



Executive Summary
Guam Department of Education Overtime Payments
OPA Report No. 23-04, April 2023

The Office of Public Accountability (OPA) uncovered significant internal control deficiencies in overtime (OT) payments primarily awarded to employees from the Federal Programs Division (FPD) of the Guam Department of Education (GDOE) from March 2020 to September 2022. These deficiencies led to OT payments to ineligible employees and raised serious concerns about the approval processes and OT payments at GDOE. As a result, we questioned **\$640,055** in OT payments made to ineligible employees and improper certification of funds, all of which were supposed to be reimbursed by federal funding for the COVID-19 response. However, because of the nature of the improprieties, reimbursement from the U.S. Department of Education (USDOE) was not requested.

The internal control deficiencies identified in our audit include:

- FPD employees incurred OT hours almost a year prior to submitting plans and receiving approval for overtime worked;
- Payments of OT from local funds shorted local appropriations;
- Exempt employees received OT;
- The disparity in OT payments between essential workers and administrative support; and
- Improper payments occurred due to an unauthorized certifier of funds.

The OPA commenced its audit in response to the findings by independent auditors that “Program payroll expenditures, documentation was not sufficient to substantiate that the cost was allowable under the Program...” The finding in GDOE’s FY 2021 Single Audit tested three payroll expenditures and questioned \$17,131 in OT costs for two employees that were exempt from receiving overtime pay. Independent auditors noted “The total of overtime paid to potentially exempt employees during Fiscal Year (FY) 2021 is estimated to be \$1,511,984.”

Despite these conditions, management, including the previous Superintendent and previous Deputy Superintendent were aware of these issues as far back as July 2020, given that employees alerted them through inter-office memorandums, which included recitations of local law, rules, regulations, and GDOE’s Standard Operating Procedures (SOPs). Additionally, GDOE’s Internal Audit Office had conducted a risk assessment of GDOE overtime payments in May 2022, prior to the previous Superintendent’s resignation.

GDOE Receives Significant Federal Funding to Respond to COVID-19

With significant business closures and concerns over the economy, GDOE found relief with an influx of federal awards from the USDOE. USDOE was awarded \$41.5 million (M) from the Education Stabilization Fund-State Education Agency (ESF I-SEA) in May 2020 to address the immediate safety needs of students and employees and support the shift to distance learning. In January 2021, USDOE awarded a second round of funding, referred to as the ESF II-SEA, totaling \$110.6M to ensure the continued safety of students and employees and to prepare for the transition of the reopening of schools for face-to-face learning. Finally, in March 2021, USDOE awarded \$286.9M from the American Rescue Plan to continue support for a safe return to in-person instruction.

FPD Employees Incurred Overtime Hours Without Plan or Approval

From the onset of the grants being awarded, our audit found that in May 2020, the FPD, Curriculum and Instructional Improvement (C&I) staff, and School Climate, Culture, and Engagement (SCCE) project staff incurred overtime hours. However, it was not until April 2021 that the C&I and FPD submitted plans for the overtime worked. For 11 months, these employees incurred overtime without a plan or approval from the Superintendent.

In September 2021, the former Superintendent approved the plans and established a limit “*such that no employee shall be able to earn more than 30% of their annual salary in any calendar year, except with specific authorization by the Superintendent.*” Within two weeks of the former Superintendent’s approval, the Payroll Office began processing special check runs for overtime for work done over a year ago with no plan or prior approval. The FPD also submitted an overtime plan for Fiscal Year 2022 to continue their extended work hours on the ESF and ARP grant activities.

Payment of Overtime from Local Funds Shorted Local Appropriations

In FY 2022, GDOE paid \$640,055 in overtime to 59 GDOE employees, with a majority of them from the FPD. Although the overtime plans stated that federal account numbers were to fund these payments, personnel costs of employees funded by USDOE grants are paid on a reimbursement basis. Appropriations to the General Fund operations initially pay for the costs. After that, GDOE would seek reimbursement from the Third Party Fiduciary Agent (TPFA).

However, since overtime was paid, appropriations from other approved budget categories were used and shorted until reimbursements were received. The overtime payments were processed as special check runs and were charged to the ESF II-SEA grant and a corresponding accounts receivable was recorded for reimbursement. As of the date of this report, overtime costs remain as a receivable, pending reimbursement. We recommend that the GDOE seek recovery of the local funds that were paid for ineligible overtime.

Exempt Employees Received Overtime

Our audit found that of the 59 GDOE employees that received overtime, 46 were ineligible and 13 were eligible to receive overtime as per the Department of Administration’s Circular No. 2019-018. This includes a classifications listing of exempt positions and restricts payments of OT and compensatory time off for employees occupying certain positions. Payments to the ineligible employees totaled \$628,904, or 98%, of the total payments.

The exempt positions on DOA’s list included the Federal Programs Administrator (1), Program Coordinator II (2), Program Coordinator III (10), Program Coordinator IV (13), Administrative Officer (5), Social Worker III (8), Accountant I (1), Accountant III (1), Payroll Supervisor (1), School Program Consultant (1), Accounting Technician Supervisor (1), Chief Payroll Officer (1), and Social Service Supervisor I (1).

The Federal Programs Administrator was one of the ineligible employees that received OT and was part of the approval process. Based on the OT plans submitted by FPD, the Federal Programs Administrator:

- Was the requestor for the OT for the FPD;

- Was the signatory for compliance with federal grants;
- Signed on the line for certifying funds through a stamp stating “Certified for Allowable Use of Federal Funds”; and
- Was the approver for a signature block on the bottom of the page.

There was a lack of segregation of duties as one person signed for four different approvals. The Federal Programs Administrator received the highest amount in OT and benefits and accounted for 12% of the total OT and benefits paid out.

Misinterpretation of USDOE Guidance on Use of ESF for Overtime

In May 2020, GDOE sent several questions and requests for clarification to USDOE regarding the use of the ESF-SEA. GDOE specifically asked about personnel costs, if it is allowable for ESF-SEA funds to be utilized to compensate employees that qualify for OT and hazardous/differential pay and if they could be utilized to retroactively compensate employees that have performed the overtime and hazardous/differential services.

In their May 16, 2020 response, USDOE stated *“It is allowable to use ESF-SEA funds to compensate employees for work, as long as the work was related to preventing, preparing for, or responding to COVID-19. Overtime and hazardous/differential pay would be allowable to the extent that it is “reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities.” See the Uniform Guidance at 2 CFR § 200.430(a)(1).”*

Additionally, in March 2021, the USDOE Office of Elementary and Secondary Education, ESF Program Office provided the following guidance to GDOE:

“[ED] believes that this [overtime, night differential and holiday compensation to employees who are exempt from the overtime provisions] is a use of funds that could be allowable. However, it would be up to GDOE to determine whether these employees may receive this compensation in light of the FLSA exemption [...] the Uniform Guidance provides that the compensation for individual employees must be ‘reasonable for services rendered and conform to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities.’ 2 CFR 200.430(a). [...] the proposed compensation must conform to GDOE’s established written policy as applied to both Federal and non-Federal activities.”

Disparity in OT Payments Between Essential Workers and Administrative Support

With the onset of the COVID-19 pandemic and the necessity for essential workers to work in support of the public health emergency, the Governor of Guam created a differential pay policy through Executive Order (E.O.) 2020-08. This E.O. created the following three categories:

- **Category 1:** 25% pay differential to essential employees, in the course of their duties, are in direct contact or close physical proximity to a population infected with or may be reasonably suspected to be infected with COVID-19. Such positions may include public safety/law enforcement, health care providers, and other positions performing essential critical mission duties.
- **Category 2:** 15% pay differential to essential employees, in the course of their duties, may incidentally come into contact with or close physical proximity to a population infected with or may be reasonably suspected to be infected with COVID-19. These employees may

be providing humanitarian services or direct public assistance to the public.

- **Category 3:** 10% pay differential to essential employees whose positions do not allow them to telework *and* are mandated to perform their job duties at physical worksites pre-determined by their agency heads, required by the government's response to COVID-19.

In OPA Report No. 21-01, *Government of Guam COVID-19 Payroll Expenses*, we identified certain GDOE employees availed of the Governor's differential pay policy. These essential workers included nurses assisting with the public health response, school resource officers assisting with quarantine operations, social workers assisting with contact tracing, and staff members assisting with the Grab and Go Food Program at school distribution sites. In comparison to OT payments received by the FPD, which is calculated at the rate of 1 and ½ times the regular rate of pay for each hour, there appears to be a disparity in compensation between essential workers and administrative support.

Utilization of Overtime Appears Excessive

GDOE finds it imperative to control the unauthorized use of overtime. GDOE's Personnel Rules and Regulations Section 907.402 describes overtime as a tool to be used in cases of emergency or when it is in the best interest of GDOE. While it is the duty of division heads to maintain internal controls, it is the Superintendent who holds the ultimate authority for the manner in which OT is authorized.

Based on the labor cost distribution report for the 45 employees listed in the overtime plans, the overtime hours charged per week for certain employees appear excessive. For example:

- Employee No. 5405 worked 58.5 hours of overtime in one week. It is the highest number of hours in the labor cost distribution report.
- Employee No. 8901 had an average of 30+ hours per week for eight consecutive weeks. In other words, this employee worked for about 12 hours every day for six days in a week.
- 16 employees charged 20 hours or more of overtime per week in more than one instance.

Improper Payments Occurred Due to Unauthorized Certifier of Funds

A significant concern highlighted in our audit is the apparent breakdown of internal controls, specifically with processing disbursement requests that were signed by an unauthorized certifier of funds. Guam law requires a Certifying Officer, who has been granted an appropriate delegation of authority, to be responsible for determining and certifying the legality of the disbursement of public funds. However, based on our review of the timesheets and our interviews with GDOE's former and current Certifying Officers, no such appointed certifying officer certified the availability of funds.

Instead, a certification for "allowable use" of funds was made by the Federal Programs Administrator who received, requested, and approved OT payments for compliance. A conflict of interest exists when the beneficiary of the payment is also part of the approval process. Segregation of duties was rendered ineffective when a document containing one signature for four different roles went through the disbursement process.

As a result, payments were disbursed to employees via special payroll check runs. Per Guam law, a disbursing officer is responsible for disbursing funds only upon, and in accordance with duly certified vouchers, examining vouchers as necessary to ensure that they are in the proper form,

duly certified and approved and correctly computed based on the facts certified. The noncompliance may result in a dismissal and personal liability of the employee or officer responsible for the payments. We questioned the remaining \$14 thousand (K) in overtime payments due to the improper payments occurring due to the unauthorized certifier of funds.

Our audit discovered a meeting with the Federal Programs Division and the TPFA in June 2020 discussed “improvements to the procurement process within Guam Department of Education (GDOE). During this meeting, flow charts were provided to open our discussion and illustrate strategies that can be applied to improve GDOE’s procurement process.” Through an inquiry by an Accountant in the Finance & Administration Division in April 2021, it was uncovered the TPFA removed the FAD from the requisition approval process, thus resulting in a breakdown of internal controls. Certifying Officers are assigned to the FAD.

Response and Corrective Action to Single Audit Finding

In May 2022, the OPA released the FY 2021 Single Audit Report conducted by Deloitte and Touche. Among the findings identified in the report, was Finding No. 2021-004 which questioned \$17,131 in allowable costs/cost principles directly related to two employees that were exempt from receiving overtime. Two of three transactions tested showed that (aggregating \$2,581 of \$4.9M in total Program payroll expenditures) documentation was insufficient to substantiate the cost was allowable under the Program. GDOE did not effectively monitor transactions for compliance with applicable costs/cost principles requirements.

In their response, GDOE agreed to the finding and, as part of their plan of action, they were to confer with USDOE to determine whether such expenditures could be reimbursed. Upon USDOE’s determination, GDOE will implement the necessary corrective actions.

Conclusion and Recommendations

With significant internal control deficiencies identified in our audit of the OT payments received primarily by employees of the FPD, we concluded the following:

- The accumulation of overtime hours without a plan or approval from the Superintendent was premature;
- A receivable is still outstanding for the OT payments and shorted local appropriations;
- 46 exempt employees ineligible to receive OT received over \$628K in payments;
- A disparity in OT payments and differential pay between essential workers and administrative support; and
- Improper payments occurred due to an unauthorized certifier of funds resulted in questioned costs of \$11K.

To address these findings, we recommend to GDOE the following:

1. Adhere to local law and comply with GDOE Personnel Rules and Regulations and Standard Operating Procedures.
2. Seek the recovery of local funds paid to ineligible exempt employees and payments given to eligible employees whose timesheets were improperly certified.
3. Examine removing the Federal Programs Administrator from oversight and management of federal grants as outlined in Title 5 Guam Code Annotated (GCA) § 22306.

Due to the sensitivity of this matter, a copy of this report will be forwarded to the Office of the Attorney General for review and disposition on potential fraud and abuse by the FPD and its management and the potential recovery of OT compensation awarded to ineligible employees and eligible employees whose timesheets were improperly certified.



Benjamin J.F. Cruz
Public Auditor