

GOVERNMENT OF GUAM
RETIREMENT FUND
 STABILITY · SECURITY · REWARDS
BOARD OF TRUSTEES
Regular Meeting
 Friday, May 27, 2011, 12:00 p.m.
 Retirement Fund Conference Room

Eddie Baza Calvo
 Governor

Ray Tenorio
 Lieutenant Governor

Paula M. Blas
 Director

Trustees:

Joe T. San Agustin
 Chairman

Wilfred P. Leon Guerrero, Ed.D.
 Vice-Chairman
 Investment Committee, Chairman

Antolina S. Leon Guerrero
 Secretary

Gerard A. Cruz
 Treasurer
 Audit & Operations Committee,
 Chairman

George A. Santos
 Members' & Benefits Committee,
 Chairman

Katherine T.E. Taitano
 Trustee

Wilfred G. Aflague
 Trustee

MINUTES

DEFINED BENEFITS

I. ATTENDANCE, QUORUM, AND CALL TO ORDER

After determining a quorum was present, the Retirement Fund Board of Trustees Regular Meeting for the Defined Benefits Plan was called to order at 12:54 p.m. Friday, May 27, 2011, in the Retirement Fund Conference Room. Chairman Joe T. San Agustin officiated.

Board of Trustees Present:

- Joe T. San Agustin, Chairman
- Wilfred P. Leon Guerrero, Vice-Chairman
- Antolina S. Leon Guerrero, Secretary
- Gerard A. Cruz, Treasurer
- Wilfred G. Aflague, Trustee (3:15 p.m.)
- George A. Santos, Trustee
- Katherine T.E. Taitano, Trustee

Staff Present:

- Paula Blas, Director
- Diana Bernardo, Controller
- Rosalia Bordallo, General Accounting Supervisor
- Jackie Blas, Recording Secretary
- Alice Taijeron & Kent Morris, Great-West Retirement Services
- Kenneth Dunstan, Benefit Program Administrator
- Lena Sanchez, Benefit Specialist II, Jackie Sablan, Benefit Specialist II

Legal Counsel Present:

Elyze McDonald Iriarte (1:28 p.m.)

Public Present:

Senator Ben Pangelinan, Ricky Hernandez, Office of Finance and Budget
 Attorney Ricardo Bordallo, Ed Benavente

II. REVIEW AND APPROVAL OF BOARD MINUTES

A. April 29, 2011 Regular Meeting

On motion of Secretary Antolina Leon Guerrero, seconded by Trustee George Santos, and without objection, the Minutes of April 29, 2011 Regular Meeting were approved, subject to technical corrections. Motion unanimously passed.

III. CORRESPONDENCE

None

IV. INFORMATIONAL ITEMS

None

V. DIRECTOR'S REPORT - EXECUTIVE SUMMARY

1. *Candelaria Rios, et al. vs. Joseph Ada, et al. (Special Proceeding Case No. SP206-93)* –

Director Paula Blas stated that on March 14, 2011, the Guam Economic Development Authority (GEDA) issued a Request for Proposal (RFP) requesting for proposals to provide a loan for approximately \$20 Million for the purpose of paying outstanding Certificates of Claims issued to COLA Awardees. The RFP closed on March 29, 2011. As of April 18, 2011, there were no responses to the RFP. Director Blas further stated that as of April 28, 2011, in accordance with Public Law 30-101, the Retirement Fund processed checks for retirees who initially opted out and were not covered by the COLA settlement. No additional funding has been made available for the outstanding principal and interest. Vice-Chairman Wilfred Leon Guerrero asked how many retirees are owed. Director Blas replied, "Approximately 2,000 retirees." Treasurer Gerard Cruz asked who is owed principal. Director Blas replied, "Deceased awardees." Vice-Chairman Leon Guerrero asked whether the COLA Certificates are still earning interest. Director Blas stated that interest continues to accrue at 7%. Senator Ben Pangelinan informed the Board that there is \$1.3 Million reimbursed by the Port Authority of Guam that is still at the Department of Administration (DOA) and available for the Lola COLA.

2. *Public Law 28-38: Interest Only Payments* – Director Blas stated that monthly interest payments for the Department of Education (DOE) and Guam Memorial Hospital Authority (GMHA) due on May 10, 2011 were paid. The Retirement Fund continues to process retirement applications for DOE. GMHA retirement applications will be suspended until GMHA is current with their employee and employer contributions.

3. *Guam Memorial Hospital Authority (GMHA) Outstanding Contributions* – Director Blas stated that Public Law 30-200 authorized GMHA to enter into revolving loan funds and direct loans for up to \$25 Million. GEDA's RFP for GMHA loans closed on December 14, 2010. As of February 16, 2011, GMHA received loan proceeds of \$12 Million from Bank of Guam. The Retirement Fund has not received any of these loan proceeds for outstanding retirement contributions. Director Blas stated that on January 25, 2011, the Retirement Fund filed an Application for Hearing on Petition for Writ of Mandamus. The hearing was held on March 11, 2011. At that hearing, GMHA presented their motion and arguments before Judge Vernon Perez. As of April 26, 2011, Judge Perez has not rendered his decision. Director Blas stated that GMHA is behind eleven pay periods. The total amount due is \$6.8 Million. Senator Pangelinan inquired about the \$6.8 Million. Director Blas stated that it is GMHA's

current outstanding balance. Treasurer Cruz asked how much longer Judge Perez has to render his decision. Director Blas replied, "Thirty days more."

4. ***Bernstein Litowitz Berger and Grossmann (BLGB)*** – Director Blas stated that BLBG's Litigation Status Report dated May 24, 2011 on the following lawsuits is provided for the Board's information:

- **Lehman Brothers** – Director Blas stated that BLBG is waiting for the Court's decision on the motion to dismiss.
- **Wells Fargo** – Director Blas stated that the Court scheduled a jury trial for August 27, 2012. Treasurer Cruz stated that he was subpoenaed by the attorneys for Wells Fargo for a deposition on behalf of the Retirement Fund. Treasurer Cruz stated that he was asked a lot of questions about the details of the case. The Retirement Fund is one of four lead plaintiffs.
- **Genzyme Corporation** – Director Blas stated that BLBG is waiting for the Court's decision on the motion to dismiss.
- **Countrywide** – Director Blas stated that the Court issued an order placing an indefinite continuance on the final approval hearing date. BLBG believes this is likely related to ongoing negotiations between all parties regarding the requests for exclusions.
- **AXA Rosenberg** – Director Blas stated that the complaint was filed on February 3, 2011.

5. ***Legislative Bills:***

- **Bill 156-31 (COR) – Appropriates \$9.8 Million Reimbursed from Guam Waterworks Authority to Government of Guam for the Payment of Tax Refunds for 2009 and Prior and to Pay for Interest and Principal for Cost of Living Allowances** – Director Blas stated that Bill 156-31 will authorize 50% of the reimbursement for tax refunds and the remaining 50% of the reimbursement for interest and principal for the COLA. The public hearing was held on April 27, 2011. The passage of Bill 156-31 failed.
- **Bill 184-31, Section 3 – Fiscal Year 2011 Supplemental Appropriations** – Director Blas stated that Bill 184-31 declared an overpayment of up to \$18.1 Million in interest payments by the General Fund to the Retirement Fund. Bill 184-31 proposes to offset an overpayment of \$15.4 Million from future government retirement contributions and would suspend remitting government retirement contributions of departments and agencies until the \$15.4 Million has been realized. The \$15.4 Million would be appropriated to cover the costs of the GMHA current retirement contributions, and the Medical/Dental/Life Insurance Premiums for retirees and survivors. Director Blas stated that the Retirement Fund provided a position statement in opposition to the contention that there was an overpayment and requested for the deletion of Section 3 of Bill 184-31. As a result of the Retirement Fund's opposition, the Administration met with Retirement Fund in order to reach a viable solution that would be submitted to the Legislature. Director Blas stated that in consultation with Milliman, Inc., the Retirement Fund's Actuary, projected contribution rates for longer amortization periods were provided for "Plus 5" and "Plus 10" years effective June 1, 2011. The Retirement Fund agreed to allow for a temporary reduction in the government's contribution rate effective June 1, 2011 to September 30, 2013 and to add the GMHA arrears for current Defined Benefit (DB) and Defined Contribution (DC) Unfunded Contributions to the "interest-only" balance. In accordance with Public Law 28-38, as amended by Public Law 30-196, interest would be calculated on GMHA's total outstanding balance of approximately \$12 Million. DC contributions in arrears for the current fiscal year will be paid in full. Conditions of the agreement are outlined in a letter to the Director of DOA.

Chairman San Agustin stated that he would like to reaffirm the Board's Position Statement regarding Bill 184-31.

Vice-Chairman Wilfred Leon Guerrero, seconded by Secretary Antolina Leon Guerrero, moved to affirm the Board of Trustees' Position Statement on Bill 184-31. Without objection, the motion unanimously passed.

Chairman San Agustin stated that the meeting with the Governor's Office resulted in a solution, but disagreed upon the source of funding. Chairman San Agustin stated that the Board of Trustees has a fiduciary responsibility to the members of the Retirement Fund. Chairman San Agustin stated that interest will be calculated on the total amount. There is no amendment to the conditions to retire. Only the amount is added on. Chairman San Agustin stated that the Board will support a temporary decrease in the contribution rate from 27.46% to 21.44% for the remainder of the Fiscal Year. Vice-Chairman Leon Guerrero asked whether the Board is liable for GMH's non-payment. Director Blas stated that, according to the Department of Labor, the employee has to be the one to file a complaint. Director Blas stated that a complaint has been filed in the Superior Court. Chairman San Agustin stated that the complaint should have been filed in the Federal Court.

Chairman San Agustin stated that the recommended rate is to provide savings with the condition to meet the actuarial rate of 7%. Senator Pangelinan suggested stretching it to ten years and leaving it at that. Senator Pangelinan stated that he is concerned that the DC Plan is supposed to be a Hybrid Plan. Chairman San Agustin stated that the shortfall is in the General Fund, but it applies to all departments. Chairman San Agustin stated that the 6% should not apply to the autonomous agencies. Chairman San Agustin reiterated that the Retirement Fund is not recognizing that there is a \$15 Million overpayment.

Chairman San Agustin stated that the two factors are the Security Ratio and the Unfunded Liability. Secretary Antolina Leon Guerrero stated that the actuary will provide the numbers to keep the Retirement Fund on track. Chairman San Agustin stated that the concept is to extend the amortization period. Vice-Chairman Leon Guerrero stated that this problem with GMHA will never be resolved. Maybe GMHA should create their retirement fund.

Senator Pangelinan stated that he believes the Governor will accept this proposal. Director Blas stated that if the Governor accepts the proposal, then we could address whether to apply it to all agencies or just to GMHA. Trustee Santos stated that he recommends approving the amortization for the remainder of Fiscal Year 2011 only with the exemption of the autonomous agencies.

Trustee George Santos, seconded by Treasurer Gerard Cruz, moved to support the proposal for amortization for the remainder of Fiscal Year 2011 only and to exempt the autonomous agencies, subject to clarification on Bill 145. Without objection, the motion unanimously passed.

Financial Reports

1. Contributions – Director Blas stated that as of May 24, 2011, all agencies are current with their Fiscal Year 2011 employee and employer contributions with the exception of GMHA.

2. Financial Statements – Director Blas stated that the books for the month ending April 2011 were closed on May 19, 2011.

3. *Fiscal Year 2011 Retirees' Supplemental Benefits* – Director Blas stated that the supplemental benefits for retirees and survivors for the month of May 2011 have been paid.

4. *Fiscal Year 2011 Medicare Reimbursements* – Director Blas stated that the Retirement Fund received the May 2011 allotment from the General Fund and payments were processed accordingly.

VI. LEGAL COUNSEL'S REPORT

No report was made at this time.

VII. TREASURER'S REPORT OF FINANCIAL STATUS

Treasurer Cruz stated that the Treasurer's Report is provided, at this meeting. It covers the Retirement Fund's Statement of Plan Assets (unaudited) and Prior Year Receivables for both the Defined Benefit (DB) Plan and the Defined Contribution (DC) Plan for the month ended April 30, 2011.

Treasurer Gerard Cruz, seconded by Secretary Antolina Leon Guerrero, moved to approve the drawdown authorization of \$7 Million for the remainder of the year. Without objection, the motion passed.

VIII. STANDING COMMITTEE REPORTS

A. Members and Benefits Committee

Trustee George Santos presented his Committee's May 2011 report to the Board of Trustees.

Trustee George Santos, seconded by Secretary Antolina Leon Guerrero, moved to approve the recommendation of the Members and Benefits Committee contained on Pages 4 through 8, during their meeting of May 11, 2011 and subsequent meetings thereafter. Without objection, the motion unanimously passed.

DISABILITY CASE NO. 10-007

Chairman San Agustin indicated that Disability Case No. 10-007 was entertained at the April 29, 2011 Board Meeting. Only four Board Members were present at that meeting which requires all four votes to pass a motion. There was one objection to the motion made and the motion failed.

Secretary Leon Guerrero stated that this 54 year old Executive Director of the Guam Ancestral Land Commission applied for Disability Retirement on July 8, 2010. The applicant's symptoms were of episodes of dizziness (vertigo). The applicant was assessed by Dr. Vincent Duenas, Dr. Patrick Santos, Dr. Fred Schroeder, and Dr. Doris Lim.

Legal Counsel Elyze McDonald Iriarte reads out loud the definition of Total and Permanent Disability: *"One which results from some impairment of body or mind which can be expected to result in death, or can be expected to last for a continuous period of not less than twelve (12) months. The impairment shall be one that substantially precludes a person from performing with reasonable regularity the substantial and material parts of any gainful work or occupation that he/she would be*

competent to perform were it not for that impairment and if founded upon condition which render it reasonably certain that it will continue indefinitely.”

Chairman San Agustin informed everyone present at today’s meeting that the disability applicants are referred to by their case numbers. The names of the applicants are not provided or known by the Board of Trustees. Chairman San Agustin stated that if an applicant would like to address the Board, he/she would have to waive his/her rights to the privacy of their medical records and he/she must state his/her name for the record. Chairman San Agustin recognized that there is someone that would like to speak on behalf of the applicant.

Attorney Ricardo Bordallo stated that he will be speaking on behalf of Mr. Ed Benavente. Attorney Bordallo pointed out that the two physicians’ answers on Page 17 of the Report of Medical Evaluation were “Yes.” Attorney Bordallo stated that Dr. Lim and Dr. Santos certified that the applicant is totally and permanently disabled. Chairman San Agustin asked whether the applicant is totally and permanently disabled. Attorney Bordallo replied, “Yes, according to the Physicians’ Certification.” Secretary Leon Guerrero asked the applicant about his day to day activities. The applicant stated that he is usually at home relaxing, takes his medications, and watches TV. Secretary Leon Guerrero asked how often he gets his attack. The applicant stated that he gets it 5-8 times a day. Secretary Leon Guerrero asked whether the applicant is able to take care of himself. The applicant stated that he has family to care for him. Secretary Leon Guerrero asked what work he performed at the Guam Ancestral Land Commission. The applicant stated that he did field inspections and if he has his episodes in the office he would lie down. The applicant stated that he had brain surgery. He has 22 years of government service.

Chairman San Agustin stated that he is bothered about total disability. Attorney Bordallo stated that the statute reads “some impairment” and Page 17 also asks “Does the applicant have some impairment of body or mind that substantially precludes him/her from performing...” Attorney Bordallo noted that the physicians answered “Yes.” Legal Counsel Iriarte stated that it is useful to read the full report and not only Page 17.

Trustee Wilfred Aflague joins the meeting at this time (3:15 p.m.)

Vice-Chairman Leon Guerrero inquired about the applicant’s vertigo attacks. The applicant stated that it is random. Vice-Chairman Leon Guerrero asked whether the applicant drives. The applicant replied, “No.” Treasurer Cruz suggested reconciling the reports without looking at Page 17. The assessment by AMA Guidelines is low. Page 17 has a disconnect with the report. Trustee Wilfred Aflague mentioned that he had his vertigo attack yesterday and also today. Trustee Aflague stated that he sympathizes with the applicant. Treasurer Cruz stated that he would like to consult with the Retirement Fund’s Medical Consultant before making a decision.

Secretary Antolina Leon Guerrero, seconded by Trustee George Santos, moved to deny Disability Retirement for Disability Case No. 10-007, based on the physicians’ findings. Votes as follows: Yes votes – Secretary Antolina Leon Guerrero, Trustee George Santos; No Votes – Treasurer Gerard Cruz, Trustee Katherine Taitano, Vice-Chairman Wilfred Leon Guerrero, Trustee Wilfred Aflague. With four “No” votes, the motion failed.

B. Investment Committee

Vice-Chairman Leon Guerrero reported that the Investment Committee meeting was held on May 27, 2011. The Committee reviewed and approved the Investment Committee Minutes of April 8, 2011 and the March 24, 2011 Due Diligence Meeting Minutes for the Quarter Ended December 31, 2010.

IX. TRAVEL REPORT

**A. Vice-Chairman Wilfred P. Leon Guerrero: IFEBP Investments Institute
April 11-13, 2011, Las Vegas, Nevada**

Chairman San Agustin stated that Vice-Chairman Leon Guerrero's travel report on the IFEBP Investments Institute he attended on April 11-13, 2011 in Las Vegas, Nevada, is submitted for the Board's information.

X. OLD BUSINESS

**A. OPA Report: "Retirement Fund's Unintended Windfall" – Government of Guam
Retirement Fund Position Statement on Bill 184-31**

Chairman San Agustin stated that this item was discussed earlier under the Director's Report.

XI. NEW BUSINESS

None

XII. OPEN DISCUSSION / GENERAL PUBLIC INPUT

None

XIII. ANNOUNCEMENTS

None

XIV. ADJOURNMENT

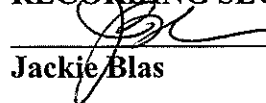
There being no further business before the Board for the Defined Benefits Plan, on motion of Trustee George Santos, seconded by Secretary Antolina Leon Guerrero, and without objection, the meeting was adjourned at 3:36 p.m. Motion unanimously passed.

I hereby certify that the foregoing is a full, true and correct copy of the Minutes of May 27, 2011 Regular Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on June 24, 2011.



ANTOLINA S. LEON GUERRERO, Board Secretary

RECORDING SECRETARY:


Jackie Blas