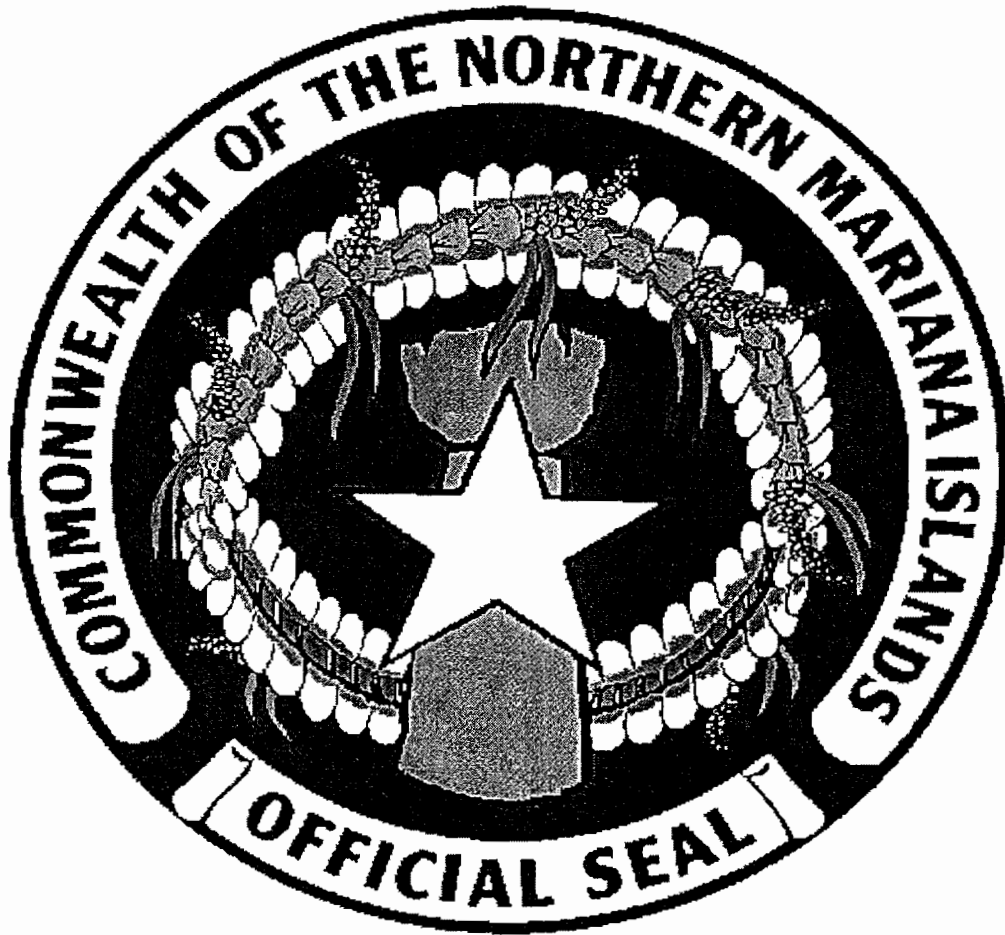


COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS



COMMONWEALTH REGISTER

VOLUME 37
NUMBER 02

FEBRUARY 28, 2015

COMMONWEALTH REGISTER

VOLUME 37
NUMBER 02

FEBRUARY 28, 2015

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Commonwealth of the Northern Mariana Islands
HEALTH CARE PROFESSIONS LICENSING BOARD
P.O. Box 502078, Bldg., 1242 Pohnpei Court
Capitol Hill, Saipan, MP 96950
Tel No: (670) 664-4809 Fax: (670) 664-4814
Email: bpl@pticom.com

**PUBLIC NOTICE AND CERTIFICATION OF ADOPTION OF THE AMENDMENTS TO THE
HEALTH CARE PROFESSIONS LICENSING BOARD'S REGULATIONS FOR
PODIATRISTS**

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED AMENDMENTS TO REGULATIONS
VOLUME 36, NUMBER 12, PP 035963-035969 OF DECEMBER 28, 2014

Regulations for Podiatrists

ADOPTION OF THE AMENDMENTS TO THE REGULATIONS FOR PODIATRISTS: The Health Care Professions Licensing Board (HCPLB) intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The regulations would become effective 10 days after compliance with 1 CMC §§ 9102 and 9104(a) or (b) (1 CMC §9105(b)).

PRIOR PUBLICATION: The prior publication was as stated above. The Health Care Professions Licensing Board adopted the attached regulations as final as of the date of signing below.

MODIFICATIONS FROM PRIOR PUBLISHED PROPOSED REGULATIONS, IF ANY: None.

AUTHORITY: The Health Care Professions Licensing Board has statutory power to promulgate and effect regulations pursuant P.L. 15-105, as amended.


EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b), these adopted amendments to the HCPLB regulations for Podiatrists are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a), which in this instance is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT. Pursuant to the APA, 1 CMC § 9104(a) (2), the HCPLB has reviewed the comments on the proposed amendments to these regulations it received during the thirty-day period. Upon this adoption of the amendments, the agency, if requested to do so by any interested person, within 30 days of adoption, will issue a concise statement of the principal reasons for and against its adoption.

ATTORNEY GENERAL APPROVAL: The adopted regulations for Podiatrists were approved for promulgation by the CNMI Attorney General in the above cited pages of the Commonwealth Register, pursuant to 1 CMC §2153(e) (to review and approve as to form and legal sufficiency all rules and regulations to be promulgated by any department or agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

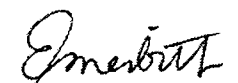
I declare under penalty of perjury that the foregoing is true and correct copy and that this declaration was executed on the 20th day of February, 2015, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and Ordered by:


Theodore R. Parker, R. Ph., MPH
HCPLB Chairman


Date

Filed and Recorded by:


Esther SN. Nesbitt
Commonwealth Register

02.23.2015
Date



Commonwealth of the Northern Mariana Islands
HEALTH CARE PROFESSIONS LICENSING BOARD
P.O. Box 502078, Bldg., 1242 Pohnpei Court
Capitol Hill, Saipan, MP 96950
Tel No: (670) 664-4809 Fax: (670) 664-4814
Email: bpl@pticom.com

**PUBLIC NOTICE AND CERTIFICATION OF ADOPTION OF THE AMENDMENTS TO THE
HEALTH CARE PROFESSIONS LICENSING BOARD'S REGULATIONS FOR
PHYSICAL THERAPIST, PHYSICAL THERAPY ASSISTANT,
OCCUPATIONAL THERAPIST, AND OCCUPATIONAL THERAPY ASSISTANT**

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED AMENDMENTS TO REGULATIONS
VOLUME 36, NUMBER 12, PP 035956-035962 OF DECEMBER 28, 2014

Regulations for Physical Therapist, Physical Therapy Assistant, Occupational Therapist, and Occupational Therapy Assistant

ADOPTION OF THE AMENDMENTS TO THE REGULATIONS FOR PHYSICAL THERAPIST, PHYSICAL THERAPY ASSISTANT, OCCUPATIONAL THERAPIST, AND OCCUPATIONAL THERAPY ASSISTANT:
The Health Care Professions Licensing Board (HCPLB) intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The regulations would become effective 10 days after compliance with 1 CMC §§ 9102 and 9104(a) or (b) (1 CMC §9105(b)).

PRIOR PUBLICATION: The prior publication was as stated above. The Health Care Professions Licensing Board adopted the attached regulations as final as of the date of signing below.

MODIFICATIONS FROM PRIOR PUBLISHED PROPOSED REGULATIONS, IF ANY: None.

AUTHORITY: The Health Care Professions Licensing Board has statutory power to promulgate and effect regulations pursuant P.L. 15-105, as amended.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b), these adopted amendments to the HCPLB regulations for Physical Therapist, Physical Therapy Assistant, Occupational Therapist, and Occupational Therapy Assistant for are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a), which in this instance is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT. Pursuant to the APA, 1 CMC § 9104(a) (2), the HCPLB has reviewed the comments on the proposed amendments to these regulations it received during the thirty-day period. Upon this adoption of the amendments, the agency, if requested to do so by any interested person, within 30 days of adoption, will issue a concise statement of the principal reasons for and against its adoption.

ATTORNEY GENERAL APPROVAL: The adopted regulations for Physical Therapist, Physical Therapy Assistant, Occupational Therapist, and Occupational Therapy Assistant were approved for promulgation by the CNMI Attorney General in the above cited pages of the Commonwealth Register, pursuant to 1 CMC §2153(e) (to

review and approve as to form and legal sufficiency all rules and regulations to be promulgated by any department or 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 copy and that this declaration was executed on the 20 day of February, 2015, at Saipan, Commonwealth of the Northern Mariana Islands.

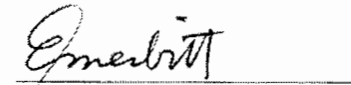
Certified and Ordered by:



Theodore R. Parker, R. Ph., MPH
HCPLB Chairman

2/20/15
Date

Filed and Recorded by:



Esther SN. Nesbitt
Commonwealth Register

02-23-2015
Date



Commonwealth of the Northern Mariana Islands
HEALTH CARE PROFESSIONS LICENSING BOARD
P.O. Box 502078, Bldg., 1242 Pohnpei Court
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Tel No: (670) 664-4809 Fax: (670) 664-4814
Email: bpl@pticom.com

**PUBLIC NOTICE AND CERTIFICATION OF ADOPTION OF THE AMENDMENTS TO THE
HEALTH CARE PROFESSIONS LICENSING BOARD'S REGULATIONS FOR
LICENSED BACCALAUREATE SOCIAL WORKER, LICENSED MASTER'S SOCIAL WORKER
AND LICENSED CLINICAL SOCIAL WORKER**

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED AMENDMENTS TO REGULATIONS
VOLUME 36, NUMBER 12, PP 035947-035955 OF DECEMBER 28, 2014

Regulations for Licensed Baccalaureate Social Worker, Licensed Master's
Social Worker and Licensed Clinical Social Worker

**ADOPTION OF THE AMENDMENTS TO THE REGULATIONS FOR LICENSED BACCALAUREATE
SOCIAL WORKER, LICENSED MASTER'S SOCIAL WORKER AND LICENSED CLINICAL SOCIAL
WORKER:** The Health Care Professions Licensing Board (HCPLB) intends to adopt
as permanent regulations the attached Proposed Regulations, pursuant to the
procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The
regulations would become effective 10 days after compliance with 1 CMC §§
9102 and 9104(a) or (b) (1 CMC §9105(b)).

PRIOR PUBLICATION: The prior publication was as stated above. The Health
Care Professions Licensing Board adopted the attached regulations as final as
of the date of signing below.

MODIFICATIONS FROM PRIOR PUBLISHED PROPOSED REGULATIONS, IF ANY: None.

AUTHORITY: The Health Care Professions Licensing Board has statutory power
to promulgate and effect regulations pursuant P.L. 15-105, as amended.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b), these adopted
amendments to the HCPLB regulations for Licensed Baccalaureate Social
Worker, Licensed Master's Social Worker and Licensed Clinical Social Worker
are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and
9104(a), which in this instance is 10 days after this publication in
the Commonwealth Register.


COMMENTS AND AGENCY CONCISE STATEMENT. Pursuant to the APA, 1 CMC § 9104(a)
(2), the HCPLB has reviewed the comments on the proposed amendments to these
regulations it received during the thirty-day period. Upon this adoption of
the amendments, the agency, if requested to do so by any interested person,
within 30 days of adoption, will issue a concise statement of the principal
reasons for and against its adoption.

ATTORNEY GENERAL APPROVAL: The adopted regulations for Licensed Baccalaureate
Social Worker, Licensed Master's Social Worker and Licensed Clinical Social
Worker were approved for promulgation by the CNMI Attorney General in the
above cited pages of the Commonwealth Register, pursuant to 1 CMC §2153(e)

and approve as to form and legal sufficiency all rules and regulations to be promulgated by any department or agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

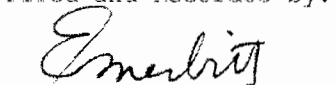
I declare under penalty of perjury that the foregoing is true and correct copy and that this declaration was executed on the 20th day of February, 2015, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and Ordered by:


Theodore R. Parker, R. Ph., MPH
HCFLB Chairman

2/20/2015
Date

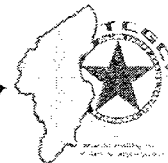
Filed and Recorded by:


Esther SN. Nesbitt
Commonwealth Register

02-23-2015
Date

TINIAN CASINO GAMING CONTROL COMMISSION

Municipality of Tinian and Aguiguan
Commonwealth of the Northern Mariana Islands



Mathew C. Masga
Chairman

Bernadita C. Falacios
Vice Chairwoman

Lydia F. Darcinas
Member

Lucia L. Blanco-Maratta, Esq.
Executive Director
TinianGamingFD@gmail.com

Rosemond Blanco Santos
Legal Counsel

NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS FOR THE REPORTING AND PROPER FILING OF ANNUAL AUDIT, OTHER REPORTS, SUSPICIOUS ACTIVITY AND CURRENCY TRANSACTION REPORTS BY A LICENSED CASINO OPERATOR ON THE ISLAND OF TINIAN

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS
PROPOSED REGULATIONS
VOLUME 36, NUMBER 12, PAGES 35988-35996
OF DECEMBER 28, 2014

**ACTION TO ADOPT THESE PROPOSED RULES AND
REGULATIONS:** The Tinian Casino Gaming Control Commission
(TCGCC) finds that:

**INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND
REGULATIONS:** The Tinian Casino Gaming Control Commission
HEREBY ADOPTS AS PERMANENT REGULATIONS the Proposed
Regulations which were published in the Commonwealth Register at
the above-referenced pages, pursuant to the procedures of the
Administrative Procedure Act, 1 CMC § 9104(a). The Tinian Casino
Gaming Control Commission announced that it intended to adopt them
as permanent, and now does so. 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.

PRIOR PUBLICATION: The prior publication was as stated above.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY:
None.

AUTHORITY: The proposed Regulations are promulgated pursuant to
the Commission's authority as provided by Part II Section 5(8)c of the
Revised Tinian Casino Gaming Control Act of 1989 to establish
regulations and the CNMI Administrative Procedures Act.

EFFECTIVE DATE: Pursuant to the Administrative Procedures Act, 1
CMC §9105(b), these adopted Regulations are effective 10 days after
compliance with the Administrative Procedures Act, 1 CMC §9102 and
§9104(a) or (b), which in this instance, is 10 days after this publication
in the Commonwealth Register.

1 of 2

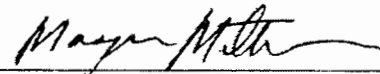
COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the Administrative Procedures Act, 1CMC §9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption. Please see the following pages for this agency's concise statement, if there are 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 § 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).

These regulations were proposed by the Tinian Casino Gaming Control Commission on November 13, 2014, and adopted as FINAL on February 19, 2015.

I declare under penalty of perjury that the foregoing is true and correct copy and that this declaration was executed on the 25 day of February 2015, at Tinian, Commonwealth of the Northern Mariana Islands.


Certified and ordered by:



Mathew C. Masga
Chairman

2/25/15
Date

Filed and recorded by:



Esther SN. Nesbitt
Commonwealth Registrar

02-25-2015
Date



Commonwealth of the Northern Mariana Islands
BOARD OF PROFESSIONAL LICENSING
P.O. Box 502078, #1242 Pohnpei Court
Capitol Hill, Saipan, MP 96950
Tel No: (670)664-4809 Fax: (670)664-4814
Email: bpl@pticom.com

NOTICE OF PROPOSED AMENDMENTS TO THE
BOARD OF PROFESSIONAL LICENSING REGULATIONS FOR
REAL PROPERTY APPRAISERS

INTENDED ACTION TO ADOPT THESE PROPOSED REGULATIONS: The Board of Professional Licensing (BPL) intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The regulations would become effective 10 days after compliance with 1 CMC §§ 9102 and 9104(a) or (b) (1 CMC § 9105(b)).

AUTHORITY: The Board of Professional Licensing has statutory power to promulgate and effect regulations pursuant to P.L. 14-95, as amended. See also Executive Order 94-3 (effective August 23, 1994, reorganizing the Executive branch).

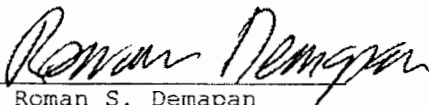
THE TERMS AND SUBSTANCE: The BPL must amend the regulations to meet policies, practices and procedures of the Appraisal Subcommittee that are consistent with the requirements of Title XI. (12 U.S.C. 3331-3351) Title XI, as amended, of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), established the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council. The purpose of Title XI is to provide protection of Federal financial and public policy interests by upholding Title XI requirements for appraisers performed for federally related transactions. Pursuant to Title XI, one of the ASC's core functions is to monitor the requirements established by the states for certifications and licensing of appraisers qualified to perform appraisals in connection with federally related transactions.

THE SUBJECTS AND ISSUES INVOLVED: The proposed amendments to the regulations are:

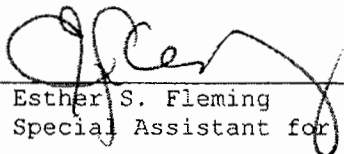
1. To amend section 4.2 of the regulations or Section 125-40-105 of 125-40, NMIAC Title 125.
2. To amend section 4.3 to add new subsection (E) and move subsection (D) to (E) of the regulations or Section 125-40-110(d) of 125-40, NMIAC Title 125.
3. To add a subsection (c) to section 4.4(A) (1) and amend (4) (e) of the regulations or Section 125-40-115(a) (1) (4) (v) of 125-40, NMIAC Title 125.
4. To amend section 4.4(B) (1(a) and (2) of the regulations or Section 125-40-115(b) (1) of 125-40, NMIAC Title 125.
5. To amend section 4.4(C) (1(a) and (b), delete (c), and amend (2) of the regulations or Section 125-40-115(c) (2) and (3) of 125-40, NMIAC Title 125.
6. To amend section 4.4(C) (1(a) and (b), delete (c), and amend (2) of the regulations or Section 125-40-115(c) (2) and (3) of 125-40, NMIAC Title 125.

7. To amend section 4.6(G) of the regulations or Section 125-40-125(g) of 125-40, NMIAC Title 125.

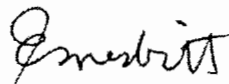
DIRECTIONS FOR FILING AND PUBLICATION: The Board is soliciting comments regarding these proposed amendments which must be received by the Board within thirty (30) days of first publication of this notice in the Commonwealth Register. Interested persons may request copies of the proposed amendments by contacting us at 664-4809 or by email at bpl@pticom.com or come by our office located at Bldg. 1242, Pohnpei Ct., Capitol Hill, Saipan. Written comments on these amendments should be drop off at our office or sent to the BPL, P.O. Box 502079, Saipan, MP 96950.

Submitted By: 
Roman S. Demapan
Chairman, BPL

2.19.15
Date

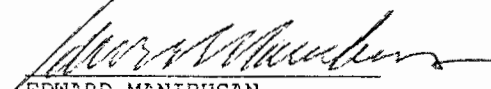
Received By: 
Esther S. Fleming
Special Assistant for Administration

02/23/15
Date

Filed and Recorded By: 
Esther SN Nesbitt
Commonwealth Register

02.25.2015
Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a) (3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).


EDWARD MANIBUSAN
Attorney General

2-23-15
Date

Commonwealth of the Northern Mariana Islands
BOARD OF PROFESSIONAL LICENSING
P.O. Box 502078, #1242 Pohnpei Court
Capitol Hill, Saipan, MP 96950
Tel No: (670)664-4809 Fax: (670)664-4814
Email: bpl@pticom.com

ARONGORONG REL POMMWOL LIWELL REL BOARD OF PROFESSIONAL LICENSING REL ALLÉGHÚL
MWÓGHUTÚGHÚT REL REAL PROPERTY APPRAISERS

MÁNGEMÁNGIL MWÓGHUT YEEL BWE EBWE ADAPTÁALI POMMWOL ALLÉGHÚL

MWÓGHUTÚGHÚT: Board of Professional Licensing (BPL) re mángemángil re bwe adaptáali bwe e bwe llégh ló allégh kka re appaasch long bwe pommol allégh, sáangi mwóghutúghútúl Administrative Procedure Act, 1 CMC § 9104 (a) ngáre (b) (1 CMC § 9105 (b)). E bwe bwuung-ló mwóghutúghútúl allégh lól seigh (10) rál mwiiril yal palúweli 1CMC §§ 9102 me 9104 (a) ngáre (b) (1 CMC § 9105 (b)).

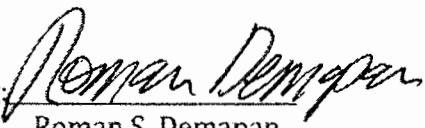
BWÁNGIL: Eyoor bwángil Board of Professional Licensing bwe re bwe arongowoow me re bwe mwóghut agháli allégh sáangi P.L. 14-95, igha re liwelli. Amweri Executive Order 94-3 (e bwung ló August 23, 1994, ighiwe re fféerú sefáaliy Executive branch).

KKAPASAL ME AWEEWEL: BPL re bwe liwelli mwóghutúghútúl allégh bwe re bwe palúweli allégh, bwe re bwe aweweey policies, practices me procedures rel Appraisal Subcommittee ikka re aweewe me kkapasal Titel XI. (**12 U.S.C. 3331-33351**) Title XI, igha re liwelli, rel Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), iye e fféeritiw Appraisal Subcommittee (ASC) merel Federal Financial Institution Examination Council. Mwóghutúghút rel Title XI nge e bwe ayoora tepengiyal Federal financial me public policy interest igha re isáali Title XI requirement rel mwóghutúghútúl appraisers rel mwóghutúghút kka re bwe fféer ikka re aweewe federally. Sáangi Title XI, eew yaal angaang ASC nge re bwe monitor li requirements kka re fféer rel states ngáli certification me licensing rel appraisers kka re mmwel re bwe fféer appraisals rel ikka re schuu me mwóghutúghútúl federally.

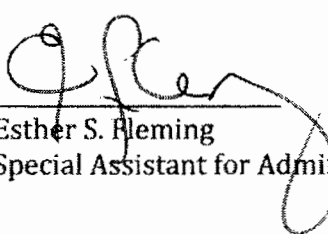
KKAPASAL ME ÓUTOL: Pommwol liwell ngáli mwóghutúghútúl ikka re lo lóll tálil:

1. Re bwe liwelli section 4.2 merel regulation ngáre section 125-40-105 rel 125-40, NMIAC Title 125.
2. Re bwe liwelli section 4.3 bwe re bwe aschuulong mil ffé subsection (E) me re bwe amiláaló subsection (D) ngáli (E) rel mwóghutúghútúl ngáre section 125-40-110(d) rel 125-40, NMIAC Title 125
3. Re bwe aschuulong subsection (c) ngáli section 4.4 (A) (1) me liwelli (4) (e) rel mwóghutúghútúl allégh ngáre section 125-40-115(a) (1) (4) (v) rel 125-40, NMIAC Title 125.
4. Re bwe liwelli section 4.4 (B) (1(a) me (2) rel mwóghutúghútúl allégh ngáre section 125-40-115(b) (1) rel 125-40, NMIAC Title 125.
5. Re bwe liwelli subsection 4.4 (c) (1(a) me (b), miláaló (c) me liwelli (2) rel mwóghutúghútúl allégh ngáre section 125-40-115 (c) (2) me (3) rel 125-40, NMIAC Title 125.
6. Re bwe liwelli section 404 (c) (1(a) me (b), miláaló (c), me liwelli (2) rel mwóghutúghútúl allégh ngáre section 125-40-115 (c) (2) me (3) rel 125-40, NMIAC Title 125.
7. Re bwe liwelli section 406 (G) rel mwóghutúghútúl allégh ngáre section 125-40-15-25(g) rel 125-40, NMIAC Title 125.

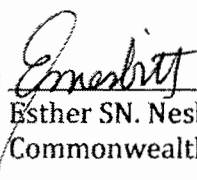
AFAL REEL AMWELIL ME ARONGOWOWUL: Board e tittingór mángemángiir toulap rel pommel liwell kka iye re bwe bwughil lóll eliigh ráll ngáre schagh aa akkatééwow arongongoron merel Commonwealth Register. Schóó kka re re mweschál copy-il pommel liwell kkal emwel re bwe faingi numero ye 664-4809 me ngare email bpl@pticom.com me ngare mweteló reel bwulasiyo Bldg. 1242, Pohnpei Ct., Capitol Hill, Saipan. Ischil mángemáng ebwe iisisilong llól bwulasiyo me ngáre afanga ngáli BPL, P.O. Box 502078, Saipan, MP 96950.

Isáliiyalong: 
Roman S. Demapan
Chairman, BPL

2.19.15
Ráll

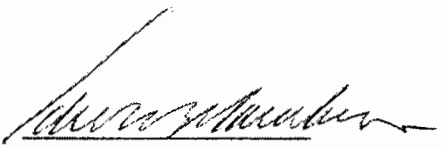
Mwir Sáangi: 
Esther S. Fleming
Special Assistant for Administration

2/23/15
Ráll

Amwel Sáangi: 
Esther SN. Nesbitt
Commonwealth Register

02.25.2015
Ráll

Sáangi 1 CMC § 2153(e) (Allégh kkaal a llégh-ló sáangi AG bwe e fil reel fféerúl) me 1 CMC § 9104 (a) (3) (mwiir sáangi AG) Pomwol atiweligh kkal a appaschlong a takkal amwuri fischiiy, me angúungú ló fféerúl me legal sufficiency sáangi CNMI Attorney General me e bwele akkatewoow, 1 CMC § 2153 (f) (Arongowowul allégh me atiwiligh kkaal.


EDWARD MANIBUSAN
Sóulemelemil Allégh Lapalap

2-23-15
Ráll

Commonwealth gi Sangkattan na Islan Marianas Siha

BOARD OF PROFESSIONAL LICENSING

P.O. Box 502078, #1242 Pohnpei Court

Capitol Hill, Saipan, MP 96950

Tel: No. (670) 664-4809 Fax No: (670) 664-4814

e-mail: bpl@pticom.com

**NUTISIA PUT I MANMAPROPONI NA AMENDASION PARA I
BOARD OF PROFESSIONAL LICENSING NA REGULASION SIHA
PARA I REAL PROPERTY APPRAISERS**

I MA'INTENSIONA NA AKSION NI PARA U MA'ADÁPTA ESTI I MANMAPROPONI NA REGULASION SIHA:

I Kuetpun Professional Licensing (BPL) ha intensiona na para u adápta kumu petmanienti na regulasion siha ni mañechettun i Manmaproponi na Regulasion siha, sigun gi manera siha gi Áktun i Administrative Procedure, 1 CMC § 9104 (a). I Regulasion siha para u ifektibu gi dies(10) dihas dispues di compliance i 1 CMC §§ 9102 yan i 9104 (a) pat i (b) (1 CMC § 9105 (b)).

ÁTURIDÁT: I Kuetpun Professional Licensing gai áturidát para u cho'gui yan u ifektibu i regulasion siha sigun gi Lai Publiku 14-95, kumu ma'amenda. Atan lokku' i Etdin Eksakatibu 94-3 (ifektibu gi Agostu 23, 1994, ya u mata'lun otganisa i rãmas Eksakatibu).

I TEMA YAN SUSTANSIAN I PALÁBRA SIHA: I BPL debi na u amenda i regulasion siha ni para u afakcha' i areklu, prinaktika, yan manera siha gi Appraisal Subcommittee ni mangkunsisti yan i dinimãnda siha gi Titulu XI. (12 U. S. C. 3331 – 3351) Titulu XI, kumu ma'amenda, i Financial Institutions Reform, Recovery, yan Enforcement Act (FIRREA), ni ma'estapblesi i Appraisal Subcommittee (ASC) gi Federal Financial Institution Examination Council. I hinangai i Titulu XI na para u pribeniyi pruteksion gi Federal financial yan i areklun publiku na intires ginin i upholding i Titulu XI na dinimãnda siha para i appraisers performed para federally related na transakcion siha. Sigun i Titulu XI, unu gi ASC's core functions ni para u monitor i dinimãnda siha ni ma'estapblesi ginin i states para settifikasion siha yan linisensian appraisers ni mangkualifikão para u perform i appraisals in connection yan i federally related na transakcion siha.

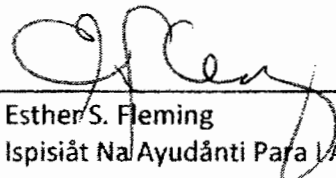
SUHETU NI MASUMÁRIA YAN ASUNTU NI TINEKKA: I manmaproponi na amendasion para i regulasion siha man:


1. Para u amenda i seksiona 4.2 gi regulasion siha pat gi Seksiona 125-40-105 gi 125-40, NMIAC Titulu 125.
2. Para u amenda i seksiona 4.3 para u áomenta i nuebu na subsection (E) yan u suha i subsection (D) para i (E) gi regulasion siha pat gi Seksiona 125-40-110 (d) gi 125-40, NMIAC Titulu 125.
3. Para u áomenta i subsection (c) para i seksiona 4.4 (A) (1) yan u amenda i (4) (e) gi regulasion siha pat gi Seksiona 125-40-115 (a) (1) (4) (v) gi 125-40, NMIAC Titulu 125.
4. Para u amenda i seksiona 4.4 (B) (1)(a) yan i (2) gi regulasion siha pat gi Seksiona 125-40-115 (b) (1) gi 125-40, NMIAC Titulu 125.

5. Para u amenda i seksiona 4.4 (C) (1a) yan i (b), mana'suha i (c), yan u ma'amenda i (2) gi regulasion siha pat gi Seksiona 125-40-115 (c) (2) yan i (3) gi 125-40, NMIAC Titulu 125.
6. Para u amenda i seksiona 4.4 (C) (1a) yan i (b), u mana'suha i (c), yan u ma'amenda i (2) gi regulasion siha pat gi Seksiona 125-40-115 (c) (2) yan i (3) gi 125-40, NMIAC Titulu 125.
7. Para u amenda i seksiona 4.6 (G) gi regulasion siha pat gi Seksiona 125-40-125 (g) gi 125-40, NMIAC Titulu 125.

DIREKSION PARA U MAPO'LU YAN MAPUPBLIKA: I Kuetpu mamamaisin upiñon siha sigun gi esti i manmaproponi na amendasion siha ni debi na u marisibi ginin i Kuetpu gi halum i trenta(30) dihas gi gi primet na publikasion esti na nutisia gi halum i Rehistran Commonwealth. Maseha hãyi na petsona manintirisão manmamaisin kopia siha gi i manmaproponi na amendasion a'agang ham gi 664-4809 pat i email gi bpl@pticom.com pat fãttu gi ufisinan-mãmi ni gaigi gi Bldg. 1242, Pohnpei Ct., Capitol Hill, Saipan. Tinigi' upiñon put esti na amendasion siha debi na u machuli' guatu gi ufisinan-mãmi pat na'hãnão para i BPL, P. O. Box 502078, Saipan, MP 96950.

Nina'hãlum as:  2-19-15
 Roman S. Demapan
 Kabesiyu, BPL
 Fetcha

Rinisibi as:  02/23/15
 Esther S. Fleming
 Ispisiãt Na Ayudãnti Para Administrasion
 Fetcha

Pine'lu yan Ninota as:  02-25-2015
 Esther SN. Nesbitt
 Rehistran Commonwealth
 Fetcha

Sigun i 1 CMC § 2153(e) (Inaprueba i regulasion siha ni Abugãdu Henerãt na para u macho'gi kumu fotma) yan 1 CMC § 9104(a) (3) (ahentan inapruewan Abugãdu Henerãt) i manmaproponi na Regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligãt ginin i CNMI Abugãdu Henerãt yan debi na u mapupblika, 1 CMC § 2153(f) (publikasion i areklamentu yan regulasion siha).

 2-23-15
 EDWARD MANIBUSAN
 Attorney General
 Fetcha

To amend section 4.2 of the regulations or Section 125-40-105 of 125-40, NMIAC Title 125.

4.2 General Requirements. All applicants for a license shall possess a reputation for honesty, trustworthiness, fairness, and financial integrity; meet educational and experience requirements; and shall pass an examination approved by the Appraiser Qualifications Board of the Appraisal Foundation and not have been convicted of or pled guilty or nolo contendere to, a felony in a domestic or foreign court during the five year period immediately preceding the date of the application for licensing or certification, or at any time preceding the date of application, if such felony involved an act of fraud, dishonestly, or a breach of trust, or money laundering. Applicants for the non-federally related appraiser license must take and pass the local appraisal examination as part of the requirement.

To amend section 4.3 to add new subsection (E) and move subsection (D) to (E) of the regulations or Section 125-40-110(d) of 125-40, NMIAC Title 125.

D. Extension of Time for Active Duty U.S. Military

An applicant in the Reserve components of the US Armed Forces, who was pursuing an appraiser license or certification prior to December 1, 2011, and who was called to active duty between December 1, 2011 and December 31, 2014, may satisfy the qualifications required under the 2008 Criteria for an additional time period after January 1, 2015. The extension of time shall be equal to the applicant's time of active duty, plus 12 months.

E. Compliance with USPAP

Appraisers in all classifications shall perform and practice in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).

To add a subsection (c) to section 4.4(A) (1) and amend (4) (e) of the regulations or Section 125-40-115(s) (1) (4) (v) of 125-40, NMIAC Title 125.

c. Effective after 1/1/15, both the Trainee Appraiser and Supervisory Appraiser shall be required to complete a course that, at a minimum, complies with the specifications for course content established by the AQB (including existing supervisors if they take on a new trainee after 1/1/15). The course will be oriented toward the requirements and responsibilities of Supervisory Appraisers and expectations for Trainee Appraisers. The course must be completed by the Trainee Appraiser prior to obtaining a Trainee Appraiser credential, and completed by the Supervisory Appraiser prior to supervising a Trainee Appraiser.

e. The supervising appraiser shall be in good standing within the training jurisdiction, not subject to any disciplinary action within the last three years that affects the Supervisory Appraiser's legal eligibility to engage in appraisal practice. A Supervisory Appraiser subject to a disciplinary action would be considered to be in good standing three years after the successful completion/termination of the sanction imposed against the appraiser.

To amend section 4.4(B) (1(a) and (2) of the regulations or Section 125-40-115(b) (1) of 125-40, NMIAC Title 125.

1. Qualifying Education
 - a. Applicants for the licensed real property credential shall successfully complete 30 semester hours of college-level education, from an accredited college, junior college, community college, or university. The college or university must be a degree-granting institution accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education. If an accredited college or university accepts the College-Level Examination Program® (CLEP) and examination(s) and issues a transcript for the exam, showing its approval, it will be considered as credit for the college course. Applicants holding an Associate degree, or higher, from an accredited college, junior college, community college, or university satisfy the 30-hour college-level education requirement.

2. Examination
 - a. The AQB approved Licensed Residential Real Property Appraiser Examination must be successfully completed. The only alternative to successful completion of the Licensed Residential examination is the successful completion of the Certified Residential or Certified General examination.

b. The prerequisites for taking the AQB-approved examination are completion of:

(1) One hundred fifty (150) creditable class hours as specified in the Required Core Curriculum; and

(2) Completion of the college-level education requirements specified in (B) (1) (a) above; and

(3) Two thousand (2,000) hours of qualifying experience in no fewer than twelve (12) months.

To amend section 4.4(C) (1(a) and (b), delete (c), and amend (2) of the regulations or Section 125-40-115(c) (2) and (3) of 125-40, NMIAC Title 125.

1. Qualifying Education
 - a. Applicants for the Certified Residential credential must hold a Bachelor's degree, or higher, from an accredited college or university. The college or university must be a degree-granting institution accredited by the Commission on Colleges, a national or regional accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education.

b. The Certified Residential Real Property Appraiser classification requires completion of two hundred (200) creditable class hours as specified in the Required Core Curriculum. As part of the 200 required hours, the applicant shall successfully complete the 15-Hour National USPAP Course, or its AQB-approved equivalent, and the examination. There is no alternative to successful completion of the USPAP Course and examination.

2. Examination
- a. The AQB approved Certified Residential Real Property Appraiser Examination must be successfully completed. There is no alternative to successful completion of the examination.
- b. The prerequisites for taking the AQB-approved examination are completion of:
- (1) Two hundred (200) creditable class hours as specified in the Required Core Curriculum;
- (2) Completion of the college-level education requirements specified in § (1) (a) above; and
- (3) Two thousand five hundred (2,500) hours of qualifying experience obtained in no fewer than twenty-four (24) months.

To amend section 4.4(D) (1(a) and (b), delete (c), and amend (2) of the regulations or Section 125-40-115(d) (2) and (3) of 125-40, NMIAC Title 125.

1. Qualifying Education
- a. Applicants for the Certified General credential must hold a Bachelor's degree, or higher, from an accredited college or university. The college or university must be a degree-granting institution accredited by the Commission on Colleges, a national or regional accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education.
- b. The Certified General Real Property Appraiser classification requires completion of three hundred (300) creditable class hours as specified in the Required Core Curriculum. As part of the 300 required hours, the applicant shall successfully complete the 15-Hour National USPAP Course, or its AQB-approved equivalent, and the examination. There is no alternative to successful completion of the USPAP Course and examination.
2. Examination
- a. The AQB approved Certified General Real Property Appraiser Examination must be successfully completed. There is no alternative to successful completion of the examination.
- b. The prerequisites for taking the AQB-approved examination are completion of:
- (1) Three hundred (300) creditable class hours as specified in the Required Core Curriculum;
- (2) Completion of the college-level education requirements specified in (D) (1) (a) above; and
- (3) Three thousand (3,000) hours of qualifying experience obtained in no fewer than thirty (30) months, where a minimum of 1,500 hours must be obtained in non-residential appraisal work.

To amend section 4.6(G) of the regulations or Section 125-40-125(g) of 125-40, NMIAC Title 125.

G. Aside from complying with the requirements to complete the 7-Hour National USPAP Update Course, or its equivalent, appraisers may not receive credit for completion of the same continuing education course offering within an appraiser's continuing education cycle.



COMMONWEALTH PORTS AUTHORITY

Main Office: FRANCISCO C. ADA/SAIPAN INTERNATIONAL AIRPORT

P.O. BOX 501055, SAIPAN, MP 96950-1055

Phone: (670) 237-6500/1 • Fax: (670) 234-5962

E-mail Address: cpa.admin@pticom.com

Website: www.cpa.gov.mp

PUBLIC NOTICE

Proposed Military Exercise Ground Operations and Implementation Plans of the Commonwealth Ports Authority

The Executive Director of the Commonwealth Ports Authority hereby notifies the public that the Commonwealth Ports Authority intends to promulgate its proposed Military Ground Operations and Implementation Plans.

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: Notice is hereby given pursuant to 1 CMC § 9104(a) of the Administrative Procedure Act that the Commonwealth Ports Authority publishes the following Military Exercise Ground Operations and Implementation Plans for the agency and its intended action to become the complete operative regulations for the agency.

AUTHORITY: At its Regular Board meeting on November 25, 2014, the Board of Directors, vested with authority as the governing body, approved the proposed plans for publication and notice in the Commonwealth Register. The authority for the promulgation of regulations for the Commonwealth Ports Authority is set forth in 2 CMC § 2122(j) as an autonomous agency of the Commonwealth of the Northern Mariana Islands. 2 CMC § 2111(b)

The following proposed military implementation plans have been fully reviewed and approved by the CPA Board of Directors as a comprehensive publication set forth in the Commonwealth Register and NMI Administrative Code set forth at Chapter 40-10. The Board hereby approves for the publication in the Commonwealth Register for Notice and Comment pursuant to the Administrative Procedure Act and as administered by the CNMI Law Revision Commission and for approval by the Attorney General pursuant to 1 CMC § 2153(e).

THE TERMS AND SUBSTANCE: The proposed plan sets forth the Commonwealth Ports Authority Military Exercise Ground Operations and Implementation Plans.

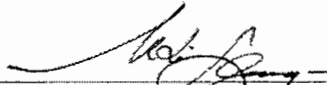
THE SUBJECTS AND ISSUES INVOLVED: This sets forth regulations to outline and implement a consistent plan containing CNMI's requirements that DoD agencies can follow to facilitate use of CNMI airfields on an enduring and long-term basis.


DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on Proposed and Newly

Adopted Regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local governments in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104(a)(1))

TO PROVIDE COMMENTS: Persons or entities wishing to submit comments may submit written comments to: Ms. MaryAnn Q. Lizama, Executive Director, Commonwealth Ports Authority, P.O. Box 501055, Saipan, MP 96950; or via hand delivery to the Saipan International Airport Administration Office; or via facsimile at (670) 237-5962. **All written comments shall be submitted so as to be received on or before 30 days after publication of this notice.**

These regulations were approved by the CPA Board of Directors on November 25, 2014.

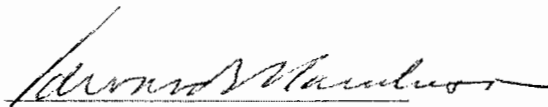
Submitted by:  06 FEB - 15
MARYANN Q. LIZAMA
Executive Director, CPA Date

Received by:  2/16/15
ESTHER S. FLEMING
Special Assistant for Administration Date

Filed and Recorded by:  02-18-2015
ESTHER SN. NESBITT
Commonwealth Register Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC §9104 (a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153 (f) (publication of rules and regulations)).

Dated this 13th day of February, 2015.


EDWARD E. MANIBUSAN
Attorney General

COMMONWEALTH PORTS AUTHORITY

Main Office: FRANCISCO C. ADA/SAIPAN INTERNATIONAL AIRPORT
P.O. Box 501055, SAIPAN, M.P. 96950-1055
Tel: (670)237-6500/1 Fax: (670)234-5962
E-mail Address: cpa_admin@pticom.com
Website: www.cpa.gov.mp

NUTISIAN PUPBLIKU

I Maproponi na Military Exercise Ground Operations yan Implementation Plans gi Commonwealth Ports Authority

I Direktot Eksakatibu gi Commonwealth Ports Authority guini ha nutisia i pupbliku na i Commonwealth Ports Authority ha intensiona para u cho'gui i maproponi-ña ni Military Grounds Operations yan Implementatiion Plans.

I MA'INTENSIONA NA AKSION NI PARA U MA'ADĀPTA ESTI SIHA I MANMAPROPO NI NA AREKLAMENTU YAN REGULASION SIHA: I nutisia guini ha nã'i sigun gi 1 CMC § 9104(a) gi Āktun i Administrative Procedure na i Commonwealth Ports Authority ha pupblika i sigienti na Military Exercise Ground Operations yan Implementation Plans para i ahensia yan i intension-ña na aksion para u mana'kumplidu i operative na regulasion siha para i ahensia.

ĀTURIDĀT: Gi Regulât na huntan Kuetpu gi Nubembri 25, 2014, i Kuetpun Direktot siha, ma-vested i āturidât kumu ginibebietna i kuetpu, inaprueba i maproponi na plãnu siha para i pupplikasion yan nutisia gi halum i Rehistran Commonwealth. I āturidât ni para u macho'gui i regulasion siha para i Commonwealth Ports Authority mapega mo'na gi 2 CMC § 2122(j) kumu autonomous agency gi Commonwealth gi Sangkattan na Islas Marianas siha. (2 CMC § 2111(b)

I sigienti ni manmaproponi na military implementation plans manmagef atan yan manma'aprueba ni CPA Kuetpun Direktot siha kumu comprehensive publication ni manmapega para gi Rehistran Commonwealth yan i NMI Administrative Code ni mapega mo'na gi Kapitulo 40-10. I Kuetpu guini ha aprueba para i pupplikasion gi halum i Rehistran Commonwealth para i Nutisia yan Upiñon sigun gi Āktun Administrative Procedure yan kumu ma'-administered ginin i CNMI Law Revision Commission yan para inaprueba ginin i Abugâdu Henerât sigun gi 1 CMC § 2153(e).

I SUSTĀNSIAN I PALĀBRA SIHA: I manmaproponi na plãnu mapega mo'na gi Commonwealth Ports Authority Military Exercise Ground Operations yan Implementation Plans.


SUHETU NI MASUMĀRIA YAN ASUNTU NI TINEKKA: Esti manmapega mo'na i regulasion siha para u ma'-outline yan u ma'implementa i kunsisti na plãnu ni gagaigi i CNMI's na dinimãnda siha anai ahensian DoD siha siña matattiyi ni para u facilitate i ma'usan i CNMI airfields gi minesngun yan anãkku' na manera gi tiempu.


DIREKSION PARA U MAPO'LU YAN PARA PUPBLIKASION: Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi halum i Rehistran Commonwealth gi seksiona ni Maproponi yan Nuebu na Ma'adãpta na Regulasion siha, 1 CMC § 9102(a)(1), yan u mapega gi kumbinienti na lugât siha gi

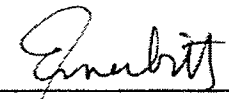
halum i civic center yan i ufisinan gubietnamentu siha gi kada distritun senadot, parehu English yan prinsipât na lingguâhin natibu. 1 CMC § 9104(a)(1).

PARA U MAPRIBENIYI UPIÑON SIHA: Petsona siha pat entities ni ha diseseha para u na'hâlum upiñon siha siña ha na'hâlum tinigi' upiñon siha guatu gi as: Siñora Maryann Q. Lizama, Direktoran Eksakatibu, gi Commonwealth Ports Authority, P.O. Box 501055, Saipan, MP 96950; pat u machuli' guatu gi Saipan International Airport Ufisinan Atministrasion; pat via facsimile gi (670) 237-5962. **Todu tinigi' upiñon siha debi na u mana'hâlum ni para u marisibi gi pat ântis di trenta dihas dispues di publikasion esti na nutisia.**

Esti na regulasion siha manma' aprueba ni CPA Kuetpun Direktot siha gi Nubembri 25, 2014.

Nina'hâlum as: 
MARYANN Q. LIZAMA
Direktot Eksakatibu, CPA
06 FEB -15
Fetcha

Rinisibi as: 
ESTHER S. FLEMING
Ispisiât Na Ayudânti Para I Atministrasion
2/16/15
Fetcha

Pine'lu yan
Ninota as: 
ESTHER S. NESBITT
Rehistran Commonwealth
02-18-2015
Fetcha

Sigun i 1 CMC § 2153(e) (Inapruedan Abugâdu Henerât i regulasion siha ni para u macho'gui kumu fotma) yan i 1 CMC § 9104(a)(3) (inahentan inapruedan Abugâdu Henerât) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma' aprueba kumu fotma yan sufisienti ligât ginin i CNMI Abugâdu Henerât yan debi na u mapupblika, 1 CMC § 2153(f) (publikasion areklamentu yan regulasion siha)).

Mafetcha guini gi diha 13th di February, 2015.


EDWARD E. MANIBUSAN
Abugâdu Henerât

COMMONWEALTH PORTS AUTHORITY
Main Office: FRANCISCO C. ADA/SAIPAN INTERNATIONAL AIRPORT
P.O. Box 501055, SAIPAN, MP 96950-1055
Phone: (670) 237-6500/1 Fax: (670) 234-5692
Email: cpa.admin@pticom.com
Website: www.cpa.gov.mp

ARONGORONGOL TOULAP

**SÁNGI COMMONWEALTH PORTS AUTHORITY
REL POMMWOL MWÓGHUTÚGHÚTÚL MILITARY EXERCISE GROUNDS OPERATIONS
ME IMPLEMENTATION PLANS**

Sáangi Executive Director me rel Commonwealth Ports Authority re arongowoow reer toulap bwe Commonwealth Ports Authority re mángemángil re bwe arongowoow yaar pommwol mwóghutúghút rel Military Grounds Operations me Implementation Plans.

MÁNGEMÁNGIL MWÓGHUT YEEL BWE EBWE ADAPTÁÁLI POMMWOL MWÓGHUTÚGHÚL ALLÉGH:
Arongowoowul sáangi mwóghutúghútú Administrative Procedure Act, 1 CMC § 9104 (a) bwe Commonwealth Ports Authority re arongowoow kkapasal Military Exercise Grounds Operations me Implementation Plans ngáliir agency me meeta pommwol mángemángil bwe e bwe llégh ló operative regulations ngáli agency

BWÁNGIL: Rel yéelágh me Board wól November 25, 2014, Board of Directors, re ngáleey bwáángil bwe schóól lemelemil, bwe a bwuung pommwol mwóghutúghút rel arongowoowul, me arongowoowul rel Commonwealth Register. Bwáángil rel arongowoowul alléghúl mwóghutúghút ngáli Commonwealth Ports Authority nge a palúweli ló 2 CMC § 2122(j) igha e autonomous agency rel Commonwealth of the Northern Mariana Islands. 2 CMC § 2111(b)

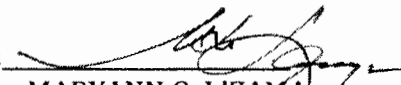
Pommwol mwóghutúghút rel Military Implementation plans nge ra amweeri fischiiy nge a llégh ló rel CPA Board of Directors bwe attakkaló kkapasal, e llo rel Commonwealth Register me NMI Administratvie Code, e llo rel Chapter 40-10. A bwuung sáangi Board bwe Arongowoowul me Kkapasal sáangi Administrative Procedure Act me e fféer sáangi CNMI Law Revision Commission me e bwe bwuung sáangi Soulemelemil Allégh Lapalap sáangi 1 CMC § 2153(e).

KKAPASAL ME AWEEWEL: Pommwol mwóghutúghút nge e bwe palúweli ló Commonwelath Ports Authority Military Exercise Ground Operations me Implementation Plans.

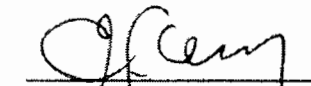
KKAPASAL ME ÓUTOL: A palúweli ló alléghúl mwóghutúghút, bwe re bwe fféer ngáli me ayoora mwóghutúghútú, bwe e bwe aweewe ló kkapasal rel mille CNMI re tipáli, bwe DoD agencies re bwe attabweey kkapasal rel yááyál CNMI airfields igha e bwe tottoori ló mmwal.

AFALAFAL REEL ISIISILONGOL ME AKKATÉÉWOWUL: Pomwol alléghúl mwóghutúghút nge e bwe arongowoow me rel Commonwealth Register llól tánil rel pommwol me fillóól allégh kka re ffé (1 CMC tánil 9102(a)(1)) me ebwe appaschetá igha toulap re bwe weri iye me bwal llól bwulasiyool Gobenno kkaal llól senatorial district, fengál rel kkasal English, me mwááliasch. (1 CMC Tánil 9104(a)(1)).


REL ISIISILONGOL KKAPAS: Rel toulap kka re mwuschel re bwe atottoolong mángemángiir nge re bwe afanga ngáli: Ms. MaryAnn Q. Lizama, Executive Director, Commonwealth Ports Authority, P. O. Box 501055, Saipan, MP 96950; me ngáre re bwe bwughi ló rel Saipan International Airport Administrative Office; me ngáre Facsimile rel (670) 237-5962. Iischil mángemáng nge re bwe attotoolong lól eliigh ráll (30) mwiriil arongowoowul.

Isáliiyalong: 
MARYANN Q. LIZAMA
EXECUTIVE DIRECTOR, CPA

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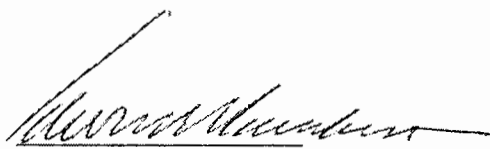
Mwir Sángi: 
ESTHER S. FLEMING
Special Assistant for Administration

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Amwel Sángi: 
ESTHER SN. NESBITT
Commonwealth Register

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Sángi 1 CMC § 2153(e) (Allégh kkaal a llégh-ló sángi AG bwe e fil reel fféerúl) me 1 CMC § 9104 (a) (3) (mwiir sángi AG) Pomwol atiweligh kkal a appaschlong a takkal amwuri fischiiy, me angúungú ló fféerúl me legal sufficiency sángi CNMI Attorney General me e bwe le arongowoow, 1 CMC § 2153 (f) (Arongowowul allégh me atiwiligh kkaal.


EDWARD E. MANIBUSAN
Sóulemelemil Allégh Lapalap

February 13, 2015
Ráll

COMMONWEALTH PORTS AUTHORITY

Saipan, Tinian and Rota Airports



MILITARY EXERCISE GROUND OPERATIONS PLAN And IMPLEMENTATION PLAN

October 2014

CPA MILITARY EXERCISE GROUND OPERATIONS PLAN

SECTION I Roles and Responsibilities

Purpose: This section defines operational roles and responsibilities for the Military members and other support personnel. Emphasis is on proper management of activities related to the exercise events to maintain the highest level of safety throughout the exercise at a FAR Part 139 Certified Airport.

Key Positions:

Airport Manager or authorized designee – Overall responsibility for safe operation of the airport, including:

1. Responsible for the safe conduct of exercise events on the airport coordinating with Air Traffic Control Tower (ATCT, Guam CERAP) personnel during the exercise.
2. Determine whether crowd evacuation is necessary in an emergency. If evacuation is required, issues appropriate instructions to direct evacuation pursuant to its AEP.
3. Continuously monitor for any operation or activity deemed unsafe, and communicate necessary instructions to appropriate personnel to terminate those activities.
4. Ensure compliance with FAR Part 139.
5. Manage the schedule of exercises.
6. Coordinate with outside agencies.

Operations Supervisor or authorized designee – Overall responsibility for safety on the AOA during the exercise including:

1. Overall responsibility for placement of approved temporary facilities and equipment.
2. Assess ground operations from the standpoint of safe practices.
3. Coordination of parking and transportation issues.
4. Coordinate real time activities with ATCT, Guam CERAP.
5. Ensure necessary operational planning has been completed.
6. Coordinate with Emergency personnel to ensure emergency resources are in place prior to commencing exercises when required.
7. Conduct a daily exercise operations briefing for participating pilots and ground crews as required. The briefing will include specific local information such as compliance with FAR Part 139 and security requirements.
8. Continuously monitor the exercise remaining alert for any operations or activity deemed unsafe, and take action to terminate those activities.
9. In an emergency requiring evacuation, assist with appropriate crowd evacuation procedure pursuant to the AEP.

Chief of Ports Police or authorized designee – Responsibility for implementation of 49 CFR Part 1542, security regulations.

1. Coordinate operations of the emergency resources: local fire protection district and emergency medical service units, first aid station, local law enforcement, and contract security agencies.
2. Ensure that exercise site security (perimeter, controlled access points, etc.) is maintained at all times, including proper deployment of crowd control barriers and personnel.
3. Handle crowd control and security-related issues in coordination with all Airport Emergency Plans (AEP).
4. Make continuous safety announcements.
5. Inform all of an emergency situation.
6. Maintain calm by making appropriate announcements.

ARFF Operations - Command Post: The exercise Command Post will be located at the Emergency Operations Center (EOC) at the ARFF station for Saipan or respective EOC locations for Rota and Tinian, as designated by the ports managers, and will serve as the central location for managing information, directing exercise staff, and coordinating with outside agencies. Command post resources will include: communications capability (radios and cell phones), site diagrams, posted lists (key personnel and contact numbers), copies of exercise documents and plans, message board, and office supplies. In the event of emergency, key exercise personnel, the airport manager, and the local FAA coordinator are authorized to coordinate information, assess conditions, and manage the incident.

Communications Network: A formal radio communications network will be used during the exercise. Key personnel and operational areas will be issued a radio and or communication device and shall monitor the assigned frequency at all times. At Tinian and Rota Airports, radio communications must be freely accessible by the Flight Service personnel to the exercise's radio communications command center. If no radio is available or provided by the exercise operation, a manned personnel from the exercise team must be stationed at the Flight Service Office to monitor and relay traffic activities of the exercise to Flight Service personnel.

The command post shall serve as base station and conduct a roll call each morning of the event to ensure the network is operating properly. Notification of minor incidents (e.g., small fuel spill from static aircraft, etc.) and medical emergencies will be via this network.

Air Operations Briefing/Debriefing: An operations briefing for the current day followed by debriefing of the previous day will be held daily at a specified time at the command post. The focus will be on procedures that worked well, problems encountered, suggested corrective actions, and an evaluation by the Airport Manager. These briefings/debriefings shall be attended by the following:

1. Airport Manager or authorized designee
2. Director of Emergency Management or authorized designee
3. Chief of Ports Police or authorized designee
4. Chief of ARFF or authorized designee
5. Operations Supervisor or authorized designee
6. Safety Officer or authorized designee

7. Officer in Charge of Military Operations

SECTION II GROUND OPERATIONS

Purpose: This section defines the procedures to be followed to safely conduct ground operations in support of the exercise.

Safety: The safety of flight line personnel, aircrew, exercise participants and visitors is the primary focus during the exercise and aircraft handling activities. All personnel are to remain alert for unsafe conditions or practices. Anyone observing a safety-related incident must immediately report the problem to the appropriate airport management representative and/or immediately take corrective action.

Security:

1. The exercise area will be delineated by crowd control barriers and security fencing. There will be two (2) to four (4) controlled entry and exit points depending on the airport and as designated by each respective Airport Manager. Each airport designated entry and exit points are as follows:

Saipan International Airport

- AOA Gate #1, West Gate (main gate)
- AOA Gate #3, Commuter Gate

Tinian International Airport

- Main Gate "A" Ramp Access
- Secondary Gate "C"
- Secondary Gate "D"

Benjamin Taisacan Manglona International Airport (Rota)

- AOA East Gate
- AOA West Gate
- AOA South Gate

2. Flight line access will be allowed only to appropriately badged individuals, to include:
 - Exercise officials and directors.
 - Military personnel.
 - Pilots of aircraft parked on the ramp/apron.
 - Certain guests escorted by exercise personnel.
 - Media personnel, if allowed.
3. Ports Police personnel will provide security for the exercise ramp area during the period of the scheduled exercises hours as well as during off hours to discourage unauthorized entry and to prevent tampering with the aircraft.

Apron/Ramp Operations: The following procedures and considerations will apply to exercise participants:

Note: Prior to any operations at the airport, all ground personnel identified as part of the exercise operations must go through a briefing by either the Operations Supervisor or Chef/Asst. Chief of Ports Police.

1. Aircraft shall not be started or taxied on non aircraft usable surfaces
2. Aircraft engines will not be started and operated closer than 100 ft. of the terminal area.
3. Helicopters may not engage rotor systems closer than 200 ft. from the terminal area.
4. A fire guard with fire extinguisher shall be posted prior to exercise aircraft engine starts.
5. There must be at least two wing-walkers for each aircraft being moved or towed by the ramp crew.
6. Following engine start and prior to taxi, each aircraft will be inspected by a flight line crewmember for anomalies such as fluid leaks, loose panels, etc.
7. Aircraft shall be checked when in their assigned parking spot
8. Flight line personnel are to remain clear of propellers and jet engine intakes at all times.
9. To the extent practical, there should be no running on the flight line.
10. Flight line personnel must be alert for and remove any debris, trash etc. on the ramp that could cause foreign object damage (FOD) to aircraft.

SECTION III **OPERATIONS**

Purpose: This section defines procedures to be followed to safely conduct the aerial events scheduled for the exercise.

Aerial Events: Exercise aerial events will be conducted in accordance with and/or be governed by the following standards and regulations:

- Federal Aviation Regulations (FAA Order 7110)
- Federal Aviation Regulations (FAR Part 139)
- Federal Flight Standards District Office (FSDO) directives
- Commonwealth Ports Authority (CPA) rules, regulations, policies and directives

Note: All fighter jets approaching the runway for landing must align with the runway no less than a mile away. Similarly, when taking off from the runway, they should maintain alignment (no right or left turn) at least three miles away from runway end prior to making any turns.

SECTION IV **TERMINATING EXERCISE ACTIVITIES**

Purpose: This section sets protocol that will be used to suspend an exercise event that is in progress on the airport. Only the Airport Manager or his/her designee has the authority to terminate any and all exercise activities in the airport for non-complying conditions in accordance with FAR Part 139, safety of personnel and the protection of property. The Exercise

Coordinator must report any unusual exercise activities to the Airport Manager for immediate action.

SECTION V **EMERGENCY PLANNING**

Purpose: This section defines procedures that will be implemented in the event of an emergency situation and shall be conducted pursuant to the Saipan, Tinian or Rota International Airports' AEP.

Emergency Situations: Emergency situations requiring immediate action to ensure life safety could occur during the exercise. These include (but are not limited to): aircraft crash, aircraft fire, fuel spill, and structure fire.

Aircraft Emergency: In the event of an aircraft accident, primary response will consist of Airport aircraft rescue and fire fighting (ARFF) equipment along with mutual aid fire and emergency medical services (EMS) units in accordance with the established Airport Emergency Plan. If an aircraft emergency occurs during the exercise, the primary objective of the airport staff will be to quickly isolate the hazard by evacuating people away from the area. This also applies to fires and other hazardous situations (e.g. fuel spill) involving aircraft on its apron/ramp areas.

Airport personnel assisted by other resources, as necessary, will handle incident mitigation.

Non-Aircraft Emergency: Fire incidents (e.g. vehicle fire) and other hazardous situations in the exercise area (not involving aircraft) or in the parking areas, can be handled by both ARFF and the local fire department engine company assigned to the state. Local law enforcement personnel will assist by directing participants away from the incident and then keeping the area clear for responding emergency services.

Medial Emergency: Emergency care and transport of sick or injured persons will be conducted in accordance with established local EMS protocols. Resources available to accomplish this function include:

1. On-site first aid station
2. Local EMS unit on exercise standby (assisted by local fire department).
3. Local EMS response capability. In the event of a mass casualty-type incident, triage, emergency care, and transport will be conducted in accordance with the established Airport Emergency Plan and local EMS protocols.

Incident Notification Procedure: The exercise command post will serve as "base station" for the operations communications network. The command post must be notified of an emergency or hazardous condition as soon as is practical by the person(s) discovering the problem. In many cases, this notification could occur after one of the on-site emergency units has been alerted (e.g. EMS unit on exercise standby). When notified of an incident in progress, the command post will:

1. Confirm the nature and location of the emergency

2. Announce the nature and location of the emergency over the operations communications network
3. Verify that the proper resources are responding to the incident
4. Ensure the proper airport and exercise personnel are aware of the incident
5. Document all relevant information on the incident, including: time of occurrence, nature, location, and action taken.

CROWD EVACUATION

Purpose: - This section defines procedures that will be implemented in the event of an emergency situation requiring exercise participant evacuation from all or part of the airport.

* *For evacuation routes, see Evacuation Route APPENDIXES for each respective airport attached to this document.*

Evacuation Procedures:

The Chief of Airport Police:

1. Determine the need for evacuation
2. Notify the Airport Management on the exercise communications network to initiate evacuation. Specify by which evacuation route(s) (e.g. primary and secondary only).
3. Determine if aircraft exposed to the incident can be safely moved and issue necessary instructions to accomplish this task.

The AOA Crew:

1. Immediately isolate the incident site by evacuating people from the area
2. Direct the personnel toward the appropriate evacuation route – as instructed by the Chief of Police.
3. Move exposed aircraft away from the incident site – as instructed by the Chief of Police
4. Make appropriate announcements to direct participants away from the incident and toward the appropriate evacuation route(s).
5. Announcements may be supplemented with pre-assigned personnel on foot utilizing bull horns.

AIRCRAFT ACCIDENT/INCIDENT PROCEDURES

Purpose: This section defines procedures to be followed should an accident/incident occur involving any aircraft.

Refer to the Saipan, Rota or Tinian Airport Emergency Plans (AEP) depending on which airport accident/incident occurred on.

Accident Scene Preservation: Preservation of the accident scene and physical evidence shall be a high priority after life safety issues have been addressed. Exercise staff shall assist in this effort at the direction of the Incident Commander and airport staff.

Access to the crash site shall be restricted to ALL personnel unless approved by the Incident Commander.

KEY POSITIONS of levels of Management include:

OVERALL:

1. **Executive Director** – Ms. MaryAnn Q. Lizama

Saipan International Airport

2. **Saipan Airport Manager** – Mr. Edward B. Mendiola
3. **Operations Supervisor** - Mr. Juan C. Tudela
4. **ARFF** - Chief James V. Diaz
5. **Ports Police** – Acting Chief Juan Dela Cruz

Tinian International Airport

6. **Tinian Ports Manager** - Mr. Joseph M. Mendiola
7. **Tinian Asst. Ports Manager** - Gerald K. Crisostomo
8. **Police/ARFF** - Capt. Rudeinn C. Sablan

Benjamin Taisacan Manglona International Airport (Rota)

9. **Rota Ports Manager** - Mr. Martin Mendiola
10. **Police/ARFF** – Asst. Chief Roger Taisacan

Others

11. **Military Officer in Charge** – Military appointed
12. **Safety Administrator** – TBD

SECTION VI

Airspace: All airspace use will be strictly coordinated with the FAA Guam CERAP office.

Aircraft Handling, Servicing and Fueling: It is the responsibility of the exercise participants to arrange for all necessary and proper Aerospace Ground Equipment (AGE) for military units to ensure professional, qualified and safe aircraft servicing. All aircraft requiring fuel and related fueling operations shall be conducted in accordance with the Saipan, Tinian or Rota Airport Certification Manuals, NFPA 407, FAR Part 139 and APPENDIX B for Hot Refueling requirements. *Note: Hot refueling operations are not permitted at the Benjamin Taisacan Manglona International Airport on the island of Rota.*

Hangar Space: The only available hangar space available at the Francisco C. Ada/Saipan International Airport is being leased out exclusively to Freedom Air. Therefore, temporarily tent” shelters may be used in a location designated by CPA as provided by the military.

Due to limited hangar space at Tinian Airport, exercise participants will be granted temporary access to any terminal space as designated by the airport manager or "tent" shelters on the side of the airport as provided by the military.

Due to limited hangar space at Rota Airport, exercise participants will be granted temporary access and use of ARFF Bay II or in temporary "tent" shelters as provided by the military.

AOA Security: Security of the exercise will be conducted in accordance with 49 CFR, Part 1542, security regulations and combined efforts between the airports, TSA and the military. Airport perimeter gates and openings in security fence will be protected by the Airport Police. The exercise will utilize only areas of the airport that are designated by the Airport Manager.

Hazardous Materials: Hazardous Materials (HAZMAT) disposal methods will comply with both State and Federal HAZMAT disposal regulations. A HAZMAT disposal drum shall be provided by the Exercise participants for the discarding of hazardous materials and ultimate disposal of same.

SECTION VII

FAR PART 139 ISSUES: The proceeding topics cover elements contained in the Airport Certification Manuals (ACM). CPA is responsible for resolution of these issues:

Airline Operations: The exercise event is planned for the Apron/Ramp area and is not anticipated to impact the commercial airlines terminal and ramp areas. Accordingly no special Operations can be conducted during the exercise that will impact other aeronautical activities on the airport.

Aircraft Rescue and Firefighting (ARFF) Capability and Special Emergency Response Procedures: All three CPA airports will function in accordance with their Airport Emergency Plans which is to provide Aircraft Rescue and Firefighting (ARFF) in the event of an aircraft incident or accident during on the airport. ARFF is the first responder to all incidents on the airport back up by the state Fire Department. The airport shall ensure that pre-positioning of an ARFF unit does not affect any of the airport's Part 139 Certification Level. Response times to any airport incident will not be affected by the exercise. The airport has the following ARFF Units:

Saipan International Airport

Vehicle	Gallons of Water	Gallons of Foam
RIV	100	10
Crash-7	1,500	205
Crash-8	3,000	420
Crash-9	1,500	210
Tanker-6	3,000	none

On-Duty ARFF Personnel per shift: 7-9 personnel

Tinian International Airport

Vehicle	Gallons of Water	Gallons of Foam
Striker ARFF Vehicle	1,500	200
Titan ARFF Vehicle	1,500	200
HAZMAT Vehicle w/trailer		

On-Duty ARFF Personnel per shift: 2 personnel (ARFF/ Ports Police Officers)

Benjamin Taisacan Manglona International Airport (Rota)

Vehicle	Gallons of Water	Gallons of Foam
Striker ARFF Vehicle	1,500	200
Titan ARFF Vehicle	1,500	200
HAZMAT Vehicle w/trailer		

On-Duty ARFF Personnel per shift: 2 personnel (1 Chief, 1 fire fighter)

Hazardous material response will be provided by both the ARFF and State Fire department. However, the ARFF is not fully trained to handle and respond to hydrazine incident(s). ARFF personnel will assist with exercise participants who are trained to handle this specific hazardous material. Exercise participants shall be responsible in bringing highly trained and qualified personnel to handle hydrazine incidents.

Temporary Arresting Gears Installed in a Runway Safety Area: Arresting Gear/Barrier Engagement Systems must be coordinated for use with the Airport Manager and can only be utilized upon approval by the FAA ADO. To include objects that cannot be located in the Safety Areas that are not fixed by function and must be frangible no higher than 3 inches above grade.

Pyrotechnic Devices: Pyrotechnic devices must be coordinated for use with the Airport Manager and can only be utilized upon approval by the FAA ADO, Airport Police and TSA.

Temporary Closures of Runways and Taxiways: Must be coordinated with the Airport Manager and conducted in accordance with its ACM and AC 150/5370-2f.

Movement Area Maintenance: Exercise aircraft and ground vehicles will be parked in the following locations of each respective airport:

Saipan International Airport

- Western end of the apron which is adjacent to Taxiway G, in a non-movement area.

Tinian International Airport

- East Apron adjacent to Taxiway A or west gate adjacent to Taxiway A, in a non-movement area.

Benjamin Taisacan Manglona International Airport (Rota)

- East Apron adjacent to Taxiway C, in a non-movement area.

NOTE: Any ground vehicles required to access the movement areas MUST BE ESCORTED BY A QUALIFIED AIRPORT OPERATOR in accordance with its ACM and FAR Part 13.339.

Fueling Operations: Jet-A fueling will be provided by mobile refueler truck through Exxon/Mobil. Refueling of AVGAS will be coordinated with local supplier. All Exercise Self Fuelers MUST conduct all fueling operations in accordance with the Saipan, Tinian or Rota International Airports' ACM, NFPA and FAR Part 139.321.

Public Protection: Personnel control is maintained by encircling the exercise grounds with a combination of manufactured chain link fence, snow fence and water filled barricades. The Airport and Exercise participants are responsible for protecting any openings in this fencing. Facilitation of ingress and egress of participants is a combined effort of local law enforcement agencies. Exercise aircraft will taxi on Taxiway A and onto Taxiway G at the western end of the apron at the Saipan International Airport in a non-movement area, Taxiway B north of the terminal at the Tinian International Airport, and north to south on Taxiway B south ramp at the Benjamin Taisacan Manglona International Airport (Rota). The security effort provided by the airport will be in place for exercise control along the fence line and will keep people away from the fence during aircraft operations to protect against jet blast.

Self-Inspections: The airport will conduct inspections daily except as otherwise required by the ACM and FAR Part 139.327, which are required to be performed as a result of unusual conditions such as construction activities, meteorological conditions, after an accident and or an incident on the movement areas.

Exercise Ground Vehicle Operations: Should a need occur for exercise personnel to enter the movement area; they will be escorted by a Qualified airport personnel who are trained and permitted.

The exercise will utilize vehicles permitted to operate within the AOA areas and as approved by each respective airport. The other vehicles will be used only to transit adjacent non-movement areas only. Exercise operators will use the established marked roadways already in use by FBO and general aviation personnel in the non-movement areas ONLY.

Pedestrian Operations: Should a need occur for exercise personnel to enter the movement area on foot, they will be escorted by Qualified airport personnel who are trained and permitted. Exercise personnel shall not be left unattended under any circumstance and must be accompanied at all times while operating on the movement areas.

Impact to NAVAIDS: The airport shall prevent the use of exercise equipment that may derogate the operations of an electronic or visual NAVAID and ATCT facilities on the airport in accordance with FAR Part 139.333. ONLY FAA maintenance personnel are responsible for placing NAVAIDS out and in service.

NOTAMs: The airport is responsible for the issuance of NOTAMs in accordance with its ACM and FAR Part 139.339, i.e., NOTAMs affecting airport closures, airport surfaces and airport aircraft landing and movement areas.

Wildlife Hazards: The airport is responsible for reporting and alleviating wildlife hazards whenever they are detected in accordance with its ACM, Wildlife Hazard Management Plan and FAA Part 139.337.

FOD Control: Exercise participants shall provide the necessary personnel and equipment for the cleanup and control of FOD on the AOA within its assigned areas.

Changes to Airport Markings: No changes to any airfield signage, markings and lightings are authorized unless approved by the FAA ADO. This includes any temporary features.

Paved Areas: No changes or alterations to any runway, taxiway, loading ramp and aircraft parking surface is authorized, unless approved by the FAA ADO. This includes any temporary features to be installed on any portion of paved aircraft surfaces.

Obstructions: The installation of objects in Obstruction Free zones and areas are prohibited and must be approved by the Airport Manager prior to installation. This includes temporary objects i.e. antennas, light poles/fixtures, communications towers, etc.

SECTION VIII
CLAIMS AGAINST THE UNITED STATES

CPA hereby reserves the right to make a claim against the United States for property damage, personal injury, or death caused by military personnel or civilian employees of any branch of the military acting in the scope of their employment or otherwise incident to the military's noncombat activities while on or off CPA property.

SECTION IX
CONDITIONS

Any military branch requesting use of a CPA airport must submit a scope of work for CPA's review, and acknowledge receipt and understanding of the Implementation Plan, as attached to this document. No military activities will be allowed/permitted without approval by CPA's Executive Director or his designated appointee.

APPENDIX A
Implementation Plan

See separate Implementation Plan document

APPENDIX B
Hot Refueling Procedures

Hot Refueling Area must first be identified and situated away from the terminal and other aeronautical activities, preferably to be conducted at the designated HOT Cargo Area. ALL HOT REFUELING OPERATIONS MUST BE DESIGNATED BY AND APPROVED BY THE AIRPORT MANAGER.

Note: No hot cargo or hot refueling operations are permitted at the Benjamin Tuisacan Manglona International Airport on the island of Rota, CNMI.

Required Action: Hot fueling/loading can be extremely hazardous and is not recommended except when absolutely necessary due to the nature of the operation. Operators who conduct hot fueling/loading should develop standard operating procedures (SOP) for flight and ground crew personnel. The operator's procedures should address the following guidelines:

1. Hot fueling is to be conducted only by aircraft utilizing JET A or JET A-1 fuel types. If strict operating procedures are not followed, hot fueling of aircraft utilizing AvGas can be extremely hazardous due to its low flash point. Aircraft being fueled while an engine is operating should have all potential ignition sources located above the fuel inlet port(s) and above fuel vent or tank openings. Sources of ignition include, but are not limited to: engines, exhausts, auxiliary power units (APU), and combustion-type cabin heater exhausts. In accordance with 14 Code of Federal Regulations (14 CFR) section 91.9, hot fueling is not permitted if the Airplane or Rotorcraft Flight Manual contains an associated operating limitation.
2. An appropriately certificated and rated pilot shall be at the flight controls during the entire hot fueling/loading process with controls appropriately adjusted to prevent aircraft movement. The pilot shall unbuckle all restraints, and be prepared to immediately shut-down the engine and egress the aircraft, if necessary. The pilot shall not conduct any extraneous duties during hot fueling/loading.
3. Only designated personnel with proper training in hot fueling/loading operations shall operate fueling or chemical loading equipment. The operator's written procedures shall include: precautions for safe handling of the fuel or chemical, emergency shutoff procedures, fire extinguisher use, hand signal use, and precautions regarding moving propeller and rotor blades
4. At least two ground personnel shall be present during hot fueling/loading. One person conducts the fueling/loading, while the other stands by prepared to activate the fuel/chemical emergency shutoff and handle fire extinguishers if necessary. The aircraft shall remain well clear of the fuel source and at no time shall the aircraft wing or helicopter blades extend over the fueling source
5. Before fueling, the aircraft must be bonded to the fuel source to equalize static electricity between the fuel source and the aircraft. Grounding of the aircraft and/or fuel truck is no longer recommended because it does not prevent sparks at the fuel source, and the grounding cable may not be sufficient to discharge the electrical current.

6. All doors, windows, and access points allowing entry to the interior of the aircraft that are adjacent to, or in the immediate vicinity of the fuel inlet ports shall be closed and should remain closed during fueling operations.
7. ARFF units of appropriate airport index must be on standby at the site during hot refueling operations and properly suited in personnel protective equipment (PPE).
8. Fuel shall be dispensed into an open port only from approved deadman-type nozzles, with a flow rate not to exceed 10 gallons per minute (38 liters per minute). Close port pressure fueling ports are preferable because the potential for spillage is reduced.
9. A fire extinguisher of an appropriate type and size for the fueling operation must be within easy reach of ground personnel at all times during hot fueling operations. Operators who conduct hot fueling shall also equip the aircraft with a fire extinguisher in the cockpit, if possible.
10. When fueling/loading is complete, the pilot must ensure that the seatbelt and shoulder harness are properly re-secured as necessary prior to any aircraft movement.
11. Operators shall require initial and recurrent training for pilots, ground personnel and ARFF.

References:

- *Aeronautical Information Manual (AIM) – Helicopter Rapid Refueling*
- *AC 00-34A, Aircraft Ground Handling and Servicing,*
- *National Fire Prevention Association (NFPA) 407, Standard for Aircraft Fuel Servicing,*
- *Include review of this SAFO in initial and recurrent training, and flight reviews.*

APPENDIX C
Emergency Procedures for F-16 Hydrazine Leaks/Spills

The U.S. Air Force F-16 Fighting Falcon utilizes the chemical compound Hydrazine (H-70) which fuels the aircraft's Emergency Power Unit (EPU). The EPU is used to re-start the F-16's single engine in the event of an engine failure while in flight.

With the F-16's EPU operating, Hydrazine problems usually occur when the aircraft is on hold awaiting take-offs, or while in-flight. Rarely will a problem occur while the aircraft is parked with the engine and EPU not running, and Hydrazine canister's removed and properly stored.

I. Basic Hydrazine Information

- Hydrazine is extremely combustible in its liquid and vapor forms
- Hydrazine poses an extreme health risk for responders and ground personnel
- It is potentially fatal if inhaled, ingested, or absorbed through the skin
- Hydrazine is colorless, with an ammonia odor, and is classified as a highly corrosive agent
- An F-16 carries 6.7 gallons of Hydrazine to fuel the EPU
- Hydrazine's listed UN Number is 2029

II. Emergency Access Route(s) Around Exercise Areas - In the event ARFF must respond to emergency at the exercise areas, access routes shall be by way of the following taxiways:

Saipan International Airport

- Taxiway B via Taxiway A
- Taxiway D via Taxiway A
- Taxiway F via Taxiway A

Tinian International Airport

- South end
- South on west
- Street on east
- AOA ramp north of aircraft parking spot if emergency is at or near north section of the exercise barricade

Benjamin Taisacan Manglona International Airport (Rota)

- Taxiway Bravo
- Taxiway Charlie
- ARFF Access Road

III. ARFF Response for Emergency EPU Activation Procedures - For purposes of the EXERCISE, ARFF response for a Hydrazine leaks/spills shall be as follows:

WARNING: Non-essential personnel shall leave the immediate area to avoid breathing Hydrazine vapors. Failure to do so may result in personal injury. Personnel will exercise

care to ensure that hydrazine does not come in contact with skin or eyes. All EPU firings and suspected hydrazine leaks will be treated as definite leaks until the EPU servicing/spill cleanup team determines otherwise.

1. A pilot - - taxiing or awaiting take-off - - declaring an emergency involving Hydrazine shall be directed to taxi with prevailing winds (This allows the aircraft to be at a minimally safe distance of 600 feet downwind from all human activity).
2. ARFF crews responding to a Hydrazine emergency shall be in full firefighting Personal Protective Equipment, approaching scene from upwind and establishing a cordon of 50 feet minimum - upwind, and 600 feet downwind - at a 45-degree angle off the aircraft nose and tail.
3. If no wind is present, a 600 foot cordon around the entire aircraft shall be established.
4. The Incident Commander (IC) shall ensure that the pilot positions aircraft with the left-wing upwind, and with the pilot breathing 100% oxygen, remaining in aircraft if no fire is present, until Hydrazine leak has stopped and is fully dissipated.
5. Once the leak as stopped and Hydrazine has dissipated, ARFF crews may proceed with extrication of pilot from rescue-side of aircraft (pilot's left).
6. ARFF crews shall provide and out-fit the F-16 pilot with a spare Self-Contained-Breathing-Apparatus (SCBA) at time of extrication.
7. Pilot declaring an in-flight emergency shall be diverted to AAFB (Guam).
8. In event the aircraft is unable to proceed to AAFB Guam, and must land, aircraft shall be directed to a taxiway designated by ATCT, with prevailing winds, and pilot shall position aircraft with leftwing upwind.
9. If fire is present, ARFF crews shall fight fires utilizing heavy fog-patterns directing any spill downwind and away from aircraft, before performing rescue operations.

NOTE - Runoff must be controlled since Hydrazine is harmful to the environment 10. If F-16 crashes, normal firefighting operations shall be accomplished.

10. All ARFF, and, Mutual-aid (HFD) responders at emergency shall be on SCBA's.

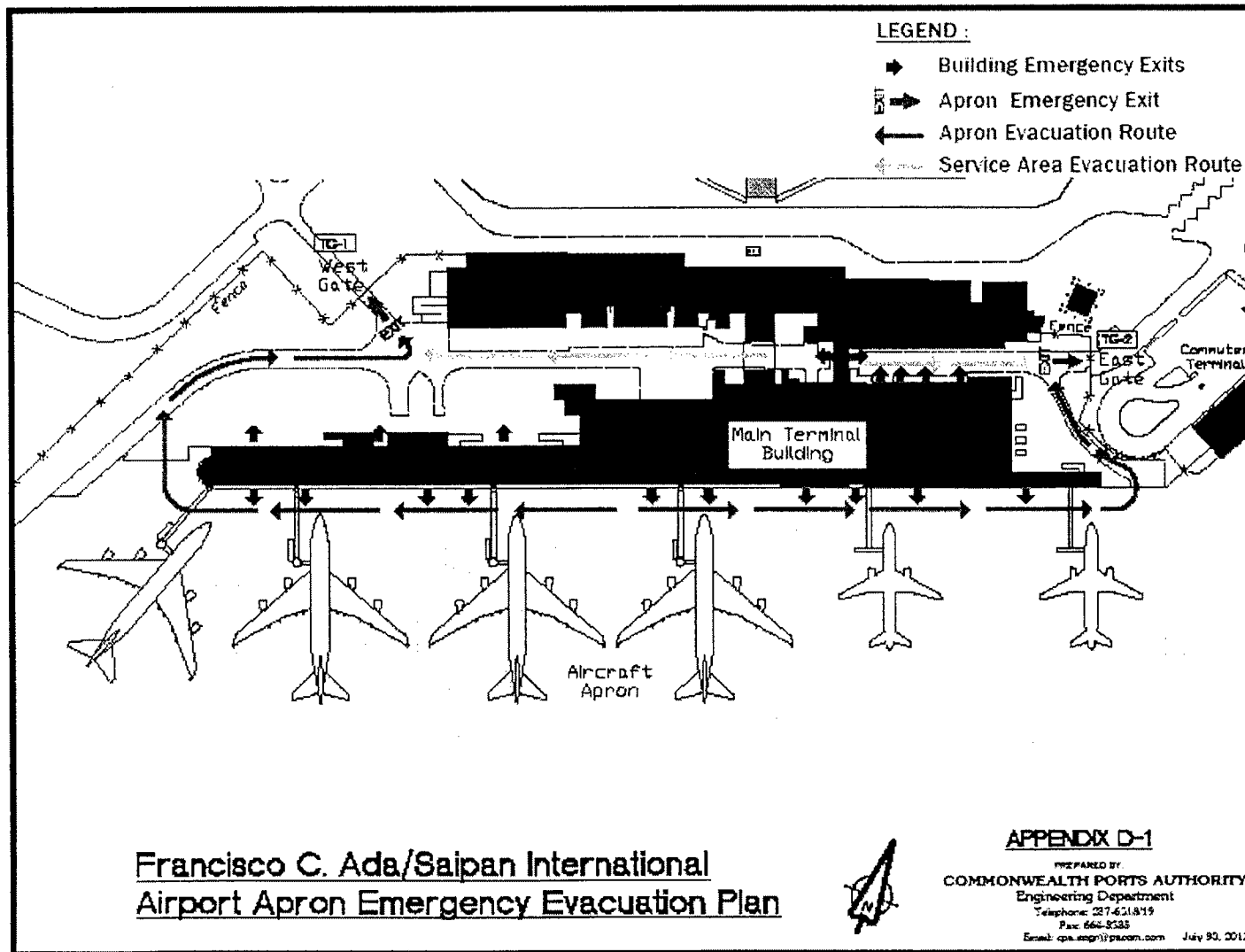
References:

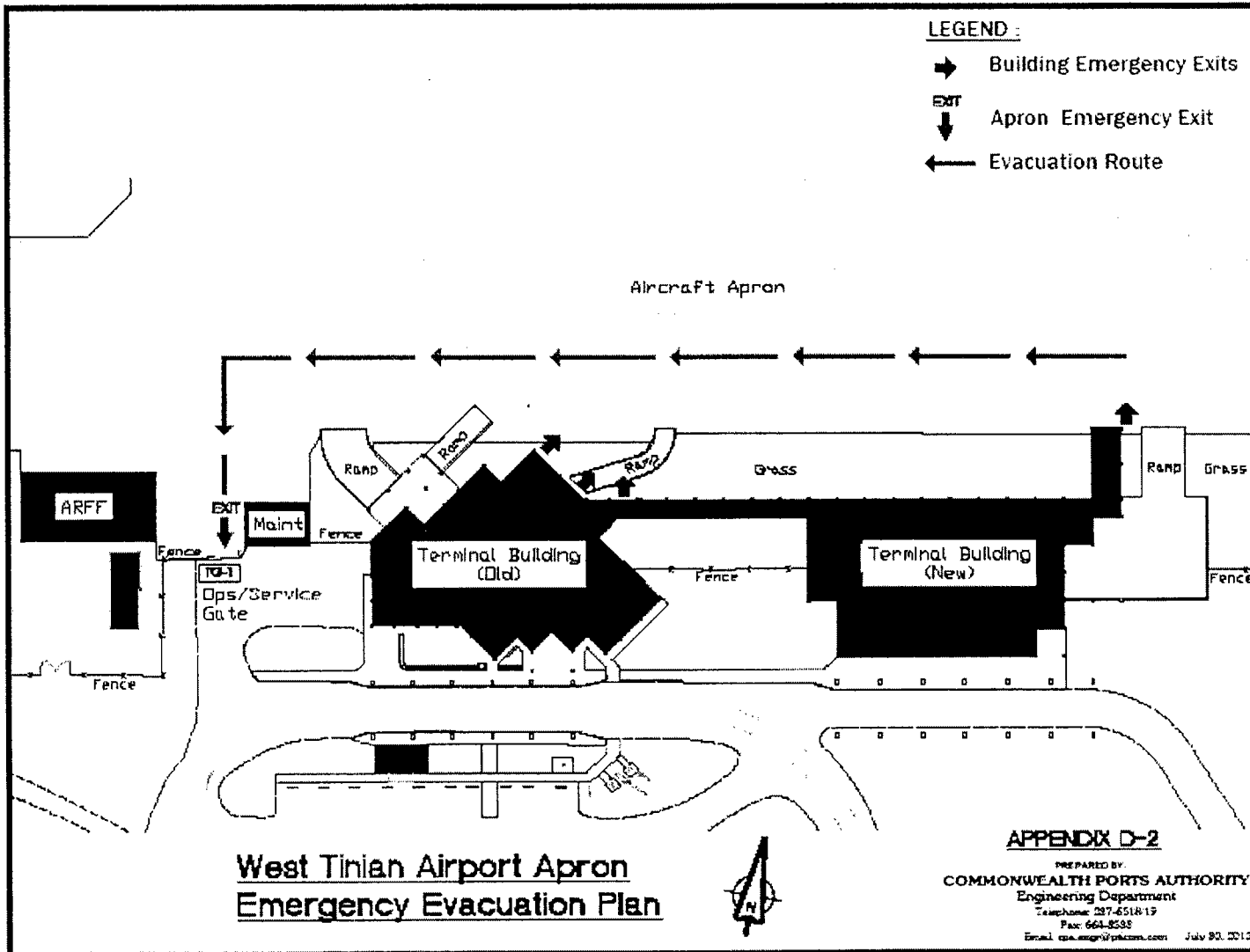
- *NFPA Fire Protection Guide to Hazardous Materials, Emergency Handling of Hazardous Materials in Surface Transportation, Dangerous Properties in Industrial Materials*
- *2008 Emergency Response Guidebook (ERG) CHRIS Manuals*
- *USAF 419th Fighter Wing Emergency Spill Response Plan*

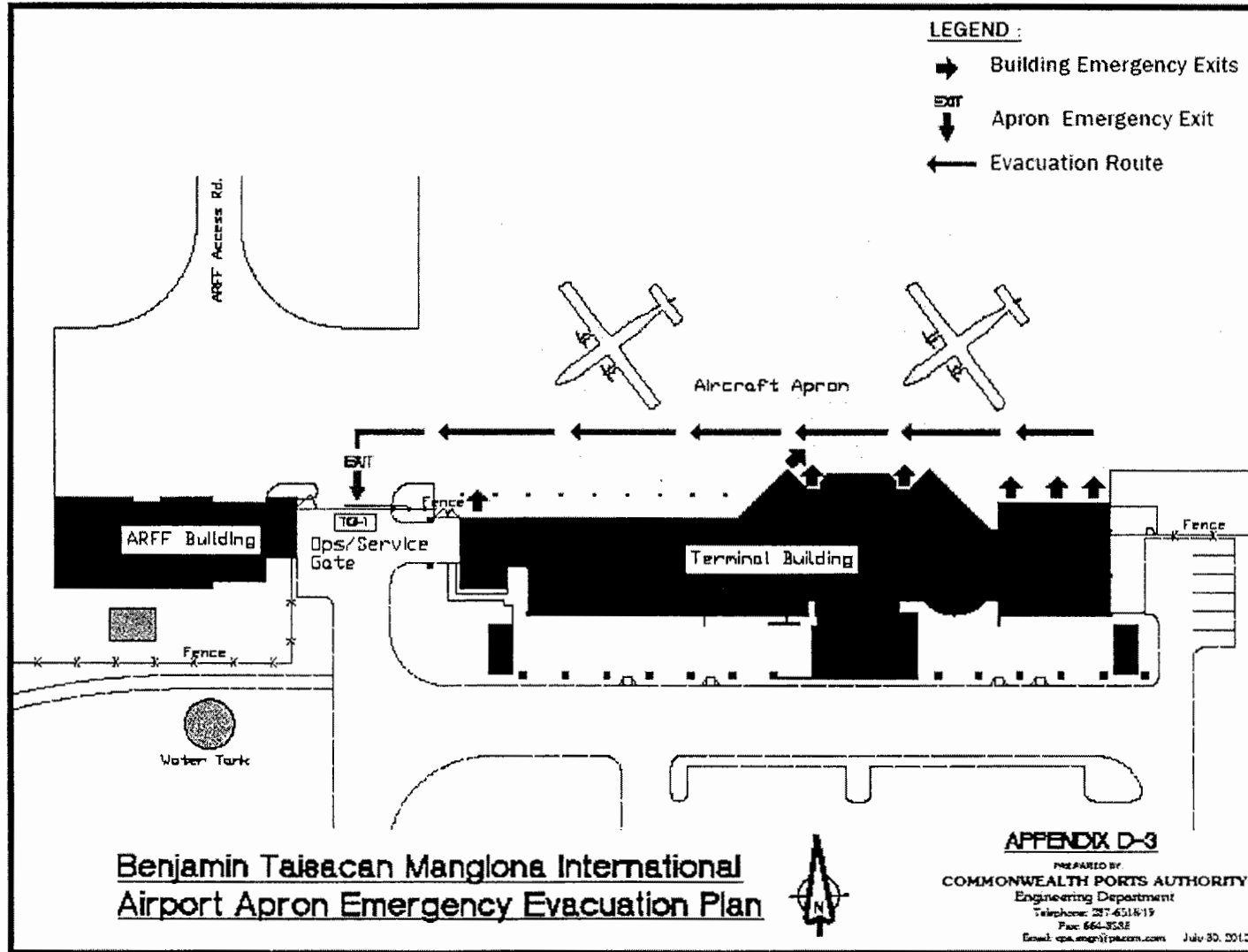
- *USAF 301st Fighter Wing Hydrazine Emergency Response Program*
- *AFPD 91-3, Occupational Safety and Health;*
- *AFI 91-301, Air Force Occupational and Environmental Safety, Fire Prevention and Health (AFOSH) Program;*
- *AFMAN 91-201, Explosive Safety Standards;*
- *T.O. 00-25-172, Ground Servicing of Aircraft and Static Grounding/Bonding;*
- *AFOSHSTD 48-137, Respiratory Protection Program;*
- *AFOSHSTD 48-8, Controlling Exposures to Hazardous Materials;*
- *T.O. 1F-16C-2-10JG-00-1, Aircraft Safety;*
- *T.O. 1F-16C-2-49JG-00-2, Emergency Power System;*
- *T.O. 1F-16C-2-49GS-00-1, Emergency Power System;*
- *LCL-419FW-10-6, H-70 Response, (H-70 Spill Check-list);*
- *T.O. 42B1-1-18, Handling of H-70 (Hydrazine - Water Fuel*

APPENDIX D
Apron Evacuation Routes

- ⇒ D-1 Saipan International Airport
- ⇒ D-2 Tinian International Airport
- ⇒ D-3 Benjamin Taisacan Manglona
International Airport (Rota)

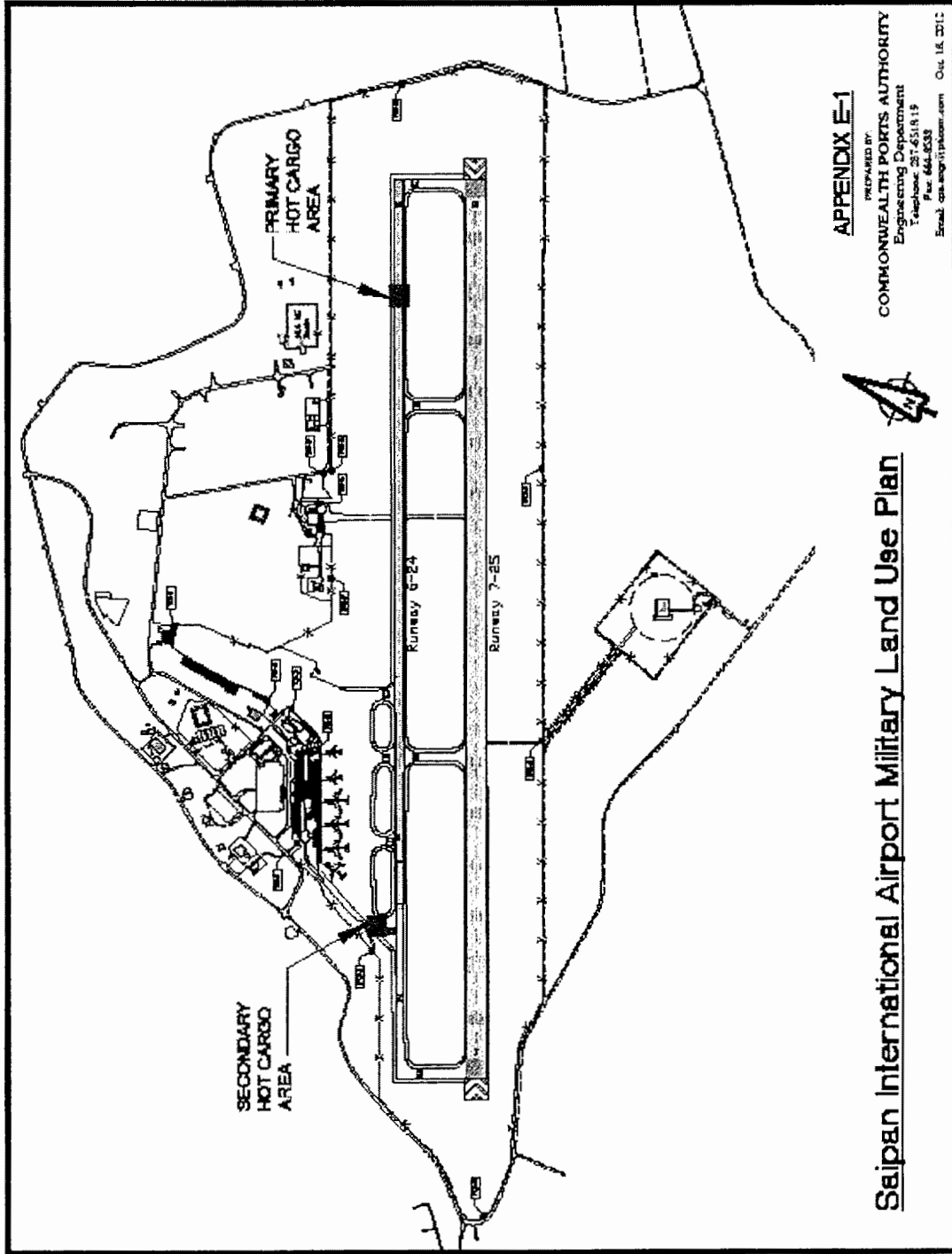






APPENDIX E
Approved Sites for Military Use

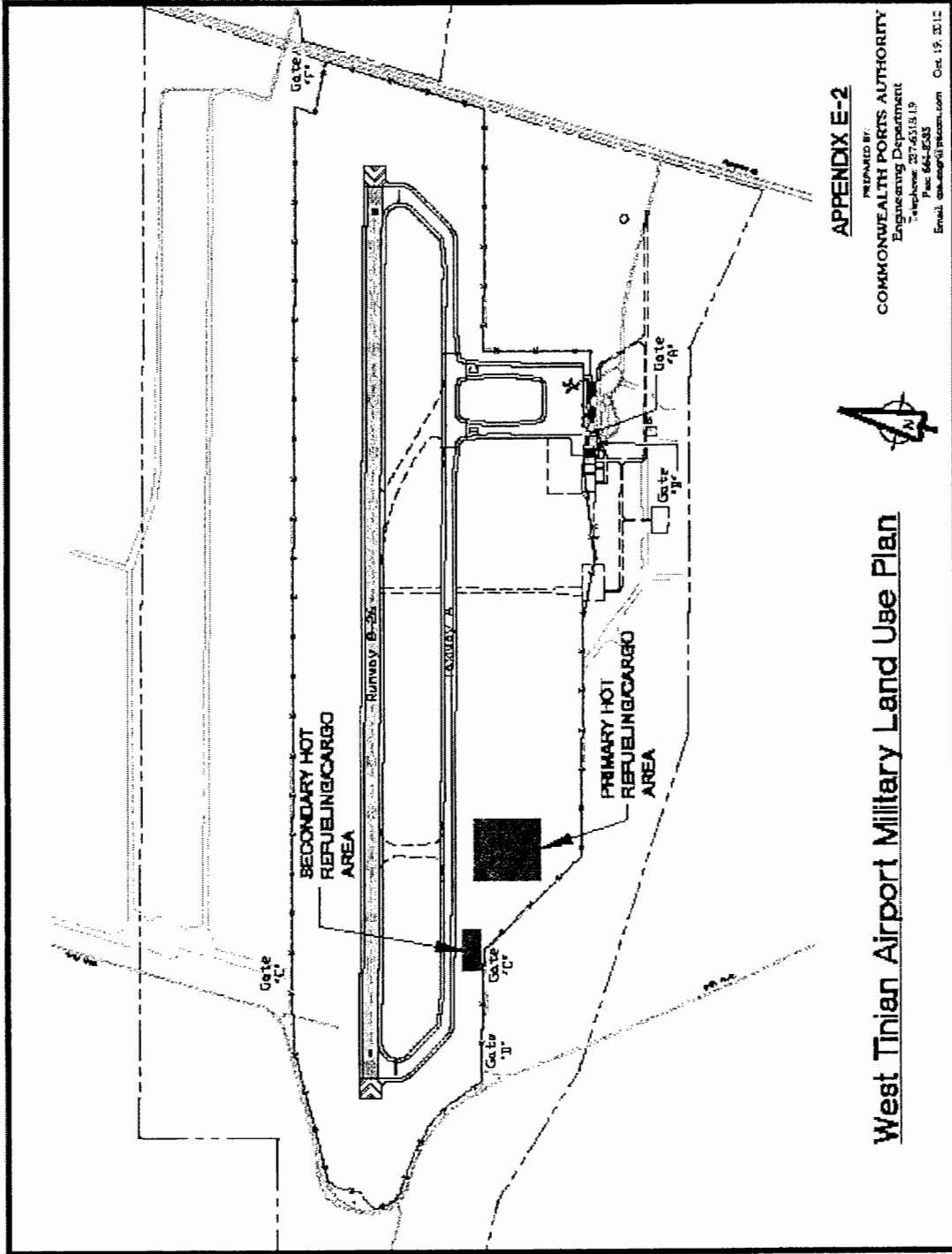
- ⇒ E-1 Saipan International Airport
- ⇒ E-2 Tinian International Airport
- ⇒ Rota Airport - NO HOT CARGO/
REFUELING ALLOWED



APPENDIX E-1

PREPARED BY
COMMONWEALTH PORTS AUTHORITY
 Engineering Department
 Telephone: 237-4519/19
 Fax: 644-6338
 Email: cta.enr@tpa.com Oct. 18, 2011

Saipan International Airport Military Land Use Plan



APPENDIX E-2

PREPARED BY:
COMMONWEALTH PORTS AUTHORITY
 Engineering Department
 Telephone: 237-6518/19
 Fax: 664-8535
 Email: enr@ports.com Oct. 19, 2012

West Thian Airport Military Land Use Plan

IMPLEMENTATION PLAN
APPENDIX A
To
CPA's Military Ground Operations Plan

It is in the mutual interest of the Commonwealth of the Mariana Islands (CNMI) through the Commonwealth Ports Authority (CPA), the Federal Aviation Administration (FAA) through the FAA ADO Honolulu, and the Department of Defense (DoD-Army, Navy, Air Force, Marines) that the DoD continue the DoD use of the various airports in the CNMI (Rota, Saipan, Tinian) for military exercises, operations and training (referred to collectively as "the participants").

The purpose of this Implementation Plan is to outline and implement a consistent plan containing CNMI's requirements that DoD agencies can follow to facilitate use of CNMI airfields on an enduring and long-term basis.

Unless there is any superseding Federal or CNMI law to the contrary, this Implementation Plan does not apply to foreign military units or commercial aircraft contracted by DoD to provide support services. All foreign military units or private commercial aircraft participating in military exercises with United States DoD units shall be assessed fees or other landing charges unless CPA determines that such landing fees or charges do not apply.

STANDARD OPERATING PROCEDURES

The following is the Commonwealth Ports Authority's (CPA) standard operating procedures for preparing and planning of military exercises at CPA facilities. A Ground Operations Plan is also required as part of this Implementation Plan.

1. Any branch of the U.S. military services (generally referred to as the "Military" regardless of branch, station or unit or location) planning to conduct exercises/training at a CPA airport must submit its written proposed scope of work (SOW) to the airport manager of the proposed airport no later than SIXTY (60) CALENDAR DAYS prior to the actual exercise/training. Short fused requests will be handled as expeditiously as possible but the Military shall comply with all requirements and the operating requirement is sixty (60) calendar days' notice in writing. The SOW from the Military should be as detailed as possible and should include, but not be limited to the following:
 - a. The type of exercise and military units involved including any foreign military;
 - b. The duration of the exercise, including number of days, frequency of activities per day and exercise hours;
 - c. A description of movement/mobilization locations at the airport, whether in or outside restricted and/or safety areas;
 - d. The location of staging areas, temporary tents, equipment, machinery and signs within the airport properties;
 - e. Any other information requested by CPA Management.

Should the SOW not include the items listed above at a minimum or additional information is required, the submission shall be deemed incomplete or deficient. The Airport Manager shall request for additional detailed information from the military branch.

2. Once an airport manager receives a satisfactory detailed SOW, the airport manager shall immediately send the document to the Executive Director for approval, as submitted or with amendments, restrictions and/or conditions prior to any activity at a CPA airport. The manager shall also provide the FAA ADO office with an informal notice of the SOW request and intended operation as soon as possible.
3. The Executive Director shall notify the Federal Aviation Administration's (FAA) Honolulu ADO of the Military's proposed activities at each respective airport. FAA ADO Honolulu will review the SOW and give concurrence and/or comments on the activity. The Executive Director will also brief the CPA Board of Directors on the proposed activity once FAA concurrence and comments are received. The Executive Director shall also provide his approval in writing to the Military and FAA.
4. After CPA approval of the SOW, the CPA Executive Director will transmit to the requesting Military the following: 1) the CPA Military Exercise Ground Operations Plan, 2) the Implementation Plan and 3) the Acknowledgment Form. These are provided for the Military's review. The Military shall return the signed acknowledgment forms to the CPA Executive Director within seven (7) days.
5. No later than fourteen (14) days prior to the scheduled exercises/trainings, designated military personnel responsible for the activities at CPA airports shall meet with CPA management for a briefing on the proposed activities and the allowable safety areas as well as restricted activities within the safety areas of the airport. By this time, the CPA Military Exercise Ground Operations Plan and Implementation Plan shall be acknowledged by CPA.
6. Seven (7) days prior to the scheduled approved exercise/training at the CPA airport, involved airport management and/or their authorized representative shall conduct a briefing with all airport employees, tenants and users to inform all of the proposed activities at the airport as listed in Item No. 1.
7. Prior to any exercise/training at a CPA airport, designated military personnel working/assisting with such activities within the safety areas of the airport shall attend a briefing by designated safety officers of CPA. Any military personnel who do not attend such briefing may be restricted from entering the safety areas of the airport.
8. No approved activities in conjunction with the exercise/training shall commence unless all required documents, agreements and forms are submitted to CPA management with the signature of the responsible party conducting/sponsoring the Military exercise/training.
9. An acknowledgement Form must be completely signed and executed before any military activities/exercises are permitted on any CPA airports.

10. Notice to and approval by the Manager, FAA Guam Air Route Traffic Control Center (ARTCC) is also required prior to CPA approval for any military activities/exercises on CPA airports as set forth below.
11. Military Operation Facilities Impact Report: Each Ground Operations Plan and Standard Operating Procedures shall include a "Military Operation Facilities Impact Report" ("MOFIR") which shall be completed and submitted to CPA within seven (7) days following completion of the military exercise or operation. The MOFIR is intended to provide CPA with an accounting and report of the use of CPA's facilities by the military. The MOFIR shall include the number of take-offs and landings; the gross take-off weight of each aircraft; the types of aircraft or helicopters landing and taking off and any landings by civilian-contracted aircraft. The purpose of each MOFIR is for CPA to monitor the level of use of its facilities by the Military units for which CPA will seek reimbursement once the substantial use level is reached as authorized in Section 17 of CPA's Grant Assurance Agreement with the FAA. Should a Military Unit fail to provide a MOFIR within the required time-frame and continue to fail to produce that information after request to do so, CPA shall withhold further approval for future operations by that particular unit the MOFIS is provided for the last military exercise.

Air Traffic Control Notice and Approval or Clearance Requirements

All DoD units seeking to conduct military exercises shall, as a preliminary requirement, provide written notice to the Manager, FAA Guam ARTCC. Such notice shall detail the flight operations activities; type and number of aircraft to be used; and the frequency and duration of all activities. Clear and specific clearance or approval by the Manager, FAA Guam ARTCC is required before any military exercises are conducted.

No less than forty-five (45) days' prior to military exercises by any DoD unit, written notice shall be submitted to the Manager, FAA Guam ARTCC through the Marianas Islands Range Complex Operations (MIRC Ops). A copy of the written notice shall be provided to CPA as part of the Scope of Work described above.

Safety Risk Mitigation Process

Every DoD or Military unit conducting an exercise shall be subject to and shall participate in a Safety Risk Mitigation Process with CPA. The Military Unit shall provide CPA with formal written notice of its intended exercise at least sixty (60) days prior to commencement as required in the Standard Operating Procedures above. Further, CPA and the Military Unit shall confer and participate in a Safety Risk Mitigation Process with other stakeholders (such as airlines, the FAA ADO, and the FAA ATC) in order to address all safety risks and how those safety risks will be addressed and mitigated.

Once CPA and the Military Unit agree and approve the exercise activity and the Safety Risk Mitigation plan, there shall be no revisions or changes to the plan. CPA will not accept any additional activities or exercises after the established "cut-off" point. The "cut-off" point for any changes or activities for an approved exercise shall be when CPA's Executive Director or designee approves the exercise and Safety Risk Mitigation plan. Any additions or inserts to the exercise or operations shall be denied.

Designated Military Point of Contact

All DoD units seeking to conduct military exercises shall, as a preliminary requirement, be directed to communicate with and inform Joint Region Operations Marianas and/or the Commander for Joint Region Marianas (JRM).

The JRM Commander or his designee shall, in response to such communication and notice, immediately and without any delay inform CPA through its Executive Director as well as the Manager, FAA Guam Air Route Traffic Control Center (ARTCC). JRM is directed to provide such notice in writing, such as by fax or e mail.

Legal Authorities

There are numerous legal authorities related to the use of the CNMI airports by DoD entities, which are set forth below in summary fashion. The authorities cited are not intended to be exhaustive nor exclusive.

- A. Title 49, United States Code (U.S.C.), Chapter 471, 'Airport Development (Title 49 U.S.C., Sections 47101-47129), provides that each of the airport's facilities developed with financial assistance from the United States Government and each of the airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by government aircraft in common with other aircraft, except that if the use is substantial, as that term is defined in Chapter 27 of the Federal Aviation Administration (FAA) Grant Assurance, the government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facility used.
- B. Federal Aviation Administration (FAA) Grant Assurance 27, *Use by Government Aircraft*, defines substantial use as any one of the following:
 - 1) Five (5) or more government aircraft regularly based at the airport or on land adjacent thereto; or
 - 2) The total number of movements (counting each landing as a movement) of government aircraft is 300 or more in a month; or
 - 3) The gross accumulative weight of government aircraft using the airport (the total movement of government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds in a month.
- C. Antideficiency Act, 31 U.S.C. § 1341, and the Adequacy of Appropriations Act, 41 U.S.C. § 11.
- D. Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (48 USC § 1801) provides that all facilities at Isley Field developed with federal aid and all facilities at that field usable for the landing and take-off of aircraft will be available to the United States for the use by military and naval aircraft, in common with other aircraft, at all times without charge, except, if the use by military and naval aircraft shall be substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining the facilities so used may be charged at a rate established by agreement between the Government of the Northern Mariana Islands and the Government of the United States.

Fiscal Control Procedures

Title 49, United States Code (U.S.C.), Chapter 471, 'Airport Development (Title 49 U.S.C., Sections 47101-47129), provides that each of the airport's facilities developed with financial assistance from the United States Government and each of the airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by government aircraft in common with other aircraft, except that if the use is substantial, as that term is defined in Chapter 27 of the Federal Aviation Administration (FAA) Grant Assurance, the government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facility used.

In addition, Commonwealth Port Authority Regulations (Title 40) ("CPA Fee Schedule") sets forth the tariffs and fees for use of the CPA airport facilities. The CPA Fee Schedule includes fee exemptions for:

- A. landing Fees (40-10.1-1205)
- B. "public apron and operational area" charges, including parking on the public apron, crew access to public facilities in the departure building and on the airport
- C. departure facility service charge
- D. aircraft parking charge
- E. in-transit passenger service charge
- F. public parking fees

The parties confirm that whenever the military requests services and facilities beyond those exempted under law or regulation, then DoD, subject to availability of appropriations, shall pay the appropriate charges for such additional services requested pursuant to the CPA Fee Schedule. In addition to fees payable directly to the CPA, exercise participants need to be aware that additional fees may be payable directly to service providers. In the event of any disagreement or dispute in fees, the parties will engage each other in good faith to resolve any fee disputes.

Risk Management

The airport(s) were designed, constructed, and are operated, primarily for civil use. Mixing military operations with the existing civil use may create risks of loss not anticipated in the airport(s) original design. Therefore, military operations or exercises will be evaluated to minimize risks and damage to airport facilities. The following risk management measures will be adopted and shall be incorporated in each military exercise or operation:

- A. Flight operations will be conducted in accordance with the Aeronautical Information Manual (AIM) February 9, 2012 et seq.
- B. The airports' Airport Traffic Airspace (ATA) shall not be considered as Special Use Airspace (AIM Section 4)
- C. The DoD will not cause or allow any temporary fueling facilities to be installed at the airport(s) without prior permission.
- D. The DoD will assure that all helicopter and VTOL flights will take off and land from existing runways or from specially prepared and designated points commensurate with the overall operational safety of the airport(s).

- E. The DoD will assure that all ordinance and ammunition will be stored in appropriate facilities to positively assure there will be no loss or damage to civilians or airport property.
- F. The DoD will assure that during loading of any ordinance or ammunition the aircraft being loaded/unloaded will be located in a remote portion of the airport(s) and parked at a heading of 070 (Saipan and Tinian) and 090 (Rota) to assure that any accidental discharge of such ordinance or ammunition will be directed away from inhabited areas.
- G. Pursuant to Part 139, the parties shall consult with and secure review and approval of proposed military exercises from the FAA.

Claims

The United States Government (USG) to the extent permitted by law, may be liable to third parties for personal injury, wrongful death, or property damage caused by the negligent or wrongful act of its officers, employees or agents acting within the scope of their office or employment.

The USG is self-insured as to such claims and indemnification is prohibited.

Any claim for personal injury, wrongful death, or property damage should be submitted to the Joint Region Marianas Force Judge Advocate office. Claims forms and instructions will be provided upon request.

Claims against foreign nation military forces participating shall be addressed within the Ground Operations Plan. All concerns or objections by CPA with respect to participating foreign nation military forces shall be resolved or addressed to the satisfaction of CPA and/or the FAA prior to their participation in military exercises. This shall include providing CPA with the designated foreign military forces' authorized point of contact; claims process; and authorized legal counsel. CPA, however, reserves the right to deny access by foreign nation military forces to its facilities until all concerns regard responsibility for any damage or loss on CPA property are addressed.

The Commonwealth disclaims responsibility for any claim for damages, property loss, personal injury or death resulting solely from an act or omission of the USG occurring on the Premises.

DoD entities using the CNMI airfields agree to the following:

- A. Removing disabled government aircraft as expeditiously as possible in order to minimize the time the CNMI Facilities, or any part thereof, would be closed because of such aircraft.
- B. Subject to availability of appropriations, manpower and expertise, the user will repair the CNMI Facilities to the extent that such damage is caused solely by government aircraft or military exercise operations and is in excess of the fair wear and tear resulting from the military use.
- C. Except as otherwise provided in this implementation plan, neither party accepts liability for damages to property or injuries to persons arising from acts of the other in the use of the CNMI Facilities.

ACKNOWLEDGEMENT:

The foregoing Implementation Plan and attachments set forth the appropriate process and procedures for the permitted use of the CPA airport facilities under the Grant Assurance/Covenant/Regulation requirements. The procedures in the Implementation Plan are appropriate and necessary to ensure a workable process of addressing claims, costs, risks, and communications between DoD, FAA and CPA.

COMMONWEALTH PORTS AUTHORITY:

MARYANN Q. LIZAMA
Executive Director

JOSE R. LIFOIFOI
CPA Board Chairman

ACKNOWLEDGMENT FORM

Authorized Government Representative:

Military Branch(es): _____

Unit Type: _____

Mailing Address: _____

Telephone Number: _____

Email Address: _____

By my signature below, I acknowledge receipt of the CPA's Military Exercise Ground Operations and Implementation Plan and acknowledgment and agree to comply with all the provisions contained in the abovementioned documents.

I further understand that failure to comply with any provision of the CPA Military Exercise Ground Operations and Implementation Plan may be grounds for removal from CPA Premises and the immediate termination of the military exercise on CPA property.

Printed Name and Title
of Authorized Government Representative

Signature of Authorized Government
Representative

Date: _____

COMPLETE AND RETURN WITHIN 14 DAYS OF RECEIPT.
Exercises shall not commence without executed acknowledgement form.

CPA/FAA acknowledgement:

Jose R. Lifoifoi
Chairman of the Board of Directors
Commonwealth Ports Authority

Date: _____

MaryAnn Q. Lizama
Executive Director
Commonwealth Ports Authority

Date: _____

Ron V. Simpson
Manager
FAA Honolulu Airports District Office

Date: _____

PUBLIC NOTICE OF PROPOSED REGULATIONS

WHICH ARE AMENDMENTS TO THE RULES AND REGULATIONS OF THE BOARD OF PAROLE

INTENDED ACTION: The Commonwealth of the Northern Mariana Islands, Board of Parole, intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations will become effective 10 days after adoption and publication in the Commonwealth Register.

AUTHORITY: The Board of Parole is mandated by the Legislature to adopt regulations with respect to the eligibility and granting of parole, the conduct of parole hearings, conditions to be imposed upon parolees, revocation of parole, and subsequent parole after revocation. 6 CMC § 4206.

TERMS AND SUBSTANCE: The proposed regulations provide for the administration of the Board of Parole and the procedures that it must follow during all stages of the parole process. Further, the proposed regulations provide for a procedure to be followed when the Board of Parole receives notice from the Governor of his or her intention to grant clemency to a person.

REGULATIONS BEING AMENDED: NMIAC §§ 115-10-001, et seq.

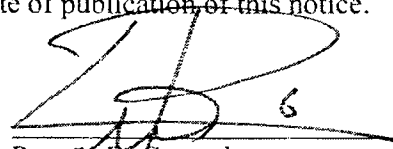
DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular.

SEND OR DELIVER COMMENTS TO:

Ramon B. Camacho
Chairperson
Board of Parole
Attn: Proposed Board of Parole Regulations
PO Box 502641
Saipan, MP 96956410

Comments, data, views, or arguments for or against the proposed regulations are due within 30 days of the date of publication of this notice.

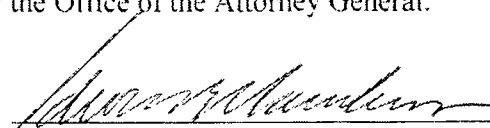
Submitted by: _____


Ramon B. Camacho
Chairperson
Board of Parole


Date

The proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the Office of the Attorney General.


Approved by:



Edward Manibusan
Attorney General

Date 2-26-15

Filed and
Recorded by:



Esther San Nicolas Nesbitt
Commonwealth Register

Date 02-26-2015

ARONGORONGOL TOULAP

REL POMMWOL LIWELL REL ALLÉGH ME MWÓGHUTÚGHÚTÚL ALLÉGH NGÁLI BOARD OF PAROLE

MÁNGEMÁNGIL MWÓGHUTÚGHÚT: Sáangi Commonwealth lól Marianas me Téél Falúw kka Efáng, Board of Parole, re mángemángil re bwe adóptááli bwe e bwe llégh ló allégh kka re appaasch-long bwe pommwol mwoghutúghútúl allégh, sáangi mwóghutúghútúl Administrative Procedure Act, 1 CMC § 9104 (a). Mwoghutúghútúl allégh e bwe bwunguló mwiiril yaar adaptááilil me arongowoowul rel Commonwealth Register.

BWÁNGIL: E atiwiiligh bwe Board of Parole sáangi Legislature bwe re bwe adóptááli mwoghutúghútúl allégh rel aweewel rel ffiliiyal me igha re bwe ngaleey ló ngáliir Parole, igha re bwe fféer parole hearings, kkapasal rel mille re bwe fféerú rel parolees, revocation rer parole, me mille e bwe taabwey kkapasal mwiiril revocation. 6 CMC § 4206.

KKAPASAL ME AWEEWEL: Pommwol mwóghutúghútúl allégh e bwe ayoora ngáli administrasiyonal Board of Parole me mwóghutúghútúl allégh bwe re bwe attabweey ólongal tálil kkapasal mwóghutúghútúl process. Rel pommwol mwóghutúghútúl allégh e bwe ayoora ngáli mwóghutúghútúl rel re bwe attabweey igha Board of Parole rel bwobwoghul arongorong me rel Samwool Lapalap rel kkapasal mángemángiir mwáál ngáre schóóbwut bwe e bwe laamáy aramas.

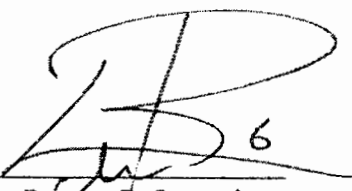
LIWELLIL REL MWÓGHUTÚGHÚTÚL ALLÉGH: NMIAC §§115-10-007, et seq.

AFAL REEL AMWELIL ME ARONGOWOWUL: Pomwol mwóghutúghútúl allégh nge e bwe arongowoow me rel Commwealth Register nge e bwe appasch-tá lól civic center me bwal llól bwulasiyol Gobenameento kka llól senatorial district, fengál rel English, me mwááliasch.

AFANGA ME NGÁRE BWUUGHI LÓ KKPASAL MÁNGEMÁNG REL:

Ramon B. Camacho
Chairperson
Board of Parole
Attn: Proposed Board of Parole Regulations
PO Box 502641
Saipan, MP 96956410

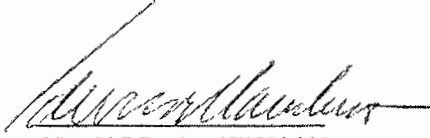
Isáliiyalong:


Roman B. Camacho
Chairperson
Board of Parole


Ráll

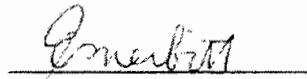
Pomwol liwell kkal a appasch-long a ttakkal amweeri fischiiy, me a bwunguló fféerúl me legal sufficiency sáangi CNMI Attorney General me e bwe-le arongowoow, 1 CMC § 2153 (f) (Arongowowul allégh me atiweligh kkaal.

E bwung Sáangi:


EDWARD MANIBUSAN
Sóulemeleemil Allégh Lapalap

2-26-15
Ráil

Ammwel Sáangi:


Esther SN. Nesbitt
Commonwealth Register

2-26-2015
Ráil

NUTISIAN PUPBLIKU GI MANMAPROPONI NA REGULASION SIHA

NI AMENDASION SIHA PARA I AREKLAMENTU YAN REGULASION SIHA GI BOARD OF PAROLE

I MA'INTENSIONA NA AKSION: I Commonwealth gi Sangkattan na Islas Marianas Siha, Board of Parole, ha intensiona para u adãpta kumu petmanienti na regulasion siha ni mañechettun gi Manmaproponi na Regulasion Siha, sigun gi manera siha gi Æktun Administrative Procedure, 1 CMC § 9104(a). I Regulasion siha para u ifektibu gi halum dies (10) dihas na tiempu dispues di adaptasion yan publikasion gi halum i Rehistran Commonwealth.

ÆTURIDÆT: I Board of Parole ni mãnda ni Leyislatura para u adãpta i regulasion siha kun respetu ni para i eligibility yan granting of parole, i kunduktan i parole hearings, kundision siha ni para i Imposed upon parolees, revocation of parole, yan u matattiyi i parole dispues di revocation. 6 CMC § 4206.

TEMA YAN SUSTÆNSIAN I PALÆBRA SIHA: I maproponi na regulasion siha ha pribeniyi para i atministrasion i Board of Parole yan i manera siha na debi na u tattiyi todũ i durãnti na stages gi parole process. Sigi mo'na, i maproponi na regulasion siha ha pribeniyi para i manera ni para u matattiyi anai i Board of Parole ha risibi i nutisia ginin i intension-ña i Gubietnu pat intension-ña ni para u ma- grant clemency gi petsona.

REGULASION SIHA NI MANMA'AMENDA: NMIAC §§ 115-10-001, et seq.


DIREKSION PARA U MAPO'LU YAN PUPBLIKASION: Esti i Manmaproponi na Regulasion Siha debi na u mapupblika gi halum i Rehistran Commonwealth yan u mapega gi halum i mangkumbinieti na lugãt siha gi halum i civic center yan gi ufisinan gubietnamentu siha gi kada distritun senadot, parehu gi English yan i dos lingguãhin natibu.

NA'HÆNÆO PAT INTREGA I UPIÑON SIHA GUATU GI AS:

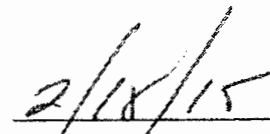
Ramon B. Camacho
Kabesiyu
Board of Parole
Attn: Proposed Board of Parole Regulations
PO Box 502641
Saipan, MP 969506410

Upiñon, imfotmasion, inatan, pat atgumentu para pat kinentra gi maproponi na regulasion siha debi na u fanhålum gi halum trenta (30) dihas dispues di fetchan pupublikasion esti na nutisia.

Nina'hålum as :



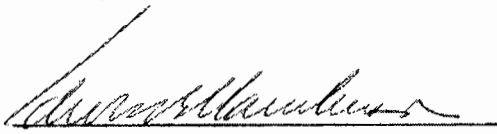
Ramon B. Camacho
Kabesityu
Board of Parole




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I maproponi na regulasion siha ni mañechettun guini manmaribisa yan ma'aprueba kumu fotma yan sufisienti ligåt ginin i Ofisinan Abugådu Heneråt.

Inaprueba as:




Edward Manibusan
Abugådu Heneråt

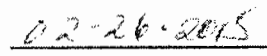


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Pine'lu yan
Ninota as:



Esther SN. Nesbitt
Behistran Commonwealth



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PROPOSED AMENDMENTS TO REGULATIONS

NMIAC § 115-10 is repealed and reenacted as follows, subject to codification by the Law Revision Commission:

Part 001 - GENERAL PROVISIONS

SECTION 1 Authority

The Board of Parole is authorized by 6 CMC § 4206 to adopt rules and regulations.

SECTION 2 Rules of Construction

(a) Rules of Construction.

The following rules of construction apply to the regulations contained in this division, except as otherwise noted:

- (1) The enumeration of some criteria for the making of discretionary decisions does not prohibit the application of other criteria reasonably related to the decision being made.
- (2) The order in which criteria are listed does not indicate their relative weight or importance.
- (3) "Inmate," "prisoner," or "parolee" applies to any person who is or has been committed to the custody of the Department of Corrections, including inmates, residents, parolees, and dischargees, regardless of that person's present status.
- (4) "Regulation" means rule or regulation.
- (5) "Shall" is mandatory, "should" is advisory, and "may" is permissive.
- (6) The past, present, or future tense includes the others.
- (7) The masculine gender includes the feminine gender; the singular includes the plural.
- (8) The time limits specified in these rules do not create a right to have the specified action taken within the time limits. The time limits are directory, and the failure to meet them does not preclude taking the specified action beyond the time limits.

(b) Definitions.

For the purpose of the regulations contained in this division the definitions below shall have the following meanings:

- (1) Agent. See Parole Agent.
- (2) Applicant. The person applying for parole.
- (3) Board. See Board of Parole Hearings.

- (4) Board Action. An official decision of the board in an individual case.
- (5) Case Conference. A documented conference between a parole agent and his supervisor to discuss a parolee's behavior.
- (6) Central File. A master file maintained by the Board of Parole containing records regarding each person committed to its jurisdiction.
- (7) Central Office Hearing Coordinator. The board employee at the central office who is responsible for schedules, attorney appointments, and other services related to hearings.
- (8) Chairperson. Also referred to as the Chair or the Chairman. The Chairperson is the Chief member of the Board of Parole.
- (9) Chief Parole Officer. The Chief Parole Officer and expenditure authority for the Board of Parole.
- (10) Conditions of Parole. The specific conditions under which an applicant is released to parole supervision.
- (11) Criminal conduct. Conduct constituting a felony or misdemeanor under federal, state, or Commonwealth law.
- (12) Department. The Department of Corrections.
- (13) Director of Corrections. The administrative head of the Department of Corrections appointed by the Governor.
- (14) Dispositional Witness. A dispositional witness is one whose expected testimony provides information regarding the overall adjustment of the prisoner or parolee or other factors to be considered when rendering a disposition in a proceeding.
- (15) Disruptive Group. A disruptive group is defined as any gang other than a prison gang.
- (16) Effective Discharge Date. The effective discharge date is the latest date on which the jurisdiction of the Board over the individual expires.
- (17) Evidentiary Witness. An evidentiary witness is a person who perceived, reported on, or investigated an event material to the proceeding. An event material to a proceeding is an act or omission allegedly committed by the applicant or parolee which is a basis for the proceeding. An evidentiary witness is one whose expected testimony either supports or refutes an act or omission allegedly committed by the applicant or parolee.

- (18) Full Board. The Board members performing the function of meeting in public or executive session. At least five board members must be present at a meeting and at least four members must participate when granting or revoking parole. Other acts of a preliminary or administrative nature may be performed by individual members or may be agreed upon by a majority vote.
- (19) Gang. A criminal street gang is defined as any formal or informal organization, association, or group of three or more persons having as one of its primary activities the commission of any criminal act or acts. A gang is also defined as a group having a common identifying sign or symbol, whose members individually or collectively engage in, or have engaged in, repetitive or escalating non-criminal activities which the Board determines to be a threat to public safety.
- (20) Good Cause. A finding by the board based upon a preponderance of the evidence that there is a factual basis and good reason for the decision made.
- (21) Hearing. A proceeding at which evidence is received for use in deciding factual and dispositional questions.
- (22) Hearing Panel. One or more persons assigned to consider a case or make a decision.
- (23) Hold. A request by a department employee that a parolee be held in custody until further notice. A person under a parole hold is not eligible for bail.
- (24) Material Evidence. Evidence which has a substantial bearing on matters in dispute and legitimate and effective influence on the decision of a case.
- (25) Maximum Term. The longest statutory period of time a prisoner may remain under the jurisdiction of the board.
- (26) Minimum Eligible Parole Date. The earliest date on which a prisoner may legally be released on parole.
- (27) Parole Agent. An employee of the Board of Parole that has been assigned to supervise adult felons and released to the supervision of the Board of Parole.
- (28) Parolee. A felon released from confinement in prison to supervision in the community.
- (29) Parole Consideration Hearing. Any hearing at which an applicant's parole suitability is considered including an initial parole hearing, subsequent hearing, and rehearing.
- (30) Parole Hold. See Hold.
- (31) Parole Violation. Conduct by a parolee which violates the conditions of parole or otherwise provides good cause for the modification or revocation of parole.
- (32) Parole Violator. A parolee who is found to have violated parole and who may be reconfined.

- (33) Prison Gang. A prison gang is defined as any gang which originated and has its roots within the Department of Corrections or any other prison system.
- (34) Probable Cause. A state of facts as would lead a person of ordinary caution and prudence to believe and conscientiously entertain a strong suspicion that the charges are true.
- (35) Relevant Evidence. Evidence which tends to prove or disprove an issue or fact in dispute.
- (36) Revocation File. A file containing the documents pertinent to a particular revocation proceeding.
- (37) Subpoena. A means to secure the attendance of a witness at a parole revocation or rescission hearing. It is an order directed to a person requiring that person's attendance at a particular time and place to testify as a witness.
- (38) Subpoena Duces Tecum. A means to secure the delivery of documentary evidence to parole revocation or rescission hearings, ordering that person to deliver documentary evidence at a particular time and place and testify about that evidence.

Part 100 - BOARD OF PAROLE HEARINGS

SECTION 3 Public Comment in Individual Cases

Any person may submit information concerning any applicant or parolee. Written comments from the public shall be directed to the Chair of the Board who shall forward the comments to the applicant's or parolee's central file for the consideration of future hearing panels. The board shall consider, in deciding whether to release an applicant on parole, all information received from the public.

SECTION 4 Victims, Offenders, Next of Kin, and Immediate Family Members at Consideration Hearings

(a) Notification from the Board.

Victims or, if the victim has died, the next of kin or immediate family members may, upon request to the Board of Parole, receive notification of any parole consideration hearing and review the setting of a parole date for any applicant, so that an opportunity to make a statement is afforded them. Any person requesting such notification shall provide the Board with their contact information and update it as necessary. The Board shall notify each such person who has informed it of his or her address at least 30 days prior to the hearing date. The Board is not responsible for providing notification if the Board has not been provided with up to date contact information for the person requesting notification.

(b) Notification and Appearance.

If there is insufficient time to consider the statements of all persons that wish to speak at a hearing, the next of kin, immediate family members, and friends of the victim and the applicant shall be entitled to address the board in the following order:

- (1) spouse;
- (2) children;
- (3) parents;
- (4) siblings;
- (5) grandchildren;
- (6) grandparents;
- (7) friends and acquaintances.

(c) Information Required – Speaking Time

All persons making a statement to the Board shall identify their relation to the victim or the offender. The victim, or the person speaking on the victim's behalf, will be shown the utmost respect and will not have the time for his or her statement limited because of the number of persons attending the hearing. The remaining individuals speaking for or against the parole of the offender shall receive substantially equal time to make a statement.

(d) Representation by Counsel.

The victim, next of kin, or immediate family members may appear personally or be represented by counsel. If counsel and client both attend the hearing, the person will not receive additional time to make a statement or address the panel.

(e) Support Persons.

Victims, next of kin, or immediate family members attending hearings may be accompanied at all times by a support person of his or her own choosing who shall not participate in the hearing nor make comments while in attendance.

(f) Audio or Video Tapes.

In lieu of personal appearance, any victim, next of kin, or immediate family member may submit an audio or video statement to the Board of Parole thirty days before the hearing for consideration by the hearing panel. The audio or video recording shall be placed in the applicant's central file. The person submitting the recording may request at the time of any subsequent hearing that the board reconsider the recording so that multiple recordings need not be submitted to the Board of Parole. No recording made by a victim shall exceed fifteen minutes, except by preapproval of the Chair of the Board of Parole. Any recording submitted by a next of kin or immediate family member shall not exceed ten minutes, except by preapproval of the Chair of the Board of Parole.

(g) Control of Hearings.

The Board of Parole shall regulate parole hearings to ensure order, security, and the right to privacy protected by the Commonwealth Constitution. As such, the Board may assign seating,

remove any person that creates a disturbance, or take any other action necessary to proceed with the parole hearing.

SECTION 5 Prosecutor Participation

(a) Hearings in Which Prosecutors May Participate.

(1) General.

Except as otherwise provided in this section, the Board of Parole may permit a representative of the office which prosecuted the applicant or parolee to participate in any Board hearing.

(b) Notification Requirements.

Notice that a hearing will be held shall be given to the prosecutor at least 30 days before the hearing when possible. Notice to the Office of the Attorney General shall be sufficient for notice to the prosecutor. If the prosecutor wishes to participate in the hearing he shall, at least two weeks before the hearing, notify the Board of Parole that a representative will attend. The applicant or applicant's attorney shall be notified that a prosecutor will attend.

(c) Prehearing Procedures.

The prosecutor may review the applicant's central file and submit any relevant documents including the Appellant's and Respondent's Statements of the Case and Statements of Facts filed in any appeal that may have been taken from the judgment. Any information which is not already available in the central file shall be submitted in writing to department staff not later than ten days before the hearing. Failure to submit new information as provided in this section may result in exclusion of the information at the hearing.

(d) As soon as administratively feasible parole staff shall forward to the applicant or his attorney copies of any documents submitted by the prosecutor.

(e) Hearing Procedures.

- (1) Procedures.** The presiding hearing officer shall specify the hearing procedures and order in which testimony will be taken. The hearing officer shall ensure throughout the hearing that unnecessary, irrelevant, or cumulative oral testimony and statements are excluded.
- (2) Role of the Prosecutor.** The role of the prosecutor is to comment on the facts of the case and present an opinion about the appropriate disposition. In making comments, supporting documentation in the file should be cited.

SECTION 6 Media Participation

(a) Introduction

The Board of Parole is responsible for ensuring the fair and equal administration of the parole process. To guarantee each person their right to participate in a parole hearing, the Board of Parole must maintain order in its hearings and make sure that all persons feel free to participate.

Photographing, recording, and broadcasting of hearings may be permitted as provided in this subsection.

(b) Definitions

As used in this rule:

- (1) "Media coverage" means any photographing, recording, or broadcasting of administrative proceedings by the media using television, radio, photographic, or recording equipment.
- (2) "Media" or "media agency" means any person or organization engaging in news gathering or reporting and includes any newspaper, radio or television station or network, news service, magazine, trade paper, in-house publication, professional journal, or other news-reporting or news-gathering agency.
- (3) "Photographing" means recording a likeness, regardless of the method used, including by digital or photographic methods.
- (4) "Recording" means the use of any analog or digital device to aurally or visually preserve Board of Parole hearings. As used in this subsection, recording does not include handwritten notes on the hearing.
- (5) "Broadcasting" means a visual or aural transmission or signal, by any method, of a parole hearing, including any electronic transmission or transmission by sound waves.

(c) Photographing, recording, and broadcasting prohibited

Except as provided in this rule, Board of Parole hearings may not be photographed, recorded, or broadcast.

(d) Personal recording devices

The Chair may permit inconspicuous personal recording devices to be used by persons in a hearing to make sound recordings of their own personal notes of the proceedings. A person proposing to use a recording device to record their own personal notes must obtain advance permission from the Chair. The recordings must not be used for any purpose other than recording personal notes. The recording device shall not be used to record the parole hearing.

(e) Media coverage

Media coverage at a parole consideration hearing may be permitted only by a majority vote of the hearing panel to allow media coverage upon review of a properly submitted request. The Board of Parole may permit, refuse, limit, or terminate media coverage at any time during the hearing.

Media coverage at all hearings discussing the administration of the Board of Parole shall be permitted. The media will not be required to submit a request to provide media coverage of a hearing on the administration of the Board of Parole.

(1) Request for order

The media may make a written request for permission to provide media coverage at a Board of Parole hearing. The request must be filed at least ten calendar days before the portion of the proceeding to be covered unless good cause is shown. Board of Parole staff must promptly notify the parties that a request has been filed.

(2) Decision upon request.

In ruling on a request for media coverage at a parole consideration hearing, the Chair and the Board of Parole must consider the following factors:

- (i) The impact of media on the victim, the victim's family, and the victim's friends;
- (ii) The importance of promoting public access to a hearing;
- (iii) The parties' support of or opposition to the request;
- (iv) The nature of the case;
- (v) The Constitutional right to privacy afforded to all participants in the proceeding, including witnesses and victims;
- (vi) The effect on any minor who is a party, prospective witness, victim, or other participant in the proceeding;
- (vii) The effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness;
- (viii) The security and dignity of parole hearing;
- (ix) The maintenance of the orderly conduct of the proceeding; and
- (x) Any other factor the Board of Parole deems relevant.

(3) Order permitting media coverage

The decision on the request to permit media coverage will be reduced to writing after the hearing. Each media agency is responsible for ensuring that all its media personnel who cover Board proceedings know and follow the provisions of this rule.

(4) Prohibited coverage

The Board of Parole may not permit media coverage of the following:

- (i) Proceedings held in executive session;
- (ii) Conferences between an attorney and a client, witness, aide, or between attorneys;

- (iii) Any witness that invokes their Constitutional right to privacy.
- (iv) Any person attending the hearing that invokes their Constitutional right to privacy.

(5) Equipment and personnel

The Chair or any Board of Parole member may specify the placement of media personnel and equipment to permit reasonable media coverage without disruption of the proceedings.

(6) Normal requirements for media coverage of proceedings

Unless the Chair in his or her discretion orders otherwise, the following requirements apply to media coverage of parole hearings:

- (i) Cameras and photographers may be limited as necessary.
- (ii) The equipment used may not produce distracting sound or light.
- (iii) Microphones and wiring must be unobtrusively located in places approved by a board member and must be operated by one person.
- (iv) Operators may not move equipment or enter or leave the hearing while the hearing is in session, or otherwise cause a distraction.
- (v) Sanctions

Any violation of this rule or an order made under this rule is an unlawful interference with the proceedings of the Board of Parole and may form the basis for an order terminating media coverage or an order imposing monetary or other sanctions as provided by law. The Board of Parole may sanction a media agency or person up to \$500 for violation of this subsection and may restrict that agency or person's eligibility to record future hearings. If a recording is made in violation of this subsection, then the Board of Parole may require that the recording be destroyed or surrendered to the Board of Parole. The Board of Parole may issue a fine of up to \$10,000 for the intentional dissemination of a recording made in violation of this subsection.

SECTION 7 Applicant's Version of Events

The board shall not require an admission of guilt to any crime for which the applicant was committed. An applicant may refuse to discuss the facts of the crime in which instance a decision shall be made based on the other information available. Written material submitted by the applicant relating to personal culpability shall be considered.

SECTION 8 Insufficient Information

If, during a parole hearing, the hearing panel determines there is insufficient information available to determine any relevant or necessary fact, the hearing panel may continue the hearing until the next Board of Parole hearing. Appropriate staff shall be instructed to obtain the specific information which is needed as soon as possible. The applicant is entitled to review this information at least 10 days before the rescheduled hearing.

SECTION 9 Impartial Hearing Panel

(a) Impartial Panel.

All applicants are entitled to a hearing by an impartial panel. An applicant may request the disqualification of a hearing panel member or a hearing panel member may disqualify himself. Unless good cause is shown, any request for disqualification must be made at least ten days prior to the parole hearing.

(b) Grounds for Disqualification.

A hearing panel member shall disqualify himself in the following circumstances:

- (1) A close personal or familial relationship exists between the hearing panel member and the applicant or the victim.
- (2) A close personal relationship between the hearing panel member and the family of the applicant or the victim.
- (3) The hearing panel member was involved in a past incident with the applicant which might cause him to be prejudiced against the applicant; for example, the hearing panel member was responsible for the arrest of the applicant or the applicant has assaulted the hearing panel member or a member of the hearing panel member's family.
- (4) The hearing panel member is actually prejudiced against or biased in favor of the applicant to the extent that he cannot make an objective decision.
- (5) The hearing panel member believes that, regardless of actual prejudice, there may be an appearance of impropriety if the panel member participates in the hearing.

(c) Decision.

The hearing panel shall consider the request for disqualification and document the decision on disqualification if the issue has been raised. Disqualification shall not occur solely because the hearing panel member knew the applicant in the past, is remotely related to the applicant, or has made a decision in the past affecting the applicant. Any panel member may disqualify him or herself on their own motion.

(d) Procedure.

If a request for disqualification is made, then the hearing panel must vote on the request. A hearing panel member that has not voluntarily disqualified himself may only be disqualified by a majority vote of the hearing panel. The hearing panel member that is the subject of the disqualification vote may not vote on their own disqualification.

SECTION 10 Assistance in Preparing for Hearing

(a) Assistance to be Provided.

An applicant who is unable to effectively communicate with the hearing panel due to language difficulties or a physical or mental defect shall be provided with appropriate assistance during the hearing. Department staff shall arrange for the necessary assistance prior to the hearing. If assistance has not been arranged and appears necessary during the hearing, the hearing panel shall request department staff to provide assistance and continue the hearing to another date if necessary.

- (b) Any person requiring accommodation must inform the Board of Parole no later than ten days prior to the hearing.

SECTION 11 Americans with Disabilities Act

- (a) Compliance with Americans with Disabilities Act.

No qualified individual with a disability as defined in 42 U.S.C. § 12102 shall, by reason of such disability, be excluded from participation in, or be denied the benefits of, the services, programs or activities of the board, or be subject to discrimination by the board.

- (a) Grievance Allowed.

Any applicant or parolee who believes that he or she is an individual with a qualifying disability, and believes that he or she has been denied reasonable accommodation by the board, may grieve that denial in accordance with SECTION 12.

SECTION 12 Filing a Grievance

The applicant or parolee has the following responsibility in filing any grievance:

- (a) Contents of the Grievance.
 - (1) The grievance shall include the name, birth date, and social security number of the applicant or parolee.
 - (2) The grievance shall be brief, pertinent, legible, and clearly written.
 - (3) Specific grounds, relating to Americans with Disabilities Act issues only, must be clearly stated and all necessary documents and information must be attached to the application.
 - (4) All grounds must be included in the same grievance.
 - (5) The decision desired must be stated.
 - (6) The application shall not exceed ten pages of 8 and 1/2 by 11 inch paper.

- (b) Assistance.

Assistance in preparing the grievance may be sought from staff of the Board of Parole or any other person.

- (c) Submitting the Grievance.

Grievances shall be submitted within a reasonable amount of time to the Board of Parole.

SECTION 13 Processing a Grievance

(a) Timeframes.

The Chair of the Board of Parole shall ensure that a grievance meeting the requirements of SECTION 12 be answered within 30 calendar days of receipt by the Board of Parole.

(b) Board Actions. The Board may take any of the following actions when answering a grievance.

(1) Order a New Hearing.

Place the matter directly on the appropriate calendar if the denial of the requested accommodation violated the applicant or parolee's due process or disability rights to access the parole proceeding. Reasons for this action shall be stated.

(2) Deny.

Deny the grievance if the decision denying the accommodation was harmless or the decision was reasonable under the circumstances of the case. The decision shall document the reasons for denial and include specific citation of policy when applicable.

(3) Dismiss.

Dismiss the grievance if the Board has no jurisdiction over the issues being grieved, if the grievance is premature, or if the grievance was filed more than 90 days after the applicant or parolee received written confirmation of the decision denying the accommodation.

(c) Exhaustion of Administrative Remedies.

Administrative remedies with the Board are exhausted after the applicant or parolee has filed a grievance as specified in SECTION 12 and the Board has taken action on the grievance or failed to respond within thirty days of receiving the grievance.

SECTION 14 Postponements and Continuances

(a) General.

The rights and interests of all persons properly appearing before the Board of are best served when hearings are conducted as scheduled. Occasional circumstances may require the delay of a scheduled hearing. It is the intention of the board to recognize the need and desirability to occasionally delay a scheduled hearing and to authorize said delays through a process of voluntary waiver or stipulation of unsuitability or to postpone or continue a scheduled life parole consideration hearing.

(b) Postponements.

(1) Postponement upon motion – When necessary

The Chair may postpone a parole hearing, upon its own motion or at the request of an applicant, due to the unavailability of a hearing panel; the absence or untimeliness of required board notices, documents, reports or required prisoner accommodations; or exigent circumstances such as illness of attending parties, natural disasters or institutional emergencies.

(2) Postponement upon request by applicant.

An applicant may request that the board postpone a parole hearing to resolve matters relevant to his or her parole. The board may grant a postponement only upon the affirmative showing of good cause on the part of the applicant and only if the applicant did not and could not have known about the need for the postponement earlier than when he or she made the postponement request. Good cause is an applicant's excused inability to obtain essential documents or other material evidence or information despite his or her diligent efforts.

(3) Reschedule postponed hearing.

A postponed hearing shall be rescheduled at a date consistent with resolution of the issue causing the postponement, the need to provide notice to affected parties, and panel availability.

(4) Notice of postponement required.

If a postponement is granted during the week of the scheduled hearing, the Board shall give the prosecutor, and the victim, the victim's next of kin, members of the victim's immediate family and two victim's representatives the opportunity to give a statement on the record. Exercising this option will not preclude the speaker from making a statement at subsequent parole consideration hearings. This statement shall be made available for consideration by subsequent hearing panels. If statements are taken, a transcript shall be made and a copy provided to the applicant.

(c) Continuance.

After the commencement of a parole hearing, the hearing panel may continue a hearing only upon a showing of good cause which was unknown, and could not reasonably have been known by the party requesting the continuance, prior to the commencement of the hearing.

(1) Consideration of Continuance.

In considering a continuance, the hearing panel shall weigh the reasons and the need for the continuance and any inconvenience to the Board and any parties or witnesses appearing at the hearing.

(2) Same Panel.

If a parole hearing is continued, the Board shall attempt to impanel the same panel members when the hearing is reconvened. However, the Board may, in its discretion, reconvene a new panel and commence a new hearing.

(3) Statement on the record allowed.

In the event of a continuance, the prosecutor and the victim, victim's next of kin, members of the victim's immediate family and two victim's representatives may elect to give a statement on the

record before the hearing is continued, in lieu of giving a statement when the hearing resumes. This statement shall be made available to subsequent hearing panels.

SECTION 15 Record of Hearing

A record (a verbatim transcript, tape recording, or written summary) shall be made of all hearings. The record of the hearing shall include or incorporate by reference the evidence considered, the evidence relied on, and the findings of the hearing panel with supporting reasons.

SECTION 16 Written Statement of Decision

Every applicant shall receive a copy of the Board's decision. If the applicant was represented by an attorney, then the Board will deliver the decision to the applicant's attorney.

SECTION 17 Representation by Attorney

An applicant or parolee may be represented by an attorney at any relevant Board of Parole hearing.

SECTION 18 Board of Parole Shall Direct Hearing

The Board of Parole may question witnesses or require the production of evidence relevant to a hearing. The attorney advising the Board of Parole may participate in the hearing and assist the Board of Parole as requested. The Board of Parole shall conduct hearings as fact finders to determine the truth of any allegation of parole violation, the best interests of the community, the best interests of the victim(s), suitability for parole, or any other issue relevant to the Board's decision.

Part 200 - APPLICANT INFORMATION

SECTION 19 Notice

The applicant shall be notified as soon as possible of the hearing date. Board staff shall provide notification of the hearing.

SECTION 20 Disclosure and Presence at Hearing

(a) Review of Documents.

The applicant is entitled to review non-confidential documents in the department central file. The applicant is responsible for complying with department procedures for review of the documents and for making his request sufficiently early to permit his review of the documents at least 10 days before the parole hearing. The applicant shall have the opportunity to enter a written response to any material in the file.

(b) Right to be present at hearing.

The applicant has the right to be present at the hearing, to speak on his own behalf, and to ask and answer questions. An applicant refusing to attend the hearing shall be advised that a decision may be made without his presence.

SECTION 21 Applicant Presentation of Documents

(a) Relevant Documents.

The applicant shall have the right to present relevant documents to the hearing panel. The documents should be brief, pertinent, and clearly written. The following documents are always relevant:

- (1) Documents tending to show mitigating circumstances;
- (2) Documents tending to prove or disprove any disputed fact;
- (3) Documents related to release planning.

(b) Documents to be placed in file.

A copy of any submitted document must be placed in the applicant's central file.

Part 300 - HEARING PROCEDURES

SECTION 22 Initial Parole Hearing

(a) Decision.

After the panel has made its decision, the applicant shall receive a written copy of the decision. If the panel's decision is to grant parole, the proposed decision shall state the date of release, the conditions which must be met in order to be released, and the consequences of a failure to meet such conditions. If the panel decision is to deny parole, the proposed decision shall state that parole has been denied and when the applicant may file a new petition for parole.

(b) Multiple Year Denials.

The Board of Parole may deny parole and prohibit further applications for parole for up to five years at a time. In cases in which the panel denies a subsequent parole hearing for more than one year, the Board shall make specific written findings stating the bases for the decision to defer subsequent hearings for two, three, four, or five years. If the board defers a hearing for four or five years, the applicant's central file shall be reviewed by the Chair of the Board of Parole after three years. Notwithstanding the deferral of future hearings, the Chair may direct that a parole hearing be scheduled for the applicant at the next available Board of Parole hearing. The Chair shall notify the applicant in writing of his or her decision after review.

SECTION 23 Subsequent Parole Hearings

Each applicant who was previously denied parole shall be reconsidered for parole in the same manner as at the initial parole hearing. The hearing panel shall consider the same information considered at the initial parole hearing and any information developed since the last hearing.

SECTION 24 Hearings for Applicants with New Criminal or Disciplinary Charges Pending

(a) Initial Parole Hearing and Subsequent Parole Hearing.

An applicant with new criminal or disciplinary charges pending prior to the initial parole hearing or subsequent parole hearing shall be scheduled for the hearing as provided as normal.

(b) Continuance necessary.

If it is determined during the course of the hearing that a decision regarding parole cannot be made because of pending charges, the hearing panel shall continue the hearing to the next available Board of Parole hearing.

SECTION 25 Hearings for Applicants with Change in Legal Status

(a) Changes in legal status.

Changes in legal status include, but are not limited to: a final court decision altering the applicant's commitment status, modification of the judgment or abstract of judgment, and new commitments.

(b) Before Initial Parole Hearing.

The change in legal status shall be considered at the initial parole hearing as regularly scheduled or as would be scheduled by the change in legal status.

(c) After Initial Parole Hearing.

If an applicant's legal status changes after the initial parole hearing, the Board shall immediately schedule the applicant for a subsequent parole hearing as appropriate.

(d) New Commitment.

If an applicant with a previously established parole date receives a new commitment to prison, the parole date shall be rescinded. No hearing or other Board action is required. The Board shall record the rescission of the parole date on the grounds that the applicant has received a new commitment. The applicant may appeal the rescission only on the grounds that he is not the person sentenced to prison by the new judgment.

Part 400 - ELIGIBILITY AND CRITERIA FOR GRANTING PAROLE

SECTION 26 Eligibility

(a) In order to be eligible for a parole hearing before the Board of Parole an applicant must meet all of the following criteria:

- (1) Eligible under the laws governing parole;
- (2) Has no pending criminal charges in the Commonwealth of the Northern Mariana Islands or any other jurisdiction;
- (3) Has made a formal application for parole to the Board of Parole as set forth below;
- (4) Understands and accepts that the terms and conditions of parole not negotiable or flexible. The terms and conditions of parole must be adhered to at all times;

- (5) Understands and accepts that parole may be revoked at any time by the Board of Parole for violation of any of the terms and conditions of parole;
- (6) Has had, during the past twelve months prior to application for parole, or since the inception of the inmate's incarceration, whichever is shorter, a satisfactory record of behavior during incarceration. A satisfactory record of behavior is a record which demonstrates that the applicant has substantially complied with the rules and policies of the Department of Corrections pertaining to the imprisonment of persons or inmates; and
- (7) Is in compliance with all Court orders.

SECTION 27 Application

(a) Form of application and contents.

Application for parole shall be made on the form prescribed by the Board of Parole. An applicant desiring parole shall complete the application and shall complete a specific parole plan. The parole plan shall include details regarding the life the applicant intends to lead if released. The parole plan must include information describing the applicant's proposed residence, who the applicant will be living with, a plan for employment or schooling, and if known, the employer's name or place of business.

(b) Application Processing

- (1) Once the completed application is submitted to the Board of Parole, the Chief Parole Officer shall have sixty days to process the application.
- (2) The Chief Parole Officer shall, during the sixty day processing period, review the applicant's application for parole and the records available to the Board of Parole Office and shall make a determination as to whether or not the applicant has met the above eligibility criteria set forth in these regulations. If the applicant has met the eligibility criteria, as determined by the Chief Parole Officer, the applicant shall be eligible to appear at a hearing before the Board of Parole. If the applicant does not meet the eligibility criteria, as determined by the Chief Parole Officer, the applicant shall not be eligible to appear at a hearing before the Board of Parole until the applicant meets all eligibility criteria.
- (3) During processing, parole agents may request additional information and documents from the applicant. The applicant shall cooperate with the parole agent in the collection of additional information.
- (4) At the conclusion of the sixty day period, the Chief Parole Officer shall notify the applicant either:
 - (i) That the applicant is eligible for a hearing before the Board of Parole and when the applicant can expect to be advised of the hearing date; or
 - (ii) That the applicant is not currently eligible for parole. The Chief Parole Officer shall specify the criteria that the applicant has failed to meet.

- (5) If an applicant is not eligible for parole, the applicant may reapply when the applicant becomes eligible for parole.
- (6) If an applicant is not eligible, or if the applicant's application is withdrawn by the applicant for any reason, the Board of Parole Office shall have an additional sixty days to process the application upon resubmission.

(c) Hearings Calendar

- (1) The Chief Parole Officer shall maintain a list of processed and eligible parole applicants. The Chief Parole Officer shall report to the Board of Parole at each regularly scheduled meeting, in as much detail as the Board of Parole requests, as to the inmates that have applied and are eligible for parole. The Board of Parole shall schedule a date for hearing for those inmates that are eligible for parole.

SECTION 28 Criteria

(a) Suitability determination.

Applying the criteria in this subsection, the hearing panel shall first determine whether the applicant is unsuitable for parole. If the applicant is found unsuitable, parole shall be denied. If parole is denied, then the hearing panel shall determine when the applicant may reapply for parole.

(b) Factors for determining suitability for parole.

In determining whether the applicant is unsuitable for parole the hearing panel shall consider factors which affect the severity of the offense and the risk of danger to society if the applicant were released. Examples of factors indicating the applicant is unsuitable for parole include:

- (1) A history of violent attacks.
- (2) A history of forcible sexual attacks on others.
- (3) A persistent pattern of criminal behavior and a failure to demonstrate evidence of a substantial change for the better.
- (4) The presence of a psychiatric or psychological condition related to the applicant's criminality which creates a high likelihood that new serious crimes will be committed if released.
- (5) The refusal to accept responsibility for his or her crime.

(c) Specific Aggravating Factors.

Aggravating circumstances are those which relate solely to the commitment offense and tend to increase the seriousness of the offense. Examples of specific aggravating circumstances by offense include:

- (1) Homicide.
 - (i) Multiple victims.
 - (ii) Method of killing vicious in nature where suffering is deliberately inflicted.
- (2) Violence against a Person.
 - (i) Extent of injury, such as injury which caused permanent loss of body organ or limb; created long standing serious medical or psychiatric problems; or required extensive hospitalization.
 - (ii) Manner of infliction, such as a vicious assault continuing after victim incapacitated or prolonged torture.
 - (iii) Injury to peace officer intended to prevent performance of his duty.
- (3) Sexual Offenses.
 - (i) Physical harm, such as injuries which required hospitalization or extensive medical treatment or injuries which were inflicted beyond accomplishing the sexual act.
 - (ii) Psychological harm, such as a victim forced to participate in front of family or friends; lack of concern for unusual condition of victim such as age, pregnancy, or physical disability; or the offense was committed in a manner that might increase the likelihood of psychological harm.
- (4) Property Crimes with Threat to Persons.
 - (i) Extent of force or threat, such as force or threat exceeded what was necessary to accomplish act or force or threats continued after property was acquired.
 - (ii) Systematic in nature, such as the planning indicates the crime was a part of a larger criminal scheme or organization; the crime was part of a large scale effort to disrupt business or safety; or the crime was done for hire.
- (5) Crimes Against Property.
 - (i) Harm to victim, such as a victim left destitute or suffers substantial losses: a victim physically or sexually abused in course of offense.
 - (ii) Systematic in nature, such as when the crime is part of a complex scheme or criminal network or is repeatedly practiced on unsophisticated victims.
- (6) Weapons Offenses.

Potential for harm, such as bringing a weapon into an institution by a person with privileged access; bringing a weapon into an institution as part of a plan for escape or injury; possession or manufacture of bombs or weapons by an organization planning injury or destruction; or

possession of a firearm by an ex-felon where the circumstances indicate the great likelihood of further criminal use or actual criminal use.

(7) Drugs.

Size and scope of operation, such as an extensive volume of drugs or the manufacture of drugs with professional chemical equipment.

(8) Family Offenses.

- (i) Act resulted in prolonged hospitalization, deformity, or disfigurement.
- (ii) Act was repeated over a prolonged period of time.
- (iii) Victim was totally defenseless.
- (iv) Other family members forced to witness abuse.

(9) Escape Offenses.

Extent of violence or threat used to escape.

(10) Miscellaneous Offenses.

Harm and scope of operation such as perjury meant to seriously injure another's life or liberty; the act seriously undermines the integrity of the governmental process or faith therein or otherwise is an abuse of a fiduciary position; a conspiracy as part of a large scale criminal operation.

(d) Specific Mitigating Circumstances.

Mitigating factors are those which relate solely to the commitment offense and which tend to lessen the seriousness of the offense, including circumstances in mitigation which do not amount to a full legal defense.

Examples of mitigating circumstances by offense include:

(1) Violence (including homicide).

- (i) Provocation by victim such as verbal threats by victim or physical harassment by victim.
- (ii) Elements of self-defense, for example the victim was armed or had a great physical advantage.
- (iii) Motivation such as whether the violence was not foreseeable or was due to unique circumstances not likely to recur.
- (iv) Battered Woman Syndrome. At the time of the commission of the crime, the applicant suffered from Battered Woman Syndrome and it appears the criminal behavior was the result of that victimization.

- (2) Property Offenses.
 - (i) Economic need not likely to recur.
 - (ii) Relatively small actual losses involved.
 - (iii) Any restitution made.
- (3) Escape.
 - (i) Escapee has been threatened or assaulted or is in fear for his life.
 - (ii) Escapee's family has been assaulted or threatened and escapee fears for their safety.
- (4) Forgiveness.
 - (i) Applicant has sought forgiveness from victims and injured parties.
 - (ii) Applicant has received forgiveness from victims and injured parties.
 - (iii) Applicant has paid restitution, if any, to victims and injured parties.
- (5) Lack of criminal history.

SECTION 29 Criminal Charges Not Resulting in Conviction

(a) No Conviction.

Criminal charges not resulting in conviction (charges which resulted in acquittal or dismissal for any reason) shall not impact the parole decision unless the factual circumstances surrounding the charge are reliably documented and are an integral part of the crime for which the applicant is currently committed to prison.

(b) Conviction.

Criminal charges resulting in conviction but not commitment to prison (such as convictions upon which sentencing was suspended or stayed) may be considered as part of the individual's criminal history or as an integral part of the circumstances of an offense for which the applicant is currently committed to prison.

(c) Victims of applicant will be permitted to testify.

The Board may consider testimony from individuals that claim to be victims of the applicant, even if the applicant was not charged or convicted for the alleged crimes.

Part 500 - RELEASE

SECTION 30 General

Release on parole is the actual transfer of an applicant confined in prison to parole supervision in the community. Actual release on parole shall occur when all the provisions of these rules and

any applicable laws have been met. If an applicant has been scheduled for revocation proceedings, then the applicant shall not be released until the termination of the revocation proceedings.

SECTION 31 Notice and Conditions of Parole

Prior to release on parole, the applicant shall be given the notice and conditions of parole by Board of Parole staff. The notice and conditions shall be provided in the language primarily spoken or read by the applicant.

Part 600 - PAROLE SUPERVISION

SECTION 32 Notice of Parole

(a) Definition. The notice of parole is a general description of rules and regulations governing parolees.

(b) Notice. The notice of parole shall include all of the conditions of parole and shall always include the following conditions:

1. Release. You will be released on parole effective _____ and will remain on parole until _____. This parole is subject to the following notice and conditions. Should you violate any conditions of this parole, you will be subject to arrest and the Board may modify, suspend, or revoke your parole and order your return to custody. You must read or have had read to you these conditions of parole and you must fully understand them. Whenever any problems arise or you do not understand what is expected of you, talk to your parole agent.
2. Extradition. You waive extradition to the Commonwealth of the Northern Mariana Islands from any State or Territory of the United States, or from the District of Columbia. You will not contest any effort to return you to the Commonwealth of the Northern Mariana Islands.
3. Psychiatric Returns. If the board determines that you suffer from a mental disorder which substantially impairs your ability to maintain yourself in the community or which makes you a danger to yourself or others, the Board may order your placement in a community treatment facility, if necessary for treatment. The Board may revoke your parole and order you returned to prison for psychiatric treatment if the necessary treatment cannot be provided in the community.
4. Search. You and your residence and any property under your control may be searched without a warrant at any time by any agent of the Board of Parole or any law enforcement officer.
5. Residence. The establishment and maintenance of a residence upon release from prison is required and it is critical to your successful reintegration into society.

SECTION 33 General Conditions of Parole

- (a) The parole conditions are not a contract but are the specific rules governing all parolees whether or not the parolee has signed the form containing the parole conditions. A violation of any of these conditions of parole may result in the revocation of parole and the parolee's return to prison. The general conditions of parole shall read as follows:

- (1) Special conditions. Any special condition imposed by the Board.
- (2) Release, Reporting, Residence and Travel. Unless other arrangements are approved in writing, you will report to your parole agent within 24 hours or the next working day if released on the day before a holiday or weekend. Your residence and any change of residence shall be reported to your parole agent in advance. You will inform your parole agent within 72 hours of any change of employment location, employer, or termination of employment.
- (3) Parole Agent Instructions. You shall comply with all instructions of your parole agent and will not travel from your island of residence without his or her prior approval. You will not leave the Commonwealth of the Northern Mariana Islands without prior written approval of your parole agent.
- (4) Criminal Conduct. You shall not engage in criminal conduct. You shall immediately inform your parole agent if you are arrested for a felony or misdemeanor under federal, state, or Commonwealth law.
- (5) Weapons. You shall not own, use, have access to, or have under your control: (a) any type of firearm or instrument or device which a reasonable person would believe to be capable of being used as a firearm or any ammunition which could be used in a firearm; (b) any knife with a blade longer than two inches, except kitchen knives which must be kept in your residence and knives related to your employment which may be used and carried only in connection with your employment; or (c) a crossbow of any kind.
- (6) You must understand and acknowledge the conditions of parole specified in this section and any special conditions imposed. If you do not understand a condition of parole, then you must immediately speak to your parole officer.

SECTION 34 Special Conditions of Parole

- (a) Special conditions may be established and imposed by the Board and are in addition to the general conditions of parole. Special conditions include:
 - (1) "To participate in Psychiatric Treatment. You agree to participate in the psychiatric treatment program approved for you by Board." This special condition shall be imposed whenever the Board, or the Department of Corrections psychiatric staff have determined that treatment is required for successful adjustment on parole.
 - (2) "To abstain from Alcoholic Beverages. You agree to abstain from the use of any alcoholic beverages or liquors." This special condition may be imposed whenever the Board determines that such a condition is warranted by the circumstances of the case.
 - (3) "To Participate in Anti-Narcotic Testing. You agree to participate in anti-narcotic testing in accordance with instructions from a parole agent." This special condition may be imposed if there is a documented or admitted history of controlled substances usage.

- (4) "Residence. You shall maintain a residence with a street address or a dwelling location approved in writing by your parole officer." This special condition shall be imposed on all parolees required to register as a sex offender.
- (5) "Gang Participation. You will not actively participate in, promote, further, or assist in any prison gang, disruptive group, or criminal street gang activity. You will not associate with any prison gang, disruptive group, or street gang member, nor wear or carry on your person, gang colors or any sign, symbol, or paraphernalia associated with gang activity." These special conditions may be imposed if there is a history of street gang, disruptive group, or prison gang membership, affiliation, or association. Only those gang tattoos received prior to parole are not considered to be a violation of this special condition.
- (6) Other. Any other condition deemed necessary by the Board due to unusual circumstances. This special condition shall be imposed whenever warranted by unusual circumstances. The reasons for its imposition shall be sufficiently documented in the parolee's case records to explain the need for imposition.

SECTION 35 Petition for Change of Conditions of Parole

Any parolee may petition the Board for a change of their general or special conditions of parole. The Board will consider the petition at its next regularly scheduled hearing. Notice shall be given to all parties in the same manner proscribed in SECTION 4.

SECTION 36 Length of Parole

- (a) General. The length of parole shall be the period of time that the parolee has remaining on his or her unsuspended term of imprisonment on the parolee's release date.
- (b) The parolee shall be discharged from the custody of the Board of Parole after serving the period of parole specified in this section. The Board of Parole shall issue an order of discharge and provide a copy to the parolee and any person requesting notice under SECTION 4 and any other person the Chief Parole Officer believes should be notified.

Part 700 - PAROLE REVOCATION

SECTION 37 Parole Hold Policy

- (a) Preliminary hearing – Issuance of warrant

The Chief Parole Officer may, if parolee is alleged to have violated the terms and conditions of parole, summon the parolee to appear at a preliminary hearing. Alternatively, if the parolee is alleged to have violated the terms and conditions of his or her parole, the Chief Parole Officer may issue an order suspending parolee's parole and a warrant ordering parolee to be apprehended and held in custody.

- (b) Minor violation.

If the parolee's violation of his or her terms and conditions of parole is a minor violation, then the Chief Parole Officer may exercise his or her discretion and issue a written warning to the parolee.

(c) Issuance of hold upon new charge.

The Chief Parole Officer may issue an order to hold a parolee when he is already confined as the result of a new criminal charge or may arrest a parolee and place him with the Department of Corrections on a parole hold pending investigation of alleged parole violations.

(d) Release on bail or recognizance irrelevant.

The fact that a parolee has been released on bail or his own recognizance in a new criminal case will not influence the Chief Parole Officer's decision to place a hold. The Chief Parole Officer must always consider the best interests of the community.

(e) Absconding.

If a parolee is suspected of absconding, then the Chief Parole Officer shall attempt to contact the parolee through the parolee's friends and family. The Chief Parole Officer will then issue an order suspending the parolee's parole and a warrant ordering parolee to be apprehended and held. The parolee will not receive any credit for time served towards the parolee's sentence during a period which he or she is alleged and proven to have absconded. A preliminary hearing shall be scheduled for any parolee alleged to have absconded.

(f) Public Safety.

The primary concern shall always be for public safety.

SECTION 38 Emergency Hold

(a) If a parole agent has probable cause to believe that a parolee has violated a condition of parole and that an emergency situation exists, so that awaiting an order from the Chief Parole Officer would create an undue risk to the public or to the parolee, the parole agent may cause the parolee to be arrested with or without first issuing a warrant for parolee's detention.

(b) The parole agent may call on any law enforcement officer to assist in the arrest.

(c) The parolee shall be detained on the written order of the parole agent at the Department of Corrections, pending action by the Chief Parole Officer.

(d) The Chief Parole Officer may, after such detention, issue an order suspending parole or issue an order for the conditional or unconditional release of the parolee.

SECTION 39 Emergency Parole Hold Procedural Time Period

If, pursuant to SECTION 38, a parole agent has a parolee arrested and detained, then the Chief Parole Officer shall issue a warrant of arrest and an order suspending parole within forty-eight hours. Otherwise, the Chief Parole Officer shall issue an order releasing the parolee with or without condition within forty-eight hours.

SECTION 40 Preliminary Hearing

(a) A parolee who has been summoned or retaken for an alleged violation of the terms and conditions of parole shall be scheduled for a preliminary hearing before the Board of Parole, or any member of the Board of Parole within twenty days of arrest or of summons.

(b) A parolee may waive his or her right to preliminary hearing.

SECTION 41 Probable Cause Determination and Notification of Revocation

At the preliminary hearing, the Board of Parole or any Board of Parole member shall determine if there is probable cause to believe that a parolee has violated a term or condition of parole. If probable cause is found, the Board of Parole or the designated representative shall:

- (a) Notify the parolee, in writing, of its finding and of the date, time, and place, of parolee's revocation hearing; and
 - (1) Order the parolee held under its warrant pending a revocation hearing; or
 - (2) Order the release of the parolee upon a finding that incarceration of the parolee pending revocation proceedings is unwarranted because the parolee does not pose a flight risk and does not constitute a danger to the community; or
 - (3) In the event the alleged violation is a pending criminal charge, notify the parolee that parolee's parole is and shall be suspended pending the disposal of the criminal suit against parolee. In such cases, a revocation hearing shall not be set until such time as the criminal suit against the parolee is disposed of by the court or otherwise dismissed.
- (b) If the hearing panel, or in the case of a single Board member presiding at a preliminary hearing, a Board member, determines that probable cause exists, but that continuation of revocation proceeding is not warranted, the hearing panel or Board member may subsequently order that the parolee be released and required to conform with the terms and conditions of parole. Further, the Board of Parole or Board of Parole member may impose additional conditions of parole recommended by the Chief Parole Officer.
- (c) Where probable cause has been found that a parolee has violated a term or condition of parole, a revocation hearing shall be conducted by the Board of Parole within ninety days of the probable cause determination.
- (d) Where probable cause has been found that the parolee has absconded, the parolee shall be scheduled for a revocation hearing.

SECTION 42 Warrants

- (a) Procedure.

If a warrant is issued pursuant to Board of Parole regulations, then the appropriate law enforcement agencies must be immediately notified of its issuance. Immediately after issuing the warrant the Chief Parole Officer shall forward the warrant, the reasons or basis for its issuance,

and a list of law enforcement agencies notified, if any, to the members of the Board of Parole and its officers.

(b) General.

Board warrants remain in full force and effect until the Chief Parole Officer, the Chair of the Board of Parole, or the Board of Parole recalls the warrant by removing it from the active warrant file and notifying appropriate law enforcement agencies that the warrant has been recalled. The members of the Board of Parole shall be notified and informed of the reasons justifying recall of a warrant.

(c) Arrest of Parolee.

The warrant shall be recalled upon notification that a parolee subject to a warrant has been taken into custody by a law enforcement agency.

Part 800 - PAROLE VIOLATIONS

SECTION 43 General

The Board is authorized to revoke parole if the parolee has violated the terms and conditions of his or her parole.

SECTION 44 Violations

(a) Behavior Requiring Revocation Proceedings.

The Chief Parole Officer shall initiate revocation proceedings against any parolee who is reasonably believed to have engaged in the following kinds of behavior:

- (1) Any assaultive conduct resulting in serious injury to another person.
- (2) Possession, control, use of, or access to any firearms, explosive or crossbow or possession or use of any prohibited weapon.
- (3) Involvement in any fraud or fraudulent schemes.
- (4) Sale, transportation, or distribution of any narcotic or other controlled substances as defined by federal or Commonwealth law.
- (5) A parolee has absconded. A parolee has absconded when his or her whereabouts are unknown and he or she has been unavailable for contact for ten days.
- (6) Any other conduct or pattern of conduct in violation of the conditions of parole deemed sufficiently serious by the Chief Parole Officer, including repetitive parole violations and escalating criminal conduct.
- (7) The failure to register as a sex offender, if the parolee is required to register.
- (8) Conduct indicating that the parolee's mental condition has deteriorated such that the parolee is likely to engage in future criminal behavior.

- (9) Violation of residency or travel restrictions.
- (10) Violation of any court order.
- (11) Any criminal conduct.

(b) Behavior Which May Form the Basis for Revocation Proceedings.

Any conduct which the Chief Parole Officer feels is sufficiently serious to require revocation, regardless of whether the conduct is being prosecuted in court.

SECTION 45 Investigation

A parole agent shall investigate all cases of a parolee suspected of a parole violation. All available facts relating to the charged violation shall be documented. If the parolee is suspected of a violation which is being investigated as a new crime by a law enforcement agency, the parole agent should obtain a copy of the arresting agency's arrest and investigation report. If the parolee is suspected of a violation which is not being investigated as a new crime by a law enforcement agency, the parole agent should interview all persons who have knowledge of the conduct and record their statements.

SECTION 46 Parole Violation Report

The parole violation report is a document prepared by the parole agent specifying the parole violation charges against a parolee, and containing or referring to the information known to the parole agent relevant to the charges. The parole violation report shall include a summary of the parolee's adjustment to community supervision and any aggravating or mitigating facts known to the parole agent. Any documents which relate to the parole violation shall be attached to the report or specifically identified in the report.

SECTION 47 Supplemental Parole Violation Reports

A supplemental parole violation report may be submitted to: report significant new information or evidence which tends to prove or disprove the violations previously charged; note court actions on charges which are being prosecuted in a criminal proceeding; expand, clarify, or correct information in an earlier report; add or amend charges before a hearing is scheduled; provide the Board with information not related to the violation, but which may affect the Board's decision regarding the appropriate disposition; provide additional information to the Board at any time requested by the Board; or change the Chief Parole Officer's recommendation. A copy of the supplemental parole violation report shall be given to the parolee within 5 business days after the report has been submitted to the Board.

SECTION 48 Recommendations

The Chief Parole Officer shall recommend the appropriate action necessary to deal with the violation charged. The primary concern shall be for the public safety. In a parole violation report the Chief Parole Officer may make the following recommendations:

- (a) Continue on Parole.

This recommendation may be used when the violation charged is not serious enough to warrant reimprisonment. A continue on parole recommendation may include a recommendation to delete, modify, or add special conditions of parole.

(b) Local Program.

This recommendation may be used when the violation charged does not require reimprisonment of the parolee but does require treatment which can be obtained in a community facility or program.

(c) Schedule for Revocation Proceedings.

This recommendation may be used whenever the violation charged is so serious that reimprisonment is necessary

Part 900 - REVOCATION HEARING PROCEDURE

SECTION 49 Waiver of Hearing

Unconditional Waiver.

A parolee may waive the revocation hearing. An unconditional waiver includes a waiver of any right to a personal appearance before the Board to contest the charges against the parolee, but shall not be an admission of guilt. Following an unconditional waiver, the Chief Parole Officer or the Chair of the Board of Parole may revoke parole without further notice.

SECTION 50 Prehearing Procedure

The Chief Parole Officer shall assure that: time limits are met; the parolee is advised of his rights; the parolee's requests for witnesses are screened; any necessary witnesses are notified of the date, time and place of the hearing; all documentary and physical evidence is disclosed, unless designated; requests for continuances are decided; and the case is otherwise prepared for the hearing.

SECTION 51 Parolee Rights

(a) General.

At the revocation hearing the parolee shall have the rights provided for by the United States Constitution, the Commonwealth Constitution, Commonwealth law, and the Board of Parole regulations. The record of the hearing shall be an audio recording.

(b) Notification of the Charges and the Supporting Evidence.

The parolee and his attorney, if he has one, shall receive copies of the parole violation report, any supplemental reports, and any evidence supporting the parole violation charges unless designated. The parolee and his attorney shall receive copies of any police, arrest, or crime reports relevant to the parole violation charges. Any information which is deemed confidential shall not be disclosed, but the parolee and his attorney shall be notified that confidential information has been deleted from the report.

(c) Witnesses.

The parolee is entitled to request the presence of evidentiary and dispositional witnesses at any revocation hearing. The witnesses shall be called unless the hearing panel has specific reason to deny the request. Witnesses shall be screened pursuant to the procedures of **Section 57**. The parolee may request subpoena(s) or subpoena(s) duces tecum as provided in **Section 58**. If denied, the specific reasons for denial shall be documented and a copy of the document given to the parolee.

(d) Right to question witnesses.

During the hearing the parolee has the right, under the direction of the hearing panel, to question all witnesses.

(e) Notice of the Hearing.

At any hearing where witnesses are approved, notice of the hearing shall be given as soon as possible but no later than fourteen calendar days before the hearing.

SECTION 52 Revocation Hearing Procedure

(a) General.

At the revocation hearing the hearing panel shall decide whether there is good cause to believe a condition of parole has been violated and, if so, the most appropriate disposition. The parolee may offer mitigating circumstances either to the violation charged or to the disposition during the appropriate part of the hearing.

(b) Factual disputes.

If the facts of the violation charged have been settled against the parolee in a criminal prosecution or a probation revocation hearing, the parolee may not contest the facts settled against him but may contest: the fact of a post-parole conviction or whether the conviction violated a condition of parole. If the facts against the parolee have not been settled in a criminal prosecution or probation revocation hearing, the parolee may contest the violation charged.

(c) Sex offender registration.

If the parolee is charged with failing to register as a sex offender under federal or Commonwealth law, the only factual issues at the revocation hearing are whether the parolee is required to register as a sex offender and whether the parolee failed to register.

(b) Oath.

The hearing panel shall require all witnesses to testify under oath.

SECTION 53 Disposition

The hearing panel shall make a disposition appropriate to the facts of the case including consideration for public safety. Parole involves conditional liberty and a parolee who engages in

violation of the condition(s) of parole may not be capable of successful reintegration into society and may compromise public safety. Disposition alternatives include the following:

(a) No Violation Found.

If the hearing panel finds that the parolee did not commit the violation charged, the parolee shall be continued on parole.

(b) Charge Dismissed.

The charge may be dismissed if there is insufficient information to determine whether the charge is true, if the charge will not significantly affect the disposition, or if the interest of justice would be served.

(c) Violation Found.

If the hearing panel determines that the parolee committed the violation charged, the hearing panel shall make the appropriate decision necessary to handle the violation. Examples of disposition are:

(1) Continue on Parole.

This disposition shall be used when the violation is not sufficiently serious to warrant reimprisonment. The decision to continue on parole may be accompanied by a decision to modify, add, or delete special conditions of parole.

(2) Local Program.

This disposition shall be used when the violation is not sufficiently serious to warrant reimprisonment but does indicate a need for treatment available in a community facility or program.

(3) Return to Custody.

This disposition shall be used when the violation is so serious that reincarceration is necessary or when the violation is the failure to register as a sex offender in a timely manner as required by federal or Commonwealth law. The Board of Parole may set a date of release back onto parole or the Board of Parole may terminate parole and require the parolee to wait a set amount of time before filing a petition for parole.

(4) Revocation for absconding.

If the parolee is found to have absconded, then his parole shall be revoked and he shall be ordered returned to the custody of the Department of Corrections. Further, the Board of Parole shall determine the date that the parolee absconded. The period of time that the parolee absconded shall toll the criminal sentence of the parolee. If the parolee has not been located at the time the disposition is entered, then the sentence shall be tolled until the parolee is recaptured.

Part 1000 - EVIDENCE

SECTION 54 Generally

All evidence relevant to the charges or disposition is admissible in any parole hearing. Hearsay will be admissible. Formal rules of evidence do not apply to Board of Parole hearings.

SECTION 55 Documentary Evidence

The Chief Parole Officer shall assure that all relevant documentary evidence is available at the hearing and has been made available to the parolee prior to the hearing unless designated confidential. This evidence includes, but is not limited to, the violation report, arrest report, special services reports, psychiatric reports, and statements of witnesses. If relevant documentary evidence is not available, the Chief Parole Officer shall specify in writing what the evidence is and why it is unavailable.

SECTION 56 Physical Evidence

Physical evidence should not ordinarily be required at a hearing. The Chief Parole Officer may bring physical evidence to the hearing if: the applicant or parolee has requested it or it appears necessary for the hearing; institutional security is not endangered; and there is no other means of presenting the information.

SECTION 57 Witnesses

(a) Request.

(1) Applicant or Parolee Request.

The applicant or parolee may request either evidentiary or dispositional witnesses. The request must be made sufficiently ahead of the hearing to notify the witnesses and to make arrangements to have them present at the hearing. The request shall include the reason for requesting the witness and the expected testimony of the witness.

(2) Parole agent request.

If in reviewing the case prior to a hearing, staff determine that a particular witness is necessary to provide testimony regarding an event material to the proceeding, attendance of that evidentiary witness shall be requested even though the applicant or parolee has not requested that witness. In these circumstances, staff shall notify the applicant, parolee, or his attorney.

(b) Chief Parole Officer to review witness list.

The Chief Parole Officer shall review the list of requested witnesses prior to the hearing and may refuse to notify or call witnesses for good cause. The Chief Parole Officer shall document the reason for any refusal to notify or call a witness, and the parolee, applicant, or attorney shall be told of the refusal prior to the hearing.

(1) Evidentiary Witnesses.

The Chief Parole Officer shall determine that the testimony of an evidentiary witness is clearly irrelevant before refusing to call the witness. (Examples of irrelevant witnesses include a public official having no knowledge of the violation or witness with no knowledge or evidence in

mitigation). A requested evidentiary witness should ordinarily be notified to attend even though the testimony may be cumulative, such as where several persons witnessed the incident.

(2) Dispositional Witnesses.

The Chief Parole Officer may refuse to notify any dispositional witness whose testimony is clearly irrelevant or cumulative. The testimony of dispositional witnesses whose testimony is of a general nature may be presented by means of written statements, letters, or affidavits.

(c) Notification.

(1) Evidentiary Witnesses.

The Chief Parole Officer is responsible for making every effort to assure the attendance of any requested evidentiary witness deemed necessary.

(2) Dispositional Witnesses.

If the applicant or parolee is not represented by an attorney, the Chief Parole Officer shall provide any needed assistance in notifying dispositional witnesses. If the applicant or parolee is assisted by an attorney, the Chief Parole Officer has no responsibility for notifying applicant or parolee dispositional witnesses who are not confined in prison. The attorney shall notify the Chief Parole Officer in writing of witnesses so that the Board of Parole can properly manage its time at a hearing.

(3) Documentation.

All efforts to locate evidentiary witnesses shall be documented. Any efforts made to locate dispositional witnesses for a applicant or parolee unassisted by counsel shall also be documented.

(4) Witness refusal to attend.

If a witness is located, but refuses to attend, the reason for the refusal shall be documented to give the hearing panel sufficient information to determine whether it is reasonable to excuse the witness' attendance.

(d) Fearful Witnesses.

Evidentiary witnesses who refuse to attend the hearing either because they would be subject to risk of harm if their identities were disclosed or who, even if their identity is known, fear for their safety should they attend the hearing, shall be interviewed by staff prior to the hearing and their information documented in writing or on tape. The reasons for their fear shall also be documented. The hearing panel shall determine whether there is good cause to excuse a witness' attendance and shall document the decision, including the reasons.

(e) Interviewing Witnesses.

An applicant, parolee, or his attorney has a right to speak to possible witnesses, but it is within the discretion of an individual witness whether to speak to or disclose his whereabouts to a applicant, parolee, or his attorney. Staff shall not attempt to influence the witness' decision.

SECTION 58 Subpoenas

- (a) Subpoenas may be issued to require the attendance of witnesses or the production of documents at parole revocation hearings.
- (b) The parolee or applicant, or the attorney for the parolee or applicant, the Chief Parole Officer, or Board members may request that a subpoena be issued.
- (c) Requests for subpoenas shall be made directly to the Chair of the Board of Parole or another Board Member as appropriate, at least 10 working days prior to the scheduled hearing. An attorney for the Office of the Attorney General shall review any subpoena prior to issuance as to form and content.
- (d) Subpoena Duces Tecum. A supporting declaration shall accompany each request for a subpoena duces tecum. The declaration shall show good cause for production of documentary evidence and specify precisely the documentary evidence to be produced, the relevance and materiality of that evidence to the hearing, and that the requested witness has possession or control of the documentary evidence.

SECTION 59 Criteria for Issuance of a Subpoena

- (a) General.

A subpoena or subpoena duces tecum shall be issued when it is necessary to secure the presence of a witness or the production of documents for a proceeding. Subpoenas shall be issued for evidence that is relevant and material. Each case shall be evaluated individually to make this determination, based upon the following factors:

- (1) whether the person is an evidentiary or dispositional witness;
- (2) the relevance and materiality of the testimony or documents to the issues to be decided during the fact finding (violation) phase of the hearing;
- (3) the availability of the witness and/or the documents;
- (4) whether the witness will have difficulty attending the hearing.

- (b) Witnesses.

- (1) General.

Requests for subpoenas for witnesses shall be screened in accordance with the procedures of SECTION 57. A request for a subpoena may be denied for any witness whose testimony is clearly irrelevant or cumulative.

- (2) Evidentiary Witnesses.

Requests for subpoenas for evidentiary witnesses shall ordinarily be granted even though the testimony may be cumulative, such as when several persons witnessed the incident. Fearfulness of an evidentiary witness shall be considered and may justify denial of a request for a subpoena.

(3) Dispositional Witnesses.

Normally only evidentiary witnesses will be subpoenaed. The testimony of dispositional witnesses whose testimony is of a general nature should be presented by means of written statements, letters, or affidavits. The parolee/applicant or the parolee's/applicant's attorney shall provide a written statement which summarizes the expected testimony and states how the testimony would be relevant, material, and non-cumulative.

(c) Documentary Evidence.

Subpoenas duces tecum may be issued for documentary evidence that is relevant and non-cumulative and under the control of someone other than the parolee/applicant, the applicant's attorney, or the Board. A declaration in support shall accompany the request for a subpoena duces tecum.

(d) Denial.

The reason for the denial of a request for a subpoena or a subpoena duces tecum shall be documented and a copy of the decision given to the parolee/applicant or to the parolee's/applicant's attorney.

SECTION 60 Service of Subpoena

(a) Process.

Service may be made by any person 18 years of age or older, in all parts of the Commonwealth, no later than ten calendar days before the hearing, unless good cause for later service is shown.

(b) Subpoena.

Except as provided in this section, service of a subpoena is completed by showing the original and delivering a copy to the witness personally.

(c) Subpoena for Officer.

When an officer of the Department of Public Safety or the Department of Corrections is required as a witness in a proceeding relating to an event which he perceived or investigated in the course of his duties, a subpoena may be served by delivering a copy to the officer personally. Alternatively, a subpoena may be served by delivering two copies to the Commissioner of the Department of Public Safety or the Director of the Department of Corrections.

(d) Subpoena Duces Tecum.

Service of a subpoena duces tecum is completed by showing the original and delivering a copy to the person having possession or control of the documentary evidence. Service is invalid if the declaration in support is not served on the person at the same time as the subpoena duces tecum.

SECTION 61 Obligation to Comply with Subpoena

(a) General.

A person is obliged to attend a parole revocation hearing as a witness pursuant to a subpoena or a subpoena duces tecum if the hearing is being held on the island of the person's residence. If the hearing is not being held on the island of the person's residence, then the person can be required to attend the hearing telephonically.

(b) Custodian of Records.

(1) General.

The custodian of records may, upon receiving a subpoena duces tecum, mail a true, legible, and durable copy of all the records described in the subpoena duces tecum. The records shall be accompanied by the affidavit of the custodian.

(2) Affidavit of Custodian.

The affidavit shall state that the affiant is the custodian of the records and is authorized to certify the records; that the copy is a true copy of the records described in the subpoena duces tecum; and that the records were prepared in the ordinary course of business. If the custodian has none or only part of the records described in the subpoena duces tecum, the custodian shall mail the affidavit and the available records.

(3) Attendance Required.

The custodian of records shall attend the hearing and produce original records only when the subpoena duces tecum contains a clause to that effect.

(c) Failure to Comply.

If a witness fails to comply with a subpoena or a subpoena duces tecum, the Board may petition the Superior Court for an order compelling compliance and for costs incurred by the Board in scheduling a new hearing. All subpoenas issued pursuant to these rules shall warn the persons being subpoenaed that the failure to comply will result in an order of compliance and an order to pay the costs incurred by the Board of Parole in scheduling a new hearing.

SECTION 62 Quashing a Subpoena

(a) General.

The Chair of the Board of Parole, upon request timely and reasonably made, may quash a subpoena or subpoena duces tecum entirely, modify it, or direct compliance with it upon terms or conditions. The request to quash shall be made to the Chair of the Board of Parole and shall include specific reasons for the request.

(b) Criteria.

The Chair of the Board of Parole shall consider the objections to a subpoena or a subpoena duces tecum in light of all available information. The guiding principles shall be to protect witnesses from unreasonable and oppressive demands and to ensure their safety.

Part 1100 - Administration

SECTION 63 Chair of the Board of Parole

- (a) The Chair of the Board of Parole may delegate any of his or her duties to any other member of the Board of Parole. Whenever such delegation is made, the members of the Board of Parole and the Chief Parole Officer shall be notified.
- (b) If the Chair has not delegated his or her authority and the Chair is incapacitated or cannot be contacted by the Chief Parole Officer, then the Chief Parole Officer may ask any member of the Board of Parole to perform any function normally reserved to the Chair.
- (c) In an emergency, the Chief Parole Officer may ask any member of the Board of Parole to perform any function normally reserved to the Chair.
- (d) If the Chief Parole Officer is unable to contact any member of the Board of Parole, then the Chief Parole Officer may take any action normally reserved to the Chair or a member of the Board of Parole. The Chief Parole Officer shall make a record of the emergency and the reasons for his or her actions. Any actions taken under this subsection must be reviewed by the Chair or a member of the Board of Parole within ten days of reestablishing contact. Upon review, the decisions by the Chief Parole Officer may be affirmed or reversed.

SECTION 64 Chief Parole Officer

The Chief Parole Officer is the senior parole officer and is required to manage and direct staff to accomplish the mandate of the Board of Parole. If necessary, the Chief Parole Officer may delegate any duty or function required of him or her by these regulations. If the Chief Parole Officer is incapacitated or cannot be contacted, then the Chair shall nominate a parole officer to fulfill the duties and functions of the Chief Parole Officer until the Chief Parole Officer is able to resume his or her position.

SECTION 65 Voting

- (a) Any Board member, the Chief Parole Officer, or Commonwealth resident, may place a topic for discussion and possible vote on the meeting agenda.
- (b) All votes not related to the grant or denial of parole shall be carried by a majority vote.
- (c) A minimum of four Board members must concur to grant or revoke parole. If there are less than four members capable of voting at a parole hearing, then the parole hearing will be continued to the next available hearing date.
- (d) Five Board members shall constitute a quorum.

SECTION 66 Attorney for the Board of Parole

The Attorney for the Board of Parole shall assist in hearings, the creation of forms or other legal documents, offer relevant advice, interpret the law, and perform any duties assigned to him or her by the Board of Parole or the Chief Parole Officer. The Chief Parole Officer or any Board

member may ask the Attorney for the Board to research a matter of law relevant to the Board of Parole.

Part 1200 – Clemency

SECTION 67 Authority

The Board of Parole is required by the Commonwealth Constitution and by Commonwealth law to participate in any reprieve, commutation, or pardon granted by the Governor of the Commonwealth. The Board shall, upon request of the Governor, consider and make nonbinding recommendations concerning all requests for clemency. Such recommendations shall be made pursuant to the procedures in in this part.

SECTION 68 Definitions

- (a) Absolute Pardon. A pardon that releases a person from punishment and restores the offender's civil rights without qualification.
- (b) Clemency. The power of the Governor to issue a pardon, reprieve, or commutation.
- (c) Commutation. The substitution in a particular case of a less severe punishment for a more severe one that that has already been judicially imposed on a person.
- (d) Conditional Pardon. A pardon that does not become effective until the person satisfies a prerequisite or that will be revoked upon the occurrence of some specified act.
- (e) Pardon. The act or instance of officially nullifying punishment or other legal consequences of a crime.
- (f) Partial Pardon. A pardon that exonerates the offender from some but not all of the punishment or legal consequences of a crime.

SECTION 69 Notice

The Board of Parole shall attempt to provide notice to all interested parties in accordance with SECTION 4. The Board of Parole shall, subject to budgetary restraints, advertise any clemency hearing in at least one newspaper of public circulation in the Commonwealth.

SECTION 70 Procedure

- (a) A request for a clemency must be directed to the Office of the Governor. If the Board of Parole receives a request for clemency, then the Chief Parole Officer will forward the request to the Office of the Governor.
- (b) If the Governor is considering a grant of clemency to a person, then the Office of the Governor shall issue a request to the Board of Parole to provide any information known to the Board of Parole regarding the criminal record of the person. The Office of the Governor must issue a similar request to the Office of the Attorney General and the Department of Public Safety.

- (c) Upon receipt of the request from the Office of the Governor, the Board of Parole will provide a complete summary of the person's criminal record within fourteen calendar days. The Board of Parole may supplement the criminal history with any other information that it deems relevant to the request, such as:
- (1) A detailed legal analysis of the person's criminal case and sentence;
 - (2) Any information tending to show that the person has or has not taken responsibility for his or her actions;
 - (3) A copy of the person's record of behavior while incarcerated at the Department of Corrections; and
 - (4) Any other relevant information possessed by the Board of Parole.
- (d) After reviewing information and the clemency request, the Governor may choose to grant or deny clemency to the person. If the Governor wishes to grant clemency, then the Office of the Governor must inform the Board of Parole in writing.
- (e) If the Board of Parole receives written notice of intent to grant clemency from the Office of the Governor, then the Board of Parole must schedule and hold a hearing within thirty days.
- (f) The Governor must attend the hearing and must consult with the Board of Parole on his or her intention to grant clemency.
- (g) The clemency hearing must be open to the public.
- (h) Any interested person may submit data, views, or arguments in writing, on the clemency request. Within reasonable time limitations, any person may present oral testimony for or against the clemency request. If time is limited, then the Board shall utilize the procedure in SECTION 4 for determining who may speak and for how long.
- (i) At the conclusion of the hearing, the Board of Parole must vote on whether to support or object to the issuance of clemency. A majority of the voting members will be required to support or object to the issuance of clemency. The failure of the Board to reach a majority vote will mean that the Board takes no position on the issuance of clemency.
- (j) The Governor may choose to grant or deny clemency regardless of the position taken by the Board of Parole. The purpose of this procedure is to advise the Governor and assist him or her to reach a decision that is in the best interests of the Commonwealth.



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PUBLIC NOTICE

OF THE PROPOSED REPEAL AND REENACTMENT OF NORTHERN MARIANAS HOUSING CORPORATION (NMHC) HOMEOWNERSHIP INVESTMENT PARTNERSHIPS (HOME) PROGRAM POLICIES AND PROCEDURES FOR HOMEBUYER ACTIVITIES AND HOMEOWNER REHABILITATION

INTENDED ACTION TO ADOPT PROPOSED REENACTMENT OF NMHC HOMEOWNERSHIP INVESTMENT PARTNERSHIPS (HOME) PROGRAM POLICIES AND PROCEDURES FOR HOMEBUYER ACTIVITIES AND HOMEOWNER REHABILITATION: The Board of Directors ("Board") of NMHC intends to repeal and reenact the NMHC Homeownership Investment Partnerships (Home) Program Policies and Procedures for Homebuyer Activities and Homeowner Rehabilitation, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a) and applicable regulations. The proposed reenactment of the NMHC Homeownership Investment Partnerships (Home) Program Policies and Procedures for Homebuyer Activities and Homeowner Rehabilitation would become effective 10 days after compliance with 1 CMC §§ 9102, 9104(a), and 9105(b)).

AUTHORITY: The Board, through its Chairperson, is authorized to promulgate the Repeal and Reenactment of the NMHC Homeownership Investment Partnerships (Home) Program Policies and Procedures for Homebuyer Activities and Homeowner Rehabilitation pursuant to 2 CMC § 4433(i).

THE TERMS AND SUBSTANCE: NMHC seeks to repeal the current Homeownership Investment Partnerships (Home) Program Policies and Procedures for Homebuyer Activities and Homeowner Rehabilitation, which were published in the Commonwealth Register, Volume 31, Number 07, July 23, 2009, pages 029660 to 029739. NMHC originally published the existing Homeownership Investment Partnerships (Home) Program Policies and Procedures for Homebuyer Activities and Homeowner Rehabilitation to establish policies for carrying out the NMHC's homeowner/homebuyer program in providing loans and direct grants to eligible families for the purchase, construction, rehabilitation and repair of their principal homes in a manner consistent with funding source requirements of the United States Department of Housing and Urban Development (HUD) and local objectives. The proposed reenactments contain substantive revisions and additions to the existing policies and procedures, which also includes the NMHC Board of Directors' adoption of the same. The purpose is to provide guidelines for NMHC in fulfilling certain Home Program requirements and aid NMHC improve affordable housing choices, and promote self-sufficiency and asset development of assisted households.

CITATION OF RELATED AND/OR AFFECTED STATUTES, RULES AND REGULATIONS: The proposed repeal and reenactment was formulated to replace the existing NMHC Homeownership Investment Partnerships (Home) Program Policies and Procedures for Homebuyer Activities and Homeowner Rehabilitation as affected through Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, and 24 CFR Part 92.

DIRECTIONS FOR FILING AND PUBLICATION: The proposed repeal and reenactment of the NMHC Homeownership Investment Partnerships (Home) Program Policies and Procedures for Homebuyer Activities and Homeowner Rehabilitation shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1) and posted in convenient places in the Civic Center and in local government offices in each senatorial district, both in English and in the principal vernacular of both Chamorro and Carolinian. (1 CMC § 9104(a)(1).

TO PROVIDE COMMENTS: Send or deliver your comments to Jesse S. Palacios, Corporate Director, NMHC to the following address, fax or email address, with the subject line "Proposed Repeal and Reenactment of the NMHC Homeownership Investment Partnerships (Home) Program Policies and Procedures for Homebuyer Activities and Homeowner Rehabilitation."

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Comments are due within 30 days from the date of publication of this notice. Please submit your supporting data, views and arguments. (1 CMC § 9104(a)(2))

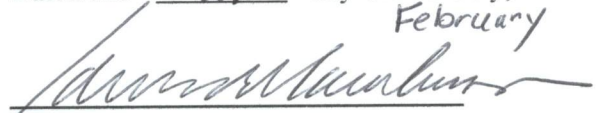
Submitted by: 
Tom Glenn A. Quitugua
Acting Chairman
Date: 02/25/15

Received by: 
Esther Fleming
Special Assistant for Administration
Date: 2/27/15

Filed and Recorded by: 
Esther M. S.N. Nesbitt
Commonwealth Register
Date: 02.27.15

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC §9104(a)(3) (obtaining AG approval) the proposed reenactment of NMHC Homeownership Investment Partnerships (Home) Program Policies and Procedures for Homebuyer Activities and Homeowner Rehabilitation, attached hereto has been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published pursuant to, 1 CMC § 2153(f) (publication of rules and regulations).

Dated this 27th day of ~~February~~^{March}, 2015.
February



EDWARD MANIBUSAN
Attorney General



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GI MAPROPONI NA REPEAL YAN REENACTMENT GI NORTHERN MARIANAS HOUSING CORPORATION (NMHC) HOMEOWNERSHIP INVESTMENT PARTNERSHIPS (HOME) NA AREKLUN PRUGRĀMA SIHA YAN MANERA SIHA PARA I HOMEBUYER ACTIVITIES YAN HOMEOWNER REHABILITATION

I AKSION NI MA'INTENSIONA NA PARA U MA'ADĀPTA I MAPROPONI NA REENACTMENT GI NMHC HOMEOWNERSHIP INVESTMENT PARTNERSHIPS (HOME) NA AREKLUN PRUGRĀMA SIHA YAN MANERA SIHA PARA I HOMEBUYER ACTIVITIES YAN HOMEOWNER REHABILITATION: I Kuetpun Direktot siha ("Board") gi NMHC ha intensiona para u repeal yan reenact i NMHC Homeownership Investment Partnerships (Home) na Areklun PrugrĀma siha yan Manera siha para I Homebuyer Activities yan Homeowner Rehabilitation, sigun gi manera siha gi Āktun Administrative Procedure, 1 CMC § 9104(a) yan i aplikāpbli na regulasion siha. I maproponi na reenactment gi NMHC Homeownership Investment Partnerships (Home) na Areklun PrugrĀma siha para u ifektibu gi halum dies(10) dihas na tiempu dispues di compliance yan i CMC §§ 9102, 9104(a), yan i 9105(b)).

ĀTURIDĀT: I Kuetpu, ginin i Kabiseyu-ña, ma'aturisa para u chogui i Repeal yan Reenactment gi NMHC Homeownership (Home) na Areklun PrugrĀma siha yan Manera siha para I Homebuyer Activities yan Homeowner Rehabilitation sigun gi 2 CMC § 4433(i).

I TEMA YAN SUSTĀNSIAN I PALĀBRA SIHA: I NMHC ha aligĀo para i repeal i presenti na Homeownership Investment Partnerships (Home) na Areklun PrugrĀma siha yan Manera siha para I Homebuyer Activities yan I Homeowner Rehabilitation, ni mapublika gi halum Rehistran Commonwealth, Baluma 31, Numiru 07, gi Hului 23, 2009, pĀhina 029660 asta i 029739. I NMHC ha pupblika I oriyinĀt I presenti na Homeownership Investment Partnerships (Home) na Areklun PrugrĀma siha yan Manera para I Homebuyer Activities yan I homeowner Rehabilitation ni para u istapblesi I areklu siha ni para u chuli' huyung I NMHC's homeowner/homebuyer na prugrĀma ni prinibeniniyi loans yan direct grants ni para u fangkualifikĀo I familia siha ni para u fanmamĀhan, construction, rehabilitation yan repair i prinsipĀt na gima'-ñiha gi manera ni kinensisti yan i funding source ni dinimĀnda siha ni United States Department of Housing yan Urban Development (HUD) yan I local objectives. I maproponi na reenactment ha sasahguan I substantive revisions yan inaomenta siha gi para i presenti na areklu yan manera siha, ni ingklusu lokaui' i NMHC Board of Directors' gi parehu na adĀptasion. I hinangai i para u pribeniya giniha siha para i NMHC gi anai u makumpli i pumalu na Home Program na dinimĀnda siha yan u ayuda i NMHC uma'adilĀnta i affordable housing choices, yan u promote i self-sufficiency yan i asset development gi inasistensian households.

SITASION GI MANA'ACHULI' YAN/PAT MANAFEKTA NA ESTATUA, AREKLAMENTU YAN REGULASION

SIHA: I manmaproponi na repeal yan reenactment mafotma para u tinahgui i presenti na NMHC Homeownership Investment Partnerships (Home) na Areklun Prugrâma yan Manera siha para I Homebuyer Activities yan Homeowner Rehabilitation kumu inafekta kontra I Titulu II gi Cranston-Gonzales National Affordable Housing na Åktu gi 1990, kumu ma'amenda, yan I 24 CFR Pãtti 92.

DIREKSION SIHA PARA U MAPO'LU YAN PUPBLIKASION: I maproponi na repeal yan reenactment i NMHC Homeownership Investment Partnerships (Home) na Areklun Prugrâma siha yan Manera siha para i HomebuyerActivities yan Homeowner Rehabilitation debi na u mapublika gi Rehistran Commonwealth gi halum i seksiona gi maproponi yan nuebu na ma'adãpta na regulasion siha (1 CMC § 9102(a)(1) yan u mapega gi halum i mangkumbinienti na lugãt gi halum i Civic Center yan i halum ufisinan gubietnamentu siha gi kada distritun senadot, parehu English yan i dos na linguãhi Chamorro yan Refaluwasch. (1 CMC § 9104(a)(1).

PARA U MAPRIBENIYI OPIÑON SIHA: Na'hãnão para intrega i opiñon-mu siha guatu gi as Jesse S. Palacios, Corporate Director, NMHC gi sigienti na address, fax, pat email address, yan i rãyan suhetu "Maproponi na Repeal yan Reenactment i NMHC Homeownership Investment Partnerships (Home) na Areklun Prugrâma yan Manera siha para i Homebuyer Activities yan i Homeowner Rehabilitation."

NORTHERN MARIANAS HOUSING CORPORATION

P.O. Box 500514

Saipan, MP 96950

Numirun Tilifon: 234-6866/234-9447, 234-7689 Fax: 234-9021

Email Address: jspalacios@nmhc.gov.net

Todu opiñon debi na u fanhãlum trenta (30) dihas ginin i fetchan pupublikasion esti na nutisia. Put fabot na'hãlum i supottasion opiñon, imfotmasion yan kuntestasion siha. (1 CMC § 9104(a) (2))

Nina'hãlum as:


Tom Glenn A. Quitugua
Acting Chairman

02/19/15
Fetcha

Rinisibi as:


ESTHER S. FLEMING
Espisiãt Na Ayudãnti Para I Atministrasion

2/27/15
Fetcha

Pine'lu yan
Ninota as:


ESTHER SN. NESBITT
Rehistran Commonwealth

02.27.15
Fetcha

1

Sigun i 1 CMC § 2153(e) (Inaprueba Abugådu Heneråt i regulasion siha na para u macho'gui kumu fotma) yan 1 CMC § 9104(a)(3) (inahehenta ni inapruedan Abugådu Heneråt) i manmaproponi na reenactment i NMHC Homeownership Investment Partnerships (Home) na Areklun Prugråma siha yan Manera para i Homebuyer Activities yan Homeowner Rehabilitation, ni chechettun guini ni maribisa yan ma'aprueba kumu para fotma yan sufisienti ligåt ginin i CNMI Abugådu Heneråt yan debi na u mapupblika sigun gi , 1 CMC § 2153(f) (pupplikasion areklamentu yan regulasion siha).

Mafetcha esti gi diha 27 di Fibreru, 2015.



EDWARD MANIBUSAN
Abugådu Heneråt

2



 **NMHC**
EQUAL HOUSING OPPORTUNITY

NORTHERN MARIANAS HOUSING CORPORATION

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ARONGORONGOL TOULAP

REL POMWOL AYÚGHÚLÓ ME RE BWE FFÉERI SEFÁÁLIY REL ALLÉGHÚL ME MWÓGHUTÚGHÚTÚL NORTHERN MARIANAS HOUSING CORPORATION (NMHC) HOMEOWNERSHIP INVESTMENT PARTNERSHIP (HOME) PROGRAM NGÁLI HOMEBUYERS ACTIVITIES ME HOMEOWNER REHABILITATION

**MÁNGEMÁNGIL MWÓGHUT YEEL BWE EBWE ADAPTÁÁLI POMWOL EBWE FFÉER SEFÁÁL
ALLÉGHÚL ME MWÓGHUTÚGHÚTÚL NMHC HOMEOWNERS INVESTMENT PARTNERSHIPS (HOME)
PROGRAM NGÁLI HOMEBUYERS ACTIVITIES ME HOMEOWNERREHIBITATION:** Sáangi pomwol Board
of Directors (Aboard@) nge re mángemángil re bwe ayúghúóló me re bwe fféeri sefááliy alléghúl me
mwóghutúghútúl NMHC Homeownerships Investment Partnerships (HOME) Program ngáli Homebuyer
Activities me Homeowner Rehabilitation sáangi mwóghutúghútúl Administrative Procedure Act 1 CMC §
9104(a) me mille a ffil bwe allégh. Pomwol rel re bwe fféeri sefááliy rel NMHC Homeownership
Investment Partnerships (HOME) Program alléghúl me mwóghutúghútúl ngáli Homebuyer Activities me
Homeowner Rehabilitation nge e bwe bwungúló llól seigh (10) ráll mwiril igha re palúweli
1 CMC §§ 9102, 9104(a), me 9105(b)).

BWÁNGIL: Rel Board, Sáangi Chairperson e yoor bwángil bwe e bwe arongowoow rel ayúghúólól me igha
e bwe fféer sefáál alléghúl me mwóghutúghúghútúl NMHC Homeownership Investment Partnerships
(HOME) Program ngáli Homebuyer Activities me Homeowner Rehabilitation sáangi 2 CMC § 4433(i).

KKAPASAL ME AWEWEEL: NMHC eghal tittingór bwe rebwe ayúghúóló fassúl Alléghúl me
Mwóghutúghútúl Homeownerships Investment Partnerships (HOME) Program ngáli Homebuyer
Activities me Homeowner Rehabilitation, kkewe ra appaasch llong rel Commonwealth Register, Volume
31, Number 07, wól July 23, 2009, peigh 029660 mwetengáli 029739. NMHC e bwal arongowoow mille e
llo bwe Alléghúl me mwóghutúghútúl Homeowner Investment Partnerships (HOME) Program, ngáli
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mwóghutúghútúl NMHC=s homeowner/hombuyer program igha re bwe ghal iisisiwoow Loans me
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aghatchú iimweer rel aweewel mwóghutúghútúl rel selaapiyal sáangi United States Department of
Housing me Urban Development (HUD) me Local Objectives. Pommol reenactments nge eyoor ghooghol
kkapasal igha re amweeri fischiiy me millikka e appaasch llong rel allégh me mwóghutúghút, ikka e bwal
aschuullong rel NMHC Board of Directors= e bwal aweewe rel igha re adaptáánil. Rel mwóghutúghúl igha
re ayoora ngáli guidelines rel NMHC rel re bwe attakka millikka mwóghutúghútúl Home Program me
alillisil NMHC rel aghaghatchúl iimw kka e mmwel re bwe affiliy ghatchúw akkaméél, me re bwe ayoora
alillisil self-sufficiency me asset development rel assisted households.

COMMONWEALTH REGISTER VOLUME 37 NUMBER 02 FEBRUARY 28, 2015 PAGE 036126

“NMHC is a fair housing agency and an equal opportunity, lender and employer”

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CITATION KKA AWEWEL ME/NGÁRE STATUTES, ALLÉGH ME ATIWLIGH KKA EBWE

AFFEKKTÁÁLIL: Pomw kka ebwe ayúghúló me e bwe fféer sefáál bwele e bwe liwillil millikka e fassil llo bwe Alléghúl me Mwóghutúghútúl NMHC Homeownership Investment Partnerships (HOME) Program, ngáli Homebuyer Activities me Homeowner Rehabilitation igha e afektaay sáangi Title II rel Cranston-Gonzales National Affordable Housing Act of 1990, igha re ameendááli, me 24CFR Part 92.

AFALAFAL REEL AMWELIL ME ARONGOWOWUL: Pomwol igha ebwe ayúghúúló me ebwe fféer sefáál alléghúl me mwóghutúghútúl NMHC Homeownerhip Investment Partnerships (HOME) Program ngáli Homeowner Activities me Rehabilitation igha e bwe arongowoow rel Commonwealth Register leyil táil mwóghutúghútúl rel pommol me mill ffé kka re adaptááli (1 CMC § 9102(a)(1) me e bwe appaasch llól sááobw kka ello Civic Center me bwal llól bwullasiyol gobetnamento kka llól Senatorial District rel English, Remeraalis me mwááliyash. (1 CMC § 9104(a)(1).

ATTOTOOLONGOL MÁNGEMÁNG: Afanga ngáre bwughiló yóómw mángemáng rel Jesse S. Palacios, Corporate Director, NMHC ngáli address, fax me email address nge ebwe ittitiw wól subject line *“Proposed Repeal and Reenactment of the NMHC Homeownership Investment Partnerships (HOME) Program Policies and Procedures for Homebuyer Activities and Homeowner Rehabilitation”*.

NORTHERN MARIANA HOUSING CORPORATION

P.O. Box 500514

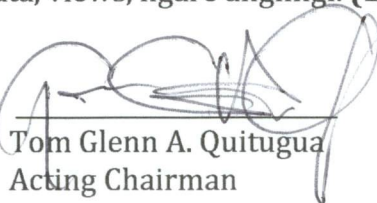
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Email Address: jspalacios@nmhc.gov.net

Isiisilongol mángemáng nge ebwe llól 30 ráll sáangi al toowow arongorong yeel. Isáliilong yóómw supporting data, views, ngáre angiingi. **(1 CMC § 9104(a)(2))**.

Isáliiyallong:


Tom Glenn A. Quitugua
Acting Chairman

02/19/15
Ráll

Aramas ye:

E bwughi


Esther S. Fleming
Special Assistant for Administration

2/27/15
Ráll

File me

Rekoodliiyal:


Esther SN. Nesbitt
Commonwealth Register

02.27.15
Ráll

Sáangi 1 CMC § 2153(e) (Allégh kkaal ebwe llégh ló sáangi AG bwe e fil reel fféerúl) me 1 CMC § 9104 (a)(3) (mwiir sáangi yaar llégh lló merel AG) rel pommol igha re bwe fféeri sefaáliy Alléghúl me Mwóghutúghútúl Homeownerships Investment Partnerships (HOME) rel Home Buyer Activities me Homeowner Rehabilitation, ie re appasch long bwe ra takkal amwuri fiischiy, me aa lléghló fféerúl me legal sufficiency sáangi CNMI Attorney General me e bwele attootowoow, 1 CMC § 2153(f) (Arongowowul allégh me atiwligh).

Ráánil iye ~~27~~ Febreero, 2015.



EDWARD MANIBUSAN
Sóulemelemil Allégh Lapalap

HOMEOWNERSHIP INVESTMENT PARTNERSHIPS

(HOME) PROGRAM

**POLICIES AND PROCEDURES
FOR
HOMEBUYER ACTIVITIES**

GENERAL PROVISIONS

INTRODUCTION

The Homeownership Investment Partnerships (HOME) Program was established under the National Affordable Housing Act of 1990 (NAHA). The main objectives for the creation of the HOME Program were to encourage, promote, and expand the supply of decent, safe, sanitary, and affordable housing, as well as to increase homeownership opportunities for low- and very low-income families.

Funds will be made available for eligible projects and to eligible beneficiaries through the following forms of financial assistance or subsidy:

- Interest bearing loans or advances
- Non-interest bearing loans or advances
- Deferred loans
- Interest subsidies
- Loan guarantees

Due to the limited availability of HOME funds allocated each Fiscal Year to the Commonwealth of the Northern Mariana Islands (CNMI) from the U.S. Department of Housing and Urban Development (HUD), financial assistance will be limited to qualified low and very low-income homebuyers. 100 percent of HOME funds will be used to assist families with income levels at or below 80 percent of the area median income. These families' income eligibility is based on their annual income. Annual income for this purpose is the gross amount of income anticipated by all adults in a family during the 12 months following the effective date of the determination. The determination of income and allowances as a criteria to qualify these homebuyers shall be guided by 24 CFR Part 5 (Part 5 annual income).

The Northern Marianas Housing Corporation (NMHC), on behalf of the CNMI, has been tasked with the responsibility and administration of the HOME Program for the benefit of low- and very-low income families. NMHC's Mortgage and Credit Division (MCD) will be responsible for the day-to-day administration of HOME Program. Support services will be provided by NMHC's Fiscal Division with respect to disbursement of funds and collection of payments, accounting, and maintenance of financial records. NMHC's Property Manager will provide technical assistance with respect to reasonableness of cost estimates, dwelling unit inspections, and other related matters. Overall, the NMHC Corporate Director will assume ultimate responsibility for the efficient and proper administration of the HOME Program in accordance with federal and local statutory and regulatory requirements.

With these policies and procedures, NMHC will strive to accomplish the following objectives:

1. Provide for the efficient and effective administration of the HOME Program wherein eligible beneficiaries can avail the financial assistance provided for the construction of their principal residence;
2. Foster positive working relationships among NMHC, homebuyers assisted with HOME monies, and Minority and Women-Owned Businesses (MBE/WBE);
3. Enforce NMHC, Building Code, and HUD-prescribed residential building standards; and
4. Preserve and improve the general housing stock of the CNMI.

These policies and procedures shall govern; however, in situations in which these policies and procedures are silent, NMHC may apply its general standard loans policies/ procedures to address these situations in the administration of the HOME Program.

I. PUBLIC ANNOUNCEMENT

A. Publicity

Upon notification from HUD of the approval of additional HOME funds, NMHC shall publish such approval within thirty (30) calendar days from the date of the approval. General information of the HOME Program shall be published in the print media of the widest local circulation and other suitable means available. HOME Program information shall also be posted in public and private bulletin boards where announcements are commonly posted. Loan applications may be submitted after a thirty (30) calendar day period to be stated in the public notice, has expired. **NOTE:** When it is determined that HOME funds have been exhausted, the application intake may be closed until funding is once again available. Those applicants who did not submit their loan applications when HOME funds were available may do so once NMHC is notified by HUD of the availability of funds and after such notice is published.

B. Contents

Program announcements shall inform interested applicants on how and where they may obtain an application and additional information on the type of HOME Program activity being administered in the CNMI. Such announcements shall further contain the following information:

1. Brief overview of the HOME Program;
2. General list of eligible activities available;
3. Amount of funds available;
4. General eligibility requirements to qualify for financial assistance;
5. Homeowner (Rehab)/Homebuyer selection process;
6. Fair Housing Logo and Equal Opportunity language; and
7. Opening date for acceptance of applications.

C. Special Outreach

To ensure that all persons are effectively and adequately informed about the HOME Program and the availability of funds, brochures or HOME Program information notices shall be provided and distributed or posted in the following locations and shall contain the information described in Part I. B. Contents. Brochures and/or HOME Program information notices shall be made available at the following public and private areas:

1. U.S. Post Offices;
2. Major shopping centers;
3. Public Health Centers;
4. Places of worship;
5. Government office buildings;
6. The Nutrition Assistance Program (Food Stamp) office(s); and
7. U.S. Social Security Administration office(s).

II. APPLICATION FORM

A. Formal Application

Applicants may obtain a *Uniform Residential Loan Application* form along with a checklist of required documents in order to complete the application submission. Such application form shall be in accordance with loan applications widely used by financial lending institutions. Those applicants who are initially determined eligible shall be notified to provide additional documents to further process their applications. Proper completion of the formal application and submission of supplemental information shall be in accordance with HOME Program and NMHC loan processing procedures. Loan applications shall be completed and signed by applicant(s) requesting assistance and such signature(s) shall certify to the truth of all statements contained therein. No formal application shall be officially received prior to the completion of the thirty (30) day announcement period

B. SUPPLEMENTAL INFORMATION

Completed applications shall be submitted together with the following supporting information which shall be used solely for the purpose of determining applicant eligibility for financial assistance:

1. Prior year's income tax return and/or W-2 Tax Form;
2. Recent check stubs for the past two (2) months prior to applying for HOME Program financial assistance of all household members that are 18 years old or older;
3. Other forms of documentation of income (i.e., Social Security payments, SSI, Retirement Income, etc.), if any;
4. Proof of land ownership for principal residence;
5. Property map for principal residence;
6. Preliminary Title Report (PTR) showing clear title to property;
7. Savings and checking account(s) information, if any; and
8. Private life insurance policies, if any.

A checklist of the above described supplemental information shall be provided with each formal application obtained. Additional information may be requested if deemed necessary by NMHC to ensure the eligibility of each applicant. NMHC must complete the Borrower's income eligibility within six (6) months.

To substantiate eligibility, supplemental information submitted with each loan application shall be verified in writing, from a reliable third party and such verification shall be considered valid for a period of one hundred eighty (180) calendar days from the date the verification was completed. Prior to verifying any applicant information, NMHC shall obtain written authorization from the applicants.

If a written third party verification is not used, notarized statements or signed affidavits by the applicants shall be an acceptable form of verification, but only in situations where a more acceptable form of verification cannot be obtained.

III. ELIGIBILITY REQUIREMENTS

A. Household Income

Homebuyer(s) must qualify as a low-income household as defined in the HOME Program. Their income eligibility is determined based on their annual income. Combined anticipated gross household income of adults 18 years old or older, must not exceed 80% of the median income for the area (adjusted for family size), as prescribed by HUD (see Table 1). Section 8 (Part 5) annual (gross) income definition is used to calculate annual (gross) income. NMHC will verify their income using source documentation such as wage statements, interest statements, and SSI documents to determine if program applicants are income-eligible.

Table 1

PACIFIC ISLANDS INCOME LIMITS 2014	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
15% of Median Income	6,400	7,350	8,250	9,150	9,900	10,650	11,350	12,100
30% of Median Income	12,850	14,700	16,550	18,350	19,850	21,300	22,800	24,250
50% of Median Income	21,400	24,450	27,500	30,550	33,000	35,450	37,900	40,350
80% of Median Income	34,250	39,150	44,050	48,900	52,850	56,750	60,650	64,550

B. Determination of Repayment Ability

NMHC shall use **forty-percent (40%)** (or most current ratio) of the gross monthly income of both applicant and co-applicant (homebuyers) combined, to determine the amount of available debt-service or repayment ability. Any remaining debt-service or repayment ability after existing monthly obligations (long- and short-term combined) is/are subtracted from the total available debt-service (not to exceed 30% of gross monthly income for loan mortgage payment), shall be used to determine if homebuyers/applicants can afford to repay the entire loan amount needed.

***** On a case-by-case basis, NMHC may provide an exception to exceed the 40% Debt-to-Income Ratio, but not more than 50%, upon NMHC's determination that the applicant(s) can meet repayment responsibilities. This provision is also applicable in determining and providing financial hardship assistance.*****

C. Property Ownership

Interested applicants must provide proof of ownership such as fee simple title to the property. Ownership also includes leases of 40 years or more provided that the applicant must have at least a minimum of thirty (30) years leasehold interest remaining on the property to be improved, or ownership of a condominium.

D. Principal Residence and Annual Recertification

A. Homebuyers/Applicants approved to receive financial assistance must occupy the property as their primary residence immediately upon completion of all HOME-funded activities. Since the CNMI currently does not have street addresses, proof of residency must be verified and recertified on an annual basis through an affidavit signed by the borrower(s). In addition, homebuyers/borrowers must submit copies of utility and/or telephone billing which reflect their names and addresses. An exception to this requirement is granted to those homebuyers/borrowers that do not have utility connection or telephone service prior to application or at the time of annual

recertification but are continually residing at the property as their principal residence. In this case, a completed, signed, and notarized affidavit should suffice. The following stipulations apply for a principal residence:

- a. A deed restriction or covenant running with the land shall incorporate this requirement;
- b. The loan documents between the homeowner and NMHC shall also incorporate this requirement;
- c. Temporary subleases are not allowed; and
- d. Loan default and subsequent foreclosure negates the principal residence limitation.

Annual recertifications shall be required for all HOME-assisted borrowers regardless of the type of assistance provided. This is conducted in order for Homeowners to maintain compliance with the affordability restrictions.

Annual recertifications through field visits may be conducted on a case-by-case basis where the Loan Specialist shall verify the borrower(s) principal residence and, as necessary, to take photos and document the status of the residential unit.

E. Loan Cancellation

NMHC reserves the right to cancel any loan if in its opinion the homebuyer(s)/applicant(s) have not substantially complied with all the terms and conditions herein.

IV. AFFORDABILITY RESTRICTIONS

A. Long Term Affordability

HOME rules require that assisted properties remain affordable for a specific period of time, depending on the level of HOME funds invested in the property and the nature of the activity funded.

- For Interest bearing loans, Non-interest bearing loans, and “Repayable” Deferred loans, the affordability schedule is as follows:

<u>HOME Invested per Unit</u>	<u>Minimum Length of the Affordability</u>
	<u>Period</u>
Less than \$15,000	5 years
\$15,000 - \$40,000	10 years
More than \$40,000	15 years

- For “Forgivable” Deferred Loans, the affordability schedule is as follows:

<u>HOME Invested per Unit</u>	<u>Minimum Length of the Affordability</u>
	<u>Period</u>
Less than \$15,000	10 years
\$15,000 - \$30,000	15 years
More than \$30,000	20 years

The affordability requirements are to be imposed by deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. NMHC may use its right of first refusal, as set forth in the loan documents, to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability.

The affordability restrictions shall be revived according to the original terms if, during

the original affordability period, the owner of record before the termination event, or any entity that includes the former owner or those whom, the former owner has or had family or business ties, obtains an ownership interest in the project or property. If a home purchased with HOME assistance is sold during the affordability period, resale or recapture provisions apply to ensure the continued provision of affordable homeownership. Loan payoffs do not end the affordability period.

B. Right of First Refusal

During the affordability period, the homeowner(s) agrees not to sell or assign the residence hereby purchased to any persons or persons unless and until homeowner(s) proposes to sell same to NMHC, its successors or assigns, on terms consistent with preserving affordability and allows then sixty (60) days time within which to purchase said residence.

C. Resale

If the housing unit designated as an affordable unit does not continue to be the principal residence of the approved homebuyer(s) for the duration of the period of affordability, the housing shall be made available for subsequent purchase only to a purchaser whose family qualifies as a low-income family, meeting the HOME Program definition, and will use the property as the family's principal residence. The remaining resale restrictions will apply to the new buyer. If additional HOME assistance is provided to the new buyer, the period of affordability for the unit starts anew.

Fair Return on Investment. The price at resale must provide the homebuyer(s) a fair return on investment, defined as the homebuyer(s) original investment and any capital improvements, and ensure that the housing unit will remain affordable (may not exceed 95 percent of the median purchase price for that type of single-family housing for the area, as published by HUD, or in accordance with the Final Rule, as determined locally through market analysis) to a reasonable range of low-income homebuyers. "Affordable" is defined as monthly costs for principal, interest, taxes, and insurance (PITI) not

exceeding 40% (or most current repayment ability ratio) of monthly gross income of a buyer household whose income is at or below 80% of the Area Median Income. Should the resale of the property be consummated before the fifth (5th) year into the affordability period, the homebuyer(s) may get his/her/their investment back but not appreciation.

Circumstances Under Which Resale Will Apply. Resale restrictions must be used in cases where deferred loans (forgivable) or grants were provided to the homebuyer(s) in order to subsidize the purchase of the property to cover the downpayment or closing costs. Resale restrictions must be used in pure grant situations. Resale restrictions must be used for properties that received development subsidies only (that is, no direct financial assistance is provided to the homebuyer).

Legal Instrument to Enforce Resale. NMHC must use deed restrictions, land covenants, or other similar legal documents to enforce these resale restrictions.

D. Recapture

NMHC will ensure that it recoups all or a portion of the HOME loan assistance provided to the homebuyer(s), if the housing unit ceases to be the principal residence of the homebuyer(s) for the duration of the period of affordability. All subsidy amounts (in the form of loans) that directly benefited the property owner (i.e., through downpayment and/or closing cost assistance, deferred payment loans, interest rate buy-downs, property discount, etc.) are also subject to recapture. Recapture is capped at what is available out of net proceeds for agreements after November 2004. Net proceeds are defined as the sales price less superior non HOME debt (if any) less closing costs. NMHC will utilize the following recapture options:

- (1) *Recapture entire amount.* NMHC may recapture the entire amount of the loan and/or subsidy from the homebuyer(s) if the sale of the property occurs within halfway into the given affordability period. For example, a homebuyer was approved for a \$50,000 HOME loan to construct a home. The affordability

period is therefore, fifteen (15) years. On the seventh (7th) year, the borrower sells the house for \$60,000. Since the borrower failed to comply with the minimum seven and one half (7.5) years of the fifteen (15) year affordability period, the recaptured amount is \$50,000.

- (2) *Forgiveness.* NMHC may reduce the loan amount and/or subsidy to be recaptured on a pro rata basis for the period the homebuyer(s) has/have owned and occupied the housing unit measured against the required affordability period; however, homebuyer(s) must occupy the housing unit at a minimum of ten (10) years or at least halfway into the affordability period, whichever is greater, in order to qualify for this recapture option. For example, if the HOME subsidy is \$60,000 with 15-year affordability and the owner sells the property in the 12th year of ownership the recapture amount will equal \$12,000. ($\$60,000/15$ years affordability period x 3 years remaining = \$12,000 recapture.)
- (3) *Buyer's recovery of initial investment.* The homebuyer(s) investment (downpayment and capital improvements made by the owner since purchase) may be repaid in full before any HOME funds are recaptured, provided that the homebuyer(s) occupied the housing unit at a minimum of ten (10) years before the sale of the property and the homebuyer's household income level is at or below 50% of the Area Median Income in order to qualify for this recapture option.
- (4) *Shared appreciation.* In the case where net proceeds exceed the amount necessary to repay both the homebuyer(s)' investment and the HOME assistance, the excess proceeds may be shared proportionately (i.e., percentage of investment provided) by both parties.

NOTE: The HOME Interim Rule on November 22, 2004 clarifies that when the recapture requirement is triggered due to a voluntary or involuntary sale during the period of affordability and there are no net proceeds or the net proceeds are insufficient to repay the HOME investment due, NMHC may recapture an amount less than or equal to the net proceeds available.

Circumstances Under Which Recapture Will Apply. Recapture restrictions must be used in cases where interest bearing loans or advances, non-interest bearing loans or advances, deferred loans (repayable), interest subsidies, or loan guarantees were provided to the homebuyer(s) in order to subsidize the purchase of the property to cover the down payment or closing costs.

Legal Instrument to Enforce Recapture. NMHC must use deed restrictions, land covenants, or other similar legal documents to enforce these recapture restrictions.

V. ELIGIBLE HOMEBUYER COSTS:

Hard Costs include:

- Acquisition of land and existing structures
- Site preparation or improvement, including demolition
- Securing buildings
- Construction materials and labor

Soft Costs include:

- Financing fees
- Credit reports
- Title binders and insurance
- Recordation fees
- Legal & accounting fees
- Appraisals
- Architectural/engineering fees, including specifications and job progress inspections
- Environmental investigations

- Builders' or developers' fees
- Affirmative marketing and marketing costs
- Homebuyer counseling provided to purchasers of HOME-assisted housing
- Management fees
- Direct project costs incurred by the PJ

Relocation Costs include:

- Replacement housing, moving costs, and out-of-pocket expenses
- Advisory services
- Staff and overhead related to relocation assistance and services

NMHC shall set aside \$1,508.50 (more or less, depending on current costs) of its Administrative Funds to assist each qualified homebuyer client whose total income is at or below 50% of the Area Median Income (AMI), to pay for certain Loan Closing fees and other related costs such as the following:

- a. \$400.00 Initial Utility Connection;
- b. \$400.00 First Annual Premium for Hazard Insurance;
- c. \$450.00 Appraisal Report, the fee is covered for approved "New Construction" loans only;
- d. \$150.00 Recordation of Mortgage Documents;
- e. \$100.00 Preliminary Title Report (PTR), the fee is covered for approved "New Construction" loans only;

f. \$8.50 Credit Report @ \$4.25 each.

\$1,508.50 Total

If the homebuyer(s) opt to have a private inspector perform unit inspection, the first/initial unit inspection fee may be covered by NMHC, subject to any conditions set by NMHC. Any cost associated with any subsequent inspection shall be the responsibility of the homebuyer client(s).

This form of assistance shall not be in any way, a part of the loan amount extended to the client. Borrowers may not be required to pay back any of this amount so long as they are in compliance with the NMHC affordability restrictions. The entire amount shall be immediately due and payable by borrower(s) should NMHC determine that borrower(s) are not in compliance with NMHC affordability restrictions.

VI. NOTIFICATION OF ELIGIBILITY/INELIGIBILITY

A. Eligible Applicants

NMHC shall send written notifications to all applicants determined eligible for financial assistance. Such notification shall be mailed no later than five (5) working days after the determination, and shall contain a listing of additional information to be submitted for completion of loan file. Eligible applicant(s) shall be given thirty (30) calendar days to submit the additional information requested. Applicant(s) that do not submit all pending information before the thirty (30) calendar day deadline, shall have their applications file placed in the inactive files.

B. Ineligible Homebuyers/Applicants

All ineligible applicants shall be notified in writing of their ineligibility. Such notification shall be mailed no later than five (5) working days after the determination of ineligibility and shall include a description/reason of such determination.

VII. LOAN PROCESSING

A. SELECTION

Financial assistance shall be based on available HOME Program funds and such assistance shall be awarded to eligible applicants on a "first-come, first-served" basis. The application will have the date and time stamped when received; however, to be considered received, the application must be completely filled-out and the applicant has submitted all additional information requested by NMHC to perform an eligibility review.

In the event that there are more applicants than available funds, NMHC shall establish and maintain an applicant waiting list. Applicants placed on the waiting list shall be assisted in the event that funds available are not entirely used up or committed by the homebuyers applicants initially awarded financial assistance. Those applicants unable to be assisted with remaining funds shall be given first priority if and when additional funds are available.

B. ADMINISTRATION, APPROVAL, APPEALS PROCESS

Program Administration

The MCD Manager shall be responsible for HOME program implementation and management of related tasks. The MCD Manager shall supervise division staff in loan and grant origination, underwriting and closings under the HOME program.

The MCD Manager shall review each submitted application, ensure all supportive documentation is in place and make any necessary recommendations to the Corporate

Director prior to the Corporate Director making the final decision on the loan or grant application.

Loan Review & Approval

Under the direction of the MCD Manager, a Loan Specialist shall review and verify all applicants' credit, income, assets, liabilities, title reports and any other requested reports and documentation. Upon completion of the review process, the Loan Specialist shall prepare a loan write-up containing his/her recommendations.

The MCD Manager shall review the loan write-up for concurrence before submitting the same to the Corporate Director for a final decision. Final approval or denial of any HOME loan or grant shall be made by the Corporate Director except as follows:

1. If the Corporate Director is off-island or on extended leave at the time the loan or grant is submitted to him/her for a final decision, then the Deputy Corporate Director may make the final decision to approve or deny the HOME loan or grant; or
2. If the Corporate Director and Deputy Corporate Director are both simultaneously off-island or on extended leave at the time the loan or grant is submitted for a final decision, then the Acting Corporate Director may make the final decision to approve or deny the HOME loan or grant.

For purpose of these policies, off-island or extended leave shall be defined as an absence or leave that extends for more than three (3) working days after the loan or grant is submitted to the Corporate Director for his or her final decision.

A written notice of the final decision shall be provided to the applicant and a copy/report of the decision shall be provided to the NMHC Board of Directors for informational purposes.

Loan/Grant Denial Appeals Process

Applicants denied assistance under the HOME Program may appeal the final decision to the NMHC Board of Directors by submitting their appeal in writing to the Corporate

Director within thirty (30) calendar days of the written notice of the final decision.

Any appeal submitted must indicate the basis for the appeal and include any supporting documents. Upon receipt of an appeal, the Corporate Director shall submit the same to the Board of Directors for review and action at the next scheduled Board meeting.

VIII. TERMS AND CONDITIONS OF LOAN

A. Maximum Homebuyer Programs Loan Amount

The maximum HOME funds for new construction or for acquisition shall be based on the lowest responsible bid submitted by the applicant(s), and such bid shall not exceed \$60,000.00 or the most current HUD approved area median purchase price. If using HOME funds for new construction, the property must meet all applicable Federal or local codes and zoning ordinances.

- For NMHC-owned properties, NMHC may sell the property directly to the HOME-approved applicant(s) but only after the property has been publicly auctioned at least three (3) times and resulted in unsuccessful bids.

B. Minimum Homebuyer Programs Loan Amount

The Minimum loan amount shall not be less than \$1,000.00.

C. Interest-Bearing Loans or Advances

These loans are amortizing loans. Repayment is expected on a regular basis, usually monthly, so that over a fixed period of time, all of the principal and interest is repaid. The interest chargeable on any borrowed HOME funds shall be based on income limits as specified below (see Table 2):

- If the applicant(s)' annual household income is between 60.1% and 80% of the HUD Income Limits, a fixed rate of five percent (5%) shall apply throughout the term of the loan.

- If the applicant(s)' annual household income is between 50.1% and 60% of the HUD Income Limits, a fixed rate of four percent (4%) shall apply throughout the term of the loan.
- If the applicant(s)' annual household income is between 30.1% and 50% of the HUD Income Limits, a fixed rate of three percent (3%) shall apply throughout the term of the loan.
- If the applicant(s)' annual household income is at or below 30% of the HUD Income Limits, a fixed rate of two percent (2%) shall apply throughout the term of the loan.
- If the applicant(s)' annual household income is between 15.1% and 30% of the HUD Income Limits, AND is at least 62 years of age or disabled, a fixed rate of one percent (1%) shall apply throughout the term of the loan.

D. Deferred Loans (Forgivable or Repayable)

These loans are not fully amortized. Instead, some, or even all, principal and interest payments are deferred to some point in the future. Deferred payment loans can be forgivable or repayable.

The forgiveness may be forgiven incrementally based on the affordability period. In order to qualify for deferred forgivable loans, the applicant(s)' annual household income must be at or below 15% of the HUD Income Limits AND at a minimum the homebuyer(s)/applicant(s) must be 62 years of age or disabled and unable to be gainfully employed. A disabled family is a family whose head of household, spouse, or sole member is a person with a disability.

Person with a disability:

(1) Means a person who:

(i) Has a disability, as defined in 42 U.S.C. 423;

(ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:

(A) Is expected to be of long-continued and indefinite duration;

(B) Substantially impedes his or her ability to live independently, and

(C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or

(iii) Has a developmental disability as defined in 42 U.S.C. 6001.

(2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome; and

(3) Does not include a person whose disability is based solely on any drug or alcohol dependence.

The applicant's physician must complete the *HOMEBUYER/HOMEOWNER PROGRAM DISABILITY ELIGIBILITY VERIFICATION* to certify the borrower's disability. As appropriate, NMHC shall require a Court Legal Guardianship in cases where the Physician Certification indicates that the applicant is incapacitated or incompetent to enter into a legal and binding agreement such as a mortgage.

TABLE 2

INCOME LIMITS	INTEREST RATE	TYPE OF ASSISTANCE
0% - 15%	0%	DEFERRED LOAN**
15.1 - 30%	1%	INTEREST BEARING LOANS**
0% - 30%	2%	INTEREST BEARING LOAN
30.1% - 50%	3%	INTEREST BEARING LOAN
50.1% - 60%	4%	INTEREST BEARING LOAN
60.1% - 80%	5%	INTEREST BEARING LOAN

****Applies only to qualified elderly or disabled household applicants.**

Full repayment will be required at the sale, transfer, or the property being no longer the principal residence less than halfway into the affordability period. The deferred loan will be structured to begin incremental forgiveness when the homebuyer is more than halfway into the affordability period.

For example, a homebuyer acquires a HOME assisted property that has a HOME subsidy of \$50,000. The affordability period is therefore 20 years. The homebuyer would have to live in the HOME assisted property for ten (10) years before forgiveness will begin. Beginning with the 121st month of the affordability period, NMHC will forgive one (1) percent of principal and interest for each month thereafter that homebuyer principally resides in the HOME assisted property.

Existing homebuyer(s) (a homebuyer that received a HOME interest-bearing loans/advances or non-interest bearing loans/advances) may qualify for a deferral if their annual household income is at or below 15% of the HUD Income Limits AND at some future point in time they have become un-gainfully employed because of a medical condition or because of a career-ending injury.

E. Interest Subsidies

The interest subsidy will be deposited in an interest-bearing account from which monthly subsidies are drawn and paid to a lender along with the homebuyer(s)' monthly payment. Any applicant who is at or below 80% of the HUD Income Limits is eligible for this option.

F. Loan Guarantees

A loan guarantee ensures payment of a loan in case of default. A written promise or agreement is executed between NMHC and the lender to pay the lender a maximum of 20 percent of the total outstanding principal. The timeframe for this guarantee is only up until the given length of affordability period based on the loan guarantee amount.

G. Repayment Period

The maximum repayment term shall not exceed 360 months or the affordability period, whichever is greater, unless the repayment term is amended or revised by the NMHC Board to accommodate requests for relief from borrowers who have been

determined to be able to repay their obligations, with the amended or revised repayment terms not to exceed an additional 60 months.

H. After-Construction Property Value

The projected "after-construction" value of each homebuyer property to be assisted, must not exceed 95% of the current HUD prescribed area median purchase price for the type of housing unit being assisted (single-family unit). NMHC will request for a real estate appraisal from a Federally-certified and licensed Real Estate Appraiser, prior to loan closing. To determine such value, NMHC shall conduct a HUD-approved local market survey where the length of the reporting period will depend on the volume of monthly home sales, and may be justifiably adjusted upwards depending on the nature or extent of any economic/housing crisis.

I. Security

To ensure borrowed HOME funds, NMHC shall secure a mortgage on the property. The mortgage shall be maintained for no less than the term of each approved loan or the affordability period, whichever is greater.

NMHC will execute a written agreement with the homebuyer that will specify the use of HOME funds, description of the project, roles and responsibilities, compliance with affordability period requirements, qualifications for affordable homeowner housing, monitoring, and duration of the agreement.

During the term of the loan, homebuyer shall also be required to maintain, at their expense, property insurance on the mortgaged property for fire, earthquake, typhoon, and flood damage covering the replacement value of all properties at a minimum equal to the loan amount.

NMHC will require the homebuyer to execute and file for record a deed or deeds of

restriction, land covenant or similar legal documents approved by HUD that will assure compliance with the principal residency and affordability period requirements and enforce HOME restrictions.

J. Late Charge

For interest-bearing loans, a fixed one percent (1%) late installment charge of the missed monthly principal and interest (P & I) payment shall be assessed for every monthly payment that is over fifteen (15) calendar days late or past due.

K. Prepayment of Loan

There shall be no prepayment penalties for loans that are "paid-off" prior to the completion of the term of the loan. The affordability period provision is still applicable to loans that are "paid-off."

IX. DISTRESSED HOMEBUYER(S)

Distressed homebuyer(s) are those who are having a difficult time meeting their monthly loan payments due to external circumstances beyond their control. These circumstances include:

- Reduction-In-Force
- Reduction in pay
- Family medical emergency (including death of an immediate family member: parents, siblings, child(ren), spouse, and in-laws)
- Medical condition (including career-ending injury) that causes homebuyer to discontinue employment. The borrower's physician must complete the *HOMEBUYER/HOMEOWNER PROGRAM DISABILITY ELIGIBILITY VERIFICATION* to certify the borrower's medical condition.
- Drastic increase in cost of living (e.g., utility rates, fuel)

- Call of duty (deployment)
- Temporary Relocation

X. TYPES OF ASSISTANCE

NMHC may offer the following types of assistance depending on the circumstances mentioned above:

1. Reduction-In-Force -- Monthly loan payments may be deferred for a period of up to twelve months. Interest and late charges would not accrue. Thereafter, interest rate will be reduced by 50% for a period of up to sixty months. If this approach is still deemed unaffordable, the current term with the new interest rate may be extended and reamortized with an additional sixty months.
2. Reduction in pay -- Interest rate may be reduced by 50% for a period of up to twenty-four months. If this approach is still deemed unaffordable, the current term with the new interest rate may be extended and reamortized with an additional sixty months.
3. Family medical emergency -- Monthly loan payments may be deferred for a period of up to twenty-four months. Interest and late charges would not accrue. The current term may be extended and reamortized with an additional sixty months.
4. Medical condition that causes borrower to discontinue employment -- Principal amount may be forgiven incrementally (based on term). Homebuyer(s) above the 50% HUD income limits may only be required to pay principal or interest (whichever is lower) as his/her monthly payments.
5. Drastic increase in cost of living -- Interest may be waived for a period of up to twenty-four months. If this approach is still deemed unaffordable, the current term may be extended and reamortized with an additional sixty months.

6. Call of duty (deployment) - Monthly loan payments may be deferred for a period of up to twenty-four months. Interest and late charges would not accrue. The current term of the loan may be extended and reamortized with an additional sixty months.

7. Temporary relocation If the borrower must relocate for (a) employment purposes due to the lack of jobs to support the household; (b) educational purposes; or (c) to seek medical treatment, the resale or recapture provisions may be suspended for a period of five (5) years. If, after the 5-year period and the unit is still not the principal place of residence, the resale or recapture provisions will take into effect.

During the period of temporary relocation, the unit will become a HOME rental unit subject to:

"24 CFR 92.252 - Qualification as affordable housing: Rental housing.

The HOME-assisted units in a rental housing project must be occupied only by households that are eligible as low income families and must meet the following requirements to qualify as affordable housing. The affordability requirements also apply to the HOME-assisted non-owner-occupied units in single-family housing purchased with HOME funds in accordance with § 92.254.

(a) Rent limitation. HUD provides the following maximum HOME rent limits. The maximum HOME rents are the lesser of: (1) The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or (2) A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit.

The HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions. . .

(d) Nondiscrimination against rental assistance subsidy holders. The owner cannot refuse to lease HOME-assisted units to a certificate or voucher holder under 24 CFR part 982—Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

(e) **Periods of Affordability.** The HOME-assisted units must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership. They must be imposed by deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

(f) **Subsequent rents during the affordability period.** (1) The maximum HOME rent limits are recalculated on a periodic basis after HUD determines fair market rents and median incomes. HUD then provides the new maximum HOME rent limits to participating jurisdictions. Regardless of changes in fair market rents and in median income over time, the HOME rents for a project are not required to be lower than the HOME rent limits for the project in effect at the time of project commitment. (2) The participating jurisdiction must provide project owners with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits in paragraph (f)(1) of this section) in accordance with the written agreement between the participating jurisdiction and the owner. Owners must annually provide the participating jurisdiction with information on rents and occupancy of HOME-assisted units to demonstrate compliance with this section. (3) Any increase in rents for HOME assisted units is subject to the provisions of outstanding leases, and in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

(g) **Adjustment of HOME rent limits for a particular project.** (1) Changes in fair market rents and in median income over time should be sufficient to maintain the financial viability of a project within the HOME rent limits in this section. (2) HUD may adjust the HOME rent limits for a project, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly.

(h) **Tenant income.** The income of each tenant must be determined initially in accordance with § 92.203(a)(1)(i). In addition, each year during the period of affordability the project owner must re-examine each tenant's annual income in accordance with one of the options in § 92.203 selected by the participating jurisdiction. . . [61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28929, May 28, 1997; 62 FR 44840, Aug. 22, 1997]; and

24 CFR 92.253 Tenant and participant protections.

(a) Lease. The lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.

(b) Prohibited lease terms. The lease may not contain any of the following provisions: (1) Agreement to be sued. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease; (2) Treatment of property. Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law; (3) Excusing owner from responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent; (4) Waiver of notice. Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant; (5) Waiver of legal proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties; (6) Waiver of a jury trial. Agreement by the tenant to waive any right to a trial by jury; (7) Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and (8) Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

(c) Termination of tenancy. An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing; or for other good cause. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy. [61 FR 48750, Sept. 16, 1996, as amended at 67 FR 61756, Oct. 1, 2002]"

8. **Natural Disaster** - Monthly loan payments may be deferred for a period of up to six months in the event of a natural disaster, such as fire, typhoon, earthquake and flood. Final decisions regarding requested deferments shall be made by the Corporate Director. Interest and late charges shall not accrue during deferment. Borrowers may be eligible for a deferment upon written request accompanied by

acceptable evidence of negative impact caused by natural disaster. Further, in order to qualify for a deferment, the Borrower's loan and hazard insurance must be up to date.

9. **Other Hardships** - Any other claimed financial hardship outside of the aforementioned eight listed hardships shall be brought to the Board for review and decision.

In addition, NMHC may offer the two following types of assistance:

- **Penalty Waiver** - Accrued penalty fees for delinquent borrowers may be waived to assist them in making their accounts current.
- **Loan Assumption** - Death of a homebuyer/borrower: Upon the death of the borrower which occurs within the affordability period, the entire unpaid balance of the loan shall be immediately due and payable. Title transfer without sale triggers the HOME resale or recapture agreement enforceable through the restrictive deed or land covenant. The NMHC Board may allow assumption of the loan by the heirs of the borrower if a final decree in the probate of the borrower identifies the heirs and approves distribution to them of the improved property and the loan, and if the heirs themselves would qualify as a new applicant for the loan.

At the sole discretion of the NMHC Board, the loan may be assumed by a legal heir of a deceased borrower(s) of the HOME-assisted unit. This assumption exception is permitted where transfer of title is through the laws of descent provided that the heir is of legal age, meets all HOME Program eligibility requirements and has a full, undivided interest in the real property. The heir will be required to fill out an application and will be subject to credit, income, and asset verification.

Foreclosure Prevention. In situations where a foreclosure is imminent, the NMHC Board may allow a borrower to have a HOME eligible immediate relative (i.e., mother, father, brother, sister, son, daughter) assume the loan, all for the purpose of

preserving the affordability period. The total outstanding balance thereof shall be fully amortized at the original interest rate and terms to produce equal monthly payments. If, however, the HOME eligible immediate relative assuming the loan cannot afford the repayment of the loan at its original rate and terms, the NMHC Board may extend the term up to a period of sixty months. Should this accommodation still prove unaffordable, the property will go through the foreclosure process.

Foreclosure. NMHC may use its right of first refusal, as set forth in the loan documents, written agreement with homebuyer, and restrictive deed or land covenant, to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. Foreclosure triggers the HOME resale or recapture agreement enforceable through the restrictive deed or land covenant.

Foreclosure and Resale. If the HOME assisted property is subject to resale terms, NMHC has two options:

Resale Option 1: NMHC will ensure the sale of the HOME assisted property to another eligible low income homebuyer under the terms of the resale agreement. OR

Resale Option 2: NMHC will repay the full amount of HOME assistance to the CNMI HOME account regardless of the amount collected at foreclosure sale.

Under Resale Option 1, NMHC may provide assistance to the new homebuyer. However, the total amount of the original and any additional HOME assistance may not exceed the maximum per unit subsidy amount.

Foreclosure and Recapture. If the HOME assisted property is subject to recapture terms, NMHC has two options:

Recapture Option 1: NMHC will recapture and pay to the CNMI HOME account the net proceeds from the foreclosure sale of the property in accordance with the recapture terms. OR

Recapture Option 2: NMHC may purchase the HOME assisted property at foreclosure sale and additional HOME funds may be spent. However, the total amount of the original and additional HOME funds spent may not exceed the maximum per unit subsidy amount.

If NMHC forecloses on its own loan, NMHC CANNOT spend any additional HOME funds to acquire the property.

XI. ITEMS NEEDED TO CANCEL FORECLOSURE AND RE-INSTATE ACCOUNT

- In accordance with 2 CMC 4536(a) pay the entire amount then due under the terms of the mortgage other than such portion of principal as would not then be due had no default occurred, and reasonable attorney's fees actually incurred.
- Pay delinquent account current inclusive of one month advance payment.
- Have the homebuyer(s) submit a written proposal on how he/she will maintain the account in good standing.
- Submit paid in full receipt of homebuyer(s)' insurance coverage for fire and earthquake.
- Submit 2-3 recent check stubs and/or verification of benefits.

XII. PERFORMING NEW CONSTRUCTION WORK

A. Contractor Cost Estimates

Homebuyers/Applicants approved for financial assistance shall be responsible for and required to obtain a minimum of three (3) written cost estimates from NMHC-approved

CNMI-licensed contractors. Contractor shall be required to submit cost estimates, and each cost estimate submitted must include, as a minimum, the following information:

1. Bid price, cost breakdown of materials, and labor charges;
2. Schedule for completion of work; and
3. Copy of valid business/contractor license.

B. Selection of Contractor/Contract Award

Upon NMHC's receipt of three (3) contractor proposals, NMHC shall schedule an appointment with the homebuyers/applicants to review bids submitted. Homebuyers/applicants shall be required to select the responsible contractor to perform proposed work. The selection shall be based on the reasonableness of the cost estimate.

C. Notification of Contract Award

Homebuyers/applicants shall be responsible for notifying the selected contractor of the contract award. Such notification shall be in writing and shall be mailed to selected contractor within ten working (10) days after making the selection.

D. Contractor/Homebuyer Agreement Form

Contractors selected to perform work shall prepare an NMHC-prescribed "AIA Construction Contract" (AIA Document No. A107-1997) between Contractor and Homebuyer for Construction of Private House form. Such Agreement shall be completed by the contractor and immediately forwarded to NMHC for review by NMHC Loan Specialists and the Homebuyer(s), prior to executing such Agreement. At a minimum, the Agreement shall include the following:

1. Name of Contractor and Project Owner(s): _____
2. Lot/Tract No. of Project:
3. Description of all work to be performed:
4. U.S. Dollar amount/cost of project:

5. Progress Payment Schedule; and

6. Time of Performance.

E. Pre-Construction Conference

NMHC shall schedule and conduct a Pre-Construction Conference between the homebuyer(s) and selected contractor prior to the execution of the Contract Agreement specified above. The conference shall be conducted to ensure that the homebuyer(s) understand their responsibilities during the construction phase, terms of the contract, the work to be performed by the contractor, and the role of NMHC. An NMHC-prescribed "Pre-construction Conference Report" form shall be signed by the homebuyer(s) and contractor upon completion of such conference.

F. Execution of Contract Agreement

Upon completion of the "Pre-Construction Conference Report" and approved by NMHC as well the execution of all necessary loan documents by the approved homebuyer(s) applicant(s), the Construction Contract may be executed by all necessary parties.

G. Inspections

NMHC shall have the right, during the construction or improvement of the building, to inspect the same and to reject and to require to be replaced, any material or workmanship that does not comply with the plans and specifications, without any liability on the part of NMHC, as to workmanship or materials therein. Such inspection is solely for financing purposes and for the disbursement of funds, and any inspection or approval of any construction phase or increments of said dwelling shall not be deemed as a warranty by NMHC of the workmanship and material therein.

H. Inspector

Progress and final inspections shall be conducted by the Building Safety Office of the Department of Public Works (DPW) to ensure all work performed is done according to

the plans and specifications as approved by the applicant and DPW and applicable property standards. Applicant(s) may have a private inspector, (i.e., a qualified Licensed Engineer or a qualified Licensed Architect), conduct inspection with the costs with such inspection to be handled in accordance with Section V.

I. Minimum Property Standards (MPS)

For new construction of housing and acquisition-rehabilitation of housing, CNMI Building Safety Code and zoning laws (if applicable for Tinian and Rota), International Energy Conservation Code, NMHC written design standards for single-family housing new/rehabilitation, and handicapped accessibility requirements (where applicable) must be adhered to. Homebuyer(s), through their contractors, must ensure that they are familiar with these requirements. PJs using MPS may rely on inspections performed by a qualified person. If using HOME funds solely for acquisition, the property must also meet the minimum property standards mentioned above (or Section 8 HQS if no local codes and standards apply).

The contractor will provide all the construction plans and permits necessary to comply with applicable local and federal laws.

ACRONYMS REFERENCE SECTION

[For Rehab & Homebuyer Policies and Procedures]

AIA - American Institute of Architects
AMI - Area Median Income
CD - Corporate Director
CFR - Code of Federal Regulations
CNMI - Commonwealth of the Northern Mariana Islands
CPSC - Consumer Product Safety Commission
DCD - Deputy Corporate Director
DEQ - Department of Environmental Quality
DPW - Department of Public Works
DTI - Debt-to-Income Ratio
EA - Environmental Assessment
GFE - Good Faith Estimate
HOME Program - U.S. HUD Homeownership Investment Partnerships Program
HQS - Housing Quality Standards
MCD - Mortgage Credit Division
MPS - Minimum Property Standards
MPV - Maximum Property Value
NAHA - National Affordable Housing Act
NEPA - National Environmental Policy Act
NMHC - Northern Marianas Housing Corporation
NTP - Notice to Proceed

PITI - Principal, Interest, Taxes, and Insurance
PJ - Participating Jurisdiction
PTI - Payment-to-Income Ratio
PTR - Preliminary Title Report
RER - Rehab Environmental Review
RESPA - Real Estate Settlement Procedures Act
SCRA - Servicemembers Civil Relief Act
SSI - Supplemental Security Income [Social Security]
TCD - Time Certificates of Deposits
TILA - Truth in Lending Act
U.S. HUD - United States Department of Housing and Urban Development
USDA RD - United States Department of Agriculture Rural Development
USPAP - Uniform Standard of Professional Appraisal Practice
VOE - Verification of Employment

HOMEOWNERSHIP INVESTMENT PARTNERSHIPS

(HOME) PROGRAM

**POLICIES AND PROCEDURES
FOR
HOMEOWNER REHABILITATION**

GENERAL PROVISIONS

INTRODUCTION

The Homeownership Investment Partnerships (HOME) Program was established under the National Affordable Housing Act of 1990. The main objective for the creation of the HOME Program was to encourage, promote, and provide decent, safe, sanitary, and affordable housing.

Due to the limited availability of HOME funds allocated each Fiscal Year to the Commonwealth of the Northern Mariana Islands (CNMI) from the U.S. Department of Housing and Urban Development (HUD), financial assistance will be limited to qualified low-to very low-income homeowners. The Northern Marianas Housing Corporation (NMHC) has recognized three target groups to assist under the HOME Program. Funds will be made available for eligible "Homeowner Rehabilitation" activities through low interest, non-interest bearing loans, and direct grants to assist in the rehabilitation and repair of their principal place of residence. Homeowner Rehabilitation activities include those items identified at the **Initial Inspection** which are necessary in bringing the home in compliance with health and safety housing codes including the reduction of lead-based paint hazards and the remediation of other home health hazards.

The (NMHC), on behalf of the CNMI, has been designated the responsibility of implementing and carrying out the objective of the Program. NMHC's Mortgage and Credit Division (MCD) will be responsible for the day-to-day operation of the HOME Program. Support services will be provided by the NMHC's Fiscal Division with respect to disbursement of and collection of payments, accounting, and maintenance of financial records. Overall, the NMHC Corporate Director will assume ultimate responsibility for the efficient and proper administration of the Program in accordance with statutory and regulatory requirements. Through these policies and procedures, NMHC will strive to accomplish the following Program objectives:

1. Provide for the operation of the HOME Program, the CNMI's primary objective which is to avail financial assistance to eligible homeowners for the rehabilitation and repair of their principal residence;
2. Foster good working relationships among NMHC, homeowners assisted with HOME monies, and Minority and Women-Owned Businesses (MBE/WBE);
and
3. By imposing NMHC and HUD-prescribed residential rehabilitation standards, preserve and improve the general housing stock of the CNMI.

PUBLIC ANNOUNCEMENT

Publicity

Upon notification from HUD of the approval of additional HOME funds, NMHC shall publish such approval within thirty (30) calendar days from the date of the approval. General information of the HOME Program shall be published in the print media of the widest local circulation and other suitable means available. HOME Program information shall also be posted in public and private bulletin boards where announcements are commonly posted. Loan applications may be submitted after a thirty (30) calendar day period to be stated in the public notice, has expired. **NOTE:** When it is determined that HOME funds have been exhausted, the application intake may be closed until funding is once again available. Those applicants who did not submit their loan applications when HOME funds were available may do so once NMHC is notified by HUD of the availability of funds and after such notice is published.

Contents

Program announcements shall inform interested applicants on how and where they may obtain an application and additional information on the type of HOME Program activity being administered in the CNMI. Such announcements shall further contain the following information:

1. Brief overview of the HOME Program;
2. General list of eligible activities available;
3. Amount of funds available;
4. General eligibility requirements to qualify for financial assistance;
5. Homeowner (Rehab)/Homebuyer selection process;
6. Fair Housing Logo and Equal Opportunity language; and
7. Opening date for acceptance of applications.

Special Outreach

To ensure that all persons are effectively and adequately informed about the HOME Program and the availability of funds, brochures or HOME Program information notices shall be provided and distributed or posted in the following locations and shall contain the information described in Part I. B. Contents. Brochures and/or HOME Program information notices shall be made available at the following public and private areas:

1. U.S. Post Offices;
2. Major shopping centers;
3. Public Health Centers;
4. Places of worship;
5. Government office buildings;
6. The Nutrition Assistance Program (Food Stamp) office(s); and
7. U.S. Social Security Administration office(s).

1.0 PURPOSE OF THE PROGRAM

The purpose of the program is to provide no cost or low cost financing assistance to very low and low-income families for the rehabilitation and/or repair of their principal residence. The rehabilitation goal is to increase the economic life of the existing dwelling, provide energy efficiency, and ensure a safe, decent, and healthy living environment for assisted families.

1.1 GENERAL REQUIREMENTS

To qualify for rehabilitation assistance, the applicant(s) must meet the following:

1. Qualify as low-income family as defined under the HOME program.
2. The dwelling must be the applicant's primary residence prior to applying for rehabilitation assistance.
3. Must occupy and continue to occupy residence **after** the completion of such repairs and/or renovation.
4. Own the property under an approved form of ownership as set forth in 24 CFR Part 92 § 92.254(c), and as specified below:
 - a. Has fee simple title to the property
 - b. Maintains a 40-year leasehold interest in the property
 - c. Owns a condominium
 - d. Owns or has a membership in a cooperative or mutual housing project that constitutes homeownership under state law; or
 - e. Maintains an equivalent form of ownership approved by HUD.

Applicants not meeting ANY ONE of the above, do not qualify for assistance under the HOME Rehabilitation Program.

2.0 LOAN SPECIFICATIONS

2.1 LOAN AMOUNT

1. Minimum and Maximum Loans: The minimum loan amount allowable under this program is ONE THOUSAND DOLLARS (\$1,000.00) to a maximum of FORTY THOUSAND DOLLARS (\$40,000.00).
2. HOME Loan funds may not be used for projects that exceed the maximum loan amount. However, in circumstances where the borrower is able to deposit the difference with NMHC before loan closing and he/she is still at or below the debt-to-income ratio, the borrower may still be eligible for assistance.

2.2 TARGET GROUP

- A. Because of the limited funding allocated to the CNMI each program year, NMHC has recognized the need to prioritize the level of assistance to qualified families. In the event that there are more applicants than available funds, NMHC shall establish and maintain an applicant waiting list in where applicants shall be assisted if and when additional funds become available. All applicants being assisted, as well as those placed on the waiting list shall be processed on a first come, first serve basis.
- B. NMHC will categorize the target groups as First Priority, Second Priority, Third Priority, and Fourth Priority. Classification of such groups are as follows:

A. First Priority:

1. Elderly or Disabled families with income between 0%-15% of the area median income. This target group is eligible for grant assistance. Elderly or disabled household applicants may receive 100% grant assistance.

An elderly family is a family whose head of household, spouse, or sole

member is age 62 or older.

A disabled family is a family whose head of household, spouse, or sole member is a person with a disability. Person with a disability:

(1) Means a person who:

(i) Has a disability, as defined in 42 U.S.C. 423;

(ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:

(A) Is expected to be of long-continued and indefinite duration;

(B) Substantially impedes his or her ability to live independently, and

(C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or

(iii) Has a developmental disability as defined in 42 U.S.C. 6001.

(2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome; and

(3) Does not include a person whose disability is based solely on any drug or alcohol dependence.

The applicant's physician must complete the HOMEBUYER/HOMEOWNER PROGRAM DISABILITY ELIGIBILITY VERIFICATION to certify the borrower's disability. As appropriate, NMHC shall require a Court Legal Guardianship in cases where the Physician Certification indicates that the applicant is incapacitated or incompetent to enter into a legal and binding agreement such as a mortgage.

2. A combination of non-interest loan and grant assistance may be provided to very low income non-elderly or non-disabled applicants whose income fall between 0% - 20% provided that the first half of the assistance (or the first \$20,000) will be in the form of a non-interest bearing loan and the next half (or remaining \$20,000) will be in the form of a grant.

- B. Second Priority: Very low-income families with limited financial resources whose income fall between 20.1% - 30% of the HUD Income Limits; a fixed rate of one percent (1%) shall apply throughout the term of the loan.
- C. Third Priority: Low-income families with limited financial resources whose income fall between 30.1% - 50% of the HUD Income Limits; a fixed rate of two percent (2%) shall apply throughout the term of the loan.
- D. Fourth Priority: Low-income families with limited financial resources whose income fall between 50.1% to 80.0% of the HUD Income Limits; a fixed rate of three percent (3%) shall apply throughout the term of the loan.

2.3 INCOME ELIGIBILITY

- A. NMHC shall refer to the *Technical Guide for Determining Income and Allowances for the HOME Program, Third Edition* in verifying the household's assets and income which can be found in the HUD website. The NMHC shall adopt the guide and make use of the Part 5 income and asset calculation worksheets including any and all forms required in determining an applicant's annual and adjusted income. Information provided by the applicant shall be accompanied with proper documentations (i.e., check stubs, bank statements, 1040 tax forms, etc). The anticipated gross annual household income and assets for the next twelve (12) months is used in determining if an applicant(s) is/are eligible to participate in the program. NMHC shall calculate the weekly average income and assets and multiply it by 52 weeks. If the total household income falls within the 80% area median income as indicated on Table 2 below, the applicant(s) is/are eligible to participate in the program. **Anything more than 80% would immediately disqualify them.**

2.4 PROPERTY ELIGIBILITY

- A. Property Ownership: Interested applicant(s) must provide proof of fee simple ownership or must have at least 40 year leasehold interest on the property to be

improved. The applicant must have at least a minimum of 30 years of the leasehold interest remaining on the property to be improved. The assisted unit must be located in the CNMI, more specifically, Saipan, Rota or Tinian.

- B. **Conformance to Property Standards:** All assisted properties that are rehabilitated with HOME Assisted funds must meet the program's established Rehabilitation Standards (see Exhibit 1). The Rehabilitation Standards is the program's guidelines of acceptable construction methods and materials to be used when performing rehabilitation and the quality standards that the property must meet when all rehabilitation work is completed. NMHC shall make the Rehabilitation Standards available to the Department of Public Works (DPW) inspectors and the inspectors shall use it as a guide to certify that completed work was done accordingly.

- C. **Local/State, National, or International Codes.** Upon completion of rehabilitation work, the HOME assisted owner-occupied rehabilitation property must meet applicable state/local, national, or international building codes as adopted by the Commonwealth of Northern Mariana Islands (CNMI) government.

- D. Upon completion of rehabilitation work, the HOME assisted owner-occupied rehabilitation property must meet handicapped accessibility requirements, where applicable; and the homeowner must also maintain, at their own expense, property insurance on the mortgaged property covering fire, earthquake, typhoon, and flood damage.

- E. **Principal Residence and Annual Recertification:** Upon submission of completed HOME Rehab loan application, applicants shall also include a signed and notarized affidavit of proof of residency. HOME Rehab Applicants approved to receive financial assistance must own the property and occupy the property as their principal residence at the time of application, upon completion of the HOME-funded project, and throughout the NMHC affordability period. Since the CNMI currently does not have street addresses, proof of residency must be verified on an annual basis through an affidavit signed by the borrower(s). In addition, homeowners/borrowers must

submit copies of utility and/or telephone billing which reflect their names and addresses. An exception to this requirement is granted to those homeowners/borrowers that do not have utility connection or telephone service prior to application or at the time of annual recertification but are continually residing at the property as their principal residence. In this case, a completed, signed, and notarized affidavit should suffice. The following stipulations apply for a principal residence:

- a. A deed restriction or covenant running with the land shall incorporate this requirement;
- b. The loan documents between the homeowner and NMHC shall also incorporate this requirement;
- c. Temporary subleases are not allowed; and
- d. Loan default and subsequent foreclosure negates the principal residence limitation.

Annual recertifications shall be required for all HOME-assisted borrowers regardless of the type of assistance provided. This is conducted in order for Homeowners to maintain compliance with the affordability restrictions.

Annual recertifications through field visits shall be conducted if required documents are not provided and the Loan Specialist shall verify the borrower(s) principal residence and, as necessary, to take photos and document the status of the residential unit.

- F. **Maximum Property Value:** The projected after rehabilitation value of each assisted property may not exceed ninety-five percent (95%) of the current HUD prescribed area median purchase price for the type of housing unit being assisted (single-family unit). To determine such value, a written appraisal must be obtained by the borrower from an appraiser approved by NMHC. The appraisal report must document the

appraised value and the appraisal approach used.

2.5 INTEREST RATE & TYPE OF ASSISTANCE

- A. The interest rate charged on the outstanding principal balance for each target group is determined by the gross household income which falls in the following percentage of the established Pacific Islands Income Limits. See Table 1 and Table 2 below for more details. *NMHC from time to time may revise the specified interest rates below as it deems beneficial for the administration of the program.*

Table 1

TARGET GROUPS	PACIFIC ISLANDS HOME INCOME LIMITS	INTEREST RATE	TYPE OF ASSISTANCE
FIRST	0% - 15%	0%	100% GRANT*
	0% - 20%	0%	NON-INTEREST LOAN & GRANT**
SECOND	20.1% - 30%	1%	INTEREST BEARING LOAN
THIRD	30.1% - 50%	2%	INTEREST BEARING LOAN
FOURTH	50.1% - 80%	3%	INTEREST BEARING LOAN

* -Applies only to qualified elderly or disabled household applicant(s).

** -Applies to families who fall within the specified area median income group above. Families in this income bracket may be given a grant to supplement the additional funding needed to complete the renovation/rehabilitation of the family's dwelling. Maximum grant amount for applicants in this income bracket shall not be more than \$20,000.00. The first \$20,000.00 shall be in the form of a loan and the next half of the assistance shall be in the form of a grant.

- B. The Area Median Income for the Pacific Islands as established by the U.S. Department of HUD and periodically revised is provided below and referenced as

Table 2. NMHC shall comply with any revisions that the U.S. Congress enacts.

Table 2

PACIFIC ISLANDS INCOME LIMITS 2014	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
15% of Median Income	6,400	7,350	8,250	9,150	9,900	10,650	11,350	12,100
30% of Median Income	12,850	14,700	16,550	18,350	19,850	21,300	22,800	24,250
50% of Median Income	21,400	24,450	27,500	30,550	33,000	35,450	37,900	40,350
80% of Median Income	34,250	39,150	44,050	48,900	52,850	56,750	60,650	64,550

2.6 LOAN TERMS & REPAYMENT

A. Grants: Grants are provided with no requirement or expectation of repayment. Homeowners that receive grants to rehabilitate their principal residence must occupy the assisted unit throughout the NMHC affordability period following completion of the rehabilitation. HOWEVER, should the assisted homeowner(s) decide to vacate, rent out, transfer title, or sell the assisted unit during the NMHC affordability period, the homeowner must repay the grant. See Section 6.0 Affordability Restrictions for an explanation of the affordability restrictions and recapture.

- B. Non-Interest Bearing Loans: The principal amount of loans is paid back on a regular basis over time, but no interest is charged. The repayment term of all non-interest bearing loans shall be twenty (20) years or two hundred forty (240) months and shall be fully amortized to produce equal monthly payments.
- C. Interest-Bearing Loans: These loans are amortizing loans. Repayment is expected on a regular basis so that over a fixed period of time, all the principal and interest is repaid. The repayment term of all interest-bearing loans shall be twenty (20) years or two hundred forty (240) months and shall be fully amortized at either one percent (1%), two percent (2%), or three percent (3%), to produce equal monthly payments. The interest rate is dependent on the applicant's gross household income as specified on Table 1.
- D. Extended Terms: Should a financial hardship beyond the borrower(s)' control exists, a request for an extended loan term may be considered provided that the borrower(s) are able to meet the repayment of their reamortized loan. The borrower(s) must provide NMHC with documentations justifying their inability to meet the loan repayment term while at the same time providing an adequate standard of living for his/her/their family. An extended term must be recommended by the Mortgage Manager and approved by the Corporate Director. All extended terms granted must not exceed a five-year extension term for each request made. The maximum number of times such an extension may be requested by a homeowner is two (2)

Financial Hardship includes, but is not limited to:

1. Reduction-In-Force
2. Reduction in pay
3. Family medical emergency (including death of an immediate family member: parents, siblings, child(ren), spouse, and in-laws)
4. Medical condition (including career-ending injury) that causes homeowner to discontinue employment. The borrower's physician must complete the *HOMEBUYER/HOMEOWNER PROGRAM DISABILITY ELIGIBILITY VERIFICATION* to certify the borrower's medical condition.

5. Drastic increase in cost of living (e.g., utility rates, fuel)
6. Call of duty (deployment)
7. Temporary Relocation

2.7 REPAYMENT ANALYSIS

- A. *Grant*: 100% Grant assistance need not be repaid so long as the homeowner is in compliance with the 10-year principal residency requirement. Provisions in Section 2.6(a) apply to this section as well.
- B. *Non-interest and Interest-Bearing Loans*: Maximum monthly debt service for either type of loan including existing long term obligations, insurance, plus the rehabilitation loan that will be incurred shall not exceed 40% of the gross household income.
- C. The maximum **Debt-to-Income Ratio** shall be not more than 40% (or most current ratio) of the gross household income. The maximum **Payment-to-Income Ratio** of the rehabilitation loan itself shall not be more than 30% (or most current ratio) of the gross household income.

***** On a case-by-case basis, NMHC may provide an exception to exceed the 40% Debt-to-Income Ratio, but not more than 50%, upon NMHC's determination that the applicant(s) can meet repayment responsibilities. This provision is also applicable in determining and providing financial hardship assistance (see Section 9.0).*****

2.8 USE OF LOAN FUNDS

- A. The loan/grant funds will be used to assist existing homeowners to repair, rehabilitate, or reconstruct owner-occupied housing units for the primary purpose of correcting dwelling deficiencies ensuring a safe and healthy living condition, and preserving and extending the physical life of the dwelling. All corrections

shall conform to the applicable state/local, national, or international building codes as adopted by the Commonwealth of the Northern Mariana Islands (CNMI) government, and also ensure that it meets the NMHC HOME Rehabilitation Standards as adopted by the NMHC Board.

Special purpose homeowner repairs such as weatherization, emergency repairs, and handicapped accessibility may only be undertaken within a more comprehensive scope of work that brings the housing unit up to standard.

- B. Rehabilitation - This includes the alteration, improvement or modification of an existing structure. It also includes moving an existing structure to a foundation constructed with HOME funds. Rehabilitation may include adding rooms outside the existing walls of a structure.

Adding a housing unit is considered new construction and is not eligible.

- C. Reconstruction - In many instances, applicant(s) requesting assistance under this program live in substandard homes which are often unsafe and unsanitary. Many of which are termite infested and dilapidated to the point where a complete tearing down of the unit would be most appropriate. Reconstruction refers to rebuilding a structure on the same lot where housing is standing at the time of project commitment. HOME funds may be used to build a new foundation or repair an existing foundation. Reconstruction may take place on the same foundation that the existing structure is on. Reconstruction may take place anywhere on the lot. During reconstruction, the number of rooms per unit may change, but the number of units may not.

- D. Luxury items and improvements are not eligible, including but not limited to: barbecue pits, bathhouses, exterior hot tubs, saunas, whirlpool baths, swimming pools, satellite dishes, tennis courts, carport/garage extension, and dirty kitchens. Any additions or alterations to provide for commercial use are not eligible. An exception for a carport/garage extension may be granted for disabled/elderly applicant(s).

2.9 ELIGIBLE COSTS

A. As defined in 24 CFR Part 92, §92.206(a)(2)-(5), (b), and (d), HOME funds can be used to cover the hard rehabilitation costs necessary to meet required rehabilitation standards and associated "soft costs." HOME funds may be used to pay for property improvements that are considered standard for the area. However, nonessential luxury or cosmetic improvements to the property are not permitted.

1. Hard costs include the following:

- i. Meeting the rehabilitation standards;
- ii. Meeting applicable codes, standards and ordinances;
- iii. Essential Improvements;
- iv. Energy-related improvements;
- v. Lead-based paint hazard reduction;
- vi. Accessibility for disabled persons;
- vii. Repair or replacement of major housing systems;
- viii. Incipient repairs and general property improvements of a non-luxury nature; and
- ix. Site improvements and utility connections.

2. Soft costs include the following:

- i. Financing fees;
- ii. Initial Credit report;

- iii. Preliminary Title Report (PTR) and Lender's Title Policy , if applicable;
- iv. Recordation fees, transaction taxes;
- v. Legal and accounting fees;
- vi. Appraisals;
- vii. Architectural/engineering fees, including specifications and job progress inspections;
- viii. Project costs incurred by the PJ that are directly related to a specific project; and
- ix. Refinancing of secured existing debt if the housing is owner-occupied and refinancing allows the overall costs of borrower to be reduced and the housing is made more affordable.

B. NMHC shall set aside \$1,508.50 (more or less, depending on current costs) of its Administrative Funds to assist each qualified rehab client whose total income is at or below 50% of the Area Median Income (AMI), to pay for the following Loan Closing fees and other related costs. This form of assistance shall not be in any way, a part of the rehab loan amount extended to the client. Borrowers will not be required to pay back any of this amount so long as they are in compliance with NMHC affordability restrictions. The entire amount shall be immediately due and payable by the borrower should NMHC determine that borrower(s) are not in compliance with NMHC affordability restrictions.

- a. \$400.00 Utility Connection;
- b. \$400.00 First Annual Premium for Hazard Insurance;

c.	\$450.00	Appraisal Report;
d.	\$150.00	Recordation of Mortgage Documents;
e.	\$100.00	Preliminary Title Report (PTR);
f.	\$8.50	Credit Report @ \$4.25 each.
<hr/>		
	\$1,508.50	Total

3.0. LOAN APPLICATION PROCESS

3.1 CONFIDENTIALITY

As is NMHC's practice, all applicant information is kept confidential and shall be made available only to borrower(s), borrower(s)' authorized representative, and authorized NMHC personnel.

3.2 DISCRIMINATION PROHIBITED

Under no circumstances shall any of the NMHC Board of Directors, its officers, employees, agents or contractors providing services to the corporation discriminate any applicant or borrower on the basis of race, color, national origin, religion, sex, ancestry, disability or familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18).

3.3 PRE-QUALIFICATION INTERVIEW

A. Before an applicant can be given a formal application, the interviewing Loan Officer must conduct a pre-qualification interview to initially determine an applicant's eligibility for assistance. A *HOME Program Pre-Qualification Interview Worksheet*

shall be completed by the interviewing Loan Specialist.

B. Because the information collected from the applicant during this process may not be accurate, as the Loan Officer may only be relying on "assumed estimates" regarding their employment, debt, and assets, applicants who are initially determined eligible may later be determined ineligible for the program.

3.4 ELIGIBILITY NOTIFICATION

Once the applicant(s) have been pre-qualified and have been later determined eligible for the program, NMHC shall officially notify the applicants in writing of their eligibility. Such notification shall be mailed no later than five (5) working days after the determination, and shall contain a listing of additional information to be submitted for completion of loan file. Eligible applicant(s) shall be given thirty (30) calendar days to submit the additional information requested. Applicant(s) that do not submit all pending information before the thirty (30) calendar day deadline, shall have their applications file placed in the inactive files.

3.5 INELIGIBLE APPLICANTS

All ineligible applicants shall be notified in writing of their ineligibility. Such notification shall be mailed no later than five (5) working days after the determination of ineligibility and shall include a description/reason of such determination.

3.6 INITIAL INSPECTION OF RESIDENCE

Initial inspections shall be conducted by NMHC's Property Manager and in coordination with the Loan Specialist or an NMHC representative to identify and verify deficiencies noted by eligible homeowners/applicants. NMHC personnel conducting the inspections shall note deficiencies in written form and shall obtain pictures of the condition of the unit. Such inspections shall also verify the eligibility and be the basis in estimating the costs of the rehabilitation activities requested and in developing the scope of work for the rehabilitation project. The applicant and the Property Manager, as well as, the responsible Loan Specialist shall work cooperatively to develop the Scope of Work for the project.

The Scope of Work must be an eligible activity as described in Section 2.8 (Use of Loan Funds). The Scope of Work shall be provided to three (3) NMHC approved contractors by the borrower(s) who shall prepare a cost breakdown estimate for the project. The estimates shall then be submitted along with the applicant(s) choice of contractor for the project upon submission of his/her their loan application.

3.7 LEAD-BASED PAINT

- A. The federal government banned lead-based paint from housing in 1978. Deteriorating lead-based paint (peeling, chipping, chalking, cracking, or damaged) is a hazard and needs immediate attention. Before any rehabilitation work is done, homeowners must provide documentation that shows that their homes were built either before or after January 1, 1978. Homes built before the passage of Public Law No. 6-45 or the Building Safety Code of the Commonwealth of the Northern Mariana Islands, must provide an affidavit by the homeowner or contractor attesting to the completion date of the home construction. Homeowners whose homes were completed after Public Law No. 6-45 must provide copies of their building permits as proof that their homes were constructed and completed after January 1, 1978.
- B. For those homes deemed to have been completed before January 1, 1978, they must be checked for lead in one of two ways, or both:
- A paint inspection which shows the lead content of every different type of painted surface in the home;
 - A risk assessment which shows if there are any sources of serious lead exposure (such as peeling paint and lead dust). A risk assessment provides the homeowner the necessary actions to take when addressing these hazards.
- C. Only a trained, certified professional is allowed to check the home for such hazards. Only a certified lead "abatement" contractor is allowed to permanently remove lead hazards. However, if the risk assessment does not reveal any lead-based paint hazards, NMHC will not require the homeowner to conduct any abatement of

hazards.

D. For those homes that were completed before January 1, 1978, the following forms must be completed:

- Lead Hazard Evaluation Notice;
- Notice of Lead Hazard Reduction;
- Relocation Screening Sheet for Projects with Lead Hazard Reduction Activities;
- Protection of Occupants' Belongings and Worksite Preparation for Projects with Lead Hazard Reduction Activities; and
- Property Owner/Rehab Contractor Contract Addendum Reduction of Lead Paint Hazards.

E. The following are required activities to address lead-based paint:

1. Notification

(A) Lead Hazard Information Pamphlet - Occupants, owners, and purchasers must receive the EPA/HUD Consumer Product Safety Commission (CPSC) lead hazard information pamphlet, or an EPA-approved equivalent.

(B) Disclosure -Property owners must provide purchasers and lessees with available information or knowledge regarding the presence of lead-based paint and lead-based paint hazards prior to selling or leasing a residence.

(C) Notice of Lead Hazard Evaluation or Presumption Occupants, owners, and purchasers must be notified of the results of any lead hazard evaluation work or the presumption of lead-based paint or lead hazards.

2. Notice of Lead Hazard Reduction Activity - Occupants, owners, and purchasers

must be notified of the results of any lead hazard reduction work.

3. Lead Hazard Evaluation -Evaluation methods include visual assessments, paint testing, and risk assessments.
4. Lead Hazard Reduction -Reduction methods described include paint stabilization, interim controls, standard treatments, and abatement.

F. The SUMMARY OF LEAD-BASED PAINT REQUIREMENTS BY ACTIVITY chart is also adopted and herein incorporated.

3.8 ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES (24 CFR PART 58)

HOME rehabilitation activities to be undertaken by NMHC are subject to the environmental review requirements at 24 CFR Part 58. CNMI is the responsibility entity and is responsible for ensuring that the environmental review process is satisfied before HOME funds are committed to specific project site.

Rehabilitation of homeowner housing may be categorically excluded per 24 CFR 58.35(a)(3) when the following conditions are met:

- The building is for residential use and has one (1) to four (4) units;
- The density will not increase beyond four (4) units;
- The land use will not change; and
- The footprint of the building will not increase in a floodplain or in a wetland.

Reconstruction of a single family unit in a new location on the same lot is classified as new construction for the purposes of environmental review. Reconstruction of homeowner housing may be categorically excluded per 24 CFR 58.35(4)(i) when it is an individual action (reconstruction only) on a one (1) to four (4) family dwelling.

Homeowner rehabilitation housing categorically excluded per 24 CFR 58.35 is categorically excluded from an environmental assessment (EA) and finding of no significant impact (FONSI) under the National Environmental Policy Act (NEPA) except for extraordinary circumstances. To document compliance with environmental review requirements, CNMI must:

- Complete the Rehab Environmental Review (RER) for the Homeowner Rehabilitation Loan Program; and
- Complete the RER Appendix A when an individual loan or grant application is received before approving any site-specific loan or grant for each structure, document and implement the mitigation of impacts as necessary, and keep all supporting documents in the Environmental Review Record as evidence of compliance.

3.9 HOME REHABILITATION LOAN APPLICATION

A. Applicants determined eligible for assistance will be provided a HOME Rehabilitation Loan Application. A checklist of all required documentation for submission is attached to the loan application. Preliminary Requirements include:

1. Certificate of Title/Deed/Homestead Permit/Lease Agreement
2. Property map and sketch of direction to property
3. 1040 Tax form for the previous tax year
4. HOME Program Eligibility Release Form
5. Last two (2) months worth of pay stubs
6. Verification of Permit Employment
7. Current loan statement or loan payment record
8. Most recent savings account statement (TCD, Bonds, Form Passbook, Money

Market Accounts)

9. The last Six (6) months checking account statement available
 10. Profit Sharing Plan (Bank or Duty Free Employees)
 11. Most recent retirement plan statement
 12. Current Certification of Child Care expenses
 13. Current Certificate of Compliance from Division of Revenue and Tax
 14. Judgments (if any); Divorce Statement and/or Probate Decree
 15. Verification of Medical Expenses (transportation and medication)
 16. Verification of Full-Time Student Status
 17. Business Income Tax Forms for three (3) previous years, if applicable
 18. Most current Financial Statement, if applicable
- B. For further verification purposes, the application shall also be attached with the following documents:
1. Verification of Income from Business
 2. Verification of Social Security Benefits
 3. Verification of Pension and Annuities
 4. Verification of Veterans Administration Benefits
 5. Verification of Public Assistance Income

6. Verification of Child Support Payments
7. Verification of Alimony or Separation Payments
8. Verification of Recurring Cash Contributions
9. Verification of Income from Military Service
10. Verification of Assets on Deposit
11. Verification of Assets Disposed
12. Record of Oral Verification
13. Three (3) cost estimates for the rehabilitation project
14. Current Appraisal by a licensed and Uniform Standard of Professional Appraiser Practice (USPAP) certified Appraiser, if available

3.10 APPLICATION INTAKE & PROCESSING

Upon receipt of the HOME Rehabilitation Loan Application, the Loan Specialist must provide the applicant(s) with a Good Faith Estimate (GFE) Disclosure Statement as required by the Real Estate Settlement Procedures Act (RESPA) of 1974. The GFE discloses all costs and/or fees associated with the processing of such loan request. If the GFE is not provided to the client at the time of their submission of their application, the form must be mailed out within three (3) business days after NMHC's receipt of the loan application. If the application is denied within a three (3) business day period, then NMHC is not obligated to send one out.

3.11 CREDIT HISTORY AND VERIFICATION OF INCOME

As part of determining income eligibility and credit worthiness, the applicant(s) shall provide NMHC with an executed *HOME Program Eligibility Release Form* to conduct a third party verification of the following:

1. Credit Report - The applicant(s) shall provide a written authorization for NMHC to request and obtain a written credit report from a recognized Credit Bureau, more specifically, Equifax. The credit report will be used as a reference in determining the applicant(s) credit worthiness. Poor repayment of credit obligations shall be considered a credit risk and shall be a reason for denial of assistance. On a case by case basis, NMHC may reconsider its decision if the applicant has reestablished his/her credit standing, or if the applicant demonstrates a good faith effort to pay-off or resolve his/her delinquent account(s) or bad debt(s), and shall be required to submit a letter justifying any delinquency and/or bad debt. A nonrefundable credit report fee of at least \$4.25 (or current applicable fee) shall be collected from each applicant.

2. Employment - NMHC shall send the applicant(s) employer(s) a signed Verification of Employment (V.O.E.) form who shall furnish the requested information on the V.O.E.

NMHC may consider job stability as one of the basis in determining loan approval. As such, NMHC, on a case-by-case, may require that an applicant, or one of the applicants, be employed for at least two (2) years before the loan request is submitted to the Corporate Director for approval.

3. Assets, Business Income, and Credit Accounts - The applicant(s) shall provide NMHC with a written authorization to obtain third party verifications whenever applicable. Monthly bank statements from the previous six months for each checking account owned, and the most recent savings account, Time Certificates of Deposits (TCD), and other bank/investment accounts must be provided to NMHC for asset verification purposes. Third party verification from creditors shall also be conducted to determine applicant(s) credit worthiness.

3.12 ADMINISTRATION, APPROVAL, APPEALS PROCESS

A. Program Administration

The MCD Manager shall be responsible for HOME program implementation and management of related tasks. The MCD Manager shall supervise division staff in loan and grant origination, underwriting and closings under the HOME program.

The MCD Manager shall review each submitted application, ensure all supportive documentation is in place and make any necessary recommendations to the Corporate Director prior to the Corporate Director making the final decision on the loan or grant application.

B. Loan Review & Approval

Under the direction of the MCD Manager, a Loan Specialist shall review and verify all applicants' credit, income, assets, liabilities, title reports and any other requested reports and documentation. Upon completion of the review process, the Loan Specialist shall prepare a loan write-up containing his/her recommendations.

The MCD Manager shall review the loan write-up for concurrence before submitting the same to the Corporate Director for a final decision. Final approval or denial of any HOME loan or grant shall be made by the Corporate Director except as follows:

1. If the Corporate Director is off-island or on extended leave at the time the loan or grant is submitted to him/her for a final decision, then the Deputy Corporate Director may make the final decision to approve or deny the HOME loan or grant; or
2. If the Corporate Director and Deputy Corporate Director are both simultaneously off-island or on extended leave at the time the loan or grant is submitted for a final decision, then the Acting Corporate Director may make the final decision to approve or deny the HOME loan or grant.

For purpose of these policies, off-island or extended leave shall be defined as an absence or leave that extends for more than three (3) working days after the loan

or grant is submitted to the Corporate Director for his or her final decision.

A written notice of the final decision shall be provided to the applicant and a copy report of the decision shall be provided to the NMHC Board of Directors for informational purposes.

C. Loan/Grant Denial Appeals Process

Applicants denied assistance under the HOME Program may appeal the final decision to the NMHC Board of Directors by submitting their appeal in writing to the Corporate Director within thirty (30) calendar days of the written notice of the final decision.

Any appeal submitted must indicate the basis for the appeal and include any supporting documents. Upon receipt of an appeal, the Corporate Director shall submit the same to the Board of Directors for review and action at the next scheduled Board meeting.

3.13 HOMEOWNER COUNSELING SESSION

- A. All applicants for a HOME Loan assistance must attend a Homeownership/Homebuyer Education and Counseling Session that will be provided by NMHC. NMHC shall notify the applicant(s) of the date, time and location of the session. **The education and counseling session shall be scheduled after the loan has been preliminarily approved and may be conducted before or on the day that NMHC issues the Commitment Letter to the applicant(s).** The counseling session shall include a discussion of the terms and conditions of the loan, educate the homeowner(s) of their financial responsibilities, the importance of budgeting, making timely payments, foreclosure prevention, as well as, home maintenance and repair measures.

NMHC shall inform applicant(s) at the time of their submission of their application of the required Homeowner Counseling Session and again in written form when NMHC

notifies the applicant(s) of NMHC's preliminary approval of their loan request. Failure to attend the required Homeownership/Homebuyer Education and Counseling Session may be grounds for denial or cancellation of assistance.

3.14 COMMITMENT LETTER

- A. Once the loan request has been approved by the NMHC Corporate Director, the responsible Loan Specialist shall prepare the Commitment Letter for the Corporate Director's signature. The Commitment Letter is a binding agreement between NMHC and the borrower(s) wherein it discloses the terms and conditions of the approved loan. Borrowers who have been approved shall agree not to incur additional debts, unless formally requested by the borrowers and authorized by NMHC.
- B. The responsible Loan Specialist shall obtain a written certification (via email or memo format) from the Chief Accountant that funds are available for the project before the Corporate Director executes the Commitment Letter.
- C. After the Commitment Letter has been signed by the Corporate Director, the responsible Loan Specialist shall schedule the applicant(s) to come in and sign off on it should they agree with the terms and conditions.

3.15 PRELIMINARY TITLE REPORT (PTR)

- A. The responsible Loan Specialist shall order a Preliminary Title Report (PTR) on behalf of the borrower(s) within two weeks after the borrowers have executed their Commitment Letter. The purpose in obtaining a Title Report is to ascertain ownership of the proposed property for collateral and to ensure that NMHC holds the 1ST lien on the property.
- B. The responsible Loan Specialist shall obtain the Preliminary Title Report (PTR) by submitting an email request to the local title companies. The project will be granted on a first come, first serve basis to the company agreeing to the rate set by NMHC.

- C. The Loan Specialist shall obtain an updated PTR prior to loan closing to ensure that NMHC maintains the 1st lien on the property.

3.16 PRE-CONSTRUCTION CONFERENCE

- A. The pre-construction conference shall be held after NMHC's receipt of the PTR and the same has been determined to have met NMHC's requirement as indicated in Section 3.15 (PTR). The responsible Loan Officer shall inform the homeowner(s) and their contractor, and their private inspector (if applicable), in written form of the scheduled pre-construction conference. The notice shall include the date, time, and location of the conference. The conference shall be conducted by the responsible Loan Officer and shall include the homeowner(s), their contractor, and their private inspector (if applicable).
- B. The homeowner(s) and their contractor, and if applicable, their private inspector are to be provided with information such as their rights and responsibilities before, during, and after the rehabilitation period of their home. (See Exhibit 3 Pre-Construction Conference.)

3.17 SUBMISSION OF PRE-CONSTRUCTION DOCUMENTS

The NMHC shall notify the contractor of the homeowner(s) selection of his/her/their company and shall likewise instruct the contractor to submit the required construction documents listed below. These documents are to be provided to NMHC within 30 days from the date of notice.

1. Building Permit (if applicable)
2. Earthmoving & Erosion Control Permit (if applicable)
3. Construction Contract
4. Performance Bond

5. Plans & Specification approved by DPW

6. Private Inspector's Contract (if applicable)

3.18 LOAN CLOSING/SETTLEMENT

PROMISSORY NOTE, MORTGAGE, RESTRICTIVE COVENANT, CONSENT TO ENCUMBER LAND, AFFIDAVIT

- A. Promissory Note: All loans will require borrower(s) to sign a Promissory Note. The Promissory Note shall be attached together with the Mortgage and Loan Agreement and shall be filed at the Commonwealth Recorder's Office as one document in the following order: Mortgage, Promissory Note, and Loan Agreement.
- B. Mortgage, Consent to Encumber Land, Restrictive Covenant: All loans will require all legal owners, including the spouse of a borrower who may or may not be an applicant of the rehabilitation loan to sign the aforementioned documents. The Consent to Encumber Land and Restrictive Covenant shall be attached together with the Mortgage, Loan Agreement, and Promissory Note and shall be filed at the Commonwealth Recorder's Office as one document.
- C. Affidavit of Marital Status: All loans will require that all unmarried borrowers declare their marital status before executing the documents stated in Sections (A & B) above.
- D. The responsible Loan Officer shall prepare the following disclosure forms to be executed by borrowers: Federal Truth-in-Lending Disclosure, HUD 1, Fixed Rate and Variable Rate Disclosure Form.

4.0 PERFORMING REHABILITATION WORK

A. Contractor Cost Estimates

The homeowner(s) shall be responsible in obtaining a minimum of three (3) written rehabilitation cost estimates from at least three (3) NMHC approved contractors.

B. Selection of Contractor

The homeowner(s) shall have the right to select whichever contractor to perform the rehabilitation work, provided that the contractor's quotation does not exceed the loan amount and provided that the contractor is an NMHC-approved contractor. Should it exceed the loan amount, the homeowner shall choose to either deposit the difference or negotiate with contractor in reducing the contract amount. Should the borrower not be able to deposit the difference or the contractor unwilling to lower the contract amount, then the borrower shall select his/her/their next choice. The homeowner(s) shall submit a Contractor Selection Notice notifying NMHC of his/her/their selection.

C. Construction Contract

The Construction Contract is a binding agreement strictly between the homeowner and the contractor whereby the contractor will provide the rehabilitation or repair work for a specified and agreed upon price. As NMHC's role is to finance the construction of the project, it is not a party to the construction contract. However, at any time the contractual provisions are not followed, NMHC shall have the right to withhold any progress payment until the contractor has complied with such provisions. The construction contract shall include, but is not limited to the following provisions:

1. Contractor's name and mailing address
2. Homeowner(s) name and mailing address
3. Date of the contract, the contract amount, & payment schedule for each incremental billing
4. Calendar days to complete the work (includes Saturdays, Sundays, & holidays)
5. Contractor will provide the Performance Bond up to the contract amount
6. The contractor will provide all the construction plans and permits necessary to comply with applicable local and federal laws.
7. Issuance of the *Notice to Proceed* or the commencement of the project

8. Contractor will provide a one (1) year warranty on all work completed
9. NMHC's right to inspect the progress of the project and right to withhold progress payments
10. Change Order Procedures, if any
11. A provision for liquidated damages must be included in the Construction Contract which shall be negotiated between the homeowner and contractor.

D. Contractor Notification & Pre-Construction Requirements Once NMHC is in receipt of the homeowner's *Contractor Selection Notice*, NMHC shall notify the contractor of the homeowner's selection of their company. NMHC shall inform the contractor of the scheduled Pre-Construction Conference and shall likewise inform the contractor of the required construction documents for submission as listed below.

1. Building Permit (if applicable)
2. Earthmoving & Erosion Control Permit (if applicable)
3. Construction Contract
4. Performance and Payment Bonds
5. Plans & Specification approved by DPW
6. Private Inspector's Contract (if applicable)

E. Project Duration

1. Progress Payment Requests shall be submitted to NMHC by the Contractor incrementally as specified in the Payment Schedule. NMHC shall ensure that all work description indicated on the payment schedule is completed prior to releasing contractor's payment. An original and a copy of the requests must be submitted to the NMHC. The contractor shall freely use his/her/their Company's billing form when

submitting a payment request. The payment request shall be accompanied with the following whenever applicable: inspection reports (DPW and/or Private Inspector), geotesting results, termite treatment certification and/or warranty, Builder's Warranty, Homeowner's acceptance of the project. In addition, each billing submitted must include pictures of the progress of the project and a copy of the payment schedule.

2. Payment Schedule shall be as follows:

- a. Payment Request Number 1 shall not be more than 10% of the contract amount. This shall include the installation of the project sign board accompanied with a picture, the delivery of materials to the construction site and commencement of the project.
- b. Payment Request Number 2 shall not be more than 25% of the contract amount.
- c. Payment Request Number 3 shall not be more than 25% of the contract amount.
- d. Payment Request Number 4 shall not be more than 25% of the contract amount.
- e. Payment Request Number 5 shall be the 15% retainage request when all work is completed. The final payment request shall be accompanied with the Certificate of Occupancy from the Commonwealth Building Safety Office, Builder's Warranty, Window Warranty if subcontracted, Termite Treatment Warranty, Final Inspection Report from the DPW and if applicable, the Private Inspector's, Certificate of Acceptance from the homeowners, Geo Testing results if applicable, Pictures of Project Interior and Exterior, Contractor's Affidavit of Payment of Debts and Claims (AIA Form G706), Certificate of Substantial Completion (AIA Form G704), Contractor's Affidavit of Release of Liens (AIA form G706A), and DEQ Certificate of Use (Sewage Disposal System), if applicable.

3. Change Order Procedures

From time to time, homeowner(s) may request for changes in the plans and specifications. In the event that this should occur, the following steps must be taken

to address such request:

- a. Homeowner must notify contractor in written form of the proposed changes and provide NMHC a copy of the notification.
- b. Upon receipt of the notification, the contractor must cease work at the project site and obtain NMHC's approval of the change order request. Upon approval the contractor shall then provide NMHC a revised plans and specifications, including a revised payment schedule (if scheduled payments will be altered by the proposed changes). The contractor **must** obtain NMHC's approval of the Change Order request.
- c. Once the Change Order request is approved, the homeowner will be required to deposit the additional money needed to NMHC (if applicable) to carry out the Change Order. The contractor will be required to submit the revised plans and specifications to DPW for approval.
- d. Should the Change Order request be denied, then the contractor shall resume work to ensure timely completion of the project. The contractor may not be able to complete the project on time because of the delays the Change Order request may have caused. Therefore, the homeowner(s) shall give the contractor additional days equal to the time the work was ceased up until the time the Change Order request was denied to complete the project. The homeowner shall not charge the contractor liquidated damages during this period.
- e. Once the contractor has obtained the DPW's approval of the plans and specifications, then it shall provide the NMHC with the same copy. The contractor shall proceed in carrying out the Change Order and completing the project.

5.0 MORTGAGE LOAN PAYMENTS

- A. Prepayment of Mortgage Loan -There shall be no prepayment penalties for all rehabilitation loans that are "paid-off" prior to the maturity date (original or revised). Pre-

paying off the loan **DOES NOT** relieve the borrower(s) from the Affordability restrictions imposed on the property.

B. The monthly mortgage payments (inclusive of principal, interest, late charges or any other amounts due) shall be made to the NMHC whose central office is located in the corner of Micro Beach Road and Chalan Pale Arnold Road, Garapan, Saipan. NMHC's respective field offices in Rota and Tinian are likewise accepting payments daily. NMHC's Rota Field Office is currently located in Songsong Village. NMHC's Tinian Field Office is located in San Jose Village. Acceptable forms of payment are cash, personal checks, debit or credit cards (available only in Saipan), cashier's check, money order, allotment, or direct deposit thru Bank of Guam.

1. The first monthly mortgage payment inclusive of the Principal and Interest, shall begin thirty (30) days after all construction work is satisfactorily completed. Payment application shall be applied in the following order:
 - a. Accrued Interest
 - b. Principal
 - c. Late Fees
2. Irregular Payments from time to time may be made by borrowers. Should they occur, the NMHC shall apply the payments as follows:
 - a. Partial Payments made that are less than a borrower's scheduled payment shall be deposited and credited to the account, but shall not excuse the requirement of full payment.
 - b. Multiple Payments - In instances where borrower(s) may have two (2) existing loan accounts with NMHC, but makes less than the combined scheduled payments, payments are to be applied first to the oldest loan and the balance shall be deposited and credited to the other loan.
 - c. Excess Payments - In instances where borrowers make more than their scheduled monthly payments, the payments are to be applied to the unpaid

principal, unless the borrowers indicate in written form to have the payments applied as advance payments.

- d. Charged-off Accounts - Borrowers whose account(s) have been charged off will still have the opportunity to pay-off such account. Borrower(s) will be required to execute a Charged-off Payment Agreement prior to making any payment.

5.1 FAILURE TO MAKE PAYMENT AS REQUIRED

- A. Late Fees for Overdue Payments: A penalty fee of one percent (1%) of the monthly mortgage payment will be assessed on all accounts not paid by the fifteenth (15th) of each month each day that the full payment is not received.

1. Delinquencies

- a. Notices -Written notices of past due accounts shall be sent to borrower(s) based on the following schedule:

- i. First Notice -Account over 30 days past due

- ii. Second Notice -Account over 60 days past due

- iii. Third Notice (Demand Notice) Account over 90 days past due

- iv. Fourth Notice (2nd Demand Notice) -Account over 120 days past due

- b. In the event that the borrower(s) fail(s) to update the account after the receipt of the Fourth Notice, NMHC shall forward the account to the local attorney for further collection efforts, which may include foreclosure.

- B. Default: Should a borrower under this loan program fail to make payment as required or breaches any of the terms and conditions of the Mortgage and the Promissory Note, the borrower will be considered in default of said agreements. NMHC shall have the right to

collect any and all outstanding amounts due and demand a full payment thereof. NMHC shall have the right to charge the borrower(s) all legal expenses and fees caused by the borrower's failure to pay.

- C. Foreclosure: NMHC may use its right of first refusal, as set forth in the loan documents, written agreement with homebuyer, and restrictive deed or land covenant, to purchase the housing before foreclosure or deed in lieu of foreclosure. Foreclosure triggers the NMHC recapture agreement enforceable through the restrictive deed or land covenant.

Foreclosure and Recapture. If the HOME assisted property is subject to recapture terms, NMHC has two options:

Recapture Option 1: NMHC will recapture and pay to the CNMI HOME account the net proceeds from the foreclosure sale of the property in accordance with the recapture terms.
OR

Recapture Option 2: NMHC may purchase the HOME assisted property at foreclosure sale and additional HOME funds may be spent. However, the total amount of the original and additional HOME funds spent may not exceed the maximum per unit subsidy amount.

In the event of default by the borrower, the NMHC may foreclose its lien on the property as secured by the mortgage. Such foreclosure proceedings may result in the sale of the rehabilitated real property. If NMHC forecloses on its own loan, NMHC CANNOT spend any additional HOME funds to acquire the property. Should the property be sold through foreclosure, then the amount due to NMHC will be the net proceeds of the sale up to the amount of loan assistance provided, including interest due, late charges, outstanding principal, legal fees and any other amounts due.

6.0 AFFORDABILITY RESTRICTIONS

- A. Long Term Affordability:

HOME rules do not impose long term affordability requirements for rehabilitation of existing homeowner occupied housing. NMHC has elected to impose NMHC

affordability requirements that require that assisted properties remain affordable for a specific period of time, depending on the level of HOME funds invested in the property and the nature of the activity funded:

<u>HOME Invested per Unit</u>	<u>Minimum Length of the Affordability Period</u>
Less than \$15,000	5 years
\$15,000 - \$40,000	10 years
More than \$40,000	15 years

1. Affordability Restrictions

- a. The affordability requirements are to be imposed by deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. NMHC may use its right of first refusal, as set forth in the loan documents, to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability.
- b. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, or any entity that includes the former owner or those whom, the former owner has or had family or business ties, obtains an ownership interest in the project or property. If a home rehabilitated with HOME assistance is sold during the NMHC affordability period, NMHC recapture provisions apply to ensure the continued provision of affordable homeownership. Loan pay-offs do not end the affordability period.

2. Affordability and Special Exceptions

- a. NMHC may, as determined on a case-by-case basis, provide an exception to the affordability restrictions in order to extend or provide additional rehab assistance to existing qualified client(s) in need. This exception shall only be granted to existing client(s) who have paid-off their first HOME loan but have yet to satisfy or complete the affordability period. In this case, the client(s) shall be required to re-apply for the additional rehab assistance to determine eligibility and loan amount.

The remaining length of affordability, or time, for the first rehab loan/assistance shall be combined with the new, additional, rehab loan/assistance affordability period. *Example: If an existing borrower has paid-off her loan but has 5 years remaining to satisfy affordability, and subsequently approved for a \$20,000.00 additional rehab loan with a 10-year length as the affordability period. Ultimately, this client will be bound with a combined total of 15 years as the minimum length of the affordability period.*

- b. Existing client(s) who was/were assisted with a HOME Grant or Deferred Loan but has/have yet to satisfy or complete the affordability period may, on a case-by-case basis and as determined by NMHC, qualify for an extension or additional rehab assistance. However, the additional assistance shall be in the form of an interest-bearing loan with an amount not to exceed \$40,000.00 with the repayment term of twenty (20) years or two hundred forty (240) months, and shall be fully amortized at a fixed annual rate of one percent (1 %). Note: This assumes that the client(s) fall within the eligibility criteria, such as 15% income limits and applicable household size, 40% debt-to-income, and creditworthiness. Client(s) shall be required to re-apply for the additional rehab assistance to determine eligibility and loan amount.

The remaining length of affordability, or time, for the first HOME Grant or Deferred Loan shall be combined with the new, additional, rehab

loan/assistance affordability period.

- c. Requests for any of the foregoing exceptions shall be submitted to the NMHC Board at the next Board Meeting for final review and approval.

B. Right of First Refusal

During the affordability period, the homeowner(s) agrees not to sell or assign the residence hereby rehabilitated to any persons unless and until homeowner(s) proposes to sell same to NMHC, its successors or assigns on terms consistent with preserving affordability and allows then sixty (60) days time within which to purchase said residence.

C. Recapture

NMHC will ensure that it recoups all or a portion of the HOME grant or loan assistance provided to the homeowner(s), if the housing unit ceases to be the principal residence of the homeowner(s) for the duration of the period of affordability. Subsidy amounts (in the form of loans) that directly benefited the property owner (i.e., through grants, non-interest bearing loans, interest bearing loans, etc.) are also subject to recapture. Recapture is capped at what is available out of net proceeds for agreements after November 2004. Net proceeds are defined as the sales price less superior non HOME debt (if any) less closing costs. NMHC shall utilize the following recapture options:

1. RECAPTURE THE ENTIRE AMOUNT

NMHC may recapture the entire amount of the loan, grant, and/or subsidy from the homeowner(s) if the sale of the property occurs within halfway into the given NMHC affordability period. For example, a homeowner was approved for a \$20,000 HOME loan to rehabilitate a home. The NMHC affordability period is therefore, ten (10) years. On the fourth (4th) year, the homeowner sells the house for \$60,000. Since the homeowner failed to comply with the minimum five years of the ten (10) year affordability period, the recaptured amount is \$20,000.

2. FORGIVENESS: Reduction during NMHC Affordability Period

NMHC may reduce the loan amount, grant, and/or subsidy to be recaptured on a

pro rata basis for the period the homeowner(s) has/have owned and occupied the housing unit measured against the required NMHC affordability period; however, the homeowner(s) must occupy the housing unit as his/her/their principal residence for a minimum of five years or at least halfway into the NMHC affordability, whichever is greater, in order to qualify for this recapture option. For example, if the HOME assistance is \$40,000 with a 10 year affordability period, the homeowner sells the property in the 6th year of the NMHC affordability period having lived in the home for a full 5 years for \$60,000, the homeowner has a superior debt of \$15,000, and the homeowner's share of the closing cost is \$1,500, the amount subject to recapture is calculated as follows:

a. Net Proceeds:

\$60,000 (sales proceeds)

\$15,000 (superior private debt)

- \$ 1,500 (closing cost)*

\$43,500 (net proceeds)

*If client pays closing cost, it will be subtracted. If not, it will be added on as part of the net proceeds.

b. Reduction to Direct Subsidy

\$40,000 ÷ 10 year NMHC affordability period = \$4,000 per year

5 years X \$4,000 per year = \$20,000 forgiven

Amount to Recapture

\$40,000 subsidy - \$20,000 forgiven = \$20,000 subject to recapture

c. Homeowner Gets

(net proceeds amount to recapture)

\$43,500 net proceeds - \$20,000 recaptured = \$23,500 for homeowner

3. HOMEOWNER(S) RECOVERY OF INITIAL INVESTMENT

The homeowner(s) investment (down payment and capital improvements made by the owner after completion of the rehab work) may be repaid in full before any HOME funds are recaptured, provided that the homeowner(s) have occupied the housing unit at a minimum of 5 years before the sale of the property and the homeowner's household income is at or below 50% of the Area Median Income.

4. SHARED APPRECIATION

In the case where net proceeds exceed the amount necessary to repay both the homeowner(s) investment and the HOME assistance, the excess proceeds may be shared proportionately (i.e., percentage of investment provided) by both parties.

NOTE: When the recapture requirement is triggered due to a voluntary or involuntary sale during the period of affordability and there are no net proceeds or the net proceeds are insufficient to repay the HOME investment due, NMHC may recapture an amount less than or equal to the net proceeds available.

Legal Instrument to Enforce Recapture. NMHC must use deed restrictions, land covenants, or other similar legal documents to enforce these recapture restrictions.

7.0 SALE, CONVEYANCE OR TRANSFER OF PROPERTY

- A. Upon the sale, conveyance, or transfer of title of the rehabilitated and mortgaged real property under this program during the NMHC affordability period, a repayment of all HOME assistance received by the borrower will be immediately due and shall be repaid to the NMHC. Repayment of assistance includes the outstanding principal amount, interest due, late charges, legal fees, and any other amounts due.
- B. At the sole discretion of the NMHC, a title transfer will only be permitted through the laws of descent or through a Loan Assumption, or upon selling the property, provided that NMHC have been properly informed and the same have consented to such sale.

If, should any of these occur, one must submit his/her intention of loan assumption or selling of the property and request for the NMHC Board's approval for the transfer of title.

8.0 LOAN ASSUMPTION

- A. Death of a Borrower -Immediately upon notification to NMHC of a borrower's death, the surviving borrower or a family member of the borrower(s) shall complete a Deceased Borrower's Report (See exhibit 4) and must submit it together with the Death Certificate.
1. Upon the death of a borrower, the entire unpaid balance of the loan shall be immediately due and payable. NMHC shall instruct its Collection Attorney to file a claim against the estate or;
 2. For those accounts covered with a Mortgage Life Insurance, or where the borrower assigns his/her Life Insurance to NMHC, NMHC shall ensure that it files its claim with the insurance company to ensure that the outstanding balance including the principal, interest, insurances, late fees, and any other fees due to the account is paid off or;
 3. In situations where there exists a surviving borrower, the same may submit a request to maintain the current monthly payment as scheduled without having the account sent for legal collection or;
 4. If both borrowers are deceased, then NMHC may allow for an assumption of the loan by the heir(s) as indicated in the Probate Decree (which shall be provided to NMHC).
 - a. This assumption exception is permitted where transfer of title is through the laws of descent provided that the heir is of legal age, meets all HOME Program eligibility requirements and has a full,

undivided interest in the real property. The heir will be required to fill out an application and execute a mortgage update and will be subject to a credit, income, and asset verification just like a new applicant.

- b. The heir or heirs of the deceased will be responsible in maintaining the account current as they await the Probate Decree. Once they are in receipt of the decree, they must submit it to NMHC so that NMHC will prepare the Loan Assumption Agreement.

B. Foreclosure Prevention - In situations where a foreclosure is imminent, the NMHC may allow a borrower to have a HOME eligible immediate relative (i.e., mother, father, brother, sister, son, daughter) assume the loan, all for the purpose of preserving the affordability period. The total outstanding balance thereof shall be fully amortized at the original interest rate and terms to produce equal monthly payments.

If the HOME eligible immediate relative assuming the loan cannot afford the repayment of the loan at its original rate and terms, NMHC may but is not required to waive that requirement and extend an additional term of up to a period of five (5) years or sixty (60) months to the existing term.

C. Foreclosure - Should NMHC determine the borrower(s) or family member's absolute inability to repay the loan, then it shall sell the property to recover all assistance provided. Recapture provision shall take place. See Section 5.1 Failure to Make Payment and Required for guidance on foreclosures and Section 6.0 Affordability Restrictions for guidance on recapture.

9.0 FINANCIAL HARDSHIP ASSISTANCE

1. **Reduction-In-Force** - Monthly loan payments may be deferred for a period of up to twelve months. Interest and late charges would not accrue. Thereafter,

interest rate will be reduced by 50% for a period of up to sixty months. If this approach is still deemed unaffordable, the current term with the new interest rate may be extended and re-amortized with an additional sixty months.

2. **Reduction in pay** - Interest rate may be reduced by 50% for a period of up to twenty-four months. If this approach is still deemed unaffordable, the current term with the new interest rate may be extended and re-amortized with an additional sixty months.
3. **Family medical emergency** - Monthly loan payments may be deferred for a period of up to twenty-four months. Interest and late charges would not accrue. The current term may be extended and re-amortized with an additional sixty months.
4. **Medical condition or disability assistance** - Provided to borrower(s) who, after obtaining HOME Rehabilitation assistance become physically or mentally disabled and are certified by a physician to be incapable of resuming work. The assistance may be conducted in the following manner:
 - a. Borrower(s) are to submit a Doctor's Certification certifying their incapability to resume work.
 - b. Borrower(s) outstanding loan balance may be converted to a grant.
5. **Drastic increase in cost of living** - Interest may be waived for a period of up to twenty-four months. If this approach is still deemed unaffordable, the current term may be extended and re-amortized with an additional sixty months.
6. **Call of duty (deployment)** - Monthly loan payments may be deferred for a period of up to twenty-four months. Interest and late charges would not accrue. The current term of the loan may be extended and re-amortized with an additional sixty months.

7. **Temporary relocation** - If the borrower must relocate for (a) employment purposes due to the lack of jobs to support the household; (b) educational purposes; or (c) to seek medical treatment, the resale or recapture provisions may be suspended for a period of five (5) years.
8. **Natural Disaster** - Monthly loan payments may be deferred for a period of up to six months in the event of a natural disaster, such as fire, typhoon, earthquake and flood. Final decisions regarding requested deferments shall be made by the Corporate Director. Interest and late charges shall not accrue during deferment.

Borrowers may be eligible for a deferment upon written request accompanied by acceptable evidence of negative impact caused by natural disaster. Further, in order to qualify for a deferment, the Borrower's loan and hazard insurance must be up to date.

9. **Other Hardships** - Any other claimed financial hardship outside of the aforementioned eight listed hardships shall be brought to the Board for review and decision.

10.0 DIRECT/DEFERRED LOAN ASSISTANCE (COMBINATION LOAN)

- A. Deferred Loan Assistance will no longer be provided. However, to further assist our economically-disadvantaged families, NMHC may make available Direct Loan/Grant Assistance instead (See Section 2.5 Interest Rate & Type of Assistance).

*****The following provision in this section alone refers only to existing deferred loan clients. *****

B. Annual Recertification of EXISTING Deferred Home Loan Borrowers

1. Existing Borrowers whose loans have been partially or entirely deferred prior to or on December 31, 2007 shall also be recertified annually to verify eligibility for continued deferred assistance.

2. During the 11th month of any annual twelve-month deferment period, NMHC shall schedule an appointment with the borrower to conduct a recertification of income to determine if the Borrower still lacks the financial resources for the repayment of their deferred loan. Recertification will be treated the way a new applicant is determined eligible using the Part 5 adjusted income. However, the original interest rate and term will remain the same.
3. Although further extensions of deferment assistance may be granted to the Borrower by NMHC prior to the expiration or end of any twelve (12) months deferment period, no extension or deferment is automatic.
4. Furthermore, a deferred loan will be converted to repayment status as soon as the Borrower has the ability to repay and that all outstanding deferred payments are subject to recapture.
5. In the event that the Borrower does not show up for their scheduled recertification appointment (provided that they have been properly notified at least 60 calendar days notice before deferment expiration), NMHC shall automatically convert the Deferred Loan into a Direct Loan the day after the assistance expires.
6. No deferment shall be granted after fifteen (15) years from the effective date of the loan and mortgage documents. Loan and mortgage payments may be continually deferred during the fifteen (15) year period upon proper and annual recertification by NMHC of the Borrower.
7. If at any time during the fifteen (15) years following the effective date of the loan and mortgage documents or the completion of the rehabilitation and repair work, whichever is longer, Borrower decides to sell, transfer, lease, or rent the house and/or property, or any portion thereof, NMHC may declare the Borrower's loan and any other indebtedness immediately due and payable, including any and all deferred payments. In the event NMHC declares such loan or indebtedness due, the Borrower shall repay the loan and debt in its entirety, plus interest and any other fees and charges, not later than thirty (30) calendar days after the house and/or property is sold, transferred, leased, or rented. See Section 6.0 Affordability

Restrictions for guidance on enforcing recapture requirements.

8. Annual re-certification for elderly Borrower shall be conducted solely to ensure that residence and occupancy requirements are being met.
9. NMHC shall prepare the Release of Mortgage after borrowers have fully complied with the terms of the homeowner rehabilitation assistance including the NMHC affordability period and principal residency requirements.

11.0 CONFLICT OF INTEREST (24 CFR Part 92 §92.356)

Under no circumstances shall any immediate family members biological or stepfather, mother, biological or adopted son, daughter, sister, brother, elected or appointed official of the CNMI Government, NMHC's Board of Directors, its Officers, Agents, and employees may participate in any HOME assisted project or unit including the procurement of materials, or have an interest in any contracted services, or be a beneficiary in any HOME proceeds. Other provisions in Section 92.356 shall apply.

Exceptions: Threshold requirements. Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions above on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

- (1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
- (2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

Factors to be considered for exceptions. In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements mentioned above, HUD will consider the cumulative effect of the following factors, where applicable:

- (1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
- (2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- (3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;
- (4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;
- (5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- (6) Any other relevant considerations.

ACRONYMS REFERENCE SECTION

[For Rehab & Homebuyer Policies and Procedures]

AIA – American Institute of Architects

AMI – Area Median Income

CD – Corporate Director

CFR – Code of Federal Regulations

CNMI – Commonwealth of the Northern Mariana Islands

CPSC – Consumer Product Safety Commission

DCD – Deputy Corporate Director

DEQ – Department of Environmental Quality

DPW – Department of Public Works

DTI – Debt-to-Income Ratio

EA – Environmental Assessment

GFE – Good Faith Estimate

HOME Program – U.S. HUD Homeownership Investment Partnerships Program

HQS – Housing Quality Standards

MCD – Mortgage Credit Division

MPS – Minimum Property Standards

MPV – Maximum Property Value

NAHA – National Affordable Housing Act

NEPA – National Environmental Policy Act

NMHC – Northern Marianas Housing Corporation

NTP – Notice to Proceed

PITI – Principal, Interest, Taxes, and Insurance

PJ – Participating Jurisdiction
PTI – Payment-to-Income Ratio
PTR – Preliminary Title Report
RER – Rehab Environmental Review
RESPA – Real Estate Settlement Procedures Act
SCRA – Servicemembers Civil Relief Act
SSI – Supplemental Security Income [Social Security]
TCD – Time Certificates of Deposits
TILA – Truth in Lending Act
U.S. HUD – United States Department of Housing and Urban Development
USDA RD – United States Department of Agriculture Rural Development
USPAP – Uniform Standard of Professional Appraisal Practice
VOE – Verification of Employment



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Eloy S. Inos
Governor

Jude U. Hofschneider
Lieutenant Governor

EXECUTIVE ORDER NO. 2014-16

SUBJECT: DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY

AUTHORITY: I, ELOY S. INOS, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution and PL 18-4, § 104 of the Homeland Security and Emergency Management Act of 2013, do hereby declare a State of Significant Emergency for the Commonwealth of the Northern Mariana Islands due to the imminent threat of the inability of the Commonwealth Utilities Corporation ("CUC") to provide critical power generation, water, and wastewater services to the CNMI and considering the harm such condition would pose to the community, environment, and critical infrastructure of the Commonwealth of the Northern Mariana Islands.

WHEREAS, CUC IS THE SOLE ELECTRICITY SUPPLIER to the Government of the CNMI, including all public safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the CNMI's businesses and homes. While some businesses and agencies own backup generators, they are not generally organized to use the backups as permanent power sources and the diesel oil purchased to run these generators is substantially more expensive than that used for CUC power.

WHEREAS, WITHOUT CUC ELECTRICITY:

- (1) Most CNMI economic activity would come to a halt, much refrigeration and air conditioning would end, and the airports and ports would be forced to rely on emergency generation on the limited, expensive oil supply for it;
- (2) The CNMI's health and safety would immediately be at risk because traffic signals and street lighting would cease to function; emergency, fire, police facilities and their communications systems, and the hospital and island clinics would have to rely on limited fuel supplies for emergency generation and then cease functioning; and much refrigeration of food and medicines would end, as would air conditioning for the elderly and sick;
- (3) The public schools and the Northern Marianas College would close. Other educational institutions would close as their backup fuel supplies for emergency generators were exhausted; and

- (4) Water and sewage treatment would soon end. One of CUC's largest electric customers is the combined CUC Water and Wastewater Divisions. CUC is the sole supplier of electricity for these systems. CUC's water system relies on electricity to maintain the system pressure needed to prevent the backflow of pathogens, to chlorinate, and to pump, store, and distribute water supplies. CUC's wastewater system requires electricity to collect, pump, process, treat, and discharge sewage. The lack of electricity could result in sewage overflows, contaminating land and water.

WHEREAS, THERE EXISTS A FINANCIAL CRISIS:

- (1) CUC is owed over \$20 million by the public school system ("PSS") and the Commonwealth Healthcare Corporation ("CHC") and is owed over millions more by other users;
- (2) Although the commonwealth economy has recently improved, the improvement is only marginal and the economy and the government's finances are still fragile. This government strains to meet its obligations.
- (3) CUC often only has days' worth of purchased diesel fuel to power its system because it lacks the funds to buy oil from its sole, cash-only supplier. CUC has no credit or other means to buy fuel than the revenue it collects from its customers;

WHEREAS, THERE EXISTS A TECHNICAL WORKER CRISIS:

- (1) CUC faces a manpower crisis. Skilled workers and a responsive support system are key to the success of the operation, particularly for preventative maintenance. At present, CNMI law at 3 CMC §§ 4531 and 4532 prohibits CUC from hiring any more non-U.S. technical workers;
- (2) CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction of the U.S. District Court and the U.S. Environmental Protection Agency ("EPA"), pursuant to two sets of consent, or "Stipulated Orders." Failure to meet the requirements of the federal court orders could subject CUC and the CNMI to substantial fines and charges and, in the extreme, to a federal takeover of their finances;
- (3) CUC requires employees with specialized training. There are many non-U.S. citizens whom CUC needs to retain on technical and professional contracts. Without these positions filled, CUC operations would be severely compromised;
- (4) The legislature, through P.L. 17-1 (Mar. 22, 2010), has limited CUC's ability to hire technical staff, eliminating prior statutory permission to hire up to nineteen foreign workers and reinstating a moratorium on the government's hiring of foreign nationals, even if needed for highly technical positions for which no local or mainland citizens are available. The CUC Act, as

subsequently reenacted by P.L. 16-17 (Oct. 1, 2008), provides that CUC shall hire such persons as are necessary for operations, *except as otherwise limited by other law*. 4 CMC § 8123(h);

- (5) There are not enough U.S. citizen or U.S. resident technical specialists at CUC to perform the power generation work, particularly specialists with experience in the type of engines that CUC uses. U.S. citizens with the necessary skills are not readily available in the CNMI and it is costly to recruit from the United States. CUC believes that the vast majority of skill sets, considering its cash restrictions, must come from non-U.S. personnel. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding enough qualified candidates;
- (6) The impact of an inadequate workforce is substantial. First, there would be a direct deterioration of service to existing customers. There would be brownouts or area blackouts with the above-mentioned loss of service. Second, the power plants would again degrade, producing more of these outages. Third, if CUC fails to meet federal court deadlines for the Stipulated Orders, the Court could appoint a federal receiver and its consulting team, with all expenses charged to CUC customers.
- (7) CUC's renewal of contracts and hiring of foreign expert workers is necessary to sustain the integrity of CUC's systems. Thus, continued relief from the legislative prohibition on hiring foreign national workers is necessary to ensure the delivery of uninterrupted power services to the people of the Commonwealth. The legislature is urged to address this matter by way of amending local law to allow CUC to continue employing the services of foreign workers for such technical positions difficult to fill and to provide for a reasonable transition period.

WHEREAS, BY THIS DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY, I intend to enable CUC to continue to provide necessary services to the people of the Commonwealth. This Declaration is necessary to protect the health and safety of our children, our senior citizens, businesses, and all other CNMI residents and visitors.

NOW, THEREFORE, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and PL 18-4 § 104(c), to take all necessary measures to address the threats facing the Commonwealth of the Northern Mariana Islands including, but not limited to, the authority to:

1. Suspend all statutory or regulatory provisions as required; and
2. Utilize all available resources of the Commonwealth government and its political subdivisions as reasonably necessary to respond to the emergency.

It is hereby **ORDERED** that:

This Declaration of a State of Significant Emergency shall take effect immediately and all memoranda, directives, and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the end of the thirty (30)-day period, terminate the declaration of a state of significant emergency. PL 18-4, § 104(g)

Under authority of this Declaration and with the goal of mitigating or ameliorating the above described crises, I immediately direct the following:

DIRECTIVE: Section 4531 of Title 3 of the Commonwealth Code is hereby suspended as to CUC as follows:

The following strike-out formatted language of the quoted provisions of the following statute regulating government employment is, as indicated, suspended immediately:

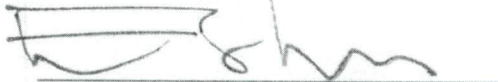
3 CMC §4531. Restrictions on Government Employment

~~Employment by departments, agencies, and all other instrumentalities of the Commonwealth government is limited to citizens and permanent residents; provided that the government may enter into contracts with foreign nationals for services performed outside of the Commonwealth.~~

As a result of my suspension of 3 CMC § 4531, CUC shall have the full power and authority to retain staff which may include employees other than citizens and permanent residents of the United States.

The above described Directives are in no way meant as the limits of my actions or authority under this Declaration. Accordingly, I reserve the right under this Declaration to issue any and all directives necessary to prevent, mitigate or ameliorate the adverse effects of the emergency.

SIGNED AND PROMULGATED on this 16th day of December 2014.



ELOY S. INOS

Governor

Commonwealth of the Northern Mariana Islands



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Eloy S. Inos
Governor

Ralph DLG. Torres
Lieutenant Governor

EXECUTIVE ORDER NO. 2015-01

SUBJECT: DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY

AUTHORITY: I, ELOY S. INOS, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution and PL 18-4, § 104 of the Homeland Security and Emergency Management Act of 2013, do hereby declare a State of Significant Emergency for the Commonwealth of the Northern Mariana Islands due to the imminent threat of the inability of the Commonwealth Utilities Corporation (“CUC”) to provide critical power generation, water, and wastewater services to the CNMI and considering the harm such condition would pose to the community, environment, and critical infrastructure of the Commonwealth of the Northern Mariana Islands.

WHEREAS, CUC IS THE SOLE ELECTRICITY SUPPLIER to the Government of the CNMI, including all public safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the CNMI’s businesses and homes. While some businesses and agencies own backup generators, they are not generally organized to use the backups as permanent power sources and the diesel oil purchased to run these generators is substantially more expensive than that used for CUC power.

WHEREAS, WITHOUT CUC ELECTRICITY:

- (1) Most CNMI economic activity would come to a halt, much refrigeration and air conditioning would end, and the airports and ports would be forced to rely on emergency generation on the limited, expensive oil supply for it;
- (2) The CNMI’s health and safety would immediately be at risk because traffic signals and street lighting would cease to function; emergency, fire, police facilities and their communications systems, and the hospital and island clinics would have to rely on limited fuel supplies for emergency generation and then cease functioning; and much refrigeration of food and medicines would end, as would air conditioning for the elderly and sick;

- (3) The public schools and the Northern Marianas College would close. Other educational institutions would close as their backup fuel supplies for emergency generators were exhausted; and
- (4) Water and sewage treatment would soon end. One of CUC's largest electric customers is the combined CUC Water and Wastewater Divisions. CUC is the sole supplier of electricity for these systems. CUC's water system relies on electricity to maintain the system pressure needed to prevent the backflow of pathogens, to chlorinate, and to pump, store, and distribute water supplies. CUC's wastewater system requires electricity to collect, pump, process, treat, and discharge sewage. The lack of electricity could result in sewage overflows, contaminating land and water.

WHEREAS, THERE EXISTS A FINANCIAL CRISIS:

- (1) CUC is owed over \$20 million by the public school system ("PSS") and the Commonwealth Healthcare Corporation ("CHC") and is owed over millions more by other users;
- (2) Although the commonwealth economy has recently improved, the improvement is only marginal and the economy and the government's finances are still fragile. This government strains to meet its obligations.
- (3) CUC often only has days' worth of purchased diesel fuel to power its system because it lacks the funds to buy oil from its sole, cash-only supplier. CUC has no credit or other means to buy fuel than the revenue it collects from its customers;

WHEREAS, THERE EXISTS A TECHNICAL WORKER CRISIS:

- (1) CUC faces a manpower crisis. Skilled workers and a responsive support system are key to the success of the operation, particularly for preventative maintenance. At present, CNMI law at 3 CMC §§ 4531 and 4532 prohibits CUC from hiring any more non-U.S. technical workers;
- (2) CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction of the U.S. District Court and the U.S. Environmental Protection Agency ("EPA"), pursuant to two sets of consent, or "Stipulated Orders." Failure to meet the requirements of the federal court orders could subject CUC and the CNMI to substantial fines and charges and, in the extreme, to a federal takeover of their finances;
- (3) CUC requires employees with specialized training. There are many non-U.S. citizens whom CUC needs to retain on technical and professional contracts. Without these positions filled, CUC operations would be severely compromised;
- (4) The legislature, through P.L. 17-1 (Mar. 22, 2010), has limited CUC's ability to hire technical staff, eliminating prior statutory permission to hire up to

nineteen foreign workers and reinstating a moratorium on the government's hiring of foreign nationals, even if needed for highly technical positions for which no local or mainland citizens are available. The CUC Act, as subsequently reenacted by P.L. 16-17 (Oct. 1, 2008), provides that CUC shall hire such persons as are necessary for operations, *except as otherwise limited by other law.* 4 CMC § 8123(h);

- (5) There are not enough U.S. citizen or U.S. resident technical specialists at CUC to perform the power generation work, particularly specialists with experience in the type of engines that CUC uses. U.S. citizens with the necessary skills are not readily available in the CNMI and it is costly to recruit from the United States. CUC believes that the vast majority of skill sets, considering its cash restrictions, must come from non-U.S. personnel. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding enough qualified candidates;
- (6) The impact of an inadequate workforce is substantial. First, there would be a direct deterioration of service to existing customers. There would be brownouts or area blackouts with the above-mentioned loss of service. Second, the power plants would again degrade, producing more of these outages. Third, if CUC fails to meet federal court deadlines for the Stipulated Orders, the Court could appoint a federal receiver and its consulting team, with all expenses charged to CUC customers.
- (7) CUC's renewal of contracts and hiring of foreign expert workers is necessary to sustain the integrity of CUC's systems. Thus, continued relief from the legislative prohibition on hiring foreign national workers is necessary to ensure the delivery of uninterrupted power services to the people of the Commonwealth. The legislature is urged to address this matter by way of amending local law to allow CUC to continue employing the services of foreign workers for such technical positions difficult to fill and to provide for a reasonable transition period.

WHEREAS, BY THIS DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY, I intend to enable CUC to continue to provide necessary services to the people of the Commonwealth. This Declaration is necessary to protect the health and safety of our children, our senior citizens, businesses, and all other CNMI residents and visitors.

NOW, THEREFORE, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and PL 18-4 § 104(c), to take all necessary measures to address the threats facing the Commonwealth of the Northern Mariana Islands including, but not limited to, the authority to:

1. Suspend all statutory or regulatory provisions as required; and
2. Utilize all available resources of the Commonwealth government and its political subdivisions as reasonably necessary to respond to the emergency.

It is hereby **ORDERED** that:

This Declaration of a State of Significant Emergency shall take effect immediately and all memoranda, directives, and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the end of the thirty (30)-day period, terminate the declaration of a state of significant emergency. PL 18-4, § 104(g)

Under authority of this Declaration and with the goal of mitigating or ameliorating the above described crises, I immediately direct the following:

DIRECTIVE: Section 4531 of Title 3 of the Commonwealth Code is hereby suspended as to CUC as follows:

The following strike-out formatted language of the quoted provisions of the following statute regulating government employment is, as indicated, suspended immediately:

3 CMC §4531. Restrictions on Government Employment

~~Employment by departments, agencies, and all other instrumentalities of the Commonwealth government is limited to citizens and permanent residents; provided that the government may enter into contracts with foreign nationals for services performed outside of the Commonwealth.~~

As a result of my suspension of 3 CMC § 4531, CUC shall have the full power and authority to retain staff which may include employees other than citizens and permanent residents of the United States.

The above described Directives are in no way meant as the limits of my actions or authority under this Declaration. Accordingly, I reserve the right under this Declaration to issue any and all directives necessary to prevent, mitigate or ameliorate the adverse effects of the emergency.

SIGNED AND PROMULGATED on this 16th day of January, 2015.



ELOY S. INOS



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Eloy S. Inos
Governor

Ralph DLG. Torres
Lieutenant Governor

EXECUTIVE ORDER NO. 2015-02

SUBJECT: DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY

AUTHORITY: I, ELOY S. INOS, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution and PL 18-4, § 104 of the Homeland Security and Emergency Management Act of 2013, do hereby declare a State of Significant Emergency for the Commonwealth of the Northern Mariana Islands due to the imminent threat of the inability of the Commonwealth Utilities Corporation ("CUC") to provide critical power generation, water, and wastewater services to the CNMI and considering the harm such condition would pose to the community, environment, and critical infrastructure of the Commonwealth of the Northern Mariana Islands.

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WHEREAS, WITHOUT CUC ELECTRICITY:

- (1) Most CNMI economic activity would come to a halt, much refrigeration and air conditioning would end, and the airports and ports would be forced to rely on emergency generation on the limited, expensive oil supply for it;
- (2) The CNMI's health and safety would immediately be at risk because traffic signals and street lighting would cease to function; emergency, fire, police facilities and their communications systems, and the hospital and island clinics would have to rely on limited fuel supplies for emergency generation and then cease functioning; and much refrigeration of food and medicines would end, as would air conditioning for the elderly and sick;

- (3) The public schools and the Northern Marianas College would close. Other educational institutions would close as their backup fuel supplies for emergency generators were exhausted; and
- (4) Water and sewage treatment would soon end. One of CUC's largest electric customers is the combined CUC Water and Wastewater Divisions. CUC is the sole supplier of electricity for these systems. CUC's water system relies on electricity to maintain the system pressure needed to prevent the backflow of pathogens, to chlorinate, and to pump, store, and distribute water supplies. CUC's wastewater system requires electricity to collect, pump, process, treat, and discharge sewage. The lack of electricity could result in sewage overflows, contaminating land and water.

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- (1) CUC faces a manpower crisis. Skilled workers and a responsive support system are key to the success of the operation, particularly for preventative maintenance. At present, CNMI law at 3 CMC §§ 4531 and 4532 prohibits CUC from hiring any more non-U.S. technical workers;
- (2) CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction of the U.S. District Court and the U.S. Environmental Protection Agency ("EPA"), pursuant to two sets of consent, or "Stipulated Orders." Failure to meet the requirements of the federal court orders could subject CUC and the CNMI to substantial fines and charges and, in the extreme, to a federal takeover of their finances;
- (3) CUC requires employees with specialized training. There are many non-U.S. citizens whom CUC needs to retain on technical and professional contracts. Without these positions filled, CUC operations would be severely compromised;
- (4) The legislature, through P.L. 17-1 (Mar. 22, 2010), has limited CUC's ability to hire technical staff, eliminating prior statutory permission to hire up to

Caller Box 10007 Saipan, MP 96950 Telephone: (670) 237-2200 Facsimile: (670) 664-2211/2311

nineteen foreign workers and reinstating a moratorium on the government's hiring of foreign nationals, even if needed for highly technical positions for which no local or mainland citizens are available. The CUC Act, as subsequently reenacted by P.L. 16-17 (Oct. 1, 2008), provides that CUC shall hire such persons as are necessary for operations, *except as otherwise limited by other law*. 4 CMC § 8123(h);

- (5) There are not enough U.S. citizen or U.S. resident technical specialists at CUC to perform the power generation work, particularly specialists with experience in the type of engines that CUC uses. U.S. citizens with the necessary skills are not readily available in the CNMI and it is costly to recruit from the United States. CUC believes that the vast majority of skill sets, considering its cash restrictions, must come from non-U.S. personnel. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding enough qualified candidates;
- (6) The impact of an inadequate workforce is substantial. First, there would be a direct deterioration of service to existing customers. There would be brownouts or area blackouts with the above-mentioned loss of service. Second, the power plants would again degrade, producing more of these outages. Third, if CUC fails to meet federal court deadlines for the Stipulated Orders, the Court could appoint a federal receiver and its consulting team, with all expenses charged to CUC customers.
- (7) CUC's renewal of contracts and hiring of foreign expert workers is necessary to sustain the integrity of CUC's systems. Thus, continued relief from the legislative prohibition on hiring foreign national workers is necessary to ensure the delivery of uninterrupted power services to the people of the Commonwealth. The legislature is urged to address this matter by way of amending local law to allow CUC to continue employing the services of foreign workers for such technical positions difficult to fill and to provide for a reasonable transition period.

WHEREAS, BY THIS DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY, I intend to enable CUC to continue to provide necessary services to the people of the Commonwealth. This Declaration is necessary to protect the health and safety of our children, our senior citizens, businesses, and all other CNMI residents and visitors.

NOW, THEREFORE, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and PL 18-4 § 104(c), to take all necessary measures to address the threats facing the Commonwealth of the Northern Mariana Islands including, but not limited to, the authority to:

1. Suspend all statutory or regulatory provisions as required; and
2. Utilize all available resources of the Commonwealth government and its political subdivisions as reasonably necessary to respond to the emergency.

It is hereby **ORDERED** that:

This Declaration of a State of Significant Emergency shall take effect immediately and all memoranda, directives, and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the end of the thirty (30)-day period, terminate the declaration of a state of significant emergency. PL 18-4, § 104(g)

Under authority of this Declaration and with the goal of mitigating or ameliorating the above described crises, I immediately direct the following:

DIRECTIVE: Section 4531 of Title 3 of the Commonwealth Code is hereby suspended as to CUC as follows:

The following strike-out formatted language of the quoted provisions of the following statute regulating government employment is, as indicated, suspended immediately:

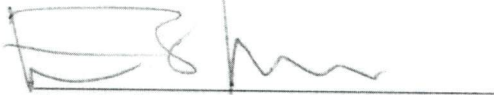
3 CMC §4531. Restrictions on Government Employment

~~Employment by departments, agencies, and all other instrumentalities of the Commonwealth government is limited to citizens and permanent residents; provided that the government may enter into contracts with foreign nationals for services performed outside of the Commonwealth.~~

As a result of my suspension of 3 CMC § 4531, CUC shall have the full power and authority to retain staff which may include employees other than citizens and permanent residents of the United States.

The above described Directives are in no way meant as the limits of my actions or authority under this Declaration. Accordingly, I reserve the right under this Declaration to issue any and all directives necessary to prevent, mitigate or ameliorate the adverse effects of the emergency.

SIGNED AND PROMULGATED on this 16th day of February, 2015.



ELOY S. INOS



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Eloy S. Inos
Governor

Ralph DLG. Torres
Lieutenant Governor

DIRECTIVE

DATE: 30 JAN 2015
NO.: 2015-01

TO: ALL DEPARTMENTS AND AGENCIES

FROM: GOVERNOR

SUBJECT: Lifting of Hiring Freeze

On December 9, 2014, Directive 2014-05 was issued freezing all hiring. This Directive lifts all hiring freeze immediately.

Although the hiring freeze is lifted, I expect all department heads and agencies to comply with applicable statutes and regulations in hiring the most qualified individuals through the proper procedures.

A handwritten signature in black ink, appearing to read "Eloy S. Inos", with a long horizontal stroke extending to the left.

ELOY S. INOS

cc: Lt. Governor
Civil Service Commission



Commonwealth of the Northern Mariana Islands
Office of the Attorney General

2nd Floor Hon. Juan A. Sablan Memorial Bldg.
Caller Box 10007, Capitol Hill
Saipan, MP 96950

Civil Division
Telephone: (670) 237-7500
Facsimile: (670) 664-2349

Criminal Division
Telephone: (670) 237-7500
Facsimile: (670) 234-7016

Gilbert J. Birnbrich
Attorney General

To : Gilbert J. Birnbrich, Attorney General
From : Charles E. Brasington, Assistant Attorney General ^{CB}
Subject: Concerning the Ability of the Office of the Attorney General to Defend Public Officials in Criminal Proceedings

ATTORNEY GENERAL'S LEGAL OPINION NO. 2015-01

Attorney General Gilbert J. Birnbrich requests an opinion on the issue of when, if ever, it is appropriate for members of the Office of the Attorney General to defend public officials or employees in a criminal matter. This opinion is meant as guidance for succeeding Commonwealth Attorneys General, as well as present and future Assistant Attorneys General and staff of the Office of the Attorney General

QUESTION PRESENTED

The Office of the Attorney General ("the Office") is constitutionally mandated to prosecute violations of law. The Constitution provides, in relevant part: "The Attorney General shall be the Chief Legal Officer of the Commonwealth government and shall be responsible for providing legal advice to the governor and executive departments (including public corporations and autonomous agencies), representing the Commonwealth in all legal matters, and *prosecuting violations of Commonwealth law.*" NMI Const. art. III, § 11 (emphasis added). Is the Office of the Attorney General or its attorneys permitted to defend public officials in criminal proceedings?

SHORT ANSWER

No. The Attorney General and attorneys of the Office of the Attorney General do not have the power to defend public officials or employees in criminal proceedings. The Constitution requires the Attorney General to advise the Governor, represent the Commonwealth in legal proceedings, and "prosecut[e] violations of Commonwealth law." NMI Const. art. III, § 11. The Commonwealth Constitution does not empower the Office of the Attorney General to defend public officials or employees in criminal matters. Commonwealth statutes mostly provide that the Attorney General represents the Commonwealth, but allow the Attorney General to represent public officials or employees in civil proceedings against them. Importantly, a public employee may violate the Government Ethics Code's Conflict of Interest provisions by representing a private

individual before a “government entity.” *But see* 1 CMC § 8537. A public official or employee that requests, orders, solicits, or otherwise attempts to secure representation from the Office of the Attorney General in a criminal proceeding violates the Government Ethics Code. 1 CMC § 8532(a). Finally, although some State attorneys general have Common Law powers in addition to those granted by statute, those powers most often relate to bringing actions on behalf of the public interest, and cannot be said to support the Commonwealth Office of the Attorney General’s representation of a criminal defendant.

ANALYSIS

The question at hand requires analysis of the Commonwealth Constitution, the Commonwealth Code, and the powers of attorneys general at Common Law. This inquiry will begin at the highest level of authority, the Constitution, and thence shall consider the relevant Commonwealth statutes and case law concerning the inherent Common Law powers of attorneys general in other jurisdictions. The analysis of the Commonwealth Constitution, Commonwealth Code, and the Common Law powers of attorneys general demonstrates that it is improper for members of the Office of the Attorney General to represent public officials in criminal proceedings.

A. Constitutional Powers

The Commonwealth Constitution establishes an Attorney General for the Commonwealth. NMI Const. art. III, § 11. This provision states in relevant part:

There is in the Commonwealth government an Office of the Attorney General to be headed by an attorney general. The Office of the Attorney General is established as an independent agency within the executive branch of the Commonwealth government. The attorney general shall be elected at large within the Commonwealth for a term of office of four years. The Attorney General shall be the Chief Legal Officer of the Commonwealth government and shall be responsible for providing legal advice to the governor and executive departments (including public corporations and autonomous agencies), representing the Commonwealth in all legal matters, and prosecuting violations of Commonwealth law.

Id. In interpreting the Commonwealth Constitution, Commonwealth courts apply the plain-meaning doctrine. *See Camacho v. N. Mar. Ret. Fund*, 1 NMI 362, 368 (1990) (applying “the plain, commonly understood meaning of constitutional language unless there is evidence that a contrary meaning was intended.”). Thus under the Constitution, the Attorney General has three specific duties: (1) “providing legal advice to the governor and executive departments”, (2) “representing the Commonwealth in all legal matters,” and (3) “prosecuting violations of Commonwealth law.”

The Constitutional text simply does not support the proposition that the Office can represent a criminal defendant. First, representing a criminal defendant is clearly not “providing legal advice to the governor and executive departments,” though the Attorney General certainly can and should advise the Governor and executive departments against a given contemplated course of action when such conduct would violate Commonwealth or federal law. Second, the Attorney General must represent the Commonwealth in all legal matters. *Id.* This text limits the Attorney General’s representation to the Commonwealth, though statutory provisions include defending Commonwealth employees in civil suits when the challenged conduct occurred within the scope of employment. *See* 7 CMC § 2209. Importantly, criminal actions are not within the scope of employment. *See, e.g., Bahan v. Kurland*, 98 Cal. App. 3d 808, 812 (1979). Finally, any

criminal defense, of a public official or otherwise, is diametrically opposed to the Attorney General's duty to "prosecut[e] violations of Commonwealth law." Thus, the Constitution does not empower the Office from defending public officials in criminal matters.

While the text of the Commonwealth Constitution appears to answer the question presented, the Commonwealth Code should be examined to fully determine the scope of the Attorney General's power to represent public officials and public employees.

B. Statutory Authorization

1. Powers of the Attorney General

The Commonwealth Code further defines the powers and duties of the Attorney General, including the power and duty to represent public officials and public employees. The Attorney General and his or her corresponding duties are established in Title 1 of the Commonwealth Code. 1 CMC §§ 2151–2157. Most of the duties assigned to the Attorney General are transactional in nature, *e.g.*, registering corporation, appointing and certifying notaries, reviewing and approving rules, regulations, contracts, bonds, etc. 1 CMC §§ 2153(a)–(g). The section most relevant to this inquiry requires the Attorney General "[t]o act, upon request, as counsel to all departments, agencies, and instrumentalities of the Commonwealth, including public corporations, except the Marianas Public Land Trust." 1 CMC § 2153(h). Importantly, the Office's enabling legislation directs the Attorney General to serve as counsel for "all departments, agencies, and instrumentalities of the Commonwealth," rather than serving as counsel for individuals. However, other portions of the Commonwealth Code provide for the limited representation of public employees.

The Attorney General is responsible for the representation of Commonwealth employees for allegedly negligent actions taken within the scope of their employment. Under the Government Liability Act, the Commonwealth assumes tort liability "arising from the negligent acts of employees of the Commonwealth acting within the scope of their employment." 7 CMC § 2201(a).¹ Importantly, the Commonwealth's waiver of sovereign immunity is limited to actions sounding in negligence, and the Commonwealth is not liable for "[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights." 7 CMC § 2204(b).

The Attorney General represents public employees only in limited circumstances. The Commonwealth Code provides, in relevant part, that the "Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Commonwealth or his estate for any such damage or injury." 7 CMC § 2209. The Commonwealth Constitution establishes a general rule that the Attorney General only represents the Commonwealth or one of its instrumentalities. NMI Const. art. III, § 11. Section 2209 slightly alters or expands this general rule, providing for the personal representation of public employees in civil actions or proceedings. 7 CMC § 2209. The statutory interpretation doctrine *inclusio unius est exclusio alterius*² strongly suggests that the Attorney General cannot represent public officials or employees in criminal

¹ The Commonwealth Supreme Court has held that under the Government Liability Act "government employees sued for negligent or wrongful conduct arising from actions taken within the scope of employment—including intentional torts—but under CNMI law, intentional torts will ordinarily fall outside the scope of employment." *Kabir v. CNMI Pub. Sch. Sys.*, 2009 MP 19 ¶ 49.

² "The inclusion of one is the exclusion of another."

matters.³ See Antonin Scalia & Bryan A. Garner, *Reading the Law: The Interpretation of Legal Texts* 107–112 (1st ed. 2012).

There is some authority from other jurisdictions allowing attorneys general to defend public officials and public employees in criminal matters. For example, South Carolina Code § 1-7-50 provides:

In the event that any officer or employee of the State, or of any political subdivision thereof, be prosecuted in any action, civil or criminal, or special proceeding in the courts of this State, or of the United States, by reason of any act done or omitted in good faith in the course of his employment, *it is made the duty of the Attorney General*, when requested in writing by any such officer or employee, *to appear and defend the action or proceeding in his behalf*. Such appearance may be by any member of his staff or by any solicitor or assistant solicitor when directed to do so by the Attorney General.

S.C. Code Ann. § 1-7-50 (2014) (emphasis added). Importantly, however, this statutory provision is only legitimate due to the unique criminal justice scheme set forth in the South Carolina Constitution and Code. See *State ex rel. McLeod v. Snipes*, 223 S.E.2d 853, 855–56 (S.C. 1976). As there is no such statute or nuanced criminal justice system in the Commonwealth, such authority is not relevant to this inquiry.

2. Conflict of Interest Statutes

The Government Ethics Code also provides strong support for the proposition that the Office of the Attorney General cannot represent public officials or employees that have been charged criminally. The statutes relating to conflicts of interest, codified at 1 CMC §§ 8531–8545, are most relevant portion of the Government Ethics Code for the question presented. There are two important lines of inquiry: (1) whether the Attorney General and Assistant Attorneys General can represent private individuals outside of their employment; and (2) whether a public official or public employee is subject to criminal liability for seeking personal representation from the Office of the Attorney General in criminal proceedings.

These questions are very serious, in light of the harshness of the penalties for violation, codified at 1 CMC §§ 8571–8577. A violation of the Government Ethics Code can lead to “removal from office, or cancellation of contract rights,” 1 CMC § 8571(b), “a fine of no more than \$500,” 1 CMC § 8572, and can lead to “an action for accounting for any pecuniary benefit received by any person in violation of” the Government Ethics Code, 1 CMC § 8575.

i. The Attorney General and Assistant Attorneys General are forbidden from serving as private attorneys.

The Commonwealth Code provides: “A public official or public employee shall not appear as an attorney for another person before a Commonwealth governmental entity.” 1 CMC § 8537(a). The Government Ethics Code defines “public employee” as “an individual who is an appointed employee of the Commonwealth government, whether part-time or full-time.” 1 CMC § 8503(k). A “public official,” by contrast, is defined as “any person holding any elected office of the

³ The Commonwealth Code does provide that the “Attorney General shall represent the [Commonwealth Ports] authority in all criminal cases.” 2 CMC § 2128(c). Subsequent statutes make clear that this representation is for the prosecution of specific offenses against the Commonwealth Ports Authority. 2 CMC § 2131(b). Furthermore, the representation is limited to a Commonwealth instrumentality.

Commonwealth or any appointed, nonemployee member of the Commonwealth government, including members of boards, commissions, and task forces.” 1 CMC § 8503(l). The Attorney General is clearly a public official and Assistant Attorneys General are clearly “public employees.” For the purposes of the Government Ethics Code, the term “person” is defined as “an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, estate, company, corporation, association, club committee, organization, or group of persons acting in concert.” 1 CMC § 8503(j). This is a very broad definition that certainly includes public officials and employees that are charged criminally. The term “government entity” is undefined. Black’s Law Dictionary defines “public entity” as a “governmental entity, such as a state government or one of its political subdivisions.” Black’s Law Dictionary 605 (10th deluxe ed. 2014). The judiciary is a branch of government, and thus a “government entity” under this definition.

There are three exceptions to the general rule provided in Section 8537(a). A public employee may act as an attorney on behalf of: (1) “The public official or public employee in the public official or public employee’s personal capacity”; (2) “A member of the public official’s [or public employee’s] immediate family”; or (3) “The government entity that is the public official or public employee’s principal employer.” 1 CMC § 8537. The first example simply means that the Attorney General or Assistant Attorneys General may represent themselves in court. The second example allows the Attorney General or Assistant Attorneys General to represent members of their immediate family. The third example, applied here, means that the Attorney General or Assistant Attorneys General may represent the Office of the Attorney General.

In light of the foregoing analysis, the Attorney General or Assistant Attorneys General would violate the Government Ethics Code by acting as an attorney for a private person, unless one of the afore mentioned exceptions applies.⁴

ii. Public officials may be subject to criminal liability for seeking representation from the Attorney General in criminal proceedings.

Any public official or public employee that requests, orders, or otherwise attempts to secure personal representation from the Office of the Attorney General in a criminal proceeding is subject to criminal liability for violating the Government Ethics Code. The Government Ethics Code provides:

A public official or public employee shall not use or attempt to use the public position to obtain private financial gain, contract, employment, license, or *other personal or private advantage*, direct or indirect, for the public official or public employee, for a relative, or for an entity in which the public official or employee has a present or potential economic interest.

1 CMC § 8532(a) (emphasis added). Criminal representation by the Attorney General or an Assistant Attorney General (*i.e.*, at the Commonwealth’s expense) would certainly qualify as a “personal or private advantage,” because, unlike a non-indigent member of the public, the public official or public employee would not need to pay an attorney for representation. Furthermore, the Government Ethics Code defines “financial interest” to include: “Any interest with a cost or present value of \$5,000 or more.” 1 CMC § 8503(f)(2). In this case, any criminal representation has the potential to exceed \$5,000 at prevailing legal rates, especially if the matter goes to trial. In light of the broad language employed by Section 8532 and the Government Ethics Code generally,

⁴ Importantly, this analysis does not mean that an Assistant Attorney General may represent a private individual even if within an exception of the Government Ethics Act. There are other legal issues that must be considered, such as whether his or her employment contract permits such representation.

it is eminently reasonable to conclude that a public official or public employee violates Section 8532(a) by attempting to secure criminal representation from the Office of the Attorney General.

C. Common Law Powers

Any inquiry into the powers of the Attorney General is incomplete without addressing whether the Attorney General's Common Law powers allow the Attorney General or Assistant Attorneys General to represent a public official or public employee in a criminal proceeding. Many State courts hold that their respective Attorneys General possess Common Law powers in addition to statutory and constitutional grants of power. *See Florida ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266 (5th Cir. 1976) (providing a quite thorough analysis of the Common Law powers of attorneys general); *Minnesota ex rel. Hatch v. Am. Family Mut. Ins.*, 609 N.W.2d 1, 3 (Minn. Ct. App. 2000); *Gandy v. Reserve Life Ins. Co.*, 279 So.2d 648, 649 (Miss. 1973) (The Mississippi "Attorney General is a constitutional officer possessed of all the power and authority inherited from the Common Law as well as that specifically conferred upon him by statute."); *see also* Nat'l Ass'n of Attorneys General, *State Attorneys General: Powers and Responsibilities* 27–44 (Emily Myers ed., 3d ed. 2013) [hereinafter *State Attorneys General*] (detailing the Common Law powers of attorneys general in United States jurisdictions). "Contemporary experience reaffirms that the Common Law is a vital source of power for attorneys general who seek to protect public interests in developing areas of law." *Id.* at 27. Locally, Commonwealth Courts have held that the Commonwealth Attorney General retains the Common Law powers inherent to his office. *See Commonwealth v. Demapan-Castro*, Civ. No. 04-0563 (NMI Super. Ct. Mar. 22, 2005) (Order Denying Various Motions to Dismiss, with Some Treated as Motions for Summary Judgment at 15–16) (explaining that there is no constitutional or statutory language that would lead a court to conclude that the Framers of the Commonwealth Constitution intended to divest the Attorney General of his or her Common Law powers). Therefore, to be completely thorough in this analysis, we must examine whether the Common Law gives the Attorney General the power to represent public officials and employees in criminal proceedings.

It is relatively uncontested that attorneys general have certain Common Law powers. Attorneys general may waive a State's sovereign immunity. *See generally Richardson v. Fajardo Sugar Co.*, 241 U.S. 44, 47 (1916) (the Attorney General of Puerto Rico can waive the territory's sovereign immunity). Attorneys general also often have the Common Law power to bring *parens patriae* actions, at least for injunctive relief. *Hawaii v. Standard Oil Co. of Cal.*, 405 U.S. 251, 258 (1972) (approving *parens patriae* action under the Clayton Act for injunctive relief, but not for treble damages); *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439 (1945) (upholding *parens patriae* action for injunctive relief).⁵ The broad Common Law powers of some attorneys general is demonstrated by *Ex parte Young*, 209 U.S. 123 (1908), where the U.S. Supreme Court noted that an "attorney general might institute, conduct, and maintain all suits and proceedings he might deem necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights. . . ." 209 U.S. at 160. Other powers exist, but are not relevant to the present inquiry. *See State Attorneys General* at 37–44. Ultimately, however, the Common Law powers of attorneys general primarily involve the power to bring actions on behalf of the public or in the public interest.


⁵ Although this Opinion cites many U.S. Supreme Court cases, each case requires the Court to address the powers of the State or territorial attorney general in question. *See, e.g., Ford Motor Co. v. Dep't of Treasury of State of Indiana*, 323 U.S. 459 (1945) (removal of state action to federal court did not waive Eleventh Amendment immunity because the Indiana Attorney General did not have the power to waive the State's sovereign immunity); *see State v. Home Brewing Co. of Indianapolis*, 105 N.E. 909 (Ind. 1914) (pursuant to statute, the acts of Parliament after 1607 are not Indiana's common law).

The Common Law powers of the Commonwealth Attorney General do not allow the Attorney General or Assistant Attorneys General to represent public officials or public employees in criminal proceedings. The Common Law powers of attorneys general almost always relate to maintaining suits that are in the public interest. Defending a public official or public employee charged with a crime simply cannot be said to be in the public interest.

CONCLUSION

In light of the foregoing analysis, it is clear that the Office of the Attorney General cannot represent public officials or public employees in criminal proceedings. The only clear instance in which the Attorney General or an Assistant Attorney General can represent a criminal defendant is when the Attorney General or an Assistant Attorney General is representing him- or herself. 1 CMC § 8537. Accordingly, it is my opinion that the Attorney General and attorneys of the Office of the Attorney General do not have the power to defend public officials or employees in criminal proceedings.

CONCURRED IN AND APPROVED FOR PUBLICATION


Gilbert J. Birnrich
Attorney General

1-7-15
Date