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CH. 14 ACCOUNTABILITY OF DISBURSING AND
CERTIFYING OFFICERS**

**CHAPTER 14
ACCOUNTABILITY OF DISBURSING AND
CERTIFYING OFFICERS**

- Article 1. Accountable Officers.
- Article 2. Bonds of Public Officers.

**ARTICLE 1
ACCOUNTABLE OFFICERS**

SOURCE: This entire Article 1 was repealed and reenacted by P.L. 26-35:IV:7.

- § 14101. Purpose.
- § 14102. Scope.
- § 14103. Policy.
- § 14104. Definitions.
- § 14105. Disbursement of Public Funds.
- § 14106. Types of Accountable Officers.
- § 14107. Designating a Certifying Officer.
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- § 14109. Liability of Accountable Officers.
- § 14110. Violations of Appropriations and Transfers.
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- § 14118. Inconsistent Laws Superseded.
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§ 14101. Purpose.

This Chapter establishes the parameters of the position of an Accountable Officer.

§ 14102. Scope.

The provisions of this Chapter apply to all government of Guam Agencies including the Legislative, Executive and Judicial Branches and all

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autonomous and semi-autonomous agencies which are authorized Certifying Officers and Accountable Officers in general. The concept of accountability and relief discussed in this Chapter apply to all Accountable Officers.

§ 14103. Policy.

It is the policy of the government of Guam that Accountable Officers shall assure the legality, propriety and correctness of collections and disbursements of public funds.

§ 14104. Definitions.

For the purpose of this Article, the following words and phrases have been defined to mean:

(a) '*Accountable Officer*.' Any government of Guam officer or employee who, by reason of the person's employment, is responsible for or has custody of government funds or who physically handles government funds, even if only once or occasionally, and is accountable for those funds while in the individual's possession. The functional titles of an Accountable Officer includes:

(1) '*Certifying Officer*' shall mean a person who is responsible for determining and certifying legality of the disbursement of public funds. The officer does not have physical possession of the funds.

(2) '*Disbursing Officer*' shall mean a person who disburses funds and renders accounts in accordance with laws and regulations governing disbursement of public funds. The officer has physical possession or control of the funds.

(3) '*Cashier*' shall mean a person who is appointed to perform limited cash disbursing functions or other cash-handling operations to assist a finance officer.

(4) '*Collecting Officer*' shall mean a person who is authorized to receive or collect money for the government.

(b) '*Appropriation*' shall mean any appropriation made by *I Liheslaturan Guåhan* [Guam Legislature] within any fund of the government of Guam.

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(c) '*Fund*' shall mean as used in this Chapter the General Fund and all special and trust funds. This includes impress fund cash held at personal risk.

(d) '*Improper payment*' shall mean a disbursement of public funds by a disbursing officer or subordinate that is found by an appropriate authority to be illegal, improper or incorrect. Improper payments result from fraud, forgery, alteration of vouchers, improper certifications and other improper practices. Improper payments can be caused by human and/or mechanical error during the payment process.

(e) '*Relief*' shall mean an administrative decision made by government of Guam officers authorized by law to make such a decision that absolves the accountable officer from liability for a loss.

§ 14105. Disbursement of Public Funds.

All public funds of the government of Guam shall not be disbursed, except as provided in this Chapter and by the persons designated or delegated by the authority of the law and in accordance with applicable Federal and Guam laws.

§ 14106. Types of Accountable Officers.

(a) Certifying Officer. A person who certifies that payment vouchers are correct and ready for payment. The officer does not have physical possession of the funds. A certifying officer is responsible for the existence and correctness of the facts stated in the certificate or voucher or supporting papers, the legality of the proposed payment under the appropriation or fund involved, the correctness of the computations on the certified voucher, and making good to the government of Guam the amount of any illegal, improper or incorrect payment resulting from:

(1) any false, inaccurate or misleading certification made by the officer; or

(2) any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved.

(b) Disbursing Officer. A disbursing officer is responsible for disbursing funds only upon, and in accordance with duly certified vouchers and is required to give bond in favor of the government of Guam pursuant to the provision of Article 2 of this Chapter, examining vouchers as

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necessary to ensure that they are in the proper form, duly certified and approved and correctly computed on the basis of the facts certified.

(c) Cashier. This person is appointed to perform limited cash disbursing functions or other cash-handling operations to assist a finance officer.

(d) Collecting Officer. This person is authorized to receive or collect money for the government.

§ 14107. Designating a Certifying Officer.

Upon approval by the Director of the Department of Administration; the Administrative Director of the Superior Court of Guam; the Executive Officer of the Supreme Court of Guam; or the Executive Director of *I Liheslaturan Guåhan* [Guam Legislature] for each of their respective organizations only, an employee can be designated as a Certifying Officer. To accomplish this, all required forms (Designation for Certifying Officers) must be completed by the employee, approved by the designated official and forwarded to the Treasurer of Guam. To designate Certifying Officers, the approving official must have a delegated authority form (Delegation of Authority) on file with the Treasurer of Guam. The Treasurer of Guam must maintain an automated system to manage all delegations and designations of authority for disbursement related functions. Designations of Certifying Officers are valid for two (2) years from the effective date unless revoked earlier.

Upon the respective approval by the Director of the Department of Administration for the Executive Branch, the Director of *I Liheslaturan Guåhan* [Guam Legislature] for the Legislative Branch, as specified in the Judicial Council of the Superior Court of Guam policies for the Superior Court of Guam, and the Executive Director for the Guam Supreme Court, an employee can be designated as a Certifying Officer for their respective entity.

SOURCE: Amended by P.L. 26-55:15.

§ 14108. Certifying Officer's Delegation of Authority.

The Certifying Officer may delegate the authority to determine and certify the legality of the disbursement of public funds but final responsibility for certification shall remain with the Certifying Officer. Whenever the Certifying Officer delegates such authority he shall, within ten (10) days after such an appointment, file a copy of the appointment with

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the Disbursing Officer for the department, establishment or agency, and with the Treasurer of Guam indicating the name and position of the appointed officer or employee.

§ 14109. Liability of Accountable Officers.

(a) Strict liability denotes that the accountable officer is an insurer of the funds.

(b) An accountable officer is automatically liable when the loss occurs.

(1) A certifying officer is not liable unless an improper payment has been made on the basis of the certified voucher. Liability arises automatically at the moment of the improper payment.

(2) The liability of a certifying officer shall be enforced in the same manner and to the same extent as provided by law with respect to the enforcement of the liability of disbursing and other accountable officers. A certifying officer shall be required to make restitution to the government of Guam for the amount of any illegal, improper or incorrect payment resulting from any false, inaccurate or misleading certificates made by the certifying officer, as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved.(3) A disbursing officer, cashier or other officer who has physical possession or control of government funds is automatically liable when the physical loss occurs or erroneous payment is made.

(c) There may be more than one liable accountable officer:

(1) because more than one person was negligent: the employee whose error caused the loss and the supervisor who entrusted funds to an unqualified employee.

(2) because their positions make both of them accountable: the employee who makes the actual payment and the officer in whose name the account is held.

(3) Relief must apply for all accountable officers.

(d) An accountable officer is only liable for funds in the possession of the government of Guam.

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(1) Interest and penalty charges on amounts owed to the government of Guam are not in its possession, so the officer is not liable for them.

(2) A time discount lost through failure to submit the voucher within the stated time is not within the possession of the government of Guam; thereby, the officer is not liable for the loss.

(3) An officer is liable for submitting a voucher for the full amount during the period in which a time discount is available, because the voucher is inaccurate.

(e) Check Cashing.

(1) All agencies of the government of Guam may have authority to grant relief to an accountable officer in cases involving check cashing.

(2) If the agency declines to adjust the officer's account, the case will be sent to the government of Guam Accounting Office for relief as an erroneous payment but not a physical loss. The Comptroller may grant relief for an illegal, improper or incorrect payment if the payment was not the result of bad faith or lack of reasonable care by the disbursing officer. Relief may be denied if the head of the agency did not carry out diligent collection efforts. The Comptroller may grant relief for the physical loss or deficiency of funds if he finds that the officer was carrying out official duties when the funds were lost and the loss was neither the result of an incorrect or illegal payment nor the result of fault or negligence on the part of the official.

§ 14110. Violations of Appropriations and Transfer.

It is unlawful for an officer, clerk or other person charged with disbursements of public funds appropriated by *I Liheslaturan Guåhan* [Guam Legislature] to exceed the amounts and purposes stated in the appropriation or to change or shift appropriations from one item to another.

Only *I Liheslaturan Guåhan* [Guam Legislature] in any appropriation act may authorize transfers. An officer, clerk or other person violating the provisions of this Section is guilty of malfeasance in office. They are subject to suspension and investigation of conduct. Upon conviction, the person is guilty of a misdemeanor and must be fined in the discretion of the court or imprisoned not more than three (3) years.

§ 14111. Standard of Care for Accountable Officers.

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(a) Due Care.

(1) An accountable officer must exercise the highest degree of care in the performance of duty.

(2) An accountable officer is not liable for acts of God or the public enemy.

(3) Neither lack of fault nor negligence affects an accountable officer's legal liability. It may provide a basis for granting relief from the obligation to repay the amount of the loss or erroneous payment.

(b) Proving Due Care.

(1) The loss of funds entrusted to an accountable officer raises a rebuttable presumption of negligence. The accountable officer bears the burden of affirmatively proving the use of the requisite degree of care. The reasonable care standard does not vary with age or experience.

(2) Regulations dictate the accountable officer's actions in most instances. Failure to follow the regulations will result in a finding of negligence and a denial of relief if the negligence caused the loss.

(3) If there are no regulations governing the specific actions of the accountable officer, the Comptroller will apply a reasonable person standard. That is, did the accountable officer do what a reasonably prudent and careful person would have done to take care of the person's own funds or property of like description under like circumstances? Mere agency determination that an accountable officer is faultless is insufficient. There must be sufficient evidence included in the request for relief for the Comptroller to independently make the same determination as the agency.

(c) Standard of Care Required of a Supervisor. The supervisor must maintain a system of controls to prevent losses and erroneous payments and take steps to ensure that controls are implemented. The supervisor must substantiate these facts. The errors of a subordinate are not the errors of the supervisor if controls are in place to prevent mistakes. However, entrusting funds to an inexperienced or incapable employee may make the supervisor equally liable for the loss.

(d) A disbursing officer is entitled to rely on information from a certifying officer:

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(1) which the disbursing officer has no way of knowing is incorrect;

(2) unless the disbursing officer has reasonable doubts as to the correctness of the facts on or attached to the voucher.

(e) An accountable officer must make adequate efforts to collect any erroneous payments. Within three (3) months, the debt must be sent to the collection department or the Comptroller may deny relief. Authority to deny relief based on lack of adequate collection efforts is discretionary, not mandatory.

(1) The Comptroller is required to look to the collection regulations.

(2) Generally, a single letter to a debtor is not sufficient to show an attempt at collection.

§ 14112. Protection and Relief from Liability.

(a) Advance Decisions from the Comptroller. The contracting and procurement officers may submit to the Comptroller for advance decision, any question which affects the award of public contracts and which requires a determination prior to award.

(b) A certifying or disbursing officer or the head of an agency may request an opinion concerning the propriety of a certification or disbursement.

(c) If doubts remain and the amount is in excess of One Hundred Dollars (\$100.00), request a decision from the Comptroller.

(d) If the amount is less than One Hundred Dollars (\$100.00), request advice from government of Guam Accounting Office. If doubts remain, seek advice from the Comptroller.

(e) The liability of accountable officers is statutory. Agencies cannot shield officers from liability through devices such as Memoranda of Understanding.

§ 14113. Obtaining Relief from Liability.

Relief may be granted if under the following circumstances and conditions:

(a) (1) an improper certification was based on official records, and

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(2) the officer did not know or could not by reasonable diligence and inquiry have discovered that the information was incorrect; or

(b) (1) the obligation was incurred in good faith, (the officer had no reason to doubt his authority to make the certification);

(2) payment was not prohibited by law;

(3) the government of Guam received some benefit; and

(4) the agency made diligent efforts to collect the debt.

§ 14114. Statutory Standard for Relief.

(a) The request for relief must be sent by the agency head and must contain evidence sufficient for the Comptroller to independently determine that the standards for relief have been met. Relief for disbursing officers is governed by the statute distinguishing between physical losses and erroneous payments. The distinction is important because it determines which agency may grant relief. Departments may grant relief for physical losses, but only the Comptroller may grant relief for erroneous payments.

(b) The authority of agencies to treat deficiencies as physical losses is limited: it includes loss by theft, burglary or in shipment; loss by fire, accident or natural disaster; a shortage or deficiency with absolutely no evidence to explain the discrepancy; and loss resulting from fraud or embezzlement by subordinate personnel.

(c) Erroneous Payments Result from the Disbursement of Public Funds. Losses from cashing checks, whether from fraud or insufficient funds, are disbursements and are therefore treated as erroneous payments. Relief for improper payments is granted by the Comptroller, if the payment was not the result of bad faith or lack of due care on the part of the accountable officer. Relief may be denied if collection action has not been diligently pursued. The Comptroller may order the adjustment of the appropriate fund. If relief is denied, an offset of up to fifteen percent (15%) from the accountable officer's salary is specifically authorized to recover the debt owed as a result of the loss. The offset is required to be initiated immediately.

(d) Superior Court of Guam.

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(1) The Superior Court of Guam shall have jurisdiction over the claims of disbursing officers for relief from responsibility for the loss of government funds, vouchers or other papers in the line of duty.

(2) Whenever the court finds that a loss by a disbursing officer was without the fault or negligence of the officer, it shall render a judgment requiring the government of Guam Accounting Office to credit the officer's accounts for that amount in settlement of the accounts.

§ 14115. Bases for Relief.

(a) Relief is a matter of equity and is fact specific.

(b) Because an accountable officer is strictly liable, a loss or deficiency raises a refutable presumption of negligence. The accountable officer must affirmatively show that there was no negligence, bad faith or fraud.

(1) Negligence.

(A) Gross negligence is not required for liability. Simple negligence on the part of the accountable officer is sufficient to bar relief.

(B) If there is negligence, it must be the proximate cause of the loss.

(C) The Comptroller can allow relief when it is shown that more than one (1) person had access to the funds or that there is pervasive laxity in the security procedures of the office and that laxity is the proximate cause of the loss.

(D) Relief may not always be granted in cases of pervasive laxity because an accountable officer has a duty to report security weaknesses to appropriate supervisory personnel, and to make the best of the security conditions available, however inadequate. The determination of whether to grant relief may turn on whether that duty has been breached.

(2) Bad Faith or Fraud.

(A) The officer is liable only for the amount of the overpayment.

(B) The use of due care is the basis of relief. Relief will not be granted on the basis of:

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(i) inadequate training or inexperience; however, entrusting funds to an inexperienced or incapable subordinate may make a supervisor equally liable for the loss;

(ii) hardship of repayment by the accountable officer;

(iii) heavy workload; or

(iv) an exemplary work history.

(c) Statute of Limitations.

(1) The accountable officer's account is considered settled after a three (3) year period.

(2) The Comptroller is without authority to grant relief after the three (3) year period. An agency must therefore report financial irregularities to the Comptroller within two (2) years of the time it receives a substantially complete account.

(3) The statute of limitations only applies to cases involving erroneous payments made by accountable officers; and does not apply to losses from disbursements involving fraud or criminal activity,

(A) on the part of the accountable officer, by the terms of the statute,

(B) or on the part of a subordinate personnel, which are considered physical losses.

(d) Physical Losses. The Comptroller considers the agency to have received an account at the time the agency's accounts are substantially complete, whether or not they are properly documented or filed, or at the later of:

(1) when an accountable officer certifies a periodic statement of accountability, or

(2) when an agency receives the information placing it on notice that a deficiency exists:

(A) if the deficiency is the result of a duplicate payment or forgery, when the agency receives notice of the loss from the Treasury,

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(B) if the deficiency is the result of fraud, embezzlement or criminal activity, when the loss is discovered and reported to the appropriate agency officials,

(C) a delay in receiving documentation supporting the statement of accountability will suspend the running of the statute:

(i) Only the Comptroller, not the agency, can suspend the running of the statute of limitations. An agency's attempt to hold the officer liable will not toll the statute.

(ii) Liability must be established within the three (3) year period. Collection of the deficiency from the officer need not start or finish within the three (3) year period.

§ 14116. Procedures.

Automation has changed the approach of government protection against legal liability. Requests should be supported by all documents and facts relevant to the decision. If the requesting official fails to present any known facts pertinent to the decision and the payment later becomes challenged and deemed illegal, improper or incorrect, the official will not be granted relief or protection against liability. The Head of an agency may delegate an agency official to advise Disbursing or Certifying Officers in cases involving payments of Twenty-five Dollars (\$25.00) or less. Written notification of a recommendation should be provided by the agency official and the recommendation should be attached to the voucher as supporting documentation in the event legal questions arise in the future.

§ 14117. Violations.

In addition to any penalty contained in any other provisions of Guam law, any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this Chapter may be fined, suspended or removed from office or employment in the manner provided by law.

§ 14118. Inconsistent Laws Superseded.

All laws and parts of laws of Guam inconsistent with this Chapter are superseded.

§ 14119. Severability.

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If any provision of this Law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.

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**ARTICLE 2
BONDS OF PUBLIC OFFICERS**

- § 14201. Bonding of Officers and Employees.
- § 14202. Amount of Bond Determined.
- § 14203. Filing and Approval of Bonds: Register of Bonds.
- § 14204. Payment of Premiums.

§ 14201. Bonding of Officers and Employees.

Effective February 1, 1984, all officers and employees of the government of Guam who serve as certifying and/or disbursing officers or who handle public funds in any manner whatsoever shall be properly bonded against any loss of money or other property which the said government of Guam shall sustain through any negligent, fraudulent or dishonest act or acts committed by any of such employees, acting alone or in collusion with others.

SOURCE: GC § 6260, as added by P.L. 12-34, amended by P.L. 15-125 and further amended by P.L. 17-26.

§ 14202. Amount of Bond Determined.

The amount of bond for each officer and employee of the government of Guam covered by this Subchapter, shall be determined by the Director of Administration with the approval of the Governor.

SOURCE: GC § 6261, as added by P.L. 12-34.

§ 14203. Filing and Approval of Bonds: Register of Bonds.

(a) Every bond required by virtue of this Article, shall be filed in the office of the Director of Administration who shall approve such bonds as to form and execution and as to the sufficiency of the sureties thereon.

(b) A proper register of such bonds shall be kept in the office of the Director of Administration, and a copy of the register furnished to the Territorial Auditor by the Director of Administration.

SOURCE: GC § 6262, as added by P.L. 12-34.

NOTE: Office of the Territorial Auditor was abolished by P.L. 17-7.

§ 14204. Payment of Premiums.

Funds shall be appropriated in the annual budgets of the government of Guam to pay the cost of premiums covering bonds required by virtue of this Article.

SOURCE: GC § 6263, as added by P.L. 12-34.
