



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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April 7, 2008

The Honorable Justo S. Quitugua
Representative
House of Representatives
Sixteenth Northern Marianas Commonwealth
Legislature
Caller Box 500586, Capitol Hill
Saipan, MP 96950

Dear Representative Quitugua:

SUBJECT: Review of the Saipan Higher Education Financial Assistance Program (SHEFA)

In March 2007, you requested that the Office of the Public Auditor (OPA) conduct a review of the Saipan Higher Education Financial Assistance (SHEFA) program to evaluate the program's compliance with its enabling act and other applicable laws, rules and regulations.¹

Based on the review conducted, and as more fully discussed later in this report, OPA's primary finding is that SHEFA did not operate in a fiscally prudent manner as evidenced particularly by its use of and excesses accorded contract employees, improper payments to some Board members, and the hiring or contracting of three persons or entities to perform duplicative work (the employee, a contractor, and the Board).

OPA notes that SHEFA has similar eligibility requirements (though SHEFA applicants must be residents of Saipan) and requires similar documentation as that required by the CNMI Scholarship Office. Therefore, the Saipan and Northern Islands Legislative Delegation ("SNILD") might consider consulting with House and Senate members to determine whether local legislation should and can be amended to consolidate SHEFA's

1 Initially, in January 2007, you requested an audit of the program. In a subsequent meeting with OPA in March 2007, it was agreed that OPA would conduct a review of the SHEFA program in lieu of an audit. Accordingly, OPA's review was not conducted in accordance with Generally Accepted Government Auditing Standards. The names of individuals are not disclosed in this report pursuant to restrictions contained in the Auditing and Ethics Act.

administration with the CNMI Scholarship Office. A consolidation of the administrative functions between SHEFA and the CNMI Scholarship Office could be structured without amendments to the eligibility of benefits criteria currently established in SHEFA's Rules and Regulations.

OPA also determined that:

- SHEFA relied upon inadequate documentation to support students' eligibility for and continuation in the program, deadlines were malleable and exceptions were made, the review form (an internal control) was not always properly filled out at the appropriate times or at all, and the check disbursement procedure was not always followed.
- SHEFA hired two contractors where it appears that it should have hired employees. Both contractors are CNMI government retirees and may have been in essence "double-dipping". One contractor had a contract dubious in several respects as it contained duplicative deliverables and had highly unusual payment schedules.
- There was inadequate documentation to support the payments made to some SHEFA Board members. Some board members were compensated for work other than Board meetings, and the Board did not fully comply with PL 15-32, The Boards and Commissions Reform Act of 2006.

BACKGROUND

Saipan Higher Education Financial Assistance Program

Saipan Local Law (SLL) 13-21 created the "Saipan Higher Education Financial Assistance Act [SHEFA] of 2003." SHEFA's mission is to provide supplemental financial assistance to qualified Saipan and Northern Island residents pursuing post-secondary education on Saipan or abroad. It is expected that SHEFA recipients, upon successful completion of post-secondary education, will return to Saipan and provide services within the Saipan community.

Pursuant to SLL 13-21, a SHEFA Board was appointed in February 2004 to oversee the SHEFA program. The program is primarily funded through local appropriations from SNILD. Additional funding may also come from gifts, grants, and donations received for the purpose of providing higher education assistance.

SHEFA's enabling act, SLL 13-21, initially provided a continuous yearly appropriation of \$1,200,000 funding from local license fees for poker and pachinko machines and this funding level was allotted in fiscal years (FY) 2004 and 2005.

In October 2004, SLL 14-9 appropriated an additional \$150,000 for the program's operational costs which was non-lapsing and was intended to cover operational expenditures starting FY 2004 until fully used.

In October 2004, SLL 14-11 appropriated an additional \$1,200,000 for the "Saipan Local Scholarship account".²

In October 2005, SLL 14-28 increased the continuous yearly appropriation for the financial assistance fund from \$1,200,000 to \$3,000,000 and provided a continuous yearly appropriation of \$200,000 for the SHEFA program's operational costs.

Please see **Appendix A** for OPA's analysis of SHEFA appropriations, allotments, and expenditures for FY 2004 to FY 2006.

SHEFA Board

The SHEFA Board is charged with the overall administration of the SHEFA program, including control over all funds appropriated for higher education financial assistance. Board members are appointed by the Mayor of Saipan and are subject to confirmation by SNILD. It is comprised of five members, with three members serving two-year terms and two members serving three-year terms.

SLL 14-13, enacted in October of 2004, amended SLL 13-21 and provided for staggered terms. It also specified that board members "shall hold office until his or her successor has been appointed and has qualified." Currently, one Board member has resigned and four remaining board members have exceeded their terms.

SHEFA Rules and Regulations

The SHEFA Board promulgated its Rules and Regulations (NMIAC 165-20.1-001 et. seq) pursuant to 10 CMC § 3924(n).

Eligibility Requirements for Financial Assistance

In order to obtain funds through SHEFA, applicants must be U.S. citizens or permanent residents, be enrolled in or accepted at an institution of higher learning, and be able to

2 SLL 14-11 identifies the Mayor of Saipan as the expenditure authority for the "Saipan Local Scholarship account." SHEFA's enabling act, however, provides that the SHEFA board is the expenditure authority for funds appropriated by the SNILD for higher education financial assistance. The Saipan delegation should address this contradiction.

prove one year Saipan residency prior to their application for financial assistance. Applicants must also be full-time students and maintain a 2.5 grade point average (GPA). Upon certification of eligibility, recipients are required to complete, sign, and notarize a Memorandum of Agreement (MOA) which acknowledges their agreement to return to Saipan to provide services for the community. Failure to adhere to the MOA should result in aid received being converted to an interest-bearing loan.

SHEFA currently administers three types of financial assistance: Grant-in-Aid, Priority Field,³ and Performance Based. Grant amounts vary by the type of financial assistance and whether the study is on Saipan or off-island.⁴

REVIEW OBJECTIVE, SCOPE, AND METHODOLOGY

This is OPA's first review of the SHEFA program. The scope of OPA's review was whether the SHEFA Board administered program eligibility, professional contracts, and board compensation from FY 2004 through FY 2006 prudently and in accordance with applicable laws, regulations, and policies.

OPA conducted fieldwork at the SHEFA office in Garapan from July to October 2007. OPA:

- 1) reviewed board compensation payments, related documentation, and applicable laws;
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- 3 Priority fields of study for Saipan, under codified regulations (Fall 2004 through Spring 2006), include Accounting, Nursing, Teaching/specialized Special Education/Early Childhood Education/Library Science/Counseling/Bilingual Education, Business Management and Administration, Hospitality, and Information Technology, including technical or specialized trades such as Journalism, Management Information, Computer Programming and other fields of study sanctioned by the board in accordance with the Administrative Procedure Act. Priority fields of study added, as a result of regulations adopted to the Register in May 19, 2006 (beginning Fall 2006) includes Anthropology/Sociology for Teaching, Biology (Science for Teaching), Criminal Justice leading to Forensic Science, Lab Technology, Psychology other than leading to Counseling, Human Resources Development/Personnel Management, Social Worker, Mathematics for Teaching, Engineering/Architect (A&E), Medical and Allied Fields, including Psychiatry, Environmental Studies/Conservation (e.g., Natural Resources, Volcanology, Marine Biology, Fish and Wildlife, Meteorology, and Archaeology), and Computer Graphics.
 - 4 On-island SHEFA recipients receive \$600 per semester as a Grant-in-Aid, while off-island recipients receive \$1,000. Additional scholarship assistance of \$1,500 per semester is awarded to those recipients in a Board sanctioned Priority Field of Study, and an additional Performance Based scholarship assistance of \$2,000 per semester is awarded to those recipients who achieve a term GPA of 3.5 or above.

- 2) reviewed SHEFA award payments, related recipient files and applicable eligibility regulations and/or policies and procedures;
- 3) reviewed independent services contracts and related billings and payments; and
- 4) interviewed SHEFA, MOS, and DOF-Procurement & Supply employees.

DISCUSSION OF FINDINGS

SHEFA Did Not Fully Comply with its Rules and Regulations or Applicable Law

An applicant for financial assistance through SHEFA must:

- be a Saipan resident and a U.S. citizen or permanent resident. In order to prove residence in Saipan, the applicant must provide an income tax return or a Saipan Municipal ID or a CNMI driver's license. In order to prove U.S. citizenship or permanent residency, the applicant must provide a birth certificate or a passport.
- submit a transcript that reflects full-time student status and a GPA of at least 2.5.
- sign an MOA after the student is certified as eligible to receive funds.

OPA reviewed the files of 15 financial assistance recipients to determine if SHEFA complied with the requirements for initial and subsequent eligibility. Please see **Appendix B**. Four of the 15 files reviewed contained deficiencies.⁵

OPA also found that SHEFA did not comply with its stated deadlines. SHEFA Rules and Regulations require that financial assistance applications and all required supporting documents be filed by July 1 for the Fall semester and December 1 for the Spring semester. According to the SHEFA Rules and Regulations, “[f]ailure to submit a completed application form and the requisite supporting documents to the SHEFA office on the deadline will be cause for not considering the application until the next financial

5 During the Fall 2004 semester, two applicants were deemed eligible without proof of Saipan residency and did not have official transcripts on file for the previous term. One of the two also did not have anything in the file as proof of US citizenship. Furthermore, SHEFA found one of the two recipients eligible to receive continued financial assistance the following term again without a transcript. OPA also noted two recipient files that did not have MOAs for the applicable term. Although SHEFA personnel noted that the missing MOAs could have been at the Mayor's Office awaiting signature, they were not produced by the conclusion of OPA's review.

assistance cycle.” NMIAC § 165-20.1-125 (b).

Contrary to SHEFA Rules and Regulations, SHEFA’s practice has been to consider an application as good for one year and to allow supporting documents to be filed by September 30 for the Fall semester and February 28 for the Spring semester. While the later deadline and one application per year as opposed to one per semester might be more workable, OPA notes that if these are the desired terms, the Rules and Regulations should be modified to incorporate these changes. OPA also found instances when SHEFA allowed an exception for the submission of the completed application ⁶ after the deadline required by the regulations and another exception for the submission of supporting documentation by the extended deadline.

Though not required by its Rules and Regulations, SHEFA instituted the use of a two-part review form: the first half is to be filled out at receipt of the application and the second part is to be filled out at the time of review by the Awards Committee. In 7 of the 15 files reviewed, the review forms were deficient or completely absent.⁷

Though also not required by its Rules and Regulations, SHEFA established internal controls for the disbursement of checks including signature of the recipient on a log sheet and an authorization letter if the collector of the check was not the financial assistance recipient. OPA found three instances when the check release log was not properly filled out prior to the release of financial assistance checks and three instances where there was no authorization letters⁸ for the release of the checks to individuals other than the named payee.

SHEFA also mis-classified operational expenses as financial assistance expenditures. Specifically, \$1,030 of operational expenses was charged to financial assistance in FY 2004; \$22,384 of operational expenditures was charged to financial assistance in FY 2005. With respect to the mis-classification of expenditures in FY 2004, it is likely that this occurred as a result of the program having incurred operational expenses before the enactment of SLL 14-9 in October of 2004, which provided a special appropriation for SHEFA’s operational expenses. However, this does not explain the mis-classification in FY 2005 as the special appropriation had already been made available.⁹

6 SHEFA did not indicate a received date on this application, however, the applicant’s signature date of 1/26/06 was clearly after the deadline (December 1 - Spring Term).

7 Seven applications did not have review forms on file, either at the time of intake or during committee review. Three review forms were not properly filled out as they were missing either the signatures of the committee reviewers or the dates of the reviews.

8 SHEFA was unable to provide the missing authorization letters during this review.

9 SHEFA also reprogrammed \$200 from SHEFA’s operations account to the Mayor’s Office official representation account. In September 2006, the SHEFA Chairwoman requested the

SHEFA Did Not Comply with the CNMI Procurement Regulations to Procure its Professional Service Contracts and the Contracts are Suspect in Necessity, Form, and Substance

SHEFA currently has three people working for it; one is an employee (detailed to SHEFA by the Office of the Mayor) and two are independent contractors. The employee and one of the contractors manage the day-to-day operations. The employee is an Administrative Assistant and is paid \$25,000 per annum to receive, review, and maintain the financial assistance applications and the supporting documentation.

SHEFA did not use the CNMI Procurement Regulations to procure its professional services contracts. Article X, § 8 of the CNMI Constitution dictates that the Department of Finance control and regulate the expenditure of public funds. Moreover, 1 CMC § 2253(j) mandates the Department of Finance to be in control of and responsible for the procurement and supply in the Commonwealth. The CNMI Procurement Regulations are thus promulgated by the Department of Finance, as Procurement and Supply is one of its divisions. There is no distinction, in terms of procurement, as to whether the funds come from the General Fund or local funds.

Section 3 of SLL 13-21 provides that SHEFA is established within the Office of the Mayor of Saipan. According to the Chief of Administration and Human Resource for the Office of the Mayor, contracts with the Mayor's Office follow CNMI Procurement Regulations. So if SHEFA is established within the Office of the Mayor, and the Mayor's Office follows CNMI Procurement Regulations, why does SHEFA not follow them?

reprogramming of funds, citing the transfer as "necessary to cover other expenditures." SHEFA documented the use of the funds reprogramming to purchase a wreath for the funeral of the Chairwoman's mother. Review of this Payment Voucher showed payment of \$200 to First Floral for a floral arrangement. Supporting documents attached include a Purchase Order dated 10/4/06 to First Floral and an invoice dated 6/13/06 from the vendor. The vendor invoice showed that the floral arrangement was sold to the Mayor's Office, with a SHEFA contractor signing on the invoice (Contractor 1 is discussed at length, *intra*).

The authorization by the SHEFA Chairwoman for the reprogramming of funds from the SHEFA operations account to the Mayor's Office official representation account is problematic for several reasons. First, the purported reprogramming runs afoul of SHEFA's enabling statute which establishes a specific and wholly segregated account into which SHEFA funds must be kept. The transfer of \$200 into the Mayor's Office official representation account kept under the Commonwealth's General Fund appears to be an impermissible commingling of public funds. Indeed, the Saipan local laws pertaining to SHEFA are silent as to whether funds may be reprogrammed outside of SHEFA's segregated account and into the Mayor's office. Second, Contractor 1 was not authorized to incur expenses on behalf of the Mayor's Office as she was not an employee of the Mayor's Office (or SHEFA).

The irony is that while SHEFA did not follow the CNMI Procurement Regulations, the various officials who signed the professional services contracts of the two SHEFA contractors (discussed in more detail below) signed the contracts under the penalty of perjury that they did follow the Procurement Regulations.

The CNMI Procurement Regulations allow for sole source contracts for professional services only in the following instances:

- [(1) and (2) refer to construction or infrastructure supplies, equipment, or services]
- (3) To obtain professional services for the purpose of facilitating the process of obtaining needed critical infrastructure funding in order to harden and enhance the capability of protecting critical infrastructure of the Commonwealth; or
 - (4) To obtain professional services for the purpose of facilitating the establishment of a unit authorized in a federal defense appropriation act; or
 - (5) Solely for the purpose of obtaining expert witnesses for litigation; or
 - (6) For legal services; or
 - (7) For policy consultants of the Governor, Lt. Governor, and presiding officers of the Legislature.

NMIAC § 70-30.3-225(a)

SHEFA's professional services contracts do not meet any of the criteria enumerated in NMIAC § 70-30.3-225(a). Moreover, even if a professional services contract meets one of the criteria enumerated in NMIAC § 70-30.3-225(a), the expenditure authority must prepare a written justification for the sole source that contains the specific unique capabilities of the contractor that are required by the contract in question and the efforts made to obtain competition, specifically why alternative sources were not selected. NMIAC § 70-30.3-225(b). The SHEFA contracts did not contain any justifications.

The first contractor was initially hired in September 2004 on a 90-day employment contract as an Administrative Officer with a pro-rated salary of \$37,000 per annum. Once the 90-day employment contract expired, Contractor 1 was hired on an independent services contract for one year at \$37,000 per annum, payable in 12 equal monthly installments. According to the contract (Contract No. 434155-OC), the scope of work was "the implementation of the SHEFA program, policies, and procedures." The deliverables were ". . . receipt, review, and maintenance of SHEFA recipient information, in addition to providing the SHEFA board with administrative assistance."

Upon the expiration of this contract, Contractor 1 was awarded another one-year contract (Contract No. 453220-OC) for the same \$37,000 per annum with very similar deliverables. OPA believes there are subsequent independent service contracts as Contractor 1 continues to report to SHEFA as of the date of this report.

Contractor 1 did not perform any unique services that justify an independent services contract. Her duties were routine and clerical in nature, and in fact, were the same duties as performed by the Administrative Assistant: receive, organize, analyze, document, and process SHEFA applications. Contractor 1 also processed purchase orders, again a task not normally associated with an independent contractor.

Contractor 1 is a retiree and has been collecting a pension from the Northern Mariana Islands Retirement Fund (NMIRF) since January 15, 2004. It appears that she was hired as a contractor so that she could earn what is essentially another salary while drawing retirement benefits. OPA will refer this to the NMIRF for its determination as to whether this is a violation of the prohibition on double-dipping.

Contractor 2 was awarded two professional services contracts. The first (Contract No. 442885-OC) was for one year at \$35,000¹⁰ per annum. The second (Contract No. 455892-OC) was for two years and eight months – an unusual contract term – with a \$45,000 per annum rate; the highly unusual time frame for payments will be discussed *infra*.

Most of the deliverables of the two contracts for Contractor 2 are virtually identical. Please see **Appendix C**. This is surprising because many of the deliverables needed to be in place before SHEFA could function, and once in place, should have been complete, such as

- developing the SHEFA Rules and Regulations
- developing the SHEFA policies and procedures
- developing SHEFA's rules of procedure for regular, special, and standing committee meetings
- developing the MOA
- finding a site for SHEFA
- developing a reference handbook.

10 In August 2006, contractor submitted an invoice under his second contract and also requested payment for the remaining 5% of contract 442485-OC, his first contract. Review of PV# 582628 revealed that the contractor was not paid the balance of the first contract, possibly due to confusion on the payment schedule referenced. The payment schedule for the balance of the first contract (schedule #4) is payment of 5% or \$1,750 in January 2006. The payment schedule attached and referenced in the contractor's invoice for the balance of the first contract (schedule #4) was, however, the payment schedule for the second contract which indicated schedule #4 as 0% of the contract amount in December 2006.

But the outrageousness of the remarkably similar contract deliverables in the two contracts pales in comparison to the payment schedule. The second contract purports to be for two years and eight months, from May 2006 through December 2008.¹¹ Forty-four percent (44%) of the contract fee or \$19,800 was due upon signing, in May 2006. The next 44% or \$19,800 was payable in June 2006, *only one month after contract signing*, for “delivery of twelve (10) [sic] deliverables. . .” The final 12% or \$5,400 in August 2006 was to be paid for “delivery of ten (8) [sic] deliverables. . .”

The payment schedule for the second contract of Contractor 2 (Contract No. 455892-OC)¹² is highly unusual in a number of respects. First, the advance payment does not meet any of the standards set forth in the CNMI Procurement Rules, NMIAC § 70-30.3-401(b)(1):

1. Advance payments. Advance payments shall be authorized only in certain circumstances as provided in (b)(1)(i), in (b)(1)(ii), or in (b)(1)(iii) below.
 - (i) The contractor fails to qualify as a responsible contractor due solely to the absence of financial capability, and it is justified under § 70 - 30.3 - 225 that the contractor is the only available source, subject to the following conditions:
. . .
 - (ii) The official with expenditure authority demonstrates in writing that the common business practice of a particular industry requires buyers to pay on an advance payment basis. Such advance payment shall be limited to not more than 50 percent of the contract price. Pertinent documents supporting such business practice shall be attached to the written justification.
 - (iii) The official with expenditure authority demonstrates in writing that the advance payment is made pursuant to procurement of goods and services as provided in § 70-30.3-225(a)(2), (a)(3), or (a)(4), or § 70-30.3-225(b)(1).

The only sub-section under which Contractor 2's second contract could arguably fall is

11 It is possible that the December 2008 term of expiration might have been a typographical error (meaning it should have been December 2006) except that the contract clearly states that it is not to exceed \$45,000 per annum (as opposed to a total of \$45,000) and number 4 on page 7 of Contract No. 455892-OC clearly envisions “subsequent delivery of the remaining deliverables. . .” after the first \$45,000 was paid within the first eight months of the contract.

12 Contractor 2's first contract (Contract No. 442885-OC) also required an initial advance payment, in this case \$14,000.

NMIAC § 70-30.3-401(b)(1)(ii) but in order for that sub-section to be applicable, there must be a written justification. Moreover, there must be “[p]ertinent documents supporting” “the common business practice of a particular industry requires buyers to pay on an advance payment basis.” Nothing in the deliverables suggests that this is a common business practice in this particular industry to pay on an advance payment basis.

The term of the contract and the requirements are ambiguous. After the first \$45,000 was paid for 18 - 22 deliverables,¹³ according to the Exhibit B of the contract, “Pay 0% of the total contract balance amount for the month of December 2006 and on subsequent term of this agreement, or upon the initial or subsequent delivery of the remaining deliverables referenced on [sic] Exhibit A in accordance with the priority of SHEFA or upon the delivery of oral debriefing to the SHEFA chairperson on behalf of the Board.”

Contractor 2's two-year and eight-month contract is “N.T.E. [not to exceed] \$45,000 per annum.” In May 2006, he received \$19,800. In August 2006, he received \$25,200, one payment for \$19,800 and another for \$5,400; the two August payments were separated by less than two weeks. So the \$45,000 per annum was received in a total of four months. And one year after the initial May 2006 payment of \$19,800, there was another \$19,800 in May 2007.

In addition to a highly compressed and unusual payment schedule, Contractor 2 submitted billings that lack specificity and detail. In order to receive the large lump sum payments he receives, Contractor 2 submits a photocopy of the deliverables pages from the contract with asterisks (or checkmarks) next to those he purportedly worked on. Surely this is insufficient as a billing from a “professional” and puts into question the motives of the individual(s) who authorized payment on this basis.

OPA is aware of other concurrent independent services contracts that Contractor 2 has with the CNMI government in addition to the SHEFA contract. In addition, Contractor 2 is a retiree and has been collecting a pension from the NMIRF since February 15, 1998. OPA will refer this to the NMIRF for its determination as to whether this is a violation of the prohibition on double-dipping.

SHEFA's decision to engage Contractor 2 continuously for a period of almost four years does not appear to have been a prudent one. The CNMI Scholarship Office, which manages the Educational Assistance Program and the Honor Scholarship for the CNMI, is currently staffed by an Administrator with an annual salary of \$41,350. The Administrator is responsible for the review of all applications and related documentation, including determination of program eligibility. The Scholarship Office board, currently

13 As described in the text above, 44% or \$19,800 was due upon signing, in May 2006. The next 44% or \$19,800 was payable in June 2006 for “delivery of twelve (10) [sic] deliverables. . .” The final 12% or \$5,400 in August 2006 was to be paid for “delivery of ten (8) [sic] deliverables. . .”

comprised of six members, serves on a voluntary basis. The board conducts the Honor Scholarship selection process and the appeal process. One striking difference between the Scholarship Office and SHEFA is that the Scholarship Office serves a larger population of recipients as it is the scholarship program for the entire CNMI, whereas SHEFA serves only residents of Saipan. In briefly comparing the administration of these programs, it is evident that SHEFA needs to re-evaluate the efficiency of its program by reducing the number of personnel involved in duplicate tasks. A qualified program administrator could perform many of the tasks currently being performed by SHEFA's contractors with adequate supervision from the members of the SHEFA board (who are known educators). In OPA's opinion, the program administrator may also be the best person to periodically modify and improve existing policies and regulations because of the administrator's role in implementing the SHEFA program.

Aside from the absence of written justification for the services of Contractor 2 (as discussed in a subsequent section of this report), OPA did not see any written assessment on the quality and effectiveness of the services provided by the contractor. Because SHEFA is spending very limited public funds and knowing that the best use of those funds is for educational financial assistance, the SHEFA board should have those written assessments to justify why he has been contracted up to December 2008.

Board Compensation Was Not Always Supported by Documentation and Did Not Fully Comply with Public Law 15-32, The Boards and Commissions Reform Act of 2006¹⁴

The SHEFA Board is charged with the overall administration of the SHEFA program, including control over all funds appropriated for higher education financial assistance. Board members are appointed by the Mayor of Saipan and are subject to confirmation by SNILD.

The Board is comprised of five members, with three members serving two-year terms and two members serving three-year terms. SLL 14-13, enacted in October of 2004, amended SLL 13-21 and provided for staggered terms. It also specified that board members "shall hold office until his or her successor has been appointed and has qualified."¹⁵

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- 14 SHEFA incorrectly classifies Board compensation payments as board honoraria. Honoraria is defined as payment given to a professional person for services for which fees are not legally or traditionally required. But 1 CMC § 8247 clearly provides that members of boards may receive compensation in their capacity as appointed and confirmed board members. OPA suggests that SHEFA correct its classification of board "honorarium" as "compensation".
- 15 In a September 2005 memorandum to the Mayor of Saipan, the Mayor's Office Legal Counsel provided this interpretation of the law and further indicated that "a successor board member is considered to have been qualified when he or she is sworn in following appointment (and

Currently, one Board member has resigned and four remaining board members have exceeded their terms. The Mayor should evaluate the performance of the Board members whose terms have expired and decide if he wants to reappoint them. If he decides not to reappoint them, then he should appoint new Board members. Whether he chooses to retain the current Board members by reappointing them or appoints new ones, SNILD must use its oversight authority to confirm the appointments.

From FY 2004 through FY 2006, the five SHEFA Board members all together were compensated for 273 sessions.¹⁶ Certain Board members were compensated for “work sessions,” which were review of applications and supporting documents by Awards Committee members. The Awards Committee consists of two members who are responsible for the application and documentation review prior to the Board meeting wherein the applicant would be discussed. These work sessions were not open to the public and did not necessitate the presence of the entire Board. Since SHEFA hired Contractor 1 expressly for the purpose of receipt, review, and maintenance of financial assistance applications and supporting documentation, it is unclear if these work sessions were duplicative of the work of Contractor 1. In addition, the Administrative Assistant who was detailed from the Office of the Mayor also receives, reviews, and maintains the financial assistance applications and supporting documentation. OPA is unclear if the same work is being done by the Administrative Assistant, Contractor 1, and the Awards Committee or if the work has somehow been divided amongst the three.

OPA acknowledges that although the savings to be realized from the elimination of work sessions is modest, the board is duty-bound to conduct its business in accordance with applicable CNMI laws. Whether these work sessions are essential to the award process is uncertain. As discussed earlier in this report, SHEFA has contracted for services related to the receipt, review, and maintenance of financial assistance applications and pertinent recipient information. Additionally, a Mayor’s Office employee has been detailed to the SHEFA office for additional administrative support. With these professional and administrative services available to the board, the need for additional review by a board committee is questionable. The efficiency and timeliness of the award process could be improved by eliminating the work sessions.

confirmation, when required).”

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Sessions Compensated Per Board Member
(FYs 2004 - 2006)

<i>Board Member 1</i>	17
<i>Board Member 2</i>	122
<i>Board Member 3</i>	90
<i>Board Member 4</i>	37
<i>Board Member 5</i>	7
Total	273

Prior to PL 15-32 (for discussion of PL 15-32 *see infra*), Board members were entitled to receive compensation for meetings actually attended -- \$30 for a half day or less, \$60 for a full day. Although the law then did not define what constituted a “half day” or a “full day,” SHEFA considered a half day meeting as less than four hours, and a full day meeting as four hours or more. Between March and September 2004, SHEFA maintained an “activities listing” to document the dates of and work performed at SHEFA’s Board meetings, work sessions, or other activities as a basis for compensation. Since no meeting duration was recorded on the listing, OPA could not independently verify whether Board compensation was in accordance with SHEFA’s stated policy. OPA did find, however, 19 instances when Board members were compensated for duties performed that were not documented on the activities listing.

In late September 2004, SHEFA implemented the use of an attendance log to be used by Board members to document participation in all SHEFA related duties, including board meetings. The attendance log required the Board member to indicate the date, purpose, (i.e. work session or Board meeting), and duration of attendance. Although SHEFA’s implementation of the attendance log appears to be intended to be used for providing better accountability for Board members’ attendance for determining compensation, Board members did not consistently time-in/out in 83¹⁷ instances.¹⁸

On September 28, 2006, Governor Fitial approved Public Law 15-32, “The Boards and Commissions Reform Act of 2006”. The Act was intended to clarify statutory inconsistencies and impose restrictions and additional requirements on board compensation. In part, the Act amended the definition of “meeting” and tightened the statutory rules for compensation. Specifically, compensation for meetings is limited to those open and public, in accordance with 1 CMC § 9904, for which notice has been published as provided in 1 CMC § 9910. The Act also amended § 9902(d), prohibiting compensation for standing committee, subcommittee, ad hoc, and informal meetings. Board meetings in compliance with the requirements enumerated above are to be compensated at \$60 per session in excess of four hours or \$30 for sessions between two and four hours. OPA notes that in examining SHEFA’s compensation records prior to

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- 17 DOF was unable to provide ten board compensation payment vouchers. OPA relied on SHEFA documentation to review these payments and found that supporting documentation was insufficient.
- 18 Moreover, OPA found eight instances when board members were compensated for duties performed that were not reflected on the attendance log (after its implementation) and seven instances when board members were compensated for dates when the board members’ attendance was not reflected on the attendance log although other board members’ attendance was recorded. Consequently, OPA could not determine compliance with compensation rates or ascertain whether board members were compensated for actual duties performed in these instances. For those board members’ attendance that were completely documented, OPA noted at least two instances that should have been compensated at the half-day rate but was paid out as full-day sessions.

PL 15-32, OPA noted that at least 15 compensated sessions were less than two hours.

OPA reviewed some board compensation expenditures¹⁹ after PL 15-32 to determine if SHEFA was complying with the new law.

Although SHEFA's enabling act provides that the board may establish committees necessary to conduct its business, PL 15-32 governs the compensation of its members. Because PL 15-32 prescribes compensation rates for Commonwealth Government and Municipal officials, inclusive of the SHEFA board, SHEFA work sessions were not compensable under law. A cursory review of a board compensation payment after the enactment of PL 15-32 showed that Board members continued to be compensated for meetings of less than two hours duration²⁰ and certain members continued to be compensated for work sessions after PL 15-32 took effect, both of which are clear violations of the law.

SUGGESTIONS

OPA suggests that SHEFA:

- train the person who processes expenditure documents on how to classify the correct cost centers under the CNMI Financial Management System chart of accounts. This will ensure proper matching of revenue (allotments) against expenses and will also assist in future allocation of resources.
- amend its Rules and Regulations to be congruent with its practices, for example as to its extended deadlines and submission of a completed application one per year as opposed to one per semester.
- follow its Rules and Regulations without exception or provide justifications for any exceptions (e.g., an applicant was permitted to file late due to an unforeseen hospitalization, which is verified by a doctor's note or a hospital bill.)
- comply with Public Law 15-32, The Boards and Commissions Reform Act of 2006, in its entirety.
- hire an employee for the administrative work performed by Contractor 1, if the

19 OPA performed only selected review as this period was outside of OPA's initial scope.

20 OPA reviewed a Request for Payment of board compensation dated January 2008. OPA discovered that the Board decided to pro-rate sessions of less than two hours duration, despite PL 15-32's explicit prohibition on compensation for meetings of less than two hours duration though OPA is not clear exactly when the decision was made to prorate the sessions of less than two hours.

Administrative Assistant cannot handle the day-to-day operations on her own.

- cancel or do not renew Contractor 2's professional services contract.
- use professional services contracts on an as-needed basis for individual tasks and procure those contracts in conformance with the CNMI Procurement Regulations.

Alternatively, SHEFA could consolidate its administration with the CNMI Scholarship Office thereby negating the need for the suggestions above.

OPA will refer to the Office of the Attorney General and the Division of Procurement and Supply the issue of the professional services contracts that did not go through the CNMI procurement process to determine whether any laws were violated and / or for any other action.

OPA will refer to the Office of the Attorney General and the Secretary of Finance the issues related to unsupported board compensation and the unusual payment schedule related to Contractor 2 to determine the legality of the payments made and whether recovery of any payments is necessary.

Finally, OPA will refer the issue of the two retirees with the professional services contracts to the NMIRF for its determination whether those contracts violate the Fund's prohibition on double-dipping.²¹

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- 21 § 8392. Re-employment and Double Dipping.
- (a) A person who has retired and received retirement benefits from the government of the Northern Mariana Islands shall not be employed by or under an employment or consulting contract with the government of the Northern Mariana Islands or its public corporations, boards or commissions unless the person is:
- (1) Appointed by the Governor to a position requiring the advice and consent of the Senate or House of Representatives or both.
 - (2) Hired in a position for which professionals are not readily available in the local labor market, including, for example, teachers for the Public School System and the Northern Marianas College, attorneys for the offices of the Attorney General and Public Defender, nurses and doctors for the Commonwealth Health Center, audit staff for the office of the Public Auditor, and former elected officials.
 - (3) Elected to public office.
 - (4) A Title V employee under the federal Older Americans Act. A retiree may be hired under Title V of the Older Americans Act [42 U.S.C. §3001 et seq.] and continue to receive benefits from the Northern Marianas Retirement Fund. Those benefits will be based on the computed service and wages earned upon his or her retirement. He or she shall not be required to contribute to the Retirement Fund on wages earned as a recipient of Title V of the Older Americans Act. Any retiree who was hired under Title V of the Older Americans Act prior to October 11, 1991, and who has contributed to the Retirement Fund from such wages, shall be entitled to a refund of all such contributions.

Should you have any questions about any of the matters discussed in this letter, please do not hesitate to call me.

Sincerely,



Michael S. Sablan, CPA
Public Auditor

- cc: SNILD Members
SHEFA Board Members
Mayor of Saipan
Attorney General
NMIRF Administrator
Secretary of Finance
Director of Procurement & Supply
Governor
Lt. Governor

Nothing in this section shall be construed to violate any provision of N.M.I. Const. art. III, § 20.

- (5) Specifically exempted by the Governor, with the concurrence of the Retirement Board.
- (b) A person who has retired and received a retirement benefit shall not be eligible to receive prior service credit if the person continues to receive retirement benefits from the government while accruing service that is eligible for credit as prior service credit upon reemployment with the government.
- (c) Provided, however, that any person who elected to retire pursuant to the provisions of N.M.I. Const. art. III, § 20(b) may be employed by the Commonwealth for no more than 60 calendar days in any fiscal year without forfeiting any retirement benefits.
- (d) Retirees are allowed to return to government employment as classroom teachers, nurses, doctors and other medical professionals for a period not to exceed two years without losing their retirement benefits. However, no such re-employed retiree shall have their retirement benefits recomputed based on any re-employment during which retirement benefits are drawn, but every such re-employed retiree shall nevertheless be required to contribute to the retirement fund during the period of re-employment, at the same rate as other government employees.

Appendix A

	A Appropriations	B Allotments	C Expenditures	[B-C] Excess (Deficiency) Allotments vs Expenditures
<u>FY 2004</u>				
Financial Assistance	1,200,000	1,200,000	171,630 A	1,028,370 B
Operations	150,000 A	0	0	0
TOTAL	1,350,000	1,200,000	171,630	1,028,370
<u>FY 2005</u>				
Financial Assistance	2,400,000	1,370,600 B	1,948,284 B	(577,684) B
Operations	150,000	107,716	80,352	27,364
TOTAL	2,550,000	1,478,316	2,028,636	(550,320)
<u>FY 2006</u>				
Financial Assistance	3,000,000	3,000,000	2,783,010	216,990
Operations	200,000	148,352	142,243	6,109
TOTAL	3,200,000	3,148,352	2,925,253	223,099
TOTAL FY 2004- 2006	7,100,000	5,826,668	5,125,519	701,149

- A** \$150,000 was appropriated for operations by SLL 14-19 in October 2004. This amount was made available for operating expenses from the start of FY 2004. However, because FY 2004 had ended and since the appropriation was non-lapsing, no allotment was issued retroactively for FY 2004. Operational expenditures that was recorded under FY 2004 financial assistance account was no longer reclassified.
- B** \$2,400,000 was allotted in FY 2005 but \$1,029,400 was later de-allotted. The de-allotment should have been recorded in FY 2004 because excess of allotment over expenditures occurred that year. As shown above, the FY 2004 overage of \$1,028,370 plus the \$1,030 operational expense recorded under financial assistance funds, will add up to \$1,029,400. The untimely recording of the de-allotment makes it appear that expenditures exceeded allotments in FY 2005. In addition, operational expenses of \$22,384 was erroneously recorded under financial assistance.

Appendix B

	Academic Year of Initial Eligibility	No. of Semesters Assistance was Received	Total Award ¹
Recipient # 1	2004	4	\$ 7,000
Recipient # 2	2004	3	\$ 3,000
Recipient # 3	2004	4	\$11,400
Recipient # 4	2004	1	\$ 2,100
Recipient # 5	2004	1	\$ 2,500
Recipient # 6	2006	1	\$ 4,100
Recipient # 7	2006	1	\$ 5,000
Recipient # 8	2006	1	\$ 4,500
Recipient # 9	2006	1	\$ 600
Recipient #10	2006	1	\$ 2,100
Recipient #11	2005	1	\$ 2,500
Recipient #12	2005	2	\$ 5,000
Recipient #13	2005	2	\$ 5,000
Recipient #14	2005	3	\$ 9,500
Recipient #15	2005	3	\$11,500

¹ Total reflects amount received for academic years tested (2004 - 2006)

Appendix C
(Page 1 of 3)

**Comparison of 442485-OC and 455892-OC
Contractor 2**

442485-OC

Sole Source, Professional Services

Contract Period: 3/1/05-3/1/06

Annual Rate: \$35,000

455892-OC

Renewal, Professional Services

Contract Period: 4/30/06-12/30/08

Annual Rate: \$45,000*

Est. Total (2005-2008) - \$170,000

* Based on payment schedule from May to December of each year (455892-OC), it appears that Contractor 2 will be paid \$45,000 per year or \$135,000 for the duration of the contract

Payment Terms:	Payment Terms:	Notes:
40% or \$14,000 upon signing; 40% or \$14,000 in June 2005; 15% or \$5,250 in August 2005; and 5% or \$1,750 in January 2006	44% or \$19,800 upon signing 44% or \$19,800 in June 2006 or upon delivery of twelve (10) [sic] deliverables; 12% or \$5,400 in August 2006 or upon delivery of ten (8) [sic] deliverables; 0% in December 2006 or upon delivery of remaining deliverables	
Scope:	Scope:	Notes:
<u>Professional consultation, undertake technical work, provide representation to board; program development, implementation and evaluation, policy and procedural compliance and internal control, fiscal development and oversight, drafting of legislation, development and/or refinement of SHEFA R&R, policy analysis, annual program report</u>	Independent, technical and professional services and work products relative to SHEFA fiscal and management accountability, organizational development and career guidance development for SHEFA graduates; <u>Professional consultation, undertake technical work, provide representation to board; program development, implementation and evaluation, policy and procedural compliance and internal control, fiscal development and oversight, drafting of legislation, development and/or refinement of SHEFA R&R, policy analysis, annual program report</u>	
Deliverables:	Deliverables:	Notes:
Note: OPA is paraphrasing the deliverables of the contracts. The deliverables of both contracts were compared and those similar in both contracts were matched as shown below		
1) Develop SHEFA R&R	1) Develop SHEFA R&R	SHEFA R&R had already been developed
2) Develop policies, procedures, R&R	2) Develop policies, procedures, R&R	SHEFA R&R had already been developed
3) Prepare technical correspondences for SHEFA	3) Prepare technical correspondences for SHEFA	Not a specific deliverable
4) Develop interim and/or permanent rules of procedure governing regular, special and standing committee meetings	21) Provide guidance on rules of procedure and protocols for board and committee meetings	
5) Develop a profile of delineated and defined role, authority and responsibility of SHEFA standing committees	22) Develop a delineation of scope of responsibility and defined authority and jurisdiction of SHEFA Board standing committees	

Appendix C
(Page 2 of 3)

**Comparison of 442485-OC and 455892-OC
Contractor 2**

442485-OC	455892-OC	
Deliverables:	Deliverables:	Notes:
6) Develop MOA	5) Develop MOA	MOAs already in use
7) Identify, negotiate and work out agreement for the interim and/or permanent site of SHEFA	6) Identify, negotiate and work out agreement for the interim and/or permanent site of SHEFA	SHEFA has been in Garapan (NMHC Housing) since early 2005
8) Develop reference handbook	7) Develop reference handbook	SHEFA handbook - already in use since 2005
9) Provide professional guidance and technical support in development of SHEFA chart of account, financial status report, expenditure report, accounts payable report and aging of financial reports	8) Provide professional guidance and technical support in development of SHEFA chart of account, financial status report, expenditure report, accounts payable report and aging of	Most financial reports can be obtained from DOF. Any additional reports should be specifically identified and must not be available from DOF.
10) Work closely with DOF in the timely processing and disbursement of checks	9) Work closely with DOF in the timely processing and disbursement of checks	This should be a board responsibility and may be caused by funding availability.
11) Develop customized inter-agency agreements tailored for use of public facilities; provision of student services; and data and information collection, aggregation, analysis and reporting; and other technical support and assistance	10) Develop customized inter-agency agreements tailored for use of public facilities; provision of student services; and data and information collection, aggregation, analysis and reporting; and other technical support and assistance	Not sure what this means, stats on students are kept by contractor (also helps with annual report)
12) Develop a design for SHEFA's centralized portal system	11) Work on a design for SHEFA's centralized portal system	Unsure what a portal system is ... computer-related - on-line application/SHEFA page was designed by a web site designer
13) Develop a framework for the integration of technical data and information in the portal system	12) Develop a framework for the integration of technical data and information in the portal	see Note above
14) Provide periodic assessment report on the efficiency and impact of SHEFA's electronic capability in facilitating the process implementation of the SHEFA system	13) Provide periodic assessment report on the efficiency and impact of SHEFA's electronic capability in facilitating the process implementation of the SHEFA system	Unsure what this means but "periodic assessment" seems to be an on-going process rather than an individual work product
15) Develop a statistical information and data profile on SHEFA recipients based on applicable R&R	14) Develop a statistical information and data profile on SHEFA recipients based on applicable R&R	Contractor maintains stats on students and the other contractor maintains other related data
16) Facilitate SHEFA's conversion from a manual-driven system of bookkeeping to electronic accounting system	15) Facilitate SHEFA's conversion from a manual-driven system of bookkeeping to electronic accounting system	DOF can do this for SHEFA
17) Facilitating the building of partnerships between SHEFA and college campuses where there are at least five SHEFA recipients in attendance	16) Facilitating the building of partnerships between SHEFA and college campuses where there are at least five SHEFA recipients in attendance	Unsure what the partnership is for. Review of student files shows that SHEFA does communicate with schools when needed (request for clarification, enquiries, etc.), however this more of an on-going responsibility/task, rather than a deliverable
18) Train staff in the preparation of board meetings and minutes	17) Provide training to SHEFA in the preparation of board meetings and minutes	Simple task that should be handled by the Board

Appendix C
(Page 3 of 3)

**Comparison of 442485-OC and 455892-OC
Contractor 2**

442485-OC	455892-OC	
Deliverables:	Deliverables:	Notes:
18) Train staff in the preparation of board meetings and minutes	17) Provide training to SHEFA in the preparation of board meetings and minutes	Simple task that should be handled by the Board
19) Develop proforma letters for SHEFA use	19) Draft official form documents prescribed by SHEFA for its own use	Similar deliverables
20) Prepare responses to legislative requests; comments on legislation relating to SHEFA	20) Prepare responses to legislative requests; comments on legislation relating to SHEFA	
	4) Prepare SHEFA's annual accountability report	
	18) Develop community outreach	
	23) Prepare Appeal Committee on appeal hearings, committee deliberations, and issuance of committee report to the board	
	24) Develop administrative procedures or SOPs in the review of SHEFA applications, award and award determinations and other administrative policies and procedures for board sanction in accordance with applicable laws.	Should be part of Deliverable 1 already
	25) Provide SHEFA board and SHEFA in the area of academic advisement	
	26) Periodically update compendium of SHEFA handbook and rules and regulations	
	27) Develop checklist for use in evaluation of policies and procedures for SHEFA in the administration, management and operation of the SHEFA program	
	28) Provide technical guidance to SHEFA board and office in implementation of policies and procedures related to fiscal, programatic, financial management and record management	This is an on-going responsibility/task
	29) Prepare development and production of SHEFA Accountability Report	Same as Deliverable 4
	30) Provide information to the Board and SHEFA on laws, rules and regulations, orders, decree and other administrative decisions	This is a task that board members should be able to do on their own.
	31) Work on other specific task orders and deliverables	