



OFFICE OF THE PUBLIC AUDITOR

**EXECUTIVE SUMMARY**

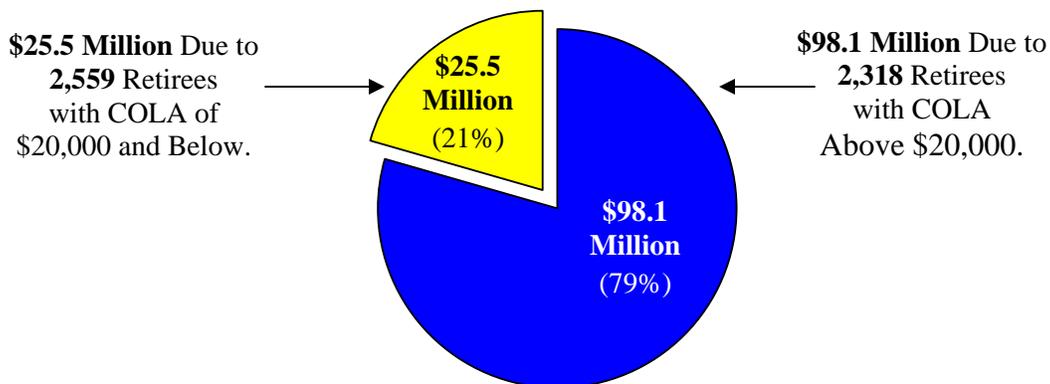
Government of Guam Retirement Fund Cost of Living Allowance Comparative Analysis  
Report No. 07-05, May 2007

At the request of the Director of Administration, we performed a comparative analysis of the cost of living allowance (COLA) calculations submitted to the Superior Court of Guam for Special Proceedings Case No. SP0206-93. We compared the calculations of the Government of Guam Retirement Fund (Retirement Fund), the Governor’s Office, and the Superior Court.<sup>1</sup> We also reviewed the methodologies of these three calculations to compute the COLA amounts due to the retirees. There were some limitations on our scope of work as discussed in Appendix 2.

In August 1988, Public Law (P.L.) 19-19, codified in 4 G.C.A. § 8137.1, required the General Fund to pay an annual lump sum COLA to retirees and survivors on the first retirement payday after July 1 of each year. The amount was to be calculated by multiplying the entitled benefit by the rate of inflation using 1988 as the base year. The inflation rate was to be determined by the Department of Commerce through its annual cost of living index. In October 1995, P.L. 23-45 repealed the “prospective application of Department of Commerce cost of living index to Government of Guam Retirement Fund benefits.”

Pursuant to 4 G.C.A. § 8137.1, the Superior Court, in October 2006, ordered the Retirement Fund to revise its initial August 2006 COLA calculation of \$96 million<sup>2</sup> (M) using the 1988 inflation rates regardless of the annuitant’s retirement dates. This revision resulted in the award of \$123.6M to the COLA class. We stratified the Superior Court ordered COLA of \$123.6M due to retirees in increments of \$10,000. Of the 4,877 retirees in the COLA class, we found that 52% or 2,559 retirees who are entitled to COLA of \$20,000 and below expect to receive \$25.5M, or 21% of the \$123.6M COLA award. In contrast, a larger percentage, 79% or \$98.1M, in COLA will go to a smaller number of retirees (2,318 or 48%) who are entitled to COLA in excess of \$20,000. Refer to Chart 1.

**Chart 1: Breakdown of COLA Due Based on Superior Court Ordered Calculation**



<sup>1</sup> Pursuant to an October 2006 Decision and Order, the Retirement Fund prepared the calculation on behalf of the Superior Court of Guam.

<sup>2</sup> The Retirement Fund calculation multiplied the annuity amount received per year by the inflation rate that was dependent on the individual’s retirement date.

We also found 61 retirees with COLA amounts in excess of \$100,000. These 61 retirees expect to receive a total of \$7.3M under the Superior Court ordered calculation, compared to \$3.4M under the Retirement Fund calculation; a difference of \$3.9M.<sup>3</sup>

From fiscal year (FY) 1991 through FY 1995, the Guam Legislature appropriated a total of \$108M: \$32M in COLA and \$76M in supplemental annuities. Entitled retirees and survivors each received \$1,800 annually for COLA and \$4,238 annually for supplemental annuities for the five years. In addition, all retirees and survivors received annual automatic increases in their annuities during the five years ranging from \$200 to \$600 according to the sliding scale prescribed in 4 G.C.A. § 8122(b).

Table 1 summarizes the respective COLA calculations of the Retirement Fund, Governor’s Office, and the Superior Court.

**Table 1: Summary of COLA Calculations**

Payout Month / Year	Retirement Fund Calculation	Governor’s Office Calculation	Superior Court Ordered Calculation
July 1991	\$ 7,427,381	\$ 4,200,993	\$ 9,281,908
July 1992	13,023,396	7,238,218	17,946,826
July 1993	16,933,437	9,586,139	26,043,141
July 1994	23,883,812	11,289,157	40,174,856
July 1995	34,936,063	12,979,834	61,898,157
<b>Gross COLA Amount</b>	<b>\$ 96,204,089</b>	<b>\$ 45,294,341</b>	<b>\$ 155,344,887</b>
- Less COLA Paid	-	(32,484,450)	(32,187,900)
- Less Supplemental Annuity Paid	-	-	-
- Less Net Increases in Annuities	-	(6,189,659) <sup>4</sup>	-
+ Plus COLA Overpaid	-	-	423,243
<b>Total COLA Due<sup>5</sup></b>	<b>\$ 96,204,089</b>	<b>\$ 6,620,232</b>	<b>\$ 123,580,231</b>

None of these calculations deducted the \$76M in supplemental annuities paid to retirees from 1991 to 1995, although the Retirement Fund’s 1987 annual report stated supplemental annuities are “Ad-Hoc Cost of Living Adjustments.” Supplemental annuities are not an integral part of an annuitant’s pension benefits. The Superior Court of Guam, as adjudicated by Judge Arthur Barcinas, issued an October 2006 Decision and Order, which ruled that COLA class members who retired before July 1995 are entitled to the COLA using the multiplication factor prescribed by 4 G.C.A. § 8137.1.

The COLA amount of \$123.6M was \$27M more than the Retirement Fund calculation of \$96M and \$117M more than the Governor’s Office calculation of \$6.6M. If the Retirement Fund deducted the \$32M COLA already paid from its calculation, the difference between its calculation and the Superior Court ordered calculation would have been \$59M.

<sup>3</sup> We did not perform similar comparisons between the Retirement Fund calculation and the Superior Court ordered calculation for the other COLA ranges.

<sup>4</sup> This is the estimated amount of the net increases as described in the declaration of the Governor’s consultant. However, the calculations in Schedule 4 of the Governor’s consultant’s declaration indicate \$5.7M and did not list the details of how the remaining \$500,000 was applied to derive the final COLA amount of \$6.6M.

<sup>5</sup> Column totals may not add up due to rounding.

The major differences among the three calculations are due to the inflation rates applied, deductions to the COLA due, and the cut-off retirement dates used. Again, none of the three calculations subtracted the \$76M in supplemental annuities already paid to the COLA class from July 1991 through July 1995. Table 2 illustrates the major differences among the three calculations.

**Table 2: Calculation Comparison**

Aspects of Comparison	Retirement Fund Calculation	Governor's Office Calculation	Superior Court Ordered Calculation
<b>Inflation Rates Applied</b>	Guam Department of Commerce's floating base year inflation rates depending on the individual's retirement year.	Hawaii's floating base year inflation rates depending on the individual's retirement year.	Guam Department of Commerce's 1988 base year inflation rates regardless of the individual's retirement year.
<b>\$32M COLA Already Paid</b>	Not Deducted	Deducted	Deducted
<b>\$423,243 in Overpaid COLA</b>	Not Added Back	Not Added Back	Added Back
<b>\$6.2M Net Increases in Annuities</b>	Not Deducted	Deducted	Not Deducted
<b>Cut-off Retirement Dates</b>	Includes retirees who retired prior to December 1993.	Includes retirees who retired prior to December 1993.	Includes retirees who retired prior to July 1995.
<b>\$76M Supplemental Annuities Already Paid</b>	Not Deducted	Not Deducted	Not Deducted

Table 3 illustrates how the different calculations can yield varying COLA amounts.

**Table 3: COLA Calculations for Retiree D (Retired on 2/1/91)**

Payout Month / Year	Annual Annuity Paid	Retirement Fund Calculation & Rates		Governor's Office Calculation & Rates		Superior Court Ordered Calculation & Rates	
July 1991	\$ 8,697	0.00%	\$ -	0.00%	\$ -	24.02%	\$ 2,089
July 1992	20,956	0.00%	-	0.00%	-	39.59%	8,296
July 1993	21,156	7.07%	1,496	4.70%	985	49.46%	10,464
July 1994	21,356	18.56%	3,964	7.93%	1,678	65.49%	13,986
July 1995	21,547	34.42%	7,416	10.61%	2,266	87.63%	18,882
<b>Subtotal</b>	<b>\$ 93,712</b>		<b>\$ 12,876</b>		<b>\$ 4,928</b>		<b>\$ 53,717</b>
- Less COLA Paid			-		(7,200)		(7,200)
- Less Net Annuity Increases			-		(591)		-
+ Plus COLA Overpaid			-		-		-
<b>Total COLA Due</b>			<b>\$ 12,876</b>		<b>\$ (2,863)</b>		<b>\$ 46,517</b>

Since Retiree D was not retired a full year in 1991, this retiree's July 1991 annuity was prorated for five months or \$8,697. Under the Retirement Fund calculation, Retiree D is entitled to three payments totaling \$12,876. Under the Governor's Office calculation, Retiree D would not be entitled to any COLA. Under the Superior Court ordered calculation, Retiree D is entitled to five COLA payments totaling \$46,517. The difference in COLA amounts was due primarily to the inflation rates used.

Our analysis was based on data provided by the Retirement Fund from which the \$123.6M COLA payout was derived. The COLA listing included annuitants who retired after the July 1995 COLA payout date. We noted 755 unusual COLA calculations, including 63 retirees that

may still be employed in the government of Guam and 83 survivors of retirees with no retirement dates. These anomalies have been referred to the Retirement Fund for review as to eligibility.

Refer to the full report for further discussion.

**Subsequent Events**

In February 2007, a group of taxpayers launched an effort to block the \$123.6M COLA. The taxpayers alleged that the Superior Court Judge had a conflict of interest as both this Judge's parents stand to benefit from the COLA decision. In April 2007, two Supreme Court Justices recused themselves from the case because their family members are COLA recipients.



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