

EXECUTIVE SUMMARY

Monthly Subsistence Allowance Provided to Members of the Senate Covering the Six Months Ending June 30, 2002

Report No. AR-03-05, dated August 6, 2003

Summary

This report presents the Office of the Public Auditor's (OPA) evaluation of the monthly subsistence allowance provided to the members of the Senate for the Thirteenth Legislature in the Commonwealth of the Northern Mariana Islands (CNMI). The evaluation's objectives were to determine whether: (a) the Senate has authority to grant the monthly \$5,000 subsistence allowance; (b) the amount of the \$5,000 monthly allowance satisfies public purpose requirements; (c) senators receiving monthly allowances are required to submit documentation detailing travel; and (d) the Commonwealth is compensating senators twice for items covered by the monthly subsistence allowance.

Senators from the First Senatorial District (Rota), Second Senatorial District (Tinian and Aguiguan) and Third Senatorial District (Saipan and the Northern Islands) receive a monthly subsistence allowance for local inter-island travel within the CNMI. The allowance is based upon Senate rules and resolutions.

Our review of the NMI Constitution, statutes, regulations, legislative resolutions and rules, current quoted air fares, and applicable per diem rates show that the monthly travel expenses for Rota and Tinian senators are likely to be considerably less than the \$5,000 monthly subsistence allowance provided to them when traveling to Saipan, resulting in an unjustified personal benefit to the senators in violation of public purpose.

Reasonableness of \$5,000 Monthly Travel Allowance for Tinian and Rota Senators Traveling to Saipan

When Per Diem is Based Upon:	Excessive Monthly Allowance Under Different Scenarios		
	Daily Trips	Weekly Trips	Monthly Trips
Full \$175 Per Diem Regardless of Whether Overnight Trips Were Made			
Rota	(\$34)	\$1,720	\$961
Tinian	1,265	1,980	1,021
\$87.50 Per Diem in Lieu of the Full \$175 Per Diem Because Overnight Trips Not Made			
Rota	1,387	2,004	1,027
Tinian	2,686	2,264	1,087

Our review also found:

- while the authority for the monthly subsistence allowance is found in Senate rules and resolutions, the Constitution and Commonwealth law require allowances for expenses to be in the form of a law;
- the Commonwealth is likely paying the six senators from Rota and Tinian \$104,216 annually in excess of reasonable travel costs;
- although current laws and regulations applicable to the Senate appear to require submission of documentation for travel covered by the monthly allowance, senators are not filing such documentation; and

- finally, Senate rules and resolutions do not provide adequate assurance that senators are not reimbursed for items already covered by the allowance, i.e. concurrent travel.

Accordingly, we recommend that the Senate:

- 1) introduce legislation to grant it authority for the subsistence allowance and its amount, to set the amount of the allowance, and to certify it as a public purpose;
- 2) undertake an analysis of reasonable travel costs to ensure that the amount set for allowances is appropriate given expenses incurred;
- 3) document travel activity to enable it to more accurately estimate an appropriate monthly allowance;
- 4) require that travelers document trip activities to ensure compliance with applicable regulations and the law, a practice which would support Senate efforts to determine a reasonable monthly allowance amount; and
- 5) draft amendments to current legislation or other travel policies to prevent senators from being reimbursed for other concurrent travel.

In a letter response dated June 25, 2003, the Senate agreed with recommendations 2, 3, and 5. More specifically, the Senate agreed to replace the existing subsistence allowance system with a new revolving reimbursement system that would use uniform per diem rates to reimburse senators for expenses incurred in the exercise of their constitutional duties. The Senate also agreed to conduct an analysis of travel expenses to ensure that the new per diem rate was reasonable. Further, it agreed to adopt policies to ensure compliance with public purpose requirements. Also, the Senate confirmed that any disbursements of funds from the new revolving account would be predicated on the provision of sufficient documentation of expenditures. Finally, it agreed to take action to ensure that members of the Senate do not receive “double compensation” for travel costs.

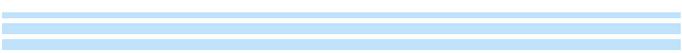
The Senate did not, however, adequately respond to recommendations 1 and 4. More specifically, the Senate did not agree:

- with OPA’s position that authority for the monthly subsistence allowance, created in the Senate rules, must be in the form of a law. Instead the Senate asserts that it has the implied statutory authority to establish the subsistence allowance for its members by Senate rule; or
- to submit travel vouchers documenting travel purpose and expenses.



Office of the Public Auditor
Commonwealth of the Northern Mariana Islands

**CNMI Senate
Monthly Subsistence Allowance
Provided to Members of the Senate
Covering the Six Months Ending June 30, 2002**



Audit Report
AR-03-05



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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August 6, 2003

The Honorable Paul A. Manglona
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Thirteenth Northern Marianas Commonwealth Legislature
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Saipan, MP 96950

The Honorable Ramon S. Guerrero
Senator
Thirteenth Northern Marianas Commonwealth Legislature
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Dear President Manglona and Senator Guerrero:

**Subject: Monthly Subsistence Allowance Provided to Members of the Senate
Covering the Six Months Ending June 30, 2002 (Report No. AR-03-05)**

This report presents the Office of the Public Auditor's (OPA) evaluation of the monthly subsistence allowance provided to the members of the Senate for the Thirteenth Legislature in the Commonwealth of the Northern Mariana Islands (CNMI). The evaluation's objectives were to determine whether: (a) the Senate has authority to grant the monthly \$5,000 subsistence allowance; (b) the amount of the \$5,000 monthly allowance satisfies public purpose requirements; (c) senators receiving monthly allowances are required to submit documentation detailing travel; and (d) the Commonwealth is compensating senators twice for items covered by the monthly subsistence allowance.

BACKGROUND

Senators from the First Senatorial District (Rota), Second Senatorial District (Tinian and Aguiguan) and Third Senatorial District (Saipan and the Northern Islands) receive a monthly subsistence allowance for local inter-island travel within the CNMI. The allowance is based upon Senate rules and resolutions.

On March 15, 2002, Senator Ramon S. Guerrero requested the Office of the Public Auditor to review the monthly subsistence allowance received by senators from Rota and Tinian.¹ Later, in a meeting on June 11, 2002, Senate President Paul Manglona, Senator Joaquin Adriano, and Senator Ricardo Atalig requested OPA to broaden the request to include other areas which will be addressed in a separate report.

The Senate has periodically increased the subsistence allowance, which initially applied only to senators from Rota and Tinian, and has more recently provided a similar allowance to senators from Saipan.

- On February 24, 1999, the Senate adopted Senate Resolution 11-30 setting the monthly allowance at \$5,000. According to the resolution, senators would no longer receive housing allowances or blanket travel authorizations and “reimbursement is permitted upon legal review by the Senate Legal Counsel.”
- On July 3, 2002, the Senate for the Thirteenth Legislature adopted Official Rules. Rule 12, section 2(a)(6) provides that Members of the Senate from Rota and Tinian may use a portion of the funds under their individual office accounts as an allowance to defray the costs of food, lodging, transportation, and other expenses they incur by reason of their presence on Saipan on legislative business, in accordance with any Senate resolution relative to such subsistence costs allowances. It further provided that members of the Senate from the Third Senatorial District shall receive a legislative allowance from funds under their individual office accounts to defray the cost of food, lodging and transportation and other related expense incurred while on legislative business in the First or Second Senatorial Districts. According to the rule, the allowance shall be \$2,000 per month if the member is a chairperson of a standing or special committee and \$1,000 per month per committee, standing or special, of which the member is a member, but in no event shall a member from the Third Senatorial District receive more than \$5,000 per month under this Rule.
- Senate Resolution 13-19, adopted on August 16, 2002, increased the Senate per diem rates for travel within the CNMI to \$175 per day. The resolution provided that if a senator spends eight hours away from his island of residence he is entitled to a stipend equal to the full per diem rate. If a senator spends less than eight hours on travel within the Commonwealth, he is entitled to receive a stipend equal to fifty percent of the daily per diem rate, which equals \$87.50.

¹ When OPA received Senator Guerrero’s request on March 15, 2002, the Interim Rules of the Thirteenth Senate were in effect, which provided the allowance only to senators of the First Senatorial District (Rota) and Second Senatorial District (Tinian and Aguigan). Subsequently, on July 3, 2002, the Thirteenth Senate adopted final rules which provided for allowances to senators of the Third Senatorial District (Saipan and the islands to the north of it) in amounts ranging from \$1,000 to \$5,000 calculated based upon the number of committees of which the senator is a member or chairs.

Senate Rule 12, section 2(a)(6), together with Senate Resolution 11-30, authorized Rota and Tinian senators to receive a monthly allowance of \$5,000 and allowed senators from Saipan to receive up to \$5,000 per month, based on the number of committees the senator chairs or serves as a member, while Senate Resolution 13-19 increased the per diem rates for travel within the CNMI to \$175.

OBJECTIVE, SCOPE, AND METHODOLOGY

OPA's evaluation had four objectives:

- Does the Senate have authority to grant the monthly \$5,000 allowance?
- Does the amount of the \$5,000 monthly allowance meet public purpose requirements?
- Are senators who receive monthly allowances required to submit documentation detailing travel?
- Is the Commonwealth compensating senators twice for items covered by the monthly subsistence allowance?

To address our 1st objective, namely to determine whether the Senate has authority to grant the monthly subsistence allowance, we reviewed the applicable provisions in the Constitution of the Northern Mariana Islands (NMI), statutes, regulations and legislative resolutions and rules.

To address our 2nd objective, namely to determine whether the amount of the monthly subsistence allowance comports with public purpose requirements, we utilized current quoted air fares and applicable per diem rates to determine if estimates of reasonable travel expenses approximated the current allowance.

To address our 3rd objective, namely to determine whether senators receiving the allowance need to submit travel documentation, we reviewed the applicable provisions in the NMI Constitution, statutes, regulations and legislative resolutions and rules.

To address our 4th objective, namely to determine whether the Commonwealth is providing duplicate compensation to senators for items covered by the monthly allowance, we reviewed the applicable Senate rules and resolutions and available financial documents.

Our evaluation was limited to: (a) reviewing documents obtained from the Department of Finance (DOF) and the CNMI Legislature relating to legislative expenditures and the monthly allowance, (b) conducting interviews with various legislative and DOF employees, (c) reviewing applicable airline flight costs, per diem rates, as well as the CNMI's consumer price index, (d) reviewing applicable provisions in the Constitution of the NMI, statutes, regulations and legislative rules, and (e) conducting analyses of average travel and subsistence costs to determine

reasonable travel expenses.

Our evaluation was conducted, where applicable, in accordance with the Government Auditing Standards issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures as we considered necessary to accomplish our objectives.

RESULTS OF EVALUATION

Our review of the NMI Constitution, statutes, regulations, Senate resolutions and rules, current quoted air fares, and applicable per diem rates shows that:

- while authority for the monthly subsistence allowance is found in Senate rules and resolutions, the Constitution and Commonwealth law require allowances for expenses to be in the form of a law;
- Rota and Tinian senators are likely to spend considerably less than the \$5,000 monthly subsistence allowance provided to them when traveling to Saipan resulting in an unjustified personal benefit to the senators in violation of public purpose;
- the Commonwealth is likely paying the senators \$104,216 annually in excess of reasonable travel costs;
- although current laws and regulations applicable to the Senate appear to require submission of documentation for travel covered by the monthly allowance, senators are not filing such documentation; and
- finally, Senate rules and resolutions do not provide adequate assurance that senators are not reimbursed for items already covered by the allowance, i.e. concurrent travel.

A. Authority to Grant Subsistence Allowance

The Senate's monthly subsistence allowance appears to have been improperly authorized. Based on the NMI Constitution, it appears such allowance for expenses should be authorized in the form of a law rather than a Senate rule or resolution.

Article X, Section 1 of the NMI Constitution mandates that Commonwealth funds be expended for a "public purpose" and it authorized "*the legislature*" to define public purpose. (Emphasis added). Public Law 11-84, the Public Purpose Definition Act of 1998, which was subsequently amended through Public Law 12-2, provided that:

[n]ot withstanding any other provision of this act or other law to the contrary, expenditures *authorized and regulated by legislative rules* are expressly declared to be for a public purpose, unless proved by clear and convincing evidence that the expenditure in fact was for a personal or political activity.” (Emphasis added.)

However, the Senate rules and resolutions authorizing the monthly allowance were not passed by “the legislature” as a whole, but rather independently by the Senate. OPA has concerns regarding the constitutionality of this portion of Public Law 12-2 as the CNMI Legislature, through Public Law 12-2, essentially changed the Constitutional mandate that public purpose be defined by law, and allowed it to be done by legislative rule.² Furthermore, 1 CMC §1251, which was enacted prior to, and not affected by, Public Law 12-2, states that “[l]egislators traveling away from their home islands on legislative business shall be paid such per diem as may be determined by *the legislature*.” (Emphasis added). This law also seems to contemplate that the funds provided to a legislator traveling outside of his or her home island is to be set by the “legislature” as a whole rather than the individual houses of the Legislature. Furthermore, Public Law 12-2 provides that legislators shall be paid per diem for travel away from their home islands and does not appear to contemplate or authorize subsistence in lieu of per diem.

In addition, Article II, Section 10 of the NMI Constitution states “[t]he members of the legislature shall receive an annual salary of eight thousand dollars and reasonable *allowances for expenses provided by law*. . .”³ (Emphasis added). Consequently, if the monthly subsistence allowances cover travel expenses related to a senator’s official duties, and are therefore “allowances for expenses,” and the authorization for those expenses would need to be provided for in the form of a law rather than a Senate rule.

As 1) the NMI Constitution mandates that the Legislature define public purpose in the form of law, 2) the NMI Constitution requires allowances for expenses provided by law, and 3) CNMI

² Relegating the defining of public purpose from a law to a legislative rule avoids the veto power of the governor and judicial review. (See, e.g. Mafnas v. Inos, Civ. Action No. 90-031, N.M.I. Super. Ct. Jan. 22, 1990, Memorandum Decision on Order to Show Cause for Declaratory Relief at n.16. In the absence of any law specifically authorizing judicial inquiry, court has no authority to inquire into or police administration of senate’s internal rules.). “The legislature cannot enact laws by a resolution, which merely expresses the agreement of the legislators without force of law.” Analysis of the Constitution of the CNMI, p. 43. It must be noted that, outside of the Senate’s traditional role of confirming executive nominations, “the Commonwealth Constitution contains no authorization for one house of the legislature to act unilaterally...”. Marianas Visitors Bureau v. Commonwealth, Civ. Action No. 94-516 (N.M.I. Super. Ct. June 23, 1994) (Memorandum Decision and Judgment at 37). In addition, Mason’s Manual of Legislative Procedure, Section 12 (1) states “[a] legislative body cannot make a rule that evades or avoids the effect of a rule prescribed by the constitution governing it, and it cannot do by indirection what it cannot do directly.” Mason’s Manual of Legislative Procedure, Section 12 (2) at 21. Public Law 12-2 indirectly evades the mandate of the NMI Constitution that public purpose be set by the Legislature through a law.

³ The eight thousand dollar annual salary was only the initial compensation level set by the NMI Constitution. The NMI Constitution also provided a mechanism and formula for increases in the compensation levels of legislative members over the years.

statutory law requires that the legislature determine per diem, OPA recommends that the Legislature enact laws to address Senate/legislative travel and expenses to replace Senate rules and resolutions so as to forestall challenges to the constitutionality of the authority for the monthly subsistence allowance.

B. Satisfaction of Public Purpose

The NMI Constitution mandates that government funds only be expended for a public purpose. While providing senators funds for reasonable official travel expenses satisfies public purpose, any amount provided above reasonable travel expenses would violate public purpose.

The members of the Second Constitutional Convention set forth the intended limitations of the Legislature's authority to define public purpose by stating:⁴

'A public purpose is one that directly and substantially benefits the public welfare. The direct and substantial benefits to the welfare necessary for a finding of public purpose must be reasonably foreseeable and reasonably likely to occur. This section does not prohibit government participation with private investors in enterprises that will benefit the public welfare. *A public purpose does not include an objective that brings benefits only to a few persons or corporations, that results in profits most of which are exported from the Commonwealth to the benefit of persons in other countries, that redresses private wrongs or that improves private property.*' (Emphasis added.)⁵

While Public Law 12-2 states that the Legislature may define public purpose through legislative rule, this authority must be interpreted in light of guidance set forth by the Committee in its Report to the Convention if it is to be consistent with the constitutional intent and its intended limitations. Therefore, to comply with the public purpose requirement, the Senate must set the allowance at a level that ensures a direct and substantial benefit to the public welfare without benefit to selective persons or to improving private property.

Article II, Section 10 of the NMI Constitution also mandates that the allowance legislators receive should be "reasonable." It states "[t]he members of the legislature shall receive an annual salary of eight thousand dollars and *reasonable allowances* for expenses provided by law. . ." As the monthly allowances are for expenses, pursuant to this section they must be both reasonable and provided for by law. (Emphasis added.)

⁴ The original version of Article X, Section 1 of the NMI Constitution did not provide for the Legislature to define public purpose. The change to the NMI Constitution granting such power to the Legislature came from ratification of Amendment 28 of the Second Constitutional Convention.

⁵ Committee Recommendation No. 33, Report To The Convention By The Committee on Finance And Other Matters. (Adopted, as amended, by the Committee of the Whole and the Convention on July 12, 1985.)

Given these constitutional principles, it is important to understand that each senator has a dual responsibility, namely to be: (1) responsive to their constituents which requires a presence in their legislative district and, (2) responsible to their legislative duties which require their attendance at official functions in Saipan, Rota, and Tinian. If senators are to be compensated for travel expenses incurred in carrying out their official duties, the per diem or allowance must still be reasonable and comply with public purpose. However, the Senate rules and resolutions do not provide clear guidance on what basis was used to set the monthly allowance at \$5,000. It therefore cannot be clearly determined if: 1) such amount is reasonable and in compliance with the public purpose requirement, or 2) whether the allowance provides an unjustified personal benefit.

If the \$5,000 monthly allowance was based on the average cost of hotel lodging, airline fares, and past expenditures for such items, the allowance might be reasonable. However, if these costs are less than \$5,000 per month, the allowance would benefit a few, namely the legislators, contrary to the limitations set forth by Article X, Section 1 of the NMI Constitution.

The Senate has indicated that it intended to conserve Commonwealth funds when it established the monthly allowance. Its justification, set forth in Senate Resolution 8-1 was “to *save public funds* by setting a maximum and yet *reasonable* limit on monthly subsistence allowance to senators rather than utilizing the established per diem rate for Saipan, which would cause a severe and unnecessary strain on available financial resources.” (Emphasis added.)⁶

OPA attempted to determine whether the fixed monthly allowance generates a public savings or is even reasonably related to estimated costs of travel. OPA compared the \$5,000 allowance with estimated per diem and air fares, assuming that senators from Rota and Tinian spent three-fourths of their time (75%) in Saipan on official business. This is a generous presumption as Senate attendance records indicate that, on average, the Senate only holds about two single day sessions each month in Saipan. While senators need to travel to Saipan for more than just attendance at legislative sessions, the number of monthly Senate sessions held indicates that OPA’s assumption that members spend not less than 75 percent of their time in Saipan is generous.

To analyze the reasonableness of the \$5,000 allowance, OPA:

- computed the number of days a senator would have to travel to Saipan to incur \$5,000 in costs associated with travel, lodging, and incidentals, and
- compared the allowance with estimated travel costs under different travel scenarios.

⁶ Senate Resolution 8-1.

The results of these analyses follow.

Number of Trips Needed by Rota and Tinian Senators to Incur \$5,000 in Travel Costs

Our analyses show that the \$5,000 allowance is unreasonably high given the number of daily trips a Rota or Tinian senator would need to take to Saipan to incur \$5,000 in costs associated with travel, lodging, and incidentals. OPA used per diem rates set forth in Senate Resolution 13-19 which authorizes full per diem of \$175 for senate travel exceeding 8 hours regardless of whether or not an overnight stay is involved, and provides a stipend of \$87.50 for any trip under 8 hours.

The Senate's policy of providing a full per diem rate without considering whether or not the traveler stays overnight is unreasonable. Full per diem rate assumes that an individual needs overnight accommodation, and is, therefore, partially based on hotel room rates. If a traveler does not spend the night, it seems arbitrary and without sound basis that a trip of more than 8 hours, including flight time, would justify a full per diem rate. According to the Department of Finance, the non-overnight travel stipend for the Executive Branch is \$15. This is likely insufficient given current food costs. The Senate's \$87.50 stipend rate, though still high for food costs alone, is more reasonable than \$175 for an individual who made a day trip of more than 8 hours but returned home by the end of the day and, therefore, did not require overnight lodging.

Our analysis of the number of travel days required to incur \$5,000 in costs associated with travel, lodging, and incidentals, where senators receive full per diem of \$175 regardless of whether or not they stayed overnight, shows that the allowance is unnecessarily high. To illustrate, Rota senators would need to make 16 round trips per month to Saipan to incur \$5,000 in travel expenses, while Tinian senators would likewise need to make 22 round trips, meaning they would spend practically every work day in Saipan.

For non-overnight travel the \$175 per diem rate appears overly generous as it compensates senators for lodging not necessarily used. Calculations based on the more reasonable daily stipend rate of \$87.50 for non-overnight stays show that Tinian senators would need to make 35 round trips per month and Rota senators would need to make 23 round trips per month to justify the \$5,000 monthly allowance. The 35 round trips from Tinian per month is clearly unrealistic. It is also unreasonable to assume that a Rota senator makes 23 day trips to Saipan per month. See **Appendix A** for the analysis.

Likely Travel Costs for Rota and Tinian Senators under Various Travel Scenarios

OPA reviewed three scenarios, namely, daily, weekly, and monthly travel to Saipan. OPA found that the allowance was excessive in every scenario, except the daily travel scenario from Rota where full per diem (\$175) would be received despite the senator not staying overnight.

- Under the daily travel scenario a senator would arrive in Saipan in the morning of each day and would return to the home island at the end of the day. Under this scenario, the total

cost of travel would be the corresponding daily air fare and daily stipend for non-overnight travel (either \$87.50 for less than 8 hours or \$175 for more than 8 hours).

- Under the weekly travel scenario, a senator would arrive on Saipan on Monday morning and could return to his home island on Friday afternoon, having spent four nights at the full overnight per diem rate and a single day of less than full day per diem (for Friday) plus corresponding airfare.
- Under the monthly travel scenario, a senator would arrive on Saipan on the first of the month and would return to his home island at the end of the month. Costs would include per diem for each day of the month and the one round trip air fare.

Under the daily scenario where a senator can receive per diem of \$175 despite travel being non-overnight, a Rota senator’s estimated travel costs would only exceed his monthly allowance by \$34 per month. This assumed that the senator spent 75 percent of his time in Saipan, took no off-island trips on other official business, never took any personal time, and only spent one week per month in Rota. For all other scenarios, the monthly allowance provided to senators exceeded estimated travel costs by amounts ranging from \$961 to \$2,686 per senator. These amounts in excess of estimated travel costs are difficult to justify and clearly exceed public purpose limitations.

Reasonableness of \$5,000 Monthly Travel Allowance for Tinian and Rota Senators Traveling to Saipan⁷

Excessive Monthly Allowance Under Different Scenarios			
When Per Diem is Based Upon:	Daily Trips	Weekly Trips	Monthly Trips
Full \$175 Per Diem Regardless of Whether Overnight Trips Were Made			
Rota	(\$34)	\$1,720	\$961
Tinian	1,265	1,980	1,021
\$87.50 Per Diem in Lieu of the Full \$175 Per Diem Because Overnight Trips Not Made			
Rota	1,387	2,004	1,027
Tinian	2,686	2,264	1,087

⁷ OPA assumed that Senators spend 75 percent of their time in Saipan while making daily, weekly, or monthly round trips to their home island.

See **Appendix B** for OPA’s detailed computation of the reasonableness of the \$5,000 subsistence allowance under daily, weekly, and monthly scenarios.

OPA calculated that if Rota and Tinian senators spend no less than 75 percent of their time in Saipan, the Commonwealth is likely paying the six senators via the monthly allowance \$104,216 annually in excess of estimated travel costs. See **Appendix C**.

Allowance provided to Saipan Senators

Although current Senate rules provide that Saipan senators are eligible to receive a monthly allowance of between \$1,000 to \$5,000 depending on the number of committees chaired or served, such allowance seems unreasonable given that:

- travel costs should be less than that of Rota and Tinian senators as most legislative meetings are held in Saipan.
- a Saipan senator would need to make at least 5 round trips to Rota or Tinian each month to fully utilize a \$1,000 allowance, and 11 round trips to utilize \$2,000.

The NMI Constitution mandates that allowances for expenses must be reasonable, and requires that expenditures must have a direct and substantial benefit to the public welfare. Article II, Section 10 of the NMI Constitution mandates “*reasonable allowances* for expenses.” Setting the monthly allowances above reasonable travel costs violates both of these provisions, and results in an unjustified benefit to the senators receiving the allowance in violation of these constitutional provisions.

C. Documentation Needed

While both the NMI Constitution and CNMI law appear to require that the Legislature account for its travel, senators do not document travel covered by their allowances. Article X, Section 8 of the NMI Constitution states:

[t]he Department of Finance or its successor department shall control and regulate the expenditure of public funds. The department shall *promulgate regulations* including accounting procedures that require public officials to provide *full and reasonable documentation* that *public funds* are expended for public purposes.” (Emphasis added.)

This authority extends to legislative expenditures⁸ and indicates that there is an expectation that government expenditures be fully accounted for and documented.

DOF regulations, adopted in the September 20, 2000 Commonwealth Register Volume 22, Number 9, page 17489, et seq., (“DOF Regulations”), to provide uniform standards for the control of public funds do not specifically address monthly allowances. However, two definitions addressing a “Travel Authorization Form” and “Travel Voucher Form” contained in such regulations do provide guidance. Such guidance, in Section 1100.3(v) of the DOF Regulations, requires government travelers to file a travel voucher for “*travel allowances, per diem, honorarium, or other expenses*” and would seem to cover the Senate’s monthly allowance which are intended to be a substitute for per diem. (Emphasis added)⁹

Furthermore, DOF Regulations and CNMI law indicate that the Government will not expend funds unless the expenditure is documented. More specifically, section 1100.6 of the DOF Regulations states:

Unallowable or *undocumented* official representation and *other expenditures will not be reimbursed or paid* by the CNMI Government. In cases where payments for such unallowable or *undocumented* expenses have been made from CNMI Government funds such as *travel or other advances*, imprest funds or other government funds, the responsible party who incurred the expense will pay or reimburse the CNMI Government for these expenditures. If not paid in a timely manner, such costs may be recovered, after notice through payroll deductions, or other means authorized by law. (Emphasis added)

This documentation requirement is also found in 1 CMC §7407(a) which states that:

Every government travel authorization shall contain a statement under penalty of perjury that the travel is for official business purposes and undertaken to benefit the people of the Commonwealth.

⁸ Public funds are used to pay Senators’ monthly subsistence allowance. Furthermore, discussions of the Second Constitution Convention members relating to Committee Recommendation 59, (which later became Article X section 8) focused on the Department of Finance’s authority to issue “regulations” that would apply to all branches of government.

⁹ When per diem is provided, travelers need not document expenses such as meals and incidental items, and the traveler is also permitted to retain the unspent amounts. However, to receive a per diem, an individual must complete a travel authorization and file a travel voucher upon completion of travel detailing trip activities.

In addition, 1 CMC §7407(b) requires that:

Within 15 days after completion of government travel, the traveler shall submit a detailed trip report and documented travel expenditures to the approving authority. The submissions shall be a public record. A person who has failed to make a timely submission shall not receive travel advances until his untimely submission is remedied.

These provisions, which apply to the Senate, also appear to apply to the monthly allowances, as the allowances are for Senate travel, which is “government travel.” Furthermore, the applicable Senate rules and resolutions do not contain language specifically excusing senators who receive monthly allowances from reporting on the travel activities covered by the funds.¹⁰ To the contrary, Senate Rule 12, Section 2(b)(1) provides that expenditures, whenever appropriate, shall follow the “standard procurement, purchase, *travel*, *per diem* and contract format.” (Emphasis added).

In addition, Senate Resolution 11-30 indicates that reimbursement connected to the monthly allowance is permitted upon legal review by the Senate Legal Counsel. While this can not serve as a substitute for the requirements set forth in public law and the constitutionally mandated DOF regulations, it does indicate that some documentation must be provided by the Senators, for review, to the Senate Legal Counsel.¹¹ Therefore, in order to comply with the law and to receive the monthly allowance, senators must file travel authorizations and travel vouchers or be liable to the Commonwealth for such funds pursuant to Section 1100.6 of the DOF Regulations.

While this analysis seems fairly straightforward, an issue arises because Public Law 12-2 created a different standard for expenditures authorized by legislative rules as compared to other expenditures of public funds. Normally expense items are submitted to DOF for payment and, if the Secretary of Finance denies payment because they are not found to be for public purpose, the burden is on the entity or individual submitting the request for payment to establish that the expenditures constitute a public purpose. According to Article X, Section 8 of the NMI Constitution, DOF regulates public funds and sets procedures for public officials to provide “full and reasonable documentation that public funds are expended for public purpose” thus placing a burden on the party requesting payment to show public purpose. If someone objects to the Secretary of Finance’s refusal to pay, he or she could seek remedy in a civil suit employing the

¹⁰ Given Article X, Section 8 of the NMI Constitution mandate, the legislative rules or resolutions can not override the DOF Regulation’s reporting requirements.

¹¹ Senate Legal counsel advised OPA that the Senate was not bound by this language given that it is contained in a “whereas” clause. However, the “resolved” language of the resolution adopts the increased per diem stating that the “Senate agrees with the maximum limit *as said above*.” The words “as said above” refer to the above “whereas” clauses. As such, there is some indication that the requirement for legal review was part of the intended resolution.

standard of preponderance of the evidence that the expenditure was for a public purpose.

According to Public Law 12-2, items authorized through legislative rules are presumed to be for a public purpose. If the Secretary of Finance refuses to pay them because of concern they do not satisfy public purpose, DOF would have to provide “clear and convincing evidence that the expenditure was in fact for a personal or political activity.” This is a higher standard than the “preponderance of the evidence” standard used for other government expenses and more importantly it shifts the burden of proof from the expenditure authority to the DOF. Such differential treatment for legislative expenditures would seem contrary to the intention as indicated by the Constitutional framers of Article X, Section 8.

Nevertheless, while the burden of proof for denial of payments of travel expenses or allowances may differ, this does not negate the requirement that current regulations and laws appear to require submission of documentation regarding the travel covered by the monthly allowances. Given (1) these requirements, (2) the Senate rule stating that standard travel and per diem format be observed, and (3) the benefit the Legislature could derive from documenting and tracking travel to more accurately estimate actual travel expenses in setting the allowance amount, OPA suggests that senators receiving the allowance file travel documentation and substantiation as required by the DOF Control of Public Fund Regulations and Commonwealth law.

D. Possible Double Compensation of Travel Expenses

OPA noted a number of areas where senators might be receiving double reimbursement for the same travel:

- OPA is concerned that the current allowance system allows senators to receive double compensation for per diem when they travel to destinations other than Saipan both within and outside of the Commonwealth. OPA noted two instances during the 6 months ended June 30, 2002 where senators traveled out of the CNMI, and were reimbursed twice for the same period of time. A senator traveled to Manila and received \$804 in per diem for a five day trip, but still collected his full monthly allowance of \$5,000. This resulted in the senator being reimbursed twice for the five days he was out of the CNMI. In the other instance, a senator from Tinian traveled to Rota for two and a half days and received \$321.50 in per diem in addition to the full \$5,000 monthly allowance.
- Another area where double payment for the same item can occur concerns official representation reimbursements. Thirteenth Senate Rule 12, Section 2(a)(3) states that members can expend Senate funds for “food, beverage, entertainment, and similar expenses” and seek separate reimbursement for such costs upon submission of supporting documentation. If the monthly allowance was intended to be in lieu of per diem, there is a question of whether a senator should be reimbursed for food and meals under an official representation request, as this would essentially reimburse the senator twice for such expense.

- Finally, Senate Rule 12, Section 2(a)(6) states that the monthly allowance is intended to cover “food, lodging, transportation, and other expenses.” The phrase “other expenses” opens the door for uncertainty.¹² This language and the other issues raised above need to be analyzed to ensure that senators receiving monthly allowances are not compensated more than once for an expense.

OPA strongly suggests clarifications in these areas to resolve these issues.

CONCLUSIONS AND RECOMMENDATIONS

Although the authority for the monthly subsistence allowance is found in Senate rules and resolutions, the Constitution and Commonwealth law appear to require it to be in the form of a law. Rota and Tinian senators are likely to spend considerably less than the \$5,000 monthly subsistence allowance provided to them when traveling to Saipan because the allowance has been set unreasonably high. This results in an unjustified personal benefit to the senators in violation of public purpose. OPA estimates that the Commonwealth is likely paying the six senators \$104,216 annually in excess of reasonable travel costs. Although current laws and regulations applicable to the Senate appear to require submission of documentation on the travel covered by the monthly allowance, senators are not filing such documentation. Finally, Senate rules and resolutions do not provide adequate assurance that senators are not compensated for items already covered by the allowance.

Accordingly, we recommend that the Senate:

1. introduce legislation to grant it authority for the subsistence allowance, to set the amount of the allowance, and to certify it as a public purpose;
2. undertake an analysis of reasonable travel costs to ensure that the amount set for allowances is appropriate given expenses incurred;
3. document travel activity to enable it to more accurately estimate an appropriate monthly allowance;
4. require that travelers document trip activities to ensure compliance with applicable

¹² The language in this rule for the Twelfth and Thirteenth Senate is the same. Senate Resolution 8-1, the initial resolution establishing the monthly allowance, authorized a Senate Committee to establish a “monthly subsistence and travel allowance.” The Resolution also provides that the allowance was to be used in lieu of per diem. Although per diem traditionally covers food and lodging, the Resolution used the term “monthly subsistence and travel” when establishing the allowance. By using the words “and travel” in the allowance, it appears the Resolution intended the allowance to cover food, lodging and air fare. The next resolution addressing the allowance, Senate Resolution 9-9, set the “monthly subsistence travel allowance” at \$2,000 per month using the same phrase, “monthly subsistence and travel allowance.” Senate Resolution 11-30, the current resolution addressing the monthly allowance established by Senate Resolution 8-1, increased the rate to \$5,000 per month.

regulations and the law, a practice which would support Senate efforts to determine a reasonable monthly allowance amount; and

5. amend legislation and/or travel policy to prevent senators from being reimbursed for other concurrent travel.

Senate Comments on Draft Report

The Senate provided OPA its initial written comments (See **Appendix D**) on June 12, 2003 by a letter dated May 29, 2003 which was accompanied by a Legal Opinion from its counsel concluding that the Senate had implied authority to establish a monthly subsistence allowance by legislative rule.

On June 17, 2003, OPA met with members of the Senate to discuss the Senate's response to OPA's draft report. The Senate subsequently responded by letter, dated June 25, 2003 (See **Appendix E**), to this discussion, and agreed with certain recommendations made by OPA. More specifically, the Senate agreed to:

- replace the existing subsistence allowance system with a new revolving reimbursement system that would use uniform per diem rates to reimburse Senators for expenses incurred in the exercise of their constitutional duties. This new system would apply only to travel within the Commonwealth.
- conduct an analysis of travel expenses to establish a new reasonable per diem rate.
- adopt policies to ensure compliance with public purpose requirements. Also, they agreed that any disbursements of funds from the new revolving account would be predicated on the provision of sufficient documentation of expenditures. They did not, however, agree to submit travel vouchers documenting travel purpose and expenses.
- take action to ensure that members of the Senate do not receive "double compensation" for travel costs.

The Senate did not, however, agree with OPA's position that authority for the monthly subsistence allowance, created in the Senate rules, must be in the form of a law. Instead, the Senate asserts that it has the implied statutory authority to establish the subsistence allowance for its members by Senate rule because Public Law 12-2, codified at 1 CMC §121(i) states that "expenditures authorized and regulated by legislative rules are expressly declared to be for a public purpose...". They further reasoned that this section "impliedly grants the Legislature the authority to authorize and regulate expenditures by legislative rule because it expressly refers to the existence of such expenditures and states that such expenditures are deemed to be for a public purpose."

OPA's Response

The Senate's response and agreements will, if carried through, satisfy or make moot all but two of OPA's recommendations: Recommendation No. 1, namely that the Senate provide for the subsistence allowance through law as required by the Constitution and existing Commonwealth laws, and Recommendation No. 4, namely the need to submit travel vouchers documenting travel. The remaining recommendations would be moot if the Senate: (a) abandons the allowance system and properly institutes a revolving reimbursement account, (b) properly sets reasonable researched per diem rates, and (c) requires proper substantiation and documentation. Those recommendations can be closed once the Senate completes these actions.

OPA disagrees that the Senate may impliedly grant itself the authority to create an allowance for expenses through its internal rules as the Constitution requires otherwise. More specifically,

- Article II, Section 5 states that the "legislature may not enact a law except by bill and no bill may be enacted without the approval of at least a majority of the votes cast in each house of legislature."
- Article II, Section 10 of the NMI Constitution allows the members of the legislature to "receive *reasonable allowance for expenses as provided by law.*"

Therefore, until such time as allowances that have been created by the Senate rules are discontinued, OPA must reiterate that the potential for legal challenges to the constitutionality and the authority for the monthly allowance exists.

Actions or documents needed to consider these recommendations as closed are presented in **Appendix F**.

Our office has implemented an audit recommendation tracking system. All audit recommendations will be included in the tracking system as open or resolved until we have received evidence that the recommendations have been implemented. An open recommendation is one where no action or plan of action has been made by the client. A resolved recommendation is one in which the auditors are satisfied that the client cannot take immediate action, but has established a reasonable plan and time frame of action. A closed recommendation is one in which the client has taken sufficient action to meet the intent of the recommendation or we have withdrawn it.

Please provide us the status of recommendation implementation within 30 days along with documentation showing specific actions that were taken. If corrective actions will take longer than 30 days, please provide us additional information every 60 days until we notify you that the recommendation has been closed.

Sincerely,

A handwritten signature in blue ink, appearing to read "MS Sablan", written in a cursive style.

Michael S. Sablan, CPA
Public Auditor

cc: Members of the Thirteenth CNMI Senate
Governor
Lt. Governor
President of the Senate
Speaker of the House
Attorney General
Special Assistant for Management and Budget
Secretary of Finance
Press

Appendix A

Number of Round Trips that Rota and Tinian Senators Need to Make to Incur \$5,000 in Costs Associated with Travel, Lodging, and Incidentals

	Travel Costs	Number of Round Trips Needed to Incur \$5,000 in Travel Costs
Using \$175 Per Diem Rate and Air Fare:		
Rota Senators	\$135 Air Fare & 175 Per Diem = \$310	$\$5,000/\$310 = 16$ trips
Tinian Senators	\$55 Air Fare & \$175 Per Diem = \$230	$\$5,000/\$230 = 22$ trips
Using \$87.50 Per Diem Rate and Air Fare:		
Rota Senators	\$135 Air Fare & 87.50 Per Diem = \$222	$\$5,000/\$222 = 23$ trips
Tinian Senators	\$55 Air Fare & \$87.50 Per Diem = \$143	$\$5,000/\$143 = 35$ trips

**Calculation of the Reasonableness of Subsistence For Rota Senators Under Daily, Weekly and Monthly Scenarios
Using a \$175 Per Diem Rate**

DAILY FLIGHT SCENARIO	AMOUNT
Air Fare At \$135 Per Round Trip x 5 Round Trips Per Week x 4.33 Weeks* Per Month	\$2,923
Non-Overnight Per Diem At \$175 Per Trip x 5 Trips Per Week x 4.33 Weeks Per Month	3,789
Total Monthly Expenses With 100% Time Spent On Saipan	6,712
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	5,034
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	34
For 3 Senators	101
For 3 Senators Annually	\$1,217
WEEKLY FLIGHT SCENARIO	AMOUNT
Air Fare At \$135 Per Flight x 4.33 Flights Per Month	\$585
Overnight Per Diem At \$175 Per Night x 4 Nights Per Week x 4.33 Weeks Per Month	3,031
Non-Overnight Per Diem At \$175 Per Day x 4.33 Weeks Per Month	758
Total Monthly Expenses With 100% Time Spent On Saipan	4,373
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	3,280
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(1,720)
For 3 Senators	(5,160)
For 3 Senators Annually	(\$61,921)
MONTHLY FLIGHT SCENARIO	AMOUNT
Air Fare At \$135 Per Flight x One Flight Per Month	\$135
Overnight Per Diem At \$175 Per Night x 29 Nights Per Month	5,075
Non-Overnight Per Diem At \$175 x One Day	175
Total Monthly Expenses With 100% Time Spent On Saipan	5,385
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	4,039
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(961)
For 3 Senators	(2,884)
For 3 Senators Annually	(\$34,605)

**Calculation of the Reasonableness of Subsistence For Tinian Senators Under Daily, Weekly and Monthly Scenarios
Using a \$175 Per Diem Rate**

DAILY FLIGHT SCENARIO	AMOUNT
Air Fare At \$55 Per Round Trip x 5 Round Trips Per Week x 4.33 Weeks* Per Month	\$1,191
Non-Overnight Per Diem At \$175 Per Trip x 5 Trips Per Week x 4.33 Weeks Per Month	3,789
Total Monthly Expenses With 100% Time Spent On Saipan	4,980
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	3,735
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(1,265)
For 3 Senators	(3,796)
For 3 Senators Annually	(\$45,554)
WEEKLY FLIGHT SCENARIO	
Air Fare At \$55 Per Flight x 4.33 Flights Per Month	\$238
Overnight Per Diem At \$175 Per Night x 4 Nights Per Week x 4.33 Weeks Per Month	3,031
Non-Overnight Per Diem At \$87.5 Per Day x 4.33 Weeks Per Month	758
Total Monthly Expenses With 100% Time Spent On Saipan	4,027
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	3,020
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(1,980)
For 3 Senators	(5,939)
For 3 Senators Annually	(\$71,274)
MONTHLY FLIGHT SCENARIO	
Air Fare At \$55 Per Flight x One Flight Per Month	\$55
Overnight Per Diem At \$175 Per Night x 29 Nights Per Month	5,075
Non-Overnight Per Diem At \$87.5 x One Day	175
Total Monthly Expenses With 100% Time Spent On Saipan	5,305
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	3,979
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(1,021)
For 3 Senators	(3,064)
For 3 Senators Annually	(\$36,765)

Calculation of the Reasonableness of Subsistence For Rota Senators Under Daily, Weekly and Monthly Scenarios Using a \$175 Per Diem Rate for Overnight Travel & \$87.50 For Non-Overnight Travel	
DAILY FLIGHT SCENARIO	AMOUNT
Air Fare At \$135 Per Round Trip x 5 Round Trips Per Week x 4.33 Weeks* Per Month	\$2,923
Non-Overnight Per Diem At \$87.5 Per Trip x 5 Trips Per Week x 4.33 Weeks Per Month	1,894
Total Monthly Expenses With 100% Time Spent On Saipan	4,817
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	3,613
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(1,387)
For 3 Senators	(4,161)
For 3 Senators Annually	(\$49,938)
WEEKLY FLIGHT SCENARIO	AMOUNT
Air Fare At \$135 Per Flight x 4.33 Flights Per Month	\$585
Overnight Per Diem At \$175 Per Night x 4 Nights Per Week x 4.33 Weeks Per Month	3,031
Non-Overnight Per Diem At \$87.5 Per Day x 4.33 Weeks Per Month	379
Total Monthly Expenses With 100% Time Spent On Saipan	3,994
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	2,996
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(2,004)
For 3 Senators	(6,013)
For 3 Senators Annually	(\$72,151)
MONTHLY FLIGHT SCENARIO	AMOUNT
Air Fare At \$135 Per Flight x One Flight Per Month	\$135
Overnight Per Diem At \$175 Per Night x 29 Nights Per Month	5,075
Non-Overnight Per Diem At \$87.5 x One Day	88
Total Monthly Expenses With 100% Time Spent On Saipan	5,298
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	3,973
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(1,027)
For 3 Senators	(3,081)
For 3 Senators Annually	(\$36,968)

Calculation of the Reasonableness of Subsistence For Tinian Senators Under Daily, Weekly and Monthly Scenarios Using a \$175 Per Diem Rate for Overnight Travel & \$87.50

DAILY FLIGHT SCENARIO	AMOUNT
Air Fare At \$55 Per Round Trip x 5 Round Trips Per Week x 4.33 Weeks* Per Month	\$1,191
Non-Overnight Per Diem At \$87.50 Per Trip x 5 Trips Per Week x 4.33 Weeks Per Month	1,894
Total Monthly Expenses With 100% Time Spent On Saipan	3,085
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	2,314
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(2,686)
For 3 Senators	(8,058)
For 3 Senators Annually	(\$96,702)
WEEKLY FLIGHT SCENARIO	
Air Fare At \$55 Per Flight x 4.33 Flights Per Month	\$238
Overnight Per Diem At \$175 Per Night x 4 Nights Per Week x 4.33 Weeks Per Month	3,031
Non-Overnight Per Diem At \$87.5 Per Day x 4.33 Weeks Per Month	379
Total Monthly Expenses With 100% Time Spent On Saipan	3,648
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	2,736
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(2,264)
For 3 Senators	(6,792)
For 3 Senators Annually	(\$81,503)
MONTHLY FLIGHT SCENARIO	
Air Fare At \$55 Per Flight x One Flight Per Month	\$55
Overnight Per Diem At \$175 Per Night x 29 Nights Per Month	5,075
Non-Overnight Per Diem At \$87.5 x One Day	88
Total Monthly Expenses With 100% Time Spent On Saipan	5,218
Total 100% Monthly Expenses Adjusted To 75% Time Spent On Saipan	3,913
Less: Monthly Allowance Per Senator According To Resolution 11-30	5,000
(Excessive) Monthly Allowance	
For One Senator	(1,087)
For 3 Senators	(3,261)
For 3 Senators Annually	(\$39,128)

* 4.33 Weeks In a Month Is Derived as Follows: 365 Days per Year Divided by 12 Months Divided by 7 Days Equal 4.33 Weeks.

APPENDIX C

Summary of Annual (Excess) Reimbursements to Senators Using Per Diem ¹³		
Excess Allowance Using \$175 Per Diem Under:	<u>Rota</u>	<u>Tinian</u>
Daily Scenario	\$1,217	(\$45,554)
Weekly Scenario	(61,921)	(71,274)
Monthly Scenario	(34,605)	(36,765)
Average Excess Allowance Under the 3 Scenarios	(\$31,772)	(\$51,198)
Average between Rota And Tinian		(\$82,969)
Excess Allowance Using \$87.50 Per Diem Under:	<u>Rota</u>	<u>Tinian</u>
Daily Scenario	(\$49,938)	(\$96,702)
Weekly Scenario	(72,151)	(81,503)
Monthly Scenario	(36,968)	(39,128)
Average Excess Allowance Under the 3 Scenarios	(\$53,019)	(\$72,444)
Average between Rota And Tinian		(\$125,463)
Overall Average		(\$104,216)

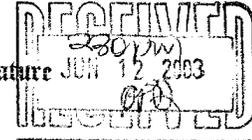
¹³ Derived from Appendix B, pages 1 to 4.



The Senate

Thirteenth Northern Marianas Commonwealth Legislature

Senator Joaquin G. Adriano
Floor Leader



P.O. Box 500129, Saipan, MP 96950 email address: sen.j.adriano@vzpacifica.net

May 29, 2003

Michael S. Sablan
Public Auditor
Office of the Public Auditor
J.E. Tenorio Building, Gualo Rai
P.O. Box 51399 CK
Saipan, MP 96950

Re: Written Comment on OPA's Draft Report on the Monthly Subsistence Allowance.

Dear Michael S. Sablan:

This following written comment is submitted for your review and is in response to the Office of the Public Auditor's (OPA) Draft Report on the Monthly Subsistence Allowance Provided to Members of the Senate Covering the Six Months Ending June 30, 2002.

First, the members of the Senate have sought and obtained legal advice from its counsel as to the authority of the Senate to establish a monthly subsistence allowance for its members by legislative rule. The members of the Senate have been advised that the Senate has the implied statutory authority to establish a monthly subsistence allowance for its members by legislative rule due to the enactment of Public Law 12-2 which is codified at 1 CMC § 121(i). See Attached Confidential Legal Opinion. The members of the Senate have also been advised, however, that the monthly subsistence allowance must be reasonable and must be accounted for in a manner that ensures that the "public purpose" requirement set forth at 1 CMC § 121 is fulfilled.

The members of the Senate, after reviewing the aforementioned legal analysis, have determined that it is in the best interests of all concerned that the present monthly subsistence allowance provisions be rescinded. The members of the Senate will establish, by legislative rule, a new

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revolving account system that utilizes a uniform per diem rate to reimburse members of the Senate for costs incurred in the exercise of their constitutional duties and responsibilities on a monthly basis.

Second, the members of the Senate will endeavor to ensure that the new revolving account system satisfies the public purpose requirements established by law. The members of the Senate note that the public purpose requirements will be enforced in accordance with the mandate of Public Law 12-2, which specifically sets forth the legal mechanism by which expenditures authorized by legislative rules can be challenged to ensure that they are indeed for a public purpose. Public Law 12-2, states:

Notwithstanding any other provision of this act or other law to the contrary, expenditures authorized and regulated by legislative rules are expressly declared to be for a public purpose, unless proved by clear and convincing evidence that the expenditure in fact was for a personal or political activity.

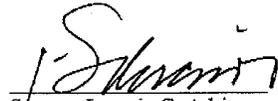
See Public Law 12-2, codified at 1 CMC § 121(i) (emphasis added).

Third, the members of the Senate will require that the disbursement of funds from the new revolving account system are predicated on the provision of sufficient documentation of costs incurred.

Finally, the members of the Senate will ensure that the new revolving account system does not allow for members of the Senate to receive "double compensation" for travel costs. The new revolving account system shall apply solely to travel within the Commonwealth. Travel outside of the Commonwealth will be compensated under the existing system whereby each member of the Senate submits a travel authorization request directly to the Department of Finance.

The members of the Senate would appreciate the opportunity to meet with you to discuss the aforementioned issues and to answer any questions you may have.

Sincerely,



Senator Joaquin G. Adriano
Chairman
Senate Standing Committee on Rules and Procedure

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LEGAL OPINION

To: Senator Joaquin G. Adriano
Chairman, Senate Standing Committee on Rules and Procedures
Re: Senate's Authority to Adopt Subsistence Allowance Policy
From: Steven M. Newman
Senate Legal Counsel
Date: May 23, 2003

I. Facts.

The Senate has adopted several Senate Resolutions establishing per diem and allowance rates for members of the Senate, including: (1) Senate Joint Resolution No. 7-13, establishing a per diem rate of one hundred twenty five dollars (\$125) per day for travel within the Commonwealth; (2) Senate Joint Resolution No. 8-1, authorizing the Senate Standing Committee on Rules and Procedures, in consultation with the Senate Standing Committee on Fiscal Affairs, to establish a monthly subsistence and travel allowance for each Senator from the First and Second Senatorial Districts for travel within the Commonwealth; (3) Senate Resolution No. 9-9, authorizing Senators from the First and Second Senatorial District to receive a monthly subsistence allowance in the amount of two thousand dollars (\$2,000); (4) Senate Resolution No. 11-30, authorizing Senators from the First and Second Senatorial District to receive a monthly subsistence allowance in the amount of five thousand dollars (\$5,000), such amount to replace the previous quarterly subsistence allowance, the housing allowance, and the blanket travel authorizations previously issued to Senators from the First and Second Senatorial Districts; and (5) Senate Resolution 13-19, establishing a per diem rate of one hundred seventy five dollars (\$175) per day for travel within the Commonwealth and establishing separate per diem rates for travel outside the Commonwealth.

Confidential Memorandum

On July 3, 2002, the Official Rules the Senate for the Thirteenth Northern Marianas Legislature were adopted. Rule 12, Section 2(a)(6) of the Official Rules of the Senate incorporates the aforementioned resolutions in the form of a legislative rule, stating:

Members of the Senate from the First or Second Senatorial Districts may use a portion of the funds under their individual office accounts as an allowance to defray the costs of food, lodging, transportation, and other expenses they incur by reason attending to legislative business without their respective senatorial district, in accordance with any Senate resolution relative to such allowances. Allowances previously approved, whether by action of the current or a preceding Senate, shall be deemed approved and remain in effect until amended or repealed by the Senate. Members of the Senate from the Third Senatorial District shall receive a legislative allowance from funds under their individual office accounts to defray the cost of food, lodging and transportation and other related expenses incurred while on legislative business in the First or Second Senatorial Districts. The allowance shall be \$2,000.00 per month if the member is a chairperson of a standing or special committee and \$1,000.00 per month per committee, standing or special, of which the member is a member, but in no event shall a member from the Third Senatorial District receive more than \$5,000.00 per month under this Rule.

See Official Rules of the Senate, Rule 12, § 2(a)(6).

On April 14, 2003, upon the request of members of the Senate, the Office of the Public Auditor submitted a Draft Report on the Monthly Subsistence Allowance Provided to Members of the Senate (OPA Draft Report). The OPA Draft Report addressed, in part, the Senate's authority to establish a monthly subsistence allowance. The OPA Draft Report concludes that "while the authority for the monthly subsistence allowance is found in Senate rules and resolutions, the Constitution and Commonwealth law appear to require it to be in the form of a law." *See* OPA Draft Report, Page 4.

II. Issue.

Whether the Senate has the authority to establish a monthly subsistence allowance for its members by legislative rule.

Confidential Memorandum

III. Analysis.

Article II, Section 10 of the Commonwealth Constitution states, in pertinent part, that “[t]he members of the legislature shall receive an annual salary of eight thousand dollars and reasonable allowances for expenses provided by law.” *See* N.M.I. Const. Art. II, § 10. Article II, Section 10 of the Commonwealth Constitution further states that “[t]he salary of members may be changed no more than once every four years and only upon the recommendation of an advisory commission established by law to make recommendations concerning the compensation of Commonwealth executive, legislative and judicial officers.” *See* N.M.I. Const. Art. II, § 10.

Members of the Senate are permitted by Article II, Section 10 of the Commonwealth Constitution to receive “reasonable allowances provided by law.” *See* NMI Const. Art. II, § 10. Legislators were formerly given an “Official Representation Allowance” pursuant to 1 CMC § 1201 through 1 CMC § 1203. The “Official Representation Allowance,” however, was discontinued upon the enactment of Public Law 4-32, the “1984 Compensation Adjustments Act.” *See* Public Law 4-32, § 3. The “Official Representation Allowance” has not been reinstated as evidenced by the language of Public Law 7-31, the “Commonwealth Compensation Adjustment and Salary Act of 1991,” which states that “[t]he members of the legislature shall receive an annual salary of \$39,300 and no official representation allowance.” *See* 1 CMC § 1271. There have been no further enactments specifically authorizing Legislators to receive an “allowance.”

1 CMC § 121(i), however, states:

Notwithstanding any other provision of this act or other law to the contrary, expenditures authorized and regulated by legislative rules are expressly declared to be for a public purpose, unless proved by clear and convincing evidence that the expenditure in fact was for a personal or political activity.

See 1 CMC § 121(i) (emphasis added).

The language set forth at 1 CMC § 121(i) does not specifically authorize Legislators to receive an “allowance.” 1 CMC § 121(i), however, impliedly grants the Legislature the authority to authorize and regulate expenditures by legislative rule because it expressly refers to the existence of such expenditures and states that such expenditures are deemed to be for a public

Confidential Memorandum

purpose. Accordingly, the Senate has the authority to establish a monthly subsistence allowance by legislative rule.

B. CONCLUSION:

The Senate has the authority to establish a monthly subsistence allowance by legislative rule. The monthly subsistence allowance, however, must be reasonable and must be accounted for in a manner that ensures that the “public purpose” requirement set forth at 1 CMC § 121 is fulfilled.

Confidential Memorandum

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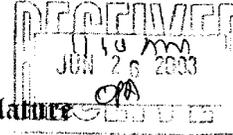
The Senate

Thirteenth Northern Marianas Commonwealth Legislature

Senator Joaquin G. Adriano

Floor Leader

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June 25, 2003

Michael S. Sablan
Public Auditor
#1236 Yap Drive, Capitol Hill
Saipan, MP 96950

Re: June 17, 2003, Meeting to Discuss OPA Draft Report on Monthly Subsistence Allowance.

Dear Michael S. Sablan:

Thank you for taking the time to meet with members of the Senate on June 17, 2003, to discuss the Office of the Public Auditor's (OPA) Draft Report on the Monthly Subsistence Allowance Provided to Members of the Senate Covering the Six Months Ending June 30, 2002.

The following is set forth to clarify the position of members of the Senate as to some of the issues discussed at the aforementioned meeting.

First, the members of the Senate reiterate that the Senate has the implied statutory authority to establish a monthly subsistence allowance for its members by legislative rule due to the enactment of Public Law 12-2 which is codified at 1 CMC § 121(i). The members of the Senate acknowledge, however, that as discussed in the June 17, 2003 meeting, it would be prudent to clarify the kind of expenditures that can be authorized by legislative rule by amending Public Law 12-2 or by enacting new legislation.

Second, the members of the Senate note that the existing subsistence allowance system will be replaced by a new revolving account system that utilizes a uniform per diem rate to reimburse

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APPENDIX E
Page 2 of 2

June 25, 2003
June 17, 2003, Meeting OPA Draft Report on Monthly Subsistence Allowance.
Page -2-

members of the Senate for costs incurred in the exercise of their constitutional duties and responsibilities. The members of the Senate accept the recommendations made by OPA as to the method for determining a reasonable per diem rate and will undertake an analysis of travel expenses to ensure that the rate adopted is reasonable.

Third, the members of the Senate agree with the suggestions made by OPA related to the adoption of policies to ensure compliance with the public purpose requirements established by law. Disbursement of funds from the new revolving account system will be predicated on the provision of sufficient documentation of costs incurred.

Finally, the members of the Senate reiterate that they will ensure that the new revolving account system does not allow for members of the Senate to receive "double compensation" for travel costs. The new revolving account system shall apply solely to travel within the Commonwealth. Travel outside the Commonwealth will be compensated under the existing system whereby each member of the Senate submits a travel authorization request directly to the Department of Finance.

Sincerely,



Senator Joaquin G. Adriano
Chairman, Rules and Procedure

cc: *Senate President, Paul A. Manglona*
Senate Vice-President, Jose M. Dela Cruz
Senate Legislative Secretary, Thomas P. Villagomez
Chairman PUTC, Diego M. Songao
Chairman RED&P, Ramon S. Guerrero
Senate Minority Leader, Pete P. Reyes

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Thirteenth Legislature
Monthly Subsistence Allowance Provided to Members
of the Senate Covering the Period Ending June 30, 2002

STATUS OF RECOMMENDATIONS

Recommendations	Agency to Act	Status	Agency Response/ Action Required
1. Introduce legislation to grant it authority for the subsistence allowance, to set the amount of the allowance, and to certify it as a public purpose.	Senate	Open	<p>Senate Response: The Senate stated that the subsistence allowance need not be in the form of a law. Instead the Senate asserts that it has <u>implied</u> statutory authority to establish the subsistence allowance for its members by Senate rule because 1 CMC §121(i) states that “expenditures authorized and regulated by legislative rules are expressly declared to be for a public purpose...”.</p> <p>Action Required: Introduce legislation to authorize monthly subsistence allowance and any changes in its amount, and to certify it as a public purpose.</p>
2. Undertake an analysis of reasonable travel costs to ensure that the amount set for allowances is appropriate given expenses incurred.	Senate	Resolved	<p>Senate Response: The Senate said it will replace the existing subsistence allowance system with a new revolving reimbursement system that would use uniform per diem rates to reimburse Senators for expenses incurred in the exercise of their constitutional duties. It would also conduct an analysis of travel expenses to ensure that the new per diem rate was reasonable.</p> <p>Action Required: After the Senate replaces its existing subsistence system with a new revolving reimbursement system, it should provide OPA with:(1) the Senate’s analysis of what it considers reasonable travel to support the amount set for per diem. and (2) legislative bills authorizing the new per diem.</p>
3. Document travel activity to enable the Senate to more accurately estimate an appropriate monthly allowance.	Senate	Resolved	<p>Senate Response: The Senate agreed to provide OPA with a written analysis of what it considers as reasonable travel to support changing the amount set for the monthly subsistence allowance.</p> <p>Action Required: The Senate should provide OPA with an analysis of what it considers as reasonable travel to support changing the amount set for the monthly subsistence allowance.</p>

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STATUS OF RECOMMENDATIONS

Recommendations	Agency to Act	Status	Agency Response/ Action Required
4. Require that travelers document trip activities to ensure compliance with applicable regulations and the law, a practice which would support Senate efforts to determine a reasonable monthly allowance amount.	Senate	Open	<p>Senate Response: The Senate stated it would adopt policies to ensure compliance with established public purpose requirements. Also, any disbursements of funds from the new revolving account would be predicated on the provision of sufficient documentation of expenditures.</p> <p>Action Required: Department of Finance regulations which apply to all 3 branches of government require (Section 1100.2(v) government travelers file a government travel voucher documenting travel and other expenses. The Senate did not, however, agree to document trips with travel vouchers as required by regulation and law. The Senate should enact a Resolution requiring Senators to submit a travel voucher monthly showing local trips taken to Saipan in order to comply with regulations and law.</p>
5. Amend legislation and/or travel policy to prevent senators from being reimbursed for other concurrent travel.	Senate	Resolved	<p>Senate Response: The Senate stated it would take action so that members do not receive "double compensation" for travel costs.</p> <p>Action Required: The Senate should amend language in legislation and/or travel policy requiring senators to adjust their vouchers or allowance so as not to obtain reimbursement for other concurrent travel.</p>

