



# EXECUTIVE SUMMARY

## Government of Guam COVID-19 Payroll Expenses OPA Report No. 21-01, January 2021



SOURCE: GOVGUAM.GOV

Our audit of the novel coronavirus (COVID-19) payroll expenses found that between March 14, 2020 and May 11, 2020, two Government of Guam (GovGuam) agencies utilized the Rule 8.406 double pay provision to compensate their employees, while 45 departments and agencies used the E.O. 2020-08 Differential Pay Policy. GovGuam employees were paid \$10.4 million (M) for differential, double, or other pay in response to the state of emergency due to COVID-19. This was in addition to the GovGuam employees' regular pay received during the closure and suspension of GovGuam services.

Specifically, we found:

- \$2.5M in double pay for GPA and GWA;
- \$2.0M in 25% differential pay for 26 departments and agencies with top three users: GFD, GMHA, and GPD;
- \$933 thousand (K) in 15% differential pay for 29 departments and agencies with top three users: GMHA, MCOG, and GDOE;
- \$568K in 10% differential pay for 42 departments and agencies with top three users PAG, GMHA, and DPHSS; and
- \$4.5M in Other Pay for 34 departments and agencies with top three users: GMHA, GWA, and GIAA.



**GovGuam employees were paid \$10.4 million (M) for differential, double, or other pay (...)**



In addition, we identified unclassified employees, including department and agency heads and certain elected officials, received COVID-19 related compensation as part of the differential pay policy. This would have been in violation of Title 4, Chapter 6, §6218.2 of the Guam Code Annotated (GCA), which prohibits bonus payments for unclassified employees. However, federal appropriations allowed the Governor to enforce a differential pay policy. There were 54 elected and appointed officials who received \$176K COVID-related compensation.

### **COVID-19 Relief Fund Grant**

Under the Coronavirus Aid, Recovery and Economic Security (CARES) Act, the Federal Government directed \$118.0M to assist Guam during the COVID-19 pandemic. The CARES Act budget was based on the April 2020 U.S. Department of Treasury Guidance for State, Territorial, Local, and Tribal Governments and submitted to the Guam Legislature in May 2020. Of the \$118.0M, \$29.2M was budgeted for COVID-19 payroll expenses for public safety, public health, health care, and human services.

SOURCE: ANNA SHVETS



## GPA and GWA Utilized Double Pay Provision

GPA and GWA were the only GovGuam agencies that utilized the Rule 8.406 double pay provision, while other GovGuam departments and agencies used the E.O. 2020-08 Differential Pay Policy. With \$2.5M in double pay, GPA spent \$1.5M and GWA spent \$1.0M. These payroll expenses for GPA and GWA were not paid out of or reimbursed by the COVID-19 Relief Fund Grant.

### *Guam Power Authority*

GPA compensated 399 employees \$1.5M in double pay if they reported to work or teleworked. The GPA Authority Policy on Pandemic Influenza Preparedness and Response Plan stated that personnel working from home shall be compensated at their regular pay. Essential personnel on duty were to earn regular pay and overtime based on hours worked beyond the 40-hour workweek. GPA did not follow their policy. Therefore, we questioned the \$1.5M in double pay given to employees during this period.

### *Guam Waterworks Authority*

GWA compensated 333 employees \$1.0M in double pay if they reported to work. Teleworking employees were compensated at their regular pay. GWA sought guidance from DOA and other GovGuam agencies on the conflicting provisions. However, there were

conflicts relative to the interpretation of the guidance. GWA ceased the double pay and tracked employee hours for the 10% differential pay when Pandemic Condition of Readiness 2 was declared in May 2020. However, GWA employees



**GPA and GWA were the only GovGuam agencies that utilized the Rule 8.406 double pay provision (...)**

were not paid the 10% differential because of numerous ongoing legal and legislative discussions.

## Differential Pay Policy

E.O. 2020-08 implemented a Differential Pay Policy for employees working in support of the public health emergency, in areas necessary for the elimination or reduction of immediate threats to life, public health, or safety, and whose work could expose them to COVID-19. Depending on the level of potential COVID-19 exposure, the E.O. outlined three categories of differential pay: Category 1 at 25%, Category 2 at 15%, and Category 3 at 10%. Differential pay was paid out of the COVID-19 Relief Fund Grant for some agencies.

**Figure 1: Breakdown of Differential Pay Categories**

CATEGORY	AMOUNT	TOP THREE AGENCIES
CAT 1 (25%)	\$ 1,956,041	GFD, GMHA, GPD
CAT 2 (15%)	\$ 933,442	GMHA, MCOG, GDOE
CAT 3 (10%)	\$ 568,432	PAG, GMHA, DPHSS
<b>TOTAL</b>	<b>\$ 3,457,915</b>	

## Other Pay

In addition to the double pay provision and differential pay policy, we also identified \$4.5M for other pay was utilized for 34 departments and agencies with top three users: GMHA, GWA, and GIAA. Examples of other pay include compensatory time off, overtime, and night differential.

## Unclassified Employees Received COVID-Related Compensation

Unclassified employees, including department and agency heads and certain elected officials, received COVID-related compensation as part of the differential pay policy. This would have been in violation of 4 GCA §6218.2, which prohibits bonus payments. However, federal appropriations allowed the Governor to enforce a differential pay policy. In the 1978 case of *Wong v. Camina*, Congress can directly appropriate to GovGuam where the appropriation or grant does not provide for local legislative control nor the authority for the Guam Legislature to re-appropriate these funds. The U.S. Department of Treasury guidance for the CARES Act did not specify guidance regarding classified and unclassified employees' payroll expenses. Thus, 4 GCA §6218.2 would not be applicable to this situation.

## Subsequent Event

In November 2020, the Governor of Guam's legal counsel submitted the October COVID-19 Relief Fund report to the Guam Legislature. Of the \$25.7M COVID-19 budget related payroll expenses, \$16.4M was spent for executive branch agencies, the Judiciary, and GMHA. There is \$9.3M available as of October 31, 2020. These amounts do not include the compensation for autonomous or semi-autonomous agencies, unless otherwise budgeted. The COVID-19 Relief Fund was to be spent or encumbered by December 30, 2020. In December, the Consolidated Appropriations Act for 2021 extended the deadline to December 31, 2021.

## Conclusion and Recommendations

There was an inconsistent use of legal authority for GovGuam employees' compensation during the state of emergency in March 2020. Due to the potential violations of legal statutes, we recommend the Office of the Attorney General review the:

- (1) Circumstances surrounding the application of the double pay provision for GPA and GWA and determine if reimbursement is necessary for employees that received double pay;
- (2) Circumstances surrounding the application of the compensatory leave credits for GWA and determine if reimbursement is necessary for employees that received this benefit; and
- (3) Payment of elected and appointed officials receiving COVID-related compensation and determine if reimbursement is necessary for employees that received additional pay.



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