

directing" in accordance with the law that created it. Therefore, it should be permitted to operate and develop independently as intended by the governing law.

The operation and administration of the Government of Guam Retirement System by the Board of Trustees frequently results in a misconstruction of the relationship of the system to the governmental employer whom it services. The Retirement System constitutes a "trust" of the highest degree, with the Trustees charged with specific and personal fiduciary obligations, both individually and collectively. The trust aspects and its operation as a separate entity with its independent management and direction establish it as an "organization" distinct from all other operating units of the Government of Guam, the employer.

The Retirement System is "not, as it is frequently represented" an "integral part of the organization of the governmental unit", analogous to the Government of Guam Federal Employees Credit Union, except that thru its enabling legislation in May 1951, opted to incorporate its employees, within the Defined Benefit Plan System, with the Government of Guam Personnel Management System. Thus, the Defined Benefit Plan System is expected, of course, to conform to the conditions and regulations applicable to all other organizations of the Governmental unit. However, the accomplishment of this aspect does not envisage the relinquishing of the Board of Trustees' authority to manage its own affairs and enforce compliance on the part of the Government of Guam as the employer to the end that proper and adequate revenues to meet statutory liabilities are forthcoming. Of course, this independent status of the System does not rule out possible examination and review by appropriate governmental agencies, i.e. Governor, Guam Legislature, Office of the Public Auditor, or Attorney General. This includes the Civil Service Commission due to the fact that the Board of Trustees "opted" to include its personnel administration within the government of Guam personnel management system since 1951, and GGRF continued to accept the Department of Administration Rules and Regulations. GGRF anticipates the passage and adoption of its Personnel Rules and Regulations before July 2005.

In 1995 when the Defined Contribution Retirement System was implemented, the law allowed the Board of Trustees to outsource the recordkeeping and DC members' investment education to a private firm, currently Great West Benefit Corps, as distinguished from the Defined Benefit System — which both systems are under the direct control of the management and the Board of Trustees.

In 1998 the 457 Deferred Compensation Plan was implemented, thus placing the third plan under the direct control of the management and Board of Trustees of the Retirement Fund.

The Retirement Fund is one of the largest industries on Guam with an asset of over \$1.4 billion, covering approximately 10,028 active DB and DC members and approximately 6,912 DB and DC retirees, and are entrusted to provide annuities and other benefits for employees of the government of Guam and their survivors when they reach eligibility for retirement.

The Fund's Management works closely with the Fund's 11 Investment Managers, Investment Consultant, Custodial Bank, Actuary, Legal Counsel, and Medical Consultant to ensure that the Fund's mandates and mission are carried out. The Fund continues to experience an increase in annuity benefit payments and operational expenses, however, due to the Fund's ability to realize higher investment returns; this in turn, resulted in decreasing the *cash draw downs* needed to meet the Fund's expense obligations.

The Retirement Fund experienced positive investment rate of returns during the last two fiscal years: 9.9% in FY-03 and 9.3% in FY-04 compared to the average of the preceding three fiscal years (FY-2000 to FY-2002) of 2.0%.

The FY-2003 audit performed by Burger and Comer reveals that with the exception of one finding, which the Retirement Fund disagrees with, all other findings have been removed due to remedies that have been put in place to provide full transparency and accountability.

Since the inception of the Retirement Fund in 1951, the operations and administration of the Retirement Fund has been funded by a percentage of the Fund's assets in accordance with its enabling mandate. Through a percentage of direct contributions from the employer and employee of all government agencies, the Fund's operational budget is prepared and approved by the Board of Trustees each fiscal year and is *not* subject to legislative appropriations or General Fund appropriations.

The Fund has recently received its actuarial study for the fiscal year ended September 30, 2003. The study has been forwarded to you for informational purposes. The Fund has received information from its actuary Milliman, USA regarding costs of Fund operations with our asset base. Per their analysis, operating costs for pensions our size average 0.0149% of total Fund assets. This translates approximately to an operating budget of \$20,150,878 (based on Defined Benefit Plan assets as of 9/30/03 of \$1,352,407,962) for fiscal year 2004 and \$20,110,323 (based on Defined Benefit Plan assets as of 9/30/02 of \$1,349,686,126) for fiscal year 2003.

The Fund's operating expenses for fiscal years 2004 and 2003 were \$3,101,558 (unaudited) and \$2,980,438 (audited), respectively.

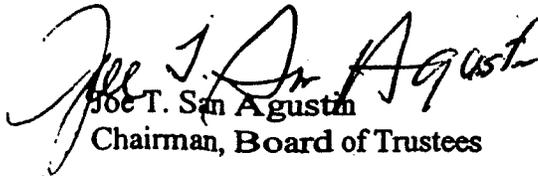
The amount received from all agencies for Fund operations during fiscal year 2004 was \$2,291,234.19. Fund operating costs during fiscal year 2004 was \$3,101,558.00. Accordingly, the shortfall of \$810,323.81 was funded via investment returns during fiscal year 2004. It is important to note that outstanding contribution balances owed by the Guam Memorial Hospital Authority and the Department of Education approximating \$34 million dollars significantly impacts this shortfall.

We have attached a schedule that shows the allocation of the 3.57% relating to Fund operating costs across all agencies. We have also provided a copy of the Fund's financial statements for the fiscal year ended September 30, 2003 for your information.

The Fund has continued to operate significantly below the national average for pensions of our size. The continued non-receipt of outstanding balances and the use of investment returns for Fund operations prove detrimental to the Fund, its members, and retirees and their survivors.

We hope that this information provides an insight into the problems facing the Fund. Please contact us at 475-8900 should you have any questions.

Regards,

  
Joe T. San Agustin  
Chairman, Board of Trustees

Attachments

cc: Governor Felix P. Camacho  
Speaker Mark Forbes  
Vice Speaker Joann Brown  
Senator Frank B. Aguon, Jr.  
Senator Benjamin JF Cruz  
Senator Mike Cruz, M.D.  
Senator Larry F. Kasperbauer  
Senator Robert Klitzkie  
Senator Lou A. Leon Guerrero  
Senator Jesse A. Lujan  
Senator Adolpho B. Palacios, Sr.  
Senator Rory J. Respicio  
Senator Ray Tenorio  
Senator Antonio Unpingco  
Senator Judith T. Won Pat  
Chief Justice F. Philip Carbullido, Supreme Court of Guam  
Presiding Judge Alberto Lamorena III, Superior Court of Guam  
GGRF Board of Trustees

ADMINISTRATIVE EXPENSES ANALYSIS  
FISCAL YEAR 2004

% of Contributions Required for Fund Ops

Administrative Costs - Fund Operations FY 2003 = 3,533,184.00  
Total Required Actuarial Contributions for FY 2003 99,079,513.00

% of Contributions Required for Fund Ops

= 3.57%

	<b>TOTAL FY 2004</b>			
	<b>DB EMPLOYER CONTRIBUTION</b>	<b>DC EMPLOYER CONTRIBUTION UNFUNDED PORTION</b>	<b>DB EMPLOYER (20.81%) CONTRIBUTION AND DC EMPLOYER (16.81%) UNFUNDED PORTION</b>	<b>ALLOCATION OF ADMIN COST PERCENTAGE</b>
UOG	2,954,183.89	1,074,382.98	4,028,566.87	143,819.84
SUPREME COURT	149,229.98	180,534.91	309,764.89	11,058.81
SUPERIOR COURT	1,183,738.05	580,949.88	1,764,687.93	62,999.35
GGRF	146,321.41	106,412.72	251,734.13	8,986.91
PUBLIC DEFENDER	257,824.88	117,325.28	374,950.16	13,385.72
PORT AUTHORITY OF GUAM	1,188,078.97	693,362.84	1,879,459.61	67,096.71
LEGISLATURE	289,799.91	254,805.85	524,605.56	18,728.42
GUAM WATERWORKS AUTHORITY	1,054,927.86	480,428.80	1,515,356.46	54,098.23
GUAM VISITORS BUREAU	108,175.14	61,849.25	168,024.39	5,998.47
GHURA	344,705.92	254,849.96	599,555.88	21,404.14
GUAM TELEPHONE AUTHORITY	1,219,882.85	870,955.07	2,090,837.92	74,832.20
GUAM POWER AUTHORITY	2,498,405.88	889,780.11	3,188,185.86	113,032.83
GMHA	2,709,217.05	2,079,252.80	4,788,469.85	170,948.37
GUAM HOUSING CORP	63,508.24	63,358.44	126,864.88	4,529.07
GENERAL FUND	13,500,509.59	7,078,667.61	20,579,177.20	734,876.63
GEDCA	58,484.50	135,839.04	192,323.54	6,865.95
GUAM COMMUNITY COLLEGE	1,103,998.46	455,212.71	1,559,211.17	55,663.84
GUAM INT'L AIRPORT AUTHORITY	918,794.98	460,097.58	1,378,892.56	49,226.46
DEPT OF EDUCATION	12,747,803.02	6,134,258.15	18,881,861.17	674,082.44
	<b>42,487,886.05</b>	<b>21,712,341.38</b>	<b>64,180,229.43</b>	<b>2,291,234.19</b>
			<b>TOTAL FY 2004 ADMIN COSTS (UNAUDITED)</b>	<b>3,101,558.00</b>
			<b>SHORTFALL FUNDED BY INVESTMENT RETURNS</b>	<b>810,323.81</b>



**GOVERNMENT OF GUAM RETIREMENT FUND**

**Financial Statements**

**September 30, 2003 and 2002**

**(Together with Independent Auditors' Report Thereon)**

# GOVERNMENT OF GUAM RETIREMENT FUND

September 30, 2003 and 2002

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## INDEPENDENT AUDITORS' REPORT

Board of Trustees  
Government of Guam Retirement Fund:

We have audited the accompanying financial statements of the Government of Guam Retirement Fund (the Fund), a component unit of the Government of Guam, administered by the Government of Guam Retirement Fund Board of Trustees (the Board) as of September 30, 2003 and 2002 and for the years then ended. These financial statements are the responsibility of the management of the Fund. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial status of the Fund administered by the Board as of September 30, 2003 and 2002, and the changes in its financial status for the years then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated August 15, 2004 on our consideration of the Fund's internal control over financial reporting and our tests of its compliance with laws, regulations, contracts and grants. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audit.

The management's discussion and analysis on pages 3 through 9 is not a required part of the basic financial statements but is supplementary information required by accounting principles generally accepted in the United States of America. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

Our audits were conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The accompanying information listed as supplemental schedules on pages 28 to 34 is presented for the purpose of additional analysis and is not a required part of the basic financial statements. This additional information is the responsibility of the fund's management. Such information has been subjected to the auditing procedures applied in our audits of the basic financial statements and, in our opinion, is fairly stated in all material respects when considered in relation to the basic financial statements taken as a whole.

Guam  
August 1, 2004

# GOVERNMENT OF GUAM RETIREMENT FUND

## Management's Discussion & Analysis For the Year Ended September 30, 2003

As management of the Government of Guam Retirement Fund, we offer readers of the Fund's financial statements this narrative overview and analysis of the financial activities of the Fund for fiscal years ended September 30, 2003 and 2002.

### Financial Highlights

- The Fund did not have an actuarial assessment performed in fiscal year 2003, but is in the process of having an actuarial assessment performed for the fiscal year ended September 30, 2004.
- The net assets held in trust for pension benefits totaled approximately \$1.39 billion at September 30, 2003 compared to \$1.34 billion at September 30, 2002. The net assets are available for payment of monthly retirement benefits and other qualified distributions to the Fund's participants. The increase of \$52.7 million resulted primarily from the appreciation of the fair value of the Fund investments due to equity market increases affecting the year ended September 30, 2003.
- Interest income on investments dropped by \$5.8 million as the asset focus was shifted to common stocks to take advantage of a rebounding equities market.
- Dividend income increased by \$1 million due to the strengthening of economic conditions and slightly increased corporate earnings.
- The total number of active members participating in the Defined Benefit Plan decreased by 10.8% from 6,066 at September 30, 2002 to 5,409 at September 30, 2003. The number of retirees at September 30, 2003 was 6,590 and the total number of retirees at September 30, 2002 was 6,536. The Fund added 201 new annuitants in fiscal year 2003. The total number of active members participating in the Defined Contribution Plan decreased by 4.02% from 5,220 at September 30, 2002 to 5,010 at September 30, 2003.
- The Fund did not have an actuarial assessment performed in fiscal year 2003, but is in the process of having an actuarial assessment performed for the fiscal year ended September 30, 2004. The funded ratio of the Fund per the actuarial valuation was 47.7% at September 30, 2002 compared to 54.2% at September 30, 2001. This resulted from liability gains of \$44 million and asset losses of \$124 million as computed by the Fund's actuary.
- Supplemental benefits and medical, dental, and life insurance premiums to be funded by the General Fund and various autonomous agencies, as authorized by Public Law 26-152, amounting to \$8.96 million were paid by the Fund for the period from October 1, 2002 through December 15, 2002. These payments ceased after December 15, 2002 based on a court order prohibiting the Fund from advancing these payments without receipt of the appropriation from the funding agencies identified by Public Law 26-152. The Fund collected approximately \$4.3 million of these advanced payments during fiscal year 2004. The remaining balance of supplemental benefits authorized by Public Law 26-152 for the fiscal year ended September 30, 2003 owed by the Government of Guam and their

autonomous agencies to annuitants that retired from their respective agencies amounted to approximately \$8.1 million.

- The following agencies have significant outstanding payables to the Fund for "employer and member" contributions:

Department of Education	\$17.6 million
Guam Memorial Hospital Authority	8.3 million

The Guam Memorial Hospital Authority had an outstanding note amounting to \$6.3 million as of September 30, 2003. The Fund in fiscal year 2000 established a reserve of \$8.0 million due to the uncertainty of collection of this note; however, Fund management continues collection efforts in this matter.

### Overview of the Financial Statements

The Fund's purpose is to provide retirement annuities and other benefits to employees of the Government of Guam. The Fund administers two plans: the Defined Benefit (DB) plan and the Defined Contribution (DC) plan.

#### **Defined Benefit Plan**

The Defined Benefit Plan provides for retirement, disability, and survivor benefits to members of the plan prior to October 1, 1995 (all government employees are required to participate in the DC Plan after October 1, 1995). Under this plan, retirement benefits are based on age and/or years of credited service and an average of the three (3) highest annual salaries received by a member during the years of credited service, or six thousand dollars (\$6,000), whichever is greater.

- The basic retirement benefit is computed as the sum of an amount equal to two (2%) percent of the average annual salary for each of the first ten years of creditable service and two and one-half (2.5%) percent of average annual salary for each year or part thereof of credited service over ten years and an amount equal to twenty dollars (\$20) multiplied by each year of credited service, the total of which is reduced by an amount equal to one hundredth of one percent (.01%) of said total for each one dollar (\$1) that a member's average annual salary exceeds six thousand dollars (\$6,000). The basic annuity is limited to a maximum of eighty five percent (85%) of the average salary, and cannot be less than one thousand two hundred dollars (\$1,200) per year.
- Members under the age of sixty-five (65) with six (6) or more years of credited service who are not entitled to receive disability payments from the United States Government are eligible to receive sixty-six and two-thirds percent (66-2/3%) of the average of their three highest annual salaries received during the years of credited services.
- In the event of death of a member who completed three (3) years of total service, the following benefits are payable:
  1. Spouse - Annual benefit is equal to fifty percent (50%) of the disability or service retirement benefit earned by the member.

2. Minor Children – Basic benefit is two thousand one hundred and sixty dollars (\$2,160) per year for a minor child up to eighteen (18) years of age (age 21 if a full time student).

#### **Defined Contribution Plan**

This plan was created by Public Law 23-42:3 to provide an individual account retirement system for any person who is employed by the Government of Guam. This plan is a single-employer pension plan and is the only plan for all new employees whose employment commences on or after October 1, 1995. This plan is administered by BenefitsCorp.

The Fund's financial statements comprise a Statement of Plan Net Assets, a Statement of Changes in Plan Net Assets and Notes to the Financial Statements. Also included is certain required supplementary and other supplementary information.

The Board of Trustees, which comprises five (5) members, is responsible for the administration and operation of the Fund. The Fund is accounted for as a blended component unit, fiduciary fund type, and pension trust fund of the Government of Guam.

The *statement of plan assets* presents information on the Fund's assets and liabilities and the resulting *net assets held in trust for pension benefits*. This statement reflects the Fund's investments, at fair value, along with cash and cash equivalents, receivables and other assets and liabilities.

The *statement of changes in plan net assets* presents information showing how the Fund's net assets held in trust for pension benefits changed during the years ended September 30, 2003 and 2002. It reflects contributions by members and participating employers along with deductions for retirement benefits, refunds and withdrawals, and administrative expenses. Investment income is also presented showing income from investments, interest and dividends.

The *notes to the financial statements* provide additional information that is essential to a full understanding of the data provided in the financial statements.

The *other supplementary information* presents a schedule of funding progress and employer contributions at September 30, 2003. Additionally, schedules of certain expenses and fees paid at September 30, 2003 and 2002 are also presented. The *other supplementary information* is presented for additional analysis of the financial statements.

#### **Financial Analysis**

The following are the condensed Schedules of Plan Net Assets and Changes in Plan Net Assets for the Government of Guam Retirement Fund for the fiscal years ended September 30, 2003 and 2002.

**CONDENSED SCHEDULE OF  
PLAN NET ASSETS**

	(\$ millions)	
	September 30,	
	<u>2003</u>	<u>2002</u>
Cash and cash equivalents	\$ 16.2	\$ 5.7
Receivables	203.6	223.3
Investments	1,222.6	1,194.4
Property and equipment	<u>1.4</u>	<u>1.4</u>
<b>Total Assets</b>	<b>1,443.8</b>	<b>1,424.8</b>
Accounts payable and accrued expenses	3.7	5.5
Due to brokers for unsettled trades	2.7	28.2
Other liabilities	<u>39.2</u>	<u>45.6</u>
<b>Total Liabilities</b>	<b>45.6</b>	<b>79.3</b>
<b>Net Assets Held in Trust for Benefits</b>	<b><u>\$ 1,398.2</u></b>	<b><u>\$ 1,345.5</u></b>

**CONDENSED SCHEDULE OF  
CHANGES IN PLAN NET ASSETS**

	(\$ millions)	
	September 30,	
	<u>2003</u>	<u>2002</u>
Employer contributions	\$ 68.9	\$ 70.0
Member contributions	29.6	31.1
Net investment income (loss)	<u>126.5</u>	<u>(8.8)</u>
<b>Total Additions</b>	<b>225.0</b>	<b>92.3</b>
Retirement, death, survivor benefits, and insurance	151.1	146.9
Refunds and withdrawals	16.6	13.3
Administrative expenses	<u>4.6</u>	<u>3.9</u>
<b>Total Deductions</b>	<b>172.3</b>	<b>164.1</b>
<b>Total Changes in Plan Net Assets</b>	<b><u>\$ 52.7</u></b>	<b><u>\$ (71.8)</u></b>

For the year ended September 30, 2003 Fund assets increased \$52.7 million or 3.92% from the prior year primarily due to the increase in investments of \$28.2 million. Receivables decreased \$19.8 million at the end of the fiscal year due primarily to the collection of balances due from the Government of Guam General Fund relating to payments made to annuitants for supplemental annuities and cost of living allowance (COLA) as authorized by Public Law 25-72 and the collection of balances relating to the Early Retirement Incentive Program as authorized by Public Law 24-327.

The outstanding supplemental and COLA balance is being reduced by a portion of the employer contribution received. The percentage used for reduction was 1.2016% for the fiscal years ended September 30, 2003 and 2002. The outstanding balance owed by the Government of Guam General Fund relating to the Early Retirement Incentive Program is reduced by a portion of the employer contribution received.

The percentage of reduction was 1.31% for the fiscal years ended September 30, 2003 and 2002.

Fund liabilities decreased \$33.7 million at the end of the fiscal year due primarily to a \$25.4 million decrease in payables for pending purchases of securities and a decrease of \$5.5 million in deferred revenues due to the recognition of deferred revenues relating to payments received by annuitants relating to the Early Retirement Incentive Program (ERIP) as well as the amortization of receivable balances owed by the Government of Guam General Fund relating to the ERIP. This program was established by Public Law 24-327 and the outstanding balance owed by the Government of Guam General Fund is reduced by a portion of the employer contributions received.

Total additions to plan assets of \$224.9 million are significantly greater than prior year due to the appreciation in the fair value of investments. Total deductions increased \$8.2 million for the year as a result of a 2.8% increase in retirement, death and survivor benefits.

#### **Additions to Plan Net Assets**

Additions for the year ended September 30, 2003 were \$224.9 million, a \$132.6 million increase over the prior year due primarily to a net investment gain of \$126.5 million. The total number of active members participating in the Defined Benefit Plan decreased by 10.8% from 6,066 at September 30, 2002 to 5,409 at September 30, 2003. The total number of active members participating in the Defined Contribution Plan decreased by 4.02% from 5,220 at September 30, 2002 to 5,010 at September 30, 2003.

#### **Deductions to Plan Net Assets**

For the year ended September 30, 2003 total deductions increased \$8.2 million over the prior year due to a 4.98% increase in retirement, death, and survivor benefits as the average monthly benefit increased for retirees. At September 30, 2003 the total number of annuitants receiving retirement benefits was 6,590 compared to 6,536 at September 30, 2002, an increase of 0.83%. Refunds and withdrawals increased as more participants withdrew contributions during the period compared to the prior year. The 16.52% increase in administrative expenses is a result of increased administrative fees incurred for the administration of the Defined Contribution Retirement Plan as compared to the prior year.

#### **Investments**

The investment portfolio is reported by asset type which comprises the investment managers' portfolios including cash equivalents. A summary of the Fund's investments for the fiscal years ended September 30, 2003 and 2002 is as follows:

## INVESTMENT PORTFOLIO

	(\$ millions)	
	September 30,	
	<u>2003</u>	<u>2002</u>
Common Stocks	\$ 529.5	\$ 348.9
U.S. Government Securities	207.1	369.8
Corporate Bonds and Notes	342.4	376.2
Money Market Funds	54.5	28.5
Mutual Funds	83.4	65.9
Other	<u>5.7</u>	<u>5.1</u>
<b>Total managed investments</b>	<u>1,222.6</u>	<u>1,194.4</u>
Cash and equivalents	<u>16.2</u>	<u>5.7</u>
<b>Total Investments and cash</b>	<u>1,238.8</u>	<u>1,200.1</u>

For the fiscal year ended September 30, 2003 the Fund's managed investments, for the most part, reflect management expectations as the asset focus was shifted to common stocks to take advantage of a rebounding equities market. The Fund experienced a return on investments of 9.9% for the fiscal year ended September 30, 2003 as a result of the focus shift. While the Fund experienced this gain, this was offset by reductions for the cash flow requirements of the Fund for operations and retiree annuities.

### Economic Factors

#### **Funding**

- A pension fund is well funded when it has enough money in reserve to meet all expected future obligations to participants. The funded ratios of the Fund at September 30, 2002 and 2001 were 47.7% and 54.2% respectively. The actuarially determined rate for contributions for the years ended September 30, 2003 and 2002 were 20.81% and 29.25% respectively. The Fund did not have an actuarial assessment performed in fiscal year 2003, but is in the process of having an actuarial assessment performed for the fiscal year ended September 30, 2004. The established statutory rates at September 30, 2003 were 26% for the period from October 1, 2002 through February 28, 2003 and 18% for the period from March 1, 2003 to September 30, 2003 (as amended by Public Law 27-29). The established statutory rate at September 30, 2002 was 19.8016%.
- The previously noted significant decrease in funding ratios are primarily due to the impact of market performance and the non-remittance of contributions based on actuarially determined contribution percentages during the fiscal year ended September 30, 2003.

#### **Plan Amendments**

There were no amendments affecting either the Defined Benefit or the Defined Contribution Plans noted for the fiscal year ended September 30, 2003.

**Other**

Other than changes in the fair value of Fund assets as may be impacted by the stock and bond markets, no other matters are known by management to have a significant impact on the operations or financial position of the Fund.

**Requests for Information**

This financial report is designed to provide a general overview of the Fund's finances for all those with an interest. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to the Director of the Government of Guam Retirement Fund, 424A Route 8, Maite, Guam 96910.

**GOVERNMENT OF GUAM RETIREMENT FUND**

Statement of Plan Net Assets

September 30, 2003 and 2002

<u>ASSETS</u>	<u>Defined Benefit</u>	<u>Defined Contribution</u>	<u>Total 2003</u>	<u>Total 2002</u>
Investments, at fair value:				
Common stocks	\$ 529,489,480	-	529,489,480	348,941,716
U.S. Government securities	207,036,448	-	207,036,448	369,781,797
Corporate bonds and notes	342,432,781	-	342,432,781	376,218,434
Money market funds	54,539,441	-	54,539,441	28,490,623
Mutual funds	-	83,411,530	83,411,530	65,864,770
DC plan forfeitures	-	5,722,593	5,722,593	5,106,242
Total investments	<u>1,133,498,150</u>	<u>89,134,123</u>	<u>1,222,632,273</u>	<u>1,194,403,582</u>
Receivables:				
Employer contributions, net	20,479,533	916,595	21,396,128	24,555,960
Member contributions	7,872,191	223,165	8,095,356	11,067,888
Accrued investment income	7,220,281	-	7,220,281	10,155,834
Due from brokers for unsettled trades	11,152,068	-	11,152,068	15,399,194
Note receivable from GMHA, net (note 5)	-	-	-	-
Notes receivable for service credits	8,807,252	-	8,807,252	8,837,608
Notes receivable - ERIP	12,498,071	-	12,498,071	13,487,082
Receivable - ERIP employer's share	17,080,487	-	17,080,487	21,644,375
Supplemental/COLA benefits receivable	103,675,964	-	103,675,964	106,513,203
Other receivables	12,854,115	347,457	13,201,572	11,217,914
Due from DC plan	419,722	-	419,722	420,993
Total receivables	<u>202,059,684</u>	<u>1,487,217</u>	<u>203,546,901</u>	<u>223,300,051</u>
Cash and cash equivalents	15,409,299	772,757	16,182,056	5,701,019
Property and equipment	1,440,829	-	1,440,829	1,425,433
Total assets	<u>1,352,407,962</u>	<u>91,394,097</u>	<u>1,443,802,059</u>	<u>1,424,830,085</u>
 <u>LIABILITIES</u>				
Bank overdraft	411,663	-	411,663	1,306,081
Deferred revenue for service credits	38,385,810	-	38,385,810	43,969,065
Accounts payable and accrued expenses	3,224,330	455,625	3,679,955	5,487,703
Due to brokers for unsettled trades	2,730,786	-	2,730,786	28,162,721
Due to DB plan	-	419,722	419,722	420,993
Total liabilities	<u>44,752,589</u>	<u>875,347</u>	<u>45,627,936</u>	<u>79,346,563</u>
Net assets available for benefits	<u>\$ 1,307,655,373</u>	<u>90,518,750</u>	<u>1,398,174,123</u>	<u>1,345,483,522</u>

See accompanying notes to financial statements.

**GOVERNMENT OF GUAM RETIREMENT FUND**

Statement of Changes in Plan Net Assets

Years ended September 30, 2003 and 2002

	Defined <u>Benefit</u>	Defined <u>Contribution</u>	Total <u>2003</u>	Total <u>2002</u>
<b>Investment income</b>				
Net appreciation (depreciation) in fair value of investments	\$ 68,955,855	7,557,622	76,513,477	(63,321,367)
Interest	41,147,525	1,882,287	43,029,812	48,889,828
Dividends	8,441,013	-	8,441,013	7,457,745
Other investment income	631,605	627,429	1,259,034	1,033,471
	<u>119,175,998</u>	<u>10,067,338</u>	<u>129,243,336</u>	<u>(5,940,323)</u>
Less investment expenses	2,727,823	-	2,727,823	2,825,072
<b>Net investment income</b>	<u>116,448,175</u>	<u>10,067,338</u>	<u>126,515,513</u>	<u>(8,765,395)</u>
<b>Contributions</b>				
Employer	61,667,848	7,236,039	68,903,887	70,020,484
Member	22,339,675	7,234,109	29,573,784	31,111,632
<b>Total contributions</b>	<u>84,007,523</u>	<u>14,470,148</u>	<u>98,477,671</u>	<u>101,132,116</u>
<b>TOTAL ADDITIONS</b>	200,455,698	24,537,486	224,993,184	92,366,721
<b>Benefit payments</b>				
Age and service annuities	128,189,391	-	128,189,391	124,500,190
Disability annuities	9,276,164	-	9,276,164	9,205,129
Survivor annuities	13,617,180	-	13,617,180	12,893,926
Insurance	-	-	-	332,562
<b>Total benefit payments</b>	<u>151,082,735</u>	<u>-</u>	<u>151,082,735</u>	<u>146,931,807</u>
Refunds to separated employees and withdrawals	10,239,383	6,408,554	16,647,937	13,278,125
Interest on refunded contributions	546,733	-	546,733	230,841
Balances transferred to DC plan	1,640,404	(1,640,404)	-	-
Administrative and general expenses	2,980,438	1,044,740	4,025,178	3,692,765
<b>TOTAL DEDUCTIONS</b>	<u>166,489,693</u>	<u>5,812,890</u>	<u>172,302,583</u>	<u>164,133,538</u>
Net increase (decrease) in plan net assets	33,966,005	18,724,596	52,690,601	(71,766,817)
Net assets available for benefits, beginning of year	<u>1,273,689,368</u>	<u>71,794,154</u>	<u>1,345,483,522</u>	<u>1,417,250,339</u>
Net assets available for benefits, end of year	<u>\$ 1,307,655,373</u>	<u>90,518,750</u>	<u>1,398,174,123</u>	<u>1,345,483,522</u>

See accompanying notes to financial statements.

# GOVERNMENT OF GUAM RETIREMENT FUND

## Notes to Financial Statements

September 30, 2003 and 2002

### (1) Description of the Fund

The following brief description of the Government of Guam Retirement Fund (GGRF) is provided for general information purposes only. Members should refer to Title 4, Chapter 8, Articles 1 and 2 of the Guam Code Annotated (GCA) for more complete information.

#### Purpose

The Government of Guam Retirement Fund was established and became operative on May 1, 1951 to provide retirement annuities and other benefits to employees of the Government of Guam. The Board of Trustees is responsible for the general administration and proper operation of the Fund. The Board of Trustees comprises five members, appointed by the Governor with the advice and consent of the Legislature. Three of the member trustees are employees with at least five years of service credit as members of the GGRF. The GGRF is accounted for as a blended component unit, fiduciary fund type, pension trust fund of the Government of Guam.

### (2) Description of the Defined Benefit Plan

#### Membership

The Defined Benefit Plan (DB) is a single-employer defined benefit pension plan and membership is mandatory for all employees in the service of the Government of Guam on the operative date. Persons becoming employees after the effective date are members as a condition of employment.

The following employees have the option of accepting or rejecting membership and become members only upon submission of a written request to the Board for membership.

1. Employees hired for a definite agreed term or who at the time of employment are not domiciled on Guam.
2. Employees of a public corporation of the Government of Guam or of the University of Guam.
3. Any employee whose employment is purely temporary, seasonal, intermittent or part time.

September 30, 2003 and 2002

(2) Description of the Defined Benefit Plan, continued

Ineligible Persons

The following employees are not eligible for membership:

1. Persons whose services are compensated on a fee basis.
2. Independent contractors.
3. Persons whose employment is for a specific project.
4. Persons who are employed in the Senior Citizens Community Employment Program.

At September 30, 2002, the latest actuarial valuation date, membership was as follows:

Retirees and beneficiaries receiving benefits	6,557
Terminated plan members entitled to but not yet receiving benefits	-
Active plan members	<u>6,099</u>
	<u>12,656</u>

Contributions

Contributions are set by law. Member contributions are required at 9.5% of base pay. During the year ended September 30, 2003 the Guam Legislature mandated an employer contribution rate of 26% of covered payroll from October 1, 2002 to February 28, 2003. This rate was dropped to 18.6% effective March 1, 2003. Employer contributions were required at 19.8016% of covered payroll for the year ended September 30, 2002.

The actuarial valuation as of September 30, 2002 was issued in June 2003. The actuarially determined contribution rate was 20.81% of covered payroll.

Retirement, Disability and Survivor Benefits

Under the defined benefit plan, retirement benefits are based on a age and/or years of credited service and an average of the three highest annual salaries received by a member during years of credited service, or \$6,000, whichever is greater.

September 30, 2003 and 2002

(2) Description of the Defined Benefit Plan, continued

Retirement, Disability and Survivor Benefits, continued

Members who joined the DB plan prior to October 1, 1981 may retire after 10 years of service at age 60 (age 55 for uniformed personnel) or completion of 25 years of service at any age. Members may retire after 20 years of service regardless of age with a reduced benefit.

Service Benefit Formula

The basic retirement benefit is computed as the sum of the following:

1. An amount equal to two percent (2%) of the average annual salary for each of the first ten years of credited service and two and one-half percent (2.5%) of average annual salary for each year or part thereof of credited service over ten years.
2. An amount equal to twenty dollars (\$20) multiplied by each year of credited service, the total of which is reduced by an amount equal to one hundredth of one percent (.01%) of said total for each one dollar (\$1) that a member's average annual salary exceeds six thousand dollars (\$6,000).

The basic annuity is limited to a maximum of eighty-five percent (85%) of the average annual salary, and cannot be less than one thousand two hundred dollars (\$1,200) per year.

Disability

Members under the age of sixty-five with six or more years of credited service who are not entitled to receive disability payments from the United States Government are eligible to receive sixty six and two-thirds percent (66-2/3%) of the average of their three highest annual salaries received during years of credited services.

Survivor

In the event of death of a member who completed at least 3 years of total service, the following benefits are payable:

1. Spouse – annual benefit is equal to fifty percent (50%) of the disability or service retirement benefit earned by the member.

September 30, 2003 and 2002

(2) Description of the Defined Benefit Plan, continued

Survivor, continued

2. Minor children – Basic benefit is \$2,160 per year for a minor child up to 18 years of age (age 24 if a full-time student).

Separation from the DB Plan

Upon complete separation from service before attaining at least 20 years of total service, a member is entitled to receive a refund of total contributions including interest.

A member who withdraws after completing at least 5 years of service has the option of leaving contributions in the GGRF and receives a service retirement benefit upon attainment of the age of 60 years.

(3) Description of the Defined Contribution Retirement System

Purpose

The Defined Contribution Retirement System (DCRS) was created by Public Law 23-42:3 to provide an individual account retirement system for any person who is employed in the Government of Guam. The GGRF Board of Trustees is responsible for the general administration and operation of the fund. The DCRS, by its nature, is fully funded on a current basis from employer and member contributions.

Membership

The DCRS is a single-employer pension plan and shall be the single retirement program for all new employees whose employment commences on or after October 1, 1995.

Existing members of the DB plan with less than twenty years service credit may, upon written election, voluntarily elect membership in the DCRS. This option was available for sixty five (65) months after enactment of the legislation, and between March 1 and May 31 of every year, beginning in the year 2002. After making the election to transfer, the employee may not change the election or again become a member of the DB plan.

September 30, 2003 and 2002

(3) Description of the Defined Contribution Retirement System, continued

Ineligible Persons

Employees ineligible for membership in the DB plan are also ineligible for membership in the DCRS.

Contributions

Member and employer contributions are set by law at five percent (5%) of base pay.

Separation from the DCRS

Any member who leaves government service after attaining 5 years but less than 20 years of total service is entitled to receive their total contribution plus 100% of the employer contribution and any earnings thereon after attaining the age of 55.

Any member who leaves government service below the age of 55, with 5 years but less than 20 years of total service is entitled to receive their total contribution plus any earnings thereon.

(4) Summary of Significant Accounting Policies

Method of Accounting

The financial statements presented herein have been prepared on the accrual basis of accounting under which expenses are recorded when the liability is incurred and revenues are recorded in the accounting period in which they are earned. Employee contributions are recognized in the period in which contributions are due. Employer contributions are recognized when due and the employer has made a formal commitment to provide the contributions. Contributions from employees and employers for service through September 30, 2003 and 2002 are accrued. With the exception of amounts due from the Guam Memorial Hospital Authority under a promissory note, these contributions are considered to be fully collectible; accordingly, no allowance for uncollectible receivables is reflected in the financial statements. Benefits and refunds are recognized when due and payable in accordance with provisions set forth in Government of Guam Code Annotated.

September 30, 2003 and 2002

(4) Summary of Significant Accounting Policies, continued

Cash

At September 30, 2003 and 2002, the GGRF has cash balances in banks of approximately \$16.5 million and \$4.9 million, respectively, of which \$200,000 is insured by the Federal Deposit Insurance Corporation. The remaining balances are collateralized by securities held by a trustee in the name of the financial institution.

Investments

Investments include U.S. Federal Government and agency obligations, foreign government obligations, real estate, commercial mortgages, corporate debt, and equity instruments. Investments are reported at fair value. Security transactions and any resulting gains or losses are accounted for on a trade date basis.

The Fund's investments may be categorized as either (1) insured and registered for which the securities are held by the Fund or its agent in the Fund's name, (2) uninsured and registered for which the securities are held by the broker's or dealer's trust department or agent in the Fund's name, or (3) uninsured and unregistered for which the securities are held by the broker or dealer or by its trust department or agent but not in the Fund's name. At September 30, 2003 and 2002 all of the Fund's investments are classified in category (1).

Investments other than real estate, commercial mortgages and other loans, and municipal revenue bonds are reported at market values determined by the custodial agents. The agent's determination of market values includes, among other things, using pricing services or prices quoted by independent brokers at current exchange rates.

Commercial mortgages and other loans and municipal revenue bonds have been valued on an amortized cost basis, which approximates market or fair value. No allowance for loan loss has been provided as all loans and bonds are considered by management to be fully collectible. Short-term investments are reported at cost, which approximates market value. For investments where no readily ascertainable market value exists, management, in consultation with their investment advisors, have determined the fair values for the individual investments based on anticipated maturity dates and current interest rates commensurate with the investment's degree of risk.

September 30, 2003 and 2002

(4) Summary of Significant Accounting Policies, continued

First Hawaiian Bank holds the investments as custodian in **the** Fund's name. In addition, the Fund has selected investment managers who are given authority to purchase and sell securities in accordance with the following guidelines:

A. Investment managers may invest in U.S. and non-U.S. common stocks, American Depository Receipts (ADRs), convertible bonds, preferred stocks, fixed-income securities, mutual funds and short-term securities.

1. U.S. equities:

a. Equity holdings are restricted to readily marketable securities of corporations that are actively traded on the major U.S. exchanges and over the counter.

b. Common and preferred stock:

i. The issuing institution has reported a profit in at least four of the five fiscal years preceding the date of investment, or alternatively in at least seven of the ten fiscal years preceding the date of investment.

ii. The issuing institution has paid a cash dividend on its common or capital stock in at least four of the five years preceding the date of investment, or alternatively, in at least seven of the ten fiscal years preceding the date of investment.

iii. Total cash dividends have not exceeded total earnings in five years preceding the date of investment.

iv. On the date of investment, the issuer is not in default in payment of principal or interest on any of its publicly held bonds or other evidence of indebtedness, and any contingent interest, cumulative and non-cumulative preferred dividends and dividends on prior common or capital stock have been paid in full.

v. Preferred stock must also adhere to the following:

The net earnings of the institution available for fixed charges over a period of five fiscal years preceding the date of investment have averaged per year, and during either of the last two years have been, after depreciation and after income taxes, no less than:

September 30, 2003 and 2002

(4) Summary of Significant Accounting Policies, continued

1. Two times its average annual fixed charges, maximum contingent interest and preferred dividend requirements over the same period, in the case of any public utility company; or,
2. Three times its average annual fixed charges, maximum contingent interest and preferred dividend requirements over the same period, in the case of any other company.

2. U.S. Fixed Income:

- a. All fixed income securities held in the portfolio must have a Moody's, Standard & Poor's and/or a Fitch's credit quality rating of no less than "BBB". U.S. Treasury and U.S. Government agencies are qualified for inclusion in the portfolio.
- b. No more than twenty percent (20%) of the market value of the portfolio may be rated less than single "A" quality, unless the manager has specific written authorization. Eighty percent (80%) of the fixed income portfolio must be in bonds of credit quality equal to or greater than "A".
- c. Total portfolio quality (capitalization weighted) must maintain an "A" minimum rating.
- d. In case such bonds or other evidence of indebtedness are not so rated by two nationally recognized and published rating services, the net earnings available for fixed charges over a period of five fiscal years preceding the date of investment have averaged per year and during either of the last two years have been, after depreciation and after taxes, not less than:
  - i. Two times its average annual fixed charges over the same period, in the case of any public utility company;
  - ii. One and one-half times its average annual fixed charges over the same period, in the case of any financial company; or,
  - iii. Three times its average annual fixed charges over the same period, in the case of any other company.

September 30, 2003 and 2002

(4) Summary of Significant Accounting Policies, continued

- e. With the written petition and subsequent written approval of the Trustees, opportunistic investment bonds issued by national governments other than the United States or foreign corporations may comprise up to six percent (6%) of each fixed-income manager's portfolio. In no case shall these investments exceed three and one-half percent (3.5%) of the total GGRF investments. All non-U.S. securities will be, in the judgment of the investment managers, of credit quality equal or superior to the standards described above.

3. Non-U.S. Equities

- a. Common or capital stock of any institution or entity created or existing under the laws of any foreign country are permissible investments, provided that:
  - i. The issuing institution has reported a profit in at least four of the five fiscal years preceding the date of investment, or alternatively, in at least seven of the ten fiscal years preceding the date of investment.
  - ii. The issuing institution has paid a cash dividend on its common or capital stock in at least four of the five years preceding the date of investment, or alternatively, in at least seven of the ten fiscal years preceding the date of investment.
  - iii. Total cash dividends have not exceeded total earnings in five years preceding the date of investment.
  - iv. On the date of investment, the issuer is not in default in payment of principal or interest on any of its publicly held bonds or other evidences of indebtedness, and any contingent interest, cumulative and non-cumulative preferred dividends and dividends on prior common or capital stock have been paid in full.
- b. Consistent with the desire to maintain broad diversification, allocations to any country, industry or other economic sector should not be excessive.

September 30, 2003 and 2002

(4) Summary of Significant Accounting Policies, continued

4. Cash and Cash Equivalents

- a. Cash equivalent reserves must consist of cash instruments having a quality rating of A-2, P-2 or higher. Eurodollar Certificates of Deposit, time deposits, and repurchase agreements are also acceptable investment vehicles. All other securities will be, in the judgment of the investment managers, of credit quality equal or superior to the standards described above.
  - b. No single issue shall have a maturity of greater than two years.
  - c. The cash portfolio shall have a maturity of less than one year.
  - d. Any idle cash not invested by the investment managers shall be invested daily through an automatic sweep managed by the custodian.
- B. No investment management organization shall have more than twenty-five percent (25%) of the GGRF's assets under its direction.
  - C. No individual security of any issuer, other than that of the United States government or Government of Guam, shall constitute more than five percent (5%), at cost, of the total GGRF or of any investment manager's portfolio.
  - D. Holdings of any issuer must constitute no more than five percent (5%) of the outstanding securities of such issuer.
  - E. Investments in a registered mutual fund managed by the investment manager are subject to prior approval of the Board of Trustees.
  - F. The following securities and transactions are not authorized: letter stock and other unregistered securities; non-negotiable securities; commodities or other commodity contracts; and, short sales origin transactions. Options and futures are restricted, except by petition to the Trustees for approval.

Income Taxes

The Fund is a public employees' retirement system and an autonomous agency of the Government of Guam. Accordingly, the Fund is not subject to income taxes.

Actuarial Present Value of Accumulated Plan Benefits

Accumulated plan benefits are those future periodic payments, including lump-sum distributions that are attributable under the Fund's provisions to the service members have rendered through the most recent actuarial valuation date (September 30, 2002).

September 30, 2003 and 2002

(4) Summary of Significant Accounting Policies, continued

Accumulated plan benefits include benefits expected to be paid to (i) retired, disabled, and terminated employees and their beneficiaries, (ii) beneficiaries of employees who have died, and to (iii) present employees and their beneficiaries. Benefits payable under all circumstances - retirement, death, disability, and termination of employment - are included, to the extent they are deemed attributable to employee service rendered through September 30, 2002.

The actuarial present value of accumulated plan benefits is determined by an independent actuarial firm and is the amount that results from applying actuarial assumptions to adjust the accumulated plan benefits to reflect the time value of money (through discounts for interest) and the probability of payment (by means of decrements such as for death, disability, withdrawals, or retirement) between the most recent actuarial valuation date (September 30, 2002), and the expected date of payment.

The significant actuarial assumptions used to calculate the actuarial present value of accumulated plan benefits are presented below, and are based on the assumption that the Fund will continue in operation. Were the Fund to terminate, different actuarial assumptions and other factors might be applicable in determining the actuarial present value of accumulated plan benefits.

Actuarial Cost Method:	Entry age normal
Valuation of Assets:	Market value, including accrued but unpaid contributions, with fixed income investments at amortized cost
Investment Income:	8% per year.
Salary Increase:	Graded based on service with the Government ranging from 4.0% for service in excess of 21 years to 8.5% for service from zero to five years
Total Payroll Growth:	4.5%
Expenses:	Administrative expenses of the prior year. For 2002, assumed to be 1.80% of covered defined benefit payroll
Mortality:	1983 Group Annuity Mortality for males set forward two years for males and no set forward for females

Notes to Financial Statements, continued

September 30, 2003 and 2002

(4) Summary of Significant Accounting Policies, continued

- Disability: 1974-78 SOA LTD Non-Jumbo with rates increased for males by 30%
- Retirement Age: 80% probability of retirement at earliest age of eligibility for unreduced retirement benefits; remaining are assumed to retire at age 60
- Credited Service: Active participant liabilities and costs loaded by 1.6% for estimated cost of those members purchasing additional credited service in accordance with Fund provisions. Additional 2% for unknown but assumed errors in data files

Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Depreciation

Depreciation is calculated using the straight-line method over the estimated useful lives of the assets, as follows:

Furniture and fixtures	3 years
Automobiles	5 years
Buildings	30 years
Improvements	5-10 years
Equipment	1-5 years

Administrative expenses include depreciation and amortization expense of \$119,101 and \$147,653 in 2003 and 2002, respectively.

September 30, 2003 and 2002

(5) Related Party Transactions

In March 1998, the GGRF accepted a promissory note from Guam Memorial Hospital Authority (GMHA), a component unit of the Government of Guam. The note was originally in the amount of \$9,385,720 and bears interest at the bank's prime rate plus 1%, with a floor amount of 8%. The note was executed for the outstanding balance of a previously executed promissory note and for contributions owed to the GGRF as of February 28, 1998, along with related penalties and interest. Payments were to begin on March 30, 1998. At September 30, 2003 and 2002 the balance on the note was \$6,271,028 and \$6,823,775, respectively. Management established a reserve of \$8,000,000 at September 30, 2000 due to the uncertainty of collection of this balance. The reserve was decreased during the years ended September 30, 2003 and 2002 to equal the balance of the receivable, with a corresponding offset included in bad debt recoveries.

(6) Property and Equipment and Land

Property and equipment at September 30, 2003 and 2002 were as follows:

	<u>2003</u>	<u>2002</u>
Building	\$ 1,130,186	1,130,186
Improvements	629,894	716,557
Equipment	814,973	712,977
Land	439,429	439,429
Furniture and fixtures	318,818	318,818
Automobiles	38,201	14,678
Other	<u>12,200</u>	<u>5,200</u>
	3,383,701	3,337,845
Less: Accumulated depreciation	<u>(1,942,872)</u>	<u>(1,912,412)</u>
	<u>\$ 1,440,829</u>	<u>1,425,433</u>

(7) Supplemental Annuities and COLA Payments

Public Law 25-72, passed in September 1999, required the payment of supplemental annuities and cost of living allowances (COLA) to retirees. P.L. 25-72 also specified that these payments were an obligation of the General Fund and not of the GGRF. The cost of these benefits is to be paid through increased contributions over a period of twenty years.

September 30, 2003 and 2002

(7) Supplemental Annuities and COLA Payments, continued

During the year ended September 30, 1999 the GGRF paid out approximately \$31.4 million for supplemental annuities and COLA payments. The GGRF collected approximately \$3.2 million from autonomous agencies and approximately \$14.8 million from the general fund during fiscal year 1999 for these payments. The receivable balance at September 30, 1999 was approximately \$14.9 million. Approximately \$1.6 million was reflected as "Other receivables" on the statement of net assets, and \$13.3 as "Supplemental/COLA benefits receivable".

During fiscal year 1999, the Government of Guam appropriated \$12 million to pay for a portion of the \$31.4 million that the GGRF paid for supplemental annuities and COLA payments. Public Law 25-122, passed in May 2000, reallocated \$12 million from the payment of supplemental annuities and COLA to regular employer contributions.

Since the \$12 million collected in fiscal year 1999 was used to reduce the receivable at September 30, 1999, this reallocation required the receivable for supplemental annuities and COLA payments to be increased by \$12 million. The offset was recorded as a reduction of employer contributions receivable from the Government of Guam.

During the year ended September 30, 2000 the GGRF paid out \$32.3 million for supplemental annuities and COLA payments. Of the employer contributions received in fiscal year 2000, \$4.2 million was allocated to the reduction of the receivable for these payments. The balance at September 30, 2000 was \$54.9 million.

During the year ended September 30, 2001 the GGRF paid out \$34.0 million for supplemental annuities and COLA payments. Of the employer contributions received in fiscal year 2001, \$4.7 million was allocated to the reduction of the receivable for these payments. The balance at September 30, 2001 was \$84.2 million.

During the year ended September 30, 2002 the GGRF paid out \$27.5 million for supplemental annuities and COLA payments. Of the employer contributions received in fiscal year 2002, \$3.6 million was allocated to the reduction of the receivable for these payments. The balance at September 30, 2002 was \$108.1 million.

## Notes to Financial Statements, continued

September 30, 2003 and 2002

(7) Supplemental Annuities and COLA Payments, continued

During the year ended September 30, 2003 the GGRF paid approximately \$8.96 million in supplemental and COLA benefits. These payments are included in "Other receivables" in the statement of net assets, and not in the "Supplemental and COLA benefits receivable". Accordingly, the only change in the supplemental and COLA benefits receivable in 2003 is amortization of the employer contributions received. In fiscal year 2003, \$4.44 million was allocated to the reduction of the receivable for these payments. The balance at September 30, 2003 was \$103.7 million.

Since the GGRF is simply acting as a paying agent for these benefits, the payment of the benefits and their subsequent collection should not increase or decrease plan net assets. The receivable for supplemental annuities and COLA payments is being reduced by a portion of the employer contributions received. The percentage used for fiscal years 2003 and 2002 was 1.2016% of covered payroll.

(8) Early Retirement Incentive Program (ERIP)

Public Law 24-327, as amended by Public Laws 25-2, 25-3, 25-72, 25-74, 25-90, 25-98 and 25-99 became effective December 30, 1998. This law allowed GGRF members with at least twenty years of creditable service to retire and to purchase up to five years of creditable service. Those electing to participate in the ERIP must pay the members' share of the required contribution, plus interest, based on their salary at the time they made the election. Payments can be made in full or can be financed through deductions from annuities over a period not to exceed fifteen years.

The time allowed for making the election and retiring was from December 30, 1998 to January 7, 2000. During this period, approximately eight hundred (800) members elected to participate in this program and signed promissory notes totaling nearly \$15 million. At September 30, 2003 and 2002 the amount owed under these notes was \$12,498,071 and \$13,487,082, respectively. There is a corresponding deferred revenue account to offset these notes receivable, since contribution income is recognized on a cash basis as amounts are collected from the retirees.

## Notes to Financial Statements, continued

September 30, 2003 and 2002

**(8) Early Retirement Incentive Program (ERIP), continued**

The government's share of these required contributions has been recognized in the accompanying statement of plan net assets as "Receivable - ERIP employer's share" and amounted to \$17,080,487 and \$21,667,768 at September 30, 2003 and 2002, respectively. This receivable is offset by deferred revenue in the same amount. Contribution income is recognized on a cash basis as amounts are collected from the employer agencies.

The receivable for the government's share of required contributions is being reduced by a portion of the employer contributions received. The statutory percentage for fiscal years 2003 and 2002 was 1.31% of covered payroll.

**(9) Additional Amounts Owed to Retirees by Government of Guam Agencies**

Certain supplemental and COLA benefits were paid by GGRF on behalf of the Government of Guam and are reflected as "Other receivables" in the accompanying statement of net assets. In addition, various Government of Guam agencies are obligated to pay retirees for supplemental and COLA benefits. Such benefits were not paid by the GGRF and are therefore not included in the accompanying financial statements.

Amounts owed to retirees by Government of Guam agencies for the period from January 31, 2003 to September 30, 2003 are as follows:

General fund line agencies	\$ 3,147,964
Other agencies funded by the general fund:	
Department of Education	2,186,010
Guam Memorial Hospital Authority	492,787
University of Guam	344,631
Guam Waterworks Authority	255,758
Other agencies	522,226
Autonomous agencies:	
Port Authority of Guam	415,236
Guam Power Authority	301,546
Guam Telephone Authority	218,398
Other agencies	<u>166,979</u>
<b>Total</b>	<b>\$ <u>8,051,535</u></b>

**GOVERNMENT OF GUAM RETIREMENT FUND**

Schedule of Funding Progress

September 30, 2003

Actuarial Valuation as of September 30	Actuarial Value of Assets	Actuarial Accrued Liability (AAL) Entry Age	Unfunded AAL (UAAL)	Funded Ratio	Covered Payroll	UAAL as a percentage of covered payroll
1991	\$ 532,031,203.00	\$ 1,151,609,685.00	\$ 619,578,482.00	46.2%	\$ 321,580,393.00	192.7%
1992	617,736,989	1,290,723,919	672,986,930	47.9%	345,240,093	194.9%
1993	703,442,774	1,429,838,154	726,395,380	49.2%	368,899,793	196.9%
1994	784,228,607	1,423,514,217	639,285,610	55.1%	362,944,815	176.1%
1995	865,014,439	1,417,190,280	552,175,841	61.0%	356,989,837	154.7%
1996	1,039,360,363	1,621,028,990	581,668,627	64.1%	373,494,919	155.7%
1997	1,213,706,286	1,824,867,699	611,161,413	66.5%	390,000,000	156.7%
1998	1,287,157,129	1,770,851,501	483,694,372	72.7%	407,550,000	118.7%
1999	1,346,204,661	2,096,616,994	750,412,333	64.2%	363,710,950	206.3%
2000	1,348,760,812	2,126,149,616	777,388,804	63.4%	374,551,304	207.6%
2001	1,265,001,000	2,333,862,000	1,068,861,000	54.2%	403,061,000	265.2%
2002	1,135,666,000	2,378,399,000	1,242,733,000	47.7%	395,967,000	313.8%

See accompanying independent auditors' report.

GOVERNMENT OF GUAM RETIREMENT FUND

Schedule of Employer Contributions

September 30, 2003

<u>Year ended September 30</u>	<u>Annual Required Contribution</u>	<u>Actual Employer Contribution</u>	<u>Percentage Contributed</u>
1991	\$ 95,626,462.00	\$ 47,981,639.00	50.2%
1992	101,997,881	51,178,569	50.2%
1993	113,004,409	57,762,706	51.1%
1994	108,474,825	66,591,020	61.4%
1995	89,717,590	76,491,049	85.3%
1996	80,204,912	75,976,487	94.7%
1997	64,262,185	67,976,263	105.8%
1998	57,162,473	78,727,824	137.7%
1999	77,663,514	72,120,965	92.9%
2000	85,623,203	68,677,714	80.2%
2001	117,856,000	66,047,627	56.0%
2002	86,100,000	70,793,426	82.2%

See accompanying independent auditors' report.

**GOVERNMENT OF GUAM RETIREMENT FUND**

Supplementary Schedule of Administrative and General Expenses

Years ended September 30, 2003 and 2002

	<u>2003</u>	<u>2002</u>
<b><u>DEFINED BENEFIT PLAN</u></b>		
Salaries and wages	\$ 1,617,229 /	1,567,599
Legal fees	375,185 /	336,908
Employer's retirement contribution	326,120 /	317,401
Program services/maintenance	243,000 /	243,000
Insurance	165,668 /	162,297
Depreciation	119,101 /	147,563
Actuary fees	109,593 /	284,089
Repairs and maintenance	77,705 /	72,269
Computers and software	61,701 /	44,750
Utilities	57,727 /	52,555
Retiree supplemental/COLA	52,001 /	74,894
Printing and publications	46,087 /	62,329
Audit fees	45,000 /	32,225
Postage	44,583 /	48,443
Miscellaneous	34,073 /	12,435
Communications	32,298 /	33,198
Equipment rental	23,323 /	24,048
Travel and transportation	21,448 /	26,377
Medicare contribution	20,158 /	19,633
Medical exams	18,531 /	28,521
Training	18,135 /	7,936
Office supplies	14,055 /	13,746
Medical consultant	10,463 /	13,875
Contract services	- /	-
Bad debts (recoveries)	<u>(552,746)</u>	<u>(924,247)</u>
	<u>\$ 2,980,438</u>	<u>2,701,844</u>
<b><u>DEFINED CONTRIBUTION PLAN</u></b>		
FASCORP administrative fees	\$ 696,635	653,755
Other operating expenses	<u>348,105</u>	<u>337,166</u>
	<u>\$ 1,044,740 /</u>	<u>990,921</u>

See accompanying independent auditors' report.

**GOVERNMENT OF GUAM RETIREMENT FUND**

**Supplementary Schedule of Personnel Costs**

**Years ended September 30, 2003 and 2002**

	<u>2003</u>	<u>2002</u>
Salaries and wages	\$ 1,617,229	1,567,599
Employer's retirement contribution	326,120	317,401
Medicare contribution	<u>20,158</u>	<u>19,632</u>
	<u>\$ 1,963,507</u>	<u>1,904,632</u>
Average number of employees	49	49
Average cost per employee	\$ 40,072	\$ 38,870

See accompanying independent auditors' report.

**GOVERNMENT OF GUAM RETIREMENT FUND**

**Supplementary Schedule of Other Receivables - Defined Benefit Plan**

September 30, 2003 and 2002

	<u>2003</u>	<u>2002</u>
Retiree supplemental benefits - agencies	\$ 8,407,000	4,010,308
Penalties and interest	2,093,749	2,800,533
Defined contribution plan start-up costs	1,479,240	1,628,330
Benefit overpayments	729,894	665,665
Other	82,326	13,187
Employer contributions for non-base pay	27,337	27,337
Other overpayments	18,887	18,867
Unfunded liability portion from defined contribution plan	<u>15,682</u>	<u>2,053,687</u>
	<u>\$ 12,854,115</u>	<u>11,217,914</u>

See accompanying independent auditors' report.

**GOVERNMENT OF GUAM RETIREMENT FUND**

Supplementary Schedule of Receivables by Agency - Defined Benefit Plan

September 30, 2003

Agency	Supplemental/ COLA	ERIP Employer's Share	Employer Contributions	Member Contributions	TOTAL
Department of Administration (General Fund)	\$ 103,675,964	9,010,477	1,540,593	15,371	114,242,405
Department of Education	-	2,820,116	13,088,732	5,006,512	20,915,360
Guam Memorial Hospital Authority	-	535,483	5,786,277	2,797,543	9,119,303
Guam Power Authority	-	1,182,814	(9,120)	77	1,173,771
Guam Community College	-	885,661	32,551	18,341	936,553
Guam Waterworks Authority	-	845,127	21,552	15,120	881,799
Superior Court of Guam	-	350,027	43,209	22,818	416,054
Port Authority of Guam	-	592,700	(4,612)	(47)	588,041
Guam Telephone Authority	-	404,768	(135)	(554)	404,079
University of Guam	-	152,762	12,655	3,201	168,618
Guam Legislature	-	153,108	(30,283)	(8,629)	114,196
Government of Guam Retirement Fund	-	87,575	-	-	87,575
Guam Airport Authority	-	-	(2,531)	2,509	(22)
Guam Housing Corporation	-	19,431	1,638	-	21,069
Guam Mass Transit Authority	-	40,438	-	-	40,438
Guam Economic Development and Commerce Authority	-	-	(168)	(71)	(239)
Guam Housing and Urban Renewal Authority	-	-	2,467	-	2,467
Guam Visitors Bureau	-	-	40	-	40
Public Defender Service Corporation	-	-	(3,324)	-	(3,324)
Supreme Court of Guam	-	-	(8)	-	(8)
<b>TOTALS</b>	<b>\$ 103,675,964</b>	<b>17,080,487</b>	<b>20,479,533</b>	<b>7,872,191</b>	<b>149,108,175</b>

See accompanying independent auditors' report.

**GOVERNMENT OF GUAM RETIREMENT FUND**

**Supplementary Schedule of Receivables by Agency - Defined Benefit Plan**

September 30, 2002

Agency	Supplemental/ COLA	ERIP Employer's Share	Employer Contributions	Member Contributions	TOTAL
Department of Administration (General Fund)	\$ 106,513,203	10,525,611	4,820,015	2,707,621	124,566,450
Department of Education	-	4,230,073	12,404,582	5,180,401	21,815,056
Guam Memorial Hospital Authority	-	846,187	5,539,039	2,758,112	9,143,338
Guam Power Authority	-	1,466,934	(9,120)	77	1,457,891
Guam Community College	-	1,032,833	38,052	18,905	1,089,790
Guam Waterworks Authority	-	979,828	58,420	26,365	1,064,613
Superior Court of Guam	-	508,107	244,843	117,950	870,900
Port Authority of Guam	-	750,321	(4,612)	(47)	745,662
Guam Telephone Authority	-	595,029	(135)	(554)	594,340
University of Guam	-	426,135	15,399	3,870	445,404
Guam Legislature	-	193,291	7,452	(2,460)	198,283
Guam Airport Authority	-	43,472	5,160	(5,182)	43,450
Guam Housing Corporation	-	29,452	1,638	-	31,090
Guam Mass Transit Authority	-	26,345	-	-	26,345
Guam Economic Development and Commerce Authority	-	14,149	(168)	(71)	13,910
Guam Housing and Urban Renewal Authority	-	-	2,464	2	2,466
Guam Visitors Bureau	-	-	-	-	-
Public Defender Service Corporation	-	-	40	-	40
Supreme Court of Guam	-	-	(3,324)	-	(3,324)
TOTALS	-	(23,392)	(8)	-	(23,400)
	<u>\$ 106,513,203</u>	<u>21,644,375</u>	<u>23,119,737</u>	<u>10,804,989</u>	<u>162,082,304</u>

See accompanying independent auditors' report.

## WHAT WOULD CONSTITUTE DETREMENTAL TO THE FUND??

—by Joe T. San Agustin- 1/18/05  
Chairman, Board of Retirement Fund Trustees.  
Government of Guam Retirement Fund

We have over \$32 millions due to the Retirement Fund; and the Legislature and the Governor “propensity” to cure these delinquencies have been by enacting specific appropriations” to cover “selected “ specific employee’s contributions of selected employee(s) in order to be allowed to retire. Since the Legislature’s appropriation includes all interest and penalties covering the “selected” employee’s due contributions, it has been the findings of our Legal Counsel that the “allowance” for the “selected” employee to retiree would not be detrimental to the Fund. This appears contrary to the Court Decree issued on Feb. 18, 2003, CV 1848-01 and the Consent Decree, dated Dec. 19,2003, (CV 1848-01 and CV 1823-02) both by Judge Lamorena.

Budget Law 2003, 2004 and 2005 continually provides for these “allowances” in order for the “selected” employee deemed eligible to retire.

Our Legal Counsel recently indicates that:

1. The reason the Legislation was passed was to clear the “backlog of retirees who were no longer working.
2. The Board’s non-compliance with the Budget Law would be the basis for a legal suit against the Board (by DOE or GMH retirees who wants to retire);
3. The best defense for such a suit would be a finding that the individual retirement provisions would be a detrimental to the Fund(which the Legal Counsel could not support);

### ON THE OTHER HAND, OUR LEGAL COUNSEL

Maintains that if “you believe that by allowing the agencies to pay on an individual basis, this will deter them from paying amounts past due, then of course this would be a detriment” However, it was acknowledged since the Agencies have not been paying the amounts past due, and they have been apparently being using the amounts past due for other expenses, there is a “need to institute appropriate collections actions as a separate matter”.

ESSENTIALLY, OUR LEGAL COUNSEL MAINTAINS THAT ENTIRE MATTER SHOULD BE “SEPARATED” AND HANDLED IN TWO SEPARATE PROCEDURES, I.E. (1) ALLOW THE INDIVIDUAL RETIREMENT, BASED ON BUDGET LAW WHICH PROVIDES FOR THE SPECIFIC AMOUNTS DUE; (2) INSTITUTE SEPARATE COLLECTIONS FOR OTHER AMOUNTS PAST DUE—A MATTER WHICH IS ON-GOING WITH DISMAL RESULTS.

## **HISTORICAL BACKGROUND**

**During the 11<sup>th</sup> Guam Legislature, there was a bill 692 introduced to establish an appropriation by the Legislature out of which administrative expenses and other costs in the administration and operation of the Retirement Fund shall be paid.**

**On a letter testimony, dated Jan 20, 1972, submitted to the oversight legislative chairman of the 11<sup>th</sup> Guam Legislature, opposes the bill in part due to the fact that the Government as an employer in its appropriated contributions includes a portion earmarked for administrative expenses.**

**The Board of Retirement Trustees maintained an established government policy and has prevailed since the establishment of the Government of Guam Retirement Fund, the following:**

**“The operation of a retirement system in effectuating personnel objectives for government and the successful fulfillment of this major function frequently results in a misconstruction of the relationship of the system to the governmental employer whom it services. A retirement system constitutes a trust of the highest degree. Its trust aspects and its operation as a separate entity with its independent management and direction establishes it as an organization which is distinct from all other operating units of the governmental employer. It is not, as it is frequently represented, an integral part of the organization of the governmental unit.**

**A retirement system is actually self-governing and self-directing according to law creating it. It should, therefore, be permitted to operate and develop in its independent form as contemplated by the governing law. The system is expected, of course, to conform to the conditions and regulations applicable to all other organizations of government.**

**However, this conformance does not encompass subservient to the employer or submission to his policies if these are in conflict with or in violation of the underlying principles of the system or contrary to the expressed or implied provisions of the Retirement Law.**

**Likewise, the system is expected to cooperate fully in rendering the employer the services for which it was created, and to assist in carrying out**

its role as an essential adjunct of a progressive personnel policy. But the accomplishment of this function does not envisage the relinquishing of its authority to manage its own affairs and enforce compliance on the part of the employer with the provisions of the retirement law to the end that proper and adequate revenues to meet statutory liabilities are forthcoming, and to insure that the duties of the employer arising out of his obligations under the law are performed properly and fully. On the other hand, the independent status of the system does not rule out possible examination by the employer or regulation by appropriate governmental agencies.”

In a published view point, Guam Pacific Sunday News, dated July 13, 1986, Mr. Phil J. Flores, then the chairman of the board for the Guam Chamber of Commerce, stated:

“ The concern extends to the treat to the Retirement Fund. A study performed as of December 31, 1982 disclosed that the Retirement Fund had an unfunded accrued liability which increased at an annual growth rate of 8 percent from \$101.9 million on Dec. 31, 1979 to \$135.4 million on Dec. 31, 1982. This liability was the result of implemented changes in retirement benefits without corresponding adjustments in employer-employee contribution rates to the Fund. Assuming that the annual growth rate remained at 8 percent since 1982, we can conclude that by Dec. 31, 1986, the unfunded accrued liability to the Retirement fund will total \$180.4 million.

The fact that the government had failed to pay the employer’s share and withheld employees’ share of contributions over the last several years is also taking its toll on the Fund. For the period ending Dec. 31,1985, GovGuam reports showed 10,110 active employees in the Government of Guam. As of the same date, the Administration Deficit

Elimination Plan showed \$3,739 per GovGuam employee in Retirement Fund contributions which remain unpaid.

If we keep on our present course one of these days our friends, relatives and neighbors will get credit memos or some other non-negotiable piece of paper and not a check. What will happen to the members of the Retirement

**Fund then, or their families who depend upon their pension income for subsistence.”**

## WHAT DOES THE LAW STATES?

### 1. Section 8137GCA --- Contributions by the Government:

“The amount of contributions by the Government shall be determined by applying the applicable percentage rate of contributions as hereinabove prescribed to the total salaries paid to the members during each payroll period, and all such amounts shall be paid into the Fund following the close of each payroll period, concurrently with the contributions made to the Fund by the members”. Total salaries means “base pay”

Subsection © authorizes the assessments on the total delinquent payments at a rate equal to average rate of return on the investment of retirement funds, plus 1% as penalty for late payments. Delinquent payments are payments not paid within ten (10) working days after the issuance of the payroll checks. In other words, payments not made after the tenth day after payroll will be considered delinquents. Apparently, since there are no specific time stated by law how long these late payments need to be paid, there are really no real incentive for any Agency to make payments within a “reasonable or customary time”. Historically, GMH was the only Agency that has had serious delinquency, BUT, for 2002 and 2003, the Department of Education “has joined” the delinquency group. While GMH may have signed a “promissory note” but, to date, DOE has not- nor will they without Legislative authorization.

Unfortunately, the Fund can assess interest and penalty, the actual receipt of such payments, plus interests and penalties, becomes a “collection issue” according to our Legal Counsel, which the Retirement Fund, other than to seek Court relief, lacks the enforcement powers, i.e. The Retirement Fund appears not to have the authority to “levy” government assets. On the other hand, the first instance of “collections” would appear to be legally required by the Government, i.e. the appropriate Agency, charged with the payroll functions to “deduct” from the employees’ gross salaries, and to pay such amounts into the Fund.

The legal question appears to determine whether the “past due accounts” are considered “assets of the Retirement Fund” as “accounts receivables”, within the full meaning and intent of 22 GCA, Section 3215—which states that “retirement contributions of both the employer and the employee to a retirement fund or plan, including the Government of Guam retirement fund, shall be the property of the retirement fund or plan held in trust for the benefit of the members of the plan or fund, and the employer retains no rights thereto”. These contributions once deducted from the employee’s gross salary and the Government, likewise, in accordance with 4GCA Section 8168, is required as a legal obligation to make the corresponding contributions, whether they are “remitted to the Fund or not” would become

an assets of the Retirement Fund. Consequently, continued non-remittance of these contributions could be construed as “unlawfully dissipating the assets of the Fund” especially, if it can be shown that the actual funds, representing contributions, were diverted to meet other expenses of the Agencies, i.e. mis-routing of funds specifically “from the total salaries” of the employee members gross pay.

Court Order, Civil Case No. CV 1848-01, cited 22 GCA, Section 3215 and 4 GCA Section 8139.1 Fiduciary Duties, agrees with the California Court Case, Valdes (139 Cal App.3d at 788 189 Cal. Repr. At 224) which holds that “contributions to a public employee’s retirement plan, including employer’s contribution, became part of the corpus of the trust and were not available as state funds”. The Court further states that the “employees have earned these funds, so any purpose of which they are used which is not the puppies of the fund is an adverse modification of the rights of the participants”. Furthermore, pursuant to 48 U.S.C. 142 (b) (j) of the Organic Act of Guam recognizes that “public employment contains certain obligations, which are protected by the Contract Clause, including the right to the payment of pensions and retirement benefits”. Under this Court Decree, the Board, among other things, is ordered to “(4) decline to process retirement, disability, or survivor benefit applications at the statutory contribution rate (this includes unfunded, underfunded, and late contributions)”. Please note that this includes not only late contributions, BUT also “unfunded” or “underfunded”. Is it reasonable to conclude even if “late contributions” were made as provided in the Budget Law for 2005, GMH employees, but the Court’s Order includes the “underfunded liability” which is now in excess of \$1.0 Billions?

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This same Court Order is cited by the AG’s Opinion, dated Mar 6, 2003, maintains that “the employee and employer contributions” are intended to be on an “actuarial funded basis”, and hence failure of the departments and agencies to make contributions will “indubitably impair the actuarial soundness of the Defined Benefit Plan.”

Attorney-General’s Opinion, further, maintains that the Board should permit those members who are attempting to retire, to retire, provided that their contributions, interest and penalties are paid; and at the same time, the Board should “also immediately assess all delinquent members and provide them reasonable notice of their amount of delinquency, giving a date certain when they will be terminated unless their contributions are fully paid”. Our Retirement Fund Director did issue a letter, dated 20 Dec. 2004 to both GMH and DOE, indicating that individual notices will be issued to employees of both Agencies.

However, 4 GCA Section 8105: Members stated that all employees (with few exemptions specified in law) “shall become members of the Fund, by virtue of their employment”, and more specifically sub-section (b) that all employees shall become members of the Fund “as a condition of employment” below 60 years of age.

Assuming that “terminations” of membership would be done in accordance with the AG’s opinion, does this means also “termination of employment”? Can an employee with few statutory exceptions, be continually employed if the membership status is not maintained?

2. Section 8164 Contributions Reserves and Accounts. There are five (5) required reserves that must be maintained :

a. Members' contribution reserve. Each member must have an individual account established on which "credit" – representing the amounts of his contributions (upon receipt of his deductions, following the close of each payroll period) and regular interest credited annually at the end of year. At the end of the fiscal year, each member shall be provided with the year-end statement of account. Whenever, the member is granted retirement annuity (service, disability or survivors), accumulated contributions, including interest, to the credit of the member shall be transferred from this "reserve" to the "retirement reserve (see item (c) below- Retirement Reserve).

b. Employer's Contribution Reserve. Government contributions (service, disability, survivors) covering each member shall be credited to this reserve. Regular interest "shall be credited annually upon the mean amount in the reserve".

Whenever, the covered member is granted retirement annuity (service, disability, or survivors), an amount "representing the excess of the actuarial value of the annuity or benefit over the accumulated contributions, including interest, shall be transferred from this reserve to the retirement reserve" (see item (3) below- Retirement Reserve). In terms of what is the "excess of the actuarial value" whatever this amount is not clear—be it over the assumed actuarial rate of returns, i.e. 7.5%? Of the actual rate of return, i.e. 8.5%--- 1%? We need to established what would be the amount to be "transferred" to the individual member account in the Retirement Reserve (see item (c) below).

c. Retirement Reserve. Before any eligible member is to receive annuity (service, disability or survivors), the amounts plus interest in both the Members and Employer's contribution reserves must be transferred to this Retirement Reserve. From this reserve, the individual member receives his annuity payments.

d. Death Benefit Account. This account is maintained based on the Normal Cost (employer share) for the death of a member.

e. Interest and Investment Income Reserve. This reserve is essentially the first "step" in the distribution of all income from investments. The required interest payment due the Member and Employer contributions shall come from this Reserve.

f. Supplementary Annuity Payment Reserve. To cover the cost of the required annuity adjustments, an amount over and above the 4.5% interest (this amount is the interest paid to the individual member account (see item (a) above), shall be credited to this reserve. Presumably whenever a member retires (the source of his annuity payment would be the Retirement Reserve), the added annuity adjustments amount would come from this Supplementary Annuity Reserve.

CAN THE ISSUE OF SELECTED EMPLOYEES TO RETIRE BY LEGISLATIVE APPROPRIATIONS BE SEPARATED BY THE FAILURE OF THE AGENCIES TO "REMIT AS REQUIRED BY LAW" OR WOULD THE CUMULATIVE EFFECT OF BOTH ISSUES CAN BE A SERIOUS THREAT TO THE DETRIMENTAL FISCAL INTEGRITY OF THE FUND???

1. It is known fact that the total contributions of an individual member and the Government's are "exhausted" for the individual member's total annuity payments after eighteen (18) months, and the life time annuity payments due will be absorbed or met by the contributions of active employees and at best by the investment returns of the total invested assets.
2. Since the total delinquent payments, plus interests and penalties, would be by general accounting practices be reflected on the Retirement Fund's balance sheets as "accounts receivables". Continued "non-remittance of the actual funds" would thereby under general accounting principles mandates the Fund to "write off as uncollectible", creating an actual reduction of the Fund's assets—(Public Auditor has recommended that a reserve be established for GMH delinquent payments-which effectively reduced the assets of the Fund)
3. Since both 1 and 2 above has indeed occurred, can it be concluded that such happenings are not detrimental to the Fund?
4. How can the various requirements for the maintenance of the Reserves, as established by law, be implemented—the Reserve Requirements are basic in the existence of a qualified pension plan. If these Reserves are not maintained as they should be, would the Pension Plan as being "tax-exempt" be in jeopardy?
5. What legal standing would the Retirement Fund have in "having a member whose member account stand in arrears for years"? Would the fact that there appears to be no real enforceable penalty, civil or otherwise, against an Agency who fail to remit the member prescribed deductions to the Fund as prescribed by Law, and the Fund, as it has been the regular practice (although the law do not prohibit such practice) to divert contributions by an active member to pay or meet current annuity payments be considered as detrimental to the future stability of the Fund?
6. What kind of fiduciary liabilities, if any, does the members of the Board of Trustees assumed?
7. Inasmuch as the current members of the GovGuam Retirement Board of Trustees consist of four (4) elected from the members of the Fund, would these elected members have a constituency obligations to so informed its voters of the continued fiscal soundness of the Pension Plan?

8. Based on the above discussions, would the Board be free from its fiduciary obligations if (1) allows individual employee request for retirement provided full contributions are made to the Fund; (2) the delinquent payments becomes strictly a matter of collection issue. Would the treatment of these two as distinct and separate issue be not in violation of the two Court Decrees., as issued by Judge Lamorena?
9. At a meeting with the Governor, several weeks ago, there were general agreements for the Administration to: (1) Remit the appropriations of \$1.2 millions for GMH in four equal installments, plus all outstanding interests and penalties on the delinquent accounts, totaling approximately \$2.5 millions, and the principal payments will be made, if and when, the pending Bond issues were made. In so far as DOE, the Governor has effectively direct that the problem would be resolved by the Supt. of Education, Juan Flores and the Legislature. Governor indicates that the Legislature has effectively "cut him off" educations financial matters.
10. According to the AG's Opinion RF 81-0432, dated 9/15/81, retirement benefits , under the Defined Benefit Plan, are contractual rights that have limited or qualified vesting on employment and full vesting on maturation. The Government, as the Employer, continued failure or in constant arrears of the contributions, both the employee's and employer's share, to "remit" to the Retirement Fund could surely can be argued as jeopardizing the annuity payments of both current and future retirees.

Prepared in Draft Form:

1/6/05—Joe T. San Agustin

# Legislators Eye \$45 M Retirement Fund Control

By Pat McElroy  
Daily News Staff Writer

Gov. Camacho's most successful monetary venture—the \$45 million Retirement Fund—has caught the eye of local legislators who appear to want more control but who may run into legal problems getting it.

The fund was set up in 1954 as a trust administered by a board of two GovGuam employees, two nongovernment persons and the director of administration.

Joe San Agustin, a retirement fund trustee and current director of administration appeared yesterday before Sen. Richard Taitano's Finance committee to defend the fund's operations.

The retirement fund, which receives contributions from the General Fund and government employees to finance retirement and survivors benefits for some 1,000 GovGuam employees now on the payroll.

Legislators inserted a section in the executive budget bill, recently adopted, that defines

the duties of the Governor to include recommending for consideration by the Legislature programs and financial plans covering all estimated receipts and expenditures that include the General Fund and all special funds.

The question arises over the implication that the Retirement Fund is considered a special fund. The section did state that all funds were up for legislative consideration, regardless of the source of revenue.

San Agustin told committee members that he had taken the section to several lawyers to see if the Retirement Fund should be under Legislative control.

The response was negative by both the Attorney General Keith Andrews and attorney Andrew Gayle, according to letters from San Agustin's file.

The board of trustees is charged by law with managing the Fund. It would be considered a breach of trust if the board delegated its fiduciary duty to another agency or person, it was noted in Gayle's opinion.

Legally, a trust fund cannot be diverted from the purpose for which it originally was set up, according to Gayle.

Taitano argued yesterday that it was the taxpayers, who support the General Fund, who were the major "stockholders" in the retirement fund and thus should have some power of review or control. Taxpayers contribute more than 9 percent to the fund, it was noted, while the employees of the government contribute some percent.

Besides, Taitano argued, the General Fund is in debt and the Legislature needs to explore all sources of potential revenue. Taitano said the General Fund deficit may hit \$16 million, implying some help from the Retirement Fund would be welcomed.

When asked how much the Retirement Fund had in assets, San Agustin said about \$45 million. Some \$35 million is in investments that include stocks, land and financing large construction projects. San Agustin later said it was the GovGuam Retirement Fund

which financed the Bank of Guam construction, and he said the yield on the investment dollars has been very "rewarding." The fund also has about \$5 million money on time deposits that can receive up to 13 percent interest under certain circumstances, according to San Agustin.

Finance committee business also included a quick look at the Retirement Fund budget request of \$522,359. The Fund has 35 employees, including investment analysts and accountants.

The Retirement Fund now pays benefits to 935 retirees and survivors, according to San Agustin.

Taitano criticized the Governor's weekly column in the retirement fund newsletter,

Y. Simana. Taitano said it is against the law for politicians to use government-sponsored communications to further their ends. He called Gov. Camacho the "top politician" here.

A bill to appropriate \$383,766 to cover GovGuam contributions to those employees joining the retirement fund or the Social Security program for the months of April, May and June was reviewed by the committee.

Some 2,710 employees of the government who had not chosen retirement fund or Social Security benefits are now required to join one of the two, according to federal law.

The money will be used to cover the government's contribution toward placing these persons in a retirement plan, according to San Agustin.