



# Office of the Attorney General of Guam

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June 15, 2016

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## OPINION MEMORANDUM

**Ref.:** DOA 16-0327

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**TO:** Director, Department of Administration

**FROM:** Attorney General

**SUBJECT:** Application of Certification Pay Pursuant to Public Law 33-18

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This is in response to your letter dated April 27, 2016, requesting this Office's opinion on the following matter:

### QUESTION/ANSWER

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1. Whether the Office of the Attorney General is a line agency for which the certification pay as provided in 4 GCA § 6235 is applicable to qualified personnel in the Attorney General's office? YES.

2. Whether the certification pay is an adjustment to the base salary rather than a one-time payment? YES.

3. Whether the law allows for retroactive compensation to October 1, 2015? YES.

4. Whether the law allows a 15% certification pay for a Guam licensed Certified Public Accountant and one 10% certification pay for a Certified Government Financial Manager, Certified Fraud Examiner or Certified Internal Auditor? YES.

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### DISCUSSION

1. Whether the Office of the Attorney General is a line agency for which the certification pay as provided in 4 GCA § 6235 is applicable to qualified personnel in the Attorney General's office?

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Although undefined in 4 GCA § 6235, a line agency is usually thought of as a department or agency funded by the General Fund through the annual appropriations or budget act. This notion is consistent with the only definition of a line agency found in the Guam Code Annotated.

Title 5 GCA 6103(c) of the Government Claims Act states:

Line Agency means any department, agency, or instrumentality of the Government of Guam which is funded by an annual appropriation from the Legislature. Such appropriations do not include subsidies.

The Office of the Attorney General was created in 1975 as a line agency within the executive branch of the government of Guam. *See Public Law 13-117*. The law was codified as Section 5101 of the Government Code; the Chapter<sup>1</sup> in which all line agencies are listed.

The Attorney General was appointed by the Governor and confirmed by the Legislature and subsequently the law was amended to provide for an elected the Attorney General. *See Public Law 25-44*. There were several other statutory changes which gave the Attorney General more autonomy over the operations of the office. Public Law 31-153 gave the Attorney General more control over the office's budgetary resources and management of its personnel. Although the Attorney General became more independent of the Governor, the office remains a line agency and continues to receive General Fund appropriations.

2. Whether the certification pay is a one-time payment or an adjustment to the base salary?

The law allows a "one-time" certification pay to "certified accounting, auditing, budgeting, and management professional positions." The issue is whether "one-time" pay means one lump-sum payment or one-time adjustment to the base salary paid every pay period.

The one-time pay language is susceptible to different interpretations, and is therefore ambiguous. "A statute, phrase, or word is ambiguous when capable of being interpreted by reasonably well-informed persons in either of two or more senses. However, the language of the statute cannot be read in isolation, and must be examined within its context." *Aguon v. Gutierrez*, 2002 Guam 14 ¶ 9.

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<sup>1</sup> Chapter 3 of Title 5 GCA has been noted by the Compiler of Laws as the Chapter in which all line agencies are listed. *See Comment 10 GCA 1101 and Note G.C.A. T. 5, Div. 5, Ch. 56, Art. 1, Refs & Annos*. The Office of the Attorney General remains in the Chapter where all line agencies are listed as 5 GCA § 3102 and has not been repealed.

Section 6235 uses different terms to refer to the certification pay thereby creating an ambiguity in its connotation. It is referenced as "one-time incentive pay compensation" or "one-time certification pay differential". Although not consistently stated in the law, certification pay as used in the law's context implies an adjustment to the qualified employee's base salary. This interpretation is supported by the language in Section 6235 that the certification pay differential is "added to the base pay to rectify an inequity in certification pay." Further, Section 6235 provides a qualified employee *shall* be entitled to the "pay differential provided in one (1) initial certification pay increase". Increase<sup>2</sup> implies an adjustment to the base salary rather than a one-time payment.

This interpretation is consistent with the law's intent to retain and equitably compensate certified financial professionals. The qualified employee would need to be paid the certification pay every pay period in order for the government to retain and equitably compensate these certified financial professionals. Therefore, a reasonable interpretation would be that the certification pay is an adjustment to the base salary paid every payday.

3. Whether the law allows for retroactive compensation to October 1, 2015?

The law expressly provides that the effective date is October 1, 2015 even though it was enacted on March 23, 2016. Laws are effective at midnight of the day it becomes law, unless otherwise provided therein. *See 1 GCA § 102*. Since the effective date is stated as October 1, 2015, retroactive compensation to the law's effective date is authorized.

4. Whether the law allows for multiple differential payments for multiple certifications or one differential payment for a single certification?

The law allows a 15% pay differential for a Guam licensed Certified Public Accountant and one 10% pay differential for all other authorized certified employees. Again, the same analysis as discussed in the second issue applies here.

The law states a one-time certification pay increase shall be provided to certain government financial professionals including a Guam licensed Certified Public Accountant (CPA), a Certified Government Financial Manager (CGFM), a Certified Fraud Examiner (CFE), and a Certified Internal Auditor (CIA), which are nationally recognized but not required to be Guam licensed. The law also allows a CPA employee to be eligible to an "additional fifteen percent (15%) increase" and an "additional ten percent (10%) increase" to a CGFM, CFE, or CIA employee.

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<sup>2</sup> "Increase" is also used in the "additional fifteen percent (15%) increase" and "additional ten percent (10%) increase" authorizations in the law.

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Although ambiguous, the law can be interpreted to allow a 15% pay differential for CPA and one 10% pay differential for all others since the law allows both pay increases. A qualified employee could be eligible for only one 10% pay differential as the law clearly states that the pay differential is limited to a single certification. Naturally, the CPA is the single certification for the 15% pay differential. Therefore, a reasonable interpretation of the law would be that an employee could be eligible for a 15% pay differential and one 10% pay differential.

### CONCLUSION

The certification pay increase for eligible financial professionals is adjusted to the employee's base salary every pay period. The employee could be eligible for the 15% pay differential and one 10% pay differential. The law extends to qualified personnel of the Office of the Attorney General. The pay increase is to be applied retroactive to October 1, 2015, the effective date of Public Law 33-18.



**ELIZABETH BARRETT-ANDERSON**