 1 CMC, talil 2153 ye aa lliwel mereel Alléghúl Toulap ye 10-50, lliwel kka e appasch, nge raa takkal amweri fischiy me alúghúlúghúló mereel Bwulasiyool Sów Bwungul Allégh Lapalap mellól CNMI.

PK

 Pamela Brown
 Sów Bwungul Allégh Lapalap, CNMI

Rál: _____

Ammwel Sáangi: Bernadita B. Dela Cruz
Bernadita B. Dela Cruz

Rál: 10/21/05

Mwir Sáangi: Thomas Tebuteb
Thomas Tebuteb
Sów Alillisil Sów Lemelem

Rál: 10/21/05

Staff Welfare and Standards of Conduct

Minimum Qualifications

- (a) All Head Start staff must meet the education and experience qualifications required by the Head Start performance standards and as set forth in the job vacancy announcements and this regulation.
 - (b) Unlike other PSS classroom teachers, the Head Start Program in accordance with the Performance Standards allows individuals without a baccalaureate (BA/BS) degree to teach in Head Start classrooms. However, advanced degree holders are preferred and all Head Start lead teachers must meet the minimum qualifications as set forth in Regulation 8125.
 - (c) In accordance with the Head Start Performance Standards, the Head Start lead teacher, at a minimum, shall possess:
 - 1) An Associate (AA/AS) degree with Early Childhood Education (ECE) certification or a Child Development Associate (CDA) certification or equivalent;
- OR
- 2) 60 graduate semester hours (with at least a GPA of 2.25) towards a baccalaureate degree with ECE certification or CDA certification or equivalent.

These minimum requirements are different than the Public School System's requirement that all teachers have a minimum of a baccalaureate (BA/BS) degree. The Head Start Program prefers advanced degree holders in Early Childhood Education with CDA certification.

- (d) For Head Start teachers, the following titles education qualifications and starting salaries, upon availability of funding, shall apply:

Classification Title	Education Qualification	Starting Salary	Agency or Grantee
Teacher Assistant II	ECE/CDA without AA/AS	\$12,608.40	PSS and Head Start
Teacher Assistant III	AA/AS without ECE/CDA	\$13,584.24	PSS and Head Start
Head Start Teacher	AA/AS with ECE/CDA	\$23,505.87	Head Start Only
Classroom Teacher I	BA/BS degree	\$27,000	PSS Only
Classroom Teacher II	BA/BS Education major, with ECE/CDA	\$28,884.60	PSS and Head Start (CDA)
Classroom Teacher III	BA/BS Education major plus 15 graduate credits with ECE/CDA	\$29,906.41	PSS and Head Start (CDA)
Classroom Teacher IV	MA/MS Education major, with ECE/CDA	\$30,976.96	PSS and Head Start (CDA)

- (e) *The Head Start Program adopts the PSS Regulations regarding teacher certification and PRAXIS core knowledge examination requirements as set forth in Chapter 2 and Sections 1601- 1603 of the PSS Regulations for Certified Personnel. All current classroom teachers and applicants for these positions shall submit passing grade results on the PRAXIS I and II tests to PSS, effective August 1, 2006. Failure to submit passing scores shall result in the denial of an employment contract as a classroom teacher with the Head Start Program.*
- (f) The Head Start Program adopts the PSS regulations regarding salary increases and reclassification. Salary increases will be based on performance and available funds.
- (g) Head Start teachers shall be considered as exempt employees for the purpose of Fair Labor Standards Act (FLSA).

INSTRUCTIONAL SERVICES

Regulation 6210

Instruction

Instructional Time

(a) Elementary School

1. **Kindergarten**

Each public elementary school will provide a minimum of 180 minutes of instructional time to kindergarten students in the thematic approach to instruction.

2. **First through Sixth Grades**

Each public elementary school will provide 360 minutes daily instructional time for students in grades one through six. The subjects and daily time allotments set forth below shall apply. Any departure from the time and/or subject requirements will require express prior approval from the Commissioner of Education that is subject to Board review upon request.

SUBJECT	GRADES 1 THROUGH 6
Language Arts (Social Studies Content)	120 minutes
Math	40 minutes
Science	40 minutes
Chamorro/Carolinian	40 minutes
Physical Education/Health	40 minutes
Art (1 semester per school year)	40 minutes
<i>Music (1 semester per school year)</i>	
Music (1 semester per school year)	40 minutes
<i>Social Studies</i>	40 minutes

(b) Junior High School

1. Each public junior high school will provide *a minimum of 300 minutes* daily instructional time for students in grades seven and eight. The required courses as listed on the next page shall be taught for a minimum of 50 minutes *per class*. Any departure from the subject, time and/or credit requirements will require express prior approval from the Commissioner of Education that is subject to Board review upon request.

REQUIRED COURSES*	
Language Arts <i>Composition, Literature</i>	2 credits
<ul style="list-style-type: none"> • <i>Integrated Literature/Reading/Speaking and Listening – Grade 7</i> • <i>Integrated Writing and Grammar – Grade 7</i> • <i>Integrated Literature/Reading/Speaking and Listening – Grade 8</i> • <i>Integrated Writing and Grammar – Grade 8</i> 	
Math <i>Pre-Algebra, Algebra</i>	2 credits
Science <i>Life Science, Physical Science</i>	2 credits
<ul style="list-style-type: none"> • <i>Integrated Science: Life, Earth and Physical Science (a) 7th</i> • <i>Integrated Science: Life, Earth and Physical Science (b) 8th</i> 	
Social Studies <i>CNMI Civics, Geography</i>	2 credits
<ul style="list-style-type: none"> • <i>Geography .5 – 7th</i> • <i>History .5 – 7th</i> • <i>Civics .5 – 8th</i> • <i>Economics – 8th</i> 	
Physical Education	1 credit
<ul style="list-style-type: none"> • <i>0.5 credits of the Physical Education credits must include a Health Course</i> 	
Chamorro <i>and/or</i> Carolinian	0.5 credits
Vocational	0.5 credits
Computer Literacy	0.5 credits
Art/Music	0.5 credits

2. A minimum of eleven (11) credits is required for promotion from 8th to the 9th grade.

** The amendments to this regulation shall be effective for students entering seventh grade school year 2005-2006.*

(c) **High School**

1. A minimum of 300 minutes daily instructional time shall be provided in CNMI public high schools. All required courses shall be for a minimum of fifty (50) minutes *per class*. Any departure from the subject, time and/or credit requirements will require express prior approval from the Commissioner that is subject to Board review upon request. Honors/Advanced Placement courses are recommended by the principals and approved by the Commissioner of Education.
2. A minimum of ~~twenty-one (21)~~ *(twenty-eight) (28)* credits are required for graduation from the 12th grade. Required courses constitute ~~sixteen (16)~~ *twenty-three (23)* credits of the minimum credits and are as follows:

REQUIRED COURSES*	
English	4 (8) credits
<u>Composition I and II</u> <ul style="list-style-type: none"> ● <i>Integrated Literature and Composition – 9th</i> ● <i>Integrated Literature and Composition – 10th</i> ● <i>Technical Research/Business Writing – 11th</i> ● <i>American Literature 11th</i> ● <i>British Literature 12th</i> 	
Math	3 (6) credits
<ul style="list-style-type: none"> ● <i>Algebra I – 9th</i> ● <i>Plane Geometry – 10th</i> ● <i>Algebra II – 11th</i> 	
Science	3 (3) credits
<ul style="list-style-type: none"> ● <i>Environmental Science - 9th</i> ● <i>General Biology – 10th</i> ● <i>Chemistry -11th</i> 	
Social Studies	3 credits
<ul style="list-style-type: none"> ● <i>NMI History – 10th</i> ● <i>US. / World History 11th</i> ● <i>US Government/Economics – 12th</i> 	
Physical Education	2 credit **
<ul style="list-style-type: none"> ● <i>0.5 credit of Physical Education must include a health course.</i> 	
Language other than English	1 credits

+ Agriculture may be substituted for 1 credit of science.

* 1 credit of CNMI History is required. 1 credit of U.S. History is required starting with the class of 2003.

* The amendments to this regulation shall be effective for students entering ninth grade school year 2005-2006.

**** JROTC may be substituted for 1 credit of Physical Education**

STUDENTS

Regulation 2525

Student Academic Achievement

Promotion and Graduation Requirements

(a) Promotion Requirements for Junior High School or Middle Grade Level

A minimum of eleven (11) credits will be required for a student to be promoted to high school. Subject areas are as follows*:

<u>Language Arts</u>	2
Integrated Literature/Reading/Speaking & Listening 7 th	
Integrated Writing and Grammar 7 th	
Integrated Literature/Reading/Speaking & Listening 8 th	
Integrated Writing and Grammar 8 th	
<u>Mathematics</u>	2
Pre-Algebra, Algebra	
<u>Social Studies</u>	2
Geography .5 and History .5 at grade 7	
Civics .5 and Economics .5 at grade 8	
<u>Science</u>	2
Integrated Science: Life, Earth, and Physical Science (A)	
Integrated Science: Life, Earth, and Physical Science (B)	
<u>Physical Education**</u>	1
<u>Vocational Education</u>	.5
<u>Chamorro and/or Carolinian</u>	.5
<u>Music/Art</u>	.5
<u>Computer Literacy</u>	.5
TOTAL	11

* The amendments to this regulation shall be effective for students entering seventh grade school year 2005-2006.

** 0.5 credits of the Physical Education credits must include a health course.

(b) Graduation Requirements for High School Level

A minimum of twenty-eight (28) credits will be required for graduation from the 12th grade. Required subjects constitute twenty-three (23) credits and are as follows: *

<u>English</u>	8 credits
Integrated Literature and Composition 9 th grade	2
Integrated Literature and Composition 10 th grade	2
Technical Research/Business Writing 11 th grade	<u>2</u> 1
American Literature 11 th grade	1
British Literature 12 th grade	<u>2</u> 1
<hr/>	
<u>Mathematics</u>	6
Algebra I, Geometry, Algebra II	
<u>Social Studies</u>	3
NMI History US/ <u>World</u> History and US Government/Economics	
<u>Science</u>	3
Environmental Science, Biology, Chemistry	
<u>Physical Education</u>	2**
<u>Language other than English</u>	1
TOTAL	23

* The amendments to this regulation shall be effective for students entering ninth grade school year 2005-2006.

** 1 credit of JROTC may be substituted for 1 credit of Physical Education. 0.5 credits of the Physical Education credits must include a health course.

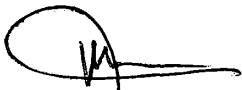
PUBLIC NOTICE
OF PROPOSED AMENDMENTS TO THE RULES AND REGULATIONS
GOVERNING THE NORTHERN MARIANA ISLANDS RETIREMENT FUND

The Board of Trustees of the Northern Mariana Islands Retirement Fund ("NMI Retirement Fund") hereby gives notice to its members and the general public that it has adopted the proposed amendments to the NMI Retirement Fund's Administrative Rules and Regulations, pursuant to its authority under 1 CMC § 8315(f) and the Administrative Procedure Act at 1 CMC § 9101, et. seq. The attached proposed amendments would modify the regulations as last published in the Commonwealth Register, Volume 19, Number 02, dated February 15, 1997.

The purpose of these amendments is to effectuate the provisions of Public Law 13-60, entitled Retirement Fund Integrity Act ("RIAA"), and to clarify ambiguities in Public Law 6-17. The Board is soliciting comments and recommendations regarding these proposed amendments, which must be received by the NMI Retirement Fund within thirty (30) days of first publication of this notice in the Commonwealth Register.

Written comments on these amendments should be sent to Karl T. Reyes, Administrator, NMI Retirement Fund, Retirement Fund Building, Isa Drive, Capitol Hill, P.O. Box 501247, Saipan, MP 96950, or by facsimile to (670) 664-8080. Copies of these proposed amendments may be obtained at the NMI Retirement Fund offices on Saipan, Tinian and Rota.

Dated this 30th day of September, 2005.

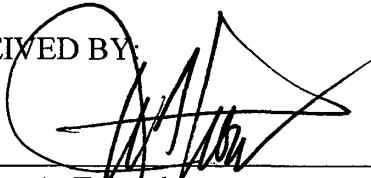


Joseph C. Reyes
Chairman, Board of Trustees, NMIRF

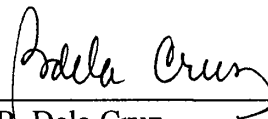


Karl T. Reyes
Administrator, NMIRF

RECEIVED BY:



Thomas A. Tebuteh
Special Assistant to the Governor
Date: 10/17/05




Bernie B. Dela Cruz
Corporate Register
Date: 10/17/05

Certification by the Office of the Attorney General

Pursuant to 1 CMC § 2153, as amended by P.L. 10-50, the proposed amendments to the rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the Office of the Attorney General.

Dated this 20th day of October, 2005.


MBK CLYDE LEMONS
Acting Attorney General

**PROPOSED AMENDMENTS
TO THE RULES AND REGULATIONS
GOVERNING THE NORTHERN MARIANA ISLANDS RETIREMENT FUND**

Citation of Statutory Authority: The Board of Trustees of the Northern Mariana Islands Retirement Fund ("Retirement Fund") has statutory power to promulgate and effect Rules and Regulations pursuant to 1 CMC § 8315(f). Furthermore, Public Law No. 13-60, entitled the Retirement Integrity Assurance Act ("RIAA"), directs the Retirement Fund to promulgate Rules and Regulations to implement the objectives of that Public Law.

Statement of Goals and Objectives: The Rules and Regulations provide guidelines for the Board to manage the government retirement program, as well as provide government employees and retirees information on how the program functions. The primary goals and objectives of the proposed amendments are to effectuate the changes outlined by RIAA, Public Law No. 13-60, and to clarify the Fund's implementation of the re-employment and double dipping restrictions found in Article III, Section 20(b) of the N.M.I. Constitution and 1 CMC § 8392.

Summary of Amendments: These proposed amendments to the Rules and Regulations includes provisions of Public Law No. 13-60, entitled the Retirement Integrity Assurance Act ("RIAA"), that would maintain the financial integrity of the government retirement system by relieving the government from the burden of having to allocate a substantial portion of its revenues to the Retirement Fund, and permit the government to divert the necessary resources to pay for essential services for the benefit of the general public. RIAA repeals: (a) the additional 3% retirement bonus for certain elected officials, (b) benefits for board and commission members, (c) vesting credits for education service, military service, compensatory time, and unused sick leave, and (d) prior service vesting credit. Early Retirement Bonus is eliminated.

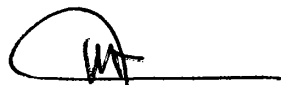
In addition to the above changes, RIAA creates disincentive to the withdrawal of employee contributions by imposing an early withdrawal penalty, by restricting re-employment for a period of six months unless the refunded contributions are returned to the Fund, and by redefining the term salary to mean base salary. Finally, RIAA includes a provision to encourage Class I members to retire before reaching 62 years of age which would reduce government payroll costs and thereby free up additional funds for remittance as employer contributions to the Retirement Fund.

For Further Information: Contact Karl T. Reyes, Administrator, NMI Retirement Fund, by telephone (670) 664-3863 or facsimile (670) 664-8080.

**Citation of Related and/or
Affected Statutes, Regulations
and Orders:**

The Rules and Regulations governing the NMI Retirement Fund, as adopted in the Commonwealth Register, Volume 19, Number 02, dated February 15, 1997.

Dated this 30th day of September, 2005.



Joseph C. Reyes
Chairman, Board of Trustees, NMIRF




Karl T. Reyes
Administrator, NMIRF

RECEIVED BY:

FILED AND RECORDED BY:

THOMAS A. TEBUTEB
Special Assistant for Administration
Date: _____



BERNADITA B. DELA CRUZ
Corporate Register
Date: 10/17/05

NOTISIAN PUBLIKU

POT I MAN MAPROPONE NA AMENDASION PARA I AREKLAMENTO YAN REGULASION SIHA NI GUMUBEBIETNA I PROGRAMAN I FUNDON RITIRAO GI SANKATTAN SIHA NA ISLAS MARIANAS

I Kuetpon Trustees I Fundon Ritirao gi Sankattan Siha Na Islas Marianas, ("NMI Retirement Fund") sigun gi aturidat I lai gi 1 CMC Seksiona 8315 (f), yan I Administrative Procedures Act gi papa 1 CMC Seksiona 9101, et. seq. ha nana'i' I membru siha yan I publiku henerat notisia pot I mapropopone siha na amendasion gi Areklamento yan Regulasion ni gumubebetna I Proqraman I Fundon Ritirao gi Sankattan Siha Na Islas Marianas. I man che'che'ton siha ni man mapropone na amendasion para u modifika I areklamento yan regulasion anai uttimo mapublika gi Rehistran I Commonwealth, Baluma 19, Numiru 02, ni mafecha gi Febreru 15, 1997.

I rason este na na amendasion pot para u na efektibu I probensyon siha gi Lai Publiku 13-60, ni matitilu Retirement Fund Integrity Act ("RIAA") yan para u na klaru mas I Lai Publiku 6-17. I Kuetpo ha so'sohyo opinion yan rekomendasion siha pot I amendasion este siha gi Areklamento yan Regulasion, ya debi di u fan marisibe' gi Ofisinan I NMI Retirement Fund gi halom trenta (30) diha siha despues di I primet na publikasion este na notisia.


Todu I rekomendasion yan opinion siha u ma'entrega si Karl T. Reyes, I Atministradot I NMI Retirement Fund, gi Retirement Fund Building, gi Isa Drive, gi Capitol Hill, gi P.O. Box 501247, giya Saipan, MP 96950, osino fax gi numiru (670) 664-8080. I kopian I man mapropone na amendasion siha siha man machule' gi Ofisinan I NMI Retirement Fund giya Saipan, Tinian yan Luta.

Mafecha este gi mina trenta (30) na ha'ane gi Septiembre, 2005.


Joseph C. Reyes
Kabiseyo, Kuetpon I Trustees, NMIRF


Karl T. Reyes
Atministradot, NMIRF


Marisibe' as:


Thomas A. Tebuteb
Espisiãt Na Ayudãnte Para I Gubietno

Fecha:

10/17/05

Marikot as:


Bernadita B. Dela Cruz
Rehistran I Koporasion

Fecha:

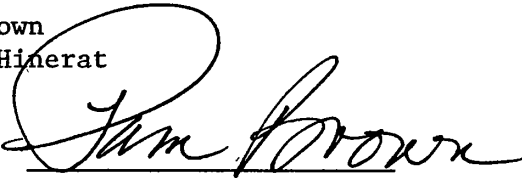
10/17/05

Sigun gi l CMC Seksion 2153, ni ma amenda gi Lai Publiku 10-51, i checheton na Areklamento yan Regulasion siha man maribisa yan man ma-aprueba nui Ofisinan Atbogadu Hinerat CNMI.

Ma fecha gi dia 10 guine mes October 2005.

Pamela Brown
Atbogadu Hinerat

Ginen As:



MBK


NUTISIAN PUBLIKU
POT I MAPROPOPONE NA TINILAIKA GI AREKLAMENTON YAN
REGULASIÓN NI GUMUBEBIETNA I PROGRAMAN I FUNDON RITIRAO GI
SANKATTAN SIHA NA ISLAS MARIANAS

I Kuetpon Trustees i Fundon Ritirao gi Sankattan Siha Na Islas Mariánas, ("NMI Retirement Fund") sigun gi atoridat i lai gi 1 CMC § 8315(f), yan i Administrative Procedure Act gi papa i 1 CMC § 9101, et. seq. ha nãnã'e i membru siha yan i publiku hinerat nutisia pot i mapropopone siha na amendasion gi Areklamento yan Regulasion ni gumubebietna i Programan i Fundon Ritirao gi Sankattan Siha Na Islas Marianas. I chechetton siha na priniponen amendasion para u modifika i areklamento yan regulasion ni uttimo mapublikia gi Rehistran Commonwealth, Baluma 19, Numiru 02, ni ma fecha gi Febreru 15, 1997.

I rason este na prupositon areklo yan regulasion pot para ma aomenta i nuevo na lai, Public Law 13-60, osino i Retirement Fund Integrity Act ("RIAA"), yan para hu mana' klaru mas i lai Public Law 6-17. I Kuetpo ha sosoyo komento yan rekomendasion pot i priniponen este siha na amendasion gi Areklamento yan Regulasion, ya debi u fanma risibi gi Ofisinan i NMI Retirement Fund gi halom trenta (30) dias despues di i primet na publikasion este na nutisia.

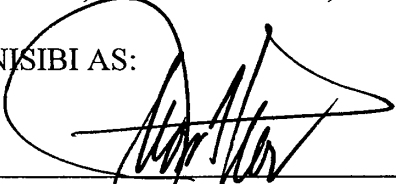
Komento yan rekomendasion siha hu ma na'e si Karl T. Reyes, i Atministradot NMI Retirement Fund, gi Retirement Fund Building, Isa Drive, Capitol Hill, P.O. Box 501247, Saipan, MP 96950, pat hu mana' hanao fax gi numeru (670) 664-8080. Kopian i mapropopone siha na amendasion sina manma chu'le gi Ofisinan NMI Retirement Fund giya Saipan, Tinian yan Luta.

Ma fecha gi mina 30th na dia gi Septiembre, 2005.




Joseph C. Reyes
Chairman, Board of Trustees, NMIRF

RINISIBI AS:




Thomas A. Tebuteb
Special Assistant to the Governor
Date: 10/17/05



Karl T. Reyes
Administrator, NMIRF

RINIKOT AS:



Bernadita B. Dela Cruz
Corporate Register
Date: 10/17/05

Setifikasion i Ligat Ufisina Atbogadu Hinerat CNMI.

Konsiste yan i 1 CMC § 2153, koma inamenda nu i Lai Publiku 10-50, i priniponen amendasion siha gi areklamento yan regulasion ni chechetton guine esta manmaribisa yan apreba komu put i fotma yan sinufisenten ligat nu i Ufisina Atbogadu Hinerat CNMI.

CLYDE LEMONS
Atbogadu Hinerat (Acting)

ARONGOL TOULAP

POMWOL LLIWEL REEL ALLÉGHÚL LEMELEMIL RETIREMENT FUND MELLÓL COMMONWEALTH

Mwiischil Trustees, Retirement Fund mellól Téél Falúw Kka Efang, Marianas ("NMI Retirement Fund") ekke arongowow reer membro me aramas toulap bwe raa fillóoy pomwol lliwel kka reel Alléghúl me Ammwelil Administrative mellól NMI Retirement Fund, sangi bwángil allégh ye 1 CMC § 8315 (f) me Alléghúl Administrative ye 1 CMC §9101 et.seq. Pomwol liwelil allégh kkaal e siweliló allégh kka aa akkatéwow llól Commonwealth Register Volume 19, Numuro 02, llól rallil ye Febrero 15, 1997.

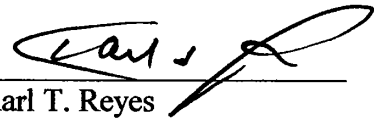
Etoowow lliwel kkaal bwelle ebwe fillóoy Alléghúl Toulap ye 13-60 iye Retirement Fund Integrity Act ("RIAA") me ebwe affataaló aweweel Alléghúl Toulap ye 6-17. Schóoy Mwiisch rekke tingór yáami mángemáng reel pomwol lliwel kkaal llól eliigh (30) rál, igha e akkatéwow llól Commonwealth Register.

Schéél yáami aghiyagh ebwe akkafang ngali Karl T. Reyes, Samwoolul NMI Retirement Fund, reel Retirement Fund Building, Isa Drive, Capitol Hill, P.O. Box 501247, Seipél MP 96950, me ngare Facsimile ngali (670) 664-8080. Tilighil lliwel kkaal nge ebwe lo llól Bwulasyool NMI Retirement Fund me Seipél, Tchúlúyól me Luuta.

Llól rál ye 30th Setembre, 2005

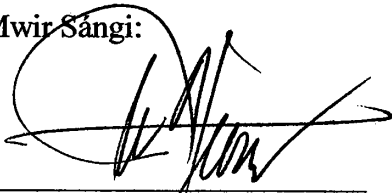


Joseph C. Reyes
Samwoolul Mwiischil Trustees NMIRF



Karl T. Reyes
Samwoolul NMIRF

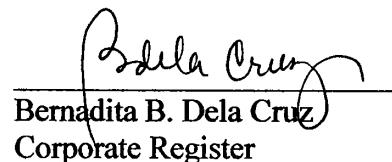
Mwir Sàngi:



Thomas A. Tebuteb
Sów Alillisil Sów Lemelem

Rál: 10/17/05

Aisis Ngali:



Bernadita B. Dela Cruz
Corporate Register

Rál: 10/17/05

NORTHERN MARIANA ISLANDS RETIREMENT FUND

Administrative Rules and Regulations (Proposed)

As of October ____, 2005

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
NORTHERN MARIANA ISLANDS RETIREMENT FUND
ADMINISTRATIVE RULES AND REGULATIONS
2005

PART 1. GENERAL PROVISIONS

- 1.01. Authority.** Under and by virtue of the authority vested in the Board pursuant to 1 CMC 8315(f), and Section 10 of Public Law 13-60, the Board hereby promulgates these rules and regulations.
- 1.02. Purpose.** The Board promulgates these rules and regulations to effectively administer and maintain the Fund pursuant to Public Laws 6-17, 6-33, 6-41, 7-39, 7-40, 8-24, 8-30, 8-31, 8-39, 9-25, 9-33, 9-45, 10-88, 11-2, 11-9, 11-95, 11-114 and 13-60, to update existing regulations, and for other purposes.

PART 2. DEFINITIONS

- 2.01 Applicability.** The words and terms as used in these rules and regulations shall have the meanings indicated and shall include the plural unless the context clearly indicates otherwise. The definitions herein provided shall supplement the Public Laws referenced in Section 1.02.
- A. **“Accredited Institution of Higher Learning”** means an institution of higher learning in the United States of America, its commonwealths, possessions, or territories, that in the Fund’s judgment, has official authority to provide accreditations and has met established standards of quality.
- B. **“Administrator”** means the administrator of the Fund or the acting administrator in the event the administrator is unavailable for duty.
- C. **“Annual”** means yearly, and refers to the calendar year.
- D. **“Annual Salary”** The term “annual salary” means:
1. For members who were employed before December 5, 2003 (the effective date of Public Law 13-60) and who did not receive a refund of contributions, annual salary shall include lump sum payment of annual leave, 30% bonus, overtime compensation, hazardous pay, differential pay, and hardship post pay, but not housing allowance or any other type of extra pay where retirement contributions are not deducted and remitted to the Fund. Furthermore, the exceptions in former 1 CMC § 8313(o)(1)-(2), which predated Public Law 13-60, shall apply to the definition of salary for members under this subsection.

2. For members who became employed on or after December 5, 2003 (the effective date of Public Law 13-60), including persons who were refunded contributions and subsequently became re-employed with the CNMI Government on or after the effective date of Public Law 13-60, the definition of "annual salary" in Public Law 13-60, shall apply.
 3. Provided however, that "bonus salary," as referenced in Section 5 of P.L 13-60, shall include severance pay and any settlement of any claim involving employment or termination of employment. Such payments shall be excluded from the calculation of base salary.
- E. **"Calendar Year"** means the year from January 1 to December 31.
- F. **"Child"** As used in 1 CMC § 8313(g), the term "child" includes a child adopted pursuant to local custom, provided that the customary adoption is recognized in an order by a court of competent jurisdiction.
- G. **"Commonwealth Trial Court Judge"** means a judge appointed by the Governor after January 8, 1978, to serve as a judge of the Commonwealth Trial Court, the Superior Court of the Commonwealth, or the Supreme Court of the Commonwealth of the Northern Mariana Islands.
- H. **"Complete Separation From Service" or "Completely Separated From Service"** means separation from Government service by any employee of the Government, whose employment has terminated, effective as of the last day of employment, and who has been refunded his or her contributions. A person who completely separates from service and refunds his or her contributions shall be deemed a new member of the Fund upon subsequent employment with the CNMI Government.
- I. **"Fiscal Year"** means a twelve (12) month period from October 1 to September 30.
- J. **"Government"** The term "government" as used in Public Law 6-17 means the Government of the Commonwealth of the Northern Mariana Islands, which came into existence on or after January 8, 1978 including branches, departments, agencies, instrumentalities, public corporations, municipalities, political subdivisions and the Office of the Washington Representative.
- K. **"Interest"** The term "regular interest" in 1 CMC § 8313(n) shall mean the following:
1. For purposes of refunding contributions, the Fund shall pay 3.5%, compounded annually, and credited for each complete year.

2. For purposes of repayment of refunded contributions, the interest rate the Member shall pay is the higher of the average investment rate of return of the past five years most current fiscal years from the date of the application, or the actuarial rate in existence at the time of election.
 3. For purposes of retroactive contributions for Early Retirement pursuant to Section 4.02 herein, the interest shall be 5 %.
- L. **“Medical Professional”** For purposes of Public Law 11-2, this term means an employee of the Commonwealth Health Center who has received a specialized degree or formal training in, and whose occupational title has the primary duty of, the treatment or care of patients’ medical or psychological conditions and who is so certified by the CNMI Medical Professional Licensing Board.
- M. **“Member of the Legislature”** means a person elected to serve in the Northern Marianas Commonwealth Legislature on or after January 8, 1978.
- N. **“Overtime”** or **“Compensatory Time”** For purposes of Public Law 8-24, these terms mean the number of hours worked at the same job in excess of 2,080 regular hours per year during any year of membership service, and for which payment was received or compensatory time used, and which have been timely certified by the Director of Finance or the head of the autonomous agency, as the case may be.
- O. **“Place of Residence”** For purposes of determining where a disability examination shall take place pursuant to 1 CMC § 8347, this term means the island on which the member resides, if in the Commonwealth. If the member lives outside the Commonwealth, this term means within 50 miles of where the member resides, provided there exist in that area suitable medical facilities at which disability examinations can be conducted. If no medical facilities exist within 50 miles of where the member resides, then the Administrator shall designate the nearest medical facility at which disability examinations can be conducted. In any case, where the member resides shall be the last address of record on file with the Fund pursuant to Rule 8.01.
- P. **“Re-employment”** Re-employment of a retiree as an employee or a consultant by the CNMI Government is limited by both Article III, section 20 (c) of the NMI Constitution as well as by 1 CMC § 8392. For purposes of the limitations contained in these provisions, the following definitions will apply:
1. ***“Consultant” or “consultant contract”:***
 - (a) A consultant is an expert who is called upon for professional or technical advice or opinions. The expertise of a consultant may be based on education, training, experience, or a combination thereof.

- (b) A consulting contract is an agreement for the services of a consultant for compensation. The work product of a consulting contract is primarily intellectual in character and may include consultation, analysis or recommendation; it does not include the provisions of supplies or materials; and will result in the production of a report or completion of a task.
 - (c) A contract for professional services, such as provided by engineers, accountants, physicians, lawyers and other similar professionals, is not a consulting contract for purposes of 1 CMC section 8392. Such a contract must, however, meet the test for an independent contract set forth in Subsection 3, below.
2. ***“Employee” or “Employment Contract”***, means any retiree in the service of any entity, office or official of the CNMI Government under any appointment or contract of hire without regard to the label of the contract, for wages or its equivalent, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed. Whether a person is an employee requires a factual inquiry that will differ in each case. The form or title of the contract or personnel action under which the retiree is hired is not, by itself, determinative of whether the retiree is an employee.
3. ***“Independent Contractor” or “Independent Contract,”*** means any contract, without regard to the label of the contract, between a retiree and any entity, office or official of the CNMI Government to provide professional services, products or deliverables or a retiree who enters into such a contract. In determining whether a person is an independent contractor, a consultant or an employee, the following factors shall be considered:
- (a) The extent or control which, by the agreement, the employer may exercise over the details of the work;
 - (b) Whether or not the one employed is engaged in a distinct occupation or business;
 - (c) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
 - (d) The skill required in the particular occupation;
 - (e) Whether the employer or the workman supplies the instrumentalities, tools and the place of work for the person doing the work;
 - (f) The length of time the person is employed;
 - (g) The method of payment whether by the time or by the job;
 - (h) Whether or not the work is part of the regular business of the employer;

- (i) Whether or not the parties believe they are creating an employer-employee relationship; and
- (j) Whether or not, the same or comparable work has previously been performed by the retiree during any period of employment with the CNMI government.

These factors are all examined and no one factor is determinative. (*Source: Castro v. Hotel Nikko Saipan, Inc., 4 N.M.I. 268 (1995)*).

- Q. **“Regular Hours”** For purposes of the credit granted for overtime and compensatory time pursuant to Public Law 8-24, this term means 2,080 hours per calendar year consisting of the actual hours worked, annual leave taken and paid, sick leave taken and paid or administrative leave taken and paid, and paid legal holidays. This term does not include annual leave paid in lump sum during the years of membership service or on the date of retirement, or any type of leave converted into service credit.
- R. **“Teacher”** For purposes of Public Law 8-30, this term means an employee who is a certified or non-certified classroom teacher, instructor, or an employee holding such occupational title whose primary duty is to teach students. This term does not include administrative or support personnel, teacher aides, or other professionals whose primary duty is not to teach students.
- S. **“Terminated Vested Member”** means either:
 - 1. a person who became a member after October 1, 1980, but before April 16, 1998 (the effective date of Public Law 11-9) and whose Government employment has terminated with at least 3 years but less than 20 years of membership service and who did not obtain a refund of contributions; or
 - 2. a person who became a member on or after April 16, 1998 (the effective date of Public Law 11-9), and whose Government employment has terminated with at least 10 years but less than 20 years of membership service and who did not obtain a refund of contributions.
- T. **“Wages”** for purposes of determining whether a retiree is receiving compensation from the CNMI Government, means the money rate at which the service rendered is recompensed under the contract of hiring, including the reasonable value of board, rent, housing, lodging or similar advantage received from the employer, and gratuities received in the course of employment from other than the employer. This definition of wages does not supplant the definition of “annual salary” for the purposes of calculating benefits under the Retirement Fund Act.
- U. **“Years of Service”** means the calendar year(s) or fraction thereof for which service is creditable and used for computation of benefits and eligibility for benefits.

PART 3. MEMBERSHIP IN RETIREMENT FUND

3.01. Election of Membership Class. A Class II member may elect at any time to change to Class I membership. Upon election, the member will receive a refund of 2.5% of salary member contribution not to exceed one (1) year. The election to change membership class is irrevocable. A Class I member cannot elect to join Class II membership.

3.02. Eligibility for Fund Membership.

- A. A person whose employment is for a specific project or purpose, which will cease upon completion of the project or purpose, shall not be eligible to become a member of the Fund based on that employment. Examples of such a specific project or purpose include the census, a constitutional convention, disaster related projects and the like. (1 CMC §8322)
- B. Part time, seasonal, intermittent or temporary employees who are members whose services are not for a specific project or otherwise not compensated on a fee basis will be receive one-twelfth (1/12) of a year of membership service for every 160 hours for which they are paid in a calendar year, but in no case more than 12 months credit for any calendar year. In the event a person is employed concurrently in another Government position, Section 4.18 of these rules and regulations shall govern.

3.03. Services to the Saipan Credit Union. Services to the Saipan Credit Union prior to January 1, 1990, may be creditable provided the person became an employee of the CNMI Government on or after January 1, 1990, and before December 5, 2003 (the effective date of Public Law 13-60). The required contributions shall first be paid by the employee and by the CNMI Government at the prevailing employee's and employer's rate at the time and class of membership at enrollment date. The employee must elect to be credited for such prior service within 30 days of the effective date of first employment with the CNMI Government between January 1, 1990, and December 4, 2003. Failure to so elect will be deemed an irrevocable rejection of the credit.

3.04. Elected Members of a Local Municipal Council. Prior service credit may be allowed for members who have rendered service to a municipal council prior to January 9, 1978, as follows:

- A. The person became an employee of the CNMI Government before December 5, 2003 (the effective date of Public Law 13-60) and did not refund contributions.
- B. If the member was a full-time government employee at the same time of service to a local municipal council, no credit for council service will be granted.
- C. If the member was not a Government employee at the time of service to a local municipal council, the member may receive service credit for every full year

served with the council. No credit shall be granted for partial year of service. For example, a member who served three (3) years and 364 days for a local municipal council and was not at the same time a full-time Government employee may receive credit for 3 years, but not the 364 days, regardless of how close to one year the partial year is.

- D. Members who qualify for prior service credit for service to any local municipal council must elect to receive the credit by November 4, 1989 (within 180 days of the effective date of Public Law 6-17) or 30 days from the first date of hire, whichever is later. Failure to timely apply for the prior service credit shall be deemed an irrevocable rejection of the credits.

3.05. Education Service Credit. Membership service credit shall be granted upon election by the member on a form prescribed by the Board of Trustees under the following terms and conditions:

- A. The person became a Government employee and Fund member and received a degree before December 5, 2003 (the effective date of Public Law 13-60). The education service credit is not available for any person who becomes a member on or after December 5, 2003, including those persons who have been refunded contributions and subsequently become a new Government employee on or after December 5, 2003. For example, a person who became a member on August 1, 1997, terminated employment on December 31, 1999, was refunded contributions, and re-employed with the CNMI Government on August 1, 2005, is not eligible for the education service credit.
- B. The member must submit an original diploma or degree from an Accredited Institution of Higher Learning. The original will be returned to the member after the Fund has made a copy. A member is not entitled to more vesting service credit by virtue of having two or more associate degrees. The member is entitled to a maximum of two (2) years of education membership service credit for having two or more associate degrees, or a maximum of four (4) years of education membership service credit for having two or more bachelor's or higher degrees.
 - 1. For an associate degree, membership service credit shall be granted for a maximum of two (2) years. A member with credited service of five (5) years or more and who has contributed not less than three (3) years as a member may receive one (1) year of education membership service credit. A member who has credited and contributing service of at least five (5) years may receive two (2) years of education membership service. For example, a member with credited service of five (5) years, but only two (2) years of contributing service, is not entitled to any education membership service credit. If that same member remains employed and contributes to the Fund for at least three (3) more years, the member may be eligible for two (2) years of education membership service for an associate degree.

2. For a bachelor's, master's or higher degree, the member shall be granted a maximum of four (4) years of education membership service credit. A member with credited service of five (5) years or more and who has contributed not less than three (3) years may receive two (2) years of education service credit. A member with at least five (5) years of credited and contributing service may receive three (3) years of education membership service credit. A member with more than ten (10) years of credited service, regardless of the member's number of years of contributing service, may receive four (4) years of education vesting credit.
- C. The member must arrange for the accredited educational institution to send directly to the Fund an official, sealed transcript indicating completion of studies for a degree or degrees.
 - D. To be eligible for education membership service credits, the member must elect in writing on a prescribed form at any time prior to retirement.

3.06. *Military Service Credit.* Membership service credit for active military service shall be granted upon election by the member under the following terms and conditions:

- A. The person became a Government employee and Fund member and completed service before December 5, 2003, the effective date of Public Law 13-60. The military service credit is not available for any person who became a member on or after the effective date of Public Law 13-60, including those persons who completely separated from Government service and have been refunded contributions.

Example 1: A person became an employee on January 1, 1996, and completely separated from Government service on January 1, 1997, without having applied for the military service credit. The person was refunded contributions and subsequently returned to Government service on August 1, 2005. Although that person first became a member on January 1, 1996, before the effective date of Public Law 13-60, the person ceased becoming a member upon completely separating from Government service on January 1, 1997, and refunding contributions. The person became a new member on August 1, 2005, after the effective date of Public Law 13-60 (December 5, 2003), and is not eligible for the military service credit.

Example 2: Same facts as Example 1, except that the person did not refund contributions upon leaving Government service. The person remained a member from January 1, 1997, through the reemployment date of August 1, 2005. Accordingly, the person is eligible for the military service credit.

Example 3: The person first became a member on August 1, 2005. This person is not eligible for the military service credit.

B. A maximum of two (2) years membership service credit shall be granted for active-service in the Armed Forces of the United States.

1. If the member has a total of up to five (5) years of credited service, one (1) year of military membership service shall be granted.

Example 1: A member with three (3) years of credited service and six (6) months of military service with an honorable discharge may receive six (6) months of military service credit.

Example 2: A member with three (3) years of credited service and two and one-half (2½) years of military service with an honorable discharge may receive one (1) year of military service credit.

Example 3: Same facts as Example 1 (three (3) years of credited service and six (6) months of military service with honorable discharge), but after ten (10) years on reserve status, the member is called to active service for another two (2) years. The member has a total of two and one-half (2½) years of active service, one (1) year of which may be creditable. The ten (10) years on reserve status is not creditable.

Example 4: Same facts as Example 1, but the person became a new member on August 1, 2005, after the effective date of Public Law 13-60 (December 5, 2003). The member is not eligible for the military service credit.

2. If a member has more than five (5) years of credited service, two (2) years of military membership service may be granted.

Example 1: A member with seven (7) years of credited service and six (6) months of military service with an honorable discharge may receive six (6) months of military service credit.

Example 2: A member with seven (7) years of credited service and two and one-half (2½) years of military service with an honorable discharge may receive two (2) years of military service credit.

Example 3: Same facts as Example 1, but after ten (10) years on reserve status, the member is called to active service for another two (2) years. The member has a total of two and one-half (2½) years of active service, two (2) years of which may be creditable. The ten (10) years on reserve status are not creditable.

Example 4: Same facts as Example 1, but the person became a new member on August 1, 2005, after the effective date of Public Law 13-60 (December 5, 2003). The member is not eligible for the military service credit.

- C. To be eligible for military membership service credit, the member must elect in writing on a form prescribed by the Board of Trustees and submit such election to the Fund together with authenticated documentation, such as Form DD14, from the Armed Forces showing the beginning date of service and the date of an honorable discharge.
- D. To be eligible for military membership service credit, the member must make the election before retiring.
- E. A member who was honorably discharged for medical reasons from the Armed Forces of the United States may be eligible to receive membership service credit for up to two (2) years provided the other requirements in this rule are satisfied.

3.07. *Applicability of the Five (5) Year Credit Pursuant to Constitutional Amendment No. 19 and Limitation on Re-employment and Double Dipping.*

- A. In accordance with Constitutional Amendment 19, a member is eligible to retire and to receive an additional five (5) years membership credit under the following circumstances:
 - 1. the member has been on active Government service on or after January 7, 1986; and
 - 2. the member has acquired not less than 20 years of membership service credits under the NMI Retirement Fund system; and
 - 3. the member has made an election to retire under this provision in writing, on a form prescribed by the Board of Trustees, at the time of application for retirement. Such an election is irrevocable once made.
 - 4. a member who elects to retire under this provision may not be re-employed by the Commonwealth government or any of its instrumentalities or agencies, for more than 60 days in any fiscal year without losing his or her retirement benefits for the remainder of that fiscal year. (Constitutional Amendment No. 19).
 - 5. Provided, however, that classroom teachers, doctors, nurses and other medical professionals, who retired under this provision, may return to government employment for a period not to exceed two years without losing their retirement benefits. (1 CMC § 8392 (d)).

- B. An employee who has retired under age retirement or an employee who has retired upon acquiring 20 years or more of membership service under the NMI Retirement Fund system before January 7, 1986, is not eligible to receive an additional five (5) years of credit if the employee is subsequently employed by the CNMI Government on or after January 7, 1986.

3.08. *Membership Status Upon Subsequent Employment.* A person who has completely separated from service and received a refund of contributions shall, upon subsequent employment with the CNMI Government, be deemed a new member of the Fund.

3.09. *Re-Employment and Double Dipping.*

- A. Retirees may not return to Government service and continue to receive retirement annuities during their return to service except under the following conditions:

1. **Employment Contract.** A retiree under an employment contract must fall within one of the exemptions for re-employment enumerated under 1 CMC § 8392 (a) (1)-(3), or (5). Doctors, nurses, other medical professionals, and classroom teachers may receive retirement annuities for a maximum of two (2) years, after which the annuities must be ceased. Retirees employed with the CNMI Government under the Older Americans Act may receive retirement annuities indefinitely during such employment. All other retirees may not be re-employed with the CNMI Government unless they fall within an exemption enumerated under 1 CMC § 8392(a)(1)-(3), or (5), but during the time of employment retirement annuities will be limited to sixty (60) days per fiscal year, provided that the retiree elected to take advantage of the five (5) extra years service credit granted by Amendment 19. After the sixty days, such retiree may continue to receive compensation under the employment contract, but must relinquish and shall not be eligible to receive his retirement annuity for the balance of the fiscal year.
2. **Consulting Contract.** A retiree under a consulting contract must fall within one of the exemptions for re-employment enumerated under 1 CMC § 8392(a)(1)-(3), or (5). Such a retiree is limited to receive both compensation under the contract and retirement annuities for sixty (60) days per fiscal year, provided that the retiree elected to take advantage of the five (5) extra years service credit granted by Amendment 19. After the sixty days, such retiree may continue to receive compensation under the consulting contract, but must relinquish and shall not be eligible to receive his retirement annuity for the balance of the fiscal year.
3. **Independent Contract.** If the contract calls for professional services, products or deliverables and comports with Section 2.01(P)(3), the retiree may continue to receive retirement annuities as well as compensation under the contract during the term of the contract.

- B. **Duty to Disclose Re-employment.** Within 30 days of either the execution of any form of employment contract with the CNMI government by the retiree, or the effective date of a Request for Personnel Action by the CNMI Government, the retiree has the duty to disclose the re-employment to the Fund. Such disclosure shall be in writing on a form prescribed by the Board of Trustees and shall include a copy of the document that is the basis for the re-hiring. Failure to comply with this subsection shall constitute grounds for terminating retirement benefits.
- C. Retirees who do not meet any of the conditions in (A) may not return to Government service.

PART 4. BENEFITS

4.01. Normal Retirement Benefits for Class I Members.

- A. Employees of the CNMI Government who were hired on or after October 1, 1980, but prior to April 16, 1998 (the effective date of Public Law 11-9) and were 60 years of age or older on the date of hire may retire, provided the member has at least 3 years of membership service, is at least 62 years of age upon retirement and has not withdrawn his or her contributions.
- B. Employees of the CNMI Government who were hired on or after April 16, 1998 (the effective date of Public Law 11-9) and were 60 years of age or older on the date of hire may retire, provided the member has at least 10 years of membership service, is at least 62 years of age upon retirement and has not withdrawn his or her contributions.

4.02. Early Retirement Benefits for Class I Members. A Class I member may elect to take early retirement under the following terms and conditions:

- A. A person who became a Class I member before April 16, 1998 (the effective date of Public Law 11-9) must be at least 52 years of age with 10 years of vesting service or be under 62 years of age with at least 25 years of vesting service, provided that the member has at least three (3) years of credited service earned after May 7, 1989.
- B. A person who became a Class I member on or after April 16, 1998, must be at least 52 years of age with 10 years of membership service or be under 62 years of age with at least 25 years of membership service, provided that the member has at least 10 years of membership service earned after May 7, 1989.
- C. A person eligible to take early retirement under subsection A or B, and who so elects, shall pay to the Fund, prior to retirement, a lump sum amount equivalent to the difference between Class I and Class II contributions, including regular interest, for all periods in which the member was required to make contributions

until the date of retirement. Such payment does not constitute conversion from Class I to Class II; rather, it entitles the member to receive an annuity equivalent to the full amount the member would have been entitled to receive at age 62. No payment of such lump sum amount shall be allowed by installment or by deduction from the member's annuity.

- D. At any time prior to early retirement, a person who is actively employed with the CNMI Government, may elect to pay to the Fund the difference between Class I and Class II contributions, including regular interest, for all periods in which the member was required to make contributions until the date of election. Such payment shall be made in full, prior to retirement, either in a lump sum or in installments to be set by the Fund. Such payment does not constitute conversion from Class I to Class II; rather, it entitles the member, upon early retirement, to receive an annuity equivalent to the full amount the member would have been entitled to receive at age 62. After such election, the member shall be deducted the nine percent (9%) contribution rate of a Class II member until the date of retirement. An election under this paragraph is irrevocable.
- E. A terminated vested member is not eligible to receive early retirement benefits under 1 CMC § 8342. Accordingly, a person seeking to receive early retirement benefits must file the required documents and application with the Fund before officially separating from Government service. No applications for early retirement will be considered if the person already has terminated employment with the CNMI Government without first having filed the required application and documents.

4.03 Normal Retirement Benefits for Class II Members. Normal Retirement Benefits for Class II Members shall be in accordance with standards and procedures set forth in 1 CMC §§8343 and 8344.

4.04 Early Retirement Benefits for Class II Members. Early Retirement Benefits for Class II Members shall be in accordance with standards and procedures set forth in 1 CMC §§8321 and 8355.

4.05. Disability Benefits.

- A. Any member who becomes disabled from an occupational cause and qualifies for disability benefits will have his or her benefits computed at 50 percent of the salary earned at the time the disability was incurred, except that a person who became a member before December 5, 2003 (the effective date of Public Law 13-60) and did not refund contributions will have benefits computed at sixty-six and two thirds percent (66 2/3%) of the salary earned at the time the disability was incurred. Provided however, that any disabled Class I member, who is otherwise eligible to retire on a normal or service retirement, shall not receive a retirement annuity but rather shall receive disability benefits in an amount no greater than the retirement annuity to which they would have been otherwise entitled.

- B. If the disability continues until the member reaches 62 years of age, the benefits shall be based on the normal retirement for Class I members or the greater of the normal retirement or disability benefits for Class II members.
- C. A member applying for non-occupational disability benefits must meet the following additional requirements:
 - 1. A person who became a member before December 5, 2003 (the effective date of Public Law 13-60), and did not refund contributions must have at least eighteen (18) months of membership service.
 - 2. A person who became a member on or after December 5, 2003 (the effective date of Public Law 13-60), including those persons who were refunded contributions and who subsequently became re-employed with the CNMI Government on or after the effective date of Public Law 13-60 must have at least five (5) years of membership service.
- D. Investigation, Records, and Other Information
 - 1. In accordance with 1 CMC §8347, the Administrator shall have the right to investigate the member's disability and submit any information gathered from an investigation to a licensed physician or a vocational rehabilitation counselor to determine a member's initial or continuing entitlement to a disability annuity.
 - 2. The member shall be required to undergo reasonable examination by physicians, vocational rehabilitation experts, or other experts selected by the Administrator.
 - 3. The member shall be required to provide medical records, other medical information, employment information, financial information and any other information reasonably requested by the Administrator.
 - 4. The member, any current employer, and any former employer is required to provide the job description, job duties, essential functions, job site conditions, possible accommodation, payroll records, attendance records, return-to-work information, and any other employment related information reasonably requested by the Administrator.
- E. If any examination indicates that the disability annuitant is no longer physically or mentally incapacitated for service, or that the disability annuitant is engaged in or is able to engage in a gainful occupation, payment of the disability annuity by the Fund shall be discontinued.
- F. If the Administrator determines that the disability annuitant received any amount from the United States Social Security system, any worker's compensation

insurance program, or any insurance or other program covering the annuitant's disability, the Administrator shall reduce the amount of the disability annuity by an amount equal to any sum the annuitant is entitled to from any other disability program.

1. In order to substantiate that the disability annuitant did not receive any thirty (30) days of the annual Commonwealth or federal deadline (or applicable extended deadline) for filing tax returns, a certified copy of his or her latest income tax returns, including W-2 forms, schedules and other supporting documents.
- G. Failure to undergo a reasonable examination or re-examination, failure to cooperate with the examiner or the Administrator, or failure to provide any requested information under this section 4.05 may cause the application to be cancelled and any payment, if started, to cease.

4.06 *Service Credit and Three Percent Bonus for Certain Government Officials.*

- A. Any member who retired before May 7, 1989 (the effective date of Public Law 6-17) is eligible to have his/her benefit recalculated if the member has service rendered after January 8, 1978, became a member before December 5, 2003 (the effective date of Public Law 13-60), and did not refund his or her contributions, provided the member served the CNMI Government as Governor, Lieutenant Governor, Commonwealth Trial Court Judge, Mayor, Member of the Legislature, or Resident Representative to the United States. The recomputation will be performed at the time of retirement and will increase the benefit by 3% per year for every year served in such capacity. The additional benefit shall be effective on May 7, 1989 (the effective date of Public Law 6-17), but shall not be retroactive to the date of retirement, if earlier than May 7, 1989.
- B. A person who served as a member of the Mariana Islands District Legislature before April 1, 1975, may be credited 60 calendar days per year for such service. A person who served with the Mariana Islands District Legislature from January 1, 1975 to March 31, 1975, may receive a credit of 30 calendar days. A person who served with the Mariana Islands District Legislature on or after April 1, 1975, may receive credit for full-time employment. In any case under this section, the person must have become a member before December 5, 2003 (the effective date of Public Law 13-60) and not have been refunded his or her contributions.

Example 1: A person served with the Mariana Islands District Legislature from January 1, 1975, to March 31, 1975. On January 1, 1995, the person became a member upon employment with the Government. The person left Government employment on December 31, 1996, but did not refund contributions. The person returned to Government employment on August 1, 2004, after the effective date of

Public Law 13-60, but remains eligible for 60 days service credit because the member did not refund contributions.

Example 2: A person served with the Mariana Islands District Legislature from January 1, 1975, to March 31, 1975, became a Fund member on January 1, 1997, was refunded contributions on January 1, 2001, and returned to Government employment on June 1, 2005. This person is not eligible for the service credit.

Example 3: A person served with the Mariana Islands District Legislature from January 1, 1975, to March 31, 1975, and first became a Fund member on June 1, 2005. This person is not eligible for the service credit.

4.07 Option for Unmarried Employees – Class II Members.

- A. Should any member be unmarried on the date of retirement, and designate an individual as a beneficiary pursuant to 1 CMC § 8352(d), and subsequently marry, the prior designation will be deemed null and void.
- B. Any individual designated by a member pursuant to 1 CMC § 8352(d) shall be entitled to an annuity equal to that of a surviving spouse for Class II members, except as provided in (a).

4.08 Refund of Contribution – Interest Computation.

- A. Upon complete separation from government service, a member eligible for refund of contributions shall receive both contributions and interest thereon after submission of an application for refund. A member who become employed on or after December 5, 2003 (the effective date of Public Law 13-60), shall be subject to a 10% early withdrawal penalty on total contributions, excluding interest. Computation of interest and any deduction, if applicable, shall be calculated according to the fiscal year, as of the close of each fiscal year (October 1 to September 30), using 365 days per year. Examples in computing interest and deductions, where applicable, are provided below.

Example 1: Member started working for the CNMI Government on June 1, 1995, and started contributing to the Fund beginning pay-period June 29, 1995. As of the closing of the fiscal year, September 30, 1995, Member had contributed \$1,000. Member stopped working on January 31, 1996. From October 1, 1995, to January 31, 1996, Member contributed \$500. Member submitted a refund application on February 2, 1996. The total amount to be refunded is computed in the following way:

1995 Contribution.....	\$1,000.00
For Fiscal Year 1995 Interest (\$1000 x 3.5%).....	<u>35.00</u>

Total Accumulated Contribution/Interest as of 9/30/95	\$1,035.00
1996 Contribution	500.00
<u>TOTAL AMOUNT TO BE REFUNDED</u>	<u>\$1,535.00</u>

No interest is given for 1996 because Member applied for a refund before the close of the fiscal year.

Example 2: The same facts as Example 1, except that Member did not request a refund until December 31, 1996. Member's total refund amount is computed as follows:

1995 Contribution	\$1,000.00
For Fiscal Year 1995 Interest (\$1000 x 3.5%).....	35.00
Total Accumulated Contribution/Interest as of 9/30/95.....	\$1,035.00
1996 Contribution	500.00
For Fiscal Year 1996 Interest (\$1535 x 3.5%).....	53.73
Total Accumulated Contribution/Interest as of 9/30/96.....	\$1,588.73
<u>TOTAL AMOUNT TO BE REFUNDED</u>	<u>\$1,588.73</u>

Example 3: The same facts as Example 2, except that the person returns to Government employment after refunding contributions and after the effective date of Public Law 13-60. Member started working for the CNMI Government on June 1, 2005, and started contributing to the Fund beginning pay-period June 29, 2005. AS of the close of the fiscal year, September 30, 2005, Member had contributed \$1,000. Member stopped working on January 31, 2006. From October 1, 2005, to January 31, 2006, Member contributed \$500. Member submitted a refund application on February 2, 2006. Note that the results will be the same if the member did not have the prior Government employment and became a member on or after the effective date of Public Law 13-60. The total amount to be refunded is computed in the following way:

2005 Contribution	\$1,000.00
For Fiscal Year 2005 Interest (\$1,000 x 3.5%).....	35.00
Deduction of 10% (\$1,000 x 10%).....	(100.00)
Total Accumulated Contribution/Interest As Of 9/30/05.....	\$935.00
2006 Contribution.....	500.00
For Fiscal Year 2006 Interest (\$1435 x 3.5%).....	50.23
Deduction of 10% (\$500 x 10%).....	(50.00)
Total Accumulated Contribution/Interest as of 9/30/06.....	\$1,435.23
<u>TOTAL AMOUNT TO BE REFUNDED</u>	<u>\$1,435.23</u>

Example 4: Member started working for the CNMI Government on June 1, 2003, and started contributing to the Fund beginning pay-period June 29, 2003. As of the close of the fiscal year, September 30, 2003, Member had contributed \$1,000. Member stopped working on January 31, 2004. From October 1, 2003, to January 31, 2004, Member contributed \$500. The result is similar to Example 1 because

the member became an employee before the effective date of Public Law 13-60 and did not previously refund contributions.

2003 Contribution.....	\$1,000.00
For Fiscal Year 2003 Interest (\$1,000 x 3.5%).....	35.00
Total Accumulated Contribution/Interest as of 9/30/03.....	\$1,035.00
2004 Contribution.....	500.00
<u>TOTAL AMOUNT TO BE REFUNDED</u>	<u>\$1,535.00</u>

- B. A member who receives a refund of contributions gives up all rights and benefits accorded to that member under the Retirement Fund Act. Accordingly, upon re-employment with the CNMI Government on or after the effective date of Public Law 13-60, the member shall be deemed a Class I member and subject to Public Law 13-60, regardless of the member's status before refunding contributions. A member who receives a refund of contributions and returns to Government employment before the effective date of Public Law 13-60 is subject to the applicable laws and rules and regulations in force at the time of the member's re-employment.
- C. Regardless of class membership, a member shall be restricted from government re-employment for a period of six months after receiving a refund of his or her contributions, unless the member repays to the Fund the full amount of the refund plus regular interest, prior to returning to government service.
- D. Upon timely and full payment of the refund and regular interest, the Fund shall recognize the membership service represented by the refunded amount.

4.09 Interest Computation for Active Members. At the end of each fiscal year, regular interest of 3.5% shall be computed and added to the contributions of the member.

4.10 Prior Service Credit per Public Law 8-39. Only those persons who became members before the effective date of Public Law 13-60 and did not refund contributions are eligible to apply for the prior service credit for service described in former 1 CMC § 8323, provided all other requirements are met.

4.11 Survivors' Benefits for Children.

- A. Benefits for children of a deceased member shall be paid to the surviving spouse for the benefit of the children, or if there is no surviving spouse, to a guardian appointed by a court of competent jurisdiction for the benefit of the children.
- B. Death of a member with children by different spouses:
 - 1. If a deceased member has children eligible for survivor's benefits, such children shall be entitled to a pro rata share of children's benefits payable,

regardless of whether they continue to reside with the member's surviving spouse.

2. The fact that such children may not be children of the surviving spouse is irrelevant in determining the children's benefits.
3. All benefits payable to children who are not residing with the surviving spouse shall be payable to the legal guardian appointed for such children. If a child is over 18 years of age, is not under legal guardianship and is eligible for a benefit, the benefit shall be payable to the child.

4.12. *Death After Separation Non-Vested Members: Refund to Survivors; No Annuities.*

A. *Pre-P.L. 11-9: Non-Vested Members – Less Than Three Years Membership Service:*

Upon the death of a person who became a member after October 1, 1980, but before April 16, 1998 (effective date of P.L. 11-9), and whose government service terminated with less than three (3) years of membership service, and who did not obtain a refund of contributions, the estate or beneficiary of the deceased is entitled to receive a full refund of the total amount of contributions made by the member, including regular interest. Payment of such a refund shall be made in accordance with 1 CMC § 8348.

B. *Post P.L. 11-9: Non-Vested Members – Less Than Ten Years Membership Service:*

Upon the death of a person who became a member after April 16, 1998 (effective date of P.L. 11-9), and whose government service terminated with less than ten (10) years of membership service, and who did not obtain a refund of contributions, the estate or beneficiary of the deceased is entitled to receive a full refund of the total amount of contributions made by the member, including regular interest. Payment of such refunds shall be made in accordance with 1 CMC § 8348.

- C. In accordance with 1 CMC § 8356 (b) (3), the Board may, in its discretion, regardless of cause, withhold payment of a refund for a period not to exceed three months, after receipt of an application from a deceased member's authorized representative. Refund of contributions may be made in installments within the three-month limit.

4.13 *Death After Separation Vested Members: Survivors' Annuities.*

A. *Pre-P.L. 11-9: Vested Members – Three (3) Years or More Membership Service:*

Upon the death of a person who became a member after October 1, 1980 but before April 16, 1998 (effective date of P.L. 11-9), and whose government service terminated with three (3) years or more of membership service, and who did not obtain a refund of contributions, the survivors shall be entitled to annuities in

accordance with 1 CMC § 8351 for survivors of Class I members and in accordance with 1 CMC § 8353 for survivors of Class II members.

- B. *Post-P.L. 11-9: Vested Members –Ten (10) Years or More Membership Service:*
Upon the death of a person who became a member after April 16, 1998 (effective date of P.L. 11-9), and whose government service terminated with ten (10) years or more of membership service, and who did not obtain a refund of contributions, the survivors shall be entitled to annuities in accordance with 1 CMC § 8351 for survivors of Class I members and in accordance with 1 CMC § 8353 for survivors of Class II members.
- C. *Death After Separation Vested Members, No Persons Eligible For Survivors' Annuities:*
Upon the death of a vested member occurring before his or her retirement on a retirement annuity, leaving no persons eligible for survivors' benefits, and who did not obtain a refund of contributions, a refund of one-third of the total amount of contributions made by the member, including regular interest, shall be paid to the beneficiaries or estate of the member, in accordance with 1 CMC § 8348 (b).

4.14 Designation of Payee on Behalf of Recipient of Benefits.

- A. Payment of retirement benefits or other benefits issued under the Fund plan is personal to the recipient as provided under 1 CMC § 8383. For this reason, the benefit shall not be assigned or paid to any person other than the recipient, unless the person lacks the legal capacity to directly receive the benefit as follows:
1. the recipient is under the age of 18 years;
 2. the recipient has been declared by a court of competent jurisdiction to be mentally incapable of managing his/her own affairs, financial or otherwise;
- B. Payment of benefits to recipients who are under the age of 18 years shall be made to the recipient's legal guardian(s).
- C. If a court of competent jurisdiction appoints a legal guardian for the recipient, the legal guardian shall serve as the payee.
- D. For purposes of payments on behalf of a recipient, a power of attorney in any manner, shape or form, executed after the date of declaration of incompetence of the recipient, shall not be honored or recognized by the Board nor can it be used to determine a payee.
- E. Application for a change of payee shall be filed by the person eligible under this Section to receive the benefits, on a form prescribed by the Board. The Board shall have the final determination on all applications submitted.

4.15 Reporting Required for Payment on Behalf of Recipients Who are Incapable of Self-Management.

- A. Persons authorized to receive payment of benefits on behalf of the recipient pursuant to Section 4.14 shall file with the Fund a monthly report on the use of the funds received during the previous month. The report must be signed and contain the following language or its legal equivalent: "I declare under penalty of perjury under the laws of the Commonwealth of the Northern Mariana Islands that the contents of this declaration are true to the best of my knowledge and belief. Dated this ____ day of _____, 20___, at [village or city where signed]."
- B. The report required under this Section 4.15 shall be in writing, contain a statement of how and on what the funds were used to benefit the recipient, filed no later than the last day of the month following the month on which a payment was received.

4.16 Penalty for Failure to File a Report.

- A. If the payee fails to submit a report as required under Section 4.15, the payee shall, after notice and an opportunity to respond, return the exact amount of benefits received for the month in which a report was due but not filed.
- B. If the payee fails to return the funds pursuant to Section 4.16(a), and the Board so directs, the legal counsel for the Board shall initiate a civil action to collect the amount due as determined by the Board, after exhaustion of administrative remedies.
- C. Failure by the person designated as payee to file a required report shall be ground for termination of such designation and the Board may require that another qualified person be appointed or designated to become the payee as described in Section 4.14.

4.17 Membership Service Credit for Overtime or Compensatory Time.

- A. Active employees who were paid or granted overtime or compensatory time between January 1, 1985 and December 4, 2003; may be eligible for membership service credit for overtime or compensatory time, provided the other requirements of this Section are met:
 - 1. The person must have been a member before the effective date of Public Law 13-60 and has not been refunded his or her contributions;
 - 2. Overtime or compensatory time hours must exceed 2,080 hours of regular hours worked within the calendar year. For example, if an employee works 2,000 regular hours and 200 hours of overtime or compensatory

time for the year, the employee is entitled to 120 hours of additional membership service credit (2,200 hours minus 2,080 hours equals 120 hours);

3. Overtime and compensatory time must have been ~~be~~ paid to, or used by, the employee; ~~and~~ unpaid and unused compensatory time shall not be converted to service credit.
 4. Overtime and compensatory time must be certified by the Director of Finance or the head of the autonomous Agency where overtime or compensatory time was accrued.
- B. Overtime and compensatory time and accumulated sick leave hours will be converted to membership service credit by using the following conversion table:

MEMBERSHIP SERVICE CONVERSION TABLE
For Sick Leave, Overtime or Compensatory Time

No. Day	1 Dy & Up	1 Mo & Up	2 Mo & Up	3 Mo & Up	4 Mo & Up	5 Mo & Up	6 Mo & Up	7 Mo & Up	8 Mo & Up	9 Mo & Up	10 Mo & Up	11 Mo & Up
0	---	173	347	520	693	867	1040	1213	1387	1560	1733	1907
1	6	179	352	527	699	872	1046	1219	1392	1566	1739	1912
2	12	185	358	532	705	878	1052	1225	1398	1572	1745	1918
3	17	191	364	537	711	884	1057	1231	1404	1577	1751	1924
4	23	196	370	543	716	890	1063	1236	1410	1583	1756	1930
5	29	202	376	549	722	896	1069	1242	1416	1589	1762	1936
6	35	208	381	555	728	901	1075	1248	1421	1595	1768	1941
7	40	214	387	560	734	907	1080	1254	1427	1600	1774	1947
8	46	220	393	566	740	913	1086	1260	1433	1606	1780	1953
9	52	225	399	572	745	919	1092	1265	1439	1612	1785	1959
10	58	231	404	578	751	924	1098	1271	1444	1618	1791	1964
11	64	237	410	584	757	930	1104	1277	1450	1624	1797	1970
12	69	243	416	589	763	936	1109	1283	1456	1629	1803	1976
13	75	248	422	595	768	942	1115	1288	1462	1635	1808	1982
14	81	254	428	601	774	948	1121	1294	1468	1641	1814	1988
15	87	260	433	607	780	953	1127	1300	1473	1647	1820	1993
16	92	266	439	612	786	959	1132	1306	1479	1652	1826	1999
17	98	272	445	618	792	965	1138	1312	1485	1658	1832	2005
18	104	277	451	624	797	971	1144	1317	1491	1664	1837	2011
19	110	283	456	630	803	976	1150	1323	1496	1670	1843	2016
20	116	289	462	636	809	982	1156	1329	1502	1676	1849	2022
21	121	295	468	641	815	988	1161	1335	1508	1681	1855	2028
22	127	300	474	647	820	994	1167	1340	1514	1687	1860	2034
23	133	306	480	653	826	1000	1173	1346	1520	1693	1866	2040
24	139	312	485	659	832	1005	1179	1352	1525	1699	1872	2045
25	144	318	491	664	838	1011	1184	1358	1531	1704	1878	2051
26	150	324	497	670	844	1017	1190	1364	1537	1710	1884	2057
27	156	329	503	676	849	1023	1196	1369	1543	1716	1889	2063
28	162	335	508	682	855	1028	1202	1375	1548	1722	1895	2068
29	168	341	514	688	861	1034	1208	1381	1554	1728	1901	2074

4.18 Members With Two or More Concurrent Government Jobs.

- A. A person who became a member before December 5, 2003 (the effective date of Public Law 13-60) and held two or more concurrent CNMI Government jobs qualifying for membership may be eligible for membership service credit for any hours worked in excess of 2,080 hours in a calendar year. Any such membership credit will be calculated consistent with Section 4.17.
- B. A person who became a member on or after December 5, 2003 (the effective date of Public Law 13-60) and held two or more concurrent CNMI Government jobs

qualifying for membership is not eligible for membership service credit for any hours worked in excess of 2,080 hours in a calendar year.

- C, However, the salary from each of the concurrent CNMI Government jobs shall be used in the computation of any retirement benefits.

4.19 Early Retirement Bonus.

- A. A person who was a member of the Fund before December 15, 1999 (the effective date of Public Law 11-114), may be eligible for a bonus equal to 30% of the annual salary of the member pursuant to Public Law 8-30. A person who became a member of the Fund on or after December 15, 1999 (the effective date of Public Law 11-114) is not eligible for the bonus. . Election to receive the bonus shall be in writing and on a form prescribed by the Board of Trustees. The requirements for eligibility to elect and receive the bonus are as follows:
 - 1. Employees, except those specifically exempted by law, who had twenty (20) or more years of membership service credit with the Fund on October 1, 1993, may elect to receive the bonus and retire within 90 days of October 1, 1993 , but not later than December 31, 2005.
 - 2. Employees, except those specifically exempted by law, who had less than twenty (20) years of membership service credit with the Fund on October 1, 1993, may elect to receive the bonus and retire within 90 days of attaining 20 years of membership service with the Fund, , but not later than December 31, 2005.
 - 3. Any member of the Fund who is occupying an exempted position may be eligible for the bonus only upon attaining at least 20 years of membership service with the Fund and who elects to retire, but not later than December 31, 2005.
 - 4. Any employee who does not make an election during the 90-day election period, and who converts to a position or status exempted from the civil service, shall not be eligible for the bonus.
 - 5. Any employee, unless exempted by law from the 90-day election requirement, who fails to elect and retire within the 90 days of becoming eligible for the early retirement bonus, shall not be eligible for the bonus.
 - 6. Any employee whose position is classified by the Civil Service Commission and has attained or upon attainment of 20 years of membership service, may elect to receive the bonus and retire within 90 days of attaining 20 years of membership service, but not later than December 31, 2005.

7. Excepted service employees or employees who are under an employment contract and who have attained 20 years of membership service, may elect to receive the bonus and retire within 90 days of the expiration of the employment contract, or if renewed within 90 days of the expiration of any renewed contract, but not later than December 31, 2005.
 8. Any elected official, or any department head appointed by the governor, or any special assistant to the governor, who has attained at least 20 years of membership service, may elect to receive the bonus and retire within 90 days of the expiration of his or her term of office, but not later than December 31, 2005.
 9. Employees appointed by elected officials who have attained 20 years of membership service, may elect to receive the bonus and retire within 90 days of the expiration of the term of the appointing elected official., but not later than December 31, 2005.
 10. Teachers, nurses, doctors or attorneys for the CNMI Government who have attained 20 years of membership service, may elect to receive the bonus and retire at any time, but not later than December 31, 2005.
- B. For purposes of eligibility for the 30% bonus, 20 years of membership service shall consist of the following:
1. Actual membership service.
 2. Credited prior service. Prior service that has not been credited or has not been fully paid will not be counted until it is fully paid and credited, except when the member elects to retire prior to full settlement of the amounts due with appropriate deductions from the annuity amount.
- C. Membership service of education and military service shall not be included in the determination of bonus eligibility until the employee elects to retire. Credited overtime or compensatory time and sick leave balance also will be considered only at the time the employee elects to retire.
- D. Pursuant to Section 11 of Public Law 13-60, no early retirement bonus shall be paid to a government employee electing to retire after December 31, 2005.

4.20 Basis for the Payment of Bonus; Withholdings.

- A. The 30% early retirement bonus shall be based on the lower of the annual salary received during the last 12 months consisting of 26 pay periods immediately preceding the date of retirement; or, the annual salary stated in the most recent personnel action preceding the date of early retirement.

- B. The early retirement bonus is subject to withholding for retirement fund contribution and all applicable taxes.

PART 5. RIGHTS AND OBLIGATIONS

5.01. Time for Payments and Recalculation of Benefits.

- A. All payments for benefits (retirement, disability, surviving spouse and surviving child) shall be made on the fifteenth and last day of every month.. Payments prior to the scheduled disbursement date may be released only by the Administrator and only upon a showing of an extraordinary circumstance. For purposes of this subsection, "extraordinary circumstance" shall be limited to the death or off-island medical referral of the beneficiary or the beneficiary's immediate family. "Immediate family" shall mean mother, father, brother, sister, spouse, child (natural and culturally or legally adopted), grandfather, grandmother, grandchild, mother-in-law or father-in-law.
- B. In the case where a benefit was paid based on estimated figures or service dates, the Fund shall, after receipt of updated information, re-compute the benefit. If the Fund determines that the benefit is underpaid, the annuitant shall receive a retroactive adjustment of his/her benefit. If the Fund determines that the benefit was overpaid, the Fund shall recover such overpayment by reducing the annuitant's benefit by 50% or another amount as authorized by the Administrator until the full amount is recovered.
- C. Upon death of an annuitant before a scheduled annuity disbursement date, the pro rata share of the deceased annuitant shall be payable to the surviving spouse or beneficiary, as the case may be. If the deceased annuitant has no surviving spouse or beneficiary, the pro rata share shall be held in abeyance pending the court appointment of an administrator of the estate.

5.02 Anti-Fraud Provision. The Fund may, from time to time, request for updated pertinent information, including but not limited to tax information, current identification, driver's license and the like., It is the duty of the recipient to timely respond to requests for updated information. Substantial or repeated failure to provide complete information or providing false or misleading information shall constitute grounds for terminating benefits.

PART 6. OTHER BENEFITS

6.01. Cost of Living Allowance (COLA).

- A. All Class I and Class II retirees and surviving spouses in receipt of an annuity from the Fund shall have their annuity adjusted for COLA as determined by the Board.

- B The determination of the Board whether or not to approve a COLA for a particular year shall be based on factors consistent with the fiduciary obligations of the Board and shall include, but not be limited to, the availability of funds specifically appropriated for the purpose.
- C. In the event that a COLA adjustment is determined by the Board, a retiree or surviving spouse is entitled to such adjustment commencing on January 1 subsequent to the anniversary of the member's retirement date upon attaining the following ages:
 - 1. Class I retirees: 55 years
 - 2. Class I surviving spouses with children: 62 years
 - 3. Class I surviving spouses without children: 55 years
 - 4. Class II retirees: 55 years
 - 5. Class II surviving spouses: 55 years
 - 6. Disability annuitants: 62 years
- D. The COLA rate shall be the rate used by the United States of America Social Security System for its beneficiaries. Once the Board of Trustees adopts the COLA rate, it will be the same rate applied throughout the calendar year.

6.02. *Government Life Insurance Contributions and Level of Coverage.*

- A. Members in receipt of a service or age retirement annuity shall have the option to elect, on a form prescribed by the Board of Trustees, to receive the same level of life insurance coverage in force at the time of their retirement. Premiums for the excess coverage (an amount in excess of what is presently being made available by the government insurance carrier for retirees) are subject to the prevailing rate for active government employees or as established by the Board based on the prevailing rate for retirees.
- B. The retiree and the Fund shall share the premium cost for coverage beginning October 1, 1993. However, if coverage is made retroactive to the date of retirement (prior to October 1, 1993) the one-time cost of premium will be paid solely by the Fund.
- C. The retroactive effective date does not apply to deceased annuitant's estate or cause added benefits to be paid to survivors of deceased annuitants.
- D. In the event the existing government life insurance carrier does not consent to provide the additional life insurance coverage, the Board will establish a Life Insurance Trust Fund to meet the requirements of the law.
- E. A retiree who did not carry life insurance coverage immediately prior to retirement shall not be eligible for the option described in subsection (a) of this Section.

6.03. Health Insurance Contributions.

- A. Recipients of service retirement and surviving spouse annuities are eligible to elect for health insurance coverage. Terms and conditions of eligibility and the Fund's share of the cost of health insurance premiums shall be determined by the Board through rules and regulations promulgated by the Group Life and Health Insurance Trust Fund.
- B. The contributions of the Fund to other health insurance plans shall be equal to the amount it pays under the Government Health Insurance Plan.

PART 7. APPEALS

7.01. Appeal from Decision of Administrator. Any person aggrieved by a decision of the Administrator of the Retirement Fund shall appeal the decision to the Board by filing a written notice of appeal with the Board within 30 days of the date of the Administrator's decision. A failure to file a timely appeal will result in its dismissal.

7.02. Contents of the Notice Appeal. The notice of appeal shall contain:

- A. the name of the party appealing;
- B. a brief statement of any disputed factual matters in the decision of the Administrator; and
- C. a brief statement of any disputed legal issues in the decision of the Administrator.

7.03. Hearing on Appeal.

- A. After reviewing the notice of appeal, the Board may then, at its discretion, in accordance with 1 CMC Section 9109, either: (1) preside at the taking of evidence; or (2) appoint a hearing officer to preside at the taking of the evidence. No hearing officer will be appointed where the aggrieved party in its notice of appeal does not dispute any factual findings of the Administrator, or raise any new factual issues.
- B. In accordance with 1 CMC Section 9110, if a hearing officer is appointed, the hearing officer shall initially decide the case in accordance with the procedures outlined in 1 CMC Section 9109. The initial decision of the Hearing Officer shall be promptly served on the Board of Trustees.
- C. In accordance with 1 CMC Section 9110, if the Board presides at the initial hearing, the Board shall decide the case in accordance with the procedures outlined in 1 CMC Section 9109. Any further appeal of the Board's decision shall be made to the Commonwealth Superior Court in accordance with 1 CMC Section 9112(b).

- D. For purposes of all administrative proceedings and appeals under this Part, service shall be accomplished by any reasonable means including personal service, registered mail and publication.

7.04. *Appeal to the Board from a Decision of the Hearing Officer.*

- A. Any person aggrieved by a decision of the hearing officer may appeal the decision to the Board by filing a written notice of appeal within fifteen (15) days of the date of service upon the party of the hearing officer's decision. A failure to file a timely appeal will result in its dismissal.
- B. Any appeal to the Board from a party aggrieved by a decision of the hearing officer shall state the following in writing:
 - 1. the name of the party appealing;
 - 2. a brief statement of any disputed factual matters in the decision of the hearing officer; and
 - 3. a brief statement of any disputed legal issues in the decision of the hearing officer.
- C. Subject to the Board's discretion, the Board may:
 - 1. affirm the judgment of the hearing officer without further hearing; or
 - 2. reverse the judgment of the hearing officer without further hearing; or
 - 3. hold a further hearing limited to specified legal and factual issues.
- D. Any further appeal of the Board's decision shall be made to the Commonwealth Superior Court in accordance with 1 CMC Section 9112(b).

7.05. *Legal Representation in Fund Proceedings.* A person may represent himself or herself in connection with any administrative hearing or other proceeding of the Fund. A person may also be represented in such matters by any attorney licensed to practice in the Commonwealth. A person shall not be represented in such matters by any other person; provided, however, that a person may bring such witnesses, translator(s), and observers to a proceeding as he or she deems necessary.

PART 8. NOTICE

8.01 *Address of Record.* A member shall provide the Fund with an address of record at which to receive notices, benefits or correspondence from the Fund. Should the member move or choose to designate another address of record, the member shall notify the Fund, in writing, of any change in address within 30 days of the change. In the event the member

does not comply with this requirement, the member's last address on file shall be deemed the member's address of record until such time the member provides the Fund with a notice of change in address. Should the member leave the Commonwealth for longer than a 30-day period, whether temporarily, indefinitely or permanently, the member shall likewise provide the Fund with an address at which to receive notices, benefits and correspondence. In the absence of such notice, the member's last address on file shall be deemed the member's address of record until such time the member provides the Fund with a notice of change in address. Any notice, benefits or correspondence may be mailed by the Fund to the address of record. The Administrator shall maintain a log of any returned or undeliverable mail.

8.02. *Notice to the Fund.* Except where otherwise provided by law, a notice of appeal or other official notice, such as but not limited to an address change or application for benefits, must be filed at either the Fund's main office on Saipan, or at either of the Fund's satellite offices on Tinian or Rota: A filing also may be made by confirmed facsimile transmission to the Fund's main office facsimile number, (670) 664-8080, or whatever main office facsimile number is currently designated and posted in any of the Fund offices on Saipan, Tinian or Rota, provided that the signed original must be received at the main office within fourteen (14) calendar days of the facsimile transmission. Any notices, applications or other documents provided to the Fund's satellite offices on Tinian or Rota will be deemed filed when received at the Fund's satellite office.

PART 9. SPOUSAL AND CHILD SUPPORT OBLIGATIONS ARISING OUT OF JUDICIAL PROCEEDINGS

9.01 *Spousal and Child Support Obligations Arising out of Judicial Proceedings Defined.* For purposes of this part and section 6(h) of Public Law 13-60, the following definitions and requirements shall apply, regardless of when the employee became a member of the Fund. (Source: 8 CMC §§ 1311, 1828; *Rice v. Rice*, 757 P.2d 60, 61 (Alas. 1988).)

- A. **In General.** The term "spousal and child support obligations arising out of judicial proceedings" means any judgment, decree, or order (hereinafter collectively referred to as a "domestic relations order," including approval of a property settlement agreement) which –
1. relates to the provisions of child support or alimony payments, including arrearages, or marital property rights to a spouse, former spouse, child or other dependent of a member;
 2. is made pursuant to a state's, commonwealth's, territory's, or country's domestic relations law (including a community property law);
 3. creates or recognizes the existence of an alternative payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant of a plan; and

4. with respect to which the requirement of subsections (B) and (C) of this section are met.
- B. Order Must Clearly Specify Certain Facts.** A domestic relations order meets the requirements of this Part only if such order clearly specifies –
1. the name and last known mailing address (if any) of the member and the name and mailing address of each alternate payee covered by the order;
 2. the amount or percentage of the participant’s benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined;
 3. the number of payments or period to which such order applies; and
 4. each plan to which such order applies.
- C. Order May Not Alter Amount, Form, etc., of Benefits.** A domestic relations order meets the requirements of this Part only if such order –
1. does not require the plan to provide any type or form of benefit, or any option, not otherwise provided under the plan;
 2. does not require the plan to provide increased benefits (determined on the basis of actuarial value); and
 3. does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order determined to be a domestic relations order.

PART 10. PROCUREMENT

10.01. The Commonwealth *Procurement Regulations* and any subsequent amendments are adopted, as modified herein, to be the procurement regulations of the Fund. All references in the Commonwealth Procurement Regulations to the Director of Procurement and Supply, Secretary of Finance, and other executive branch officials shall be deemed to refer to the Administrator of the Fund. All references to the Governor shall be deemed to refer to the Board of Trustees of the Fund. All contracts shall be subject to legal review by the Attorney General as provided in the Commonwealth Procurement Regulations. Procurement appeals may be made to the Office of the Public Auditor, as provided in the Commonwealth Procurement Regulations.

PART 11. EFFECTIVE DATE

These regulations shall become effective pursuant to the Administrative Procedure Act, 1 CMC §§ 9101-9115.

NORTHERN MARIANA ISLANDS RETIREMENT FUND

Administrative Rules and Regulations

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
July 31, 1998

PART 1. GENERAL PROVISIONS

- 1.01. **Authority.** Under and by virtue of the authority vested in the Board of Trustees pursuant to 1 CMC 8315(f), the Board hereby promulgates these rules and regulations.
- 1.02. **Purpose.** To provide for the effective administration of Public Law 8-24, 8-30, and 8-31, and to provide updates of existing regulations, and for other purposes.

PART 2. DEFINITIONS

2.01. **Applicability.** The following words and terms as used in these rules and regulations, or in interpreting Public Law 6-17, shall have the meanings indicated unless the context clearly indicates otherwise. The definitions herein provided shall supplement those contained in Public Law 6-17.

- (a) "Accredited Institution of Higher Learning" means an institution of higher learning in the United States of America, its Commonwealths, possessions, or territories, that has received an official decision by the Government's Department of Education, or another recognized accrediting agency recognized by the Fund as having official authority, that in its judgment, the institution has met established standards or quality.

Persons who were/are educated in a foreign institution of higher learning will be given the applicable education vesting service credit if Commonwealth law duly recognizes such education as an accredited education.

Persons who obtained a diploma from a business college or from the nursing school as a result of completing at least 60 credit hours shall be eligible to receive education vesting credits similar to one who have an Associate Degree.

Persons whose education is not recognized by Commonwealth law or is not otherwise covered above will be given the applicable education vesting service credit if the Northern Marianas College would substantially recognize such an education.

- (b) "Annual". The term "annual" shall mean yearly, and refer to the calendar year.
- (c) "Child". As used in 1 CMC 8313(g), the term "adopted child" includes a child adopted pursuant to local Carolinian Custom.
- (d) "Commonwealth Trial Court Judge" means judges appointed by the Governor after January 8, 1978, to serve as judge of the Commonwealth Trial Court, the Superior Court of the Commonwealth, or the Supreme Court of the Commonwealth of the Northern Mariana Islands.

- (e) "Fiscal Year". The term "fiscal year" as used herein shall mean a twelve (12) month period from October 1 to September 30.
- (f) "Government". The term "government" as used in Public Law 6-17 means the Government of the Northern Mariana Islands, which came into existence on April 1, 1976, as well as the Commonwealth of the Northern Mariana Islands, which came into existence on January 8, 1978, including its agencies, instrumentalities, and public corporations.
- (g) "Member of the Legislature" means persons elected to serve in the Northern Marianas Commonwealth Legislature after January 8, 1978.
- (h) "Regular Interest". As used in 1 CMC 8313(n) shall mean the following:
 - (i) For purposes of refunding contributions, the regular interest rate is 3.5%, compounded annually, and credited for each complete year.
 - (ii) For purposes of payment of prior service or repayment of refunded contributions, the regular interest rate to be applied at the time of election shall be higher of:
 - (1) the average investment rate of return of the past five (5) most current fiscal years from date of application; or
 - (2) the actuarial rate in existence at the time of election.
- (i) "Year" means the calendar year from January 1 to December 31.
- (j) "Years of Service" means the years or fraction thereof for which such service is creditable and used for computation of benefits and eligibility for benefits.
- (k) "Complete Separation From Service" means separation from government service by any employee of the Commonwealth Government, including its agencies and instrumentalities, whose employment is terminated and is not re-employed by any branch of the Commonwealth Government, including its agencies and instrumentalities within seven (7) days from the date of termination.
 - (i) Any employee who has separated from service and has obtained a refund of contributions, and is re-employed by the Commonwealth Government, including any of its agencies and instrumentalities within 7 days after such separation, shall return to the Fund any refunded contributions received within 30 days of re-employment.
 - (ii) If the contributions have not been refunded, the employee who returns to government employment within 7 days from the date of last termination shall retain the same membership class as when last terminated.

[Ref. C.R. Vol. 16, No. 08]

- (l) "Terminated Vested Member". A member who terminated employment with the government with at least 3 years but less than 20 years of vesting service credits and who did not obtain a refund of his/her contributions.

[Ref. C.R. Vol. 16, No. 09]

- (m) "Annual Salary". For purposes of the 30% bonus, this term shall mean the lower of the base salary earned for the last 26 pay periods immediately preceding the date of retirement or the annual salary stated on the employee's most recent personnel action. The base salary does not include lump sum payment of annual leave, overtime compensation, hazardous pay, differentials, hardship post, or any other extra pay. [Source: P.L. 8-30]
- (n) "Regular Hours". For purposes of the credit granted for overtime and compensatory time pursuant to P.L. 8-24, this term means 2,080 hours per calendar year consisting of the actual hours worked, annual leave taken and paid, sick leave taken and paid or administrative leave taken and paid, and paid legal holidays. This term does not include annual leave paid in lump sum during the years of credited service or on the date of retirement; or sick leave converted into service credit. [Source: P.L. 8-24]
- (o) "Overtime or Compensatory Time". For purposes of P.L. 8-24, these terms mean the number of hours worked in excess of 2,080 regular hours per year during any year of credited service, and for which payment was received and which have been certified by the Director of Finance or the head of the autonomous agency, as the case may be.
- (p) "Teacher". For purposes of P.L. 8-30, this term means an employee who is a certified or non-certified classroom teacher, instructor, or an employee holding such occupational title whose primary duty is to teach students. This term does not include administrative or support personnel, teacher aides, or other professionals whose primary duty is not to teach.

[Ref. C.R. Vol. 16, No. 2]

PART 3. MEMBERSHIP IN RETIREMENT FUND

3.01. Election of Membership Class. Class II members may elect at any time to change to Class I membership. Upon election, the member will receive a refund of 3.5% of salary member contribution not to exceed one (1) year. The election to change membership class is irrevocable. Class I members cannot elect to join Class II membership.

[Ref. C.R. Vol. 11, No. 11]

3.02. Fund Membership: Ineligible Persons.

- (a) Persons whose employment is for a specific project or purpose which will cease upon completion of such project or purpose, shall not be eligible to become members of the Fund.
- (b) Part time, seasonal, intermittent or temporary employees who are members whose services are not for a specific project or otherwise compensated on a fee basis will be credited with one-twelfth (1/12) of a year of service for every 160 hours for which they are paid in a calendar year after election, but in no case in excess of 12 months credit for any calendar year. If adequate records for years prior to 1980 are not available, the number of hours worked in previous years will be estimated by the Administrator of the Retirement Fund based on available records or such other documentary and other evidences the Administrator finds persuasive. Affidavits are not an acceptable documentation of such service beginning May 7, 1990.

[Ref. C.R. Vol. 11, No. 11]

- 3.03. Services to the Saipan Credit Union.** Services to the Saipan Credit Union prior to January 1, 1990, is or will be creditable upon the employee's becoming thereafter an employee of the government. The required contributions shall first be paid by the employee and by the government at the prevailing employer's and employee's rate at the time and class of membership at enrollment date. The employee must also elect to be credited for such prior service within 30 days from the effective date of employment with the government. Failure to so elect will be deemed an irrevocable rejection of the credits.

[Ref. C.R. Vol. 11, No. 11]

- 3.04. Members of the Local Municipal Council.** Prior service credit will be given to members who have rendered services to any local Municipal Council as follows:

- (a) If the member was a full-time government employee at the same time he/she served as members of the municipal council, no credit for such services will be granted.
- (b) If the member was not a government employee at the time he/she served as member of any local municipal council, the member shall receive service credit for every full year served in such elected capacity.
- (c) Members who qualify for prior service credit for services as members of any local municipal council must elect to receive such prior service by December 7, 1989 (within 180 days of the effective date of Public Law 6-17) or 30 days from the date of hire, whichever is later. Failure to apply to be credit for prior service shall be deemed an irrevocable rejection of the credits.

[Ref. C.R. Vol. 11, No. 11]

3.05. Prior Service for Class II Members.

- (a) Class II members who have prior service and have not elected to receive credit for such service must elect within 90 days of the effective date of these regulations to be eligible for such prior service credit; provided, however, that the required contributions are paid for services beginning October 1, 1980, and thereafter, as herein provided. Failure to elect to be credited for such prior service shall be deemed an irrevocable rejection of the credits.
- (b) Payment for prior service credit shall be made in lump sum or installment through payroll deduction over a period not to exceed seven (7) years. In the event a member retires before having fully paid for prior service, the same level of payment shall be automatically deducted from the pension benefit of the member. If the member dies leaving an eligible surviving beneficiary(ies), the benefit of the surviving beneficiary(ies) shall be reduced in allocable percentage to meet fifty percent (50%) of the total benefits until the prior service liability is fully satisfied.
- (c) All payments for prior service credit shall include regular interest from the date the salary was first paid to the employee until the liability is fully paid. The principal amount due shall consist of the employee contribution based on the rate applicable at the time the salary was paid plus the regular interest computed at the time of election. Payment on installment will continue to accrue regular interest on the principal until the liability is fully paid.
- (d) Only active Class II members on the effective date of these regulations are eligible to elect to receive prior service credit as provided herein.
- (e) For purposes of this rule, prior service includes services lost through refund of contributions.
- (f) This rule shall cease to exist upon the expiration of the open period of election as provided herein.

[Ref. C.R. Vol. 19, No. 02]

3.06. Certification of Service. Although affidavit for unrecorded services will not be honored after May 7, 1990 (one year from the effective date of Public Law 6-17), the aggrieved member may support services during an appeal of service denial to the Hearing Officer or the Board of Trustees by witnesses or by bringing in affidavits to support claims for unrecorded services if the witness is unavailable.

[Ref. C.R. Vol. 11, No. 11]

3.07. Education Service Credit. Vesting service credit shall be given upon election by the member on a form prescribed by the Board of Trustees for education service under the following terms and conditions:

- (a) Submission of the original diploma or degree from an accredited institution of higher learning. The original will be returned to the member after the Fund has made a copy. For an Associate Degree, vesting service credit will be granted for a maximum of two (2) years under the following terms and conditions:
 - (i) Members who have credited service of 5 years or but not less than 3 years as a contributing member shall be granted 1 year of education vesting service credit.
 - (ii) Members who have credit service of more than 5 years will be eligible to get 2 years of education vesting service.
- (b) For a Bachelor's Degree, a Master's Degree or higher, the member will be granted a maximum of 4 years of education vesting service credit under the following terms and conditions:
 - (i) If a member has credited service of 5 years or but not less than 3 years as a contributing member, 2 years of education vesting service credit will be granted.
 - (ii) If a member has credited service of more than 5 years but less than 10 years, a total of 3 years of education vesting service will be earned.
 - (iii) If a member has more than 10 years of credited service, a total of 4 years of education vesting service will be earned.
- (c) Submission of a transcript from an accredited institution of higher learning indicating completion of studies for a degree will qualify the member vesting service credit depending on the degree indicated in the transcript.
- (d) To be eligible for education vesting service credit, the member may elect in writing on a prescribed form at any time prior to retirement.
- (e) A member is not entitled to more vesting service credit by virtue of having two or more Associate Degrees or two or more Bachelor's or higher degrees. In this case, the member is entitled a maximum of 2 years of vesting service for having two or more Associate Degrees or a maximum of 4 years of vesting service for having two or more Bachelor's or higher degrees.

[Ref. C.R. Vol. 11, No. 11]

3.08. Military Service Credit.

- (a) A maximum of 2 years vesting service credit shall be given for active service in the Armed Forces of the United States under the following terms and conditions:

- (i) If the member has a total of at least 5 years of credited service, 1 year of military vesting service credit will be granted.
- (ii) If a member has more than 5 years of credited service, 2 years of military vesting service credit will be granted.
- (b) To be granted vesting service credits, the member must elect in writing on the form prescribed by the Board of Trustees and submit such election to the Fund together with authenticated documentation from the Armed Forces showing the date of entry and the date of an honorable discharge. Such election may be made at any time prior to retirement.
- (c) To be eligible for military vesting service credit, the member must be an employee on the date of the election to be eligible for such credit.
- (d) A member who was honorably discharged for medical reason after having served at least 2 years in the Armed Services shall be eligible to receive 2 years of vesting service under the same condition as those who were honorably discharged.

[Ref. C.R. Vol. 11, No. 11]

3.09. Applicability of the Five (5) Year Credit Pursuant to Constitutional Amendment No. 19.

- (a) The Administrator of the Fund shall grant an additional 5 years service credit to any member who is on active service on or after January 7, 1986, who has acquired not less than 20 years of vesting service credits under the NMI Retirement System and shall be eligible to retire.
- (b) An employee who has retired under age retirement or an employee who has retired upon acquiring 20 years or more of creditable service under the NMI Retirement System shall not be credited an additional 5 years if the employee is thereafter employed again by the Commonwealth Government or any of its instrumentalities or agencies on or after January 7, 1986.

[Ref. C.R. Vol. 11, No. 11]

PART 4. BENEFITS

4.01. Normal Retirement Benefits for Class I Members.

- (a) Employees of the government of the Commonwealth of the Northern Mariana Islands who were hired after October 1, 1980, but prior to May 7, 1989 (the effective date of Public Law 6-17) and were 60 years of age or older on the date

of hire may retire with 3 years of credited prior service provided the member is at least 62 years of age and has not withdrawn his/her contribution.

- (b) Any person who has retired prior to May 7, 1989 (the effective date of Public Law 6-17) will have his/her benefit recalculated if such person has services rendered after January 8, 1978 as Governor, Commonwealth Trial Court Judge, Lt. Governor, Mayor, Member of the Legislature, and Resident Representative to the United States. The re-computation of benefits will be to increase the benefit by 3% per year for every year served in such capacity. The additional benefit shall be effective May 7, 1989 (the effective date of Public Law 6-17). It shall not be retroactive to the date of retirement.

[Ref. C.R. Vol. 11, No. 11]

- (c) For service as a member of the Mariana Islands District Legislature prior to April 1, 1975, each member shall be credited 60 calendar days per year for such service. A member who served from January 1, 1975 to March 31, 1975 shall receive a credit of 30 calendar days. A member who served on or after April 1, 1975 shall receive credit for full-time employment for service on or after April 1, 1975.

[The source for this determination is found under Article II Section 1 and 2 of the Charter of the Mariana Islands District Legislature wherein it states as follows:

“The Legislature shall convene twice a year in regular session on the first Monday of February and the first Monday in August... The Legislature shall be considered as being continuously in session from the date convened, but no session of the Legislature shall exceed thirty (30) calendar days”.]

[Ref. C.R. Vol. 12, No. 11]

4.02. Early Retirement Benefits for Class I. Members.

- (a) A Class I member who elects to take early retirement will have his/her benefit reduced by 3% for every year or fraction thereof that the member is under age 62. This rate may be changed from time to time by the Board of Trustees depending on the actuarial valuation of the Fund by a qualified consulting actuary.
- (b) To be eligible for early retirement, the member must be at least 52 years of age with 10 years of vesting service or have a total vesting service of 25 years and under age 62 at the date of retirement; provided that the member has at least 3 years of credited service earned after May 7, 1989.
- (c) A member who takes early retirement and is at least 62 years of age will be eligible to receive the cost of living adjustment pursuant to the terms and conditions provided under 1 CMC Section 8358.

[Ref. C.R. Vol. 11, No. 11]

- (d) A terminated vested member is not eligible to receive service retirement benefits under Section 8342, 1 CMC, Division 8.

[Ref. C.R. Vol. 16, No. 09]

4.03. Disability Benefit.

- (a) Any member who becomes disabled and qualified for disability benefits will have his/her benefit computed at 66 and 2/3% of the wages earned at the time the disability was incurred.
- (b) If the disabled member reaches 62 years of age, the benefit shall be based on the normal retirement for Class I members and the greater of the benefit for Class II members computed under normal retirement or disability. In computing the benefit due under normal retirement, service as qualified elected officials and judges of the Commonwealth shall be considered in determining the benefit level.

[Ref. C.R. Vol. 11, No. 11]

4.03. Option for Unmarried Employees – Class II Members.

- (a) Should any member be unmarried on the date of retirement, and designate an individual as a beneficiary pursuant to 1 CMC Section 8352(d), and then subsequently marry, the prior designation will be deemed null and void. Full retirement benefits will then be restored to the annuitant from the date of marriage.
- (b) Any individual designated by a member pursuant to 1 CMC Section 8352(d) shall be entitled to an annuity equal to that of a surviving spouse for Class II members.

[Ref. C.R. Vol. 11, No. 11]

4.05. Refund of Contribution – Interest Computation. Upon complete separation from government service, a member eligible for refund of contribution shall receive both contribution and interest upon submission of an application for refund. Computation of interest shall be given annually, as of the close of each year, (October 1 to September 30), using 365 days per year. Examples in computing interest are as follows:

Example 1: Tom started working for the government on June 1, 1995 and started contributing to the Fund beginning pay-period June 29, 1995. As of the closing of the year, September 30, 1995, he had contributed \$1,000. He stopped working on January 31, 1996. From October 1, 1995 to January 31, 1996 he contributed \$500. Tom submitted a refund application on February 2, 1996. The total amount to be refunded is computed as follows:

1995 Contribution.....	\$1,000.00
For Fiscal Year 1995 Interest (\$1000 x 3.5%).....	35.00
Total Accumulated Contribution/Interest as of 9/30/95.....	<u>\$1,035.00</u>
1996 Contribution.....	500.00
<u>TOTAL AMOUNT TO BE REFUNDED.....</u>	<u>\$1,535.00</u>

No interest is given for 1996 because he applied for a refund before the close of the year.

Example 2: The same scenario as Example 1, except that Tom did not request his refund until December 31, 1996. His total refund amount is computed as follows:

1995 Contribution.....	\$1,000.00
For Fiscal Year 1995 Interest (\$1000 x 3.5%).....	35.00
Total Accumulated Contribution/Interest as of 9/30/95.....	<u>\$1,035.00</u>
1996 Contribution.....	500.00
For Fiscal Year 1996 Interest (\$1535 x 3.5%).....	53.73
Total Accumulated Contribution/Interest as of 9/30/96.....	<u>\$1,588.73</u>
<u>TOTAL AMOUNT TO BE REFUNDED.....</u>	<u>\$1,588.73</u>

4.06. Interest Computation for Active Members. As of the end of each fiscal year, regular interest of 3.5% shall be computed and added to the contribution record of the member. Method of computation for interest is the same as that provided under Section 4.50 of these rules and regulations.

[Ref. C.R. Vol. 17, No. 06]

4.07. Prior Service Credit per Public Law 8-39. Upon the effective date of this rules and regulations, prior service credit shall be given for services rendered to the following agencies based on the following terms and conditions:

(a) Agencies:

- (1) The United States District Court for the Northern Mariana islands, Appellate Division, between October 2, 1980 and May 1, 1989;
- (2) The National Health Corps between September 1986 and September 1990 in the Northern Mariana Islands;
- (3) The Commission on Federal Laws between January 1981 and May 1983.

(b) Terms and conditions: Such members must elect to receive such prior service within 90 days of the effective date of these regulations.

[Ref. C.R. Vol. 16, No. 09]

4.08. Survivors Benefits for Children.

- (a) Benefits for children, under 18 years of age, of deceased Fund members shall be paid to the surviving spouse for the benefit of the children, or if there is no surviving spouse, to a guardian appointed by a court of competent jurisdiction for the benefit of the children.
- (b) If both spouses in a household are Fund members, such membership shall not result in any increase in children's benefits.
- (c) Death of a member with children by different spouses:
 - (i) If a deceased member has children (natural or adopted) eligible for survivor's benefits, such children shall be entitled to a pro rata share of children's benefits payable, regardless of whether they continue to reside with the member's surviving spouse.
 - (ii) The fact that such children may not be children of the surviving spouse is irrelevant in determining the children's benefits.
 - (iii) All benefits payable to children who are not residing with the surviving spouse shall be payable to the guardian appointed for such children provided the children are under 18 years of age. If a child is over 18 years of age and eligible for a benefit, the benefit shall be payable to the child.

[Ref. C.R. Vol. 11, No. 11]

4.09. Death After Separation – Contributions on Account. If a vested member who separated from membership leaving contributions on account with the Fund, who dies prior to age 60 in Class II, and 62 if Class I, with 3 years of contributing membership service, the estate or beneficiary is entitled to receive a refund of contributions as follows:

- (a) For Class I, one-third of the contribution plus regular interest.
- (b) For Class II, all of the contribution plus regular interest.

No death benefits or survivor's benefits shall be payable as a result of the death of such a person.

4.10. Designation of Payee on Behalf of Recipient of Retirement Benefits.

- (a) Payment of retirement benefits or other benefits issued under the Retirement Fund plan is personal to the recipient as provided under 1 CMC Section 8383. For this reason, the benefit shall not be assigned or paid to any person other than the recipient, unless the person lacks the legal capacity to directly receive the benefit as follows:
 - (i) the recipient is under the age of 18 years;

- (ii) the recipient has been declared by a court of competent jurisdiction to be mentally incapable of managing his/her own affairs, financial or otherwise;
 - (iii) the recipient has been declared, in writing by two licensed and practicing physicians, selected by the Board of Trustees, to be mentally incapable of managing his/her own affairs, financial or otherwise, and the Board of Trustees has confirmed the physicians' decision after notice and an opportunity for hearing to mentally incapable individual.
- (b) Payment of benefits to recipients who are under the age of 18 years shall be made to a parent or parents, natural or adopted, or if no living parent, a court appointed legal guardian, who has actual custody of the recipient.
 - (c) Payment of benefits to mentally incapable recipients shall be made to an immediate relative who is either a spouse, the child of the recipient who is 18 years or over, or a person who demonstrates a strong concern for the personal welfare of the recipient as determined by the Board of Trustees. If a legal guardian is appointed by a court of competent jurisdiction, the legal guardian shall serve as the payee.
 - (d) For purposes of payments on behalf of a recipient, a power of attorney in any manner, shape or form, executed after the date of the declaration of incompetency of the recipient, shall not be honored or recognized by the Board of Trustees nor can it be used to determine a payee.
 - (e) Application for a change of payee shall be filed by the person willing to accept responsibility for the recipient, on a form prescribed by the Board of Trustees. The Board shall have the final determination on all applications submitted.

4.11. Reporting Required for Payment on Behalf of Recipients Who are Incapable of Self-Management.

- (a) Persons designated and who accepted responsibility for receiving payment of benefits on behalf of and for the recipients shall file with the Fund a monthly report on the use of the funds received during the previous month. The report must be signed and declared under penalty of perjury and filed no later than the last day of the month following the month on which payments were received.
- (b) The report required under this Section shall be in writing and shall contain a statement on how and on what were the funds used to benefit the recipient.

4.12. Penalty of Failure to File a Report.

- (a) If the payee fails to submit a report required under this Section, the payee shall, upon reasonable notice by the Fund, return the exact amount of benefit received for the month in which such report is due but not filed.
- (b) If the payee fails to return the funds pursuant to Section 4.8(a), and the Board so directs, the legal counsel for the Board of Trustees shall initiate a civil action to collect the amount due as determined by the Fund.
- (c) Failure by the person so designated as a payee to file a report as required shall be grounds for termination of such designation and the Board of Trustees may require that another qualified person be appointed or designated to be the payee as described in Section 4.6(c).

[Ref. C.R. Vol. 11, No. 11]

4.13. Vesting Service Credit for Overtime or Compensatory Time.

- (1) To receive vesting service credit for overtime or compensatory time, the following conditions must be met:
 - (a) Overtime or compensatory time hours must exceed 2,080 hours of regular hours worked within the calendar year (January to December of the same year). For example, if an employee works 2,000 regular hours and 200 hours of overtime or compensatory time for the year, the employee is entitled to 120 hours of additional vesting service credit (2,080 minus 2,200 hours equals 120 hours).
 - (b) Overtime and compensatory time must be paid to the employee.
 - (c) Overtime or compensatory time must be certified by the Director of Finance or the Head of the Autonomous Agency where overtime or compensatory was performed.
- (2) The members who are eligible are as follows:
 - (a) Active employees who were paid overtime from January 1, 1985 to the date of retirement.
 - (b) Retired members who are receiving benefits from the NMI Retirement Fund and who had worked overtime or compensatory time while employed by the government from January 1, 1985 to the date of retirement.
 - (c) Retirees or surviving spouse benefits may be adjusted when the overtime or compensatory time is certified to the NMI Retirement Fund.

(d) Former employees who are vested (members having 3 or more years of contributing membership service) in the NMI Retirement Fund will receive vesting service credit upon certification by the Director of Finance or certification from the Autonomous Agency Head that the member has overtime or compensatory time. If as a result of such certification the vested member becomes eligible for benefit, it shall be processed and the annuity shall begin from the date the certification of overtime or compensatory is received by the Fund.

(3) Overtime or compensatory time and accumulated sick leave hours will be converted to vesting service credit by using the following Conversion Table:

**VESTING SERVICE CONVERSION TABLE
For Sick Leave, Overtime or Compensatory Time**

No. Day	1 Dy & Up	1 Mo & Up	2 Mo & Up	3 Mo & Up	4 Mo & Up	5 Mo & Up	6 Mo & Up	7 Mo & Up	8 Mo & Up	9 Mo & Up	10 Mo & Up	11 Mo & Up
0	—	173	347	520	693	867	1040	1213	1387	1560	1733	1907
1	6	179	352	527	699	872	1046	1219	1392	1566	1739	1912
2	12	185	358	532	705	878	1052	1225	1398	1572	1745	1918
3	17	191	364	537	711	884	1057	1231	1404	1577	1751	1924
4	23	196	370	543	716	890	1063	1236	1410	1583	1756	1930
5	29	202	376	549	722	896	1069	1242	1416	1589	1762	1936
6	35	208	381	555	728	901	1075	1248	1421	1595	1768	1941
7	40	214	387	560	734	907	1080	1254	1427	1600	1774	1947
8	46	220	393	566	740	913	1086	1260	1433	1606	1780	1953
9	52	225	399	572	745	919	1092	1265	1439	1612	1785	1959
10	58	231	404	578	751	924	1098	1271	1444	1618	1791	1964
11	64	237	410	584	757	930	1104	1277	1450	1624	1797	1970
12	69	243	416	589	763	936	1109	1283	1456	1629	1803	1976
13	75	248	422	595	768	942	1115	1288	1462	1635	1808	1982
14	81	254	428	601	774	948	1121	1294	1468	1641	1814	1988
15	87	260	433	607	780	953	1127	1300	1473	1647	1820	1993
16	92	266	439	612	786	959	1132	1306	1479	1652	1826	1999
17	98	272	445	618	792	965	1138	1312	1485	1658	1832	2005
18	104	277	451	624	797	971	1144	1317	1491	1664	1837	2011
19	110	283	456	630	803	976	1150	1323	1496	1670	1843	2016
20	116	289	462	636	809	982	1156	1329	1502	1676	1849	2022
21	121	295	468	641	815	988	1161	1335	1508	1681	1855	2028
22	127	300	474	647	820	994	1167	1340	1514	1687	1860	2034
23	133	306	480	653	826	1000	1173	1346	1520	1693	1866	2040
24	139	312	485	659	832	1005	1179	1352	1525	1699	1872	2045
25	144	318	491	664	838	1011	1184	1358	1531	1704	1878	2051
26	150	324	497	670	844	1017	1190	1364	1537	1710	1884	2057
27	156	329	503	676	849	1023	1196	1369	1543	1716	1889	2063
28	162	335	508	682	855	1028	1202	1375	1548	1722	1895	2068
29	168	341	514	688	861	1034	1208	1381	1554	1728	1901	2074

4.14 Early Retirement Bonus.

- (1) General Requirements. Every member of the Fund shall be eligible for the bonus equal to 30% of the annual salary of the member pursuant to P.L. 8-30. General requirements for eligibility to elect and receive the bonus are as follows:
 - (a) Employees, except those specifically exempted by law, who have 20 or more years of vesting service credit with the NMI Retirement Fund on October 1, 1993 must elect to receive the bonus and retire within 90 days of October 1, 1993.
 - (b) Employees, except those specifically exempted by law, must elect and retire within 90 days of attaining 20 years of vesting service with the NMI Retirement Fund.
 - (c) Any member of the NMI Retirement Fund who is occupying an exempted position will be eligible for the bonus only upon attaining at least 20 years of vesting service with the NMI Retirement Fund and who elects to retire.
 - (d) Any employee who did not make the election and retire within 90 days of becoming eligible for the bonus, and who instead converts into a position or status which is exempted from making the immediate election to receive the bonus, is deemed to have waived his/her eligibility for the bonus.
 - (e) Any employee who, during the 90-day eligibility period, converts to a position not requiring an immediate election will continue to be eligible until the expiration of the 90 days. If such an employee fails to elect during the eligibility period and the employee continues to be employed, he/she is deemed to have waived the eligibility for the bonus.
 - (f) Any employee, except those exempted by law, who fails to elect and retire within 90 days of becoming eligible for the early retirement bonus shall forfeit the bonus.
- (2) Specific Election Requirements. To receive the bonus, election must be made as follows:
 - (a) Any employee whose position is classified by the Civil Service Commission and has attained or upon attainment of 20 years of vesting service, must elect and retire within 90 days.
 - (b) Excepted service employees or employees who are under an employment contract and who have attained 20 years of vesting service, must elect and retire within 90 days of the expiration of the employment contract, or if

renewed, within 90 days of the expiration of any renewed contract, or any subsequent new contract.

- (c) Any elected official, or any department director appointed by the governor, or any special assistant to the governor, who has attained at least 20 years of vesting service, may elect and receive the bonus in December and retires on the expiration of his/her term of office in January of the following year.
 - (d) Employees appointed by elected officials who have attained 20 years of vesting service, may elect and retire within 90 days of the expiration of the term of the appointing elected official.
 - (e) For teachers, nurses, doctors or attorneys for the government and who have attained 20 years of vesting service, may, at anytime, elect to receive the bonus and retire.
- (3) For purposes of eligibility for the 30% bonus, 20 years of vesting service shall consist of the following:
- (a) Actual membership service.
 - (b) Credited prior service. Prior service that has not been credited or has not been fully paid will not be counted until it is fully paid and credited, except when the member elects to retire prior to full settlement.
 - (c) Credited overtime or compensatory time.
- (4) Vesting service of education and military service shall not be included in the determination of bonus eligibility until the employee elects to retire. Sick leave balance will also be considered only at the time the employee elects to retire.

4.15. Procedure For Certification of Lack of Funds.

- (1) Procedure to certify to the Administrator with respect to the lack of funds to pay for the 30% bonus is as follows:
- (a) Employees within the executive, legislative and judiciary branches including federal programs and agencies whose payroll are processed and paid by the Director of Finance must be certified by the person with expenditure authority, concurred by the Director of Finance and the Special Assistant for Planning and Budget.
 - (b) Employees within the autonomous agencies whose payroll is processed and paid by such autonomous agencies must be certified by the head of the

autonomous agency, concurred by its financial officer and approved by the respective Chairman of the Board or Commission.

4.16. Basis For The Payment of Bonus; Withholdings.

- (1) The 30% early retirement bonus shall be based on the lower of the annual salary received during the last 12 months consisting of 26 pay periods immediately preceding the date of retirement; or, the annual salary stated in the most recent personnel action.
- (2) The early retirement bonus is subject to withholding for retirement fund contribution and all applicable taxes.

4.17. Re-employment After Bonus Was Received.

- (1) Any employee who retires pursuant to Public Law 8-30 and later returns to government service in any of the exempted positions must return all bonus received to the NMI Retirement Fund. The repayment shall be either lump sum or through payroll deduction as approved by the Administrator of the NMI Retirement Fund. The Administrator shall, on a monthly basis, remit all collections of repaid bonus to the Director of Finance, less any bonus amount paid by the Fund which remains unreimbursed by the government.
- (2) Retirees prior to October 1, 1993, who subsequently return to government service on or after the effective date of Public Law 8-30 are not eligible for the early retirement bonus of 30%.

[Ref. C.R. Vol. 16, No. 02]

PART 5. RIGHTS AND OBLIGATIONS

5.01. Time for Payments.

- (a) All payments for benefits (retirement, disability, surviving spouse and surviving child) shall be made on equal semi-monthly disbursements.
- (b) In the case where a benefit was paid based on estimated figures, the Fund shall upon receipt of genuine documents recomputed the benefit. If it is found that the benefit is underpaid, the annuitant shall receive a retroactive adjustment of his/her benefit. If it is found that the benefit was overpaid, the Fund shall recover such overpayment by reducing the annuitant's benefit by 50% or a lesser amount as authorized by the Administrator until the full amount is recovered.
- (c) Upon death of an annuitant, with a surviving spouse or beneficiary, the pro rata share of the deceased annuitant shall be payable to the spouse or beneficiary as the case may be. If the annuitant has no surviving spouse nor beneficiary, the pro

rata share shall be held in abeyance pending the court appointment of an administrator of the estate.

[Ref. C.R. Volume 11, No. 11]

PART 6. OTHER BENEFITS

6.01. Cost of Living Allowance (COLA).

- (1) All Class I, Class II and surviving spouses in receipt of benefit from the NMI Retirement Fund will have their annuity adjusted for COLA beginning January 1, and thereafter based on the following criteria:
 - (a) Those annuitants who are 55 years of age or older on January 1, 1994 will receive a COLA on January 1, 1994.
 - (b) Thereafter, annuitants turning 55 years of age during the year will receive their COLA on January 1 of the following year.
- (2) The COLA rate will be adopted by the Board of Trustees which shall be that rate used for the beneficiaries of the United States Social Security System but not less than 2% per annum. Once the Board of Trustees adopts the COLA rate, it will be the same rate applied throughout the year (January to December of the same year).
- (3) The COLA rate will be applied to the benefits based on compound interest formula.

6.02. Life Insurance Contributions and Level of Coverage.

- (1) Persons in receipt of service or age retirement annuity shall have the option to elect, on a form prescribed by the Board of Trustees, to receive the same level of life insurance coverage in force at the time of their retirement. Premium for the excess coverage (amount in excess of what is presently being made available by the government insurance carrier for retirees) is subject to the current prevailing rate for an active government employee or as established by the Board of Trustees based on the prevailing rate for retirees.
- (2) The premium cost shall be equally shared by the retiree and the NMI Retirement Fund for coverage period beginning October 1, 1993. However, if the coverage is made retroactive to the date of retirement (prior to October 1, 1993), the one time cost of premium will be paid solely by the NMI Retirement Fund.
- (3) The retroactive effective date does not apply to deceased annuitant's estate or cause added benefits to be paid to survivors of deceased annuitants.

- (4) In the event the existing government life insurance carrier does not consent to provide the additional life insurance coverage, the Board of Trustees will establish a Life Insurance Trust Fund to meet the requirement of the law.
- (5) A retiree who did not carry life insurance coverage immediately prior to retirement shall not be eligible for the option described in subsection (1) of this section.

6.03. Health Insurance Contributions.

- (1) Recipients of service retirement and surviving spouse annuity shall be entitled to elect for health insurance coverage. Effective October 1, 1993, the NMI Retirement Fund will share the cost of health insurance premium equal to 52% of the total cost based on the premium under the Government Health Insurance Plan.
- (2) The contributions of the NMI Retirement Fund to other health insurance plans shall be equal to the amount it pays under the Government Health Insurance Plan.

For example: If the NMI Retirement Fund pays \$15.00 for a family health insurance coverage under the Government Health Insurance Plan, it will only contribute \$15.00 for a family health insurance coverage under any other plan.

6.04. Survivor's Benefits Upon Death of a Terminated Vested Member.

- (1) Upon the death of a vested member who has separated from government service and leaving his/her retirement contribution with the Fund, the surviving spouse and children shall be entitled to survivors benefits pursuant to 1 CMC Section 8353, as amended by Public Law 8-31, if the terminated vested member is a Class II member; and if the terminated vested member is a Class I member, the survivors benefit shall be pursuant to 1 CMC 8351, as amended by Public Law 8-31.

[Ref. C.R. Vol. 16, No. 02]

PART 7. APPEALS

7.01. Appeal from Decision of Administrator. Any person aggrieved by a decision of the Administrator of the Retirement Fund may appeal the decision to the Board by filing a written notice of appeal with the Board within 30 days of the date of the Administrator's decision. A failure to file a timely appeal will result in its dismissal.

7.02. Contents of the Notice Appeal. The notice of appeal shall contain:

- (a) the name of the party appealing;

- (b) a brief statement of any disputed factual matters in the decision of the Administrator; and
- (c) a brief statement of any disputed legal issues in the decision of the Administrator.

7.03. Hearing on Appeal.

- (a) After reviewing the notice of appeal, the Board may then, at its discretion, in accordance with 1 CMC Section 9109, either: (1) preside at the taking of evidence; or (2) appoint a hearing officer to preside at the taking of the evidence. No hearing officer will be appointed where the aggrieved party in its notice of appeal does not dispute any factual findings of the Administrator, or raise any new factual issues.
- (b) In accordance with 1 CMC Section 9110, if a hearing officer is appointed, the hearing officer shall initially decide the case in accordance with the procedures outlined in 1 CMC Section 9109.
- (c) In accordance with 1 CMC Section 9110, if the Board presides at the initial hearing, the Board shall decide the case in accordance with the procedures outlined in 1 CMC Section 9109. Any further appeal of the Board's decision shall be made to the Commonwealth Superior Court in accordance with 1 CMC Section 9112(b).

7.04. Appeal to the Board from a Decision of the Hearing Officer.

- (a) Any person aggrieved by a decision of the hearing officer may appeal the decision to the Board by filing a written notice of appeal within 15 days of the date of the hearing officer's decision. A failure to file a timely appeal will result in its dismissal.
- (b) The Board may also on its own review any decision of the hearing officer.
- (c) Any appeal to the Board from a party aggrieved by a decision of the hearing officer shall state the following in writing:
 - (i) the name of the party appealing;
 - (ii) a brief statement of any disputed factual matters in the decision of the hearing officer; and
 - (iii) a brief statement of any disputed legal issues in the decision of the hearing officer.
- (d) Subject to the Board's discretion, the Board may:

- (i) affirm the judgment of the hearing officer without further hearing; or
 - (ii) reverse the judgment of the hearing officer without further hearing; or
 - (iii) hold a further hearing limited to specified legal and factual issues.
- (e) Any further appeal of the Board's decision shall be made to the Commonwealth Superior Court in accordance with 1 CMC Section 9112(b).

7.05. Legal Representation in Fund Proceedings. A person may represent himself or herself in connection with any administrative hearing or other proceeding of the Fund. A person may also be represented in such matters by any attorney licensed to practice in the Commonwealth. A person shall not be represented in such matters by any other person; provided, however, that a person may bring such witnesses, translator(s), and observers to a proceeding as he or she deems necessary.

[Ref. C.R. Vol. 11, No. 11]

PART 8. PROCUREMENT

The Commonwealth Procurement Regulations are adopted, as modified herein, to be the procurement regulations of the NMI Retirement Fund.

8.01. All references in the Commonwealth Procurement Regulations to the Chief of Procurement and Supply, Director of Finance, Officer with Expenditure Authority, and other executive branch officials shall be deemed to refer to the Administrator of the Retirement Fund. All references to the Governor shall be deemed to refer to the Board of Trustees of the NMI Retirement Fund. All references to the Attorney General shall be deemed to refer to the legal counsel to the Retirement Fund. Procurement appeals may be made to the Public Auditor as provided in the Commonwealth Procurement Regulations.

[Ref. C.R. Vol. 11, No. 11]

PART 9. EFFECTIVE DATE

These regulations shall become effective pursuant to the Administrative Procedures Act at 1 CMC 9101, et. seq.

**NORTHERN MARIANA ISLANDS
RETIREMENT FUND**

**RETIREMENT INTEGRITY
ASSURANCE ACT (RIAA)**

**ACTUARIAL STUDY AND
FUNDING RECOMMENDATIONS**

Prepared by:
Mellon
Human Resources & Investor Solutions
May 2004

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5/18/04



FOREWORD

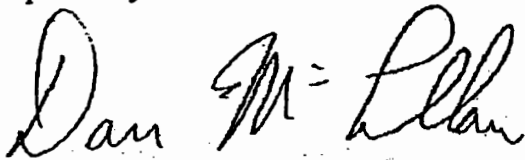
As required by Section 8 of the Retirement Integrity Assurance Act (RIAA), the Board of Trustees of the Northern Mariana Islands Retirement Fund shall commission an actuarial study on the effect of the provisions of RIAA.

The purpose of this report is to:

- Review some key issues in RIAA and its impact on the Fund.
- Provide additional recommendations to improve the unfunded liability and reduce government contributions.

Details of our findings and recommendations are contained in this report. We welcome the opportunity to discuss the results of our study with you and answer any questions you may have.

Respectfully submitted,



L. Daniel McLellan, A.S.A., E.A., M.A.A.A.
Consulting Actuary

May 2004



Northern Mariana Islands Retirement Fund

Retirement Integrity Assurance Act (RIAA)

Actuarial Study and Funding Recommendations

Actuarial Study

RIAA is legislation that looks to maintain the financial integrity of the government retirement system by relieving the government from the burden of having to allocate a substantial portion of its revenues to the retirement fund, and permit the government to divert the necessary resources to pay for essential services for the benefit of the general public. RIAA repeals: (a) the additional 3% retirement bonus for certain elected officials, (b) benefits for board and commission members, (c) vesting credits for education service, military service, compensatory time, and unused sick leave, and (d) prior service vesting credit.

In addition to the above changes, RIAA creates disincentive to the withdrawal of employee contributions by imposing an early withdrawal penalty, by restricting reemployment for a period of six months unless the refunded contributions are returned to the fund, and by redefining the term salary to mean base salary. Finally, RIAA includes a provision to encourage Class I members to retire before reaching 62 years of age which would reduce government payroll costs and thereby free up additional funds for remittance as employer contributions to the retirement fund.

Each of these provisions will be reviewed in the following section.

Repeal of CMC Section 8341(d) and 8344(f) eliminates the additional 3% retirement bonus benefit provided for service rendered by a member while acting as Governor, Judge of the Commonwealth government, Lieutenant Governor, Mayor, member of the legislature, or Resident Representative to the United States. The repeal of this provision places these members on the same benefit basis as all other members covered by the plan. The change is fair due to the fact that contributions paid by this group are the same as all other members in either Class I or Class II. Equal contributions should produce equal benefits. This change will generate an overall gain for the Fund and will help accomplish what the ACT is intended to accomplish.

Repeal of CMC Section 8341 (f) eliminates retirement benefits of persons who serve as a board member on an autonomous agencies of the government of the Commonwealth of the Northern Mariana Islands and who is not a member or a retiree of the NMI Retirement Fund. These benefits were being provided without any contributions being made by the members. Eliminating these benefits is fair to the remaining members that are required to make contributions to be entitled to receive benefits. Equal benefits should only be provided for equal contributions. This change will generate an overall gain for the Fund and will help accomplish what the ACT is intended to accomplish.



Repeal of CMC Sections 8313 (p)(2) through (p)(6) and CMC Sections 8323 through 8334 eliminating Prior Service, Credited Service, Education Service, Military Service, and Vesting Service has a dual effect on the benefits and vesting of members. Prior to this change, service retirement benefits were calculated based on a combination of Prior Service and Membership Service. Prior Service was service rendered by a member during their employment with the Government prior to becoming a Fund member. The level of required member contributions necessary to buy back this service credit was not sufficient to purchase the entire benefit. Membership Service is service rendered after becoming a Fund member and making required contributions. The elimination of Prior Service for determining benefits will eliminate unfunded liability that was created when the Fund was created and never funded. The funding burden for these liabilities fell totally on the shoulders of the Government. This change will generate an overall gain for the Fund and will help accomplish what the ACT is intended to accomplish.

The elimination of Education Service, Military Service, and Vesting Service should have no effect on plan benefits for members that would have otherwise become vested. These service amounts were not used to determine benefits, just whether or not a member was vested in the benefit that they had earned. Any member that becomes vested based on Membership Service, for which the member makes contributions, will have no change in their benefit. Members that do not become vested based on Membership Service will no longer be entitled to a benefit. This is a fair change since members will no longer receive credit for service where no contributions were received. All of these service changes will generate an overall gain for the Fund and will help accomplish what the ACT is intended to accomplish.

Benefits for members that elected, and paid the Fund the required amounts, to receive the Prior Service benefit credits should be reviewed to see if any adjustments are needed. Benefits for this group of members may either be unchanged with no refund of the member's contributions made to purchase these benefits, or if a refund of contributions is made benefits should be adjusted.

CMC Sections 8356(a) and (b) were modified to provide penalties for members that separated from service prior to retirement and elect to withdraw their contributions. The Fund was created to provide members benefits upon retirement. Allowing members to separate from service and withdraw their contributions, with interest, is counter productive to the intent of the Fund. Once a member withdraws his contribution from the Fund, they are no longer entitled to any future retirement benefits. This modification will generate a small gain for the Fund.

CMC Section 8313(o) was modified to change the definition of salary used to determine benefits. Prior to this change, Form W-2 wages were used to determine benefits. This change limits salary to base salary for the member plus payments for annual leave, sick leave, administrative leave, and holiday pay. This change in the definition of salary may have the effect of lowering the benefits provide to members. Members that are unaffected by this change will have no change in the level of benefits. The magnitude of the change for other members will depend on the amount of pay that has been eliminated for benefit purposes. It is estimated that this change will have little effect on long term benefit levels for members. It is projected that this change will generate a small gain for the Fund.



Members may question why they are required to make contributions on pay amounts that are not used for benefits. The Northern Mariana Islands Retirement Fund was modeled after the Social Security System of the United States. Like the Social Security System of the United States, contributions are paid by United States residents on their total income, but benefits are capped at certain limits. The Social Security System goes even further by providing smaller benefits for those residents with higher incomes than the benefits provide to those residents with lower incomes. The Northern Mariana Islands Retirement Fund provides equal benefits to members based on their contribution levels. Members contributions based on total member income is consistent with the Social Security System.

The administration of this provision will require a modification in the way that salaries are reported to the Fund. W-2 income will no longer be useful to the Fund. Once this provision is implemented, only that portion of the W-2 income that will be used to provide retirement benefits will need to be reported to the Fund.

It would be our recommendation that this provision not be implemented until January 1, 2006. This transition period allows two important elements to be accomplished. First, the transition period will allow those members that are near retirement to retire at the benefit levels that they have been planning on receiving. Those members should not be harmed by a sudden change in their retirement plans. Transition periods such as this are common within Funds that make these types of changes. Members that are further away from retirement will have time to adjust their plans to help offset the potential decrease in their retirement benefits provided by the Fund. Many members may not have any change in their benefit level if all of their income is included in the new definition of salary. Secondly, the transition period will give employers time to modify their administrative systems so that the proper level of salary is report to the Fund.

The repeal and reenacted CMC Section 8342(a) provides the opportunity for Class I members to have the same early retirement options that Class II members. This opportunity requires that Class I members pay the Fund the difference between the amount of contributions that Class I members make (6.5%) and that of Class II members (9%). This change is intended to help reduce government payroll, which will provide needed cash that can be used to help make the required government contributions to the Fund. The slight increase in required government funding that will be required by this change is more than offset by the payroll savings.

It is our recommendation that the pay back of member contributions should include an interest adjustment. We have spoken with the Funds administer, and have agreed that the 5-year moving scale that is currently being used for other calculations is a reasonable rate to use for this adjustment. The one additional recommendation that we would make concerning this rate is that a minimum rate also be utilized. Thus, as has happen in recent history, the 5-year average of the Fund may be negative while the historical rate of return for the fund is positive. A minimum rate between 4% and 5% is commonly used for such calculations.

④ Our final recommendation in this area is that before the Fund pays any adjusted benefits to any member that the member be required to fully pay all moneys that are due in order to receive the enhanced benefit. This requirement of advanced payment by the member will insure that the Fund is made whole before any benefits are paid. The Fund will not have to go looking for payment. This recommendation is true with any member buy back of benefit service. The Fund should collect first before making any benefit payments.

The Fund should also review any provision that allows members to buy back benefit credits. If the Fund does not collect the cost of these buy backs from the member, additional unfunded liability will be created that will be the responsibility of the government. In many cases, this will drive up the cost of the buy back by the member, but it will not cause the Fund to create additional liabilities for which there is no additional funding. All such provisions should be reviewed to determine if they are cost neutral for the Fund before they are implemented.

Conclusion - Actuarial Study

The passage of the Retirement Integrity Assurance Act was intended to strengthen the financial soundness of the Northern Mariana Islands Retirement Fund. Financial soundness of any Fund is based on two items. First, benefits provided by the Fund should be reasonable in comparison to the level of contributions going into the Fund. If benefits levels exceed funding, the current funding deficiency will continue to escalate. Second, the collected contributions must be deposited into the Fund. If contributions are diverted to other areas the Fund will continue to run at a deficit. Any changes made to the benefit levels should be accompanied with a sound fiscal funding program. One without the other only prolongs the problem.

The changes that have been discussed above have the net effect of reducing the unfunded liability of the Fund by an estimated \$40,000,000, and the annual government contributions by an estimated \$4,000,000 per year. These benefit changes, along with an ongoing fiscal responsibility of remitting employer contributions to the Fund, will help insure the future financial soundness of the Fund. These changes without the fiscal responsibility of remitting employer contributions to the Fund will only require additional benefit reductions in the future.

We recommend that the Fund and the Commonwealth take both actions.



Funding Recommendations

We have been asked to review various provisions that contribute to the unfunded liability of the Northern Mariana Islands Retirement Fund (the "Fund"). Our study was done in conjunction with the passage of the Retirement Integrity Assurance Act of 2004. Our recommendations are outlined below.

Projected Salary Increases

Benefits provided by the Fund are based on a participant's total annual compensation. When we perform the annual actuarial valuation for the Fund, we project each participant's salary out into his or her future expected retirement date. The higher the assumed salary increases, the larger the estimated projected retirement benefit and the larger the liabilities are for the Fund.

The Fund currently assumes that participant's salaries will increase at a rate of 5.00% per year. We have been monitoring salary increases of the Fund over the last several years and have not seen these level of increases given to participants. Historical salary increases have been much smaller than the 5.00% projection. We have also seen a decrease in the assumed rate of salary increases given in the United States. The ongoing budget for most companies payroll departments is an annual increase somewhere between 2.50% and 3.00% per year.

Based on historical information of the Fund, and the current trend that we see across the United States, we would recommend that the Fund lower the projection of future salary increases of the Fund's participants. A decrease from the current 5.00% projection to future projection of 3.00% would decrease the liabilities of the Fund by an estimated \$110,000,000. This change would not change the amount of benefits that participants are receiving; it would just bring in line the liabilities of the Fund to reflect both historical facts and current trends.

Cost of Living Adjustments

The Fund currently provides that participants receiving benefits are to have annual cost of living adjustments made to their benefits. Cost of living assumptions work in the same manner that the assumed salary assumption works. The higher the assumption, the larger the projected benefits, and the larger the liabilities are for the Fund. These adjustments are the same that are used by the United States of America Social Security System for its beneficiaries. Recent history shows that this rate has been between 2.00% and 2.50%. The Fund, for valuation purposes, is projecting annual benefit increases of 3.00%.

Providing participants with benefit increases that exceed current inflationary indexes not only increases the Fund's liabilities, but also forces the Fund to increase its level of contributions. Since assets of the Fund are meant to keep up with inflation, any benefit improvements that are greater than inflation cause the liabilities to grow faster than the assets and thus result in increased funding levels.



Based on current inflationary indexes, we recommend that the Fund reduce the assumed cost of living adjustments that are made to participants currently receiving benefits from 3.00% to 2.00%. This reduction will decrease the liabilities of the Fund by an estimated \$50,000,000. This change will ensure that the liabilities of the Fund do not grow faster than inflation and result in increased funding levels.

Conclusion – Funding Recommendations

The unfunded liabilities of the Fund have increased significantly over the past several years. Part of the increase has been the down turn in the economic markets. Another factor of this increase are plan provision that have not keep up with this down turn. Future salaries are no longer expected to increase at levels from the past, nor are inflation rates at their prior levels. The changes that are being recommended in this memo are areas that can be controlled by the Fund and will help to correct the later problem. The economic down turn is not within the control of the Fund and only time will help turn that situation around.

The net effect of these recommendations is highlighted on the attached illustration. This illustration shows, that in conjunction with the passage of the Retirement Integrity Assurance Act, that the unfunded funded liabilities of the Fund can be reduced by an estimated \$200,000,000.

We recommend that all of the above changes be enacted to ensure the future of the Northern Mariana Islands retirement Fund.

We welcome any comments or questions that you might have concerning this report.



THIRTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

FOURTH REGULAR SESSION, 2003

PUBLIC LAW NO. 13-60
H. B. NO. 13-356

AN ACT

TO AMEND THE NORTHERN MARIANA ISLANDS RETIREMENT ACT OF 1988;
AND FOR OTHER PURPOSE.

**BE IT ENACTED BY THE THIRTEENTH NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

Section 1. Short Title. This act may be cited as the "Retirement Integrity Assurance Act" (or RIAA).

Section 2. Findings and Purpose. The Legislature finds that the government retirement system is saddled with an unfunded liability that threatens its financial soundness and ability to pay retirement and other benefits. The unfunded liability has increased in part because of the Commonwealth government's financial inability to remit employer contributions to the Fund, along with various amendments to the Retirement Fund Act that have enhanced and increased benefits to eligible members.

The Legislature finds that repealing the following unfunded mandates will maintain the financial integrity of the government retirement system, relieve the government from the burden of having to allocate a substantial portion of its revenues to the retirement fund, and permit the government to divert the necessary resources to pay for essential services for the benefit of the general public: (a) 3% bonus for certain elected officials, (b) benefits for boards and commissions members, (c) vesting credits for education service, military service, compensatory time, and unused sick leave and (d) prior service vesting credit.

Additional reform measures must be instituted to protect the financial viability of the fund including -- (a) disincentives to the withdrawal of employee contributions by imposing an early withdrawal penalty and by restricting reemployment for a period of six months unless the contributions are returned to the fund, and (b) redefining the term "salary" to mean base salary.

The Legislature further finds that the early retirement provision for class I members under 1 CMC § 8342(a) should be restructured to encourage class I members to retire before reaching 62 years of age. Doing so would likely reduce government payroll costs and thereby free up additional funds for remittance as employer contributions to the retirement fund.

Finally the authority of the Retirement Board must be expanded to include reviewing other retirement plans and determining whether such pension plans such as contribution- based benefit plans would be feasible alternatives or supplemental plans that would be in the best interest of the government. Under this Act, the board would have the authority to commission professional studies on such plans and to prescribe rules necessary to implement recommendations from those studies.

Section 3. Repealer. 1 CMC §§ 8313 (p)(2) through (6), 8323 through 8334, 8341 (d) and (f), 8342(b), 8344(0, are hereby repealed. The Law Revision Commission shall redesignate affected sections, subsections, paragraphs and subparagraphs accordingly.

Section 4. Conforming Amendment. The term "vesting service" referred to in 1 CMC §§ 8321, 8342, 8343(b), 8346, 8350, 8352(a) and (c), 8356(b)(1) and (2) is stricken out and replaced by the term "membership service." The term "credited service" is also stricken in 1 CMC §§ 8313(d), 8341, 8342, 8344, 8356(b), and replaced by the term "membership service."

Section 5. Repealer and Reenactment.

(a) 1 CMC § 8313(o) is repealed and reenacted:

“(o) “Salary” means base Salary paid to an employee for services including payment for annual leave, sick leave, administrative leave, holiday pay, but excluding lump sum payment for annual leave, or standby, hazardous, night time differential, typhoon pay differential or overtime pay, or any kind of bonus salary.”

(b) 1 CMC § 8342(a) is repealed and reenacted as follows:

“(a) Any class I member electing to take early retirement shall receive an amount equal to the amount the member would have been entitled to at normal retirement age. Provided that notwithstanding any law to the contrary, the member shall elect to take early retirement and pay a contribution to be set by the Fund based on an actuarial study but no more than the contribution required of class II members. The Fund shall prescribe by regulation procedures and other reasonably necessary regulations to implement this section.”

Section 6. Amendments.

(a) Subsection (a) of 1 CMC § 8345 is amended as follows:

“§ 8345. Occupational Disability Benefits.

(a) Any member who becomes totally and permanently disabled for service from an occupational cause shall receive an annuity equal to 50 percent of the salary such member was receiving at the time the disability was incurred. Such annuity shall continue until the member reaches 62 years of age.”

(b) 1 CMC § 8346 is amended as follows:

“§ 8346. Nonoccupational Disability Benefits.

Any member with at least five years of membership service who becomes totally and permanently disabled for service from nonoccupational causes shall receive the same benefits as those provided members with an occupationally-caused disability.”

(c) Subsections (a), (b), and (d) of 1 CMC § 8347 are amended as follows:

“§ 8347. Disability: Administrative Provisions.

(a) A member shall be considered totally and permanently disabled after the board receives written certification by at least two licensed and practicing physicians and a vocational rehabilitation

counselor preferably one with a master's degree selected by the board that the member is totally and permanently disabled for the further performance of the duties of any assigned position in the service of the government. If, upon consideration of the reports of the physicians and the vocational rehabilitation counselor and any other evidence presented to the board by the member or others interested therein, the board finds the member to be totally and permanently disabled, it shall grant the member a disability retirement annuity upon written certification that the member has been separated from the service of the employer because of total disability of such nature as to reasonably prevent further service for the employer, and as a consequence is not entitled to compensation from the government.

(b) At least once each year during the first five years following the allowance of a disability annuity to any member, and at least once in every three-year period thereafter, the board shall require any disability annuitant to undergo a medical examination and vocational assessment to be made at the place of residence of the annuitant, or at any other place mutually agreed upon, by a physician: or physicians, and vocational rehabilitation counselor engaged by the board. If any examination indicates that the annuitant is no longer physically or mentally incapacitated for service, or that the annuitant is engaged or is able to engage in a gainful occupation, payments of the disability annuity by the fund shall be discontinued.

(d) If any disability annuitant refuses to submit to the examinations as herein provided, payments by the fund shall be discontinued until the member submits to such examinations. If the refusal continues for one year, all rights of the member in any disability annuity shall be permanently revoked by the board."

(d) Subsection (a) of 1 CMC § 8348 is amended as follows:

“§ 8348. Benefits: Death Prior to Retirement Without Survivor Benefits.

Upon death of a member occurring before his or her retirement on a retirement annuity, leaving no persons eligible for survivor annuities as provided herein, the following shall be payable:

(a) For class I members, a refund of one third of the total amount of contributions made by the member, including regular interest; for class 1/members, a refund of one-third of the total amount of contributions made by the member, including regular interest; and”

(e) 1 CMC § 8356 is amended as follows:

“(a) Upon complete separation from service before a class I member shall have completed 10 years of contributing member service, the class I member shall receive a refund of his or her total contributions, including regular interest, subject to an early withdrawal penalty of 10% of the total contributions, excluding interest earned. The penalty shall be withheld and retained upon issuance of the contributions by the Fund. Except as provided in other sections of this part, no refund of any contributions shall be permitted for class I members after completion of 10 years of contributing member service.

(b) Refund of contributions shall be permitted for class II members as follows:

(1) Upon complete separation from service before a member shall have completed at least three years vesting service, the member shall receive a refund of his or her total contributions, including regular interest, subject to an early withdrawal penalty of 10% of the total contributions, excluding

interest earned. The penalty shall be withheld and retained upon issuance of the contributions by the Fund. Total contributions shall include all contributions made by the member to obtain various types of credit authorized by this part.

(2) [no amendments]

(3) [no amendments]

(4) [no amendments]

(c) Regardless of class membership, a member shall be restricted from government reemployment for a period of six months after receiving a refund of his or her contributions, unless the member returns the full amount to the Fund within six months of receiving the refund."

(f) 1 CMC § 8358 is amended as follows:

"§ 8358. Annual Cost of Living Increase.

Class I and class II members in a receipt of a service retirement annuity shall be provided an annual cost of-living increase. The annuity amount will automatically increase on the first day of the quarter following approval by the board.

The cost of living increase will be the same as used by the United States of America Social Security System for its beneficiaries. The cost of living increase percentage will be applied to the previous year's annuity amount paid in equal semimonthly increments."

(g) 1 CMC § 8315 is amended by adding the following a new subsection (b) and by redesignating affected provisions accordingly:

"(b) To submit annual recommendations to the Legislature on any proposed modification to the retirement system authorized under this Part to protect the financial integrity of the fund, and to commission professional

studies, if deemed necessary, to determine the feasibility of transforming the Retirement Fund program into a contribution-based benefits program or to assess the feasibility of administering other supplemental retirement programs."

(h) 1 CMC § 8383(b) is amended as follows:

"(b) Benefits specified in subsection (a) of this section, other than the right to refund, may be allotted for savings with the Commonwealth Government Employee's Credit Union, and may be assigned or transferred for the payment of, and may answer for, debts to the Commonwealth Government Employees' Credit Union or spousal and child support obligations arising out of judicial proceedings, and may be attached, garnished, or otherwise affected by judicial proceedings for the collection of such debts or obligations."

(i) 1 CMC § 8347(h) is amended as follows:

"(h) Any annuity received by a class I or class II member as a result of any disability shall be reduced by an amount equal to any sum the member is entitled to from U.S. Social Security, any workers' compensation insurance or any other insurance covering such disability."

Section 7. Amendment. Title 1, Division 8, Part 2, Chapter 4 of the Commonwealth Code is amended by adding a new section 8253 as follows:

"§ 8253. Filling Positions Vacated By a Retiring Employee.

Notwithstanding any law to the contrary, all department, agencies, and instrumentalities of the Commonwealth Government shall in good faith fill any vacant FTE position that occurs when an employee retires with an employee at a salary lower than the last salary paid to the retiring employee. Each department, agency and instrumentality of the Commonwealth Government shall advise in a timely manner and in writing the Office of Personnel Management and the Department of Finance of positions which become vacant as a result of employee retirement and shall advise the corresponding salaries at which such positions would

be filled. Both the Office of Personnel Management and the Department of Finance shall establish rules and regulations providing procedures to monitor the vacancy of such positions, the salaries to be paid, and any payroll savings to be realized from paying lower salaries. The Department of Finance shall remit such savings, if any, to the Northern Marianas Islands Retirement Fund, in addition to any amounts owed to the Fund.”

Section 8. Actuarial Study Mandate. Within 60 days after the effective date of this Act, the Board of Trustees of the Northern Mariana Islands Retirement Fund shall commission an actuarial study on the effect of the provisions of this Act and shall lower, if warranted, the government contribution rate under 1 CMC § 8362. Such study shall also review the entire government retirement system and to recommend appropriate statutory changes that would significantly lower the government contribution rate over time.

Section 9. Conformance with N.M.I. Const. Art. III § 20(a). All of the provisions of this Act are subject to the mandate set forth by N.M.I. Const. art. 111, § 20(a) and no provision of this Act, including amendments and repealers, shall be construed to be in violation of the constitutional mandate.

Section 10. Rulemaking Authority. The Board of Trustees of the Northern Mariana Islands Retirement Fund shall implement this Act in accordance with section 20(a) of Article III of the Constitution of the Northern Mariana Islands and shall provide for the specific application of the provisions of this Act as to each group of fund members through regulation, except that the amendments to 1 CMC § 8342(a) under this Act shall apply to existing class I members in accordance with procedures to be established by the Fund pursuant to section 5(b) of this Act.

Section 11. Suspension of Early Retirement Bonus. Notwithstanding Section 3 of Public Law 11-114 or any contrary provision of law, no early retirement bonus shall be paid to a government employee electing to retire after December 31, 2005.

Section 12. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent

jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 13. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of the Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this Act becomes effective.

Section 14. Effective Date. This Act shall take effect upon its approval by the Governor or becoming law without such approval.

CERTIFIED BY:

ATTESTED TO BY:

/s/ _____
HEINZ S. HOFSCHEIDER
SPEAKER OF THE HOUSE

/s/ _____
EVELYN C. FLEMING
HOUSE CLERK

Approved this 05th day of December, 2003

/s/ _____
JUAN N. BABAUTA
GOVERNOR
COMMONWEALTH OF THE NORTHERN MARIANAS ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
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OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION

MEMORANDUM

Attorney General Legal Opinion # 04-03

To: Legal Counsel, Northern Marianas Retirement Fund
Director, Office of Public Auditor

From: Angela Bennett, Assistant Attorney General

Thru: Pam Brown, Attorney General

CC:

Date: February 3, 2004

Re: Receipt of government contract funds concurrently with retirement benefits

RECEIVED
FEB 17 2004
Regat R.

Introduction and Issues Presented

This memorandum is in response to your requests for a legal opinion on the issues numbered below.

Operating Definitions:

Contract means contracts with the CNMI government for employment, consulting, independent services, professional services, and sole source contracts.

Contract for employment includes those employment contracts disguised as consulting contracts, independent services contracts, professional services contracts and sole source contracts.

Consulting means "deliberating, seeking advice and opinion, and applying for information."¹

Advice means "a recommendation regarding a decision or course of conduct."²

Government funds means funds received pursuant to a contract as defined above.

¹ *Inos v. Tenorio*, Civ. No. 94-1289 (Decision June 14, 1995 at 28 (citing *Mid-American Regional Council v. Mathews*, 416 F. Supp. 896, 904 (D.C. Mo. 1976));

² Webster's Ninth New Collegiate Dictionary, 1992.

Submitted into Record
My friend w/ no obj.
by RTT.

cc to RTT/NEA/MCA/ICI
la/1705

1. Can a person who has retired from employment with the CNMI government receive funds from the same government under a contract when that person is not exempt under 1 CMC § 8392 (a)?

Short Answer: Yes, as long as (a) that contract is not a contract for employment, or consulting and (b) the contract complies with all applicable procurement regulations.

2. Can a person who has retired from employment with the CNMI government and is receiving funds from the government under a valid contract continue to receive retirement benefits ("double-dip")?

Short Answer: Yes, if they (a) are re-employed by or consulting for the CNMI government and qualify for an exemption under 1 CMC §8392(a) or (b) have a contract that is not for employment or consulting and complies with all applicable procurement regulations. If they are an early retiree, pursuant to C.N.M.I. Constitution, Article III, Section 20(b), and re-employed by the C.N.M.I. government, they may "double dip" for only 60 days during each fiscal year, regardless of their exemption status, unless they are classroom teachers, doctors, nurses, and other medical professionals. This group of early retirees may "double-dip" for two years.

3. Must a person who receives an early retirement bonus from the CNMI government under 1 CMC §8402 repay that bonus if they receive funds from the CNMI government under a valid contract?

Short Answer: No, the person who receives an early retirement bonus does not have to repay that bonus upon executing a valid contract with the CNMI government because the repayment provision was repealed by P.L.11-114.

The application of any of the opinions expressed in this document is fact specific and depends upon a review of the particular contract in question

Applicable Constitutional and Legal Authority

A. The Commonwealth Constitution, as Applicable.

Article III, Section 20 (b) of the N.M.I. Constitution provides for retiree reemployment and double-dipping.

In 1985, this section stated as follows:

An employee who has acquired not less than twenty years of creditable service under the Commonwealth retirement system shall be credited an additional five years and shall be eligible to retire. An employee who elects to retire under this provision may not be reemployed by the Commonwealth Government or any of its instrumentalities or agencies, for more than 60 days in any fiscal year without losing his or her retirement benefits for the remainder of that fiscal year.

In 1997, this section was amended to add the following:

“except that the legislature may by law exempt reemployment of retirees as classroom teachers, doctors, nurses, and other medical professionals from this limitation, for reemployment not exceeding two (2) years. No retiree may have their retirement benefits recomputed based on any reemployment during which retirement benefits are drawn, but every such reemployed retiree shall nevertheless be required to contribute to the retirement fund during the period of reemployment, at the same rate as other government employees. The legislature may prohibit recomputation of retirement benefits based on reemployment after retirement in any event or under any circumstances.”

Source: Second Const. Conv. Amend. 19 (1985); amended by House Legislative Initiative 10-4 (1997).

B. Commonwealth Statutory Authority: 1 CMC 8392

The only relevant statute that provides guidance on these issues is 1 CMC 8392. This statute states as follows:

Reemployment and Double Dipping:

- (a) A person who has retired and received retirement benefits from the government of the Northern Mariana Islands shall not be employed by or under an employment or consulting contract with the government of the Northern Mariana Islands or its public corporations, boards or commissions, unless the person is:
- (1) Appointed by the Governor to a position requiring the advice and consent of the Senate or House of Representatives or both.
 - (2) Hired in a position for which professionals are not readily available in the local labor market, including, for example, teachers for the Public School System and the Northern Marianas College, attorneys for the offices of the Attorney General and Public Defender, nurses and doctors for the Commonwealth Health Center, audit staff for the office of the Public Auditor, and former elected officials.
 - (3) Elected to public office.
 - (4) Title V employee under the federal Older Americans Act. A retiree may be hired under Title V of the Older Americans Act [42 U.S.C. § 3001 et seq.] and continue to receive benefits from the Northern Marianas Retirement Fund. Those benefits will be based on the computed service and wages earned upon

his or her retirement. He or she shall not be required to contribute to the Retirement Fund on wages earned as a recipient of Title V of the Older Americans Act. Any retiree who was hired under Title V of the Older Americans Act prior to October 11, 1991, and who has contributed to the Retirement Fund from such wages, shall be entitled to a refund of all such contributions. Nothing in this section shall be construed to violate any provision of N.M.I. Const. art. III, § 20.

(5) Specifically exempted by the Governor, with the concurrence of the Retirement Board.

(b) A person who has retired and received a retirement benefit shall not be eligible to receive prior service credit if the person continues to receive retirement benefits from the government while accruing service that is eligible for credit as prior service credit upon reemployment with the government.

(c) Provided, however, that any person who elected to retire pursuant to the provisions of N.M.I. Const. art. III, § 20(b) may be employed by the Commonwealth for no more than 60 calendar days in any fiscal year without forfeiting any retirement benefits.

(d) Retirees are allowed to return to government employment as classroom teachers, nurses, doctors and other medical professionals for a period not to exceed two years without losing their retirement benefits. However, no such re-employed retiree shall have their retirement benefits recomputed based on any re-employment during which retirement benefits are drawn, but every such re-employed retiree shall nevertheless be required to contribute to the retirement fund during the period of re-employment, at the same rate as other government employees.

Source: PL 6-41, § 15 (repealing PL 6-17, ch. 8, § 83811); amended by PL 7-39, §§ 6, 7, 8; PL 7-40, § 3; PL 8-31, § 13; PL 11-2, §4.

I. **Can a person who has retired from employment with the CNMI government receive funds from that same government under a contract when that person is not exempt under 1 CMC § 8392 (a)?**

Analysis

A. CNMI law regarding limitations on retirees being reemployed by the CNMI government:

The CNMI Constitution does not prohibit individuals who have retired from employment with the CNMI government from being rehired.³ N.M.I. Const. art. III § 20 (b). Any re-employment of a retiree comes with a constitutional restriction, however. Those retired individuals who are re-employed must contribute to the retirement fund, but cannot have their retirement benefits recomputed based on that re-employment. *Id.* Individuals who have other types of valid contracts are not eligible for membership in the retirement system. 1 CMC § 8322.

N.M.I. Const. art. III § 20 (b) states in pertinent part:

“No retiree may have their retirement benefits recomputed based on any reemployment during which retirement benefits are drawn, but every such reemployed retiree shall nevertheless be required to contribute to the retirement fund during the period of reemployment, at the same rate as other government employees. The legislature may prohibit recomputation of retirement benefits based on reemployment after retirement in any event or under any circumstances.” (emphasis added)

The CNMI limits by statute, the reemployment of retired individuals with some exemptions. 1 CMC § 8392. This statute states in pertinent part:

Reemployment and Double Dipping: (a) A person who has retired and received retirement benefits from the government of the Northern Mariana Islands shall not be employed by or under an employment or consulting contract with the government of the Northern Mariana Islands or its public corporations, boards or commissions...” 1 CMC 8392 (a) (emphasis added)

The history of the exemptions illustrates two contradictory positions taken by the CNMI legislature: (1) to encourage the early retirement of long-time government employees, and (2) to rehire those former employees after retirement. In 1985, the CNMI constitution was amended to allow a five-year early retirement credit for any individual who had been employed by the CNMI government for at least 20 years. N.M.I. Const. art. III § 20 (b). In 1993, the legislature passed the Early Retirement Bonus Act of 1993 (P.L. 8-30). With that incentive, many long-time government employees retired. During that same time, the CNMI legislature allowed rehiring of retired individuals through statutory exemptions from the rehire prohibitions in 1 CMC § 8392.⁴ The intent of these exemptions is summarized in P.L. 7-40 which states in pertinent part:

³ For constitutional limitations on receiving a salary and retirement benefits (“double-dipping”), see Issue II.

⁴ The legislature passed its first rehiring provision in 1989, with the passage of the Northern Mariana Islands Retirement Fund Act (“NMIRFA”) (Public Law 6-17). This statute allowed only those elected to public office to be “employed” after retirement. In 1990, the CNMI legislature amended the NMIRFA, expanding the categories of retired government employees who could be rehired by the CNMI government to include (1) those appointed by the Governor to a position requiring the advice and consent of the Senate or House of Representatives or both; and (2) individuals hired in positions for which professionals were not readily available in the local labor market, such as teachers for Northern Marianas College and the Public School System, attorneys of the Attorney General’s office and the Public Defender’s office, nurses and doctors, audit staff of the OPA and former elected officials. *See* P.L. 6-41. In 1991, the legislature added retired employees hired under Title V of the Older American’s Act, and those specifically exempted by the Governor, with the concurrence of the Retirement Board. *See* P.L. 7-39 and P.L. 7-40.

The Legislature finds that the exemptions which allow retired government employees who are receiving retirement benefits to work for the Commonwealth government are insufficient to cover numerous situations where it is beneficial to the Commonwealth and the retired government employee to resume work for the government.

P.L. 7-40 § 2. All of the amendments that allow the reemployment of individuals who had formerly retired from CNMI government employment are codified in 1 CMC § 8392.⁵

Conclusion: Issue 1, Part A.

Based on the analysis contained in the paragraphs above, a retiree may receive CNMI government funds as an employee, or as a consultant, as long as the retiree qualifies for an exemption in 1 CMC § 8392. There is no restriction on retirees receiving government funds under an independent contract.

Therefore, the analysis turns to a discussion of determining whether the retiree is being paid as an employee, a consultant, or as an independent contractor.

B. CNMI law defining “employee”⁶ and “consultant”: Plain meaning of the term, Regulations, and Restatement of Agency

CNMI caselaw mandates that statutory language be construed according to its plain meaning. *Town House, Inc. v. Saburo*, 2003 MP 002 (citing *Gioda v. Saipan Stevedoring Company, Inc.*, 1 N.M.I. 310, 315 (1990)).

The CNMI public employment statute does not contain a definition of the word “employee.” 1 CMC 8101 *et seq.* However, the civil service system’s Personnel Service System Rules and Regulations (PSSR&R) defines an employee as follows:

“A person in active pay status holding a position in accordance with Commonwealth of the Northern Mariana Islands Public Law 1-9, as amended, whether permanent, probationary, full-time or otherwise in either the Personnel Service or Excepted Service Systems.”

PSSR&R Definitions. A position is defined as:

“the authorized group of work, duties, and responsibilities assigned by competent authority requiring the full-or part-time employment of at least one person.”

⁵ The legislature has been relatively even-handed in granting exemption power to all three branches of government. P.L. 7-40 pertains to exemptions granted by the governor. Other sections of 1 CMC § 8392 grant exemptions for the legislative and judicial branch (e.g. elected officials at 1 CMC 8392(a)(3)). Members of all three branches can grant exemptions for anyone “hired in a position for which professionals are not readily available in the local labor market.” 1 CMC § 8392 (a)(2).

⁶ All contracts for employment must follow applicable CNMI statutes and regulations regarding government employment, including certification by the Department of Finance and the Office of Management and Budget that a vacant FTE exists and there is funding for that FTE. 1 CMC § 7405. Recruitment and hiring for civil service positions must be done according to regulations promulgated by the Civil Service Commission, the PSSR&R. 1 CMC 8117; PSSR&R Part III.

PSSR&R Definitions. The PSSR&R does not contain a definition of independent contractor.

Black's Law dictionary defines "employee" as

"A person in the service of another under any contract of hire...where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.... Generally, when (the) person for whom services are performed has (the) right to control and direct (the) individual who performs services not only as to result to be accomplished by (the) work but also as to (the) details and means by which result is accomplished, (the) individual subject to direction is an "employee." "Servant" is synonymous with "employee."

Black's Law Dictionary, 1990. ⁷ (emphasis added)

In the absence of statutory or customary law, CNMI law mandates that courts apply the common law as expressed in the Restatements. 7 CMC § 3401. In *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268 (1995), the CNMI Supreme Court used Restatement (Second) of Agency (hereinafter "Agency") § 2(1), § 220(2), and § 220 cmt. c. (1958) to guide an analysis of whether an individual was an employee⁸ or an independent contractor for purposes of assigning liability under the doctrine of *respondeat superior*. *Id.* at 272, 273.

The Court in *Castro* stated:

" 'A master is a principal who employs an agent to perform service in his affairs and who controls or has the right to control the physical conduct of the other in the performance of the service.' Agency § 2(1). 'A servant is an agent employed by a master to perform service in his affairs whose physical conduct in the performance of the service is controlled or is subject to the right to control by the master.' *Id.* § 2(2).

In determining if one is a servant or independent contractor, the court looks to the following factors:

- (a) The extent of control which, by the agreement, the master may exercise over the details of the work;
- (b) Whether or not the one employed is engaged in a distinct occupation or business;
- (c) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
- (d) The skill required in the particular occupation;

⁷Black's Law Dictionary defines an independent contractor as "one who, in exercise of an independent employment, contracts to do a piece of work according to his own methods and is subject to his employer's control only as to end product or final result of this work...and not as to means whereby it is to be accomplished... Restatement, Second, Agency, § 2." *Id.*

⁸ In this analysis, the word "servant" means employee, and "master" means employer. These labels are based in the law of agency.

- (e) Whether the employer of the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
- (f) The length of time for which the person is employed;
- (g) The method of payment, whether by the time or by the job;
- (h) Whether or not the work is a part of the regular business of the employer;
- (i) Whether or not the parties believe they are creating the relations of master and servant; and
- (j) Whether the principal is or is not a business. *Id.* § 220(2).

These factors are all examined and no one factor is dispositive. *Id.* cmt. c; *Community for Creative Non- Violence v. Reid*, 490 U.S. 730, 751-52, 752 n.31, 109 S. Ct. 2166, 2178-79, 2179 n. 31, 104 L. Ed. 2d 811, 831-32, 832 n.31 (1989).”

Castro, supra at 273.

The Court in the *Castro* case defined an independent contractor as follows:

“ [A] person who contracts with another to do something for him but who is not controlled by the other nor subject to the other’s right to control with respect to his physical conduct in the performance of the undertaking. He may or may not be an agent.”

Id. at p. 273 n.7. See also Restatement of Law on Agency § 2(3)

Conclusion Issue I, Part B

In order to determine whether a person is an employee or an independent contractor under CNMI law, the analysis must include a discussion of several factors. A functional analysis of the factors determines the extent of control the “employer” has over the “employee.” See the *Castro* factors discussed above. If the contract for hire is one within the CNMI government, the analysis should include determining if the person is holding a position described within the civil service system, or the excepted service system that has an assigned appointing authority. See PSSR&R Definitions. The form of the contract of hire is not determinative.

In determining agency or tort liability, there is no express definition in CNMI law of an employee versus independent contractor. CNMI statute and caselaw mandate that, in the absence of a statutory definition of employee or independent contractor, the courts must use applicable sections of the Restatements of Law. Therefore, the court would apply the principles of Agency § 2(1), § 220(2), and § 220 comment c. to determine whether the person receiving government funds is an employee or an independent contractor. Based on the outcome of that analysis, the court would then determine whether or not the person is an agent of the CNMI government and whether or not tort liability exists for the CNMI government. *Castro, supra.*

C. CNMI laws other than public employment law defining "employee"

The Compensation Adjustment Act

The 1984 Compensation Adjustment Act ("CAA") provided a definition of "employee" when it established uniform and consistent salaries for top policy-making appointed officials. This statute defined employees, including independent contractors, for the purposes of coverage by the CAA, in the following manner:

"'Employee' includes independent services contractors, consultants, and professional services contractors. "Employee" also includes full-time and part-time personnel. "Employee" includes employees of federal programs who receive their paychecks from the Commonwealth government.

1 CMC § 8243 (a). (emphasis added).⁹

Executive Order 94-3 § 307(b)(3), effective August 23, 1994 through September 10, 2002, excluded independent service contractors, consultants, and professional services contractors from the definition of "employee" under 1 CMC § 8243(a). However, this exclusion is subject to constitutional challenge because it exceeds the Governor's constitutional authority. N.M.I. Const. art. III § 15. Under the standard set in *Sonoda v. Cabrera*, certified question No. 96-001, the governor's authority to make changes affecting existing law is limited to changes in the allocation of offices, agencies and instrumentalities and in their functions and duties that are necessary for efficient administration. The legislature enacted 1 CMC § 8243 (a). Only the legislature can change that statute. *Id.*

Executive Order 94-3 also stated that:

"The function of deciding whether it is in the public interest for the government to obtain professional services by employing more people to work for the government (either in the classified Civil Service or the Excepted Service as determined by the Personnel Officer) or by procuring such services from the private sector is allocated to the Office of the Governor, the Marianas Land Trust, and the various boards and commissions."

E.O. 94-3 § 307 (b)(1)

This provision of the Executive Order is also subject to constitutional challenge, because the legislature, not the governor, determines the number of employees that work for the government by approving a balanced budget setting FTE ceilings and appropriations for the various government agencies. N.M.I. Const. art III § 9. The Governor's ability to employ individuals is further limited by statute. CNMI law mandates that: "no new or vacant position may be filled without first receiving

from the Office of Management and Budget and the Department of Finance a certification that a full-time employee (FTE) and personnel funds for that position are available. 1 CMC § 7405. (emphasis added)

In 2002, pursuant to P.L. 13-24 § 602(a), the legislature amended 1 CMC 8243(a). The statute now reads in pertinent part:

“Employee” does not include an independent services contractor, a consultant, or a professional services contractor.”

1 CMC 8243(a) (emphasis added)

Public Employee Legal Defense and Indemnification Act of 1986 (“PELDIA”)

Only government employees¹⁰ are covered under PELDIA. This statute defines employee in the following manner:

“Employee” means an officer, elected or appointed official, exempted service, classified or unclassified employee, or servant of a public entity, whether or not compensated, but does not include an independent contractor of a public entity.

7 CMC § 2303(d). (emphasis added)

Commonwealth Workers’ Compensation Law of 1989 (“CWC”)

The CWC defines employee as follows:

‘Employee’ means any person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed. “Employee” specifically includes aquacultural and agricultural workers. “Employee” excludes any person whose employment is purely casual and not for the purpose of the employer’s trade or business, any corporate director not receiving any compensation, independent contractors, and any person employed by the inhabitant of a private dwelling to reside at the dwelling and perform household domestic service.

4 CMC 9302(1). (emphasis added)

¹⁰ In contrast, independent contractors, even if they are “state actors” within a privatized government function, are not generally entitled to qualified immunity. Neither are they qualified for indemnification by the government, absent a specific indemnification agreement. See *Richardson v. Mc-Knight*, 521 U.S. 399 (1997). The Richardson court noted in its rationale for excluding independent contractors from qualified immunity, that: (1) insurance could provide protection from litigation costs, (2) qualified candidates would be attracted to the private sector for higher pay and extra benefits, and would not need the incentive of qualified immunity that attracts workers into government civil service. *Id* at 411.

Northern Mariana Islands Retirement Fund Act ("NMIRF")

Interestingly, under NMIRF Act of 1988, not all government "employees" are eligible for membership in the CNMI government retirement system. The statute states:

The following employees are not eligible for membership:

- (a) Persons whose services are compensated on a fee basis.
- (b) Independent contractors.
- (c) Persons whose employment is for a specific project.

1 CMC § 8322 (emphasis added)

The statute further states that the retirement fund board "shall determine who are employees and entitled to membership within the meaning of this part." *Id.*

Conclusion Issue I, Part C

A person may be an employee for purposes of a specific CNMI law, regardless of the type of contract of hire they may have. The NMIRF Act is the only act that requires a decision, by the retirement fund board, on whether or not an individual is an employee eligible for membership in the system. Until September, 2002, the CCA arguably applied to all individuals who were employed by the C.N.M.I. government in certain positions, regardless of the form of the contract of hire. After September, 2002, each contract would need to be analyzed to determine whether the person was actually an employee, or an independent contractor, using the factors outlined in this opinion. (See Section B above.) PELDIA would cover any independent contractor who was a "servant" of a public entity, implicating the *Castro* analysis. *Id.* Similarly, the CWC indicates that any person in the service of an employer where the employer has the power or right to control and direct the employee is covered under the act. *Id.*; 4 CMC § 9302(l). Therefore, even independent contractors may be eligible for worker's compensation regardless of the label they have if they are functionally employees. The courts would determine eligibility using the functional analysis required by the statute's definition of employee.

D. CNMI law regarding privatization¹¹ of government services by contracting with retirees.

¹¹ Privatization is a shift from government provision of functions and services to provision by the private sector. *Konno v. County of Hawai'i*, 937 P 2d 397 (9th Cir.1997) at 404. "Contracting out," for purposes of this analysis, occurs when the government transfers the responsibility for performance of its administrative services to a private contractor. *Id.* This private contractor performs the same work under conditions of employment that are similar to that previously performed by a government employee. *Id.* "The purported policy behind privatization is to increase governmental efficiency." *Id.* (citing Timothy P. Dowling, Note, *Civil Service Restrictions on Contracting Out by State Agencies*, 55 Wash. L. Rev. 419, 425-26 (1980).) "Services can often be provided more efficiently by private entities than by civil servants." *Id.* (emphasis added)

CNMI law allows for the privatization of government personal or administrative services by statute and through government procurement and supply regulations.¹² This privatization can occur through the hiring of independent contractors. However, the CNMI law that governs retirees who contract with the CNMI government as independent contractors prohibits retirees from executing consulting contracts, without qualifying for an exemption under the statute. 1 CMC § 8392 (a). Retirees are allowed to contract as other types of independent contractors, such as professional services contractors, or sole source contractors without an exemption.¹³

All contracts for services that are not employment contracts must follow procurement and supply regulations in order to be valid contracts.

N.M.I. Constitution Article X, § 8 grants to the CNMI Department of Finance (“DOF”) absolute authority “to control and regulate the expenditure of public funds...” To implement the broad authority granted to the DOF, the CNMI Legislature has enacted 1 CMC § 2551 *et seq.* 1 CMC § 2553(g) grants to the DOF the right to dispense funds pursuant to the authority of law and 1 CMC § 2257 grants to the DOF authority to adopt rules and regulations for “those matters within its jurisdiction...”. Pursuant to the authority to promulgate rules and regulations, and 1 CMC § 2553(j), the DOF promulgated procurement regulations.

Procurement and Supply Regulations as applied to the CNMI Legislature

Procurement and supply regulations apply “to every expenditure of public funds irrespective of source...these regulations apply to all agencies, departments, branches of the government, political subdivisions...” P&SR Article 1, Part A, § 1-105. Therefore, procurement and supply regulations apply to independent contracts initiated by the legislature under the N.M.I Constitution, and CNMI statutes.

The N.M.I. House of Representatives adopted rules, which address any constitutional challenges to this broad interpretation of DOF’s authority extending to the legislature.

The House Rules of the N.M.I. Commonwealth Legislature require that:

¹²See for example the P&SR, P.L. 13-24 § 602(a); 2 CMC § 2127(g); 2 CMC § 4874(k); 2 CMC § 6302(a)(3); and 4 CMC § 8123(h) and the appropriations for professional services in various government agency budgets.

¹³ It is important to note in determining legislative intent that this provision prohibiting retirees from executing only employment or consulting contracts with the government has existed unchanged since it was first introduced into law in 1989. P.L. 6-14 § 83811. This section of the retirement fund statute has been amended five times, generally expanding the role of retirees in government service. The last amendment was added to this statute in 1998, four years after the terms “independent services contractor” and “professional services contractor” became part of CNMI law in E.O. 94-3. Yet, the legislature chose not to include these types of contracts in the contracting prohibitions of 1 CMC § 8392(a). In the CNMI, for the purposes of statutory interpretation, *expressio unius es exclusio alterius* (the express mention of one thing implies the exclusion of another which might logically have been considered at the same time). *Aldan v. Mafnas*, 2 N.M.I. 122 (1991), *rev'd on other grounds* 31 F.3d 756 (9th Cir. 1994), *cert. denied*, 513 U.S. 1116, 115 S. Ct. 913, (1995); *E-Tours Inc. v. Marianas Visitors Authority*, NMI Superior Ct., Civil Action No. 00-0078D, Opinion, April 19, 2000 (Manglona, J.) The legislature did not amend this statute to include these terms, therefore, the statute must be interpreted to exclude them from incorporation into the statute.

“Purchases made by the House and chargeable to funds available to the House shall be made in accordance with the CNMI Procurement Policy.”

13th N.M.C. L. House Rule XIII § 6, p. 27(adopted Jan. 14, 2002); 12th N.M.C.L. House Rule XIII § 6, p. 25-26 (adopted Jan. 10, 2000)¹⁴ (emphasis added)

“A member, officer or employee of the House of Representatives shall adhere to the spirit and the letter of the rules of the House of Representatives and to the policies thereof.”

13th N.M.C.L. House Rule XV § 1(b), p. 28 (adopted Jan. 14, 2002); 12th N.M.C.L. House Rule XV § 1(b), p. 27 (adopted Jan. 10, 2000)¹⁵

Procurement and Supply Rules and Regulations applicable to independent contracts

The clearest expression of the “spirit and letter” of CNMI Procurement Policy is expressed in the P&SR.¹⁶ These regulations define agreements for services in the following manner:

“Contract means all types of agreements, regardless of what they may be called for the procurement of supplies, services or construction, including purchase orders.” P&SR Part B § 1-201, 3. (emphasis added)

“Services mean the furnishing of time, labor or effort by a person other than an employee, and not involving the delivery of a specific end product other than reports, plans and incidental documents.” P&SR Part B § 1-201, 22. (emphasis added)

The regulations that apply to contractors for independent services, and professional services and sole source contractors include, but are not limited to, P&SR Article 3 Part A, § 3-103, § 3-106, Article § 4-102 and § 4-103.¹⁷ Additionally, the P&SR states that “No Government contract shall be valid unless it complies with these regulations.” P&SR Part A § 1-107. Any one responsible for a procurement action that is in violation of P&SR will be individually liable. P&SR Part A § 1-108.

All processing¹⁸ of legislative contracts must, by CNMI law, occur only through the Legislative Counsel’s office. 1 CMC § 1106. This process would include review for compliance with all applicable House or Senate Rules, Procurement and Supply regulations, and CNMI law.

Conclusion Issue I, Part D

¹⁴ Research going back as far as 1994 indicates this rule has existed in the same section with identical wording.

¹⁵ Research going back as far as 1994 indicates this rule has existed in the same section with identical wording.

¹⁶ Because the P&SR were promulgated according to the CNMI Administrative Procedures Act, they were published in the Commonwealth Register with opportunity for notice and comment by members of the legislature, and reviewed by the Attorney General’s office before taking effect.

¹⁷ CNMI procurement regulations do not apply to contracts for employment or for personal services under an excepted service.

¹⁸ Assuming processing to mean the same level of scrutiny that all other CNMI government contracts must undergo.

All types of independent contracts that are the subject of this opinion must comply with CNMI P&SR. Any contract that does not comply with these regulations is void. Any individual who works for any branch of the CNMI government who violates these regulations is personally liable for the amount of the contract.

E. CNMI Business Licensing Law

The following statutes may be applicable in the analysis of any independent contract, that is not an employment contract, because independent contractors must have a valid business license prior to doing business in the CNMI.

Business License Fees.

Business License Required. Before engaging in or continuing in a business, a person shall first obtain from the Secretary of the Department of Finance a license to engage in or conduct that business.

4 CMC § 5611(a) (emphasis added)

.Penalty for Violation of Business License Requirements.

Any person found operating or engaging in a business to sell merchandise, goods, or commodities, or providing services for compensation without a valid business license shall be subject to a penalty of \$500 and upon written notice to a person under subsection (c) of this section, any continual violation shall subject the person to an additional penalty of \$100 per day for every additional day that the person is in violation of the business license provisions.

4 CMC § 5613(a) (emphasis added)

CONCLUSION ISSUE ONE

A person who has retired from employment with the CNMI government may not be re-employed by the CNMI government, absent qualifying for a specific exemption under 1 CMC § 8392. However, a person who has retired from employment with the CNMI government may receive funds from the government under an independent contract that is not exempt under 1 CMC § 8392 if he/she is an individual or is employed by a business that has a valid contract for independent services, professional services, or is a sole source contractor. Entities wishing to procure services under these types of contracts must follow all applicable CNMI procurement regulations. NMI Const. art. X, § 8; 1 CMC § 2553(g); 1 CMC § 2257; 1 CMC § 2553(j); P&SR. Individuals who wish to contract with the CNMI government must comply with all applicable CNMI business laws.

PSSR&R provides guidance in the determination of whether a particular contract is one for employment or an independent services contract.

Issue II

II. Can a person who has retired from employment with the CNMI government and is receiving funds from the government under a valid contract continue to receive retirement benefits?

The CNMI Constitution and statutes allow individuals who retire from employment with the CNMI government and receive retirement benefits to receive funds from the CNMI government as employees (to “double dip”) under the following restrictions:

A. Double-dipping for regular retirees:

The N.M.I. Constitution allows retirees to “double dip” with a penalty.

N.M.I const. Art III § 20 b) states in pertinent part:

No retiree may have their retirement benefits recomputed based on any reemployment during which retirement benefits are drawn, but every such reemployed retiree shall nevertheless be required to contribute to the retirement fund during the period of reemployment, at the same rate as other government employees.

N.M.I const. Art III § 20 b) (emphasis added).¹⁹

Therefore, under this article, retirees who continue receiving their retirement benefits while re-employed must pay into the retirement system. However, they cannot have their retirement benefits recomputed based on their re-employment contributions. N.M.I. Const. art III § 20 b).

1 CMC § 8392(d) applies this limitation specifically to classroom teachers, nurses, doctors and other medical professionals by stating:

However, no such re-employed retiree shall have their retirement benefits recomputed based on any re-employment during which retirement benefits are drawn, but every such re-employed retiree shall nevertheless be required to contribute to the retirement fund during the period of re-employment, at the same rate as other government employees.

1 CMC § 8392(d) (emphasis added).

¹⁹ It is significant to note that Article III § 20 of the CNMI Constitution was added in 1985 and amended in 1997. At neither time were retirees prohibited from contracting independently with the CNMI government and receiving retirement benefits at the same time. Any constitutional limitations were applied only to re-employed retirees.

In 2000, the legislature repealed the hiring limitations for retirees who had retired and received an early retirement bonus under 1 CMC § 8401 *et seq.* P.L. 11-114. In this same law, the legislature repealed the mandatory payback of that early retirement bonus upon re-employment allowed under the exclusions of 1 CMC § 8392(a). (See Attorney General's Opinion 02-13 for a complete analysis of the effect of P.L. 11-114 on the rehiring of retirees who received an early retirement bonus.)

B. Double-dipping for early retirees:

The N.M.I. Constitution limits the time that a certain group of retirees (hereinafter "early retirees") may "double dip."

N.M.I. Const. art. III § 20 b) states in pertinent part:

"An employee who has acquired not less than twenty years of creditable service under the Commonwealth retirement system shall be credited an additional five years and shall be eligible to retire. An employee who elects to retire under this provision may not be reemployed by the Commonwealth Government or any of its instrumentalities or agencies, for more than 60 days in any fiscal year without losing his or her retirement benefits for the remainder of that fiscal year..."

N.M.I. Const. art. III § 20 b) (emphasis added).

Therefore, if "early retirees" return to employment with the CNMI government, they are limited, by the Constitution, to only 60 calendar days in any fiscal year that they may receive both retirement benefits and a salary.

In 1997, Article III § 20 b) of the CNMI Constitution was amended, allowing legislation to permit "early retirees" to fill certain positions, without losing their retirement benefits.²⁰ House Legislative Initiative 10-4 amended this section in the following way:

"An employee who elects to retire under this provision may not be reemployed by the Commonwealth Government or any of its instrumentalities or agencies, for more than 60 days in any fiscal year without losing his or her retirement benefits for the remainder of that fiscal year, except that the legislature may by law exempt reemployment of retirees²¹ as classroom teachers, doctors, nurses, and other medical professionals from this limitation, for reemployment not exceeding two (2) years."

N.M.I. Const. art. III § 20 b) (emphasis added).

²⁰ It is significant to note that Article III § 20 of the CNMI Constitution was added in 1985 and amended in 1997. At neither time were early retirees prohibited from contracting independently with the CNMI government and receiving retirement benefits at the same time. The framers applied limitations only to re-employed early retirees.

²¹ Meaning "early retirees"

The legislature, in proposing this initiative, found that:

the number of classroom teachers, doctors, nurses, and other medical professionals is insufficient to meet the demands of the Commonwealth. The Legislature further finds that there are local retirees²² who could fill these positions who are reluctant to do so because government reemployment would terminate their retirement benefits. The Legislature cannot provide for the utilization of this labor source due to the Constitutional prohibition against reemployment without loss of retirement benefits. The purpose of the amendment is to allow legislation to help reduce reliance on nonresident labor to fill these positions by encouraging qualified retirees to seek employment as classroom teachers, doctors, nurses, and other medical professionals without losing their retirement benefits.

Therefore, this select group of “early retiree” teachers, doctors, nurses, and other medical professionals may work for two years without losing their retirement benefits, even if they elected to take the five-year early retirement credit allowed in N.M.I. Const. art. III § 20.

C. Double-dipping by retirees re-employed under re-hiring prohibition exemptions:

Prior to 1993, 1 CMC § 8392 contained a section that prohibited retirees from receiving retirement benefits while employed by the CNMI government under the exemptions listed in 1 CMC § 8392(a). P.L. 7-39 § 8. In 1993 the legislature passed P.L. 8-31. This statute repealed P.L. 7-39 § 8, removing the prohibition against double-dipping for exempted employees.

However, 1 CMC § 8392(a)(4) contains the following statement: “A retiree may be hired under Title V of the Older Americans Act (42 U.S.C. § 3001 et seq.) and continue to receive benefits from the Northern Marianas Retirement Fund.” (emphasis added)

Therefore, whether retirees could continue to receive retirement benefits if hired under any category of exemptions allowed in 1 CMC § 8392 (a) would depend on a legal analysis of the impact of the phrase “and continue to receive benefits from the Northern Marianas Retirement Fund” contained in 1 CMC § 8392 (a)(4) on the other exemptions allowed in 1 CMC § 8392(a).

Retirees hired under the exclusions listed in 1 CMC 8392(a)²³ may work for the government and receive retirement benefits at the same time because:

²² Meaning “early retirees”

²³ Please note the previous AG opinion 02-13 which contains the analysis that the rehiring limitations in 1 CMC § 8402 have been repealed. Therefore, the only limitations on re-hiring individuals who received an early retirement bonus are those contained in 1 CMC § 8392.

- (1) 1 CMC § 8392 (a)(4) was added to the statute in 1991, through P.L. 7-39; this same statute made the loss of retirement benefits upon rehire mandatory;²⁴ Note that in exchange for this loss of benefits, retirees were allowed to have their retirement benefits recomputed based on their re-employment wages.
- (2) The legislature expressly repealed this mandatory loss of benefits in 1993 through P.L. 8-30 § 13. Because the repeal of the mandatory loss of benefits upon rehire occurred after P. L. 7-39 was passed, the rule of statutory construction *expressio unius es exclusio alterius* (the mention of one thing implies the exclusion of another which might have been considered at the same time) does not apply in this analysis. If this rule were used to construe the statute to mean that all other retired individuals exempted under this section cannot receive retirement benefits while being employed, it would nullify the legislature's repeal of that restriction in 1993. C.N.M.I. case law regarding statutory construction states that: The objective in interpreting statutes that reflect ambiguity is to "ascertain and give effect to the intent of the legislature." *Faisao v. Tenorio*, App. No. 94-108, C.A. No. 976 (Slip Opinion, April 13, 1995 at p. 11), and if the amendatory act cannot be reconciled with the requirements of the altered provision, the last expression of the legislative will must be given effect. *Commonwealth v. Lizama*, Crim No. 91-106, Amended Order (Superior Court Nov. 1, 1991 at p. 12), *rev. on other grounds*, 3 N.M.I. 402 (1992).

Classroom teachers, doctors, nurses and other medical professionals who are not "early retirees" (have not received retirement credit under N.M.I. Const. art III, §20) are still limited to working two years while receiving retirement benefits. 1 CMC § 8392(d).²⁵ However, this limitation would not apply if the position that the retiree seeks to fill as a doctor, nurse, other medical professional or teacher qualifies for an exemption under 1 CMC § 8392 (a)(2).

²⁴ P.L. 7-39 § 8 stated that "The last paragraph of 1 CMC 8392(a) is amended to read as follows: (a) a retiree hired under any of the above exceptions, other than pursuant to subsection (4), shall have his/her benefits terminated for the duration of the employment or office. Upon retirement, the benefit shall be recomputed based on the additional service and wages earned. During the employment or office, contributions to the Fund shall be mandatory. Except for positions stated above all government consulting contracts and employment application forms and agreements shall contain a declaration to be made under penalty of perjury, stating that the employee or independent contractor has not retired from and is not receiving retirement benefits for the Commonwealth Government." (emphasis added)

This section merely restated the mandatory termination of benefits provision that existed in the Northern Marianas Retirement Fund Act of 1988 (P.L. 6-17 § 83811) codified at 1 CMC 8301 *et seq.* and in 1990 (P.L. 6-41 § 15). It is interesting to note that P.L. 7-39 was introduced in the House and had its final reading on August 29, 1991. On that same date, the House had its first and final reading of P.L. 7-40, a bill introduced in the Senate. This public law added the exemption currently codified as 1 CMC 8392(a)(5). It states in P.L. 7-40 § 2, Findings and Intent, that "The Legislature finds that the exemptions which allow retired government employees who are receiving retirement benefits to work for the Commonwealth government are insufficient to cover numerous situations where it is beneficial to the Commonwealth and to the retired government employee to resume work for the government. It is the intent of this legislation to allow more retired governmental employees to work for the government when exempted by the governor." (emphasis added) The inconsistency between P.L. 7-39 § 8 and the Findings and Intent of P.L. 7-40 were resolved when P.L. 8-31 § 13 repealed 7-39 § 8 in 1993.

²⁵ 1 CMC 8392 (d) states in pertinent part: "Retirees are allowed to return to government employment as classroom teachers, nurses, doctors and other medical professionals for a period not to exceed two years without losing their retirement benefits." This provision is more restrictive than is required in the N.M.I. Constitution, and may be subject to an equal protection challenge, because it appears to have no rational government purpose. Additionally, under the 1 CMC 8392(a)(2) exemption, any classroom teacher, nurse, doctor or other medical professional in a position not readily available in the local labor market may be employed and receive retirement benefits, without the 2 year limitation. In order for the restriction in 1 CMC 8392(d) to harmonize with the N.M.I. Constitution; Article III § 20(b), the 2 year limitation should be interpreted to apply only to those who were "early retirees" and want to be re-employed as teachers, nurses, doctors, etc.

Conclusion Issue II

Read into record by Moya.

A retiree who is not an "early retiree" and receives retirement benefits from the CNMI government may continue to receive those benefits while being employed under an exemption from the re-hiring prohibition, under a valid employment or consulting contract. An "early retiree" may be re-employed under an exemption, but must forfeit his or her retirement benefits while re-employed, after the first 60 days of each fiscal year. "Early retirees" who occupy positions under 1 CMC § 8392 (d) may "double dip" for two years. Both retirees and "early retirees" may be independent contractors with the CNMI government and continue to receive their retirement benefits without limitation.

Issue III

III. Must a person who receives an early retirement bonus from the CNMI government repay that bonus if they receive funds from the CNMI government under an independent contract or a re-employment contract?

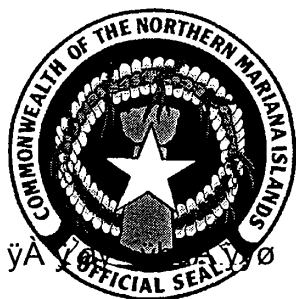
Individuals who received an early retirement bonus under 1 CMC § 8402 and were hired as independent contractors or re-employed under the exclusions of 1 CMC § 8392 (a) do not have to pay back their bonus. 1 CMC § 8402 did not apply to independent contractors. Retirees with a valid exemption may keep their bonus upon re-employment because the statute that required payback of the bonus upon re-employment was repealed. Please see AG Opinion 02-13.

BY:

Angela L. Bennett
Angela L. Bennett
Assistant Attorney General

CONCURRED BY:

Pam Brown
Pam Brown
Attorney General



Commonwealth of the Northern Mariana Islands
Commonwealth Utilities Corporation

Lorraine A. Babauta, Executive Director
PO Box 501220, Saipan MP 96950
(La Fiesta III, San Roque)
tel: 670. 664.6100 fax: 670.664.6169

**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION
OF REGULATIONS WHICH ARE AMENDMENTS TO
THE REGULATIONS OF THE COMMONWEALTH UTILITIES CORPORATION**

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS

Volume 27, Number 06, p 024650, of July 20, 2005

**Article X, Schedule of Rates and Charges of the Regulations Governing the Use
of the CUC Water System**

Please take notice that I, Lorraine A. Babauta, Executive Director, hereby adopt as permanent, the referenced Proposed Regulations. I also certify by signature below that, as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment. I further request and direct that this Notice be published in the Commonwealth Register.

Pursuant to 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

The prior publication was as stated above.

Comments and agency concise statement. Pursuant to 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if any, in response to filed comments.

Attorney General approval. The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register,

pursuant to 1 CMC sec. 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the _____ day of October, 2005, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:



LORRAINE A. BABAUTA
Executive Director, Commonwealth Utilities Corporation

Date 10/18/05

Concurred by:



JUAN N. BABAUTA
Governor

Date 10/18/05

Filed and
Recorded by:



BERNADITA B. DE LA CRUZ
Commonwealth Register

10/18/05
Date

0 CUC Notice of Adoption Permanent Procurement Regs in Oct.wpd



Commonwealth of the Northern Mariana Islands
Commonwealth Utilities Corporation

Lorraine A. Babauta, Executive Director
PO Box 501220, Saipan MP 96950
(La Fiesta III, San Roque)
tel: 670. 664.6100 fax: 670.664.6169

**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION
OF REGULATIONS WHICH ARE AMENDMENTS TO
THE REGULATIONS OF THE COMMONWEALTH UTILITIES CORPORATION**

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS

Volume 27, Number 06, p 024647, of July 20, 2005
Volume 27, Number 06, p 024692, of August 22, 2005

Part 6.8 Accountability of Security Deposits and Part 6.9 Refunding of Security Deposits

Please take notice that I, Lorraine A. Babauta, Executive Director, hereby adopt as permanent, the referenced Proposed Regulations. I also certify by signature below that, as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment. I further request and direct that this Notice be published in the Commonwealth Register.

Pursuant to 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

The prior publications were as stated above.

Comments and agency concise statement. Pursuant to 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if any, in response to filed comments.

Attorney General approval. The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register,

pursuant to 1 CMC sec. 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the _____ day of October, 2005, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

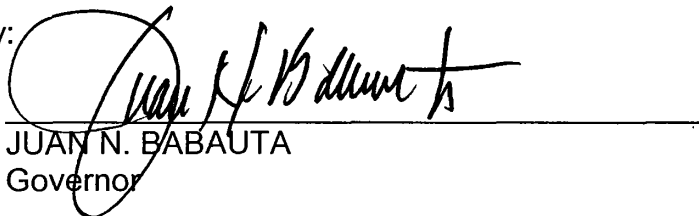


LORRAINE A. BABAUTA
Executive Director, Commonwealth Utilities Corporation

Date

10/18/05

Concurred by:



JUAN N. BABAUTA
Governor

Date

10/18/05

Filed and
Recorded by:



BERNADITA B. DE LA CRUZ
Commonwealth Register

Date

10/18/05

0 CUC Notice of Adoption Permanent Sec Dep Regs in Oct.wpd



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
Department of Public Safety



NOTICE AND CERTIFICATION OF ADOPTION OF
AMENDED
RULES AND REGULATIONS REGARDING
THE COMMONWEALTH FIRE SAFETY CODE

Emergency (24 hrs.) 911

DPS Main Switchboard
(670) 664-9000

Office of the Commissioner
664-9022

Police Division
664-9001

Fire Division
664-9003

Division of Correction
664-9058

Bureau of Motor Vehicles
664-9066

Training and Development
664-9094

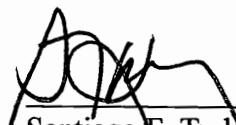
Administrative Support
664-9000

Office of Special Programs
664-9120

Rota DPS
Tel: (670) 532-9433
Fax: (670) 532-9434


Tinian DPS
Tel: (670) 433-9222
Fax: (670) 433-9259

I, Santiago F. Tudela, the Commissioner of the Department of Public Safety, promulgate the Rules and Regulations regarding "Commonwealth Fire Safety Code". Published in the Commonwealth Register Vol. 23, No. 11 on November 23, 2001 at pages 18610 to 18641 and the adoption of amendments on Vol. 27, No. 8 on September 22, 2005 at pages 024913 to 024945 by signature below hereby certify that as published such rules are a true, complete and correct copy of the Rules and Regulations regarding the "Commonwealth Fire Safety Code" previously proposed by the Department of Public Safety Fire Division.



Santiago F. Tudela, Commissioner
CNMI Department of Public Safety

10/19/05
Date




Francis S. Taimanao, Acting Director
Division of Fire, DPS

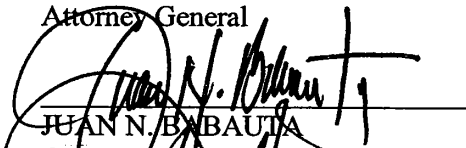
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Date

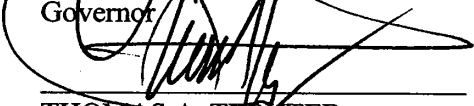
NOTICE OF ADOPTION

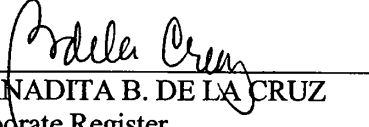
AMENDMENTS TO IMMIGRATION REGULATION SECTIONS 706 and 707

The Commonwealth of the Northern Mariana Islands, Office of the Attorney General, notifies the general public of the adoption of amendments to Immigration Regulations §§706 and 707. It is the intent of the Attorney General to adopt such amendments, proposed on an emergency basis in May of 2005 pursuant to 1 CMC §9104(a)(1) and (2), as permanent. The public notice and comment period began on September 22, 2005. The Office of the Attorney General now publishes these amendments for adoption.

Submitted by:  10/17/05
PAMELA BROWN Date
Attorney General

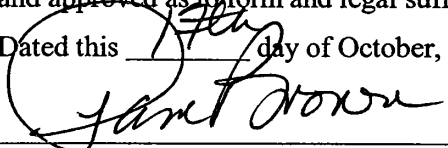
Concurred by:  10/17/05
JUAN N. BAUTA Date
Governor

Received by:  10/17/05
THOMAS A. TEBUTEB Date
Special Assistant for Administration

Filed and Recorded by:  10/17/05
BERNADITA B. DE LA CRUZ Date
Corporate Register

Pursuant to 1CMC §2153, as amended by Public Law 10-50, amendments attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this 17th day of October, 2005.


PAMELA BROWN
Attorney General

PUBLIC NOTICE
PROPOSED AMENDMENTS TO IMMIGRATION REGULATION SECTIONS 706 and 707

Citation of

Statutory Authority:

The Office of Attorney General is authorized to promulgate regulations for entry and deportation of aliens in the Commonwealth of the Northern Marianas pursuant to Executive Order 03-01 and 3 CMC § 4312(d).

**Short Statement of
Goals and Objectives:**

The Attorney General finds that it is in the public interest to amend Immigration Regulations §§706K, 706P and 707 to require that all non-resident workers entering the Commonwealth of the Northern Mariana Islands to work in establishments licensed to serve alcohol be at least twenty-one (21) years of age. Specifically, the Attorney General finds that the employment of non-resident workers under the age of 21 in alcohol establishments has created problems for both criminal and immigration enforcement authorities, has led to inexperienced workers entering the CNMI, and is not consistent with the efficient enforcement of the liquor laws.

The Attorney General further finds that the current Immigration Regulation §706P is not sufficiently defined as falling outside of the Non-resident Workers Act and is therefore not effective in its present form.

The Attorney General further finds that it is in the public interest that Immigration Regulation §707 be amended to include reference to an "Overseas Employment Certificate" or OEC. An OEC is an official document issued by the Government of the Philippines to workers applying for employment abroad. The Attorney General finds that, in the case of Filipino workers, this certificate can be the best evidence of the worker's identity, employment eligibility, and job category.

**For Further
Information Contact:**

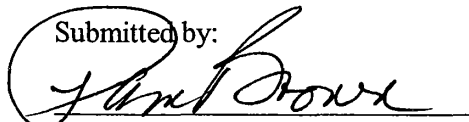
Ian M. Catlett, Assistant Attorney General, Office of the Attorney General, telephone (670) 664-2366 or facsimile (670) 234-7016.

**Citation of Related
and/or Affected Statutes,
Rules and Regulations,
and Orders:**

The proposed amendments affect or are related to Immigration Regulations Sections 706 and 707.

Dated this 17th day of October, 2005.

Submitted by:


PAMELA BROWN
Attorney General

PROPOSED AMENDMENTS TO IMMIGRATION REGULATION SECTION 706 and 707:

Immigration Regulation §706K is amended to read:

Nonresident Worker Entry Permit – An alien who is coming temporarily to the CNMI to perform temporary service or labor who has been certified as an eligible nonresident worker by the Department of Labor may be granted an entry permit in accordance with Public Law No. 3-66, except that no alien under the age of twenty-one (21) shall be approved for entry under this section to perform work of any kind in an establishment licensed to serve alcohol.

Immigration Regulation §706P is amended to read:

Special Circumstances Entry Permit- permits an alien under special circumstances to legally remain and work in the Commonwealth without further authorization under Commonwealth law. A permit holder under this section is exempted from the provisions of the Non-Resident Workers Act (3 CMC §4411 et seq.). This permit shall be subject to annual renewal at the discretion of the Office of the Attorney General. This permit may be revoked upon a finding by the Attorney General that the special circumstances under which the permit was issued no longer exist.

Immigration Regulation §707 is amended to read:

Authorization For Entry Application Procedure.

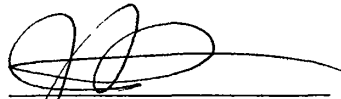
- A. Applications for Authorization for Entry permits shall be submitted to the Main Office for Immigration. All applications and supporting documents become the property of the Office of the Immigration. Applications shall be processed within seven (7) days of compliance with all applicable requirements. Authorization For Entry permits will be signed only by the Immigration Officer except for Short-Term Business Entry Permits. All documents shall be filled out under penalty of perjury.
- B. Necessary documents for filing:
1. A completed application form,
 2. Certified copy of birth certificate,
 3. Any document deemed by the Immigration Officer to be necessary to substantiate the applicant's entry classification, including, at the discretion of the Attorney General, an Overseas Employment Certificate (OEC) issued by the Government of the Philippines to the applicant.
 4. One and one quarter inch (1-1/4") frontal photograph in either black and white or color.
- C. The application fee shall be deposited with the CNMI Treasurer by filing the necessary documents. The fee is non-refundable. Application may be made by mail. Checks must be made to "Treasurer of the CNMF".

- D. Applications shall not be accepted from aliens present in the Commonwealth whose presence is permitted solely because they have a pending labor, immigration or legal matter. However, once said matter is decided, the alien may apply for an entry permit, renewal or change of status if the alien prevailed in the labor, immigration or legal matter.

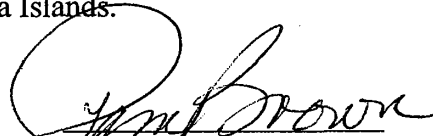
**NOTICE AND CERTIFICATION OF ADOPTION OF THE
REGULATIONS AMENDING ALIEN LABOR
RULES AND REGULATIONS SECTION II.**

We, Dr. Joaquin A. Tenorio, Secretary of the Department of Labor, and Pamela Brown, Attorney General, who promulgated Regulations Amending Alien Labor Rules and Regulations Section II, published in the Commonwealth Register, Volume 27, Number 01, January 17, 2005, at pages 23780 to 23788 by signing below hereby certify that as published such Regulations are a true, complete and correct copy of the Regulations previously proposed which, after the expiration of the time for public comment, have been finally adopted without modification. We further request and direct that this Notice and Certification be published in the CNMI Commonwealth Register.

We declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 17th day of October 2005 in Saipan, Commonwealth of the Northern Mariana Islands.

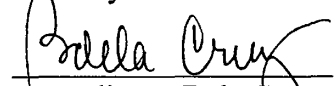


Dr. Joaquin A. Tenorio
Secretary of Labor

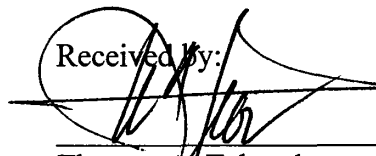


Pamela Brown
Attorney General

Filed By:




Bernadita B. Dela Cruz
Commonwealth Register
Date: 10/17/05

Received By: 

Thomas A. Tebuteb
Special Assistant for Administration
Date: 10/17/05

Pursuant to 1 CMC § 2153, as amended, the above certification has been reviewed and approved as to form and legal sufficiency by the Office of the Attorney General.

Dated: 10/17/05



Pamela Brown
Attorney General

AMENDMENTS TO SECTION II OF THE ALIEN LABOR RULES AND REGULATIONS

The Alien Labor Rules and Regulations are amended by adding a new section designated as Section II.L. as follows:

- L.. Compliance with agreements between the CNMI and foreign governments:
- a. In addition to the application requirements stated earlier in this section, the Department of Labor shall require that an application bear proof of compliance with any agreement entered into between the CNMI and a representative organization of a foreign government. The Department shall also require that any forms required to be submitted by an applicant shall conform to the requirements of any such agreement.
 - b. Proof of compliance may be shown by notification of approval of the employment to the Department of Labor by the representative organization of the foreign government by a stamp or certification placed on the employment contract by the organization, by an original attachment accompanying the application, by a separate writing to the Department by the organization, or by any similar means as agreed upon by the Department and the organization.
 - c. The Department shall make information available to prospective employers informing them of any special conditions or procedures required by an agreement. The Department shall not approve a nonresident worker application unless the conditions of the agreement have been satisfied. A nonconforming application shall be found to be deficient and shall be denied if the deficiency is not cured within the time allowed by these rules.
 - d. In the event the foreign organization rejects an employment application, the Department's Division of Administrative Hearings does not have jurisdiction to address a worker's or employer's challenge to the rejection.
 - e. The Division of Immigration Services of the Office of the Attorney General shall not issue an Authorization to Board, and the Department shall not issue an Authorization for Entry for an alien worker whose employment contract has not been certified as approved by the foreign representative organization.



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Office of the Attorney General

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ATTORNEY GENERAL OPINION No. 05 - 14

To: Hon. Juan N. Babauta, Governor
Commonwealth of the Northern Mariana Islands

From: Kristin St. Peter, Assistant Attorney General, Civil Division

Through: Clyde Lemons, Jr., Acting Attorney General

Date: September 27, 2005

Re: The Commonwealth's Ownership of Outer Cove Marina

ISSUE AND SHORT ANSWER

Question:

Does the Commonwealth of the Northern Mariana Islands (hereafter "CNMI") currently possess right, title and interest to the Outer Cove Marina and its underlying land?

Short Answer:

Yes.

Summary:

On August 25, 1995, Marine Revitalization Corporation by and through its officer Anthony Pellegrino (hereafter collectively "MRC") and the CNMI Department of Land and Natural Resources (hereafter "DLNR") entered into a Submerged Lands Lease Agreement (hereafter "Lease") whereby MRC agreed to lease from DLNR submerged and other lands for the purpose of constructing a marina.¹ MRC thereafter constructed Outer Cove Marina.

¹ At the time of the Lease's execution and pursuant to 2 CMC § 1201 et seq., the CNMI Department of Land and Natural Resources possessed the authority to manage, use and dispose of all submerged lands. In 2000 and pursuant to PL 12-33, the management of public and submerged lands shifted to another executive agency, but still remains with the CNMI government.

In 2001, a dispute arose between the parties. Pursuant to the terms of the Lease, MRC and the CNMI government, entered binding arbitration in order to resolve the underlying dispute. In 2004 and after a protracted arbitration period, the arbitration panel awarded MRC damages for DLNR's alleged breach of the terms and conditions set forth in the Lease. Furthermore, the Lease was "rescinded and all rights, duties and responsibilities of the parties [were] terminated,"² with all pre-lease right, title and interest to the Marina and its land returning to the CNMI government.

The CNMI's Superior Court affirmed the Arbitration Award in a Stipulated Judgment Order dated January 27, 2005,³ and, again, specifically rescinded "all rights, duties and responsibilities of the parties" as articulated in the Lease.⁴

Negotiations between MRC and the CNMI government regarding a payment schedule for the damages awarded are ongoing. In the meantime and while these negotiations continue, the CNMI Lieutenant Governor's Office wishes to confirm the government's ownership interest in Outer Cove Marina and its underlying land.

Discussion:

Even though the CNMI government has yet to pay the damages ordered by the Superior Court, the government is endowed with its original right, title and interest to the Marina's underlying land and any improvements located thereon.

It is well settled law that a judgment is binding upon the parties as soon as it is rendered.⁵ The Arbitration Award and the CNMI Superior Court's subsequent Stipulated Judgment Order are very clear. MRC is awarded damages and the CNMI government is re-vested with the same right, title and interest to the Outer Cove Marina's submerged and contiguous lands that it possessed before the Lease was executed.

All rights, including MRC's right to occupy the Marina and its land, duties and responsibilities specified in the Lease were rescinded.⁶ In essence, it is as though the Lease never occurred and both parties are returned to their pre-Lease positions. For MRC this means that all rights to Outer Cove Marina and its underlying land are terminated. The CNMI, on the other hand, once again possesses its original right, title and interest to the Outer Cove Marina and its submerged and contiguous lands.

If good faith negotiations between MRC and the CNMI fail to yield a satisfactory payment schedule, it is possible for MRC to move for relief from judgment pursuant to the Commonwealth Rules of Civil Procedure.⁷ However, until such time as a court amends the Stipulated Judgment Order, the order is binding and the CNMI owns the Outer Cove Marina and its land.

² *Marine Revitalization Corporation, et al. v. CNMI Department of Lands and Natural Resources, et al.*, Arbitration Award, December 3, 2004 at pg. 6.

³ *Marine Revitalization Corporation, et al. v. CNMI Department of Lands and Natural Resources, et al.*, N. Mar. I. Commw. Super. Ct., Stipulated Judgment, Civ. Act. No. 04-0589D.

⁴ See *id.* at ¶ 8.

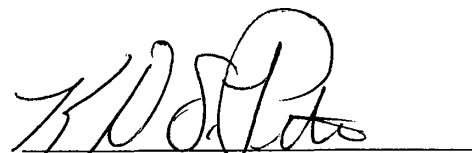
⁵ See *Brownell v. Superior Court of Yolo County*, 109 P. 91, 93 (Cal. 1910), see also *Aspegren & Co. v. Sherwood, Swan & Co.*, 250 P. 400, 402 (Cal. 1926).

⁶ See *Marine Revitalization Corporation, et al. v. CNMI Department of Lands and Natural Resources, et al.*, N. Mar. I. Commw. Super. Ct., Stipulated Judgment, Civ. Act. No. 04-0589D.

⁷ Com. R. Civ. P. 60.

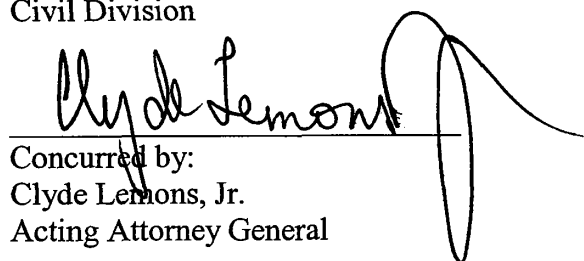
Conclusion:

The CNMI government is once again endowed with the same right, title and interest to Outer Cove Marina and its corresponding lands that it possessed before the Lease was undertaken. MRC's right to possess and control Outer Cove Marina and its land terminated on January 27, 2005, the date the Stipulated Judgment Order was issued.



Kristin D. St. Peter,
Assistant Attorney General
Civil Division

Date: 9/27/05



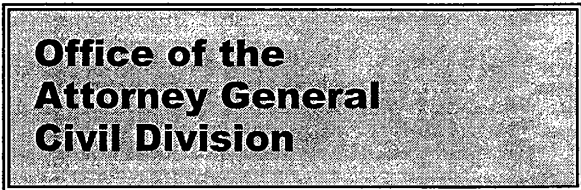
Concurred by:
Clyde Lemons, Jr.
Acting Attorney General

Date: 9/29/05

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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MEMORANDUM

ATTORNEY GENERAL OPINION NO. 05-15

To: Jerry Crisostomo
Special Assistant for Homeland Security

From: Clyde Lemons, Acting Attorney General; 
Jeanne H. Rayphand, Assistant Attorney General 

Date: September 30, 2005

Re: **PUBLIC LAW 14-63**

This Opinion is in response to the request of Jerry Crisostomo, the Special Assistant for Homeland Security, for clarification of certain provisions of Public Law 14-63. The following are the questions that he has asked and the responsive opinions.

1. Are those employees hired by the Director of Emergency Management while he was State Administrating Agency and paid using grant funds employees of the CNMI Office of Homeland Security now?

The Office of Homeland Security was created and established by Public Law 14-63 which took effect on April 25, 2005.

Persons hired by the Director of Emergency Management for positions identified as being within the Division of Emergency Management Office are not employees of the Office of Homeland Security. The Director of Emergency Management does not have authority under Public Law 14-63 to administer the Office of Homeland Security and he is without authority to hire personnel for the Office of Homeland Security.

Therefore, those persons hired by the Director of Emergency Management are not employees of the Office of Homeland Security.

However, the Emergency Management Office is authorized to assign one representative from the Emergency Management Office to be its representative on the Terrorism Task Force within the Office of Homeland Security and that representative "shall be under the direct supervision of the Special Assistant for Homeland Security." PL 14-63 Section 3(c).

2. Are those employees entitled to 20% compensation based on Public Law 14-63?

Public Law 14-63 provides that:

1. The Special Assistant, Deputy Special Assistant, and the representatives, i.e., the First and Second Senatorial Districts representatives, "shall be authorized 20% Stand-by differential in addition to their annual base compensation." PL 14-63 Section 5(a).

2. "All personnel within or assigned to the Office of Homeland Security shall be compensated 20% stand-by differential. The stand-by differential shall be paid out of the Office of Homeland Security's annual budget."

Therefore, only those employees who are within or assigned to the Office of Homeland Security are entitled to 20% stand-by differential and that 20% stand-by differential shall be paid out of the Office of Homeland Security's annual budget.

3. On what date did Jerry Crisostomo become custodian of the Program with respect to hiring and expenditure authority?

Public Law 14-63 provides that the Office of Homeland Security shall be administered by a Special Assistant for Homeland Security. PL 14-63 Section 3(a).

Jerry P. Crisostomo was employed as Special Assistant for Homeland Security effective May 12, 2005, and thus became the administrator for the Homeland Security Office on May 12, 2005.

As the head of the Office of Homeland Security, Jerry Crisostomo is the person with expenditure authority for the Office of Homeland Security. See, 1 CMC 7401(a).

Thus, Jerry Crosostomo became the person with hiring and expenditure authority for the Office of Homeland Security on May 12, 2005.

4. Is the Special Assistant for Homeland Security entitled to the 20% standby differential pay when he is on official travel within the CNMI as well as abroad?

Public Law 14-63 provides that the "Special Assistant . . . shall be authorized 20% Stand-by differential in addition to their annual base computation." PL 14-63 Section 5(a).

Public Law 14-63 places no limitations on the authorization for stand-by differential.

However, if the annual budget of the Office of Homeland Security (from which the 20% differential is to be paid) consists of federal grants, reference to the specific grants and federal limitations may be required to determine whether federal law has restrictions on payment of stand-by differential from federal funds.
