

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS



COMMONWEALTH REGISTER

VOLUME 43
NUMBER 11
NOVBER 28, 2021

COMMONWEALTH REGISTER

VOLUME 43
NUMBER 11
NOVEMBER 28, 2021

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NORTHERN MARIANAS HOUSING CORPORATION

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PUBLIC NOTICE

EMERGENCY AMENDMENTS TO PROCUREMENT REGULATIONS FOR THE NORTHERN MARIANAS HOUSING CORPORATION

EMERGENCY ADOPTION AND IMMEDIATE EFFECT: The Northern Marianas Housing Corporation (NMHC) finds that:

(1) the attached Amendments to its Procurement Regulations for the Northern Marianas Housing Corporation (NMHC), shall be adopted immediately on an emergency basis because the public interest so requires, for the reasons stated below. 1 CMC § 9104(b), (c) and 1 CMC § 9105(b)(2)); and

(2) the same proposed Amendments to its Procurement Regulations shall be adopted, after a proper notice and comment period, as permanent regulations pursuant to the Administrative Procedure Act, 1 CMC § 9104(a).

AUTHORITY: These proposed regulations are promulgated under the authority of the Board of Directors, through its Chairperson, to promulgate rules and regulations pursuant to 2 CMC § 4433(t).

The Administrative Procedure Act provides that an agency may adopt an emergency regulation upon fewer than 30 days' notice if it states its reasons in writing:

(1) If an agency finds that the public interest so requires, or that an imminent peril to the public health, safety, or welfare requires adoption of a regulation upon fewer than 30 days' notice, and states in writing its reasons for that finding, it may, with the concurrence of the Governor, proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency regulation. The regulation may be effective for a period of not longer than 120 days, but the adoption of an identical regulation under subsections (a)(1) and (a)(2) of this section is not precluded.

(2) No regulation adopted is valid unless adopted in substantial compliance with this section.

1 CMC § 9104(b), (c).

THE TERMS AND SUBSTANCE: The Amendments to the Procurement Rules and Regulations affect the regulations relating to Small Purchases (NMIAC § 100-60-220(c)) and

Construction Procurement – Contract Performance and Payment Bonds (NMIAC § 100-60-301 (c)).

THE SUBJECTS AND ISSUES INVOLVED: The Amendments modify the regulations set forth for Small Purchases and Construction procurement.

ADOPTION OF EMERGENCY REGULATIONS FOR 120 DAYS: The Northern Marianas Housing Corporation “NMHC” has followed the procedures of 1 CMC § 9104(b) to adopt these Proposed Regulations on an emergency basis for 120 days.

REASONS FOR EMERGENCY ADOPTION: The Northern Marianas Housing Corporation (NMHC) finds that the public interest requires adoption of these Amendments to the Procurement Regulations on an emergency basis, for the following reasons:

1. NMHC must be able to use a modified Small Purchase and Construction Procurement procedures in a more efficient manner due to the time constraints of the Community Development Block Grant-Disaster Relief funding programs. Over \$123 million has been allocated to the Housing Program alone and there are time constraints on using the money. In order to expend this funding in the next five (5) years, a more efficient procurement process must be established while at the same time, the federal interest of the grantor agency is protected. It is in the public interest to create this more efficient process immediately to avoid losing any funds. To that end –
 - a. With the Amendments, NMHC procurement regulations will include federal prevailing Simplified Acquisition Threshold (SAT) and Simplified Acquisition Procedures (SAP) as authorized by 2 CFR 200.88;
 - b. By including SAT and SAP, and aligning the affected regulations with federal and CNMI procurement regulations, the Amendments will facilitate and speed up public infrastructure and housing construction projects funded by Community Development Block Grant Disaster Recovery (CDBG-DR) funds, other federal funds, or NMHC funds; and
 - c. The Amendments will ensure procurement regulatory uniformity and conformity with HUD requirements by partner government entities receiving CDBG-DR funds as local match and that may be utilizing NMHC and CNMI procurement regulations.

DIRECTIONS FOR FILING AND PUBLICATION: The Amendments to NMHC’s Procurement Regulations shall be published in the Commonwealth Register in the section/s on emergency and proposed regulations (*see* 1 CMC § 9102(a)(1)) and posted in convenient places in the Civic Center and in local government offices in each senatorial district. (1 CMC § 9104(a)(1))

The Northern Marianas Housing Corporation (NMHC) shall take appropriate measures to make these Rules and Regulations known to the persons who may be affected by them (1 CMC 9105(b)(2)).

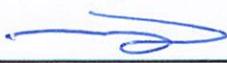
IMMEDIATE EFFECT: These emergency rules and regulations become effective immediately upon filing with the Commonwealth Register and delivery to the Governor. (1 CMC § 9105(b)(2)) The Northern Marianas Housing Corporation (NMHC) has found that this effective

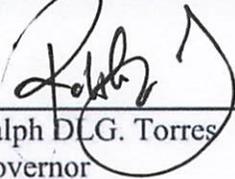
date is required by the public interest or is necessary because of imminent peril to the public health, safety, or welfare. (*Id.*)

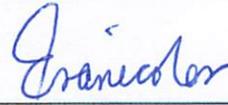
TO PROVIDE COMMENTS: No comments are required for these emergency rules and regulations. However, the related Notice of Proposed Amendments to the Procurement Regulations will specify comment procedures. Please see the notice regarding these emergency Amendments to the Procurement Regulations being presented as proposed regulations, in the November 2021, Commonwealth Register.

The attached emergency regulations were approved by the Northern Marianas Housing Corporation (NMHC) on October 15, 2021.

Submitted by:  11-22-21
Eric Reyes
Acting Chairman
NMHC Board of Directors
Date

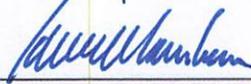
Received by:  11/23/21
Mathilda A. Rosario
Special Assistant for Administration
Date

Concurred by:  24 NOV 2021
Ralph DLG. Torres
Governor
Date

Filed and Recorded by:  11.28.2021
ESTHER R.M. San Nicolas
Commonwealth Registrar
Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3), the proposed Amendments to the Procurement Regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

Dated the 29 day of November, 2021.


EDWARD MANIBUSAN
Attorney General

**Proposed Amendments to NMIAC Title 100
Northern Marianas Housing Corporation
Procurement Regulations
Subchapter 100-60
Sections 100-60-220(c) and 100-60-301(c)**

Regulation	Current Language	Proposed Amendment #1 – Repeal of the current § 100-60-220(c) and replaced with the language below:
§ 100-60-220 (c)	(c) Bidding is not required but is encouraged for procurement over \$3,000.00 and under \$50,000.00. The official with expenditure authority must obtain price quotations from at least three vendors and base the selection on competitive price and quality for procurement valued at \$3,000 to \$50,000. Any price quotations obtained must be written, documented, and submitted for the record.	<p>(c) Bidding is not required but is encouraged for procurement valued at \$250,000.00 or below the <i>Prevailing Simplified Acquisition Threshold set forth in 2 CFR § 200.88</i>, which is periodically updated based on inflation.</p> <p>(1) Simplified Acquisition Threshold (SAT). The simplified acquisition threshold authorizes purchase of goods, services, or property using small purchase procurement method not to exceed the prevailing SAT threshold (\$250,000).</p> <p>(2) Simplified Acquisition Procedures.</p> <p>(i) The official with expenditure authority must obtain price quotations from at least three vendors and base the selection on competitive price and quality for procurement valued at no more than the prevailing SAT (\$250,000). Any price quotations obtained must be written, documented, and submitted for the record.</p> <p>(ii) The official with expenditure authority shall document all informal solicitation of bids/prices obtained through Request for Quotations (RFQs) and solicitation information shall be uniform and consistent for all vendors.</p> <p>(iii) The official with expenditure authority shall perform and document cost/price reasonableness.</p> <p>(iv) The official with expenditure authority shall ensure that required and applicable federal contracting language, e.g., Davis Bacon and Related Acts, is in the contract.</p>

		(v) The prevailing SAT includes modifications, e.g., change orders, that increase total cost.
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Regulation	Current Language	Proposed Amendment #2 – Repeal of the current language of NMIAC § 100-60-301(c) and replaced with the language below:
<p>§ 100-60-301 (c)</p>	<p>(c) Contract Performance and Payment Bonds.</p> <p>(1) When a construction contract is awarded in excess of \$25,000.00, the following bonds or security shall be delivered to the NMHC and shall become binding on the parties upon the execution of the contract:</p> <p>(i) A performance bond satisfactory to the NMHC pursuant to subsection (c)(2) below, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the NMHC, in an amount equal to one hundred percent (100%) of the price specified in the contract; and</p> <p>(ii) A payment bond satisfactory to the NMHC pursuant to subsection (c)(2) below, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the NMHC, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.</p> <p>(2) Acceptability of payment and performance bonds. The Procurement Officer shall ensure that the bonding company's pledged assets are sufficient to cover the bond obligation. Prior to the execution of the contract, the Procurement Officer shall require the selected contractor to submit:</p> <p>(i) A current license from the bonding company showing that it has authority to issue bonds, and</p> <p>(ii) A certification from the bonding company that the unencumbered value of its assets (exclusive of all outstanding commitments on other bond obligations) exceed the penal amount of each bond.</p>	<p>(c) For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, HUD may accept the bonding policy and requirements of NMHC provided that HUD has made a determination that the Federal interest is adequately protected.</p> <p>If such a determination has not been made, the minimum requirements must be as follows:</p> <p>(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.</p> <p>(2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.</p> <p>(3) A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.</p> <p>(4) The Procurement Officer shall ensure that the bonding company's pledged assets are sufficient to cover the bond obligation. Prior to the execution of the contract, the</p>

	<p>(3) A contractor submitting an unacceptable payment or performance bond may be permitted a reasonable time, as determined by the Procurement Officer, to substitute an acceptable bond prior to executing a contract. When evaluating payment and performance bonds, the Procurement Officer, to substitute an acceptable bond prior to executing a contract. When evaluating payment and performance bonds, the Procurement Officer shall confirm the acceptability of the bonding company from other government agencies, such as the Insurance Office under the Department of Commerce.</p>	<p>Procurement Officer shall require the selected contractor to submit:</p> <ul style="list-style-type: none">(i) A current license from the bonding company showing that it has authority to issue bonds, and(ii) A certification from the bonding company that the unencumbered value of its assets (exclusive of all outstanding commitments on other bond obligations) exceed the penal amount of each bond.
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Commonwealth Utilities Corporation
P. O. Box 501220, Third Floor, Joeten Dandan Building, Saipan, MP 96950
Tel: (670) 664-4282 • Fax: (670) 235-5131
CUC is an Equal Opportunity Provider and Employer.



**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS
OF THE COMMONWEALTH UTILITIES CORPORATION**

**PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED
AMENDMENTS TO THE PROCUREMENT REGULATIONS OF THE
COMMONWEALTH UTILITIES CORPORATION**

Volume 43, Number 09, pp 047636-047649, of September 28, 2021

Amendments to the Commonwealth Utilities Corporation's Procurement Regulations

ACTION TO ADOPT PROPOSED REGULATIONS: Pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a), the Commonwealth Utilities Corporation ("CUC") HEREBY ADOPTS AS PERMANENT the Proposed Amendments to CUC's Procurement Regulations which were published in the Commonwealth Register at the above-referenced pages. CUC announced that it intended to adopt them as permanent, and now does so.

I also certify by signature below that as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Amendments to CUC's Procurement Regulations, and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The proposed regulations were published as Volume 43, Number 09, pp 047636-047649, of September 28, 2021 of the Commonwealth Register.

COMMENTS, MODIFICATION, AND AGENCY CONCISE STATEMENT, IF ANY: During the 30-day comment period, the CUC received no comments regarding the proposed regulations as referenced above. No individual requested a concise statement of the principal reasons for or against the adoption of the proposed regulations.

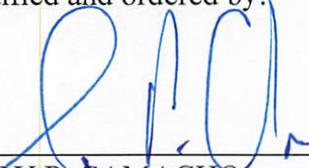
AUTHORITY: The proposed regulations and amendments have been fully reviewed by the CUC Board of Directors, which exercises all powers vested in the Commonwealth Utilities Corporation. During the Board of Director's meeting held on September 2, 2021, the Board of Directors approved the proposed amendments to CUC's Procurement Regulations for publication in the Commonwealth Register for notice and comment pursuant to the Administrative Procedure Act and for approval by the Attorney General pursuant to 1 CMC § 2153(e). The Commonwealth Utilities Corporation has the authority to promulgate these regulations pursuant to 4 CMC §§ 8122 and 8123.

EFFECTIVE DATE: Pursuant to the Administrative Procedures Act, 1 CMC § 9105(b), these adopted regulations are effective 10 days after compliance with the Act, 1 CMC §§ 9102, and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

ATTORNEY GENERAL APPROVAL FOR NON-MODIFIED REGULATIONS: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC § 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law.). As such, further approval is not required.

I DECLARE under penalty and perjury that the foregoing is true and correct and that this declaration was executed on the 12th day of November, 2021, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:



GARY P. CAMACHO
Executive Director
Commonwealth Utilities Corporation

11/12/2021
Date

Filed and recorded by:



ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

11.15.2021
Date



Commonwealth Healthcare Corporation
Commonwealth of the Northern Mariana Islands
1 Lower Navy Hill Road Navy Hill, Saipan, MP 96950



**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION
OF RULES AND REGULATIONS OF
THE COMMONWEALTH HEALTHCARE CORPORATION**

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED RULES AND REGULATIONS
Volume 43, Number 10, pp. 0477018-0477026, of October 28, 2021

**AMENDMENTS TO THE CHCC CHARGEMASTER
FOR VARIOUS NEW SERVICES**

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, COMMONWEALTH HEALTHCARE CORPORATION ("CHCC"), HEREBY ADOPTS AS PERMANENT regulations the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The CHCC announced that it intended to adopt them as permanent, and now does so. (Id.) A true copy is attached. I also certify by signature below that:

as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations,

and that they are being adopted as published.

PRIOR PUBLICATION: The prior publication was as stated above.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None.

AUTHORITY: The Corporation is empowered by the Legislature to adopt these rules and regulations pursuant to 3 CMC Section 2826(c).

EFFECTIVE DATE: Pursuant to the APA, 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the Corporation has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the Corporation, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a

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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
OFFICE OF THE ATTORNEY GENERAL



NOTICE OF CERTIFICATION AND ADOPTION
OF RULES AND REGULATIONS
OF THE BOARD OF REGISTRATION
FOR VARIOUS NEW SERVICES

THE BOARD OF REGISTRATION FOR VARIOUS NEW SERVICES
HAS ADOPTED THE FOLLOWING RULES AND REGULATIONS
WHICH ARE HEREBY CERTIFIED AND ADOPTED AS
THE RULES AND REGULATIONS OF THE BOARD

THE BOARD OF REGISTRATION FOR VARIOUS NEW SERVICES
HAS ADOPTED THE FOLLOWING RULES AND REGULATIONS
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Civil Division
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DATE 11/22/21

concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153(e)

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 22 day of November, 2021 at Saipan, Commonwealth of the Northern Mariana Islands.

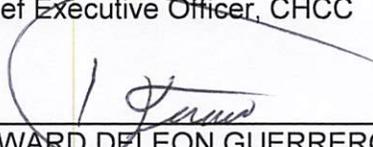
Certified and ordered by:



ESTHER L. MUNA
Chief Executive Officer, CHCC

Nov. 22, 2021

Date



EDWARD DELEON GUERRERO
Chairman, CHCC Board of Trustees

11/22/21

Date

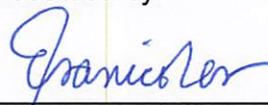
Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

Dated the 23 day of Nov, 2021.



EDWARD MANIBUSAN
Attorney General

Filed and
Recorded by:



ESTHER M. SAN NICOLAS
Commonwealth Registrar

11.23.2021

Date

P.O. Box 500409 CK, Saipan, MP 96950
Telephone: (670) 236-8201/2 FAX: (670) 233-8756



Commonwealth of the Northern Mariana Islands
Department of Finance

David DLG Atalig, Secretary of Finance
P.O. Box 5234,
CHRB Dandan Commercial Center, Saipan, MP 96950
Tel: 664.1100

**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION
OF REGULATIONS OF
The Department of Finance, Division of Revenue and Taxation**

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
Volume 43, Number 10, pp 0477027-0477087, of October 28, 2021

Regulations of the Department of Finance: Chapter 70-40.6 Revenue and Taxation

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Finance ("DOF"), HEREBY ADOPTS AS PERMANENT the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The DOF announced that it intended to adopt them as permanent, and now does so. (Id.) I also certify by signature below that:

as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The prior publication was as stated above.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None

AUTHORITY: These regulations are promulgated under the authority set forth in the Commonwealth Code including, but not limited to, 1 CMC § 2553, 1 CMC § 2557, 1 CMC § 25201, 4 CMC § 1104, 4 CMC § 1402, 4 CMC § 1425 and 4 CMC § 1820.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC § 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

Department of the Attorney General
Civil Division
Washington, D.C.

SUBJECT: [Illegible]

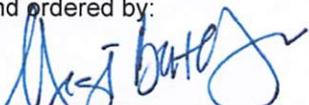
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Civil Division
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BY: *EW* DATE: *11/20/21*

ATTORNEY GENERAL APPROVAL for non-modified regulations or regulations with non-material modification: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC § 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 30th day of November, 2021, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:



Margaret Bertha C. Torres
Acting Secretary of Finance

November 30, 2021
Date

Filed and
Recorded by:



Esther SN. Nesbitt
Commonwealth Registrar

11.28.2021
Date



NORTHERN MARIANAS HOUSING CORPORATION

P.O. BOX 500514, Saipan, MP 96950-0514

Email: nmhc@nmhc.gov.mp

Website: <http://www.nmhc.gov.net>

Tels: (670) 234-9447

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Fax: (670) 234-9021

PUBLIC NOTICE OF PROPOSED ADOPTION OF AMENDMENTS TO PROCUREMENT REGULATIONS FOR THE NORTHERN MARIANAS HOUSING CORPORATION PROCUREMENT REGULATIONS

Notice of Intended Action: The Board of Directors of the Northern Marianas Housing Corporation intends to adopt the following amendments to NMHC's Procurement Regulations pursuant to the Administrative Procedure Act, 1 CMC § 9104(a). If adopted, these Amendments to the Regulations will become effective ten (10) calendar days after publication of a Notice of Adoption in the Commonwealth Register after compliance with 1 CMC §§ 9102, 9104(a), and 9105(b).

Authority: The proposed Amendments are promulgated under the authority of the Board of Directors, through its Chairperson, to promulgate rules and regulations pursuant to 2 CMC § 4433(t).

Terms and Substance: The proposed Amendments to the Procurement Rules and Regulations affect the regulations relating to Small Purchases and Construction Procurement.

Citation of Related and/or Affected Statutes, Rules and Regulations. The proposed Amendments were formulated to amend NMHC's Procurement Regulations, namely, NMIAC §§ 100-60-220 (c) (Small Purchases) and 100-60-301(c) (Construction Procurement – Contract Performance and Payment Bonds).

Directions for Filing and Publication: These proposed Amendments to the Procurement Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district; the Public Notice of Proposed Adoption shall be both in English and in the principal vernacular (1 CMC § 9104(a)(1)).

Comments: Interested parties may submit written comments on the proposed amendments to Jesse S. Palacios, Corporate Director, NMHC, to the following address, fax or email address, with the subject line "Proposed Amendments to the NMHC Procurement Regulations:"

NORTHERN MARIANAS HOUSING CORPORATION

PO Box 500514

Saipan, MP 96950

Fax: 234-9021

Email address: jspalacios@nmhc.gov.net

MEMBERS MANAGING INSURING CORPORATION

1100 BOX 300-1111, Suite 1100, 90000-1111

Phone: (800) 555-1234

Website: www.mimc.com

MEMBER SERVICE
DEPARTMENT

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CIVIL DIVISION

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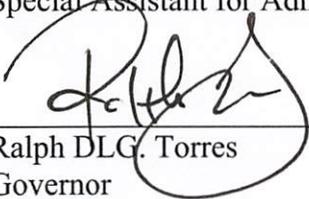
BY: [Signature] DATE: 11/20/20

Comments, data, views, or arguments are due within thirty (30) calendar days from the date of publication of this notice. 1 CMC § 9104(a)(2). If you have any questions, you may reach NMHC at telephone nos. 234-6866/234-9447, 234-7689.

The attached proposed Amendments to the Procurement Regulations were approved by the Northern Marianas Housing Corporation (NMHC) on October 15, 2021.

Submitted by:  11.22.21
Eric Reyes
Acting Chairman
NMHC Board of Directors
Date

Received by:  11/23/21
Mathilda A. Rosario
Special Assistant for Administration
Date

Concurred by:  24 NOV 2021
Ralph DLG. Torres
Governor
Date

Filed and Recorded by:  11.28.2021
Esther R.M. San Nicolas
Commonwealth Registrar
Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3) the proposed Amendments to the Procurement Regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

Dated the 29 day of November, 2021.


EDWARD MANIBUSAN
Attorney General



NORTHERN MARIANAS HOUSING CORPORATION

P.O. BOX 500514, Saipan, MP 96950-0514

Email: nmhc@nmhc.gov.mp

Website: <http://www.nmhc.gov.net>

Tels: (670) 234-9447

234-6866

Fax: (670) 234-9021

NUTISIAN PUBLIKU

I MANMAPROPRONI NA REGULASION PARA HU MA ADAPTA I TINILAIKAN I REGULASION PROCUREMENT SIHA GI NORTHERN MARIANAS HOUSING CORPORATION

NOTISIA I MA'INTENSION NA AKSION: I Kuetpun Direktot siha gi Northern Marianas Housing Corporation maproponi para hu ma adapta i tinattiyi na tinilaikan i NMHC Procurement Regulations sigun para i Aktun Administrative Procedure, 1 CMC § 9104(a). Kumu ma'adapta, esti na regulasion siha para u ifektibu gi hulum dies (10) dihas ni mafetcha dispues di publikasion i Nutisian i Adaptasion gi hulum i Rehistran Commonwealth dispues di compliance yan i CMC §§ 9102 yan 9104 (a), yan 9105(b).

ATURIDAT: Esti na maproponi na tinilaika manmacho'gui gi papa' i aturidat i Kuepun Direktot siha, ginin iyon-niha Chairperson, para u macho'gui i areklamentu yan regulasion siha sigun para i 2 CMC § 4433 (i).

I TEMA YAN SUSTANSIAN I PALABRA SIHA: Esti i maproponi na tinilaika gi regulasion procurement para hu afekta i regulasion Small Purchases yan Construction Procurement.

SITASION I ASOSIAT YAN/PAT I MANINA'FEKTA NA STATUTES, AREKLAMENTU YAN REGULASION SIHA: I maproponi na regulasion siha para hu amenda i regulasion procurement gi NMIAC §§ 100-6-220 (c) (Small Purchases) yan 100-60-301(c) (Construction Procurement - Contract Performance and Payment Bonds).

DIREKSION SIHA PARA U MAPO'LU YAN PUBLIKASION: Esti i maproponi na amendan regulasion debi na u mapublika gi hulum i Rehistran Commonwealth gi hulum seksion i maproponi yan nuebu na ma'adapta na regulasion siha (1 CMC § 9102(a)(1) yan u mapega gi hulum i mangkumbinienti na lugat gi hulum i Civic Center yan i hulum ufisinan gubietnamentu siha gi kada distritun senadot; i nutisian publiku pot i propositun adaptasion debi na gi finu' English yan i dos na lingguahi Chamorro yan Refaluwasch. (1 CMC § 9104(a)(1)).

PARA U MAPRIBENIYI UPIÑON SIHA: I intirisao na petsona siha siña muna'hulum tinigi' upiñon siha put i manmaproponi na amendasion siha guatu gi as Jesse S. Palacios, Corporate Director, NMHC gi sigienti na address, fax, pat email address, yan i rayan suhetu "Proposed Amendments to the NMHC Regulations."

NORTHERN MARIANAS HOUSING CORPORATION
PO Box 500514
Saipan, MP 96950
Fax: 234-9021
Email address: jspalacios@nmhcgov.net

I upiñon, infotmasion yan kumtestasion siha debi na u fanhålum gi hålum trenta (30) dihas ginin i fetchan pupplikasion esti na nutisia. Kumu guaha maseha håfa na kuestion-mu, siña un hågan i NMHC gi numerun tilifon gi 234-6866/234-9447, 234-7689.

Esti na mapropoponi na amendasion para i Procurement Regulations ma aprueba ni Northern Marianas Housing Corporation (NMHC) gi Octubre 15, 2021.

Nina'halum as:



Eric Reyes
Acting-Kabesiyu
Kuetpun Mandirektot NMHC

Fetcha: 11.22.21

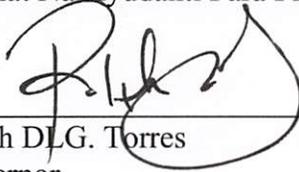
Rinisibi as:



Mathilda A. Rosario
Ispisiåt Na Ayudånti Para I Atministrasion

Fetcha: 11/23/21

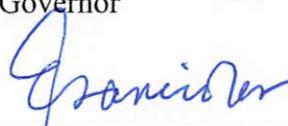
Konfotme as:



Ralph DLG. Torres
Governor

Fetcha: 24 NOV 2021

Pine'lu yan
Ninota as:



Esther R.M. San Nicolas
Rehistran Commonwealth

Fetcha: 11.28.2021

I Abugådu Heneråt CNMI ha' sitifikåo, sigun para i 1 CMC § 2153(e) yan 1 CMC § 9104(a)(3), yan ha' ribisa yan aprueba esti siha na propositun amedasion i Procurement Regulations kumu para u fotma yan ligåt na sufisienti pues para hu ma publika (1 CMC § 2153(f) (publikasion areklamento yan regulasion)).



EDWARD MANIBUSAN
Abugådu Heneråt

Fetcha: 11/29/2021



NORTHERN MARIANAS HOUSING CORPORATION

P.O. BOX 500514, Saipan, MP 96950-0514

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Website: <http://www.nmhc.gov.net>

Tels: (670) 234-9447

234-6866

Fax: (670) 234-9021

ARONGORONGOL TOULAP REEL POMWOL ADOPTION REEL IKKAAL LLIWEL LLÒL MWÒGHÚTÚGHÚTÚÚL PROCUREMENT NGALI NORTHERN MARIANAS HOUSING CORPORATION MWÒGHÚTÚGHÚTÚÚL PROCUREMENT

Arongorong reel Màngemàngil Mwòghùt: Board of Directors sàngi Northern Marianas Housing Corporation e màngiiy ebwe adopt ikkaal lliiwel ngàli NMHC's Mwòghùtùghùtùl Procurement sàngi Administrative Procurement Act, 1 CMC § 9104(a) ngare a adopt lò lliiwel kkaal me mwòghùtùghùtùl nge ebwe bwungulò lòll seigh(10) ral mwiril arongorongol iyeel adoption, mellol Commonwealth Register mwiril angùngù fengàl me 1 CMC § § 9102, 9104(a) bwal 9105(b).

Bwangil: Reel pomwol Lliiwel a akkatèèlò faal bwàngil Board of Directors, mereel Chairperson, reel ebwe akkatèèlò afal me mwòghùtùghùtùl aileewal mereel 2 CMC § 4433(t).

Kkapsal me Aweeweel: Reel pomwol Lliiwel kkaal reel afal me mwòghùtùghùtùl Procurement reel ebwe affect ikkaal mwòghùtùghùtùl kka eghil ngàli Small Purchase bwal Construction Procurement.

Citation reel ikka eghil me/ngare Affected Statutes, Afal me Mwòghùtùghùtùl: Reel pomwol lliiwel kkaal a ammwalaalò reel ebwe lliiwel NMHC's Mwòghùtùl Procurement, maas ngàli, NMIAC § § 100-60-220(c) (Small Purchases) bwal 110-60-30(c) (Construction Procurement-Contract Performance me Payment Bonds).

Afal reel Ammwelil me Akkatèèwowul: Reel ikkaal pomwol Lliiwel me Mwòghùtùghùtùl Procurement a akkatèèlong Commonwealth Register lòll tàlil pomwol me ffèetàal yaal adopted ikkaal mwòghùtùghùtùl (1 CMC § 9102(a) (1) me ebwe appaschetà llòl ghal ikkeey bwuley civic center bwal government offices llòl ghal ikkeey senatorial district; Arongorongol Toulap reel Pomwol Adoption nge ebwe sàssàl llòl kkapsal English bwal llòl Mwaleyasch (1 CMC § 9104(a)(1)).

Kkapas: Schòò kka re tipeli rebwe ischilong jaar kkapas reel ikkaal pomwol lliiwel ngali Jesse S. Palacios Corporate Director, NMHC, reel ikkeey address, fax ngare eew email, ebwe lo subject line ebwe "Pomwol Lliiwel reel NMHC Mwòghùtùghùtùl Procurement"

NORTHERN MARIANAS HOUSING CORPORATION

PO Box 500514

Saipan, MP 96950

Fax: 234-9021

Email address: jspalacios@nmhc.gov.net

Kkapas, data, views, ngare eew wosommwòng ebwe isiisilong llòl eliigh(30) ral sàngi bweletàal yaal arongowow iyeel arongorongol toulap. 1 CMC § 9104(a)(2). Ngare eghal yoor yòòm w aiyegh, emmwel ubwe ffaingì NMHC reel telephone kkaal. 234-6866 / 234-9447, 234-7689.

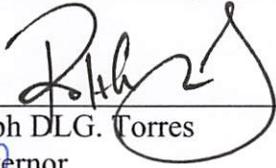
Ikkaal pomwol Lliiwel reel Mwòghùtùghùtùl Procurement a lleghelo mereel Northern Marianas Housing Corporation (NMHC) wòòl October 15, 2021.

Isaliyalong: 
Eric Reyes
Acting Chairman
NMHC Board-il Directors

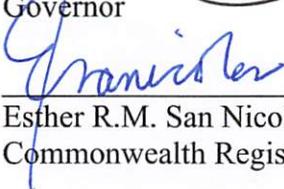
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Ràal

Bwugiyal: 
Mathilda A. Rosario
Special Assistant ngàli Administration

11/23/21
Ràal

Alùghùlùgh: 
Ralph DLG. Torres
Governor

24 NOV 2021
Ràal

Ammwelil: 
Esther R.M. San Nicolas
Commonwealth Registrar

11-28-2021
Ràal

Ailewal 1 CMC § 2153(e) me 1 CMC § 9104(a)(3) ikkaal pomwol Lliiwel reel Mwòghùtùghùtùl Procurement a takkal amweril me llèghèlè reel ebwe afiisi me legal sufficiency iye toowow mereel CNMI Attorney General me ebwe published (1 CMC § 2153(f) (akkatèèlòòl afal me mwoghtughutul).

Ral ye 29 llòl November, 2021.


EDWARD MANIBUSAN
Soulemelemil Allègh Lapalap

**Proposed Amendments to NMIAC Title 100
Northern Marianas Housing Corporation
Procurement Regulations
Subchapter 100-60
Sections 100-60-220(c) and 100-60-301(c)**

Regulation	Current Language	Proposed Amendment #1 – Repeal of the current § 100-60-220(c) and replaced with the language below:
§ 100-60-220 (c)	(c) Bidding is not required but is encouraged for procurement over \$3,000.00 and under \$50,000.00. The official with expenditure authority must obtain price quotations from at least three vendors and base the selection on competitive price and quality for procurement valued at \$3,000 to \$50,000. Any price quotations obtained must be written, documented, and submitted for the record.	<p>(c) Bidding is not required but is encouraged for procurement valued at \$250,000.00 or below the <i>Prevailing Simplified Acquisition Threshold set forth in 2 CFR § 200.88</i>, which is periodically updated based on inflation.</p> <p>(1) Simplified Acquisition Threshold (SAT). The simplified acquisition threshold authorizes purchase of goods, services, or property using small purchase procurement method not to exceed the prevailing SAT threshold (\$250,000).</p> <p>(2) Simplified Acquisition Procedures.</p> <p>(i) The official with expenditure authority must obtain price quotations from at least three vendors and base the selection on competitive price and quality for procurement valued at no more than the prevailing SAT (\$250,000). Any price quotations obtained must be written, documented, and submitted for the record.</p> <p>(ii) The official with expenditure authority shall document all informal solicitation of bids/prices obtained through Request for Quotations (RFQs) and solicitation information shall be uniform and consistent for all vendors.</p> <p>(iii) The official with expenditure authority shall perform and document cost/price reasonableness.</p> <p>(iv) The official with expenditure authority shall ensure that required and applicable federal contracting language, e.g., Davis Bacon and Related Acts, is in the contract.</p>

		(v) The prevailing SAT includes modifications, e.g., change orders, that increase total cost.
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Regulation	Current Language	Proposed Amendment #2 – Repeal of the current language of NMIAC § 100-60-301(c) and replaced with the language below:
§ 100-60-301 (c)	<p>(c) Contract Performance and Payment Bonds.</p> <p>(1) When a construction contract is awarded in excess of \$25,000.00, the following bonds or security shall be delivered to the NMHC and shall become binding on the parties upon the execution of the contract:</p> <p>(i) A performance bond satisfactory to the NMHC pursuant to subsection (c)(2) below, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the NMHC, in an amount equal to one hundred percent (100%) of the price specified in the contract; and</p> <p>(ii) A payment bond satisfactory to the NMHC pursuant to subsection (c)(2) below, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the NMHC, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.</p> <p>(2) Acceptability of payment and performance bonds. The Procurement Officer shall ensure that the bonding company's pledged assets are sufficient to cover the bond obligation. Prior to the execution of the contract, the Procurement Officer shall require the selected contractor to submit:</p> <p>(i) A current license from the bonding company showing that it has authority to issue bonds, and</p> <p>(ii) A certification from the bonding company that the unencumbered value of its assets (exclusive of all outstanding commitments on other bond obligations) exceed the penal amount of each bond.</p>	<p>(c) For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, HUD may accept the bonding policy and requirements of NMHC provided that HUD has made a determination that the Federal interest is adequately protected.</p> <p>If such a determination has not been made, the minimum requirements must be as follows:</p> <p>(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.</p> <p>(2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.</p> <p>(3) A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.</p> <p>(4) The Procurement Officer shall ensure that the bonding company's pledged assets are sufficient to cover the bond obligation. Prior to the execution of the contract, the</p>

(3) A contractor submitting an unacceptable payment or performance bond may be permitted a reasonable time, as determined by the Procurement Officer, to substitute an acceptable bond prior to executing a contract. When evaluating payment and performance bonds, the Procurement Officer, to substitute an acceptable bond prior to executing a contract. When evaluating payment and performance bonds, the Procurement Officer shall confirm the acceptability of the bonding company from other government agencies, such as the Insurance Office under the Department of Commerce.

Procurement Officer shall require the selected contractor to submit:

- (i) A current license from the bonding company showing that it has authority to issue bonds, and
- (ii) A certification from the bonding company that the unencumbered value of its assets (exclusive of all outstanding commitments on other bond obligations) exceed the penal amount of each bond.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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In Re Matter of:)	
)	Labor Case No. 21-041
Arnel A. Gruspe,)	
)	
Complainant,)	ADMINISTRATIVE DECISION
	)	DISMISSING COMPLAINT FOR LACK
v.	)	OF SUBJECT MATTER JURISDICTION
	)	AND FAILURE TO STATE A CLAIM
Imperial Pacific International (CNMI), LLC,)	
)	
Respondent.)	

This matter came for an Order to Show Cause Hearing on October 26, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Arnel A. Gruspe (“Complainant”) was present and self-represented. Respondent Imperial Pacific International (CNMI), LLC (“Respondent”) was present and represented by Senior Vice President Tao Xing and Human Resource Director Redie Dela Cruz.

On July 15, 2021, Complainant filed a labor complaint for unpaid wages, unsafe working conditions, retaliation, and a violation for 20 CFR § 655.423 regarding employer obligations to foreign national workers. Pursuant to 3 CMC § 4947(a), “the hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit.” Based on the applicable law and available evidence, the undersigned finds dismissal appropriate.

First, with respect to the alleged violations of employer obligations under 20 CFR § 655.423, this office lacks subject matter jurisdiction. The CNMI Department of Labor’s Administrative Hearing Office only has jurisdiction to hear labor violations of CNMI law and regulations. *See* 3 CMC § 4942; *see also* NMIAC § 80-20.1-450; *see also* 42 Com. Reg 044063 (Aug. 28, 2020). The employer obligations under 20 CFR 655.423 were promulgated and enforced by the US Department of Labor (“USDOL”). In order to pursue this claim, Complainant must seek relief with USDOL.

1 Second, with respect to Complainant's other claims, Complainant fails to state a claim
2 within the six-month statute of limitations.¹ Here, Complainant's Intake and Complaint form
3 provide that: (1) Complainant is seeking damages occurring from October 1, 2019 to March 28,
4 2020; and (2) the last date he performed work was March 27, 2020. However, the complaint was
5 not filed until July 15, 2021—well beyond the six-month statute of limitations. Further, there is
6 no showing of good cause for filing late. For that reason, Complainant's claims are time-barred
7 and must be dismissed.

8 After notice and opportunity to be heard, the undersigned finds that dismissal is
9 appropriate. Accordingly, pursuant to 3 CMC § 4947, this complaint is hereby **DISMISSED**,
10 with prejudice. Any person or party aggrieved by this Order may appeal by filing the Notice of
11 Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from
12 the date of this Order.²

13 So ordered this **26th** day of October, 2021.

14 /s/

15 **JACQUELINE A. NICOLAS**
16 Administrative Hearing Officer

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26 ¹ Pursuant to 3 CMC § 4962, “[n]o labor complaint may be filed more than six months after the date of the last-
27 occurring event that is the subject of the complaint, except in cases where the actionable conduct was not discoverable
upon the last-occurring event.” “If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with
prejudice.” NMIAC § 80-20.1-465(e). Emphasis added.

28 ² The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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In Re the Matter of:)	
)	Labor Case No. 21-046
Chun Jee Wong,)	
)	
Complainant,)	ADMINISTRATIVE DECISION
	)	DISMISSING COMPLAINT FOR
v.	)	FAILURE TO STATE A CLAIM
)	
Plumeria International Corporation, Ltd.,)	
)	
Respondent.)	

This matter came for an Order to Show Cause Hearing on November 10, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Chun Jee Wong (“Complainant”) was present and self-represented. Respondent Plumeria International Corporation, Ltd. (“Respondent”) was present and represented by Shun Lin Zeng and Attorney Samuel I. Mok. Also, interpreter Monique Kramer was present.

On August 12, 2021, Complainant filed the above-captioned labor case alleging unpaid wages for over time earned and a violation of the employment preference statute. Based on a review of the filings, the matter was scheduled for the present Order to Show Cause Hearing.¹

With respect to his claim for unpaid wages, Complainant’s allegations are time-barred. Pursuant to 3 CMC § 4962, “[n]o labor complaint may be filed more than six months after the date of the last-occurring event that is the subject of the complaint, except in cases where the actionable conduct was not discoverable upon the last-occurring event.” “If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice.” NMIAC § 80-20.1-465(e). Emphasis added. During the Order to Show Cause Hearing, Complainant confirmed that his claim was based on overtime worked sometime between 2018 to 2020. Complainant’s last

¹ “The hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit.” 3 CMC § 4947.

1 day of work was on or around December 2020. However, Complainant did not file his labor
2 complaint until August of 2021—approximately 2 months after the six-month statute of
3 limitations. Considering that the claim is outside the statute of limitations, Complainant fails to
4 state a claim upon which relief can be granted.

5 Further, with respect to his claim for a violation of the employment preference statute,
6 Complainant misunderstands the applicable law. First, the employment preference law requires
7 CNMI employers to give preferential employment opportunities to U.S. citizens, U.S. permanent
8 residents, and CNMI permanent residents. 3 CMC §§ 4521 et. seq.;² see also NMIAC § 80-20.1-
9 220.³ The employment preference law does not provide any protections or preference to
10 Commonwealth Transitional Only Workers (“CW-1”). See 3 CMC §§ 4521 et. seq; see also
11 NMIAC § 80-20.1-240(f).⁴ During the Order to Show Cause Hearing, Complainant confirmed
12 that he was not a U.S. Citizen, CNMI permanent resident, or US permanent resident. Instead,
13 Complainant stated he was a CW-1 worker at all times relevant to this claim. Considering that
14 Complainant was a CW-1, he does not have standing to initiate a claim for employment
15 preference. Additional allegations cannot cure this deficiency.

16 After notice and opportunity to be heard, the undersigned finds that Complainant fails to
17 state a claim upon which relief can be granted and there is no merit to Complainant’s allegations.
18 Accordingly, pursuant to 3 CMC § 4962 and NMIAC § 80-20.1-465(e), this complaint is hereby
19 **DISMISSED**, with prejudice. Any person or party aggrieved by this Order may appeal by filing
20 the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen
21 (15) days from the date of this Order.⁵

22 So ordered this **10th** day of November, 2021.

23
24 /s/
25 **JACQUELINE A. NICOLAS**
26 Administrative Hearing Officer
27

28 ² “A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S. permanent resident for the job.” 3 CMC § 4528(a) (emphasis added).

³ “Employers shall give qualified citizens, CNMI permanent residents, and U.S. permanent residents preference over foreign national worker, transitional worker, or other nonimmigration aliens.”

⁴ “The employer shall layoff foreign national workers, transitional worker, and other nonimmigrant aliens before laying off citizens, CNMI permanent residents, and U.S. permanent residents”

⁵ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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In Re the Matter of:)	
)	Labor Case No. 21-047
Chun Jee Wong,)	
)	
Complainant,)	ADMINISTRATIVE DECISION
	)	DISMISSING COMPLAINT FOR
v.	)	FAILURE TO STATE A CLAIM
)	
Ping Shun Corporation.,)	
)	
Respondent.)	

This matter came for an Order to Show Cause Hearing on November 10, 2021 at approximately 9:30 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Chun Jee Wong (“Complainant”) was present and self-represented. Respondent Ping Shun Corporation (“Respondent”) was present and represented by Shun Lin Zeng and Attorney Samuel I. Mok. Also, interpreter Monique Kramer was present.

On September 8, 2021, Complainant filed the above-captioned labor case alleging unpaid wages for over time earned and a violation of the employment preference statute. Based on a review of the filings, the matter was scheduled for the present Order to Show Cause Hearing.¹

With respect to his claim for unpaid wages, Complainant’s allegations are time-barred. Pursuant to 3 CMC § 4962, “[n]o labor complaint may be filed more than six months after the date of the last-occurring event that is the subject of the complaint, except in cases where the actionable conduct was not discoverable upon the last-occurring event.” “If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice.” NMIAC § 80-20.1-465(e). Emphasis added. During the Order to Show Cause Hearing, Complainant confirmed that his claim was based on overtime worked sometime between June 2019 to December 2020.

¹ “The hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit.” 3 CMC § 4947.

1 Complainant's last day of work was on or around December 2020. However, Complainant did
2 not file his labor complaint until September of 2021—approximately 3 months after the six-month
3 statute of limitations. Considering that the claim is outside the statute of limitations, Complainant
4 fails to state a claim upon which relief can be granted.

5 Further, with respect to his claim for a violation of the employment preference statute,
6 Complainant misunderstands the applicable law. First, the employment preference law requires
7 CNMI employers to give preferential employment opportunities to U.S. citizens, U.S. permanent
8 residents, and CNMI permanent residents. 3 CMC §§ 4521 et. seq.;² *see also* NMIAC § 80-20.1-
9 220.³ The employment preference law does not provide any protections or preference to
10 Commonwealth Transitional Only Workers (“CW-1”). *See* 3 CMC §§ 4521 et. seq; *see also*
11 NMIAC § 80-20.1-240(f).⁴ During the Order to Show Cause Hearing, Complainant confirmed
12 that he was not a U.S. Citizen, CNMI permanent resident, or US permanent resident. Instead,
13 Complainant stated he was a CW-1 worker at all times relevant to this claim. Considering that
14 Complainant was a CW-1, he does not have standing to initiate a claim for employment
15 preference. Additional allegations cannot cure this deficiency.

16 After notice and opportunity to be heard, the undersigned finds that Complainant fails to
17 state a claim upon which relief can be granted and there is no merit to Complainant's allegations.
18 Accordingly, pursuant to 3 CMC § 4962 and NMIAC § 80-20.1-465(e), this complaint is hereby
19 **DISMISSED**, with prejudice. Any person or party aggrieved by this Order may appeal by filing
20 the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen
21 (15) days from the date of this Order.⁵

22 So ordered this **10th** day of November, 2021.

23 /s/

24 **JACQUELINE A. NICOLAS**
25 Administrative Hearing Officer

26 ² “A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim
27 for damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for
28 the job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or
U.S. permanent resident for the job.” 3 CMC § 4528(a) (emphasis added).

³ “Employers shall give qualified citizens, CNMI permanent residents, and U.S. permanent residents preference over
foreign national worker, transitional worker, or other nonimmigration aliens.”

⁴ “The employer shall layoff foreign national workers, transitional worker, and other nonimmigrant aliens before
laying off citizens, CNMI permanent residents, and U.S. permanent residents”

⁵ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

In Re Matter of:	)	PUA Case No. 21-0133
)	
Matthew Berton Stuart,)	
)	
Appellant,)	
)	
v.	)	ADMINISTRATIVE ORDER
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on September 23, 2021 at 9:00 a.m. at the Administrative Hearing Office. Appellant Matthew Berton Stuart (“Appellant”) appeared telephonically and was self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Appellee” or “Department”) was present and represented by Acting PUA Supervisor Zachary Taitano and PUA Coordinator Jacqueline Takai. There were no other witnesses that provided testimony at the hearing. The following documents were admitted into evidence:

Exhibits:

1. Exhibit 1: Copy of the Appellant’s Application Snapshot, filed December 9, 2020;
2. Exhibit 2: Copies of three Case Notes, dated April 5, 2021, June 30, 2021, and June 30, 2021;
3. Exhibit 3: Copy of Appellant’s boarding passes with United Airlines for flights on April 5, 2020;
4. Exhibit 4: Copy of Appellant’s Affidavit Regarding Previous Employer, signed on March 26, 2021;
5. Exhibit 5: Copy of Department’s Disqualifying Determination, dated June 30, 2021;

6. Exhibit 6: Copy of Department's Disqualifying Determination (amended), dated September 20, 2021;
7. Exhibit 7: Copy of Appellant's Request for Appeal Form, filed July 1, 2021;
8. Exhibit 8: Copy of Appellant's Written Statement, filed on September 20, 2021;
9. Exhibit 9: Copy of the Notice of Hearing issued on July 1, 2021;
10. Exhibit 10: Copy of Email from the Department's Benefit Payment Control Unit dated September 22, 2021;
11. Exhibit 11: Copy of Appellant's Former Employer SMS Software, Inc.'s Certificate of Incorporation filed in the state of Delaware, dated March 1, 2018;

For the reasons stated below, the Department's Determination dated September 20, 2021, effective April 12, 2020 to May 15, 2021 is **AFFIRMED**. Claimant is not eligible for benefits for the period of April 12, 2020 to May 15, 2021.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment Compensation ("FPUC").² On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said federal unemployment insurance programs, which, among other things, extended the PUA and FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office has been designated to preside over appeals of agency decisions.

Upon review of the records, the appeal is timely filed. Accordingly, jurisdiction is established.

¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

- 1 9. On or about April 5, 2020, Appellant relocated to Saipan, CNMI with his family.¹²
2 Appellant decided to relocate to Saipan, CNMI based on promising but speculative
3 discussions he had with an online group whose CNMI resident members discussed with
4 the Appellant the prospects for software development businesses or similar businesses in
5 the CNMI
6 10. At the time he relocated from California to the CNMI, Appellant was not scheduled to
7 commence employment in the CNMI and he did not have any bona fide job offer or
8 specific job prospects in the CNMI.
9 11. On June 17, 2020, the Department launched the PUA and FPUC programs.
10 12. On December 9, 2020, Appellant submitted an application¹³ for unemployment
11 assistance under the PUA and FPUC programs.
12 13. In his application,¹⁴ Appellant self-certified under penalty of perjury that:
13 a. Appellant is a Citizen of U.S. or U.S. Territory;
14 b. Appellant's employment was directly affected by COVID-19 when his place of
15 employment closed as a direct result of the COVID-19 public health emergency;
16 and
17 c. Appellant's employment was affected since April 15, 2020.¹⁵
18 14. The answers provided in Appellant's initial application were submitted under penalty of
19 perjury. It is Appellant's responsibility to provide true, accurate, and complete answers.
20 Moreover, it is Appellant's responsibility to be informed about the program by reading
21 the PUA Benefit Rights Information Handbook and other official written material
22 regarding PUA.
23 15. Appellant did not submit employment certifications, notices of termination, notices of
24 separation, or other documentation to substantiate his claim that his employment is
25 affected as a direct result of the specific COVID-19 qualifying reasons in the CNMI.

¹² See Exhibit 3.

¹³ Exhibit 1.

¹⁴ *Id.*

¹⁵ Exhibit 1.

- 1 16. The Department investigated and reviewed Appellant's claim and self-certifications in
2 his application. The adjudicator in this case contacted Appellant and asked him to provide
3 documents to support his self-certifications.¹⁶
- 4 17. On June 30, 2021, the Department issued a determination disqualifying Appellant from
5 PUA and FPUC benefits from April 12, 2021 to May 15, 2021 because the Department
6 found that Appellant was "residing in the United States when affected by Covid-19
7 pandemic on March 2020. The interruption of [Appellant's] employment did not satisfy
8 [his] eligibility. Therefore, [Appellant is] not eligible for Pandemic Unemployment
9 Assistance in the Northern Mariana Island. For the weeks indicated [], [Appellant was]
10 off-island. Being off-island does not satisfy Eligibility Requirement #6 of the Benefits
11 Rights Handbook (6. Be Physically and Mentally Able to Work)."¹⁷
- 12 18. On July 1, 2021, Appellant filed the present appeal and the matter was scheduled for an
13 Administrative Hearing.¹⁸
- 14 19. Upon filing the present Appeal, the Department reviewed Appellant's claims and, on
15 September 20, 2021, the Department issued an amended determination disqualifying
16 Appellant from PUA and FPUC benefits from April 12, 2020 to May 15, 2021 because
17 the Department found that "Based on the documents [Appellant] had provided,
18 [Appellant was] residing in California when [his] employment was interrupted before
19 moving to Saipan, Commonwealth of the Northern Mariana Island on April 5, 2020. It
20 was found that there was no interruption of [Appellant's] employment in the
21 Commonwealth of the Northern Marianas Island, nor [was Appellant] ever tied to the
22 CNMI Workforce. Therefore, [Appellant is] not eligible for the Pandemic
23 Unemployment Assistance [] Program under the CNMI."¹⁹
- 24 20. As discussed during the Administrative Hearing, Appellant is appealing the
25 Department's Determination dated September 20, 2021 for the period of April 12, 2020
to May 15, 2021.

¹⁶ Exhibit 2.

¹⁷ See Exhibit 5.

¹⁸ Exhibit 7.

¹⁹ Exhibit 6.

1 21. With respect to the overpayment issue, upon Appellant filing his present appeal, the
2 Department conducted further review and confirmed with the Department's Benefit
3 Payment Control Unit ("BPC") that no overpayment occurred in this case.²⁰ Appellant
4 and the Department also confirmed during testimony under oath at the Administrative
5 Hearing that Appellant has not received any payments for federal unemployment
6 benefits. Therefore, there is no overpayment issue in this matter.

6 V. CONCLUSIONS OF LAW

7 In consideration of the above-stated findings and applicable law, the undersigned issues the
8 following conclusions of law:

9 **1. Appellant's employment was not affected as a direct result of COVID-19 in the
10 CNMI.**

11 In accordance with the CARES Act and Continued Assistance Act, payment of PUA and
12 FPUC benefits are available to "covered individuals." A "covered individual" is someone who:
13 (1) is not eligible for regular compensation or extended benefits under State or Federal law or
14 pandemic emergency unemployment compensation under Section 2107 of the CARES Act,
15 including an individual who has exhausted all rights to regular unemployment or extended
16 benefits under State or Federal law or Pandemic Emergency Unemployment Compensation
17 under Section 2107;²¹ (2) self-certifies²² that the individual is unemployed, partially
18 unemployed, or unable or unavailable to work²³ as a direct result²⁴ of a listed COVID-19 reason
19 in Section 2102(a)(3)(A)(ii) of the CARES Act, and (3) provides required documentation of
20 employment/self-employment within the applicable period of time.²⁵

21 ²⁰ Exhibit 10.

22 ²¹ See UIPL 9-21, Attachment 1: Coordination of Unemployment Benefit Programs. This condition is generally not
23 at issue with claimants in the CNMI because there are no other State or Federal unemployment insurance programs
24 in the CNMI.

25 ²² The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty
of perjury.

²³ A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible
for benefits. See HAR § 12-5-35.

²⁴ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the
employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer
chain of events precipitated or exacerbated by the pandemic.

²⁵ Section 241 of the Continued Assistance Act requires that an individual must provide documentation
substantiating employment or self-employment, or the planned commencement of employment or self-employment,
if he or she files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before
January 31, 2021 and receives PUA benefits on or after December 27, 2020. "Individuals who do not provide

1 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
2 specifically identifies the COVID-19 qualifying reasons²⁶ as:

- 3 (aa) The individual has been diagnosed with COVID-19 or is
4 experiencing symptoms of COVID-19 and is seeking a medical
5 diagnosis;
6 (bb) A member of the individual's household has been diagnosed with
7 COVID-19;
8 (cc) The individual is providing care for a family member or a
9 member of the individual's household who has been diagnosed
10 with COVID-19;
11 (dd) A child or other person in the household for which the individual
12 has primary caregiving responsibility is unable to attend school
13 or another facility that is closed as a direct result of the COVID-
14 19 public health emergency and such school or facility care is
15 required for the individual to work;
16 (ee) The individual is unable to reach the place of employment
17 because of a quarantine imposed as a direct result of the COVID-
18 19 public health emergency;
19 (ff) The individual is unable to reach the place of employment
20 because the individual has been advised by a health care provider
21 to quarantine due to concerns related to COVID-19;
22 (gg) The individual was scheduled to commence employment and
23 does not have a job or is unable to reach the job as a direct result
24 of the COVID-19 public health emergency;
25 (hh) The individual has become the breadwinner or major support for
a household because the head of the household has died as a direct
result of COVID-19;
(ii) The individual has to quit his or her job as a direct result of
COVID-19;
(jj) The individual's place of employment is closed as a direct result
of the COVID-19 public health emergency; or
(kk) The individual meets any additional criteria established by the US
Secretary of Labor for unemployment assistance under PUA.

20 Additional criteria established by the US Secretary of Labor under item (kk)²⁷, above, includes:

- 21 (1) The individual is an independent contractor who is unemployed
22 (total or partial) or is unable or unavailable to work because of

23 documents substantiating employment/self-employment (or planned employment/self-employment) within the
24 required timeframe...are not eligible for PUA." UIPL 16-20, change 4, I-11. Failure to supply said documents, and
any other relevant, requested documents is a justifiable basis to deny benefits under HAR § 12-5-81(j).

²⁶ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

²⁷ See Unemployment Insurance Program Letter ("UIPL") 16-20 and 16-20, Change 5.

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- the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job;
- (2) The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines;
 - (3) An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures; and
 - (4) An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.²⁸

As a preliminary matter, the undersigned recognizes the impact of COVID-19 on employees, their families, and companies. Further, the undersigned recognizes the significance of Appellant deciding to relocate with his family to Saipan, CNMI. However, based on applicable law and evidence provided, Appellant is not a “covered” individual eligible for PUA benefits. As further discussed below, Appellant does not meet the eligibility criteria in federal law, federal guidance, and state law.

With respect to condition two, stated above, Appellant’s employment was not affected as a direct result of COVID-19 in the CNMI. Considering that this program applies a combination of federal and state law to determine eligibility, a claimant must file for unemployment benefits in the state or territory where their employment was affected by the COVID-19 pandemic.²⁹ “The [] individual must file with the state [or territory] where he or she was working at the time of becoming unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2102(a)(3(A)(ii)(I) of the CARES Act.”³⁰ “[A]n individual may not file a PUA claim with a state [or territory] which they did not work.”³¹

²⁸ *Id.*
²⁹ See UIPL 16-20, Change 1 Attachment I, question 7.
³⁰ *Id.*
³¹ UIPL 16-20, Change 6(4)(c). See also PUA Benefit Rights Handbook.

1 Here, Appellant's employment was not affected in the CNMI because he was not employed
2 or scheduled to begin employment in the CNMI. Instead, it appears that Appellant's employment
3 was affected in California where his employer is located, transacts and conducts its business
4 activities. Therefore, Appellant may not file a PUA claim with the CNMI. Appellant should
5 have applied in the state that he worked at the time of becoming unemployed, partially
unemployed, or unable or unavailable to work because of COVID-19 related reasons.

6 Appellant submitted a claim for PUA and FPUC benefits and self-certified, under penalty of
7 perjury, that his employment was affected as a direct result of COVID-19 because his "place of
8 employment is closed as a direct result of the COVID-19 public health emergency."³² However,
9 based on the evidence and testimony provided, the closure of Appellant's place of employment
10 occurred outside of the CNMI prior to his relocation to the CNMI, and was the result of
11 circumstances and events that occurred outside of the CNMI and prior to Appellant's relocation
12 to the CNMI. First, SMS is neither a CNMI business nor a foreign corporation licensed or
13 authorized to do business in the CNMI. SMS also did not conduct business or perform services
14 for any person or organization in the CNMI. Second, based on Appellant's signed affidavit and
15 sworn testimony, Appellant's employer ceased operations and terminated Appellant's
16 employment in March 2020.³³ After Appellant's employer closed and Appellant was terminated,
17 Appellant relocated to Saipan, CNMI on or about April 5, 2020.³⁴ Appellant also testified that
18 Appellant's work activities as Software Developer was already significantly reduced and SMS
19 had very little business activities and opportunities before Appellant made the decision to
20 relocate to the CNMI. Therefore, based on the evidence and testimony provided, Appellant's
21 unemployment occurred prior to his relocation to Saipan, outside of the CNMI, and due to
22 circumstances outside of the CNMI.

23 With respect to condition 3, stated above, Appellant has failed to submit employment
24 certifications, notices of termination or separation, or other documentation to substantiate his
25 claim that his employment is affected as a direct result of the specific COVID-19 qualifying
reasons in the CNMI. "Individuals who do not provide documents substantiating
employment/self-employment (or planned employment/self-employment) within the required

³² Exhibit 1.

³³ See Exhibit 4.

³⁴ See Exhibit 3.

1 timeframe . . . are not eligible for PUA.”³⁵ Therefore, failure to supply said documents, and any
2 other relevant, requested documents is a justifiable basis to deny benefits under HAR § 12-5-
3 81(j). Simply, there is no showing of Appellant’s employment was affected as a direct result of
4 COVID-19 reason in the CNMI.

5 Moreover, Appellant’s employment in the CNMI after his relocation was not affected as a
6 “direct result” of any COVID-19 qualifying reason. Appellant’s inability to find employment
7 after his relocation to the CNMI is not a COVID-19 reason listed above. When questioned under
8 oath as to whether he was scheduled to commence employment in the CNMI or whether he
9 received a job offer in the CNMI, Appellant responded in the negative. Appellant also testified
10 that he had no guaranteed projects or bona fide job offer of employment in the CNMI when he
11 relocated to the CNMI on or about April 5, 2020.

12 Accordingly, based on the evidence and testimony provided, Appellant’s employment was
13 not affected by a COVID-19 qualifying reason in the CNMI. For that reason, Appellant is not
14 eligible for unemployment benefits under the PUA and/or FPUC programs.

15 VI. DECISION

16 For the reasons stated above, it is ORDERED that:

- 17 1. The CNMI Department of Labor’s Disqualifying Determination, dated September 20,
18 2021, is **AFFIRMED**; and
- 19 2. The Appellant is **NOT ELIGIBLE** to receive PUA and FPUC benefits for the period
20 of April 12, 2020 to May 15, 2021.

21 If a party is aggrieved by this Order and would like to contest the decision, he or she must
22 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
23 written request should be supported by legal, factual, or evidentiary reasons to reopen the
24 decision. The written request must be submitted to the Administrative Hearing Office, either in
25 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at
hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a
subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant
still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI

³⁵ UIPL 16-20, Change No. 4, I-11.

1 Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms,
2 filings fees, and filing deadlines for judicial review will be as established by the applicable law
and court rule.

3 So ordered this 19th day of November, 2021.
4

5
6 */s/*

CATHERINE J. CACHERO
Pro Tem Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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In Re Matter of:)	PUA Case No. 21-0157
)	
Yuping Guo,)	
)	
Appellant,)	ADMINISTRATIVE DECISION
	)	DISMISSING APPEAL PURSUANT TO
v.	)	PARTIES' REQUEST
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

Pursuant to Appellant's Request to Appeal, the matter was scheduled for an Administrative Hearing on January 25, 2022 at 9:00 a.m. On November 3, 2021, Appellant filed a written request to voluntarily withdraw the appeal. Further, on November 22, 2021 the Department filed a Motion to Dismiss confirming that the issues in dispute were resolved and that no overpayment occurred.

In consideration of above, the undersigned finds that the parties no longer contest the issues on appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for January 25, 2022 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this **22nd** day of November, 2021.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**



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In Re Matter of:)	PUA Case No. 21-0166
)	
Alfonso R. Dela Cruz,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on October 19, 2021 at 9:00 a.m. and October 20, 2021 at 1:30 p.m. at the Administrative Hearing Office. Appellant Alfonso R. Dela Cruz (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Appellee” or “Department”) was present and represented by PUA Coordinator Jessica Ichihara and Labor Certification Worker Dennis Cabrera. There were no other witnesses that provided testimony at the Administrative Hearing.

The following documents were admitted into evidence:

Exhibits:

1. Exhibit 1: Copy of the Appellant’s Manual Application Snapshot, received by the Department on June 1, 2021 and inputted by the Department on July 20, 2021;
2. Exhibit 2: Copies of Manual Weekly Certification, dated February 2, 2020 to February 8, 2020 and August 2, 2020 to August 8, 2020;
3. Exhibit 3: Copy of Department’s Disqualifying Determination, dated September 30, 2021, effective February 2, 2020 to December 26, 2020;
4. Exhibit 4: Copy of Department’s Disqualifying Determination (amended), dated October 14, 2021, effective February 2, 2020 to August 8, 2020;

- 1 5. Exhibit 5: Copy of Email Communication from the Department's Benefit Payment
2 Control Unit, dated October 14, 2021;
- 3 6. Exhibit 6: Copy of Appellant's Request for Appeal; filed on October 6, 2021;
- 4 7. Exhibit 7: Copy of Notice of Hearing, issued on October 6, 2021;
- 5 8. Exhibit 8: Copy of Email Communication from the Appellant, dated October 9, 2021;
- 6 9. Exhibit 9: Copy of Second Notice of Hearing, issued on October 14, 2021;
- 7 10. Exhibit 10: Copies of Appellant's Employment Certifications, dated June 21, 2021,
8 July 28, 2021, and August 3, 2021;
- 9 11. Exhibit 11: Copy of a Portion of RJ Corporation's Job Vacancy Announcement posted
10 on the website of the Department (www.marianaslabor.net);
- 11 12. Exhibit 12: Copy of a Form 1099-MISC for 2019, issued by RJ Corporation to
12 Appellant;
- 13 13. Exhibit 13: Copies of the following Press Releases:
 - 14 a. Press Releases issued by the CNMI Office of the Governor titled "USDOL
15 approves CNMI's PUA and FPUC implementation plan", dated May 24, 2020;
 - 16 b. Press Release issued by the CNMI Office of the Governor titled "Pandemic
17 Unemployment Assistance (PUA) and Federal Unemployment Compensation
18 (FPUC) available for Workers and Self-Employed Individual in the CNMI",
19 dated June 10, 2020;
 - 20 c. Press Release issued by the CNMI Office of the Governor titled "CNMI DOL
21 to hold another webinar on PUA and FPUC programs on Thursday", dated July
22 7, 2021;
 - 23 d. Press Release issued by the Department titled "December 26, 2020 is the last
24 day to apply for Pandemic Unemployment Assistance (PUA) and Federal
25 Pandemic Unemployment Compensation (FPUC)", dated December 15, 2020;
 - 26 e. Press Release issued by the Department titled "Labor prepares for reopening of
27 PUA program for new application", dated January 24, 2021;
 - 28 f. Press Release issued by the Department titled "CNMI DOL announces second
round of Pandemic Unemployment Assistance (PUA) and Federal Pandemic
Unemployment Compensation (FPUC) for the CNMI", dated February 11,
2021; and

1 g. Press Release issued by the Department titled “CNMI DOL announces new
2 round of unemployment assistance under ARPA”, dated May 25, 2021.

3 14. Exhibit 14: Copy of the PUA Benefit Rights Information Handbook; and

4 15. Exhibit 15: Copy of Order Continuing Hearing, issued on October 19, 2021.

5 For the reasons stated below, the Department’s Determination dated October 14, 2021 is
6 **AFFIRMED**. Claimant is not eligible for benefits for the period of February 2, 2020 to
7 August 8, 2020.

8 II. JURISDICTION

9 On March 27, 2020, the Coronavirus Aid Relief and Economic Security (“CARES”) Act of
10 2020 was signed into law creating new temporary federal programs for unemployment benefits
11 called Pandemic Unemployment Assistance (“PUA”)¹ and Federal Pandemic Unemployment
12 Compensation (“FPUC”).² On December 27, 2020, the Continued Assistance for Unemployed
13 Workers Act of 2020 (“Continued Assistance Act”) amended and created new provisions of said
14 federal unemployment insurance programs, which, among other things, extended the PUA and
15 FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021
16 (“ARPA”) extended the programs to September 6, 2021.

17 The CNMI Department of Labor is charged with the responsibility in administering the above-
18 mentioned programs in the CNMI in accordance to applicable law.⁴ The CNMI Department of
19 Labor Administrative Hearing Office has been designated to preside over appeals of agency
20 decisions.

21 Upon review of the records, Appellant’s appeal of the Department’s Disqualifying
22 Determination is timely filed. The Department issued a Disqualifying Determination on
23 September 30, 2021. On October 6, 2021, within the 10-day deadline, Appellant filed the present
24 appeal. Accordingly, jurisdiction is established.

25 _____
26 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

27 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

28 ³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A (“Continued Assistance for Unemployed Workers Act of 2020” or “Continued Assistance Act”).

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

III. PROCEDURAL BACKGROUND & ISSUES

1 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs on or
2 around June 1, 2021.⁵ Upon review of Appellant's application and supporting documents, the
3 Department issued a Disqualifying Determination on September 30, 2021.⁶ On October 6, 2021,
4 Appellant filed the present appeal and the matter was scheduled for a hearing.⁷ On October
5 6, 2021, the Administrative Hearing Office issued a Notice of Hearing setting the Administrative
6 Hearing for February 24, 2022 at 9:00 a.m. On October 8, 2021, Appellant submitted a written
7 request for an earlier hearing date due to exigent circumstances.⁸ On October 14, 2021, the
8 undersigned granted the Appellant's request and issued a Second Notice of Hearing setting the
9 Administrative Hearing for October 19, 2021 at 9:00 a.m.⁹

10 During the Administrative Hearing on October 19, 2021, all parties appeared and were
11 represented. It became evident during the Administrative Hearing that in-person testimony by the
12 Appellant would be necessary to fully address the issue of eligibility. Accordingly, without
13 objections by either of the parties, the undersigned continued the Administrative Hearing to
14 October 20, 2021 at 1:30 p.m.¹⁰ All parties appeared at the Administrative Hearing.

15 As stated in the Notice of Hearing, Second Notice of Hearing, and Order Continuing Hearing,
16 the issues on appeal are: (1) whether Appellant is eligible for PUA; and (2) whether an
17 overpayment occurred and funds should be returned.

IV. FINDINGS OF FACT

18 In consideration of the evidence provided and credibility of witnesses' testimony, the
19 undersigned issues the following findings of fact:

- 20 1. On or around June 1, 2021, Appellant submitted an application for unemployment
21 assistance under the PUA and FPUC programs administered by the Department.¹¹ In
22 his application, Appellant self-certified under penalty of perjury that:
23 a. Appellant is a citizen of the U.S. or U.S. Territory;

24
25 _____
26 ⁵ Exhibit 1.

27 ⁶ Exhibit 3.

28 ⁷ Exhibits 6-7.

⁸ Exhibit 8.

⁹ Exhibit 9.

¹⁰ Exhibit 15.

¹¹ Exhibit 1.

1 b. Appellant's employment was directly affected by COVID-19 when his place
2 of employment was closed as a direct result of the COVID-19 public health
3 emergency; and

4 c. The last date that Appellant last performed work was "March 2020-
5 September 2020."¹²

6 2. Appellant submitted weekly certifications to claim benefits only for weeks beginning
7 February 2, 2020 to February 8, 2020 and for August 8, 2020 to August 8, 2020.¹³ In
8 each of these weekly certifications, Appellant reported that:

9 a. His employment was still affected by COVID-19 because his place of
10 employment was closed as a direct result of the COVID-19 public health
11 emergency; and

12 b. He is able and available for work during the claimed week.¹⁴

13 3. The answers provided in Appellant's application and weekly certifications were
14 submitted under penalty of perjury. It is Appellant's responsibility to provide true,
15 accurate, and complete answers. Moreover, it is Appellant's responsibility to be
16 informed about the program by reading the PUA Benefit Rights Information
17 Handbook and other official written material regarding PUA.

18 4. Based on the evidence presented and testimony provided, Appellant's self-
19 certifications in his application and his weekly certifications were inaccurate and
20 untrue. Specifically, contrary to Appellant's self-certifications in his application and
21 his weekly certifications, Appellant was not employed immediately prior to COVID-
22 19 pandemic and his place of employment was not closed as a direct result of COVID-
23 19.

24 a. Beginning in 2018, Appellant performed, from time-to-time certain realtor-
25 and/or broker-like services for Jose C. Ayuyu, including but not limited to
26 finding real property on Saipan for Mr. Ayuyu to consider and purchase;¹⁵

27 ¹² *Id.*

28 ¹³ Exhibit 2

¹⁴ *Id.*

¹⁵ Exhibit 10.

- b. Appellant performed and provided these services only to Mr. Ayuyu and no other company or individual;
- c. Appellant was not an employee of Mr. Ayuyu or any company owned by Mr. Ayuyu;
- d. Appellant was not paid any wages or salary by Mr. Ayuyu or any company owned by Mr. Ayuyu;
- e. For these services, Mr. Ayuyu paid Appellant a commission;
- f. Appellant did not own a business and was not self-employed, and he did not have a valid business license;
- g. Appellant is not an independent contractor;
- h. Mr. Ayuyu, through his company, RJ Corporation, reported some of the commission paid to Appellant,¹⁶ but Appellant did not report all the commissions that he received from Mr. Ayuyu;
- i. Appellant did not pay himself a wage or salary, and he could not provide testimony or documents to show how many hours he customarily worked performing these services for Mr. Ayuyu;
- j. During the months of March 2020 to August 2020, Appellant did not perform any of said services for Mr. Ayuyu, and therefore, Appellant did not earn any commissions from Mr. Ayuyu during this time.¹⁷

5. In filing his claims for PUA and FPUC benefits, Appellant did not provide sufficient supporting documents to substantiate how COVID-19 affected his employment or the above-mentioned self-certifications.

6. With respect to Appellant's immigration status and employment authorization, Appellant is a U.S. citizen and his eligibility for benefits as a U.S. citizen is undisputed.

7. On September 30, 2021, after reviewing and investigating Appellant's claims and self-certifications, the Department issued a Disqualifying Determination effective February 2, 2020 to December 26, 2020, and the stated grounds for disqualification is

¹⁶ Exhibit 12 (Form 1099 on 2019).

¹⁷ Exhibit 10.

1 that "Appellant does not meet the qualifications required of the CARES Act of 2020
2 for PUA assistance."¹⁸

3 8. On October 6, 2021, Appellant filed the present appeal¹⁹ and the matter was scheduled
4 for an Administrative Hearing.²⁰

5 9. On October 14, 2021, upon Appellant's request for appeal, the Department reviewed
6 Appellant's claim and issued a second determination disqualifying Appellant from
7 PUA and FPUC benefits, effective February 2, 2020 to August 8, 2020.²¹ In this
8 amended, second Determination, the Department cited as the basis for denial UIPL
9 Change 4, page I-19, "PUA initial claims filed after December 27, 2020 (the enactment
10 date of the Continued Assistance Act) may be back dated no earlier than December 1,
11 2020."²²

12 10. Appellant appeals the Department's Determination dated October 14, 2021, effective
13 February 2, 2020 to August 8, 2020.

14 11. As demonstrated by an audit and confirmation from the Department's Benefit
15 Payment Control Unit, Appellant was not paid any federal unemployment benefits.²³
16 Accordingly, there is no overpayment issue in this matter.

17 V. CONCLUSIONS OF LAW

18 In consideration of the above-stated findings and applicable law, the undersigned issues the
19 following conclusions of law:

20 1. Appellant's claim for benefits is limited on backdating.

21 Under the CARES Act of 2020, PUA and FPUC benefits were made available retroactively
22 to covered individuals.²⁴ Individuals could apply for PUA and FPUC benefits if they had a
23 week(s) of unemployment, partial unemployment, or unable or unavailable work due to one or
24 more of the COVID-19 related reasons (listed in Section 2102(a)(3)(A)(ii)(1) of the CARES Act)

25 ¹⁸ Exhibit 3.

26 ¹⁹ Exhibit 6,

27 ²⁰ Exhibit 7.

28 ²¹ Exhibit 4.

²² *Id.*

²³ *Id.*

²⁴ See Section 2102 of the CARES Act of 2020, Public Law 116-136; see also Question 4 of Attachment I to UIPL
No. 16-20, Change 1; Section C.15 of Attachment I to UIPL No. 16-20, Change 4.

1 prior to their PUA claim filing date (but no earlier than from February 2, 2020).²⁵ Under the
2 CARES Act of 2020, first time applicants had to submit an online application on or before
3 December 26, 2020.²⁶

4 On December 27, 2020, the Continued Assistance Act amended and created new provisions
5 of said federal unemployment insurance programs. Among other things, the Continued Assistance
6 Act extended the PUA and FPUC programs through weeks of unemployment partial
7 unemployment, or unable or unavailable work to March 13, 2021.²⁷ However, Section 201(f) of
8 the Continued Assistance Act provided limitations on the availability of backdating for claims
9 that are filed after December 27, 2020 to weeks of unemployment, partial unemployment, or
10 unable or unavailable work that occurred no earlier than December 1, 2020.²⁸ In other words,
11 claims filed on or before December 27, 2020 (the enactment date of the Continued Assistance
12 Act) may be backdated no earlier than the week that begins on or after February 2, 2020. Initial
13 PUA claims filed after December 27, 2020 may be backdated no earlier than December 1, 2020.²⁹

14 On or around December 15, 2020, the Department announced to the general public that the
15 last day to apply for PUA and FPUC is December 26, 2020.³⁰ In consideration of the application
16 deadline falling on a Saturday, the Department extended the paper application submission through
17 Monday, December 28, 2020.³¹ The Department announced that any claim submitted after
18 December 28, 2020 will be rejected.³² Prior to this announcement, the Department and the CNMI
19 Government issued multitudes of press releases and conducted outreach including virtual
20 webinars announcing when and how individuals could apply for PUA and FPUC benefits.³³

21 Here, Appellant filed weekly certifications only for weeks beginning February 2, 2020 to
22 February 8, 2020 and for August 2, 2020 to August 8, 2020.³⁴ As discussed in the foregoing,
23 under the applicable law and backdating limitations, Appellant's deadline to submit his paper

24 ²⁵ UIPL No. 16-20, Change 4, Section C.15 of Attachment I, p. I-18. *See also* UIPL No. 16-20, Change 6, p. 6

25 ²⁶ UIPL No. 16-20, Change 4, p. I-19.

26 ²⁷ *See* Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A, Section 201(a).

27 ²⁸ UIPL No. 16-20, Change 4, p. 4; I-18; I-19.

28 ²⁹ UIPL No. 16-20, Change 4, Section C.15 of Attachment I, pp. I-18 and I-19.

29 ³⁰ Exhibit 13.

30 ³¹ *Id.*

31 ³² *Id.*

32 ³³ *See, e.g.*, Exhibit 13.

33 ³⁴ *See* Exhibits 1-2.

1 application to the Department was December 28, 2020. Appellant did not file his paper
2 application with the Department until June 10, 2021, more than six months after the filing
3 deadline.³⁵ When questioned why he submitted his paper application so late, Appellant admitted
4 that he did not have any reason for the delay. Appellant testified only that the lines were “long”.

5 Accordingly, because Appellant’s claims were filed months after the deadline of December
6 28, 2020, Appellant’s claims are limited by the backdating limitations under applicable law, and
7 Appellant is not eligible to receive benefits.

8 **VI. DECISION**

9 For the reasons stated above, it is ORDERED that:

- 10 1. The CNMI Department of Labor’s Disqualifying Determination, dated October 14,
11 2021, is **AFFIRMED**; and
12 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of February
13 2, 2020 to August 8, 2020.

14 If a party is aggrieved by this Order and would like to contest the decision, he or she must
15 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
16 written request should be supported by legal, factual, or evidentiary reasons to reopen the
17 decision. The written request must be submitted to the Administrative Hearing Office, either in
18 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at
19 hearing@dol.gov.mp.

20 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
21 subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant
22 still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI
23 Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms,
24 filings fees, and filing deadlines for judicial review will be as established by the applicable law
25 and court rule.

26 So ordered this **17th** day of November, 2021.

27 /s/

28 **CATHERINE J. CACHERO**
Pro Tem Administrative Hearing Officer

³⁵ Exhibit 1.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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In Re Matter of:)	PUA Case No. 21-0171
)	
Juan Borja Cepeda,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	
)	

Pursuant to Appellant’s Request to Appeal, the matter was scheduled for an Administrative Hearing on March 22, 2022 at 9:00 a.m. On October 28, 2021, Appellant filed a written request to withdraw the appeal. Further, on November 3, 2021, the Department filed a Motion to Dismiss confirming that the issues in dispute were resolved and a subsequent requalifying determination was issued that found Appellant eligible, effective May 9, 2021.

In consideration of above, the undersigned finds that there are no issues on appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for March 22, 2022 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 5th day of November, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer