

4 GCA PUBLIC OFFICERS & EMPLOYEES  
CH 8 RETIREMENT OF PUBLIC EMPLOYEES

**CHAPTER 8**  
**RETIREMENT OF PUBLIC EMPLOYEES**

- Article 1. Defined Benefit Plan [Old Plan].
- Article 2. Defined Contribution Retirement System [New Plan].
- Article 3. Deferred Compensation Program.
- Article 4. Welfare Benefit Plans.

**ARTICLE 3**  
**DEFERRED COMPENSATION PROGRAM**

- § 8301. Definitions.
- § 8302. Establishment of the Government of Guam Deferred Compensation Program; Participation in Government Guam Deferred Compensation Program; Limiting Participation in Existing § 457 Plans.
- § 8303. Article to be Liberally Construed; Purpose.
- § 8304. Administration of the Government of Guam Deferred Compensation Program.
- § 8305. Powers and Duties of the Board of Trustees and the Director of the Government of Guam Retirement System in the Administration of the Deferred Compensation Program.
- § 8306. Members' Contributions.
- § 8307. Payment of Administrative Cost and Expenses.
- § 8308. Amount of Benefit Payments.
- § 8309. Account Statements.

**§ 8301. Definitions.**

As used in this Article, unless the context otherwise requires:

(a) *Deferred Compensation Program* or *Program* means the government of Guam Deferred Compensation Program created and established by this Article.

(b) *Board of Trustees* or *Board* means the Board of Trustees of the government of Guam Retirement Fund, which is responsible for the direction and operation of the affairs and business of the Program. Title to all assets and income of the program shall be held in trust by the Board or by a Qualified Custodian for the exclusive benefit of members and their beneficiaries.

**4 GCA PUBLIC OFFICERS & EMPLOYEES**  
**CH 8 RETIREMENT OF PUBLIC EMPLOYEES**

(c) *Code* means the United States Internal Revenue Code, as amended, and corresponding references to the Guam Territorial Income Tax Code, as may be appropriate.

(d) *Director of the Government of Guam Retirement System* or *Director* means the Director of the Government of Guam Retirement Fund as appointed by the Board in accordance with §8140 of Article 1, Chapter 8 of Title 4 of the Guam Code Annotated.

(e) *Member of the Government of Guam Deferred Compensation Program* or *Member* means any person who is employed by an Employer in the government of Guam and who is a member of either the Government of Guam Retirement Fund established in Article 1 of this Title or the Government of Guam Defined Contribution Retirement System established in Article 2 of this Title, with the exception of any person who participates under a Code § 403(b) plan sponsored by the employer.

(f) *Employer* or *Employer Unit* means the following government entities, organizations or departments that are organized and operated in Guam: each and every line department or agency of the Executive Branch, every autonomous and semi-autonomous agency or instrumentality, every public corporation, every educational institution, whether secondary or post secondary, the Legislative Branch, the Judicial Branch, the Public Defender Corporation and every public entity hereafter to be created by law, within Guam which has employed or employs a member.

(g) *Qualified Custodian* means a bank as described in Code § 408(n), or person other than a bank that satisfies the requirements of Paragraphs (2)-(6) of U.S. Treasury Regulations §1.408-2(e), or the Board in its capacity as trustee of the Program in accordance with Code § 457(g).

(h) *Section 457* means § 457 of the United States Internal Revenue Code, as amended, and corresponding references to the Guam Territorial Income Tax Code, as may be appropriate.

**§ 8302. Establishment of the Government of Guam Deferred Compensation Program; Participation in Government of Guam Deferred Compensation Program; Limiting Participation in Existing § 457 Plans.**

**4 GCA PUBLIC OFFICERS & EMPLOYEES**  
**CH 8 RETIREMENT OF PUBLIC EMPLOYEES**

(a) There shall be established the Government of Guam Deferred Compensation Program, hereinafter referred to as 'Program,' to which member contributions, in the form of deductions from salary, shall be deposited and to which earnings on investments and other contributions shall also be deposited upon receipt and from which benefits and reasonable administrative fees and expenses authorized by the Board of Trustees shall be paid.

(b) Voluntary Participation. Each member's participation in the Program shall be completely voluntary. At the request of a member of the Deferred Compensation Program, the employer shall by payroll deduction defer the payment of part of the compensation of the member. The amount to be deferred must be as provided in a written agreement timely executed by and between the member and his or her employing unit. This agreement shall be in a form as prescribed by the Director of the Government of Guam Retirement System, approved by the Board of Trustees, and in compliance with the requirements of Code § 457.

(c) Employer's Failure to Implement Program. Implementation of the Deferred Compensation Program by the employer must be completed within thirty (30) days of the member's request as provided in Subsection (b). Beginning on the date of enactment, the Government of Guam Deferred Compensation Program shall be the single § 457 program receiving payroll deductions representing elective deferrals of the compensation of any member of an employer unit other than an employer unit which had established a § 457 program and was receiving payroll deductions prior to the date of enactment. Such excepted employer unit may defer compensation under its existing 457 deferred compensation plan through December 31, 1998. Payroll deductions representing § 457 elective deferrals of any employee of an excepted employer unit must be remitted to the Qualified Custodian of the Government of Guam Deferred Compensation Program after December 31, 1998. The Board of Trustees may order any employer to implement the Deferred Compensation Program provided for in this Section upon receipt of a member's approved request to undertake that implementation and may enforce that order in appropriate legal proceedings.

**§ 8303. Article to be Liberally Construed; Purpose.**

The provisions of this Article shall be liberally construed so as to provide a Deferred Compensation Program for any member which is funded on a current basis from elective member contributions.

**§ 8304. Administration of the Government of Guam Deferred Compensation Program.**

The Board of Trustees created pursuant to Article 1 of Chapter 8 of this Title shall administer the Government of Guam Deferred Compensation Program. The Board may sue and be sued, contract and be contracted with, and conduct all the business of the Deferred Compensation Program in the name of the Government of Guam.

**§ 8305. Powers and Duties of the Board of Trustees and the Director of the Government of Guam Retirement System in the Administration of the Deferred Compensation Program.**

(a) Adoption of Formal Written Plan and Trust Arrangement. The Board of Trustees shall be responsible for the adoption of a formal written plan setting forth all the terms and conditions of the Program, and any plan amendments which from time to time the Board of Trustees shall determine to be required, in order that the Plan shall comply with and remain in compliance with Code § 457. The Board of Trustees, on behalf of the Government of Guam and all of its Employers, shall be authorized and empowered to take any and all required action, including, but not limited to, entering into annuity contracts, trust agreements and custodial arrangements, all of which shall be intended to satisfy the requirements of Code § 457(g) or to implement the Program.

(b) Exclusive Jurisdiction. The Board of Trustees shall have exclusive original jurisdiction in all matters relating to or affecting the Program, including, but not limited to, claims for benefits and refunds under this Article.

(c) Approval of Rules, Regulations and Administrative Procedures. The Board of Trustees shall consent to and approve such rules, regulations, administrative procedures and prescribed forms as established by the Director, as it may deem necessary to effectuate the purposes of this Article, all of which shall conform to Code § 457, Federal tax laws, U.S. Treasury Regulations, and rulings.

(d) Administrative Contracts. The Board of Trustees may contract with insurance, annuity, mutual fund, trust company or other qualified company or companies to administer the operations of the Program. In addition, the Board of Trustees shall also be authorized and empowered to take any and all additional actions, including, but not limited to, the

**4 GCA PUBLIC OFFICERS & EMPLOYEES**  
**CH 8 RETIREMENT OF PUBLIC EMPLOYEES**

execution of custodial, record keeping, and investment advisory agreements in order to implement the Program.

(e) Investments. The Board of Trustees may solicit bids for investment options and may retain consulting services to assist it in soliciting and evaluating bids and in the periodic review of companies offering investment options. The Board of Trustees may annually establish a budget for its costs in the soliciting, evaluating and periodic review process of companies offering investment options, and may charge a proportional share of all costs related to the periodic review to each such company currently under contract and charge a proportional share of all costs related to soliciting and evaluating bids to each such company offering investment options which is selected by the Board of Trustees. Contracts must provide that any investment options are offered to members in an unbiased manner, in a manner that conforms to rules adopted by the Director, and without unreasonable solicitation. The contract must not permit any person to jeopardize the tax-deferred status of money invested by members under this Article.

The Board of Trustees shall invest and reinvest the monies of the Program and manage the assets and income of the Program:

(i) solely in the interest of, and for the exclusive purposes of providing benefits to, members and their beneficiaries, and defraying reasonable expenses of administering the Program;

(ii) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims; and

(iii) in a manner that diversifies the investments of the Program as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances prudent not to do so.

Notwithstanding any other provision of this Article, and except as otherwise expressly restricted by the Organic Act of Guam and by the law, the Board of Trustees may delegate its authority to invest and/or manage the assets and income of the Program, provided that the Board of Trustees shall exercise reasonable care, skill and caution in: (a) selecting an agent; (b) establishing the scope and terms of the delegation, consistent with the purposes and terms of the Program; and (c) periodically reviewing the agent's performance and compliance with the terms of the delegation.

**4 GCA PUBLIC OFFICERS & EMPLOYEES**  
**CH 8 RETIREMENT OF PUBLIC EMPLOYEES**

(f) Member Accounts. The Board of Trustees shall establish an individual account(s) for each Member, to which his or her respective contributions, together with all earnings on investments shall be deposited, and from which his or her respective benefits under this Program and his or her respective pro-rata share of reasonable administrative fees and expenses, as authorized by the Board of Trustees, shall be paid.

(g) Advisors. The Board of Trustees may engage actuarial, legal, clerical and all other advisors, including, but not limited to, a Qualified Custodian as described by § 8301(g) of this Article, as may be necessary to effectuate the purposes of this Article.

(h) Duties of Employer. The Board of Trustees shall confirm that all duties under this Article of each employer are being performed and, in the event that an employer fails to perform any duty imposed on said employer under the provisions of this Article, to take such steps as in its judgment seem advisable to enforce compliance by the employer with the provisions of this Article.

(i) Supervised Contributions. The Board of Trustees shall confirm that all member contributions by way of salary deductions are remitted to the appropriate Qualified Custodian of the Program, and shall certify to each employer the amount to be deducted from each member's salary.

(j) Records. The Board of Trustees shall cause to be maintained adequate accounting records that reflect the financial condition of the Program, and such additional data as is necessary or required for the operation of the Program.

**§ 8306. Members' Contributions.**

(a) Deductions from Salary. Member contributions in the form of deductions from salary shall not exceed the limits prescribed by Code § 457, as amended. The employer shall contribute or pay these member deducted contributions from the same source of funds which is used in paying base pay to the members. Such member contributions shall be deducted from his or her salary by the employer and immediately credited to such member's account and/or accounts at the normal payroll intervals, and shall be remitted to the Qualified Custodian designated by the Board of Trustees to receive such contributions of the Program, no later than ten (10) working days from the date on which such amount would otherwise have been payable to the member in cash.

**4 GCA PUBLIC OFFICERS & EMPLOYEES**  
**CH 8 RETIREMENT OF PUBLIC EMPLOYEES**

(b) Purchase of Shares. The amount of compensation so deferred may be used to purchase such forms of investments which are prescribed by the Board of Trustees. Included among such forms of investments which may be provided are:

(1) shares in mutual funds or other managed investment portfolios selected by the Board of Trustees; or

(2) annuity contracts from an insurance company selected by the Board of Trustees, which company is licensed to contract business on Guam and is subject to regulation by the Director of Revenue and Taxation; or

(3) a combination of (1) and (2).

The shares or contracts purchased shall stand in the name of the Qualified Custodian designated by the Board of Trustees for the member whose deferred compensation purchased the shares or contracts until distributed to the member in a manner agreed upon by the member and the Board of Trustees and in accordance with the terms of the deferred compensation plan. The government of Guam, the Board of Trustees, political subdivision, or other employer is *not* responsible for any loss that may result from investment of the Member's deferred compensation.

**§ 8307. Payment of Administrative Cost and Expenses.**

(a) Subject to the approval of the Board of Trustees, the Director shall develop and establish a procedure by which common administrative expenses shared among the Government of Guam Retirement Fund, the Government of Guam Defined Contribution System and the Program, taking into account such factors, including, but not limited to, the number of members and plan asset values that may be prorated among such retirement plans.

(b) In accordance with such procedure, the Qualified Custodian, as selected by the Board of Trustees, shall allocate all of the administrative, custodial, record keeping, and investment management costs and expenses associated with the Program, other than the costs described in § 8305(a)(5) relating to the soliciting, evaluating and periodic review of companies offering investment options, against the assets and investment income accumulated pursuant to this Article. The amount of administrative costs and expenses which are to be appropriated from the fund or member's account in accordance with this Section shall also include the costs of the Board of Trustees and the Director which are incurred in administering the

**4 GCA PUBLIC OFFICERS & EMPLOYEES**  
**CH 8 RETIREMENT OF PUBLIC EMPLOYEES**

Program, including, but not limited to, fees of counsel, actuaries, accountants or other experts appointed to provide services with respect to the Program and payroll expenses of persons on the payroll of the Board of Trustees or the Retirement Fund who are employed to perform services with respect to the Program.

The Board of Trustees is authorized and instructed to borrow from the Government of Guam Retirement Fund on behalf of the Deferred Compensation Program, the amounts necessary to pay the administrative costs and expenses of the Board of Trustees and the Director pending the appropriation of such costs from the fund or the members' accounts. Such borrowed amounts shall be repaid to the Government of Guam Retirement Fund as soon as possible following the Board of Trustee's receipt of the appropriated reimbursements together with a reasonable rate of interest based upon the investment return which the Government of Guam Retirement Fund could have obtained through an alternative investment of such monies.

**§ 8308. Amount of Benefit Payments.**

(a) The amount of benefit payments that a retired member shall receive shall be based solely upon the balance in the member's deferred compensation plan account at the date of retirement, the retirement option selected, the actuarial life expectancy of the member, if applicable, and such other factors as normally govern annuity payments.

(b) The Board of Trustees, or its designee, is authorized upon retirement of a member, upon the election of that member, to purchase an annuity for the member upon his or her retirement.

(c) In accordance with 7 GCA § 23111, no amount of deferred compensation is assignable or subject to execution, levy, attachment, garnishment or other legal process.

**§ 8309. Account Statements.**

The Board of Trustees shall prepare or cause to be prepared, on a quarterly basis, an account statement for each member's account. The statement shall include, but shall not be limited to, a statement of the current market value of the member's account. The Board of Trustees shall prescribe the form and content of the account statement, which shall be consistent with the provisions of this Section.

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**4 GCA PUBLIC OFFICERS & EMPLOYEES**  
**CH 8 RETIREMENT OF PUBLIC EMPLOYEES**