

**Audit of the Compensatory Time
Claimed and Retirement Benefits Paid
to Two Former Officials of the
Commonwealth Ports Authority**





Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

World Wide Web Site: <http://opacnmi.com>
2nd Floor J. E. Tenorio Building, Chalan Pale Arnold
Gualo Rai, Saipan, MP 96950

Mailing Address:
P.O. Box 1399
Saipan, MP 96950

E-mail Address:
mail@opacnmi.com

Phone: (670) 234-6481
Fax: (670) 234-7812

July 20, 2000

Mr. Roman S. Palacios
Chairman, Board of Directors
Commonwealth Ports Authority
P.O. Box 1055
Saipan, MP 96950

Dear Mr. Palacios:

Subject: Final Report on the Audit of Compensatory Time Claimed and Retirement Benefits Paid to Two Former Officials of the Commonwealth Ports Authority (Report No. AR-00-03)

The enclosed audit report presents the results of our audit of compensatory time claimed and retirement benefits paid to two former officials of the Commonwealth Ports Authority (CPA). The objectives of our audit were to determine whether the comptime granted and the retirement benefits already paid and those now being paid to the two former CPA officials were (1) in accordance with applicable CNMI laws and regulations, and (2) properly computed, approved and documented.

Our audit showed that (1) the Commonwealth Ports Authority allowed its former Executive Director and its former Security Chief, who as executives were FLSA-exempt employees, to earn comptime, in violation of applicable CNMI Personnel Regulations; (2) comptime claimed by the two former CPA officials violated all requirements of the CNMI Personnel Regulations for comptime authorization and documentation; (3) the former Security Chief claimed excessive comptime of 1,800 hours retroactive to 1991 to qualify himself for early retirement benefits; (4) CPA allowed its officials to earn annual leave of about 14 hours per payperiod, or 360 hours in each year, which is beyond the 8 hours per payperiod, or 208 hours in each year, that is being granted to other CNMI government officials and employees; (5) the former Executive Director was granted comptime even though he was already receiving the maximum compensation of \$70,000 established for executive directors of government corporations under the Compensation Adjustment Act; we also found that the CPA personnel manual was never published as adopted in violation of the Administrative Procedures Act; CPA circumvented the NMI Retirement Fund Act to increase the retirement benefits of the two former officials by (6) allowing the conversion of unused comptime hours to sick leave for use as additional years of credited service in the computation of their retirement annuity, and by (7) making advance payments for unused annual leave and salary to increase the average annual salary used in the computation of their retirement annuity. This practice created unfunded liabilities for the Retirement Fund to which the Fund should not be subjected.

Accordingly, we recommend that the CPA Board of Directors (1) adopt personnel rules and regulations that are: (a) within the authority granted by the Commonwealth Ports Authority Act and other laws such as the Compensation Adjustments Act, and (b) consistent with and governed by the same principles of fairness and equality as the CNMI Personnel Regulations, thereby eliminating the grant to FLSA-exempt (executive, administrative and professional) officials and employees to earn comptime, and the grant to six designated CPA officials of 14 annual leave hours per payperiod, or 360 hours per year; (2) establish

necessary control procedures for approval and documentation of overtime and comptime; (3) comply with the Administrative Procedure Act by publishing the CPA Personnel Regulations in the Commonwealth Register; (4) adopt personnel rules and regulations that are in compliance with the NMI Retirement Fund Act, thereby repealing the regulation that allows conversion of unused comptime hours to accumulated sick leave for certain CPA officials; (5) instruct the CPA Accounting Department to stop the practice of making advance payment of unused annual leave and salary, and to comply with the provision in the employment contracts that payments will be made upon contract expiration. In the case of retiring employees not covered by employment contracts, payment should be made on the next payday following the termination of employment or on payroll due dates; and (6) request the NMI Retirement Fund to (a) adjust the pension amount of the former CPA Executive Director based on the average annual salary and years of credited service per audit, (b) discontinue pension payments to the former CPA Security Chief who is not qualified to receive early retirement benefits, and (c) recover improper payments of retirement benefits already made to the two former CPA officials in accordance with the NMI Retirement Fund Act.

We also recommend that the NMI Retirement Fund Administrator (7) instruct his staff to recalculate and adjust the pension benefits payable to the former CPA Executive Director, and discontinue pension payments to the former CPA Security Chief; (8) Instruct his staff to recalculate and adjust the pension benefits of all other fund members by disregarding overtime and comptime hours that were considered as additional years of credited service; (9) recover improper payments made to the two former CPA officials totaling \$126,730.06, and also from all other fund members who have been overpaid by including overtime and comptime in the computation of their retirement annuity; and (10) inform all government agencies how to compute retirement annuities, clearly explaining that overtime and comptime hours may not be considered as part of credited service.

In his letter response dated May 12, 2000, the CPA Board Chairman agreed with recommendations 2, 3, and 4, disagreed with recommendations 1 and 5, and did not address recommendation 6 pending the outcome of its own agency hearing. While, the NMI Retirement Fund Administrator, in his letter response dated May 2, 2000, generally concurred with recommendations 7, 8, 9 and 10, and felt that action to implement recommendations 8, 9 and 10 should await an official legal opinion from the Attorney General, after which action will be taken to implement those recommendations.

Subsequently, on May 25, 2000, CPA conducted its own agency hearing through its Personnel Affairs Committee (Committee) with respect to the comptime claimed by CPA's former Security Chief. In its written decision, the Committee concluded that "the 1,800 hours of comptime claimed, although not documented in a timely fashion, in 1991, clearly had a factual basis and was justified. The 1,800 hours of comptime claimed for overtime work performed by [the Security Chief] during the Persian Gulf War is, therefore, reaffirmed by the Committee and allowed to stand." Also, on June 17, 2000, CPA thru its Personnel Affairs Committee wrote to the former Executive Director about the OPA findings and conclusion regarding his claimed comptime during his employment at CPA (see **Appendix D**). The Personnel Affairs Committee stated that it had no way to independently determine the veracity of the total number of comptime hours claimed by the former Executive Director, and advised him to present his position to OPA regarding the comptime hours claimed.

CPA's conclusion as to the 1,800 comptime hours claimed by the former Security Chief lacks a sufficient factual basis to be considered justified. As an FLSA-exempt employee, the former Security Chief was not even entitled to comptime. Also, there was no justification for retroactive granting of comptime which

violated all the requirements of the CNMI Personnel Regulations for comptime authorization and documentation.

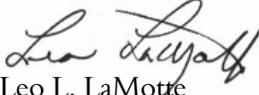
Based on the above discussion, OPA maintains its position that the 2,748 comptime hours claimed by the former Security Chief were excessive and unwarranted, and were made without proper documentation, justification and approval. They should therefore be disallowed and not considered in the computation of the former Security Chief's retirement benefits.

Furthermore, in accordance with CPA Board Resolution 01-94, the former Security Chief was not even among the CPA officials who were granted the privilege of converting all of their remaining comptime to sick leave upon retirement. Therefore, the comptime claimed by the former Security Chief should not have been converted to sick leave and considered in the computation of retirement benefits.

OPA reaffirms its findings and conclusion about the comptime claimed by the former CPA Executive Director. As of the report date, the former Executive Director has not submitted any information that would affect the results of our audit.

Based on the responses received, we consider all recommendations open except for recommendation 7 which is considered closed. The additional information or actions required to consider the recommendations closed are presented in **Appendix E**.

Sincerely,


Leo L. LaMotte
Public Auditor, CNMI

cc: CPA Executive Director
Governor
Lt. Governor
Twelfth CNMI Legislature (27 copies)
Secretary of Finance
Attorney General
Special Assistant for Management and Budget
Public Information Officer
Press

Contents

Executive Summary	i
Introduction	1
Background	1
Objectives, Scope, and Methodology	2
Prior Audit Coverage	2
Findings and Recommendations	3
A. CPA Allowed its Two Former Officials to Earn Comptime in Violation of Applicable CNMI Personnel Regulations	3
B. CPA Circumvented the NMI Retirement Fund Act to Increase Retirement Benefits	14
Appendices	28
A. CPA Board Chairman Letter Response Dated May 12, 2000	28
B. NMI Retirement Fund Administrator Letter Response Dated May 2,2000	39
C. NMI Retirement Fund Letter Dated May 15, 2000 Addressed to the Attorney for the Former CPA Executive Director	44
D. CPA Personnel Affairs Committee Letter Dated June 07, 2000 Addressed to the Former CPA Executive Director	45
E. Status of Recommendations	46

**E
X
E
C
U
T
I
V
E

S
U
M
M
A
R
Y**

Our audit showed that (1) the Commonwealth Ports Authority allowed its former Executive Director and its former Security Chief, who as executives were FLSA- exempt employees, to earn comptime, in violation of applicable CNMI Personnel Regulations; (2) comptime claimed by the two former CPA officials violated all requirements of the CNMI Personnel Regulations for comptime authorization and documentation; (3) the former Security Chief claimed excessive comptime of 1,800 hours retroactive to 1991 to qualify himself for early retirement benefits; (4) CPA allowed its officials to earn annual leave of about 14 hours per payperiod, or 360 hours in each year, which is beyond the 8 hours per payperiod, or 208 hours in each year, that is being granted to other CNMI government officials and employees; (5) the former Executive Director was granted comptime even though he was already receiving the maximum compensation of \$70,000 established for executive directors of government corporations under the Compensation Adjustment Act; CPA circumvented the NMI Retirement Fund Act to increase the retirement benefits of the two former officials by (6) allowing the conversion of unused comptime hours to sick leave for use as additional years of credited service in the computation of their retirement annuity, and by (7) making advance payments for unused annual leave and salary to increase the average annual salary used in the computation of their retirement annuity. This practice created unfunded liabilities for the Retirement Fund to which the Fund should not be subjected.

Background

Under the Commonwealth Auditing Act, the Office of the Public Auditor (OPA) has a special duty to detect and prevent fraud, waste, and abuse of public funds.

The report of the 1997/1998 Transition Sub-Committee on the operation and financial matters of the Commonwealth Ports Authority (CPA) revealed various areas for audit including granting of compensatory time (comptime) and payment of retirement benefits to the former Executive Director and the former Saipan Airport Security Chief. The Transition Sub-Committee pro-

vided the Office of the Public Auditor (OPA) with documents showing that CPA's former Executive Director and former Airport Security Chief claimed comptime during their employment at CPA, and that the comptime was claimed under unusual circumstances.

Furthermore, based on the documents provided by the Transition Sub-Committee for CPA, comptime claimed by the two former CPA officials was converted to sick leave and added to their years of credited service upon their retirement. The added years of credited service increased the amount of computed pension benefit for the former Executive Director, and allowed the

former Security Chief to become eligible to receive early retirement benefits. He qualified to receive the early retirement bonus and to receive monthly pension benefits.

After performing a preliminary review, OPA determined that waste of government funds may have occurred, and that a formal audit should be conducted.

In accordance with CPA's enabling Act, the CPA Board established a personnel manual on December 23, 1988.

Section 3.04 of CPA's original personnel manual provides that all employees below the executive level are eligible for overtime compensation at the rate of one-and-one-half times regular pay for hours actually worked. On January 18, 1994, the CPA Board added to the regulations a provision that executive level employees (i.e. Executive Director, Deputy Director, Staff Attorney and Comptroller) who work overtime would also receive comptime at the same rate for hours actually worked. Then on May 17, 1994, the CPA Board addressed the issue of what to do with unused comptime hours of executive level employees. The Board adopted Resolution No. 01-94 which authorized any unused comptime in excess of 360 hours to be credited to sick leave, and *all remaining comptime to be credited to sick leave upon the termination or retirement of the Executive Director, the Deputy Director, the Staff Attorney or the Comptroller.*

Furthermore, on December 20, 1996, the former Executive Director issued a memorandum and a listing of CPA's employee positions which are considered as FLSA-exempt. The memorandum stated that employees whose positions were included in the attached revised

listing would be granted compensatory time at a 1.5 factor instead of payment for overtime on hours worked in excess of 40 hours per week.

Objectives and Scope

The objectives of our audit were to determine whether the comptime granted and the retirement benefits already paid and those now being paid to the two former CPA officials were (1) in accordance with applicable CNMI laws and regulations, and (2) properly computed, approved and documented.

Our audit was limited to the comptime granted and retirement benefits already paid and those now being paid to the former Executive Director and former Security Chief of CPA. To accomplish our objectives, we (1) reviewed applicable laws and personnel regulations, (2) analyzed and reviewed comptime hours claimed by the former Executive Director and the former Security Chief which included recomputation of comptime hours and examination of comptime records, (3) interviewed CPA officials responsible for procedures and policies in granting comptime, (4) obtained an understanding of computation of retirement benefits through discussion with Northern Mariana Islands Retirement Fund (Retirement Fund) employees and review of applicable provisions of the Northern Mariana Islands Retirement Fund Act (Retirement Fund Act), and (5) examined retirement benefit documents and performed independent computation of retirement benefits.

Comptime
Claimed by Two
Former CPA
Officials
Violated All
Requirements of
the CNMI
Regulations for
Comptime
Authorization
and
Documentation

CPA Allowed its Two Former Officials to Earn Comptime In Violation of Applicable CNMI Personnel Regulations

CPA, as part of the CNMI government, is obliged to adopt personnel regulations that are consistent with and governed by the same principles of fairness and equality as are in the CNMI Personnel Regulations. Although its enabling Act authorizes CPA to set its own compensation scales, it also requires that these compensation scales be commensurate with those of the CNMI. Furthermore, the Act only authorizes CPA to establish personnel regulations governing specifically stated areas. Hence, CPA must be consistent with the other CNMI government agencies in granting benefits to its employees. The CNMI Personnel Regulations adopted the provisions of the Fair Labor Standards Act (FLSA) which exempt executive, administrative and professional employees from payment of overtime and from earning comptime. Furthermore, the CNMI personnel regulations prescribe specific control procedures for documentation and approval of overtime or comptime. Our audit revealed however, that (1) CPA allowed its former Executive Director and its former Security Chief, who as executives were FLSA-exempt employees, to earn comptime, and (2) comptime claimed by the two former CPA officials violated all requirements of the CNMI Personnel Regulations for comptime authorization and documentation. Also, (3) the former CPA Security Chief claimed excessive comptime of 1,800 hours retroactive to 1991 to qualify himself for early retirement benefits. In addition, we found that (4) CPA allows its officials to earn annual leave of about 14 hours per payperiod,

or 360 hours in each year, which is beyond the 8 hours per payperiod, or 208 hours in each year, that are granted to other CNMI government officials or employees. Furthermore, the Compensation Adjustment Act provides that the maximum annual compensation/salary level of \$70,000 established for executive directors of government corporations such as CPA is in effect a salary cap which includes all compensation such as overtime and /or comptime. Our audit revealed, however, that (5) the former Executive Director was granted comptime even though he was already receiving his maximum compensation of \$70,000 established by the Compensation Adjustment Act. We also found that the CPA personnel manual was never published as adopted in violation of the Administrative Procedures Act. These improprieties occurred because personnel regulations adopted by CPA were not in accordance with the CNMI Personnel Regulations. This resulted in a violation of those CNMI Personnel Regulations. Comptime claimed was used to increase retirement benefits for the two former CPA officials without authority and thereby created unfunded liabilities for the Retirement Fund to which the Fund should not be subjected.

Accordingly, we recommend that the CPA Board of Directors:

1. Adopt personnel rules and regulations that are: (a) within the authority granted by the Commonwealth Ports Authority Act and other CNMI laws such as the Compensation Adjustments Act, and (b) consistent with and governed by the same principles of fairness and equality as the CNMI Personnel Regulations, thereby eliminating

CPA Allowed Conversion of Comptime to Sick Leave and Made Advance Payments of Unused Annual Leave and Salary, Resulting in Payments of About \$126,000 in Retirement Benefits to which Employees were not Entitled

the grant to FLSA-exempt (executive, administrative and professional) officials and employees of comptime and the grant to six designated CPA officials of 14 annual leave hours per payperiod, or 360 hours per year.

2. Establish necessary control procedures for approval and documentation of overtime and comptime.
3. Comply with the Administrative Procedure Act by publishing the CPA Personnel Regulations in the Commonwealth Register.

CPA Circumvented the Retirement Fund Act to Increase Retirement Benefits

The Retirement Fund Act provides that average annual salary and years of credited service determine the retirement annuity of a fund member. Therefore, any increase in average annual salary or years of credited service also increases the computed amount of the retirement annuity. Furthermore, the Act specifically prohibits the use of comptime in the computation of a fund member's retirement annuity. We found, however, that CPA (1) allowed the conversion of unused comptime to sick leave for the two former officials of CPA, to be used as additional credited service in the computation of their retirement annuity, and (2) made advance payments for unused annual leave and salary to the two former officials to increase their average annual salary, instead of making the payments upon expiration of employment contracts and on the payroll due dates, both in circumvention of the Retirement Fund Act. These improprieties occurred because personnel regulations adopted by CPA were not in accordance with the

Retirement Fund Act and the CNMI Personnel Regulations. As a result, payments of retirement benefits were made to the CPA's former Executive Director and the former Security Chief to which they were not entitled totaling \$126,730 as of February 29, 2000, an amount which will increase further if the pension amounts are not corrected or stopped promptly.

Accordingly, we recommend that:

The CPA Board of Directors

4. Adopt personnel rules and regulations that are in compliance with the Retirement Fund Act, thereby repealing the regulation that allows conversion of unused comptime hours to accumulated sick leave for certain CPA officials.
5. Instruct the CPA Accounting Department to stop the practice of making advance payment of unused annual leave and salary, and to comply with the provision in the employment contracts that payments will be made upon contract expiration. In the case of retiring employees not covered by employment contracts, payment should be made on the next payday following the termination of employment or on payroll due dates.

The CPA Board Chairman

6. Request the NMI Retirement Fund to (a) adjust the pension amount of the former CPA Executive Director based on average annual salary and years of credited service per audit, (b) discontinue pension payments to the former CPA Security Chief who is not qualified to receive early

retirement benefits, and (c) recover payments of retirement benefits to the two former CPA officials to which they were not entitled in accordance with the Retirement Fund Act.

The NMI Retirement Fund Administrator:

7. Instruct his staff to recalculate and adjust the pension benefits payable to the former CPA Executive Director, and discontinue pension payments to the former CPA Security Chief.
8. Instruct his staff to recalculate and adjust the pension benefits of all other fund members by disregarding overtime and comptime hours that were considered as additional years of credited service.
9. Recover from the two former CPA officials improper payments totaling \$126,730.06, and also from all other fund members who have been overpaid by including overtime and comptime in the computation of their retirement annuity. If any problems exist in recovering overpayments, refer the matter to the Attorney General for legal action.
10. Inform all government agencies how to compute retirement annuities, clearly explaining that overtime and comptime hours may not be considered as part of credited service.

CPA 's and NMI Retirement Fund's Responses

In his letter response, dated May 12,

2000, the CPA Board Chairman (one of the co-chairmen of the 1997/1998 CPA Transition Sub-Committee which questioned the validity of the comptime claimed by the two former officials of CPA) agreed with recommendations 2, 3, and 4, disagreed with recommendations 1 and 5 and did not address recommendation 6.

The NMI Retirement Fund Administrator, in his letter response dated May 5, 2000, generally concurred with recommendations 7, 8, 9 and 10.

For recommendation 1, the CPA Board Chairman believed that CPA is not required or obliged to adopt rules and regulations similar or identical to the CNMI Personnel Regulations. He agreed, however, that FLSA does exempt CPA from giving comptime to its executive employees. He further stated that CPA's existing comptime policy is quite liberal, generous, and unnecessary, and CPA intends to reconsider its present policy. It will undertake a comprehensive review of its comptime policy and formulate a revised policy that will address CPA's needs, observe FLSA guidelines and be fiscally responsible. CPA's alternatives include eliminating all comptime for FLSA-exempt employees, giving comptime only during emergencies or under time constraint, and granting of an "hour-for-hour" comptime rate.

He also stated that CPA's system of compensation is generally commensurate with the rest of the Commonwealth government. He commented that granting of 14 hours annual leave per payperiod to six designated CPA officials is a matter of personnel policy to provide greater benefits or incentives to officials who are "on call" 24 hours a day because

of possible threat and also, to encourage these officials to work harder to promote port operation or efficiency. The granting of this benefit does not constitute waste of public funds nor it is illegal and excessive.

For recommendation 5, the CPA Board Chairman believed that the act of making an advance payment is neither illegal nor improper. Nonetheless, CPA intends to include this issue in its review of the various audit issues raised, and will notify OPA of its decision in the matter.

CPA took no action to implement recommendation 6 pending the outcome of its own agency hearing.

Subsequently, on May 25, 2000, CPA conducted an agency hearing through its Personnel Affairs Committee (Committee) with respect to the comptime claimed by CPA's former Security Chief. In its written decision, the Committee concluded that "the 1,800 hours of comptime claimed, although not documented in a timely fashion, in 1991, clearly had a factual basis and was justified. The 1,800 hours of comptime claimed for overtime work performed by [the Security Chief] during the Persian Gulf War is, therefore, reaffirmed by the Committee and allowed to stand."

The Committee's decision was based on the oral testimony of the former Security Chief who was present at the hearing. The Committee stated that during the Persian Gulf War, the US Federal Aviation Administration (FAA) required all US airports including those in the Northern Marianas and Guam to go on Level IV Security Alert, the highest state of security alert for airports.

The former Security Chief testified that as Chief of Airport Security, it was his obligation to assume personal command of the situation on a 24-hour basis. He added that he was literally present at the airport 24 hours a day. During the 75 days, meals were being served by CPA, and although he was able to go home to take a shower and to change clothes, many times he took his showers in the airport. He did not deny that he had to sleep, but stated that he slept at the airport during the entire 75-day period.

Also, on June 17, 2000, CPA thru its Personnel Affairs Committee wrote a letter to the former Executive Director about OPA's findings and conclusion regarding his claimed comptime during his employment at CPA (see **Appendix D**). The Personnel Affairs Committee stated that it had no way to independently determine the veracity of the total number of comptime hours claimed by the former Executive Director, and advised him to present his position to OPA regarding the comptime hours claimed.

OPA's Comments

For recommendation 1, OPA maintains its position that CPA's exemption by law from the Commonwealth Civil Service Act covered only the specific areas mentioned in 2 CMC §2130. The wage and salary scales, including granting of benefits to its employees such as comptime and leave accrual, are to be commensurate with those paid by the Commonwealth or other CNMI government agencies as provided in 2 CMC §2122(n). Furthermore, 2 CMC §2130(b) specifically provides that "Employees of the authority..., shall accumulate leave time in accordance with applicable Commonwealth laws..."

Applicable CNMI personnel regulations provide that FLSA-exempt employees are not entitled to earn comptime or overtime, and that a maximum of only 8 hours annual leave per payperiod may be earned by a government employee. Thus, the CPA policies of granting comptime to all of its FLSA-exempt employees, and granting 14 annual leave hours per payperiod to six designated officials, are not commensurate with those of the Commonwealth, and clearly violate provisions of the Commonwealth Code as discussed earlier.

OPA also believes that promoting port operation or efficiency, and being “on call” 24 hours a day, are part of the duties and responsibilities of these high CPA officials, and their salaries ranging from \$50,000 to \$70,000 provide more than enough incentive to competently perform those duties and responsibilities. Therefore, granting 14 hours annual leave, as contrasted with only 8 hours given to other CNMI officials and employees (who are also “on call” 24 hours a day), can be considered excessive and unfair to those other government employees.

Nevertheless, OPA appreciates CPA’s intent to reconsider its present policy on granting comptime to its FLSA-exempt employees which CPA acknowledged as unnecessary, liberal and generous. However, CPA needs to go further and adopt a policy that would completely rescind granting of comptime to all of its FLSA-exempt employees and granting 14 hours annual leave per payperiod to six designated officials.

For Recommendation 5, CPA’s practice of making advance payment of unused annual leave is inconsistent with the

requirements in provisions of its own employment contracts, and also with the CNMI Personnel Regulations which require that lump sum payments for all unused leave of employees shall be made at the time of separation or contract expiration. Considering CPA’s inconsistency with its own employment contracts and because OPA believes that CPA should comply with the CNMI Personnel Regulations which apply generally to all government employees, CPA’s policy of allowing payment of unused annual leave before contract expiration should be discontinued to avoid placing an unauthorized burden on the Retirement Fund.

For recommendation 6, CPA’s conclusion as to the 1,800 comptime hours claimed by the former Security Chief lacks a sufficient factual basis to be considered justified. As an FLSA-exempt employee, the former Security Chief was not even entitled to comptime. Also, there was no justification for retroactive granting of comptime which violated all the requirements of the CNMI Personnel Regulations for comptime authorization and documentation.

Based on the above discussion, OPA maintains its position that the 2,748 comptime hours claimed by the former Security Chief were excessive and unwarranted, and were made without proper documentation, justification and approval. They should therefore be disallowed and not considered in the computation of the former Security Chief’s retirement benefits.

Furthermore, in accordance with CPA Board Resolution 01-94, the former Security Chief was not among the CPA officials who were granted the privilege

of converting all of their remaining comptime to sick leave upon retirement (also discussed under “**Other Matters**” in **Finding B**). Therefore, the comptime claimed by the former Security Chief should not have been converted to sick leave and considered in the computation of retirement benefits.

OPA reaffirms its findings and conclusion about the comptime claimed by the former CPA Executive Director. As of the report date, the former Executive Director has not submitted any information that would affect the results of our audit.

Status of Recommendations

Based on the responses we received from CPA and the NMI Retirement

Fund, we consider all recommendations open, except for recommendation 7 which is considered closed.

Although the CPA Board Chairman concurred with recommendations 2, 3, and 4, he did not provide a time frame for action to implement these recommendations. The Fund Administrator, although concurring with the recommendations, felt that action to implement recommendations 8, 9 and 10 should await an official legal opinion from the Attorney General, after which action will be taken to implement those recommendations.

The additional information or actions required to closed the recommendations are presented in **Appendix E**.

Introduction

Background

Under the Commonwealth Auditing Act, the Office of the Public Auditor (OPA) has a special duty to detect and prevent fraud, waste, and abuse of public funds. The report of the 1997/1998 Transition Sub-Committee on the operation and financial matters for the Commonwealth Ports Authority (CPA) revealed various areas for audit including granting of compensatory time (comptime) and payment of retirement benefits to CPA's former Executive Director and former Saipan Airport Security Chief. The Transition Sub-Committee provided OPA with documents showing that CPA's former Executive Director and former Airport Security Chief claimed comptime during their employment at CPA, and that the comptime was claimed under unusual circumstances.

The Transition Sub-Committee questioned the validity of comptime claimed by the two former officials of CPA. Based on the documents provided by the Transition Sub-Committee for CPA, comptime claimed by the two CPA former officials was converted to sick leave and added to their years of credited service upon their retirement. The added years of credited service increased the amount of computed pension benefit for the former Executive Director, and allowed the former Security Chief to become eligible to receive early retirement benefits including the early retirement bonus and monthly pension benefits. After performing a preliminary review, OPA determined that waste of government funds may have occurred, and that a formal audit should be conducted.

CPA's Personnel Regulations

The Commonwealth Ports Authority Act provides, in 2 CMC §2130, that "The Board shall establish rules and regulations governing the selection, promotion, performance evaluation, demotion, suspension, dismissal, and other disciplinary rules for employees of the authority." In accordance with the Act, the CPA Board established a personnel manual on December 23, 1988.

Section 3.04 of CPA's original personnel manual provides that all employees below the executive level are eligible for overtime compensation at the rate of one-and-one-half times regular pay for hours actually worked. On January 18, 1994, the CPA Board added to the regulations a provision that executive level employees (i.e. Executive Director, Deputy Director, Staff Attorney and Comptroller) who work overtime would also receive comptime at the same rate for hours actually worked. Then on May 17, 1994, the CPA Board addressed the issue of what to do with unused comptime hours of executive level employees. The board adopted Resolution No. 01-94 which authorized any unused comptime in excess of 360 hours to be credited to sick leave, and *all remaining comptime to be credited to sick leave upon the termination or retirement of the Executive Director, the Deputy Director, the Staff Attorney or the Comptroller.*

Furthermore, on December 20, 1996, the former Executive Director issued a memorandum and a listing of CPA's employees positions which were considered as FLSA-exempt. The memorandum stated that employees whose positions were included in the attached listing would be granted compensatory time at a 1.5 factor instead of payment for overtime on hours worked in excess of 40 hours per week.

**Objectives,
Scope, and
Methodology**

The objectives of our audit were to determine whether the comptime granted and the retirement benefits already paid and those now being paid to the two former CPA officials were (1) in accordance with applicable CNMI laws and regulations, and (2) properly computed, approved and documented.

Our audit was limited to the comptime granted and retirement benefits already paid and those now being paid to the former Executive Director and former Security Chief of CPA. To accomplish our objectives, we (1) reviewed applicable laws and personnel regulations, (2) analyzed and reviewed comptime hours claimed by the former Executive Director and the former Security Chief which included recomputation of comptime hours and examination of comptime records, (3) interviewed CPA officials responsible for procedures and policies in granting comptime, (4) obtained an understanding of computation of retirement benefits through discussion with Northern Mariana Islands Retirement Fund (Fund) employees and review of applicable provisions of the Northern Mariana Islands Retirement Fund Act(Retirement Fund Act), and (5) examined retirement benefit documents and performed independent computation of retirement benefits.

We conducted our audit at CPA and Retirement Fund offices in Saipan during October and November 1999. This performance audit was made, where applicable, in accordance with Government Auditing Standards issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures as we considered necessary under the circumstances.

**Prior Audit
Coverage**

For the past five years, OPA has issued audit reports covering various areas of CPA operations. Among these reports were audits of (1)credit cards and related travel transactions (AR-95-11), (2)board-related transactions and purchase of a vehicle (AR-95-17), (3)permits, leases and concession agreements (AR-96-07), (4)misuse of government vehicles (LT-98-03), and (5) salary increases of Rota employees (LT-98-12). None of these audit reports, however, specifically involved an audit of employees' compensatory time and retirement benefits.

Findings and Recommendations

A. CPA Allowed its Two Former Officials to Earn Comptime in Violation of Applicable CNMI Personnel Regulations

Comptime
Claimed by Two
Former CPA
Officials
Violated All
Requirements of
the CNMI
Regulations for
Comptime
Authorization
and
Documentation

CPA, as part of the CNMI government, is obliged to adopt personnel regulations that are consistent with and governed by the same principles of fairness and equality as are in the CNMI Personnel Regulations. Although its enabling Act authorizes CPA to set its own compensation scales, it also requires that these compensation scales be commensurate with those of the CNMI. Furthermore, the Act only authorizes CPA to establish personnel regulations governing specific areas as stated. Hence, CPA must be consistent with the other CNMI government agencies in granting benefits to its employees. The CNMI Personnel Regulations adopted the provisions of the Fair Labor Standards Act (FLSA) which exempt executive, administrative and professional employees from payment of overtime and from earning comptime. The CNMI personnel regulations also prescribe specific control procedures for documentation and approval of overtime or comptime. Our audit revealed however, that (1) CPA allowed its former Executive Director and its former Security Chief, who as executives were FLSA-exempt employees, to earn comptime, and (2) comptime claimed by the two former CPA officials violated all requirements of the CNMI Personnel Regulations for comptime authorization and documentation. Also, (3) the former CPA Security Chief claimed excessive comptime of 1,800 hours retroactive to 1991 to qualify himself for early retirement benefits. In addition, we found that (4) CPA allows its officials to earn annual leave of about 14 hours per payperiod or 360 hours in each year, which is beyond the 8 hours per payperiod, or 208 hours in each year, that is being granted to other CNMI government officials or employees. Furthermore, the Compensation Adjustment Act provides that the maximum annual compensation/salary of \$70,000, established for executive directors of government corporations such as CPA, is in effect a salary cap which includes all compensation such as overtime and/or comptime. Our audit revealed, however, that (5) the former Executive Director was granted comptime even though he was already receiving his maximum compensation of \$70,000 established by the Compensation Adjustment Act. These improprieties occurred because personnel regulations adopted by CPA were not in accordance with the applicable CNMI Personnel Regulations. This resulted in a violation of those CNMI Personnel Regulations. Comptime claimed was used to increase retirement benefits for the two former CPA officials without authority and thereby created unfunded liabilities to the Retirement Fund to which the Fund should not be subjected (see **Finding B** for separate discussion).

The CNMI Personnel Regulations for Granting Comptime Are Applicable

The CNMI Personnel Regulations (Personnel Service System Rules and Regulations [PSSRR] and Excepted Service Rules and Regulations [ESPR]) contain the following provisions:

Part IV.B16 (A) of the PSSRR and ESPR - “Bonafide executive, administrative and professional employees are exempt from payment of overtime....”

Part IV.B16 (F) of the PSSRR and ESPR - “Intelligent and responsible control of overtime is a continuing management function and certain steps are to be taken by all appointing authorities and supervisors to reduce overtime.¹ Overtime work should be directed to a specific objective or goal, and should not be work that can be completed during the regular workday, nor postponed to the following day or days.”

Part IV.B16 (G) of the PSSRR and ESPR - “Overtime must be approved, in advance, by the appropriate management official on forms prescribed by the Director of Personnel Management. Such officials are Secretaries or their equivalent, or Directors or their equivalent when this authority is delegated.”

Contrary to those provisions of the PSSRR and ESPR, CPA adopted the following personnel regulations in granting comptime to its employees:

Section 3.04 of the CPA personnel manual - “...All employees below the executive level are eligible for overtime compensation at the rate of one-and-one-half times regular pay for hours actually worked. Executive level employees who work overtime shall receive compensatory time-off (CTO) at the rate of one and one-half times an hour actually worked.²...”

Fourth Paragraph of CPA Board Resolution No. 01-94 (adopted on May 17, 1994)- “...The Board of Directors of the Commonwealth Ports Authority authorizes that any unused comptime in excess of 360 hours to be credited to sick leave, and all remaining comptime to be credited to sick leave upon the termination or retirement of the Executive Director, the Deputy Director, the Staff Attorney or the Comptroller.”

¹The PSSRR and ESPR have established appropriate control procedures with respect to overtime pay. Both state that overtime must be approved in advance by the appropriate management official on prescribed forms such as “Request and Authorization Form.” The information in the form includes the following: (a)estimated work hours requested, (b)purpose and justification for the request, (c)names of employees who were directed to work, and (d)beginning and ending dates and time of work. The regulations also state that the purpose of overtime should be examined to determine whether the work to be accomplished requires immediate completion, and that the control procedures with respect to claims of overtime are necessary for management to effectively achieve intelligent and responsible control of overtime. Comptime should be requested and authorized in similar manner as overtime.

²The entitlement of executive level employees to comptime was an amendment passed by the CPA Board of Directors on January 18, 1994.

Executive Director's Memorandum and Listing of FLSA-Exempt Employees dated December 20, 1996 - "... If your position is included in the attached revised listing, you will be granted compensatory time at 1.5 factor instead of payment for overtime on hours worked in excess of 40 hours on a weekly basis"

CPA personnel regulations did not provide any control procedures for authorization and documentation of overtime or comptime.

The Commonwealth Ports Authority Act, in 2 CMC §2122(n), states that CPA is authorized "to employ agents, employees or specialists or experts,.... They shall be exempt from the application of the Commonwealth Civil Service Act [1 CMC §8101 et seq.]. The authority may set its own compensation, wage and salary scales. Except for the compensation of the executive director and other specialists for which no comparable positions exist in the Commonwealth, *the wage and salary scales shall be commensurate with those paid by the Commonwealth requiring comparable education, training or experience.*" [Emphasis Added.] In our opinion, this requirement reflects the law's intent that CPA be consistent with and governed by the same principles of fairness and equality as apply in the CNMI Civil Service System (CSS). Hence, CPA should be consistent with the other CNMI government agencies in granting benefits to its employees, including the exemption of its executive, administrative, and professional employees from payment of overtime or comptime.

CPA's enabling Act also provides, in 2 CMC §2130, that "*The Board shall establish rules and regulations governing the selection, promotion, performance evaluation, demotion, suspension, dismissal, and other disciplinary rules for employees of the authority.*" Pursuant to this law, CPA is only authorized to establish personnel regulations governing specific areas as mentioned so that CPA may have regulations that are appropriate for its unique operation. However, we believe that all other CSC personnel regulations (types of benefits such as leave accruals, premium pay, retirement, etc.) that generally apply to all government employees should have been adopted as is by CPA.

Two Former CPA Officials Claimed Comptime in Violation of Applicable CNMI Personnel Regulations

Our audit showed that CPA's former Executive Director and former Security Chief claimed comptime in violation of applicable CNMI Personnel Regulations.

During his tenure from November 1, 1994 to December 31, 1997, CPA's former Executive Director claimed a total of 3,302 comptime hours for the period January 1996 to October 1997, an average of 150 comptime hours monthly for 22 months. CPA's former Security Chief who received an annual salary of \$46,920 claimed a total of 2,748 comptime hours. Of this total, 1,800 comptime hours were claimed for the period January 17, 1991 to April 1, 1991, an average of 720 comptime hours monthly for 2 ½ months. Another 348 hours were claimed for the period November 5, 1994 to December 23, 1995 for an average of 27 comptime hours monthly for

13 months. The remaining 600 comptime hours were claimed for the period January 1996 to December 1996, an average of 50 comptime hours monthly for 12 months.

Since the CNMI Personnel Regulations adopted the overtime provisions of the FLSA, executives of government agencies/departments are not entitled to overtime or comptime. The Executive Directors of other CNMI autonomous agencies such as CUC and MVA receive salaries equal to or less than the CPA Executive Director but they do not earn comptime. In the executive branch, secretaries or heads of departments, who in our opinion have responsibilities greater than or similar to those of the CPA Executive Director, are earning less and do not receive comptime. Among those officials are the Secretary of Finance, Secretary of Labor and Immigration, Secretary of Public Health, and Secretary of Public Works. Also, the Chief of Police/Directors and Resident Department Heads of various divisions of the Department of Public Safety (i.e. DPS Saipan, Rota and Tinian, Divisions of Corrections, Investigations and Fire) earn less and in our opinion have responsibilities greater than or similar to those of the CPA Saipan Airport Security Chief, but they too do not earn comptime. CPA's awarding of comptime benefits beyond what the CNMI government allows indicates the tendency of CPA management to exclude itself from oversight by the main government to which it belongs.

Comptime Hours Claimed Were Violated All Requirements of the CNMI Personnel Regulations for Comptime Authorization and Documentation

Under the CNMI Personnel Regulations, specific control procedures must be complied with before an employee is entitled to overtime payment or to earn comptime. The regulations provide that overtime or comptime requests should be approved in advance, properly documented and filed on a bi-weekly basis in order to serve as a management tool for controlling overtime. Our audit showed, however, that comptime claimed by the two former CPA officials violated all those requirements of the CNMI Personnel Regulations for comptime authorization and documentation. We noted that comptime claimed were (1) not approved in advance and/or were not approved at all by an appropriate management official; (2) not properly documented since required information such as the justifications and purpose of overtime work, the starting and ending time of work, and the dates of approvals, were not provided in comptime records; and (3) not supported by written requests filed on a bi-weekly basis. Instead, monthly summaries of comptime were filed to cover longer periods such as a month, eight months or even a year.

Comptime hours totaling 3,302 claimed by the former CPA Executive Director were supported by monthly summaries that showed only the day and the number of comptime hours. The summaries were signed by the former CPA Executive Director as the claimant and by the Office Manager as preparer. No approval was sought from any other high CPA official such as the Board Chairman. In addition, the former Executive Director provided no purpose or justification for any comptime work. According to the office manager (preparer), the monthly summaries were prepared from notes written on the desk calendar of the former Executive Director, and also

from the former Executive Director's recollection of the dates and number of hours he worked. When asked about the desk calendar, the office manager told us that it had already been thrown out. No time cards or other written records were used to substantiate the overtime hours. We also noted that summaries were prepared monthly, and not bi-weekly. There was also an instance when comptime summaries for an 8-month period (April to December 1996) were filed in a single claim on January 27, 1997. When CPA's administrative secretary was asked on October 18, 1999 whether anyone of their administrative personnel could attest to the comptime work performed by the former Executive Director, she responded that nobody worked directly with the former Executive Director in the administration section. She added that usually, employees at the administration section leave at 4:30, and therefore nobody could really tell whether he performed such work.

For his part, the former Security Chief claimed a total of 2,748 comptime hours. Without those 2,748 hours, the Security Chief would have had to work another 15 months and 25 days before he could retire. Of this total, 1,800 comptime hours were for overtime work performed during the time of the Gulf War crisis from January 17 to April 01, 1991, yet the claim was filed only in September 1995. Despite the 4½-year delay in filing, the former CPA Executive Director approved the request on January 24, 1996. Furthermore, although the former Executive Director approved the comptime, he had not been in office during the time when the work was performed. It appears that the former Executive Director, in approving the comptime, used his position and disregarded regulations in order to help the former Security Chief qualify for early retirement benefits. Another 348 comptime hours were claimed for the period November 5, 1994 to December 23, 1995 through a single request and were only approved by the former Executive Director on January 4, 1996. No written purpose or justification was provided for these 348 hours of comptime work³. The former Security Chief also claimed another 600 comptime hours for overtime work performed from January to December 1996, which were approved by the CPA Airport Manager. Based on our examination of the payroll master listing and as confirmed by the CPA Accounting Manager, the 600 comptime hours were again claimed through a single request just prior to the retirement of the former Security Chief on December 31, 1996, rather than bi-weekly as required.

The incumbent CPA Security Chief was also asked about any records of time-in/out of CPA employees after working hours and during weekends. He responded that although they have such records, the CPA's Police Section is not accustomed to using it regularly. The incumbent CPA Security Chief submitted a page of the log-in/out record covering the period from January 1996 to July 1997. This one-page record showed 7 log-in entries for the former Executive Director, five of which had no related log-outs. The other two entries showed comptime work performed on January 20, 1996 for an hour and on June 18, 1997 for 4 ½ hours. These comptime hours per log-in/out record for two dates do not tally with the comptime hours

³ A written summary of personnel hearing conducted by CPA on May 25, 2000 was provided to OPA which stated that these 348 hours were for comptime work performed in monitoring security operations at the Saipan Airport per instructions issued to the former Security Chief by the former Executive Director.

claimed by the former Executive Director. He claimed 5 hours and 6 ½ hours for the two dates, respectively, which are more than what were on the log-in/out record.

Considering the lack of proper documentation and approval of comptime claimed by the two former CPA executive officials, no comptime should have been granted to them even if they had been otherwise entitled to receive it.

The Former CPA Security Chief Claimed Excessive and Unwarranted Comptime to Qualify for Early Retirement Benefits

As previously stated, the former CPA Security Chief claimed a total of 2,748 comptime hours. Of this total, 2,400 comptime hours were found to be not only excessive and unnecessary, but it also appears that he claimed this comptime just to qualify for early retirement benefits. When converted to sick leave hours upon separation from service, the equivalent sick leave hours of approximately 13 months and 25 days were added to his years of service, and this additional period enabled the former Security Chief to qualify for early retirement. OPA concluded that the hours claimed were excessive and unwarranted because of the timing and the irregular methods used to claim comptime. We also found that the former CPA Security Chief claimed comptime for unnecessary overtime work that could have been performed during his regular workday.

The 1,800 comptime hours were claimed only in January 24, 1996, although they were supposedly earned during the “Gulf War crisis” from January 17 to April 1, 1991. Aside from not complying with the proper and timely filing of the request for comptime, the claim was preposterous because it equated to working 16 hours of daily overtime for 75 days in addition to the regular eight working hours. That would have left the Security Chief only 16 hours (8 hours/day during his two days off a workweek) for rest and sleep within each 7-day week period. Also, a comparison with comptime claimed by other CPA security officers/staff for the same period revealed an average of only 163 comptime hours (high of 239 hours and low of 62 hours for 11 security officers/staff). The 1,800 comptime hours were directly credited to the accumulated sick leave balance in the payperiod ending 02/03/96, after approval by the former Executive Director.

Of the remaining 600 comptime hours claimed, 534.5 hours pertained to overtime work performed for inspection of the airport perimeter and facilities. Our inquiry to the Saipan Airport Manager revealed that this work could have been completed during the regular workday, or performed by or assigned to any of CPA’s security staff. As provided in the regulations, overtime should not be authorized for work that could have been completed during the regular workday. For this reason, comptime claimed by the former Security Chief was improper and should not have been granted.

Upon his retirement, the former Security Chief was able to claim the 30% early retirement bonus of \$13,973.76 which was paid out of CPA funds, and to receive from the Fund monthly pension payments of \$2,473.36 starting in January 1997. Pension payments as of February 29, 2000 totaled \$93,987.68.

CPA Allows its Officials to Accrue Annual Leave Hours Beyond What Other CNMI Agencies Allow

As provided in the CPA personnel manual, the employment of the Executive Director and other CPA officials shall be governed by employment contracts executed by the employees and CPA. Section Four of all three employment contracts of the former Executive Director stated that “....Employee shall accrue forty-five (45) days of annual leave each year....” This accrual of annual leave is also equal to about 14 hours per payperiod, or a total of 360 hours in a year. We found that this annual leave accrual rate of 14 hours per payperiod, or 360 hours per year, granted by CPA to certain officials is beyond the 8 hours per payperiod, or 208 per year, being granted by other CNMI agencies to their employees and officials. Further inquiry to the CPA Accounting Manager revealed that other CPA officials who earn 360 hours of annual leave per year are the Executive Director, Deputy Director, Comptroller, and Airport/Seaport Managers.

2 CMC §2130 (b) of the CPA Act provides that “Employees of the authority shall be..., and shall accumulate leave time in accordance with applicable Commonwealth laws....” Part VII.A4 (A) of the PSSRR and Part I.8 (F) of the ESPR, as part of the Commonwealth law, both provide that the maximum annual leave hours an employee with six (6) or more years of creditable service can earn is eight (8) hours per payperiod or a total of 208 hours in each working year.

Accordingly, key officials of other CNMI autonomous agencies such as CUC, MVA, PSS, NMC and CDA who, in our opinion, have responsibilities greater than or similar to those of the CPA officials mentioned, only earn a maximum of 8 hours annual leave per payperiod or a total of 208 hours in each year. Secretaries or heads of departments in the executive branch also earn a maximum of eight (8) hours per payperiod. Again, CPA must be consistent with other CNMI government agencies in granting benefits to its employees, in order to apply the principles of fairness and equality among government employees.

This CPA personnel manual provision has resulted in compensation benefits of \$12,114 (360 hours x \$33.65⁴) paid to the former Executive Director, which is \$5,114.80 ({360-208} x \$33.65) more than other Government officials, assuming that such officials have the same salary rate. As discussed in detail in **Finding B**, the Retirement Fund Act provides that the average annual salary and years of credited service determine the retirement annuity of a fund member. An increase in the average annual salary or years of credited service also increases the computed amount of retirement annuity. This excess annual leave increased the average annual salary

⁴Annual salary of \$70,000 divided by 2,080 working hours in a year is equal to an hourly rate of \$33.65

of the former Executive Director, and therefore has increased the former Executive Director's pension benefits. Based on our independent computation, the pension benefits have increased by \$222.83 monthly, or \$2,673.91 annually.

Comptime was Granted to the Former CPA Executive Director Receiving Maximum Compensation Established Under the Compensation Adjustments Act

The Compensation Adjustments Act, in 1 CMC §8246, states that “The executive directors (top administrative officers) of government corporations, as defined in 1 CMC §7103(n)⁵, and other agencies, commissions, and offices shall receive an annual salary of not less than \$48,000 and not more than \$70,000, as determined by the applicable boards based on duties and responsibilities of such agencies.” §8243 of the Act also provides that “wages” and “salaries” mean the same as defined in 4 CMC §1103(z) which states that “ ‘wages’ and ‘salaries’ means any compensation for services, such as commissions, fees, compensation, educational benefits, emoluments, bonuses, and every and all other kinds of compensation paid for, credited, or attributable to personal services performed by an employee or other individual...” Accordingly, the maximum compensation/salary established for executive directors of government corporations such as CPA is in effect a salary cap which includes *all* compensation such as overtime and/or comptime. Hence, no overtime pay or comptime should be granted to the executive directors of any government corporations such as CPA.

Our audit revealed, however, that the former CPA Executive Director was granted comptime even though he was already receiving the maximum compensation of \$70,000 established for an executive director of any government corporation under the Compensation Adjustments Act.

During his employment at CPA, the former Executive Director claimed a total of 3,302 hours of comptime. Although the former Executive Director did not use any of the comptime earned as time-off from work and CPA did not pay for it, this comptime was subsequently converted to sick leave upon his retirement and was treated as additional years of credited service in the computation of the retirement benefits. Accordingly, the added years of credited service increased the amount of the computed pension benefit for the former Executive Director (see **Finding B** for a more detailed discussion).

Other Matters

Furthermore, we found that the CPA personnel manual which was adopted on December 23, 1988 was never published as adopted, which is required by the Administrative Procedure Act. The Act, in 1 CMC §9102 (c) and (d), provides that no agency rule or regulation is valid or effective against any person or party nor may

⁵1 CMC §7103 defines “Government Corporations” to include the Northern Marianas Retirement Fund, the Mariana Islands Housing Authority, the Marianas Public Land Corporation, the Marianas Visitors Bureau, the Commonwealth Ports Authority, and other public corporations created by a specific Commonwealth law.

it be invoked by the agency, until the rule or regulation has been published in the Commonwealth Register. Consequently, the CPA Personnel Regulations appear to be of no effect, and therefore CPA should be governed by the CNMI Personnel Regulations.

Personnel Regulations Adopted by CPA Were Not In Accordance with the CNMI Personnel Regulations

These comptime irregularities occurred because personnel regulations adopted by CPA were not in accordance with the CNMI Personnel Regulations as to exempting executive employees from payment of comptime, and establishing specific control procedures for documentation and approval of comptime. The irregularities also occurred because the former CPA Executive Director and former Security Chief used their positions and disregarded regulations to improperly claim comptime.

This resulted in a violation of the applicable CNMI Personnel Regulations. Comptime claimed was used to increase retirement benefits for the two former CPA officials without authority and thereby created unfunded liabilities to the Retirement Fund to which the Fund should not be subjected (see **Finding B** for separate discussion).

Conclusion and Recommendations

CPA allowed its former Executive Director and its former Security Chief, both of whom were executive and FLSA-exempt employees, to earn comptime in violation of the applicable personnel regulations. Furthermore, the former Executive Director and former Security Chief used their positions and disregarded regulations to improperly claim comptime. Accordingly, we recommend that the CPA Board of Directors:

1. Adopt personnel rules and regulations that are: (a) within the authority granted by the Commonwealth Ports Authority Act and other CNMI laws such as the Compensation Adjustments Act, (b) consistent with and governed by the same principles of fairness and equality as the CNMI Personnel Regulations, thereby eliminating the grant to FLSA- exempt (executive, administrative and professional) officials and employees to earn comptime, and the grant to six designated CPA officials of 14 annual leave hours per payperiod, or 360 hours per year.
2. Establish necessary control procedures for approval and documentation of overtime and comptime.
3. Comply with the Administrative Procedure Act by publishing the CPA Personnel Regulations in the Commonwealth Register.

CPA Response

In his letter response dated May 12, 2000 (see **Appendix A**), the CPA Board Chairman (one of the co-chairmen of the 1997/1998 CPA Transition Sub-Committee which questioned the validity of the comptime claimed by the two former officials of CPA) disagreed with recommendation 1 and agreed with recommendations 2 and 3.

Recommendation 1 - The CPA Board Chairman believed that CPA is not required or obliged to adopt rules and regulations similar or identical to the CNMI PSSRR. He stated that 2 CMC §2122 (n) clearly exempts CPA from the application of the Commonwealth Civil Service Act. He also stated that there is no law that says CPA must follow PSSRR regulations whenever it does not have a personnel regulation on a particular subject such as annual leave or comptime. He agreed, however, that FLSA does exempt CPA from giving comptime to its executive employees. He further stated that CPA's existing comptime policy is quite liberal, generous, and unnecessary and CPA intends to reconsider its present policy and undertake a comprehensive review of its comptime policy and formulate a revised policy that would address CPA's needs, observe FLSA guidelines and be fiscally responsible. CPA's alternatives include eliminating all comptime for FLSA-exempt employees, giving comptime only during emergencies or under time constraint, and granting of an "hour-for-hour" comptime rate.

He also stated that CPA's system of compensation is generally commensurate with the rest of the Commonwealth government. He commented that granting of 14 hours annual leave per payperiod to six designated officials is a matter of personnel policy to provide greater benefits or incentives to officials who are "on call" 24 hours a day because of possible threats, and also to encourage these officials to work harder to promote port operation or efficiency. The granting of this benefit does not constitute a waste of public funds nor it is illegal and excessive. He stated, however, that the CPA Board will re-examine the concern raised by OPA and determine whether its annual leave policy should be revised or re-adjusted.

Recommendation 2 - The CPA Board Chairman stated that a fairly comprehensive set of personnel rules with respect to applications for comptime, the basis for justification, documentation and approval will be considered in a comprehensive review of its comptime policy.

Recommendation 3 - The CPA Board Chairman stated that CPA intends to later publish its Personnel Manual in the Commonwealth Register in accordance with the CNMI Administrative Procedures Act.

OPA Comments

Based on CPA's response, we consider Recommendations 1, 2 and 3 open because of the following:

For recommendation 1, OPA maintains its position that CPA's exemption by law from the Commonwealth Civil Service Act covered only the specific areas mentioned in 2 CMC §2130. The wage and salary scales, including granting of benefits to its employees such as comptime and leave accrual, are to be commensurate with those paid by the Commonwealth or other CNMI government agencies, as provided in 2 CMC §2122 (n). Furthermore, 2 CMC §2130 (b) specifically states that "Employees of the authority..., *shall accumulate leave time in accordance with applicable Commonwealth laws...*" Applicable CNMI personnel regulations provide that FLSA-exempt employees are not entitled to earn comptime or overtime, and that a maximum of only 8 hours annual leave per payperiod may be earned by a government employee. Thus, the CPA policies of granting comptime to all of its FLSA-exempt employees, and granting 14 annual leave hours per payperiod to six designated officials are not commensurate with those of the Commonwealth, and clearly violated provisions of the Commonwealth Code as discussed earlier.

OPA also believes that promoting port operation or efficiency and being "on call" 24 hours a day are part of the duties and responsibilities of these high CPA officials, and their salaries ranging from \$50,000 to \$70,000 provide more than enough incentive to competently perform those duties and responsibilities. Therefore, granting of 14 hours annual leave, as contrasted with only 8 hours given to other CNMI officials and employees (who are also "on call" 24 hours a day), can be considered excessive and unfair to those other government employees.

Nevertheless, OPA appreciates CPA's intent to reconsider its present policy on granting comptime to its FLSA-exempt employees which CPA acknowledged as unnecessary, liberal and generous. However, CPA needs to go further and adopt a policy that would completely rescind granting of comptime to all of its FLSA-exempt employees and granting 14 hours annual leave per payperiod to six designated officials.

For recommendations 2 and 3, CPA did not provide a time frame for action although it concurred with the recommendations.

The additional information or actions required to close Recommendations 1, 2 and 3 are presented in **Appendix E**.

B. CPA Circumvented the Retirement Fund Act to Increase Retirement Benefits of Two Former Officials

CPA Allowed Conversion of Comptime to Sick Leave and Made Advance Payments of Unused Annual Leave and Salaries, Resulting in Payments of About \$126,000 in Retirement Benefits to which Employees were not Entitled

The Retirement Fund Act provides that average annual salary and years of credited service determine the retirement annuity of a fund member. Therefore, any increase in the average annual salary or years of credited service also increases the computed amount of the retirement annuity. Furthermore, the Act specifically prohibits the use of comptime in the computation of a fund member’s retirement annuity. We found, however, that CPA (1) allowed the conversion of unused comptime to sick leave for the two former officials of CPA, for use as additional years of credited service in the computation of their retirement annuity, and (2) made advance payments for unused annual leave and salary to the former Executive Director to increase his average annual salary, instead of making the payments upon expiration of employment contracts and on the payroll due dates, both in circumvention of the Retirement Fund Act. These improprieties occurred because personnel regulations adopted by CPA were not in accordance with the Retirement Fund Act and the CNMI Personnel Regulations. As a result, payments of retirement benefits were made to the CPA’s former Executive Director and the former Security Chief to which they were not entitled totaling \$126,730 as of February 29, 2000, an amount which will increase further if the pension amounts are not corrected or stopped promptly.

Retirement Fund Act Provisions for the Computation of Retirement Annuity

The Retirement Fund Act contains the following provisions for the basic computation of fund members’ retirement annuity:

§8313(o) - “Salary means the amount received by an employee for service as shown on the employee’s Form W-2, Wage and Salary Tax Statement...”

§8313(p) - “Service means actual employment by the government as an employee for salary or compensation, or service otherwise creditable as herein provided....”

§8313(p)(1) - “Credited service means prior service and membership service⁶, plus *accumulated sick leave*.”

§8313(p)(6) - “*Vesting service means the sum of credited service, education service and military service, which service shall be deemed creditable for the purpose of determining a member’s eligibility for the additional five years of credited service pursuant to NMI Const. Art. III, §20. Vesting service shall only be used to determine whether a member is eligible*

⁶§8313 (p) (1) and (2) define membership service and prior service as the “services rendered prior to becoming a fund member.”

for benefits and shall not be used to determine the amount of benefits to be paid to a member.”

§8333 - “*Vesting service credit shall be given for overtime or compensatory time performed in excess of 2,080 hours per annum.*”

§8334 - “The Director of Finance or the executive director of the autonomous agency shall certify to the board the total excess hours performed by such member at the end of each calendar year. The board shall compute and add such credit to the member’s total service.”

§8341(a) and (b) - “For Class I members retiring with less than 25 years of *credited service* the annual annuity shall be 2.5 percent times the average annual salary times years of *credited service* with maximum of no more than 50 percent times the average annual salary. For class I members retiring with 25 years or more of *credited service* the annual annuity shall be 50 percent times the average annual salary times all *credited service* in excess of 25 years, not to exceed 85 percent of average annual salary at the time of retirement.”

§8344(a) - A class II member retirement annuity shall be calculated at “An amount equal to two percent of average annual salary for each of the first ten years of *credited service*, and 2.5 percent of average annual salary for each year or part thereof of *credited service* over 10 years.”

CPA Regulation of Converting Comptime Hours to Sick Leave Circumvented the Retirement Fund Act

As provided in §8341 and §8344 of the Act, average annual salary and years of credited service determine the amount of a fund member’s retirement annuity. *Any increase in the amount of average annual salary or years of credited service increases the member’s retirement annuity.* The annual salary of an employee as reflected on the employee’s W-2 form includes any amount paid for overtime and comptime during that year. Thus, salaries paid for comptime and overtime increase a fund member’s retirement annuity because of the increase in average annual salary. *However, comptime and overtime hours worked should not be considered as additional years of credited service,* since the Retirement Fund Act, in 1 CMC §8333, provides that vesting service credit shall be given for overtime or comptime performed only for amounts in excess of the total regular working hours of 2,080 per annum. As stated in §8313(p)(6), vesting service should be used only for the purpose of determining a member’s eligibility for the additional five years of credited service pursuant to NMI Const. Art. III, §20, and should not be used to determine the amount of benefits paid to a member.

Our audit showed, however, that CPA allows the conversion of unused comptime hours to accumulated sick leave for certain CPA officials, to be used as additional credited service in the computation of their retirement annuity (CPA Board Resolution No. 01-94 adopted on May 17, 1994). §8313(p)(1) of the Retirement Fund Act provides that accumulated sick leave forms part of credited service. Thus,

unused comptime hours credited to accumulated sick leave will automatically be used in the computation of retirement annuity as additional credited service. The Act specifically prohibits the use of comptime hours as additional credited service in determining a fund member's retirement annuity, and therefore the CPA regulation which allows conversion of comptime hours to accumulated sick leave hours for certain CPA officials circumvents the Retirement Fund Act.

Furthermore, the Retirement Fund Act requirement that total overtime or comptime hours worked must be certified by the Director of Finance or the executive director of an autonomous agency was also circumvented. Since comptime had already been converted to accumulated sick leave, CPA was able to avoid compliance with the requirement of certification to the Fund.

Comptime and Overtime Have Been Considered as Years of Credited Service By Retirement Fund in Violation of the Retirement Fund Act

Section 4.13 of the NMI Retirement Fund Administrative Rules and Regulations provides that for overtime and compensatory time to be treated as vesting service credit, it (a) must exceed 2,080 regular hours worked within the calendar year; (b) must be paid to the employee; and (c) must be certified by the Director of Finance or Head of the Autonomous Agency where the work was performed. Based on this NMI Retirement Fund regulation, we found that the Fund has been considering overtime and comptime hours worked as vesting service credit not only to determine eligibility for the additional five years credited service but also in determining the amount of a member's retirement annuity, in violation of the Retirement Fund Act. This violation has resulted in overpayment of pension benefits to fund members whose overtime and comptime hours have been considered as additional years of credited service in the computation of their retirement annuity.

In November 1999, OPA asked one of the Fund benefit analysts about the use of comptime in determining fund members' retirement annuity. According to the benefit analyst, the Fund has been using comptime not only in determining eligibility for the additional five years credited service but also as additional credited service in determining the amount of a fund member's retirement annuity. The benefit analyst was requested to ask a higher Fund official as to whether the use of comptime as additional credited service was in accordance with the Retirement Fund Act. He subsequently responded that according to his benefit manager, the computation was based on the guidelines provided in the Retirement Fund Act.

However, in a meeting on January 19, 2000, the Fund Administrator provided us with a copy of an opinion letter from their legal counsel dated December 15, 1999,⁷ stating that the Fund's computation of retirement benefits does not conform to the provisions of the Retirement Fund Act. The Fund has been considering overtime and comptime as additional credited service in the computation of a fund member's

⁷On January 26, 2000, another request for legal opinion was made by the Fund to the Office of the Attorney General (AGO). However, as of the report date, AGO had not yet responded .

retirement annuity in violation of the Retirement Fund Act, which has resulted in overpayment of retirement benefits to some fund members. The legal counsel also stated that in accordance with the provisions of the Retirement Fund Act, the Fund does not have discretion to waive collection of overpayments and that the Fund Administrator must collect the overpayment through deductions from future payments or through filing a claim with a deceased beneficiary's estate [1 CMC §8390 (a), Retirement Fund Act]. The opinion letter also added that since no fraud, misrepresentation, or concealment of material information was involved in connection with the overpayment, the administrator should withhold no more than 50% of all future benefits from the person overpaid until the overpayment has been fully recovered. However, "taking into consideration the financial condition of the annuitant," the administrator may reduce the percentage to be withheld as long as the total overpayment can be recovered within two years [1 CMC, §8390 (b), Retirement Fund Act]." The legal counsel ended by stating that "the only way to avoid this painful collection process is to obtain relief from the Legislature through a change in the law."

OPA believes that recovery of the overpayments needs to be made because all payments of benefits should have been strictly in accordance with the Retirement Fund Act. Recovery of improperly paid benefits should not be avoided through "a change in the law" in order to protect the financial interest of selected fund members. The Fund was established to provide retirement security and other benefits in accordance with the constitutional provisions protecting the rights of government employees. Each member by virtue of contributing to the system is entitled to receive a vested interest and benefits as provided in the Retirement Fund Act.

Recovery of overpayments and correcting the rate of current benefits paid to fund members who have been overpaid will result in additional revenues for the Fund and will assure that all fund members are equally and fairly benefitted.

CPA Made Improper Advance Payments of Unused Annual Leave and Salaries To Two Former Officials To Increase Retirement Benefits

Section 2.01 of the CPA personnel manual provides that the Executive Director and certain other officials of CPA shall be governed by contracts executed by the employee and CPA. Section Four of all three employment contracts of the former Executive Director with CPA stated that "...Upon expiration of this contract, employee may cash in any unused annual leave at his regular rate of pay in an amount not to exceed three hundred and sixty (360) hours of accrued annual leave." Moreover, as provided in the PSSRR and ESPR, lump sum payment of all unused leave of an employee who terminates his employment at the completion of his employment term or contract shall be made at the time of separation or contract expiration. Also, per our inquiry, other autonomous agencies such as MVA follow this policy. In our opinion, this regulation was established to safeguard the CNMI Government from making improper payments for used leave in case the employee used his annual leave before the end of his employment term or contract but after receiving the lump sum payment.

Our audit showed, however, that CPA made advance payments for unused annual leave and salaries to the former Executive Director and the former Security Chief to increase their average annual salary, thereby also increasing their retirement annuity, instead of making the payments upon expiration of employment contracts and on payroll due dates. This action was in circumvention of the Retirement Fund Act. An inquiry to the CPA Accounting Manager revealed that this procedure has been applied to retiring employees to maximize their annual salary and thereby increase pension benefits.

For the former Executive Director, payment of \$12,114 (\$33.65 hourly rate x 360 hours) covering unused annual leave for the contract ending December 31, 1996 was made on December 20, 1996 which was the last payday for calendar year 1996, and was therefore included in the total annual salary for calendar year 1996. Payment should have been made at the expiration of the contract on December 31, 1996 and included in the total annual salary for calendar year 1997 since the last payday for calendar year 1996 was on December 20, 1996. This resulted in overstatement and understatement of \$12,114 in the total annual salaries for calendar years 1996 and 1997, respectively. The understatement of salary for calendar year 1997 was offset by another advance payment of \$12,114 covering unused annual leave for the contract ending December 31, 1997 which was paid on December 19, 1997. Again, payment for unused annual leave under the contract ending December 31, 1997 should have been made at the expiration of the contract and included in the total annual salary for calendar year 1998, since the last payday for calendar year 1997 was on December 19, 1997. Furthermore, salary for work during the period December 07-31, 1997 amounting to \$4,845.60 (144 hours x \$33.65/hr) was paid in advance on December 19, 1997 and was therefore included in the total annual salary for calendar year 1997. Per payperiod schedule, related worked hours should have been paid on payroll dates January 02, 1998 and January 16, 1998, and should have been included in the total annual salary for calendar year 1998.

We also found that the total annual salary of the former Executive Director for calendar year 1997 was overstated by \$2,692. This overstatement pertained to a double payment of salary for the hours worked December 07-20, 1997. As discussed earlier, this was included in the advance payment made to the former Executive Director on December 19, 1997. On payday January 02, 1998, another check was made payable to the former Executive Director for the hours worked December 07-20, 1997. The check, however, was not issued and was subsequently deposited to CPA's savings account (Bank of Guam #0203-014105) on February 18, 1998. However, no correction was made of the total annual salary stated in the W-2 tax form for calendar year 1997 by deducting \$2,692.

Overstatements of total annual salaries for calendar years 1996 and 1997 by \$12,114 and \$7,537.60, respectively, resulted in an increase of average annual salary from \$78,068 to \$84,618.53 (see computation below). Per our independent computation, assuming that the years of credited service of the former Executive Director were correct, the increase in his pension benefits attributable to this impropriety was \$428.05 monthly, or \$5,136.60 annually.

	CY 1995	CY1996	CY1997
Salary per W-2 and Retirement Benefit Computation	\$82,106.00	\$82,106.00	\$89,643.60
Add (Deduct) Adjustments			
Advance Payment of 360 hrs Unused Annual Leave, which should have been paid upon expiration of employment contract (Advance Payment was made on the last payday for the calendar year)			
- Contract ending Oct. 31, 1995 charged correctly in CY 1995			
- Contract ending Dec. 31, 1996- payment made on 12/07/96 should have been included in CY 1997 (360 hours at \$33.65/hr)		(12,114.00)	12,114.00
- Contract ending Dec. 31, 1997 - payment made on 12/06/97 should have been included in calendar year 1998			(12,114.00)
Salary Paid in Advance for period December 07-31, 1997 (144 hours at \$33.65) should have been paid in CY 1998			(4,845.60)
Double payment of salary for period December 07-20, 1997 (80 hours at \$33.65). Check was not issued and was subsequently deposited to CPA's savings account; however, W-2 was not corrected for this double payment			(2,692.00)
Annual Salary Per Audit (Total for 3 years = \$234,204)	82,106.00	69,992.00	82,106.00
Average Annual Salary (\$234,204 /3)			\$78,068.00

We also computed the corrected average annual salary of the former Security Chief, assuming that he was eligible to retire; this computed amount should have been the one used in the computation of his retirement annuity. Overstatement of annual salary for calendar year 1996 by \$25,163.72 resulted in an increase of average annual salary from \$43,043.64 to \$51,431.55 (see computation on next page). Per our independent computation, assuming that he was eligible to retire and his years of credited service were correct, the increase in his pension benefits attributable to this impropriety was \$403.39 monthly, or \$4,840.56 annually.

	CY 1994	CY1995	CY1996
Salary per W-2 and Retirement Benefit Computation	\$38,384.96	\$43,448.64	\$72,461.04
Add (Deduct) Adjustments			
- Advance Payment of 360 hrs Unused Annual Leave (360 hours x \$22.56/hr) that should have been paid at the end of employment term at retirement on December 31, 1996 and included in CY 1997 total salary			(8,121.80)
- Advance Payment of Salary for payperiod ending 12/21/96 which should have been paid on 01/03/97 and included in CY 1997 total salary			(1,804.80)
- Advance Payment of Salary for payperiod ending 01/04/97 (worked hours from December 22-31, 1996) which should have been paid on 01/17/97 and included in CY 1997 total salary			(1,263.36)
- Payment of 30% early retirement bonus which should have been paid at the end of employment term at retirement on December 31, 1996 and included in CY 1997 total salary			(13,973.76)
Annual Salary Per Audit (Total for 3 years = \$129,130.92)	38,384.96	43,448.64	47,297.32
Average Annual Salary (\$129,130.92 /3)			\$43,043.64

Other Matters

We also noted that comptime claimed by the former Security Chief was converted to sick leave in violation of CPA Personnel Regulations. In accordance with CPA Board Resolution No. 01-94, the former Security Chief was not included among the CPA officials granted the authority to convert all remaining comptime to sick leave upon retirement. CPA officials specifically mentioned in the resolution were the Executive Director, the Deputy Director, the Staff Attorney and the Comptroller.

CPA Circumvented Retirement Fund Act to Increase Retirement Benefits

These retirement benefit improprieties occurred because CPA circumvented the Retirement Fund Act to increase retirement benefits for some of its employees. The improprieties also occurred because the Fund misinterpreted the provisions of the Retirement Fund Act by considering comptime hours worked as additional years of credited service.

This resulted in payments of retirement benefits to the former CPA Executive Director and the former Security Chief to which they were not entitled totaling \$126,730.06 (see computations on the next page) as of February 29, 2000, an amount which will increase further if the pension amounts are not corrected or stopped promptly.

	Former Executive Director	Former Security Chief
Unaudited Creditable Years of Service	33yrs-09mos-21 days	25yrs-00mo -24days
Less: Unallowable Comptime Claimed -		
Former Executive Director - 3,302 hours	01yr- 07mos-02 days	
Former Saipan Airport Security Chief- 2,400 hours		01yr -03mo -25 days
Medical Leave Taken Not Deducted fr Accumulated (December 15-31, 1997 totaling 96 hours)	00 yr- 00mo- 18 days	
Total Adjustments	01yr - 07mos-20 days	01yr - 03mos-25days
Creditable Years of Service Per Audit	32yrs-02mos-01day	23yrs-08mos-24days
Qualified to Receive Retirement Benefits?	Qualified	Not Qualified
Monthly Pension Per NMI Retirement Fund	5,823.40	2,473.36
Monthly Pension Per Audit*	5,101.53	0.00
Monthly Pension Improperly Paid by the NMI Retirement Fund	721.87	2,473.36
Total Retirement Benefits Improper Payments Computation: Pension (Mo. Improper Payments x No. of Mo. Pension Payments Made)		
Former Exec. Director - Jan. 1, 1997 to Feb. 29, 2000 (26 months x \$721.87)	18,768.62	
Former Security Chief- Jan.1, 1996 to Feb. 29, 2000 (38 months x \$2,473.36)		93,987.68
Add: 30% Early Retirement Bonus Paid by CPA to former	0.00	13,973.76
Total Retirement Benefits Improperly Paid - \$126,730.06	18,768.62	107,961.44

* Retirement Annuity Computation for CPA's Former Executive Director

Retirement Data :		
Average Annual Salary Per Audit		\$78,068.00
Creditable Years of Service Per Audit - In number of years		32yrs-02mos-01day
- In decimal form	32.16667	
Yrs of Service as member of Marianas District Legislature	1.00000	
Computation of Retirement Annuity ⁸ (Annual Pension):		
\$78,068.00 x 2% x 10 years		\$15,613.60
\$78,068.00 x 2.5% x 22.16667		43,262.69
\$78,068.00 x 3% x 1 yr		2,342.04
Annual Pension		61,218.33
Monthly Pension (Annual Pension divided by 12) Per Audit		\$5,101.53

⁸The Northern Mariana Islands Retirement Fund Act, in 1 CMC §8344(a) , provides that Class II members' retirement annuity shall be calculated at an amount equal to two percent of average annual salary for each of the first 10 years of credited service and 2.5 percent of average annual salary for each year or part thereof of credited service thereafter. The Act also provides, in 1 CMC §8344 (f), that former members of the Marianas District Legislature shall receive an additional retirement annuity equivalent to three percent times average annual salary times years of service in such capacity.

Conclusion and Recommendations

CPA circumvented the Retirement Fund Act to increase retirement benefits resulting in payments of retirement benefits to the former Executive Director and the former Security Chief to which they were not entitled totaling \$126,730.06. Accordingly, we recommend that:

The CPA Board of Directors

4. Adopt personnel rules and regulations that are in compliance with the Retirement Fund Act, thereby repealing the regulation that allows conversion of unused comptime hours to accumulated sick leave for certain officials.
5. Instruct the CPA Accounting Department to stop the practice of making advance payments of unused annual leave and salary, and to comply with the provision in the employment contracts that payments will be made upon contract expiration. In the case of retiring employees not covered by employment contracts, payment should be made on the next payday following the termination of employment or on payroll due dates.

The CPA Board Chairman

6. Request the NMI Retirement Fund to (a) adjust the pension amount of the former CPA Executive Director based on the average annual salary and creditable years of service per audit, (b) discontinue pension payments to the former CPA Security Chief who is not qualified to receive early retirement benefits, and (c) recover improper payments of retirement benefits to the two former CPA officials in accordance with the Retirement Fund Act.

The Fund Administrator

7. Instruct his staff to recalculate and adjust the pension benefits payable to the former CPA Executive Director, and discontinue pension payments to the former CPA Security Chief.
8. Instruct his staff to recalculate and adjust the pension benefits of all other fund members by disregarding overtime and comptime hours that were considered as additional credited service.
9. Recover from the two former CPA officials improper payments totaling \$126,730.06, and also from all other fund members who have been overpaid by including overtime and comptime in the computation of their retirement annuity. If any problems exist recovering overpayments, refer the matter to the Attorney General for legal action.

10. Inform all government agencies how to compute retirement annuities, clearly explaining that overtime and comptime hours may not be considered as part of credited service.

CPA Response

In his letter response dated May 12, 2000 (see **Appendix A**), the CPA Board Chairman agreed with recommendation 4, disagreed with recommendation 5, and did not address recommendation 6. Details are as follow:

Recommendation 4 - CPA agreed to rescind its policy of converting comptime to sick leave since the Fund already considers comptime as part of a member's credited service. CPA believed that the current policy of the Fund in considering overtime and comptime as part of an employee's credited service is legally correct.

Recommendation 5 - CPA believed that making advance payments is neither illegal nor improper. Nonetheless, CPA intends to include this issue in its review of the various audit issues raised, and will notify OPA of its decision on the matter.

Recommendation 6 - CPA took no action to request the Fund to adjust and recover improper payments of pension benefits to its two former officials pending the outcome of its own agency hearing.

Subsequently, on May 25, 2000, CPA conducted an agency hearing through its Personnel Affairs Committee (Committee) with respect to the comptime claimed by CPA's former Security Chief. In its written decision, the Committee concluded that "the 1,800 hours of comptime claimed, although not documented in a timely fashion, in 1991, clearly had a factual basis and was justified. The 1,800 hours of comptime claimed for overtime work performed by [the Security Chief] during the Persian Gulf War is, therefore, reaffirmed by the Committee and allowed to stand."

The Committee's decision was based on the oral testimony of the former Security Chief who was present at the hearing. The Committee stated that during the Persian Gulf War which began on January 17, 1991 and ended on April 1, 1991, the US Federal Aviation Administration (FAA) required all US airports including those in the Northern Mariana and Guam to go on Level IV Security Alert, the highest state of security alert for airports. The former Security Chief testified that during that time, it was his obligation as Chief of Airport Security to assume personal command of the situation on a 24-hour basis. He added that he was literally present at the airport 24 hours a day. During the 75 days, meals were being served by CPA for the security staff at the airport, and although he was able to go home to take a shower and to change clothes, many times he took his showers in the airport. He did not deny that he had to sleep, but stated that he slept at the airport during the entire 75 day period.

Also, on June 17, 2000, CPA thru its Personnel Affairs Committee wrote a letter to the former Executive Director about the OPA findings and conclusion regarding his claimed comptime during his employment at CPA (see **Appendix D**). The Personnel Affairs Committee stated that it had no way to independently determine the veracity of the total number of comptime hours claimed by the former Executive Director, and advised him to present his position to OPA regarding the comptime hours claimed.

Retirement Fund Response

In his letter response dated May 2, 2000 (see **Appendix B, page 1 of 5**), the Fund Administrator concurred with recommendations 7, 8, 9 and 10. However, he felt that the action to implement recommendations 8, 9 and 10 should await an official legal opinion from the Attorney General, after which action will be taken to implement those recommendations. Details follow:

Recommendation 7 - The Fund issued two separate letters to the former Executive Director and the former Security Chief of CPA. The letter addressed to the former CPA Executive Director dated April 14, 2000 (see **Appendix B, page 2 of 5**), stated that the Fund would adjust his retirement benefits effective April 30, 2000. In a separate letter to the former CPA Security Chief dated April 13, 2000 (see **Appendix B, page 3 of 5**), the Fund advised him that his retirement benefits would cease effective immediately. The Fund adjusted the amount of the pension benefit of the former Executive Director effective June 15, 2000, while, the former Security Chief's benefit was terminated on April 30, 2000.

Recommendation 8 - In his memorandum dated May 1, 2000, the Fund Administrator asked the Manager of the Fund's Records and Statistics Section to identify those fund members so that corrective action can be taken once the Fund receives the official legal opinion from the Attorney General's Office (see **Appendix B, page 5 of 5**).

Recommendation 9 - On May 15, 2000, the Fund began holding 50% of the former CPA Executive Director's semi-monthly pension. However, the former CPA Security Chief, in a telephone conversation with the Fund Administrator on May 16, 2000, expressed his disappointment with the termination of his pension benefits and said that as of then, he didn't know how he would financially support his family. In this situation, the Fund believed that at that time, it would be very hard to pursue the recovery of improper pension payments to the Security Chief until such time as he became employed again. Also, the Retirement Fund has not yet taken any action against all the other fund members whose overtime and comptime had been considered in the computation of their retirement benefits pending receipt of a legal opinion from the Attorney General.

Recommendation 10 - In his letter response dated May 2, 2000, the Fund Administrator stated that once he receives the Attorney General's opinion which hopefully would support their legal counsel's contention that overtime and comptime

should not be considered as part of the credited service in computing retirement benefits, he would begin informing all government agencies about the proper computation of retirement annuity, clearly explaining the exclusion of overtime and comptime from credited service.

OPA Comments

Based on the responses we received from CPA and the Fund, we consider Recommendations 4, 5, 6, 8, 9, and 10 open, and recommendation 7 closed.

We consider recommendation 4 open although CPA concurred with the recommendation, because it did not provide a time frame for action to rescind its policy on converting comptime to sick leave. Also, CPA should be aware that the NMI Retirement Fund regulation which considers comptime as additional years of credited service and was found to be in conflict with the Retirement Fund Act only refers to paid comptime. This means that comptime must be first paid to the employee in order to qualify as additional years of credited service in the computation of retirement benefits. Therefore, even if the comptime of the two former CPA officials is not converted to sick leave, it cannot be considered as additional years of credited service in the computation of their retirement benefits since it was never paid (even assuming that their comptime had been valid).

For Recommendation 5, as OPA discussed in its findings, CPA's practice of making advance payment of unused annual leave is inconsistent with the requirements in provisions of its own employment contracts, and also with the CNMI Personnel Regulations (PSSRR and ESPR) which require that lump-sum payment of all unused leave of employees is to be made at the time of separation or contract expiration. Considering CPA's non-compliance with its own employment contracts and because OPA believes that CPA's practice should comply with the CNMI Personnel Regulations which apply generally to all government employees, CPA's policy of allowing payment of unused annual leave before contract expiration should be discontinued to avoid placing an unauthorized burden on the Retirement Fund.

For recommendation 6, CPA's conclusion as to the 1,800 comptime hours claimed by the former Security Chief lacks a sufficient factual basis to be considered justified. As an FLSA-exempt employee, the former Security Chief was not even entitled to comptime. Also, there was no justification for retroactive granting of comptime which violated all the requirements of the CNMI Personnel Regulations for comptime authorization and documentation.

OPA also made an inquiry to the Superintendent for Airport Operations of the Guam Ports Authority. He responded that as far as he could remember, during the Persian Gulf War FAA required them to go on Level III of Security Alert which is next to the highest level of alert. He added that security staff was shifted every 12 hours in order to achieve the required alert level. However, none of their security staff worked for more than 12 hours since they realized that no security staff would be effective

or alert to any possible threat if required to work for more than 12 hours straight.

Based on the above discussion, OPA maintains its position that the 2,748 comptime hours claimed by the former Security Chief were excessive and unwarranted, and were made without proper documentation, justification and approval. They should therefore be disallowed and not considered in the computation of the Security Chief's retirement benefits.

Furthermore, in accordance with CPA Board Resolution 01-94, the former Security Chief was not among the CPA officials who were granted the privilege of converting all of their remaining comptime to sick leave upon retirement (also discussed under “**Other Matters**” in **Finding B**). Therefore, the comptime claimed by the former Security Chief should not have been converted to sick leave and considered in the computation of retirement benefits.

OPA reaffirms its findings and conclusion about the comptime claimed by the former CPA Executive Director. As of the report date, the former Executive Director has not presented any information that would affect the results of our audit.

The additional information or actions required to closed recommendations 4 to 10 are presented in **Appendix E**.

Other Matters Discussed by CPA

CPA reminded the Fund about the rights of its two former officials to “due process.” It further stated that the Fund terminated and adjusted their pension benefits based on OPA's draft report. CPA also mentioned that the two former officials should be given notice of any proposed agency action by the Fund and should be given the opportunity to be heard. CPA commented further that personnel records of both employees should first be re-examined and a hearing (if necessary) be held by CPA to determine the validity and veracity of the comptime hours claimed by the former officials. It stated that CPA's findings and conclusion on the matter should be deemed final and only then may the Fund take action in accordance with CPA's findings and conclusion.

OPA Comments

CPA should be aware that the Fund issued letters to the two former CPA officials before it acted to comply with OPA's recommendations regarding recovery of the improper payments of retirement benefits. The Fund's letter dated April 14, 2000 informed the former CPA Executive Director about the Fund's determination of improper payments of his benefits based on OPA's findings. Subsequently, on May 2, 2000 the Fund issued a letter documenting their teleconference with the former CPA Executive Director about the Fund's decision to offset the improper payments to his current pension, and his right to contest the decision or action (see **Appendix B, page 4 of 5**). Another letter dated May 15, 2000 was issued to the attorney for

the former Executive Director documenting that the former Executive Director had agreed to the deduction on the premise that the entire amount deducted from his benefits would be reimbursed right away if OPA's findings were not sustained in the appeal process before the Fund's Board of Trustees (see **Appendix C**). The same procedures were undertaken with respect to the former CPA Security Chief. The Fund sent a letter dated April 13, 2000 to the former Security Chief before terminating his pension benefits on April 30, 2000 (see **Appendix A, page 3 of 5**). After that, a teleconference was held informing him of the decision and his right to contest; however, no letter was prepared to document this procedure. OPA has been informed that the former Security Chief is currently communicating with the Fund regarding this matter.

1 CMC §8390 (a) to (d) of the Retirement Fund Act provides that "Whenever the administrator finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustments or recovery shall be made by appropriate adjustments to future payments to the member or any survivors, or from the estate of any recipient of benefits...." This provision authorizes the Fund to make its own determination whether improper benefit payments have been made, and to take appropriate action to adjust benefits and recover any improper payments.

1 CMC §9108 to 9109 of the Administrative Procedure Act also provides that an agency may conduct a hearing in any adjudication in which sanction may be imposed. After conducting the hearing, as provided in 1 CMC §9112, when an appellant still does not agree with the outcome of the agency hearing, the appellant can file an action in the Commonwealth Superior Court for judicial review. In this case, both CPA and the Fund can conduct hearings on this matter, and if the appellant does not agree with the outcome of either hearing, an action can then be brought in the Superior Court.



COMMONWEALTH PORTS AUTHORITY

Main Office: SAIPAN INTERNATIONAL AIRPORT
P.O. BOX 501055 • SAIPAN • MP 96950-1055
Phone: (670) 664-3500/1/2 FAX: (670) 234-5962
SEAPORT: Phone (670) 664-3550/1/4 FAX (670) 322-4710

May 12, 2000

Leo L. LaMotte, Public Auditor
Office of the Public Auditor
Commonwealth of the Northern
Mariana Islands
Saipan, MP 96950



Dear Mr. LaMotte:

Re: Draft Report on the Audit of Compensatory
Time Claimed and Retirement Benefits Paid to Two
Former Officials of the Commonwealth Ports Authority

This letter sets forth the response of the Commonwealth Ports Authority (CPA) to the findings, conclusions and recommendations made by the Office of the Public Auditor with respect to the above-referenced draft audit report. Because of the complexity of several of the issues raised by the draft audit report regarding the matter of compensatory time for executive level employees of CPA under its Personnel Manual, we appreciate the additional time allowed us to formulate an informed response. Although the audit was undertaken by the Office of the Public Auditor to determine the validity or propriety of the compensatory time claimed by the former Executive Director and the former Security Chief of CPA, we needed to review the audit findings and conclusions not only from the perspective of the two former officials that are the subject of the audit, but also as whether those findings and conclusions also affect other CPA employees, both past and present.

So that there is some degree of order to our response, we shall address each finding and conclusion in essentially the same order as was presented by the audit report.

I. RESPONSES TO THE AUDIT FINDINGS AND CONCLUSIONS

1. **The Findings and Conclusion Relating to the Validity of Granting Compensatory-Time (Comp-time) to Executive Employees of CPA.** The basic issue raised by the audit report is the question of whether it is legal for CPA to give compensatory-time at the rate of one and one-half times an hour for work in excess of 40 hours in a work week, to its executive level employees. See, CPA Personnel Manual, § 3.04, second paragraph. The audit report concludes, presumably as a matter of law, that CPA cannot give its executive employees comp-time for work performed in excess of forty (40) hours in a work week because CPA is "obliged to adopt personnel regulations that are consistent with and governed by the same principle of fairness and equality as are [set forth] in the CNMI Personnel Regulations." The report goes on to state that, because the CNMI Personnel Regulations have adopted the provisions of the U.S. Fair Labor Standards Act which does not provide comp-time to executive employees, CPA must also do the same. Accordingly, the audit report concludes, "CPA allowed

SAIPAN INTERNATIONAL AIRPORT / SEAPORT
P.O. Box 501055, Saipan MP 96950-1055

ROTA INTERNATIONAL AIRPORT / SEAPORT
P.O. Box 561, Rota MP 96951

WEST TINIAN AIRPORT / SEAPORT
San Jose Village, Tinian MP 96952

Appendix A

Page 2 of 11

Mr. Leo L. LaMotte
 May 12, 2000
 PAGE TWO

its two former officials to earn comp-time in violation of applicable CNMI Personnel Regulations." (Emphasis added.)

Before we address the basic issue of whether CPA could properly grant comp-time to its executive level employees, we need to address the threshold question of whether CPA is required to comply with the CNMI Personnel Service System Personnel Rules and Regulations (PSSRR). The short answer to this question is "No." The Commonwealth Ports Authority Act, expressly provides, among CPA's powers and duties, the following:

(n) To employ agents, employees, or contract for the services of a qualified Executive Director, specialists or experts, as individuals or as organizations, to advise and assist the Authority and its employees. *They shall be exempt from the application of the Commonwealth Civil Service Act, Part 1 (commencing with § 8101) of Division 8 of Title 1.* The Authority may set its own compensation, wage and salary scales. Except for the compensation of the Executive Director and other specialists for which no comparable positions exist in the Commonwealth, the wage and salary scales shall be commensurate with those paid by the Commonwealth requiring comparable education, training, or experience. (Emphasis added)

2 CMC § 2122 (n). Because CPA is clearly exempted from the Commonwealth Civil Service Act, the Civil Service Commission Personnel Service System Rules and Regulations do not apply. Neither is CPA required or "obliged" to adopt rules and regulations similar or identical to the Civil Service Commission's Personnel Service System Rules and Regulations pursuant to which the issue of comp-time was apparently examined from by the Public Auditor.

A second underlying issue to address is whether the U.S. Fair Labor Standards Act (FLSA) applies to CPA, a public agency, and therefore must comply with the requirement of such federal law to pay employees (who are not exempt) the overtime rate of compensation. Because the FLSA (except for its minimum wage provisions) clearly applies to the Commonwealth, failure by CPA to comply would result in a violation of the FLSA. The converse (i.e. payment of overtime rate to exempt employees), however, does not result in a violation of the FLSA.

It is clear that the FLSA exempts employers from paying the overtime rate of one and one-half times the regular rate, for hours worked in excess of forty (40) hours in a work week, for the following exempt employees: executive, administrative and professional. The operative word is "exempt." If an employer decides, however, to give these exempt employees the overtime rate of pay for overtime work performed, there is no violation of the FLSA. Such practice would be questioned as either being unnecessary or generous, or that it is "fiscally irresponsible," since the employer is not obligated to do so. That is the audit's criticism of CPA. For its executive, administrative and professional employees, CPA is not required under the FLSA to pay its executive employees overtime rate or to give compensatory time for overtime work performed in excess of forty (40) hours in a work week, but has been doing so pursuant to CPA's Personnel Manual. The audit recommendation is to stop the practice of granting compensatory time to executive employees since they are exempted from being paid the overtime rate under the FLSA.

Mr. Leo L. LaMotte
May 12, 2000
PAGE THREE

Before CPA stops or modifies its present practice, it needs to review the matter further, to determine the appropriate course of action to take, so that its executive, administrative and professional employees are treated fairly for overtime work performed. The alternatives range from the existing practice of granting comp-time at the rate of one and one-half times each hour worked in excess of 40 hours in a work week, to that of completely eliminating all comp-time for FLSA-exempt employees. In between, CPA's other alternatives include giving comp-time to exempt employees for overtime work performed during emergencies or under time constraint. Comp-time may also be given, say, on an "hour-for-hour" basis, rather than at "overtime rate." Further, a fairly comprehensive set of personnel rules with respect to application for comp-time, the basis for justification, documentation and approval, as well as payments of monetary compensation for unused comp-time upon termination or retirement should also be considered.

Although there is no doubt that CPA's existing comp-time policy and practice is quite liberal and generous, such policy and practice is not in violation of the FLSA. CPA, however, intends to reconsider its present policy and practice relating to comp-time and determine whether changes are in order. The changes, however, does not necessarily have to be similar or identical to the PSSRR, which does not apply to CPA.

2. The Findings and Conclusion Relating to Whether the Former Executive Director and the Former Security Chief were granted Comptime without Proper Authorization and Documentation. The audit report determined that the comp-time claimed by the former Executive Director and the former Security Chief were either not approved in advance of the same being incurred or were not approved at all by an appropriate official of CPA. Because CPA is expressly exempted from the Commonwealth Civil Service Act, CPA's personnel matters are not governed by the CNMI Personnel Regulations on the subject of compensatory time. We agree, however, that CPA's personnel practice regarding the need for advance approval of comp-time, for the proper documentation and timely filing of comp-time earned need to be addressed so that the granting of comp-time is not abused. The fault does not lie with the employees who are not responsible for CPA's personnel system. And although the "easy answer" to the overall criticism regarding comp-time is to say that CPA has been derelict on the matter, one should not jump immediately to hasty conclusions, which many times are unfair.

CPA wishes to note, as a matter of historical perspective, that the matter of granting compensatory-time to CNMI Government employees has itself been in state of evolution and uncertainty for many years, even to the present. We understand that it was not until three (3) years ago that this state of uncertainty for employees covered by CNMI Government's Personnel Service System, started being addressed by the Office of Personnel Management. As an example, in a memorandum dated May 29, 1997 from the CNMI Director of Personnel to all Department and Activity Heads on the subject of "Waiver of Exempt Status to Allow Extra Hours Payment For Emergencies and Other Special Situations," the Director of Personnel noted:

The Governor's memorandum of April 1, 1997, on the above subject, authorized the Director of Personnel to continue making the necessary decisions relative to

Appendix A

Page 4 of 11

Mr. Leo L. LaMotte
 May 12, 2000
 PAGE FOUR

overtime and extra hours for Commonwealth employees. This included the establishment of standards of eligibility for extra hours payment for overtime exempt workers and, also, of procedures for requesting waivers for exceptional situations. (Emphasis added.)

This memorandum shows that even for the CNMI Civil Service System the area of overtime compensation and compensatory time off for exempt employees was (and apparently still is) a gray area that requires further fine tuning. CPA also wishes to point that it was not until May 15, 1995 that the CNMI Personnel Service System Rules and Regulations (PSSRR) added the FLSA guidelines for the determination of overtime status with respect to each position in the CNMI Government. Also, it was not until January 15, 1997 or only three years ago, that these guidelines became permanent amendments to the PSSRR.

The audit report's legal conclusion that CPA has been in violation of the CNMI Civil Service System regulations on the subject of comp-time is not only erroneous because CPA is expressly exempted from the Civil Service System, but it is also very unfair because it tries to paint a picture that CPA just simply disregarded long standing Civil Service System regulations on overtime and comp-time. Nothing could be farther from the truth.

CPA's experience with compensatory-time matters for its executive employees was formally addressed in 1994. The CPA Board decided, as a matter of fairness, to formally allow compensatory time-off (CTO) for its executive level employees who, it was then learned, were exempted under the FLSA from receiving overtime rate of compensation for overtime work performed. The Board decision did not in any way violate the FLSA, whose only requirement is that non-exempt employees be paid overtime rate for overtime work performed. The present audit's criticism, however, focuses on why CPA is giving comp-time for exempt employees for overtime work performed in a work week when an employer is not obligated by the FLSA to do so. The answer to this criticism is that CPA adopted the policy because it determined that it is only fair that exempt employees who are required to perform overtime work should be allowed to later take time off from work to be with their family or to tend to personal affairs that they would have tended to had they not been required to work overtime. Even the FLSA recognizes that these situations arise, and exempt employees themselves should be given compensatory time off, maybe not necessarily at an overtime rate, but at least on an hour-for-hour basis.

With respect to the issue of whether the comp-time hours claimed by the former Executive Director and the former Security Chief were properly approved and documented by CPA, one needs to review the employment records of both employees to determine where the comp-time hours claimed were properly approved and documented. The personnel records of each of these two employees, with respect to comp-time, have previously been furnished the Office of the Public Auditor. It is fairly clear that the Public Auditor takes the position that the hours claimed were improperly approved and documented, and were not timely filed.

Although it is true that the comp-time claims made by the two officials appear to have not been timely filed, it does not necessarily follow that the comp-time were not earned. Also, although it may be true

Mr. Leo L. LaMotte
May 12, 2000
PAGE FIVE

that the approval for the comp-time claimed were not expressly made in advance, and that the type of documentation does not follow the CNMI Personnel Service System required documentation on comp-time, it does not necessarily follow that the approval of such claims were improper. It appears to CPA that the real issue behind the comp-time hours claimed relates to the veracity of the comp-time claims that were made. The audits, in essence, appear to be second-guessing the claims made by the two officials because of the manner and the timing of the claims when made. But CPA believes that this is not the proper way to address this issue. To the extent that CPA has in effect already de facto approved the comp-time hours claimed by the two officials as shown in their personnel records, the appropriate procedure to take, in light of this audit, is for CPA to review the comp-time hours once again, and determine whether the total comp-time hours claimed are indeed without basis. Until such a review is made by CPA, CPA's personnel record on the matter should be presumed valid and, unless reversed or modified after such a review, they should stand. Because the pension rights and benefits of the two officials are now at issue and may be adversely affected by the outcome of such a review, it is necessary (if not mandatory, as a matter of due process) to accord the two former officials the opportunity to be heard and to present their side of the story, before any final decision is made affecting their pension benefit or their pension eligibility.

CPA does not wish to re-hash the comp-time hours records previously furnished the Office of the Public Auditor on this matter. It believes, however, that if the hours claimed and approved are questionable, that those questions or concerns should be revisited, re-examined and answered. Further, if the conclusions reached after such agency review adversely affects the pension benefit or pension eligibility of the two former CPA officials, a court of law may end up being the appropriate forum to settle the issue. Until the issue of whether the comp-time hours claimed were indeed earned by the two officials has been resolved, however, the manner and timing in which they were claimed should not be dispositive.

3. The Findings and Conclusion Relating to Whether the Former Security Chief Claimed Excessive and Unnecessary Comptime to Qualify for Early Retirement Benefits. Because this issue also relates to the question pertaining to the veracity of the comp-time hours claimed by the former Security Chief, CPA incorporates its comments on the audit findings and conclusion in Part 2 above. Since the issue relates to the manner and timing of the filing, as well as the approval of the comp-time hours claimed by the former Security Chief, and because the personnel records maintained by CPA regarding the matter is itself at issue, it is necessary for CPA to re-examine its personnel records and determine, after giving both former officials an opportunity to present their respective positions on the matter, whether the comp-time hours claimed should stand, be modified, or be rejected. Until an independent review of this issue is done, however, CPA believes that the status quo should be maintained.

4. Findings and Conclusions Relating to the Unaccounted-For Extra Sick Leave Hours Credited to the Former Security Chief's Since Leave Balance. As with the immediately preceding issue regarding the audit determination that the comp-time claimed by the former Security Chief was "excessive and unnecessary," the issue regarding the "348 hours of unaccounted-for sick leave" requires CPA to re-examine the personnel records of the former Security Chief and determine whether there

Mr. Leo L. LaMotte
 May 12, 2000
 PAGE SIX

was indeed no basis for such hours of sick leave given the Security Chief. If it is true that there was no basis for the "unaccounted-for sick leave," then the matter should be retroactively corrected by CPA, and the same should be certified to the NMI Retirement to recompute the former Security Chief's length of "credited service." If such sick leave, however, are accounted for, after an independent examination of the matter by CPA, then a certification by CPA to the NMI Retirement Fund should still be made, in light of the contrary position taken by the audit. Either way, in its examination of the issue, CPA should accord the former Security Chief to present his side, so that the matter could be fully resolved once and for all.

5. The Findings and Conclusion Relating to the Number of Annual Leave Hours Certain Executive Employees of CPA Are Allowed to Accrue Per Pay Period. The audit report determined, under the premise that CPA is obligated to adopt personnel regulations which are consistent with the CNMI Personnel Service System Regulations, that the practice of allowing certain of its top executives to accrue annual leave at the rate of 14-hours per pay period (or 360-hours a year) violates the CNMI Personnel Service System Regulations and, as such, is illegal. CPA disagrees with the audit conclusion that such practice is illegal because, as we have noted earlier, CPA is clearly exempted from the CNMI Civil Service Act and its regulations. There is no law that says that CPA must follow PSSRR regulations whenever it does not have a personnel regulation on a particular subject, such as annual leave or comp-time.

The policy and practice of CPA, for many years now, of allowing certain of its top executives to accrue annual leave at a rate which is more generous than that accorded other government executives is not illegal. The audit's criticism in essence is not really a question of legality, but rather whether the policy and practice is not sound or is without basis. CPA acknowledges the fact that, although it is an autonomous agency of the Commonwealth Government, it is still a part of it. The Commonwealth Ports Authority Act, codified at 2 CMC § 2101 *et seq.*, intended the Authority to be autonomous and independent in carrying out its mission to operate and manage the CNMI's public airports and seaports in an efficient and effective manner. Its mission is to benefit the traveling public, and to develop and improve the economy and commerce of the CNMI.

Compared to other jurisdictions under the U.S. flag, CPA believes that public employee compensation benefits for most employment categories in the CNMI Government lag behind the rest of the Nation. Although autonomous and independent, CPA's system of compensation is generally "commensurate" with the rest of the Commonwealth Government, as called for by its enabling statute. With respect to employee benefits also, CPA has been giving its employees essentially the same benefits as are given other employees of the Commonwealth Government. When CPA decides as a matter of personnel policy to provide greater personnel benefits, it does so only after making an informed determination that such employment benefit is fair and warranted, that it would provide an incentive to the official or employee to work harder to improve port operation or efficiency, and that the incentive being provided the official or employee does not constitute a waste of public funds or that the benefit is not illegal.

CPA wishes to point out that the practice of accruing 14-hours of annual leave per pay period is given only to a very select group of top executives at CPA, taking into account the sensitive nature of their

Mr. Leo L. LaMotte
May 12, 2000
PAGE SEVEN

respective responsibilities. These officials are the following: the Executive Director, the Deputy Director, the Comptroller, the Rota Ports Manager, the Tinian Ports Manager, and the Saipan Seaport Manager. All of these positions carry an extremely high level of duties and responsibility. As you know, our airports and seaports are the Commonwealth's economic lifelines. CPA's top executives are "on call" 24-hours a day. They cannot sleep on the job. They must be alert at all times to the possibility of any threat, real or perceived, that may endanger or adversely affect our airports and seaports, and consequently the overall economic well-being of the Commonwealth. In weighing the duties and responsibilities which each of these top CPA executives is entrusted with, the CPA policy and practice of allowing the *accrual of six additional hours of annual leave each pay period* to the executives listed is clearly justified as a matter of policy.

The audit's criticism appear to lie, not with the fact that such policy is justified, but rather with the fact that the maximum number of hours of annual leave that other Commonwealth Government employees could earn is only 8-hours per pay period. CPA believes that the Government's maximum annual leave accrual rate is outdated and should be re-examined. Such maximum limitation has been practiced since Trust Territory days and should be reconsidered.

6. The Findings and Conclusion Relating to the Issue as to the Propriety of Making Advanced Payments for Unused Annual Leave and Accrued Salaries. The audit also questions the propriety of (and concludes as improper) the action taken by CPA of making advanced payments to the former Executive Director and the former Security for their unused annual leave and salaries, before retirement. The audit asserts that this was done in order to increase their "average annual salary" and, consequently, their retirement annuity. CPA believes that the audit report is making an issue of a matter that rests within the sound discretion of CPA. The practice of making advance payment during the holidays has been around for many years now. A good example is, say, when Christmas falls on a Thursday, and the Governor (or the U.S. President) declares Friday a holiday as well. When this happens, employee salary checks which are normally issued on Friday are allowed by the governor to receive their paycheck on Wednesday. We fail to see what is wrong with making such "advance" payment, particularly when the salary or the annual leave has already been earned. How the Retirement Fund Administration treats such advance payment for purposes of a retiree's annuity compensation rests exclusively with the Fund, pursuant to the Fund's enabling statute and regulations. The act of making an advance payment by itself, however, is not illegal. Neither is it improper under the circumstances when made. Further, we wish to note that the audit's assertion that it is made solely for purposes of increasing one's average annual salary is truly unfair, since the underlying reason for making such advance payments is usually because of the holiday season. But even if the reason is not the holiday season, the act itself of making the advance payment is sort of a "bonus" to the retiring employee who has served CPA for at least twenty (20) years. Why the audit would take the time to quarrel with such practice is indeed difficult to comprehend.

7. The Findings and Conclusion Relating to the Issue Regarding the Conversion of Accumulated Comptime to Sick Leave When an Official Retires. The audit report finds that the CPA practice of converting accumulated comp-time to sick leave when an employee retires is illegal because it circumvents the NMI Retirement Fund Act which defines "credited service" for purposes of

Mr. Leo L. LaMotte
 May 12, 2000
 PAGE EIGHT

retirement eligibility to mean "prior service and membership service, plus accumulated sick leave." In addressing this issue, CPA agrees that comp-time is not sick leave. But we need to address the meaning of "comp-time" itself. We believe there is no question that compensatory time is time given an employee to take off from work in order to "compensate" the employee for overtime work performed beyond the regular 40 hours worked in a work week. Thus, if an employee is given 12 hours of comp-time (in lieu of overtime pay) for working 48 hours in a particular work week, the 8 hours of overtime work performed is in fact a part of his work service, and should be considered a part of that employee's regular membership service that should and must be counted towards the employee's credited service.

CPA Resolution No. 01-94, when it was adopted in 1994, decided that one's unused comp-time hours should be converted to sick leave in order to be considered a part of one's credited service; otherwise it may be lost. In retrospect, however, that resolution was not necessary since one basis of an employee's membership service is the number of hours that an employee actually works. There is, therefore, no need to convert comp-time to sick leave, since comp-time is the "compensatory" hours away from work given an employee (who is not eligible for overtime pay) given for the hours of overtime work performed. It is compensation for actual overtime service rendered, and must be considered a part of one's membership service that is counted towards credited service.

CPA is offended by the audit's unfair and unfounded conclusion that the resolution adopted by the CPA Board in 1994, to convert comp-time to sick leave, was intended to circumvent the Retirement Fund Act which recognizes sick leave only as being countable towards one's credited service. CPA adopted the resolution because it thought that comp-time (i.e. compensatory time off given an employee for overtime work actually performed) would not be counted by the NMI Retirement Fund as part of a member's credited service. The audit has found that the NMI Retirement Fund in fact considers overtime and comp-time as part of a member's "credited service."

Ironically and surprisingly, however, the audit adamantly urges the Fund *not* to consider overtime work and comp-time as part of an employee's credited service. The audit report erroneously concludes that overtime service and comp-time are not part of one's membership service and, therefore, violates the NMI Retirement Fund Act, resulting in the "overpayment of retirement benefits to some Fund members." The audit urges the Retirement Fund to adopt the opinion of the Fund's legal counsel that overtime and comp-time hours do not constitute "credited service" as defined by the NMI Retirement Fund Act. It urges the Fund to begin collecting the overpayments in pension benefits made by the Fund as a result of the practice of including overtime and comp-time as part of a member's credited service.

CPA strongly disagrees with the audit's position on the issue that overtime and comp-time are not "credited service. For the reasons already stated, overtime and comp-time are actual work services performed by the employee. Unlike sick leave which is an employee "fringe benefit," comp-time and overtime are actual services rendered by the employee. It would indeed be truly ironic if accumulated sick leave which is not for actual services performed is made a part of a member's credited service, but overtime and comp-time, which are for services *actually* rendered, are not or cannot be considered a part of one's credited service, as defined by the Retirement Fund Act. To adopt the conclusion urged by the Office of the Public Auditor on this issue would permit a practice that is not prohibited by the Act and

Mr. Leo L. LaMorte
May 12, 2000
PAGE NINE

defies logic and common sense. CPA truly fails to comprehend the rationale behind the audit's insistence that overtime and comp-time are not credited service. Further, to insist that the Fund collect "overpayments" made as a result of the Fund's treatment of overtime and comp-time as credited service would add insult to injury.

The Retirement Fund's longstanding decision of treating overtime and comp-time as credited service is legally correct. Factually, it is for actual service rendered by the employee, and legally the intent of the Retirement Fund Act is to include all work services rendered by the employee: both for regular hours and for overtime hours worked (which include comp-time).

II. CPA POSITION REGARDING THE AUDIT RECOMMENDATIONS

Based on the foregoing responses to the audit findings and conclusions, CPA now sets forth its comments and position on the various recommendations made by the audit report.

a. **The Practice of Granting Comptime to Executive Employees of CPA.** Although CPA disagrees with the audit report's conclusion that the PSSRR regulations issued by the CNMI Personnel Service System legally apply to CPA, including the PSSRR regulations pertaining to comp-time, CPA agrees that the FLSA does exempt CPA from giving compensatory time off (CTO) to its executive employees at the rate of one and one half times the number of hours worked in excess of 40-hours in a work week. Such practice, however, does not violate the FLSA. Some might view the practice as "not being fiscally responsible," but such practice and policy were adopted by the CPA Board in 1994 to ensure fairness to executive employees who, due to emergencies or other pressing needs or requirement of CPA, had to work at nights or on weekends to address such emergencies, needs or requirements. The Board believed (and still believes) it is only fair that they be allowed to take time off from work. In light of the audit, however, CPA intends to undertake a comprehensive review of its compensatory time off policy and formulate a revised policy on comp-time that would address CPA's needs, observe FLSA guidelines, and be fiscally responsible.

b. **The Comptime Hours Claimed by the former Executive Director and the former Security Chief.** The audit report questions the comp-time hours claimed by the former Executive Director and the former Security Chief of CPA. It asserts that the comp-time given them were not approved in advance, were not properly documented, and were not filed on a timely basis. CPA intends to review the comp-time records of both past officials to determine the validity and veracity of the comp-time hours claimed. If there is fraud, collusion, or any fraudulent act committed, or if there is a miscalculation as to the actual hours of comp-time earned, CPA's decision on the matter, after conducting such review, should be final. The issue of advance approval, timely filing and proper documentation is secondary to the primary consideration of whether the two officials actually worked overtime (and, consequently, have earned the corresponding comp-time claimed). The issue of who should approve the comp-time application of the Executive Director will be also reviewed by the Board

Appendix A

Page 10 of 11

Mr. Leo L. LaMotte
 May 12, 2000
 PAGE TEN

to determine whether the Board Chairman or some other Board official should review such application.

c. **The Comptime Hours Claimed by the former Security Chief and his Unaccounted-for Extra Sick Leave.** CPA also intends to review anew this issue to determine whether the so-called "Gulf War comp-time" claimed by the former Security Chief were truly earned, under CPA's personnel regulations. CPA also intends to conduct a new review of the "unaccounted for" sick leave. Such review will be conducted by CPA's Personnel Committee, which will render a decision thereafter.

d. **The Practice of Giving Certain Top Executives of CPA Annual Leave Benefit Which Accrues at the Rate of 14 Hours Per Pay Period.** The audit report criticizes CPA for allowing several of its top management executives to accrue annual leave at the rate of 14 hours per pay period or 360 hours per annum, beyond the maximum eight (8) hours of annual leave that employees of the Commonwealth Government may accrue. CPA disagrees with the audit conclusion that this practice violates the PSSRR rules and regulations on the subject. As previously noted, CPA is expressly exempted from the CNMI Civil Service Act and its personnel regulations. It is, therefore, not required or obliged to follow civil service regulations regarding annual leave. For the reasons stated in CPA's comments above regarding this issue, the practice which allows CPA's key executives *an additional six (6) hours of annual leave each pay period* is neither excessive nor was it made without justification. The CPA Board will, however, re-examine the concern raised by the Public Auditor and determine whether its annual leave policy should be revised or re-adjusted.

e. **The Propriety of the Year End Practice of Making Advanced Payments of Unused Annual Leave and Salaries.** Regarding this practice, CPA takes the position that the audit report is making an issue of a matter that is committed the sound discretion of the CPA Board. In only less than a handful of occasion does CPA permit the granting of advance payments to its employees. Usually, this is done at the end of the year, around Christmas time. Further, advance payments are made only for annual leave that has already been accrued or for salary that either has been earned or would be earned before the end of the year, when an employee retires. It does not involve a situation where CPA would later be left holding the proverbial "empty bag." CPA nonetheless intends to include this issue in its review of the various issues raised by the audit and, thereafter, notify the Public Auditor of its decision on the matter.

f. **The Practice of Converting Unused Comp-time to Sick Leave When an Employee Retires.** In light of CPA's major disagreement with the audit report on this issue, and in view of CPA's position that the conversion of comp-time to sick leave when an employee retires is actually not necessary since the NMI Retirement Fund already considers unused comp-time as part of a member's credited service, CPA will consider rescinding its conversion policy, since it is unnecessary. CPA agrees with the Retirement Fund Board's inclusion of overtime and comp-time as part of an employee's credited service, since both relate to actual work service performed. If sick leave which is an employee benefit (and is not actual work service) is now being considered as part of one's credited service, it should logically follow, and as a matter of common sense, that overtime and comp-time, which clearly constitute actual service, should be deemed a part of one's credited service.

Mr. Leo L. LaMotte
May 12, 2000
PAGE ELEVEN

g. **The Recommendation to Publish CPA's Personnel Regulations in Accordance with the Administrative Procedure Act.** CPA finds this recommendation to be well taken, and intends to later publish its Personnel Manual in the Commonwealth Register in accordance with the CNMI Administrative Procedure Act, so that its validity and effectiveness will not be questioned and so that it will be treated as part of CPA's permanent regulations.

h. **The Recommendations Addressed to the NMI Retirement Fund to Adjust the Pension of the Former Executive Director and to Terminate the Former Security Chief's Pension Benefits.**

As we have noted earlier above, CPA should first be given the opportunity to review and re-examine the comp-time and leave benefit records of the two former CPA officials who are directly affected by this audit report. Both officials have procedural due process rights and should be given notice of any proposed agency action by the Fund, and should be given the opportunity to be heard. CPA has learned that the Fund has already terminated the former Security Chief's pension benefit as a result of the draft audit report. Similarly, CPA has also learned that the Fund has already adjusted downwards the former Executive Director's pension benefits based on the draft audit report. CPA wishes to alert the Fund of the due process rights of the two employees. CPA believes that because of the audit's conclusion on the comp-time hours claimed, the personnel records of both employees should first be re-examined and a hearing (if necessary) be held by CPA to determine the validity and veracity of the comp-time hours claimed by the former officials. The review and examination should be conducted and CPA's findings and conclusion on the matter should be deemed final. Only then, may the NMI Retirement Fund act, in accordance with CPA's findings and conclusion.

The foregoing comments and responses are submitted pursuant to the Commonwealth Auditing Act, 1 CMC § 7823 (a). Please let us know if you have any questions.

Sincerely,

COMMONWEALTH PORTS AUTHORITY


ROMAN S. PALACIOS
Chair, Board of Directors

xc: CPA Board of Directors
CPA Executive Director
NMI Retirement Fund Board
NMI Retirement Fund Administrator



Northern Mariana Islands
R E T I R E M E N T F U N D
"Investing For The Future Financial Security Of Our Members"

May 2, 2000

Mr. Leo J. LaMotte
Public Auditor, CNMI
Office of the Public Auditor
Commonwealth of the Northern
Mariana Islands
P.O. 501399
Saipan, MP 96950-1399



Dear Mr. LaMotte:

To indicate our concurrence with OPA's audit findings and its recommendations for corrective action, enclosed are two (2) separate letters I wrote to the two (2) former CPA officials explaining the improper elements that were applied to compute their retirement benefits. The basis of our agreement with OPA's report is supported by our legal counsel's opinion, which disallows overtime and compensatory time from being considered as additional credited service for purpose of retirement annuity. At the same time, I have also requested the Attorney General's Office for an official legal opinion, so that I can eventually pursue the recovery of these overpayments from the two (2) individuals mentioned on your audit report, as well as other fund members with similar situations.

Once I receive the Attorney General's legal opinion, which hopefully should reinforce our counsel's contention, I will begin informing all government agencies about the proper computation of retirement annuity, which shall clearly explain that overtime and compensatory time hours are not considered as part of the credited service.

Sincerely,

Juan Torres
J.S. Torres
Administrator

JST/rm

cc: Board of Trustees, NMIRF

P.O. Box 501247 C.K., Saipan, MP 96950 | Tel: (670) 664-3863 | Fax: (670) 664-8080
Internet: <http://www.saipan.com/gov/branches/retire/index.htm> E-mail: nmi.retirement@saipan.com



Northern Mariana Islands
R E T I R E M E N T F U N D
"Investing For The Future Financial Security Of Our Members"

April 14, 2000

Carlos A. Shoda
P. O. Box 500054 CK
Saipan, MP 96950

Dear Mr. Shoda:

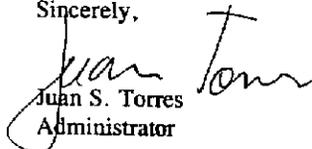
This is to advise that the Northern Mariana Islands Retirement Fund will adjust your retirement benefits effective April 30, 2000 pay period as a result of the findings by the Office of the Public Auditor.

Based on these findings, you were granted credited services for unallowable compensatory time hours of 3,302 and medical leave taken but not deducted from accumulated sick leave equivalent to 96 hours. These all translate to one (01) year, seven (07) months and twenty (20) days. In addition, improper advance payments of unused annual leaves, advance and double payment of salaries have all inflated your average annual salary and had therefore increased your retirement benefits. As a result, the Fund has overpaid you the total amount \$19,851.43 as of April 15, 2000.

The Fund may be compelled to withhold your next retirement benefit check until a settlement plan is amicably determined. Therefore, we urge you to visit our office within ten (10) days after receipt of this notice for an arrangement of an acceptable settlement plan. Although we would prefer that you settle the entire amount promptly, but if you are unable to do so, then the Fund may initiate deduction of 50% of your retirement benefits pursuant to 1 CMC 8390(b).

Your cooperation and understanding in settling this matter is appreciated.

Sincerely,


Juan S. Torres
Administrator

Xc: Member's File
Benefits Branch

P.O. Box 501247 C.K., Saipan, MP 96950 | Tel: (670) 664-3863 | Fax: (670) 664-8080
Internet: <http://www.saipan.com/gov/branches/retire/index.htm> E-mail: nmi.retirement@saipan.com



Northern Mariana Islands
R E T I R E M E N T F U N D
"Investing For The Future Financial Security Of Our Members"

April 13, 2000

Joseph A. Reyes
P. O. Box 500413 CK
Saipan, MP 96950

Dear Mr. Reyes:

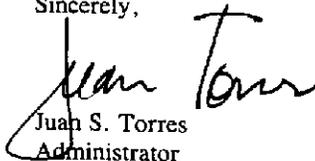
This is to advise that the Northern Mariana Islands Retirement Fund will cease your benefits effective immediately.

Based on the findings of the Office of the Public Auditor, you were granted credited services for unallowable compensatory time hours of 2,400 and unjustified sick leave hours of 348 which translate to one (01) year, three (03) months and twenty-five (25) days of service. As a result of this, the Fund has determined that you are not eligible for service retirement annuity and must recover the benefits and the early retirement bonus you had received.

You were overpaid retirement benefits as of March 31, 2000 and the bonus amounting to \$110,434.80. We urge you to visit our office to either see Mario Taitano or Angel Salas for an arrangement of an acceptable settlement plan. Although we would prefer that you settle the entire amount promptly, but if you are unable to do so, then the Fund would still like to know the best possible manner you can repay these overpaid and inappropriate retirement benefits.

Your cooperation and understanding in settling this serious matter is appreciated.

Sincerely,


Juan S. Torres
Administrator

Xc: Member's File
Benefits Branch

P.O. Box 501247 C.K., Saipan, MP 96950 | Tel: (670) 664-3863 | Fax: (670) 664-8080
Internet: <http://www.saipan.com/gov/branches/retire/index.htm> E-mail: nmi.retirement@saipan.com



Northern Mariana Islands
R E T I R E M E N T F U N D
"Investing For The Future Financial Security Of Our Members"

May 02, 2000

Carlos A. Shoda
P. O. Box 500054 CK
Saipan, MP 96950

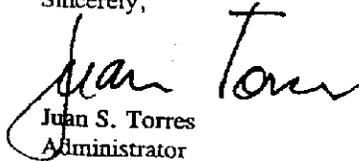
Dear Mr. Shoda:

This is to confirm your teleconference with Mario Taitano relative to the Fund's decision in deducting 50% of your retirement annuity in accordance to 1 CMC 8390(b) to offset the overpaid annuities which has accumulated to \$20,212.43 as of pay period, April 30, 2000.

Effective May 15, 2000 and for every pay period thereafter, your gross semi-monthly will be \$1,455.85 until the entire overpaid amount is paid in full. If a decision is rendered in your favor should you contest the findings of the Office of the Public Auditor, you will be reimbursed of the entire amount deducted.

Should you have any questions or require additional information, please do not hesitate to let us know.

Sincerely,



Juan S. Torres
Administrator

Xc: Member's File
Benefits Branch
Records & Statistics
Branch

Appendix B

Page 5 of 5

Reading

Northern Mariana Islands
R E T I R E M E N T F U N D
"Investing For The Future Financial Security Of Our Members"

MEMORANDUM

May 1, 2000

TO : Pamela Seman
 Manager, Records & Statistics

FROM : Administrator

SUBJECT : *Annuitants who were improperly given credited service for OT and Comp. Time*

Our legal counsel had rendered an opinion disallowing "overtime and compensatory time" when computing a member's length of credited service for retirement. The ruling from OPA had also given support to this opinion in its draft audit report of two former CPA officials. Once we receive an official legal opinion from the Attorney General's Office confirming the findings of our counsel and OPA, we are looking at a big task of reviewing our records to determine who were given improper/erroneous service credit.

We need to start identifying these people so that corrective action shall be taken accordingly. Please give this your highest priority and let me know if you need bodies to help out.

Juan Torres
 J.S. Torres

P.O. Box 501247 CCK, Saipan, MP 96950 | Tel: (670)664-3863 | Fax: (670)664-8080
 Internet: <http://www.saipan.com/gov/branches/retire/index.htm> E-mail: nmi.retirement@saipan.com



Northern Mariana Islands
R E T I R E M E N T F U N D
"Investing For The Future Financial Security Of Our Members"

May 15, 2000

Mr. Pedro M. Atalig
Attorney at Law
Family Building, Suite 205
P.O. Box 5332
Saipan, MP 96950

RE: Carlos A. Shoda

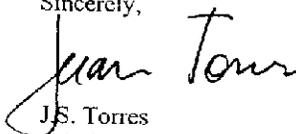
Dear Mr. Atalig:

This shall acknowledge receipt of your May 9th letter about Mr. Carlos Shoda's retirement benefits as it relates to the recent findings and recommendation by the Office of the Public Auditor ("OPA").

We believed we didn't act unilaterally to bring compliance with OPA's recommendation, because before we actually did anything else, we called up Mr. Shoda on the phone to discuss the course of action we'll be taking to recoup the amount that was overpaid. Having done that, he finally told us to go ahead and start the deduction, on the premise that upon negating OPA's assessment by going through the appeal process before the Board of Trustees, we'll return the entire amount right away.

So, what we ended up doing was only to temporarily prevent further financial erosion of the Fund's asset until such time as Mr. Shoda can sufficiently disprove OPA's authoritative conclusion.

Sincerely,


J.S. Torres
Administrator

Enclosure

Cc: Board of Trustees, NMIRF
Office of the Public Auditor
Carlos A. Shoda

P.O. Box 501247 C.X., Saipan, MP 96950 | Tel: (670) 664-3863 | Fax: (670) 664 8080
Internet: <http://www.saipan.com/gov/branches/retire/index.htm> E-mail: nmi.retirement@saipan.com

Appendix D



COMMONWEALTH PORTS AUTHORITY

Main Office: SAIPAN INTERNATIONAL AIRPORT
P.O. BOX 501055 • SAIPAN • MP 96950-1055
Phone: (1-670) 664-3500/1 FAX: (1-670) 234-5962
E-Mail Address: cpa.admin@saipan.com

June 07, 2000

Mr. Carlos A. Shoda
P.O. Box 500054
Saipan, MP 96950

Dear Mr. Shoda:

On March 30, 2000, the Office of the Public Auditor issued a draft audit report which, among other things, questioned the compensatory time that you claimed during your term as CPA Executive Director from November 1, 1994 to December 31, 1997. It concluded that the 3,302 hours of comp-time which you claimed were (a) not approved in advance; (b) not properly documented; and (c) not supported by written requests filed on a bi-weekly basis, which is in violation of the CNMI Personnel Service System Regulations.

Since the Personnel Affairs Committee has no way of independently determining the veracity of the total number of comp-time hours which you claimed during your tenure a few years ago, the Committee has decided that it is best for you to directly present your position to the Public Auditor regarding the audit finding and conclusion relating to your comp-time hours. Only you alone know the actual days and hours that you worked overtime during your tenure, for purposes of verifying the comp-time which you claimed.

For your reference and review, I am enclosing a copy of the March 30, 2000 draft audit report and the May 12, 2000 response filed by the Commonwealth Ports Authority.

Sincerely,

COMMONWEALTH PORTS AUTHORITY

A handwritten signature in black ink, appearing to read "Fidel M. Manglona".

FIDEL M. MANGLONA
Chairman, Personnel Affairs Committee

Enclosure

Cc: Executive Director
Chairman, Board of Directors
Legal Counsel

SAIPAN INTERNATIONAL AIRPORT / SEAPORT
P.O. Box 501055, Saipan MP 96950-1055

ROTA INTERNATIONAL AIRPORT / SEAPORT
P.O. Box 561, Rota MP 96951

WEST TINIAN AIRPORT / SEAPORT
San Jose Village, Tinian MP 96952

Status of Recommendations

Recommendations	Agency to Act	Status	Agency Response/ Additional Information or Action Required
<p>1. Adopt personnel rules and regulations that are: (a) within the authority granted by the Commonwealth Ports Authority Act and other CNMI laws such as the Compensation Adjustment Act, (b) consistent with and governed by the same principles of fairness and equality as the CNMI Personnel Regulations, thereby eliminating the grant to FLSA exempt (executive, administrative and professional) officials and employees to earn comptime, and the grant to six designated officials of 14 annual leave hours per payperiod, or 360 hours per year.</p>	<p>CPA</p>	<p>Open</p>	<p>In his letter response dated May 12, 2000, the CPA Board Chairman disagreed with recommendation 1. He believed that CPA is not required or obliged to adopt rules and regulations similar or identical to the CNMII Personnel Regulations. However, CPA intends to reconsider its present policy and undertake a comprehensive review of its comptime policy and formulate a revised policy that would address CPA's needs, observe FLSA guidelines and be fiscally responsible.</p> <p>He also stated that CPA's system of compensation is generally commensurate with the rest of the Commonwealth government. He further said that granting of 14 hours annual leave per payperiod to designated officials is a matter of personnel policy. He stated, however, that the CPA Board will re-examine the concern raised by OPA and determine whether its annual leave policy should be revised or readjusted.</p> <p><i>Further Action Needed:</i></p> <p>Provide OPA with revised personnel policy removing provisions allowing FLSA-exempt employees to earn comptime, and also reconsider and rescind its policy of granting 14 hours annual leave to six designated officials.</p>
<p>2. Establish necessary control procedures for approval and documentation of overtime and comptime.</p>	<p>CPA</p>	<p>Open</p>	<p>The CPA Board Chairman stated that a fairly comprehensive set of personnel rules with respect to applications for comptime, the basis for justification, documentation and approval will be considered in a comprehensive review of its comptime policy.</p> <p><i>Further Action Needed</i></p> <p>Provide OPA with new promulgated comptime policies implementing the recommendation.</p>
<p>3. Comply with the Administrative Procedure Act by publishing the CPA Personnel Regulations in the Commonwealth Register.</p>	<p>CPA</p>	<p>Open</p>	<p>The CPA Board Chairman stated that CPA intends to later publish its Personnel Manual in the Commonwealth Register in accordance with the CNMI Administrative Procedure Act.</p> <p><i>Further Action Needed</i></p> <p>Provide OPA with evidence that the recommendation has been implemented.</p>

Appendix E
Page 2 of 4

Status of Recommendations

Recommendations	Agency to Act	Status	Agency Response/ Additional Information or Action Required
<p>4. Adopt personnel rules and regulations that are in compliance with the Retirement Fund Act, thereby repealing the regulation that allows conversion of unused comptime hours to accumulated sick leave for certain officials.</p>	<p>CPA</p>	<p>Open</p>	<p>The CPA Board Chairman agreed to rescind CPA’s policy of converting comptime to sick leave since the Fund already considers comptime as part of a member’s credited service.</p> <p><i>Further Action Needed</i></p> <p>Provide OPA with its new policy eliminating the conversion of comptime to sick leave.</p>
<p>5. Instruct the CPA Accounting Department to stop the practice of making advance payments of unused annual leave and salary, and comply with the provision in the employment contracts that payments will be made upon contract expiration. In the case of retiring employees not covered by employment contracts, payment should be made on the next payday following the termination of employment or on payroll due dates.</p>	<p>CPA</p>	<p>Open</p>	<p>CPA believed that making advance payments is neither illegal nor improper. Nonetheless, CPA intends to include this issue in its review of the various audit issues raised, and will notify OPA of its decision on the matter.</p> <p><i>Further Action Needed</i></p> <p>The CPA Board Chairman should reconsider his position and implement the recommendation.</p>
<p>6. Request the NMI Retirement Fund to (a) adjust the pension amount of the former CPA Executive Director based on the average annual salary and creditable years of service per audit, (b) discontinue pension payments to the former CPA Security Chief who is not qualified to receive early retirement benefits, and (c) recover improper payments of retirement benefits to the two former CPA officials in accordance with the NMIRF Act.</p>	<p>CPA</p>	<p>Open</p>	<p>On May 25, 2000, CPA conducted a hearing thru its Personnel Affairs Committee. In its written decision, the Committee stated that the 1,800 hours of comptime claimed by the former Security Chief had a factual basis and were justified, and therefore reaffirmed its decision and allowed it to stand. Also, on, June 17, 2000, the Committee wrote a letter to the former Executive Director about OPA’s findings and conclusion on the comptime he claimed during his employment at CPA. The Committee added that it had no way to independently determine the veracity of the total number of comptime hours claimed by the former Executive Director, and advised him to present his position to OPA regarding the comptime hours claimed.</p> <p><i>Further Action Needed</i></p> <p>The CPA Board Chairman should reconsider his decision on the comptime claimed by the former CPA Security Chief and implement the recommendation.</p>

Status of Recommendations

Recommendations	Agency to Act	Status	Agency Response/ Additional Information or Action Required
<p>7. The Fund Administrator should instruct his staff to recalculate and adjust the pension benefits payable to the former CPA Executive Director, and discontinue pension payments to the former CPA Security Chief.</p>	<p>NMI Retirement Fund</p>	<p>Closed</p>	<p>The Fund sent a letter to the former CPA Executive Director dated April 14, 2000, informing him that the Fund would adjust his retirement benefits effective April 30, 2000. A separate letter to the former CPA Security Chief dated April 13, 2000, advised him that his retirement benefits would cease immediately. The Fund adjusted the amount of the pension benefit of the former Executive Director effective June 15, 2000, while the former Security Chief's benefit ended on April 30, 2000.</p>
<p>8. Instruct his staff to recalculate and adjust the pension benefits of all other fund members by disregarding overtime and comptime hours that were considered as additional credited service.</p>	<p>NMI Retirement Fund</p>	<p>Open</p>	<p>The Fund believed that action to correct or adjust the retirement benefits of all other fund members (whose overtime and comptime were included in the computation of their retirement benefits as part of credited service) warrants an official legal opinion from the Attorney General's Office. In his memorandum dated May 1, 2000, the Fund Administrator asked the Manager of the Fund's Records and Statistics Section to identify those fund members so that corrective action can be taken once they receive the official legal opinion from the Attorney General's Office.</p> <p><i>Further Action Needed</i></p> <p>Provide OPA evidence that the recommendation has been implemented.</p>
<p>9. Recover improper payments to the two former CPA officials totaling \$126,730.06, and also from all other fund members who have been overpaid by including overtime and comptime in the computation of their retirement annuity. If any problems exist in recovering overpayments, refer the matter to the Attorney General for legal action.</p>	<p>NMI Retirement Fund</p>	<p>Open</p>	<p>On May 15, 2000, the Fund began withholding 50% of the former CPA Executive Director's semi-monthly pension. However, the Retirement Fund believed that at that time it would be very hard to pursue recovery from the former Security Chief until such time as he become employed again. Also, the Retirement Fund had not yet taken any action to recover improper payments from all other fund members pending receipt of a legal opinion from the Attorney General.</p> <p><i>Further Action Needed</i></p> <p>Provide OPA evidence of a written settlement plan with the former CPA Security Chief requiring to repay the Retirement Fund as soon as he is again employed.</p>

Appendix E
Page 4 of 4

Status of Recommendations

Recommendations	Agency to Act	Status	Agency Response/ Additional Information or Action Required
<p>10. Inform all government agencies how to compute retirement annuities, clearly explaining that overtime and comptime hours may not be considered as part of credited service.</p>	<p>NMI Retirement Fund</p>	<p>Open</p>	<p>In his letter response dated May 2, 2000, the Fund Administrator stated that once he receives a favorable Attorney General’s opinion, he will begin informing all government agencies about the proper computation of retirement annuity, clearly explaining the exclusion of overtime and comptime from credited service.</p> <p><i>Further Action Needed</i></p> <p>Provide OPA evidence that the recommendation has been implemented.</p>

