



U.S. Department of the Interior
Office of Inspector General

AUDIT REPORT

FOLLOWUP OF RECOMMENDATIONS
CONCERNING PERSONNEL AND
PAYROLL PRACTICES,
LEGISLATIVE BRANCH,
GOVERNMENT OF GUAM

REPORT NO. 97-I-1051
JULY 1997



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

JUL 31 1997

MEMORANDUM

TO: The Secretary

FROM: Wilma A. Lewis
Inspector General

SUBJECT SUMMARY: Final Audit Report for Your Information - "Followup of Recommendations Concerning Personnel and Payroll Practices, Legislative Branch, Government of Guam" (No. 97-I-1051)

Attached for your information is a copy of the subject final audit report. The objective of the **followup** review was to determine whether the Guam Legislature had satisfactorily implemented the recommendations in our 1991 report and whether any new recommendations were warranted.

We concluded that the Guam Legislature had implemented only 1 of the 10 recommendations made to it in our original report. The Legislature continued to: (1) allow legislative employees to accrue annual leave at the maximum rate; (2) make lump-sum payments of annual leave to senators and employees at the end of each term; and (3) issue personal services contracts that contained vague performance requirements. As a result, from January 1, 1993, through September 30, 1995, the Government of Guam incurred excess personnel costs of about \$3.6 million and did not ensure that full value was received from the \$4.6 million of personal services contracts issued. Accordingly we requested in our **followup** report that the Guam Legislature respond to eight new recommendations to address the issues still outstanding from the original report.

Based on the response we received from the Guam Legislature, we considered two of the eight new recommendations made in our **followup** report to be implemented and two recommendations to be resolved but not implemented. In addition, we withdrew three of the recommendations based on additional information presented by the Legislature. However, regarding the remaining recommendation, which related to prohibiting senators from receiving Government of Guam retirement payments concurrent with their senatorial pay, we revised the recommendation to request that the Guam Code be amended to prohibit elected **officials** from receiving retirement annuities until they leave government service. We asked the Legislature to reconsider its position in view of our additional comments on the revised recommendation.

If you have any questions concerning this matter, please contact me at (202) 208-5745 or Mr. Robert J. Williams, Assistant Inspector General for Audits, at (202) 208-4252.

Attachment



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

AUDIT REPORT

The Honorable Antonio R. Unpingco
Speaker
24th Guam Legislature
155 Hesler Street
Agana, Guam 96910

JUL 31 1997

Dear Mr. Speaker:

Subject: Audit Report on Followup of Recommendations Concerning Personnel and Payroll Practices, Legislative Branch, Government of Guam (No. 97-I-1051)

This report presents the results of our followup review of recommendations contained in our February 1991 audit report entitled "Personnel and Payroll Practices, Legislative Branch and Other Elected Officials, Government of Guam" (No. 91-I-372). The objective of the followup review was to determine whether the Guam Legislature had satisfactorily implemented the recommendations in the prior report and whether any new recommendations were warranted.

BACKGROUND

The Guam Legislature was established by Section 10 of the Organic Act of Guam (Title 48, Section 1421, of the United States Code Annotated). The Legislature is composed of 21 senators elected at large every 2 years and is governed by Title 2 of the Guam Code Annotated. The operation of the Legislature, including administrative rules and procedures, is set forth in the Standing Rules, which are adopted at the beginning of each legislative term. The Legislature's Committee on Rules is responsible for implementing the Standing Rules, including establishing an annual budget; maintaining, through a Chief Fiscal Officer, an accounting system; and preparing annual financial statements. The Central Offices, under the Rules Committee, administer the personnel, payroll, procurement/property, accounting, legal, protocol, and archival functions and maintain the Legislature's checking accounts. The Central Offices draw down funds against their budget from the Department of Administration, which is part of the Government of Guam's Executive Branch.

The Department of Administration also provides accounting, training, data processing, procurement, and personnel services support to Government of Guam Executive Branch agencies. The Department's function is to ensure the effectiveness and efficiency of

Government program objectives by providing administrative direction and establishing policies for the implementation of supportive services to all Government agencies.

SCOPE OF AUDIT

To accomplish our audit objective, we reviewed the Legislature's payroll and leave records for senators and their employees, as well as personal services contracts for the 22nd and the 23rd Legislatures.¹ In addition, we interviewed legislative personnel responsible for administering payroll and personal services contracts. We did not perform any detailed reviews of elected officials outside of the Legislature. This followup review covered actions that occurred during the period of January 1993 through December 1995.

The audit was made, as applicable, in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances.

PRIOR AUDIT COVERAGE

In our February 1991 audit, we concluded that elected officials and legislative employees received benefits that either were not consistent with benefits provided to other Government of Guam employees or were in excess of those authorized by law. Specifically, elected officials who had previously retired from Government service and were reemployed received both their retirement annuity and their salary, a benefit denied nonelected Government employees. In addition, all elected officials accrued annual leave--a practice that we found to be unique to Guam. Moreover, contrary to Guam law, all elected officials accrued sick leave. Furthermore, senators and legislative employees were allowed to receive lump-sum payments for annual leave while remaining in Government service. Our prior audit further disclosed that the Guam Legislature did not adequately control personal services contracts.

These conditions occurred because: (1) senators either exempted themselves from laws that applied to other Government of Guam employees or authorized certain benefits to themselves, other elected officials, and legislative employees and (2) senators exempted themselves from existing Government contracting regulations and guidelines and did not establish their own internal controls. As a result of these conditions, the Government of Guam incurred: (1) about \$360,000 annually in excess personnel costs for retirement benefits beginning in March 1990; (2) about \$1.9 million in excess personnel costs from leave benefits from October 1988 through February 1990; and (3) \$3.7 million of costs relating to personal services contracts during 1988 and 1989 with little assurance that full value was received. We made 10 recommendations in the prior report to correct these

¹From January 1993 through September 1995.

conditions. These 10 recommendations were subsequently reported as resolved and implemented.

RESULTS OF AUDIT

Of the 10 recommendations made in our February 1991 report relating to excess personnel costs for elected officials and to the improvement of legislative contracting procedures for personal services contracts, we found that 9 recommendations were not implemented and 1 recommendation was implemented. (The status of the recommendations and corrective actions taken is in Appendix 2.) Specifically, the Legislature continued to: (1) allow legislative employees to accrue annual leave at the maximum rate; (2) make lump-sum payments of annual leave to senators and employees at the end of each legislative term; (3) allow senators, contrary to the Guam Code, to accrue sick leave; and (4) issue personal services contracts for services that were not openly solicited and that contained vague performance requirements. As a result, from January 1, 1993, through September 30, 1995, the Government of Guam incurred excess personnel costs of about \$3.6 million and did not have assurance that full value was received from the \$4.6 million of personal services contracts awarded.

Prior Audit Report Recommendations

Recommendation A. 1. Submit legislation to discontinue annual leave accrual by elected officials.

Our prior audit report questioned the propriety of elected officials accruing annual leave when the basic relationship with which leave is accrued and used by an employee does not exist with respect to senators. The prior report stated that “basic leave principles require that a systematic approach exist for measuring the accrual and use of leave,” including procedures for approving or disapproving leave. For example, an employee with 15 years of service working a pay period that includes 10 8-hour days would accrue 8 hours of annual leave for the pay period. If the same employee (with the approval of a supervisor) took a workday off during the period, 8 hours of leave would be deducted from the leave balance. However, elected officials do not have supervisors and are answerable only to their constituents.

Our followup review found that senators continued to accrue annual leave. The Standing Rules for the 22nd and the 23rd Legislatures prescribe annual leave policies for legislative employees but do not address senatorial accrual and use of annual leave. Also, senators were not charged leave when they were absent. For example, a senator of the 23rd Legislature was away from his job for at least 70 consecutive workdays (560 hours) but was not charged any leave for that time period. As of September 30, 1995, senators of the 23rd Legislature had accrued a total of 2,596 hours of annual leave, but only 1 of the 21 senators had used and was charged for annual leave (136 hours). Because the senators continued to accrue annual leave, we consider the recommendation unimplemented.

Recommendation A.2. Initiate action to revise the Legislature's Standing Rules for nonelected employees' annual leave accrual to conform to the provisions of Title 4, Section 4109. of the Guam Code Annotated.

Our prior audit found that legislative employees accrued annual leave at the maximum rate of 8 hours per pay period regardless of their length of service. Title 4, Section 4109(a), of the Guam Code Annotated authorizes annual leave to be granted to employees occupying permanent positions as follows:

- Less than 3 years of service: 4 hours per pay period.
- Three but less than 15 years of service: 6 hours per pay period.
- Fifteen years or more of service: 8 hours per pay period.

However, the Legislature had modified the accrual rate for senators and legislative employees through the Standing Rules. As a result, senators and their employees had accumulated 57,405 hours of excess annual leave, valued at \$487,859, from January 1, 1982 (the date the law was amended), through February 24, 1990.

Our followup review found that legislative employees continued to accrue annual leave in excess of the rates specified for Government of Guam employees. Specifically, Rule XXII, Section 22.09.11, of the Standing Rules of the 22nd and the 23rd Legislatures states that employees will accrue annual leave at the rate of 1 day (8 hours) for each full biweekly pay period. As a result, legislative employees accumulated, from February 24, 1990, through September 30, 1995, an additional 88,736 hours of excess annual leave, valued at \$1,112,165. Because the legislative employees continued to accrue annual leave in excess of rates specified in the Guam Code Annotated, we consider the recommendation unimplemented.

Recommendation A. 3. Require the Legislature's Executive Director to initiate collection actions to recoup the improper lump-sum payments made by the Government.

Recommendation A.4. Initiate action to establish procedures for limiting lump-sum payment of accrued annual leave to employees only when they actually terminate Government employment.

Our prior audit report stated that senators and legislative employees received lump-sum payment for their unused annual leave balance at the end of each legislative term regardless of whether the senator was reelected or the employee continued to work for the Government of Guam. We concluded that senators and legislative employees would be entitled to the lump-sum payment only if they were not reelected or otherwise employed by the Government. Our position was supported by a January 1989 memorandum issued by Guam's Attorney General, which stated that there was no separation from Government employment if an official was reelected. Because lump-sum payments were not limited, the Government of Guam incurred excess personnel costs of \$361,427 in January 1989.

Regarding Recommendation A.3, our followup review found that actions had not been taken to collect the lump-sum payments of accrued annual leave incorrectly paid to senators and legislative employees. Therefore, we consider the recommendation unimplemented.

Regarding Recommendation A.4, our follow-up review found that senators and legislative employees continued to receive lump-sum payments for their unused annual leave balance at the end of each legislative term regardless of whether the senator was reelected or the employee continued to work for the Government of Guam. As a result, the Government of Guam incurred additional excess personnel costs of \$2,103,869 for lump-sum payments of annual leave in fiscal years 1993 (\$1,347,525) and 1995 (\$756,344). Because lump-sum payments continued to be received by senators and legislative employees, we consider the recommendation unimplemented.

Recommendation A.5. Direct the Legislature's Executive Director to discontinue the accrual of sick leave for senators and to eliminate all sick leave balances previously accrued by senators.

Our prior audit report found that senators and other elected officials of the Government of Guam accrued sick leave, which was contrary to existing law. Title 4, Section 4108, of the Guam Code Annotated authorizes Government of Guam employees to accrue sick leave at the rate of 4 hours per pay period. However, Section 4108 does not include elected officials in the definition of Government employees. Because sick leave was accrued by senators and other elected officials, as of February 24, 1990, the Government of Guam had incurred a potential liability of at least \$1.1 million relating to the accrual of sick leave for these individuals.

In our follow-up review, we found that the practice of accruing sick leave continued despite an April 19, 1995, memorandum from the Legislative Legal Counsel which stated that the Inspector General's position had legal merit and that senatorial sick leave accrual should be discontinued. As a result, from January 1, 1993, through September 30, 1995, the Government of Guam incurred an additional potential liability of at least \$373,350 for sick leave accrued by senators of the 22nd and the 23rd Legislatures. Subsequent to our completion of fieldwork, legislation was enacted on July 26, 1996, that eliminated the accrual of sick leave by members of the 24th Guam Legislature, which began on October 1, 1996. However, the legislation did not address sick leave balances that were accrued previously. Because the sick leave balances previously accrued were not eliminated, we consider the recommendation unimplemented.

Recommendation A.6. Submit legislation to eliminate the provisions of Title 2, Section 1120(b), of the Guam Code Annotated, which allows elected officials to receive retirement annuities while they are employed by the Government.

Our prior audit found that officials retired from elected Government positions but did not leave the Government. In these cases, they received both their retirement annuity and

their salary, a benefit denied nonelected Government employees. Title 4, Section 8 121, of the Guam Code Annotated states that a Government retiree who becomes reemployed by the Government “shall have his/her retirement annuity suspended.” However, in December 1984, the Legislature exempted itself and other elected officials from this provision through enactment of Title 2, Section 1120(b), of the Guam Code Annotated. Because of the dual compensation, at March 1990, the Government of Guam had incurred \$367,477 in excess personnel costs.

Although no examples were noted, our followup review found that the dual compensation provision for elected officials had not been eliminated. Therefore, we consider the recommendation unimplemented.

Recommendation A.7. Submit legislation to amend the provisions of Title 4 of the Guam Code Annotated (Section 8170(a)(3)) so that a senator’s retirement annuity will be based on the average of the senator’s three highest annual salaries actually received.

Our prior audit found that a senator’s retirement annuity computation was based on the higher of: (1) the average of the senator’s three highest annual salaries or (2) the annual compensation paid to the Director, Department of Administration, at the time the senator applied for retirement. Three senators who retired in 1989 had been paid \$26,000 each in 1987 and 1988 and \$41,500 in 1989 (a 3-year average of \$31,167). However, at the time these senators applied for retirement, the Director of Administration’s salary was \$50,000. Thus, each senator’s average salary for annuity computation purposes was increased by \$18,833 because the Director’s salary was used as the basis for retirement purposes.

In our followup review, we found that the recommendation had been implemented with enactment of Public Law 23-33 on June 28, 1995, which changed the basis for computing a senator’s retirement to the average of the three highest annual salaries actually earned by the senator. Therefore, we consider the recommendation implemented.

Recommendation A. 8. Instruct the Director, Department of Administration, to discontinue the accrual of sick leave for elected officials of the executive branch and to eliminate the sick leave balances previously accrued by these officials.

Our prior audit found that elected officials of both the Executive and the Legislative Branches of the Government of Guam accrued sick leave, which was contrary to existing law. Because the Department of Administration maintained the leave records for all elected officials, we recommended that the Governor instruct the Department’s Director to eliminate sick leave balances for elected officials in the Executive Branch. However, our follow-up review was limited to practices of the Legislative Branch. In the review, we found that, based on the leave records for each senator that were maintained at the Legislature’s Personnel and Payroll Office (see Recommendation A.5), sick leave was still being accrued and sick leave balances were not eliminated. Since we noted the problem in the Legislative Branch and we did not receive documentation subsequent to our prior

audit confirming that corrective actions were taken as they relate to the Executive Branch, we consider the recommendation unimplemented.

Recommendation A.9. Instruct the Director of the Retirement Fund to recompute the retirement annuities for elected officials who have retired to exclude the sick leave previously granted improperly.

Our prior audit found that elected officials accrued sick leave, which was contrary to the Guam Code. The sick leave was used in computing retirement annuities. For example, the three senators who retired during the prior audit received retirement credit for 4,132 hours of accrued sick leave. In our follow-up review, we found that this practice still existed. For example, two senators who retired during the 22nd Legislature (1993 and 1994) used a combined total of 1,495 hours of sick leave in computing their years of service. Therefore, we consider the recommendation unimplemented.

Recommendation B.1. Initiate action to establish and implement written procedures that include but are not limited to soliciting for personal services and awarding, monitoring the progress of, and evaluating performance under Personal services contracts.

Our prior audit found that contracts for personal services: (1) were not openly solicited; (2) were awarded for questionable services; (3) did not contain specific terms or deliverables; and (4) appeared to duplicate existing services. The Government of Guam had guidelines for and regulations that specified how and under what circumstances personal services contracts could be awarded. However, the Legislature exempted itself from such regulations and did not establish its own control procedures. As a result, the Legislature did not have assurance that full value was received from the \$3.7 million of personal services contracts awarded during 1988 and 1989.

Our prior audit found that the 21 senators had a support staff of approximately 250 employees during calendar years 1988 and 1989. In addition to the support staff, the Legislature awarded 574 personal services contracts: 310 contracts awarded to 195 individuals in 1988 and 264 contracts awarded to 173 individuals in 1989. Our followup review found that the 21 senators had an average support staff of 334 employees for the 22nd and the 23rd Legislatures. In addition to the support staff, the 22nd Legislature awarded 261 personal services contracts to 261 individuals, and the 23rd Legislature awarded 177 personal services contracts to 161 individuals. The values of these contracts were \$2,859,465 and \$1,765,658, respectively, for the 22nd and the 23rd Legislatures.

In our follow-up review, we found that the same conditions previously noted still existed. We also noted that legislative personnel paid contractors without valid contracts and that senators' offices prepared the contractors' invoices. Specifically, we found that consultants generally did not submit their own billings. Instead, payment forms were prepared by the respective senator's office in a manner similar to an employer processing payroll for an employee, where payment was based on the passage of time rather than on the attainment of specific objectives in the contracted scope of work. For example, a

consultant received an advance payment of \$4,000 for April on March 15, 1995, and received another \$4,000 for May 1995.² However, the consultant had resigned and left Guam in April 1995. The May 1995 invoice form was submitted for payment by the office of the employing senator on May 2, 1995. These conditions occurred because the Legislature did not have written procedures for contracting with consultants. As a result, the Legislature did not have assurance that full value was received from over \$4.6 million of personal services contracts it awarded during the 22nd and the 23rd Legislatures. Because corrective actions regarding personal services and personal services contracts were not taken, we consider the recommendation unimplemented.

Recommendations

We recommend that the Speaker of the Legislature:

1. Submit legislation to discontinue annual leave accrual by senators.
2. Revise the Legislature's Standing Rules to ensure that legislative employees accrue annual leave in accordance with Title 4, Section 4109(a), of the Guam Code Annotated.
3. Revise the Legislature's Standing Rules to limit lump-sum payments of accrued annual leave to **only** those individuals who are not reelected or are no longer employed by the Government of Guam.
4. Amend Title 2, Section 1120(b), of the Guam Code Annotated to prohibit elected officials from receiving retirement annuities until they leave elected government service.
5. Initiate action to establish and implement written procedures for openly soliciting and awarding contracts with specific terms and deliverables, including the processing of contractor invoices based on the completion of contract deliverables.

Guam Legislature Response and Office of Inspector General Reply

The February 28, 1997, response (Appendix 3) to the draft report from the Chairman of the Committee on Rules, Government Reform and Federal Affairs, 24th Guam Legislature, on behalf of the Speaker of the Guam Legislature, expressed concurrence with Recommendations 1, 2, 3, and 8 and nonconcurrence with Recommendations 4, 5, 6, and 7. For Recommendations 4, 5, and 7 in our draft report, we requested the retroactive recovery of improper lump-sum payments for accrued annual leave, the **elimination** of sick leave balances improperly accrued by senators, and the recomputation of retirement annuities of elected officials to omit credit for sick leave. The Legislature, however, said

²The consultant's contract stipulated that he be paid \$4,000 per month for 9 months.

that these recommended actions were “impractical” because a “large number of individuals” would be affected by implementation of the recommendations and thus the “real possibility of litigation over the issue, simply makes collection more trouble than it is worth and likely one that will cost more money than will be gained.” We agree that litigation may occur and be costly as a result of any attempt to retroactively implement these recommendations. In addition, the time that has elapsed from the previous recommendation to the present appears to make it impractical to initiate collection actions. As such, we have eliminated Recommendations 4, 5, and 7 from the final report and renumbered Recommendations 6 and 8 from our draft report as Recommendations 4 and 5, respectively.

Regarding Recommendation 4 (Recommendation 6 in the draft report), which requested amendment of the provisions of the Guam Code Annotated that allow elected officials to receive retirement annuities while they are employed by the Government, the Legislature stated, in response to Recommendation 1, that a premise for eliminating annual leave accrual by senators was that senators were not full-time government employees and were not eligible for the benefits of full-time employees. Therefore, according to the Legislature, senators should not be subject to the same prohibitions against dual compensation that govern full-time employees. The Legislature also stated that retirees from the private sector and from the Federal Government would not have to forgo their retirement benefits if they were elected to the Legislature. Further, the response stated that implementation of the recommendation would discourage “literally thousands of our brightest, most experienced, and talented” government retirees from seeking elected office.

We agree that because senators are not full-time government employees they should not be subject to the same post-retirement government reemployment restrictions and that government retirees should be allowed to retain their pensions if they later decide to run for office. However, our recommendation was meant to address a somewhat different situation, which had occurred at the time of our 1991 audit with respect to 13 elected officials, including 3 senators. At that time, the 13 elected officials met government retirement qualifications and began to receive retirement annuities. However, they actually remained in office, thus collecting both their retirement annuities (although they never retired) and their regular salaries. We believe that, in such cases, the retirement annuities should have been deferred until the individuals left elected government service. Although our followup review did not disclose additional situations as the 13 prior instances, the law that permitted the dual compensation is still in effect. Therefore, we have revised Recommendation 4 accordingly, and we request that the Legislature respond to the revised recommendation.

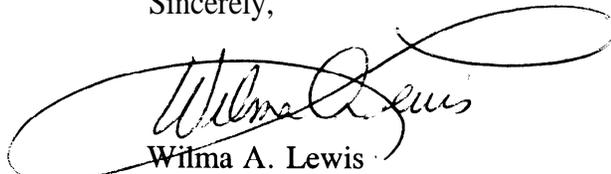
Based on the Legislature’s response, we consider Recommendations 1 and 5 resolved and implemented and Recommendations 2 and 3 resolved but not implemented. Also based on the response, we request that the Legislature respond to Recommendation 4, which has been revised to request that the Guam Code be amended to prohibit elected officials from receiving retirement annuities until they leave elected government service.

The Inspector General Act, Public Law 95-452, Section 5(a)(3), as amended, requires semiannual reporting to the U.S. Congress on all audit reports issued, the monetary impact of audit findings (Appendix 1), actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken.

In view of the above, please provide a response, as required by Public Law 97-357, to this report by September 30, 1997, to our North Pacific Regional Office, 238 Archbishop F.C. Flores St., Suite 807, Pacific News Building, Agana, Guam, 96910. The response should provide the information requested in Appendix 4.

We appreciate the assistance of Guam Legislature personnel in the conduct of our audit.

Sincerely,



Wilma A. Lewis
Inspector General

CLASSIFICATION OF MONETARY AMOUNTS

<u>Finding Areas</u>	<u>Funds To Be Put To Better Use*</u>
Benefits	
Annual Leave	\$3,216,034
Sick Leave	373,350
Personal Services Contracts	<u>4,625,123</u>
Total	<u>\$8,214,507</u>

*Amounts represent local funds.

**STATUS OF RECOMMENDATIONS AND CORRECTIVE ACTIONS
FOR AUDIT REPORT “PERSONNEL AND PAYROLL
PRACTICES, LEGISLATIVE BRANCH
AND OTHER ELECTED OFFICIALS,
GOVERNMENT OF GUAM”
(No. 91-I-372)**

<u>Recommendations</u>	<u>Status of Corrective Action</u>
A. 1. Submit legislation to discontinue annual leave accrual by elected officials.	Not implemented.
A.2. Initiate action to revise the Legislature’s Standing Rules for the nonelected employees’ annual leave accrual to conform to the provisions of Title 4, Section 4109, of the Guam Code Annotated.	Not Implemented.
A.3. Require the Legislature’s Executive Director to initiate collection actions to recoup the improper lump-sum payments made by the Government.	Not implemented.
A.4. Initiate action to establish procedures for limiting lump-sum payment of accrued annual leave to employees only when they actually terminate Government employment.	Not implemented.
A.5. Direct the Legislature’s Executive Director to discontinue the accrual of sick leave for senators and to eliminate all sick leave balances previously accrued by senators.	Not implemented.

<u>Recommendations</u>	<u>Status of Corrective Action</u>
A.6. Submit legislation to eliminate the provisions of Title 2, Section 1120(b), of the Guam Code Annotated, which allows elected officials to receive retirement annuities while they are employed by the Government.	Not implemented.
A.7. Submit legislation to amend the provisions of Title 4 of the Guam Code Annotated (Section 8170(a)(3)) so that a senator's retirement annuity will be based on the average of the senator's three highest annual salaries actually received.	Implemented. On June 28, 1995, Guam Public Law 23-33 was enacted, which changed the basis for computing a senator's retirement to the average of the three highest salaries actually earned.
A.8. Instruct the Director, Department of Administration, to discontinue the accrual of sick leave for elected officials of the executive branch and to eliminate the sick leave balances previously accrued by these officials.	Not implemented.
A.9. Instruct the Director of the Retirement Fund to recompute the retirement annuities for elected officials who have retired to exclude the sick leave previously granted improperly.	Not implemented.
B.1 Initiate action to establish and implement written procedures that include but are not limited to soliciting for personal services and awarding, monitoring the progress of, and evaluating performance under personal services contracts.	Not implemented.

24th Guam Legislature
Committee on **Rules, Government**
Reform and Federal Affairs
Senator Mark Forbes, Chairman



FEB 28 1997

Wilma A. Lewis
Inspector General
U.S. Department of the Interior
Office of Inspector General
Agana, Guam 96910

Dear Ms. Lewis:

On behalf of Speaker Antonio R. Unpingco and the 24th Guam Legislature, I have been tasked to respond to the follow-up audit conducted by your office on the personnel and payroll practices of the Guam Legislature, specifically during the 22nd and 23rd Guam Legislature. Allow me to extend our appreciation for the additional time we have been granted to make this response. The extension was quite necessary, as we are still in many ways getting our feet wet in our new role as the majority party, a position we have not had the honor of holding for the past fourteen years.

This response will be more or less patterned after the recommendations made in the follow up audit. From time to time, I may stray from the specific of a recommendation to make a more generalized point. I hope you will forgive this deficiency in style, but I do think that several of the problems noted by the audit have a root in certain philosophical issues the Legislature has failed to deal with in the past, and that -- at least in part -- solutions can be found by dealing with certain general principles as well as through specific action steps. To the extent that this may muddle our presentation, I apologize.

**** Recommendations 1 and 6**

I concur that senators in the Guam Legislature should not accrue annual leave. It has been argued, by some, that senators are full-time, regular employees of the government and thus should be eligible for all employee benefits. This is not the case. Senators clearly are not in the same boat as regular employees of the government. Senators are permitted to draw retirement annuities from the government concurrent with the drawing of their paychecks, something regular employees are prohibited from doing with the exception of teachers and nurses in the government of Guam. Teachers and nurses are granted this exemption only due

**** [OFFICE OF INSPECTOR GENERAL NOTE: As stated in our report, Recommendations 4, 5, and 7 have been deleted, and Recommendations 6 and 8 have been renumbered as Recommendations 4 and 5, respectively.]**

to a critical shortage of these vital personnel in Guam. No similar shortage of political candidates exists.

Unlike most regular government employees, senators are not compensated on an hourly basis, indeed, senators need not keep hours at all. Under law, a senator receives a set amount of pay equally divided into twenty-six installments. Should a senator choose never to show up at the office, or indeed fail to attend a single day of session, the senator would nonetheless receive precisely the same degree of compensation as one who diligently attended each session and worked at the office daily from 8:00 a.m. to 5:00 p.m. It is precisely this absolute work flexibility that makes the notion of leave for senators an absurdity. Would a senator be docked pay for showing up at 11:00 a.m. at the office rather than 8:00 a.m.? No. It never happens. There is no mechanism for such a reduction in pay that is practicable or even conceivable. There is no immediate supervisor for any senator, no one to act as timekeeper. The argument, that the "supervisor" of senators is the people of Guam, is moot. Yes, the people do elect senators, but can a senator wishing to take leave for eight hours on a given day circulate his or her leave form to the general public to receive approval? Attendance on the job for regular employees is not a matter of public ratification every two years, it is a daily matter of record keeping and failure to show up to work is reflected in the amount of pay a regular employee receives every two weeks.

The entire reason why such a thing as leave exists for regular employees of the government is absent in the case of a senator, who is in fact his or her own timekeeper. That is why -- in practical effect -- most senators never take annual leave, and those few who do submit leave forms (during vacations) do not do so with absolute consistency. In short, senators are not regular employees of the government of Guam and are not by definition entitled to all the benefits that regular employees receive. Most assuredly, we are not entitled to leave -- or more accurately -- senators have the ability to take leave at will and it is automatically paid leave since there is no correlation between the number of hours actually worked and the level of compensation we receive.

Since virtually all leave granted to senators under current practice is converted to cash payments to senators every two years, the current leave provisions for senators amount to nothing more than a sub-rosa mechanism for increasing senatorial pay by an average of \$3,000 to \$4,000 annually.

Terminating annual leave accrual for senators will require change in statute. I will, within the next thirty days introduce into the Twenty-fourth Guam Legislature a bill which when passed into law will end the accrual of annual leave. Further, references to senators as full-time and regular employees of the government of Guam as exist in various areas of the code will be repealed.

Having said the foregoing, I must respectfully disagree with the recommendation that senators who have retired from government service be prohibited from receiving their annuities while they serve in the Legislature. A prohibition would make sense if senators are in fact full-time regular employees of the government. But, as previously stated, I do not believe they are regular employees of the government (and that we must expunge all references to such a status). Senators are arguably not even full-time. The total number of session days

in a year usually number sixty or less. Public hearings will occur an average of three times a week, but no senator is a member of every committee and no member attends every public hearing for every committee he or she is a member of. Constituent work can be demanding at times, but presumably that is why senators have full-time staffs and such staffs also (in varying degrees) assist in the drafting of legislation and the introduction, hearing, mark-up and promotion thereof. I suspect that it is the essential part-time nature of a senator's job that allows so many senators to conduct stellar careers as professionals (doctors and lawyers) or business people during the time they spend in the Legislature. If a senator is not a regular employee of the government and may in fact be a part-time employee at that, why should a person who has previously retired from the government be denied their annuity upon assuming office? Where is the conflict? We wouldn't expect a federal retiree or military retiree or someone retired from a private business to forego their annuity as a condition of public service. Indeed, given the tremendous contributions retirees can make to the formation of public policy and law, I would be very reluctant to embrace a policy that would effectively discourage our people who have retired from seeking office, especially here in Guam, where literally thousands of our brightest, most experienced and talented people are in fact government retirees.

The fact is that senators cannot have it both ways. We cannot consider ourselves regular government employees when it suits us (as when we want to get leave benefits) and call ourselves special when it doesn't suit us to be regular (as in justifying the simultaneous receipt of annuities and salaries). We have to resolve this one way or the other, and I favor resolution against regular status, under which we would be denied leave, but also under which annuitants could seek office without fear of losing their annuities.

Recommendation 2

We concur entirely. In the next thirty days, I will introduce a resolution to amend the Standing Rules and conform employee leave provisions in the Legislature to §4109., 4GCA.

Recommendation 3

We concur entirely. In the next thirty days, I will introduce a resolution which will amend the Standing Rules to limit lump-sum payments as recommended.

**** Recommendation 4**

The recommendation is impractical. Turnover in previous Legislatures was legendary. Lord knows how many thousands of people have passed through employment in the past three or four Legislatures (especially the Twenty-first and Twenty-second). The large number of individuals that would be effected, plus the real possibility of litigation over this issue, simply makes collection more trouble than it is worth and likely one that will cost more money than will be gained.

** **Recommendation 5 and 7**

These recommendations are also impractical, for reasons similar to those detailed above. Sometimes, it is pointless to attempt to change what has happened and better to resolve no to recapitulate previous error.

** **Recommendation 8**

We concur that personnel service contracts are poorly used in the Guam Legislature and that things need to change. Currently, personnel service contracts are being used to hire people who are essentially full-time legislative employees. Here is our proposal for changing this. We propose to create two classes of employee in the Legislature.

CLASS 1. Unrestricted employee. When hired on a full-time basis, CLASS 1 employees are eligible to receive full benefits (medical, dental and life insurance) and may choose to join the GovGuam Retirement plan. Annuitants may not become CLASS 1 employees without foregoing their annuities.

CLASS 2. Restricted employee. CLASS 2 employees are ineligible for medical, dental or life insurance benefits. They may not join the GovGuam Retirement plan but FICA must be paid on such employees. Annuitants may be CLASS 2 employees without losing their annuities. CLASS 2 employees can be valuable to the Legislature inasmuch as they would cost less, saving taxpayers' dollars.

At the same time that this is done, the rules governing the use of contracts must be tightened up in the Standing Rules, so that contracts can only be used for the acquisition of professional services with specific deliverables, such as legal services, audit services, construction contracts, maintenance contracts, etc. and that such contracts be openly solicited and awarded, in a manner designed to endure competition for the purpose of reducing costs associated with contractual services.

I will introduce a resolution amending the Standing Rules as detailed above within the next thirty days.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Forbes', with a long horizontal flourish extending to the right.

MARK FORBES
Senator, Chairman
Committee on Rules,
Government Reform
and Federal Affairs

STATUS OF AUDIT REPORT RECOMMENDATIONS

<u>Finding/Recommendation Reference</u>	<u>Status</u>	<u>Action Required</u>
1 and 5	Implemented.	No further action is required.
2 and 3	Resolved; not Implemented.	Advise the Office of Inspector General when the Legislature's Standing Rules have been revised regarding accrued annual leave and lump-sum payments of annual leave for legislative employees.
4	Unresolved.	Respond to the revised recommendation. If concurrence is indicated, provide an action plan that includes target dates and titles of officials responsible for implementation. If nonconcurrence is indicated, provide reasons for the nonconcurrence.

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