
**Management Audit of the
Department of Labor**

A Report to the
Governor, the
Judiciary and
the Legislature
of the Government
of Guam



**THE PUBLIC AUDITOR
GOVERNMENT OF GUAM**



OFFICE OF THE PUBLIC AUDITOR
UFISINAN I ADITOT PUPBLEKO
GOVERNMENT OF GUAM
P.O. BOX 23667, GMF, Barrigada, Guam 96921
(1208 East Sunset Boulevard, Tiyan)
(671) 475-0393/0394/0395 - FAX: (671) 472-7951

ROBERT G.P. CRUZ
PUBLIC AUDITOR
LESTER L. KUYKENDALL
AUDITOR III
ERNIE C. SALES
AUDITOR II
RUDY H. TARUSAN
SUPPORT STAFF

BACKGROUND

The Office of the Public Auditor was created by P.L. 21-122 as an independent agency of the Government of Guam. The first Public Auditor, Robert G.P. Cruz, was one of three candidates recommended by the Commission on the Public Auditor made up of representatives from the Guam Society of Certified Public Accountants, the Territorial Board of Accountancy, the Guam Bar Association, and majority and minority representatives of the Guam Legislature. After nomination by the Governor and confirmation by the Guam Legislature, Mr. Cruz began operations of the office in October, 1994. He serves for a six-year term of office.

MISSION

Subject to the availability of resources the Public Auditor has a mission of annually auditing the financial transactions and management of every agency in each of the three branches of the Government of Guam. In addition, other audits or reviews may be conducted as deemed necessary, or as required by statute. We see ourselves as the public's advocate for government accountability. Based upon our observations, we recommend changes in financial procedures to the heads of the branches of our government. We recommend changes to our statutes as appropriate. Because we are independent, we have the objectivity and integrity to objectively perform audits and investigations, and to provide feedback on the Government of Guam's programs, activities and functions. Our work is vital in maintaining citizen trust and confidence that its resources are used effectively and honestly. We use the Government Auditing Standards in performing our audits. Audits are either contracted out or done by us. We coordinate with the U.S. Department of the Interior and other audit agencies to avoid duplication of audits.

Management Audit of the Guam Department of Labor

SUMMARY

The Department of Labor (DOL) is tasked to foster promote and develop the welfare of wage earners on Guam, improve their living and working conditions and advance their opportunities for occupational training and profitable employment. DOL enforces minimum wage, overtime, and child labor requirements; regulates workplace safety and health, and oversees Worker's Compensation Assistance. The DOL also administers the Alien Labor Processing and Certification program.

The objectives of our audit were to determine whether the DOL has been able to: (1) effectively administer employment programs; (2) conduct enforcement of labor laws and practices and surveillance operations; (3) oversee Worker's Compensation assistance; (4) account for, control, and use funds collected to provide sufficient trainees for the local construction workforce.

Our review showed that: (1) the DOL did not aggressively assess or collect penalties and fines for labor law violations or ensure that available funds were used to enforce labor law enforcement operations; (2) there was no subsidiary ledger control over Wage and Repatriation Bond accounts; (3) the DOL needs to increase its surveillance and enforcement operations over the Alien Labor workforce and Worker's Compensation recipients; (4) there was no fraud and abuse detection program or cost containment program within the Worker's Compensation Commission; and that (5) Manpower Development Funds were not being used effectively to develop a local construction workforce.

We concluded that there is no assurance that the DOL is effectively accomplishing its tasks of enforcing labor laws, and conducting surveillance operations over the alien labor workforce or Worker's Compensation recipients. We also concluded that the process for collecting, controlling and using funds collected from fines and penalties needs to be improved. Finally, we concluded that the DOL needs to be a catalyst in ensuring that the Manpower Development Funds are being used effectively to provide a locally-trained workforce for the construction industry.

RECOMMENDATIONS AND RESPONSE

We recommend that the Director establish procedures for the control and management of Wage and Repatriation Bonds. He should promulgate written policies and procedures for the management of Citation Fee and Collection Fee accounts. The Director should take immediate action for the release of available funds in the Citation Fee revenue account deposited in the Manpower Development Fund (MDF) for use in labor law enforcement. He should start collecting the 12 per cent Collection Fee from employers in accordance with 22 GCA, Section 3218.

We recommend that the Director request the Department of Administration to periodically audit the Wage and Hour Trust Fund, in accordance with E.O. No. 89-25 and request the Director of Administration and the President of Guam Community College to prepare quarterly and annual MDF Status Reports in accordance with P.L.No. 23-106. He should also transfer unclaimed wages deposited in the Wage and Hour Trust Fund to the General Fund.

We recommend that the Director promulgate necessary rules and regulations to govern the methods of testing skills of temporary alien laborers and implementing a testing program.

We recommend that the Director establish a cost containment program for Worker's Compensation and use available funds for surveillance and enforcement to aggressively deter program abuse. He should work with the GCC and the Legislature to devise a plan to provide incentives to local contractors for training local workers. Request the Legislature to make a special appropriation each year for producing the Current Labor Force Survey (CLFS) report and publish the CLFS biannually.

We withdrew our recommendation on Manpower Development Fund (MDF) allocation because P.L. 25-03 addressed our concerns.

The Director cited initiatives, on-going or completed to address our findings. He stated that the DOL is actively pursuing whether it can continue requiring enforcement bonds because the INS has indicated that enforcement is their responsibility. Guam P.L. 18-48 requires the DOL to collect and deposit Repatriation and Guaranty and Wage Bonds. We believe that the Director should establish written policies and procedures for the control and management of the bonds until P.L. 18-48 is amended or repealed.

The Director stated "Since the Alien Labor Processing and Certification Division (ALPCD) is without authority to use registration fee funds in its wide range of operations it is unreasonable and unrealistic to characterize the DOL as losing fund resources." We disagree. DOL did not aggressively seek authority to use funds collected for labor enforcement operations. It did not collect the twelve per cent (12%) collection fee (authorized by P.L. 21-140), from employers for back wages assessed from October 1992 to September 1998. Furthermore, DOL did not collect the proper non-immigrant worker registration fee that was mandated by P.L. 23-106. Overall the DOL failed to access available fund resources and lost potential funds in the total amount of \$1,156,459.

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INTRODUCTION

BACKGROUND

The Department of Labor (DOL) was created by Public Law (PL) 9-238 on August 13, 1968, to foster, promote and develop the welfare of wage earners on Guam, improve their working and living conditions and advance their opportunities for occupational training and profitable employment.

The objectives of the Department are:

- To enforce minimum wage and hour standards, child labor law.
- To ensure payment of lawfully earned wages.
- To ensure safe and health living and working conditions of workers.
- Ensure compensation of health related injuries.
- Ensure equal employment opportunities and treatment of workers
- To encourage, promote and develop occupational training and opportunities.
- Promote friendly and cooperative relations between employees and employees.
- Develop, implement, and promote information and educational programs to acquaint employers, employees, and the public with provisions of all labor laws.
- To make studies and investigations, collect and compile statistical information and reports upon the condition of labor in general including studies of employment, unemployment, labor supply, manpower development and training, wages and hours, industrial relations, working and living conditions, cost of living, prices and per capita income.

To carry out an efficient and effective administration, the Department has thirteen (13) divisions and organizational units:

1. OSHA Enforcement Division
2. Bureau of Labor Statistics
3. Guam Occupational Information Coordination Committee
4. Wage and Hour Division
5. Worker's Compensation Commission
6. Guam Occupational Safety and Health
7. Fair Employment Practice Division
8. Prevailing Wage Determination Division
9. Alien Labor Processing and Certification Division
10. Guam Employment Service
11. Senior Community Service Employment Program
12. Fiscal Support Division
13. Director's Office

The DOL administers the temporary labor certification program and the permanent labor certification in cooperation with US DOL. The Department collects a Registration Fee of \$200.00 annually or fraction thereof from each temporary alien worker. For the three (3) fiscal years 1996, 1997, and 1998, DOL processed and registered 9,442 temporary alien temporary alien workers. For the same period DOL collected the total amount of \$1,689,471 that was deposited in the Manpower Development Fund to support the Apprenticeship Training Program at Guam Community College. Also, the collections during the same period from employers for fines and penalties were \$105,250. By Executive Order 89-25 the Wage and Hour Division (WHD) administers the Wage and Hour Trust Fund. Back wages collected from employers and litigated judgements on behalf of employees are deposited in this account. The balance of the Trust Account as of October 31, 1998 was \$742,113 that includes the interest earned in the net amount of \$163,433.

The full time equivalent employees of DOL for FYs 1996, 1997 and 1998 were 69, 70 and 72, respectively. Total DOL expenditures were \$2.0m FY1996, \$2.2m in FY1997, and \$2.4m in FY1998.

OBJECTIVE AND SCOPE

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The objective of our audit was to determine whether the Department of Labor (DOL): (1) has been able to effectively administer employment programs; (2) conduct enforcement of labor laws and practices and surveillance operations; (3) effectively oversees Worker's Compensation assistance; (4) used Manpower Development Funds effectively to provide sufficient trainees for the local construction workforce; and (5) properly collected, deposited, controlled, and used funds as intended.

The purpose of the DOL shall be to foster, promote, and develop the welfare of the wage earners of Guam, to improve their working and living conditions, and to advance their opportunities for occupational training and profitable employment. It administers several employment programs; guards against employment discrimination, enforces minimum wage; overtime, and child labor requirements; regulates workplace safety and health; and oversees Worker's Compensation Commission assistance. The DOL also administers the Temporary Labor Certification Program and the Permanent Labor Certification Program.

We reviewed the DOL's mission, organization, operational policies, procedures and other records. We also reviewed selected accounting transactions relative to receiving and depositing cash.

This performance management audit was conducted from August 19, 1998 to February 12, 1999 in accordance with Government Auditing Standards issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. We adhered to fieldwork standards and reporting standards for performance management audits provided in the Yellow Book of Government Auditing Standards. Our fieldwork was performed at various DOL offices.

PRIOR AUDIT COVERAGE

The Public Auditor has not issued any prior audit reports on the DOL.

Department of Labor
Alien Labor Processing and Certification Division

Good Control and Management of Employers' Deposits

Before the issuance of alien labor certification, the employers of temporary alien workers must provide guarantees to cover their obligations to the temporary alien workers. This includes the payment of wages and the return fare to the point of hire. The Wage Bond and Repatriation Bond shall be required and deposited with the Treasurer of Guam and these become the liability of the Government and require appropriate control and management.

Proper Control of Liability Accounts

According to accounting standard practices for controlling and managing liability accounts, subsidiary ledgers should be maintained and balances timely reconciled.

Subsidiary Ledger Control Not Maintained

Our review of the Wage Bond and Repatriation Bond accounts indicated that subsidiary ledgers were not maintained to properly support these accounts. As a result, the balances of the deposits by depositors or employers could not be determined. Although there were records to show the bonds transmitted to Department of Administration (DOA), there were no records showing the releases applied against the individual bond deposits and to show the balances. Moreover, the bond accounts were not reconciled with the Division of Accounts, DOA.

The balances of the bond deposits per Division of Accounts, DOA for the three (3) fiscal years were:

• Balance	<u>FY96</u>	<u>FY97</u>	<u>FY98</u>
• Employer's	81,809.65	96,647.79	95,888.92
• Repatriation Bond	<u>113,965.39</u>	<u>87,645.71</u>	<u>87,645.71</u>
• Totals	195,775.04	184,392.50	183,534.63

During the audit, the DOL ALPCD staff with appreciable determination was able and did provide the individual depositors' balances on the Wage Bond and Repatriation Bond properly reconciled with the balances recorded by Division of Accounts, DOA.

Adequate Written Policies and Procedures Needed

The Department of Labor does not have adequate written policies and procedures relating to control and management of bond deposits by employers. It appears that personnel are unfamiliar with the requirements, and therefore, proper guidance is needed. Adequate policies and procedures must be established and implemented, there was insufficient supervisory involvement, and moreover, a lack of personnel training.

Deposits/Liability Accounts Correctly Stated

Because the deposits are accounts payable, they must be properly controlled and managed. If subsidiary ledgers are maintained for the depositors/employers and properly reconciled monthly with Division of Accounts, DOA, the deposits will be correctly stated and current information on the Wage Bond and Repatriation Bond will be readily available.

Recommendations

1. The Director write/establish policies and procedures for the control and management of the Wage Bond and Repatriation Bond to include monthly reconciliation with Division of Accounts, DOA.
2. The Director ensures sufficient supervisory involvement and appropriate personnel training.

Fund Resources for Better Labor Law Enforcement

Fund resources provide for the accomplishment of the department objectives to improve the wage earners' working and living conditions and to advance their opportunities and profitable employment. Available funds should be used for better labor law enforcement, for the purchase of office equipment, vehicles, office supplies and materials and for filling personnel vacancies. Sources of funds must be continuously explored.

Utilization and Production of Needed Funds

Available funds should be tapped and utilized in carrying out the Department's operation. According to the 22 GCA, Section 7118.1(e), fines collected by the Department shall be deposited in the Manpower Development Fund (MDF) to be employed exclusively for the surveillance and enforcement operations within the Alien Labor Processing and Certification Division (ALPCD) and other divisions at the Department of Labor (DOL) with similar tasks.

By executive Order 89-25 dated September 26, 1989, the Wage and Hour Trust Fund was established where back wages collected from employers and litigated judgments on behalf of employees are deposited. The Trust Fund shall be an interest bearing account and that income, therefrom, may be used to defray printing of checks, bank services, and other costs in maintaining the account. Further, it requires that collections not disbursed after two (2) years shall be transferred and deposited into the General Fund in accordance with Section 822 of the Civil Code; and that the Department of Administration shall periodically audit the accounts and records of the Trust Fund and render a report to the Governor.

Title 22, GCA, Section 3218 provides that the Department of Labor (DOL) shall be entitled to a collection fee to be paid by the employer in the amount of twelve per cent (12%) of wages due and collected by DOL or the Government of Guam on behalf of an employee to offset costs to the people of Guam.

Title 22, GCA, Section 7119 as amended by Public Law 23-106 (PL) effective July 8, 1996 authorized DOL to collect a registration fee of two hundred dollars (\$200.00) per non-immigrant temporary worker, payable at the time of registration by the non-immigrant worker.

Section 7120 created the Manpower Development Fund (MDF) for the purpose of receiving territorial, federal and provides money and revenues from registration fees of non-immigrant temporary workers. It provides that one hundred per cent (100%) of the annual revenues generated shall be allocated to Apprenticeship Training Program (ATP) at Guam Community College. Section 7120.2 provides that the Director of Administration and the President of Guam Community College shall complete quarterly reports to the Board of Trustees of the College, the Apprenticeship Advisory Council and the Legislature of the status of the MDF.

Untapped Available Funds

In our review of the divisions of the Department of Labor (DOL) we observed the loud clamor for proper staffing, for needed equipment such as computers and vehicles, office supplies and materials. However, we found that available funds were not being tapped for use in the wide range of labor law enforcement operations. For example, the Alien Certification and Processing Division (ALCPD) had collected citation fees and deposited them in the Manpower Development Fund (MDF). In Fiscal Year 1998, the Citation Fee account was \$168,200. Also, 30% per cent of Citation Fees deposited in MDF that were generated and collected prior to PL 21-106 in the amount of \$34,387.50 is subject to appropriation in order to be used for surveillance and labor law enforcement operations. This was indicated in the Budget and Management Research letter to DOL on June 1, 1998. Additionally, the Wage and Hour Trust Fund account, which was opened with the Bank of Guam on November 28, 1989, had accumulated interest income as of October 31, 1998 in the amount of \$163,433.14. However, the Executive Order 89-25 only authorized that the interest earned from the Trust Fund account be used to defray the printing of checks, bank charges and other cost in maintaining this account; thus, leaving a large amount of earned interest idle in the bank. Although the funds in these accounts keep growing along with corresponding interest income, they are not being gainfully utilized.

The DOL should have obtained authority to fully use the interest earned, as well as, taken the appropriate action to have funds released from the Citation Fee account.

Lost Fund Resources

The DOL Wage and Hour Division (WHD) failed to take advantage of the opportunities to produce needed funds even though it is entitled to the collection fee. While the Division has made great strides in protecting all workers against unfair practices relating to pay rates and work hours by collecting back wages amounting to \$1,972,077., it did not fully accomplish its responsibilities. DOL WHD did not collect the twelve per cent (12%) Collection Fee from employers for back wages assessed and collected on behalf of the employee during the six-year period from October 1992 to September 1998. We noted that DOL WHD still has not enforced the Collection Fee in FY99 and consequently, DOL is still violating the law. During the Twenty-Fourth Guam Legislature 1997 First Regular Session a Bill (No. 16) was authored by one of the Senators. The Bill was entitled "An Act to Establish the Wage and Hour Trust Fund and a Wage and Hour Trust Fund Escheat Account for the Department of Labor". It should have been the ultimate guideline for DOL WHD in the managing and utilizing back wages collected from employers on behalf of the employees including the interest income but the bill never gained status. We could not substantiate why it did not pass. However, it appears that DOL did not pursue a strong legislative lobby for its introduction and passage into law. Furthermore, we found that on October 29, 1988 DOL WHD had requested the Attorney General's legal opinion on WHD's entitlement to the twelve per

cent (12%) Collection Fee from employers. The request for opinion was written six (6) years after DOL WHD was entitled to collect the twelve per cent (12%) Collection Fee. We believe that Public Law 21-140 Section 8 had provided DOD WHD sufficient authority to collect, even without the Attorney General's opinion. To implement the law, DOL should have established written policies and procedures that constitute the governing principles and courses of action in managing the Wage and Hour Trust Fund, and in utilizing the interest income.

Similarly, we found that the DOL Alien Labor Processing and Certification Division did not collect the proper registration fee that was mandated by Public Law 23-106 dated July 10, 1996. From July 1996 to January 1997, this Division continued to collect a prorated registration fee instead of the full fee of two hundred dollars (\$200) per non-immigrant temporary worker for each calendar year or fraction thereof. However, we noted that DOL ALPCD has been properly collecting the \$200 registration fee per non-immigrant worker from February 1997 to the present time.

Title 22 GCA, Sections 3218 and 7118.1 clearly provided for the collection of these fees. As a result, the Department of Labor had incurred the loss of much needed funds in the total amount of \$324,474.00; broken down as; Wage and Hour - \$236,649.00 and Alien Labor Processing and Certification - \$87,825.00.

Furthermore, the DOL is losing fund resources, which are desperately needed to carry out its wide range of operations. DOL ALPCD collects the \$200 registration fee from each alien temporary worker, as well as, fines and fees for any labor law violation, or re-issue of alien worker's identification card. The original allocation of these revenues was seventy per cent (70%) to the Apprenticeship Training Program (ATP) at GCC and thirty per cent (30%) to DOL. Subsequently, this was amended by PL 23-106 to allocate one hundred per cent (100%) of the revenue generated to ATP at GCC; thus, creating a heavy burden on ALPCD. This Division conducts daily inspections, investigations and surveillance operations, and is required to test temporary workers skills. We believe that ALPCD and other divisions conducting inspections, investigations and surveillance should share in the revenues it produces to support its operations and to supplement the limited general fund appropriation. The DOL should have sought legislative repeal of the present legislation to restore the 70% ATP and 30% DOL allocations.

The Statement of Revenues, Expenditures and Changes in Fund Balance as of September 30, 1998 for MDF indicated the Registration Fees for FY97 were \$605,836, and for FY98, \$535,165. Accordingly, the DOL sustained losses of funds equivalent to the thirty per cent (30%) of generated revenues, as follows: FY97, \$181,751 and FY98, \$160,550, or in the total amount of \$342,304. For FY96, it showed the DOL revenue share of \$123,663 left in MDF and which is subject to legislative appropriation in accordance to Public Law 21-85. We found that, overall, the DOL failed to access available fund resources and lost potential funds in the total amount of \$1,156,459.

The Director of Administration and the President of Guam Community College did not complete the MDF quarterly and annual reports as required by Title 22, GCA Section 7120.2. By Executive Order 89-25, unclaimed wage or collections not disbursed from the Trust Fund after two (2) years shall be transferred to the General Fund. As of October 31, 1998, the collections not disbursed and not transferred were \$458,952.89. Additionally, the Department of Administration did not conduct an audit of the Fund.

Aggressive Management Action Required

Although there were funds available, the DOL did not use the funds because the Executive Order 89-25 only provided for limited use of the interest earned from the Wage and Hour Trust Fund. However, management did not aggressively seek authority to use the funds for labor law enforcement operations; and to have the 30% Citation Fees deposited in MDF prior to PL 23-106 appropriated to DOL. We believe that appropriate action should have been taken to lobby strongly for legislative repeal of the 100% MDF Apprenticeship Training Program allocation. There appeared to be management indifference and insufficient attention. DOL's conscious decision to deviate from the public law contributed to the continued loss of funds. Management should be clearly focused on the sources of needed funds and act aggressively in collecting fines and fees. Moreover, we noted the lack of established policies and procedures for the management and use of funds. These constitute the governing principles and courses of actions, which give direction and bind all actions of employees in the department/divisions

Better Labor Law Enforcement

We believe that the Department should use the funds generated by DOL from enforcing labor laws. Aggressive and appropriate actions should be taken to use these available funds, through legislation or an executive order. The collection of fines and fees if actively enforced can bolster the fund resources to purchase needed office equipment, vehicles, supplies and materials and to fill personnel vacancies. With more generated fund resources being authorized and made available for use, DOL will be able to conduct expanded inspection and surveillance operations. As a result, labor law enforcement will be improved, staff morale rose, and finally, the DOL will be in compliance with the law.

Recommendations

1. The Director promulgates written policies and procedures for the management of the Citation Fee and Collection Fee accounts.
2. The Director take immediate action for the release of available funds in the Citation Fee Revenue Account deposited in MDF for use in labor law enforcement and seeks an appropriation from the Legislature for the fines and fees deposited in MDF prior to PL23-106.

3. The Director conduct a strong legislative lobby for the introduction/and passage into law of Bill No. 16 sponsored during the 24th Guam Legislature and, for the legislative repeal of 22 GCA Section 7120, as amended by PL23-106.
4. The Director immediately start collecting the 12% Collection Fee from employers in accordance with 22 GCA, Section 3218.
5. The Director carry the following out in accordance with Executive Order 89-25:
 - a) The Department of Administration periodically audits the Wage and Hour Trust Fund.
 - b) The wages deposited in the WHD Trust Fund unclaimed after two years transferred to the General Fund.

Producing Timely and Reliable Labor Statistics

The Bureau of Labor Statistics (BLS) is not producing timely and reliable labor statistics. The BLS did not produce Current Labor Force Survey (CLFS) reports for three (3) quarters in 1998. The last quarterly report was released in March 1998.

Section 1107 of 22 GCA provides that the Director shall make studies and investigations, collect and compile statistical information, and report upon the general conditions of labor. Except for 1997 and 1998, the BLS provided CLFS reports quarterly since 1978. Data representing three quarters was reported for 1997, however, data was provided for only one quarter in 1998.

Critical Indicators not provided

The true unemployment rate in Guam is unknown. The last official report (March 1998) showed that it was 7.7% per cent. However, informed business owners, financial analysts, bankers, and others estimate unemployment rates ranging from 12 to 24% per cent. The DOL Director estimated it at 10 or 10.5% per cent. The DOL is operating under a two-year budget for FY 98 and FY 99. The Director requested a total of \$2,900,000 for FY 98. This total included \$90,000 designated as priority one (1), for completing the Current Labor Force Survey. The total amount initially appropriated was \$2,491,040. This amount was not enough to cover budgeted salaries and benefits of \$2,699,894. Therefore, no funds were allocated to the BLS to conduct the labor survey, compile the statistics, and publish a report. When the BLS does not publish the CLFS, critical labor statistics are not available. Government agencies, local and federal, need the CLFS to make economic decisions and long range plans. Businesses such as banks, investment companies, construction companies, and others also need current labor statistics. People wanting to start a business or bring investments to Guam need to know the unemployment rate. The lack of current labor statistics could also result in federal funds and grants being unavailable and delayed economic planning.

Issue Report Biannually

According to the BLS, it is a common practice to conduct labor force surveys monthly in most areas of the U.S. However, this process is impractical and too costly for Guam. Unemployment data is readily available from unemployment insurance records maintained by the states. Unfortunately, there is no unemployment system on Guam. Therefore there is no quick and easy way to obtain the information needed. Guam unemployment surveys are labor intensive and costly because field workers go door to door to interview household members. Information gathered by field workers is analyzed, compiled by statisticians, and published in the CLFS report. The entire process takes about four months to complete to ensure reliability. Although in the past CLFS

reports have been published quarterly there is no law that requires this frequent publication. In fact, savings could be achieved and reliability improved by issuing reports biannually. According to the BLS, the ideal reporting period is quarterly, but it is getting increasingly difficult to accomplish this because funds are not provided timely. The BLS completed an analysis to show that biannual reports could be provided for about \$70,000 (a \$20,000 savings over the current method).

Special Appropriation for the CLFS Report

The CLFS report is extremely important in determining the official economic condition of Guam. Accordingly, we believe that the DOL should request the Legislature to make a special appropriation each year for gathering, compiling, and publishing unemployment statistics. The legislature should stipulate that the funds must be used only for reporting current labor force statistics.

Recommendations

1. The Director requests the Legislature to make a special appropriation each year for producing the CLFS report
2. The Director publishes the CLFS biannually.

Verifying Skills of Alien Laborers

The Department of Labor Alien Labor Processing Division (ALPCD) can not make certain that non-immigrant temporary workers have the skills set out in their labor certification applications.

The ALPCD does not test the skills of non-immigrant temporary workers. Skills listed in labor certification applications are not verified.

Section 7126 of 22GCA, provides that the DOL shall on a random basis, test the skills of non-immigrant temporary workers to make certain that they have the skills set out in their labor certification applications. It also states that when a non-immigrant temporary worker is found in such random testing to be unskilled, all such temporary workers of such worker's employer shall be tested and disqualified as necessary.

Unqualified non-immigrant temporary workers may be employed on construction sites. Workers may also have advanced skills but paid lower wages in another category e.g., a welder being listed and paid as a plasterer.

Section 7126 of 22GCA states that the Director of Labor shall promulgate all necessary rules and regulations to govern the methods of testing for skills, the languages in which tests shall be given, and such other means as are appropriate to such testing program. We found that the Director of Labor has not promulgated the necessary rules and regulations to govern the methods of testing and that a testing program does not exist. Although currently there are more that 2,000 non-immigrant temporary workers on Guam none of them have been tested to verify their skills.

The DOL has no way of knowing whether non-immigrant workers have the skills claimed.

Recommendation

The Director promulgates necessary rules and regulations to govern the methods of testing skills of temporary alien laborers and implement a testing program.

DEVELOPING A SELF-SUSTAINING LOCAL CONSTRUCTION WORKFORCE

Manpower Development Funds should be used to provide incentives for local construction contractors to hire trainees for the local construction workforce to develop a self-sustaining local labor force.

P.L. NO. 18-48, Section 44019, created the Manpower Development Fund (MDF). It was amended by P.L. 20-221 and P.L. 23-106. The MDF was created solely for the purpose of receiving territorial, federal and private money and revenues from the registration fees of non-immigrant temporary workers for allocation to locally authorized manpower training programs. P.L. 23-106 provides that one hundred per cent (100%) of the annual revenues generated shall be allocated to the Apprenticeship Training Program at Guam Community College. The intent of the MDF is to develop a self-sustaining local labor force.

Apprenticeship Program

The apprenticeship program for the construction industry was created to develop a local workforce and decrease Guam's dependence on foreign labor. The current alien labor workforce on Guam averages around 2,000 workers. The Apprenticeship Training Program provides opportunities for apprentices to learn a craft or trade, through on-the-job training (under close supervision by a skilled worker or journey worker on the job-site), and through related classroom instruction at the Guam Community College (GCC). Apprentices work at an actual job site (with an employer) during the day, and attend related classes at the Guam Community College during evenings and Saturdays. Tuition, books, and fees for apprenticeship courses are billed to the Manpower Development Fund (MDF). When a student completes all the classes taken in a semester, the student is given an incentive award. A four (4) credit course is worth 60 hours at the level of minimum wage (currently \$5.15 an hour). A three (3) credit course is worth 45 hours. The student receives a stipend from the MDF based upon the total number of hours.

Long Term Commitment from Contractors and Trainees

Apprenticeship training is a long-term commitment for the contractor and the apprentice. The contractor must use productive workers to provide training. Standards for certifying apprentices are set by the U.S. Department of Labor. To become certified carpenters, masons, electricians, plumbers, etc., an apprentice must complete a total of 8,000 on-the-job training hours (the equivalent of 2,000 working hours per year), and a varied total of between 288 academic contact hours and 576 academic contact hours. Due to the length of time it takes to become certified and the cost to the contractor, the current program for construction apprentices is not a viable tool for providing qualified workers to replace alien workers in the short term.

Direct Financial Assistance to Students

During the periods FY 1997 and 1998 MDF revenue was \$1,226,651 and expenditures were \$1,144,295. Eighty – three per cent (83%) of revenues generated (\$1,022,709) was appropriated for salaries and benefits. Only \$203,942 (17%) was available for direct financial assistance to students. Although P.L. 23-106 provides that “not less than fifty (50%) of the annual revenues generated shall be appropriated for Direct financial assistance to students enrolled in the Apprenticeship program.” Guam Community College interprets direct financial aid to students as financial support for all activities directly benefiting students. This includes support for instructional activities for which such students enroll and support for student service programs set up to directly assist students in the program. We disagree with this interpretation and we believe that GCC is not in compliance with P. L. 23-106.

Few Apprentices Complete the Program

One hundred and sixty (160) apprentices were enrolled in the GCC Apprenticeship Program in FY 1997. Five (5) apprentices completed the program, and sixty-nine (69), (43%) were terminated. In FY 1998 one hundred and ninety-six (196) apprentices were enrolled. Six completed the program and thirty-five (35), (17.8%) were terminated. In spite of the relatively large number of trainees enrolled in the apprenticeship program only a few graduate. We did not determine the reason for the high termination rate. However, we believe that if local contractors were more committed to the program it would be more successful in producing graduates.

Incentives for Contractors

Local contractors are investing time and money to help Guam provide a local construction workforce. However, they are not given any incentives to partially compensate them for their investments. Contractors would be eager to hire more trainees and provide more training if they received tax rebates or other incentives for participating in the program. One of the major problems with the program is that contractors must hire trainees at their own expense. When there is a downturn in construction, trainees are first to be laid off because they are the least productive. Contractors can not afford to keep non-productive workers on the payroll unless they receive help. Apprentices can not receive on the job training unless they remain on the contractor's payroll. The MDF could be used to keep trainees working and to make the program more equitable. Contractors could be allocated a portion of MDF revenue to subsidize apprentice salaries. The following is an example of how the salaries could be subsidized

Apprentice Salary

	<u>MDF</u>	<u>CONTRACTOR</u>
1 st Year	75%	25%
2 nd Year	50%	50%
3 rd Year	25%	75%
4 th Year		100%

Recommendations

1. The Director requests the DOA to audit the MDF to ensure that GCC complies with P.L. 23-106.
2. The Director should work with Guam Community College and the Legislature to devise a plan to provide incentives to local contractors for training local workers.

Surveillance and Enforcement

The Department of Labor needs to increase its enforcement and surveillance efforts at non-immigrant alien labor dormitories and construction sites. There are more than 2,000 non-immigrant alien laborers living in more than 150 barracks, and working at more than 200 construction sites. Workers may be living in unsafe and unsanitary conditions and working on unauthorized construction sites.

Section 7118.1 (ii) (g) of 22 GCA provides that the Director of Public Health and Social Services, in coordination with the Guam Environmental Protection Agency and the DOL, shall cause to be inspected every workers' dormitory at least once every three (3) months. The DOL Alien Labor Processing and Certification Division (ALPCD) SOP provides that it shall be the responsibility of the Labor Law Enforcement Specialists to conduct daily field surveillance and/or investigations of private and public establishments or private and government projects to determine compliance with the program's standards.

Barracks Inspections

There were a total of 152 barracks in FY 1997. One hundred and sixty-eight (168) inspections were conducted. Some barracks were inspected more than once but none were inspected every three months as required by law. A total of 157 barracks existed in FY 1998, and 180 inspections were conducted. None of the barracks were inspected every three months.

Construction Company Inspections

A total of 157 companies were listed in FY 1997 and 127 (81%) were inspected. One hundred and twelve (112) companies were listed in FY 1998 and 111 were inspected. However, no inspections were performed for a four-month period in FY 1998 because there were no government vehicles available. Inventory records show that there are only nine (9) government vehicles assigned to the DOL. Supervisory ALPCD personnel stated that there are not enough vehicles available to conduct necessary inspections. During our audit there were only three (3) vehicles assigned to the ALPCD. The lack of government vehicles is a serious problem for an agency that depends on site visits to enforce labor laws. Further, when inspectors use their privately owned vehicles (POV), to make site visits they are not reimbursed for mileage accumulated. This problem is not only limited to the ALPCD. It also exists at the Wage and Hour Division, the Worker's Compensation Commission, and The Fair Employment Practice Office. These offices are also responsible for enforcement and surveillance, however, there are no vehicles assigned to them. Employees are using their privately owned vehicles to conduct government

business but they are not being reimbursed for mileage. The DOL stated that no funds are available to reimburse for mileage, however they requested \$1,000 for Privately Owned Vehicle (POV) mileage reimbursement in the 1998 budget.

Aggressive Surveillance and Enforcement

The DOL has been subjected to severe criticism from the local construction industry, and adverse publicity from the news media for not being aggressive in its surveillance and enforcement efforts. However, during our audit we found that the ALPCD has increased its surveillance and inspection efforts. A supervisor's position was transferred from the Guam Occupational Safety and Health office to ensure that the ALPCD inspection office is properly supervised. The office is also staffed with two (2) Labor Law Enforcement Specialists and a Safety Inspector. We could not find published criteria for staffing and equipping an inspection office like the one at the ALPCD. However, our review of the office staffing, workload, and equipment indicates that the current inspection staff is too small and not properly equipped to aggressively inspect several hundred barracks and construction sites as frequently as required. Further, the lack of resources makes it difficult to effectively investigate possible violations of administrative rules, and federal and local operations.

Additional Resources

We believe that the ALPCD could enhance its enforcement and surveillance operations if the division was properly staffed and equipped. This could be achieved by increasing civil penalties for violations of labor rules or allocating a portion of Manpower Development Funds revenue to the DOL. Currently, civil penalties (fines) for violations of labor rules cannot exceed \$500. All fines collected go to the DOL, and all revenue generated from alien labor registration fees is allocated to the Apprenticeship Training Program at Guam Community College. Originally, thirty per cent (30%) of MDF revenue was allocated to the DOL, and fines were deposited into the General Fund. However, PL 23-106 changed this.

Recommendations

1. The Director should request the Legislature to amend legislation to increase fines for labor law violations or amend PL 23-106 to reinstate the original thirty per cent (30%) of the MDF to the DOL to be used exclusively for surveillance and enforcement efforts.
2. The Director should reimburse employees for vehicle mileage when a government vehicle is not available, and establishes controls to prevent abuse.

Detecting Abuse and Fraud in the Worker's Compensation Program

The Worker's Compensation Commission (WCC) does not have the resources to prevent or detect fraud and abuse in the program. The commission does not have adequate resources to review and investigate suspected fraud and abuse cases. Officials in the U.S. estimate that Fraud and abuse occurs in one out of every four Worker's Compensation claims. In spite of the possibility that fraud and abuse may be occurring at this rate on Guam the WCC does not have equipment, vehicles, or sufficient personnel to perform surveillance or conduct investigations.

Section 9132 of 22GCA provides that any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this Title, or for the purpose of evading liability for any benefit or payment under this Title, shall be guilty of a misdemeanor.

Lack of Resources to Detect Abuses

The WCC disbursements averaged about \$2.0 million per year for FYs 1996 and 1997. The number of payments averaged about 3,200 for the same period. With a workload of this magnitude the WCC is attempting to perform surveillance, conduct investigations and inspections with one individual. The individual uses his own POV and is not reimbursed for official mileage or paid for overtime. He also uses a substandard video camera provided by the office. During the period, 1996 through 1998 only 13 surveillance operations or investigations were conducted. During the same period 162 inspections were conducted. The Employment Program administrator has taken steps to address abuse and fraud. However, the office is severely limited by a lack of personnel and other resources. The office is staffed with one Medical Utilization Specialist to review suspected cases (including cases permanently located off-island) and to closely monitor them. The office is also staffed with one Claims Investigator who doesn't have the necessary equipment to trail suspected abusers. The investigator cannot covertly observe and record the suspect's activities without compromising his presence. We believe that additional claims adjusting and investigating personnel would help to curb abuses of the system. According to the program administrator, one program abuser could cost the government more than the salary of a claims clerk or investigator.

No Cost Containment Program

The WCC also does not have resources to establish a cost containment program to limit exposure to worker's compensation losses after an injury occurs. A cost containment program would help to control medical costs attendant upon an injury. The WCC does not effectively monitor treatment to get the injured employee back on the job as soon as possible. A cost containment program would also include rehabilitation. Currently there

are no rehabilitation programs to get employees ready to return to the workplace, an interim job, or a new job. A good rehabilitation program would help the injured worker and the employer to measure progress, and more significantly it would help to expose malingerers. Under current conditions, workers may receive monthly checks for injuries that never happened, did not happen on the job, or healed a long time ago. The claimant could be working at another job while drawing benefits, or engaging in other strenuous activities. Further, claimants who have permanently relocated off-island are not being monitored.

Recommendations

1. The Director should request funds from the Legislature to establish a cost containment program for Worker's Compensation.
2. The Director use funds available for surveillance and enforcement to provide resources to aggressively pursue program abusers.

RESPONSE OF THE AFFECTED AGENCY

Comments on Agency Response

We transmitted a draft of the report to the Department of Labor (DOL) on May 20, 1999. We received the Director's comments on July 2, 1999. We took the comments under consideration and made changes to our report, as we deemed necessary. The Director's comments are included as attachment 1.

The Director stated that the DOL will defer policies and procedures revision until INS replies. However, the DOL is still responsible for complying with P.L. 18-48, which requires collection of Repatriation and Wage bonds. DOL is also still responsible for collecting registration fees for work permits for non-immigrant foreign workers. Therefore, we believe that the inadequate procedures should be revised promptly to ensure DOL controls, manages and reconciles Bond and Registration fees. The Director does not need Immigration and Naturalization Service (INS) approval to collect fees relating to non-immigrant foreign workers. Guam statutes already authorize collection of fees.

The Director responded that the DOL has worked with the Bureau of Budget and Management Research in de-encumbering some prior Manpower Development Funds (MDF). However, an appropriation from the Legislature is still required for some of the funds, since there are two types. The DOL starting collecting the 12% Collection Fee from employers in January 1999.

The DOL agrees to periodic fund audits but strongly disagrees that it should not be able to use unclaimed back wages collected after two years. We agree with the DOL. It should be able to use the unclaimed wages for administration and operation of the Wage and Hour Trust Fund. However, Executive Order 89-25 provides that unclaimed wages or collections not disbursed from the Trust Fund after two (2) years shall be transferred to the General Fund

The DOL believes that the finding on developing a self-sustaining local construction workforce is inappropriately included in our audit. Our purpose in directing recommendations to the DOL is that we believe that they should be the catalyst in ensuring that MDF funds are being used effectively to develop a local construction workforce. The DOL stated that it does not have authority to verify skills of alien laborers. However, GCA 22 Section 7126 specifically provides that the DOL shall on a random basis, test the skills of non-immigrant temporary workers.

The DOL agreed that it needed to increase surveillance and inspections at alien labor dormitories and construction sites. It also agreed that the Current Labor Force Survey should be funded by special annual appropriations. In conclusion, the DOL was also responsive to our recommendations on detecting abuse and fraud in the Worker's Compensation Program. It is working on legislation that will address our concerns.



OFFICE OF THE PUBLIC AUDITOR
UFISINAN I ADITOT PUPBLEKO
GOVERNMENT OF GUAM
P.O. BOX 23667, GME, Barrigada, Guam 96921
(1208 East Sunset Boulevard, Tiyan)
(671) 475-0393/0394/0395 - FAX: (671) 472-7951

ROBERT G.P. CRUZ
PUBLIC AUDITOR

ACKNOWLEDGMENT RECEIPT

DOCUMENT/ITEM: MANAGEMENT AUDIT MEMO (CORRECTED COPY)	
TO: MR. UNDERWOOD	FROM: MR. BOB CRUZ
RECEIVED BY: T. C. CRUZ	DATE/TIME: 5/20/97 11:50
PRINT: [Signature]	TITLE: SEC.
REMARKS: THIS IS A CORRECTED COPY ON THE MANAGEMENT AUDIT LETTER.	



OFFICE OF THE PUBLIC AUDITOR
UFISINAN I ADITOT PUPBLEKO
GOVERNMENT OF GUAM
P.O. BOX 23667, GMF, Barrigada, Guam 96921
(1208 East Sunset Boulevard, Tiyan)
(671) 475-0393/0394/0395 - FAX: (671) 472-7951

ROBERT G.P. CRUZ
PUBLIC AUDITOR

May 20, 1999

Mr. James Underwood
Acting Director
Department of Labor
Post Office Box 9970
Tamuning, Guam 96931

Dear Mr. Underwood

We conducted a management audit of the Department of Labor from August 1998 to February 1999, during Mr. Taijito's tenure. A copy of our final draft is provided for your review and comments. Your staff should be aware of our issues. We request that you respond to each recommendation. In each response, please state what steps are being taken to correct the problem, and provide a time frame for completion or state disagreement and briefly explain your position. Either way, your comments will be included in our report. We also invite that you provide us a synopsis of your agency's "Best Practices" or specific accomplishments so that they may be included in our report. We would appreciate receiving your response by June 9, 1999 so that we can issue the final report.

Sincerely,


Robert G.P. Cruz

4/8/99



DEPARTMENT OF
LABOR
DIPATTAMENTON HUMOTNAT

JAMES H. UNDERWOOD, Director
ROLANDO P. ZABALA, Deputy Director

R.C. GUTIERREZ
Governor

NE Z. BORDALLO
Lieutenant Governor

June 8, 1999

Mr. Robert G.P. Cruz
Public Auditor
P.O. Box 23667, GMF,
Barrigada, Guam 96921

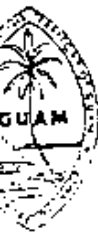
Dear Mr. Cruz:

I am requesting an additional 2-3 weeks to submit Labor's comments.

Some of the review of the Alien Labor Processing Procedures requires that time to finalize some changes that I am initiating and will include by way of comments and position we take. Si Yu'os Malina.


Jim Underwood





DEPARTMENT OF

LABOR

DIPATTAMENTION HUMOTNÁT

Received by Office of the
Public Auditor

7/6/99

JAMES H. UNDERWOOD, Director
ROLANDO P. ZABALA, Deputy Director

L.C. GUTIERREZ
Governor

EMILIE Z. BORDALLO
tenant Governor

Mr. Robert G.P. Cruz
Public Auditor
Office of the Public Auditor
Ufisinan I Aditot Pupbleko
Government of Guam
P.O. Box 23667
GMF, Barrigada, Guam 96921

Subject: Comments on Management Audit

Dear Mr. Cruz

This letter is to document our comments on your Draft Audit Report on the Department of Labor as follows:

BACKGROUND

- The third objective bullet should be limited to "working conditions".
- The fourth objective bullet should be "job related" injuries.
- The eighth objective bullet should be "human resource" laws not labor.
- OSHA On-Site Consultation and One Stop Center should be added as organizational units of the department.
- The sentence after the organizational listing should be corrected to replace the words "in cooperation with" with "under authority delegated by the"

ALIEN LABOR PROCESSING AND CERTIFICATION DIVISION EMPLOYERS' DEPOSIT

"The Department is actively pursuing whether it can continue requiring these types of enforcement bonds which the U.S. Immigration and Naturalization Service (INS) has indicated is their responsibility for enforcement compliance and on whose determination continuance will be based. We will defer policies and procedure revision until we receive INS review and reply. The Department agrees with the INS procedure of determining if such posting of maintenance of status and departure bonds are necessary to insure compliance with immigration requirements.



The Department believes that staff now required to administer this bond program can be shifted to the larger and more effective program of wage and hour administration specifically in the alien labor certification program."

FUND RESOURCES FOR BETTER LABOR LAW ENFORCEMENT

"Since the ALPCD is without authority to use registration fee funds in its wide range of operations, it is unreasonable and unrealistic to characterize the Department of Labor as "losing fund resources." The division/department should instead be acknowledged and thanked for its collection of funds that until the recent enactment of P.L. 25-03 had no ability or incentive for fund development. The Department agrees that it should be able to use the funds it generates in enforcing labor laws.

Recommendations

1. The Department is actively pursuing approval from the ENS of the collection of Registration Fees and will suspend issuance of penalties unless ENS permits DOL this responsibility to enforce compliance. Policies and procedure revision will be deferred until it receives ENS review/reply.
2. The department has already worked with the Bureau of Budget and Management Research in de-encumbering some prior MDF funds and will develop a plan to continue to use this fund as a permanent source to fund the Current Labor Force Survey.
3. With the enactment of P.L. 25-03 this recommendation should be deleted.
4. This item should read: The Director started collecting the 12% Collection Fee from employers in accordance with 22 GCA, Section 3218 on January 1999.
5. The Department agrees to periodic audits but strongly disagrees that it should not be able to use funds that it collected after two years.

DEVELOPING A SELF-SUSTAINING LOCAL CONSTRUCTION WORKFORCE

The Department believes this entire section is inappropriately included in this management audit of the Department of Labor. The audit focused on apprenticeship programs and recommendations that should be addressed to the Guam Community College where studies and apprenticeship programs were recommended as early as May 15, 1979. The Department welcomes involvement in developing a self-sustaining local labor force and is a participant in the Task Force created by Executive Order 98-24 that is tasked to gradually move Guam from dependence on a foreign labor force and develop a self-sustaining local labor force. The Public Auditor, rather than the Director of Labor should initiate its own audit of the MDF to ensure that GCC complies with P.L. 23-106. The Department of Labor welcomes and is aggressively pursuing partnerships with other agencies such as GCC in the operation of the One-Stop Center. The Department believe, that the training function can be added to the department responsibilities when the Department merges with AHRD under a Department of Human Resources.

SURVEILLANCE AND ENFORCEMENT

The Department agrees that it needs to increase its enforcement and surveillance at alien labor dormitories and construction sites but for different reasons than those listed in this audit. Barracks inspections are more correctly the responsibility of the Department of Public Health and Social Services and the department is actively working on a plan to terminate such health, related inspections.

The Department is shifting its focus of enforcement away from current barracks, badge, report and citation activities to Wage and Hour enforcement where alleged abuses that have been publicly reported.

The MDF has been amended to restore the 30 % to the Department and the Department is in agreement that it should reimburse employees for vehicle mileage when they use their personal vehicle for official duty.

7/02/99

VERIFYING SKILLS OF ALIEN LABORERS

The Department in administering the Alien Labor Certification Program under delegated authority is without power to test an aliens skills. This power exists only if there is a need or a requirement to test a U.S. worker that is available for the same job in which all parties would be tested. The Department will seek clarification from INS on its ability to Implement Section 7126, 22GCA. The Department will defer rules' promulgation for the testing program until it receives INS review/reply.

PRODUCING TIMELY AND RELIABLE LABOR STATISTICS

The Current Labor Force Survey has continued to work within a \$90,000 budget per fiscal year. There are some new incremental costs associated with this survey such as Medicare costs. If an unemployment insurance program is established on Guam, monthly surveys could be conducted. The Department agrees that this survey should be funded by special annual appropriations. The Department believes that the surveys should be conducted not less than 3 times a year by the elimination of the June survey that historically has been higher than the other quarters do to School schedules and summer vacations.

DETECTING ABUSE AND FRAUD IN THE WORKER'S COMPENSATION PROGRAM

The Department is working on legislation that will address these concerns as well as the larger issue of fund integrity and minimization of fraud and abuse. The Department will be implementing and coordinating the new mandates of P.L. 25-03 that shares the program requirements with all GovGuam agencies from all aspects of funding and fraud and abuse minimization.

Thank you for the opportunity to comment on this audit.



JAMES H. UNDERWOOD

Director

cc: Chief of Staff
ALPCD
BLS
WCC
WH