



GOVERNMENT OF GUAM  
**RETIREMENT FUND**  
 STABILITY · SECURITY · REWARDS

Eddie Baza Calvo  
 Governor

Ray Tenorio  
 Lieutenant Governor

Paula M. Blas  
 Director

**BOARD OF TRUSTEES**  
**Regular Meeting**  
 Friday, September 30, 2011, 12:00 p.m.  
 Retirement Fund Conference Room

**MINUTES**

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

**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 12:46 p.m. Friday, September 30, 2011, in the Retirement Fund Conference Room. Acting Chairman Wilfred P. Leon Guerrero officiated.

**Board of Trustees Present:**

Wilfred P. Leon Guerrero, Vice Chairman  
 Antolina S. Leon Guerrero, Secretary  
 Gerard A. Cruz, Treasurer  
 Wilfred G. Aflague, Trustee  
 George A. Santos, Trustee  
 Katherine T.E. Taitano, Trustee (1:35 p.m.)

**Board of Trustees Absent:**

Joe T. San Agustin, Chairman  
 (Excused)

**Staff Present:**

Paula Blas, Director  
 Diana Bernardo, Controller  
 Rosalia Bordallo, General Accounting Supervisor  
 Jackie Blas, Recording Secretary  
 Alice Taijeron, Great-West Retirement Services

**Legal Counsel Present:**

Elyze McDonald Iriarte, Carlsmith Ball LLP (1:06 p.m.)

## II. REVIEW AND APPROVAL OF BOARD MINUTES

### A. August 26, 2011 Regular Meeting

On motion of Trustee George Santos, seconded by Secretary Antolina Leon Guerrero, and without objection, the Minutes of August 26, 2011 Regular Meeting were approved, subject to technical corrections. Motion unanimously passed.

## III. CORRESPONDENCE

### A. September 14, 2011 Letter from Michael D. Carlson, Retiree Advocate, Regarding Fiscal Year 2012 Healthcare Negotiations

Director Paula Blas stated that Mr. Carlson provided the Board with his report on this year's healthcare negotiations. Rosalia Bordallo, General Accounting Supervisor, made a comment on Mr. Carlson's report regarding retirees over 65 years old and older being prohibited by law from signing up for the HSA 2000 Plan. Ms. Bordallo stated that per Frank Campillo, retirees over 65 years may enroll in the 2000 Plan, but not on the HSA Account. Director Blas stated that she will clarify this. Ms. Bordallo mentioned that the Hay Group is the consultant for the Health Plan. Ms. Bordallo stated that ASC is not the only one that can set up an HSA Account. The Department of Administration (DOA) should have a list of who is offering HSA Accounts.

Acting Chairman Leon Guerrero stated that Mr. Carlson's report indicates that he is making a recommendation. Acting Chairman Leon Guerrero asked whether the Board is going to accept his recommendation. Director Blas stated that alternative options are already being looked at which will be entertained at the next Healthcare Negotiations. Trustee George Santos recommended appointing two Board members, Chairman San Agustin and Vice Chairman Leon Guerrero, to the Committee and to review the options and recommendation. Director Blas is to inform Mr. Carlson.

## 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 Blas stated that \$20 Million is earmarked to pay the outstanding principal and interest for the COLA Awardees. Payment to the COLA Awardees and to the Retirement Fund is expected sometime in March 2012 or no later than June 2012.

Interest will continue to accrue on the outstanding balances for those Awardees who have been identified and located. Interest accrual will cease as of September 30, 2011 for those Awardees/Beneficiaries who are deceased and whose beneficiaries have not been located or identified.

2. *Public Law 28-38: Interest Only Payments* – Director Blas stated that the monthly interest payments for Department of Education (DOE) and Guam Memorial Hospital Authority (GMHA) due on September 10, 2011 were paid. The Retirement Fund continues to process retirement applications for DOE and GMHA. Director Blas stated that in addition to the outstanding balances for DOE and GMHA, the reduced contributions as a result of Public Law 31-74 have been added to this account. Interest continues to be paid on this account.

3. **Guam Memorial Hospital Authority (GMHA) Outstanding Contributions** – Director Blas stated that with the passage of Public Law 31-74, the delinquent contributions of GMHA for the current fiscal year will be added to the outstanding GMHA contributions in the “interest only” payment account (Public Law 28-38). Based on this, the Retirement Fund is now allowing eligible GMHA individuals to retire from the Defined Benefit (DB) Plan. Director Blas stated that as a result of the reduced contribution rate, the GMHA savings realized on the Defined Contribution (DC) government contribution will be applied to the delinquent outstanding employer and employee contributions for DC participants. Director Blas mentioned that, as of September 27, 2011, Judge Vernon Perez has not rendered his decision on the Petition for Writ of Mandamus against GMHA.

Legal Counsel Elyze Iriarte pointed out that judges have 90 days to render their decision on motions filed, and 120 days on petitions. Legal Counsel Iriarte stated that she is looking at the 120 days to be in September 2011. There is no repercussion if the judge fails to issue his decision. Legal Counsel Iriarte stated that there are cases further delayed than the Retirement Fund’s petition. Trustee Wilfred Aflague asked what happens if GMHA does not pay. Legal Counsel Iriarte stated that the Court will be informed that payment was not made. Controller Diana Bernardo asked whether the Retirement Fund will suspend retirement because of that. Director Blas stated that, come Monday, if payment is not received, the Retirement Fund will stop DB and DC retirement of GMHA eligible employees. Director Blas asked for a clarification of whether to suspend DB eligible employees. Legal Counsel Iriarte stated that they are two separate plans. If the DB Plan is fully paid, why cease retirement? Trustee Santos stated that we should cease retirement for both DB and DC. Treasurer Gerard Cruz stated that the law did not specify or distinguish DB or DC not living up to being current. Legal Counsel Iriarte stated that the law says for GMHA to be current. Acting Chairman Leon Guerrero asked what happens if it comes up that they are separate plans. Secretary Leon Guerrero stated that the conditions for GMHA to remain current are spelled out in the law.

**Treasurer Gerard Cruz, seconded by Secretary Antolina Leon Guerrero, moved to suspend retirement process for Guam Memorial Hospital Authority (GMHA) eligible employees if GMHA is not current by September 30, 2011. Without objection, the motion unanimously passed.**

4. **Bernstein Litowitz Berger and Grossmann (BLBG)** – Director Blas stated that BLBG’s Litigation Status Report dated September 26, 2011 on the following lawsuits is provided for the Board’s information. Director Blas stated that these cases are highly confidential and BLBG asked that the cases not be discussed in public forum.

- **Lehman Brothers**
- **Wells Fargo**
- **Genzyme Corporation**
- **Countrywide**
- **AXA Rosenberg**

5. **Legislative Bills/Public Laws:**

- **Public Law 31-76: An Act to Authorize the Insurance of Bonds**
  - ❖ Public Law 31-76 authorizes the Governor to issue one or more series of bonds not to exceed \$343,700,000 to provide for unpaid tax refunds, COLA, the balances in Public Law 28-38, and 2012 health insurance premiums in the following priority:

- (1) \$198,000,000 – unpaid tax refunds plus interest for year 2010 and prior.
- (2) \$ 20,000,000 – unpaid tax refunds for humanitarian purposes (reasons such as: off-island medical treatment, medication, death of a family member, delinquent Guam Power Authority and Guam Waterworks Authority bills, payments owed to Guam Housing and Urban Renewal Authority, and Judiciary. Delinquent loan payments to legally licensed and qualified lenders.
- (3) \$ 20,000,000 – outstanding principal and interest for COLA Awards.
- (4) \$ 26,700,000 – Government of Guam Retirement Fund for the outstanding balance in Public Law 28-38 (Interest Only Account) which includes the outstanding contributions and interest for Department of Education and Guam Memorial Hospital Authority, and the reduced contributions for General Fund agencies from June 1, 2011 to September 30, 2011.
- (5) If no alternate source of funding is available, the bond proceeds may be used for the payment of health insurance premiums for Fiscal Year 2012.

Legal Counsel Iriarte pointed out that there is an inconsistency in the law. The Retirement Fund was given priority on the first list, but not on the second list. There are two places in the law that list the priorities for bond proceeds and the Retirement Fund is in the first part only. Legal Counsel Iriarte added that the University of Guam's (UOG's) Economic Adviser will look at it first. The Legislature still needs to approve it. Director Blas stated that there are steps to go through. Treasurer Cruz asked why it has to go through UOG. Legal Counsel Iriarte stated that UOG will look at the economic impact. Director Blas inquired about action needed. Legal Counsel Iriarte stated that what the Retirement Fund needs to do is to nail down whether the bond is for the Retirement Fund. We need assurance. Director Blas stated that she will communicate with the Guam Economic Development Authority (GEDA) or the Governor's Office. Legal Counsel Iriarte stated that we need their commitment in writing. Director Blas asked whether we need to legally do anything now. Legal Counsel Iriarte stated that we need a commitment in writing from everyone, GEDA and the Governor, that a bond will be floated in March 2012 and no later than June 2012. Director Blas stated that it is contingent on UOG giving the go ahead. Legal Counsel Iriarte stated that if UOG does not sign off, then we need to say GovGuam is in default. Trustee Santos suggested sending a letter to GEDA to confirm the Governor's intentions. Director Blas stated that she will work on getting a commitment letter from GEDA.

*Trustee Katherine Taitano joins the meeting at this time (1:35 p.m.)*

- **Public Law 31-77: Fiscal Year 2012 Executive Budget (Effective October 1, 2011)**
  - ❖ Provides appropriations for the following:
    - Supplemental Annuities
    - Medicare Premium (Part B) Reimbursement
    - Retirees' Medical and Dental (MD) Insurance Premiums
    - Retiree Life (L) Insurance Subsidy
    - Governor/Lieutenant Governor Annuities and MDL Insurance Premiums
    - Judges Annuities and MDL Insurance Premiums
    - Fiscal Year 2012 Annual COLA
  - ❖ The retirement contribution rate is statutorily set at 28.30%.
  - ❖ The surviving spouse annuity has been increased from 50% to 60%.

- ❖ The minor child(ren) annuity has been increased from \$90.00 per payday to \$120.00 per payday for a monthly annuity of \$240.00. Minor child(ren) annuities are limited to five (5) children.

Acting Chairman Leon Guerrero inquired about the previous contribution rate. Director Blas stated that it was 27.46%. Acting Chairman Leon Guerrero asked what the increase is. Director Blas replied, “.84%.” Trustee Santos asked what the actuarial rate is. Director Blas replied “30.09%.”

Acting Chairman Leon Guerrero asked whether the bill regarding the increase of benefits passed. Director Blas replied, “Yes, it is part of the Budget Act.” Acting Chairman Leon Guerrero asked whether it is still being discussed. Secretary Antolina Leon Guerrero stated that it is one of the benefits being discussed in the Hybrid Plan. Director Blas stated that we are trying to find out what the costs impact would be for the Hybrid Plan and the individual new benefits. Secretary Leon Guerrero stated that these are new benefits under the DB Plan that require funding and the Legislature has not identified funding for the increase of benefits. By court order, we have to make sure that there is funding. We need to explore options to make sure these benefits have a funding source identified. Acting Chairman Leon Guerrero asked whether Legal Counsel is aware of this issue. Legal Counsel Iriarte stated that she only became aware of this when it became law. Acting Chairman Leon Guerrero asked whether Legal Counsel is prepared to discuss what the Board needs to do. Treasurer Cruz asked Legal Counsel what is the Board compelled to do. Secretary Leon Guerrero stated that the Board should look at options to secure funding. Director Blas stated that we will pursue the options to make sure that this particular benefit is funded whether it be securing the additional funding or be in an increase in the contribution rate.

Director Blas stated that further discussion on this should involve Chairman San Agustin. Acting Chairman Leon Guerrero agreed that it would be good to have the Chairman present when discussing this matter. Treasurer Cruz stated that if the Board needs to do something, we need to make a decision on what we need to do as a Board. Legal Counsel Iriarte stated to look at options available to support the new requirement and to be prepared on seeing how to effectuate it and finding the source of funding. Treasurer Cruz inquired about the long term costs. Director Blas stated that she asked Milliman to provide a cost analysis. Trustee Santos stated that he is concerned that today is September 30 and tomorrow is October 1st so the Board needs to take a position today especially since there is a movement to effectuate this without a specified funding source. Acting Chairman Leon Guerrero stated that the Board is waiting for the costs analysis from Milliman. Trustee Santos stated that if this is implemented it is harder to take it back. Legal Counsel Iriarte stated that an option could be halting or challenging implementation until it is clearly funded. Secretary Leon Guerrero stated that she would rather do something like that than to start it and then find out they can't fund it and then to have to tell the survivors that we have to take it back. Treasurer Cruz asked how soon could we get the costs analysis from Milliman. Controller Bernardo stated that it would be sometime next week. Trustee Santos stated that staff is already revving up to start making payments and if they are not given direction, they will cut the checks. Secretary Leon Guerrero stated that if we don't cut the checks until we get the funding, we could retroactively pay benefits back to October 1. Director Blas stated that we want to fully implement this on October 31, 2011 and then retro it back to October 1, 2011. Director Blas stated that staff is moving quickly to implement this by October 15, but with the health insurance open enrollment and everything else she is not sure whether staff could meet the October 15, 2011 timeline. Controller Bernardo stated that she mentioned to Director Blas that it is not as simple as adding the 10%, since some survivors were placed on payroll before 1980, information as to what their

initial annuity was, is not in the system. Controller Bernardo stated that in as much as they would like to process this by October 15, it is not likely that would be the case. Controller Bernardo stated that if the Board has a concern about it, the best thing to do would be to hold off as it would be easier to process a retroactive payment.

**Treasurer Gerard Cruz, seconded by Secretary Antolina Leon Guerrero, moved to hold off on the implementation of the increase in the survivor annuity and minor child stipend until a funding source has been identified. Without objection, the motion unanimously passed.**

- **Proposed Bill – Disabled Children**

- ❖ Senator Aline Yamashita is proposing a bill that would allow retirees who have incompetent dependents the choice to leave behind survivor benefits to the family member of their choice.
- ❖ A copy of the Retirement Fund's Legal Counsel's comments on the draft bill as written is provided.
- ❖ A copy of the Retirement Fund's actuary's analysis of the impact associated with the new benefits is provided.

Director Blas stated that the draft bill as written has a lot of issues. Acting Chairman Leon Guerrero asked whether the Retirement Fund is in communication with Senator Yamashita. Director Blas replied, "No." Acting Chairman Leon Guerrero suggested having the Director meet with the Senator. Director Blas stated that she will schedule a meeting with Senator Yamashita.

**Financial Reports**

1. ***Contributions*** – Director Blas stated that as of September 27, 2011, all agencies are current with their Fiscal Year 2011 employee and employer contributions.

2. ***Financial Statements*** – Director Blas stated that the books for the month ending August 2011 will be closed on Monday, October 3, 2011.

3. ***Fiscal Year 2011 Retirees' Supplemental Benefits*** – Director Blas stated that the supplemental benefits for retirees and survivors for the month of September 2011 will be paid by the end of the month.

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

**VI. LEGAL COUNSEL'S REPORT**

Director Blas stated that the Retirement Fund's Legal Counsel provided an update, for the Board's information, on the status of current litigation involving the Retirement Fund. Legal Counsel Elyze Iriarte reported on the following:

- **Jane M. Story vs. Government of Guam Retirement Fund** – Legal Counsel Iriarte stated that the Retirement Fund is still waiting for an assignment of a judge to hear the case.

- **Luis Reyes vs. Department of Education (DOE)** – Legal Counsel Iriarte stated that Mr. Reyes has filed a motion with the Court for an injunction against the Retirement Fund’s intended action, and the Retirement Fund filed its Opposition on September 21, 2011. The Motion will be heard by Judge Michael Bordallo on October 13, 2011.
- **Government of Guam Retirement Fund vs. Guam Memorial Hospital Authority (GMHA)** – Legal Counsel Iriarte stated that the Court has not issued a decision on the Retirement Fund’s Petition for a Writ of Mandamus. Even though the Retirement Fund signed the Health Insurance Bailout Agreement, it has not dismissed the action against GMHA. Part of the Bailout Agreement requires GMHA to remit certain sums by September 30, 2011. If GMHA fails to make those payments, the Retirement Fund will consider the Agreement breached and will press the Court for a ruling on its Petition.
- **Perez vs. Guam Memorial Hospital Authority (GMHA)** – Legal Counsel Iriarte stated that GMHA has not been served with the Complaint filed by GMHA employees.
- **Bautista vs. Perez** – Legal Counsel Iriarte stated that Plaintiff Joseph Guthrie has submitted a settlement offer to the Retirement Fund.

## **VII. TREASURER’S REPORT OF FINANCIAL STATUS**

### **A. Fiscal Year 2012 Proposed Budget**

Treasurer Cruz reported that the proposed FY2012 Operating Budget of \$5.336 Million represents an increase of \$52,333 or 1.0% from the Retirement Fund’s FY2011 budget.

Treasurer Cruz stated that there is an operating system upgrade on the AS400 Equipment. The AS400 Equipment Upgrade for FY2012 is \$360,000. Director Blas stated that the AS400 has reached its current capacity. IBM will replace the AS400. Acting Chairman Leon Guerrero suggested staggering purchases of computers. Trustee Katherine Taitano asked whether this includes everything. Director Blas stated that it is the software/hardware upgrade.

Treasurer Cruz stated that the Building Property Improvements for FY2012 is \$462,000. Director Blas stated that contractors will be installing a new electrical box and air conditioners. There will be water blasting of the roof and painting of the building.

**Treasurer Gerard Cruz, seconded by Secretary Antolina Leon Guerrero, moved to approve the Fiscal Year 2012 Budget. Without objection, the motion unanimously passed.**

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 DB Plan and the DC Plan for the month ended August 31, 2011. Treasurer Cruz stated that the drawdown schedule is also provided. Treasurer Cruz stated that he is requesting authorization for a principal drawdown of \$19 Million for the next six months.

**Treasurer Gerard Cruz, seconded by Trustee George Santos, moved to approve the principal drawdown of \$19 Million for the next six months. Without objection, the motion passed.**

## VIII. STANDING COMMITTEE REPORTS

### A. Members and Benefits Committee

Trustee Santos presented his Committee's September 2011 report to the Board of Trustees. Controller Bernardo stated that this report includes the annuity worksheet of Martin J. Dugan relative to a child stipend which should be excluded. Director Blas stated that the interpretation of the minor child stipend of a child over 18 after a retiree passes away is entitled to child stipend up to the age of 24 years old if the child is enrolled in college. Director Blas stated that the definition is the child must be under 18 years old and in school or 18 and still in high school at the time of death of the retiree. Director Blas stated that the interpretation when the law first passed was how it was implemented. Director Blas stated that there are 6-7 adults impacted. Controller Bernardo stated that the Dugan child is not eligible since the child was over the age of 18 at the time of the retiree's death. Director Blas stated that Legal Counsel has indicated eligibility must be established first.

**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 15, including the attached Annuity Worksheets, excluding Martin J. Dugan's Annuity Worksheet for Child Stipend, based on the Committee's review and findings during their meeting of September 21, 2011 and subsequent meetings thereafter. Without objection, the motion unanimously passed.**

#### **Application for Disabled Adult Survivor Benefits – NORMA JEAN THACKER**

Trustee Santos stated that Ms. Thacker is applying for Disabled Adult Survivor Benefits on her own behalf. Trustee Santos stated that Ms. Thacker is the natural child of deceased retiree Maria Dolores P. Thacker who passed away on August 17, 2011. Trustee Santos stated that based on their review and findings during their meeting of September 21, 2011, the following application for Disabled Adult Survivor Benefits is being presented to the Board for their discussion and disposition.

Trustee Santos stated that Ms. Thacker's doctor affirmed her condition. Trustee Santos stated that Ms. Thacker has been employed in the past. Ms. Thacker was last employed in 1998. Supporting documents indicate that Ms. Thacker qualified for a chauffeur's license. Director Blas stated that the law reads that the child has to have been disabled before age 18 and must be certified by two physicians. Ms. Bordallo suggested requesting for copies of Ms. Thacker's tax returns. Secretary Leon Guerrero stated that she is concerned that Ms. Thacker is capable to support herself. Treasurer Cruz pointed out that Ms. Thacker had Rheumatic Heart Disorder since the age of 2 and also a Cardiac Precondition. Trustee Taitano stated that Ms. Thacker's physician answered "Yes" on her report that "This child is permanently disabled and thereof incapable of work activities that are self-supporting." Trustee Santos agreed to request for a copy of Ms. Thacker's tax return, since records show that Ms. Thacker has been employed in the past and may be capable of supporting herself.

**Treasurer Gerard Cruz, seconded by Secretary Antolina Leon Guerrero, moved to deny the application for Disabled Adult Survivor Benefits for Norma Jean Thacker, contained on Page 16, due to lack of sufficient findings. Votes as follows: Yes Votes – Secretary Antolina Leon Guerrero, Trustee George Santos, Treasurer Gerard Cruz, Trustee Katherine Taitano, Trustee Wilfred Aflague, Acting Chairman Wilfred Leon Guerrero. With six "Yes" votes, the motion passed. Chairman Joe T. San Agustin was absent.**



**B. Investment Committee**

No report was made at this time.

**IX. EXECUTIVE SESSION**

Legal Counsel Elyze Iriarte stated that she is the Attorney for the Board of Trustees and as such, she is recommending that the Board of Trustees conduct an Executive Session to discuss legal issues related to litigation involving the Retirement Fund.

**Trustee George Santos, seconded by Secretary Antolina Leon Guerrero, moved to approve that the Board of Trustees go into Executive Session. Without objection, the motion unanimously passed.**

**EXECUTIVE SESSION: 2:28 P.M.**

**RECONVENED: 2:45 P.M.**

At this time Acting Chairman Leon Guerrero announced that the Board of Trustees has returned to its regular meeting. Legal Counsel Iriarte certified that the only matters discussed during the Executive Session were related to the active litigation involving Odilia Bautista and Joseph A. Guthrie vs. Gerald S.A. Perez, etal. Legal Counsel Iriarte stated that she will be signing a declaration to that effect.

**Treasurer Gerard Cruz, seconded by Secretary Antolina Leon Guerrero, moved to accept the recommendation of the Retirement Fund's Legal Counsel to reject the Settlement Offer made by Joseph Guthrie. Without objection, the motion unanimously passed.**

**X. OLD BUSINESS**

None

**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 Treasurer Gerard Cruz, and without objection, the meeting was adjourned at 2:46p.m. Motion unanimously passed.**

**I hereby certify that the foregoing is a full, true and correct copy of the Minutes of September 30, 2011 Regular Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on October 28 2011.**



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**ANTOLINA S. LEON GUERRERO, Board Secretary**

**RECORDING SECRETARY:**



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**Jackie Blas**