HOUSE OF REPRESENTATIVES

TWENTY-SECOND LEGISLATURE
COMMONWEALTH OF THE NORTHERN MARIANAS COMMONWEALTH LEGISLATURE
P.O. BOX 500586 SAIPAN, MP 96950

DONALD M. MANGLONA
CHAIRPERSON
WAYS AND MEANS COMMITTEE

STANDING COMMITTEE REPORT NO. 22-50
DATE: June 9, 2022
RE: House Bill No. 22-102

The Honorable Edmund S. Villagomez
Speaker of the House of Representatives
Twenty-Second Northern Marianas
Commonwealth Legislature
Capitol Hill
Saipan, MP 96950

Dear Mr. Speaker:

Your Committee on Ways and Means to which House Bill No. 22-102 was referred, entitled:

> "To exempt public corporations and autonomous agencies from paying the one percent (1%) Public Auditor Fee."

begs leave to report as follows:

I. RECOMMENDATION:

After considerable discussion, your Committee recommends that H. B. NO. 22-102 be passed by the House in the form of House Substitute 1.

II. ANALYSIS:

A. Purpose:

The purpose of this Act is to exempt public corporations and autonomous agencies from paying the one percent (1%) Public Auditor Fee.

B. Committee Substitute:

The Committee made the following substitute after meeting with the Commonwealth Ports Authority, CNMI Public Auditor, Secretary of Finance, and the Federal Aviation Administration. The main changes are:

1. To exempt the Commonwealth Ports Authority from paying the one percent (1%) Public Auditor Fee with respect to airport revenues.

2. Findings have been updated to reflect discussions the Committee had and a review of the correspondence with CPA, OPA, FAA and DOF describing the issues and dispute.

3. To provide for a temporary exemption to the 1% fee for airport revenue only while still allowing OPA to charge a reasonable rate for services.

4. To provide a sunset clause of five years from the effective date of this Act to allow the agencies time to get final determination from federal grantors.

C. Committee Findings:

Your Committee finds that the Office of the Public Auditor (OPA) performs a critical function of government, in auditing the receipt, possession and disbursement of public funds and deterring, detecting, and investigating waste, fraud, and abuse of public resources. OPA ensures that public funds are accounted for and controls are in place to protect public resources from misappropriation and misuse. OPA exercises oversight over the entire Commonwealth government, including autonomous agencies and public corporations. OPA requires sufficient funds and independence from political interference in order to perform it constitutional and statutory mandates. Your Committee further finds that in order to remain independent and free from the political interference through the appropriations process, the CNMI created a funding mechanism to ensure OPA's budgetary needs are met. Article III, Section 12 of the

Commonwealth Constitution guarantees OPA an annual budget of at least $500,000. In addition, Title 1, section 7831 of the Commonwealth Code provides that 1% of all locally generated funds appropriated by Commonwealth law as well as for all capital improvement projects, and not less than 1% of the total operations budgets of public corporations or other autonomous agencies of the Commonwealth, shall be deposited in a special account separate from the General Fund, and the funds shall be administered and expended by the Public Auditor without further appropriation.

Your Committee finds that the Commonwealth Ports Authority (CPA) is an autonomous agency that is tasked with managing and operating all the airports and seaports throughout the CNMI. The CPA relies heavily on federal grants as well as revenues generated from fees and rents. Your Committee further recognizes that federal law and federal grant assurances require the use of airport revenues for airport operations, maintenance, and capital improvements, and prohibit the diversion of airport revenues towards non-airport related operations and activities. Cf. 49 U.S.C. § 47107(b); 49 U.S.C. § 47133(a).

Your Committee finds that CPA and federal grantors have expressed concern that the payment of the 1% Public Auditor Fee from CPA's airport revenues may constitute unlawful revenue diversion, and could lead to CPA's placement in non-compliance with federal grant conditions, as well as sanctions as prescribed by 2 CFR § 200.505. Federal grant conditions do, however, permit CPA to pay for OPA services from airport revenues in connection with airport operations, provided that payments are calculated and documented pursuant to an approved cost allocation plan. Cf. Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696 (Feb. 6, 1999).

Your Committee further finds that OPA's position that the 1% Public Auditor Fee is a reasonable and allowable cost for the use of airport revenues, based in part on federal regulations and guidance permitting the allocation of indirect costs, and that there is no final determination from federal grantors that the 1% Public Auditor Fee in fact constitutes unlawful revenue diversion. The Public Auditor stated that in the most recent audited report on internal control and compliance, that is was noted that there have not been any federal findings associated with OPA's 1% fees and in fact, it has never been noted on any prior audit reports.

Your Committee finds that this is not the first legislation introduced to exempt public corporations and autonomous agencies from paying the one percent (1%) Public Auditor Fee and will not be the last. Your Committee further finds that this Act will temporarily exempt the Commonwealth Ports Authority from paying the 1% Public Auditor Fee as to airport revenues only. This exemption is subject to a sunset provision of five years from the effective date of this Act, to afford the agencies time to obtain a clear determination from federal grantors as to whether the payment of the 1% Public Auditor Fee from airport revenues is revenue diversion or not. Seaport revenues shall still be subject to the 1% Public Auditor Fee. In addition, this Act permits the Office of the Public Auditor to charge CPA reasonable rates or fees for audits, enforcement actions, investigations, reviews, inspections, or other work actually conducted by OPA that is related to CPA's airport operations and activities, and to require CPA to pay for said services.

Your Committee finds that this Act is the best approach to help resolve a critical issue without jeopardizing CPA's federal funds or threatening OPA's ability to fulfill its constitutional and legislative mandates. Therefore, your Committee agrees with the intent and purpose of this Act, and recommends that the House pass House Bill No. 22-102 in the form of House Substitute 1.

C. Public Comments/Public Hearing:

Testimonies and Comments submitted during the House Session on Wednesday, May 25th, 2022 on the island of Rota:

1) Pete Reyes, representing the Commonwealth Ports Authority.

Provided a brief history of CPA and OPA concerning the Public Auditor's 1% fee. "Requiring CPA to pay the 1% to OPA or the general fund would violate this assurances and as I alluded to earlier then the people of the CNMI, and I repeat, the people of the CNMI will be faced with the very real possibility that their airports will be closed and unable to operate. Let me mention that and I'm sure the rest of the members understand this that the airport and the seaport are the gateway to economic development on any jurisdiction. That is why passage of this bill is critical."

Documents submitted:

Christopher S. Tenorio, Executive Director, Commonwealth Ports Authority, letter to Mr. Gordon Wong, Airports District Office Manager, Federal Aviation Administration and Mr. Gordon's response dated May 16, 2022.

CPA Executive Director Tenorio: "The Commonwealth Ports Authority (CPA) is seeking guidance from the FAA airport district office and/or regional office on whether airport revenue can be used to make payments under a local Commonwealth of the Northern Mariana Islands (CNMI) statute…."

"Because the CNMI Public Auditor does not provide any auditing services to CPA or any other service to CPA that can be tied to a tangible monetary value, CPA is concerned that payment to the CNMI Public Auditor of approximately $124,000 annually constitutes at least two examples of unlawful revenue diversion: paying in excess of the value of goods or services the airport receives and improper cost allocation. Similarly, because CPA has never received funds from the CNMI General Fund, CPA is concerned that the payments of $1,885,682 owed to the CNMI Public Auditor but remitted to the CNMI General Fund constitutes at least three examples of unlawful

revenue diversion: using airport revenue for general economic development activities, paying in excess of the value of goods or services the airport receives, and improper cost allocation."

Mr. Gordon K. Wong's response: "The 1% fee may be considered revenue diversion. Airport revenue must be used for the operations, maintenance and capital improvements of CPA's airports. Revenue diversion could lead to placing CPA in non-compliance and lead to sanctions are prescribed by 2 CFR § 200.505.

CPA may pay for required services (e.g. audit reviews) but the cost for services must be appropriately calculated and documented for costs only related to CPA. The FAA may request review of the calculations/documentation prior to remittance of any airport revenue. Additionally, the accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984."

Maryann Q. Lizama, Executive Director, CPA, letter dated November 30, 2015 addressed to Mr. Edward Manibusan, CNMI Attorney General, RE: Position and Proposal from Commonwealth Ports Authority on Liability for Fee Due to the Public Auditor Pursuant to 1 CMC § 7831(b).

Edward Manibusan, CNMI Attorney General, letter dated January 26, 2016 responding to Executive Director Lizama's letter RE: Position and Proposal from Commonwealth Ports Authority on Liability for Fee Due to the Public Auditor Pursuant to 1 CMC § 7831(b).

Ashley Kost, Office of the Public Auditor Legal Counsel, letter dated November 21, 2021 to Mr. Robert Torres, CPA Legal Counsel RE: Office of the Public Auditor's response to Commonwealth Ports Authority's proposed Memorandum of Agreement to resolve their liability for fees past due pursuant to 1 CMC § 7831(b).

2) Ms. Charlene Manglona, Rota Ports Manager, Commonwealth Ports Authority

"Good Morning. May name is Charlene Manglona. hority. I am the Rota Ports Manager and I say Rota Ports Manager because I do handle the airport and the seaport. As you guys are aware, Rota is basically very far from Saipan, have very limited resources when it comes to medical as what our Board of Director stated. Right now, FAA is really looking at us. Should FAA close down the Airport, we are left here stranded. I see patients go in and out for referrals. Some very critical where a chopper flies in from Guam. Just early this year, we had our board of director that was medevacked. Imagine if our airport was shut down. How many lives could not be safe because the airport was closed? Not only that. Several months ago, our crane was down. Where does our commodity come in? The airport. So, members, please, I urge you to pass this bill. We are in dire need of these federal funds. And I'll give you guys an example. Just for Rota, because I handle the airport and seaport, our fence was recently completed. If you guys were here, you know, last year after Mankhut, you would have seen our fence propped up with maybe 100 two by fours because Mankhut destroyed it. But Guess what? FAA paid one hundred percent of that project. That project costs nearly $6 million dollars. Now I ask you guys, is the Local Government going

to give us that amount of money to repair our fence? I doubt. Another project that we recently completed was our painting and our marking sign which is required by the airline to see where they land……""

3) Kina B. Peter, CPA, CNMI Public Auditor

She submitted Department and Agency Communication No. 22-57: OPA Comments on HB 22-102 and other documents.

"HB22-102 asserts that OPA's 1% fee would violate federal entitlements for CPA. As to date, there has not been a determination that OPA 1% fee puts CPA or other agencies at a financial risk with their federal grantors. CPA has never voiced the need for an expedited timeline to resolve this issue with OPA as we met with their Comptroller back in March 2022. Additionally, CPA has recorded on its most recent audited financial statements and prior audited statements, OPA's 1% fee without contingencies recognizing the legal requirements, but has continually chosen not to remit payments."

"In conclusion, OPA requests you to consider the potential consequences of waiving this debt and reducing our budget. Furthermore, the CNMI Government has been receiving an unprecedented amount of federal money and the demands for OPA's services have never been higher. We will not be able to adequately meet our mandate of detecting fraud, waste, and abuse of funds if we have to reduce our budget. OPA appreciates the consideration of our comments on H.B. No. 22-102."

Comments submitted during the House Standing Committee Meeting on Ways and Means on Wednesday, June 8, 2022 in the House Chamber:

Invited Guests:

1) Kina B. Peter, CPA, CNMI Public Auditor

"Further, OPA is of the position that the one percent fee is an allowable cost and should not result in the non-compliance with FAA's regulations. FAA federal register Section V Permitted Uses of Airport Revenue, subsection B(3), allows for the allocation of indirect costs. Under FAA policy a portion of the general costs of government, such as the costs of the legislative branch and executive offices may be allocated to the airport as an indirect cost under a cost allocation plan as long as it is not paying a disproportionate share of these costs. I have attached a copy of the FAA policy for your reference. OPA's view is that the one percent fee which averages to approximately $150,000-$200,000 per year, which includes the Seaport Revenue, is not disproportionate to CPA's costs. Further, in the most recent audited report on internal control and compliance, it was noted that there have not been any federal findings associated with OPA's 1% fees. In fact, it has never been noted on any prior audit reports. See attached 2020 report on internal control and compliance for your reference."

- Federal Register, Part II, Department of Transportation, Federal Aviation Administration, Policy and Procedures Concerning the Use of Airport Revenue; Notice.

- Commonwealth Ports Authority. Independent Auditors' Report on Internal Control and on Compliance. Year ended September 30, 2020. Deloitte

- OPA Comments and References. House Ways and Means Committee dated June 6, 2022

2) Christopher S. Tenorio, Executive Director, Commonwealth Ports Authority

"The concern that OPA shouldn't be paid by an agency to conduct an audit of that agency is valid. However, that concern cannot be reconciled with the requirements of CPA's grant assurances. As I previously stated, CPA can only pay for the costs of services actually provided to CPA. Additionally, if being paid for the cost of audit services jeopardizes OPA's integrity, then the creation and implementation of a cost-allocation plan also has the same effect. Despite that, I believe both agencies value flexibility moving forward, so in the substitute bill that I have provided, I've left the door open for OPA to receive the costs of services directly provided to CPA as determined under an acceptable cost allocation plan in accordance with CPA's federal grant assurances and bond indentures."

3) David DLG. Atalig, Secretary, Department of Finance

"As previously stated in our letter to the Senate Fiscal Affairs Committee regarding Senate Bill 22-51, the Department of Finance's position has not changed. The Commonwealth has the responsibility for strict adherence to the laws, statutes, and regulations set forth to protect government resources from misuse. The Commonwealth government operates with a significant volume of federal and state assets and other resources requiring strict internal controls. The Office of the Public Auditor (OPA) is a critical component in ensuring these resources are protected and individuals adhere to these controls set forth to protect public resources. Consequently, we must ensure OPA is able to receive the resources they need for continued operations…."

"Lastly, to allow the Office of the Public Auditor to charge fees for their services will take away their ability to be independent in their audits and reviews of agencies, public corporations and autonomous agencies. Let us keep the Office of the Public Auditor free from the burden of charging or collecting fees to enforce, investigate or review agencies and keep their independence. OPA serves a critical role in our government, and we need to continue to support and ensure it is successful in their mandates and objectives.

With the above reasons, the CNMI Department of Finance does not support H.B. 22-102."

Comments have been attached as part of this committee report.

D. Legislative History:

House Bill No. 22-102 was introduced by Representative Edmund S. Villagomez on May 25, 2022 and was subsequently referred to the House Standing Committee on Ways and Means for disposition.

E. Cost Benefit:

If the Commonwealth Ports Authority (CPA) would pay the Office of the Public Auditor (OPA) their 1% fee, on average, this will amount to $124,000 annually. This amount consists entirely of airport revenue only and does not include revenue generated from CPA's seaport. Over a 5-year period, CPA would be exempt from paying a total of $620,000 to OPA.

III. CONCLUSION:

The Committee is in accord with the intent and purpose of H. B. NO. 22-102 and recommends its passage in the form of House Substitute 1.

Respectfully submitted,

Rep. Donald M. Manglona, Chairperson

Rep. Corina L. Magofna, Vice Chair

Rep. Celina R. Babauta, Member

Rep. Sheila J. Babauta, Member

Rep. Joel C. Camacho, Member

Rep. Vicente C. Camacho, Member

Rep. Richard T. Lizama, Member

Rep. Edwin K. Propst, Member

Rep. Christina M.E. Sablan, Member

Rep. Patrick H. San Nicolas, Member

Rep. Leila H.F.C. Staffler, Member

Rep. Denita K. Yangetmai, Member

Reviewed by:

House Legal Counsel

Attachment: -Mr. Christopher S. Tenorio, Executive Director, Commonwealth Ports Authority, letter to Mr. Gordon Wong, Airports District Office Manager, Federal Aviation Administration RE: Unlawful Revenue Diversion and Mr. Gordon's response dated May 16, 2022.
- Maryann Q. Lizama, Executive Director, CPA, letter dated November 30, 2015 addressed to Mr. Edward Manibusan, CNMI Attorney General, RE: Position and Proposal from Commonwealth Ports Authority on Liability for Fee Due to the Public Auditor Pursuant to 1 CMC § 7831(b).
-Edward Manibusan, CNMI Attorney General, letter dated January 26, 2016 responding to Executive Director Lizama's letter RE: Position and Proposal from Commonwealth Ports Authority on Liability for Fee Due to the Public Auditor Pursuant to 1 CMC § 7831(b).
-Ashley Kost, Office of the Public Auditor Legal Counsel, letter dated November 21, 2021 to Mr. Robert Torres, CPA Legal Counsel RE: Office of the Public Auditor's response to Commonwealth Ports Authority's proposed Memorandum of Agreement to resolve their liability for fees past due pursuant to 1 CMC § 7831(b).
-Kina B. Peter, CPA, CNMI Public Auditor, Department and Agency Communication No. 22-57: OPA Comments on HB 22-102 and other documents.
-Kina B. Peter, CPA, CNMI Public Auditor, letter dated June 6, 2022 RE: House Bill Bo. 22-102.
-OPA Comments and References, House Ways and Means Committee dated June 6, 2022.
-Christopher S. Tenorio, Executive Director, CPA, letter dated June 3, 2022 RE: HB22-102.
-David DLG. Atalig, Secretary, DOF, letter dated May 24, 2022 RE: HB22-102.

COMMONWEALTH PORTS AUTHORITY

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Mr. Gordon Wong
Airports District Office Manager
Federal Aviation Administration
P.O. Box 50244
Honolulu, HI 96850-0001

RE: Unlawful Revenue Diversion

Dear Mr. Gordon Wong,

The Commonwealth Ports Authority (CPA) is seeking guidance from the FAA airport district office and/or regional office on whether airport revenue can be used to make payment under a local Commonwealth of the Northern Mariana Islands (CNMI) statute.

CPA understands that the rules on airport revenue require CPA to use its airport revenue for the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by CPA that are directly and substantially related to the air transportation of passengers or property.

Additionally, CPA understands that allowable costs may include reimbursements to a state or local agency for the costs of services actually received and documented; that CPA may pay for a portion of the general costs of government, provided that CPA allocates such costs to the airport in accordance with an acceptable cost allocation plan; and that the FAA may require special scrutiny of allocated costs to assure that the airport is not paying a disproportionate share.

According to the CNMI Public Auditor, a CNMI statute, 1 CMC § 7831(b), requires CPA to pay to the CNMI Public Auditor an amount not less than one percent of its total operations budget.[1] The purpose of the CNMI Public Auditor is to audit the receipt, possession, and disbursement of public funds by the executive, legislative, and judicial branches of the government, including agencies of local government and instrumentalities of the Commonwealth, such as CPA. Despite this purpose, the CNMI Public Auditor does not provide any auditing services to CPA or any other service to CPA that can be tied to a tangible monetary value. At best, the benefit CPA receives from the CNMI Public Auditor is increased accountability and integrity in public sector organizations. If CPA were to pay the CNMI Public Auditor 1% of its airport total operations budget, which consists entirely of airport revenue, CPA would pay, on average, $124,000 annually.

Additionally, according to the CNMI Public Auditor, past amounts due to the CNMI Public Auditor are owed to the CNMI General Fund, which is controlled by an agency within the

[1] Because this statute was enacted after September 1982, CPA believes that this financial arrangement is not "grandfathered" in under 49 U.S.C. § 47107(b)(2).

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executive branch of the CNMI government. CPA's past due amounts owed to the CNMI General Fund total $1,885,682. CPA has never received funding from the CNMI General Fund.

Because the CNMI Public Auditor does not provide any auditing services to CPA or any other service to CPA that can be tied to a tangible monetary value, CPA is concerned that payment to the CNMI Public Auditor of approximately $124,000 annually constitutes at least two examples of unlawful revenue diversion: paying in excess of the value of goods or services the airport receives and improper cost allocation. Similarly, because CPA has never receive funds from the CNMI General Fund, CPA is concerned that the payment of $1,885,682 owed to the CNMI Public Auditor but remitted to the CNMI General Fund constitutes at least three examples of unlawful revenue diversion: using airport revenue for general economic development activities, paying in excess of the value of goods or services the airport receives, and improper cost allocation.

For the foregoing reasons, CPA is seeking FAA's guidance on whether payment of 1% of its airport operations budget to the CNMI Public Auditor violates the statutes, grant assurances, and policies that outline the permitted and prohibited uses of airport revenue.

Sincerely,

CHRISTOPHER S. TENORIO
Executive Director

Attachments: 1 CMC § 7831
CNMI Public Law No. 9-68

U.S. Department
of Transportation
**Federal Aviation
Administration**

Western-Pacific Region
Honolulu Airports District Office

300 Ala Moana Blvd, Rm. 7-128
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May 16, 2022

Christopher S. Tenorio
Executive Director
Commonwealth Ports Authority
Commonwealth of the Northern Mariana Islands
P.O. Box 501055
Saipan, MP 96950-1055

Dear Mr. Tenorio:

Commonwealth of the Northern Mariana Islands
Office of Public Auditor 1% Fee
Revenue Diversion

We reference your letter transmitted to the Federal Aviation Administration (FAA) on April 6, 2022, regarding the CNMI statute that requires the Commonwealth Ports Authority (CPA) to pay 1% of its total operations budget to the CNMI Public Auditor (PA). You state the purpose of the PA is to audit receipts, possessions, and disbursements of public funds by the executive, legislative, and judicial branches of the government, including local agencies such as CPA.

The 1% fee may be considered revenue diversion. Airport revenue must be used for the operations, maintenance and capital improvements of CPA's airports. Revenue diversion could lead to placing CPA in non-compliance and lead to sanctions as prescribed by 2 CFR § 200.505.

CPA may pay for required services (e.g. audit reviews) but the cost for services must be appropriately calculated and documented for costs only related to CPA. The FAA may request review of the calculations/documentation prior to remittance of any airport revenue. Additionally, the accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

Please contact me at (808) 312-6027 or Gordon.Wong@faa.gov, if you have further questions concerning this matter.

Sincerely,

Gordon K. Wong
Airports District Office Manager

cc: Mark McClardy, FAA Airports Director, Western-Pacific region

COMMONWEALTH PORTS AUTHORITY

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November 30, 2015

Mr. Edward Manibusan
Northern Mariana Islands Attorney General
Office of the Attorney General
Administration Building
P.O. Box 10007
Saipan, MP 96950

RE: Position and Proposal from Commonwealth Ports Authority on Liability for Fee Due to the Public Auditor Pursuant to 1 CMC § 7831(b)

Dear Attorney General Edward Manibusan:

On June 24, 2015, Deloitte & Touche LLC issued for the Commonwealth Ports Authority ("CPA") in accordance with government auditing standards, an independent auditors' report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements of CPA. CPA pays for this yearly audit and submits it to several agencies, including the Office of the Public Auditor ("OPA").

This report revealed an alleged recovery of liability due to OPA, as follows:

> Public Law 9-66 requires public corporations or other autonomous agencies to pay to the Commonwealth Treasurer an amount not less than one percent of total operation budgets, and such funds will be deposited into a special account of the CNMI general fund to be solely used for the operations and activities of the Office of the Public Auditor.
>
> At September 30, 2014 and 2013, OPA recorded amounts due to the CNMI government related to the 1% Public Auditor fee totaling $725,561 and $2,073,592, respectively. This liability increases each fiscal year as mandated by Public Law 9-66 and has accumulated in excess of ten years without payment. Based on the advice from legal counsel, CPA applied the six year statute of limitations against the accumulated liability and recognized a recovery of $1,475,196 during the year ended September 30, 2014.

CPA herein submits its position and proposal with regard to its liability pursuant to 1 CMC § 7831(b), and requests the review and opinion of the Attorney General on the matter.

Legal Standards

1 CMC § 7821 requires OPA to "conduct or supervise all audits required for or sought by a Commonwealth Agency.[1] 1 CMC § 7831(b) requires public corporations or other autonomous agencies, like CPA, to pay to OPA either one percent of its total operations budget from sources other than legislative appropriations, or an amount determined by another formula agreed upon by OPA and the agency, whichever amount is greater.[2]

1 CMC § 7831 is silent as to the purpose of requiring autonomous agencies and public corporations to pay this fee. If a statute is unclear, one must look to the intent of the legislature. *Aguon v. Marianas Pub. Land Corp.*, 2001 MP 4 ¶ 30 (citing *Commonwealth Ports Auth. v. Hakubotan Saipan Enter., Inc.*, 2 NMI 212, 224 (1991) ("In determining legislative intent, the statute must be read as a whole, and not as isolated words contained therein."). Public Law 9-68 is similarly silent as to the purpose of requiring autonomous agencies and public corporations to pay this fee.[3]

Although not specifically stated, common sense would suggest that the purpose of the fee is to fund OPA in order for it to conduct audits of government agencies. In support of that assertion, 1 CMC § 2306 provides that in the event OPA fails to timely conduct an audit, the agency, with the approval of the Governor and OPA and subject to the availability of funds, may enter into a contract with any independent certified public accountant for the purpose of conducting the audit.[4]

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[1] "The office of the Public Auditor shall conduct or supervise all audits required for or sought by a Commonwealth agency." 1 CMC § 7821.

[2] 1 CMC § 7831(b) (in relevant part):

> The executive directors of all public corporations or other autonomous agencies of the Commonwealth which are not funded primarily by legislative appropriations shall pay to the Public Auditor an amount not less than the greater of one percent of its total operations budget from sources other than legislative appropriations or pursuant to any other formula upon which the Public Auditor and the agency may agree.

[3] Public Law 9-68 Section 1(a)-(b):

> (a) Short Title. This Act shall be called the "Public Auditor Amendments Acts of 1994."
> (b) Purpose. It is the purpose of this Act to grant the Office of the Public Auditor greater independence and authority with respect to the executive branch and independent agencies of the Commonwealth Government. This Act also conforms the Commonwealth Auditing Act of 1983, 1 CMC Section 7811, et seq., and other provisions of the Commonwealth law to the recently adopted Constitutional Amendment of Article III, Section 12 (Public Auditor) of the Commonwealth Constitution.

[4] 1 CMC § 2306(b):

> If the Public Auditor fails to schedule an audit so that it can be completed in time to comply with any applicable law or the terms of any loan, grant, financial assistance, or contract, or if the Public Auditor fails to commence, conduct, or complete any audit as required by law, the person or agency concerned may, upon the approval of the Governor and Public Auditor and subject to the availability of funds, enter into a contract with any independent certified public accountant for the purpose of conducting the audit. The audit shall be conducted as closely as possible to the standards adopted by the office of the Public Auditor.

Audits, therefore, statutorily should be paid for by OPA, which is funded by payments by other agencies for which OPA is required to conduct audits.

With this statutory overview in mind, CPA posits its analyses and position on the following issues: 1) the equitability and legality of imposing this fee on CPA going forward; and 2) the equitability and legality of imposing this fee on CPA for amounts due in excess of ten years.

A. Equitability and Legality of Imposing this Fee on CPA Going Forward

CPA's bond indenture requires an audit by an independent auditor. Because of this requirement, CPA already, out of necessity, pays an independent auditor to conduct audits. CPA then submits this report to various agencies for review, including OPA. OPA has received these reports from CPA and publishes them on its website, without dispute or issue. OPA has not ever conducted audits of CPA as required by statute.

While CPA acknowledges the statutory requirement of payment to OPA regardless of whether audits are conducted by OPA and regardless of whether it already pays for its own independent audits, the issue does raise equitable concerns: 1) CPA is already required to pay for an independent audit – it would be duplicative, unnecessary, and wasteful to require CPA to pay OPA for an audit it does not need; and 2) CPA has never audited OPA – why should CPA pay for audits it does not, and has not ever, received?

B. Equitability and Legality of Imposing this Fee on CPA for Amounts Due from the Past Ten Years

OPA has never requested nor demanded this fee payment from CPA and CPA has not paid this amount. Although 1 CMC § 7831(b) does not require OPA to make a demand for payment in order to trigger payment, it brings into question the equitability of requiring CPA to pay for fees OPA has never requested, for audits which OPA has never conducted.

Additionally, the report errs in its claim that Public Law 9-66 imposes an accumulated and increased liability with each fiscal year. First, Public Law 9-66 was repealed and re-enacted by Public Law 9-68. Second, neither Public Law 9-66, Public Law 9-68, nor does the statute itself, impose an increased liability with each year.

Further, 1 CMC § 2306 provides an avenue for CPA to have an audit timely conducted if OPA fails to do so. Although 1 CMC § 2306 contains three requirements (approval of OPA, approval of the Governor, and availability of funds), OPA constructively agreed upon the auditor used by CPA when it accepted reports from CPA from this auditor without question or dispute, and the availability of funds is a non-issue as CPA has always paid for these audits out of its own pocket and has never charged OPA for them. 1 CMC § 2303(a) requires OPA to transmit an annual report to the Governor and the presiding officer of each house of the legislature, which should consist of a financial audit of each agency's fund, whether or not it is appropriated.[5] OPA

failed to conduct audits and then used the reports CPA paid for out of its own pocket and without a demand by CPA to pay, in order for OPA to comply with reporting requirements. It would be inequitable for OPA to then turn around and penalize CPA for taking the initiative to conduct its own audits in light of OPA's failure to do so.

Furthermore, the cost to CPA for paying for its own audits is substantially less than 1% of CPA's operating budget. CPA's operating budget is $13,074,450. Imposing at least 1% just for a single year would be $130,745. What is the basis for imposing such a weighty fee for an audit?

CPA's operating budget is significantly more than other operating budgets of government agencies by department. Yet the statute lumps CPA along with other government agencies in imposing the same amount of liability, failing to take into account the actual cost of the audit and the actual amount of CPA's operating budget. Requiring CPA to pay a significantly higher fee for the same audit OPA does for other government agencies is wholly disproportionate and arbitrary. Also, OPA has never conducted an audit for CPA: imposing fees in excess of ten years would result in a windfall of about $2,000,000.00 to OPA for work that was not done, and would potentially affect CPA's bond indenture. Such a result is unjust and unmerited.

Lastly, a claim for past fees in excess of ten years would be barred by 7 CMC § 2505, which provides for a six-year statute of limitations.[6] CPA has never made a claim for payment pursuant to 1 CMC § 7831(b). Any claim that might be made now for lack of payment in excess of ten years is barred as of approximately four years ago.

Position and Proposal

CPA is required by statute to pay either 1% of its total operations budget or another amount pursuant to a formula agreed upon by OPA and CPA, whichever is greater. From an equitable basis, CPA should not be held liable for the past years in which it did not pay for audits which OPA did not conduct and CPA should not be required to pay such a wholly disproportionate amount in comparison to the actual cost of an audit and in comparison to payments from other

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[5] 1 CMC § 2303(a):

> Not later than June 30 of each year, the Public Auditor shall transmit to the Governor and to the presiding officer of each house of the legislature the annual report for the previous fiscal year required by N.M.I. Const. art. III, § 12. The report shall consist of a financial audit of the General Fund, each trust fund, each other fund of any agency whether or not appropriated, each contract to which any agency is a party, and each grant made or received by any agency. The audit shall cover the receipt, possession, and disbursement of public funds including all liabilities, receivables, and accruals of any agency, all taxes, fees, receipts, and other revenues of any agency, all other financial transactions involving any agency, and any financial statement issued or prepared by any agency. Personal service contracts and prime contracts with employees of any agency.

[6] 7 CMC § 2505:

> All actions other than those covered in 7 CMC §§ 2502, 2503, and 2504 shall be commenced within six years after the cause of action accrues or, in the case of actions brought by or on behalf of the former Saipan Credit Union or its depositors, shareholders, investors, or guarantors on account of their interest therein, within 10 years after the cause of action accrues.

government agencies. From a legal basis, any claim by OPA would be barred by the six-year statute of limitations and any recovery would be limited accordingly.

In the interests of equity, CPA proposes that the 1% requirement should be waived and that CPA and OPA should agree on a formula or amount that is balanced and fair. CPA proposes a rate of .01% of its total operations budget or $1,300.00.

CPA requests your review of this matter and your opinion. Thank you for your just consideration.

Sincerely,

MARYANN Q. LIZAMA
Executive Director

Commonwealth of the Northern Mariana Islands
Office of the Attorney General
2nd Floor Hon. Juan A. Sablan Memorial Bldg.
Caller Box 10007, Capitol Hill
Saipan, MP 96950
www.oagcnmi.net

EDWARD MANIBUSAN
Attorney General

LILLIAN A. TENORIO
Deputy Attorney General

- Board of Directors
- Skgg Lgn
- RTT

January 26, 2016

OAGCPA: 2016-03

RECEIVED
CPA ADMINISTRATION
DATE: 01/27/2016
BY: Christine

Maryann Q. Lizama
Executive Director
Commonwealth Ports Authority
PO Box 501055
Saipan, MP 96950

Re: Position and Proposal from Commonwealth Ports Authority on Liability for Fee Due to the Public Auditor Pursuant to 1 CMC § 7831(b)

Dear Executive Director Lizama:

This letter is in response to your letter of November 30, 2015, in which you assert that because the Commonwealth Ports Authority, a public corporation of the Commonwealth Government, retained an alternate auditor to conduct its audits pursuant to 1 CMC § 2306(b), it would be inequitable to require CPA to pay the full amount of the auditing fee imposed by 1 CMC § 7831(b).

As your letter points out that "CPA acknowledges the statutory requirement of payment to OPA regardless of whether audits are conducted by OPA or pays for its independent audit...," there is also no constitutional, statutory, or regulatory requirement for the Office of the Public Auditor to use the funds it collects from a particular agency to fund an audit of that agency. You suggested an equitable exemption. The Legislature has not enacted an equitable exemption to the auditing fee. Unless it does so, the Office of the Attorney General is unable to read such an exemption into the statute.

Your letter also suggests that claims past the six-year statute of limitations imposed by 7 CMC § 2505 are barred. We do not believe that there is any limitations bar to a subsequent action by OPA or the Commonwealth to compel the payment of the disputed funds. Such an action would essentially compel the performance of CPA's public duty to remit the funds to OPA. We take note of the common law doctrine of *nullum tempus occurrit regi* that would prevent the application of statutes of limitations against the state unless the statute so provides. *See generally Shootman v. Dep't of Transp.*, 926 P.2d 1200, 1202-1207 (Colo. 1996) (providing historical overview of the doctrine). In reviewing 7 CMC § 2505, no such provision was found. As such, we do not believe that action to enforce the 1% statute by OPA and compel CPA to transfer the disputed funds would be barred by the statute of limitations.

Lastly, you request that CPA pay OPA at the rate of 0.01% of its total operations budget, or $1,300.00. OAG does not possess detailed financial information for CPA or for OPA, nor does it have the auditing expertise to determine whether CPA's proposed payments are sufficient to meet OPA's needs. Therefore, it would not be appropriate for OAG to determine whether CPA's proposal is "balanced and fair." However, if CPA and OPA were to determine a mutually acceptable payment rate pursuant to 1 CMC § 7831(b), OAG would not object to the settlement.

Sincerely,

EDWARD MANIBUSAN
Attorney General

cc: Deputy Attorney General
Office of the Public Auditor

Office of the Public Auditor

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Fax: (670) 322-7812

November 21, 2017

VIA EMAIL

Robert Tenorio Torres
Commonwealth Ports Authority Legal Counsel
Plata Drive, Whispering Palms (Chalan Kiya)
P.O. Box 503758
Saipan, MP 96950

Dear Mr. Torres:

RE: Office of the Public Auditor's response to Commonwealth Ports Authority's proposed Memorandum of Agreement to resolve their liability for fees past due pursuant to 1 CMC § 7831(b)

Sorry for the delay in our response. This issue cannot be resolved with a sole agreement between the Commonwealth Ports Authority (CPA) and the Office of the Public Auditor (OPA). OPA could agree to a formula pursuant to 1 CMC § 7831(b), but any agreement would only apply to the current fiscal year. However, past due amounts beyond the current fiscal year are not owed to OPA directly, but instead to the CNMI General Fund because at the end of every fiscal year OPA's excess funds remit to the General Fund. All monies from CPA would be classified as excess funds because the fiscal years in which they were owed have already passed, and should be remitted to the General Fund. Therefore, any settlement for less than the full amount owed by CPA for the 1% should include the Secretary of Finance.

Furthermore, OPA cannot agree to the formula suggested for the current fiscal year in your Memorandum of Understanding (MOU) pursuant to 1 CMC § 7831(b). As stated in your first recital of the MOU, 1 CMC § 7831(b) requires autonomous agencies to pay *either* one percent of its total operations budget from sources other than legislative appropriations, *or* an amount determined by another formula agreed upon by OPA and the agency, *whichever amount is greater*. Therefore, we cannot agree to the .01% suggested in the MOU because the formula is not greater than the standard 1%.

In our research into past due payment of the 1%, we came across only two incidents of resolving past due liabilities, both for the full amounts owed. In 2003, CUC and the Acting Secretary of Finance signed a Memorandum of Agreement (MOA) for CUC to pay their past due 1% to the General Fund, the Executive Branch paid the same amount back to CUC for partial payment of utility service, CUC agreed to pay the Public Auditor their current fiscal year 1%, and the Executive Branch agreed to pay CUC the same amount of the current fiscal year 1% for outstanding utility service amounts owed. Essentially, CUC and the central government offset the outstanding 1% owed to OPA for outstanding utility payments. That MOA was entered for the full amount past due plus full payment for that fiscal year. In 2007, Commonwealth Development Authority (CDA) Board of Directors approved to pay the 1% past due amounts to the CNMI Treasury, less the legal fees paid by CDA in defending the *Kumagi* case. The payments were made for the full amount in three installments.

Recognizing potential issues raised if OPA were to settle for less than the amount past due now owed to the General Fund, OPA reached out for assistance from the executive branch. OPA had conversations with the Secretary of Finance, the attorney for the Secretary of Finance, the former and current attorney for the Governor, and the Chief of Staff for the Governor to garner support for an agreement to resolve the past due 1%. Our hope was to get the Secretary of Finance on board with support of the Governor's Office and discussions are ongoing at this point. Also, we may need to reach out to the Office of the Attorney General for a legal opinion regarding whether an entity could agree to settle for a formula that is less than the full amount of the past due statutorily required 1% (see discussion above) and if so, which entity would have that authority to make an agreement for past due amounts in violation of the statute.

Again, we apologize in the delay to our response but we cannot agree to the MOU in its current form. We do hope to continue to work together to resolve the 1%.

Sincerely,

Ashley Kost
OPA Legal Counsel

Cc: Michael Pai, OPA
David Blake, OPA

Office of the Public Auditor

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Dept. Agcy No. 22-57

WM-5/25/2022

May 24, 2022

VIA EMAIL

The Honorable Speaker Edmund Villagomez
22nd Northern Marianas Commonwealth Legislature
Honorable Jesus P. Mafnas Memorial Building
P.O. Box 500586
Saipan, MP 96950

RE: OPA comments on House Bill No. 22-102

Dear Speaker Villagomez:

It is with disappointment that I make written comments instead of appearing personally before this legislative body. Unfortunately, the Office of the Public Auditor ("OPA") received no notice of this important legislation appearing on the agenda in Rota. Travel arrangements were impossible at this late hour, and it is my hope that this letter will adequately communicate the importance of your full attention to the underlying issues raised in House Bill ("HB") 22-102.

Let's start with facts and data. To date, the estimated past due amounts from all autonomous agencies total approximately $40 million dollars. CUC alone makes up approximately $20 million of the total amount due. It is important to note that according to Article III, Section 12 of the N.M.I. Constitution, "... any unencumbered fund balance in a fiscal year shall be available for general appropriation." I want to emphasize that the outstanding balance does not go to OPA's account. This $40m balance goes back into the CNMI Government General Fund and is available for appropriations by this legislative body. For example, the $20M owed to the General Fund from CUC could be used as offset for CNMI Government utility bills. We urge you to consider the future financial situation of the CNMI and how much of a difference $40 million dollars could make to the General Fund.

As you well know, OPA is a statutorily designated independent agency of the Commonwealth Government. In order to remain independent and free from political interference through the appropriations process, the CNMI created a funding mechanism to ensure OPA's budgetary needs are met. According to 1 CMC § 7831, OPA is supposed to be funded by 1% of all locally generated funds. However, in reality, OPA's funding under 1 CMC § 7831(b), which requires the same 1% contribution to OPA from the CNMI public corporations and autonomous agencies has been at risk because nearly all such agencies regularly ignore the law of the Commonwealth. HB 22-102, as written, rewards these public entities' disregard of the law, forgives a massive debt owed to the CNMI Government General Fund, and will impact the ability of OPA to function independently as required by law.

As a direct result of the autonomous agencies' failure to pay their annual share of the required 1% funding to OPA, our agency has faced significant downsizing. For example, in 2004, OPA had 5 audit managers, 14 audit staff members, 2 attorneys, and 5 investigators. Currently, OPA has 1 audit manager, 7 audit staff members, 1 attorney, 1 investigations manager, and 4 investigators. HB 22-102 would not hold the autonomous agencies and public corporations accountable for their non-compliance and it would directly threaten OPA's ability to fulfill its constitutional and legislative mandates.

Recognized as the "sentinel against government malfeasance" by the Commonwealth Supreme Court, OPA is the back stop for honesty and accountability for all three branches of the Commonwealth government. *In re San Nicolas*, 2013 MP 8 ¶ 13. The findings and purpose set forth in HB 22-102 that "certain autonomous agencies and public corporations do not utilize the audit service of the Office of the Public Auditor" is misleading. While certain audit services are contracted directly by some autonomous agencies, there are many services provided by OPA to provide oversight for all aspects of the government, including the autonomous agencies to include: performance audits, investigations, ethics act investigations, assistance with the elections, and other statutorily delegated duties. The 1% fee is not solely an "auditing fee," but a fee to support OPA's ability to function independently from the government in order to meet our constitutional and statutory mandates. Furthermore, the suggested fee structure in HB 22-102 is unsustainable in light of the many roles that OPA plays within the CNMI Government. Quantifying the costs for investigations, elections, and other statutorily mandated services would be difficult. OPA would be put in a compromising situation to have to identify its own revenue stream, potentially impairing its independence.

HB 22-102 asserts that OPA's 1% fee would violate federal entitlements for CPA. As to date, there has not been a determination that OPA's 1% fee puts CPA or other agencies at a financial risk with their federal grantors. CPA has never voiced the need for an expedited timeline to resolve this issue with OPA as we met with their Comptroller back in March 2022. Additionally, CPA has recorded on its most recent audited financial statements and prior audited statements, OPA's 1% fee without contingencies recognizing the legal requirements, but has continually chosen not to remit payments.

Of course, this is not the first bill of its kind seeking to divert or exempt the autonomous agencies or public corporations from paying their obligation to ensure public accountability of the public funds in their care. I have attached our previous opposition comments and the opposition from the Secretary of Finance for a similar bill in 2021. OPA has been in communication with the Secretary of Finance and the Attorney General to help clean up the books and collect the money owed to the General Fund from the autonomous agencies. Cleaning up the books shouldn't mean waiving all the autonomous agencies' existing debts required by a law they chose to ignore for years. Since I took office, I have taken steps to meet with various agencies to discuss the OPA 1% fees but the agencies have taken our concerns lightly and this issue continues to be unresolved due to almost 26 years of non-compliance with the law.

In conclusion, OPA requests you to consider the potential consequences of waiving this debt and reducing our budget. Furthermore, the CNMI Government has been receiving an unprecedented amount of federal money and the demands for OPA's services have never been higher. We will not be able to adequately meet our mandate of detecting fraud, waste, and abuse of funds if we have to reduce our budget. OPA appreciates the consideration of our comments on H.B. No. 22-102. If you have any questions about OPA's comments, please do not hesitate to contact our office. We hope to hear from you.

Sincerely,

Kina B. Peter, CPA
Public Auditor

Cc: Ashley Kost, OPA Legal Counsel

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EDWARD MANIBUSAN
Attorney General

LILLIAN A. TENORIO
Deputy Attorney General

January 26, 2016

OAGCPA: 2016-03

Maryann Q. Lizama
Executive Director
Commonwealth Ports Authority
PO Box 501055
Saipan, MP 96950

Re: Position and Proposal from Commonwealth Ports Authority on Liability for Fee Due to the Public Auditor Pursuant to 1 CMC § 7831(b)

Dear Executive Director Lizama:

This letter is in response to your letter of November 30, 2015, in which you assert that because the Commonwealth Ports Authority, a public corporation of the Commonwealth Government, retained an alternate auditor to conduct its audits pursuant to 1 CMC § 2306(b), it would be inequitable to require CPA to pay the full amount of the auditing fee imposed by 1 CMC § 7831(b).

As your letter points out that "CPA acknowledges the statutory requirement of payment to OPA regardless of whether audits are conducted by OPA or pays for its independent audit…," there is also no constitutional, statutory, or regulatory requirement for the Office of the Public Auditor to use the funds it collects from a particular agency to fund an audit of that agency. You suggested an equitable exemption. The Legislature has not enacted an equitable exemption to the auditing fee. Unless it does so, the Office of the Attorney General is unable to read such an exemption into the statute.

Your letter also suggests that claims past the six-year statute of limitations imposed by 7 CMC § 2505 are barred. We do not believe that there is any limitations bar to a subsequent action by OPA or the Commonwealth to compel the payment of the disputed funds. Such an action would essentially compel the performance of CPA's public duty to remit the funds to OPA. We take note of the common law doctrine of *nullum tempus occurrit regi* that would prevent the application of statutes of limitations against the state unless the statute so provides. *See generally Shootman v. Dep't of Transp.*, 926 P.2d 1200, 1202-1207 (Colo. 1996) (providing historical overview of the doctrine). In reviewing 7 CMC § 2505, no such provision was found. As such, we do not believe that action to enforce the 1% statute by OPA and compel CPA to transfer the disputed funds would be barred by the statute of limitations.

Lastly, you request that CPA pay OPA at the rate of 0.01% of its total operations budget, or $1,300.00. OAG does not possess detailed financial information for CPA or for OPA, nor does it have the auditing expertise to determine whether CPA's proposed payments are sufficient to meet OPA's needs. Therefore, it would not be appropriate for OAG to determine whether CPA's proposal is "balanced and fair." However, if CPA and OPA were to determine a mutually acceptable payment rate pursuant to 1 CMC § 7831(b), OAG would not object to the settlement.

Sincerely,

EDWARD MANIBUSAN
Attorney General

cc: Deputy Attorney General
Office of the Public Auditor

Office of the Public Auditor

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June 18, 2019

ELECTRONIC MAIL

The Honorable Representative Roman Benavente
Chairman, Committee on Education
21st Northern Marianas Commonwealth Legislature
Honorable Jesus P. Mafnas Memorial Building
P.O. Box 500586
Saipan, MP 96950

RE: OPA comments on House Bill No. 21-40

Dear Representative Benavente:

The Office of the Public Auditor (OPA) appreciates the opportunity to comment on House Bill No. 21-40 ("Bill"). OPA has concerns that passage of this bill could lead to a slippery slope that would impair the OPA's operations. If the Northern Mariana College ("NMC") is exempted from paying the 1%, which agency would make a request for exemption next? According to 1 CMC § 7831, OPA is funded by 1% of all locally generated funds. However, OPA's funding under 1 CMC § 7831(b) is already perilous because almost all of the autonomous agencies fail to pay their statutorily required 1% including NMC. OPA receives 1% of the General Fund portion before it is remitted to NMC, but NMC has never paid 1% on their locally generated funds not received from the General Fund (see attachment). Further reduction of our budget may impact OPA's ability to meet our Constitutional and statutory mandates.

These are difficult times for everyone in the CNMI. OPA understands the devastation NMC faced from Typhoon Yutu. In a telephone conversation with Representative Benavente, I voiced our concern that changing the law would exempt NMC from paying the 1% long after they had recovered as opposed to exempting NMC in an appropriations bill which would only last for that fiscal year. Representative Benavente offered the solution of adding a sunset provision to the bill.

OPA humbly asks you to consider the potential consequences of reducing our budget and how difficult it is to overcome the slippery slope once exemptions are made for some and not others. Once again, OPA appreciates the consideration and ability to comment on H.B. No. 21-40. If you have any questions about OPA's comments, please do not hesitate to contact our office.

Sincerely,

Ashley Kost
OPA Legal Counsel

Enclosure
AK/mc

Cc: Michael Pai, OPA
David Blake, OPA

Northern Mariana College (NMC)

1% OPA Assessment Calculation

	Year		Budget Amount	(A) Less: General Fund Portion	(B) 1% Assessable Amount	1% Assessment	Payments	Net Annual Amount	Cummulative Amount
	1996	1	16,154,139	8,426,415	7,727,724	77,277	-	77,277	77,277
	1997	1	16,346,251	8,506,200	7,840,051	78,401	-	78,401	155,678
cr	1998	1	16,436,573	8,506,200	7,930,373	79,304	-	79,304	234,981
	1999	1	13,756,523	9,283,300	4,473,223	44,732	-	44,732	279,713
cr	2000	1	14,571,463	9,283,300	5,288,163	52,882	-	52,882	332,595
cr	2001	1	18,478,210	9,283,300	9,194,910	91,949	-	91,949	424,544
cr	2002	1	17,208,416	9,283,300	7,925,116	79,251	-	79,251	503,795
	2003	1	17,093,139	8,046,739	9,046,400	90,464	-	90,464	594,259
cr	2004	1	17,453,528	8,046,739	9,406,789	94,068	-	94,068	688,327
cr	2005	1	16,435,902	8,046,739	8,389,163	83,892	-	83,892	772,219
cr	2006	1	15,077,669	8,046,739	7,030,930	70,309	-	70,309	842,528
	2007	1	12,725,462	6,160,486	6,564,976	65,650	-	65,650	908,178
cr	2008	1	13,471,362	6,160,486	7,310,876	73,109	-	73,109	981,287
	2009	1	14,038,646	9,283,300	4,755,346	47,553	-	47,553	1,028,840
cr	2010	1	15,025,733	9,283,300	5,742,433	57,424	-	57,424	1,086,264
	2011	1	17,157,317	4,464,464	12,692,853	126,929	-	126,929	1,213,193
	2012	1	14,501,004	5,228,656	9,272,348	92,723	-	92,723	1,305,917
	2013	1	15,565,799	4,511,052	11,054,747	110,547	-	110,547	1,416,464
	2014	2							1,416,464
	2015	2							1,416,464
	2016	1	13,313,105	4,420,013	8,893,092	88,931	-	88,931	1,505,395
	2017	1	14,981,778	5,949,567	9,032,211	90,322	-	90,322	1,595,717
	2018	4							

1	Budget amount reflect actual expenditures for the year as presented in audited financial statements, due to the fact that budget amounts in the appropriation acts only represent general fund expenditures.
2	NMC was exempted based upon the appropriation act.
cr	Represents continuing appropriation acts.
(A)	It is presumned that the SOF withheld the 1% from the General Fund Portion.
4	Financial statements not yet available.
(B)	The assessable amounts typically represent operating income from tuition and Federal Grants. If the federal grants are based on individual student applications for admission, they may be assessable. If they are hard grants directly to NMC, with no administrative costs allowed, then they should excluded. Typically federal grants are not included in "Operating Income".

Office of the Secretary
Department of Finance
P.O. Box 5234 CHRB, Saipan MP 96950 TEL (670) 664-1100 FAX (670) 664-1115

June 29, 2020 SFM 2020-402

Honorable Joseph Lee Pan Guerrero
Chairman
Commerce and Tourism Committee
21st Northern Marianas
Commonwealth Legislature
Tel: 1-670-664-8899

Subject: SB 21-54: To amend 1 CMC § 7831 to exempt the Commonwealth Ports Authority from paying the one percent Public Auditor Fee.

Dear Chairman Guerrero:

Thank you for the opportunity to comment on Senate Bill ("SB") 21-54 "To amend 1 CMC § 7831 to exempt the Commonwealth Ports Authority from paying the one percent Public Auditor Fee."

In our effort to provide comments and recommendations on this worthwhile bill, the Department of Finance sought to understand the impact of this legislation on the Commonwealth Ports Authority ("CPA"), Office of the Public Auditor ("OPA"), and the Commonwealth of the Northern Mariana Islands ("CNMI") government's fiduciary duty of responsible fiscal management and transparent representation of government resources.

As you may be aware, the COVID-19 pandemic has crippled the CNMI's only industry leaving our private sector partners with little to no tourist arrivals to provide resources to the economy. With strict foreign and domestic travel restrictions imposed, we continue to witness diminished revenue forcing the Department of Finance along with the Office of the Governor to implement stringent cost mitigation measures to ensure continued service is provided to the public.

The Commonwealth Ports Authority plays an important role in our community and the economy. The services provided allow for access to greater health and economic resources that may otherwise be unattainable within the Commonwealth. Additionally, CPA is responsible for welcoming visitors who support our volatile and only industry. For these reasons, the

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Department of Finance commends the legislations intent to alleviate financial strains of CPA particularly during this time of difficulty and uncertainty.

However, it is important to note that the Commonwealth has the responsibility for strict adherence to laws, statutes, and regulations set forth to protect government resources from misuse. The Commonwealth government operates with a significant volume of both federal and state assets and other resources requiring strict internal controls. The Office of the Public Auditor is a critical component in ensuring these resources are protected and individuals adhere to internal controls set forth to protect public resources. Consequently, we must ensure OPA is able to receive the resources they need for continued operations.

Further, excluding an agency partner from the existing mandate allows for potentially harmful precedence for other organizations currently under significant financial constraints. The compounding effect of additional exemptions to this funding model would diminish the resources for an already underfunded office. Presently, multiple government agencies have yet to remit years of OPA 1% contribution culminating in millions of dollars owed to OPA. As a result, OPA is currently undergoing operation deficit despite their continued service.

In total, CPA is a vital component of the CNMI economy and our ability to generate the resources needed to fund our government's services and personnel. Clearly, present circumstances have impacted CPA revenue and have strained its available resources. Yet, this is the unfortunate reality of nearly all entities of the CNMI government. While the intents of this legislation are clearly in line with supporting the critical importance of CPA to our economy and our future ability to generate revenue, the alleviation of this statutory requirement places the CNMI government in a net loss as it will be forced to assume the financial responsibilities unremitted by CPA.

Most consequentially, with increased resources flowing into the CNMI government agencies as we move forward with our effort against the COVID-19 pandemic, now more than ever we need to support OPA to help us ensure these resources are protected. It is critical that accountability be at the forefront of our use of federal government resources not solely out of legal and ethical responsibilities of our duties, but doing so represents the greatest safeguard of future revenue from penalties arising from potential errors in the administration of these programs.

OPA serves a critical role in our government and will need our continued support to ensure it is successful in their mandates and objectives. Similarly, CPA is necessary, and in need of support. In the achievement of the difficult task of ensuring limited resources meet these and many more

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P.O. Box 5234 CHRB, Saipan MP 96950 TEL (670) 664-1100 FAX (670) 664-1115

needs in the months and years ahead, I stand ready to assist you, your committee and the Legislature to collaborate toward the solutions that will provide our people with the greatest and most efficient return of their resources.

Once again, we thank you for the opportunity to provide comments on this worthwhile bill. Should you have any questions about this letter, please do not hesitate to contact me at 1-670-664-1100 or email at david.atalig@dof.gov.mp.

Respectfully,

David DLG. Atalig
Secretary
Department of Finance

CC: Senate President

Office of the Public Auditor

Commonwealth of the Northern Mariana Islands
Website: http://opacnmi.com
1236 Yap Drive, Capitol Hill, Saipan, MP 96950

Mailing Address:
P.O. Box 501399
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June 30, 2020

ELECTRONIC MAIL

The Honorable Representative Joseph Lee Pan Guerrero
Chairman, Commerce and Tourism Committee
21st Northern Marianas Commonwealth Legislature
Honorable Jesus P. Mafnas Memorial Building
P.O. Box 500586
Saipan, MP 96950

RE: OPA comments on Senate Bill No. 21-54

Dear Chairman Guerrero:

The Department of Finance notified the Office of the Public Auditor ("OPA") of the existence of a bill that would exempt the Commonwealth Ports Authority ("CPA") from paying the 1% and we would like an opportunity to comment on Senate Bill No. 21-54 as it would impact our funding. OPA has concerns that passage of this bill could lead to a slippery slope that would impair OPA's operations. If the CPA is exempted from paying the 1%, which agency would make a request for exemption next? According to 1 CMC § 7831, OPA is funded by 1% of all locally generated funds. However, OPA's funding under 1 CMC § 7831(b) is already perilous because almost all of the autonomous agencies fail to pay their statutorily required 1%, including CPA to the outstanding balance of $3,749,522 per OPA's records, (not including the current fiscal year). Further reduction of our budget may impact OPA's ability to meet our statutory and Constitutional mandates.

These are difficult times for everyone in the CNMI. We understand the hardship CPA faces in the reduction of tourism since March, but to OPA's knowledge they haven't paid the 1% for 23 years which has resulted in the General Fund having to cover CPA's share. If CPA were to pay their outstanding balance, OPA would only receive the money for the current fiscal year. The remaining balance of $3,749,522 would go directly to the General Fund and be available for appropriations elsewhere in the government.

Historically, other agencies facing financial difficulty were exempted from paying the 1% in the annual appropriations act which would apply for that fiscal year as opposed to amending 1 CMC § 7831. This course of action takes into consideration CPA's current financial issues without permanently exempting CPA and potentially starting a chain reaction of future requests of exemptions by other autonomous agencies.

OPA humbly asks you to consider the potential consequences of reducing our budget and the how difficult it is to overcome the slippery slope once exemptions are made for some and not others. Furthermore, we urge you to consider the current financial crisis in the CNMI and how much of a difference $3,749,522 could make to the General Fund. OPA appreciates the consideration of our comments on S.B. No. 21-54. If you have any questions about OPA's comments, please do not hesitate to contact our office.

Sincerely,

Michael Pai, CPA
Public Auditor

MP/ak

Cc: Ashley Kost, OPA
David Blake, OPA
Geraldine Tenorio, OPA

Office of the Public Auditor

Commonwealth of the Northern Mariana Islands
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July 28, 2021

ELECTRONIC MAIL

The Honorable Senator Victor Hocog
Chairman, Fiscal Affairs
22nd Northern Marianas Commonwealth Legislature
Honorable Jesus P. Mafnas Memorial Building
P.O. Box 500129
Saipan, MP 96950

RE: OPA comments on Senate Bill No. 22-51

Dear Chairman Hocog:

The Office of the Public Auditor ("OPA") is a statutorily designated independent agency of the Commonwealth Government. In order to remain independent and free from political interference through the appropriations process, the CNMI Legislature set up a funding mechanism to ensure OPA's budgetary needs are met. According to 1 CMC § 7831, OPA is funded by 1% of all locally generated funds. However, OPA's funding under 1 CMC § 7831(b) is already at risk because almost all of the autonomous agencies fail to pay their yearly share of the 1% funding as statutorily required. Inadequate funding has caused OPA's size to shrink. In 2004, OPA had 5 audit managers, 14 audit staff members, 2 attorneys, and 5 investigators. Currently, OPA has 1 audit manager, 8 audit staff members, 1 attorney, and 4 investigators. Austerity measures and the lack of competitive benefits and salary compensation has caused OPA to lose 4 employees in the past 2 years. By exempting all public corporations and autonomous agencies from paying the 1%, S.B. 22-51 is threatening OPA's ability to fulfill its constitutional and legislative mandates. Additionally, this would force OPA to significantly rely on the General Fund to make up the difference, potentially jeopardizing our independence and consuming needed resources.

OPA provides a variety of services to the public corporations and autonomous agencies. As discussed previously, this funding mechanism was developed so all entities pay their share. S.B. 22-51 states in the Finding and Purpose section that "certain autonomous agencies and public corporations do not utilize the audit services of the Office of the Public Auditor." This statement is misleading considering there are other types of audits other than financial. During the time of non-payment, OPA has completed numerous performance audits at the public corporations and autonomous agencies. Additionally, OPA has provided services by investigating complaints of fraud, waste, and abuse of government funds and violations of the Government Ethics Act, providing ethics opinions, providing ethics training for their employees, and deciding procurement appeals.

Moreover, S.B. 22-51 adversely impacts the CNMI Government. Article III, Section 12 of the N.M.I Constitution requires that OPA's excess funds remit back to the General Fund at the end of the fiscal year. The past due 1% of the autonomous agencies, totaling approximately 30 million dollars, will not go to OPA but to the General Fund because the fees are in excess of the prior fiscal years. This money would then be available for appropriations by the Legislature. S.B. 22-51 directs "[a]ny and all past unpaid amounts accrued under this section by public corporations and autonomous agencies shall either by waived by the Commonwealth, including the Public Auditor,

or other be considered appropriated by the public corporations or autonomous agencies." The outstanding debt of 30 million dollars is needed elsewhere in the CNMI Government and should not be waived by S.B. 22-51. It would set a bad precedent to not hold the public corporations and autonomous agencies accountable for years of knowingly violating 1 CMC § 7831(b), but instead to write off debt without recourse.

Historically, the past due 1% has worked to resolve past due liabilities of the government. In 2003, CUC and the Acting Secretary of Finance signed a Memorandum of Agreement (MOA) for CUC to pay their past due 1% (almost 4 million dollars) to the General Fund, the Executive Branch paid the same amount back to CUC for partial payment of past due government utility bills, CUC agreed to pay the Public Auditor their current fiscal year 1%, and the Executive Branch agreed to pay CUC the same amount of the current fiscal year 1% for outstanding utility service amounts owed. Essentially, CUC and the central government offset the outstanding OPA 1% for outstanding utility payments. This type of agreement could work again as the CNMI Government owes CUC for utility payments and CUC's outstanding 1% is approximately 15 million dollars. However, if S.B. 22-51 eliminates the debt, there would be nothing to offset the CUC utility bills.

OPA is currently in the process of meeting with all autonomous agencies to discuss the 1% issue. We have been using these meetings to better understand the individual public corporation or autonomous agency's methodology in determining the annual 1% past due balances reported in their yearly financial audits. We will share the information gathered in the meetings with the Secretary of Finance and the Attorney General and take the proper course of action deemed necessary. Our hope is to open the dialogue regarding the 1% payments so past due amounts can be paid to the General Fund and it will allow OPA to better assess the 1% for the future. In doing so, the CNMI autonomous agencies and central government will be able to clean up their books and resolve outstanding balances.

In conclusion, OPA requests you to consider the potential consequences of reducing our budget. The CNMI Government is receiving an unprecedented amount of federal money and the demands for OPA's services have never been higher. We will not be able to adequately meet our mandate of detecting fraud, waste, and abuse of funds if S.B. 22-51 passes. Furthermore, we urge you to consider the current financial situation in the CNMI and how much of a difference $30 million dollars, without any federal requirements, could make to the General Fund. OPA appreciates the consideration of our comments on S.B. No. 22-51. If you have any questions about OPA's comments, please do not hesitate to contact our office.

Sincerely,

Kina B. Peter, CPA
Public Auditor

Cc: Ashley Kost, OPA Legal Counsel

Office of the Public Auditor

Commonwealth of the Northern Mariana Islands
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June 6, 2022

VIA EMAIL

The Honorable Chairman Donald Manglona
22nd Northern Marianas Commonwealth Legislature
Honorable Jesus P. Mafnas Memorial Building
P.O. Box 500586
Saipan, MP 96950

RE: House Bill No. 22-102

Dear Chairman Manglona:

Thank you for the opportunity to provide a statement regarding House Bill ("HB") 22-102 before this Committee.

In addition to the House Communication I previously submitted for the House Session held on May 25, 2022 in Rota, I would like to submit a brief statement on additional comments pertaining to concerns raised with HB 22-102.

The Office of the Public Auditor ("OPA"), the Secretary of Finance ("SOF"), and the Commonwealth Ports Authority ("CPA") Chairwoman, Executive Director and Comptroller, met on Thursday, June 2, 2022, to further discuss the underlying issues driving the proposed legislation HB 22-102. OPA expressed its concerns regarding the potential impairment of OPA's independence and ability to function and operate. CPA claims that the driving force for the legislation is due to the Federal Aviation Administration's ("FAA") concerns regarding OPA's 1% fee and potential non-compliance with federal requirement, specifically Airport Revenue Diversion. It was agreed that a meeting with the FAA is warranted and would allow OPA, SOF, CPA, and FAA resolve concerns raised by each party. [A meeting has been scheduled for Tuesday, June 7th when the FAA are on island.]

Further, OPA is of the position that the one percent fee is an allowable cost and should not result in the non-compliance with FAA's regulation. FAA federal register Section V Permitted Uses of Airport Revenue, subsection B(3), allows for the allocation of indirect costs. Under FAA policy a portion of the general costs of government, such as the costs of the legislative branch and executive offices may be allocated to the airport as an indirect cost under a cost allocation plan as long as it is not paying a disproportionate share of these costs. I have attached a copy of the FAA policy for your reference. OPA's view is that the one percent fee which averages to approximately $150,000-$200,000 per year, which includes the Seaport Revenue, is not disproportionate to CPA's costs. Further, in the most recent audited report on internal control and compliance, it was noted that there have not been any federal findings associated with OPA's 1% fees. In fact, it has never been noted on any prior audit reports. See attached 2020 report on internal control and compliance for your reference.

As we have previously communicated, to date, there is still no evidence that CPA is at financial or operational risk from the federal grantors as it relates to OPA's 1% fee. As such, OPA strongly opposes this legislation for the various reasons already presented in my prior House Communication letter dated May 24, 2022 and is attached for your reference. OPA requests that this bill be retracted and allow OPA, SOF, and the various agencies to resolve unpaid fees without

acting on a legislation that would hamper OPA's ability to operate with great independence and perform its duties with the appropriate funding source.

In conclusion, I cannot emphasize enough how detrimental the consequences of HB 22-102 will be. Please take the appropriate course of action that benefits the greater CNMI Government and agencies rather than solving only for a selective cause or entity. All entity and agency leaders are accountable to comply with CNMI laws. I will also iterate that the CNMI Government has been receiving an unprecedented amount of federal money and the demands for OPA's services have never been higher. Allow OPA as a regulatory agency of the CNMI to function and exist without the continued threat of its funding and independence.

OPA appreciates your time and consideration of our comments on H.B. No. 22-102 today and in my prior House Communication letter dated May 24, 2022. If you have any questions about OPA's comments, please do not hesitate to contact our office.

Sincerely,

Kina B. Peter, CPA
Public Auditor

Cc: Ashley Kost, OPA Legal Counsel

Deloitte.

COMMONWEALTH PORTS AUTHORITY
(A COMPONENT UNIT OF THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS)

INDEPENDENT AUDITORS' REPORTS ON
INTERNAL CONTROL AND ON COMPLIANCE

YEAR ENDED SEPTEMBER 30, 2020

Deloitte.

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INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

Board of Directors
Commonwealth Ports Authority:

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the Commonwealth Ports Authority (CPA), a component unit of the Commonwealth of the Northern Mariana Islands, which comprise the statement of net position as of September 30, 2020, and the related statements of revenues, expenses and changes in net position, and of cash flows for the year then ended, and the related notes to the financial statements, and have issued our report thereon dated December 13, 2021. Our report was qualified due to our inability to determine the effects of Governmental Accounting Standards Board (GASB) Statement No. 68, *Accounting and Financial Reporting for Pensions* on CPA's financial statements and includes an explanatory paragraph concerning the impact of COVID-19.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered CPA's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of CPA's internal control. Accordingly, we do not express an opinion on the effectiveness of CPA's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that have not been identified. However, as described in the accompanying Schedule of Findings and Questioned Costs, we did identify certain deficiencies in internal control that we consider to be material weaknesses and significant deficiencies.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. We consider the deficiencies described in the accompanying Schedule of Findings and Questioned Costs as item 2020-001 to be material weaknesses.

A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiencies described in the accompanying Schedule of Findings and Questioned Costs as item 2020-003 to be significant deficiencies.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether CPA's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards* and which are described in the accompanying Schedule of Findings and Questioned Costs as items 2020-002 and 2020-003.

CPA's Response to Findings

CPA's response to the findings identified in our audit is described in the accompanying Schedule of Findings and Questioned Costs. CPA's response was not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on it.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Deloitte & Touche LLC

December 13, 2021

Deloitte.

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INDEPENDENT AUDITORS' REPORT ON COMPLIANCE FOR EACH MAJOR FEDERAL PROGRAM; REPORT ON INTERNAL CONTROL OVER COMPLIANCE; AND REPORT ON SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS REQUIRED BY THE UNIFORM GUIDANCE

Board of Directors
Commonwealth Ports Authority:

Report on Compliance for Each Major Federal Program

We have audited the Commonwealth Ports Authority's (CPA's) compliance with the types of compliance requirements described in the *OMB Compliance Supplement* that could have a direct and material effect on each of CPA's major federal programs for the year ended September 30, 2020. CPA's major federal programs are identified in the summary of auditors' results section of the accompanying Schedule of Findings and Questioned Costs.

Management's Responsibility

Management is responsible for compliance with federal statutes, regulations, and the terms and conditions of its federal awards applicable to its federal programs.

Auditor's Responsibility

Our responsibility is to express an opinion on compliance for each of CPA's major federal programs based on our audit of the types of compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Those standards and the Uniform Guidance require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about CPA's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our qualified opinion on compliance for major federal programs. However, our audit does not provide a legal determination of CPA's compliance.

Basis for Qualified Opinion on CFDA Program 20.106

As described in the accompanying Schedule of Findings and Questioned Costs, CPA did not comply with requirements regarding CFDA Program 20.106 Airport Improvement Program as described in item 2020-003 for Equipment and Real Property Management. Compliance with such requirements is necessary, in our opinion, for CPA to comply with the requirements applicable to that program.

Qualified Opinion on CFDA Program 20.106

In our opinion, except for the noncompliance described in the Basis for Qualified Opinion paragraph, CPA complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on CFDA Program 20.106 Airport Improvement Program for the year ended September 30, 2020.

Unmodified Opinion on Each of the Other Major Federal Programs

In our opinion, CPA complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its other major federal programs identified in the summary of auditors' results section of the accompanying Schedule of Findings and Questioned Costs for the year ended September 30, 2020.

Other Matters

The results of our auditing procedures disclosed other instances of noncompliance which are required to be reported in accordance with the Uniform Guidance and which are described in the accompanying Schedule of Findings and Questioned Costs as items 2020-004 and 2020-005. Our opinion on each major federal program is not modified with respect to these matters.

CPA's response to the noncompliance findings identified in our audit is described in the accompanying Schedule of Findings and Questioned Costs. CPA's response was not subjected to the auditing procedures applied in the audit of compliance and, accordingly, we express no opinion on the response.

CPA is responsible for preparing a corrective action plan to address each audit finding included in our auditors' report. CPA's corrective action plan was not subjected to the auditing procedures applied in the audit of compliance and, accordingly, we express no opinion on it.

Report on Internal Control Over Compliance

Management of CPA is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In planning and performing our audit of compliance, we considered CPA's internal control over compliance with the types of requirements that could have a direct and material effect on each major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance for each major federal program and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of CPA's internal control over compliance.

Our consideration of internal control over compliance was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that have not been identified. However, as discussed below, we did identify certain deficiencies in internal control over compliance that we consider to be material weaknesses and significant deficiencies.

A *deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A *material weakness in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. We consider the deficiencies in internal control over compliance described in the accompanying Schedule of Findings and Questioned Costs as items 2020-003 to be material weaknesses.

A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance. We consider the deficiencies in internal control over compliance described in the accompanying Schedule of Findings and Questioned Costs as items 2020-004 and 2020-005 to be significant deficiencies.

CPA's response to the internal control over compliance findings identified in our audit is described in the accompanying Schedule of Findings and Questioned Costs. CPA's response was not subjected to the auditing procedures applied in the audit of compliance and, accordingly, we express no opinion on the response.

CPA is responsible for preparing a corrective action plan to address each audit finding included in our auditors' report. CPA's corrective action plan was not subjected to the auditing procedures applied in the audit of compliance and, accordingly, we express no opinion on it.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Accordingly, this report is not suitable for any other purpose.

Report on Schedule of Expenditures of Federal Awards Required by the Uniform Guidance

We have audited the financial statements of CPA as of and for the year ended September 30, 2020, and have issued our report thereon dated December 13, 2021, which contained a qualified opinion on those financial statements due to our inability to determine the effects of GASB Statement No. 68, *Accounting and Financial Reporting for Pensions* on CPA's financial statements and included an explanatory paragraph concerning the impact of COVID-19. Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The accompanying Schedule of Expenditures of Federal Awards is presented for purposes of additional analysis as required by the Uniform Guidance and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the Schedule of Expenditures of Federal Awards is fairly stated in all material respects in relation to the financial statements as a whole.

Deloitte & Touche LLC

December 13, 2021

COMMONWEALTH PORTS AUTHORITY

Schedule of Expenditures of Federal Awards
Year Ended September 30, 2020

Federal Grantor/Pass-Through Grantor/Program Title	Federal CFDA Number	Other Identification Number	Pass-Through Entity Identifying Number	Federal Expenditures
U.S. Department of the Interior Pass-Through Program From:				
CNMI Government - Economic, Social, and Political Development of the Territories - Office of Insular Affairs Technical Assistance Program Automated Passports Control Unit Acquisition (APC)	15.875		D18AP00080	$ 11,000
Total U.S. Department of the Interior				11,000
U.S. Department of Transportation Direct Program				
Airport Improvement Program	20.106			5,503,876
COVID-19 Airport Improvement Program	20.106			5,601,165
Total U.S. Department of Transportation				11,105,041
U.S. Department of Homeland Security Direct Programs				
National Explosives Detection Canine Team Program (NEDCTP)	97.072			155,765
TSA Recapitalization Program	97.U01	HSTS04-17-H-CT1012		161,627
Saipan International Airport - Reimbursement Agreement	97.U02	HSTS0208HSLR157		35,038
Subtotal U.S. Department of Homeland Security Direct Programs				352,430
U.S. Department of Homeland Security Pass-Through Program From:				
CNMI Government - Disaster Grants - Public Assistance (Presidentially Declared Disasters)	97.036		FEMA-4404-DR-MP	2,741,280
Total U.S. Department of Homeland Security				3,093,710
Total Expenditures of Federal Awards				$ 14,209,751
Reconciliation:				
Expenditures per Statement of Revenues, Expenses and Changes in Net Position:				
Capital contributions				$ 8,417,783
Other grant revenues and contributions				5,791,968
				$ 14,209,751

See accompanying notes to the schedule of expenditures of federal awards.

COMMONWEALTH PORTS AUTHORITY

Notes to the Schedule of Expenditures of Federal Awards
Year Ended September 30, 2020

(1) Scope of Audit

CPA was established as a public corporation by the CNMI by Public Law 2-48, effective November 8, 1981. All significant operations of CPA are included in the scope of the Single Audit. The U.S. Department of the Interior's Office of the Inspector General has been designated as CPA's cognizant agency for the Single Audit.

(2) Basis of Presentation

The accompanying Schedule of Expenditures of Federal Awards (the Schedule) includes the federal award activity of CPA under programs of the federal government for the year ended September 30, 2020. The information in this Schedule is presented in accordance with the requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Because the Schedule presents only a selected portion of the operations of CPA, it is not intended to and does not present the financial position, changes in net position or cash flows of CPA.

(3) Summary of Significant Accounting Policies

a. Basis of Accounting

Expenditures reported on the Schedule are reported on the accrual basis of accounting. All expenses and capital outlays are reported as expenditures. Such expenditures are recognized following the cost principles contained in the Uniform Guidance, wherein certain types of expenditures are not allowable or are limited as to reimbursement. Pass-through entity identifying numbers are presented where available. CPA does not elect to use the de minimis indirect cost rate allowed under the Uniform Guidance.

b. Matching Requirements

In allocating project expenditures between the federal share and the local share, a percentage is used based upon local matching requirements, unless funds are specifically identified to a certain phase of the project.

COMMONWEALTH PORTS AUTHORITY

Schedule of Findings and Questioned Costs
Year Ended September 30, 2020

SECTION I - SUMMARY OF AUDITORS' RESULTS

Financial Statements

1.	Type of report the auditors issued on whether the financial statements audited were prepared in accordance with GAAP:	Qualified
	Internal control over financial reporting:	
2.	Material weakness(es) identified?	Yes
3.	Significant deficiency(ies) identified?	Yes
4.	Noncompliance material to the financial statements noted?	Yes

Federal Awards

	Internal control over major federal programs:	
5.	Material weakness(es) identified?	Yes
6.	Significant deficiency(ies) identified?	Yes
7.	Type of auditors' report issued on compliance for major federal programs:	
	20.106	Qualified
	97.036	Unmodified
8.	Any audit findings disclosed that are required to be reported in accordance with 2 CFR 200.516(a)?	Yes
9.	Identification of major federal program:	

CFDA Number	Name of Federal Program
20.106	Airport Improvement Program
97.036	Disaster Grants - Public Assistance (Presidentially Declared Disasters)

10.	Dollar threshold used to distinguish between Type A and Type B Programs:	$750,000
11.	Auditee qualified as low-risk auditee?	No

SECTION II - FINANCIAL STATEMENT FINDINGS

Reference Number	Finding
2020-001	Nonpayroll Expenditures
2020-002	Local Noncompliance - Procurement
2020-003	Equipment and Real Property Management

SECTION III - FEDERAL AWARD FINDINGS AND QUESTIONED COSTS

Reference Number	CFDA Number	Findings	Questioned Costs
2020-003	20.106	Equipment and Real Property Management	$ -
2020-004	20.106	Reporting	$ -
2020-005	20.106	COVID-19 Allowable Costs/Cost Principles	$ 24,763

Nonpayroll Expenditures

Finding No. 2020-001

Criteria: An effective system of internal control includes policies and procedures to determine that transactions are adequately substantiated and are recorded in the period incurred. Lastly, relevant supporting documents should be filed and maintained.

Condition: Tests of purchases/disbursements noted the following:

1. For two disbursements, approved purchase orders or equivalent authorizing the services rendered were not provided.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	6856-101	03/31/20	None	5819	03/18/20	$ 45
Airport	6856-101	03/31/20	None	5828	03/20/20	$ 34

2. For two disbursements, transactions pertain to prepayments made on September 8, 2016 for the Rota and Tinian harbor feasibility studies for which CPA only became aware in fiscal year 2021 that the feasibility studies were completed since June 2018 and December 2018 for Rota and Tinian, respectively. CPA recorded a journal entry to expense the amounts in fiscal year 2020; however, since the feasibility studies were completed since June 2018 and December 2018, an audit adjustment was proposed to record the expenses in the period incurred of $216,000, which resulted in a restatement of net position.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Seaport	5360-200	09/30/20	MOA	None	09/07/16	$ 108,000
Seaport	5360-300	09/30/20	MOA	None	09/07/16	$ 108,000

3. For four disbursements, transactions pertain to architect-engineer and construction management services for the air traffic control tower that were recorded as construction in progress in previous years, however, CPA subsequently determined the transactions to be expenses in nature. An audit adjustment was proposed to reclassify the amount to expense in the period incurred of $193,117, which resulted in a restatement of net position.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	7186-103	09/30/20	CPA-SA-004-17	98505	04/28/18	$ 65,729
Airport	7186-103	09/30/20	CPA-SA-004-17	105651	08/31/18	$ 13,176
Airport	7186-103	09/30/20	CPA-SA-004-17	120558	05/25/19	$ 1,130
Airport	7186-103	09/30/20	CPA-SA-004-17	128644	09/28/19	$ 113,082

4. For one disbursement, the total quantity of materials received per the receiving report differs from the total quantity per the invoice, resulting in a shortage in materials amounting to $25. Management did not consider the amount material to the financial statements to warrant an adjustment.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	6259-100	10/31/19	SPN-20-23992	06-162206	10/24/19	$ 2,996

Finding No. 2020-001, Continued

Condition, Continued:

5. For three disbursements, the price payable for petroleum products are those in effect (Commercial Tank Wagon or CTW price) on the date of delivery of the products less the relevant discount of $1.00 per petroleum products purchased for the Saipan International Airport and Port of Saipan. The CTW price for the petroleum products ordered for the Saipan International terminal; however, was not reflected on either the invoices, order forms or delivery tickets to determine whether CPA was billed at the discounted rate. The detail breakdown of the costs reflecting the CTW price less the discounted rate of $1.00 was subsequently obtained from the vendor on June 10, 2021 for which the discounted rate agreed to the rates on the invoices.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	6162-100	01/31/20	CPA-RFP-003-20	30023580	01/09/20	$ 6,725
Airport	6162-100	01/31/20	CPA-RFP-003-20	30024320	01/24/20	$ 6,726
Airport	6762-100	10/24/19	CPA-RFP-003-20	30019539	10/10/19	$ 6,934

Cause: CPA lacks controls, such as oversight responsibility and monitoring to confirm documents are properly maintained and safeguarded and that expenditures are recorded in the period incurred.

Effect: Expenditures are misstated. Also, CPA is noncompliant with applicable internal control policies to confirm expenditure are adequately substantiated.

Recommendation: CPA should establish and implement monitoring controls to confirm that documents are properly maintained and safeguarded and that expenditures are recorded in the period incurred.

Views of Responsible Officials:

CPA's Corrective Action Plan states agreement.

Local Noncompliance - Procurement

Finding No. 2020-002

Criteria: Applicable procurement rules and regulations are as follows:

- 40-50-110 states all contracts must first be prepared by the Procurement Officer who shall certify compliance with this chapter and any applicable federal statutory or regulatory provisions or requirements; that the proposed contract is for a public purpose; and that the contract does not constitute a waste or abuse of Authority funds regardless of source. All contract documents must be complete including attachments and exhibits if they are incorporated into the contract by reference. If there are any defects with any contract or there were defects in the procurement process, the Procurement Officer shall report the defects to the Executive Director who shall not execute such contract until the Procurement Officer certifies correction of such defects. In addition, it is the responsibility of the Executive Director or Procurement Officer to ensure that the contractor does not sign the contract or incur any expenses under it until all necessary Authority signatures have been obtained.

- §40-50-205 part (a) states that the purchase of all services, goods, supplies and materials and all construction works, when the expenditure exceeds $25,000, shall be by contract let to the lowest responsible bidder. An Invitation for Bid may be solicited by the Executive Director or his authorized designee when the Authority determines that the best interests of the Authority are served by and/or any relevant Federal Law or regulation requires an Invitation for Bid. All invitation for bids shall be publicized in order to increase competition and broaden industry participation. Public notices shall be published in two newspapers of general circulation in the Commonwealth at least once in each week from the time the solicitation is issued including the week when the bidding period expires. Bidding period of at least thirty (30) calendar days shall be provided unless the Executive Director or authorized designee certifies that a shorter time period is reasonable and necessary.

- §40-50-210 states that the Executive Director or Procurement Officer must obtain written price quotations from at least three vendors for any procurement valued from $250 to $25,000.

- §40-50-215 states that a contract may be awarded for a supply, service, or construction item without competition when the contracting officer determines in writing that there is only one source for the required supply, service or construction item. The written determination shall state the unique capabilities required, why they are required, the consideration given to alternative sources and shall contain the specific unique capabilities required; the specific unique capabilities of the contractor and the availability of funding for such services as certified by the Comptroller.

- §40-50-220 states that in case of any major public calamity, or whenever it is in the interest of aviation or shipping safety, or necessary to keep the ports operable by the Authority or to protect any property as well as the protection of the environment or the people of the CNMI, the Executive Director shall issue a summary finding or report of such calamity as soon as practical to the Comptroller and the Board advising of the emergency or calamity. In addition, following the resolution of the emergency, the Executive Director shall file his report with the Board within five days providing the further details relating to the emergency; the actions taken; the expenditures; and any recommendations.

Finding No. 2020-002, Continued

Criteria, Continued:

- §40-50-225 states a contract or procurement may be obtained through a Request for Proposal when the Executive Director, in the exercise of his/her discretion, determines in writing that the use of an Invitation for Bid is either not practical or not advantageous to the Authority. Adequate public notice of the request for proposal shall be given in the same manner as provided for in competitive sealed bids.

Further, an effective system of internal control includes policies and procedures to determine that transactions are adequately substantiated. Lastly, relevant supporting documents should be filed and maintained.

Condition: Tests of non-federal purchases/disbursements noted the following:

1. For eight disbursements, bidding periods were less than 30 days; however, the Executive Director or authorized designee's certification that a shorter period is reasonable and necessary was not provided.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	6156-100	10/24/19	CPA-RFP-001-16	623-2019	10/15/19	$ 14,000
Airport	6156-100	02/24/20	CPA-RFP-001-16	641-2019	01/15/20	$ 14,000
Airport	6156-100	06/24/20	CPA-RFP-001-16	658-2020	06/15/20	$ 14,000
Airport	6156-100	06/24/20	CPA-IFB-002-18	S-001830	06/10/20	$ 900
Airport	6856-101	03/31/20	CPA-RFP-008-19	20200328	03/26/20	$ 8,738
Airport	6856-103	04/20/20	CPA-RFP-010-19	9161000480	04/08/20	$ 15,000
Airport	6158-100	12/31/19	CPA-RFP-007-19	13527	12/31/19	$ 3,750
Seaport	5330-100	02/28/20	CPA-RFP-010-19	9161000434	02/12/20	$ 5,000

2. For three disbursements, documentation substantiating that only two vendors submitted proposals, as well as the proposals' evaluation criteria forms, were not provided.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	6156-100	10/24/19	CPA-RFP-001-16	623-2019	10/15/19	$ 14,000
Airport	6156-100	02/24/20	CPA-RFP-001-16	641-2019	01/15/20	$ 14,000
Airport	6156-100	06/24/20	CPA-RFP-001-16	658-2020	06/15/20	$ 14,000

3. For five disbursements, requests for proposal were used; however, the Executive Director's written determination that the use of an invitation for bid is either not practical or not advantageous to CPA was not provided.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	6156-100	10/24/19	CPA-RFP-001-16	623-2019	10/15/19	$ 14,000
Airport	6156-100	02/24/20	CPA-RFP-001-16	641-2019	01/15/20	$ 14,000
Airport	6156-100	06/24/20	CPA-RFP-001-16	658-2020	06/15/20	$ 14,000
Airport	6856-103	04/20/20	CPA-RFP-010-19	9161000480	04/08/20	$ 15,000
Seaport	5330-100	02/28/20	CPA-RFP-010-19	9161000434	02/12/20	$ 5,000

Finding No. 2020-002, Continued

Condition, Continued:

4. For three disbursements, transactions pertain to a janitorial service contract for the air traffic control tower that was procured under CPA-RFP-002-16. The contract was renewed for another two years, with an option to extend for an additional two years when it expired on September 30, 2017; however, the original contract did not contain an option-to-renew provision. In addition, when the renewed contract expired on September 30, 2019, the janitorial service contract was incorporated into another contract that was procured under CPA-RFP-004-18, for which the same vendor was also providing janitorial services at the Saipan International Airport and Commuter Terminal. Since the original contract did not contain the option-to-renew provision, and the two contracts were separately procured through separate RFPs, a new procurement process for the air traffic control tower should have commenced when the original contract was expiring.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	6256-100	11/30/19	CPA-RFP-004-18	2019-322	11/02/19	$ 5,000
Airport	6256-100	03/31/20	CPA-RFP-004-18	2020-046	03/02/20	$ 5,000
Airport	6256-100	07/31/20	CPA-RFP-004-18	2020-110	07/01/20	$ 5,000

5. For one disbursement, the transaction pertains to the airside grounds maintenance services for which the contract agreement expired on March 31, 2020 and was renewed for another two years, expiring on April 1, 2022; however, the term was only for four years, and the contract agreement did not contain an option-to-renew provision. The contract should have gone through the procurement process.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	6156-100	06/24/20	CPA-RFP-001-16	658-2020	06/15/20	$ 14,000

6. For four disbursements, procurement files were not provided.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	6856-101	03/31/20	None	CS0005931	03/01/20	$ 357
Airport	6856-103	04/20/20	CPA-RFP-010-19	9161000480	04/08/20	$ 15,000
Airport	6882-101	09/30/20	None	Various	10/01/20	$ 5,407
Seaport	5330-100	02/28/20	CPA-RFP-010-19	9161000434	02/12/20	$ 5,000

7. For thirty-one disbursements, the Procurement Officer's certification of compliance that the contract is for a public purpose and that the contract does not constitute a waste or abuse of CPA funds regardless of source were not provided.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	6856-101	03/31/20	None	CS0005931	03/01/20	$ 357
Airport	6856-101	03/31/20	CPA-RFP-008-19	20200328	03/26/20	$ 8,738
Airport	6856-101	03/31/20	None	12002	03/31/20	$ 300
Airport	7186-103	09/30/20	CPA-SA-003-20	1	05/11/20	$ 29,542
Airport	7186-103	09/30/20	CPA-SA-003-20	2	06/09/20	$ 48,284
Airport	7186-103	09/30/20	CPA-SA-003-20	3	07/21/20	$ 48,946
Airport	7186-103	09/30/20	CPA-SA-003-20	4	08/21/20	$ 53,239
Airport	7186-103	09/30/20	CPA-SA-003-20	5	09/10/20	$ 51,884

Finding No. 2020-002, Continued

Condition, Continued:

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	7186-103	09/30/20	CPA-SA-003-20	6	10/20/20	$ 45,361
Airport	7186-103	09/30/20	CPA-SA-003-20	9	02/26/21	$ 14,592
Airport	7186-103	09/30/20	CPA-SA-003-20	1	04/20/20	$ 397,073
Airport	7186-103	09/30/20	CPA-SA-003-20	2	06/08/20	$ 52,605
Airport	7186-103	09/30/20	CPA-SA-003-20	3	07/01/20	$ 487,638
Airport	7186-103	09/30/20	CPA-SA-003-20	4	07/23/20	$ 425,372
Airport	7186-103	09/30/20	CPA-SA-003-20	5	08/24/20	$ 79,979
Airport	7186-103	09/30/20	CPA-SA-003-20	6	10/21/20	$ 127,494
Airport	7186-103	09/30/20	CPA-SA-003-20	7	01/06/21	$ 174,463
Airport	7186-103	09/30/20	CPA-SA-004-17	98505	04/28/18	$ 65,729
Airport	7186-103	09/30/20	CPA-SA-004-17	105651	08/31/18	$ 13,176
Airport	7186-103	09/30/20	CPA-SA-004-17	120558	05/25/19	$ 1,130
Airport	7186-103	09/30/20	CPA-SA-004-17	128644	09/28/19	$ 113,082
Airport	7186-103	09/30/20	CPA-SA-004-17	138276	03/27/20	$ 10,209
Airport	7186-103	09/30/20	CPA-SA-004-17	140201	04/27/20	$ 29,444
Airport	7186-103	09/30/20	CPA-SA-004-17	142197	06/08/20	$ 18,945
Airport	7186-103	09/30/20	CPA-SA-004-17	144838	06/30/20	$ 9,578
Airport	7186-103	09/30/20	CPA-SA-004-17	145649	07/31/20	$ 11,102
Airport	7186-103	11/26/19	CPA-SS-001-19	Prepayment	02/05/19	$ 27,500
Airport	7186-103	11/26/19	CPA-SS-001-19	19-0091	10/21/19	$ 82,500
Airport	7186-103	08/31/20	CPA-SA-001-19	CPA-20-8-2	08/25/20	$ 6,720
Airport	7186-103	09/30/20	CPA-SA-001-19	CPA 20-9-1	09/24/20	$ 6,720
Airport	7186-103	09/30/20	CPA-SA-001-19	CPA 20-9-2	10/05/20	$ 6,720

8. For three disbursements, documentation substantiating that three written price quotations were obtained was not provided.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	6856-101	03/31/20	None	12002	03/31/20	$ 300
Airport	6259-100	10/31/19	SPN-20-23989	025975	10/24/19	$ 539
Airport	6860-200	07/31/20	None	R4927	07/31/20	$ 280

9. For fourteen disbursements, transactions were procured under the sole source method; however, the written determination did not state the unique capabilities required for the project.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	7186-103	09/30/20	CPA-SA-003-20	1	05/11/20	$ 29,542
Airport	7186-103	09/30/20	CPA-SA-003-20	2	06/09/20	$ 48,284
Airport	7186-103	09/30/20	CPA-SA-003-20	3	07/21/20	$ 48,946
Airport	7186-103	09/30/20	CPA-SA-003-20	4	08/21/20	$ 53,239
Airport	7186-103	09/30/20	CPA-SA-003-20	5	09/10/20	$ 51,884
Airport	7186-103	09/30/20	CPA-SA-003-20	6	10/20/20	$ 45,361
Airport	7186-103	09/30/20	CPA-SA-003-20	9	02/26/21	$ 14,592
Airport	7186-103	09/30/20	CPA-SA-003-20	1	04/20/20	$ 397,073
Airport	7186-103	09/30/20	CPA-SA-003-20	2	06/08/20	$ 52,605
Airport	7186-103	09/30/20	CPA-SA-003-20	3	07/01/20	$ 487,638
Airport	7186-103	09/30/20	CPA-SA-003-20	4	07/23/20	$ 425,372
Airport	7186-103	09/30/20	CPA-SA-003-20	5	08/24/20	$ 79,979
Airport	7186-103	09/30/20	CPA-SA-003-20	6	10/21/20	$ 127,494
Airport	7186-103	09/30/20	CPA-SA-003-20	7	01/06/21	$ 174,463

Finding No. 2020-002, Continued

Condition, Continued:

10. For eight disbursements, transactions were procured under the sole source procurement method; however, written determinations by the Contracting Officer stating that there is only one source for the required construction item was not provided for contract no. CPA-SS-001-19; written determinations for purchase order nos. ROP-20-3961 and ROP-20-3960 and contract no. CPA-SA-001-19 do not state the unique capabilities required and considerations given to alternative sources. In addition, certification of funding availability by the Comptroller and documentation substantiating that the vendor is the only authorized company within Micronesia to sell the supply purchased was not provided for purchase order nos. ROP-20-3961 and ROP-20-3960.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	6758-200	04/30/20	ROP-20-3961	14920-51654	03/10/20	$ 5,043
Airport	6758-200	04/30/20	ROP-20-3960	14920-51659	03/10/20	$ 2,116
Airport	7186-103	11/26/19	CPA-SS-001-19	N/A	02/05/19	$ 27,500
Airport	7186-103	11/26/19	CPA-SS-001-19	19-0091	10/21/19	$ 82,500
Airport	7186-103	08/31/20	CPA-SA-001-19	CPA-20-8-2	08/25/20	$ 6,720
Airport	7186-103	09/30/20	CPA-SA-001-19	CPA 20-9-1	09/24/20	$ 6,720
Airport	7186-103	09/30/20	CPA-SA-001-19	CPA 20-9-2	10/05/20	$ 6,720
Seaport	5290-100	08/31/20	S-CPA-20-3874	15062	09/01/20	$ 6,939

11. For three disbursements, transactions were procured under the emergency procurement; however, the Executive Director's summary finding or report of the calamity to the Comptroller and the Board advising of the emergency or calamity was not provided.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	7186-103	03/11/20	SPN-20-24073	1206-032	12/06/19	$ 17,875
Airport	7186-103	03/11/20	SPN-20-24073	0120-051	02/07/20	$ 25,025
Airport	7186-103	03/11/20	SPN-20-24073	0220-063	02/25/20	$ 28,600

12. For nine disbursements, transactions were procured under the emergency procurement method; however, the Executive Director's reports to the Board of Directors providing further details relating to the emergency, the actions taken, the expenditures, and any recommendations following the resolution of the emergency were not provided.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	6258-100	07/30/20	SPN-20-24297	TAG-20-149	06/11/20	$ 1,315
Airport	6258-100	07/30/20	SPN-20-24298	TAG-20-150-R.1	06/11/20	$ 1,863
Airport	6258-100	07/30/20	SPN-20-24299	TAG-20-144	06/11/20	$ 4,628
Airport	6258-100	07/30/20	SPN-20-24297	2159	07/16/20	$ 2,958
Airport	6258-100	07/30/20	SPN-20-24298	2160	07/16/20	$ 4,191
Airport	6258-100	07/30/20	SPN-20-24299	2161	07/16/20	$ 10,413
Airport	7186-103	03/11/20	SPN-20-24073	1206-032	12/06/19	$ 17,875
Airport	7186-103	03/11/20	SPN-20-24073	0120-051	02/07/20	$ 25,025
Airport	7186-103	03/11/20	SPN-20-24073	0220-063	02/25/20	$ 28,600

Finding No. 2020-002, Continued

Condition, Continued:

13. For nine disbursements, public notices for the Request for Qualification Statements were not provided.

Location	Account No.	General Ledger Date	Reference No.	Invoice No.	Invoice Date	Invoice Amount
Airport	7186-103	09/30/20	CPA-SA-004-17	98505	04/28/18	$ 65,729
Airport	7186-103	09/30/20	CPA-SA-004-17	105651	08/31/18	$ 13,176
Airport	7186-103	09/30/20	CPA-SA-004-17	120558	05/25/19	$ 1,130
Airport	7186-103	09/30/20	CPA-SA-004-17	128644	09/28/19	$ 113,082
Airport	7186-103	09/30/20	CPA-SA-004-17	138276	03/27/20	$ 10,209
Airport	7186-103	09/30/20	CPA-SA-004-17	140201	04/27/20	$ 29,444
Airport	7186-103	09/30/20	CPA-SA-004-17	142197	06/08/20	$ 18,945
Airport	7186-103	09/30/20	CPA-SA-004-17	144838	06/30/20	$ 9,578
Airport	7186-103	09/30/20	CPA-SA-004-17	145649	07/31/20	$ 11,102

Cause: CPA lacks controls, such as oversight responsibility and monitoring, over compliance with procurement rules and regulations.

Effect: CPA is in noncompliance with applicable procurement rules and regulations requirements for non-Federal transactions.

Identification as a Repeat Finding: Finding 2019-001.

Recommendation: CPA should establish and implement controls over compliance with procurement rules and regulations. Responsible personnel should review all vendor selections for adherence with CPA's Procurement Rules and Regulations prior to signing contracts.

Views of Responsible Officials:

CPA's Corrective Action Plan states agreement with Conditions 1 through 8 and 10 (except for CPA-SA-001-19) through 13 and states disagreement with Conditions 9 and 10 (CPA-SA-001-19), as follows:

Condition 9 - CPA agrees that the procurement could have been done under emergency procurement. However, the sole source justification is valid as the roofing contractor specializes in these services. They were the original subcontractor hired during the high roof replacement in 2006, so they are familiar with the airport roofing system. They are also the local representative for the same material pitched roof aluminum siding in the region. Based on conversations with the Saipan Airport Manager, CPA tried to hire roofing contractors in the CNMI for water proofing work prior to the typhoon, but vendors did not respond and/or did not provide quotations. For the construction manager, they provided project oversight on the roof repairs completed in 2017. They are familiar with the airport's entire roofing system and would not have needed extra time to review the previous drawings prior to the typhoon repairs. For another consultant to perform the construction management services, it would have taken them additional time (which could result in additional expenditures) to familiarize themselves with the previous project.

Finding No. 2020-002, Continued

Views of Responsible Officials, Continued:

Condition 10 - CPA-SA-001-19: The sole source justification for this contract does provide the "unique capabilities" for procuring their technical services. They were the original project manager for the initial construction of the training facility and are familiar with the intricacies of this facility and its highly technical systems. There is no consultant in the CNMI that knows the facility more. For another consultant to familiarize themselves, it would take a vast amount of time due to the technicalities of the project as well as potentially more money since consultant costs are based on hourly rates. With the pressure from FAA for immediate repairs of the facility to ensure compliance with FAA's Part 139 annual live fire certification requirements, hiring an unfamiliar consultant was not an option.

Auditor Response:

Condition 9 - The sole source written determination did not state the unique capabilities required for the project as required per the procurement regulations.

Condition 10 - For CPA-SA-001-19, the sole source written determination did not state the unique capabilities required for the project and considerations given to alternative sources as required per the procurement regulations.

Finding No.:	2020-003
Federal Agency:	U.S. Department of Transportation
CFDA Program:	20.106 Airport Improvement Program
Federal Award Nos.:	All AIP Grants
Area:	Equipment and Real Property Management
Area:	Capital Assets
Questioned Costs:	$-0-

Criteria: In accordance with applicable equipment and real property management requirements, a State must use, manage and dispose of equipment acquired under a Federal award by the State in accordance with State laws and procedures.

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the federal award identification number), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal of the property; and

(2) A physical inventory of the property must be taken and the results reconciled with the property records annually.

Condition:

CFDA 20.106

1. CPA conducted a capital assets inventory during fiscal year 2020; however, only a partial reconciliation was performed. Total fixed asset additions capitalized and related to CPA's major program amounted to $-0-, $8,222,248, $-0-, $6,476,899, $5,294,765 and $-0- during fiscal years 2020, 2019, 2018, 2017, 2016 and 2015, respectively.

2. The capital assets schedule did not include the federal award identification number, who holds title, percentage of federal participation, location, use and condition of the assets.

Of sixty items (or 46%) tested of a total population of one hundred and thirty FAA-funded capital assets, we noted deficiencies, as follows:

3. Three items (or 7%) have been replaced; as such, the assets should have been written-off.

General Ledger Asset Account No.	System No.	Description	In Service Date	Acquisition Cost	Net Book Value
1510-111	000094	SECURITY ACCESS CONTROL SYSTEM	10/01/97	$ 1,134,655	$ -
1510-111	000025	Generator - SPN	04/01/87	$ 1,419,119	$ -
1570-311	000066	PERIMETER FENCING - TIQ	09/01/93	$ 197,894	$ -

4. We were unable to determine the existence of four (or 7%) as the capital asset subledger lacks a sufficient description to specifically identify the asset.

Finding No.:	2020-003, Continued
Federal Agency:	U.S. Department of Transportation
CFDA Program:	20.106 Airport Improvement Program
Federal Award Nos.:	All AIP Grants
Area:	Equipment and Real Property Management
Area:	Capital Assets
Questioned Costs:	$-0-

Condition, Continued:

CFDA 20.106, Continued

General Ledger Asset Account No.	System No.	Description	In Service Date	Acquisition Cost	Net Book Value
1520-311	000045	TIQ FAA 75-0011-01	06/01/78	$ 188,031	$ -
1520-311	000047	FAA 06-69-0011-04	12/03/80	$ 1,503,392	$ -
1520-311	000801	AJE to recon SEFA - FY06	09/30/07	$ 24,624	$ 8,721
1590-311	000845	AJ-06 FY 2005 SEFA CIP Recon	10/01/07	$ 33,481	$ -

5. One item (or 2%) could not be verified against pictures provided as the asset detail report lacks a sufficient description.

General Ledger Asset Account No.	System No.	Description	In Service Date	Acquisition Cost	Net Book Value
1520-211	000694	ROTA VISUAL GUIDANCE	10/01/05	$ 207,235	$ -

6. Eight items (or 13%) have been replaced or decommissioned; as such, the assets should have been written-off.

General Ledger Asset Account No.	System No.	Description	In Service Date	Acquisition Cost	Net Book Value
1570-311	000068	MASTER PLAN – TIQ	02/01/94	$ 197,894	$ 825
1590-111	000644	FIRE PREVENTION EQUIPMENTS	12/11/03	$ 13,476	$ -
1530-111	000706	PASSENGER LIFTER	10/01/05	$ 75,999	$ -
1520-111	000749	PAINT REMOVER MACHINE	08/01/06	$ 8,592	$ -
1510-111	000814	Inverter HF-430	01/01/08	$ 10,355	$ -
1510-111	000815	Inverters	02/01/08	$ 7,586	$ -
1590-111	000879	Radio Equipment	10/01/08	$ 30,532	$ -
1510-111	000891	4160 VAC Caterpillar Alternator	03/04/09	$ 90,895	$ -

7. For one item (or 2%), the asset system number 60 was disposed of during FY2020, but was included in the FAA fixed asset listing of September 30, 2020.

Non-Federal Capital Assets

Tests of other capital assets noted the following:

8. Three expense items were improperly capitalized. Management did not consider the amounts sufficiently material to the financial statements to warrant an adjustment.

Finding No.: 2020-003, Continued
Federal Agency: U.S. Department of Transportation
CFDA Program: 20.106 Airport Improvement Program
Federal Award Nos.: All AIP Grants
Area: Equipment and Real Property Management
Area: Capital Assets
Questioned Costs: $-0-

Condition, Continued:

Non-Federal Capital Assets, Continued

System Description	Location	System No.	In Service Date	Acquired Value	Net Book Value
REPLACE CONTROL BOARD AND MOTION SENSOR WITH NEW HARDWARE	Airport	001230	01/01/17	$ 3,404	$ -
TIRE & RIM ASSEMBLY (2 EA. - 24R21)	Airport	001125	04/01/15	$ 16,423	$ -
HYDRAULIC STEERING ASSEMBLY	Seaport	000190	03/01/13	$ 1,950	$ -

9. For one asset, we were unable to determine physical existence as the subledger lacked sufficient description (e.g., tag number or serial number) to match the asset to the fixed asset detail.

System Description	Location	System No.	In Service Date	Acquired Value	Net Book Value
6 Solid Core Doors for ARFF Bldg	Airport	000955	09/01/10	$ 10,355	$ -

10. For fourteen assets, we were unable to determine physical existence as we were advised that the asset had either been disposed of, replaced or damaged. At September 30, 2020, the assets were included in the fixed asset subledger.

System Description	Location	System No.	In Service Date	Acquired Value	Net Book Value
FIRE PREVENTION EQUIPMENTS	Airport	000644	03/01/04	$ 13,476	$ -
SONY VAIO LAPTOP	Airport	000787	09/01/07	$ 1,064	$ -
INFOCUS PROJECTOR/PRINTER	Airport	000608	05/01/03	$ 2,605	$ -
Intel Core 2 Duo Computer	Airport	000838	01/16/08	$ 1,695	$ -
TIRE W/RIM	Airport	000419	02/01/97	$ 2,000	$ -
AIR PAK	Airport	000297	03/01/95	$ 13,100	$ -
Gateway Intel Core i3 Computer	Airport	000945	08/01/10	$ 693	$ -
6 ALUMINUM DOORS FOR LOADING BRIDGE	Airport	001033	03/01/13	$ 12,380	$ -
PROJECTOR INFOCUS LP120	Airport	000719	05/01/05	$ 2,680	$ -
LINK 3 SEAT	Airport	000456	10/01/97	$ 14,400	$ -
CA TRANSPORTER	Airport	000602	02/01/03	$ 16,739	$ -
Intel Duo Computer	Airport	000839	01/31/08	$ 620	$ -
DELL DESKTOP COMPUTER	Seaport	000184	11/01/12	$ 674	$ -
6 PCS. BOSCH VEZ-523-EW PTZ CAMERA	Seaport	000237	12/01/15	$ 14,708	$ -

11. The assets are not functional; however, the assets have not been decommissioned.

System Description	Location	System No.	In Service Date	Acquired Value	Net Book Value
DUPLEX BOOSTER WATER PUMP	Airport	001131	09/01/15	$ 25,868	$ -
22,000 BTU AC SPLIT UNIT	Airport	001328	04/01/18	$ 1,700	$ -
CENTRAL SPLIT AC UNIT	Seaport	000255	06/01/18	$ 3,350	$ -
Dock Lighting Improvements	Seaport	000154	10/01/07	$ 409,263	$ 56,842

12. Nine decommissioned assets were included in the fixed asset subledger.

Finding No.:	2020-003, Continued
Federal Agency:	U.S. Department of Transportation
CFDA Program:	20.106 Airport Improvement Program
Federal Award Nos.:	All AIP Grants
Area:	Equipment and Real Property Management
Area:	Capital Assets
Questioned Costs:	$-0-

Condition, Continued:

Non-Federal Capital Assets, Continued

System Description	Location	System No.	In Service Date	Acquired Value	Net Book Value
TORO/GUARDIAN RECYCLER	Airport	000553	10/01/01	$ 23,000	$ -
TOYOTA HILUX PICK UP	Airport	000282	10/01/94	$ 12,970	$ -
FORD ECONOLINE CARGO VAN	Airport	000612	06/01/03	$ 17,154	$ -
INTEL PENTIUM SONY LAPTOP	Airport	000740	03/01/06	$ 2,155	$ -
2 Intel Core Duo Desktop Computers	Airport	000903	02/01/10	$ 2,578	$ -
Sony VAIO Notebook Laptop	Airport	000902	01/01/10	$ 1,349	$ -
FORD ECONOLINE CARGO VAN	Airport	000611	06/01/03	$ 18,801	$ -
LED Police Siren (3ea)	Airport	000888	10/01/08	$ 5,625	$ -
Desktop w/ 19" Monitor	Airport	000836	06/27/08	$ 2,700	$ -

13. For three assets, the location per the subledger did not agree to the location where the item was sighted.

System Description	System No.	In Service Date	Acquired Value	Net Book Value	Location per Subledger	Location per Sighting
FORD ECONOLINE CARGO VAN	000612	06/01/03	$ 17,154	$ -	Airport	Seaport
MAS90 UPGRADE/FRx DESKTOP	000112	03/01/03	$ 2,816	$ -	Seaport	Airport
TOYOTA TACOMA 4X2 PICK UP (DARK GREEN)	001057	09/01/13	$ 21,547	$ -	Saipan	Rota

14. For six assets, the description comprises numerous units; however, we were not able to verify physical existence of these units as they have been decommissioned. We were not provided with the decommissioning documents.

System Description	Location	System No.	In Service Date	Number of Units Per Subledger	Number of Units Could not be Verified for Existence	Acquired Value	Net Book Value
7 SETS OF ALUMINUM SOLID DOORS	Airport	001117	02/01/15	7	4	$ 15,216	$ -
6 UNITS, 30K SPLIT TYPE FLOOR STANDING	Airport	001059	09/30/13	6	5	$ 7,488	$ -
FEVER SCAN, THERMAL IMAGING CAMERA	Airport	001423	04/01/20	6	1	$ 25,045	$ 21,914
SWING ALUMINUM GLASS DOORS (2 SETS)	Airport	001149	02/01/16	2	1	$ 5,734	$ 5,734
REPLACE CONTROL BOARD AND MOTION SENSOR WITH NEW HARDWARE	Airport	001230	01/01/17	2	1	$ 3,404	$ -
2-SOLID ALUMINUM DOOR	Airport	001063	11/01/13	2	1	$ 2,650	$ -

15. For system no. 1413, eight air-conditioning units were added in FY2020 as fixed assets to replace the old eight units; however, the decommissioning documents for the old units were not provided.

16. System no. 1436 was added as a fixed asset in April 2020, while the final project was accepted and the final billing was paid in December 2019.

Finding No.: 2020-003, Continued
Federal Agency: U.S. Department of Transportation
CFDA Program: 20.106 Airport Improvement Program
Federal Award Nos.: All AIP Grants
Area: Equipment and Real Property Management
Area: Capital Assets
Questioned Costs: $-0-

Condition, Continued:

Non-Federal Capital Assets, Continued

17. Accumulated depreciation was understated as the accumulated depreciation was reduced equivalent to the acquisition cost of disposed assets even though it was not fully depreciated. This was corrected through a proposed audit adjustment.

System No.	Location	Asset Description	Acquired Value	Accumulated Depreciation	Net Book Value
001330	Airport	EQUIPMENT SHELTER	$ 24,480	$ 10,608	$ 13,872
000590	Airport	ROTA ARRIVAL/AIRCON	$ 872,523	$ 774,364	$ 98,159
001241	Airport	AUTOMATED PARKING FACILITY SYSTEM	$ 52,905	$ 34,388	$ 18,517
001248	Airport	INTALLATION OF WIFI ANTENNA AND IP	$ 6,900	$ 4,600	$ 2,300
000806	Airport	PIA Hangar	$ 154,883	$ 131,650	$ 23,233
001283	Airport	PUMP HOUSE FENCING PROJECT	$ 97,214	$ 22,683	$ 74,531
001377	Airport	PARTS FOR CRASH 8	$ 80,000	$ 36,667	$ 43,333
001284	Airport	ROOF LEAK REPAIRS	$ 189,880	$ 58,546	$ 131,334
001350	Airport	WOODEN ROOF STRUCTURE	$ 13,828	$ 6,626	$ 7,202
001203	Airport	ROTATING BEACON REPLACEMENT	$ 222,423	$ 85,262	$ 137,161

18. We were unable to determine the existence of the following as the asset could not be sighted due to inaccessibility.

System Description	Location	System No.	In Service Date	Acquired Value	Net Book Value
3 TONS CENTRAL SPLIT UNIT	Airport	001403	07/01/19	$ 5,660	$ 2,123
24,000 BTU SPLIT A/C FOR COMMUTER DEPARTURE	Airport	001034	03/01/13	$ 1,784	$ -
REPLACE CONTROL BOARD AND MOTION SENSOR WITH NEW HARDWARE	Airport	001230	01/01/17	$ 3,404	$ -

Cause: CPA lacks controls, such as oversight responsibility and monitoring, over compliance with equipment and real property management requirements.

Effect: CPA is in noncompliance with applicable equipment and real property management requirements. No questioned costs are presented as we are unable to quantify the extent of noncompliance.

Identification as a Repeat Finding: Finding 2019-002.

Recommendation: CPA should adhere to property management requirements such as performing monitoring activities to ascertain that the results of the annual physical inventory reconcile to the property records and that sufficient details are included in the capital assets subledger to specifically identify individual assets.

Views of Responsible Officials:

CPA's Corrective Action Plan states agreement.

Finding No.: 2020-004
Federal Agency: U.S. Department of Transportation
CFDA Program: 20.106 Airport Improvement Program
Federal Award Nos.: All AIP Grants
Area: Reporting
Questioned Costs: $-0-

Criteria: In accordance with applicable reporting requirements, SF-425, Federal Financial Report for cash status, should be supported by applicable accounting records.

Condition: For three (or 18%) of seventeen SF-425 reports tested, we noted incorrect amounts reported for Total recipient share required and Remaining recipient share to be provided for the reporting period ended September 30, 2020, as follows:

Federal Award No. 3-69-0002-89		Per SF-425	Per Audit	Variance
Federal expenditures and unobligated balance	10d. Total federal funds authorized	$ 5,293,632	$ 5,961,217	$ (667,585)
	10h. Unobligated balance of federal funds	$ 2,066,222	$ 2,733,807	$ (667,585)
Recipient share	10i. Total recipient share required	$ 365,959	$ 440,135	$ (74,176)
	10j. Recipient share of expenditures	$ 92,729	$ 136,379	$ (43,650)
	10k. Remaining recipient share to be provided	$ 273,230	$ 303,756	$ (30,526)
Federal Award No. 3-69-0002-91				
Recipient share	10j. Recipient share of expenditures	$ 20,040	$ 24,917	$ (4,877)
	10k. Remaining recipient share to be provided	$ 9,959	$ 5,083	$ 4,876
Federal Award No. 3-69-0002-92				
Recipient share	10j. Recipient share of expenditures	$ 23,586	$ 60,078	$ (36,492)
	10k. Remaining recipient share to be provided	$ 51,880	$ 15,388	$ 36,492

Cause: CPA did not effectively monitor reports for compliance with applicable reporting requirements.

Effect: CPA is in noncompliance with grant reporting requirements. No questioned costs are presented as the variances do not represent Program overpayments, and reports have been subsequently corrected.

Recommendation: Responsible personnel should perform supervisory reviews so that reports accurately reflect the required recipient share and remaining recipient share in accordance with applicable reporting requirements.

Views of Responsible Officials:

CPA's Corrective Action Plan states agreement.

Finding No.:	2020-005
Federal Agency:	U.S. Department of Transportation
CFDA Program:	20.106 COVID-19 Airport Improvement Program
Federal Award No.:	3-69-0002-094-2020
Area:	Allowable Costs/Cost Principles
Questioned Costs:	$24,763

Criteria: In accordance with applicable allowable costs/cost principles requirements, allowable costs must meet the purpose of the grant to maintain safe and efficient airport operations.

Further, in accordance with the terms and conditions of the CARES Act award regarding utilities proration, it states that for purposes of computing the United States' share of the allowable airport operations and maintenance costs, the allowable cost of utilities incurred by the Sponsor to operate and maintain airport(s) included in the Grant must not exceed the percent attributable to the capital or operating costs of the airport.

Condition: Of twenty-five samples tested, totaling $3,609,993 of a total population of $11,114,508, the following were noted:

1. For one (or 4%), rental costs for decorative potted plants totaling $1,500 under AP-002935 dated 09/30/2020 were charged under the grant and is not a permitted use of airport revenues.

2. For one (or 4%), utility costs of $88,640 under AP-002922 dated 08/31/2020 were charged to the grant at 100% when only 74% appears allowable.

Cause: CPA lacks such controls as oversight responsibility and monitoring over compliance with allowable costs/cost principles requirements.

Effect: CPA is in noncompliance with applicable allowable costs/cost principles requirements, and questioned costs of $24,763 exist, as projected questioned costs exceed the threshold.

Recommendation: CPA should adhere to allowable costs/cost principles requirements and should confirm that costs charged to the Program are in compliance with the terms and conditions of the Federal award.

Views of Responsible Officials:

CPA's Corrective Action Plan states disagreement with Conditions 1 and 2, as follows:

Condition 1 - CPA disagrees with this finding. According to the grant terms and conditions, the grant shall be available for any purpose for which airport revenues may be lawfully used. The plant rental service is a service provided directly to the airport and meets the requirements of the FAA Revenue Use Policy.

Condition 2 - CPA disagrees with this finding. 100% of the utility costs claimed are for airport operations.

Finding No.:	2020-005, Continued
Federal Agency:	U.S. Department of Transportation
CFDA Program:	20.106 COVID-19 Airport Improvement Program
Federal Award No.:	3-69-0002-094-2020
Area:	Allowable Costs/Cost Principles
Questioned Costs:	$24,763

Auditor Response:

Condition 1 - Airport revenue may be used for the capital or operating costs of the airport directly and substantially related to the air transportation of passengers or property. Plant rental services do not meet this definition. The finding remains.

Condition 2 - The terms of the CARES Act grant state that the allowable cost of utilities incurred by the Sponsor to operate and maintain airport(s) included in the Grant must not exceed the percent attributable to the capital or operating costs of the airport. The finding remains.

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Finding No 2020-001

Name of Contact Person: Skye Lynn L. Aldan Hofschneider

Corrective Action:

Condition 1: Resolved. CPA received updated documents from the vendor to reflect the current prices.

Condition 2: Resolved. CPA Management concurs with this finding. CPA was not aware that the studies were completed and was only provided a copy of the completed studies in FY 2020. CPA has entered the audit adjustment to reflect the expense.

Condition 3: Resolved. CPA agrees with this finding. CPA has entered the audit adjustments to reclassify the amounts to be expensed in the periods incurred.

Condition 4: Resolved. CPA concurs with this finding. The Department Manager confirmed that the shortage in materials was a typo. The Department Manager later certified the number of materials received matched the invoice. CPA Accounting will verify all receiving reports to ensure that the quantities certified to be received match up to the invoices billed.

Condition 5: Resolved. CPA has required the vendor to submit updated documentation whenever a price change occurs. The vendor has agreed to comply with the requirement.

Proposed Completion Date: Fiscal Year 2021

Finding No 2020-002

Name of Contact Person: Skye Lynn L. Aldan Hofschneider

Corrective Action:

Condition 1, 3, 4, 5, 6, 7, 8, 10, 11: CPA agrees with this finding. CPA has implemented oversight procedures to ensure that Procurement regulations are complied with. CPA will create a checklist to include all RFP and IFB requirements to ensure that all requirements are met and all documents are kept on file.

Condition 2: CPA reviewed the project file and noted that only two vendors submitted proposals in response to the RFP. The evaluation forms were misplaced with the transfer of the Procurement Office. CPA has implemented an updated filing system to ensure that bid documents are complete and kept on file per project.

Condition 9: CPA agrees that the procurement could have been done under emergency procurement. However, the sole source justification is valid as the roofing contractor specializes in these services. They were the original subcontractor hired during the high roof replacement in 2006, so they are familiar with the airport roofing system. They are also the local representative for the same material pitched roof aluminum siding in the region. Based on conversations with the Saipan Airport Manager, CPA tried to hire roofing contractors in the CNMI for water proofing work prior to the typhoon, but vendors did not respond and/or did not provide quotations. For the construction manager, they provided project oversight on the roof repairs completed in 2017. They are familiar with the airport's entire roofing system and would not have needed extra time to review the previous drawings prior to the typhoon repairs. For another consultant to perform the construction management services, it would have taken them additional time (which could result in additional expenditures) to familiarize themselves with the previous project.

Condition 10: CPA-SA-001-19: The sole source justification for this contract does provide the "unique capabilities" for procuring their technical services. They were the original project manager for the initial construction of the training facility and are familiar with the intricacies of this facility and its highly technical systems. There is no consultant in the CNMI that knows the facility more. For another consultant to familiarize themselves, it would take a vast amount of time due to the technicalities of the project as well as potentially more money since consultant costs are based on hourly rates. With the pressure from FAA for immediate repairs of the facility to ensure compliance with FAA's Part 139 annual live fire certification requirements, hiring an unfamiliar consultant was not an option.

Condition 12: CPA agrees with this finding. CPA Management will comply with Procurement regulations and provide the Executive Director's closeout reports for any emergency procurement.

Condition 13: CPA agrees with this finding. CPA has placed protocols such as better filing systems and filing of hard copies of all newspaper articles to ensure this does not happen again. Additionally, all advertised requests for qualifications will be placed on CPA's website.

Proposed Completion Date: Fiscal Year 2022

Finding No 2020-003

Name of Contact Person: Skye Lynn L. Aldan Hofschneider

Corrective Action:

Condition 1: In FY 2021, CPA reconciled its federally funded fixed assets and compiled a listing of federally funded assets to be removed. The grantor agency has approved the removal of these assets from the system and CPA proceeded with the decommissioning of these assets in FY 2021.

Condition 2, 4 & 9, 14: CPA has implemented additional requirements for entering capital assets into its fixed asset system. For each asset entered, CPA includes the serial number, VIN number, or other identification number and the specific location within the CPA premises. CPA will include the title, percentage of federal participation, use, and condition of the assets when entering into the system

Condition 3: Resolved. For fixed assets 000094 and 000025, CPA decommissioned these assets in FY 2021. For fixed asset 000066, CPA decommissioned this asset in August 2021. The fencing project was not completed until FY 2021.

Condition 5: Resolved. CPA decommissioned this asset in FY 2021, as the item is not in usable condition.

Condition 6: In FY 2021, CPA decommissioned the assets listed, except for FA 000749. CPA will verify the status of FA 000749. If confirmed that the asset is not in service, CPA will prepare the required documentation for decommissioning.

Condition 7 & 12: Resolved. This was an oversight. CPA will enter all approved decommissions into the fixed asset system.

Condition 8: CPA agrees with this finding. CPA Accounting and Procurement will review all purchases to properly determine which items should be capitalized.

Condition 10 & 11: CPA will review all assets to determine if they were replaced, disposed, or not functioning. If confirmed, CPA will process the required decommission forms to remove the fixed assets from the system.

Condition 13: Resolved. CPA updated the location in the subledgers to match the physical location of each asset listed.

Condition 15: CPA agrees with this finding. CPA will review the fixed assets to determine which items have been decommissioned.

Condition 16: CPA reviewed the project files and determined that there was a timing issue with this grant. The final billing was paid in December 2019, but the closeout documents for the grant were received in May 2020.

Condition 17: Resolved. CPA entered the audit adjustment to reflect the corrected accumulated depreciation.

Condition 18: Fixed asset 1403 is located on the rooftop, the area is able to be accessed through a ladder and the item is tagged. Fixed asset 1034 is located in the Saipan commuter building, which is condemned. CPA will proceed with decommissioning the asset, as it is not in usable condition. CPA agrees with the finding regarding fixed asset number 1230.

Proposed Completion Date: FY 2022

Finding No 2020-004

Name of Contact Person: Skye Lynn L. Aldan Hofschneider

Corrective Action: Resolved. CPA agrees to the finding listed under Federal Award No. 3-69-0002-89 and 3-69-0002-92. For federal award 3-69-0002-89, the SF-425 has been amended to include the grant amendment. For federal award 3-69-0002-92, the SF 425 was subsequently amended to reflect the closeout recipient share.

Proposed Completion Date: FY 2021

Finding No 2020-005

Name of Contact Person: Skye Lynn L. Aldan Hofschneider

Corrective Action:

Condition 1: CPA disagrees with this finding. According to the grant terms and conditions, the grant shall be available for any purpose for which airport revenues may be lawfully used. The plant rental service is a service provided directly to the airport and meets the requirements of the FAA Revenue Use Policy.

Condition 2: CPA disagrees with this finding. 100% of the utility costs claimed are for airport operations.

Proposed Completion Date: FY 2021

federal register

Tuesday
February 16, 1999

Part II

Department of Transportation

Federal Aviation Administration

Policy and Procedures Concerning the Use of Airport Revenue; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 28472]

Policy and Procedures Concerning the Use of Airport Revenue

AGENCY: Federal Aviation Administration (FAA) DoT

ACTION: Policy statement.

SUMMARY: This document announces the final publication of the Federal Aviation Administration policy on the use of airport revenue and maintenance of a self-sustaining rate structure by Federally-assisted airports. This statement of policy ("Final Policy") was required by the Federal Aviation Administration Authorization Act of 1994, and incorporates provisions of the Federal Aviation Administration Reauthorization Act of 1996. The Final Policy is also based on consideration of comments received on two notices of proposed policy issued by the FAA in February 1996, and December 1996, which were published in the **Federal Register** for public comment. The Final Policy describes the scope of airport revenue that is subject to the Federal requirements on airport revenue use and lists those requirements. The Final Policy also describes prohibited and permitted uses of airport revenue and outlines the FAA's enforcement policies and procedures. The Final Policy includes an outline of applicable record-keeping and reporting requirements for the use of airport revenue. Finally, the Final Policy includes the FAA's interpretation of the obligation of an airport sponsor to maintain a self-sustaining rate structure to the extent possible under the circumstances existing at each airport.

DATES: This Final Policy is effective February 16, 1999.

FOR FURTHER INFORMATION CONTACT: J. Kevin Kennedy, Airport Compliance Specialist, Airport Compliance Division, AAS–400, Office of Airport Safety and Standards, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8725; Barry L. Molar, Manager, Airport Compliance Division, AAS–400, Office of Airport Safety and Standards, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3446.

SUPPLEMENTARY INFORMATION:

Outline of Final Policy

The Final Policy implements the statutory requirements that pertain to the use of airport revenue and the maintenance of an airport rate structure that makes the airport as self-sustaining as possible. The Final Policy generally represents a continuation of basic FAA policy on airport revenue use that has been in effect since enactment of the Airport and Airway Improvement Act of 1982 (AAIA), currently codified at 49 U.S.C. § 47107(b). The FAA issued a comprehensive statement of this policy in the Notice of Proposed Policy dated February 26, 1996 (Proposed Policy), and addressed four particular issues in more detail in the Supplemental Notice of Proposed Policy dated December 18, 1996 (Supplemental Notice). The Final Policy includes provisions required by the Federal Aviation Administration Authorization Act of 1994, Public Law 103–305 (August 23, 1994) (FAA Authorization Act of 1994), and the Airport Revenue Protection Act of 1996, Title VIII of the Federal Aviation Administration Reauthorization Act of 1996, Public Law 104–264 (October 9, 1996), 110 Stat. 3269 (FAA Reauthorization Act of 1996). The Final Policy also includes changes adopted in response to comments on the Proposed Policy and Supplemental Notice.

The Final Policy contains nine sections. Section I is the Introduction, which explains the purpose for issuing the Final Policy and lists the statutory authorities under which the FAA is acting.

Section II, "Definitions," defines federal financial assistance, airport revenue and unlawful revenue diversion.

Section III, "Applicability of the Policy," describes the circumstances that make an airport owner or operator subject to this Final Policy.

Section IV, "Statutory Requirements for the Use of Airport Revenue," discusses the statutes that govern the use of airport revenue.

Section V, "Permitted Uses of Airport Revenue," describes categories and examples of uses of airport revenue that are considered to be permitted under 49 U.S.C. 47107(b). The discussion is not intended to be a complete list of all permitted uses but is intended to provide examples for practical guidance.

Section VI, "Prohibited Uses of Airport Revenue," describes categories and examples of uses of airport revenue not considered to be permitted under 49 U.S.C. 47107(b). The discussion is not intended to be a complete list of all prohibited uses but is intended to provide examples for practical guidance.

Section VII, "Policies Regarding Requirement for a Self-Sustaining Airport Rate Structure," describes policies regarding the requirement that an airport maintain a self-sustaining airport rate structure. This is a new section of the policy, which provides more complete guidance on the subject than appeared in either the Proposed Policy or Supplemental Notice.

Section VIII, "Reporting and Audit Requirements," addresses the requirement for the filing of annual airport financial reports and the requirement for a review and opinion on airport revenue use in a single audit conducted under the Single Audit Act, 31 U.S.C. §§ 7501–7505.

Section IX, "Monitoring and Compliance," describes the FAA's activities for monitoring airport sponsor compliance with the revenue-use requirements and the requirement for a self-sustaining airport rate structure and the range of actions that the FAA may take to assure compliance with those requirements. Section IX also describes the sanctions available to FAA when a sponsor has failed to take corrective action to cure a violation of the revenue-use requirement.

Background

Governing Statutes

Four statutes govern the use of airport revenue: the AAIA; the Airport and Airway Safety and Capacity Expansion Act of 1987; the FAA Authorization Act of 1994; and the FAA Reauthorization Act of 1996. These statutes are codified at 49 USC 47101, *et seq.*

Section 511(a)(12) of the AAIA, part of title V of the Tax Equity and Fiscal Responsibility Act, Public Law 97–248, (now codified at 49 USC 47107(b)) established the general requirement for use of airport revenue. As originally enacted, the revenue-use requirement directed public airport owners and operators to "use all revenues generated by the airport * * * for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property."

The original revenue-use requirement also contained an exception, or "grandfather" provision, permitting certain uses of airport revenue for non-airport purposes that predate the AAIA.

The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223 (December 30, 1987), narrowed the permitted uses of airport revenues to nonairport facilities that are "substantially" as well as directly related to actual air transportation; required local taxes on aviation fuel enacted after December 30, 1987, to be

spent on the airport or, in the case of state taxes on aviation fuel, state aviation programs or noise mitigation on or off the airport; and slightly modified the grandfather provision.

The FAA Authorization Act of 1994 Act included three sections regarding airport revenue.

Section 110 added a policy statement to Title 49, Chapter 471, "Airport Development," concerning the preexisting requirement that airports be as self-sustaining as possible, 49 USC § 47101(a)(13).

Section 111 added a new sponsor assurance requiring airport owners or operators to submit to the Secretary and to make available to the public an annual report listing all amounts paid by the airport to other units of government, and the purposes for the payments, and a listing of all services and property provided to other units of government and the amount of compensation received. Section 111 also requires an annual report to the Secretary containing information on airport finances, including the amount of any revenue surplus and the amount of concession-generated revenue.

Section 112(a) requires the Secretary to establish policies and procedures that will assure the prompt and effective enforcement of the revenue-use requirement and the requirement that airports be as self-sustaining as possible.

Section 112(b) amends 49 USC § 47111, "Payments under project grant agreements," to provide the Secretary, with certain limitations, to withhold approval of a grant application or a new application to impose a Passenger Facility Charge (PFC) for violation of the revenue-use requirement. Section 112(c) authorizes the Secretary to impose civil penalties up to a maximum of $50,000 on airport sponsors for violations of the revenue retention requirement. Section 112(d) requires the Secretary, in administering the 1994 Authorization Act's revenue diversion provisions and the AIP discretionary grants, to consider the amount being lawfully diverted pursuant to the grandfathering provision by the sponsor compared to the amount being sought in discretionary grants in reviewing the grant application. Consequently, in addition to the prohibition against awarding grants to airport sponsors that have illegally diverted revenue, the FAA considers the lawful diversion of airport revenues by airport sponsors under the grandfather provision as a factor militating against the distribution of discretionary grants to the airport, if the amounts being lawfully diverted exceed the amounts so lawfully diverted in the airport's first year after August 23, 1994.

Section 112(e), which amended the Anti-Head Tax Act, 49 USC § 40116(d)(2)(A), prohibits a State, political subdivision, or an authority acting for a State or political subdivision from collecting a new tax, fee, or charge which is imposed exclusively upon any business located at a commercial service airport or operating as a permittee of the airport, other than a tax, fee, or charge utilized for airport or aeronautical purposes.

Title VIII of the FAA Reauthorization Act of 1996 included new provisions on the use of airport revenue. Among other things, section 804 codifies the preexisting grant-assurance based revenue-use requirement as 49 U.S.C. § 47133. Section 804 also expands the application of the revenue-use restriction to any airport that is the subject of Federal assistance.

Section 805, codified as 49 U.S.C. § 47107(m) *et seq.*, requires recipients of Federal assistance for airports who are subject to the Single Audit Act to include a review and opinion on airport revenue use in single audit reports.

Under section 47107(n), the Secretary, acting through the Administrator of the FAA, will perform fact finding and conduct hearings in certain cases; may withhold funds that would have otherwise been made available under Title 49 of the U.S. Code to a sponsor including another public entity of which the sponsor is a member entity, and may initiate a civil action under which the sponsor shall be liable for a civil penalty, if the Secretary receives a report disclosing unlawful use of airport revenue. Section 47107(n) also includes a statute of limitations that prevents the recovery of funds illegally diverted more than six years after the illegal diversion occurs. The Secretary is also authorized to recover civil penalties in the amount of three times the unlawfully diverted airport revenue under 49 U.S.C. § 46301(n)(5).

Section 47107(o) requires the Secretary to charge a minimum annual rate of interest on the amount of any illegal diversion of revenues. Interest is due from the date of the illegal diversion.

Section 47107(l)(5) imposes a statute of limitation of six years after the date on which the expense is incurred for repayment of sponsor claims for reimbursement of past expenditures and contributions on behalf of the airport. A sponsor may claim interest on the amount due for reimbursement, but only from the date the Secretary determines that the airport owes a sponsor.

Procedural History

In response to provisions in the 1994 Authorization Act, the FAA issued the Proposed Policy. (61 FR 7134, February 26, 1996) After reviewing all comments received in response to the notice, the FAA issued the Supplemental Notice on December 11, 1996, and requested further public comment. (61 FR 66735, December 18, 1996) Although the FAA published both documents as proposed policies, both notices stated that the FAA would apply the policies in reviewing revenue-use issues pending publication of a final policy.

The Department received 32 comments on the Proposed Policy and received 50 comments on the Supplemental Notice. Comments were received from airport owners and operators, airline organizations, transit authorities, and affected businesses and organizations. Most of the commenters were airport owners and operators. The Airport Council International-North America and the American Association of Airport Executives also provided comments supporting the sponsor/operator positions. Two major groups commented on behalf of the airlines—the Air Transport Association of America and the International Air Transport Association.

The Aircraft Owners and Pilots Association and the National Air Transportation Association commented on behalf of the general aviation and private aircraft owners. AOPA was primarily concerned with sponsor/airport accountability and the prompt and effective enforcement of the revenue diversion prohibitions.

Several port authorities, transit authorities, environmental groups, other public interest groups, trade associations, private businesses and individuals commented on a variety of specific issues.

The following discussion of comments is organized by issue rather than by commenter. Issues are discussed in the order they arise in the Final Policy. Airport proprietors and their representatives who took similar positions on an issue are collectively referred to as "airport operators." Airlines and airline trade associations are referred to as "air carriers" when the organizations took common positions. The summary of comments is intended to represent the general divergence or correspondence in commenters' views on various issues. It is not intended to be an exhaustive restatement of the comments received.

In addition, many comments on the original notice of proposed policy were addressed in the supplemental notice.

Those comments are not addressed again in this discussion.

The FAA considered all comments received, even if they are not specifically identified in this summary.

Discussion of Comments by Issue

1. Applicability

a. Applicability of Policy to Privately Owned Airports

In accordance with the statutes in effect at the time it was published, the Proposed Policy applied only to public agencies that had received AIP grants for airport development. The Proposed Policy included a specific statement that it did not apply to privately owned airports that had taken AIP grants while under private ownership. The Supplemental Notice did not modify these provisions.

The Comments: A public interest group concerned about reducing airport noise and mitigating its impacts recommended that the policy should apply to operators of privately owned airports.

Final Policy: The new statutory provision added by the Reauthorization Act of 1996, governing the restriction on the use airport revenue, 49 U.S.C. § 47133, does not differentiate between publicly or privately owned airports. The statute applies to all airports that have received Federal assistance. Under the AAIA certain privately-owned airports that are available for public use are eligible to receive airport development grants. As a result, any privately owned airport that receives an AIP grant after October 1, 1996, (the effective date of the FAA Reauthorization Act of 1996), is subject to the revenue use requirements. The applicability section of the Final Policy, Section III, is modified to reflect the expansion of the revenue-use requirement to include privately-owned airports.

b. Applicability of Policy to Publicly and Privately Owned Airports Subject to Federal Assistance

As a result of the same change in the law, recipients of Federal assistance provided after October 1, 1996, other than AIP grants, are also subject to the revenue-use restrictions. However, the Reauthorization Act of 1996 did not define Federal assistance, and the legislative history does not provide guidance on the meaning of this term. In addition, it did not explicitly address the status of airports that received Federal assistance other than AIP airport development grants before October 1, 1996, and therefore were not already bound by the revenue use restrictions. These issues are addressed in the Final Policy, based on the FAA's review of the statute, its legislative history and relevant judicial decisions.

Applicability of the revenue-use requirement under § 47133 depends on the definition of the term "Federal assistance." In the absence of guidance in the statute and legislative history, the FAA has relied on the interpretation given to the similar term "Federal financial assistance" in Federal regulations and court decisions. 28 CFR part 41, "Implementation of Executive Order 12250, Non-discrimination on the Basis of Handicap in Federally Assisted Programs," section 41.4(e) establishes the definition of "Federal financial assistance" for all Federal agencies implementing § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. That definition is in turn subject to the limitation of the Department of Transportation v. Paralyzed Veterans, 477 U.S. 597 (1986) (Paralyzed Veterans), which specifically addressed the issue of whether certain facilities and services provided by the FAA in managing the national airspace system constituted federal assistance. That decision held that the provision of air navigation services and facilities to airlines by the FAA did not make the commercial airline passenger service a Federally assisted program within the meaning of § 504.

The FAA's interpretation of the term "Federal assistance" is included in Section II of the Final Policy, Definitions. The Final Policy's definition of "Federal assistance" adapts the generalized language of 28 CFR § 41.4(e) to the specific circumstances of airports receiving Federal support and reflects the holding of the Paralyzed Veterans decision. The definition lists as Federal Assistance the following:

(1) Airport development and noise mitigation grants;

(2) Transfers, under various statutory provisions, of Federal property at no cost to the airport sponsors; and

(3) Planning grants related to a specific airport.

Under this definition, FAA installation and operation of navigational aids and FAA operation of control towers are not considered Federal assistance, based on the Supreme Court decision in Paralyzed Veterans. Similarly, the FAA does not consider passenger facility charges (PFCs) to be Federal assistance even though PFCs may be collected only with approval of the FAA.

Airport development and noise mitigation grants are considered Federal assistance because they apply to a specific airport, and that airport is, therefore, "subject to Federal assistance" under the statute. Transfers of Federal property to an airport are considered Federal assistance because they also apply to a specific airport. Planning grants may apply to a specific airport or may be more general in nature. Under § 47133, the FAA considers only planning grants related to a specific airport to be Federal assistance.

However, not all airports that are the subject of Federal assistance are necessarily bound to the revenue-use assurance simply by the passage of § 47133. Established Federal grant law prevents a statute from being construed to modify unilaterally the terms of preexisting grant agreements absent a clear showing of legislative intent to do so. *Bennett* v. *New Jersey* 470 U.S. 632 (1985), 84 L.Ed 2d 572, 105 S.Ct. 1555. Neither the statutory language nor its legislative history indicates an intent by Congress to apply § 47133 to impose the revenue-use requirement on airports that were not already subject to it. By contrast, a recent example of Congressional intent to modify preexisting grant agreements exists in § 511(a)(14) of the Airport and Airway Improvement Act of 1982, 49 USC App. 2210(a)(14), which was recodified at 49 USC 47107(c)(2)(B). That subsection, which was added to the AAIA in 1987, established requirements for the disposal of land acquired with Federal grants that is no longer needed for airport purposes. The statute by its terms applied to an "airport owner or operator [who] receives a grant before on or after December 31, 1987" for the purchase of land for airport development purposes. This language demonstrated a clear Congressional intent to modify preexisting grant agreements. The language of § 47133 and its legislative history lacks any such express direction.

Therefore, the FAA does not interpret § 47133 to impose the revenue-use requirements on an airport that was not already subject to the revenue-use assurance on October 1, 1996. An airport that had accepted Surplus Property from the Federal government, but did not have an AIP grant in place on October 1, 1996, would not be subject to the revenue-use requirement by operation of § 47133. If that airport accepted additional Federal property or accepted an AIP grant on or after October 1, 1996, the airport would be subject to the revenue-use requirement. As discussed below, by operation of § 47133, the revenue-use requirement would remain in effect as long as the airport functioned as an airport.

For airports that were already subject to the revenue-use requirement on October 1, 1996, and those that become subject to the requirement after that date, the effect of § 47133 is to extend the duration of the requirement indefinitely. This application is not explicit in the statute and reference to the legislative history of the statute is necessary to determine congressional intent and the specific meaning and application of the statutory language. The legislative history of § 47133 makes it clear that Congress enacted § 47133 to extend the duration of the revenue-use requirement for airports that are already subject to it. In describing an earlier version of § 47133, the Committee on Transportation and Infrastructure of the House of Representatives stated that the reason for the change was because "revenue diversion burdens interstate commerce even if the airport is no longer receiving grants. In recognition of this fact, the bill applies the exact same revenue diversion prohibition to airports that have a FAA certificate [modified to airports that are subject to Federal assistance in conference] as now applied to airports that receive AIP grants. For the most part, these will be the same airports." H.R. Rep. 104–714 (July 26, 1996) at 38, reprinted at 1996 US Code, Congressional and Administrative News at 3675. The report further stated that broadening the prohibition would "make it clear that an airport cannot escape this prohibition [on revenue diversion] by refusing to accept AIP grants[;]" remove "this perverse incentive to refuse AIP grants * * *[;]." and "once again [encourage] all airports to use available Federal money to increase safety, capacity, and reduce noise." *Id.*

Any airport that had an outstanding AIP grant agreement in effect on October 1, 1996, was already bound to the same revenue use assurance that is contained in § 47133. Because § 47133 is extending the duration of an existing obligation, there is no conflict with the principle of Federal grant law outlined above.

c. Relationship of Final Policy to Airport Privatization

In the applicability and definition section of the Proposed Policy, the FAA stated that proceeds from the sale of the entire airport as well as from individual parcels of land would be considered as airport revenue. The FAA also stated that it did not intend "to effectively bar airport privatization initiatives," and that the FAA would take into account "the special conditions and constraints imposed by the fact of a change in ownership of the airport." 61 Fed. Reg. at 7140. The FAA proposed to remain "open and flexible in specifying conditions on the use of revenue that will protect the public interest and fulfill the requirements and objectives of § 47107(b) without unnecessarily interfering with the appropriate privatization of airport infrastructure." *Id.*

Airport operators: A number of airport operators expressed concern that the guidance in the Proposed Policy was too ambiguous to encourage privatization and might discourage privatization initiatives. One operator suggested that the FAA should take a flexible approach to the proceeds of a privatization transaction when an airport's concession revenues are sufficient to allow a public owner to use some sales proceeds for nonairport purposes without increasing fees charged to aeronautical users and without continuing a need for Federal subsidy. Another airport operator suggested that the financial terms of a transaction would reflect the local circumstances in which the transaction was negotiated and recommended that the FAA account for this fact in reviewing revenue diversion claims.

Air carriers: ATA adamantly opposed the sale or transfer of a public use airport in a situation when such an action would cause airport revenue to be taken off the airport. ATA believes that the FAA does not have the flexibility or the statutory authority to require anything less than 100% compliance under 49 USC § 47107(b).

General aviation: The AOPA is concerned that the policy gives the impression that airport privatization is a fully resolved issue. The AOPA believes that the policy must avoid any implication that the issue is resolved or that the FAA endorses privatization.

Other commenters: Three public interest organizations addressed the issue of privatization from different perspectives. A group concerned with preventing and mitigating airport noise suggests that the FAA must ensure that adequate funds remain available to meet current and future airport noise mitigation needs. This group recommended that, before approving a transfer, the FAA should conduct a thorough audit of the airport's compliance with noise compatibility requirements, plans, and promises, and that the FAA should assess the adequacy of resources to address noise compatibility problems. The FAA should also require enforcement mechanisms to ensure implementation of noise compatibility and mitigation measures as a condition of the sale or transfer.

Two other groups supported a policy that does not discourage airport privatization. One of these suggested that the FAA consider defederalization of airports. The comments regarding defederalization are beyond the scope of this proceeding, because they would require statutory changes.

Final Policy: The Final Policy adopts the basic approach of the Proposed Policy toward privatization, with some language changes for clarity and readability. In addition, the Final Policy explicitly acknowledges the Airport Privatization Pilot Program.

Guidance on the process for obtaining FAA approval of the sale or lease of an airport is contained in FAA Order 5190.6a, Airport Compliance Requirements. The Final Policy is not intended to modify the process in any way. FAA approval is required for any transfer, including those between government entities. The Final Policy makes clear, however, that in processing an application for approval the FAA will: (a) treat proceeds from the sale or lease as airport revenue; and (b) apply the revenue-use requirement flexibly, taking into consideration the special conditions and constraints imposed by a change in ownership of the airport. For example, as is noted in the Final Policy, if the owner of a single airport is selling the airport, it may be inappropriate to require the seller to simply return the proceeds to the private buyer to use for operation of the airport.

The FAA requires the transfer document to bind the new operator to all the terms and grant assurances in the sponsor's grant agreement. The FAA retains sufficient authority and power through its grant assurances to ensure compliance by the new owner with all of its obligations, including any grant-based obligations relating to mitigation of environmental impacts of the airport; to conduct sponsor audits and to take other appropriate action to ensure that the airport is self-sustaining.

The Final Policy's approach to privatization does not represent, as ATA suggests, less than 100 percent compliance with the revenue-use requirement. The FAA agrees with the ATA that we cannot waive that requirement. Rather, the FAA has committed to exercise its authority to interpret the requirement in a flexible way to account for the unique circumstances presented by a change of ownership.

The Final Policy is not an endorsement of privatization and it does not resolve the policy debate about privatization. FAA will continue to review the sale or lease of an airport on

a case-by-case basis, including transfers proposed under the Airport Privatization Pilot Program, 49 U.S.C. 47134, created by § 149 of the FAA Reauthorization Act of 1996. The demonstration program authorizes the FAA to exempt five airports from Federal statutory and regulatory requirements governing the use of airport revenue. Under the program, the FAA can exempt an airport sponsor from its obligations to repay Federal grants, to return property acquired with Federal assistance, and to use the proceeds of the sale or lease exclusively for airport purposes. The latter exemption is also subject to approval by the air carriers serving the airport.

The FAA notes the concerns that the revenue-use requirement may discourage privatization. Congress addressed this prospect by enacting the Privatization Pilot Program, which authorizes the FAA to grant exemptions from sections 47107(b) and 47133 to permit the sponsor to use sales or lease proceeds for nonairport purposes, on certain conditions. That exemption would not be required unless sales or lease proceeds were airport revenue. In addition, the FAA will consider the unique circumstances—financial and otherwise—of individual transactions in determining compliance with section 47107(b), and this should address to some degree the commenters' concerns about privatization.

d. Effect of § 47133 on Return on Investment for Private Airport Owners or Operators That Accept Federal Assistance

By extending the revenue-use requirement to privately-owned airports, § 47133 requires the FAA to consider a new issue—the extent to which a private owner that assumes the revenue-use obligation may be compensated from airport revenue for the ownership of the airport. Section 47133 prohibits all such private airport owners or operators from using airport revenue for any purpose other than the capital and operating costs of the airport. However, the FAA does not consider section 47133 to preclude private owners or operators from being paid or reimbursed reasonable compensation for providing airport management services. Private operators, presently, provide airport management services at a number of airports. In many cases, these airports are publicly owned and subject to the revenue-use requirement. The private operator is providing these services under some form of contract with the public owner. These services are considered part of the operating cost of the airport owner, and the fees can be paid from airport revenue.

It is reasonable to equate private operators managing publicly owned airports with private owner/operators managing privately owned or leased airports. To avoid any confusion of the issue, reasonable compensation for management services provided by the owner of a privately-owned airport is identified as a permitted use of airport revenue in the Final Policy.

Private airport owners may typically expect a return on their capital investment. Such investment could be considered a capital cost of the airport. In the case of private owners or operators of airports who have assumed the revenue-use obligation, that obligation would limit the ability to use the return on capital invested in the airport for nonairport purposes. In particular, the FAA expects private owners to be subject to the same requirements governing a self-sustaining airport rate structure and the recovery of unreimbursed capital contributions and operating expenses from airport revenue as public sponsors. Under section 47107(l)(5), private sponsors—like public sponsors—may recover their original investment within the six-year statute of limitation. In addition, they are entitled to claim interest from the date the FAA determines that the sponsor is entitled to reimbursement under section 47107(p). Any other profits generated by a privately-owned airport subject to section 47133 (after compensating the owner for reasonable costs of providing management services) must be applied to the capital and operating costs of the airport.

This interpretation is required by provisions of 49 U.S.C. 47134, the airport privatization pilot program. Section 47134 authorizes the FAA to grant exemptions from the revenue-use requirement to permit the private operator to "earn compensation from the operations of the airport." This exemption would not be necessary if section 47133 did not restrict the freedom of the private owner of a Federally-assisted airport to use the profits from the investment in the airport for nonairport purposes. This interpretation does not unreasonably burden private owners, because they receive a benefit (in the form of either Federal property added to the airport or Federal grant funds) in exchange for assuming the restrictions on the use of their profit.

e. Grandfather Provisions

The Proposed Policy included a discussion of the grandfather provisions of section 47107(b) in the section on permitted uses of airport revenue. That discussion included a list of examples of financing obligations and statutory provisions that had been previously found by the Department of Transportation to confer grandfather status.

The Comments: Two airport operators commented on this issue. One is an airport operator whose status under the grandfather provisions was under consideration by the FAA when the Proposed Policy was published. Its concerns were addressed by the FAA's consideration of its individual situation.

The second commenter is airport operator already established as a grandfathered airport operator. This commenter recommends that the Final Policy continue to recognize the rights of grandfathered airports.

Final Policy: The Final Policy continues to recognize the rights of grandfathered airport owners set forth at title 49 U.S.C. 47107(b)(2) and 47133. To qualify an airport for grandfathered status, the statute requires that local covenants, assurances or governing laws pre-dating September 2, 1982, must specifically pledge the use of airport generated revenues to support not only the airport but also the general debt obligations or other facilities of the owner or operator. However, the Final Policy is modified to reflect the requirement in the 1996 FAA Reauthorization Act that the FAA consider the increase in grandfathered payments of airport revenue as a factor militating against the award of discretionary grants.

f. Applicability to Non-municipal Airport Authorities

Lehigh-Northampton Airport Authority (LNAA): LNAA asserted that the airport revenue-use requirement does not allow FAA to regulate airport transactions with non-governmental parties and does not empower FAA to override state and local laws governing the use of airport revenue for airport marketing and promotional activities. The commenter advanced a number of arguments as to why FAA does not have authority to restrict such transactions. First, Congress has shaped the revenue diversion statute to identify financial irregularities in dealings between an airport enterprise account and another unit of government. The statute does not contemplate FAA regulation of airport financial relationships with non-government parties. Second, Congress did not intend the "capital or operating costs" language in the revenue diversion statute to authorize a new Federal regulatory scheme to narrow the types or levels of airport expenditures beyond

what is legal under applicable state and local law. Third, there is not a statutory requirement for FAA to regulate airport expenditures for community events or charitable contributions in the absence of facts suggesting that such expenditures are the result of undue influence by a governmental unit.

The LNAA currently has a case pending before the FAA under FAR Part 13, in which certain expenditures that LNAA characterizes as marketing and promotional expenses are being examined for consistency with the revenue-use requirement. LNAA's assertions with respect to its own promotional activities will be addressed by the FAA in that proceeding. To the extent that LNAA's practices were inconsistent with this Final Policy, LNAA will have an opportunity to argue that the Final Policy should not be applied to its situation.

The general issues of the use of airport revenue for marketing and promotional expenses and charitable donations are discussed separately below.

The FAA is not modifying the applicability of the Final Policy based on LNAA's other concerns. The language of section 47107(b) explicitly states that revenue generated by the airport may only be expended for the capital or operating costs of the airport or local airport system; it contains no limiting language concerning "financial irregularities." The statute further defines expenditures for general economic development and promotion as unlawful use of airport revenue, providing specific authority over transactions that do not involve transfers of airport revenue to other governmental entities. See 49 U.S.C. 47107(l)(2). This provision grants authority for regulation of expenditures for charitable and community-use purposes.

In addition, the Congressional mandate to establish policies and procedures to "assure the prompt and effective enforcement" of the revenue use and self-sustainability requirements (49 U.S.C. 47107(l)(1)) provides statutory authority to adopt more detailed guidance on permitted and prohibited uses of airport revenue. Many airport operators have expressed concern over the difficulty of responding to OIG findings of unlawful revenue use without clear and specific FAA guidance on permitted and prohibited practices.

Finally, the grandfathering provision establishes Congressional intent to prohibit certain airport revenue practices authorized by state or local law that do not satisfy the specific requirements of the grandfather provisions of the AAIA.

2. Definition of Airport Revenue

a. Proceeds From Sale of Airport Property

The Proposed Policy included proceeds from the sale of airport property in the proposed definition of airport revenue. No distinction was made between property acquired with airport revenue and property acquired with other funds provided by the sponsor. In the explanatory statement, the FAA discussed alternatives it had considered, including limiting the definition to property acquired with airport revenue. (61 FR 7138) The FAA also stated that a sponsor would be able to recoup any funds it contributed to finance the acquisition of airport property as an unreimbursed capital contribution.

Airport operators: Airport operators objected to defining proceeds from the sale of airport property as airport revenue. ACI/AAAE argued that the definition would reduce incentives for airport sponsors to pursue legitimate airport endeavors. One airport operator argued that the definition constitutes a transfer of wealth from the taxpayers to the airport users, and that cities would be less willing to contribute to future airport projects. Another individual operator argued that the policy should not apply to property acquired with the sponsor's own funds and to property acquired with airport revenue before 1982. This airport operator further argues that application of the policy to property acquired before 1982 amounts to a taking of airport property without just compensation and without Congressional authorization. Finally, this operator argued that the proposed definition appears to contradict a portion of the FAA Compliance Handbook, Order 5190.6A (October 2, 1989), Paragraph 7–18, that states there is no required disposition of net revenues from sale or disposal of land not acquired with Federal assistance.

Air carriers: The ATA commented that the use of airport revenue for repayment of contributions from prior years should be limited. According to ATA, reimbursements should be permitted only when the sponsor and airport enter into a written agreement concerning the terms of reimbursement before the service or expenditure is provided.

Other commenters: A public interest organization opposed the treatment of proceeds from the sale of airport property as airport revenue. This commenter argued that the sponsor, as the principal provider of airport's land and capital, has a legitimate claim to cash-out the value of its investments and to use the proceeds for other purposes.

The Final Policy: The Final Policy does not modify the treatment of proceeds from the sale, lease or other disposal of airport property. Proceeds from the sale lease or other disposal of all airport property are considered airport revenue subject to the revenue-use requirement and this policy, unless the property was acquired with Federal funds or donated by the Federal government. While proceeds from disposal of Federally-funded and Federally-donated property are also airport revenue, these proceeds are subject to separate legal requirements that are even more restrictive than the revenue-use requirement.

As discussed in the Proposed Policy, this definition is consistent with the language of the original version of section 47107(b), which applies to "all revenues generated by the airport."

In addition, the Airport Privatization Pilot Program, 49 U.S.C. 47134, permits the FAA to grant exemptions from the revenue-use requirements to permit a sponsor to keep the proceeds from a sale or lease transaction, but only to the extent approved by 65 percent of the air carriers. An exemption would not be required unless the proceeds from the sale or lease of the entire airport were airport revenue within the meaning of section 47107(b) and 47133. Since the proceeds from the sale of an entire airport are airport revenue, it follows that the proceeds from the sale of individual pieces of airport property are also airport revenue.

Further, section 47107(l)(5)(A) establishes a six-year period during which sponsors may claim reimbursement for their capital and operating contributions. This limitation on seeking reimbursement could be avoided through the process of disposing of airport property, if the proceeds of sales were not themselves considered airport revenue. Through section 47107(l)(5)(A) Congress has defined the rights of airport owners and operators to recover their investments in airport property for use for nonairport purposes. Subject to the six-year statute of limitations, the sponsor is entitled to use airport revenues for reimbursement of such contributions. Section 47107(p) provides that a sponsor may also claim interest if the FAA determines that a sponsor is entitled to reimbursement, but interest runs only from the date on which the FAA makes the determination. As discussed below, the Final Policy provides flexibility to

structure future contributions to permit reimbursement over a longer period of time in order to promote the financial stability of the airport. The six-year limitation, which is incorporated in the Final Policy, also addresses ATA's request for a time limit on the airport owner or operator's ability to claim recoupment for past unreimbursed requests.

The FAA does not accept the suggestion that the definition is an unauthorized taking of sponsor property without just compensation. First, as noted, the definition is supported by the 1996 FAA Reauthorization Act, which included an express provision for an exemption from the revenue use restriction for sale and lease proceeds. Second, all airport sponsors, including the airport commenters, voluntarily agreed to their restrictions on the use of airport revenue when they accepted grants-in-aid under the AIP program. Finally, the definition does not deprive the commenter of its property. The proceeds from the disposal will still flow to the commenter sponsor to be used for a legitimate local public purpose—operation and development of the commenter's airport.

The FAA acknowledged in the Proposed Policy that existing FAA internal orders contain provisions on the status of proceeds from the disposal of airport property that are inconsistent with this Final Policy. As stated in the Proposed Policy, this inconsistency does not preclude the FAA from defining proceeds from the disposal of airport property as airport revenue in this Final Policy. Rather, "the Policy takes precedence, and the orders will be revised to reflect the policies in this statement." 61 FR 7138. In addition, the provisions in the FAA internal orders are in conflict with the 1996 FAA Reauthorization Act. Because of this statutory conflict, the FAA cannot continue to apply them.

b. Revenue Generated by Off-airport Property

The Proposed Policy defined as airport revenue the revenue received for the use of property owned and controlled by a sponsor and used for airport-related purposes, but not located on the airport.

Airport operators: The ACI–NA/AAAE and two individual airport operators objected to this definition of airport revenue. The ACI–NA/AAAE stated that revenues received from off-airport activities should ordinarily not be counted as airport revenue. One airport operator argued that this definition is inconsistent with the statutory definition of airport in the AAIA. The other airport operator (the State of Hawaii) is especially concerned about revenue generated by off-airport duty fee shops.

No other comments were received.

Final Policy: The Final Policy does not modify the definition of airport revenue as it pertains to off-airport revenue. This definition is consistent with FAA's prior interpretation, which has defined as airport revenue the revenues received by the airport owner or operator from remote airport parking lots, downtown airport terminals, and off-airport duty free shops.

After enactment of the original revenue-use requirement, the FAA initiated an administrative action to require the State of Hawaii to use its revenue from off-airport duty free sales in a manner consistent with section 47107(b). In response, Congress amended the revenue-use requirement to provide a specific and limited exemption to the State of Hawaii to permit up to $250 million in off-airport duty-free sales revenue to be used for construction of highways that are part of the Federal-Aid highway system and that are located in the vicinity of an airport. See, 49 U.S.C. § 47107(j). The statutory exemption would only be necessary if the revenue from off-airport duty free shops is airport revenue within the meaning of the statute.

c. Royalties From Mineral Extraction

The Proposed Policy included royalties from mineral extraction on airport property earned by a sponsor as airport revenue.

Airport operators: One airport operator objected to including revenue from the sale of sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport in the definition of airport revenue. The operator stated that the retention of mineral rights as airport property would represent a windfall to the airport at the sponsor's expense; that the Proposed Policy is contrary to congressional intent and that it would take, without compensation, valuable property rights from the sponsor. The operator also cited a prior decision where FAA concluded the production of natural gas at Erie, Pennsylvania, does not serve either the airport or any air transportation purpose. The royalties generated by such production were determined to be outside the scope of the revenue-use requirement.

Final Policy: The Final Policy retains the proposed definition of airport revenue to include the sale of sponsor-owned mineral, natural, agricultural products or water to be taken from the airport. On further review of the Erie interpretation in this proceeding, the FAA no longer considers the analogy drawn in that interpretation—between mineral extraction and operation of a convention center or water treatment plant—to be appropriate. Rather, mineral and water rights represent a part of the airport property and its value. Just as proceeds from the sale or lease of airport property constitute airport revenue, proceeds from the sale or lease of a partial interest in the property—i.e. water or mineral rights—should also be considered airport revenue. The FAA will not require an airport owner or operator to reimburse the airport for past mineral royalty payments used for nonairport purposes based on the Erie interpretation. However, all airport owners and operators will be required to treat these payments as airport revenue prospectively, starting on the publication date of the Final Policy.

With respect to agricultural products, the FAA has always treated lease revenue from agricultural use of airport property as airport revenue, even if that revenue is calculated as a portion of the revenue generated by the crops grown on the airport property. The definition in the Final Policy will assure that the airport gets the full benefit of agricultural leases of airport property, regardless of the form of compensation it receives for agricultural use of airport property.

The FAA does not consider this interpretation to create a taking of airport owner or operator property. As discussed in other contexts, the limitation on the use of airport revenue was voluntarily undertaken by the airport operator upon receiving AIP grants. In addition, the revenues generated by these activities will still flow to the sponsor for its use for a legitimate local governmental activity, the operation and development of its airport.

d. Other Issues

The Final Policy includes a discussion of the requirement of 49 U.S.C. § 40116(d)(2)(A). This provision requires that taxes, fees or charges first taking effect after August 23, 1994, assessed by a governmental body exclusively upon businesses at a commercial service airport or upon businesses operating as a permittee of the airport be used for aeronautical, as well as airport purposes. This addition is included, at the suggestion of a commenter, to comply with the statutory provision, which was enacted as section 112(d) of the 1994 FAA Authorization Act.

3. Permitted Uses of Airport Revenue

a. Promotion/marketing of the Airport

Congress, in the FAA Authorization Act of 1994, permitted the use of airport revenues for promotion of the airport by expressly prohibiting "use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems." The Supplemental Proposed Policy cited this law and recognized that many airport sponsors engage in some form of promotional effort, to encourage use of the airport and increase the level of service. Accordingly, the Supplemental Notice provided that "[a]irport revenue may be used for * * * [c]osts of activities directed toward promoting public and industry awareness of airport facilities and services, and salary and expenses of employees engaged in efforts to promote air service at the airport." 61 FR 66470.

However, the preamble to the Supplemental Notice stated that promotional/marketing expenditures directed toward regional economic development, rather than specifically toward promotion of the airport, would not be considered a permitted use of airport revenue. In addition, the FAA proposed to prohibit the use of airport revenue for a direct purchase of air service or subsidy payment to air carriers because the FAA does not consider these payments to be capital or operating costs of the airport.

Airport operators: In their comments to the original proposed policy, ACI–NA/AAAE requested that FAA establish a "safe harbor," or a maximum dollar amount (perhaps based on a percentage of airport costs), under which an airport could spend airport revenue on certain promotional and marketing activities. Greater percentage amounts would be allowed for the costs of airport-specific activities, while lower amounts would be allowed for joint efforts for campaigns and organizations that have broader, regional marketing missions.

Several airport operators supported this "safe harbor" concept in their comments to the docket for the original Proposed Policy. One such commenter, without reference to ACI/AAAE's remarks, suggested a cap of 5% of an airport's budget as a "safe harbor" for marketing expenses that are not directly related to the airport or airport system. Furthermore, this commenter would limit the use of airport revenue to a maximum share of 20 percent of the overall cost of any joint-project budget.

ACI/AAAE did not pursue the concept of "safe harbor" in their comments to the docket for the Supplemental Policy, focusing instead on the discretion of the airport operator to use reasonable business judgment to determine potential benefits to the airport. Several airports concurred with the ACI–NA/AAAE position, and one airport operator added that joint-marketing expenses, if reasonable and clearly related to aviation, should be considered an operating cost of the airport.

The ACI/AAAE and several individual airport operators commented that an airport cannot be distinguished from the region served by the airport. ACI/AAAE commented that the policy should permit reasonable spending for marketing of communities and regions because airports are not ultimate destinations of passengers. Therefore, airport operators must be free to make a reasonable attempt to increase revenues by investing in the promotion of their community as a destination.

Some airports specifically opposed the ATA's suggestion of a cap, described below.

Air carriers: In its comments to the Supplemental Notice, the ATA mentioned the concept of a maximum or "cap" under which expenditures would be considered reasonable, but would apply it to efforts to promote the services of the airport itself. The ATA would have the policy prohibit entirely the use of airport revenue for the promotion of regional development, because "expenditures by an airport to promote local or regional economic development—as opposed to the services and functionality of an airport—should not be considered legitimate airport costs." In regard to cooperative or joint-marketing expenses, the ATA focused on airport participation in joint-marketing of new airline services, suggesting that these activities be limited to a 60-day promotional period. ATA also warned against abuses of cooperative marketing, in particular programs that result in promotion of a particular airline.

The ATA rejected the airport position that use of airport revenue to fund regional promotional activities is acceptable, because airports themselves are not destinations. They stated, "[l]ocal governments that are also airport sponsors should not be permitted to pass off local and regional promotional activities in order to charge such costs to an airport. Indeed, many civic organizations and chambers of commerce undertake such activities directly, since continued economic development directly benefits the local businesses that constitute such organizations."

The Final Policy: The FAA has modified the provisions on permitted uses of airport revenue in regard to promotion and marketing in the Final Policy. The FAA has applied the sections 47107(b) and 47107(l) to determine to what extent various kinds and amounts of promotional and marketing activities can be considered legitimate operating costs of the airport. The permitted uses of airport revenue for marketing and promotion are split into two paragraphs, V.A.2 and V.A.3., in the Final Policy—one addressing costs that may be fully paid with airport revenue, and one addressing costs that may be shared. The issues of general economic development, direct subsidies of air carriers, the waiving of fees to airport users and airport participation in airline marketing and promotion is further addressed in Section VI.

The Final Policy provides, under V.A.2, that expenditures for the promotion of an airport, promotion of new air service and competition at the airport, and marketing of airport services are legitimate costs of an airport's operation. These expenditures may be financed entirely with airport revenue, and the expenditures may include the costs of employees engaged in the promotion of airport services. In addition, cooperative airport-airline advertising of air service at the airport may be financed with airport revenue, with or without matching funds. The FAA is prepared to rely on airport management to assure that the level of expenditures for such purposes would be reasonable in relation to the airport's specific financial situation. In addition, cooperative airport-airline advertising of air service must be conducted in compliance with applicable grant assurances prohibiting unjust discrimination in providing access to the airport.

For other advertising and promotional activities, such as regional or destination marketing, airport revenue may be used to pay a share of the costs only if the advertising or promotional material includes a specific reference to the airport. The share must be reasonable, based on the benefits to the airport of participation in the activity. The FAA construes the prohibition on "use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems' to preclude the reliance on airport management judgment to support the use of airport revenue for general destination advertising containing no references to the airport. Likewise, the prohibition precludes adoption of a safe-harbor

provision for general promotional expenses.

Except as discussed above, the Final Policy does not limit the amounts of airport revenue that can be spent for all permitted promotional marketing and advertising activities. The FAA expects that expenditure of airport revenues for these purposes would be reasonable in relation to the airport's specific financial situation. Disproportionately high expenditures for these activities may cause a review of the expenditures on an *ad hoc* basis to verify that all expenditures actually qualify as legitimate airport costs. Examples of permissible and prohibited expenditures are included in the Final Policy itself.

b. Reimbursement of Past Contributions

The Proposed Policy permitted airport revenue to be used to reimburse a sponsor for past unreimbursed capital or operating costs of the airport. The Proposed Policy did not include a limit on how far back in time a sponsor could go to claim reimbursement, in accordance with the law in effect at the time. In addition, the Preamble noted that the FAA had not to date permitted a sponsor to claim reimbursement for more than the principal amount actually contributed to the airport. The FAA requested comment on whether the FAA should permit recoupment of interest or an inflationary adjustment or whether, in the case of contributed land, recoupment should be based on current land values.

Airport operators: ACI–NA/AAAE and a number of individual airport operators supported recoupment of interest or inflation adjustment on previous contributions or subsidies to the airport.

Air carriers: The ATA objected to the Proposed Policy and commented that recoupment should be subject to a number of requirements to prevent abuses.

The Final Policy: After the proposed policy was issued, Congress enacted legislation to limit the use of airport revenue for reimbursement of past contributions, and to limit claims for interest on past contributions. 49 U.S.C. §§ 47107(l)(5), 47107(p). The Final Policy incorporates these statutory provisions. Based on Congressional intent evidenced by the legislative history of these provisions, airport revenue may be used to reimburse a sponsor only for contributions or expenditures for a claim made after October 1, 1996, when the claim is made within six years of the contribution or expenditure. In addition, a sponsor may claim interest only from the date the FAA determines that the sponsor is entitled to reimbursement, pursuant to section 47107(p). The FAA interprets these statutory provisions to apply to contributions or expenditures made before October 1, 1996, so long as the claim is made after that date.

If an airport is unable to generate sufficient funds to repay the airport owner or operator within six years, the Final Policy permits repayment over a longer period, with interest, if the contribution is structured and documented as an interest bearing loan to the airport when it is made. The interest rate charged to the airport should not exceed a rate that the sponsor received for other investments at the time of the contribution.

c. Donations of Airport Revenue to Charitable/Community Service Organizations

The Supplemental Proposed Policy addressed the use of airport property for public recreational purposes, and addressed the use of airport funds to support community activities and for participation in community events. The FAA proposed that the use of airport revenue for such donations would not be considered a cost of operating the airport, unless the expenditure is directly related to the operation of the airport. For example, expenditures to support participation in the airport's federally approved disadvantaged business enterprise program would be considered permissible as supporting a use directly related to the operation of the airport. In contrast, expenditures to support a sponsor's participation in a community parade would not be considered to be directly related to the operation of the airport.

Airport operators: ACI–NA/AAAE contended that the expenditure of airport revenue for community or charitable purposes is appropriate and should be recognized as legitimate. Airports, regardless of their size, type, and certification or lack thereof, are important members of their local communities and, therefore, must be able to maintain their prominent, highly visible roles in their respective communities. Airports are regarded by their communities as local business enterprises and, consequently, are expected to contribute to local non-profit charitable concerns in the same manner as other local business enterprises.

Individual airport operators generally supported the position of ACI–NA/AAAE, although some individual operators acknowledged that some limitation on the expenditures may be appropriate. One suggested a *de minimis* standard; another proposed a "safe harbor" based on a percentage of the airport's total budget. Another urged that airport owners/operators be allowed leeway to make contributions of airport funds, in reasonable amounts and consistent with the local circumstances, and to use airport property for charitable purposes on the same basis.

Other airport operators commented that the Final Policy should give comparable treatment to the use of airport funds and airport property for community goodwill by recognizing the limited use of airport revenue to support charitable and community organizations as a legitimate operating cost of the airport.

Air carriers: Air carriers did not comment specifically on charitable contributions, although they commented extensively on the use of airport property for community or charitable purposes. Generally the air carriers suggested that use of airport property should be subject to strict conditions to avoid abuse.

Other commenters: An advocacy group in support of a particular airport commented that, in order for an airport to be as self-sustaining as possible, the use of each income dollar is critical, and that federally assisted airports must be fully responsive to the citizens of the community by providing information on the use of airport funds.

Final Policy: The Final Policy generally follows the approach of the Supplemental Notice. Airport funds may be used to support community activities, or community organizations, if the expenditures are directly and substantially related to the operation of the airport. In addition, the policy provides explicitly that where the amount of the contribution is minimal, the airport operator may consider the "directly and substantially related to air transportation" standard to be met if the contribution has the intangible benefit of enhancing the airport's acceptance in local communities impacted by the airport.

Expenditures that are directly and substantially related to the operation of the airport qualify inherently as operating costs of the airport. The FAA recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance, but that benefit is intangible and not quantifiable. Where the amount of the contribution is minimal, the value of the benefit will not be questioned as long as there is a reasonable connection between the recipient organization and

the benefit of community acceptance for the airport.

However, if there is no clear relationship between the charitable or community expenditure and airport operations, the use of airport revenue may be an expenditure for the benefit of the community, rather than an operating cost of the airport. The different treatment of the use of airport funds (direct payments to charitable and community organizations) and the use of airport property (less than FMV leases for charitable or community purposes) is grounded in the applicable laws: the revenue-use requirement (section 47107(b)), which governs the use of airport funds, provides far less flexibility than the requirement for a self-sustaining rate structure (section 47107(a)(13)), which applies to the use of airport property.

Examples of permitted and prohibited expenditures are included in the Final Policy.

d. Use of Airport Revenue to Fund Mass Transit Airport Access Projects

The Supplemental Proposed Policy addressed in Part VII.C., the circumstances in which an airport sponsor could provide airport property at less than fair market value to a transit operator. The Supplemental Proposed Policy did not address the use of airport revenue to finance the construction of transit facilities. That issue, however, was raised in the comments.

Airport Operators: Two airport operators supported the use of airport revenue for the construction of transit facilities. One commenter stated that an airport should be permitted to use airport revenues and assets to provide mass transit service to on-airport commercial uses. Another commenter referred to the AIP Handbook, FAA Order 5100.38A § 555, which provides AIP project eligibility for rapid transit facilities.

Air carriers: Air carriers did not specifically discuss the use of airport revenue to finance transit facilities. However, as discussed below, they objected to providing airport property for transit facilities at nominal lease rates.

Other Commenters: Two commenters representing transit operator interests supported the expenditure of airport revenues to finance transit facilities. A transit operator stated that in order to create a better balance between transit and highway interests, transit facilities should be totally eligible expenses, paid for in the same manner as other road and parking enhancements. A transit trade association urged the FAA to take appropriate actions to ensure that passenger fees and other airport revenues are widely eligible to fund a range of airport surface transportation modes, including public transportation.

The FAA also received extensive comments on providing airport property for use by transit providers at less than FMV rents. These comments are addressed separately below.

Final Policy: The Final Policy has been modified to provide guidance on the use of airport revenues to finance airport ground access projects. The Final Policy states that airport revenue may be used for the capital or operating costs of such a project if it can be considered an airport capital project, or is part of a facility owned or operated by the airport sponsor and directly and substantially related to air transportation of passengers or property, relying directly on the statutory language of § 47107(b).

As an example, the Final Policy summarizes the FAA's decision on the use of airport revenue to finance construction of the rail link between San Francisco International Airport and the Bay Area Rapid Transit (BART) rail system extension running past the airport. In that decision, the FAA approved the use of airport revenues to pay for the actual costs incurred for structures and equipment associated with an airport terminal building station and a connector between the airport station and the BART line. The structures and equipment were located entirely on airport property, and were designed and intended exclusively for use of airport passengers. The BART extension was intended for the exclusive use of people travelling to or from the airport and included design features to discourage use by through passengers. Based on these considerations, the FAA determined that the possibility of incidental use by nonairport passengers did not preclude airport revenues from being used to finance 100 percent of the otherwise eligible cost items. For purposes of this analysis, the FAA considered "airport passengers" to include airport visitors and employees working at the airport.

4. Accounting Issues

a. Principles for Allocation of Indirect Costs

Based on the comments to the Proposed Policy, the FAA addressed the principles of indirect cost allocation in its Supplemental Notice. The Supplemental Notice made clear that the allocation of indirect costs is allowable under 49 USC § 47107(b), and that no particular method of cost allocation will be required, including OMB Circular A–87. To ensure, however, that indirect costs are limited to allowable capital and operating costs, the FAA proposed to apply certain general principles and prohibitions to the allocation of costs. The Supplemental Notice did not limit significantly the development of local cost allocation methodologies, or interfere with the application of Generally Accepted Accounting Principles (GAAP) and other accounting industry recognized standards.

In the Supplemental Notice, the FAA stated that it would expect that a Federally approved cost allocation plan that complied with OMB Circular A–87 or other Federal guidance and was consistent with GAAP would be reasonable and transparent, and would generally meet the requirements of section 47107(b). However, the use of a Federally approved cost allocation plan does not rule out the possibility that a particular cost item allowable under that guidance would be in violation of the airport revenue retention requirement if allocated to the airport.

The Supplemental Notice also required specifically that indirect cost allocations be applied consistently across departments to the sponsoring government agency, and not unfairly burden the airport account. The general sponsor cost allocation plan could not result in an over-allocation to an enterprise fund. In addition, the sponsor would have to charge comparable users, such as enterprise accounts, for indirect costs on a comparable basis.

Lastly, the Supplemental Notice proposed to prohibit the allocation of general costs of the sponsoring government to the airport. However, this prohibition would not affect direct or indirect billing for actual services provided to the airport by local government.

Airport Operators: Generally, airport operators agreed with the proposal to acknowledge that the allocation of indirect costs as allowable under 49 USC § 47107(b), and to provide that no particular allocation methodology, including OMB Circular A–87, be required.

One airport operator requested the FAA to further clarify that it is not imposing on airport sponsors all of the specific elements of OMB CircularA–87. The operator was concerned that the statement in the Supplemental Notice that the FAA "believe[s] the specific principles identified by the OIG are an appropriate construction of the revenue retention requirement" may lead to confusion over whether adherence to OMB Circular A–87 is mandatory for

allocating costs to be paid by airport revenue.

Several airport operators were concerned that the FAA would not accept the allocation of costs in accordance with a Federally-approved cost allocation plan, but could review the plan to ensure that allocation of specific cost items meet the special revenue retention requirements. For example, one airport operator commented that the FAA's approach would impose on airport sponsors burdens and requirements in excess of the detailed requirements of OMB-Circular A–87, which are designed to ensure a reasonable and consistent cost allocation system. The airport proprietor proposed that such compliance with a federally-approved cost allocation plan be considered sufficient to satisfy the revenue retention requirement.

Another airport operator proposed that the FAA revise the policy to clarify that a specific cost, as opposed to a type of cost, cannot be treated as both a direct and an indirect cost. The airport operator offered as an example a city-owned and operated airport at which some police services are provided by officers assigned exclusively to the airport and other services are provided by general duty police officers. The commenter suggested that it should be permissible to charge the airport for the officers assigned exclusively to the airport as a direct cost and to charge for the general duty officers as an indirect cost allocation.

Additionally, this commenter proposed revising the policy to clarify that costs that are chargeable to one city department on a direct basis may be charged to other city departments on an indirect basis. The airport operator offered an example in which police are exclusively assigned to a city-owned airport, but are not exclusively assigned to other city departments. The commenter argued that it would be reasonable to charge the airport for police services as a direct cost, and to charge the other departments as an indirect cost allocation.

Several airport operators were also concerned that the supplemental policy implied that a local cost allocation plan must provide that all users for a service be billed equally. For example, ACI-NA and AAAE suggested that the requirement for consistent application should be interpreted to require the local government to go through the exercise of assessing indirect costs against all governmental departments, including those wholly funded by that governmental entity. Likewise, an airport operator requested that the FAA clarify that the supplemental policy does not mean that an airport sponsor must actually bill all of its General Fund agencies for certain municipal costs in order to be able to charge such costs to its airports. All of those airport proprietors that expressed concern over this proposed policy generally commented that this issue was considered and rejected by the Department of Transportation in the Second Los Angeles International Airport Rates Proceeding, Docket OST–95–474. According to the airport proprietors, the DOT recognized that in many cases sponsor agency operations are paid from a common General Fund. Under those circumstances, it is illogical and unnecessary for one General Fund agency to bill another General Fund agency for municipal services.

One airport operator proposed that the word "equally" be removed from VII.B.4 of the proposed policy. The commenter urged that the FAA allow airport sponsors the flexibility to allocate costs to various users on a reasonable, equitable basis relative to the benefits received, even though specific users may sometimes be treated differently. Returning to its example of police services, the commenter suggested that if the sponsor chooses not to charge a housing authority for costs of a special police unit assigned to that authority, it should be of no concern to the FAA as long as those costs are not then charged to the airport.

Another airport operator argued that each of its proprietary departments are unique and governed by different City Charter provisions; that they make different uses of city services; and have different financial arrangements with the sponsor's general fund. This commenter argued that treating the departments the same for cost allocation purposes because the departments are enterprise funds would, therefore, serve no valid purpose.

Several airport operators disagreed with FAA's proposed policy to prohibit the indirect cost allocation of general costs of government. Several commenters stated that the proposed policy would reverse longstanding practice at many airports and could be inconsistent with federally-approved cost allocation plans, which provide for the allocation of a share of indirect costs of various local government functions. One airport operator argued that there is no statutory basis for prohibiting the allocation of general costs of government, other than costs for particular identified services.

Finally, one airport operator commented that the proposed policy does not sufficiently clarify the appropriate allocations for fire and police stations that do not serve the airport exclusively. The airport operator proposed that policy explicitly permit a sponsor to allocate costs based on the intended purpose and value of the station to the airport, not its actual use. The airport operator argues that a more flexible approach could better implement the applicable statutory provision that prohibits "direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport."

Airlines: ATA supports the proposed policy clarification that no particular cost allocation methodology for indirect costs is preferred.

The Final Policy: The Final Policy reflects a different and simplified approach to indirect cost allocation that is intended to facilitate development of permissible cost allocation plans and the review of those plans in the single audit process. The Final Policy specifies that the cost allocation plans must be consistent with Attachment A of OMB Circular A–87. Attachment A sets forth general principles for developing cost allocation plans. Those principles are essentially a restatement of the principles proposed in the Supplemental Policy. By referring to Attachment A, the Final Policy establishes a standard that is well understood by airport cost accountants and by airport operators' independent auditors. The Final Policy does not require compliance with the other attachments to OMB Circular A–87, which include more rigid requirements and defines categories of grant recipient costs that are eligible and ineligible for reimbursement with Federal grant funds.

The Final Policy continues to specify that the costs allocated must themselves be eligible for expenditure of airport revenue under section 47107(b). Attachment A to OMB Circular A–87 provides principles for cost allocation methodologies. The cost items that may be charged to airport revenue are determined by the requirements of section 47107(b). Therefore, sponsors, and the FAA, cannot rely solely on compliance with OMB Circular A–87 to assure that the costs items charged to the airport in a Federally approved cost allocation plan are consistent with section 47107(b).

The Final Policy continues to specify that the airport must not be charged directly and indirectly for the same costs. The FAA is not persuaded that the example of police services offered by an airport sponsor requires a modification of this requirement. This

provision is not intended to preclude both the direct and indirect billing in the situation cited by the commenter—where police services are provided to the airport on both an exclusive-use and a shared-use basis. In the cited example, it would be preferable to bill for police exclusively assigned to the Airport on a direct cost basis. It would be impossible, however, to bill for the shared-use police without engaging in some form of indirect cost allocation. The FAA did not intend the supplemental policy to preclude treatment of police services as both direct and indirect costs in these circumstances, only to preclude double billing on both a direct and indirect basis, for the same police costs.

Similarly, with respect to the second example of police services where the airport receives exclusive-use police services and other sponsor departments receive shared-use police services, the FAA did not intend the Supplemental Notice to preclude disparate billing methodologies. Inherent in Attachment A is that comparable units of a sponsoring government making comparable uses of the sponsor's services should have costs allocated and billed in a comparable fashion. The clarification noted above should address this situation as well. In the second example sited, the FAA would consider the sponsor departments receiving shared-use police services not to be comparable to the airport receiving exclusive use police services.

The Final Policy also provides that the allocation plan must not burden the airport with a disproportionate share of allocated costs, and requires that all comparable units of the airport owner or operator be billed for indirect costs billed to the airport. The FAA is unwilling to accept the suggestion that comparable users of a service may sometimes be treated differently for billing purposes, so long as the costs attributed to one unit of government are not then charged to the airport. The FAA believes that such practices would result in an unfair burden being placed upon the airport simply because of the airport's ability to pay.

This provision, however, is not intended to require a sponsor's General Fund activities to bill other General Fund activities for indirect costs that are properly allocable to those activities, if the airport is billed. The policy is clear that comparable billing for services is required only for comparable users.

Enterprise funds need not be treated as comparable to units of a sponsoring government financed from the sponsor's general fund, and comparable billing between enterprise funds and other units of government is not required. While the FAA may presume that enterprise funds are comparable to each other, an airport sponsor is free to demonstrate that particular enterprise funds are sufficiently different in material ways—such as the way they consume sponsor services or their overall financial relationships with the sponsor—to justify different practices in charging for indirect costs. The Final Policy does not further define comparability because decisions on comparability will depend on the specific circumstances of a sponsor. The Final Policy also explicitly permits the allocation of general costs of government and central services costs to the airport, if the cost allocation plans meets the Final Policy's requirements. As specified in the Final Policy, however, the allocation of these costs to the airport may require special scrutiny to assure that the airport is not being burdened with a disproportionate share of the allocated costs.

In addition, the FAA continues to recognize that use of airport revenue to pay some expenses not normally considered to be allowable pursuant to OMB Circular A–87, such as fire and police services, is consistent with the revenue retention requirement. If such costs are allocated as an indirect cost in accordance with the Final Policy, they will be considered by the FAA as acceptable charges.

The Final Policy is modified to permit the allocation of certain categories of a sponsor's general cost of government as an indirect charge to the airport. Such charges include indirect expenses of the Office of Governor of a State, State legislatures, offices of mayors, county supervisors, city councils, etc. An airport owner's or operator's central service costs may also be allocated to the airport. The Final Policy specifies that allocation of these categories of costs to the airport may require special scrutiny to assure that the airport is not being burdened with a disproportionate share of the costs.

The FAA proposed to prohibit the allocation of all general costs to the airport on the grounds that the payment of such costs with airport revenue would be inconsistent with the purpose of the revenue use restriction—to avoid subsidy of general sponsor governmental activity. It is clear from the comments that airports routinely pay for a share of the general costs the legislative and executive branches of the governmental unit of which the airport is a part under cost allocation plans prepared in accordance with GAAP. Further, the comments demonstrate that the payment of legislative and executive branch costs by airport revenue can be justified as a cost of the airport because the legislative and executive branches have direct, tangible oversight and control responsibilities for the airport, and their activities provide direct benefits to the airport, such as in the areas of funding, capital development, and marketing.

In addition, under the Final Policy, the costs of shared-use facilities must be allocated to all users of the facility, even if the original purpose of constructing the facility was to provide exclusive use or benefit to the airport. While a sponsor-owned facility may have originally been established for the benefit of the airport, the FAA believes that the purpose of the facility can change from time to time based on local circumstances and that allocation of costs should be based on current purpose, as well as use. The FAA may consider a number of factors in determining current purpose, including current use, design and functionality.

b. Standard of Documentation for the Reimbursement of Cost of Services and Contributions to Government Entities

In its administration of airport agreements, the FAA is not normally concerned with the internal management or accounting procedures used by airport owners. As a matter of policy and procedure, the FAA has consistently required that reimbursement of capital and operating costs of an airport made by a government entity must be clearly supportable and documented.

Neither the Proposed Policy nor the Supplemental Notice explicitly discussed a standard of documentation that must be achieved for a sponsor to claim reimbursement for services and/or contributions it provided to the airport. However, events subsequent to the issuance of both documents indicate a need for FAA to provide specific guidance on the standard of documentation that will support the expenditure of airport revenues.

In the examination of a possible diversion of airport revenue by the City of Los Angeles at Los Angeles International, Ontario, Van Nuys and Palmdale Airports (FAA Docket No. 16–01–96), the FAA reviewed the underlying documentation which the City of Los Angeles offered to support the payment of approximately $31 million in airport revenue to the Los Angeles' general fund as the reimbursement of sponsor contributions and services provided to the airport. In the Director's Determination dated March 17, 1997, the FAA stated its standard of documentation to justify such reimbursements. Accordingly, the

FAA is including that standard in the Final Policy.

The Final Policy requires that reimbursements for capital and operating costs of the airport made by a government entity, both direct and indirect, be supported by adequate documentary evidence. Adequate documentation consists of underlying accounting records and corroborating evidence, such as invoices, vouchers and cost allocation plans, to support all payments of airport revenues to other government entities. If this underlying accounting data is not available, the Final Policy allows reimbursement to a government entity based on audited financial statements, if such statements clearly identify the expenses as having been incurred for airport purposes consistent with the Final Policy statement. In addition, the Final Policy provides that budget estimates are not a sufficient basis for reimbursement of government entities. Budget estimates are just that—estimates of projected expenditures, not records of actual expenditures. Therefore, budget estimates cannot be relied on as documentary evidence to show that the funds claimed for reimbursement were actually expended for the benefit of the airport.

Indirect cost allocation plans, however, may use budget estimates to establish pre-determined indirect cost allocation rates. Such estimated rates must, however, be adjusted to actual expenses in the subsequent accounting period.

5. Prohibited Uses of Airport Revenue

a. Impact Fees/Contingency Fees

The Proposed Policy prohibited the payment of impact fees assessed by a nonsponsoring governmental body that the airport sponsor is not obligated to pay or that exceed such fees assessed against commercial or other governmental entities. The Supplemental Notice did not modify this provision. The term "impact fees" was not defined in the Proposed Policy.

Airport operators: One Florida airport sponsor stated that impact fees should be allowable to either a sponsoring or non-sponsoring governmental body. Another commented that the language referring to a "non-sponsoring" governmental body was vague and confusing. Within the state of Florida, impact fees are typically administered by a non-sponsoring government body. It was stated that the wording did not seem to prohibit impact fee payments when assessed by a "sponsoring" agency, or impact fees that an airport sponsor is obligated to pay.

The Final Policy: For clarity, the Final Policy is modified to delete the reference to "non-sponsoring" governmental body and to delete the reference to fees the sponsor is not obligated to pay. In addition, the FAA is adding a statement that in appropriate circumstances, airport revenue may be used to reimburse a governmental body for expenditures that the imposing government will incur as a result of on-airport development, based on actual expenses incurred.

The effect of the deletions is to broaden the prohibition to all impact fees, within the meaning of the term used in the policy statement. As such, the deletions are consistent with the statutory prohibition on payment of airport revenues that do not reflect the value of services or facilities actually provided to the airport. Until a governmental unit undertakes the activity for which the impact fee is intended to compensate, it is impossible to know with certainty whether the impact fee is an accurate reflection of the cost of the activity attributable to the airport or its value to the airport, or even that the activity will occur. This situation is true regardless of both the status of the governmental unit as airport sponsor and the status of the fee as discretionary. The FAA understands that many local laws or regulations authorizing impact fees do not require the fees to be spent to mitigate or accommodate the results of the airport action that triggers the fee. The FAA has no basis for assuring the payment of impact fees would be consistent with the purpose of section 47107(b)—to prevent an airport sponsor who received Federal assistance from using airport revenues for expenditures unrelated to the airports.

The broader prohibition is consistent with applicable FAA policies. Longstanding FAA policy has permitted a sponsor to claim reimbursement from airport revenue only for "clearly supportable and documented charges, * * * supported by documented evidence." FAA Order 5190.6A, par. 4–20.a(2)(c)(ii). An impact fee assessed before the imposing government incurred any expenses to accommodate airport growth would not meet this standard.

In addition, a standard of documentation required by the Final Policy applies to all expenditures of airport revenues subject to section 47107(b), including impact fee payments. That standard requires that expenditures of airport revenues be supported by data on the actual costs incurred for the benefit of the airport, not by budget or other estimates, which impact fees essentially are. The Final Policy will allow submission of those assessed fees resulting from the proposed development when the amount of the fees become fully quantifiable, as provided for in Section IV of the Final Policy, following implementation by the imposing government of the mitigation measures for which the impact fee is assessed. At that time, the FAA can best determine whether the fees assessed against airport revenue satisfy the requirements of section 47107(b) and this policy. In unusual circumstances, the FAA may permit a prepayment of estimated impact fees at the commencement of a mitigation project, if the funds are necessary to permit the mitigation project to go forward, so long as there is a reconciliation process that assures the airport is reimbursed for any overpayments, based on actual project costs, plus interest.

However, the Final Policy does take into account the potential that an airport operator may be required by state or local law to finance the costs of mitigating the impact of certain airport development projects undertaken by the airport sponsor. Therefore, where airport development causes a government agency to take an action, such as constructing a new highway interchange in the vicinity of the airport, airport revenues may be used equal to the prorated share of the cost. In all cases, the action must be shown to be necessitated by the airport development. In the case of infrastructure projects, such impact mitigation must also be located in the vicinity of the airport. This proximity requirement is not being applied to all mitigation measures because some mitigation measures—especially certain environmental mitigation measures—may not occur in the vicinity of the airport.

The Final Policy also acknowledges the possibility that an airport operator may be bound by local or state law to use airport revenue to pay an impact fee that is prohibited by this policy. The Final Policy states that the FAA will consider any such local circumstances in determining appropriate corrective action.

b. Subsidy of Air Carriers

As discussed in Section V "Permitted Uses," the Supplemental Notice acknowledged the fact that Congress, in the 1994 FAA Authorization Act, effectively authorized the use of airport revenue for promotion of the airport by expressly prohibiting "use of airport revenues for general economic development, marketing, and

promotional activities unrelated to airports or airport systems." At the same time, that statutory provision also limited the scope of acceptable promotional activity.

In the Supplemental Notice, the FAA proposed new policy language that more clearly addressed the kinds of promotional and marketing activities that are and are not legitimate operating costs of the airport under 47107(b). In the Supplemental Notice, Section VIII(I), the FAA proposed that "[d]irect subsidy of air carrier operations" is a prohibited use of airport revenue because it is not considered a cost of operating the airport. The FAA drew a distinction between methods of encouraging new service. Supplemental Notice proposed to allow the use of airport revenue to encourage passengers to use the airport through promotional activities, including cooperative promotional activities with airlines and to allow airport operators to enhance the viability of new service through fee incentives, on the one hand. As noted, the FAA proposed to prohibit the use of airport revenue to simply buy increased use of the airport by paying an air carrier to operate aircraft, on the other. The FAA considered the former activities to be a permitted expenditure for the promotion and marketing of the airport and the latter to be a prohibited expenditure for general economic development. The FAA explained in the preamble to the Supplemental Notice that neither promotional activities nor promotional fee discounts would be considered a prohibited direct subsidy of airline operations. 61 FR at 66738.

Airport operators: In their comments on the Supplemental Notice, ACI–NA/AAAE state that, generally, an expenditure or activity should not be considered revenue diversion if there is a reasonable expectation that such an expenditure or activity will benefit the airport. Furthermore, they note that the law does not single out direct air carrier subsidy or fee waivers for more stringent scrutiny than other marketing activities. This argument in favor of the reasonable business judgement of the airport management should be applied to the use of airport revenue for promotion and marketing not unrelated to the airport, including direct air carrier subsidies and fee waivers. ACI/AAAE stated "both forms of financial assistance should be permitted, if an airport has a reasonable expectation that the subsidy will benefit the airport and the subsidy or discount is made available on a non-discriminatory basis."

ACI/AAAE further stated that there is no real distinction between direct subsidy and fee waivers, as well as none between direct subsidy and the residual airport costing methodologies, making the distinction in the policy illogical. They predicted that the proposed policy is likely to promote detrimental effects, including eliminating air service to some small airports, increasing congestion at dominant hubs at the expense of medium-sized airports, reducing potential competition and raising fares.

Several individual airport operators concurred with the ACI–NA/AAAE position. One operator commented that any subsidies should be permitted, as long as the airport remains self-sustaining and the subsidies are not included in airline costs in calculating landing fees, terminal rents and other user charges.

Another airport operator, the LNAA, which is engaged as a party in a 14 CFR Part 13 investigation regarding its former air carrier subsidy program, commented that there is no real difference between an airport making a direct subsidy to an air carrier or waiving fees.

Two airport operators expressed different views. One operator agreed that airport revenues should not be used to subsidize new air carrier service because the practice of subsidization could lead to destructive competition for air service among airports. Another airport operator stated that it "does not currently engage in nor does it contemplate any form of direct subsidy to air carriers in exchange for air service." This operator considers the Supplemental Notice to provide adequate flexibility to airport operators to foster and promote air service development.

Air carriers: The ATA strongly opposed the assertion that direct subsidies of airline operations with airport revenue may be considered to be operating costs of the airport and would extend the prohibition to indirect subsidies. They argued that the distinction in the proposed policy that allows fee waivers under certain circumstances, but prohibits direct subsidy is illogical. Both result in revenue diversion, whether the beneficiary is "a start up carrier, a new entrant in a market, or an existing carrier at an airport." The ATA further commented, in connection with joint marketing endeavors, that the permissible "promotional period" should be defined, as should the scope of permissible marketing activities.

The Final Policy: The FAA has clarified the policy provision on the direct subsidy of air carriers with airport revenue; however, the prohibition remains, as does the distinction between direct subsidy and the waiving of fees and the joint promotion of new service. The FAA has applied the test of section 47107(b) to determine to what extent various kinds and amounts of promotional and marketing activities can be considered legitimate operating costs of the airport.

In pursuit of uniformity, the FAA has integrated references to the section on the permitted uses of airport revenue, as well as to the section on self-sustainability, to assist airport operators in pursuing reasonable strategies to promote the airport and provide incentives to encourage new air service. Among other things, marketing of air service to the airport, and expenditures to promote the airport to potential air service providers can be treated as operating costs of the airport. Of course, support for marketing of air service to the airport must be provided consistently with grant assurances prohibiting unjust discrimination.

The setting of fees is a recognized management task, based on a number of considerations, including the airport management's assessment of the services needed by airport consumers, and the airport management's assessment of the financial arrangements necessary to secure that service. The FAA has consistently maintained that fee waivers or discounts involving no expenditure of airport funds raise issues of compliance with the self-sustaining rate structure requirement, not the revenue-use requirement. The Final Policy therefore, permits fee waivers and discounts during a promotional period. The waiver or discount must be offered to all users that are willing to provide the type and level of new service that qualifies for the promotional period. The Policy limits the fee waiver or discount to promotional periods because of the requirement that the airport maintain a self-sustaining airport rate structure. In addition, indefinite fee waivers or discounts could raise questions of compliance with grant assurances prohibiting unjust discrimination. The Final Policy does not define a permitted promotional period. There is too much variation in the circumstances of individual airports throughout the country to permit adoption of a single national definition of a suitable promotional period.

In contrast, the direct payment of subsidies to airline involves the expenditure of airport funds and hence raises questions under the revenue-use requirements. The FAA continues to believe that the costs of operating aircraft, or payments to air carriers to

operate certain flights, are not reasonably considered an operating cost of an airport. In addition, payment of subsidy for air service can be viewed as general regional economic development and promotion, rather than airport promotion. Use of airport revenue for these purposes is expressly prohibited under the terms of the 1994 FAA Authorization Act. The Final Policy does not preclude a sponsor from using funds other than airport revenue to pay airline subsidies for new service, and it does not preclude other community organizations— such as chambers of commerce or regional economic development agencies—from funding a program to support new air service. Therefore, the Final Policy maintains the distinction between direct subsidy of air carriers and the waiving of fees, and prohibits the former.

6. Policies Regarding the Requirement for a Self-Sustaining Rate Structure

As noted in the summary, the Final Policy contains a separate section on the requirement that an airport maintain a rate structure that makes the airport as self-sustaining as possible under the circumstances at the airport, to provide more comprehensive guidance in a single document. The 1994 FAA Authorization Act directed the FAA to adopt policies and procedures to assure compliance with both the revenue uses and self-sustaining airport rate structure requirement. The general guidance repeats the guidance appearing in the Department of Transportation Policy Statement Regarding Airport Rates and Charges, 61 FR 31994 (June 21, 1996). The Final Policy interprets the basic requirement and addresses exceptions to the basic rule for leases of airport property at nominal or less-than fair market value (FMV) to specific categories of users.

Each federally assisted airport owner/operator is required by statute and grant assurance to have an airport fee and rental structure that will make the airport as self-sustaining as possible under the particular airport circumstances, in order to minimize the airport's reliance on Federal funds and local tax revenues. The FAA has generally interpreted the self-sustaining assurance to require airport sponsors to charge FMV commercial rates for nonaeronautical uses of airport property. However, in the case of aeronautical uses, user charges are also subject to the standard of reasonableness. In applying the two standards together for aeronautical property, the FAA has considered it acceptable for an airport operator to charge fees to aeronautical users that are less than FMV, but more than nominal charges. The FAA defines "aeronautical use" as any activity which involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. Policy Statement Regarding Airport Fees, Statement of Applicability, 61 FR at 32017.

Many entities lease airport property for aeronautical and nonaeronautical uses at nominal lease rates. The FAA has determined that nominal leases to many of these entities is consistent with the requirement to maintain a self-sustaining airport rate structure. The Final Policy provides specific guidance regarding nominal leases for six categories of users. This guidance is discussed below.

a. Use of Property at Less Than FMV for Community/Charitable/Recreational Use

Airport operators: The ACI–NA/AAAE agree with the general conclusion that use of airport property for community and charitable purposes at less than FMV should be permissible. However, they argued that the criteria listed in the Supplemental Notice are too narrow. Other criteria should be considered, and an airport should be required to provide no more than one justification. The ACI–NA/AAAE specifically mentioned aeronautical higher education institutions and not-for-profit air and space museums as additional permitted uses, based on H.R. Rep. 104–714, 104th Cong. 2nd Sess. at 39 (1996) reprinted in 1996 USCC.A.N. 3676.

Individual airport operators also requested more flexibility in various forms. One operator suggested that the Supplemental Notice establishes an unnecessary two-part test which many community uses of airport property will fail to satisfy. Another operator argued that such airport property use should not be limited to temporary arrangements, e.g., parks and baseball fields, which indicates that only uses that allow property to be returned rather quickly to the airport inventory would be permitted.

In contrast, another airport operator suggested that, in order to place less burden on the airport operator, such uses should be limited in scope and that the below-market value amount that an airport operator could charge for such usage should be established as some percentage of the appraised value of the property.

Air carriers: The ATA agrees in principle with the concept of limited use of airport property for certain specified community purposes at less than FMV. However, ATA stated that the Supplemental Notice lacks specificity and that its application would consequently be inconsistent with the self-sustaining and revenue-use requirements. The ATA proposed to narrow the first element of the standard to permit contribution of property if the property is put to a general public use desired by the local community and the use does not adversely affect the capacity, safety or operations of the airport. The ATA would narrow the second test by permitting the use of property that is expected to generate no more than minimal revenue, which the ATA would define as minimal revenue equal to or less than 20 percent of revenue that could be earned by similar airport property in commercial or air carrier use. When the property could be expected to earn more than this defined minimal amount, the ATA would permit less than FMV rental if the revenue earned by the community use approximates the revenue that would otherwise be generated.

The ATA would also require that the community use be subject to periodic review and renewed justification and that the airport proprietor retain absolute discretion to reclaim the property for airport use.

Other commenters: A member of the United States House of Representatives expressed concern that the policy, if adopted as proposed, does not provide sufficient flexibility to airport operators to be good neighbors within their community. This commenter suggested that in rural areas, requiring community organizations to pay FMV could reduce airport revenue as paying community organizations are forced off of the airport by higher rents and no new tenants are found.

Final Policy: The Final Policy generally permits below-FMV-rental of airport property for community uses, but generally limits the uses to property that is not potentially capable of producing substantial income and not needed for aeronautical use. Consistent with the suggestions of the ATA, the permitted community uses of such property will be limited to those that are compatible with the safe and efficient operation of the airport and which are for general local use. In addition, the community use should not preclude reuse of the property for airport purposes, if the airport operator determines that such reuse will provide greater benefits to the airport than the continued community use. Leases to private, non-profit organizations generally will be required to be at market rates unless the sponsor can demonstrate a "community goodwill"

purpose to the lease, or can demonstrate a benefit to aviation and the airport, as discussed below.

While the Final Policy states that property provided for community use at no charge should be expected to produce no more than minimal revenue, we are not adopting a definition of minimal. For property that is capable of generating more than minimal revenue, a sponsor could charge less than FMV rental rates for community use, if the revenue earned from the community use approximates that revenue that could otherwise be generated. Providing such property for community use at no charge would not be appropriate.

The FAA has determined that this approach to community use strikes an appropriate balance between the needs of the airport to be a good neighbor and the Federal requirements on the use of airport revenue and property. This formulation provides substantial flexibility to airport operators. At the same time, the self-sustaining requirement and the policy goal of the revenue-use requirement justify some limitation on local discretion in this area.

The requirement that community use not preclude reversion to airport use is based on both the self-sustaining requirement and the airport sponsor's basic AIP obligation to operate a grant-obligated airport as an airport.

Under the Final Policy, the lease of airport property to a unit of the sponsoring government for nonaeronautical use at less than fair market value is considered a prohibited revenue diversion unless one of the specific exceptions permitting below-market rental rates applies. If a sponsor's use of airport property qualifies as community use, and the other requirements for community-use leases are satisfied, the FAA would not object to a lease at less than fair market value. Qualified uses could include park or recreational uses or other public service functions. However, such use would be subject to special scrutiny to ensure that the requirements for below-FMV community use is satisfied. The community use provision of the Final Policy does not apply to airport property used by a department or subsidiary agency of the sponsoring government seeking an alternative site for the sponsor's general governmental purposes at less-than-commercial value. For example, a city cannot claim the community use exception for a nominal value lease of airport property for a municipal vehicle maintenance garage. Such usage, while beneficial to the taxpaying citizens of the sponsoring government, would be difficult to justify as benefiting the airport by improving the airport's acceptance in the community.

b. Not for Profit Aviation Museums

The DOT OIG has cited instances in which an aviation museum at a federally assisted airport is leasing airport property at less than a fair market rental rate. In clarifying the revenue diversion prohibitions recommended for inclusion in the FAA Authorization Act of 1996, the House Transportation and Infrastructure Committee urged the FAA to take a flexible approach to the lease of airport property at below-market rates to not-for-profit air and space museums located on airport property. H.R. Rep. No. 104–714, 104th Cong. 2nd Sess. at 39 (1996) reprinted in 1996 U.S.C.C.A.N. 3676 (House Report). The Committee recommended that this type of rental arrangement should not be considered revenue diversion because of the contribution that such museums make to the understanding and support of aviation.

One airport operator commented that long-term, less-than-market value rental arrangements, particularly for leaseholds encompassing permanent facilities, should be permitted when such arrangements serve a clear and valuable aviation-related purpose. This comment could include aviation museums.

One operator of a not-for-profit aviation museum urged the FAA to permit nominal rate leases. This operator stated that a FMV-based lease for its museum property would double its current operating budget.

The Final Policy: The Final Policy permits airport operators to charge reduced rental rates and fees, including nominal rates, to not-for-profit aviation museums, to the extent that the reduction is reasonably justified by the tangible and intangible benefits to the airport or civil aviation. This provision recognizes the potential for aviation museums to provide benefits to the airport by stimulating understanding and support of aviation, consistent with the suggestion contained in the House Report, U.S.C.C.A.N. 3676. Benefits to the airport may include any in-kind services provided to the airport and airport users by the aviation museum. The limitation to not-for profit museums is consistent with the requirement for a self-sustaining airport rate structure, because there is no reason to give for-profit aviation museums preferential treatment over other commercial aeronautical activities. All for-profit aeronautical activities provide some benefit to the airport, by making it more attractive for potential airport users. If this benefit were a sufficient reason to permit reduced rental rates to commercial aviation businesses on a routine basis, the requirement for a self-sustaining airport rate structure would be virtually unenforceable.

The Final Policy permits but does not require below-market rental rates, including nominal rates. The airport operator is free to treat a qualified aviation museum as it would any other aeronautical activity in setting rental rates and other fees to be paid by the museum.

c. Aeronautical Higher Education Programs

The DOT OIG has cited instances in which aeronautical secondary and post-secondary education programs at federally assisted airports are leasing airport property at less than a fair market rental rate.

In the House Report, 1996 U.S.C.C.A.N. 3676, the House Transportation and Infrastructure Committee also urged the FAA to take a flexible approach to aeronautical higher education programs located on airports. The Committee recognized that some federally obligated airports have leased property to non-profit, accredited collegiate aviation programs, and that facilitating these programs will help build a base of support for airport operations by giving students, who will be the future users of the national airspace system, easy access to aviation facilities.

The Final Policy: The Final Policy permits reduced rental rates, including nominal rates, to not-for-profit aeronautical secondary and post-secondary education programs conducted by accredited educational institutions, to the extent that the reduction is justified by tangible or intangible benefits to the airport or to civil aviation. This treatment is justified for the same reason that reduced rental rates and fees to certain aviation museums are permitted. Again, the benefits may include in-kind services provided to the airport and airport users. As with aviation museums, the educational institution and education program must be not-for-profit. For-profit aviation education, such as flight-training, is a standard commercial aeronautical activity at many airports. Permitting reduced rental rates and fees to for-profit aviation education programs would seriously undermine compliance with the self-sustaining requirement and could raise questions of compliance with the grant assurances prohibiting unjust discrimination.

The Final Policy permits but does not require below-market rental rates, including nominal rates. The airport operator is free to treat a qualified not-for-profit aeronautical education program as it would any other aeronautical activity in setting rental rates and other fees to be paid by the education program.

d. Civil Air Patrol Leases

Reduced-rental leases, including nominal leases, to the Civil Air Patrol/United States Air Force Auxiliary (CAP) at a number of airports have also been criticized in OIG audits. As a result of this criticism, some airport operators have been seeking higher rents from the CAP when leases have come up for renewal.

In its comments, the CAP contends that the current standard airport industry practice of permitting CAP use of airport property for a nominal rent confers substantial benefits to the airport and, in general, to the aviation community. The CAP, therefore, requests that a policy be adopted which would formally permit CAP units to continue to occupy facilities on federally obligated airports at a nominal rent, whether under formal lease arrangements, or otherwise, at the discretion of the airport owner/operator.

The Final Policy: The Final Policy permits reduced rental rates and fees to CAP units operating at the airport, in recognition of the benefits to the airport and benefits to aviation similar to those provided by not-for-profit aviation museums and aeronautical secondary education programs. As with other not-for profit-aviation entities, the reduction must be reasonably justified by benefits to the airport or to civil aviation. In-kind services to the airport and airport users may be considered in determining the benefits that the CAP unit provides. In addition, this treatment of the CAP, which has been conferred with the status of an auxiliary to the United States Air Force, is not identical to the treatment provided to military units in the Final Policy, as discussed below, but is consistent with that treatment.

The reduced rental rates and fees are available only to those CAP units operating aircraft at the airport. For CAP units without aircraft, a presence at the airport is not critical. The airport operator can accommodate those CAP units with property that is not subject to Federal requirements on maintaining a self-sustaining rate structure, without compromising the effectiveness of the CAP units. Of course, if such units provide in-kind services that benefit the airport, the value of those services may be recognized as an offset to FMV rates.

The Final Policy permits but does not require nominal rental rates. The airport operator is free to treat a qualified not-for-profit aeronautical CAP lease as it would any other aeronautical activity in setting rental rates and other fees to be paid by the education program.

e. Police/Firefighting Units Operating Aircraft at the Airport

Many airports host police or fire-fighting units operating aircraft (often helicopters). The OIG has frequently criticized reduced rate or no-cost leases to these units of government as inconsistent with the self-sustaining and revenue-use requirements.

The Final Policy requires the airport operator to charge reasonable rental rates and fees to these units of government. In effect, these units of government must be treated the same as other aeronautical tenants of the airport. This treatment is consistent with the policy's general approach toward dealings between units of government—fees should be set at the level that would be produced by arm's-length bargaining. The treatment is also justified because police and fire-fighting aircraft units provide benefits to the community as a whole, and not necessarily to the airport. However, as with other police and fire-fighting units located at an airport, the policy does allow rental payments to be offset to reflect the value of services actually provided to the airport by the police and fire-fighting aircraft units.

f. Use of Property by Military Units

The US Air Force Reserve and the Air National Guard both have numerous flying units located on federally obligated, public-use airports. The majority of these aircraft-operating units are located on leased property at civilian airports established on former military airport land transferred by the US Government to the airport owner/operator under the Surplus Property Act of 1944, as amended, or under other statutes authorizing the conveyance of surplus Federal property for use as a public airport. Frequently, the favorable lease terms were contemplated in connection with the transfer of the former military property and may have been incorporated in property conveyance documents as obligations of the civilian airport sponsor. As with other reduced-rate leases, these arrangements have been criticized in individual OIG audits.

The Final Policy: The Final Policy provides that leasing of airport property at nominal lease rates to military units with aeronautical missions is not inconsistent with the requirement for a self-sustaining rate structure. The Department of Defense (DOD) has a substantial investment in facilities and infrastructure at these locations, and its operating budgets are based on the existence of these leases. Moving those facilities upon expiration of a lease or the payment of FMV rent for facilities to support military aeronautical activities required for national defense and public safety would be beyond the capability of the DOD without additional legislation and enlargement of the DOD operating budget. In all of the enactments on the self-sustaining rate structure requirement and use of airport revenue and the accompanying legislative history, the FAA can find no indication that Congress intended the airport revenue requirements to be applied in a way to disrupt the United States' defense capabilities or add significantly to the cost of maintaining those capabilities. Moreover, Congress specifically charged the FAA, in 49 U.S.C. § 47103, with developing a national plan of integrated airport systems (NPIAS) to meet, among other things, the country's national defense needs. Inclusion in the NPIAS is a prerequisite for eligibility for AIP funding. Thus, Congress clearly contemplated a military presence at civil airports. Therefore, the FAA will not construe the requirement for a self-sustaining airport rate structure to prohibit nominal leases to military units operating aircraft at an airport.

The Final Policy permits but does not require nominal rental rates. The airport operator is free to treat a qualified military unit as it would any other aeronautical activity in setting rental rates and other fees to be paid by the military unit.

7. Lease of Airport Property at Less Than FMV for Mass Transit Access to Airports

The Supplemental Notice proposed that airport property could be made available at less than fair rental value for public transit terminals, rights-of-way, and related facilities, without being considered in violation of the requirements governing airport finances, under certain conditions. The transit system would have to be publicly owned and operated (or privately operated by contract on behalf of the public owner) and the transit facilities directly related to the transportation of air passengers and airport visitors and employees to and from the airport. Twenty-one responses addressed this issue.

Airport commenters: The airport operators concur with the principle of making airport land available for mass

transit at rates below fair market value. ACI–NA/AAAE stated that the determination to use airport property for a transit terminal, transit right-of-way, or related facilities at less than fair rental value is consistent with the grant assurance requiring airports to be self-sustaining.

Air carriers: The ATA asserted that FAA has exceeded its statutory authority in the proposal. ATA's considers transit facilities to be like commercial business enterprises, because they occupy airport property and charge their customers for their services. ATA also stressed that airport transit facilities are non-aeronautical facilities which are not "directly and substantially related to the air transportation of passengers or property."

Other commenters: Transit operators, including a transit operator trade association generally supported the position in the Supplemental Notice.

Another commenter stated that making airport property available at less than fair market rental value or making airport revenue available for transit facilities equates to the airport paying a hidden taxation. This commenter argued that it was not the intention of Congress, when it passed the AAIA, to have grant funds used to subsidize, either directly or indirectly, any activity that provides no benefit to air travel.

The Final Policy: The Final Policy incorporates the provision proposed in the Supplemental Notice, with a technical correction to include transit facilities use for the transportation of property to or from the airport. The FAA does not consider public transit terminals to be the equivalent of commercial business enterprises. Rather, they are more like public and airport roadways providing ground access to the airport. Generally speaking, the FAA does not construe the self-sustaining assurance to require an airport owner or operator to charge for roadways and roadway rights-of-way at FMV.

Moreover, even though publicly-owned transit systems charge passengers for their services, they generally operate at a loss and are subsidized by general taxpayer revenue. Charging fair market value for on airport facilities would thus burden general taxpayers with the costs of providing facilities used exclusively by transit passengers visiting the airport. Therefore, a requirement to charge FMV would not further the purpose of the self-sustaining assurance—to avoid burdening local taxpayers with the cost of operating the airport system.

a. Private Transit

ACI–NA/AAAE and four airport operators commented that private transit operators should have treatment equal to public transit operators. They argued that the concepts of public-private partnerships, and privatization of transportation facilities, may be realities in the not-too-distant future. Moreover, private ownership would not detract in the least from the functions identified in the Notice for these facilities, such as bringing passengers to and from the airport. They also noted that the language in the AIP Handbook (Order 5100.38A, Section 6) does not specifically exclude private operators. The language states transit facilities will be allowable provided they will primarily serve the airport.

One state Department of Transportation also urged that reduced rental rates should be offered to privately-owned and operated transit systems on the same basis as publicly-owned systems.

Final Policy. The Final Policy retains some distinctions between privately and publicly owned systems. In general, privately-owned systems are more analogous to other ground transportation providers—private taxis and limousine services, rental car companies—and even private parking lot operators. These entities are commercial enterprises that operate for profit and are a significant source of revenue for the airport. Most importantly, they are not supported by general taxpayer funds, and charging FMV would not raise questions of burdening local taxpayers with the cost of the airport.

However, the FAA is aware that, in many communities with no publicly-owned bus systems or very limited systems, privately-owned bus systems fulfill the role of providing public transit services to the airport. Accordingly, the FAA is revising the Final Policy to permit an airport operator to provide airport property at less than FMV rates to privately-owned systems in these limited circumstances.

b. Airport Passengers

Nine airport commenters addressed the proposed requirement that transit facilities be directly related to the transportation of air passengers and airport visitors and employees to and from the airport to qualify for less-than-FMV rentals. The commenters argue that the provision is too narrow by restricting the transit service to air-passengers and airport visitors and employees. One airport operator states that airport sponsors must have the flexibility to build airport transit systems that principally serve airport passengers, employees and other users but which may also secondarily transport some nonairport users. Two airport operators with general-use rail transit systems planned or operating on or near their airports argue that the airport benefits from improved ground access, reduced traffic congestion and improved air quality of general use systems and that rent-free property should, therefore, be provided to general use systems.

Final Policy: The Final Policy incorporates the language of the Supplemental Notice. That language does not preclude any use of transit facilities constructed on airport property by nonairport passengers if the property is to be leased at less-than-FMV. The requirement that the facilities be "directly related" to the airport does not equate to a requirement that the facilities be "exclusively used" for airport purposes. However, if the intended use of a facility is not exclusive airport use, some rental charge may be necessary to reflect the benefits provided to the general public. The determination on whether the facilities are "directly related" will be made on a case-by-case basis.

It appears that some of the concern about this issue was generated by the language in the preamble, which referred to transit facilities "necessary for the transportation of air passengers, airport visitors and airport employees to and from the airport." The preamble offered a maintenance/repair facility as an example of facilities that would not qualify. The FAA is not convinced that the benefits to the airport of having such facilities on the airport is sufficient to justify less-than-FMV rental rates. However, as noted, the FAA does not construe the policy language "facilities directly related the transportation of [airport passengers]" to require that the facilities be used exclusively by airport passengers.

8. Military Base Conversions Issues

In its comments to the Proposed Policy, one airport operator argued that using airport revenue to assist in development of revenue-generating properties on former military bases that are converted to civil airports should not be considered a prohibited use of revenue.

In addition, ACI–NA/AAAE state that a base closure and conversion to civilian use often results in the existence of significant recreational facilities on property owned by an airport. In regard to these facilities on converted military bases, ACI/AAAE stated, "[a] leasing

arrangement whereby a municipality assumes all liability and operating expenses in exchange for a no-revenue lease is beneficial to the airport and should not be prohibited."

Final Policy: The Final Policy provides for no special treatment of converted military bases with respect to airport revenue use, and no special provisions are included in the final policy.

The FAA policy on the use of public and recreational use of property will be consistently applied to airports whether or not they are former military bases. Ordinarily, airport revenue may not be used to finance the costs of public and recreational facilities at the airport, just as airport revenue may not be used to develop other facilities not needed for the airport, even if those facilities will generate revenue for the airport. In addition, unless the recreational facilities qualify under the community-use exception, the airport operator would be expected to receive FMV-based rental payments for the recreational or public property. Operational costs borne by a municipality as a result of a base conversion can be considered in the analysis of whether a reduced rent is justified by tangible or intangible benefits to the airport.

9. Enforcement Policy, Whether to Impose Civil Penalty Even if Funds are Returned

The Proposed Policy provided that if the FAA received information that improper use of airport revenue had occurred, the FAA would investigate the matter and attempt to resolve the issue informally. The matter could be resolved if the sponsor persuaded the FAA that the use of airport revenue was not improper, or if the sponsor took corrective action (which usually would involve crediting the diverted amount to the airport account with interest). The proposed policy provided that the FAA would propose enforcement action only if the FAA made a preliminary finding of noncompliance and the sponsor had failed to take corrective action. The Proposed Policy outlined the enforcement actions available to the FAA as of the date of publication. The actions included: (1) withholding of new AIP grants and payments under existing grants (49 USC §§ 47111(e) and (d), respectively); (2) withholding of new authority to impose PFCs (49 USC 47111(e)); (3) withholding of all Federal transportation funds appropriated in Fiscal Years 1994 and 1995 (as provided in the Department of Transportation appropriation legislation for those years); (4) assessment of civil penalties not to exceed $50,000 (49 USC § 46301); and (5) initiation of a civil action to compel compliance with the grant assurances (49 USC § 47111(f)).

The Proposed Policy outlined the administrative procedural rules applicable to airport compliance matters at the time of publication, 14 C.F.R., Part 13 "Investigation and Enforcement Procedures."

Airport operators: ACI–NA and AAAE strongly urged the FAA to provide in the final policy that remittance of any diverted amounts, together with associated interest, should be sufficient to "cure" instances of revenue diversion, regardless of how those instances come to the attention of the FAA. In particular, a non-airport party should not be given the capacity, through the filing of a formal compliant, to eliminate an airport's ability to cure the problem.

Air carriers: ATA suggested that the proposed policy should be strengthened, backed up by a stronger enforcement policy and aggressive monitoring and vigorous enforcement action. ATA additionally argued that FAA should promulgate one rule that sets forth in detail the substantive requirements regarding revenue retention and diversion and a separate compliance and enforcement policy document.

ATA objected that the proposed policy continues to provide a passive monitoring procedure and this approach is not sufficient to provide prompt and efficient enforcement. IATA objected that the Proposed Policy does not promote prompt or effective enforcement.

ATA suggested that the FAA establish a formal compliance monitoring and inspection program that includes compliance monitoring and audits/inspections similar to those it conducts at certificated airlines, such as for drug and alcohol testing. Further, ATA stated that FAA's enforcement policy should result in civil penalties being assessed with the same vigor with which they are assessed against airlines for alleged regulatory violations. In addition, ATA urged that FAA should maintain the threat of assessing civil penalties for each day an airport or sponsor is in violation of the revenue-use requirement and for each day a sponsor fails to repay amounts determined to have been diverted unlawfully. IATA similarly supported assessment of the maximum civil penalty for each instance of unlawful revenue use.

The Final Policy: After publication of the Proposed Policy, the FAA Reauthorization Act of 1996 mandated new remedies for improper use of airport revenues and new compliance monitoring programs. The Final Policy has been modified to reflect the new requirements. Implementation of the requirements will result in more active and systematic monitoring of airport revenue use and more systematic resolution of questionable airport practices, as requested by the ATA and the IATA. It should be noted that the FAA had already assumed a more active role in monitoring through the implementation of the financial reporting requirements of the 1994 FAA Authorization Act.

In accordance with the requirements of the 1996 FAA Reauthorization Act, the Final Policy reflects the clear congressional intent that the FAA focus compliance efforts on the lawful use of airport revenue. The FAA will use all means at its disposal to monitor and enforce the revenue-use requirements and will take appropriate action when a potential violation is brought to the FAA's attention by any means. To detect whether airport revenue has been diverted from an airport, the FAA will use four primary sources of information: (1) the annual airport financial reports submitted by the sponsor; (2) findings from a single audit conducted in accordance with OMB Circular A–133 (including the audit review and opinion required by the 1996 Reauthorization Act); (3) investigation following a third-party complaint, and, (4) DOT Office of Inspector General audits.

The FAA will seek penalties for the diversion of airport funds if the airport sponsor is not willing to correct the diversion and make restitution, with interest, in a timely manner. This approach is consistent with the FAA's objective of achieving compliance with a sponsor's obligations. Moreover, it is consistent with section 805 of the 1996 Reauthorization Act, which provides for imposition of administrative and civil penalties only after a sponsor has been given an opportunity to take corrective action and failed to do so.

10. Form of Policy

As is reflected in the Proposed Policy and Supplemental Notice, the FAA proposed to implement section 112 of the 1994 Act by publishing a policy statement, rather than adopting a regulation.

The Comments: The ATA argued that the FAA should promulgate a regulation establishing substantive requirements for use of airport revenue and a separate enforcement policy. The ATA argued that a substantive regulation will provide more clarity on prohibited and permitted practices and be less

susceptible to conflicts over interpretation.

The AOPA also raised concerns over the prompt and effective enforcement of airport revenue diversion within the terms of this Proposed Policy.

The Final Policy: The FAA will publish policy guidance on airport revenue use and enforcement as a policy rather than as a regulation. Section 112 of the 1994 FAA Authorization Act directs the Secretary to "establish policies and procedures" to assure "prompt and effective enforcement" of the revenue retention grant assurances, which clearly contemplates the issuance of a policy statement for this purpose.

As discussed in connection with specific issues, the wide variation in airport situations makes it impractical for the FAA to promulgate standards with the specificity and inflexibility urged by ATA. Moreover, a regulation is not required to obtain compliance with the revenue-use requirement. Airports are obligated by the statutory assurance in AIP grant agreements pursuant to § 47107(b)(2), or directly under § 47133, and rulemaking is not required to implement those statutes.

On the issue raised by ATA and AOPA concerning the prompt and effective enforcement mechanism to address specific revenue diversion issues, the FAA had been using 14 CFR Part 13. However, on December 16, 1996, 14 CFR Part 16, Rules of Practice for Federally Assisted Airport Proceedings, took effect. Part 16 established new investigation and enforcement procedures for airport compliance matters, including compliance with the revenue-use requirement. Part 16 includes time deadlines and processes to assure that FAA promptly and effectively investigates and adjudicates specific airport compliance matters involving Federally Assisted Airports. The FAA considers the procedural requirements of the Reauthorization Act of 1996 to be self-executing and will apply the statutory provisions in the case of any conflict with Part 16. However, the FAA is in the process of revising Part 16 to incorporate those new procedural requirements.

Paperwork Reduction Act Requirements

The Office of Management and Budget (OMB) has previously approved, pursuant to the Paperwork Reduction Act, the annual airport financial reports described in Section VIII.A of the Final Policy under OMB Number 2120–0569.

Policy Statement

For the reasons discussed above, the Federal Aviation Administration adopts the following statement of policy concerning the use of airport revenue:

Policies and Procedures Concerning the Use of Airport Revenue

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Section I.—Introduction

The Federal Aviation Administration (FAA) issues this document to fulfill the statutory provisions in section 112 of the Federal Aviation Administration Authorization Act of 1994, Pub.L. No. 103–305, 108 Stat. 1569 (August 23, 1994), 49 USC 47107(l), and Federal Aviation Administration Reauthorization Act of 1996, Public Law 104–264, 110 Stat. 3213 (October 9, 1996), to establish policies and procedures on the generation and use of airport revenue. The sponsor assurance prohibiting the unlawful diversion of airport revenues, also known as the revenue-use requirement, was first mandated by Congress in 1982. Simply stated, the purpose of that assurance, now codified at 49 USC §§ 47107(b) and 47133, is to provide that an airport owner or operator receiving Federal financial assistance will use airport revenues only for purposes related to the airport. The Policy Statement implements requirements adopted by Congress in the FAA Reauthorization Acts of 1994 and 1996, and takes into consideration comments received on the interim policy statements issued on February 26, 1996, and December 18, 1996.

Section II—Definitions

A. Federal Financial Assistance

Title 49 USC § 47133, which took effect on October 1, 1996, applies the airport revenue-use requirements of § 47107(b) to any airport that has received "Federal assistance." The FAA considers the term "Federal assistance" in § 47133 to apply to the following Federal actions:

1. Airport development grants issued under the Airport Improvement Program and predecessor Federal grant programs;

2. Airport planning grants that relate to a specific airport;

3. Airport noise mitigation grants received by an airport operator;

4. The transfer of Federal property under the Surplus Property Act, now codified at 49 USC § 47151 *et seq.*; and

5. Deeds of conveyance issued under Section 16 of the Federal Airport Act of 1946, under Section 23 of the Airport and Airway Improvement Act of 1970, or under Section 516 of the Airport and Airway Improvement Act of 1982 (AAIA).

B. Airport Revenue

1. All fees, charges, rents, or other payments received by or accruing to the sponsor for any one of the following reasons are considered to be airport revenue:

a. Revenue from air carriers, tenants, lessees, purchasers of airport properties, airport permittees making use of airport property and services, and other parties. Airport revenue includes all revenue received by the sponsor for the activities of others or the transfer of rights to others relating to the airport, including revenue received:

i. For the right to conduct an activity on the airport or to use or occupy airport property;

ii. For the sale, transfer, or disposition of airport real property (as specified in the applicability section of this policy statement) not acquired with Federal assistance or personal airport property not acquired with Federal assistance, or any interest in that property, including transfer through a condemnation proceeding;

iii. For the sale of (or sale or lease of rights in) sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport; or

iv. For the right to conduct an activity on, or for the use or disposition of, real or personal property or any interest therein owned or controlled by the sponsor and used for an airport-related purpose but not located on the airport (e.g., a downtown duty-free shop).

b. Revenue from sponsor activities on the airport. Airport revenue generally includes all revenue received by the sponsor for activities conducted by the sponsor itself as airport owner and operator, including revenue received:

i. From any activity conducted by the sponsor on airport property acquired with Federal assistance;

ii. From any aeronautical activity conducted by the sponsor which is directly connected to a sponsor's ownership of an airport subject to 49 U.S.C. §§ 47107(b) or 47133; or

iii. From any nonaeronautical activity conducted by the sponsor on airport property not acquired with Federal assistance, but only to the extent of the fair rental value of the airport property. The fair rental value will be based on the fair market value.

2. State or local taxes on aviation fuel (except taxes in effect on December 30, 1987) are considered to be airport revenue subject to the revenue-use requirement. However, revenues from state taxes on aviation fuel may be used to support state aviation programs or for noise mitigation purposes, on or off the airport.

3. While not considered to be airport revenue, the proceeds from the sale of land donated by the United States or acquired with Federal grants must be used in accordance with the agreement between the FAA and the sponsor. Where such an agreement gives the FAA discretion, FAA may consider this policy as a relevant factor in specifying the permissible use or uses of the proceeds.

C. Unlawful Revenue Diversion

Unlawful revenue diversion is the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, when the use is not "grandfathered" under 49 U.S.C. § 47107(b)(2). When a use would be diversion of revenue but is grandfathered, the use is considered lawful revenue diversion. See Section VI, Prohibited Uses of Airport Revenue.

D. Airport Sponsor

The airport sponsor is the owner or operator of the airport that accepts Federal assistance and executes grant agreements or other documents required for the receipt of Federal assistance.

Section III—Applicability of the Policy

A. Policy and Procedures on the Use of Airport Revenue and State or Local Taxes on Aviation Fuel

1. With respect to the use of airport revenue, the policies and procedures in the Policy Statement are applicable to all public agencies that have received a grant for airport development since September 3, 1982, under the Airport and Airway Improvement Act of 1982 (AAIA), as amended, recodified without substantive change by Public Law 103–272 (July 5, 1994) at 49 § U.S.C. 47101, et seq., and which had grant obligations regarding the use of airport revenue in effect on October 1, 1996 (the effective date of the FAA Authorization Act of 1996). Grants issued under that statutory authority are commonly referred to as Airport Improvement Program (AIP) grants. The Policy Statement applies to revenue uses at such airports even if the sponsor has not received an AIP grant since October 1, 1996.

2. With respect to the use of state and local taxes on aviation fuel, this Policy Statement is applicable to all public agencies that have received an AIP development grant since December 30, 1987, and which had grant obligations regarding the use of state and local taxes on aviation fuel in effect of October 1, 1996.

3. Pursuant to 49 U.S.C. § 47133, this Policy Statement applies to any airport for which Federal assistance has been received after October 1, 1996, whether or not the airport owner is subject to the airport revenue-use grant assurance, and applies to any airport for which the airport revenue-use grant obligation is in effect on or after October 1, 1996. Section 47133 does not apply to an airport that has received Federal assistance prior to October 1, 1996, and does not have AIP airport development grant assurances in effect on that date.

4. Requirements regarding the use of airport revenue applicable to a particular airport or airport operator on or after October 1, 1996, as a result of the provisions of 49 U.S.C. § 47133, do not expire.

5. The FAA will not reconsider agency determinations and adjudications dated prior to the date of this Policy Statement, based on the issuance of this Policy Statement.

B. Policies and Procedures on the Requirement for a Self-Sustaining Airport Rate Structure

1. These policies and procedures apply to the operators of publicly owned airports that have received an AIP development grant and that have grant obligations in effect on or after the effective date of this policy.

2. Grant assurance obligations regarding maintenance of a self-sustaining airport rate structure in effect on or after the effective date of this policy apply until the end of the useful life of each airport development project or 20 years, whichever is less, except obligations under a grant for land acquisition, which do not expire.

C. Application of the Policy to Airport Privatization

1. The Airport Privatization Pilot Program, codified at 49 U.S.C. § 47134, provides for the sale or lease of general aviation airports and the lease of air carrier airports. Under the program, the FAA is authorized to exempt up to five airports from Federal statutory and regulatory requirements governing the use of airport revenue. The FAA can exempt an airport sponsor from its obligations to repay Federal grants, in the event of a sale, to return property acquired with Federal assistance and to use the proceeds of the sale or lease exclusively for airport purposes. The exemptions are subject to a number of conditions.

2. Except as specifically provided by the terms of an exemption granted under the Airport Privatization Pilot

Program, this policy statement applies to a privatization of airport property and/or operations.

3. For airport privatization transactions not subject to an exemption under the Pilot Program:

FAA approval of the sale or other transfer of ownership or control, of a publicly owned airport is required in accordance with the AIP sponsor assurances and general government contract law principles. The proceeds of a sale of airport property are considered airport revenue (except in the case of property acquired with Federal assistance, the sale of which is subject to other restrictions under the relevant grant contract or deed). When the sale proposed is the sale of an entire airport as an operating entity, the request may present the FAA with a complex transaction in which the disposition of the proceeds of the transfer is only one of many considerations. In its review of such a proposal, the FAA would condition its approval of the transfer on the parties' assurances that the proceeds of sale will be used for the purposes permitted by the revenue-use requirements of 49 U.S.C. §§ 47107(b) and 47133. Because of the complexity of an airport sale or privatization, the provisions for ensuring that the proceeds are used for the purposes permitted by the revenue-use requirements may need to be adapted to the special circumstances of the transaction. Accordingly, the disposition of the proceeds would need to be structured to meet the revenue-use requirements, given the special conditions and constraints imposed by the fact of a change in airport ownership. In considering and approving such requests, the FAA will remain open and flexible in specifying conditions on the use of revenue that will protect the public interest and fulfill the objectives and obligations of revenue-use requirements, without unnecessarily interfering with the appropriate privatization of airport infrastructure.

4. It is not the intention of the FAA to effectively bar airport privatization initiatives outside of the pilot program through application of the statutory requirements for use of airport revenue. Proponents of a proposed privatization or other sale or lease of airport property clearly will need to consider the effects of Federal statutory requirements on the use of airport revenue, reasonable fees for airport users, disposition of airport property, and other policies incorporated in Federal grant agreements. The FAA assumes that the proposals will be structured from the outset to comply with all such requirements, and this proposed policy is not intended to add to the considerations already involved in a transfer of airport property.

Section IV—Statutory Requirements for the Use of Airport Revenue

A. General Requirements, 49 U.S.C. §§ 47107(b) and 47133

1. The current provisions restricting the use of airport revenue are found at 49 U.S.C. §§ 47107(b), and 47133. Section 47107(b) requires the Secretary, prior to approving a project grant application for airport development, to obtain written assurances regarding the use of airport revenue and state and local taxes on aviation fuel. Section 47107(b)(1) requires the airport owner or operator to provide assurances that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—

a. The airport;

b. The local airport system; or

c. Other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

B. Exception for Certain Preexisting Arrangements (Grandfather Provisions)

Section 47107(b)(2) provides an exception to the requirements of Section 47107(b)(1) for airport owners or operators having certain financial arrangements in effect prior to the enactment of the AAIA. This provision is commonly referred to as the "grandfather" provision. It states:

> Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

C. Application of 49 U.S.C. § 47133

1. Section 47133 imposes the same requirements on all airports, privately-owned or publicly-owned, that are the subject of Federal assistance. Subsection 47133(a) states that:

Local taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of Federal assistance may not be expended for any purpose other than the capital or operating costs of—

(a) the airport;

(b) The local airport system; or

(c) Other local facilities owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of persons or property.

2. Section 47133(b) contains the same grandfather provisions as section 47107(b).

3. Enactment of section 47133 resulted in three fundamental changes to the revenue-use obligation, as reflected in the applicability section of this policy statement.

a. Privately owned airports receiving Federal assistance (as defined in this policy statement) after October 1, 1996, are subject to the revenue-use requirement.

b. In addition to airports receiving AIP grants, airports receiving Federal assistance in the form of gifts of property after October 1, 1996, are subject to the revenue-use requirement.

c. For any airport or airport operator that is subject to the revenue-use requirement on or after October 1, 1996, the revenue-use requirement applies indefinitely.

4. This section of the policy refers to the date of October 1, 1996, because the FAA Authorization Act of 1996 is by its terms effective on that date.

D. Specific Statutory Requirements for the Use of Airport Revenue

1. In section 112 of the FAA Authorization Act of 1994, 49 U.S.C. § 47107(l)(2) (A–D), Congress expressly prohibited the diversion of airport revenues through:

a. Direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport;

b. Use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;

c. Payments in lieu of taxes or other assessments that exceed the value of services provided; or

d. Payments to compensate non-sponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

2. Section 47107(l)(5), enacted as part of the FAA Authorization Act of 1996, provides that:

(A) Any request by a sponsor to any airport for additional payments for services conducted off of the airport or for reimbursement for capital contributions or operating expenses shall be filed not later than 6 years after the date on which the expense is incurred; and

(B) Any amount of airport funds that are used to make a payment or

reimbursement as described in subparagraph (a) after the date specified in that subparagraph shall be considered to be an illegal diversion of airport revenues that is subject to subsection (n).

3. 49 U.S.C. § 40116(d)(2)(A) provides, among other things, that a State, political subdivision of a State or authority acting for a State or a political subdivision may not: "(iv) levy or collect a tax, fee or charge, first taking effect after August 23, 1994, exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee or charge wholly utilized for airport or aeronautical purposes."

E. Passenger Facility Charges and Revenue Diversion

The Aviation Safety and Capacity Expansion Act of 1990 authorized the imposition of a passenger facility charge (PFC) with the approval of the Secretary.

1. While PFC revenue is not characterized as "airport revenue" for purposes of this Policy Statement, specific statutory and regulatory guidelines govern the use of PFC revenue, as set forth at 49 U.S.C. 40117, "Passenger Facility Fees," and 14 CFR Part 158, "Passenger Facility Charges." (For purposes of this policy, the terms "passenger facility fees" and "passenger facility charges" are synonymous.) These provisions are more restrictive than the requirements for the use of airport revenue in 49 U.S.C. 47107(b), in that the PFC requirements provide that PFC collections may only be used to finance the allowable costs of approved projects. The PFC regulation specifies the kinds of projects that can be funded by PFC revenue and the objectives these projects must achieve to receive FAA approval for use of PFC revenue.

2. The statute and regulations prohibit expenditure of PFC revenue for other than approved projects, or collection of PFC revenue in excess of approved amounts.

3. As explained more fully below under enforcement policies and procedures in Section IX, "Monitoring and Compliance," a final FAA determination that a public agency has violated the revenue-use provision prevents the FAA from approving new authority to impose a PFC until corrective action is taken.

Section V—Permitted Uses of Airport Revenue

A. Permitted Uses of Airport Revenue

Airport revenue may be used for:

1. The capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property. Such costs may include reimbursements to a state or local agency for the costs of services actually received and documented, subject to the terms of this policy statement. Operating costs for an airport may be both direct and indirect and may include all of the expenses and costs that are recognized under the generally accepted accounting principles and practices that apply to the airport enterprise funds of state and local government entities.

2. The full costs of activities directed toward promoting competition at an airport, public and industry awareness of airport facilities and services, new air service and competition at the airport (other than direct subsidy of air carrier operations prohibited by paragraph VI.B.12 of this policy), and salary and expenses of employees engaged in efforts to promote air service at the airport, subject to the terms of this policy statement. Other permissible expenditures include cooperative advertising, where the airport advertises new services with or without matching funds, and advertising of general or specific airline services to the airport. Examples of permitted expenditures in this category include: (a) a Superbowl hospitality tent for corporate aircraft crews at a sponsor-owned general aviation terminal intended to promote the use of that airport by corporate aircraft; and (b) the cost of promotional items bearing airport logos distributed at various aviation industry events.

3. A share of promotional expenses, which may include marketing efforts, advertising, and related activities designed to increase travel using the airport, to the extent the airport share of the promotional materials or efforts meets the requirements of V.A.2. above and includes specific information about the airport.

4. The repayment of the airport owner or sponsor of funds contributed by such owner or sponsor for capital and operating costs of the airport and not heretofore reimbursed. An airport owner or operator can seek reimbursement of contributed funds only if the request is made within 6 years of the date the contribution took place. 49 U.S.C. 47107(l).

a. If the contribution was a loan to the airport, and clearly documented as an interest-bearing loan at the time it was made, the sponsor may repay the loan principal and interest from airport funds. Interest should not exceed a rate which the sponsor received for other investments for that period of time.

b. For other contributions to the airport, the airport owner or operator may seek reimbursement of interest only if the FAA determines that the airport owes the sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport. Interest shall be determined in the manner provided in 49 U.S.C. 47107(o), but may be assessed only from the date of the FAA's determination.

5. Lobbying fees and attorney fees to the extent these fees are for services in support of any activity or project for which airport revenues may be used under this Policy Statement. See Section VI: Prohibited Uses of Airport Revenue.

6. Costs incurred by government officials, such as city council members, to the extent that such costs are for services to the airport actually received and documented. An example of such costs would be the costs of travel for city council members to meet with FAA officials regarding AIP funding for an airport project.

7. A portion of the general costs of government, including executive offices and the legislative branches, may be allocated to the airport indirectly under a cost allocation plan in accordance with V.B.3. of this Policy Statement.

8. Expenditure of airport funds for support of community activities, participation in community events, or support of community-purpose uses of airport property if such expenditures are directly and substantially related to the operation of the airport. Examples of permitted expenditures in this category include: (a) the purchase of tickets for an annual community luncheon at which the Airport director delivers a speech reviewing the state of the airport; and (b) contribution to a golf tournament sponsored by a "friends of the airport" committee. The FAA recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance, but that a benefit of that nature is intangible and not quantifiable. Where the amount of contribution is minimal, the value of the benefit will not be questioned as long as there is a reasonable connection between the recipient organization and the benefit of local community acceptance for the airport. An example of a permitted expenditure in this category was participation in a local school fair with a booth focusing on operation of the airport and career opportunities in aviation. The expenditure in this example was $250.

9. Airport revenue may be used for the capital or operating costs of those

portions of an airport ground access project that can be considered an airport capital project, or of that part of a local facility that is owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees. The FAA has approved the use of airport revenue for the actual costs incurred for structures and equipment associated with an airport terminal building station and a rail connector between the airport station and the nearest mass transit rail line, where the structures and equipment were (1) located entirely on airport property, and (2) designed and intended exclusively for the use of airport passengers.

B. Allocation of Indirect Costs

1. Indirect costs of sponsor services may be allocated to the airport in accordance with this policy, but the allocation must result in an allocation to the airport only of those costs that would otherwise be allowable under 49 U.S.C. § 47107(b). In addition, the documentation for the costs must meet the standards of documentation stated in this policy.

2. The costs must be allocated under a cost allocation plan that meets the following requirements:

a. The cost is allocated under a cost allocation plan that is consistent with Attachment A to OMB Circular A–87, except that the phrase "airport revenue" should be substituted for the phrase "grant award," wherever the latter phrase occurs in Attachment A;

b. The allocation method does not result in a disproportionate allocation of general government costs to the airport in consideration of the benefits received by the airport;

c. Costs allocated indirectly under the cost allocation plan are not billed directly to the airport; and

d. Costs billed to the airport under the cost allocation plan must be similarly billed to other comparable units of the airport owner or operator.

3. A portion of the general costs of government, such as the costs of the legislative branch and executive offices, may be allocated to the airport as an indirect cost under a cost allocation plan satisfying the requirements set forth above. However, the allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.

4. Central service costs, such as accounting, budgeting, data processing, procurement, legal services, disbursing and payroll services, may also be allocated to the airport as indirect costs under a cost allocation plan satisfying the requirements set forth above. However, the allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.

C. Standard of Documentation for the Reimbursement to Government Entities of Costs of Services and Contributions Provided to Airports

1. Reimbursements for capital and operating costs of the airport made by a government entity, both direct and indirect, must be supported by adequate documentary evidence. Documentary evidence includes, but is not limited to:

a. Underlying accounting data such as general and specialized journals, ledgers, manuals, and supporting worksheets and other analyses; and corroborating evidence such as invoices, vouchers and indirect cost allocation plans, or

b. Audited financial statements which show the specific expenditures to be reimbursed by the airport. Such expenditures should be clearly identifiable on the audited financial statements as being consistent with section VIII of this policy statement.

2. Documentary evidence to support direct and indirect charges to the airport must show that the amounts claimed were actually expended. Budget estimates are not sufficient to establish a claim for reimbursement. Indirect cost allocation plans, however, may use budget estimates to establish pre-determined indirect cost allocation rates. Such estimated rates should, however, be adjusted to actual expenses in the subsequent accounting period.

D. Expenditures of Airport Revenue by Grandfathered Airports

1. Airport revenue may be used for purposes other than capital and operating costs of the airport, the local airport system, or other local facilities owned or operated by the sponsor and directly and substantially related to the air transportation of passengers or property, if the "grandfather" provisions of 49 U.S.C. § 47107(b)(2) are applicable to the sponsor and the particular use. Based on previous DOT interpretations, examples of grandfathered airport sponsors may include, but are not limited to the following:

a. A port authority or state department of transportation which owns or operates other transportation facilities in addition to airports, and which have pre-September 3, 1982, debt obligations or legislation governing financing and providing for use of airport revenue for non-airport purposes. Such sponsors may have obtained legal opinions from their counsel to support a claim of grandfathering. Previous DOT interpretations have found the following examples of pre-AAIA legislation to provide for the grandfather exception:

b. Bond obligations and city ordinances requiring a five percent "gross receipts" fee from airport revenues. The payments were instituted in 1954 and continued in 1968.

c. A 1955 state statute for the assessing of a five percent surcharge on all receipts and deposits in an airport revenue fund to defray central service expenses of the state.

d. City legislation authorizing the transfer of a percentage of airport revenues, permitting an airport-air carrier settlement agreement providing for annual payments to the city of 15 percent of the airport concession revenues.

e. A 1957 state statutory transportation program governing the financing and operations of a multi-modal transportation authority, including airport, highway, port, rail and transit facilities, wherein state revenues, including airport revenues, support the state's transportation-related, and other, facilities. The funds flow from the airports to a state transportation trust fund, composed of all "taxes, fees, charges, and revenues" collected or received by the state department of transportation.

f. A port authority's 1956 enabling act provisions specifically permitting it to use port revenue, which includes airport revenue, to satisfy debt obligations and to use revenues from each project for the expenses of the authority. The act also exempts the authority from property taxes but requires annual payments in lieu of taxes to several local governments and gives it other corporate powers. A 1978 trust agreement recognizes the use of the authority's revenue for debt servicing, facilities of the authority, its expenses, reserves, and the payment in lieu of taxes fund.

2. Under the authority of 49 U.S.C. § 47115(f), the FAA considers as a factor militating against the approval of an application for AIP discretionary funds, the fact that a sponsor has exercised its rights to use airport revenue for nonairport purposes under the grandfather clause, when in the airport's fiscal year preceding the date of application for discretionary funds, the FAA finds that the amount of airport revenues used for nonairport purposes exceeds the amount used for such purposes in the airport's first fiscal year ending after August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index of All Urban

Consumers published by the Bureau of Labor Statistics of the Department of Labor.

Section VI—Prohibited Uses of Airport Revenue

A. Lawful and Unlawful Revenue Diversion

Revenue diversion is the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, unless that use is grandfathered under 49 U.S.C. § 47107(b)(2) and the use does not exceed the limits of the 'grandfather' clause. When such use is so grandfathered, it is known as lawful revenue diversion. Unless the revenue diversion is grandfathered, the diversion is unlawful and prohibited by the revenue-use restrictions.

B. Prohibited Uses of Airport Revenue

Prohibited uses of airport revenue include but are not limited to:

1. Direct or indirect payments that exceed the fair and reasonable value of those services and facilities provided to the airport. The FAA generally considers the cost of providing the services or facilities to the airport as a reliable indicator of value.
2. Direct or indirect payments that are based on a cost allocation formula that is not consistent with this policy statement or that is not calculated consistently for the airport and other comparable units or cost centers of government.
3. Use of airport revenues for general economic development.
4. Marketing and promotional activities unrelated to airports or airport systems. Examples of prohibited expenses in this category include participation in program to provide hospitality training to taxi drivers and funding an airport operator's float containing no reference to the airport, in a New Years Day parade.
5. Payments in lieu of taxes, or other assessments, that exceed the value of services provided or are not based on a reasonable, transparent cost allocation formula calculated consistently for other comparable units or cost centers of government;
6. Payments to compensate non-sponsoring governmental bodies for lost tax revenues to the extent the payments exceed the stated tax rates applicable to the airport;
7. Loans to or investment of airport funds in a state or local agency at less than the prevailing rate of interest.
8. Land rental to, or use of land by, the sponsor for nonaeronautical purposes at less than fair rental/market value, except to the extent permitted by SectionVII.D of this policy.
9. Use of land by the sponsor for aeronautical purposes rent-free or for nominal rental rates, except to the extent permitted by Section VII.E of this policy.
10. Impact fees assessed by any governmental body that exceed the value of services or facilities provided to the airport. However, airport revenue may be used where airport development requires a sponsoring agency to take an action, such as undertaking environmental mitigation measures contained in an FAA record of decision approving funding for an airport development project, or constructing a ground access facility that would otherwise be eligible for the use of airport revenue. Payments of impact fees must meet the general requirement that airport revenue be expended only for actual documented costs of items eligible for use of airport revenue under this Policy Statement. In determining appropriate corrective action for an impact fee payment that is not consistent with this policy, the FAA will consider whether the impact fee was imposed by a non-sponsoring governmental entity and the sponsor's ability under local law to avoid paying the fee.
11. Expenditure of airport funds for support of community activities and participation in community events, or for support of community-purpose uses of airport property except to the extent permitted by this policy. See Section V, Uses of Airport Revenue. Examples of prohibited expenditures in this category include expenditure of $50,000 to sponsor a local film society's annual film festival; and contribution of $6,000 to a community cultural heritage festival.
12. Direct subsidy of air carrier operations. Direct subsidies are considered to be payments of airport funds to carriers for air service. Prohibited direct subsidies do not include waivers of fees or discounted landing or other fees during a promotional period. Any fee waiver or discount must be offered to all users of the airport, and provided to all users that are willing to provide the same type and level of new services consistent with the promotional offering. Likewise prohibited direct subsidies do not include support for airline advertising or marketing of new services to the extent permitted by Section V of this Policy Statement.

Section VII—Policies Regarding Requirement for a Self-Sustaining Airport Rate Structure

A. Statutory Requirements

49 U.S.C. § 47107(a)(13) requires airport operators to maintain a schedule of charges for use of the airport: "(A) that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection."

The requirement is generally referred to as the "self-sustaining assurance."

B. General Policies Governing the Self-Sustaining Rate Structure Assurance

1. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible. In considering whether a particular contract or lease is consistent with this requirement, the FAA and the Office of the Inspector General (OIG) generally evaluate the individual contract or lease to determine whether the fee or rate charged generates sufficient income for the airport property or service provided, rather than looking at the financial status of the entire airport.
2. If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the airport proprietor should establish long-term goals and targets to make the airport as financially self-sustaining as possible.
3. At some airports, market conditions may not permit an airport proprietor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to attract and retain commercial aeronautical services. In such circumstances, an airport proprietor's decision to charge rates that are below those needed to achieve a self-sustaining income in order to assure that services are provided to the public is not inherently inconsistent with the obligation to make the airport as self-sustaining as possible in the circumstances.
4. Airport proprietors are encouraged, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, to undertake reasonable efforts to make their particular airports as self sustaining as possible in the circumstances existing at such airports.
5. Under 49 U.S.C. § 47107(a)(1) and the implementing grant assurance, charges to aeronautical users must be reasonable and not unjustly discriminatory. Because of the limiting effect of the reasonableness requirement, the FAA does not consider the self-sustaining requirement to require airport sponsors

to charge fair market rates to aeronautical users. Rather, for charges to aeronautical users, the FAA considers the self-sustaining assurance to be satisfied by airport charges that reflect the cost to the sponsor of providing aeronautical services and facilities to users. A fee for aeronautical users set pursuant to a residual costing methodology satisfies the requirement for a self-sustaining airport rate structure.

6. In establishing new fees, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenues may be spent under 49 U.S.C. § 47107(b)(1), including reasonable reserves and other funds to facilitate financing and to cover contingencies. While fees charged to nonaeronautical users are not subject to the reasonableness requirement or the Department of Transportation Policy on airport rates and charges, the surplus funds accumulated from those fees must be used in accordance with 49 U.S.C. § 47107(b).

C. Policy on Charges for Nonaeronautical Facilities and Services

Subject to the general guidance set forth above and the specific exceptions noted below, the FAA interprets the self-sustaining assurance to require that the airport receive fair market value for the provision of nonaeronautical facilities and services, to the extent practicable considering the circumstances at the airport.

D. Providing Property for Public Community Purposes

Making airport property available at less than fair market rental value for public recreational and other community uses, for the purpose of maintaining positive airport-community relations, can be a legitimate function of an airport proprietor in operating the airport. Accordingly, in certain circumstances, providing airport land for such purposes will not be considered a violation of the self-sustaining requirement. Generally, the circumstances in which below-market use of airport land for community purposes will be considered consistent with the grant assurances are:

1. The contribution of the airport property enhances public acceptance of the airport in a community in the immediate area of the airport; the property is put to a general public use desired by the local community; and the public use does not adversely affect the capacity, security, safety or operations of the airport. Examples of acceptable uses include public parks, recreation facilities, and bike or jogging paths. Examples of uses that would not be eligible are road maintenance equipment storage; and police, fire department, and other government facilities if they do not directly support the operation of the airport.

2. The property involved would not reasonably be expected to produce more than *de minimis* revenue at the time the community use is contemplated, and the property is not reasonably expected to be used by an aeronautical tenant or otherwise be needed for airport operations in the foreseeable future. When airport property reasonably may be expected to earn more than minimal revenue, it still may be used for community purposes at less than FMV if the revenue earned from the community use approximates the revenue that could otherwise be generated, provided that the other provisions of VII. D. are met.

3. The community use does not preclude reuse of the property for airport purposes if, in the opinion of the airport sponsor, such reuse will provide greater benefits to the airport than continuation of the community use.

4. Airport revenue is not to be used to support the capital or operating costs associated with the community use.

E. Use of Property by Not-for-Profit Aviation Organizations

1. An airport operator may charge reduced rental rates and fees to the following not-for-profit aviation organizations, to the extent that the reduction is reasonably justified by the tangible or intangible benefits to the airport or to civil aviation:

a. Aviation museums;

b. Aeronautical secondary and post-secondary education programs conducted by accredited educational institutions; or

c. Civil Air Patrol units operating aircraft at the airport;

2. Police or fire-fighting units operating aircraft at the airport generally will be expected to pay a reasonable rate for aeronautical use of airport property, but the value of any services provided by the unit to the airport may be offset against the applicable reasonable rate.

F. Use of Property by Military Units

The FAA acknowledges that many airports provide facilities to military units with aeronautical missions at nominal lease rates. The FAA does not consider this practice inconsistent with the requirement for a self-sustaining airport rate structure. Military units with aeronautical missions may include the Air National Guard, aviation units of the Army National Guard, U.S. Air Force Reserve, and Naval Reserve air units operating aircraft at the airport. Reserve and Guard units typically have an historical presence at the airport that precedes the Airport and Airway Improvement Act of 1982, and provide services that directly benefit airport operations and safety, such as snow removal and supplementary ARFF capability.

G. Use of Property for Transit Projects

Making airport property available at less than fair market rental for public transit terminals, right-of-way, and related facilities will not be considered a violation of 49 U.S.C. §§ 47107(b), 47133 or 47107(a)(13) if the transit system is publicly owned and operated (or operated by contract on behalf of the public owner), and the facilities are directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees. A lease of nominal value in the circumstances described in this section would be considered consistent with the self-sustaining requirement.

H. Private Transit Systems

Generally, private ground transportation services are charged as a nonaeronautical use of the airport. In cases where publicly-owned transit services are extremely limited and where a private transit service (i.e., bus, rail, or ferry) provides the primary source of public transportation, making property available at less than fair market rental to this private service would not be considered inconsistent with 49 U.S.C. §§ 47107(b), 47133 or 47107(a)(13).

Section VIII—Reporting and Audit Requirements

The Federal Aviation Administration Authorization Act of 1994 established a new requirement for airports to submit annual financial reports to the Secretary, and the Act required the Secretary to compile the reports and to submit a summary report to Congress. The Federal Aviation Reauthorization Act of 1996 established a new requirement for airports to include, as part of their audits under the Single Audit Act, a review and opinion on the use of airport revenue.

A. Annual Financial Reports

Section 111(a)(4) of the 1994 Authorization Act, 49 U.S.C. § 47107(a)(19), requires airport owners or operators to submit to the Secretary

and to make available to the public an annual financial report listing in detail (1) all amounts the airport paid to other government units and the purposes for which each payment was made, (2) all services and property the airport provided to other government units and compensation received for each service or unit of property provided. Additionally, Section 111(b) of the 1994 Authorization Act requires a report, for each fiscal year, in an uniform simplified format, of the airport's sources and uses of funds, net surplus/loss and other information which the Secretary may require.

FAA Forms 5100–125 and 126 have been developed to satisfy the above reporting requirements. The forms must be filed with the FAA 120 days after the end of the sponsor's fiscal year. Extensions of the filing date may be granted if audited financial information is not available within 120 days of the end of the local fiscal year. Requests for extension should be filed in writing with the FAA Airport Compliance Division, AAS–400.

B. Single Audit Review and Opinion

1. General requirement and applicability. The Federal Aviation Reauthorization Act of 1996, Section 805; 49 U.S.C. § 47107(m) requires public agencies that are subject to the Single Audit Act, 31 U.S.C. § 7501–7505, and that have received Federal financial assistance for airports to include, as part of their single audit, a review and opinion of the public agency's funding activities with respect to their airport or local airport system.

2. Federal Financial Assistance. For the purpose of complying with 49 U.S.C. § 47107(m), Federal financial assistance for airports includes any interest in property received, by a public agency since October 1, 1996, for the purpose of developing, improving, operating, or maintaining a public airport, or an AIP grant which was in force and effect on or after October 1, 1996, either directly or through a state block grant program.

3. Frequency. The opinion will be required whenever the auditor under OMB Circular A–133 selects an airport improvement program grant as a major program. In those cases where the airport improvement program grant is selected as a major program the requirements of 49 U.S.C. § 47107(m) will apply.

4. Major Program. For the purposes of complying with 49 U.S.C. § 47107(m), major program means an airport improvement program grant determined to be a major program in accordance with OMB Circular A–133, § 520 or an airport improvement program grant identified by FAA as a major program in accordance with OMB A–133 § 215(c); except additional audit costs resulting from FAA designating an airport improvement program grant as a major program are discussed at paragraph 9 below.

5. FAA Notification. When FAA designates an airport improvement program grant as a major program, FAA will generally notify the sponsor in writing at least 180 days prior to the end of the sponsor's fiscal year to have the grant included as a major program in its next Single Audit.

6. Audit Findings. The auditor will report audit findings in accordance with OMB Circular A–133.

7. Opinion. The statutory requirement for an opinion will be considered to be satisfied by the auditor's reporting under OMB Circular A–133. Consequently when an airport improvement program grant is designated as a major program, and the audit is conducted in accordance with OMB Circular A–133, FAA will accept the audit to meet the requirements of 49 USC § 47107(m) and this policy.

8. Reporting Package. The Single Audit reporting package will be distributed in accordance with the requirements of OMB Circular A–133. In addition when an airport improvement program grant is a major program, the sponsor will supply, within 30 days after receipt by the sponsor, a copy of the reporting package directly to the FAA, Airport Compliance Division (AAS–400), 800 Independence Ave. SW 20591. The FAA regional offices may continue to request the sponsor to provide separate copies of the reporting package to support their administration of airport improvement program grants.

9. Audit Cost. When an opinion is issued in accordance with 47107(m) and this policy, the costs associated with the opinion will be allocated in accordance with the sponsor's established practice for allocating the cost of its Single Audit, regardless of how the airport improvement program grant is selected as a major program.

10. Compliance Supplement. Additional information about this requirement is contained in OMB Circular A–133 Compliance Supplement for DOT programs.

11. Applicability. This requirement is not applicable to (a) privately-owned, public-use airports, including airports accepted into the airport privatization program (the Single Audit Act governs only states, local governments and non-profit organizations receiving Federal assistance); (b) public agencies that do not have a requirement for the single audit; (c) public agencies that do not satisfy the criteria of paragraph B.1 and 2; above; and Public Agencies that did not execute an AIP grant agreement on or after June 2, 1997.

Section IX—Monitoring and Compliance

A. Detection of Airport Revenue Diversion

To detect whether airport revenue has been diverted from an airport, the FAA will depend primarily upon four sources of information:

1. Annual report on revenue use submitted by the sponsor under the provisions of 49 U.S.C. § 47107(a)(19), as amended.

2. Single audit reports submitted, pursuant to 49 U.S.C. § 47107(m), with annual single audits conducted under 31 U.S.C. §§ 7501–7505. The requirement for these reports is discussed in Part IX of this policy.

3. Investigation following a third party complaint filed under 14 CFR. Part 16, FAA Rules of Practice for Federally Assisted Airport Proceedings.

4. DOT Office of Inspector General audits.

B. Investigation of Revenue Diversion Initiated Without Formal Complaint

1. When no formal complaint has been filed, but the FAA has an indication from one or more sources that airport revenue has been or is being diverted unlawfully, the FAA will notify the sponsor of the possible diversion and request that it respond to the FAA's concerns. If, after information and arguments submitted by the sponsor, the FAA determines that there is no unlawful diversion of revenue, the FAA will notify the sponsor and take no further action. If the FAA makes a preliminary finding that there has been unlawful diversion of airport revenue, and the sponsor has not taken corrective action (or agreed to take corrective action), the FAA may issue a notice of investigation under 14 CFR § 16.103.

If, after further investigation, the FAA finds that there is reason to believe that there is or has been unlawful diversion of airport revenue that the sponsor refuses to terminate or correct, the FAA will issue an appropriate order under 14 CFR § 16.109 proposing enforcement action. However, such action will cease if the airport sponsor agrees to return the diverted amount plus interest.

2. Audit or investigation by the Office of the Inspector General. An indication of revenue diversion brought to the attention of the FAA in a report of audit or investigation issued by the DOT Office of the Inspector General (OIG)

will be handled in accordance with paragraph B.1 above.

C. Investigation of Revenue Diversion Precipitated by Formal Complaint

When a formal complaint is filed against a sponsor for revenue diversion, the FAA will follow the procedures in 14 CFR Part 16 for notice to the sponsor and investigation of the complaint. After review of submissions by the parties, investigation of the complaint, and any additional process provided in a particular case, the FAA will either dismiss the complaint or issue an appropriate order proposing enforcement action.

If the airport sponsor takes the corrective action specified in the order, the complaint will be dismissed.

D. The Administrative Enforcement Process

1. Enforcement of the requirements imposed on sponsors as a condition of the acceptance of Federal grant funds or property is accomplished through the administrative procedures set forth in 14 CFR part 16. Under part 16, the FAA has the authority to receive complaints, conduct informal and formal investigations, compel production of evidence, and adjudicate matters of compliance within the jurisdiction of the Administrator.

2. If, as a result of the investigative processes described in paragraphs B and C above, the FAA finds that there is reason to proceed with enforcement action against a sponsor for unlawful revenue diversion, an order proposing enforcement action is issued by the FAA and under 14 CFR 16.109. That section provides for the opportunity for a hearing on the order.

E. Sanctions for Noncompliance

1. As explained above, if the FAA makes a preliminary finding that airport revenue has been unlawfully diverted and the sponsor declines to take the corrective action, the FAA will propose enforcement action. A decision whether to issue a final order making the action effective is made after a hearing, if a hearing is elected by the respondent. The actions required by or available to the agency for enforcement of the prohibitions against unlawful revenue diversion are:

a. Withhold future grants. The Secretary may withhold approval of an application in accordance with 49 USC § 47106(d) if the Secretary provides the sponsor with an opportunity for a hearing and, not later than 180 days after the later of the date of the grant application or the date the Secretary discovers the noncompliance, the Secretary finds that a violation has occurred. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

b. Withhold approval of the modification of existing grant agreements that would increase the amount of funds available. A supplementary provision in section 112 of the 1994 Authorization Act, 49 USC § 47111(e), makes mandatory not only the withholding of new grants but also withholding of a modification to an existing grant that would increase the amount of funds made available, if the Secretary finds a violation after hearing and opportunity to cure.

c. Withhold payments under existing grants. The Secretary may withhold a payment under a grant agreement for 180 days or less after the payment is due without providing for a hearing. However, in accordance with 49 USC § 47111(d), the Secretary may withhold a payment for more than 180 days only if he or she notifies the sponsor and provides an opportunity for a hearing and finds that the sponsor has violated the agreement. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

d. Withhold approval of an application to impose a passenger facility charge. Section 112 also makes mandatory the withholding of approval of any new application to impose a passenger facility charge under 49 USC § 40117. Subsequent to withholding, applications could be approved only upon a finding by the Secretary that corrective action has been taken and that the violation no longer exists.

e. File suit in United States district court. Section 112(b) provides express authority for the agency to seek enforcement of an order in Federal court.

f. Withhold, under 49 USC § 47107(n)(3), any amount from funds that would otherwise be available to a sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multi-modal transportation agency or transit agency of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to this title, if the sponsor has failed to reimburse the airport after receiving notification of the requirement to do so.

g. Assess civil penalties.

(1) Under section 112(c) of Public Law 103–305, codified at 49 USC § 46301(a) and (d), the Secretary has statutory authority to impose civil penalties up to a maximum of $50,000 on airport sponsors for violations of the AIP sponsor assurance on revenue diversion. Any civil penalty action under this section would be adjudicated under 14 CFR Part 13, Subpart G.

(2) Under section 804 of Public Law 104–264, codified at 49 USC § 46301((a)(5), the Secretary has statutory authority to obtain civil penalties of up to three times the amount of airport revenues that are used in violation of 49 USC §§ 47107(b) and 47133. An action for civil penalties in excess of $50,000 must be brought in a United States District Court.

(3) The Secretary may, under 49 USC § 47107(n)(4), initiate a civil action for civil penalties in the amount equal to the illegal diversion in question plus interest calculated in accordance with 49 USC § 47107(o), if the airport sponsor has failed to take corrective action specified by the Secretary and the Secretary is unable to withhold sufficient grant funds, as set forth above.

(4) An action for civil penalties under this provision must be brought in a United States District Court. The Secretary intends to use this authority only after the airport sponsor has been given a reasonable period of time, after a violation has been clearly identified to the airport sponsor, to take corrective action to restore the funds or otherwise come into compliance before a penalty is assessed, and only after other enforcement actions, such as withholding of grants and payments, have failed to achieve compliance.

F. Compliance With Reporting and Audit Requirements

The FAA will monitor airport sponsor compliance with the Airport Financial Reporting Requirements and Single Audit Requirements described in this Policy Statement. The failure to comply with these requirements can result in the withholding of future AIP grant awards and further payments under existing AIP grants.

Issued in Washington, DC on February 8, 1999.

Susan L. Kurland,

Associate Administrator for Airports.

[FR Doc. 99–3529 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–13–P

OPA COMMENTS AND REFERENCES

HOUSE WAYS AND MEANS COMMITTEE

June 6, 2022

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CMNI Constitution
Article 3
Section 12: Public Auditor.
The governor shall appoint a public auditor with the advice and consent of each house of the legislature. The public auditor shall audit the receipt, possession and disbursement of public funds by the executive, legislative and judicial branches of the government, an instrumentality of the Commonwealth or an agency of local government and shall perform other duties provided by law. The Public Auditor shall be guaranteed an annual budget of at least $500,000. The budgetary appropriation may not be reprogrammed for other purposes, and ***any unencumbered fund balance in a fiscal year shall be available for general appropriation***. The public auditor shall report to the legislature and the governor at least once every year and this report shall be made public promptly. The public auditor may be removed only for cause and by the affirmative vote of two-thirds of the members of each house of the legislature. In the event that there is a vacancy in the office of public auditor, the governor shall appoint a temporary public auditor to serve until the vacancy is filled.

Source: Original provision (ratified 1977, effective 1978); amended by Second Const. Conv. Amend. 17 (1985).

§ 7831. Authorization for Funding By Commonwealth Agencies.

(a) The Director of Finance shall withhold one percent of all locally generated funds appropriated by Commonwealth law for all Commonwealth government agencies' operations and activities as well as for all capital improvement projects and, in no event, no less than $1,000,000 for the office of the Public Auditor. The term "appropriated by law" includes appropriations pursuant to the continuing spending authority provided for in N.M.I. Const. art. III, § 9(a). The withheld amounts shall be deposited in a special account established by the Director of Finance, separate from the General Fund, to be administered in accordance with 1 CMC § 7206 and, therefore, may be expended without further appropriation. The office of the Public Auditor shall report no later than three months after the closing of each fiscal year to the Governor and the legislature in detail on the use of the funds.

(b) The executive directors of all public corporations or other autonomous agencies of the Commonwealth which are not funded primarily by legislative appropriations shall pay to the Public Auditor an amount not less than the greater of one percent of its total operations budget from sources other than legislative appropriations or pursuant to any other formula upon which the Public Auditor and the agency may agree. The funds shall be administered pursuant to subsection (a) of this section.

(c) No funds paid into the account of the office of the Public Auditor shall be reprogrammed for any other purpose to any other agency.

(d) The legislature shall be exempt from the requirement of one percent contribution of legislative funds to the office of the Public Auditor.

(e) The Public School System (PSS) shall be exempt from the withholding and payment requirements of subsections (a) and (b) of this section; provided that one percent of the budget appropriated to PSS shall be used exclusively for the purchase of textbooks and shall not be reprogrammed for any other purpose. The Commissioner of Education shall establish a Textbook Account into which funds realized by operation of this subsection shall be deposited. These funds shall not be commingled with other PSS accounts and shall be used solely for the purposes of this subsection. The Commissioner of Education shall be the expenditure authority for funds deposited into the Textbook Account.

Source: PL 9-68, § 3 (repealing PL 3-91, § 300, as amended by PL 5-44, § 7 and PL 9-66, § 515); (e) added by PL 15-107, § 2, modified.

Commission Comment: See the comment to 1 CMC § 7823. With respect to the references to the "Director of Finance," see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the Commission comment to 1 CMC § 2001.

The Commission deleted figures that repeated words when codifying subsection (e) above. PL 15-107 was enacted on November 9, 2007, and contained

the following findings and purposes, in addition to severability and savings clause provisions.

Section 1. Findings and Purpose. The Legislature finds that Public Law No. 14-96 was enacted to amend Public Law No. 13-2.4, the "Appropriations and Budget Authority Act of 2003," to supplement the budget of the Public School System (PSS) by returning the one percent Public Auditor fee that is assessed for all government agencies back to the PSS to be used exclusively to purchase textbooks. The Legislature also finds that Public Law No. 15-28, the "Appropriations and Budget Authority Act for 2007," did not provide the same provision for the PSS. The Legislature further finds that this provision enabled PSS to acquire the needed textbooks and that PSS should be permanently exempted from the Public Auditor fee assessment so that it may use these funds specifically to purchase textbooks.

The Legislature finds that Article XV of the Constitution of the Northern Mariana Islands states not only that "[e]very person in the Northern Mariana Islands has the right to free, compulsory and public elementary and secondary education within age and educational levels provided by law," but also that "[t]he educational system shall also provide support and guidance for students in assessing areas of interest and ability, in clarifying values and goals, and in providing students with clear and accurate information so they may gain the most from their educational experience." In addition, the Legislature finds that because the Public School System receives federal funding that it is subject to the provisions of the No Child Left Behind Act of 2001 which holds schools and school districts accountable for results. This essentially means that schools are responsible for ensuring that students are learning, that school districts are accountable for results, that the school district should provide options and accessible information to parents about the quality of their child's school, and that the school district should continuously work to improve teacher quality.

The Legislature further finds that parents and students are complaining about the lack of textbooks available to their children. This shortage of textbooks affects the quality of education a student is receiving and hampers a student's ability to study effectively at home or to complete homework assignments. The Legislature finds that this is a serious problem, as a textbook shortage will have an effect on the performance of students, schools, and the school district. If a school district is not performing, that district may be subject to scrutiny by the federal government and this in turn may affect federal funding. Ultimately, the most immediate and pressing concern is that students are not learning properly. The Constitution mandates that students gain the most from their educational experience, an objective that clearly cannot be realized without textbooks.

§ 7821. Centralization of Auditing Services.

The office of the Public Auditor shall conduct or supervise all audits required for or sought by a Commonwealth agency.

Source: PL 3-91, § 206.

A-2

21ST NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

_____ Session, 2019 H. B. 21-40

A BILL FOR AN ACT

To amend 1 CMC §7831 by adding a new subsection (f) to exempt the Northern Marianas College (NMC) from any payment and/or withholding requirement to the Office of the Public Auditor (OPA).

BE IT ENACTED BY THE TWENTY-FIRST NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

Section 1. Findings and Purpose. The Legislature finds that similar to the Public School System (PSS), the Northern Marianas College (NMC) was established as a non-profit public corporation that was tasked to provide higher education, community service programs, vocational and technical education, professional training programs, etc., to the residents of our beloved Commonwealth. Furthermore, the Legislature further finds that NMC was one of the major government agencies that sustained excessive damage from the occurrence of Super Typhoon Yutu. Cognizant of the essential duties and responsibilities being carried by NMC, and inclusive of the substantial amount of damage that was incurred from the previously specified Super Typhoon, it is imperative to afford NMC with the same prerogative granted to PSS by exempting them from the payment and/or withholding requirement to the Office of the Public

Auditor (OPA) in order to allow for them to avail of additional funding that will enable them to be resilient in handling such damages while simultaneously carrying out their mission in educating our residents who aim to better their lives and become positive contributors to the society of our great Commonwealth.

Therefore, the purpose of this Act is to amend 1 CMC §7831 by adding a new subsection (f) to exempt the Northern Marianas College (NMC) from any payment and/or withholding requirement to the Office of the Public Auditor (OPA).

Section 2. Amendment. 1 CMC §7831 is hereby amended by adding a new subsection (f) to read as follows:

"**§7831. Authorization for Funding By Commonwealth Agencies.**

(a) The Director of Finance shall withhold one percent of all locally generated funds appropriated by Commonwealth law for all Commonwealth government agencies' operations and activities as well as for all capital improvement projects and, in no event, no less than $1,000,000 for the office of the Public Auditor. The term "appropriated by law" includes appropriations pursuant to the continuing spending authority provided for in N.M.I. Const. art. III, § 9(a). The withheld amounts shall be deposited in a special account established by the Director of Finance, separate from the General Fund, to be administered in accordance with 1 CMC §7206 and, therefore, may be expended without further appropriation.

The office of the Public Auditor shall report no later than three months after the closing of each fiscal year to the Governor and the legislature in detail on the use of the funds.

(b) The executive directors of all public corporations or other autonomous agencies of the Commonwealth which are not funded primarily by legislative appropriations shall pay to the Public Auditor an amount not less than the greater of one percent of its total operations budget from sources other than legislative appropriations or pursuant to any other formula upon which the Public Auditor and the agency may agree. The funds shall be administered pursuant to subsection (a) of this section.

(c) No funds paid into the account of the office of the Public Auditor shall be reprogrammed for any other purpose to any other agency.

(d) The legislature shall be exempt from the requirement of one percent contribution of legislative funds to the office of the Public Auditor.

(e) The Public School System (PSS) shall be exempt from the withholding and payment requirements of subsections (a) and (b) of this section; provided that one percent of the budget appropriated to PSS shall be used exclusively for the purchase of textbooks and shall not be reprogrammed for any other purpose. The Commissioner of Education shall establish a Textbook Account into which funds realized by operation of this subsection shall be deposited. These funds shall not be commingled with

other PSS accounts and shall be used solely for the purposes of this subsection. The Commissioner of Education shall be the expenditure authority for funds deposited into the Textbook Account.

(f) The Northern Marianas College (NMC) shall be exempt from the withholding and payment requirements of subsections (a) and (b) of this section."

Section 3. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 4. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 5. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

Prefiled: _____

Date: _____ Introduced by: _____

Rep. Roman C. Benavente

Reviewed for Legal Sufficiency by:

_____

House Legal Counsel

TWENTY-FIRST NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

THIRD REGULAR SESSION, 2020 S.B. NO. 21-54

A BILL FOR AN ACT

To amend 1 CMC § 7831 to exempt the Commonwealth Ports Authority from paying the one percent Public Auditor Fee.

BE IT ENACTED BY THE TWENTY-FIRST NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

Section 1. Findings and Purpose.

The Legislature finds that the Commonwealth Ports Authority (CPA) is mandated by its bond indenture agreements to file its complete financial statements, accompanied by an audit report and opinion of an independent certified public accountant of nationally recognized status in the United States, and a certificate of the CPA based on its financial statements that CPA is in compliance with the bond payments. In the event that the financial statements, audit, and the independent opinion, indicate that CPA would not meet the bond requirements, CPA must employ an Independent Consultant to make recommendations to revise the CPA's rates, fees and charges, or the methods of operation of the CPA's ports.

The Legislature also finds that the CPA will undoubtedly be affected by the recent reductions and cancellations of flights into the Commonwealth. The flight reductions and cancellations will definitely affect the CPA revenues that it is necessary to provide relief on its financial obligations (e.g., Public Auditor Fee).

Moreover, due to the strict bond requirements on CPA's financials and timely filing of its audit, CPA has relied exclusively on private audit firms, not the Office of the Public Auditor, to undertake the bond agreement requirements.

Therefore, the purpose of this Act is to exempt the CPA from paying the 1% Public Auditor Fee as provided in 1 CMC § 7831.

Section 2. Amendment. 1 CMC § 7831 is amended to read:

"§ 7831. Authorization for Funding By Commonwealth Agencies.

(a) The ~~Director~~ Secretary of Finance shall withhold one percent of all locally generated funds appropriated by Commonwealth law for all Commonwealth government agencies' operations and activities as well as for all capital improvement projects and, in no event, no less than $1,000,000 for the office of the Public Auditor. The term "appropriated by law" includes appropriations pursuant to the continuing spending authority provided for in N.M.I. Const. art. III, § 9(a). The withheld amounts shall be deposited in a special account established by the ~~Director~~ Secretary of Finance, separate from the General Fund, to be administered in accordance with 1 CMC § 7206 and, therefore, may be expended without further appropriation. The office of the Public Auditor shall report no later than three months after the closing of each fiscal year to the Governor and the legislature in detail on the use of the funds.

(b) The executive directors of all public corporations, except the Commonwealth Ports Authority, or other autonomous agencies of the Commonwealth which are not funded primarily by legislative appropriations shall pay to the Public Auditor an amount not less than the greater of one percent of its total operations budget from sources other than legislative appropriations or pursuant to any other formula upon which the Public Auditor and the agency may agree. The funds shall be administered pursuant to subsection (a) of this section.

(c) No funds paid into the account of the office of the Public Auditor shall be reprogrammed for any other purpose to any other agency.

(d) The legislature shall be exempt from the requirement of one percent contribution of legislative funds to the office of the Public Auditor.

(e) The Public School System (PSS) shall be exempt from the withholding and payment requirements of subsections (a) and (b) of this section; provided that one percent of the budget appropriated to PSS shall be used exclusively for the purchase of textbooks and shall not be reprogrammed for any other purpose. The Commissioner of Education shall establish a Textbook Account into which funds realized by operation of this subsection shall be deposited. These funds shall not be commingled with other PSS accounts and shall be used solely for the purposes of this subsection. The Commissioner

of Education shall be the expenditure authority for funds deposited into the Textbook Account."

Section 3. **Severability**. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 4. **Savings Clause**. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 5. **Effective Date**. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

Prefiled:

Date: 03/05/20

Introduced By: _____
Sen. Jude U. Hofschneider

Reviewed for legal sufficiency by:

_____
Senate Legal Counsel

TWENTY-SECOND NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

First Special SESSION, 2021 S. B. NO. 22-51

A BILL FOR AN ACT

To exempt public corporations and autonomous agencies from paying the one percent (1%) Public Auditor Fee.

BE IT ENACTED BY THE TWENTY-SECOND NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

Section 1. **Findings and Purpose**. The Legislature finds that autonomous and public corporations need exemption from paying the Public Auditor Fee. The exemption provides relief of the financial burden on the autonomous agencies and public corporations. The Legislature also finds that certain autonomous agencies and public corporations do not utilize the audit service of the Office of the Public Auditor. For example, the Commonwealth Ports Authority (CPA) is required by the bond agreements to file its complete financial statements, together with an audit report and opinion of an independent certified public account of nationally recognized in the United States, and a certificate that CPA is in compliance with the bond payments.

Accordingly, the purpose of this Act is to exempt the public corporations and autonomous agencies from paying the public auditor fee.

Section 2. **Amendment**. 1 CMC § 7813(a) is amended to read:

"(a) "Agency" means any entity established or funded by law of the Commonwealth government or a local government. Agency includes the following entities and their officers, directors, employees, and independent contractors: any authority, board, branch, bureau, commission, cooperative, council, department, division, fund, group, institution, political division, office, or ~~public corporation, including any autonomous or~~ semiautonomous governmental entity."

Section 3. **Amendment.** 1 CMC § 7831 is amended to read:

"§ 7831. Authorization for Funding By Commonwealth Agencies.

(a) The ~~Director~~ Secretary of Finance shall withhold one percent of all locally generated funds appropriated by Commonwealth law for all Commonwealth government agencies' operations and activities as well as for all capital improvement projects and, in no event, no less than $1,000,000 for the office of the Public Auditor. The term "appropriated by law" includes appropriations pursuant to the continuing spending authority provided for in N.M.I. Const. art. III, § 9(a). The withheld amounts shall be deposited in a special account established by the ~~Director~~ Secretary of Finance, separate from the General Fund, to be administered in accordance with 1 CMC § 7206 and, therefore, may be expended without further appropriation. The office of the Public Auditor shall report no later than three months after the closing of each fiscal year to the Governor and the legislature in detail on the use of the funds.

~~(b) The executive directors of all public corporations or other autonomous agencies of the Commonwealth which are not funded primarily by legislative appropriations shall pay to the Public Auditor an amount not less than the one percent of its total operations budget from sources other than legislative appropriations or pursuant to any other formula upon which the Public Auditor and the agency may agree. The funds shall be administered pursuant to subsection (a) of this section.~~

(~~c~~ b) No funds paid into the account of the office of the Public Auditor shall be reprogrammed for any other purpose to any other agency.

(~~d~~ c) The legislature shall be exempt from the requirement of one percent contribution of legislative funds to the office of the Public Auditor.

(~~e~~ d) The Public School System (PSS) shall be exempt from the withholding and payment requirements of subsections (a) ~~and (b)~~ of this section; provided that one percent of the budget appropriated to PSS shall be used exclusively for the purchase of textbooks and shall not be reprogrammed for any other purpose. The Commissioner of Education shall establish a Textbook Account into which funds realized by operation of this subsection shall be deposited. These funds shall not be commingled with other PSS accounts and shall be used solely for the purposes of this subsection. The Commissioner

of Education shall be the expenditure authority for funds deposited into the Textbook Account.

(e) The public corporations and autonomous agencies are exempt from the withholding and payment requirements of subsections (a) of this section. Any and all past unpaid amounts accrued under this section by public corporations and autonomous agencies shall either be waived by the Commonwealth, including the Public Auditor, or otherwise be considered appropriated by the public corporations or autonomous agencies."

Section 4. Severability. If any provisions of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 5. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation, or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of the Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this Act becomes effective.

Section 6. Effective Date. This Act shall take effect upon its approval by the Governor, or its becoming law without such approval.

Date: 5/18/21

Introduced By: _____
Senator Edith Deleon Guerrero

Reviewed for Legal Sufficiency by:

_____
Senate Legal Counsel

TWENTY-SECOND NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

_____ Session, 2021 H. B. 22-152

A BILL FOR AN ACT

To exempt public corporations and autonomous agencies from paying the one percent (1%) Public Auditor Fee.

BE IT ENACTED BY THE 22ND NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

Section 1. Findings and Purpose. The Legislature finds that autonomous and public corporations need exemption from paying the Public Auditor Fee. The exemption provides relief of the financial burden on the autonomous agencies and public corporations. The Legislature also finds that certain autonomous agencies and public corporations do not utilize the audit service of the Office of the Public Auditor. For example, the Commonwealth Ports Authority (CPA) is required by its bond indentures to file its complete financial statements, together with an audit report and opinion of an independent certified public account nationally recognized in the United States, and a certificate that CPA is in compliance with its bond payments. An additional concern for CPA is that the Public Auditor Fee, as a general charge upon CPA imposed annually, constitutes

revenue diversion from CPA which would violate federal entitlement or discretionary grant conditions or jeopardize such grants for airport or seaport improvements. Similarly, the Commonwealth Utilities Corporation also engages its own independent auditor for its annual audit.

Accordingly, the purpose of this Act is to exempt the public corporations and autonomous agencies from paying the public auditor fee. However, the Legislature does authorize the Office of the Public Auditor to charge, and for such autonomous agencies to pay, for any subsequent enforcement, investigation or other review work and to charge a reasonable rate or fee for such services.

Section 2. Amendment. 1 CMC § 7813(a) is hereby amended to read as follows:

"(a) "Agency" means any entity established or funded by law of the Commonwealth government or a local government. Agency includes the following entities and their officers, directors, employees, and independent contracts: any authority, board, branch, bureau, commission, cooperative, council, department, division, fund, group, institution, political division, office, or ~~public corporation, including any autonomous or~~ semiautonomous governmental entity."

Section 3. Amendment. 1 CMC § 7831 is hereby amended to read as follows:

"§ 7831. Authorization for Funding by Commonwealth Agencies.

(a) The ~~Director~~ Secretary of Finance shall withhold one percent of all locally generated funds appropriated by Commonwealth law for all Commonwealth government agencies' operations and activities as well as for all capital improvement projects and, in any event, no less than $1,000,000 for the office of the Public Auditor. The term "appropriated by law" includes appropriations pursuant to the continuing spending authority provided for in N.M.I. Const. art. III, § 9(a). The withheld amounts shall be deposited in a special account established by the ~~Director~~ Secretary of Finance, separate from the General Fund, to be administered in accordance with 1 CMC § 7206 and, therefore, may be expended without further appropriation. The office of the Public Auditory shall report no later than three months after the closing of each fiscal year to the Governor and the legislature in detail on the use of the funds.

~~(b) The executive directors of all public corporations or other autonomous agencies of the Commonwealth which are not funded primarily by legislative appropriations shall pay to the Public Auditor an amount not less than the one percent of its total operations budget from sources other than legislative appropriations or pursuant to any other formula upon which the Public Auditor and the agency may agree. The funds shall be administered pursuant to subsection (a) of this section.~~

(e b) No funds paid into the account of the office of the Public Auditor shall be reprogrammed for any other purpose to any other agency.

(d c) The legislature shall be exempt from the requirement of one percent contribution of legislative funds to the office of the Public Auditor.

(e d) The Public School System (PSS) shall be exempt from the withholding and payment requirements of subsections (a) ~~and (b)~~ of this section: provided that one percent of the budget appropriated to PSS shall be used exclusively for the purchase of textbooks and shall not be reprogrammed for any other purpose. The Commission of Education shall establish a Textbook Account into which funds realized by operation of this subsections shall be deposited. These funds shall not be commingled with other PSS accounts and shall be used solely for the purposes of this subsection. The Commissioner of Education shall be the expenditure authority for funds deposited in to the Textbook Account.

(e) The public corporations and autonomous agencies are exempt from the withholding and payment requirements of subsection (a) of this section. Any and all past unpaid amounts accrued under this section by public corporations and autonomous agencies shall either be waived by the Commonwealth, including the Public Auditor, or otherwise be considered appropriated to the respective public corporation or autonomous agency. Notwithstanding the foregoing, the Office of the Public Auditor may charge

a fee for the reasonable value of its services to such public corporations or agencies for enforcement or review. The Office of the Public Auditor shall publish for notice and comment a proposed fee or rate schedule through regulations, pursuant to this provision, in the Commonwealth Register and which shall take effect upon final promulgation. The Office of the Public shall be reimbursed the reasonable value of any service requested and directly provided to a public corporation or autonomous agency no later than the end of the subsequent fiscal year following the year in which such service, investigation or other review was requested or performed relating to that public corporation or autonomous agency."

Section 4. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 5. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Any repealer contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way

modifying, any liability civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 6. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

Prefiled: 5/12/2022

Date: 5/11/22 Introduced by: _____

Rep. Edmund S. Villagomez

Reviewed for Legal Sufficiency by:

_____

House Legal Counsel

A-3

June 18, 2019

ELECTRONIC MAIL

The Honorable Representative Roman Benavente
Chairman, Committee on Education
21st Northern Marianas Commonwealth Legislature
Honorable Jesus P. Mafnas Memorial Building
P.O. Box 500586
Saipan, MP 96950

RE: OPA comments on House Bill No. 21-40

Dear Representative Benavente:

The Office of the Public Auditor (OPA) appreciates the opportunity to comment on House Bill No. 21-40 ("Bill"). OPA has concerns that passage of this bill could lead to a slippery slope that would impair the OPA's operations. If the Northern Mariana College ("NMC") is exempted from paying the 1%, which agency would make a request for exemption next? According to 1 CMC § 7831, OPA is funded by 1% of all locally generated funds. However, OPA's funding under 1 CMC § 7831(b) is already perilous because almost all of the autonomous agencies fail to pay their statutorily required 1% including NMC. OPA receives 1% of the General Fund portion before it is remitted to NMC, but NMC has never paid 1% on their locally generated funds not received from the General Fund (see attachment). Further reduction of our budget may impact OPA's ability to meet our Constitutional and statutory mandates.

These are difficult times for everyone in the CNMI. OPA understands the devastation NMC faced from Typhoon Yutu. In a telephone conversation with Representative Benavente, I voiced our concern that changing the law would exempt NMC from paying the 1% long after they had recovered as opposed to exempting NMC in an appropriations bill which would only last for that fiscal year. Representative Benavente offered the solution of adding a sunset provision to the bill.

OPA humbly asks you to consider the potential consequences of reducing our budget and how difficult it is to overcome the slippery slope once exemptions are made for some and not others. Once again, OPA appreciates the consideration and ability to comment on H.B. No. 21-40. If you have any questions about OPA's comments, please do not hesitate to contact our office.

Sincerely,

Ashley Kost
OPA Legal Counsel

Enclosure
AK/mc

Cc: Michael Pai, OPA
David Blake, OPA

Northern Mariana College (NMC)

1% OPA Assessment Calculation

	Year		Budget Amount	(A) Less: General Fund Portion	(B) 1% Assessable Amount	1% Assessment	Payments	Net Annual Amount	Cummulative Amount
	1996	1	16,154,139	8,426,415	7,727,724	77,277	-	77,277	77,277
	1997	1	16,346,251	8,506,200	7,840,051	78,401	-	78,401	155,678
cr	1998	1	16,436,573	8,506,200	7,930,373	79,304	-	79,304	234,981
	1999	1	13,756,523	9,283,300	4,473,223	44,732	-	44,732	279,713
cr	2000	1	14,571,463	9,283,300	5,288,163	52,882	-	52,882	332,595
cr	2001	1	18,478,210	9,283,300	9,194,910	91,949	-	91,949	424,544
cr	2002	1	17,208,416	9,283,300	7,925,116	79,251	-	79,251	503,795
	2003	1	17,093,139	8,046,739	9,046,400	90,464	-	90,464	594,259
cr	2004	1	17,453,528	8,046,739	9,406,789	94,068	-	94,068	688,327
cr	2005	1	16,435,902	8,046,739	8,389,163	83,892	-	83,892	772,219
cr	2006	1	15,077,669	8,046,739	7,030,930	70,309	-	70,309	842,528
	2007	1	12,725,462	6,160,486	6,564,976	65,650	-	65,650	908,178
cr	2008	1	13,471,362	6,160,486	7,310,876	73,109	-	73,109	981,287
	2009	1	14,038,646	9,283,300	4,755,346	47,553	-	47,553	1,028,840
cr	2010	1	15,025,733	9,283,300	5,742,433	57,424	-	57,424	1,086,264
	2011	1	17,157,317	4,464,464	12,692,853	126,929	-	126,929	1,213,193
	2012	1	14,501,004	5,228,656	9,272,348	92,723	-	92,723	1,305,917
	2013	1	15,565,799	4,511,052	11,054,747	110,547	-	110,547	1,416,464
	2014	2							1,416,464
	2015	2							1,416,464
	2016	1	13,313,105	4,420,013	8,893,092	88,931	-	88,931	1,505,395
	2017	1	14,981,778	5,949,567	9,032,211	90,322	-	90,322	1,595,717
	2018	4							

1 Budget amount reflect actual expenditures for the year as presented in audited financial statements, due to the fact that budget amounts in the appropriation acts only represent general fund expenditures.

2 NMC was exempted based upon the appropriation act.

cr Represents continuing appropriation acts.

(A) It is presumned that the SOF withheld the 1% from the General Fund Portion.

4 Financial statements not yet available.

(B) The assessable amounts typically represent operating income from tuition and Federal Grants. If the federal grants are based on individual student applications for admission, they may be assessable. If they are hard grants directly to NMC, with no administrative costs allowed, then they should excluded. Typically federal grants are not included in "Operating Income".

June 30, 2020

ELECTRONIC MAIL

The Honorable Representative Joseph Lee Pan Guerrero
Chairman, Commerce and Tourism Committee
21st Northern Marianas Commonwealth Legislature
Honorable Jesus P. Mafnas Memorial Building
P.O. Box 500586
Saipan, MP 96950

RE: OPA comments on Senate Bill No. 21-54

Dear Chairman Guerrero:

The Department of Finance notified the Office of the Public Auditor ("OPA") of the existence of a bill that would exempt the Commonwealth Ports Authority ("CPA") from paying the 1% and we would like an opportunity to comment on Senate Bill No. 21-54 as it would impact our funding. OPA has concerns that passage of this bill could lead to a slippery slope that would impair OPA's operations. If the CPA is exempted from paying the 1%, which agency would make a request for exemption next? According to 1 CMC § 7831, OPA is funded by 1% of all locally generated funds. However, OPA's funding under 1 CMC § 7831(b) is already perilous because almost all of the autonomous agencies fail to pay their statutorily required 1%, including CPA to the outstanding balance of $3,749,522 per OPA's records, (not including the current fiscal year). Further reduction of our budget may impact OPA's ability to meet our statutory and Constitutional mandates.

These are difficult times for everyone in the CNMI. We understand the hardship CPA faces in the reduction of tourism since March, but to OPA's knowledge they haven't paid the 1% for 23 years which has resulted in the General Fund having to cover CPA's share. If CPA were to pay their outstanding balance, OPA would only receive the money for the current fiscal year. The remaining balance of $3,749,522 would go directly to the General Fund and be available for appropriations elsewhere in the government.

Historically, other agencies facing financial difficulty were exempted from paying the 1% in the annual appropriations act which would apply for that fiscal year as opposed to amending 1 CMC § 7831. This course of action takes into consideration CPA's current financial issues without permanently exempting CPA and potentially starting a chain reaction of future requests of exemptions by other autonomous agencies.

OPA humbly asks you to consider the potential consequences of reducing our budget and the how difficult it is to overcome the slippery slope once exemptions are made for some and not others. Furthermore, we urge you to consider the current financial crisis in the CNMI and how much of a difference $3,749,522 could make to the General Fund. OPA appreciates the consideration of our comments on S.B. No. 21-54. If you have any questions about OPA's comments, please do not hesitate to contact our office.

Office of the Secretary
Department of Finance
P.O. Box 5234 CHRB, Saipan MP 96950 TEL (670) 664-1100 FAX (670) 664-1115

June 29, 2020 SFM 2020-402

Honorable Joseph Lee Pan Guerrero
Chairman
Commerce and Tourism Committee
21st Northern Marianas
Commonwealth Legislature
Tel: 1-670-664-8899

Subject: SB 21-54: To amend 1 CMC § 7831 to exempt the Commonwealth Ports Authority from paying the one percent Public Auditor Fee.

Dear Chairman Guerrero:

Thank you for the opportunity to comment on Senate Bill ("SB") 21-54 "To amend 1 CMC § 7831 to exempt the Commonwealth Ports Authority from paying the one percent Public Auditor Fee."

In our effort to provide comments and recommendations on this worthwhile bill, the Department of Finance sought to understand the impact of this legislation on the Commonwealth Ports Authority ("CPA"), Office of the Public Auditor ("OPA"), and the Commonwealth of the Northern Mariana Islands ("CNMI") government's fiduciary duty of responsible fiscal management and transparent representation of government resources.

As you may be aware, the COVID-19 pandemic has crippled the CNMI's only industry leaving our private sector partners with little to no tourist arrivals to provide resources to the economy. With strict foreign and domestic travel restrictions imposed, we continue to witness diminished revenue forcing the Department of Finance along with the Office of the Governor to implement stringent cost mitigation measures to ensure continued service is provided to the public.

The Commonwealth Ports Authority plays an important role in our community and the economy. The services provided allow for access to greater health and economic resources that may otherwise be unattainable within the Commonwealth. Additionally, CPA is responsible for welcoming visitors who support our volatile and only industry. For these reasons, the

Office of the Secretary
Department of Finance
P.O. Box 5234 CHRB, Saipan MP 96950 TEL (670) 664-1100 FAX (670) 664-1115

Department of Finance commends the legislations intent to alleviate financial strains of CPA particularly during this time of difficulty and uncertainty.

However, it is important to note that the Commonwealth has the responsibility for strict adherence to laws, statutes, and regulations set forth to protect government resources from misuse. The Commonwealth government operates with a significant volume of both federal and state assets and other resources requiring strict internal controls. The Office of the Public Auditor is a critical component in ensuring these resources are protected and individuals adhere to internal controls set forth to protect public resources. Consequently, we must ensure OPA is able to receive the resources they need for continued operations.

Further, excluding an agency partner from the existing mandate allows for potentially harmful precedence for other organizations currently under significant financial constraints. The compounding effect of additional exemptions to this funding model would diminish the resources for an already underfunded office. Presently, multiple government agencies have yet to remit years of OPA 1% contribution culminating in millions of dollars owed to OPA. As a result, OPA is currently undergoing operation deficit despite their continued service.

In total, CPA is a vital component of the CNMI economy and our ability to generate the resources needed to fund our government's services and personnel. Clearly, present circumstances have impacted CPA revenue and have strained its available resources. Yet, this is the unfortunate reality of nearly all entities of the CNMI government. While the intents of this legislation are clearly in line with supporting the critical importance of CPA to our economy and our future ability to generate revenue, the alleviation of this statutory requirement places the CNMI government in a net loss as it will be forced to assume the financial responsibilities unremitted by CPA.

Most consequentially, with increased resources flowing into the CNMI government agencies as we move forward with our effort against the COVID-19 pandemic, now more than ever we need to support OPA to help us ensure these resources are protected. It is critical that accountability be at the forefront of our use of federal government resources not solely out of legal and ethical responsibilities of our duties, but doing so represents the greatest safeguard of future revenue from penalties arising from potential errors in the administration of these programs.

OPA serves a critical role in our government and will need our continued support to ensure it is successful in their mandates and objectives. Similarly, CPA is necessary, and in need of support. In the achievement of the difficult task of ensuring limited resources meet these and many more

P.O. Box 5234 CHRB, Saipan MP 96950 TEL (670) 664-1100 FAX (670) 664-1115

needs in the months and years ahead, I stand ready to assist you, your committee and the Legislature to collaborate toward the solutions that will provide our people with the greatest and most efficient return of their resources.

Once again, we thank you for the opportunity to provide comments on this worthwhile bill. Should you have any questions about this letter, please do not hesitate to contact me at 1-670-664-1100 or email at david.atalig@dof.gov.mp.

Respectfully,

David DLG. Atalig
Secretary
Department of Finance

CC: Senate President

Office of the Public Auditor
Commonwealth of the Northern Mariana Islands
Website: http://opacnmi.com
1236 Yap Drive, Capitol Hill, Saipan, MP 96950

Phone: (670) 322-6481
Fax: (670) 322-7812

July 28, 2021

ELECTRONIC MAIL

The Honorable Senator Victor Hocog
Chairman, Fiscal Affairs
22nd Northern Marianas Commonwealth Legislature
Honorable Jesus P. Mafnas Memorial Building
P.O. Box 500129
Saipan, MP 96950

RE: OPA comments on Senate Bill No. 22-51

Dear Chairman Hocog:

The Office of the Public Auditor ("OPA") is a statutorily designated independent agency of the Commonwealth Government. In order to remain independent and free from political interference through the appropriations process, the CNMI Legislature set up a funding mechanism to ensure OPA's budgetary needs are met. According to 1 CMC § 7831, OPA is funded by 1% of all locally generated funds. However, OPA's funding under 1 CMC § 7831(b) is already at risk because almost all of the autonomous agencies fail to pay their yearly share of the 1% funding as statutorily required. Inadequate funding has caused OPA's size to shrink. In 2004, OPA had 5 audit managers, 14 audit staff members, 2 attorneys, and 5 investigators. Currently, OPA has 1 audit manager, 8 audit staff members, 1 attorney, and 4 investigators. Austerity measures and the lack of competitive benefits and salary compensation has caused OPA to lose 4 employees in the past 2 years. By exempting all public corporations and autonomous agencies from paying the 1%, S.B. 22-51 is threatening OPA's ability to fulfill its constitutional and legislative mandates. Additionally, this would force OPA to significantly rely on the General Fund to make up the difference, potentially jeopardizing our independence and consuming needed resources.

OPA provides a variety of services to the public corporations and autonomous agencies. As discussed previously, this funding mechanism was developed so all entities pay their share. S.B. 22-51 states in the Finding and Purpose section that "certain autonomous agencies and public corporations do not utilize the audit services of the Office of the Public Auditor." This statement is misleading considering there are other types of audits other than financial. During the time of non-payment, OPA has completed numerous performance audits at the public corporations and autonomous agencies. Additionally, OPA has provided services by investigating complaints of fraud, waste, and abuse of government funds and violations of the Government Ethics Act, providing ethics opinions, providing ethics training for their employees, and deciding procurement appeals.

Moreover, S.B. 22-51 adversely impacts the CNMI Government. Article III, Section 12 of the N.M.I Constitution requires that OPA's excess funds remit back to the General Fund at the end of the fiscal year. The past due 1% of the autonomous agencies, totaling approximately 30 million dollars, will not go to OPA but to the General Fund because the fees are in excess of the prior fiscal years. This money would then be available for appropriations by the Legislature. S.B. 22-51 directs "[a]ny and all past unpaid amounts accrued under this section by public corporations and autonomous agencies shall either by waived by the Commonwealth, including the Public Auditor,

or other be considered appropriated by the public corporations or autonomous agencies." The outstanding debt of 30 million dollars is needed elsewhere in the CNMI Government and should not be waived by S.B. 22-51. It would set a bad precedent to not hold the public corporations and autonomous agencies accountable for years of knowingly violating 1 CMC § 7831(b), but instead to write off debt without recourse.

Historically, the past due 1% has worked to resolve past due liabilities of the government. In 2003, CUC and the Acting Secretary of Finance signed a Memorandum of Agreement (MOA) for CUC to pay their past due 1% (almost 4 million dollars) to the General Fund, the Executive Branch paid the same amount back to CUC for partial payment of past due government utility bills, CUC agreed to pay the Public Auditor their current fiscal year 1%, and the Executive Branch agreed to pay CUC the same amount of the current fiscal year 1% for outstanding utility service amounts owed. Essentially, CUC and the central government offset the outstanding OPA 1% for outstanding utility payments. This type of agreement could work again as the CNMI Government owes CUC for utility payments and CUC's outstanding 1% is approximately 15 million dollars. However, if S.B. 22-51 eliminates the debt, there would be nothing to offset the CUC utility bills.

OPA is currently in the process of meeting with all autonomous agencies to discuss the 1% issue. We have been using these meetings to better understand the individual public corporation or autonomous agency's methodology in determining the annual 1% past due balances reported in their yearly financial audits. We will share the information gathered in the meetings with the Secretary of Finance and the Attorney General and take the proper course of action deemed necessary. Our hope is to open the dialogue regarding the 1% payments so past due amounts can be paid to the General Fund and it will allow OPA to better assess the 1% for the future. In doing so, the CNMI autonomous agencies and central government will be able to clean up their books and resolve outstanding balances.

In conclusion, OPA requests you to consider the potential consequences of reducing our budget. The CNMI Government is receiving an unprecedented amount of federal money and the demands for OPA's services have never been higher. We will not be able to adequately meet our mandate of detecting fraud, waste, and abuse of funds if S.B. 22-51 passes. Furthermore, we urge you to consider the current financial situation in the CNMI and how much of a difference $30 million dollars, without any federal requirements, could make to the General Fund. OPA appreciates the consideration of our comments on S.B. No. 22-51. If you have any questions about OPA's comments, please do not hesitate to contact our office.

Sincerely,

Kina B. Peter, CPA
Public Auditor

Cc: Ashley Kost, OPA Legal Counsel

Office of the Public Auditor

Commonwealth of the Northern Mariana Islands
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May 24, 2022

VIA EMAIL

The Honorable Speaker Edmund Villagomez
22nd Northern Marianas Commonwealth Legislature
Honorable Jesus P. Mafnas Memorial Building
P.O. Box 500586
Saipan, MP 96950

RE: OPA comments on House Bill No. 22-102

Dear Speaker Villagomez:

It is with disappointment that I make written comments instead of appearing personally before this legislative body. Unfortunately, the Office of the Public Auditor ("OPA") received no notice of this important legislation appearing on the agenda in Rota. Travel arrangements were impossible at this late hour, and it is my hope that this letter will adequately communicate the importance of your full attention to the underlying issues raised in House Bill ("HB") 22-102.

Let's start with facts and data. To date, the estimated past due amounts from all autonomous agencies total approximately $40 million dollars. CUC alone makes up approximately $20 million of the total amount due. It is important to note that according to Article III, Section 12 of the N.M.I. Constitution, "... any unencumbered fund balance in a fiscal year shall be available for general appropriation." I want to emphasize that the outstanding balance does not go to OPA's account. This $40m balance goes back into the CNMI Government General Fund and is available for appropriations by this legislative body. For example, the $20M owed to the General Fund from CUC could be used as offset for CNMI Government utility bills. We urge you to consider the future financial situation of the CNMI and how much of a difference $40 million dollars could make to the General Fund.

As you well know, OPA is a statutorily designated independent agency of the Commonwealth Government. In order to remain independent and free from political interference through the appropriations process, the CNMI created a funding mechanism to ensure OPA's budgetary needs are met. According to 1 CMC § 7831, OPA is supposed to be funded by 1% of all locally generated funds. However, in reality, OPA's funding under 1 CMC § 7831(b), which requires the same 1% contribution to OPA from the CNMI public corporations and autonomous agencies has been at risk because nearly all such agencies regularly ignore the law of the Commonwealth. HB 22-102, as written, rewards these public entities' disregard of the law, forgives a massive debt owed to the CNMI Government General Fund, and will impact the ability of OPA to function independently as required by law.

As a direct result of the autonomous agencies' failure to pay their annual share of the required 1% funding to OPA, our agency has faced significant downsizing. For example, in 2004, OPA had 5 audit managers, 14 audit staff members, 2 attorneys, and 5 investigators. Currently, OPA has 1 audit manager, 7 audit staff members, 1 attorney, 1 investigations manager, and 4 investigators. HB 22-102 would not hold the autonomous agencies and public corporations accountable for their non-compliance and it would directly threaten OPA's ability to fulfill its constitutional and legislative mandates.

Recognized as the "sentinel against government malfeasance" by the Commonwealth Supreme Court, OPA is the back stop for honesty and accountability for all three branches of the Commonwealth government. *In re San Nicolas*, 2013 MP 8 ¶ 13. The findings and purpose set forth in HB 22-102 that "certain autonomous agencies and public corporations do not utilize the audit service of the Office of the Public Auditor" is misleading. While certain audit services are contracted directly by some autonomous agencies, there are many services provided by OPA to provide oversight for all aspects of the government, including the autonomous agencies to include: performance audits, investigations, ethics act investigations, assistance with the elections, and other statutorily delegated duties. The 1% fee is not solely an "auditing fee," but a fee to support OPA's ability to function independently from the government in order to meet our constitutional and statutory mandates. Furthermore, the suggested fee structure in HB 22-102 is unsustainable in light of the many roles that OPA plays within the CNMI Government. Quantifying the costs for investigations, elections, and other statutorily mandated services would be difficult. OPA would be put in a compromising situation to have to identify its own revenue stream, potentially impairing its independence.

HB 22-102 asserts that OPA's 1% fee would violate federal entitlements for CPA. As to date, there has not been a determination that OPA's 1% fee puts CPA or other agencies at a financial risk with their federal grantors. CPA has never voiced the need for an expedited timeline to resolve this issue with OPA as we met with their Comptroller back in March 2022. Additionally, CPA has recorded on its most recent audited financial statements and prior audited statements, OPA's 1% fee without contingencies recognizing the legal requirements, but has continually chosen not to remit payments.

Of course, this is not the first bill of its kind seeking to divert or exempt the autonomous agencies or public corporations from paying their obligation to ensure public accountability of the public funds in their care. I have attached our previous opposition comments and the opposition from the Secretary of Finance for a similar bill in 2021. OPA has been in communication with the Secretary of Finance and the Attorney General to help clean up the books and collect the money owed to the General Fund from the autonomous agencies. Cleaning up the books shouldn't mean waiving all the autonomous agencies' existing debts required by a law they chose to ignore for years. Since I took office, I have taken steps to meet with various agencies to discuss the OPA 1% fees but the agencies have taken our concerns lightly and this issue continues to be unresolved due to almost 26 years of non-compliance with the law.

In conclusion, OPA requests you to consider the potential consequences of waiving this debt and reducing our budget. Furthermore, the CNMI Government has been receiving an unprecedented amount of federal money and the demands for OPA's services have never been higher. We will not be able to adequately meet our mandate of detecting fraud, waste, and abuse of funds if we have to reduce our budget. OPA appreciates the consideration of our comments on H.B. No. 22-102. If you have any questions about OPA's comments, please do not hesitate to contact our office. We hope to hear from you.

Sincerely,

Kina B. Peter, CPA
Public Auditor

Cc: Ashley Kost, OPA Legal Counsel

A-4

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (the "Agreement") is made this _____ day in the month of _____, 2017, by and between the COMMONWEALTH PORTS AUTHORITY ("CPA"), an autonomous and independent agency of the government of the Commonwealth of the Northern Mariana Islands, and the OFFICE OF THE PUBLIC AUDITOR ("OPA"), an independent agency of the government of the Commonwealth of the Northern Mariana Islands.

RECITALS

WHEREAS, 1 CMC § 7831(b) requires public corporations or other autonomous agencies, like CPA, to pay to OPA either one percent of its total operations budget from sources other than legislative appropriations, or an amount determined by another formula agreed upon by OPA and the agency, whichever amount is greater.

WHEREAS, 1 CMC § 7821 requires OPA to "conduct or supervise all audits required for or sought by a Commonwealth Agency.

WHEREAS, 1 CMC § 2306 provides that in the event OPA fails to timely schedule an audit, CPA may, with the approval of the Governor and OPA and subject to the availability of funds, may enter into a contract with any independent certified public accountant for the purpose of conducting the audit.

WHEREAS, by statute, OPA should pay for audits that are conducted, which are funded by payments by other agencies for which OPA is required to conduct audits.

WHEREAS, OPA has not ever conducted audits of CPA as required by statute nor has it requested or demanded the fee payment under 1 CMC § 7831(b).

WHEREAS, CPA's bond indenture requires an audit by an independent auditor and because of this requirement, CPA already out of necessity pays an independent auditor to conduct audits and then submits this report to various agencies for review, including OPA.

WHEREAS, 1 CMC § 2303(a) requires OPA to transmit an annual report to the Governor and the presiding officer of each house of the legislature, which should consist of a financial audit of each agency's fund, whether or not it is appropriated.

WHEREAS, OPA has received audit reports from CPA over the past ten years without dispute and has published them on its website.

WHEREAS, OPA constructively agreed upon the auditor used by CPA when it accepted reports from CPA from this auditor without question or dispute, and the availability of funds is a non-issue as CPA has always paid for these audits out of its own pocket and has never charged OPA for them.

WHEREAS, OPA failed to conduct audits and then used the reports CPA paid for out of its own pocket and without a demand by CPA to pay, in order for OPA to comply with reporting requirements.

WHEREAS, CPA's operating budget is significantly more than other operating budgets of government agencies by department and 1 CMC § 7831(b imposes the same liability upon CPA

that it imposes on all other government agencies without taking into account the actual cost of the audit and the actual amount of CPA's operating budget.

WHEREAS, CPA and OPA agree that CPA should not be held liable for the past years in which it did not pay for audits which OPA did not conduct and CPA should not be required to pay such a wholly disproportionate amount in comparison to the actual cost of an audit and in comparison to payments from other government agencies.

WHEREAS, CPA and OPA agree to waive the 1% requirement under 1 CMC § 7831(b) and to determine an amount that is both balanced and fair.

WHEREAS, the Office of the Attorney General of the Commonwealth of the Northern Mariana Islands has expressly indicated that it has no objection to CPA and OPA determining and settling on a mutually acceptable payment rate under 1 CMC § 7831(b).

NOW, THEREFORE OPA and CPA enter into this Memorandum of Understanding as follows:

1. CPA shall prepare an escrow account into which CPA will deposit .01% of its total operations budget for the purpose of paying for CPA's public auditing requirements and to satisfy its portion of contributing to the financial operations needs of OPA.
2. The escrow account shall be an interest-bearing account and CPA shall act as the escrow agent.
3. At the end of the following fiscal year, CPA's auditing expenses shall be deducted from the escrow account and paid to CPA.
4. OPA shall report the amount needed for its operations to the Governor and the Legislature consistent with budgeting and reporting requirements.
5. OPA shall take from the escrow account the amount needed to fund its operations, the amount of which shall never exceed 1% of CPA's total operations budget.
6. At the end of the following fiscal year, any amount remaining in the escrow account shall be remitted back to CPA.

EXECUTION

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding on the date set forth above.

Christopher S. Tenorio Executive Director Commonwealth Ports Authority	Date	Michael Pai Public Auditor Office of the Public Auditor	Date

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Escrow Agreement") is entered into by and between the COMMONWEALTH PORTS AUTHORITY ("CPA"), an autonomous and independent agency of the government of the Commonwealth of the Northern Mariana Islands, and the OFFICE OF THE PUBLIC AUDITOR ("OPA"), an independent agency of the government of the Commonwealth of the Northern Mariana Islands.

RECITALS

WHEREAS, CPA and OPA have agreed to terms stated in that Memorandum of Understanding ("MOU") executed on the _____ day of _____, 2017.

WHEREAS, CPA and OPA agree that CPA shall act as the Escrow Agent to execute the actions set forth in the MOU and CPA hereby accepts such engagement, upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the Parties, intending to be legally bound, hereby agree and issue the following escrow instructions to CPA (hereinafter "Escrow Agent"):

1. **MOU as Controlling Document.** CPA and OPA agree that the MOU is the document controlling the terms of disposition of funds in the escrow account. A copy of the MOU is attached hereto as Exhibit 1 and incorporated herein by reference.

2. **Engagement of Escrow Agent**. CPA and OPA hereby appoint and designate Escrow Agent for the purposes set forth herein, and Escrow Agent hereby agrees to serve as Escrow Agent and to hold and disburse the funds that it holds in escrow subject to and in accordance with the MOU.

3. **Establishment of Escrow Account.** Escrow Agent shall establish and maintain the funds for CPA and OPA at _____ (the "Escrow Account") entitled the "CPA Auditing Trust Account." Upon the request of CPA or OPA, Escrow Agent will advise that Party as to the balance in the Escrow Account.

4. **Receipt and Disbursement of Funds.**

4.1 CPA shall deposit .01% of its total operations budget into the Escrow Account.

4.2 At the end of each fiscal year, Escrow Agent shall deduct the amount of CPA's auditing expenses from the Escrow Account and disburse that amount to CPA.

4.3 At the end of each fiscal year, Escrow Agent shall deduct the amount needed for OPA's operations, as reported by OPA, from the Escrow Account and disburse that amount to OPA.

4.4 At the end of each fiscal year, Escrow Agent shall remit any amounts remaining in the Escrow Account to CPA.

5. **Termination of Escrow**. This Escrow Agreement shall remain in effect perpetually until it is terminated by agreement by CPA and OPA.

6. Exculpation and Indemnification of Escrow Agent.

6.1 Scope of Responsibilities. Escrow Agent will have no duties or responsibilities other than those expressly set forth herein. Escrow Agent will have no duty to enforce any obligation of any person, other than Escrow Agent, to make any payment or delivery or to direct or enforce any obligation of any person to perform any other act. Escrow Agent will be under no liability to anyone by reason of any failure on the part of any Party (other than Escrow Agent) or any maker, endorser, or other signatory of any document to perform such person's obligations under any such document. Nothing herein contained shall be deemed to impose upon Escrow Agent any duty to exercise discretion, it being the intention hereof that Escrow Agent shall not be obligated to act except upon written instructions or direction. Escrow Agent shall not be bound by or deemed to have notice of any term or terms or any agreement not expressly set forth in this Escrow Agreement, except as herein provided.

6.2 Scope of Liabilities. Escrow Agent will not be liable for any action taken or omitted by it, or any action suffered by it to be taken or omitted in good faith and in the exercise of its own best judgment, and may rely conclusively and will be protected in acting upon any order, notice, demand, certificate, opinion, or advice of counsel (including counsel chosen by Escrow Agent), statement, instrument, report, or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is reasonably believed by Escrow Agent to be genuine and to be signed or presented by the proper person or persons.

6.3 Indemnification. Escrow Agent will be indemnified and held harmless jointly and severally by CPA and OPA from and against any expenses, including reasonable counsel fees and disbursements, claims, damages, or losses suffered by Escrow Agent in connection with any claim or demand, which in any way, directly or indirectly, arises out of or relates to this Escrow Agreement or the funds held by it, except that if Escrow Agent is guilty of willful misconduct, fraud or gross negligence, Escrow Agent will bear all such losses, claims, damages and expenses. Promptly after the receipt by Escrow Agent of notice of any such demand or claim or the commencement of any action, suit or proceeding, Escrow Agent will notify the other Parties in writing. For the purposes hereof, the terms "expense" and "loss" will include all amounts paid or payable to satisfy such claim, demand or liability, or in settlement of any such claim, demand, action, suit, or proceeding settled with the written consent of the parties hereto, and all costs and expenses, including, but not limited to, reasonable counsel fees and disbursements, paid or incurred in investigating or defending against any such claim, demand, action, suit or proceeding.

6.4 Conflicting Demands. If conflicting demands are made or notices served upon Escrow Agent with respect to the escrow, and this Escrow Agreement does not otherwise specify the action to be taken by Escrow Agent as a result thereof, CPA and OPA expressly agree that Escrow Agent shall have the absolute right at its election to do either or both of the following: (i) withhold and stop all further proceedings in and performance of this Escrow Agreement pending additional joint instructions in writing from CPA and OPA; or (ii) file a suit in interpleader in a CNMI court or a federal court sitting in the CNMI for the purpose of having the respective rights of the Parties and any other claimants adjudicated, and deposit with the court all documents, monies, and any other property held hereunder. Upon institution of such interpleader suit, and notice thereof to the Parties, Escrow Agent shall be fully released and discharged from all further obligations hereunder. All reasonable attorney's fees and costs incurred by Escrow Agent in connection with the interpretation of this Agreement and with respect to any interpleader proceedings shall be paid as set forth in Section 16 herein.

7. **Consent to Jurisdiction.** Any interpleader action or any other suit brought to enforce or interpret this Escrow Agreement shall be brought in a CNMI court or a federal court sitting in the CNMI, all Parties hereto consenting to the jurisdiction of such court.

8. **Force Majeure.** Neither CPA, OPA, nor Escrow Agent shall be responsible for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, power failures, earthquakes, or other disasters.

9. **Notices.** All notices, requests, demands, and other communications given hereunder to or by a Party to the other Parties shall be in writing and shall be deemed to have duly given or have been duly given upon the date of actual delivery (if dispatched by mail, courier, or hand delivery), or upon the date of transmission if dispatched by telecopier, by or to the parties as provided below, or to such other person(s) or place(s) as a party may designate in a notice to the other parties.

If to OPA:
Michael Pai
Public Auditor
Office of the Public Auditor
P.O. Box 501399
Saipan, MP 96950

If to CPA or Escrow Agent:
Christopher S. Tenorio
Executive Director
Commonwealth Ports Authority
P.O. Box 501055
Saipan, MP 96950

10. **Entire Agreement; Benefit**. This Escrow Agreement constitutes the entire understanding and agreement of the Parties, and supersedes all prior agreements and understandings, written or oral, between or among the Parties, regarding the Escrow Agreement to be entered into pursuant to the Agreement. This Escrow Agreement shall be binding on and inure to the benefit of the successors and assigns of each Party. Escrow Agent shall not be required to review or interpret the Agreement in performing its duties under this Escrow Agreement and in the event of a conflict between the language of this Escrow Agreement and the Agreement, the Parties agree that the Escrow Agent shall be bound by the terms of this Escrow Agreement.

11. **Governing Law**. This Escrow Agreement shall be governed by, and construed in accordance with, the laws of the CNMI (excluding any choice of law rule or principle that might result in the application of the laws of any other jurisdiction).

12. **Headings.** The headings in the paragraphs of this Escrow Agreement are inserted for convenience only and shall not constitute a part hereof.

13. **Waiver; Amendments.** No waiver of any term, provision, or condition of this Escrow Agreement shall be effective against any Party unless set forth in a writing signed by such Party, and any such written waiver in any one or more instances shall not be deemed to be a further or continuing waiver of any such term, provision or condition of this Escrow

Agreement. This Escrow Agreement may be amended only by a written instrument signed by all of the Parties.

14. **Records.** Escrow Agent will maintain accurate records of all transactions hereunder and shall provide copies or summaries thereof to CPA and OPA at such times as it may reasonably request. The authorized representatives of CPA and OPA shall also have access to such records at all reasonable times during normal business hours upon reasonable notice to Escrow Agent.

15. **No Strict Construction**. The language used in this Escrow Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any person.

16. **Costs.** If any legal action or other proceeding is brought for the enforcement of this Escrow Agreement, or because of an alleged breach of or default hereunder, the prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in such action or proceeding in addition to any other relief to which it or they may be entitled.

IN WITNESS WHEREOF, the Parties hereto have caused this Escrow Agreement to be duly executed on the date set forth below.

Commonwealth Ports Authority

_____ Date: _____

Christopher S. Tenorio
Executive Director

Office of the Public Auditor

_____ Date: _____

Michael Pai
Public Auditor

Escrow Agent

_____ Date: _____

Christopher S. Tenorio
Executive Director

Office of the Public Auditor

Commonwealth of the Northern Mariana Islands
Website: http://opacnmi.com
1236 Yap Drive, Capitol Hill, Saipan, MP 96950

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Fax: (670) 322-7812

November 21, 2017

VIA EMAIL

Robert Tenorio Torres
Commonwealth Ports Authority Legal Counsel
Plata Drive, Whispering Palms (Chalan Kiya)
P.O. Box 503758
Saipan, MP 96950

Dear Mr. Torres:

RE: Office of the Public Auditor's response to Commonwealth Ports Authority's proposed Memorandum of Agreement to resolve their liability for fees past due pursuant to 1 CMC § 7831(b)

Sorry for the delay in our response. This issue cannot be resolved with a sole agreement between the Commonwealth Ports Authority (CPA) and the Office of the Public Auditor (OPA). OPA could agree to a formula pursuant to 1 CMC § 7831(b), but any agreement would only apply to the current fiscal year. However, past due amounts beyond the current fiscal year are not owed to OPA directly, but instead to the CNMI General Fund because at the end of every fiscal year OPA's excess funds remit to the General Fund. All monies from CPA would be classified as excess funds because the fiscal years in which they were owed have already passed, and should be remitted to the General Fund. Therefore, any settlement for less than the full amount owed by CPA for the 1% should include the Secretary of Finance.

Furthermore, OPA cannot agree to the formula suggested for the current fiscal year in your Memorandum of Understanding (MOU) pursuant to 1 CMC § 7831(b). As stated in your first recital of the MOU, 1 CMC § 7831(b) requires autonomous agencies to pay *either* one percent of its total operations budget from sources other than legislative appropriations, *or* an amount determined by another formula agreed upon by OPA and the agency, *whichever amount is greater*. Therefore, we cannot agree to the .01% suggested in the MOU because the formula is not greater than the standard 1%.

In our research into past due payment of the 1%, we came across only two incidents of resolving past due liabilities, both for the full amounts owed. In 2003, CUC and the Acting Secretary of Finance signed a Memorandum of Agreement (MOA) for CUC to pay their past due 1% to the General Fund, the Executive Branch paid the same amount back to CUC for partial payment of utility service, CUC agreed to pay the Public Auditor their current fiscal year 1%, and the Executive Branch agreed to pay CUC the same amount of the current fiscal year 1% for outstanding utility service amounts owed. Essentially, CUC and the central government offset the outstanding 1% owed to OPA for outstanding utility payments. That MOA was entered for the full amount past due plus full payment for that fiscal year. In 2007, Commonwealth Development Authority (CDA) Board of Directors approved to pay the 1% past due amounts to the CNMI Treasury, less the legal fees paid by CDA in defending the *Kumagi* case. The payments were made for the full amount in three installments.

Recognizing potential issues raised if OPA were to settle for less than the amount past due now owed to the General Fund, OPA reached out for assistance from the executive branch. OPA had conversations with the Secretary of Finance, the attorney for the Secretary of Finance, the former and current attorney for the Governor, and the Chief of Staff for the Governor to garner support for an agreement to resolve the past due 1%. Our hope was to get the Secretary of Finance on board with support of the Governor's Office and discussions are ongoing at this point. Also, we may need to reach out to the Office of the Attorney General for a legal opinion regarding whether an entity could agree to settle for a formula that is less than the full amount of the past due statutorily required 1% (see discussion above) and if so, which entity would have that authority to make an agreement for past due amounts in violation of the statute.

Again, we apologize in the delay to our response but we cannot agree to the MOU in its current form. We do hope to continue to work together to resolve the 1%.

Sincerely,

Ashley Kost
OPA Legal Counsel

Cc: Michael Pai, OPA
David Blake, OPA

A-5

Commonwealth of the Northern Mariana Islands
Office of the Attorney General
2nd Floor Hon. Juan A. Sablan Memorial Bldg.
Caller Box 10007, Capitol Hill
Saipan, MP 96950

EDWARD MANIBUSAN
Attorney General

LILLIAN A. TENORIO
Deputy Attorney General

January 26, 2016

OAGCPA: 2016-03

Maryann Q. Lizama
Executive Director
Commonwealth Ports Authority
PO Box 501055
Saipan, MP 96950

Re: Position and Proposal from Commonwealth Ports Authority on Liability for Fee Due to the Public Auditor Pursuant to 1 CMC § 7831(b)

Dear Executive Director Lizama:

This letter is in response to your letter of November 30, 2015, in which you assert that because the Commonwealth Ports Authority, a public corporation of the Commonwealth Government, retained an alternate auditor to conduct its audits pursuant to 1 CMC § 2306(b), it would be inequitable to require CPA to pay the full amount of the auditing fee imposed by 1 CMC § 7831(b).

As your letter points out that "CPA acknowledges the statutory requirement of payment to OPA regardless of whether audits are conducted by OPA or pays for its independent audit...," there is also no constitutional, statutory, or regulatory requirement for the Office of the Public Auditor to use the funds it collects from a particular agency to fund an audit of that agency. You suggested an equitable exemption. The Legislature has not enacted an equitable exemption to the auditing fee. Unless it does so, the Office of the Attorney General is unable to read such an exemption into the statute.

Your letter also suggests that claims past the six year statute of limitations imposed by 7 CMC § 2505 are barred. We do not believe that there is any limitations bar to a subsequent action by OPA or the Commonwealth to compel the payment of the disputed funds. Such an action would essentially compel the performance of CPA's public duty to remit the funds to OPA. We take note of the common law doctrine of *nullum tempus occurrit regi* that would prevent the application of statutes of limitations against the state unless the statute so provides. *See generally Shootman v. Dep't of Transp.*, 926 P.2d 1200, 1202 1207 (Colo. 1996) (providing historical overview of the doctrine). In reviewing 7 CMC § 2505, no such provision was found. As such, we do not believe that action to enforce the 1% statute by OPA and compel CPA to transfer the disputed funds would be barred by the statute of limitations.

Lastly, you request that CPA pay OPA at the rate of 0.01% of its total operations budget, or $1,300.00. OAG does not possess detailed financial information for CPA or for OPA, nor does it have the auditing expertise to determine whether CPA's proposed payments are sufficient to meet OPA's needs. Therefore, it would not be appropriate for OAG to determine whether CPA's proposal is "balanced and fair." However, if CPA and OPA were to determine a mutually acceptable payment rate pursuant to 1 CMC § 7831(b), OAG would not object to the settlement.

Sincerely,

EDWARD MANIBUSAN
Attorney General

cc: Deputy Attorney General
Office of the Public Auditor

COMMONWEALTH PORTS AUTHORITY
Main Office: FRANCISCO C. ADA/SAIPAN INTERNATIONAL AIRPORT
P.O. BOX 501055, SAIPAN, MP 96950-1055
Phone: (670) 237-6500/1 • Fax: (670) 234-5962
E-mail Address: cpa.admin@pticom.com
Website: www.cpa.gov.mp

November 30, 2015

Mr. Edward Manibusan
Northern Mariana Islands Attorney General
Office of the Attorney General
Administration Building
P.O. Box 10007
Saipan, MP 96950

RE: Position and Proposal from Commonwealth Ports Authority on Liability for Fee Due to the Public Auditor Pursuant to 1 CMC § 7831(b)

Dear Attorney General Edward Manibusan:

On June 24, 2015, Deloitte & Touche LLC issued for the Commonwealth Ports Authority ("CPA") in accordance with government auditing standards, an independent auditors' report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements of CPA. CPA pays for this yearly audit and submits it to several agencies, including the Office of the Public Auditor ("OPA").

This report revealed an alleged recovery of liability due to OPA, as follows:

> Public Law 9-66 requires public corporations or other autonomous agencies to pay to the Commonwealth Treasurer an amount not less than one percent of total operation budgets, and such funds will be deposited into a special account of the CNMI general fund to be solely used for the operations and activities of the Office of the Public Auditor.
>
> At September 30, 2014 and 2013, OPA recorded amounts due to the CNMI government related to the 1% Public Auditor fee totaling $725,561 and $2,073,592, respectively. This liability increases each fiscal year as mandated by Public Law 9-66 and has accumulated in excess of ten years without payment. Based on the advice from legal counsel, CPA applied the six year statute of limitations against the accumulated liability and recognized a recovery of $1,475,196 during the year ended September 30, 2014.

CPA herein submits its position and proposal with regard to its liability pursuant to 1 CMC § 7831(b), and requests the review and opinion of the Attorney General on the matter.

Legal Standards

1 CMC § 7821 requires OPA to "conduct or supervise all audits required for or sought by a Commonwealth Agency.[1] 1 CMC § 7831(b) requires public corporations or other autonomous agencies, like CPA, to pay to OPA either one percent of its total operations budget from sources other than legislative appropriations, or an amount determined by another formula agreed upon by OPA and the agency, whichever amount is greater.[2]

1 CMC § 7831 is silent as to the purpose of requiring autonomous agencies and public corporations to pay this fee. If a statute is unclear, one must look to the intent of the legislature. *Aguon v. Marianas Pub. Land Corp.*, 2001 MP 4 ¶ 30 (citing *Commonwealth Ports Auth. v. Hakubotan Saipan Enter., Inc.*, 2 NMI 212, 224 (1991) ("In determining legislative intent, the statute must be read as a whole, and not as isolated words contained therein."). Public Law 9-68 is similarly silent as to the purpose of requiring autonomous agencies and public corporations to pay this fee.[3]

Although not specifically stated, common sense would suggest that the purpose of the fee is to fund OPA in order for it to conduct audits of government agencies. In support of that assertion, 1 CMC § 2306 provides that in the event OPA fails to timely conduct an audit, the agency, with the approval of the Governor and OPA and subject to the availability of funds, may enter into a contract with any independent certified public accountant for the purpose of conducting the audit.[4]

---

[1] "The office of the Public Auditor shall conduct or supervise all audits required for or sought by a Commonwealth agency." 1 CMC § 7821.

[2] 1 CMC § 7831(b) (in relevant part):

> The executive directors of all public corporations or other autonomous agencies of the Commonwealth which are not funded primarily by legislative appropriations shall pay to the Public Auditor an amount not less than the greater of one percent of its total operations budget from sources other than legislative appropriations or pursuant to any other formula upon which the Public Auditor and the agency may agree.

[3] Public Law 9-68 Section 1(a)-(b):

> (a) Short Title. This Act shall be called the "Public Auditor Amendments Acts of 1994."
> (b) Purpose. It is the purpose of this Act to grant the Office of the Public Auditor greater independence and authority with respect to the executive branch and independent agencies of the Commonwealth Government. This Act also conforms the Commonwealth Auditing Act of 1983, 1 CMC Section 7811, et seq., and other provisions of the Commonwealth law to the recently adopted Constitutional Amendment of Article III, Section 12 (Public Auditor) of the Commonwealth Constitution.

[4] 1 CMC § 2306(b):

> If the Public Auditor fails to schedule an audit so that it can be completed in time to comply with any applicable law or the terms of any loan, grant, financial assistance, or contract, or if the Public Auditor fails to commence, conduct, or complete any audit as required by law, the person or agency concerned may, upon the approval of the Governor and Public Auditor and subject to the availability of funds, enter into a contract with any independent certified public accountant for the purpose of conducting the audit. The audit shall be conducted as closely as possible to the standards adopted by the office of the Public Auditor.

Audits, therefore, statutorily should be paid for by OPA, which is funded by payments by other agencies for which OPA is required to conduct audits.

With this statutory overview in mind, CPA posits its analyses and position on the following issues: 1) the equitability and legality of imposing this fee on CPA going forward; and 2) the equitability and legality of imposing this fee on CPA for amounts due in excess of ten years.

A. Equitability and Legality of Imposing this Fee on CPA Going Forward

CPA's bond indenture requires an audit by an independent auditor. Because of this requirement, CPA already, out of necessity, pays an independent auditor to conduct audits. CPA then submits this report to various agencies for review, including OPA. OPA has received these reports from CPA and publishes them on its website, without dispute or issue. OPA has not ever conducted audits of CPA as required by statute.

While CPA acknowledges the statutory requirement of payment to OPA regardless of whether audits are conducted by OPA and regardless of whether it already pays for its own independent audits, the issue does raise equitable concerns: 1) CPA is already required to pay for an independent audit – it would be duplicative, unnecessary, and wasteful to require CPA to pay OPA for an audit it does not need; and 2) CPA has never audited OPA – why should CPA pay for audits it does not, and has not ever, received?

B. Equitability and Legality of Imposing this Fee on CPA for Amounts Due from the Past Ten Years

OPA has never requested nor demanded this fee payment from CPA and CPA has not paid this amount. Although 1 CMC § 7831(b) does not require OPA to make a demand for payment in order to trigger payment, it brings into question the equitability of requiring CPA to pay for fees OPA has never requested, for audits which OPA has never conducted.

Additionally, the report errs in its claim that Public Law 9-66 imposes an accumulated and increased liability with each fiscal year. First, Public Law 9-66 was repealed and re-enacted by Public Law 9-68. Second, neither Public Law 9-66, Public Law 9-68, nor does the statute itself, impose an increased liability with each year.

Further, 1 CMC § 2306 provides an avenue for CPA to have an audit timely conducted if OPA fails to do so. Although 1 CMC § 2306 contains three requirements (approval of OPA, approval of the Governor, and availability of funds), OPA constructively agreed upon the auditor used by CPA when it accepted reports from CPA from this auditor without question or dispute, and the availability of funds is a non-issue as CPA has always paid for these audits out of its own pocket and has never charged OPA for them. 1 CMC § 2303(a) requires OPA to transmit an annual report to the Governor and the presiding officer of each house of the legislature, which should consist of a financial audit of each agency's fund, whether or not it is appropriated.[5] OPA

failed to conduct audits and then used the reports CPA paid for out of its own pocket and without a demand by CPA to pay, in order for OPA to comply with reporting requirements. It would be inequitable for OPA to then turn around and penalize CPA for taking the initiative to conduct its own audits in light of OPA's failure to do so.

Furthermore, the cost to CPA for paying for its own audits is substantially less than 1% of CPA's operating budget. CPA's operating budget is $13,074,450. Imposing at least 1% just for a single year would be $130,745. What is the basis for imposing such a weighty fee for an audit?

CPA's operating budget is significantly more than other operating budgets of government agencies by department. Yet the statute lumps CPA along with other government agencies in imposing the same amount of liability, failing to take into account the actual cost of the audit and the actual amount of CPA's operating budget. Requiring CPA to pay a significantly higher fee for the same audit OPA does for other government agencies is wholly disproportionate and arbitrary. Also, OPA has never conducted an audit for CPA: imposing fees in excess of ten years would result in a windfall of about $2,000,000.00 to OPA for work that was not done, and would potentially affect CPA's bond indenture. Such a result is unjust and unmerited.

Lastly, a claim for past fees in excess of ten years would be barred by 7 CMC § 2505, which provides for a six-year statute of limitations.[6] CPA has never made a claim for payment pursuant to 1 CMC § 7831(b). Any claim that might be made now for lack of payment in excess of ten years is barred as of approximately four years ago.

Position and Proposal

CPA is required by statute to pay either 1% of its total operations budget or another amount pursuant to a formula agreed upon by OPA and CPA, whichever is greater. From an equitable basis, CPA should not be held liable for the past years in which it did not pay for audits which OPA did not conduct and CPA should not be required to pay such a wholly disproportionate amount in comparison to the actual cost of an audit and in comparison to payments from other

---

[5] 1 CMC § 2303(a):

> Not later than June 30 of each year, the Public Auditor shall transmit to the Governor and to the presiding officer of each house of the legislature the annual report for the previous fiscal year required by N.M.I. Const. art. III, § 12. The report shall consist of a financial audit of the General Fund, each trust fund, each other fund of any agency whether or not appropriated, each contract to which any agency is a party, and each grant made or received by any agency. The audit shall cover the receipt, possession, and disbursement of public funds including all liabilities, receivables, and accruals of any agency, all taxes, fees, receipts, and other revenues of any agency, all other financial transactions involving any agency, and any financial statement issued or prepared by any agency. Personal service contracts and prime contracts with employees of any agency.

[6] 7 CMC § 2505:

> All actions other than those covered in 7 CMC §§ 2502, 2503, and 2504 shall be commenced within six years after the cause of action accrues or, in the case of actions brought by or on behalf of the former Saipan Credit Union or its depositors, shareholders, investors, or guarantors on account of their interest therein, within 10 years after the cause of action accrues.

government agencies. From a legal basis, any claim by OPA would be barred by the six-year statute of limitations and any recovery would be limited accordingly.

In the interests of equity, CPA proposes that the 1% requirement should be waived and that CPA and OPA should agree on a formula or amount that is balanced and fair. CPA proposes a rate of .01% of its total operations budget or $1,300.00.

CPA requests your review of this matter and your opinion. Thank you for your just consideration.

Sincerely,

MARYANN Q. LIZAMA
Executive Director

A-6

U.S. Department
of Transportation
Federal Aviation Administration

Western-Pacific Region
Honolulu Airports District Office

300 Ala Moana Blvd, Rm. 7-128
Honolulu, HI 96850
Mail: 50244
Honolulu, HI Box 96850-0001

May 16, 2022

Christopher S. Tenorio
Executive Director
Commonwealth Ports Authority
Commonwealth of the Northern Mariana Islands
P.O. Box 501055
Saipan, MP 96950-1055

Dear Mr. Tenorio:

Commonwealth of the Northern Mariana Islands
Office of Public Auditor 1% Fee
Revenue Diversion

We reference your letter transmitted to the Federal Aviation Administration (FAA) on April 6, 2022, regarding the CNMI statute that requires the Commonwealth Ports Authority (CPA) to pay 1% of its total operations budget to the CNMI Public Auditor (PA). You state the purpose of the PA is to audit receipts, possessions, and disbursements of public funds by the executive, legislative, and judicial branches of the government, including local agencies such as CPA.

The 1% fee may be considered revenue diversion. Airport revenue must be used for the operations, maintenance and capital improvements of CPA's airports. Revenue diversion could lead to placing CPA in non-compliance and lead to sanctions as prescribed by 2 CFR § 200.505.

CPA may pay for required services (e.g. audit reviews) but the cost for services must be appropriately calculated and documented for costs only related to CPA. The FAA may request review of the calculations/documentation prior to remittance of any airport revenue. Additionally, the accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

Please contact me at (808) 312-6027 or Gordon.Wong@faa.gov, if you have further questions concerning this matter.

Sincerely,

Gordon K. Wong
Airports District Office Manager

cc: Mark McClardy, FAA Airports Director, Western-Pacific region

COMMONWEALTH PORTS AUTHORITY
Main Office: FRANCISCO C. ADA SAIPAN INTERNATIONAL AIRPORT
P.O. Box 501055, Saipan, MP 96950-1055
Phone: (670) 237-6500/1 Fax: (670) 234-5962
E-mail Address: cpa.admin@pticom.com
Website: www.cpa.gov.mp

Mr. Gordon Wong
Airports District Office Manager
Federal Aviation Administration
P.O. Box 50244
Honolulu, HI 96850-0001

RE: Unlawful Revenue Diversion

Dear Mr. Gordon Wong,

The Commonwealth Ports Authority (CPA) is seeking guidance from the FAA airport district office and/or regional office on whether airport revenue can be used to make payment under a local Commonwealth of the Northern Mariana Islands (CNMI) statute.

CPA understands that the rules on airport revenue require CPA to use its airport revenue for the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by CPA that are directly and substantially related to the air transportation of passengers or property.

Additionally, CPA understands that allowable costs may include reimbursements to a state or local agency for the costs of services actually received and documented; that CPA may pay for a portion of the general costs of government, provided that CPA allocates such costs to the airport in accordance with an acceptable cost allocation plan; and that the FAA may require special scrutiny of allocated costs to assure that the airport is not paying a disproportionate share.

According to the CNMI Public Auditor, a CNMI statute, 1 CMC § 7831(b), requires CPA to pay to the CNMI Public Auditor an amount not less than one percent of its total operations budget.[1] The purpose of the CNMI Public Auditor is to audit the receipt, possession, and disbursement of public funds by the executive, legislative, and judicial branches of the government, including agencies of local government and instrumentalities of the Commonwealth, such as CPA. Despite this purpose, the CNMI Public Auditor does not provide any auditing services to CPA or any other service to CPA that can be tied to a tangible monetary value. At best, the benefit CPA receives from the CNMI Public Auditor is increased accountability and integrity in public sector organizations. If CPA were to pay the CNMI Public Auditor 1% of its airport total operations budget, which consists entirely of airport revenue, CPA would pay, on average, $124,000 annually.

Additionally, according to the CNMI Public Auditor, past amounts due to the CNMI Public Auditor are owed to the CNMI General Fund, which is controlled by an agency within the

[1] Because this statute was enacted after September 1982, CPA believes that this financial arrangement is not "grandfathered" in under 49 U.S.C. § 47107(b)(2).

executive branch of the CNMI government. CPA's past due amounts owed to the CNMI General Fund total $1,885,682. CPA has never received funding from the CNMI General Fund.

Because the CNMI Public Auditor does not provide any auditing services to CPA or any other service to CPA that can be tied to a tangible monetary value, CPA is concerned that payment to the CNMI Public Auditor of approximately $124,000 annually constitutes at least two examples of unlawful revenue diversion: paying in excess of the value of goods or services the airport receives and improper cost allocation. Similarly, because CPA has never receive funds from the CNMI General Fund, CPA is concerned that the payment of $1,885,682 owed to the CNMI Public Auditor but remitted to the CNMI General Fund constitutes at least three examples of unlawful revenue diversion: using airport revenue for general economic development activities, paying in excess of the value of goods or services the airport receives, and improper cost allocation.

For the foregoing reasons, CPA is seeking FAA's guidance on whether payment of 1% of its airport operations budget to the CNMI Public Auditor violates the statutes, grant assurances, and policies that outline the permitted and prohibited uses of airport revenue.

Sincerely,

CHRISTOPHER S. TENORIO
Executive Director

Attachments: 1 CMC § 7831
CNMI Public Law No. 9-68

A-7

MEMORANDUM OF AGREEMENT

On this the 11 day of July 2003, Chairman Herman P. Sablan, on behalf of the Commonwealth Utilities Corporation Board of Directors, and Robert Schrack, Acting Secretary of the Department of Finance, agree as follows:

WHEREAS, it is the shared goal of the Commonwealth Utilities Corporation Board of Directors and the Executive Branch of the Commonwealth Government to assure delivery of the utility services that underpin the Commonwealth economy and are essential to the quality of life of every individual inhabitant of the Northern Marianas; and

WHEREAS, both the Commonwealth Utilities Corporation Board of Directors and the Executive Branch of the Commonwealth Government have the responsibility to maintain fiscal responsibility and full compliance with the laws of the Commonwealth; and

WHEREAS, 1 CMC §7831 provides for the executive director of the Commonwealth Utilities Corporation to pay to the Public Auditor at least one percent of the Corporation's total operations budget from sources other than legislative appropriations; and

WHEREAS, subsequent to the October 31st, 1995 effective date of 1 CMC §7831, and through September 30, 2002 (the Fiscal Years 1996 to 2002, inclusive), the Corporation's total operations budget has been $441,784,743; and

WHEREAS, actual payments to the Public Auditor by the Corporation for Fiscal Years 1996 to 2002, inclusive, totaled $420,000; and

WHEREAS, a balance of $3,997,847 is, therefore, owed by the Corporation for Fiscal Years 1996 to 2002, inclusive, pursuant to 1 CMC §7831, an accounting of which balance, prepared by the Department of Finance and the Office of Public Auditor, is attached hereto as Attachment A; and

WHEREAS, for the billing periods beginning October 2002 and ending May 2003, inclusive, the Corporation has charged the Commonwealth Government the amount of $7,114,562.38, an accounting of which charges, prepared by the Department of Finance, is attached hereto as Attachment B;

NOW THEREFORE, it is understood and agreed by the parties hereto that:

I. The Commonwealth Utilities Corporations pays to the General Fund of the Commonwealth in accordance with 1 CMC §7831 the amount of $3,997,847;

II. The Executive Branch of the Commonwealth Government pays to the Commonwealth Utilities Corporation the amount of $3,997,847 in partial payment of utility services provided to the Commonwealth Government since October 1, 2002.

III. Pursuant to 1 CMC §7831 the Commonwealth Utilities Corporation agrees to pay to the Public Auditor one percent of the Corporation's Fiscal Year 2003 total operations budget by November 1, 2003.

IV. The Executive Branch of the Commonwealth Government agrees to pay to the Commonwealth Utilities Corporation the full sum of payments made to the Public Auditor pursuant to paragraph III., above, by November 1, 2003, as payment for any outstanding amount owed by the Government to the Corporation for utility services provided in Fiscal Year 2003, or, in the event that such sum exceeds the amount owed for Fiscal Year 2003, for any prior Fiscal Years' utility service provided to the Government.

Robert A. Schrack
Robert Schrack
Acting Secretary of Finance

Herman P. Sablan
Chairman, Board of Director

Francisco Q. Guerrero
Vice Chairman, Board of Directors

Laura I. Manglona
Treasurer, Board of Directors

Velma Ann M. Palacios
Member, Board of Directors

Joseph T. Torres
Member, Board of Directors

IV. The Executive Branch of the Commonwealth Government agrees to pay to the Commonwealth Utilities Corporation the full sum of payments made to the Public Auditor pursuant to paragraph III., above, by November 1, 2003, as payment for any outstanding amount owed by the Government to the Corporation for utility services provided in Fiscal Year 2003, or, in the event that such sum exceeds the amount owed for Fiscal Year 2003, for any prior Fiscal Years' utility service provided to the Government.

Robert Schrack
Acting Secretary of Finance

Herman P. Sablan
Chairman, Board of Director

Francisco Q. Guerrero
Vice Chairman, Board of Directors

Laura I. Manglona
Treasurer, Board of Directors

Velma Ann M. Palacios
Member, Board of Directors

Joseph T. Torres
Member, Board of Directors

Attachment "A"

JUL-15-03 10:57 FROM ID: PAGE 7/11

OFFICE OF THE PUBLIC AUDITOR

1% Funding Entitlements from Autonomous Agencies

Schedule B

(See "Miscellaneous 1" for supporting details)

	1996	1997	1998	1999	2000	2001	2002	TOTAL
CUC Annual Budget	46,840,197	50,828,810	62,737,598	66,909,693	68,356,000	68,356,000	67,856,446	441,784,743
OPA 1%	468,402	508,288	627,376	669,097	683,560	683,560	678,564	4,417,847
Actual Collections -Reconciled	60,000	60,000	60,000	60,000	60,000	60,000	60,000	420,000
No' Collectible	408,402	548,288	567,376	609,097	623,560	623,560	618,564	3,997,847

07/10/2003 THU 10:59 FAX 6700041119 OFFICE OF THE PUBLIC

Attachment "B"

DEPARTMENT OF FINANCE
CNMI GOVERNMENT UTILITY CHARGES
FISCAL YEAR 2003

BILLING PERIOD	BRANCH/AGENCY	BILLING AMOUNT
OCT. '02	EXE.(Saipan, cycle 1,2,& 3)	396,382.90
OCT. '02	EXE.(Tinian)	64,807.68
OCT. '02	EXE.(Rota)	58,784.34
OCT. '02	LEGISLATIVE	22,660.60
OCT. '02	JUDICIAL(Saipan)	20,473.00
OCT. '02	JUDICIAL(Tinian)	1,287.92
OCT. '02	PSS (Saipan, cycle 1, 2 & 3)	240,888.05
OCT. '02	PSS (Tinian)	34,064.21
OCT. '02	PSS (Rota)	29,192.26
OCT. '02	NMC (Saipan, cycle 1 & 2)	56,498.16
OCT. '02	NMC (Tinian)	3,061.76
OCT. '02	NMC (Rota)	4,334.32
		$932,435.20
NOV. '02	EXE.(Saipan, cycle 1, 2 & 3)	422,089.21
NOV. '02	EXE.(Tinian)	46,715.86
NOV. '02	EXE.(Rota)	50,164.03
NOV. '02	LEGISLATIVE	22,660.60
NOV. '02	JUDICIAL(Saipan)	22,361.00
NOV. '02	JUDICIAL(Tinian)	1,099.54
NOV. '02	PSS (Saipan, cycle 1, 2 & 3)	243,622.82
NOV. '02	PSS (Tinian)	26,297.88
NOV. '02	PSS (Rota)	15,287.64
NOV. '02	NMC (Saipan, cycle 1 & 2)	43,585.36
NOV. '02	NMC (Tinian)	1,894.40
NOV. '02	NMC (Rota)	3,089.74
		$898,868.08
DEC. '02	EXE.(Saipan, cycle 1, 2 & 3)	391,102.54
DEC. '02	EXE.(Tinian)	58,916.02
DEC. '02	EXE.(Rota)	34,485.56
DEC. '02	LEGISLATIVE	22,660.60
DEC. '02	JUDICIAL(Saipan)	22,169.00
DEC. '02	JUDICIAL(Tinian)	1,902.02
DEC. '02	PSS (Saipan, cycle 1, 2 & 3)	210,085.13
DEC. '02	PSS (Tinian)	32,687.96
DEC. '02	PSS (Rota)	26,754.30
DEC. '02	NMC (Saipan, cycle 1 & 2)	40,822.48
DEC. '02	NMC (Tinian)	2,566.40
DEC. '02	NMC (Rota)	5,212.84
		$849,364.85
JAN. '03	EXE.(Saipan, cycle 1, 2 & 3)	369,966.40
JAN. '03	EXE.(Tinian)	56,462.80
JAN. '03	EXE.(Rota)	35,132.60
JAN. '03	LEGISLATIVE	22,660.60

BILLING PERIOD	BRANCH/AGENCY	BILLING AMOUNT
JAN.'03	JUDICIAL(Saipan)	19,225.00
JAN.'03	JUDICIAL(Tinian)	1,698.26
JAN.'03	PSS (Saipan, cycle 1, 2 & 3)	203,448.04
JAN.'03	PSS (Tinian)	18,395.52
JAN.'03	PSS (Rota)	31,420.68
JAN.'03	NMC (Saipan, cycle 1 & 2)	39,998.32
JAN.'03	NMC (Tinian)	2,269.24
JAN.'03	NMC (Rota)	3,527.76
		$804,205.22
FEB '03	EXE. (Saipan cycle, 1, 2, & 3)	$395,868.84
FEB '03	EXE. (Tinian)	$71,960.80
FEB '03	EXE. (Rota)	$27,458.78
FEB '03	LEGISLATIVE	$22,660.60
FEB '03	JUDICIAL(Saipan)	$21,113.00
FEB '03	JUDICIAL(Tinian)	$2,239.30
FEB '03	PSS (Saipan, cycle 1, 2 & 3)	$279,952.19
FEB '03	PSS (Tinian)	$32,004.56
FEB '03	PSS (Rota)	$25,432.12
FEB '03	NMC (Saipan, cycle 1 & 2)	$41,112.08
FEB '03	NMC (Tinian)	$2,618.44
FEB '03	NMC (Rota)	$3,153.04
		$925,573.75
MAR.'03	EXE. (Saipan cycle, 1, 2, & 3)	$402,684.40
MAR.'03	EXE. (Tinian)	$62,680.22
MAR.'03	EXE. (Rota)	$30,608.10
MAR.'03	LEGISLATIVE	$22,660.60
MAR.'03	JUDICIAL(Saipan)	$22,073.00
MAR.'03	JUDICIAL(Tinian)	$2,144.64
MAR.'03	PSS (Saipan, cycle 1, 2 & 3)	$213,051.77
MAR.'03	PSS (Tinian)	$30,614.80
MAR.'03	PSS (Rota)	$26,394.98
MAR.'03	NMC (Saipan, cycle 1 & 2)	$40,823.44
MAR.'03	NMC (Tinian)	$2,603.28
MAR.'03	NMC (Rota)	$2,633.68
		$858,972.91
APR. '03	EXE. (Saipan cycle, 1. 2. & 3)	$444,935.78
APR. '03	EXE. (Tinian)	$61,967.38
APR. '03	EXE. (Rota)	$40,756.99
APR. '03	LEGISLATIVE	$22,660.60
APR. '03	JUDICIAL(Saipan)	$25,433.00
APR. '03	JUDICIAL(Tinian)	$2,197.26
APR. '03	PSS (Saipan, cycle 1, 2 & 3)	$237,145.77
APR. '03	PSS (Tinian)	$22,506.68
APR. '03	PSS (Rota)	$25,139.02
APR. '03	NMC (Saipan, cycle 1 & 2)	$45,932.72
APR. '03	NMC (Tinian)	$2,851.00
APR. '03	NMC (Rota)	$2,676.40
		$934,202.60

BILLING PERIOD	BRANCH/AGENCY	BILLING AMOUNT
MAY '03	EXE. (Saipan cycle, 1, 2, & 3)	$413,027.02
MAY '03	EXE. (Tinian)	$85,967.54
MAY '03	EXE. (Rota)	$52,130.20
MAY '03	LEGISLATIVE	$22,660.60
MAY '03	JUDICIAL(Saipan)	$23,609.00
MAY '03	JUDICIAL(Tinian)	$1,698.18
MAY '03	PSS (Saipan, cycle 1, 2 & 3)	$211,529.07
MAY '03	PSS (Tinian)	$21,172.44
MAY '03	PSS (Rota)	$30,810.44
MAY '03	NMC (Saipan, cycle 1 & 2)	$42,398.96
MAY '03	NMC (Tinian)	$2,032.56
MAY '03	NMC (Rota)	$3,503.76
		$910,939.77

TOTAL UTILITIES THRU MAY '03: **$7,114,562.38**

AVERGAGE UTILITIES PER MONTH: **$889,320.30**

COMMONWEALTH DEVELOPMENT AUTHORITY

P.O. BOX 502149, SAIPAN MP 96950
Tel.: (670) 234-6245/6293/7145/7146 • Fax: (670) 234-7144 or 235-7147
Email: administration@cda.gov.mp • Website: www.cda.gov.mp

April 11, 2007

RECEIVED
APR 12 2007

Mr. Michael S. Sablan
Public Auditor
Office of the Public Auditor
Commonwealth of the Northern Mariana Islands
1236 Yap Drive
Capital Hill
Saipan, MP 96950

Dear Mr. Sablan:

The CDA Board of Directors has approved to settle the 1% Budget submission to OPA with an offset on the billing of the Kumagai Case. After doing the calculation, we came up with a net total of $73,771.44. Because this unexpected expenditure was not accounted for in FY2007 Budget, CDA has decided to pay the amount due to OPA through CNMI Treasury on a three monthly incremental basis of $24,590.48. Beginning with FY2008 Budget, it will be remitted regularly on an annual basis. Please see the attached worksheet of the legal billings on the Kumagai Case that were paid by CDA.

Summary:	
Total Budget from FY1996 to FY2007:	$18,826,361.00
Total 1% Budget Allocation from FY1996 to FY2007:	188,264.00
Less payment for FY1996:	(13,796.00)
Less Kumagai Case offset paid by CDA (see attached):	(100,696.56)
Net Amount Due to OPA – 1% Budget allocation as of FY2007:	**$73,771.44**

Enclosed please find Check #27001 in the amount of $24,590.48. This is for the first incremental payment for April 2007. Remittance will be submitted monthly thereafter until the amount of $73,771.44 is fully paid.

Thank you for your patience and understanding as we try to fulfill this financial obligation to OPA. Should you have any questions, please feel free to contact our office.

Sincerely,

OSCAR C. CAMACHO
Acting Chief Executive Officer

cc: Mr. Eloy Inos, Secretary of Finance
Office Manager
Accounting Staff

Enclosure: Check #27001 & Worksheet

Commonwealth Development Authority
PO Box 502149
Saipan, MP 96950

Overall Billing Summary on the Kumagai Case incurred by different law firms and paid by the Commnwealth Development Authority

Law Firm	Amount	Comments
C/O Bank of Guam		
Arriola, Cowan & Arriola	88,556.33	
Torres Brothers	12,869.46	
Sub-Total:	101,425.79	
Less 15% discount	-15,213.87	
Total due to Bank of Guam	**86,211.92**	$43,230.17 paid on 07/19/06 by Ck#26132
		$42,981.76 paid on 11/14/06 by Ck#26564
Salas Law Office:	4,944.75	DEC05 Paid on 02/16/06 by Check #25623
	3,305.89	JAN06 Paid on 03/02/06 by Check #25719
	1,155.75	FEB06 Paid on 05/25/06 by Check #25983
	1,841.00	MAR06 Paid on 06/08/06 by Check #26024
	843.75	APR06 Paid on 06/14/06 by Check #26043
	1,400.50	MAY06 Paid on 07/06/06 by Check #26120
	303.75	JUN06 Paid on 08/23/06 by Check #26267
	0.00	JUL06 NONE
	0.00	AUG06 NONE
	0.00	SEP06 NONE
	187.50	OCT06 Paid on 03/02/06 by Check #25719
	501.75	NOV06 Paid on 03/02/06 by Check #25719
Total due to Salas Law Office:	**14,484.64**	
Grand Total CDA paid for Kumagai Case:	**100,696.56**	

Note: There were no billings incurred up to February 2007.

Prepared by: Winnie C. Camacho
Financial Administrator

COMMONWEALTH DEVELOPMENT AUTHORITY

27001

DATE	INVOICE NO	COMMENT	AMOUNT
04/01/07	0704	APR07 1% OPA Budget 1st PYMT	24,590.48

CHECK: 027001 04/11/07 CNMI Treasury CHK TOTAL: 24,590.48

27001

COMMONWEALTH DEVELOPMENT AUTHORITY
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
OPERATIONS ACCOUNT
P.O. BOX 502149
SAIPAN, MP 96950

BANK OF GUAM
SAIPAN, CNMI 96950
101-511/1214

027001

*TWENTY FOUR THOUSAND FIVE HUNDRED NINETY DOLLARS AND 48 CENTS

DATE 04/11/07

AMOUNT ****24,590.48*

PAY TO THE ORDER OF
CNMI Treasury
PO Box 5234 CHRB
Saipan MP 96950

AUTHORIZED SIGNATURE

Details on Back. Security Features Included

⑈027001⑈ ⑆121405115⑆ 0603⑈000260⑈

Timeline

November 30, 2015-	CPA request letter to OAG for a legal opinion regarding the 1% (statute of limitations and .01%)
January 26, 2016-	OAG issues legal opinion stating statute of limitations does not apply and declines to decide if .01% ($1,300.00) is "reasonable and fair"
February 2016-	OPA and CPA meeting regarding the 1%
April 6, 2016-	CPA emails OPA to inquire on deducting auditing fees from the 1% due to OPA. The Public Auditor does not have the legal authority to agree to change the past due amounts because the funds are due to the General Fund not OPA so the Secretary of Finance would have to agree. (This issue still needs to be addressed).
March 16, 2017-	Receive MOU and Escrow documents from CPA suggesting .01%
April 26, 2017-	Former SOF, emails CPA regarding payments of their past due 1%
April 28, 2017-	CPA follows up with OPA regarding a response to their .01% suggestion
November 14, 2017-	CPA follows up on OPA's silence .01% offer.
November 21, 2017-	Letter from OPA to CPA responding to proposed MOU sent March 16, 2017. Law states greater of 1% or other amount agreed by OPA and agency.
July 12, 2018-	CPA emails regarding meeting with OPA to discuss the 1%.
July 18, 2018-	OPA responds via email referring back to our 2017 letter, repeating OPA can't agree to any amounts due past the current fiscal year and need to get the SOF involved for negotiations. Former Public Auditor agreed to deducting audit fees from 1% owed to CPA but cannot agree to past due amounts from prior years.
July 24, 2018-	CPA emails and states OPA numbers don't match theirs and provides a spread sheet the next day with a footnote referring to statute of limitations (OAG opinion to CPA in 2015 said it didn't apply).
January 31, 2019-	CPA requests to reconcile spreadsheets (statute of limitations footnote is still there).
April 29, 2019-	HB 21-40- To exempt NMC from paying the 1% is introduced.

March 05, 2020	SB 21-54- To exempt CPA from paying the 1% is introduced.
May 18, 2021	SB 22-51- To exempt all CNMI autonomous agencies and public corporations from paying the 1% is introduced.
May 25, 2022	HB 22-102- To exempt all CNMI autonomous agencies and public corporations from paying the 1% is introduced.

CNMI Office of the Public Auditor

Summary of OPA calculation of 1% Public Auditor Fee

As of Fiscal Year 2017 through 2022

Purpose: To summarize OPA's calculation of 1% payable by each agency per fiscal year based on 1% of agencies' total operating expenses reported in their financial audit reports.

			Net Annual Amount Due Per Fiscal Year					
Agency	**Initials**	*Total due as of 2017*	2018	2019	2020	2021	2022	TOTAL
Commonwealth Utility Corporation	CUC	$ 14,763,371	$ 919,659	$ 1,433,511	$ 1,298,440	$ 903,802	$ 757,394	$ 20,076,177
Commonwealth Ports Authority	CPA	4,230,166	310,983	314,925	285,738	172,237	156,793	$ 5,470,841
Commonwealth Development Authority	CDA	2,356,252	114,420	86,325	15,319	14,328	(28,676)	$ 2,557,967
Marianas Public Land Trust	MPLT	179,659	11,101	12,112	11,059	-	-	$ 213,932
Commonwealth Healthcare Corporation	CHC	2,757,948	(7,013)	(22,960)	889,764	964,456	1,074,207	$ 5,656,402
Marianas Visitors Authority	MVA	1,011,051	146,208	112,607	64,064	109,663	53,111	$ 1,496,705
Northern Marianas College	NMC	2,394,531	128,827	117,775	118,971	5,393	30,827	$ 2,796,324
Public School System	PSS	3,940,080	554,755	-	-	-	-	$ 4,494,835
Commonwealth Casino Commission	CCC	28,367	29,720	27,206	31,385	32,988	31,911	$ 181,576
TOTAL		**$ 31,661,425**	**$ 2,208,660**	**$ 2,081,501**	**$ 2,714,741**	**$ 2,202,866**	**$ 2,075,567**	**$ 42,944,760**

NOTE	DESCRIPTION
General	Amounts highlighted in gray mean 1% was assessed against agency budgets reported in the appropriation act, net of withheld amounts by DOF if any, for the fiscal year until the agency's financial audit report becomes available. The 1% assessments for these fiscal years will be updated as soon as financial audit reports become available.

A-9

CNMI Office of the Public Auditor
One Percent Public Auditor Fee
Commonwealth Utilities Corporation

OPA Methodology: CUC's Public Auditor fee due to the CNMI for fiscal years 1996 to 2019 is based on 1% of actual expenditures reported in your agency's annual financial audit reports. Audited figures of the annual financial audit reports provide for an accurate and consistent assessment of the Public Auditor fee. CUC's Public Auditor fee due for fiscal years 2020 to 2022 are based on 1% of CUC's budgets presented in the annual appropriation acts which will be adjusted as soon as your agency's financial audit reports become available.

		1% DUE FROM CUC		
Fiscal Year	Total Amount Subject to 1% **A**	1% Assessment	Payments Made	Net 1% Due
1996	57,733,133	577,331	$ -	$ 577,331
1997	59,053,869	590,539	45,000	545,539
1998	53,795,636	537,956	50,000	487,956
1999	55,189,993	551,900	60,081	491,819
2000	76,442,964	764,430	50,010	714,420
2001	75,335,977	753,360	30,000	723,360
2002	72,312,473	723,125	-	723,125
2003	73,124,726	731,247	3,997,847	(3,266,600) **B**
2004	86,864,787	868,648	-	868,648
2005	96,180,475	961,805	-	961,805
2006	109,436,358	1,094,364	-	1,094,364
2007	97,922,901	979,229	-	979,229
2008	118,691,470	1,186,915	-	1,186,915
2009	92,384,017	923,840	-	923,840
2010	94,992,781	949,928	-	949,928
2011	104,967,412	1,049,674	-	1,049,674
2012	107,150,245	1,071,502	-	1,071,502
2013	110,521,155	1,105,212	-	1,105,212
2014	102,949,527	1,029,495	-	1,029,495
2015	85,147,441	851,474	-	851,474
2016	80,312,279	803,123	-	803,123
2017	89,121,255	891,213	-	891,213
2018	91,965,919	919,659	-	919,659
2019	143,351,056	1,433,511	-	1,433,511
2020	129,844,014	1,298,440	-	1,298,440
2021	90,380,185	903,802	-	903,802
2022	75,739,432	757,394	-	757,394
TOTAL	**$ 2,430,911,480**	**$ 24,309,115**	**$ 4,232,938**	**$ 20,076,177**

A Total Amount Subject to 1%: Total operating expenditures reported in CUC's annual financial audit report for the fiscal year. Amounts for FYs 2020 to 2022 reflect CUC's budgets presented in the annual appropriation acts which will be adjusted as soon as CUC's financial audit reports become available.

B CUC Fiscal Year 2003 Audited Financial Statements footnote 6: "During the year ended September 30, 2003, CUC and the CNMI Government, with concurrence of OPA, offset a portion of the liability related to CNMI OPA funding against utility receivables of the CNMI Government. The offset was performed through an exchange of checks for $3,997,847. At September 30, 2003 and 2002, CUC had an outstanding payable to the government in the amount of $588,468 and $3,997,847."

CNMI Office of the Public Auditor
One Percent Public Auditor Fee
Commonwealth Ports Authority

OPA Methodology: CPA's Public Auditor fee due to the CNMI for fiscal years 1996 to 2020 is based on 1% of actual expenditures reported in your agency's annual financial audit reports. Audited figures of the annual financial audit reports provide for an accurate and consistent assessment of the Public Auditor fee. CPA's Public Auditor fee due for fiscal years 2021 to 2022 are based on 1% of CPA's budgets presented in the annual appropriation acts which will be adjusted as soon as your agency's financial audit reports become available.

		1% DUE FROM CPA		
Fiscal Year	Total Amount Subject to 1% **A**	1% Assessment	Payments Made	Net 1% Due
1996	14,219,717	142,197	$ 99,365	$ 42,833
1997	15,804,797	158,048	-	158,048
1998	18,770,136	187,701	-	187,701
1999	17,309,741	173,097	-	173,097
2000	18,439,412	184,394	-	184,394
2001	19,237,798	192,378	-	192,378
2002	20,453,541	204,535	-	204,535
2003	19,091,358	190,914	-	190,914
2004	20,630,337	206,303	-	206,303
2005	21,247,211	212,472	-	212,472
2006	24,109,158	241,092	-	241,092
2007	24,064,633	240,646	-	240,646
2008	22,928,891	229,289	-	229,289
2009	23,878,430	238,784	-	238,784
2010	25,229,600	252,296	-	252,296
2011	24,805,665	248,057	-	248,057
2012	26,057,007	260,570	-	260,570
2013	24,803,446	248,034	-	248,034
2014	24,803,311	248,033	-	248,033
2015	26,324,848	263,248	597,133	(333,885) **B**
2016	28,667,070	286,671	-	286,671
2017	31,790,206	317,902	-	317,902
2018	31,098,302	310,983	-	310,983
2019	31,492,476	314,925	-	314,925
2020	28,573,823	285,738	-	285,738
2021	17,223,674	172,237	-	172,237
2022	15,679,280	156,793	-	156,793
TOTAL	**$ 616,733,868**	**$ 6,167,339**	**$ 696,498**	**$ 5,470,841**

A Total Amount Subject to 1%: Total operating expenditures reported in CPA's annual financial audit report for the fiscal year. Amounts for FYs 2021 to 2022 reflect CPA's budgets presented in the annual appropriation acts which will be adjusted as soon as CPA's financial audit reports become available.

B CPA Fiscal Year 2015 Audited Financial Statement footnote 2: "At September 30, 2015 and 2014, CPA recorded amounts due to the CNMI government related to the 1% Public Auditor fee totaling $1,735,380 and $2,200,757, respectively. During the year ended Sep. 30, 2015, OPA agreed to apply cumulative external audit fees against the amount due to the CNMI government resulting in a recovery of $597,133."

CNMI Office of the Public Auditor
One Percent Public Auditor Fee
Commonwealth Economic Development Authority

OPA Methodology: CEDA's Public Auditor fee due to the CNMI for fiscal years 1996 to 2019 is based on 1% of actual expenditures reported in your agency's annual financial audit reports. Audited figures of the annual financial audit reports provide for an accurate and consistent assessment of the Public Auditor fee. CEDA's Public Auditor fee due for fiscal years 2020 to 2022 are based on 1% of CEDA's budgets presented in the annual appropriation acts which will be adjusted as soon as your agency's financial audit reports become available.

		1% DUE FROM CEDA			
Fiscal Year	Total Amount Subject to 1% **A**	1% Assessment	Payments Made	Net 1% Due	
1996	4,096,371	40,964	$ 13,795	$ 27,169	
1997	5,600,220	56,002	-	56,002	
1998	5,501,702	55,017	-	55,017	
1999	7,494,785	74,948	-	74,948	
2000	6,896,476	68,965	-	68,965	
2001	9,309,746	93,097	-	93,097	
2002	19,700,113	197,001	-	197,001	
2003	8,647,467	86,475	-	86,475	
2004	12,390,677	123,907	-	123,907	
2005	10,949,568	109,496	-	109,496	
2006	21,118,293	211,183	100,697	110,486	**B**
2007	18,001,979	180,020	73,771	106,249	
2008	11,971,701	119,717	11,299	108,418	
2009	11,318,225	113,182	11,520	101,662	
2010	9,740,214	97,402	11,498	85,904	
2011	35,740,430	357,404	11,996	345,408	
2012	16,882,017	168,820	11,237	157,583	
2013	8,767,211	87,672	-	87,672	
2014	10,348,642	103,486	-	103,486	
2015	8,660,535	86,605	-	86,605	
2016	8,656,874	86,569	-	86,569	
2017	8,413,239	84,132	-	84,132	
2018	11,441,960	114,420	-	114,420	
2019	8,632,470	86,325	-	86,325	
2020	1,531,939	15,319	-	15,319	
2021	1,432,751	14,328	-	14,328	
2022	1,350,630	13,506	42,182	(28,676)	
TOTAL	**$ 284,596,235**	**$ 2,845,962**	**$ 287,995**	**$ 2,557,967**	

A Total Amount Subject to 1%: Total operating expenditures reported in CEDA's annual financial audit report for the fiscal year. Amounts for FYs 2020 to 2022 reflect CEDA's budgets presented in the annual appropriation acts which will be adjusted as soon as CEDA's financial audit reports become available.

B Payment of $100,697 represents settlement of the Kumagai case which was paid by CDA and agreed to by OPA. Reference Civil Action No. 05-0332E, Kumagai owned lot that was 100% wetland property. On Nov. 16, 1993, the then-governor certified that the CNMI took the lot for public purpose of protecting wetlands. MPLA determined compensation to be $159,408.19 and transmitted requisition no. FY 05-11 to CDA for disbursement.

CNMI Office of the Public Auditor
One Percent Public Auditor Fee
Marianas Public Land Trust

OPA Methodology: MPLT's Public Auditor fee due to the CNMI for fiscal years 1996 to 2020 is based on 1% of actual expenditures reported in your agency's annual financial audit reports. Audited figures of the annual financial audit reports provide for an accurate and consistent assessment of the Public Auditor fee.

		1% DUE FROM MPLT		
Fiscal Year	Total Amount Subject to 1% **A**	1% Assessment	Payments Made	Net 1% Due
1996	$ 425,023	$ 4,250	$ -	$ 4,250
1997	436,982	4,370	-	4,370
1998	474,735	4,747	-	4,747
1999	457,842	4,578	-	4,578
2000	517,677	5,177	-	5,177
2001	527,507	5,275	-	5,275
2002	751,954	7,520	-	7,520
2003	1,133,902	11,339	-	11,339
2004	927,869	9,279	-	9,279
2005	1,038,582	10,386	-	10,386
2006	890,517	8,905	-	8,905
2007	649,441	6,494	-	6,494
2008	929,213	9,292	-	9,292
2009	1,002,220	10,022	-	10,022
2010	791,768	7,918	-	7,918
2011	1,562,059	15,621	-	15,621
2012	802,951	8,030	-	8,030
2013	792,852	7,929	-	7,929
2014	869,494	8,695	-	8,695
2015	949,079	9,491	-	9,491
2016	960,324	9,603	-	9,603
2017	1,073,951	10,740	-	10,740
2018	1,110,090	11,101	-	11,101
2019	1,211,235	12,112	-	12,112
2020	1,105,944	11,059	-	11,059
2021	Pending FS	-	-	-
2022	Pending FS	-	-	-
TOTAL	**$ 21,393,211**	**$ 213,932**	**$ -**	**$ 213,932**

A Total Amount Subject to 1%: Total operating expenditures reported in MPLT's annual financial audit report for the fiscal year.

CNMI Office of the Public Auditor
One Percent Public Auditor Fee
Commonwealth Healthcare Corporation

OPA Methodology: CHCC's Public Auditor fee due to the CNMI for fiscal years 2012 to 2017 is based on 1% of actual expenditures reported in your agency's annual financial audit reports. Audited figures of the annual financial audit reports provide for an accurate and consistent assessment of the Public Auditor fee. CHCC's Public Auditor fee due for fiscal years 2020 to 2022 are based on 1% of CHCC's budgets presented in the annual appropriation acts which will be adjusted as soon as your agency's financial audit reports become available.

1% DUE FROM CHCC

Fiscal Year	Total Amount Subject to 1% **A**	1% Assessment	1% withheld by DOF	Net 1% Due	
2009	*PL 16-51, signed Jan. 15, 2009, established the Commonwealth Healthcare Corporation.*				
2010					
2011					
2012	$ 34,075,575	$ 340,756	$ -	$ 340,756	
2013	49,928,316	499,283	19,322	479,961	
2014	52,027,244	520,272	12,087	508,185	
2015	42,988,340	429,883	12,087	417,796	
2016	48,965,307	489,653	28,366	461,287	
2017	55,832,829	558,328	8,366	549,962	
2018	*See Note*		7,013	(7,013)	**B**
2019	*See Note*		22,960	(22,960)	**B**
2020	90,013,094	900,131	10,367	889,764	
2021	96,517,121	965,171	715	964,456	
2022	107,420,701	1,074,207	*Pending*	1,074,207	
TOTAL	**$ 577,768,527**	**$ 5,777,685**	**$ 121,283**	**$ 5,656,402**	

A Total Amount Subject to 1%: Total operating expenditures reported in CHCC's annual financial audit report for the fiscal year. Amounts for Fiscal Years 2020 to 2022 reflect CHCC's budgets presented in the annual appropriation acts which will be adjusted as soon as CHCC's financial audit reports become available.

B Appropriation act exempted CHCC from the 1% Public Auditor Fee under section 604(b) for FY 2018 and under section 1002(a) for FY 2019. DOF withheld $7,013 for FY 2018 and $22,960 for FY 2019. The amounts withheld by DOF were inlcuded as a reduction to the total due from CHCC.

CNMI Office of the Public Auditor
One Percent Public Auditor Fee
Marianas Visitors Authority

OPA Methodology: MVA's Public Auditor fee due to the CNMI for fiscal years 1996 to 2020 is based on 1% of actual expenditures reported in your agency's annual financial audit reports. Audited figures of the annual financial audit reports provide for an accurate and consistent assessment of the Public Auditor fee. MVA's Public Auditor fee due for fiscal years 2021 to 2022 are based on 1% of MVA's budgets presented in the annual appropriation acts which will be adjusted as soon as your agency's financial audit reports become available.

1% DUE FROM MVA

Fiscal Year	Total Amount Subject to 1% **A**	1% Assessment	1% withheld by DOF	Net 1% Due
1996	6,892,200	68,922	$ -	$ 68,922
1997	9,469,425	94,694	-	94,694
1998	7,059,742	70,597	-	70,597
1999	6,785,861	67,859	-	67,859
2000	7,792,824	77,928	60,355	17,573
2001	6,542,283	65,423	63,480	1,943
2002	7,450,872	74,509	55,338	19,171
2003	8,483,372	84,834	68,790	16,044
2004	6,545,624	65,456	70,000	(4,544)
2005	6,516,570	65,166	66,518	(1,352)
2006	7,904,422	79,044	50,822	28,222
2007	5,974,470	59,745	62,023	(2,278)
2008	7,279,735	72,797	60,545	12,252
2009	7,603,697	76,037	66,776	9,261
2010	6,292,225	62,922	61,936	986
2011	4,956,942	49,569	-	49,569
2012	5,913,805	59,138	-	59,138
2013	6,322,050	63,221	19,875	43,346
2014	7,972,969	79,730	11,502	68,228
2015	12,775,902	127,759	-	127,759
2016	12,835,953	128,360	-	128,360
2017	13,530,186	135,302	-	135,302
2018	14,620,816	146,208	-	146,208
2019	11,260,713	112,607	-	112,607
2020	6,406,357	64,064	-	64,064
2021	12,779,338	127,793	18,130	109,663
2022	5,311,141	53,111	Pending	53,111
TOTAL	**$ 223,279,494**	**$ 2,232,795**	**$ 736,090**	**$ 1,496,705**

A Total Amount Subject to 1%: Total operating expenditures reported in MVA's annual financial audit report for the fiscal year. Amounts for Fiscal Years 2021 to 2022 reflect MVA's budgets presented in the annual appropriation acts which will be adjusted as soon as your CHCC's financial audit reports become available.

CNMI Office of the Public Auditor
One Percent Public Auditor Fee
Northern Marianas College

OPA Methodology: NMC's Public Auditor fee due to the CNMI for fiscal years 1996 to 2020 is based on 1% of actual expenditures reported in your agency's annual financial audit reports. Audited figures of the annual financial audit reports provide for an accurate and consistent assessment of the Public Auditor fee. NMC's Public Auditor fee due for fiscal years 2021 and 2022 are based on 1% of NMC's budgets presented in the annual appropriation acts which will be adjusted as soon as your agency's financial audit reports become available.

1% DUE FROM NMC

Fiscal Year	Total Amount Subject to 1% **A**	1% Assessment	1% withheld by DOF	Net 1% Due
1996	16,154,139	161,541	$ -	$ 161,541
1997	16,346,251	163,463	-	163,463
1998	16,120,104	161,201	-	161,201
1999	13,756,523	137,565	-	137,565
2000	14,571,463	145,715	68,469	77,246
2001	18,478,210	184,782	68,469	116,313
2002	17,208,416	172,084	66,230	105,854
2003	17,093,139	170,931	68,431	102,500
2004	18,053,528	180,535	70,711	109,824
2005	16,815,902	168,159	70,581	97,578
2006	15,077,669	150,777	55,582	95,195
2007	14,250,549	142,505	48,161	94,344
2008	13,471,362	134,714	47,014	87,700
2009	14,120,493	141,205	46,388	94,817
2010	15,076,279	150,763	43,026	107,737
2011	17,157,315	171,573	-	171,573
2012	14,501,004	145,010	-	145,010
2013	15,565,799	155,658	44,664	110,994
2014	15,044,715	150,447	41,214	109,233
2015	*See Note*		43,617	(43,617) **B**
2016	13,313,105	133,131	43,762	89,369
2017	14,285,255	142,853	43,762	99,091
2018	17,638,332	176,383	47,556	128,827
2019	15,634,732	156,347	38,572	117,775
2020	15,014,109	150,141	31,170	118,971
2021	3,082,668	30,827	25,434	5,393
2022	3,082,668	30,827	Pending	30,827
TOTAL	**$ 380,913,729**	**$ 3,809,137**	**$ 1,012,813**	**$ 2,796,324**

A Total Amount Subject to 1%: Total operating expenditures reported in NMC's annual financial audit report for the fiscal year. Amounts for Fiscal Years 2021 and 2022 reflect NMC's budgets presented in the annual appropriation acts which will be adjusted as soon as NMC's financial audit reports become available.

B Appropriation act (PL 18-66) section 708(a) exempted NMC from the 1% for FY 2015. DOF withheld $43,617 from its transfers to NMC for FY 2015. The amount withheld by DOF is a reduction to the total due from NMC.

CNMI Office of the Public Auditor
One Percent Public Auditor Fee
Public School System

OPA Methodology: PSS' Public Auditor fee due to the CNMI for fiscal years 1996 to 2007 and 2018 is based on 1% of actual expenditures reported in your agency's annual financial audit reports. Audited figures of the annual financial audit reports provide for an accurate and consistent assessment of the Public Auditor fee.

1% DUE FROM PSS

Fiscal Year	Total Amount Subject to 1% **A**	1% Assessment	1% withheld by DOF	Net 1% Due
1996	$ 48,562,295	$ 485,623	$ -	$ 485,623
1997	52,492,839	524,928	-	524,928
1998	58,284,619	582,846	-	582,846
1999	52,102,855	521,029	-	521,029
2000	52,749,411	527,494	362,804	164,690
2001	54,111,017	541,110	373,853	167,257
2002	55,760,606	557,606	368,303	189,303
2003	63,372,920	633,729	372,099	261,630
2004	61,261,826	612,618	372,099	240,519
2005	73,338,189	733,382	372,249	361,133
2006	65,523,166	655,232	-	655,232
2007	67,898,067	678,981	367,214	311,767
2008	*See Note*		358,463	(358,463) **B**
2010	*See Note*		167,414	(167,414) **B**
2018	91,679,195	916,792	362,037	554,755
TOTAL	**$ 797,137,005**	**$ 7,971,370**	**$ 3,476,535**	**$ 4,494,835**

A Total Amount Subject to 1%: Total operating expenditures reported in PSS' annual financial audit report for the fiscal year.

B Public Law 15-107 (signed Nov. 9, 2007) amended 1 CMC §7831 by adding subsection (e) which exempted PSS from the withholding and payment requirements of subsection (a) and (b) of 1 CMC §7831 provided that 1% of the budget appropriated to PSS shall be used exclusively for the purchase of textbooks. DOF withheld $358,463 for FY 2008 and $167,414 for FY 2010 from its transfers to PSS. The amounts withheld by DOF is a reduction to the total due from PSS.

CNMI Office of the Public Auditor
One Percent Public Auditor Fee
Commonwealth Casino Commission

OPA Methodology: CCC's Public Auditor fee due to the CNMI for fiscal years 2017 to 2019 are based on 1% of actual expenditures reported in your agency's annual financial audit reports. Audited figures of the annual financial audit reports provide for an accurate and consistent assessment of the Public Auditor fee. CCC's Public Auditor fee due for fiscal years 2020 to 2022 are based on 1% of CCC's budgets presented in the annual appropriation acts which will be adjusted as soon as your agency's financial audit reports become available.

1% DUE FROM CCC

Fiscal Year	Total Amount Subject to 1% **A**	1% Assessment	Payments Made	Net 1% Due
2017	$ 2,836,680	$ 28,367	$ -	$ 28,367
2018	2,971,977	29,720	-	29,720
2019	2,720,637	27,206	-	27,206
2020	3,138,502	31,385	-	31,385
2021	3,298,757	32,988	-	32,988
2022	3,191,060	31,911	-	31,911
TOTAL	**$ 18,157,613**	**$ 181,576**	**$ -**	**$ 181,576**

A Total Amount Subject to 1%: Amounts for Fiscal Years 2020 to 2022 reflect CCC's budgets presented in the annual appropriation acts which will be adjusted as soon as CCC's financial audit reports become available.

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December 13, 2021

Mr. Christopher S. Tenorio
Executive Director
Commonwealth Ports Authority:

Dear Mr. Tenorio:

In planning and performing our audit of the financial statements of the Commonwealth Ports Authority (CPA) as of and for the year ended September 30, 2020 (on which we have issued our report dated December 13, 2021) and which report was modified due to our inability to determine the effects of Governmental Accounting Standards Board (GASB) Statement No. 68, *Accounting and Financial Reporting for Pensions* on CPA's financial statements and includes an explanatory paragraph concerning the impact of COVID-19, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards,* issued by the Comptroller General of the United States, we considered CPA's internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of CPA's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of CPA's internal control over financial reporting.

Our consideration of internal control over financial reporting was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control over financial reporting. However, in connection with our audit, we identified, and included in the attached Appendix I, other matters related to CPA's internal control over financial reporting as of September 30, 2020, that we wish to bring to your attention.

We have also issued a separate report to the Board of Directors and management, also dated December 13, 2021, which includes certain matters involving CPA's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters that we consider to be material weaknesses or significant deficiencies under standards established by the American Institute of Certified Public Accountants.

The definition of a deficiency is also set forth in the attached Appendix I.

A description of the responsibility of management for establishing and maintaining internal control over financial reporting and of the objectives of and inherent limitations of internal control over financial reporting, is set forth in the attached Appendix II and should be read in conjunction with this report.

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This report is intended solely for the information and use of management, the Board of Directors, the Office of the Public Auditor and others within the organization and is not intended to be, and should not be, used by anyone other than these specified parties. However, this report is also a matter of public record.

We will be pleased to discuss the attached comments with you and, if desired, to assist you in implementing any of the suggestions.

We wish to thank the staff and management of CPA for their cooperation and assistance during the course of this engagement.

Very truly yours,

Deloitte & Touche LLC

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APPENDIX I

SECTION I - OTHER MATTERS

Other matters related to our observations concerning operations, compliance with laws and regulations, and best practices involving internal control over financial reporting that we wish to bring to your attention are as follows:

(1) Capitalization of Interest

At September 30, 2020, CPA did not capitalize interest on eligible construction in progress (CIP) projects. Capitalizable interest for the Airport and Seaport Divisions amounted to $122,761 and $11,253, respectively. An audit adjustment was proposed to record the amounts at September 30, 2020. In addition, interest capitalized from prior years, totaling $3,739,071, (account no. 1880-000) for the Airport Division, has not been allocated to eligible CIP projects. CPA agreed that an audit adjustment be recorded to depreciate capitalized interest. Management determined that interest be capitalized over a twenty-year period. We recommend that management establish a policy for capitalization of interest on eligible CIP projects and that such cost be appropriately allocated. This matter was discussed in our previous letters dated March 8, 2021, December 30, 2019, January 18, 2019, June 22, 2017, September 6, 2016, June 24, 2015, May 28, 2014, November 20, 2013, June 27, 2013, August 5, 2011, August 25, 2010, March 3, 2010, August 5, 2008, January 11, 2008, December 14, 2006, July 29, 2005, November 21, 2003, and January 10, 2003.

(2) Bond Interest Payable

CPA recorded interest on the bond payable of $38,880 in fiscal year 2010 and had not adjusted the amount to reflect the adjusted interest payable per the audit expectation of $22,500 as of September 30, 2020, resulting in a variance of $16,380. Management did not consider the amount material to the financial statements to warrant an audit adjustment. We recommend CPA reconcile and adjust the bond interest payable balance.

(3) Accrued Salaries and Wages

Accrued salaries and wages were understated by $78,430. Management did not consider the amount material to the financial statements to warrant an audit adjustment. We recommend that unpaid salaries and wages be accrued in the period incurred.

(4) Other Income

CPA entered into an Omnibus settlement agreement with the Commonwealth Utilities Corporation (CUC) on November 2019 to resolve various issues of disputes between them relating to utilities and water charges as well as easement and access/right of use disputes. CPA agreed to enter into a permanent easement of the sixty-seven water wells/waterline/sand filtration system/20 million gallon water reservoir on CPA premises for usage and access. In consideration of the permanent water wells easement, CUC shall offset CPA's water charges up to $600,000 per year for water services provided to CPA from the well or series of wells designated by CUC as of November 1, 2019 against CUC's water well lease payments to CPA for which CPA shall not charge additional water well lease fees for the water wells beginning November 1, 2019. The offset amount of $600,000 shall be applied in equal installments over a 12-month period. At September 30, 2020, CPA recorded $87,595 pertaining to the offset of its water charges against CUC's water well lease fees for the months of November 2019 to September 2020 while CUC's confirmation noted the offset amount to be $112,340, resulting in a variance of $24,745. Management does not consider the amount material to the financial statements to warrant an adjustment.

APPENDIX I, CONTINUED

SECTION I - OTHER MATTERS, CONTINUED

(5) Payroll

Tests of non-Federal payroll determined the following:

a. Employee authorization allotment forms were not provided. The allotment form for employee no. 08-0278 was subsequently completed by the employee on June 8, 2021.

Payroll Period Ended	Employee No.	Type of Allotment
03/28/20	08-0278	ASC Loan
12/07/19	01-0254	ASC Loan

b. Employees earn compensatory time-off (comp-time) in lieu of overtime pay; however, employee signed agreements to accept comp-time in lieu of overtime pay were not provided for the following.

Payroll Period Ended	Employee No.	Comp-Time Hour Earned
01/04/20	10-0361	0.50
01/04/20	16-0326	4.25
02/15/20	01-0203	3.00
11/23/19	02-0294	11.75

We recommend employee authorization allotment forms and the compensatory time-off in lieu of overtime pay agreements for all employees be maintained and filed. This matter was discussed in our previous letters dated March 8, 2021, December 30, 2019, January 18, 2019, June 22, 2017, September 6, 2016, June 24, 2015, and May 28, 2014.

(6) Recording Audit Adjustments

CPA did not record proposed audit adjustments from prior years in the proper period that were concurred with by CPA management. An audit adjustment was proposed to record such adjustments. We recommend that proposed audit adjustments be recorded in the proper period. This matter was discussed in our previous letter dated March 8, 2021.

SECTION II - DEFINITION

The definition of a deficiency is as follows:

A *deficiency* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A deficiency in design exists when (a) a control necessary to meet the control objective is missing or (b) an existing control is not properly designed so that, even if the control operates as designed, the control objective would not be met. A deficiency in operation exists when (a) a properly designed control does not operate as designed, or (b) the person performing the control does not possess the necessary authority or competence to perform the control effectively.

APPENDIX II

MANAGEMENT'S RESPONSIBILITY FOR, AND THE OBJECTIVES AND LIMITATIONS OF, INTERNAL CONTROL OVER FINANCIAL REPORTING

The following comments concerning management's responsibility for internal control over financial reporting and the objectives and inherent limitations of internal control over financial reporting are adapted from auditing standards generally accepted in the United States of America.

Management's Responsibility

CPA's management is responsible for the overall accuracy of the financial statements and their conformity with generally accepted accounting principles. In this regard, management is also responsible for establishing and maintaining effective internal control over financial reporting.

Objectives of Internal Control over Financial Reporting

Internal control over financial reporting is a process effected by those charged with governance, management, and other personnel and designed to provide reasonable assurance about the achievement of the entity's objectives with regard to reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations. Internal control over the safeguarding of assets against unauthorized acquisition, use, or disposition may include controls related to financial reporting and operations objectives. Generally, controls that are relevant to an audit of financial statements are those that pertain to the entity's objective of reliable financial reporting (i.e., the preparation of reliable financial statements that are fairly presented in conformity with generally accepted accounting principles).

Inherent Limitations of Internal Control over Financial Reporting

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected and corrected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

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December 13, 2021

The Board of Directors
Commonwealth Ports Authority
P.O. Box 501055
Saipan, MP 96950-1055

Dear Members of the Board of Directors:

We have performed an audit of the financial statements of the Commonwealth Ports Authority ("CPA") as of and for the year ended September 30, 2020 (the "financial statements"), in accordance with auditing standards generally accepted in the United States of America ("generally accepted auditing standards") and have issued our report thereon dated December 13, 2021.

We have prepared the following comments to assist you in fulfilling your obligation to oversee the financial reporting and disclosure process for which management of CPA is responsible.

This report is intended solely for the information and use of management, the Board of Directors, others within the entity, federal awarding agencies, pass-through entities, and the cognizant audit and other federal agencies and is not intended to be and should not be used by anyone other than these specified parties.

Very truly yours,

Deloitte & Touche LLC

cc: The Management of the Commonwealth Ports Authority

Our Responsibility under Generally Accepted Auditing Standards, Generally Accepted Government Auditing Standards and the Uniform Guidance

Our responsibility under (1) generally accepted auditing standards, and (2) the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States ("generally accepted government auditing standards") (generally accepted auditing standards and generally accepted government auditing standards are collectively referred to herein as the "Auditing Standards"), and (3) the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200*, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (the Uniform Guidance) has been described in our engagement letter dated February 10, 2021, a copy of which has been provided to you. As described in that letter, the objectives of an audit conducted in accordance with the Auditing Standards and the Uniform Guidance are to:

- Express an opinion on whether the statements of net position, of revenues, expenses and changes in net position and of cash flows of CPA's basic financial statements and the accompanying supplementary information, in relation to the basic financial statements as a whole, for the year ended September 30, 2020, are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America ("generally accepted accounting principles"), and perform specified procedures on the required supplementary information for the year ended September 30, 2020;

- Express an opinion on whether the supplementary information that accompanies the financial statements, including the schedule of expenditures of federal awards and the combining statements of net position, of revenues, expenses and changes in net position and of cash flows, are fairly stated, in all material respects, in relation to the financial statements as a whole;

- Report on CPA's internal control over financial reporting and on its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters for the year ended September 30, 2020, based on an audit of financial statements performed in accordance with generally accepted government auditing standards; and

- Express an opinion on CPA's compliance with requirements applicable to each major program and report on CPA's internal control over compliance in accordance with the Uniform Guidance.

Our responsibilities under the Auditing Standards and the Uniform Guidance include forming and expressing an opinion about whether the financial statements that have been prepared with the oversight of management and the Board of Directors are presented fairly, in all material respects, in conformity with generally accepted accounting principles. The audit of the financial statements does not relieve management or the Board of Directors of their responsibilities.

Our Responsibility under Generally Accepted Auditing Standards, Generally Accepted Government Auditing Standards and the Uniform Guidance, Continued

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the financial statements, whether caused by fraud or error. In making those risk assessments, we considered internal control over financial reporting relevant to CPA's preparation and fair presentation of the financial statements in order to design audit procedures that were appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of CPA's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of CPA's internal control over financial reporting. Our consideration of internal control over financial reporting was not designed to identify all deficiencies in internal control over financial reporting that might be significant deficiencies or material weaknesses.

We also considered CPA's internal control over compliance with requirements that could have a direct and material effect on a major federal program in order to determine our auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with the Uniform Guidance. Our audit does not, however, provide a legal determination of CPA's compliance with those requirements.

Significant Accounting Policies

CPA's significant accounting policies are set forth in note 2 to CPA's 2020 financial statements. We are not aware of any significant changes in previously adopted accounting policies or their application during the year ended September 30, 2020, except for the following:

During the year ended September 30, 2020, GASB issued Statement No. 95, *Postponement of the Effective Dates of Certain Authoritative Guidance*, which postpones the effective dates of GASB Statement No. 84, 89, 90, 91, 92 and 93 by one year and GASB Statement No. 87 by 18 months; however, earlier application of the provisions addressed in GASB Statement No. 95 is encouraged and is permitted to the extent specified in each pronouncement as originally issued. In accordance with GASB Statement No. 95, management has elected to postpone implementation of these statements.

In January 2017, GASB issued Statement No. 84, *Fiduciary Activities*. This Statement is to improve guidance regarding the identification of fiduciary activities for accounting and financial reporting purposes and how those activities should be reported. The requirements of this Statement will enhance consistency and comparability by (1) establishing specific criteria for identifying activities that should be reported as fiduciary activities and (2) clarifying whether and how business-type activities should report their fiduciary activities. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 84 will be effective for fiscal year ending September 30, 2021.

Significant Accounting Policies, Continued

In June 2017, GASB issued Statement No. 87, *Leases*. The objective of this Statement is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases by governments. This Statement increases the usefulness of governments' financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and as inflows of resources or outflows of resources recognized based on the payment provisions of the contract. Management believes that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 87 will be effective for fiscal year ending September 30, 2022.

In June 2018, GASB issued Statement No. 89, *Accounting for Interest Cost Incurred Before the End of a Construction Period*. The objectives of this Statement are (1) to enhance the relevance and comparability of information about capital assets and the cost of borrowing for a reporting period and (2) to simplify accounting for interest cost incurred before the end of a construction period. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 89 will be effective for fiscal year ending September 30, 2022.

In March 2018, GASB issued Statement No. 90, *Majority Equity Interests - An Amendment of GASB Statements No. 14 and 61*. The primary objectives of this Statement are to improve the consistency and comparability of reporting a government's majority equity interest in a legally separate organization and to improve the relevance of financial statement information for certain component units. It defines a majority equity interest and specifies that a majority equity interest in a legally separate organization should be reported as an investment if a government's holding of the equity interest meets the definition of an investment. A majority equity interest that meets the definition of an investment should be measured using the equity method, unless it is held by a special-purpose government engaged only in fiduciary activities, a fiduciary fund, or an endowment (including permanent and term endowments) or permanent fund. Those governments and funds should measure the majority equity interest at fair value. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 90 will be effective for fiscal year ending September 30, 2021.

In May 2019, GASB issued Statement No. 91, *Conduit Debt Obligations*. The primary objectives of this Statement are to provide a single method of reporting conduit debt obligations by issuers and eliminate diversity in practice associated with (1) commitments extended by issuers, (2) arrangements associated with conduit debt obligations, and (3) related note disclosures. This Statement achieves those objectives by clarifying the existing definition of a conduit debt obligation; establishing that a conduit debt obligation is not a liability of the issuer; establishing standards for accounting and financial reporting of additional commitments and voluntary commitments extended by issuers and arrangements associated with conduit debt obligations; and improving required note disclosures. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 91 will be effective for fiscal year ending September 30, 2023.

Significant Accounting Policies, Continued

In January 2020, GASB issued statement No. 92, *Omnibus 2020*. The objectives of this Statement are to enhance comparability in accounting and financial reporting and to improve the consistency of authoritative literature by addressing practice issues that have been identified during implementation and application of certain GASB Statements. This Statement addresses a variety of topics and includes specific provisions about the effective date of Statement No. 87, *Leases*, and Implementation Guide No. 2019-3, *Leases*, for interim financial reports, the terminology used to refer to derivative instruments and the applicability of certain requirements of Statement No. 84, *Fiduciary Activities*, to postemployment benefits. The requirements related to the effective date of GASB Statement No. 87 and Implementation Guide 2019-3, reissuance recoveries and terminology used to refer to derivative instruments are effective upon issuance. The remaining requirements of GASB Statement No. 92 is effective for the fiscal year ending September 30, 2022.

In March 2020, GASB issued Statement No. 93, *Replacement of Interbank Offered Rates*. The primary objective of this statement is to address those and other accounting and financial reporting implications of the replacement of an IBOR. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 93 will be effective for fiscal year ending September 30, 2022.

In March 2020, GASB issued Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*. The primary objective of this statement is to improve financial reporting by addressing issues related to public-private and public-public partnership arrangements. This statement also provides guidance for accounting and financial reporting for availability payment arrangements. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. GASB Statement No. 94 will be effective for fiscal year ending September 30, 2023.

In May 2020, GASB issued Statement No. 96, *Subscription-Based Information Technology Arrangements*. This Statement provides guidance on the accounting and financial reporting for subscription-based information technology arrangements (SBITAs) for government end users (governments). This Statement (1) defines a SBITA; (2) establishes that a SBITA results in a right-to-use subscription asset - an intangible asset - and a corresponding subscription liability; (3) provides the capitalization criteria for outlays other than subscription payments, including implementation costs of a SBITA; and (4) requires note disclosures regarding a SBITA. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. GASB Statement No. 96 will be effective for fiscal year ending September 30, 2023.

Significant Accounting Policies, Continued

In June 2020, GASB issued Statement No. 97, *Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans - an amendment of GASB Statements No. 14 and No. 84, and a supersession of GASB Statement No. 32.* The primary objectives of this Statement are to (1) increase consistency and comparability related to the reporting of fiduciary component units in circumstances in which a potential component unit does not have a governing board and the primary government performs the duties that a governing board typically would perform; (2) mitigate costs associated with the reporting of certain defined contribution pension plans, defined contribution other postemployment benefit (OPEB) plans, and employee benefit plans other than pension plans or OPEB plans (other employee benefit plans) as fiduciary component units in fiduciary fund financial statements; and (3) enhance the relevance, consistency, and comparability of the accounting and financial reporting for Internal Revenue Code (IRC) Section 457 deferred compensation plans (Section 457 plans) that meet the definition of a pension plan and for benefits provided through those plans. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. GASB Statement No. 97 will be effective for fiscal year ending September 30, 2022.

We have evaluated the significant qualitative aspects of CPA's accounting practices, including accounting policies, accounting estimates and financial statement disclosures and concluded that the policies are appropriate, adequately disclosed, and consistently applied by management.

Accounting Estimates

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's current judgments. Those judgments are ordinarily based on knowledge and experience about past and current events and on assumptions about future events. During the year ended September 30, 2020, we are not aware of any significant changes in accounting estimates or in management's judgments relating to such estimates.

Uncorrected Misstatements

Our audit of the financial statements was designed to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. We have included in this letter, as an attachment to Appendix B, a summary of uncorrected misstatements that we presented to management during the current audit engagement that were determined by management to be immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Corrected Misstatements

Misstatements were brought to the attention of management as a result of our audit procedures and were corrected by management during the current period. We have attached to this letter, as Appendix A, a summary of misstatements corrected by management.

Other Information in the Annual Report of CPA

When audited financial statements are included in documents containing other information such as Annual Reports, we will read such other information and consider whether it, or the manner of its presentation, is materially inconsistent with the information, or the manner of its presentation, in the financial statements audited by us. In the event that CPA issues an Annual Report or other documentation that includes the audited financial statements, we will be required to read the other information in CPA's 2020 Annual Report and will inquire as to the methods of measurement and presentation of such information. If we note a material inconsistency or if we obtain any knowledge of a material misstatement of fact in the other information, we will discuss this matter with management.

Disagreements with Management

We have not had any disagreements with management related to matters that are material to CPA's 2020 financial statements.

Our Views about Significant Matters That Were the Subject of Consultation with Other Accountants

We are not aware of any consultations that management may have had with other accountants about auditing and accounting matters during 2020.

Significant Findings or Issues Discussed, or Subject of Correspondence, with Management Prior to Our Engagement or Retention

Throughout the year, routine discussions were held, or were the subject of correspondence, with management regarding the application of accounting principles or auditing standards in connection with transactions that have occurred, transactions that are contemplated, or reassessment of current circumstances. In our judgment, such discussions or correspondence were not held in connection with our retention as auditors.

Other Significant Findings or Issues Arising From the Audit Discussed, or Subject of Correspondence, with Management

Throughout the year, routine discussions were held, or were the subject of correspondence, with management. In our judgment, such discussions or correspondence did not involve significant findings or issues requiring communication to the Board of Directors.

Significant Difficulties Encountered in Performing the Audit

In our judgment, we received the full cooperation of CPA's management and staff and had unrestricted access to CPA's senior management in the performance of our audit.

Management's Representations

We have made specific inquiries of CPA's management about the representations embodied in the financial statements. In addition, we have requested that management provide to us the written representations CPA is required to provide to its independent auditors under generally accepted auditing standards. We have attached to this letter, as Appendix B, a copy of the representation letter we obtained from management.

Modification to our Opinion

Management has not adopted Governmental Accounting Standards Board (GASB) Statement No. 68, *Accounting and Financial Reporting for Pensions*, which was effective October 1, 2014. As discussed in note 2 to the financial statements, CPA has not recorded pension expense and related net pension asset or liability, deferred inflows of resources and deferred outflows of resources as of and for the years ended September 30, 2020 and 2019. GASB Statement No. 68 requires an employer to recognize its proportionate share of the collective pension expense, as well as the net pension asset or liability, deferred outflows of resources and deferred inflows of resources. The amount by which this departure would affect the assets and deferred outflows of resources, liabilities and deferred inflows of resources, net position and expenses of CPA has not been determined.

Emphasis-of-Matter Paragraphs

COVID-19

Economic uncertainties as a result of the COVID-19 coronavirus pandemic may negatively impact CPA's future financial results as described in note 12 to the financial statements.

Restatement

As discussed in note 13 to the financial statements, management has determined that expenditures incurred in prior years were not appropriately recorded and has restated contractors payable, net position at beginning of year, contractual services and typhoon-related damages.

Our opinion is not modified with respect to these matters.

Control-Related Matters

We have issued a separate report to you, also dated December 13, 2021, containing certain matters involving CPA's internal control over financial reporting that we consider to be material weaknesses or significant deficiencies under standards established by the American Institute of Certified Public Accountants, and on its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. Although we have included management's written response to our comments in that report, such responses have not been subjected to the auditing procedures applied in our audit of the financial statements and, accordingly, we do not express an opinion or provide any form of assurance on the appropriateness of the responses or the effectiveness of any corrective actions described therein.

We have also communicated to management, in a separate letter dated December 13, 2021, other matters that we identified during our audit.

* * * * * *

Deloitte.

APPENDIX A

Corrected Misstatements:

Audit Adjustments

Airport

#	Name	Debit	Credit
	1 AJE To correct FY2020 beginning balances		
1720-200	A/D RUNWAY IMPROVEMT/NC - ROP	178,000	
2051-100	ACCOUNTS PAYABLE- CUC OFFSET		3,642,992
2052-000	ACCOUNTS PAYABLE - CUC		481,314
3200-000	RETAINED EARNINGS - PRIOR	2,933,893	
2210-000	DEFERRED REVENUE		3,932
2010-000	ACCOUNTS PAYABLE - TRADE	1,016,460	
1135-000	A/R - LEASES		115
	2 CAJE To correct actual CUC expenditures/contributions with Omnibus offset agreement at 09/30/20		
1140-100	A/R - OTHERS-MISC.	4,599	
6263-101	UTILITIES: TERMINAL(WATER/SEWER)	50,000	
6263-100	UTILITIES: TERMINAL(ELECTRICAL)	150,376	
6263-200	UTILITIES: (TERM)		1,878
6263-300	UTILITIES: (TERM)	21,065	
6763-100	UTILITIES: ARFF	1,929	
6263-101	UTILITIES: TERMINAL(WATER/SEWER)		107,836
2051-100	ACCOUNTS PAYABLE- CUC OFFSET		63,656
9020-102	SETTLEMENTS-INS/CUC		17,040
2052-000	ACCOUNTS PAYABLE - CUC		37,559
	3 AJE To record expense in the period incurred		
3200-000	RETAINED EARNINGS - PRIOR	193,117	
7186-103	TYPHOON EXPENSES(Maria/Manhkut/Cimaron/Yutu)		193,117
	4 AJE To record additional allowance based on assessment		
7184-100	BAD DEBTS - SPN	2,600,193	
1190-000	ALLOWANCE FOR DOUBTFUL ACCTS		2,600,193
	5 AJE To record loss on disposal of equipment		
1731-111	A/D PARKING BOOTH EQUIPMENT		18,517
1770-100	A/D IMPROVEMT/OTHERS/NC - SPN		97,763
1800-100	A/D BEACON - SAIPAN		137,161
1710-100	A/D TERM FACILITIES/NC - SPN		13,872
1710-200	A/D TERM FACILITIES/NC - ROP		98,159
1760-100	A/D OFF FURN & FIX - SPN		2,300
1790-100	A/D ARFF EQUIPMENT/NC - SPN		43,333
1790-101	A/D ARFF TRAINING FACILITY - NC		138,536
DTT 9040	GAIN OR LOSS ON DISPOSAL OF FIXED ASSETS	549,641	
	6 CAJE To record credit memo no. 548 for return of Delphi reimbursement for invoice no. 548 under CARES ACT due to prepaid insurance ineligibility for FY2020		
4910-102	FAA GRANTS - CARES ACT	1,064,669	
2045-100	ACCOUNTS PAYABLE-OTHERS		1,064,669
	7 AJE To record capitalized interest for FY2020 for airport		
1880-000	CONTRACTS-IN-PROGRESS	122,761	
9010-100	INTEREST EXPENSE		122,761
	8 AJE To record depreciation on capitalized interest for FY2020		
7388-100	DEPREC. TERM. FACILITIES - SPN	92,190	
7388-200	DEPREC. TERM. FACILIITES - ROP	11,885	
7388-300	DEPREC. TERM. FACILITIES - TIQ	7,449	
7387-100	DEPREC. RUNWAYS IMPRO - SPN	12,748	
7387-200	DEPREC. RUNWAYS IMPRO- ROP	20,798	
7387-300	DEPREC. RUNWAYS IMPRO - TIQ	24,413	
7390-100	DEPREC. IMPROVEMENT OTHERS -SPN	17,173	
7390-200	DEPREC. IMPROVEMENT OTHERS - ROP	147	
7390-300	DEPREC. IMPROVEMENT OTHERS - TIQ	584	
7393-100	DEPREC. ARFF - SAIPAN	5,706	
1710-100	A/D TERM FACILITIES/NC - SPN		92,190
1710-200	A/D TERM FACILITIES/NC - ROP		11,885
1710-300	A/D TERM FACILITIES/NC - TIQ		7,449
1720-100	A/D RUNWAY IMPROVEMT/NC - SPN		12,748
1720-200	A/D RUNWAY IMPROVEMT/NC - ROP		20,798
1720-300	A/D RUNWAY IMPROVEMT/NC - TIQ		24,413
1770-100	A/D IMPROVEMT/OTHERS/NC - SPN		17,173
1770-200	A/D IMPROVEMT-OTHERS/NC - ROP		147
1770-300	A/D IMPROVEMT-OTHERS/NC - TIQ		584
1790-101	A/D ARFF TRAINING FACILITY - NC		5,706

Corrected Misstatements, Continued:

Audit Adjustments, Continued

Airport, Continued

#	Name	Debit	Credit
	9 AJE To recognize revenue related to CUC offset omnibus agreement which was effective 11/01/19		
2051-100	ACCOUNTS PAYABLE- CUC OFFSET	3,642,992	
DT9120	PERMANENT EASEMENT RIGHTS GRANTED TO WATER WELLS		3,642,992
	10 CAJE Record additional A/R Grantor - FEMA for PW# 62, 149, 157, and 169 at 09/30/20		
1120-100	A/R - FEMA /ARMY CORP/FAA-ILS	1,035,159	
4912-100	FEMA/DOI/OMIP/HOMELAND		1,035,159

Seaport

	1 AJE To record expense in the period incurred		
3200-000	RETAINED EARNINGS	216,000	
5360-300	CONSULTING SERVICES - TINIAN		108,000
5360-200	CONSULTING SERVICES - ROTA		108,000
	2 AJE To record additional allowance for receivables outstanding over 90 days		
5370-100	BAD DEBTS	36,780	
1160-000	ALLOWANCE FOR DOUBTFUL ACCT		36,780
	3 AJE To record increase in fair value of investments at 09/30/20		
7500-000	OTHER INCOME & EXPENSE		77,164
1247-102	BOG SENIOR BOND RESEVE- INVEST 71040006301	20,712	
1256-102	BOG SUPPLE FUND - INVESTMENT 71090006301	56,452	
	4 CAJE To record client provided adjusting entry to correct retention amount entered as $16,665.05 in error s/b $1,665.05		
2020-116	DELTA DOCK EXPANSION	15,000	
1880-116	SPN DELTA DOCK EXPANSION		15,000
	5 AJE To record capitalized interest for FY2020 for seaport		
1880-000	CIP - CAPITALIZED INTEREST	11,253	
8010-100	INTEREST EXPENSE		11,253
	6 CAJE To record 3% gross sales from FY2014 - FY2019 for Pacific Marine Ent. at 09/30/20. Note: Payment receipt no. 39517 dated 06/08/21.		
1102-000	A/R- OTHERS	44,445	
4140-100	LAND RENTAL - SAIPAN		44,445
	7 CAJE Record A?R FEMA for PW 57, PW 157, and PW169 at 09/30/20		
1101-101	A/R-GRANTOR	57,995	
4090-100	GRANT REVENUE INCOME - SPN		57,995

APPENDIX B

Management Representation Letter:

Commonwealth Ports Authority

Main Office: SAIPAN INTERNATIONAL AIRPORT, 2ND Floor Arrival Bldg.
PO BOX 501055•SAIPAN•MP•96950
Phone: (1-670) 237-6500/1 Fax: (1-670) 234-5962
E-Mail Address: cpa.admin@pticom.com Website: www.cnmiports.com

December 13, 2021

Deloitte & Touche LLC
Certified Public Accountants
P.O. Box 500308
Saipan, MP 96950-0308

Gentlemen:

We are providing this letter in connection with your audits of the financial statements of the Commonwealth Ports Authority ("CPA"), a component unit of the Commonwealth of the Northern Mariana Islands (CNMI), as of and for the years ended September 30, 2020 and 2019 for the purpose of expressing an opinion as to whether the basic financial statements present fairly, in all material respects, the financial position, changes in net position, and cash flows, as applicable, of CPA in accordance with accounting principles generally accepted in the United States of America (GAAP).

We confirm that we are responsible for the following:

a. The preparation and fair presentation in the basic financial statements of financial position, changes in net position and cash flows, in accordance with GAAP.

b. The design, implementation, and maintenance of internal control:

   - Relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

   - To prevent and detect fraud.

c. The review and approval of the financial statements and related notes, and we acknowledge your role in the preparation of this information. Specifically, we acknowledge that your role in the preparation of the financial statements was a matter of convenience rather than one of necessity. We have reviewed the financial statement preparation assistance provided by you and acknowledge that the financial statements are prepared in accordance with GAAP. Our review was based on the use of the financial statement disclosure checklist for stand-alone business-type activities obtained from the Government Finance Officers Association. Additionally, we agree with the adjusting entries included in Appendix A.

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm, to the best of our knowledge and belief, the following representations made to you during your audits.

1. Except as discussed in the "Basis for Qualified Opinion" paragraph described in your Independent Auditors' Report, the basic financial statements referred to above are fairly presented in accordance with GAAP. In addition:

   a. Net position components (net investment in capital assets, restricted, and unrestricted) are properly classified and, if applicable, approved.

   b. Deposits and investment securities are properly classified in the category of custodial credit risk.

   c. Capital assets, including infrastructure assets, are properly capitalized, reported, and, if applicable, depreciated.

   d. Required supplementary information is measured and presented within prescribed guidelines.

   e. Applicable laws and regulations are followed in adopting, approving, and amending budgets.

   f. CPA's policy regarding whether to first apply restricted or unrestricted resources when an expense is incurred for purposes for which both restricted and unrestricted net position is available is appropriately disclosed and the related net position is properly recognized under the policy.

   g. The financial statements properly classify all funds and activities, including special and extraordinary items.

   h. Interfund, internal, and intra-entity activity and balances have been appropriately classified and reported.

2. CPA has provided to you all relevant information and access as agreed in the terms of the audit engagement letter.

3. CPA has made available to you:

   a. All minutes of the meetings of the Board of Directors or summaries of actions of recent meetings for which minutes have not yet been prepared.

   b. All financial records and related data for all financial transactions of CPA. The records, books, and accounts, as provided to you, record the financial and fiscal operations of CPA and provide the audit trail to be used in a review of accountability. Information presented in financial reports is supported by the books and records from which the financial statements have been prepared.

   c. Contracts and grant agreements (including amendments, if any) and any other correspondence that has taken place with federal agencies.

4a-b. assurance of compliance with federal requirements

There has been no:

   a. Action taken by CPA management that contravenes the provisions of federal laws and CNMI laws and regulations, or of contracts and grants applicable to CPA, except as disclosed in the Schedule of Findings and Questioned Costs section of the Independent Auditors' Reports on Internal Control and on Compliance.

b. Communications with other regulatory agencies concerning noncompliance with or deficiencies in financial reporting practices or other matters that could have a material effect on the financial statements.

5. We believe the effects of any uncorrected financial statement misstatements aggregated by you during the current audit engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole. A summary of such uncorrected misstatements has been attached as Appendix B.

6. CPA has not performed a formal risk assessment, including the assessment of the risk that the financial statements may be materially misstated as a result of fraud. However, management has made available to you their understanding about the risks of fraud in CPA and do not believe that the financial statements are materially misstated as a result of fraud.

7. We have no knowledge of any fraud or suspected fraud affecting CPA involving:

   a. Management.

   b. Employees who have significant roles in CPA's internal control.

   c. Others, where the fraud could have a material effect on the financial statements.

8. We have no knowledge of any allegations of fraud or suspected fraud affecting CPA's financial statements communicated by employees, former employees, analysts, regulators, or others.

9. Except for instances of noncompliance with grant contract provisions, laws and regulations included in the Schedule of Findings and Questioned Costs section of your Independent Auditors' Reports on Internal Control and on Compliance related to federal awards and as discussed in note 10 to the financial statements, there are no unasserted claims or assessments that we are aware of or that legal counsel has advised us are probable of assertion and must be disclosed in accordance with Governmental Accounting Standards Board (GASB) Codification of Governmental Accounting and Financial Reporting Standards ("GASB Codification") Section C50, *Claims and Judgments.*

10. The methods, significant assumptions, and the data used by us in making the accounting estimates and the related disclosures are appropriate to achieve recognition, measurement, or disclosure that is in accordance with GAAP.

11. We are responsible for the preparation of the Schedule of Expenditures of Federal Awards in accordance with the requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* ("OMB Uniform Guidance"). We are responsible for understanding and complying with the compliance requirements related to the preparation of the SEFA. We have identified and disclosed all of CPA's government programs and related activities subject to the OMB Uniform Guidance compliance audit and have included expenditures made during the period being audited for all awards provided by federal agencies or pass-through entities in the form of grants, federal cost-reimbursement contracts, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other direct assistance. In addition, we have accurately completed the appropriate sections of the data collection form.

12. We are responsible for compliance with local and federal laws, rules, and regulations, including compliance with the requirements of OMB Uniform Guidance and the provisions of grants and contracts relating to CPA's operations. We are responsible for understanding and complying with the requirements of the federal statutes and regulations, and the terms and conditions of federal awards related to each of CPA's federal programs. We are responsible for establishing and maintaining the components of internal control relating to our activities in order to achieve the objectives of providing reliable financial reports, effective and efficient operations, and compliance with laws and regulations. We are responsible for maintaining accounting and administrative control over revenues, obligations, expenditures, assets, and liabilities.

13. We have informed you of all investigations or legal proceedings that have been initiated during the year ended September 30, 2020 or are in process as of September 30, 2020.

14. We are responsible for all nonaudit services performed by you during the year ended September 30, 2020 and through December 13, 2021.

15. We are responsible for establishing and maintaining, and have established and maintained, effective internal control over compliance for federal programs that provides reasonable assurance that we are managing federal awards in compliance with federal statutes, regulations, and the terms and conditions of the federal awards that could have a material effect on its federal programs, except as disclosed in the Schedule of Findings and Questioned Costs.

16. We have disclosed to you all deficiencies in the design or operation of internal control over financial reporting identified as part of our evaluation, including separately disclosing to you all such deficiencies that are significant deficiencies or material weaknesses in internal control over financial reporting.

17. No events have occurred subsequent to September 30, 2020, that require consideration as adjustments to or disclosures in the schedule of federal awards and related notes or that existed at the end of the reporting period that affect noncompliance during the reporting period.

18. We have disclosed all known noncompliance with direct and material compliance requirements occurring subsequent to September 30, 2020.

19. Other than those described in the Schedule of Findings and Questioned Costs, no changes in internal control over compliance or other factors that might significantly affect internal control over financial reporting, including any corrective actions taken by CPA with regard to significant deficiencies and material weaknesses in internal control over compliance, have occurred subsequent to September 30, 2020.

20. Federal awards expenditures have been charged in accordance with applicable cost principles, except as disclosed in the Schedule of Findings and Questioned Costs.

21. The Reporting Package submitted to the Federal Audit Clearinghouse (FAC) as defined by the OMB Uniform Guidance section 2CFR200.512(3)(c) does not contain protected personally identifiable information.

22. We have disclosed all contracts or other agreements with service organizations.

23. We have disclosed to you all communications from service organizations relating to noncompliance with the requirements of federal statutes, regulations, and terms and conditions of federal awards at those organizations.

24. We have:

    a. Identified and disclosed to you the requirements of federal statutes, regulations, and the terms and conditions of federal awards that are considered to have a direct and material effect on each major program under audit.

    b. Complied, in all material respects, with the direct and material compliance requirements identified above in connection with federal award, except as disclosed in the Schedule of Findings and Questioned Costs section of the Independent Auditors' Reports on Internal Control and on Compliance.

    c. Identified and disclosed interpretations of any compliance requirements that have varying interpretations.

    d. Made available all federal awards (including amendments, if any) and any other correspondence relevant to federal programs and related activities that have taken place with federal agencies or pass-through entities. Management has made available all documentation related to compliance with the direct and material compliance requirements, including information related to federal program financial reports and claims for advances and reimbursements. Federal financial reports and claims for advances and reimbursements are supported by the books and records from which the financial statements have been prepared and are prepared on a basis consistent with that presented in the Schedule of Expenditures of Federal Awards. The copies of federal program financial reports provided are true copies of the reports submitted, or electronically transmitted, to the federal agency or pass-through entity, as applicable.

    e. Identified and disclosed all amounts questioned and all known noncompliance with the direct and material compliance requirements of federal awards, including the results of other audits, program reviews, or any communications from federal awarding agencies and pass-through entities concerning possible noncompliance related to the objectives of the audit.

    f. Identified previous financial audits, attestation engagements, performance audits, or other studies related to the objectives of the audit and the corrective actions taken to address significant findings and recommendations, including the status of follow-up on prior audit findings (and information about all management decisions) by federal awarding agencies and pass-through entities.

    g. Provided to you our views on the reported findings, conclusions, and recommendations for your report.

25. We acknowledge and understand our responsibility for the presentation of the Schedule of Expenditures of Federal Awards (SEFA) in accordance with §200.510(b) of the Uniform Guidance.

26. We believe the SEFA, including its form and content, is fairly presented in accordance with §200.510(b) of the Uniform Guidance.

27. We are responsible for follow-up on all prior-year(s) findings. We have prepared a summary schedule of prior-year findings by federal awarding agency and pass-through entity, including all management decisions, to report the status of our efforts in implementation of the prior-year's corrective action plan. The summary schedule of prior audit findings includes all findings required to be included in accordance with OMB Uniform Guidance.

28. We are responsible for taking corrective action on audit findings and have developed a corrective action plan that meets the requirements of OMB Uniform Guidance. We have included in the corrective action plan for current-year findings the name of the person in our organization responsible for implementation of the actions, the best actions to be taken, and the estimate of a completion date. We have taken timely and appropriate steps to remedy fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse that you report.

29. Management has identified and disclosed to you all laws and regulations that have a direct and material effect on the determination of financial statement amounts.

30. No subsequent events that provide additional evidence with respect to conditions that existed at the end of the reporting period that affect noncompliance during the reporting period have occurred subsequent to September 30, 2020.

31. No instances of noncompliance with direct and material compliance requirements have occurred subsequent to September 30, 2020.

32. CPA has charged costs to federal awards in accordance with applicable cost principles, except as disclosed in the Schedule of Findings and Questioned Costs.

33. CPA has made available to you all financial records and related data for all financial transactions of CPA. The records, books, and accounts, as provided to you, record the financial and fiscal operations of all funds administered by CPA and provide the audit trail to be used in a review of accountability. Information in federal financial reports and claims for advances and reimbursements is supported by the books and records from which the financial statements have been prepared, except as disclosed in the Schedule of Findings and Questioned Costs.

34. CPA has obligated, expended, received, and used public funds in accordance with the purpose for which such funds have been appropriated or otherwise authorized by local, state, or federal law. Such obligation, expenditure, receipt, or use of public funds was in accordance with any limitations, conditions, or mandatory directions imposed by local, state, or federal law [, except for [*insert appropriate description*]].

35. Money or similar assets handled by CPA on behalf of the local and Federal Government have been properly and legally administered, and the accounting and record keeping related thereto is proper, accurate, and in accordance with law, except as disclosed in the Schedule of Findings and Questioned Costs.

Except where otherwise stated below, immaterial matters less than $55,800 collectively are not considered to be exceptions that require disclosure for the purpose of the following representations. This amount is not necessarily indicative of amounts that would require adjustment to, or disclosure in, the basic financial statements.

36. Except as listed in Appendix B, there are no transactions that have not been properly recorded and reflected in the financial statements.

37. CPA has no plans or intentions that may affect the carrying value or classification of assets and liabilities.

38. Regarding related parties:

    a. We have disclosed to you the identity of CPA's related parties and all the related-party relationships and transactions of which we are aware.

b. To the extent applicable, related parties and all the related-party relationships and transactions, including sales, purchases, loans, transfers, leasing arrangements, and guarantees (written or oral) have been appropriately identified, properly accounted for, and disclosed in the financial statements, as follows:

- Total related party transactions for the years ended September 30, 2020 and 2019, and the related receivable and payable balances, are as follows:

	2020			
	Revenues and Capital Contributions	Expenses	Unearned Revenues	Due to Related Parties
Commonwealth Utilities Corporation	$ 87,595	$ 2,113,911	$ -	$ 2,034,711
CNMI Government	-	175,756	-	2,525,760
	$ 87,595	$ 2,289,667	$ -	$ 4,560,471

	2019			
	Revenues and Capital Contributions	Expenses	Unearned Revenues	Due to Related Parties
Commonwealth Utilities Corporation	$ 391,909	$ 4,534,904	$ 3,642,992	$ 1,508,566
CNMI Government	195,000	171,813	-	2,350,003
Commonwealth Development Authority	546,679	55,526	-	-
	$ 1,133,588	$ 4,762,243	$ 3,642,992	$ 3,858,569

- Interest expense on the note payable to CDA for the years ended September 30, 2020 and 2019 amounted to $-0- and $55,526, respectively.

- On June 30, 2008, CPA and the Commonwealth Utilities Corporation (CUC) entered into an amended and superseding MOA for the repayment of wharfage fees due to CPA amounting to $3,385,131 with interest at 6.25%. In accordance with the MOA, CPA has the right to offset utility charges at the Port of Saipan and other ancillary accounts against the receivable from CUC beginning July 1, 2008. Total utility charges offset during the years ended September 30, 2020 and 2019 amounted to $87,595 and $-0-, respectively. In addition, during the years ended September 30, 2020 and 2019, CPA recorded lease receivables from CUC for the rental of water wells situated on CPA property. In June 2018, CPA and CUC agreed to offset CPA's electric utility charges for the Airport Division against receivables from CUC for the Seaport Division of $4,533,909 comprising of wharfage fees of $3,385,131 and interest on wharfage fees of $1,148,778 through June 30, 2018, which resulted in a recovery of the Seaport Division of $3,434,497, net of accrued interest.

- On November 1, 2019, CPA entered into an omnibus agreement with CUC which gave CUC a permanent easement over water wells, water lines, sand filtration, a 20 million gallon tank, and power poles and transmission lines to power the water wells, located on CPA property. CUC is responsible for maintenance of the permanent easement and for maintaining a continuous water supply to CPA. CUC will not charge CPA for water up to $600,000 annually on an indefinite basis beginning November 1, 2019 and CPA will recognize revenue up to this amount annually as water expense is incurred. Permanent easement rights granted for the water wells resulted in revenues of $3,642,992 in fiscal year 2020.

- CPA recorded contributions of $-0- and $195,000 from the CNMI government during the years ended September 30, 2020 and 2019, respectively. The amount due to the CNMI government relates to the 1% Public Auditor fee of $2,525,760 and $2,350,003 at September 30, 2020 and 2019, respectively.

39. CPA has not performed a determination whether a capital asset has been impaired in accordance with GASB Codification of Government Accounting and Financial Reporting Standards Section 1400.181 - 1400.201, *Impairment of Capital Assets*. However, CPA believes that the magnitude of the decline in service utility, if any, is not significant.

40. We have appropriately identified and properly recorded and disclosed in the financial statements all interfund transactions, including repayment terms.

41. Arrangements with financial institutions involving compensating balances or other arrangements involving restrictions on cash balances, line of credit, or similar arrangements have been properly disclosed in the financial statements.

42. In preparing the financial statements in accordance with GAAP, management uses estimates. All estimates have been disclosed in the financial statements for which known information available prior to the issuance of the financial statements indicates that both of the following criteria are met:

    a. It is reasonably possible that the estimate of the effect on the financial statements of a condition, situation, or set of circumstances that existed at the date of the financial statements will change in the near term due to one or more future confirming events.

    b. The effect of the change would be material to the financial statements.

43. There are no:

    a. Instances of identified or suspected noncompliance with laws, regulations, or provisions of contracts or grant agreements whose effects should be considered when preparing the financial statements, or other instances that warrant the attention of those charged with governance, except as disclosed in the Schedule of Findings and Questioned Costs section of the Independent Auditors' Reports on Internal Control and on Compliance.

    b. Known actual or possible litigation and claims whose effects should be considered when preparing the financial statements and that have not been disclosed to you and accounted for and disclosed in accordance with GAAP.

    c. Known actual or likely instances of abuse that have occurred that could be quantitatively or qualitatively material to the financial statements.

    d. Other liabilities or gain or loss contingencies that are required to be accrued or disclosed by GASB Codification Section C50, *Claims and Judgments*, except as disclosed in note 10 to the financial statements as follows:

        - CPA participates in a number of federally assisted grant programs funded by the United States Government. These programs are subject to financial and compliance audits to ascertain if Federal laws and guidelines have been followed. Cumulative questioned costs of $24,763 have been set forth in CPA's Single Audit Report for the year ended September 30, 2020. The ultimate disposition of these questioned costs can be determined only by final action of the respective grantor agencies. Therefore, no provision for any liability that may result upon resolution of this matter has been made in the financial statements.

- In accordance with 14 CFR Part 158.67(c), at least annually during the period the PFC is collected, held or used, each public agency shall provide for an audit of its PFC account. Cumulative questioned costs of $864,569 have been set forth in CPA's PFC report for the year ended September 30, 2020. The ultimate disposition of these questioned costs can be determined only by final action of the Federal Aviation Administration (FAA); therefore, no provision for any liability that may result from this matter has been made in the financial statements.

- CPA is involved in certain legal actions and claims that arise in the ordinary course of business. However, the ultimate outcome of the claims and lawsuits are unknown at the present time and management does not expect to suffer material recourse due to the merits of the claims. Accordingly, no provision for any liability that might result has been made in the accompanying financial statements. Management believes that, as a result of its legal defenses and insurance arrangements, none of these matters will have a material adverse effect on CPA's financial position, change in net position or cash flows.

44. No evidence of fraud, possible irregularities, or dishonesty in fiscal operations of programs administered by CPA has been discovered.

45. No events have occurred subsequent to September 30, 2020, that require consideration as adjustments to or disclosures in the Schedule of Expenditures of Federal Awards and related notes or that existed at the end of the reporting period that affect noncompliance during the reporting period.

46. CPA has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets, nor has any asset been pledged as collateral, except as disclosed in note 7 to the financial statements.

47. CPA has complied with all aspects of contractual agreements that may affect the financial statements, except as disclosed in the Schedule of Findings and Questioned Costs section of the Independent Auditors' Reports on Internal Control and on Compliance.

48. No department of CPA has reported a material instance of noncompliance to us.

49. No events have occurred after September 30, 2020, but before December 13, 2021, the date the financial statements were available to be issued, that require consideration as adjustments to, or disclosures in, the financial statements.

50. Regarding required supplementary information:

    a. We confirm that we are responsible for the required supplementary information.

    b. The required supplementary information is measured and presented in accordance with GASB.

    c. The methods of measurement and presentation of the supplementary information have not changed from those used in the prior period.

51. Regarding supplementary information:

    a. We are responsible for the preparation and fair presentation of the supplementary information in relation to the basic financial statements taken as a whole.

b. We believe the supplementary information, including its form and content, is fairly presented in relation to the basic financial statements taken as a whole.

c. The methods of measurement and presentation of the supplementary information have not changed from those used in the prior period.

52. Receivables recorded in the financial statements represent valid claims against debtors for sales or other charges arising on or before September 30, 2020 and have been appropriately reduced to their estimated net realizable value.

53. CPA has pledged future gross revenues to repay $20,050,000 and $33,775,000 in 1998 Senior Series A and $7,225,000 of 2005 Senior Series A tax-exempt special revenue bonds. Proceeds from the bonds provided financing for capital assets. The bonds are payable from pledged gross revenues. The bonds are payable through fiscal years 2028, 2028 and 2031, respectively. The total principal and interest payable for the remainder of the life of these bonds are $36,713,462 and $41,509,167 at September 30, 2020 and 2019, respectively. Pledged gross revenues received during the years ended September 30, 2020 and 2019 were $24,703,467 and $42,143,268, respectively, of which $16,746,477 in 2019 pertains to insurance proceeds. Debt service payments during the years ended September 30, 2020 and 2019 amounted to $4,465,328 and $4,473,804 representing 18% and 11%, respectively, of pledged gross revenues.

The bond indentures contain several restrictive covenants, including restrictions on the use of bond proceeds. Management of CPA is of the opinion that CPA was in compliance with all significant covenants as of September 30, 2020. Section 6.11 of the Airport and Seaport Bond Indenture Agreements (Indenture) states that CPA shall impose, levy, enforce and collect such dockage, entry and wharfage fees, tariffs, lease rentals, licensing fees and other fees and charges in an aggregate amount with respect to each fiscal year to produce gross revenues of 125% of debt service requirements.

Management of CPA has determined that gross revenues consist of total operating revenues, other grant revenue and contributions, interest income and PFCs to meet the indenture requirements. For fiscal years 2020 and 2019, management of CPA determined that 100% of PFCs are considered as gross revenues for these purposes.

54. Tax-exempt bonds issued have retained their tax-exempt status.

55. In June 2012, GASB issued Statement No. 68, *Accounting and Financial Reporting for Pensions* which revised and established new financial reporting requirements for most governments that provide their employees with pension benefits through plans that are administered through trusts. Management has determined that the CNMI is legally responsible for making contributions to NMISF as a non-employer entity and that net pension obligations are allocated in total to the CNMI. Management acknowledges the requirement to recognize revenue in an amount equal to the non-employer contributing entities' (CNMI) total proportionate share of the collective pension expense that is associated with CPA. CPA has not recorded related revenues and pension expense for the years ended September 30, 2020 and 2019 as amounts were not available.

56. During the year ended September 30, 2020, GASB issued Statement No. 95, *Postponement of the Effective Dates of Certain Authoritative Guidance*, which postpones the effective dates of GASB Statement No. 84, 89, 90, 91, 92 and 93 by one year and GASB Statement No. 87 by 18 months; however, earlier application of the provisions addressed in GASB Statement No. 95 is encouraged and is permitted to the extent specified in each pronouncement as originally issued. In accordance with GASB Statement No. 95, management has elected to postpone implementation of these statements.

In January 2017, GASB issued Statement No. 84, *Fiduciary Activities*. This Statement is to improve guidance regarding the identification of fiduciary activities for accounting and financial reporting purposes and how those activities should be reported. The requirements of this Statement will enhance consistency and comparability by (1) establishing specific criteria for identifying activities that should be reported as fiduciary activities and (2) clarifying whether and how business-type activities should report their fiduciary activities. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 84 will be effective for fiscal year ending September 30, 2021.

In June 2017, GASB issued Statement No. 87, *Leases*. The objective of this Statement is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases by governments. This Statement increases the usefulness of governments' financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and as inflows of resources or outflows of resources recognized based on the payment provisions of the contract. Management believes that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 87 will be effective for fiscal year ending September 30, 2022.

In June 2018, GASB issued Statement No. 89, *Accounting for Interest Cost Incurred Before the End of a Construction Period*. The objectives of this Statement are (1) to enhance the relevance and comparability of information about capital assets and the cost of borrowing for a reporting period and (2) to simplify accounting for interest cost incurred before the end of a construction period. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 89 will be effective for fiscal year ending September 30, 2022.

In March 2018, GASB issued Statement No. 90, *Majority Equity Interests - An Amendment of GASB Statements No. 14 and 61*. The primary objectives of this Statement are to improve the consistency and comparability of reporting a government's majority equity interest in a legally separate organization and to improve the relevance of financial statement information for certain component units. It defines a majority equity interest and specifies that a majority equity interest in a legally separate organization should be reported as an investment if a government's holding of the equity interest meets the definition of an investment. A majority equity interest that meets the definition of an investment should be measured using the equity method, unless it is held by a special-purpose government engaged only in fiduciary activities, a fiduciary fund, or an endowment (including permanent and term endowments) or permanent fund. Those governments and funds should measure the majority equity interest at fair value. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 90 will be effective for fiscal year ending September 30, 2021.

In May 2019, GASB issued Statement No. 91, *Conduit Debt Obligations*. The primary objectives of this Statement are to provide a single method of reporting conduit debt obligations by issuers and eliminate diversity in practice associated with (1) commitments extended by issuers, (2) arrangements associated with conduit debt obligations, and (3) related note disclosures. This Statement achieves those objectives by clarifying the existing definition of a conduit debt obligation; establishing that a conduit debt obligation is not a liability of the issuer; establishing standards for accounting and financial reporting of additional commitments and voluntary commitments extended by issuers and arrangements associated with conduit debt obligations; and improving required note disclosures. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 91 will be effective for fiscal year ending September 30, 2023.

In January 2020, GASB issued statement No. 92, *Omnibus 2020*. The objectives of this Statement are to enhance comparability in accounting and financial reporting and to improve the consistency of authoritative literature by addressing practice issues that have been identified during implementation and application of certain GASB Statements. This Statement addresses a variety of topics and includes specific provisions about the effective date of Statement No. 87, *Leases*, and Implementation Guide No. 2019-3, *Leases*, for interim financial reports, the terminology used to refer to derivative instruments and the applicability of certain requirements of Statement No. 84, *Fiduciary Activities*, to postemployment benefits. The requirements related to the effective date of GASB Statement No. 87 and Implementation Guide 2019-3, reissuance recoveries and terminology used to refer to derivative instruments are effective upon issuance. The remaining requirements of GASB Statement No. 92 is effective for the fiscal year ending September 30, 2022.

In March 2020, GASB issued Statement No. 93, *Replacement of Interbank Offered Rates*. The primary objective of this statement is to address those and other accounting and financial reporting implications of the replacement of an IBOR. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 93 will be effective for fiscal year ending September 30, 2022.

In March 2020, GASB issued Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*. The primary objective of this statement is to improve financial reporting by addressing issues related to public-private and public-public partnership arrangements. This statement also provides guidance for accounting and financial reporting for availability payment arrangements. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. GASB Statement No. 94 will be effective for fiscal year ending September 30, 2023.

In May 2020, GASB issued Statement No. 96, *Subscription-Based Information Technology Arrangements*. This Statement provides guidance on the accounting and financial reporting for subscription-based information technology arrangements (SBITAs) for government end users (governments). This Statement (1) defines a SBITA; (2) establishes that a SBITA results in a right-to-use subscription asset - an intangible asset - and a corresponding subscription liability; (3) provides the capitalization criteria for outlays other than subscription payments, including implementation costs of a SBITA; and (4) requires note disclosures regarding a SBITA. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. GASB Statement No. 96 will be effective for fiscal year ending September 30, 2023.

In June 2020, GASB issued Statement No. 97, *Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans - an amendment of GASB Statements No. 14 and No. 84, and a supersession of GASB Statement No. 32*. The primary objectives of this Statement are to (1) increase consistency and comparability related to the reporting of fiduciary component units in circumstances in which a potential component unit does not have a governing board and the primary government performs the duties that a governing board typically would perform; (2) mitigate costs associated with the reporting of certain defined contribution pension plans, defined contribution other postemployment benefit (OPEB) plans, and employee benefit plans other than pension plans or OPEB plans (other employee benefit plans) as fiduciary component units in fiduciary fund financial statements; and (3) enhance the relevance, consistency, and comparability of the accounting and financial reporting for Internal Revenue Code (IRC) Section 457 deferred compensation plans (Section 457 plans) that meet the definition of a pension plan and for benefits provided through those plans. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. GASB Statement No. 97 will be effective for fiscal year ending September 30, 2022.

57. CPA contributed to the Northern Mariana Islands Retirement Fund's (NMIRF) defined benefit plan (DB Plan), a cost-sharing, multiple-employer plan established and now administered by the CNMI. On September 30, 2013, the DB Plan was transferred to the Northern Mariana Islands Settlement Fund (NMISF). CPA also contributes to a defined contribution plan (DC Plan).

    On August 30, 2012, Public Law 17-79 was enacted to amend Title I of the Commonwealth Code to include the intent of the CNMI to participate in the retirement insurance system established by Title II of the U.S. Federal Insurance Contributions Act (FICA) and for participation to be extended to elected officials, employees, political subdivisions and instrumentalities of the CNMI. On September 11, 2012, Public Law 17-82 *CNMI Pension Reform Recovery Act of 2012* was enacted. Unless specifically exempted or authorized by federal law, Public Law 17-82 provides for mandatory membership of CNMI Government employees and elected officials in the U.S. Social Security system and authorizes employees, who elect to, to buy quarters of service in the U.S. Social Security system from contributions made to the DB Plan. In addition, Public Law 17-82 provides active and inactive DB Plan members the option to voluntarily terminate membership in the DB Plan, withdraw or roll over contributions to the DC Plan and to participate in the U.S. Social Security system without termination of employment or penalty. Further, Public Law 17-82 allows the CNMI Government to continue remitting its 4% employer contribution to the DC Plan unless the employee ceases to contribute its employee share.

    On March 11, 2013, Public Law 18-02 was enacted to amend Public Law 17-82 to clarify those provisions necessary to expedite the refunds and to prevent any further frustration of the process. Included in the public law is the amendment of Section 203(a) of Title 1, Division 8, Part 3, which states that the government obligation to withhold and remit the employee's portion to the employee's defined account shall continue with respect to employees who do not terminate membership in the DB Plan. All but two active CPA employees voluntarily terminated membership in the DB Plan and CPA contributed $24,932 and $28,359 to the DB Plan during the years ended September 30, 2020 and 2019, respectively.

58. At September 30, 2020 and 2019, CPA recorded amounts due to the CNMI government related to the 1% Public Auditor fee totaling $2,525,760 and $2,350,003, respectively.

59. During the year ended September 30, 2020, one customer accounted for 12% of total Airport Division operating revenues. During the year ended September 30, 2019, two customers accounted for 35% of total Airport Division operating revenues. One customer accounted for 21% and 19% of total operating revenues of the Seaport Division during the years ended September 30, 2020 and 2019, respectively.

60. During the year ended September 30, 2020, CPA determined that expenditures incurred in prior years were not appropriately recorded. Accordingly, contractor's payable, contractual services and typhoon-related damages are understated and net position at beginning of year is overstated at September 30, 2019.

	As Originally Stated	As Restated
Contractors payable	$ 5,987,004	$ 6,396,121
Net position at beginning of year	$ 212,604,860	$ 212,196,525
Contractual services	$ 1,345,570	$ 1,561,570
Typhoon-related damages	$ 2,272,370	$ 2,465,487

61. CPA has evaluated the effects of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") and determined that the related financial reporting considerations are accounted for and reported appropriately under the applicable financial accounting reporting framework.

Very truly yours,

Christopher S. Tenorio
Executive Director

Skye Lynn L. Aldan Hofschneider
Comptroller

Ida S. De Brum
Accounting Manager

APPENDIX A: AUDIT ADJUSTMENTS

Airport

#	Name	Debit	Credit
	1 AJE To correct FY2020 beginning balances		
1720-200	A/D RUNWAY IMPROVEMT/NC - ROP	178,000	
2051-100	ACCOUNTS PAYABLE- CUC OFFSET		3,642,992
2052-000	ACCOUNTS PAYABLE - CUC		481,314
3200-000	RETAINED EARNINGS - PRIOR	2,933,893	
2210-000	DEFERRED REVENUE		3,932
2010-000	ACCOUNTS PAYABLE - TRADE	1,016,460	
1135-000	A/R - LEASES		115
	To correct FY2020 beginning balances		
	2 CAJE To correct actual CUC expenditures/contributions		
1140-100	A/R - OTHERS-MISC.	4,599	
6263-101	UTILITIES: TERMINAL(WATER/SEWER)	50,000	
6263-100	UTILITIES: TERMINAL(ELECTRICAL)	150,376	
6263-200	UTILITIES: (TERM)		1,878
6263-300	UTILITIES: (TERM)	21,065	
6763-100	UTILITIES: ARFF	1,929	
6263-101	UTILITIES: TERMINAL(WATER/SEWER)		107,836
2051-100	ACCOUNTS PAYABLE- CUC OFFSET		63,656
9020-102	SETTLEMENTS-INS/CUC		17,040
2052-000	ACCOUNTS PAYABLE - CUC		37,559
	Client Proposed: To correct actual CUC expenditures/contributions with Omnibus offset agreement at 09/30/20		
	3 AJE To record expense in the period incurred		
3200-000	RETAINED EARNINGS - PRIOR	193,117	
7186-103	TYPHOON EXPENSES(Maria/Mangkhut/Cimaron/Yutu)		193,117
	To record expense in the period incurred		
	4 AJE To record additional allowance		
7184-100	BAD DEBTS - SPN	2,600,193	
1190-000	ALLOWANCE FOR DOUBTFUL ACCTS		2,600,193
	To record additional allowance based on assessment		
	5 AJE To record loss on disposal of equipment		
1731-111	A/D PARKING BOOTH EQUIPMENT		18,517
1770-100	A/D IMPROVEMT/OTHERS/NC - SPN		97,763
1800-100	A/D BEACON - SAIPAN		137,161
1710-100	A/D TERM FACILITIES/NC - SPN		13,872
1710-200	A/D TERM FACILITIES/NC - ROP		98,159
1760-100	A/D OFF FURN & FIX - SPN		2,300
1790-100	A/D ARFF EQUIPMENT/NC - SPN		43,333
1790-101	A/D ARFF TRAINING FACILITY - NC		138,536
DTT 9040	GAIN OR LOSS ON DISPOSAL OF FIXED ASSETS	549,641	
	To record loss on disposal of assets		
	6 CAJE To record credit memo no. 548 for return of Delphi		
4910-102	FAA GRANTS - CARES ACT	1,064,669	
2045-100	ACCOUNTS PAYABLE-OTHERS		1,064,669
	Client Proposed: To record credit memo no. 548 for return of Delphi reimbursement for invoice no. 548 under CARES ACT due to prepaid insurance ineligibility for FY2020		
	7 AJE To record capitalized interest for airport		
1880-000	CONTRACTS-IN-PROGRESS	122,761	
9010-100	INTEREST EXPENSE		122,761
	To record capitalized interest for FY2020 for airport		
	8 AJE To record depreciation on capitalized interest for FY2020		
7388-100	DEPREC. TERM. FACILITIES - SPN	92,190	
7388-200	DEPREC. TERM. FACILITES - ROP	11,885	
7388-300	DEPREC. TERM. FACILITIES - TIQ	7,449	
7387-100	DEPREC. RUNWAYS IMPRO - SPN	12,748	
7387-200	DEPREC. RUNWAYS IMPRO- ROP	20,798	
7387-300	DEPREC. RUNWAYS IMPRO - TIQ	24,413	
7390-100	DEPREC. IMPROVEMENT OTHERS -SPN	17,173	
7390-200	DEPREC. IMPROVEMENT OTHERS - ROP	147	
7390-300	DEPREC. IMPROVEMENT OTHERS - TIQ	584	
7393-100	DEPREC. ARFF - SAIPAN	5,706	
1710-100	A/D TERM FACILITIES/NC - SPN		92,190

APPENDIX A: AUDIT ADJUSTMENTS, CONTINUED

Airport, Continued

#	Name	Debit	Credit
	8 AJE To record depreciation on capitalized interest for FY2020, Continued		
1710-200	A/D TERM FACILITIES/NC - ROP		11,885
1710-300	A/D TERM FACILITIES/NC - TIQ		7,449
1720-100	A/D RUNWAY IMPROVEMT/NC - SPN		12,748
1720-200	A/D RUNWAY IMPROVEMT/NC - ROP		20,798
1720-300	A/D RUNWAY IMPROVEMT/NC - TIQ		24,413
1770-100	A/D IMPROVEMT/OTHERS/NC - SPN		17,173
1770-200	A/D IMPROVEMT-OTHERS/NC - ROP		147
1770-300	A/D IMPROVEMT-OTHERS/NC - TIQ		584
1790-101	A/D ARFF TRAINING FACILITY - NC		5,706
	To record depreciation on capitalized interest for FY2020		
	9 AJE To recognize revenue related to CUC offset omnibus		
2051-100	ACCOUNTS PAYABLE- CUC OFFSET	3,642,992	
DT9120	PERMANENT EASEMENT RIGHTS GRANTED TO WATER WELLS		3,642,992
	To recognize revenue related to omnibus agreement which was effective 11/01/19		
	10 CAJE Record additional A/R Grantor - FEMA		
1120-100	A/R - FEMA /ARMY CORP/FAA-ILS	1,035,159	
4912-100	FEMA/DOI/OMIP/HOMELAND		1,035,159
	Client Proposed Record additional A/R Grantor - FEMA for PW# 62, 149, 157, and 169 at 09/30/20		

Seaport

	1 AJE To record expense in the period incurred		
3200-000	RETAINED EARNINGS	216,000	
5360-300	CONSULTING SERVICES - TINIAN		108,000
5360-200	CONSULTING SERVICES - ROTA		108,000
	To record expense in the period incurred		
	2 AJE To record additional allowance for receivables over 90 days		
5370-100	BAD DEBTS	36,780	
1160-000	ALLOWANCE FOR DOUBTFUL ACCT		36,780
	To record additional allowance based on receivables outstanding over 90 days		
	3 AJE To record increase in fair value of investments		
7500-000	OTHER INCOME & EXPENSE		77,164
1247-102	BOG SENIOR BOND RESEVE- INVEST 71040006301	20,712	
1256-102	BOG SUPPLE FUND - INVESTMENT 71090006301	56,452	
	To record increase in fair value of investments at 09/30/20		
	4 CAJE To record client provided adjusting entry		
2020-116	DELTA DOCK EXPANSION	15,000	
1680-116	SPN DELTA DOCK EXPANSION		15,000
	Client proposed To correct retention amount entered as $16,665.05 in error s/b $1,665.05		
	5 AJE To record capitalized interest for seaport		
1880-000	CIP - CAPITALIZED INTEREST	11,253	
8010-100	INTEREST EXPENSE		11,253
	To record capitalized interest for FY2020 for seaport		
	6 CAJE To record 3% gross sales from FY2014 - FY2019		
1102-000	A/R- OTHERS	44,445	
4140-100	LAND RENTAL - SAIPAN		44,445
	Client Proposed To record 3% gross sales from FY2014 to FY2019 for Pacific Marine Ent at 09/30/20. Note. Payment receipt no. 39517 dated 06/08/21		
	7 CAJE Record A/R FEMA for PW 57, PW 157, and PW169 at 09/30/20		
1101-101	A/R-GRANTOR	57,995	
4090-100	GRANT REVENUE INCOME - SPN		57,995
	Client Proposed Record A/R FEMA for PW#57, 157, 169 at 09/30/20		

APPENDIX B

CURRENT-YEAR UNCORRECTED MISSTATEMENTS	Pre-Tax Correcting Entry								
	Assets		Liabilities		Equity		Income		Total Should
Entry Description	DR	CR	DR	CR	DR	CR	DR	CR	Equal 0
1) To adjust airport bond interest payable at 09/30/20									
DR Interest payable - bond			16,380						16,380
CR Interest expense								(16,380)	(16,380)
2) To record 09/28/20 - 09/30/20 salaries & wages									
DR Salaries & wages - Airport							70,432		70,432
DR Salaries & wages - Seaport							7,998		7,998
CR Accrued salaries & wages - Airport				(70,432)					(70,432)
CR Accrued salaries & wages - Seaport				(7,998)					(7,998)
3) To record additional water charges offset to agree with CUC's confirmation									
DR Utility (terminal water/sewer) - Airport							24,744		24,744
CR Settlements-ins/cuc - Airport								(24,744)	(24,744)
4) To adjust seaport bond interest payable at 09/30/20									
DR Interest payable - bond			35,672						35,672
CR Interest expense								(35,672)	(35,672)
5) To adjust fixed assets and accumulated depreciation at 09/30/2020 due to decommissioned assets									
DR Accumulated Depreciation	214,083								214,083
CR Fixed Assets		(214,083)							(214,083)
TOTAL MISSTATEMENTS	214,083	(214,083)	52,052	(78,430)	0	0	103,174	(76,796)	0

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Deloitte.

COMMONWEALTH PORTS AUTHORITY
(A COMPONENT UNIT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS)

REPORT ON THE AUDIT OF FINANCIAL STATEMENTS IN ACCORDANCE WITH THE UNIFORM GUIDANCE

YEAR ENDED SEPTEMBER 30, 2020

Deloitte.

COMMONWEALTH PORTS AUTHORITY
(A COMPONENT UNIT OF THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS)

FINANCIAL STATEMENTS,
ADDITIONAL INFORMATION AND
INDEPENDENT AUDITORS' REPORT

YEARS ENDED SEPTEMBER 30, 2020 AND 2019

Deloitte.

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INDEPENDENT AUDITORS' REPORT

Board of Directors
Commonwealth Ports Authority:

Report on the Financial Statements

We have audited the accompanying financial statements of the Commonwealth Ports Authority (CPA), a component unit of the Commonwealth of the Northern Mariana Islands (CNMI), which comprise the statements of net position as of September 30, 2020 and 2019, and the related statements of revenues, expenses and changes in net position and of cash flows for the years then ended and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our qualified audit opinion.

Basis for Qualified Opinion

Management has not adopted Governmental Accounting Standards Board (GASB) Statement No. 68, *Accounting and Financial Reporting for Pensions*, which was effective October 1, 2014. As discussed in note 2 to the financial statements, CPA has not recorded pension expense and related net pension asset or liability, deferred inflows of resources and deferred outflows of resources as of and for the years ended September 30, 2020 and 2019. GASB Statement No. 68 requires an employer to recognize its proportionate share of the collective pension expense, as well as the net pension asset or liability, deferred outflows of resources and deferred inflows of resources. The amount by which this departure would affect the assets and deferred outflows of resources, liabilities and deferred inflows of resources, net position and expenses of CPA has not been determined.

Qualified Opinion

In our opinion, except for the effects of the matter described in the "Basis for Qualified Opinion" paragraph, the financial statements referred to above present fairly, in all material respects, the financial position of the Commonwealth Ports Authority as of September 30, 2020 and 2019, and the changes in its net position and its cash flows thereof for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Emphasis-of-Matters

COVID-19

Economic uncertainties as a result of the COVID-19 coronavirus pandemic may negatively impact CPA's future financial results as described in note 12 to the financial statements.

Restatement

As discussed in note 13 to the financial statements, management has determined that expenditures incurred in prior years were not appropriately recorded and has restated contractors payable, net position at beginning of year, contractual services and typhoon-related damages.

Our opinion is not modified with respect to these matters.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the Management's Discussion and Analysis on pages 4 through 14 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by GASB who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Information

Our audits were conducted for the purpose of forming an opinion on the financial statements that collectively comprise CPA's basic financial statements. The Combining Statement of Net Position, the Combining Statement of Revenues, Expenses and Changes in Net Position and the Combining Statement of Cash Flows as of and for the year ended September 30, 2020 (pages 39 through 41) are presented for purposes of additional analysis and are not a required part of the basic financial statements. The Combining Statement of Net Position, the Combining Statement of Revenues, Expenses and Changes in Net Position and the Combining Statement of Cash Flows are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the Combining Statement of Net Position, the Combining Statement of Revenues, Expenses and Changes in Net Position and the Combining Statement of Cash Flows are fairly stated, in all material respects, in relation to the basic financial statements as a whole.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated December 13, 2021 on our consideration of CPA's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of CPA's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering CPA's internal control over financial reporting and compliance.

Deloitte & Touche LLC

December 13, 2021

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MANAGEMENT'S DISCUSSION AND ANALYSIS (MD&A)
YEAR ENDED SEPTEMBER 30, 2020

This section of the Commonwealth Ports Authority's (herein referred to as "CPA") audit report presents our discussion and analysis of CPA's activities and financial performance during the fiscal year ended September 30, 2020, with selected comparative information for the fiscal years ended September 30, 2019 and 2018. Please read it in conjunction with the detailed information contained within the accompanying financial statements.

INTRODUCTION

CPA is a component unit of the Government of the Commonwealth of the Northern Mariana Islands (CNMI) and was established as a public corporation on November 8, 1981 by CNMI Public Law 2-48. A seven-member Board of Directors appointed by the Governor to serve four-year terms governs CPA. CPA is a self-supporting organization and generates revenues from port users to fund operating expenses and debt service requirements.

CPA is tasked with the responsibility to operate, maintain and improve all airports and seaports within the CNMI. Airport and seaport facilities currently exist on the islands of Saipan, Tinian and Rota with 149 employees on Saipan, 24 employees on Rota and 30 employees on Tinian.

The notes to the financial statements are essential to fully understand the data contained in the financial statements. This report also presents certain required supplementary information regarding capital assets and long-term debt compliance during the year, including commitments made for capital expenditures.

OVERVIEW OF FINANCIAL STATEMENTS

CPA's financial transactions and subsequent statements are prepared in accordance with accounting principles generally accepted in the United States of America and standards mandated by the Governmental Accounting Standards Board, as applicable to governmental entities.

CPA operates on the accrual basis of accounting wherein revenues are recognized when earned, not when received, and expenses are recorded when incurred, not when paid. Capital assets, except for land, are capitalized and depreciated over their useful lives. Further information is provided in the notes to the accompanying audited financial statements.

The financial statements of this annual report consist of three parts: the MD&A, the basic financial statements and the notes to the financial statements. The basic financial statements consist of the Statement of Net Position, the Statement of Revenues, Expenses and Changes in Net Position and the Statement of Cash Flows.

The Statement of Net Position presents information on all of CPA's assets and liabilities, with the difference between the two reported as net position. Net position consists of restricted, unrestricted and net investment in capital assets.

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OVERVIEW OF FINANCIAL STATEMENTS, CONTINUED

The Statement of Revenues, Expenses and Changes in Net Position presents information showing how net position changed during the fiscal year. All changes in net position are reported when the underlying event giving rise to the change occurs, regardless of the timing of related cash flows. Thus, revenues and expenses are reported for some items that will result in cash flows in future periods.

The Statement of Cash Flows presents information related to CPA's cash receipts and cash payments during the fiscal year and its ability to generate net cash flows and meet its obligations as they become due and its needs for external financing.

FINANCIAL HIGHLIGHTS

Total assets and deferred outflows for the airport and seaport operations combined decreased by 2% or $5,272,091 from $281,291,998 in FY2019 to $276,019,907 in FY2020 and increased by 10% or $26,455,509 from $254,836,489 in FY2018 to $281,291,998 in FY2019.

Net position for the airport and seaport operations combined decreased by less than 1% or $137,816 from $212,196,525 in FY2019 to $212,058,709 in FY2020 and increased by 8% or $15,536,338 from $196,660,187 in FY2018 to $212,196,525 in FY2019. Net position represents the amount that total assets exceed total liabilities.

Operating revenues for the airport and seaport operations combined decreased by 37% or $8,237,983 from $22,267,487 in FY2019 to $14,029,504 in FY2020 and by 14% or $3,735,912 from $26,003,399 in FY2018 to $22,267,487 in FY2019. Operating revenues for the Airport Division decreased by 48% or $6,421,566 from $13,478,450 in FY2019 to $7,056,884 in FY2020 and by 22% or $3,771,549 from $17,249,999 in FY2018 to $13,478,450 in FY2019. Operating revenues for the Seaport Division decreased by 21% or $1,816,417 from $8,789,037 in FY2019 to $6,972,620 in FY2020 and increased by less than 1% or $35,637 from $8,753,400 in FY2018 to $8,789,037 in FY2019.

Operating expenses (excluding depreciation and amortization) for the airport and seaport operations combined decreased by 15% or $2,619,265 from $17,700,847 in FY2019 to $15,081,582 in FY2020. Operating expenses decreased by 8% or $1,629,384 from $19,330,231 in FY2018 to $17,700,847 in FY2019, mainly due to the austerity measures implemented.

The Airport Division aviation revenue decreased by $3,458,172 due to the reduction of flight activity resulting from the COVID-19 coronavirus pandemic. The Airport Division was in compliance with its Bond Indenture for FY2020 and expects to be in compliance with the Agreement for FY2021.

The Seaport Division performed a rate study in 2008, which resulted in a tariff increase in March 2009. This was performed due to the departure of the garment industry and the drastic decline in port revenue tons. It was through this effort that revenues increased in order to be in compliance with the Bond Indenture Agreement for 2009 and thereafter. In FY2020, the Seaport Division seaport fees decreased by $1,299,104 due to a decrease in revenue tonnage. The Seaport Division was in compliance with its 1998 and 2005 Bond Indenture Agreements (the Agreements) for FY2020. CPA expects the Seaport Division to be in compliance with the Agreement for FY2021.

Combined Statements of Net Position, Statements of Revenues, Expenses and Changes in Net Position and Statements of Cash Flows as of and for the year ended September 30, 2020 follows, with comparative information as of and for the years ended September 30, 2019 and 2018:

FINANCIAL HIGHLIGHTS, CONTINUED

Statements of Net Position

	2020	2019 (As Restated)	2018
Assets and Deferred Outflows of Resources			
Current assets:			
Cash	$ 30,898,686	$ 33,351,620	$ 37,064,903
Receivables	5,982,994	5,738,865	4,668,446
Prepaid expenses	456,079	728,149	1,084,847
Investments, restricted for debt service and other purposes	58,081,467	54,843,349	24,840,061
Total current assets	95,419,226	94,661,983	67,658,257
Nondepreciable capital assets	55,518,112	52,938,082	76,028,352
Depreciable capital assets, net of accumulated depreciation and amortization	124,618,762	133,164,819	110,562,465
Deferred outflows from cost of refunding debt	463,807	527,114	587,415
Total assets and deferred outflows of resources	$ 276,019,907	$ 281,291,998	$ 254,836,489
Liabilities and Net Position			
Current liabilities:			
Revenue bonds payable, current portion	$ 2,730,000	$ 2,565,000	$ 2,415,000
Note payable to related party, current portion	-	-	3,695,607
Contractors payable	6,434,790	6,396,121	5,557,662
Trade and other payables	1,145,331	525,808	743,175
Due to related parties	4,624,127	3,858,569	7,828,107
Accrued interest payable	-	-	550,729
Accrued expenses	665,474	772,315	712,643
Unearned revenues	1,050,391	4,489,951	1,102,762
Compensated absences, current portion	271,304	290,313	251,850
Total current liabilities	16,921,417	18,898,077	22,857,535
Noncurrent liabilities:			
Compensated absences, net of current portion	504,598	384,714	422,470
Revenue bonds payable, net of current portion	25,958,306	28,688,306	31,253,306
Unearned revenues, net of current portion	20,576,877	21,124,376	3,642,991
Total noncurrent liabilities	47,039,781	50,197,396	35,318,767
Total liabilities	63,961,198	69,095,473	58,176,302
Net position:			
Net investment in capital assets	151,912,374	155,376,709	149,814,318
Restricted	58,081,467	54,843,349	24,840,061
Unrestricted	2,064,868	1,976,467	22,005,808
Total net position	212,058,709	212,196,525	196,660,187
Total liabilities and net position	$ 276,019,907	$ 281,291,998	$ 254,836,489

FINANCIAL HIGHLIGHTS, CONTINUED

Statements of Revenues, Expenses and Changes in Net Position

	2020	2019 (As Restated)	2018
Operating revenues:			
Aviation fees	$ 3,396,689	$ 6,854,861	$ 9,283,223
Seaport fees	5,575,204	6,874,308	6,362,170
Concession and lease income	3,796,768	6,783,029	7,737,218
Other	1,260,843	1,755,289	2,620,788
	14,029,504	22,267,487	26,003,399
Bad debts	(334,264)	(874,724)	(74,836)
Operating revenues, net	13,695,240	21,392,763	25,928,563
Operating expenses:			
Depreciation and amortization	13,157,977	12,916,905	11,693,235
Salaries and wages	5,900,834	6,320,006	6,523,493
Utilities	2,113,911	4,534,904	6,071,737
Contractual services	1,178,173	1,561,570	1,432,394
Employee benefits	1,297,506	1,279,599	1,208,308
Insurance	2,652,051	1,112,765	932,206
Supplies	394,234	542,867	749,241
Repairs and maintenance	599,109	626,923	1,010,007
Penalties and interest	1,272	-	3,345
Fuel	267,424	254,729	305,569
Travel	114,006	253,494	268,342
Professional fees	166,278	211,659	259,790
Promotion and advertising	45,006	34,592	64,832
Training	-	8,345	15,127
Other	351,778	959,394	485,840
Total operating expenses	28,239,559	30,617,752	31,023,466
Operating loss	(14,544,319)	(9,224,989)	(5,094,903)
Non-operating revenues (expenses):			
Passenger facility charges	1,086,945	2,368,264	2,999,871
Interest income	467,079	580,980	504,273
Other grant and revenue contributions	5,791,968	180,060	260,097
Water utility charges offset	87,595	-	-
Loss on disposal of equipment	(549,641)	-	-
Insurance proceeds	-	16,746,477	-
Recovery	-	-	3,434,497
Typhoon-related damages	(2,708,597)	(2,465,487)	-
Interest expense	(1,829,621)	(1,517,163)	(1,891,821)
Total non-operating revenues (expenses), net	2,345,728	15,893,131	5,306,917
(Loss) income before capital contributions and special items	(12,198,591)	6,668,142	212,014
Capital contributions	8,417,783	8,868,196	6,499,821
Special items:			
Permanent easement rights granted to water wells	3,642,992	-	-
Backbilled utility charges	-	-	(7,202,831)
Water well lease revenues	-	-	1,204,455
Reversal of penalties	-	-	744,684
Total special items	3,642,992	-	(5,253,692)
Change in net position	(137,816)	15,536,338	1,458,143
Net position at beginning of year	212,196,525	196,660,187	195,202,044
Net position at end of year	$ 212,058,709	$ 212,196,525	$ 196,660,187

FINANCIAL HIGHLIGHTS, CONTINUED

Statements of Cash Flows

	2020	2019	2018
Cash flows from operating activities:			
Cash received from customers	$ 11,722,253	$ 47,882,991	$ 29,656,862
Cash payments to suppliers for goods and services	(5,768,969)	(20,930,875)	(14,031,922)
Cash payments to employees for services	(7,097,465)	(7,598,898)	(7,667,156)
Net cash (used for) provided by operating activities	(1,144,181)	19,353,218	7,957,784
Cash flows from noncapital financing activity:			
Other grant revenues and contributions	5,791,968	180,060	260,097
Net cash provided by noncapital financing activity	5,791,968	180,060	260,097
Cash flows from capital and related financing activities:			
Acquisition of capital assets	(7,019,267)	(11,887,940)	(11,276,483)
Capital and other contributions received	6,067,968	7,178,851	6,437,314
Proceeds from insurance settlement	-	16,746,477	-
Passenger facility charge receipts	1,086,945	2,368,264	2,999,871
Principal paid on revenue bond maturities	(2,565,000)	(2,415,000)	(2,227,427)
Payments on note payable to related party	-	(3,695,607)	(275,411)
Interest paid on revenue bonds and notes payable to related party	(1,900,328)	(2,119,298)	(2,362,964)
Net cash (used for) provided by capital and related financing activities	(4,329,682)	6,175,747	(6,705,100)
Cash flows from investing activities:			
Net investment purchases, restricted	(3,238,118)	(30,003,288)	(3,055,974)
Interest income	467,079	580,980	504,273
Net cash used for investing activities	(2,771,039)	(29,422,308)	(2,551,701)
Net change in cash	(2,452,934)	(3,713,283)	(1,038,920)
Cash at beginning of year	33,351,620	37,064,903	38,103,823
Cash at end of year	$ 30,898,686	$ 33,351,620	$ 37,064,903

CAPITAL ASSETS

At September 30, 2020, CPA had $180,136,874 net investment in capital assets, net of depreciation where applicable, including land, runways, terminal and harbor facilities and equipment, fire and rescue equipment, general transportation, other machinery and equipment and numerous projects under construction. This represents a net decrease of $5,966,027 or 3% from the last fiscal year.

	2020	2019	2018
Runway and improvements	$ 120,406,374	$ 119,224,577	$ 114,277,326
Other improvements	29,758,609	29,934,149	27,281,782
Terminal facilities and equipment	124,934,548	128,252,542	124,718,757
Harbor facilities	64,520,013	64,520,013	64,327,013
Grounds maintenance and shop equipment	1,841,292	1,726,667	1,707,368
Fire and rescue equipment	35,551,203	36,331,622	12,900,994
Office furniture and fixtures	4,018,042	3,352,522	2,930,553
General transportation	1,306,240	1,492,812	1,492,812
Other	2,739,514	2,739,514	2,739,514
	385,075,835	387,574,418	352,376,119
Less accumulated depreciation	(260,457,073)	(254,409,599)	(241,813,654)
Total capital assets being depreciated	124,618,762	133,164,819	110,562,465
Construction in progress	55,053,683	52,473,653	75,563,923
Land	464,429	464,429	464,429
Total capital assets, net	$ 180,136,874	$ 186,102,901	$ 186,590,817

CAPITAL ASSETS, CONTINUED

Please refer to note 6 to the financial statements for additional information regarding CPA's capital asset activity.

RESTRICTED INVESTMENTS

Restricted investments for Airport and Seaport construction and debt service purposes represent the unused proceeds of the Airport Revenue Bonds and the Seaport Revenue Bonds deposited with the Trustee. The balances as of September 30, 2020, 2019 and 2018 are as follows:

	2020	2019	2018
Airport			
Bond Reserve Fund	$ 1,683,579	$ 1,665,020	$ 1,628,992
Bond Fund	588,135	554,160	519,435
Maintenance and Operation	4,870,678	2,155,757	6,994,269
Revenue Fund	754	748	734
Optional Redemption Fund	12,602	12,509	12,270
Insurance and Condemnation Proceeds Fund - Yutu	12,428,860	12,403,516	-
Insurance and Condemnation Proceeds Fund - Mangkhut	1,712,651	1,700,015	-
Stonecastle Fund	10,069,179	10,010,292	-
	31,366,438	28,502,017	9,155,700
Seaport			
Bond Reserve Fund	3,517,215	3,492,296	3,487,417
Supplemental Reserve Fund	8,032,258	7,975,806	7,991,935
Reimbursement Fund	6,048	6,003	5,889
Bond Fund	1,258,952	1,190,825	1,111,161
Maintenance and Operation	3,822,619	3,657,852	3,079,858
Construction Fund	7,475	7,420	7,279
Reserve Fund	845	838	822
Stonecastle Fund	10,069,617	10,010,292	-
	26,715,029	26,341,332	15,684,361
Total	$ 58,081,467	$ 54,843,349	$ 24,840,061

Please refer to note 3 to the financial statements for additional information regarding CPA's restricted investments.

LONG-TERM DEBT

1998 Airport Revenue Bonds

On March 26, 1998, CPA issued a 1998 Series A $20,050,000 tax-exempt revenue bond. Interest is 6.25%, payable on March 15 and September 15 of each year, commencing September 1998 and ending in the year 2028.

Payments for the Airport bond are current. The current portion of the Airport bond principal is $865,000. The long-term portion of the bond balance as of September 30, 2020 is $7,775,000.

This 1998 bond was partially used to refund an outstanding $8,250,000 1987 Series B tax-exempt bond. The bond refunding consolidated the existing bonds with new bonds to finance various airport projects and to reduce total future debt service payments through lower interest rates. The reacquisition price exceeded the net carrying amount of the old debt by $503,906 which was fully amortized over the refunded debt's life, which is shorter than the life of the new debt. The transaction also resulted in an economic gain of $688,620 and an increase of $7,616,151 in future debt service payments.

LONG-TERM DEBT, CONTINUED

1998 Seaport Revenue Bonds

On March 26, 1998, CPA issued a 1998 Series A $33,775,000 tax-exempt revenue bond. Interest is 6.6% payable on March 15 and September 15 of each year, commencing September 1998 and ending in the year 2031.

Payments for the 1998 Seaport bond are current. The current portion of the 1998 Seaport bond principal is $1,560,000. The long-term portion of the bond balance as of September 30, 2020 is $14,085,000.

The Seaport bond proceeds were partially used for a current refunding of the $22,470,000 1995 Series A tax-exempt seaport revenue bond. The refunding consolidated existing debt with new debt issued to finance various seaport projects and to reduce total debt service payments in the future. The reacquisition price exceeded the net carrying amount of the old debt by $1,345,593 which was recorded as a deferred outflow from cost of refunding debt and is being amortized over the refunded debt's life, which is shorter than the life of the new debt. The transaction also resulted in an economic gain of $1,724,777 and a decrease of $6,983,345 in future debt service payments.

2005 Seaport Revenue Bonds

On September 21, 2005, CPA issued another Senior Series A tax-exempt revenue bond in the amount of $7,225,000 for the primary purpose of financing the paving of the container yard area of the seaport. Pursuant to Section 2.04 (A)(9) of the 1998 Senior Series A Seaport Revenue Bond Indenture Agreement, CPA entered into a Second Supplemental Indenture for the bonds at an interest rate of 5.5% payable on March 15 and September 15 of each year. Payments commenced on March 15, 2008 and ends in the year 2031.

Payments for the 2005 Seaport bond are current. The current portion of the 2005 Seaport bond principal is $305,000. The long-term portion of the bond balance as of September 30, 2020 is $4,170,000.

A summary of CPA's long-term debt balances as of September 30, 2020, 2019 and 2018 is as follows:

	2020	2019	2018
1998 Senior Series A Bonds - Airport	$ 8,640,000	$ 9,450,000	$ 10,215,000
1998 Senior Series A Bonds - Seaport	$ 15,645,000	$ 17,110,000	$ 18,485,000
2005 Senior Series A Bonds - Seaport	$ 4,475,000	$ 4,765,000	$ 5,040,000
Note payable to CDA	$ -	$ -	$ 3,695,607

Please refer to note 7 to the financial statements for additional information regarding CPA's long-term debt.

REVENUE AND EXPENSE ANALYSIS

Airport and Seaport Combined Operating Revenues

	2020	2019	2018
Airport	$ 7,056,884	$ 13,478,450	$ 17,249,999
Seaport	6,972,620	8,789,037	8,753,400
	$ 14,029,504	$ 22,267,487	$ 26,003,399

REVENUE AND EXPENSE ANALYSIS, CONTINUED

The Airport Division operating revenues decreased by 48% in FY2020 as compared to FY2019. The decrease was due to the suspension of international flights due to the COVID-19 coronavirus pandemic. The Seaport Division operating revenues decreased by 21% in FY2020 as compared to FY2019. The decrease was due to a reduction in inbound revenue tonnage due to the COVID-19 coronavirus pandemic.

The CPA Board of Directors implemented an increase of fees for the Airports that took effect in June 2008. Additionally, an increase to the tariff for the Seaports was approved and implemented in March 2009. These increases in fees had a major impact on stabilizing each Division's revenues and allowing for future revenue growth.

Airport and Seaport Combined Operating Expenses

	2020	2019 (As Restated)	2018
Airport			
Personnel expense	$ 5,987,842	$ 6,491,362	$ 6,521,094
Maintenance and operations expense	6,493,969	8,979,232	10,686,376
	12,481,811	15,470,594	17,207,470
Seaport			
Personnel expense	1,210,498	1,108,243	1,210,707
Maintenance and operations expense	1,389,273	1,122,010	912,054
	2,599,771	2,230,253	2,122,761
	$ 15,081,582	$ 17,700,847	$ 19,330,231

SPECIAL ITEM

On November 1, 2019, CPA entered into an omnibus agreement with CUC which gave CUC a permanent easement over water wells, water lines, sand filtration, a 20 million gallon tank, and power poles and transmission lines to power the water wells, located on CPA property. CUC is responsible for maintenance of the permanent easement and for maintaining a continuous water supply to CPA. CPA recorded special items related to the omnibus agreement for the year ended September 30, 2018 including $7,202,831 in back-billed utility charges, $1,204,455 in water well lease revenues and $744,684 in reversal of penalties. CUC will not charge CPA for water up to $600,000 annually on an indefinite basis beginning November 1, 2019 and CPA will recognize revenue up to this amount annually as water expense is incurred. Permanent easement rights granted for the water wells resulted in revenues of $3,642,992 and $-0- in fiscal years 2020 and 2019, respectively. Please refer to note 9 to the financial statements for additional information regarding CPA's special item.

RESTATEMENT

During the year ended September 30, 2020, CPA determined that expenditures incurred in prior years were not appropriately recorded. Accordingly, contractor's payable, contractual services and typhoon-related damages and net position at beginning of year have been restated at September 30, 2019. Please refer to note 13 to the financial statements for additional information regarding CPA's restatement.

FY 2020 BOND INDENTURE/DEBT RATIO COMPLIANCE

	Airport			Seaport		
	2020	2019	2018	2020	2019	2018
Required revenues for bond compliance	$ 14,200,952	$ 16,979,008	$ 18,946,534	$ 6,462,290	$ 6,098,094	$ 6,000,381
Actual revenues collected:						
Revenues and other income	7,056,884	13,478,450	17,249,999	6,972,620	8,789,037	8,753,400
Insurance proceeds from typhoon-related damages	-	16,746,477	-	-	-	-
Other grant revenues and contributions	5,791,968	180,060	260,097	-	-	11,610
Special item	3,642,992	-	-	-	-	-
Interest income	232,163	209,840	127,857	234,916	371,140	376,416
Passenger facility charge	1,086,945	2,368,264	2,999,871	-	-	-
	17,810,952	32,983,091	20,637,824	7,207,536	9,160,177	9,141,426
Variance (noncompliance)	$ 3,610,000	$ 16,004,083	$ 1,691,290	$ 745,246	$ 3,062,083	$ 3,141,045

FY 2020 BOND INDENTURE/DEBT RATIO COMPLIANCE, CONTINUED

As illustrated in the above table for FY2020, FY2019 and FY2018, CPA was able to generate sufficient revenues for the Airport and Seaport to meet its Bond Indenture requirements. A key factor contributing to CPA Airport's ability to meet these requirements is the FAA opinion allowing passenger facility charges to be considered as revenues for compliance calculations and the inclusion of insurance proceeds from typhoon-related damages and operating grant reimbursements in the bond indenture definition of gross revenues. As stated previously, revenues and expenses are being monitored on a monthly basis so that steps can be taken to ensure compliance. The results from this activity were used to construct realistic budgets for FY2021 and FY2022. It is management's intention to control expenses in a comprehensive manner to ensure there is a proper relationship to operating revenues.

REVENUE-BASED STATISTICS

AIRPORT DIVISION

	Enplaned Passengers	Deplaned Passengers	Landing Weights
Saipan			
FY 2018	683,415	639,811	861,262,450
FY 2019	517,433	469,981	680,938,846
FY 2020	265,675	232,230	372,886,229
Rota			
FY 2018	14,543	5,404	34,024,646
FY 2019	11,530	No data	23,051,154
FY 2020	6,945	No data	20,729,624
Tinian			
FY 2018	34,468	No data	49,434,896
FY 2019	39,128	No data	53,265,172
FY 2020	21,464	No data	30,910,024
All Airports			
FY 2018	732,426	645,215	944,721,992
FY 2019	568,091	469,981	757,255,172
FY 2020	294,084	232,230	424,525,877

REVENUE-BASED STATISTICS, CONTINUED

AIRPORT DIVISION, CONTINUED

In FY2020, consolidated airport enplanements (air passenger departures) decreased by 49% and consolidated deplanements (air passenger arrivals) decreased by 51% from FY 2019. These decreases are due to the suspension of flights resulting from the COVID-19 coronavirus pandemic.

SEAPORT DIVISION

	Revenue Tons		
	Inbound	Outbound	Total
Saipan			
FY 2018	468,631	13,802	482,433
FY 2019	513,922	27,799	541,721
FY 2020	403,997	15,842	419,839
Rota			
FY 2018	5,073	-	5,073
FY 2019	4,535	683	5,218
FY 2020	8,535	627	9,162
Tinian			
FY 2018	12,486	1,277	13,763
FY 2019	18,052	3,499	21,551
FY 2020	20,786	2,011	22,797
All Seaports			
FY 2018	486,190	15,079	501,269
FY 2019	536,509	31,981	568,490
FY 2020	433,318	18,480	451,798

In FY2020, seaport inbound cargo decreased by 19% and outbound cargo decreased by 42% for the three seaports combined from FY2019.The decrease in revenue tonnage is due to the decrease in shipping activity caused by the COVID-19 coronavirus pandemic.

ECONOMIC OUTLOOK

The Airport aviation traffic for 2021 is forecasted to significantly decrease due to the COVID-19 coronavirus pandemic. The COVID-19 coronavirus pandemic continues to have a detrimental impact on CPA's financial outlook and has drastically declined passenger traffic and corresponding revenue at CPA and its airports. Air carriers that regularly operate at the Francisco C. Ada/Saipan International Airport (SIA) have suspended flights indefinitely. In response to the declining revenues, CPA's Board of Directors implemented austerity measures effective March 2020 to reduce operational costs. The austerity measures include reduction of employee hours, freeze on all personnel actions and travel outside of the CNMI, and the implementation of energy conservation measures.

ECONOMIC OUTLOOK, CONTINUED

CPA was able to fund its airport operations and debt service requirements mainly due to the receipt of a CARES Act grant from the Federal Aviation Administration. The grant was awarded in May 2020 in the amount of $22,759,818. The grant has a four-year performance period and is available at 100% federal share. These funds can be used for any purpose which airport revenues may be lawfully used.

The Seaport gross revenue tons for 2021 is forecasted to remain steady. Management will continue to closely monitor the Airport and Seaport operating expenses in order to maintain a level to comply with the respective Bond Indentures.

Management's Discussion and Analysis for the year ended September 30, 2019 is set forth in CPA's report on the audit of financial statements, which is dated March 8, 2021. That Discussion and Analysis explains the major factors impacting the 2019 financial statements and can be viewed at the Office of the Public Auditor's website at www.opacnmi.com.

CONTACTING CPA'S FINANCIAL MANAGEMENT

This financial report is designed to provide the branches of the CNMI Government and the public at large with a general overview of CPA's finances and to demonstrate its accountability for the monies received. If you have questions about this report or need additional financial information, contact Mrs. Skye Lynn L. Aldan Hofschneider, Comptroller, P.O. Box 501055, Saipan, MP 96950-1055, or call (670) 237-6500 or email at skye.hofschneider@cnmiports.com.

COMMONWEALTH PORTS AUTHORITY

Statements of Net Position
September 30, 2020 and 2019

ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	2020	2019 (As Restated)
Current assets:		
Cash	$ 30,898,686	$ 33,351,620
Receivables:		
Grantor agencies	5,152,552	2,802,737
Operations, net	829,770	2,925,836
Officers and employees	672	10,292
Prepaid expenses	456,079	728,149
Investments, restricted for debt service and other purposes	58,081,467	54,843,349
Total current assets	95,419,226	94,661,983
Nondepreciable capital assets	55,518,112	52,938,082
Depreciable capital assets, net of accumulated depreciation and amortization	124,618,762	133,164,819
Deferred outflows from cost of refunding debt	463,807	527,114
Total assets and deferred outflows of resources	$ 276,019,907	$ 281,291,998
LIABILITIES AND NET POSITION		
Current liabilities:		
Revenue bonds payable, current portion	$ 2,730,000	$ 2,565,000
Contractors payable	6,434,790	6,396,121
Trade and other payables	1,145,331	525,808
Due to related parties	4,624,127	3,858,569
Accrued expenses	665,474	772,315
Unearned revenues	1,050,391	4,489,951
Compensated absences, current portion	271,304	290,313
Total current liabilities	16,921,417	18,898,077
Noncurrent liabilities:		
Compensated absences, net of current portion	504,598	384,714
Revenue bonds payable, net of current portion	25,958,306	28,688,306
Unearned revenues, net of current portion	20,576,877	21,124,376
Total noncurrent liabilities	47,039,781	50,197,396
Total liabilities	63,961,198	69,095,473
Commitment and contingencies		
Net position:		
Net investment in capital assets	151,912,374	155,376,709
Restricted	58,081,467	54,843,349
Unrestricted	2,064,868	1,976,467
Total net position	212,058,709	212,196,525
Total liabilities and net position	$ 276,019,907	$ 281,291,998

See accompanying notes to financial statements.

COMMONWEALTH PORTS AUTHORITY

Statements of Revenues, Expenses and Changes in Net Position
Years Ended September 30, 2020 and 2019

	2020	2019 (As Restated)
Operating revenues:		
Seaport fees	$ 5,575,204	$ 6,874,308
Concession and lease income	3,796,768	6,783,029
Aviation fees	3,396,689	6,854,861
Other	1,260,843	1,755,289
	14,029,504	22,267,487
Bad debts	(334,264)	(874,724)
Operating revenues, net	13,695,240	21,392,763
Operating expenses:		
Depreciation and amortization	13,157,977	12,916,905
Salaries and wages	5,900,834	6,320,006
Insurance	2,652,051	1,112,765
Utilities	2,113,911	4,534,904
Employee benefits	1,297,506	1,279,599
Contractual services	1,178,173	1,561,570
Repairs and maintenance	599,109	626,923
Supplies	394,234	542,867
Fuel	267,424	254,729
Professional fees	166,278	211,659
Travel	114,006	253,494
Promotion and advertising	45,006	34,592
Penalties and interest	1,272	-
Training	-	8,345
Other	351,778	959,394
Total operating expenses	28,239,559	30,617,752
Operating loss	(14,544,319)	(9,224,989)
Non-operating revenues (expenses):		
Passenger facility charges	1,086,945	2,368,264
Interest income	467,079	580,980
Other grant revenues and contributions	5,791,968	180,060
Water utility charges offset	87,595	-
Loss on disposal of equipment	(549,641)	-
Interest expense	(1,829,621)	(1,517,163)
Typhoon-related damages	(2,708,597)	(2,465,487)
Insurance proceeds from typhoon-related damages	-	16,746,477
Total non-operating revenues (expenses), net	2,345,728	15,893,131
(Loss) income before capital contributions and special item	(12,198,591)	6,668,142
Capital contributions	8,417,783	8,868,196
Special item:		
Permanent easement rights granted to water wells	3,642,992	-
Change in net position	(137,816)	15,536,338
Net position at beginning of year, as restated	212,196,525	196,660,187
Net position at end of year	$ 212,058,709	$ 212,196,525

See accompanying notes to financial statements.

COMMONWEALTH PORTS AUTHORITY

Statements of Cash Flows
Years Ended September 30, 2020 and 2019

	2020	2019 (As Restated)
Cash flows from operating activities:		
Cash received from customers	$ 11,722,253	$ 47,882,991
Cash payments to suppliers for goods and services	(5,768,969)	(20,930,875)
Cash payments to employees for services	(7,097,465)	(7,598,898)
Net cash (used for) provided by operating activities	(1,144,181)	19,353,218
Cash flows from noncapital financing activity:		
Other grant revenues and contributions	5,791,968	180,060
Net cash provided by noncapital financing activity	5,791,968	180,060
Cash flows from capital and related financing activities:		
Acquisition of capital assets	(7,019,267)	(11,887,940)
Capital and other contributions received	6,067,968	7,178,851
Passenger facility charge receipts	1,086,945	2,368,264
Principal paid on revenue bond maturities	(2,565,000)	(2,415,000)
Proceeds from insurance settlement	-	16,746,477
Payments on note payable to related party	-	(3,695,607)
Interest paid on revenue bonds and note payable to related party	(1,900,328)	(2,119,298)
Net cash (used for) provided by capital and related financing activities	(4,329,682)	6,175,747
Cash flows from investing activities:		
Net investment purchases, restricted	(3,238,118)	(30,003,288)
Interest income	467,079	580,980
Net cash used for investing activities	(2,771,039)	(29,422,308)
Net change in cash	(2,452,934)	(3,713,283)
Cash at beginning of year	33,351,620	37,064,903
Cash at end of year	$ 30,898,686	$ 33,351,620
Reconciliation of operating loss to net cash (used for) provided by operating activities:		
Operating loss	$ (14,544,319)	$ (9,224,989)
Adjustments to reconcile operating loss to net cash (used for) provided by operating activities:		
Depreciation and amortization	13,157,977	12,916,905
Water utility charges offset	87,595	-
Permanent easement rights granted to water wells	3,642,992	-
Loss on disposal of equipment	(549,641)	-
Typhoon-related damages	(2,708,597)	(2,465,487)
Bad debts	334,264	874,724
(Increase) decrease in assets:		
Receivables - operations	1,761,802	(253,198)
Receivables - officers and employees	9,620	(2,600)
Prepaid expenses	272,070	356,698
Increase (decrease) in liabilities:		
Trade and other payables	619,523	191,750
Due to related parties	765,558	(4,398,036)
Accrued expenses	(106,841)	59,672
Unearned revenue	(3,987,059)	21,297,072
Compensated absences	100,875	707
Net cash (used for) provided by operating activities	$ (1,144,181)	$ 19,353,218

See accompanying notes to financial statements.

(1) Organization

The Commonwealth Ports Authority (CPA), a component unit of the Commonwealth of the Northern Mariana Islands (CNMI), was established as a public corporation by CNMI Public Law 2-48, effective November 8, 1981. CPA was given responsibility for operations, maintenance and improvement of all airports and seaports within the CNMI. Both airports and seaports currently exist on the islands of Saipan, Tinian and Rota. CPA is governed by a seven-member Board of Directors, appointed for terms of four years by the Governor of the CNMI.

(2) Summary of Significant Accounting Policies

The accounting policies of CPA conform to accounting principles generally accepted in the United States of America, as applicable to governmental entities, specifically proprietary funds. CPA utilizes the flow of economic resources measurement focus. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting body for establishing governmental accounting and financial reporting principles.

Basis of Accounting

All proprietary funds are accounted for on a flow of economic resources measurement focus. With this measurement focus, all assets and liabilities associated with the operation of this fund are included in the statements of net position. Proprietary fund operating statements present increases (e.g. revenues) and decreases (e.g. expenses) in net position. The accrual basis of accounting is utilized for proprietary funds. Under this method, revenues are recorded when earned and expenses recorded at the time liabilities are incurred.

Budgets

In accordance with CNMI Public Law 3-68, the Planning and Budgeting Act of 1983, CPA is required to submit annual budgets to the CNMI Office of the Governor.

Concentrations of Credit Risk

Financial instruments which potentially subject CPA to concentrations of credit risk consist principally of cash demand deposits, investments, receivables and receivables from a related party.

At September 30, 2020 and 2019, CPA has cash deposits and investments in bank accounts that exceed federal depository insurance limits. CPA has not experienced any losses on such accounts.

As of September 30, 2020 and 2019, concentrations of credit risk result from receivables from significant customers and receivables from a related party which represent 4% and 17%, respectively, of total receivables. Management assesses the risk of loss and provides an allowance for doubtful accounts to compensate for known credit risk.

(2) Summary of Significant Accounting Policies, Continued

Cash

For the purposes of the statements of net position and the statements of cash flows, cash is defined as cash on hand, demand deposits and savings. Short-term investment accounts established and set aside for construction and debt service purposes are separately classified as investments in the accompanying financial statements. CPA has elected to record these investments as current as they may satisfy its debt service requirements at any time.

Capitalization of Interest

CPA capitalizes interest in order to recognize all costs associated with the non-contributed airport and seaport construction projects based on CPA's weighted average borrowing rate. Eligible interest expense of $134,014 and $111,257 was capitalized during the years ended September 30, 2020 and 2019, respectively. No interest is capitalized for projects financed with grant proceeds or Passenger Facility Charges.

Investments

CNMI Public Law 2-48, Section 31, requires that all CPA investments be guaranteed by the CNMI Government or U.S. Government, or be invested in direct obligations, or participation certificates, guaranteed by the U.S. Government.

Allowance for Doubtful Accounts

The allowance for doubtful accounts is stated at an amount that management believes will be adequate to absorb possible losses on accounts receivable that may become uncollectible based on evaluations of the collectability of these accounts and prior collection experience. The allowance is established through an allowance for doubtful accounts charged to bad debts expense. Bad debts are written-off against the allowance based on the specific identification method.

Capital Assets

Property, plant and equipment and construction-in-progress are recorded at cost. Depreciation is provided by using the straight-line method over the estimated useful lives of the assets. CPA's current policy is to capitalize items with costs in excess of $1,000.

Bond Discounts and Issuance Costs

Bond discounts are deferred and amortized over the term of the related bond using the straight-line method. Bonds payable are reported net of bond discounts. Bond issuance costs are expensed in the period incurred.

Passenger Facility Charges

Passenger Facility Charges (PFCs) generate revenue to be expended by CPA for eligible projects and the payment of debt service on the General Revenue Bonds as determined by applicable federal legislation. PFC revenues are recorded as non-operating income in the statements of revenues, expenses and changes in net position.

(2) Summary of Significant Accounting Policies, Continued

Retirement Plan

CPA contributed to the Northern Mariana Islands Retirement Fund's (NMIRF) defined benefit plan (DB Plan), a cost-sharing, multiple-employer plan established and now administered by the CNMI. On September 30, 2013, the DB Plan was transferred to the Northern Mariana Islands Settlement Fund (NMISF). CPA also contributes to a defined contribution plan (DC Plan).

On August 30, 2012, Public Law 17-79 was enacted to amend Title I of the Commonwealth Code to include the intent of the CNMI to participate in the retirement insurance system established by Title II of the U.S. Federal Insurance Contributions Act (FICA) and for participation to be extended to elected officials, employees, political subdivisions and instrumentalities of the CNMI. On September 11, 2012, Public Law 17-82 *CNMI Pension Reform Recovery Act of 2012* was enacted. Unless specifically exempted or authorized by federal law, Public Law 17-82 provides for mandatory membership of CNMI Government employees and elected officials in the U.S. Social Security system and authorizes employees, who elect to, to buy quarters of service in the U.S. Social Security system from contributions made to the DB Plan. In addition, Public Law 17-82 provides active and inactive DB Plan members the option to voluntarily terminate membership in the DB Plan, withdraw or roll over contributions to the DC Plan and to participate in the U.S. Social Security system without termination of employment or penalty. Further, Public Law 17-82 allows the CNMI Government to continue remitting its 4% employer contribution to the DC Plan unless the employee ceases to contribute its employee share.

On March 11, 2013, Public Law 18-02 was enacted to amend Public Law 17-82 to clarify those provisions necessary to expedite the refunds and to prevent any further frustration of the process. Included in the public law is the amendment of Section 203(a) of Title 1, Division 8, Part 3, which states that the government obligation to withhold and remit the employee's portion to the employee's defined account shall continue with respect to employees who do not terminate membership in the DB Plan. All but two active CPA employees voluntarily terminated membership in the DB Plan and CPA contributed $24,932 and $28,359 to the DB Plan during the years ended September 30, 2020 and 2019, respectively.

Defined Contribution Plan (DC Plan)

On June 16, 2006, Public Law No. 15-13 was enacted which created the DC Plan, a multi-employer pension plan and is the single retirement program for all employees whose first time CNMI government employment commences on or after January 1, 2007. Each member of the DC Plan is required to contribute to the member's individual account an amount equal to 10% of the member's compensation. CPA is required to contribute to each member's individual account an amount equal to 4% of the member's compensation. CPA's recorded DC contributions for the years ended September 30, 2020 and 2019 were $88,754 and $97,658, respectively, equal to the required contributions for each year.

Members of the DC Plan, who have completed five years of government service, have a vested balance of 100% of both member and employer contributions plus any earnings thereon.

(2) Summary of Significant Accounting Policies, Continued

Net Position

CPA's net position is classified as follows:

- Net investment in capital assets; capital assets, net of accumulated depreciation, plus deferred outflow from cost of refunding debt, less outstanding principal balances of debt attributable to the acquisition, construction or improvement of those assets.

- Restricted:

  - Nonexpendable - Net position subject to externally imposed stipulations that CPA maintain them permanently. For the years ended September 30, 2020 and 2019, CPA does not have nonexpendable restricted net position.

  - Expendable - Net position whose use by CPA is subject to externally imposed stipulations that can be fulfilled by actions of CPA pursuant to those stipulations or that expire by the passage of time.

- Unrestricted; Net position that is not subject to externally imposed stipulations. Unrestricted net position may be designated for specific purposes by action of management or the Board of Directors or may otherwise be limited by contractual agreements with outside parties.

Compensated Absences

Vested or accumulated vacation leave is recorded as an expense and liability as the benefits accrue to employees. No liability is recorded for nonvesting accumulating rights to receive sick pay benefits. The accumulated vacation leave liability as of September 30, 2020 and 2019 amounted to $775,902 and $675,027, respectively.

Unearned Revenues

Unearned revenues arise when federal funds are received in excess of federal funds expended as of September 30, 2020 and 2019 and from CPA granting rights to CUC to access certain assets as of September 30, 2019.

Additionally, CPA has recorded unearned revenues related to $20,900,000 received from the U.S. Department of Defense on May 9, 2019 for a 40-year lease of the Tinian divert airfield. CPA has elected to recognize lease revenue over the term of the lease and recorded $522,500 and $217,708 for the years ended September 30, 2020 and 2019, respectively. Unearned revenues of $20,159,792 and $20,682,292, respectively, have been recorded as of September 30, 2020 and 2019 of which $522,500 and $522,504, respectively, is current.

Operating and Non-Operating Revenues and Expenses

Operating revenues and expenses generally result directly from the operation and maintenance of all airports and seaports within the CNMI. Non-operating revenues and expenses result from capital, financing and investing activities, PFCs and certain recurring income and costs.

(2) Summary of Significant Accounting Policies, Continued

Operating and Non-Operating Revenues and Expenses, Continued

During the years ended September 30, 2020 and 2019, CPA incurred losses of $2,708,597 and $2,465,487, respectively, as a result of Supertyphoon Yutu and received insurance proceeds of $-0- and $16,746,477, respectively, from damages sustained.

Due to Related Party

Public Law 9-66 requires public corporations or other autonomous agencies to pay to the Commonwealth Treasurer an amount not less than one percent of total operation budgets, and such funds will be deposited into a special account of the CNMI general fund to be solely used for the operations and activities of the CNMI Office of the Public Auditor (OPA).

At September 30, 2020 and 2019, CPA recorded amounts due to the CNMI government related to the 1% Public Auditor fee totaling $2,525,760 and $2,350,003, respectively.

GASB Statement No. 68

In June 2012, GASB issued Statement No. 68, *Accounting and Financial Reporting for Pensions* which revised and established new financial reporting requirements for most governments that provide their employees with pension benefits through plans that are administered through trusts. Management has determined that the CNMI is legally responsible for making contributions to NMISF as a non-employer entity and that net pension obligations are allocated in total to the CNMI. Management acknowledges the requirement to recognize revenue in an amount equal to the non-employer contributing entities' (CNMI) total proportionate share of the collective pension expense that is associated with CPA. CPA has not recorded related revenues and pension expense for the years ended September 30, 2020 and 2019 as amounts were not available.

New Accounting Standards

During the year ended September 30, 2020, GASB issued Statement No. 95, *Postponement of the Effective Dates of Certain Authoritative Guidance*, which postpones the effective dates of GASB Statement No. 84, 89, 90, 91, 92 and 93 by one year and GASB Statement No. 87 by 18 months; however, earlier application of the provisions addressed in GASB Statement No. 95 is encouraged and is permitted to the extent specified in each pronouncement as originally issued. In accordance with GASB Statement No. 95, management has elected to postpone implementation of these statements.

In January 2017, GASB issued Statement No. 84, *Fiduciary Activities*. This Statement is to improve guidance regarding the identification of fiduciary activities for accounting and financial reporting purposes and how those activities should be reported. The requirements of this Statement will enhance consistency and comparability by (1) establishing specific criteria for identifying activities that should be reported as fiduciary activities and (2) clarifying whether and how business-type activities should report their fiduciary activities. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 84 will be effective for fiscal year ending September 30, 2021.

(2) Summary of Significant Accounting Policies, Continued

New Accounting Standards, Continued

In June 2017, GASB issued Statement No. 87, *Leases*. The objective of this Statement is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases by governments. This Statement increases the usefulness of governments' financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and as inflows of resources or outflows of resources recognized based on the payment provisions of the contract. Management believes that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 87 will be effective for fiscal year ending September 30, 2022.

In June 2018, GASB issued Statement No. 89, *Accounting for Interest Cost Incurred Before the End of a Construction Period*. The objectives of this Statement are (1) to enhance the relevance and comparability of information about capital assets and the cost of borrowing for a reporting period and (2) to simplify accounting for interest cost incurred before the end of a construction period. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 89 will be effective for fiscal year ending September 30, 2022.

In March 2018, GASB issued Statement No. 90, *Majority Equity Interests - An Amendment of GASB Statements No. 14 and 61*. The primary objectives of this Statement are to improve the consistency and comparability of reporting a government's majority equity interest in a legally separate organization and to improve the relevance of financial statement information for certain component units. It defines a majority equity interest and specifies that a majority equity interest in a legally separate organization should be reported as an investment if a government's holding of the equity interest meets the definition of an investment. A majority equity interest that meets the definition of an investment should be measured using the equity method, unless it is held by a special-purpose government engaged only in fiduciary activities, a fiduciary fund, or an endowment (including permanent and term endowments) or permanent fund. Those governments and funds should measure the majority equity interest at fair value. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 90 will be effective for fiscal year ending September 30, 2021.

In May 2019, GASB issued Statement No. 91, *Conduit Debt Obligations*. The primary objectives of this Statement are to provide a single method of reporting conduit debt obligations by issuers and eliminate diversity in practice associated with (1) commitments extended by issuers, (2) arrangements associated with conduit debt obligations, and (3) related note disclosures. This Statement achieves those objectives by clarifying the existing definition of a conduit debt obligation; establishing that a conduit debt obligation is not a liability of the issuer; establishing standards for accounting and financial reporting of additional commitments and voluntary commitments extended by issuers and arrangements associated with conduit debt obligations; and improving required note disclosures. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 91 will be effective for fiscal year ending September 30, 2023.

(2) Summary of Significant Accounting Policies, Continued

New Accounting Standards, Continued

In January 2020, GASB issued statement No. 92, *Omnibus 2020*. The objectives of this Statement are to enhance comparability in accounting and financial reporting and to improve the consistency of authoritative literature by addressing practice issues that have been identified during implementation and application of certain GASB Statements. This Statement addresses a variety of topics and includes specific provisions about the effective date of Statement No. 87, *Leases*, and Implementation Guide No. 2019-3, *Leases*, for interim financial reports, the terminology used to refer to derivative instruments and the applicability of certain requirements of Statement No. 84, *Fiduciary Activities*, to postemployment benefits. The requirements related to the effective date of GASB Statement No. 87 and Implementation Guide 2019-3, reissuance recoveries and terminology used to refer to derivative instruments are effective upon issuance. The remaining requirements of GASB Statement No. 92 is effective for the fiscal year ending September 30, 2022.

In March 2020, GASB issued Statement No. 93, *Replacement of Interbank Offered Rates*. The primary objective of this statement is to address those and other accounting and financial reporting implications of the replacement of an IBOR. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. In accordance with GASB Statement No. 95, GASB Statement No. 93 will be effective for fiscal year ending September 30, 2022.

In March 2020, GASB issued Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*. The primary objective of this statement is to improve financial reporting by addressing issues related to public-private and public-public partnership arrangements. This statement also provides guidance for accounting and financial reporting for availability payment arrangements. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. GASB Statement No. 94 will be effective for fiscal year ending September 30, 2023.

In May 2020, GASB issued Statement No. 96, *Subscription-Based Information Technology Arrangements*. This Statement provides guidance on the accounting and financial reporting for subscription-based information technology arrangements (SBITAs) for government end users (governments). This Statement (1) defines a SBITA; (2) establishes that a SBITA results in a right-to-use subscription asset - an intangible asset - and a corresponding subscription liability; (3) provides the capitalization criteria for outlays other than subscription payments, including implementation costs of a SBITA; and (4) requires note disclosures regarding a SBITA. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. GASB Statement No. 96 will be effective for fiscal year ending September 30, 2023.

(2) Summary of Significant Accounting Policies, Continued

New Accounting Standards, Continued

In June 2020, GASB issued Statement No. 97, *Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans - an amendment of GASB Statements No. 14 and No. 84, and a supersession of GASB Statement No. 32.* The primary objectives of this Statement are to (1) increase consistency and comparability related to the reporting of fiduciary component units in circumstances in which a potential component unit does not have a governing board and the primary government performs the duties that a governing board typically would perform; (2) mitigate costs associated with the reporting of certain defined contribution pension plans, defined contribution other postemployment benefit (OPEB) plans, and employee benefit plans other than pension plans or OPEB plans (other employee benefit plans) as fiduciary component units in fiduciary fund financial statements; and (3) enhance the relevance, consistency, and comparability of the accounting and financial reporting for Internal Revenue Code (IRC) Section 457 deferred compensation plans (Section 457 plans) that meet the definition of a pension plan and for benefits provided through those plans. Management does not believe that this statement, upon implementation, will have a material effect on the financial statements. GASB Statement No. 97 will be effective for fiscal year ending September 30, 2022.

Estimates

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

Reclassification

Certain 2019 balances in the accompanying financial statements have been reclassified to conform to the 2020 presentation.

(3) Deposits and Investments

GASB Statement No. 40 addresses common deposit and investment risks related to credit risk, concentration of credit risk, interest rate risk and foreign currency risk. As an element of interest rate risk, disclosure is required of investments that have fair values that are highly sensitive to changes in interest rates. GASB Statement No. 40 also requires disclosure of formal policies related to deposit and investment risks.

Deposits

As of September 30, 2020 and 2019, total cash was $30,898,686 and $33,351,620, respectively, and the corresponding bank balances were $31,001,601 and $33,349,371, respectively. All bank balances are maintained in financial institutions subject to Federal Deposit Insurance Corporation (FDIC) insurance. CNMI law does not require component unit funds to be collateralized and thus CPA's funds, in excess of FDIC insurance, are uncollateralized. Accordingly, these deposits are exposed to custodial credit risk.

(3) Deposits and Investments, Continued

Investments

Investments in U.S. Treasury obligations restricted for construction and debt service purposes represent the unused proceeds of the Airport Revenue Bonds and the Seaport Revenue Bonds. These investments are summarized as follows:

	2020	2019
Airport Division		
Bond Reserve Fund	$ 1,683,579	$ 1,665,020
Bond Fund	588,135	554,160
Maintenance and Operation	4,870,678	2,155,757
Revenue Fund	754	748
Optional Redemption Fund	12,602	12,509
Insurance and Condemnation Proceeds Fund - Yutu	12,428,860	12,403,516
Insurance and Condemnation Proceeds Fund - Mangkhut	1,712,651	1,700,015
Stonecastle Fund	10,069,179	10,010,292
	31,366,438	28,502,017
Seaport Division		
Bond Reserve Fund	3,517,215	3,492,296
Supplemental Reserve Fund	8,032,258	7,975,806
Reimbursement Fund	6,048	6,003
Bond Fund	1,258,952	1,190,825
Maintenance and Operation	3,822,619	3,657,852
Construction Fund	7,475	7,420
Revenue Fund	845	838
Stonecastle Fund	10,069,617	10,010,292
	26,715,029	26,341,332
	$ 58,081,467	$ 54,843,349

Credit risk for investments is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. With the exception of investments in U.S. government securities, which are explicitly or implicitly guaranteed by the United States government, all other investments must be rated in accordance with CPA's investment policy.

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of debt instruments. CPA's investment policy limits investment maturities to one year to manage its exposure to fair value losses arising from increasing interest rates.

Concentration of credit risk for investments is the risk of loss attributed to the magnitude of an entity's investment in a single issuer. GASB Statement No. 40 requires disclosure by issuer and amount of investments in any one issuer that represents five percent (5%) or more of total investments for CPA. As of September 30, 2020 and 2019, there were no investments in any one issuer that exceeded 5% of total investments.

As of September 30, 2020 and 2019, investments at fair value consist of investments in U.S. government money market placements and mutual funds.

(3) Deposits and Investments, Continued

Fair Value Measurement of the Investments

Investments and related investment earnings are reported at fair value using quoted market prices. Fair value is the price that would be received to sell an asset or paid to transfer a liability (i.e., the exit price) in an orderly transaction between market participants at the date as of which the fair value of an asset or liability is determined.

CPA categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The hierarchy is based on the valuation inputs used to measure the fair value of the asset. Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; Level 3 inputs are significant unobservable inputs. All CPA investments are categorized as Level 1.

(4) Receivables from Federal Grantor Agencies

Receivables from federal grantor agencies as of September 30, 2020 and 2019 are as follows:

	2020	2019
U.S. Department of Transportation	$ 3,557,972	$ 2,500,569
U.S. Department of Homeland Security	1,594,580	302,168
	$ 5,152,552	$ 2,802,737

Amounts due from the above agencies represent reimbursements due under grants for costs incurred for improvements of the CNMI airports and public assistance. Generally, under the grant agreements, the grantor agency funds a portion of the allowable costs incurred, ranging from 75% to 100%, with the remainder of project costs, if any, funded by CPA or other sources. Capital contributions amounting to $14,018,948 and $8,868,196 and operating grants amounting to $190,803 and $180,060 were received from grantor agencies during the years ended September 30, 2020 and 2019, respectively.

(5) Accounts Receivable from Operations

CPA extends credit to organizations and individuals, substantially all of whom are located in the CNMI, Japan, the United States, China and Korea. CPA's accounts receivable from operations as of September 30, 2020 and 2019, are as follows:

	2020	2019
Accounts receivable	$ 7,364,561	$ 9,282,186
Less allowance for doubtful accounts	(6,534,791)	(6,356,350)
	$ 829,770	$ 2,925,836

(6) Capital Assets

Capital asset balances consist of the following as of September 30, 2020 and 2019:

	Estimated Useful Lives	Balance October 1, 2019	Increases	Decreases	Balance September 30, 2020
Assets not being depreciated:					
Construction in progress		$ 52,473,653	$ 7,548,065	$ (4,968,035)	$ 55,053,683
Land		464,429	-	-	464,429
Total capital assets not being depreciated		52,938,082	7,548,065	(4,968,035)	55,518,112
Capital assets being depreciated:					
Runway and improvements	20 years	119,224,577	1,181,797	-	120,406,374
Other improvements	3 - 10 years	29,934,149	404,982	(580,522)	29,758,609
Terminal facilities	20 years	118,929,998	2,524,569	(5,076,165)	116,378,402
Terminal equipment	2 - 10 years	9,322,544	25,045	(791,443)	8,556,146
Harbor facilities	20 years	64,520,013	-	-	64,520,013
Grounds maintenance and shop equipment	2 - 5 years	1,726,667	125,572	(10,947)	1,841,292
Fire and rescue equipment	2 - 8 years	36,331,622	-	(780,419)	35,551,203
Office furniture and fixtures	2 - 10 years	3,352,522	899,601	(234,081)	4,018,042
General transportation	3 - 5 years	1,492,812	-	(186,572)	1,306,240
Other	3 - 5 years	2,739,514	-	-	2,739,514
		387,574,418	5,161,566	(7,660,149)	385,075,835
Less accumulated depreciation and amortization		(254,409,599)	(13,157,977)	7,110,503	(260,457,073)
Total capital assets being depreciated		133,164,819	(7,996,411)	(549,646)	124,618,762
Total capital assets, net		$ 186,102,901	$ (448,346)	$ (5,517,681)	$ 180,136,874

	Estimated Useful Lives	Balance October 1, 2018	Increases	Decreases	Balance September 30, 2019
Assets not being depreciated:					
Construction in progress		$ 75,563,923	$ 10,539,878	$ (33,630,148)	$ 52,473,653
Land		464,429	-	-	464,429
Total capital assets not being depreciated		76,028,352	10,539,878	(33,630,148)	52,938,082
Capital assets being depreciated:					
Runway and improvements	20 years	114,277,326	4,947,251	-	119,224,577
Other improvements	3 - 10 years	27,281,782	2,652,367	-	29,934,149
Terminal facilities	20 years	115,396,401	3,690,626	(157,029)	118,929,998
Terminal equipment	2 - 10 years	9,322,356	29,513	(29,325)	9,322,544
Harbor facilities	20 years	64,327,013	193,000	-	64,520,013
Grounds maintenance and shop equipment	2 - 5 years	1,707,368	19,299	-	1,726,667
Fire and rescue equipment	2 - 8 years	12,900,994	23,430,628	-	36,331,622
Office furniture and fixtures	2 - 10 years	2,930,553	556,575	(134,606)	3,352,522
General transportation	3 - 5 years	1,492,812	-	-	1,492,812
Other	3 - 5 years	2,739,514	-	-	2,739,514
		352,376,119	35,519,259	(320,960)	387,574,418
Less accumulated depreciation and amortization		(241,813,654)	(12,916,905)	320,960	(254,409,599)
Total capital assets being depreciated		110,562,465	22,602,354	-	133,164,819
Total capital assets, net		$ 186,590,817	$ 33,142,232	$ (33,630,148)	$ 186,102,901

CPA leases significant portions of airport terminal facilities and certain grounds and improvements to concessionaires, airlines, and other lessees. CPA additionally holds title to 13,646,163 square meters of land on the islands of Saipan, Tinian and Rota for seaport and airport operations.

Land acquired by CPA on the islands of Saipan and Rota from the former Marianas Public Land Corporation for seaport improvement and use has been recorded on CPA's books at its estimated fair market value. This estimated value is based on a land valuation established by Article VIII of the Marianas Political Status Commission as contained in the Section-by-Section Analysis of the Covenant to Establish a Commonwealth of the Northern Mariana Islands, dated February 15, 1975, for land of a similar nature leased by the CNMI to the U.S. Government.

(7) Revenue Bonds Payable

Airport Division

On March 26, 1998, CPA issued $20,050,000 of tax-exempt airport revenue bonds which in part were used for a current refunding of $8,250,000 of 1987 Series B tax-exempt airport revenue bonds. The refunding was undertaken to consolidate existing bonds with new bonds issued for the purpose of financing various airport projects and to reduce total future debt service payments. The reacquisition price exceeded the net carrying amount of the old debt by $503,906 and was fully amortized over the refunded debt's life, which is shorter than the life of the new debt. The transaction also resulted in an economic gain of $688,620 and an increase of $7,616,151 in future debt service payments. Interest on the bonds is payable semi-annually at 6.25% on March 15 and September 15 of each year.

Revenue bonds payable as of September 30, 2020 and 2019, consist of the following:

	2020	2019
Special Revenue Bonds, tax exempt, 1998 Senior Series A: interest and annual installments payable to the Bond Trustee between 2021 and 2028 are listed below.	$ 8,640,000	$ 9,450,000
Less current portion	865,000	810,000
Long-term portion	$ 7,775,000	$ 8,640,000

Principal installments payable by CPA to the Bond Trustee through the life of the 1998 Series A, Airport Revenue Bonds, are due on March 15.

Principal and interest payments for subsequent years ending September 30, are as follows:

Year ending September 30,	Principal	Interest	Total
2021	$ 865,000	$ 512,969	$ 1,377,969
2022	920,000	457,188	1,377,188
2023	975,000	397,969	1,372,969
2024	1,035,000	335,156	1,370,156
2025	1,105,000	268,281	1,373,281
2026 - 2028	3,740,000	360,313	4,100,313
	$ 8,640,000	$ 2,331,876	$ 10,971,876

(7) Revenue Bonds Payable, Continued

Seaport Division

On March 26, 1998, CPA issued $33,775,000 of Senior Series A tax-exempt seaport revenue bonds which in part were used for a current refunding of $22,470,000 of 1995 Series A tax-exempt seaport revenue bonds. The refunding was undertaken to consolidate existing debt with new debt issued for the purpose of financing various seaport projects and to reduce total future debt service payments. The reacquisition price exceeded the net carrying amount of the old debt by $1,345,593. This amount is recorded as a deferred outflow from cost of refunding debt and is being amortized over the refunded debt's life, which is shorter than the life of the new debt. At September 30, 2020 and 2019, deferred outflow from cost of refunding debt amounted to $463,807 and $527,114, respectively. The transaction also resulted in an economic gain of $1,724,777 and a decrease of $6,983,345 in future debt service payments. Interest on the bonds is payable semi-annually at 6.6% on March 15 and September 15 of each year.

On September 21, 2005, CPA issued $7,225,000 of Senior Series A tax-exempt seaport revenue bonds for the purpose of financing (including reimbursing itself for) the purchase, acquisition, construction, reconstruction, repair, renovation, improvement or expansion of CPA's seaports. Pursuant to Section 2.04(A)(9) of the 1998 Senior Series A Seaport Revenue Bonds Indenture Agreement dated March 1, 1998 and as supplemented by a First Supplemental Indenture dated March 1, 2000, CPA entered into a Second Supplemental Indenture for the issuance of the 2005 Senior Series A bonds. Interest on the bonds is payable semi-annually at 5.5% on March 15 and September 15 of each year.

Revenue bonds payable as of September 30, 2020 and 2019, consist of the following:

	2020	2019
Special Revenue Bonds, tax-exempt, 1998 Senior Series A: interest and annual installments payable to the Bond Trustee between 2021 and 2028 are listed below.	$ 15,645,000	$ 17,110,000
Special Revenue Bonds, tax-exempt, 2005 Senior Series A: interest and annual installments payable to the Bond Trustee between 2021 and 2031 are listed below.	4,475,000	4,765,000
Discount on 2005 Senior Series A bonds	(71,694)	(71,694)
	20,048,306	21,803,306
Less current portion	1,865,000	1,755,000
Long-term portion	$ 18,183,306	$ 20,048,306

Principal installments payable by CPA to the Bond Trustee through the life of the 1998 Senior Series A and the 2005 Senior Series A, Special Revenue Bonds, are due on March 15.

(7) Revenue Bonds Payable, Continued

Seaport Division, Continued

Principal and interest payments for subsequent years ending September 30, are as follows:

Year ending September 30,	Principal	Interest	Total
2021	$ 1,865,000	$ 1,218,828	$ 3,083,828
2022	1,980,000	1,095,380	3,075,380
2023	2,105,000	964,205	3,069,205
2024	2,235,000	824,835	3,059,835
2025	2,375,000	676,775	3,051,775
2026 - 2030	9,035,000	1,157,503	10,192,503
2031	525,000	14,437	539,437
	$ 20,120,000	$ 5,951,963	$ 26,071,963

Additionally, CPA has resolved to hold $8,000,000 in the Seaport Supplemental Reserve Fund. The Supplemental Reserve Fund was established pursuant to the First Supplemental Indenture dated March 1, 2000 for the purpose of providing funding and maintenance for the 1998 Senior Series A Seaport Bonds. At September 30, 2020 and 2019, total deposits in the Seaport Supplemental Reserve Fund amounted to $7,975,806.

Bond Redemption

In accordance with the Airport and Seaport Bond Indenture Agreements, Section 4.01, terms of redemption of the 1998 Senior Series A Bonds are as follows:

a) Optional redemption - The 1998 Senior Bonds for the airport are subject to redemption prior to their respective stated maturities on or after March 15, 2013, at the option of CPA, from any source of available funds, as a whole on any date, or in part on any Interest Payment Date and by lot within a maturity, at the Redemption Prices (expressed as percentages of principal amount) set forth in the table below plus interest accrued thereon to the date fixed for redemption:

Redemption Dates	Redemption Prices
March 15, 2013 through March 14, 2014	102%
March 15, 2014 through March 14, 2015	101%
March 15, 2015 and thereafter	100%

The option may only be exercised by depositing with the Trustee, prior to giving notice of such redemption in accordance with Section 4.03, moneys or Investment Securities sufficient in amount and maturing in a timely manner to provide for such redemption including moneys or Investment Securities sufficient to pay the premium upon such optional redemption if any. CPA shall notify the Trustee in writing at least 60 days prior to the date to be fixed for redemption of its intention to exercise its redemption option and specifying the amount and the maturities of the bonds to be redeemed and, if appropriate, the Mandatory Sinking Accounts Payments to which the bonds redeemed are to be allocated.

(7) Revenue Bonds Payable, Continued

Bond Redemption, Continued

The 1998 Senior Bonds for the seaport are not subject to optional redemption prior to their stated maturity.

b) Mandatory redemption - The 1998 Senior Bonds for the airport and seaport are subject to mandatory redemption, in part on the earliest Interest Payment Date for which notice can be given after completion of the Project or after three years from the date of issuance of the 1998 Senior Bonds, from moneys transferred from the 1998 Series A Account within the Construction Fund to the Optional Redemption Fund in accordance with Section 3.03, at a redemption price equal to 100% of the principal amount of such 1998 Senior Bonds to be redeemed plus accrued interest, if any, to the date fixed for redemption, without premium.

c) Insurance or condemnation award - At the option of CPA, prior to their stated maturity as a whole or in part by lot, the 1998 Senior Bonds for the airport and seaport are subject to redemption from the proceeds of any insurance or condemnation awards received by CPA due to a casualty loss or governmental taking of CPA's airport and seaport facilities, if such proceeds are not used to repair or replace such facilities under the circumstances and upon the conditions prescribed in Section 6.17 at the principal amount thereof and interest accrued thereon to the date fixed for redemption, without premium.

d) Mandatory sinking account - The 1998 Senior Bonds for the airport and seaport are also subject to redemption prior to their stated maturity in part, by lot, from Mandatory Sinking Account Payments established for such maturity upon payment of the principal amount thereof and accrued interest thereon to the date fixed for redemption, without premium.

In accordance with the Second Supplemental Indenture of the Seaport Bond Indenture Agreement, Section 15.03, terms of redemption of the 2005 Senior Series A Bonds are as follows:

a) Optional redemption - The 2005 Senior Series A Bonds maturing on or after March 15, 2016 are subject to redemption prior to their respective stated maturities, at the option of CPA, from lawfully available funds deposited in the Optional Redemption Fund, as a whole or in part on any date on or after March 15, 2015, at the following respective redemption prices (expressed as percentages of the principal amount of the 2005 Bonds to be redeemed) plus accrued interest thereon to the date fixed for redemption:

Redemption Dates	Redemption Prices
March 15, 2015 through March 14, 2016	101.0%
March 15, 2016 through March 14, 2017	100.5%
March 15, 2017 and thereafter	100.0%

(7) Revenue Bonds Payable, Continued

Bond Redemption, Continued

b) Mandatory redemption - The 2005 Senior Series A Bonds are subject to mandatory redemption upon notice of completion of the 2005 Project (purchase, acquisition, construction/reconstruction, repair, renovation, improvement, certain capital improvements or expansion of CPA's seaports) or after three years from the date of issuance of the 2005 Senior Series A Bonds from moneys transferred from the Construction Fund to the Optional Redemption Fund in accordance with Section 3.03, at a redemption price equal to the principal amount thereof, without premium, together with accrued interest to the date fixed for redemption.

c) Insurance or condemnation award - At the option of CPA and prior to their stated maturity, the 2005 Senior Series A Bonds are subject to redemption from proceeds of any insurance or condemnation awards received by CPA due to a casualty loss or governmental taking of CPA's seaport facilities, if such proceeds are not used to repair or replace such facilities, under the circumstances and upon the conditions prescribed in Section 6.17 of the bond indenture, at a redemption price equal to the principal amount thereof, without premium, together with accrued interest to the date fixed for redemption.

d) Mandatory sinking account - The 2005 Senior Series A Bonds maturing are also subject to redemption prior to their stated maturity in part, by lot, from Mandatory Sinking Account Payments established, at a redemption price equal to the principal amount thereof, without premium, together with accrued interest to the date fixed for redemption.

Pledge of Future Revenues

CPA has pledged future gross revenues to repay $20,050,000 and $33,775,000 in 1998 Senior Series A and $7,225,000 of 2005 Senior Series A tax-exempt special revenue bonds. Proceeds from the bonds provided financing for capital assets. The bonds are payable from pledged gross revenues. The bonds are payable through fiscal years 2028, 2028 and 2031, respectively. The total principal and interest payable for the remainder of the life of these bonds are $37,043,839 and $41,509,167 at September 30, 2020 and 2019, respectively. Pledged gross revenues received during the years ended September 30, 2020 and 2019 were $24,703,467 and $42,143,268, respectively, of which $16,746,477 in 2019 pertains to insurance proceeds. Debt service payments during the years ended September 30, 2020 and 2019 amounted to $4,465,328 and $4,473,804 representing 18% and 11%, respectively, of pledged gross revenues.

The bond indentures contain several restrictive covenants, including restrictions on the use of bond proceeds. Management of CPA is of the opinion that CPA was in compliance with all significant covenants as of September 30, 2020 and 2019. Section 6.11 of the Airport and Seaport Bond Indenture Agreements (Indenture) states that CPA shall impose, levy, enforce and collect such dockage, entry and wharfage fees, tariffs, lease rentals, licensing fees and other fees and charges in an aggregate amount with respect to each fiscal year to produce gross revenues of 125% of debt service requirements.

(7) Revenue Bonds Payable, Continued

Pledge of Future Revenues, Continued

Management of CPA has determined that gross revenues consist of total operating revenues, other grant revenue and contributions, interest income, PFCs and insurance proceeds to meet the indenture requirements. For fiscal years 2020 and 2019, management of CPA determined that 100% of PFCs are considered as gross revenues for these purposes.

Changes in long-term liabilities for the years ended September 30, 2020 and 2019, are as follows:

	Balance October 1, 2019	Additions	Reductions	Balance September 30, 2020	Due Within One Year
Bonds payable:					
Airport 1998 Senior Series A	$ 9,450,000	$ -	$ (810,000)	$ 8,640,000	$ 865,000
Seaport 1998 Senior Series A	17,110,000	-	(1,465,000)	15,645,000	1,560,000
Seaport 2005 Senior Series A	4,765,000	-	(290,000)	4,475,000	305,000
Deferred amounts:					
Discount on bonds	(71,694)	-	-	(71,694)	-
	31,253,306	-	(2,565,000)	28,688,306	2,730,000
Other:					
Compensated absences	675,027	518,061	(417,186)	775,902	271,304
	$ 31,928,333	$ 518,061	$ (2,982,186)	$ 29,464,208	$ 3,001,304

	Balance October 1, 2018	Additions	Reductions	Balance September 30, 2019	Due Within One Year
Bonds payable:					
Airport 1998 Senior Series A	$ 10,215,000	$ -	$ (765,000)	$ 9,450,000	$ 810,000
Seaport 1998 Senior Series A	18,485,000	-	(1,375,000)	17,110,000	1,465,000
Seaport 2005 Senior Series A	5,040,000	-	(275,000)	4,765,000	290,000
Note payable	3,695,607	-	(3,695,607)	-	-
Deferred amounts:					
Discount on bonds	(71,694)	-	-	(71,694)	-
	37,363,913	-	(6,110,607)	31,253,306	2,565,000
Other:					
Compensated absences	674,320	510,192	(509,485)	675,027	290,313
Accrued interest	550,729	-	(550,729)	-	-
	$ 38,588,962	$ 510,192	$ (7,170,821)	$ 31,928,333	$ 2,855,313

Events of Default and Remedies of Bondholders

The outstanding revenue bonds related to government-type activities contains a provision that defines events of default as:

(a) default of by CPA in the due and punctual payment of the principal or Redemption Price of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceeding for redemption, by declaration of otherwise; default by CPA in the redemption from any Mandatory Sinking Account of any Term Bonds in the amounts at time provided therefore; or default by CPA in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable;

(7) Revenue Bonds Payable, Continued

Events of Default and Remedies of Bondholders, Continued

(b) default by CPA in the observance of any of the covenants, agreement or conditions on its part in this Indenture or in the Bonds contained, if such default shall have continued for a period of sixty (60) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to CPA by the Trustee, or to CPA and the Trustee by any Credit Provider or by the Owners of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds at the time Outstanding; except that, if such default can be remedied but not within such sixty (60) day period and if CPA has taken all action reasonably possible to remedy such default within such sixty (60) day period, such default shall not become an Event of Default hereunder for so long as CPA shall diligently proceed to remedy same in accordance with and subject to any directions established by the Trustee; or

(c) an event of bankruptcy. Upon the occurrence of an event of default, the Trustee may, and upon the written request of the owners of not less than a majority in aggregate principal amount of Bonds then outstanding shall, declare the principal of all Bonds then outstanding and the interest accrued thereon due and payable on a date specified in such declaration (not less than fiver nor more than nine days after such declaration), and such principal and interest shall thereupon become and be immediately due and payable on such specified date, and interest shall cease to accrue on the Bonds from and after such date. The entire principal amount of the Bonds and such accrued interest shall become due and payable on the date of acceleration set forth in such notice of declaration, and interest shall cease to accrue on the Bonds from and after such date, provided moneys are held by the Trustee as of such date sufficient to pay such principal and accrued interest to such date. If an event of default shall occur and be continuing, all revenues, gross revenue and any other funds then held or thereafter received by the Trustee or the Depository under any of the provisions of the indenture shall be under the control of and apply by the Trustee as dictated by the Indenture.

(8) Risk Management

CPA is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; errors and omissions; injuries to employees; and natural disasters. CPA has elected to purchase commercial insurance from independent third parties for the risks of losses at its airport and seaport facilities to which it is exposed. Settled claims have not exceeded commercial insurance coverage during the past three years.

(9) Related Party Transactions

Total related party transactions for the years ended September 30, 2020 and 2019, and the related receivable and payable balances, are as follows:

	2020			
	Revenues and Capital Contributions	Expenses	Unearned Revenues	Due to Related Parties
Commonwealth Utilities Corporation	$ 87,595	$ 2,113,911	$ -	$ 2,098,367
CNMI Government	-	175,756	-	2,525,760
	$ 87,595	$ 2,289,667	$ -	$ 4,624,127

Footnote 9 - OPA 1% fee disclosure

(9) Related Party Transactions, Continued

	2019			
	Revenues and Capital Contributions	Expenses	Unearned Revenues	Due to Related Parties
Commonwealth Utilities Corporation	$ 391,909	$ 4,534,904	$ 3,642,992	$ 1,508,566
CNMI Government	195,000	171,813	-	2,350,003
Commonwealth Development Authority	546,679	55,526	-	-
	$ 1,133,588	$ 4,762,243	$ 3,642,992	$ 3,858,569

Interest expense on the note payable to CDA for the years ended September 30, 2020 and 2019 amounted to $-0- and $55,526, respectively.

On June 30, 2008, CPA and the Commonwealth Utilities Corporation (CUC) entered into an amended and superseding MOA for the repayment of wharfage fees due to CPA amounting to $3,385,131 with interest at 6.25%. In accordance with the MOA, CPA has the right to offset utility charges at the Port of Saipan and other ancillary accounts against the receivable from CUC beginning July 1, 2008. Total utility charges offset during the years ended September 30, 2020 and 2019 amounted to $87,595 and $-0-, respectively. In addition, during the years ended September 30, 2020 and 2019, CPA recorded lease receivables from CUC for the rental of water wells situated on CPA property. In June 2018, CPA and CUC agreed to offset CPA's electric utility charges for the Airport Division against receivables from CUC for the Seaport Division of $4,533,909 comprising wharfage fees of $3,385,131 and related interest of $1,148,778 through June 30, 2018, which resulted in a recovery of the Seaport Division of $3,434,497, net of accrued interest.

On November 1, 2019, CPA entered into an omnibus agreement with CUC which gave CUC a permanent easement over water wells, water lines, sand filtration, a 20 million gallon tank, and power poles and transmission lines to power the water wells, located on CPA property. CUC is responsible for maintenance of the permanent easement and for maintaining a continuous water supply to CPA. CUC will not charge CPA for water up to $600,000 annually on an indefinite basis beginning November 1, 2019 and CPA will recognize revenue up to this amount annually as water expense is incurred. Permanent easement rights granted for the water wells resulted in revenues of $3,642,992 in fiscal year 2020.

CPA recorded contributions of $-0- and $195,000 from the CNMI government during the years ended September 30, 2020 and 2019, respectively. The amount due to the CNMI government relates to the 1% Public Auditor fee of $2,525,760 and $2,350,003 at September 30, 2020 and 2019, respectively.

(10) Commitment and Contingencies

Commitment

CPA's Airport Division leases rental car concession booths, office space and other ground space. The Seaport Division leases land and warehouse space. Lease terms range from one to forty years and in most instances contain provisions for percentage rent. Concession and lease income for the years ended September 30, 2020 and 2019, amounted to $3,796,768 and $6,783,029, respectively. Minimum future lease income is as follows:

(10) Commitment and Contingencies, Continued

Commitment, Continued

Year ending September 30,	Minimum Lease Income Due
2021	$ 2,499,633
2022	2,142,518
2023	1,596,020
2024	1,563,591
2025	1,154,535
2026 - 2030	3,282,407
2031 - 2035	3,000,950
2036 - 2040	2,828,733
2041 - 2045	2,818,199
2046 - 2050	2,834,338
2051 - 2055	2,812,178
2056 - 2059	1,961,875
	$ 28,494,977

Contingencies

CPA participates in a number of federally assisted grant programs funded by the United States Government. These programs are subject to financial and compliance audits to ascertain if Federal laws and guidelines have been followed. Cumulative questioned costs of $24,763 have been set forth in CPA's Single Audit Report for the year ended September 30, 2020. The ultimate disposition of these questioned costs can be determined only by final action of the respective grantor agencies. Therefore, no provision for any liability that may result upon resolution of this matter has been made in the accompanying financial statements.

In accordance with 14 CFR Part 158.67(c), at least annually during the period the PFC is collected, held or used, each public agency shall provide for an audit of its PFC account. Cumulative questioned costs of $864,569 have been set forth in CPA's PFC report for the year ended September 30, 2020. The ultimate disposition of these questioned costs can be determined only by final action of the Federal Aviation Administration (FAA); therefore, no provision for any liability that may result from this matter has been made in the accompanying financial statements.

CPA is involved in certain legal actions and claims that arise in the ordinary course of business. However, the ultimate outcome of the claims and lawsuits are unknown at the present time and management does not expect to suffer material recourse due to the merits of the claims. Accordingly, no provision for any liability that might result has been made in the accompanying financial statements. Management believes that, as a result of its legal defenses and insurance arrangements, none of these matters will have a material adverse effect on CPA's financial position, change in net position or cash flows.

(11) Major Customers

Aviation fees received by CPA are comprised of facility service charges and landing fees from air carriers providing scheduled flight service to CNMI airports, substantially all of which are located in the CNMI, Japan, United States, China and Korea. Seaport fees received by CPA are primarily comprised of wharfage fees on cargo from the CNMI, Japan, United States, the Philippines and other Asian countries. Lease revenue is derived primarily from Saipan International Airport's prime concessionaire who is located in the CNMI.

During the year ended September 30, 2020, one customer accounted for 12% of total Airport Division operating revenues. During the year ended September 30, 2019, two customers accounted for 35% of total Airport Division operating revenues. One customer accounted for 21% and 19% of total operating revenues of the Seaport Division during the years ended September 30, 2020 and 2019, respectively.

(12) COVID-19 Pandemic

Economic uncertainties have arisen as a result of the COVID-19 coronavirus pandemic. CPA expects this matter to negatively impact its future financial results; however, the related financial impact cannot be reasonably estimated at this time. Other financial impacts could occur though such potential impact is unknown.

(13) Restatement

During the year ended September 30, 2020, CPA determined that expenditures incurred in prior years were not appropriately recorded. Accordingly, contractor's payable, contractual services and typhoon-related damages are understated and net position at beginning of year is overstated at September 30, 2019.

	As Originally Stated	As Restated
Contractors payable	$ 5,987,004	$ 6,396,121
Net position at beginning of year	$ 212,604,860	$ 212,196,525
Contractual services	$ 1,345,570	$ 1,561,570
Typhoon-related damages	$ 2,272,370	$ 2,465,487

COMMONWEALTH PORTS AUTHORITY

Combining Statement of Net Position
September 30, 2020

ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	Airport Division	Seaport Division	Elimination	Total
Current assets:				
Cash	$ 22,173,905	$ 8,724,781	$ -	$ 30,898,686
Receivables:				
Grantor agencies	5,094,557	57,995	-	5,152,552
Operations, net	79,065	750,705	-	829,770
Due from other division	131,491	-	(131,491)	-
Officers and employees	672	-	-	672
Prepaid expenses	451,081	4,998	-	456,079
Investments, restricted for debt service and other purposes	31,366,438	26,715,029	-	58,081,467
Total current assets	59,297,209	36,253,508	(131,491)	95,419,226
Nondepreciable capital assets	53,931,658	1,586,454	-	55,518,112
Depreciable capital assets, net of accumulated depreciation and amortization	101,246,104	23,372,658	-	124,618,762
Deferred outflows from cost of refunding debt	-	463,807	-	463,807
Total assets and deferred outflows of resources	$ 214,474,971	$ 61,676,427	$ (131,491)	$ 276,019,907
LIABILITIES AND NET POSITION				
Current liabilities:				
Revenue bonds payable, current portion	$ 865,000	$ 1,865,000	$ -	$ 2,730,000
Contractors payable	6,357,435	77,355	-	6,434,790
Trade and other payables	1,138,849	6,482	-	1,145,331
Due to related parties	4,266,323	357,804	-	4,624,127
Due to other division	-	131,491	(131,491)	-
Accrued expenses	533,680	131,794	-	665,474
Unearned revenues	911,575	138,816	-	1,050,391
Compensated absences, current portion	238,597	32,707	-	271,304
Total current liabilities	14,311,459	2,741,449	(131,491)	16,921,417
Noncurrent liabilities:				
Compensated absences, net of current portion	445,254	59,344	-	504,598
Revenue bonds payable, net of current portion	7,775,000	18,183,306	-	25,958,306
Unearned revenues, net of current portion	19,637,293	939,584	-	20,576,877
Total noncurrent liabilities	27,857,547	19,182,234	-	47,039,781
Total liabilities	42,169,006	21,923,683	(131,491)	63,961,198
Net position:				
Net investment in capital assets	146,537,761	5,374,613	-	151,912,374
Restricted	31,366,438	26,715,029	-	58,081,467
Unrestricted	(5,598,234)	7,663,102	-	2,064,868
Total net position	172,305,965	39,752,744	-	212,058,709
Total liabilities and net position	$ 214,474,971	$ 61,676,427	$ (131,491)	$ 276,019,907

See Accompanying Independent Auditors' Report.

COMMONWEALTH PORTS AUTHORITY

Combining Statement of Revenues, Expenses and Changes in Net Position
Year Ended September 30, 2020

	Airport Division	Seaport Division	Total
Operating revenues:			
Seaport fees	$ -	$ 5,575,204	$ 5,575,204
Concession and lease income	2,840,493	956,275	3,796,768
Aviation fees	3,396,689	-	3,396,689
Other	819,702	441,141	1,260,843
	7,056,884	6,972,620	14,029,504
Bad debts	(328,828)	(5,436)	(334,264)
Operating revenues, net	6,728,056	6,967,184	13,695,240
Operating expenses:			
Depreciation and amortization	10,367,859	2,790,118	13,157,977
Salaries and wages	4,955,237	945,597	5,900,834
Insurance	1,682,326	969,725	2,652,051
Utilities	1,962,067	151,844	2,113,911
Employee benefits	1,032,605	264,901	1,297,506
Contractual services	1,085,072	93,101	1,178,173
Repairs and maintenance	528,128	70,981	599,109
Supplies	361,715	32,519	394,234
Fuel	259,381	8,043	267,424
Professional fees	155,618	10,660	166,278
Travel	101,743	12,263	114,006
Promotion and advertising	38,676	6,330	45,006
Penalties and interest	1,272	-	1,272
Other	317,971	33,807	351,778
Total operating expenses	22,849,670	5,389,889	28,239,559
Operating (loss) income	(16,121,614)	1,577,295	(14,544,319)
Non-operating revenues (expenses):			
Passenger facility charges	1,086,945	-	1,086,945
Interest income	232,163	234,916	467,079
Other grant revenues and contributions	5,791,968	-	5,791,968
Water utility charges offset	87,595	-	87,595
Loss on disposal of equipment	(549,641)	-	(549,641)
Interest expense	(442,552)	(1,387,069)	(1,829,621)
Typhoon-related damages	(2,708,597)	-	(2,708,597)
Total non-operating revenues (expenses), net	3,497,881	(1,152,153)	2,345,728
(Loss) income before capital contributions and special item	(12,623,733)	425,142	(12,198,591)
Capital contributions	8,359,788	57,995	8,417,783
Special item:			
Permanent easement rights granted to water wells	3,642,992	-	3,642,992
Change in net position	(620,953)	483,137	(137,816)
Net position at beginning of year, as restated	172,926,918	39,269,607	212,196,525
Net position at end of year	$ 172,305,965	$ 39,752,744	$ 212,058,709

See Accompanying Independent Auditors' Report.

COMMONWEALTH PORTS AUTHORITY

Combining Statement of Cash Flows
Year Ended September 30, 2020

	Airport Division	Seaport Division	Total
Cash flows from operating activities:			
Cash received from customers	$ 4,794,530	$ 6,927,723	$ 11,722,253
Cash payments to suppliers for goods and services	(4,669,736)	(1,099,233)	(5,768,969)
Cash payments to employees for services	(5,893,837)	(1,203,628)	(7,097,465)
Net cash (used for) provided by operating activities	(5,769,043)	4,624,862	(1,144,181)
Cash flows from noncapital financing activity:			
Other grant revenues and contributions	5,791,968	-	5,791,968
Net cash provided by noncapital financing activity	5,791,968	-	5,791,968
Cash flows from capital and related financing activities:			
Acquisition of capital assets	(6,684,316)	(334,951)	(7,019,267)
Capital and other contributions received	6,067,968	-	6,067,968
Passenger facility charge receipts	1,086,945	-	1,086,945
Principal paid on revenue bond maturities	(810,000)	(1,755,000)	(2,565,000)
Interest paid on revenue bonds and note payable to related party	(565,313)	(1,335,015)	(1,900,328)
Net cash used for capital and related financing activities	(904,716)	(3,424,966)	(4,329,682)
Cash flows from investing activities:			
Net investment purchases, restricted	(2,864,421)	(373,697)	(3,238,118)
Interest income	232,163	234,916	467,079
Net cash used for investing activities	(2,632,258)	(138,781)	(2,771,039)
Net change in cash	(3,514,049)	1,061,115	(2,452,934)
Cash at beginning of year	25,687,954	7,663,666	33,351,620
Cash at end of year	$ 22,173,905	$ 8,724,781	$ 30,898,686
Reconciliation of operating (loss) income to net cash (used for) provided by operating activities:			
Operating (loss) income	$ (16,121,614)	$ 1,577,295	$ (14,544,319)
Adjustments to reconcile operating (loss) income to net cash (used for) provided by operating activities:			
Depreciation and amortization	10,367,859	2,790,118	13,157,977
Water utility charges offset	87,595	-	87,595
Permanent easement rights granted to water wells	3,642,992	-	3,642,992
Loss on disposal of equipment	(549,641)	-	(549,641)
Typhoon-related damages	(2,708,597)	-	(2,708,597)
Bad debts	328,828	5,436	334,264
(Increase) decrease in assets:			
Receivables - operations	1,793,539	(31,737)	1,761,802
Interdivisional accounts	(91,613)	91,613	-
Receivables - officers and employees	9,620	-	9,620
Prepaid expenses	60,829	211,241	272,070
Increase (decrease) in liabilities:			
Trade and other payables	648,494	(28,971)	619,523
Due to related parties	735,553	30,005	765,558
Accrued expenses	(92,992)	(13,849)	(106,841)
Unearned revenues	(3,973,900)	(13,159)	(3,987,059)
Compensated absences	94,005	6,870	100,875
Net cash (used for) provided by operating activities	$ (5,769,043)	$ 4,624,862	$ (1,144,181)

See Accompanying Independent Auditors' Report.

Commonwealth Ports Authority
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June 3, 2022

The Honorable Donald M. Manglona
Chairman
House Committee on Ways and Means
Twenty-Second Legislature
Commonwealth of the Northern Mariana Islands
P.O. Box 500586
Saipan, MP 96950

Dear Chairman Manglona,

Thank you for providing me this opportunity to help aid the House Standing Committee on Ways and Means decide the feasibility of House Bill No. 22-102.

I am well aware of the current political climate, and I hope that Members of this body have not already decided to vote along party lines. I assume not—since you've invited me to submit these comments—but I still urge all Members to approach this issue with an open mind.

I understand the concern regarding appropriately funding the Office of the Public Auditor and the effect House Bill No. 22-102 will have on that funding. I hope Members of this Committee also understand and appreciate the importance that Federal funding has on the operation of the CNMI's ports.

Let me first begin and clarify that this is not a political battle for CPA—it is a matter of being able to finance the operations of the CNMI's ports.

The law, as it stands today, places CPA in a predicament: it can choose to remit the 1% Public Auditor fee and lose Federal grant funding, or it can choose to withhold the 1% fee and continue to receive Federal grant funding. I ask that this Committee help CPA resolve this predicament.

It may be helpful to first begin with a comparison. Let's first compare the amount of Federal grant funding CPA receives against the amount of funding that OPA would have received had CPA remitted the 1%. CPA receives over $5,000,000 in Airport Improvement Projects (AIP) Grant funding annually. This money goes towards improving CPA's airports: the new jet bridges, firetrucks, improvements to the runway—these are all funded through AIP Grants. In contrast, if CPA were to remit the 1% Public Auditor Fee, OPA would receive approximately $140,000 annually. Is providing OPA $140,000 annually worth foregoing $5,000,000 annually? The answer is clearly "no."

A common question I've heard is: "Why does the bill include all autonomous agencies, if the driving force behind the amendment is only related to CPA?" That is a valid point, and CPA offers a substitute bill to address that issue. This substitute bill removes all other autonomous agencies except for CPA, and it is being provided to the Members of this Committee as an alternative to the bill at hand.

Another comment—"the FAA's Revenue Use Policy actually allows CPA to pay for a portion of the general costs of government, provided the costs are in accordance with an acceptable cost allocation plan." The key term here is "an acceptable cost allocation plan."

A cost allocation plan is not a flat 1% remittance across-the-board. A cost allocation plan is a plan that identifies costs of supporting service units and allocates those costs to benefiting units on an equitable basis. Applied to OPA, this would mean a plan that identifies OPA's costs as a "supporting service unit" and an allocation of those costs to CPA as a "benefiting unit." CPA receives no benefit from any costs incurred by OPA. This is because OPA provides no services to CPA.

Also, the "general costs of government" does not mean costs associated with OPA's performance of its duties to the CNMI as a whole. Rather, it is a reference to the costs of services that provide some benefit directly to CPA. Examples of such services include general accounting, budgeting, data processing, procurement, legal services, disbursing, and payroll services.[1]

As I stated earlier, OPA provides none of these aforementioned services to CPA. So, I ask you: "How exactly will OPA craft a cost-allocation plan to receive 1% from CPA, when literally 0% of its costs are associated with CPA?"

Additionally, OPA's own interpretation of the current law does not lend itself to the creation of a cost-allocation plan. As you all know, CPA has attempted to negotiate a rate lower than 1%, but OPA has responded that it must charge at least a 1% fee. Does OPA intend to craft a cost-allocation plan that equates to 1% of CPA's total operations? Such thinking is backwards—it is not right to have a target cost and then try to formulate services to meet that cost.

Other comments I've heard include: "The implementation of a fee structure creates a perverse incentive for OPA and destroys OPA's integrity." First, the bill prohibits OPA from abusing this process because it requires that services be requested by and directly provided to CPA.

The concern that OPA shouldn't be paid by an agency to conduct an audit of that agency is valid. However, that concern cannot be reconciled with the requirements of CPA's grant assurances. As I previously stated, CPA can only pay for the costs of services actually provided to CPA. Additionally, if being paid for the cost of audit services jeopardizes OPA's integrity, then the creation and implementation of a cost-allocation plan also has the same effect. Despite that, I believe both agencies value flexibility moving forward, so in the substitute bill that I have

[1] Section 15.9(g) of the FAA Revenue Use Policy states that "[a] sponsor may use airport revenue to pay for costs such as accounting, budgeting, data processing, procurement, legal services, disbursing, and payroll services that it bills to the airport through an acceptable cost allocation plan." (emphasis added).

provided, I've left the door open for OPA to receive the costs of services directly provided to CPA as determined under an acceptable cost allocation plan in accordance with CPA's federal grant assurances and bond indentures.

If you oppose this legislation or the substitute bill that I've provided, I urge you to at least provide an alternative solution. Right now, we are in limbo: CPA reserves these funds, OPA never seeks to actually collect on these funds, and there is never any progress towards actually resolving this issue. That is a disservice to the people of the CNMI. Every attempt CPA has made to resolve this issue has been met with the statement: "But it's the law." That's exactly why this issue continues to be raised—the law needs to be changed. CPA simply wants to be able to comply with both its federal grant assurances and local law.

And for those asking "Why is this an issue now?" It is an issue now because FAA says it is. As I'm sure you've heard multiple times already, FAA has stated that grant funding—funding that's required for our airports to operate— may be restricted if this is not resolved. Please ask yourselves this: "Do you want to be the legislator that forces FAA's hand?"

Last, let me reiterate that CPA has responsibly reserved these funds—they are currently being maintained in CPA's budget and have been so for years. Had this issue been previously resolved, CPA could have used this money to fund its staff—staff that happened to be the first CNMI employees placed on austerity and also the last CNMI employees to leave. Tying up this money through inaction helps nobody.

Thank you for providing me the opportunity to submit these comments. For the reasons I just stated, I urge this Committee to act and recommend approval of HB 22-102 or its substitute, HB 22-102, S1.

Sincerely,

CHRISTOPHER S. TENORIO
Executive Director
Commonwealth Ports Authority

Office of the Secretary
Department of Finance
P.O. Box 5234 CHRB, Saipan MP 96950 TEL: (670) 664-1100 FAX: (670) 664-1115

May 24, 2022 SFL 2022-145

Representative Donald M. Manglona
Chairman
Ways and Means Committee
22nd CNMI Legislature
Saipan, MP 96950

Subject: H.B. 22-102 "To exempt public corporations and autonomous agencies from Paying the one percent (1%) Public Auditor Fee"

Dear Chairman Manglona:

On behalf of the Department of Finance, I am providing our comments and recommendations on H.B. 22-102.

As previously stated in our letter to the Senate Fiscal Affairs Committee regarding Senate Bill 22-51, the Department of Finance's position has not changed. The Commonwealth has the responsibility for strict adherence to the laws, statutes, and regulations set forth to protect government resources from misuse. The Commonwealth government operates with a significant volume of federal and state assets and other resources requiring strict internal controls. The Office of the Public Auditor (OPA) is a critical component in ensuring these resources are protected and individuals adhere to these controls set forth to protect public resources. Consequently, we must ensure OPA is able to receive the resources they need for continued operations.

This oversight over the use of government resources is also not just directly financial. OPA is entrusted with the responsibility for oversight over compliance with the CNMI Code of Ethics in place to ensure the ethical conduct during the activities of government employees and officials, but also plays a critical role in promoting greater trust in government, which is crucial for fulfilling our shared responsibilities as public servant. This includes the employees and officials of the public corporations and autonomous agencies.

Further, excluding public corporations and autonomous agencies from paying the one percent (1%) contribution sets a potentially harmful precedent for other organizations currently under financial constraints. The compounding effect of additional exemptions to this funding model would diminish the resources for an already underfunded office. The Office of the Public Auditor will need our support so that they may continue the operations that are mandated by law.

Office of the Secretary
Department of Finance
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Lastly, to allow the Office of the Public Auditor to charge fees for their services will take away their ability to be independent in their audits and reviews of agencies, public corporations and autonomous agency. Let us keep the Office of the Public Auditor free from the burden of charging or collecting fees to enforce, investigate or review agencies and keep their independence. OPA serves a critical role in our government, and we need to continue to support and ensure it is successful in their mandates and objectives.

With the above reasons, the CNMI Department of Finance does not support H.B. 22-102. Thank you for the opportunity to provide this letter. If you have any questions or inquiries, please do not hesitate to contact us at 664-1100.

Respectfully,

David DLG, Atalig
Secretary of Finance

TWENTY-SECOND NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2022

Second Special Session, 2022 **H. B. 22-102, HS1**

A BILL FOR AN ACT

To temporarily exempt the Commonwealth Ports Authority from paying the one percent (1%) Public Auditor Fee with respect to airport revenues.

BE IT ENACTED BY THE 22ND NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

Section 1. Findings and Purpose. The Legislature finds that the Office of the Public Auditor (OPA) performs a critical function of government, in auditing the receipt, possession and disbursement of public funds and deterring, detecting, and investigating waste, fraud, and abuse of public resources. OPA exercises oversight over the entire Commonwealth government, including autonomous agencies and public corporations. To fulfill its constitutional and statutory mandates, OPA requires sufficient funding and independence from political interference. Article III, section 12 of the Commonwealth Constitution guarantees OPA an annual budget of at least $500,000, and Title 1, section 7831 of the Commonwealth Code provides that 1% of all locally generated funds appropriated by Commonwealth law as well as for all capital improvement projects, and not less than 1% of the total operations budgets of public corporations or other autonomous

agencies of the Commonwealth, shall be deposited in a special account separate from the General Fund, and the funds shall be administered and expended by the Public Auditor without further appropriation. The Legislature finds that this "1% Public Auditor Fee" provides an essential framework to support OPA's operations and ensure its independence and integrity.

The Legislature further finds that the Commonwealth Ports Authority (CPA) is an autonomous agency that plays a critical role in managing the Commonwealth's airports and seaports. The CPA is not funded primarily by legislative appropriations, and instead relies heavily on federal grants as well as revenues generated from fees and rents. The Legislature recognizes that federal law and federal grant assurances require the use of airport revenues for airport operations, maintenance, and capital improvements, and prohibit the diversion of airport revenues towards non-airport related operations and activities. *Cf.* 49 U.S.C. § 47107(b); 49 U.S.C. § 47133(a).

The Legislature further recognizes that CPA and federal grantors have expressed concern that the payment of the 1% Public Auditor Fee from CPA's airport revenues may constitute unlawful revenue diversion, and could lead to CPA's placement in non-compliance with federal grant conditions, as well as sanctions. Federal grant conditions do, however, permit CPA to pay for OPA services from airport revenues in connection with airport operations, provided that payments are calculated and documented pursuant to an approved cost allocation

plan. *Cf.* Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696 (Feb. 6, 1999). The Legislature further recognizes OPA's position that the 1% Public Auditor Fee is a reasonable and allowable cost for the use of airport revenues, based in part on federal regulations and guidance permitting the allocation of indirect costs, and that there is no final determination from federal grantors that the 1% Public Auditor Fee in fact constitutes unlawful revenue diversion. The Legislature also notes that the 1% Public Auditor Fee has never been cited as a finding in CPA's past audit reports.

Accordingly, the purpose of this Act is to temporarily exempt the Commonwealth Ports Authority from paying the 1% Public Auditor Fee as to airport revenues only. This exemption is subject to a sunset provision of five years from the effective date of this Act, to afford the agencies time to obtain a clear determination from federal grantors as to whether the payment of the 1% Public Auditor Fee from airport revenues is revenue diversion or not. Seaport revenues shall still be subject to the 1% Public Auditor Fee. In addition, this Act permits the Office of the Public Auditor to charge CPA reasonable rates or fees for audits, enforcement actions, investigations, reviews, inspections, or other work actually conducted by OPA that is related to CPA's airport operations and activities, and to require CPA to pay for said services.

Section 2. Amendment. Title 1, section 7831 of the Commonwealth Code is hereby amended to add a new subsection (f) to read as follows:

"(f) The Commonwealth Ports Authority (CPA) shall be exempt from the withholding and payment requirements of subsections (a) and (b) as to CPA's airport revenues only. This exemption does not apply to CPA's seaport revenues or any other non-airport related funding sources of CPA. Provided, that the Office of the Public Auditor (OPA) may charge the Commonwealth Ports Authority a reasonable rate for any services rendered to CPA, including services related in whole or in part to CPA's airport operations and funding, and CPA shall pay OPA for these services no later than the end of the fiscal year following the year in which such service was requested or performed."

Section 3. Sunset Clause. This Act shall automatically expire five years from its effective date.

Section 4. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 5. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Any repealer contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have

the effect of terminating, or in any way modifying, any liability civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 6. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

Prefiled: 5/12/2022

Date: 5/11/2022

Introduced by: /s/ Rep. Edmund S. Villagomez
/s/ Rep. Blas Jonathan "BJ" T. Attao
/s/ Rep. Celina R. Babauta
/s/ Rep. Corina L. Magofna
/s/ Rep. Donald M. Manglona
/s/ Rep. Leila H.F.C. Staffler
/s/ Rep. Ralph N. Yumul

Reviewed for Legal Sufficiency by:

/s/ John B. Layde
House Legal Counsel