EXECUTIVE SUMMARY
Government of Guam Liabilities Assessment
Report No. 11-03, April 2011

In January 2011, the Governor requested the Office of Public Accountability (OPA) to conduct an assessment of the Government of Guam's (GovGuam) liabilities, inclusive of unfunded/unbudgeted items. We found that (1) GovGuam overspent by $83.6 million (M) for fiscal year (FY) 2010, bringing the cumulative deficit to $349M as of September 30, 2010; (2) for FY 2011, the deficit is expected to increase by $23.7M to $34.1M due to the permanent injunction against the Department of Mental Health and Substance Abuse (DMHSA) to pay $14M and the unbudgeted increases in health insurance premiums ranging from $9.7M to $20.1M; and (3) the Retirement Fund (GGRF) received an unintended windfall ranging from $14.8M to $18.1M for lost opportunity income or interest-only payments.

FY 2010 Preliminary Deficit $83.6M

Consistent with prior years, GovGuam continues to spend more than it takes in. The preliminary over expenditure for FY 2010 was $83.6M, bringing the cumulative deficit to $349M. Among the factors contributing to the deficit are the over estimation of revenues by $40.4M and unbudgeted recurring items totaling $13.7M.

Actual revenues were $485.1M, $40.4M less than the anticipated $525.5M projected for FY 2010. The largest over projections were in Income and Gross Receipts taxes, which totaled $22.8M and $17.2M, respectively. Unbudgeted recurring expenditures include $3M in interest on tax refunds, $4.6M in interest-only payments to GGRF, $4.1M in credit card charges and other bank fees, and $1.3M interest on the Cost of Living Allowance (COLA), among others.

However, the $83.6M is likely to increase as the total for tax refunds, currently at $280.3M, has yet to be reconciled. The Department of Revenue and Taxation (DRT) continues to process tax returns manually and expects to complete the processing of all 2009 tax returns by May 2011. Until then, the true liability for tax refunds will not be known. Accordingly, should the tax refund liability be greater than $280.3M, the deficit would increase, but should the amount be less than $280.3M, the deficit would decrease.

FY 2011 Deficit to Increase

While the initial passage of the FY 2011 budget was nearly balanced with projected revenues of $535.2M and appropriations of $535.5M, a deficit of $23.7M to $34.1M is expected due to DMHSA's court-ordered payments and the increased cost of health insurance premiums.

DMHSA Court-Ordered Payments

In November 2010, the U.S. District Court approved DMHSA Federal Management Team's plan to bring the department into compliance at a cost of $16M. The FY 2011 Budget Act appropriated $2M for the implementation of the FMT's plan, leaving an unfunded liability of $14M to be recorded in FY 2011. As of February 2011, $4M has been remitted, leaving a balance of $8.2M for FY 2011 and the remaining amounts to be paid in FY 2012 and 2013.

Health Insurance Increase

Health insurance premiums are expected to increase by $9.7M to $20.1M beyond what was appropriated. For FY 2011, $28.9M was appropriated for health insurance premiums. Based on actual payments from the Department of Administration (DOA) to date and projecting those payments for the remainder of the fiscal year, total health insurance premiums are estimated to total $38.6M, a shortfall of $9.7M.

Under another methodology, using enrollment data from the Office of Finance and Budget for each corresponding health plan and projecting those payments for the remainder of the fiscal year, health insurance premiums would total $49M, a shortfall of $20.1M from the appropriated $28.9M. Actual payments have not been reconciled against the enrollment data.

Retirement Fund's Unintended Windfall

Before any Department of Education (DOE) and Guam Memorial Hospital Authority (GMHA) employees can retire, DOE and GMHA are required to remit to GGRF the:

(1) Delinquent government and employee contributions;
(2) Amounts resulting from the average rate of return on investment during the time that such contributions were delinquent;
(3) Late payment penalties equal to 1% per year of delinquent payments; ***and***
(4) Compounding interest of 4.5% on the outstanding employee contributions.

In addition to these penalties, Public Law (P.L.) 28-38 provided for GGRF to collect lost opportunity income on the outstanding $34M owed by DOE and GMHA. Lost opportunity income is what GGRF could have earned if the $34M had been timely received and invested. The law set a flat monthly payment of $383,456 or $4.6M annually in lost opportunity income for a total of $24.2M over a five and a quarter year period. This methodology provided for an interest rate of 10% annually plus a "monthly loss component" of $100,000. It did not take into account a rate of return based on an actual or an average rate of return nor of the reduction in the outstanding balances as payments were made. The annual 10% interest rate totaled $17.9M and the $100,000 loss component totaled $6.3M over this period.

In September 2010, P.L. 30-196 amended P.L. 28-38, requiring DOA to remit monthly payments to GGRF based on a specified computation, instead of the fixed monthly payments of $382,456.

Using three different methodologies: #1 P.L. 30-196's computation, #2 interest-only calculation, and #3 interest-on-interest calculation; we determined the lost opportunity income to range between $6.1M to $9.4M, resulting in an unintended windfall of $14.8M to $18.1M that instead should be applied to the outstanding balances owed by DOE and GMHA.

Other Assessments
We also reviewed other items such as the Making Work Pay Credit, Interfund Transfers, COLA Judgment Balance, Bureau of Prisons Prior Year Billing, and Merit Bonus.

Recommendations
Given the mounting deficit, the continued cash challenges, and meeting daily government operations, public officials must receive regular and accurate reports on the financial condition of our government. We made several recommendations, including: (1) the enactment of legislation to apply GGRF's unintended windfall of $14.8M to $18.1M to the remaining retirement liability balances of DOE and GMHA; (2) for DRT to seek technical assistance funding to fully automate and efficiently process tax returns, refunds, and collections; (3) revisit the FY 2011 budget to minimize the expected over expenditure of $23.7M to $34.1M; (4) the enactment of legislation to remove the word "automatic" to the merit bonus law; and (5) the posting of quarterly financial reports to include working trial balance and statement of Revenues, Expenditures, and Changes in Fund Balance, on the DOA website within 30 days after the quarter.

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