

TABLE OF CONTENTS

Executive Summary.....	1
Contextual Background.....	2
Analysis of Review.....	17
Section 1- Contracts.....	17
Section 2- Board Compensation.....	27
Section 3- Program Eligibility.....	38
Dispute.....	42
Recommendation.....	44
Endnotes.....	46

Executive Summary

On July 7, 2007, Chairwoman Felicidad Taman Ogumoro was notified by OPA in writing and hand delivered on even date to the SHEFA Office on OPA's intent "(p)ursuant to a legislative request...(to) conduct a review of SHEFA..." relative to the administration and management of the SHEFA program assistance and operation funds for Fiscal Year 2004 through 2006, and for the agency to be provided access to program files and conduct interviews with "key" persons in the process. SHEFA obliged accordingly, and in fact, welcomed OPA to SHEFA to perform a baseline audit utilizing the latest information and protocols of the Generally Accepted Government Auditing Standards.

A year from initial entry has almost lapsed on April 2008, when Chairwoman Ogumoro received a carbon copy of OPA's "Review" of SHEFA (hereinafter refer to "review"). The SHEFA board and the mayor were neither privy to the process nor the initial findings / conclusions of the review already in the hands of media joints, which resulted in a seemingly freestyle bashing frenzy directed at Saipan's postsecondary assistance program, oblivious that neither the mayor nor the SHEFA board as officials and individuals were never consulted on any perceived program deficiencies, notwithstanding repeated requests to OPA by SHEFA to be afforded a briefing and / or an opportunity to respond and be part of the "review" process.

Nevertheless, OPA proceeded in its review of and conclusion about SHEFA not being operated in "fiscally prudent" manner relative to SHEFA's use of contractors and payment timetable to contractor(s); compensation made to board members in the performance of duties viewed by OPA not in compliance with regulations and laws cited, including issues taken by OPA on program eligibility.

In response, SHEFA performed an introspective review of the program using OPA information or model and has taken the position that though SHEFA has clearly demonstrated due diligence in enabling and facilitating the SHEFA

program to be the state-of-the-art program that Saipan residents rightfully expect and deserve, intervening external circumstances, impeding extraneous factors and events, and a pattern and practice of constant policy tinkering adverse to the integrity and fidelity of the SHEFA program stability, growth and expansion have individually and as a whole impacted on the implementation of SHEFA now in its third full-term program year of operation.

SHEFA's section-by-section analyses and responses herein support the proposition and contention that the SHEFA program has been properly managed and operated consistent and in compliance with applicable provisions of regulations, statute(s), the NMI Constitution, Covenant and the U.S. Constitution over the successful implementation of Saipan's premiere flagship municipal postsecondary assistance program.

It is also quite clear from the onset that the Generally Accepted Government Auditing Standards did not apply or was not made applicable in the "review" of the SHEFA program.

Contextual Background

Adherence to statutory and regulatory construction principles in applying and giving effect to the plain meaning of pertinent laws and regulations and applicable provisions thereof, in addition to making prospective application and effect on relevant laws and regulations provide prima facie evidence the SHEFA Board of Directors has been cognizant of and complied with relevant laws and regulations in the procurement and implementation of contracts, compensation of board members in the performance of board duties, and in the performance of board duties in pursuit of and performance and delivery on the mission of the Saipan Higher Education Financial Assistance Program- SHEFA.

As the flagship municipal postsecondary program for bona fide residents of Saipan in the Municipality of Saipan, the SHEFA Board of Directors subscribes to and takes the position that both the act, process and outcome in formulating public policies and undertaking a review of public policy must account for, be reflective of, and demonstrate cognizance over compliance with applicable core

requirements prescribe and set forth in the NMI Constitution, which calls for a decentralized arrangement (i.e., home rule) and delivery of public services on an equitable basis among the affected jurisdictions. SHEFA is a municipal postsecondary financial assistance program that is funded solely by revenues generated on Saipan. SHEFA is envisioned to be a local municipal postsecondary program whose benefactors are residents of the Municipality of Saipan. As such, the SHEFA musters the minimum threshold requirement of a decentralized public service program at the municipal level in conformance with the CNMI Constitution. General funds intended for and are dispensed by a state fiscal agent for the direct benefit of the respective municipalities must also be re-allocated to and re-directed among the principal municipalities in the decentralized arrangement and equitable allocation as intended in the local constitution. This reallocation is required not only by constitutional mandate but also by the strict mandate ordered in the recent CNMI Supreme Court decision on the re-apportionment and re-districting on Saipan, a necessary and sufficient antecedent in adhering to the applicable provision of the Covenant and the fundamental principle of “one man, one vote” in the U.S. Constitution.

Just as the Court mandate has already been given full meaning and effect as reflected in the representation ratio among the five (5) election districts on Saipan relative to Tinian and Rota, the same principle applies in the extant case and must be given meaning and effect over the decentralization of public services on an equitable basis among the principal municipalities, by allocating existing available resources for Saipan to the Saipan municipal postsecondary financial assistance program as dictated in the constitution.

The elevated political status of the Northern Marianas beginning 1978 under the first local constitutional government promised to be a harbinger of progress, prosperity, and abundant opportunities for the local people. Or, so the local people had reason to expect better and greater things and manifestly expressed a desire to see better things come true and take roots not only on Saipan but also throughout the CNMI one day henceforth. Thirty years later, the lot of the local people has improved in an insignificant way from where they left off, insofar as

training, education, and human resource development are concerned, notwithstanding the existing local brand of higher education financing agent in place at the time up until today. This dose of reality may have fired up the ingenuity and pioneering spirit of the founding fathers and pioneers of SHEFA, bewildered, if not flat out flabbergasted over the seemingly intractable predicament and untenable situation with the perennial lack of technically skilled, college educated and productive workforce throughout the CNMI, but pronouncedly acute on Saipan as measured by the frequency and number of yearly non-resident work permits issued in the CNMI and especially on Saipan.

Moreover, the business-as-usual exemption routinely granted by statute over the continuous hiring of non-resident expertise in government agencies is prima facie evidence on the quality and effectiveness of the approach suggested in the review to resolve Saipan's perennial workforce debacle at the Commonwealth Health Services, Department of Public Work, Northern Marianas College, among others. This debacle underpins OPA's *Job Study* highlights debuted last year.

The pioneers of and advocates for the SHEFA program included then Representative and present Speaker Arnold I. Palacios, then Speaker Heinz S. Hofschneider, then SNILD Chairman and current Senate President Pete P. Reyes, former Speaker Oscar Babauta, SNILD Chairman Ramon I. Tebuteb, Vice Speaker Joseph P. Guerrero, Rep. Stanley T. Torres, and the entire Saipan delegation in the 13th Legislature. With their blessing and guidance, Saipan Local Law 13-21 became a reality and has taken root as a viable postsecondary program, having a strong presence and pivotal role in accelerating the guided and focused development of the present and future local workforce of bona fide Saipan residents in areas with high priority needs for manpower on the island.

Since its inception in August 2004 to this day, SHEFA has proven itself above and beyond its laurel. SHEFA's rapid ascendance under a highly compressed and fast-tracked timeline, from its initial conception on February 2004 to its procedural implementation three (3) months following the confirmation of the governing board of directors-meeting out of a makeshift

office in Afetnas Square for a little over three months to being uprooted to another temporary office at the Division of Youth Services in Garapan the same year, the program has had to endure and in fact has evolved as a transient program. Nonetheless, the sheer determination, dedication and unyielding commitment by the pioneering SHEFA board members towards the seminal Saipan Municipal Scholarship program had prevailed over the uncertain beginning of the program as exemplified in the timely action and disbursement of program awards to the first SHEFA recipients in Fall 2004.

Not until the program relocated yet again in 2005 to Saipan's Low Cost Housing Unit A-42 behind Garapan Elementary School, when SHEFA achieved a relative degree of permanence and stability. But as in SHEFA's early beginnings, the move proved short lived. For by then another proposal surfaced in late 2006 and continued to 2007 on a move to relocate SHEFA once again. However, the repairs and renovation requirements of an identified vacant unit was such that the allocation funds necessary for the upgrade proved to be a challenge, and the plan was foiled. Consequently, SHEFA remained where it has been since 2005, when the first semi-permanent (i.e., SHEFA is on month-to-month permit) office opened its doors on January that year. Clearly, the need to be on constant preparatory alert to vacate tenancy or be evicted as a tenant from A-42 is not merely a passing fancy though the program has survived its tenancy thus far.

The only delay encountered in the formative stages of implementation was in accessing or having funds transferred to the SHEFA account in the first year of the program, due largely to an over-commitment on SHEFA's premier funding source derived from Saipan Local Law 13-8, the fees collected from local license fees for poker and pachinko machines on Saipan. The over-extended appropriation in SLL 13-8 (i.e., advanced appropriation of unrealized revenue, e.g., retro-pay, CIP, etc.) created a predicament for the Department of Finance, for it caused an aggravated cash flow situation, thereby causing delays in the transfer of funds into SHEFA's segregated and wholly separate Fund account.

Worse, lapsing SHEFA funds in FY 2004 was artificially induced and caused by the untimely funds transfer to the SHEFA account before the fiscal year ended. It is SHEFA's considered position that this difficulty could have been remedied by directly assigning the mayor the responsibility for the management and disbursement of SHEFA scholarship and operational accounts. In this way, check processing and disbursement responsibilities will fall directly under the Office of the Mayor, and any delays in processing and release of checks will point front and center at that office, not Finance or Treasury, as it has been the case since the program's inception.

In addition, the fund allocation of a wholly separate scholarship appropriation in 2005 was not actually transferred to the SHEFA account. This resulted in an artificial overstatement of expenditure in 2005. When the actual amount in SLL 14-11 is combined with the continuous appropriation in SLL 13-21 and added to the fund balance in Fiscal Year 2004, over a million dollars in SHEFA money could be realized and reinstated in the SHEFA fund account, but was not. A situation like this, in other words, is easily preventable. If there is any lesson to be drawn, it certainly calls for a more aggressive action in interagency record reconciliation-one which SHEFA has repeatedly requested in writing and during face-to-face meetings with Finance since the early 2005, yet one that has not been realized or accomplished for reasons unknown to SHEFA, only that the Fund is vulnerable to premeditated or unplanned proclivities at re-appropriation.

As a result of these difficulties, the 14th Legislature concurred with the recommendation of the SHEFA board and took immediate corrective action to prevent delayed allocation in the future, and in the process exempted SHEFA from year end allocation funds rollover.

Because of over-appropriation then and now, the Department of Finance held the Planning and Budgeting Act to a higher standard of interpretation on funds appropriated for SHEFA in fiscal year 2004, which Finance lapsed on September 30, 2004 without the benefit of having transferred the statutory amount of funds to the SHEFA Fund account first. The actions taken by the

Saipan delegation in adopting the milestone legislations to remedy this unintended predicament neither repealed nor caused the repeal of the seminal local law 13-21.

The timely action taken by the leadership of SNILD, in fact, provided additional support to the Office of the Mayor of Saipan, the SHEFA Board of Directors and the SHEFA program, all positive and sincere efforts at protecting and advancing the individual and collective interests of Saipan residents and the Municipality of Saipan in attaining a sustainable level of workforce development and manpower for local employment given the marked surge and high record number on the issuance of temporary work permits especially on Saipan. By contrast, House Local Bill 15-18 as resurrected in House Local Bill 16-5 and others with similar intent, application and effect, including abundantly glaring overtures at dismantling and collapsing SHEFA with the CNMI Scholarship in a zeal to undo and turn the clock backwards on the progress and achievements directly attributed to the seminal Saipan Local Law 13-21 (which is responsible for the first municipal postsecondary flagship assistance program), other subsequent laws which strengthened and provided additional support to SHEFA, and SHEFA's own evolving rules and regulations is rigged with pernicious intent and effect against Saipan's first and only municipal postsecondary assistance program, a proposition inconsistent with applicable provisions of the NMI Constitution for a decentralized arrangement of public service based on an equitable resource allocation and certainly one that does violence to the fundamental principle of equality advanced in the recent Supreme Court decision referenced herein.

Clearly, SHEFA has had an eventful evolution as a new municipal program, beginning with its compressed and hurried implementation schedule coupled by its transient and holdover status, performing board duties from a makeshift office to another temporary adobe in a relatively rapid succession, yet the program has proven itself viable and sustainable municipal program under the collaborative leadership of Mayor Juan B. Tudela, SNILD, the SHEFA governing board and SHEFA's professional resources, a situation characterized

and exemplified by the exponential growth pattern of SHEFA, a little known program then which received a little over 200 applications in Fall 2004 to one with a dynamic, versatile and robust track record, accommodating a cumulative total of over 3,000 SHEFA program recipients as of Spring 2008.

Buttressed by prevailing applicable provisions in the SHEFA rules and regulations, the amount of award at program inception stood at \$447,900, a cost of a little over \$2,000 on board honorarium to a cumulative total award of over \$8,000,000 as of Spring 2008 with an honorarium cost of \$645 as of January 2008, all of which are in compliance with applicable provisions of 1 CMC 8247 for the period in “review” and applicable provisions of PL 15-32 in subsequent periods. Notwithstanding the multi-faceted challenges characteristic of program peaks and valleys SHEFA has experienced over time, SHEFA continues to move forward in the same spirit and zest SHEFA has emerged from- that is, in the spirit of partnership for progress not regression, in celebration of the successes and achievements of SHEFA scholars, the major impetus for SHEFA’s creation and the reason for its being in the first place, accruing to the benefit of college students from Saipan who are bona fide residents of the Municipality of Saipan.

The on-going program challenges which resulted in the immediate implementation of SHEFA coupled by the due diligence expectation of the SHEFA board to take action largely precipitated and established a clear and convincing case to equip SHEFA, an emerging program, to be sure, with the most basic and necessary professional manpower resources with proven track record in policy and program analysis, development, evaluation, and outcome-based program and policy management, negotiation capacity, and strategic management, among others, and operate the program in the cost-beneficial manner within the prevailing operational fiscal constraint. Such has been the case with SHEFA now approaching its third full-term academic year anniversary this Fall 2008.

SHEFA’s manpower resources of three (3) have served the SHEFA program and the SHEFA board well over its formative development and growth, and into

the third academic year since inception. Indeed, the trio constitute the very fabric and essence of the SHEFA program: the due diligence demonstrated in their exemplary performance of and commitment to their duties at SHEFA and for the SHEFA governing board; the multifaceted tasks they are called upon to perform and accomplish in such highly compressed and unusual work schedule, not to mention the external challenges they have had to deal with despite their glaring accomplishments; the humility in which they conducted themselves with applicants, parents and interested members of the community and the professionalism with which they approach their work; and above all, their willingness to help Saipan students succeed in college and in life after college are attributes that most certainly do not warrant the kind of unprofessional and incendiary characterization such as the one leveled on contractors for perceived inadequacies in the review.

In fact, the Northern Marianas College Counseling Programs & Services Director Leo Pangelinan wrote to the Mayor's Office and the SHEFA board on April 18, 2008 to acknowledge and recognize SHEFA's role during NMC's first Career Discovery Week this year as noted: "By your own generous commitment, you enable students to model success and acquire much needed information and motivation to make critical decisions about their careers. We greatly appreciate your generosity, leadership and the many ways you bring remarkable change to our community. We cannot thank you enough for your invaluable contributions as a professional. We are grateful for the energy, enthusiasm, and dedication you bring to your role as a model for members of our community, including the opportunities you afford students who seek career in your profession."

Moreover, what may seem at first blush as an unmeritorious engagement in seemingly duplicative and repetitive task orders would, upon closer scrutiny, prevail as a necessary antecedent in facilitating program growth, development, renewal and expansion in order that SHEFA becomes viable and a sustainable program, just as any new and emerging program would require, no matter the modality of delivery- whether performed or ascribed by negotiated deliverables

by the governing board or by prescriptive and ministerial list of position description assigned a civil servant, the latter proposition considered ill advised given the uncertain beginning of and externally induced instability sown into the program, not to mention the external tinkering which SHEFA has been subjected to since 2006 to this day as in the extant case.

Against the myriad of challenges throughout its evolution as a viable municipal program in postsecondary assistance, who would have imagined but self-fulfilling prophets that SHEFA would have survived heretofore? Yet, within three years following the inauguration of SHEFA, Mayor Tudela, the SHEFA Board of Directors and SHEFA pioneers and supporters collectively delivered and made good on SHEFA's mission to the people of Saipan "*to invest the limited human capital resources of qualified residents of Saipan... in recognition of the need for educated citizenry and workforce on Saipan, with the broad expectation of SHEFA and assurance from ...recipients to provide services on Saipan in the private sector, government, nongovernmental organizations...(and) not-for-profit organizations.*"

Over 100 SHEFA scholars have attained their college degrees in associate of arts (37), bachelor's of arts (59), and master's of arts (48). Most, if not all graduates with background in education are gainfully employed by the Public School System (PSS), SHEFA's most successful and positive partner of all the agencies in the state government. Others willing partners in the private sector receptive in embracing SHEFA scholars are in varied areas with opportunities provided such as an office manager at Northwest Airlines and supervisory position at Saipan Staywell Health Insurance to prospects in accounting firms in the hotel chains, among others. The Office of Personnel Management is also a willing partner in the placement of SHEFA scholars in the local job market. SHEFA will also endeavor to utilize and even partner with OPA in implementing OPA's job study review by offering direct assistance and continuing to promote and advocate SHEFA scholars for local employment in the private sector on Saipan.

Similarly, the fields of study of SHEFA graduates are just as varied as are their degrees. These areas include accounting, business administration, criminal justice, mathematics, psychology, computer science, communication, education (elementary and secondary and specialized areas), engineering, history, marketing, nursing, sociology, economics, hospitality management, and liberal arts.

A quick glimpse of SHEFA's summary statistics on award speaks volumes of and about SHEFA as a formidable municipal program, emboldened by the unyielding commitment by Mayor Tudela in working with the SHEFA Board as highlighted glaringly on the trend in SHEFA awards since its inception to date in Spring 2008.

Since its initial implementation, SHEFA awards peaked at almost 1,000 in 2006 in sharp contrast to the initial ascend at 188 in 2004 followed by 743 in 2005; 905 in 2007; and 419 at the first half of 2008, for a current cumulative total of 3325 awardees pegged at over \$8,000,000 in SHEFA financial assistance or slightly under \$3000 per pupil assistance revenue.

The honorarium cost incurred in reviewing and processing the awards stood at \$2,610 in 2004; \$3,330 in 2005; \$3,030 in 2006; \$1,115 in 2007; and \$645 in 2008, a glaring demonstration over how members of the SHEFA governing board have conducted themselves with the utmost propriety of duties of good faith and candor, goodwill and concern for and in the interest of the entire cadre of SHEFA scholars- not just the well-to-do, the powerful, and those with connection, but also the poor and those who are disaffected and disenfranchised group of individuals who are equally qualified for assistance within the bounds of the SHEFA rules and regulations and pertinent statute.

In addition to performing board duties in receiving, reviewing, processing and taking actions on applications and hearing appeals on denials, the SHEFA board along with the mayor perform annual school visits to the participating public and private high schools (including the Northern Marianas College student body) on Saipan for a one-n-one question and answer (Q & A's) engagement and dialogue with junior and senior high school students. Other

SHEFA outreach activities include but not limited to face-to-face school visits, television talk shows, meetings with school counselors, forums with NMC, NMC counselors workshops, school career fair, NMC-WIA workforce summit meetings and manpower summit and SHEFA appeal conferences or hearings, work on rules and regulations with attorneys from the Attorney General's Office, individual conferences with students, parents, appointed representatives, including meetings with members of SNILD (e.g., April 21 and May 8, 2008), Secretary of Finance, holding telephone conferences with students, parents and members of the community, etc.

Clearly, given the enumerated activities above, the seemingly endless dialogue, and non-stop participation of members of the board directly related to or incidental thereof of their role as members of the SHEFA governing board are only specimens of the multifaceted tasks being performed on weekdays, weekends, or holidays, in which members freely volunteer their time and presence in the performance of their duties. The same work schedule applies to the contractors, who are often on 24 / 7 work status, especially during the formative stages of SHEFA.

In other words, the foregoing services and activities performed and work products delivered during the review period by the board on behalf of the SHEFA program were not figured in the calculus of board compensation (i.e., free of charge). The members were compensated only for board meetings / work sessions.

The same degree of care characterized the operational expenditures of SHEFA in FY 2004 through FY 2006 and beyond. For one thing, SHEFA did not incur operational deficit or overruns in student assistance during the review period or anytime thereafter, for that matter.

Indeed, a passing review of SHEFA operational expenses would readily reveal the conservative and frugal approach with which the SHEFA board has taken against proclivities for unjustified expenditure of public funds. Since the inception of SHEFA in 2004, the SHEFA board has consistently refrained from, indeed, refused to take advantage of publicly-financed lavishes or

government-financed perks or even engage in profligate spending propensities on government-paid travel off-island for “meetings with...”, “inspection of...”, “conference / training / professional development on...”, or even for “rest / recreation / business-related this and that” public purposes for travel. For years up to this writing, the board refused to purchase or lease SUV’s or other luxury vehicles with public funds, which would then require government-paid accident insurance, government-paid gasoline and lubricant, government-paid vehicle repair and maintenance, among many other government-paid this and that categories.

Not that the board members are or want to be inaccessible, but the members most definitely do not want and have in fact refused any government-paid state-of-the-art cellular gadget (e.g., blackberry) or have their personal cellular airtime paid using public funds, as there is no public purpose being served other than for the private convenience of the user at government expense.

The same fiscally conservative approach pervades the SHEFA workplace. Since 2005 SHEFA’s office amenities consist of a single telephone landline, a facsimile and the most rudimentary low-grade lethargic Internet connection. SHEFA’s bare bone office at Garapan MIHA housing subdivision also includes the only two generic desktop computers purchased in 2005 valued at under \$1500 each and a generic wireless laptop used on school visits or board presentations in public functions (e.g., workforce summit, school career day, etc.).

The board conference room in Garapan is substandard and cramped by Capital Hill standard. Not big enough to accommodate more than 8-10 persons at a given time. The boardroom does not even add up to or fare by any level of comparison imaginable with any of the more distinctively ornate government offices in Capital Hill.

Instead, a substantial investment of the fiscal and program resources of SHEFA is parlayed and accrue to the benefit of SHEFA scholars in the form of postsecondary financial assistance, academic and career guidance and counseling, and employment referral services, among others.

On student financial assistance, SHEFA delivers three basic types of assistance, consisting of foundation or grant-in-aid, which is pegged at \$1000 and \$600 for off-island and on-island awardees respectively. The priority field of study is figured at \$1500 and SHEFA's coveted 3.5 term grade point average is pegged at \$2000. All three are awarded twice a year in the Fall and Spring term.

Of the three Fiscal Years (2004-2006) in question, SHEFA invested over \$5,000,000 in financial assistance. Close to 2000 recipients from Saipan benefited directly from the work deliverables generated by the governing board. In FY 2004, \$447,900 of recipient assistance was processed and acted upon by the board; \$1,930,900 in FY 2005; and \$2,760,000 in FY 2006 for an average per pupil revenue of \$1,770.58 for the first three years.

With the resources expended on behalf of SHEFA scholars who are qualified residents of the Municipality of Saipan, the program has remained in the black during the period in question to date. In other words, the SHEFA board has neither incur deficit in student awards nor in its efficient and effective operations since the inception of SHEFA in 2004 to date, notwithstanding an aberration or glitch in the timely fund allocation (transfer) by Finance in 2005.

Still, it is a settled fact that the SHEFA board was never afforded even a minimum opportunity to be briefed by or meet with responsible official at OPA prior to, during, or after the determinative conclusion on what initially was devised to be an "audit"- in which case the Government Auditing and Ethics Standards would have applied, but was abruptly changed, in which case the conclusions proffered in the "review" became dispositive.

It is further understood and a settled fact that the SHEFA board was never afforded any reasonable opportunity to provide timely response following the conclusion of the report and especially prior to the actual delivery of the "review" throughout the distribution network chain.

It is also well settled fact that the SHEFA board was not formally addressed as the entity in "review" which would clearly make the entity, if not the membership, a primary recipient of the work product-the "review".

Finally, it is well settled fact that the SHEFA board was identified and listed below the bottom of the signature page on the totem pole list of “cc”.

Notwithstanding all of the foregoing sets of well settled facts, the SHEFA board humbly extends a sincere appreciation to the reviewer and OPA for the manifest exercise in due diligence in the “review”, and most especially in eventually agreeing to release and make available the information delivered by OPA to the SHEFA Office in Garapan on April 28, 2008. The information provided to SHEFA served as SHEFA’s guide and reference in assessing the content validity of the “review”, among others. The information enabled the SHEFA board to respond to the conclusions proffered in the review herewith.

It is worth noting in passing that while the SHEFA board was denied the benefit of an entry briefing on the “review”, the governing body was equally denied the benefit of a standard exit briefing prior to and at the conclusion of the “review”. Most noteworthy of all, however, was the glaring absence of reasonable opportunities available to the SHEFA board and the mayor to examine the content of the “review”, deliberate on the report, assess the validity of the procedure and process, assess the quality of observations and references used or extrapolated as bases in amassing a salmagundi of conclusions extrapolated from “evidence” destined to arrive at given conclusions on SHEFA, in stark contrast to ample opportunities afforded significant third party or parties prior to, during, and at the conclusion of the “review” in question.

Based on the information provided thus far and discussions that ensue, SHEFA has demonstrated by a clear and convincing evidence how the SHEFA board has conducted itself with utmost propriety and care in complying with their fiduciary duties of good faith, trust, confidence, sincerity, goodwill and candor.

SHEFA has further demonstrated how the SHEFA board has consistently refrained from taking advantage of any perceived privileges-if there are such privileges available to members of municipal government boards such as SHEFA. Indeed, the SHEFA board has been mindful in exercising due diligence in the performance of their duties as members of a governing body, and as bona

fide residents of Saipan by birth. Just as the board has been no less prudent over the use of locally appropriated Saipan funds and cognizant of compliance requirements with applicable provisions of regulations, statute, the NMIC Constitution, Covenant and the U.S. Constitution.

How could board members be expected to do otherwise especially as 1 CMC 8247 and PL 15-32 would only allow \$30 for half day or less and \$60 for a full day honorarium in applying applicable standards of laws and regulations. Indeed, SHEFA's financial and operation funds could not have been administered and expended any other way than in accordance with applicable laws and regulations throughout FY 2004-FY 2006 and beyond. Had only the SHEFA board, the mayor and contractor were not summarily and entirely removed (by design and / or accident) from the review process in part and in whole (never consulted, interviewed, asked for clarification or provided opportunities to perform independent assessment of the procedure and process applied or utilized on subjective and qualitative issues), perhaps SHEFA as a program and the stakeholders of SHEFA would not have been torpedoed and mischaracterized unfairly and unnecessarily on the basis of "instances" or incidents as the foundation in arriving at a salmagundi of overarching generalizations.

Against the foregoing vignette- a necessary antecedent in coming to full grips with SHEFA in order to fully comprehend Saipan's flagship municipal postsecondary financial assistance program and operation, to be sure, SHEFA's response to OPA's "review" focuses on pertinent and relevant conclusions proffered therein, covering Fiscal Year 2004 through Fiscal Year 2006.

Accordingly, SHEFA's response provides the reader with an executive summary and contextual background information in order to properly make an independent assessment on the three subjects or foci of OPA "review" on contract procurement followed by issues over board compensation, and concluded with highlights on questions involving eligibility of Saipan residents in receiving SHEFA assistance in fiscal year 2004 through 2006. The remaining two sections of SHEFA's response following the topic on program eligibility

offers the reader an overview or summation of the issues in the form of a dispute, which implicates pertinent provisions of regulations and statute. Finally, SHEFA offers recommendations to policymakers and OPA for public policy consideration and standard operating procedure in any future review.

Analysis of “Review”

Section 1. Contracts

1. OPA Conclusion: SHEFA did not comply with the CNMI procurement regulations to procure its professional service contracts

SHEFA Response: Article X, Section 8 of the CNMI Constitution dictates that the Department of Finance control and regulate the expenditure of public funds. The Secretary of Finance signed off on the contracts.

2. OPA Conclusion: 1 CMC 2253(j) (sic) 2553(j) mandates the Department of Finance to be in control of and responsible for the procurement and supply in the Commonwealth.

SHEFA Response: Under 1 CMC 2553, Department of Finance: Duties and Responsibilities, the Secretary of Finance is responsible: 2553 (g) “To disburse funds pursuant to authority of law.” 2553 (j) “To be in control of and be responsible for procurement and supply in the Commonwealth.”

3. OPA Conclusion: There is no distinction...as to whether the funds come from the General Fund or local funds.

SHEFA Response: Assuming this claim by OPA is correct, the Secretary of Finance signed off on the contract based on his authority under 1 CMC 2553.

4. OPA Conclusion: According to the Chief of Administration and Human Resource for the Office of the Mayor, contracts with the Mayor’s Office follow CNMI Procurement Regulations...why does SHEFA not follow them?

SHEFA Response: There is no way to independently ascertain what the Chief of Administration and Human Resource for the Office of the Mayor actually said in response to OPA inquiry. Was the OPA inquiry limited to personnel services

contracts of employees of the Mayor or did it include procurement of contracts for independent professional services and not purchase requisitions?

5. OPA Conclusion: CNMI Procurement Regulations allow for sole source contracts for professional services in limited instances though SHEFA's contracts do not meet any of the criteria enumerated in applicable procurement regulations cited therein.

SHEFA Response: Assuming contract is covered by the CNMI procurement regulations, this assertion by OPA is correct. However, in light of the Secretary of Finance signing off on the contract under his authority pursuant to 1 CMC 2553, the contract is valid on its face.

6. OPA Conclusion: SHEFA contracts did not contain any justification or show any efforts made to obtain competition or why alternative sources were not selected in accordance with provisions of procurement regulations.

SHEFA Response: Assuming contract is covered by the CNMI procurement regulations, the assertion has merit. However, the assumption or claim by OPA is inconsistent with the exemption granted in 1 CMC 7404. Current and existing policies and practices of government entities granted exemption under 1 CMC 7404 have sole source contracts signed off only by the contractor, the contracting authority, legal counsel and the Secretary of Finance.

SHEFA's procurement of independent services contracts herein referenced would comply with procurement regulations to the extent the regulations apply relative to the exemption granted in 1 CMC 7404. In other words, the professional service contract for contractor 2 and contractor 1 are exempt from coverage of the CNMI procurement regulations by virtue of the provisions of 1 CMC 7404.

This position is supported by Legislature policy and practice with respect to the procurement of independent professional services contract pursuant to applicable statute. Independent professional services contracts (sole source contracts) are entered into between contractor and legislators without competitive bidding or submission of justification as required by the regulations in conformance with applicable provisions of law. These contracts are entered

into and are signed by Contractor, Legislators, Legal Counsel and the Secretary of Finance.

In the case of contractor 2 as with contractor 1 contract, the mayor, the mayor's Legal Counsel, and the Secretary of Finance signed off on the contracts.

7. OPA Conclusion: Contract number 2 was for two years and eight months, which is not a usual contract term and schedule of payment and progress time frame and that the payment term does not meet any standard set forth in applicable regulations.

SHEFA Response: Disbursement of funds was not performed in accordance to the stipulated terms in the contracts. The initial payment issued on the first contract was nine (9) past the commencement date of contract; the subsequent payment eleven (11) months past stipulated terms; and the remaining balance more than 38 months past due and remains unpaid as of this writing. The same holds for contract 3. Though the initial payment for contract 2 was issued close to two (2) months from the commencement date of contract, subsequent payments were not disbursed in four (4) months as concluded in the review, but seven (7) months from the date of commencement of contract 2. The balance and full payment for contract 3 is thirteen (13) months behind past due from the commencement date of contract, and unpaid as of this writing.

8. OPA Conclusion: Most of the deliverables in the two contracts on contract 2 are virtually identical or duplicative deliverables such as developing SHEFA rules and regulations; developing SHEFA policies and procedures; developing SHEFA's rules of procedures for regular, special, and standing committee meetings; developing MOA; finding a site for SHEFA; and developing a reference handbook.

SHEFA Response: To the extent the deliverables are on-going over a period of time as in the extant case would make them at first blush seem duplicative with no finality to their performance and delivery. While on the surface they seem duplicative and repetitive, it should be understood that deliverables may not have finality as long as the process, service and work products dictate their continuing progress or status over time. For instance, there is simply no finality

to drafting media releases or preparing materials for directed multimedia coverage about certain specific program or individual, for that matter, initiated by a contractor, a civil servant, an elected or appointive official or an exempted service personnel, just as it is a never-ending task or process to research, draft, implement, make fine-tuning adjustments, revise in part or in whole certain sections of the existing SHEFA rules and regulations, visit schools quarterly or annually to talk to graduating seniors about the opportunities for SHEFA assistance, appear on radio or television talk shows or before the Saipan Rotary Club, the Saipan Chamber of Commerce, NMC student body of faculty senate, among others to answer questions about the program, hear student appeals, respond to student, parent or at-large inquiries about the program or to participate in a public forum to educate and make the public aware of the SHEFA program and the opportunities offered on an on-going schedule.

Point in fact, the so-called duplicative deliverables will be the same or similar over time as set forth in the progress schedule as they are dictated by program necessity and administrative needs as directed by the priorities of the SHEFA governing body. It would seem rather axiomatic with the highly compressed and fast-tracked implementation of SHEFA that one would place greater reliance on the modality of delivery and not on the substance delivered in a veiled attempt at distancing away from outsourcing of deliverables .A case by case analysis of the OPA specimens would serve to illustrate and advance the thesis in the extant case.

OPA proffered that “developing SHEFA rules and regulations” is duplicative. The hypothesis would hold to the extent that rules and regulations are static and fixed. Which they obviously are not: rules and regulations as are laws and provisions in the local constitution, articles of corporation, bylaws, decrees, executive orders, agency action such as CUC rates, declaratory ruling, intra-agency memoranda, legal opinions, student grades, etc. are amenable to change over time. Fact is, rules and regulations, laws and provisions in the constitution do change in part or in whole. A glaring example is the manner in which the SHEFA program is constantly besieged and subjected to program

tinkering by legislative and other external operatives. As a new and maturing program, SHEFA regulations will, by necessity, change, and have, in fact, been modified even during the initial year the program was in place and the new regulations in effect though the program was a relative unknown.

Suffice it to say, a passing review of the SHEFA handbook would readily reveal even the minimal piquant details of the changes in the SHEFA regulations over time, just as “developing a reference handbook” is too, which contains the SHEFA law, revised rules and regulations, application form, and MOA as they are revised by the board. Upon revisions, it is the task of contractor to prepare for the re-publication or re-printing of the referenced handbook. The process and procedure takes more than simply finding print shops and obtaining quotations and having the board call the shots on when to publish it. Every re-publication requires editorial reviews, and rewrites, review of proofs before final approval for publication takes place. This process and procedure is repeated over and over again every time the handbook undergoes modifications or revisions or updates. In 2005, the handbook was first printed around August 2004. In 2005, a second printing occurred, changing the information contained in the handbook, including updating the rules and regulations and application form. In 2006, a third reprint occurred, changing the color and content followed by a fourth re-print in 2008 which incorporated the latest revisions in the rules and regulations, MOA, application form and contact information. Again, as long as there are changes to the rules and regulations, the application forms, the MOA, etc., the handbook will also be subjected to revisions and re-publication with or without the contractor’s assistance.

Moreover, part of the process and procedure in continuously developing rules and regulations is to monitor and assess the extent of implementation on program integrity and fidelity, and make the necessary and sufficient adjustments as the situation demands or when the need arises and to be acted upon or disposed of by the governing board. The same proposition applies to “developing SHEFA policies and procedures” reflected in SHEFA’s administrative procedure (S.O.P.) in announcing, assembling, in-taking,

reviewing, processing, disposing and ultimately the governing body taking official action on SHEFA applications for assistance pursuant to law and regulations. Again, so long as the governing body views this particular deliverable as a need based on its program priority, contractor will continue to perform and deliver this task year in and year out.

With respect to “developing SHEFA’s rules of procedure for regular, special, and standing committee meetings...”, it is to be expected that a task of this magnitude would require researching models of board governance and ancillary committee structures, functions, and authority that would be consistent or be in accord with provisions of SLL 13-21. Once the research part in this engagement is complete, the next step is the development of the instrument followed by a field test or pilot implementation. Depending on the outcome of the field test, data is then collected, aggregated and analyzed in making a determination over implementation issues—whether to continue implementation on a trial basis or engage in full-fledged implementation. Even when full implementation occurs, the process in re-calibrating and making the necessary adjustments and improvements to the instrument continues beyond implementation.

Point in fact, issues were raised over members attendance in board meetings, work sessions, appeal hearings, school visits, school presentations, public appearances on SHEFA related functions, including appearance in the legislature and any other functions which call for board duty to be performed. As an emerging issue, the board intends on deliberating on and bringing the issues to resolution. Nonetheless, this deliverable, like any other task orders, will continue to be undertaken with or without the contractor in accordance with the dictates and priority of the governing body in similar vein as in “developing the MOA”. In this case, when the board first instituted the MOA in Fall 2004 term, it was drafted and immediately set in motion given the fast-tracked manner in which the SHEFA program took off in August 2004. Clearly, the MOA in use upon commencement of contract was just implemented and less than one academic year in use; consequently, instead of re-inventing a new MOA, the board tasked contractor to monitor any problems that might arise

with the end users (students / parents), especially off-island students that may have issues in locating a public notary to have their MOA notarized. In addition, timeliness issues became a concern by the board, given the numerous instances of delays in receiving MOAs, owing in part to delays in the postal system, but for the most part due to the inability of students to find a notary public who would process documents without a fee. Contractor prevailed over the issue that the public notary aspect of the MOA is not to be compromised at any cost, as the MOA is a legally binding document between SHEFA and the recipient. In lieu of having to wait for the MOA in the mail, contractor recommended for the board to consider accepting MOA's transmitted directly to SHEFA by facsimile.

Contractor also recommended that the existing MOA should be re-calibrated and revisions anticipated in the future based on the evolving nature of the rules and regulations, if and when situations require changes and any applicable law(s) other than SLL 13-21. Reviewing, adjusting and re-calibrating the MOA format, content and enforcement is necessarily an on-going part of the implementation process of the program. In 2006, the MOA was extensively re-adjusted to be in sync with major changes in the SHEFA Rules and Regulations researched during 2005 and drafted and closely coordinated with the Office of the Attorney General during 2006, until the proposed changes in the regulations were eventually promulgated on December 2006, with implementation timeline set for Fall 2007. Clearly, reviewing, adjusting and re-calibrating the MOA format, content and enforcement is necessarily an on-going part of the implementation process of the SHEFA program. Therefore, in lieu of revising the MOA first put in use in Fall 2004, contractor reviewed the content of the MOA for internal consistency and validity of the MOA, including the instrument design, in an effort to facilitate processing the documents and having all the required signatures by signatory officials in place, especially in view of the disbursement of checks predicated upon a showing of an MOA. Implementation oversight by way of tracking and monitoring of the difficulties, if any on the newly revised MOA may cause with continuing or renewing and new SHEFA applicants preoccupied much of contractor's performance over this

deliverable. And with the impending changes in the SHEFA Rules and Regulations in 2008, it is anticipated that the MOA may be subject to another round of revisions and refinement yet again. The process of development of the SHEFA MOA, in other words, will continue to occupy the board's attention with or without a hired contractor or employee.

Finally, "finding a site for SHEFA", at first blush, would make the deliverable appear insubstantial and seemingly duplicative. However, this task order should be viewed in the context over which the SHEFA program has evolved from its inception. When the SHEFA board was initially constituted, it was with the expectation that the board would exert due diligence to implement the program. True enough, SHEFA was hurriedly implemented that same year in Fall 2004. The board held numerous meetings and work sessions at the mayor's Office at Afetnas Square in San Antonio, but soon realized that SHEFA required a larger space to work and also to better accommodate the growing number of students who expressed interest in the program. What once seemed to be a permanent location of the flagship program at the Mayor's Office was jettisoned to the Dept. of Community and Cultural Affairs Office in Garapan, until the program moved, yet again, to the Low Cost Housing behind Garapan Elementary School, another temporary re-location up to 2007, when the board was assured renovation funding by the legislature for a permanent rent-free office space. As of this writing, SHEFA continues to wait and on holder status. In other words, SHEFA will continue to find sites that best accommodate the needs of Saipan students as well as to be constantly prepared at moment's notice to vacate the office at the present location and relocate to another one, a unique fact in the life of SHEFA which probably douses even the most enthused and the initiated reviewer.

9. OPA Conclusion: SHEFA hired contractors, not employees.

SHEFA Response: Four (4) months from assembling the SHEFA governing body, the SHEFA program was geared up to entertain applications for the Fall 2004 academic term, the same year it was signed into law. A feat like this could not had been possible without the endorsement and support of such pioneers and

advocates such as then Representative and present Speaker Arnold I. Palacios, then Speaker Heinz S. Hofschneider, then SNILD Chairman and current Senate President Pete P. Reyes, former Speaker Oscar Babauta, SNILD Chairman Ramon I. Tebuteb, Vice Speaker Joseph P. Guerrero, Rep. Stanley T. Torres, and the entire Saipan delegation in the 13th Legislature, Mayor Juan B. Tudela and the dedicated members of the SHEFA board. Despite the multitude of positive overtures and support for SHEFA, the program did in fact experience turbulence and unanticipated challenges over its “highly compressed and unusual schedule” for implementation in the same year it was signed into law.

The delay in the allocation of funds to the SHEFA account was one major impediment. For the funding source, which included SHEFA, was over-appropriated, and SHEFA had to compete with public work projects like residential and farm road paving improvement projects, changes in street naming, village storm drainages, public streetlights, basketball facilities, and the like. Consequently, funding uncertainty set in and given the uncertainty in the life of a budding program, it was the most fiscally prudent decision not to hire permanent employees who would be subjected to untimely furlough should the situation of over-appropriation continue unchecked and unabated. Interestingly, the atmosphere of uncertainty and unpredictability continue as demonstrated in the constant tinkering of the SHEFA program, be it in program policies or funding (e.g., House Local Bill (HLB) 15-18, (HLB) 15-30, HLB 16-5, HLB 16-9, HLB 16-10, etc.).

In addition, hiring employees as opposed to outsourcing deliverables would not fare well, even when viewing the hiring of permanent staff in the most favorable light, for given the element of uncertainty and unpredictability in operational funding, even the most elementary cost-benefit analysis principles and formula would make hiring fulltime employees fiscally imprudent. This point is best illustrated with unequivocal and contrasting differences using an outsourcing model utilized by SHEFA compared to a suggested fiscal-prudent alternative model between postsecondary program catering to CNMI students

versus one making stretching pittance resources in affording optimal services to students from the Municipality of Saipan.

Outsource Model

1. Simple bi-weekly computation of contract @ \$45,000 equals **\$1,730.77** fixed bi-weekly conversion and @ \$45000 equals **\$1,730.76** fixed bi-weekly conversion.

2. Benefits = \$ 0 and 0%; Overtime= \$ 0 ; Government-Paid Vehicle= \$ 0; Government-Paid Fuel and Lubrication=\$0; Government-Paid Mileage= \$ -0-; Government-Paid Cellular Phone= \$ 0 ; Office Facility & Related Accessories= \$ -0- ; Work Schedule = 24 / 7; Government-Paid Travel Fare, Per Diem, & Transportation=\$0

Versus

Fiscal-Prudent Alternative Model

1. \$41,350 salary x 36.7% benefits=\$15,175.45

\$41,350 (salary) + \$15,175.45 (computable benefits) = **\$56,525.45** per annum / **\$2,1740.557** variable bi-weekly conversion. This is basic wage and salary plus statutory fringe benefits. Not included in the computation are sick leave, annual leave, maternity / paternity leave, government-paid vehicle, government-paid fuel and lubrication, government-paid repairs and maintenance, government indemnification insurance and other third party liability insurance, government-paid cellular phone, overtime (time and a half), 8-5 Monday-Friday work schedule, government-paid travel fare, per diem, and car rental, government-paid training, etc. estimated conservatively or valued at \$ 15,000.00 plus or minus annually added to the \$56,525.45 salary and benefits equal \$71,525.45 estimated annual expenses equals **\$2,750.98** variable bi-weekly conversion.

From its inception, the SHEFA program faced a “highly compressed and unusual schedule” for implementation coupled by delays in allocation of funds for financial assistance and operations. Given this climate of uncertainty and unpredictability, it is most imprudent to hire fulltime staff during the formative period of program development. Besides, operation funds are inadequate to

even attract an individual best qualified to operate a new and evolving program. Even if the governing opted to do so, however, it'd have been prevented from the outset and be deemed out of compliance with and barred by applicable statute governing fulltime employment. Therefore, outsourcing, under the unique circumstances that SHEFA has been put through, is the most fiscally prudent option to the alternative offered in the review based on total cost impact to the program as enumerated in the illustration above.

Section 2. Board Compensation

1. OPA Conclusion: SHEFA incorrectly classified compensation payment as honoraria.

SHEFA Response: 1 CMC 8247 states "...boards...may receive *as compensation* for meetings...\$60 for a full-day meeting and no more than \$30 for a half-day or less day meeting." Cambridge Advanced Learner's Dictionary (2004) defines honorarium as a small sum of money paid to someone for a service..." in contrast to compensation defined as "money paid to someone in exchange for something that has been lost or damaged or for some inconvenience", or alternatively defined as "something that makes you feel better when you have suffered something bad." The payment to board members, et. al for performance of duties as honorarium is clearly more descriptive, functional and precise than the use of the recommended lexicon which is nowhere defined in the referenced applicable statute. Moreover, neither the CNMI chart of account nor the general ledger object account recognizes the word *compensation*. Honorarium is recognized in the general ledger object account listing, however. SHEFA suggests a more descriptive, functional and precise reference in differentiating compensation by activity type. In other words, neither 1 CMC 8247 nor PL 15-32 characterizes payment for performance of board duties as compensation per se in the manner in which PL 15-32 makes reference to compensation for performance of board duties as honorarium.

2. OPA Conclusion: In FY 2004 through FY 2006 (Oct. 1, 2003-Sept. 2006), the Board members were compensated for 273 sessions (No. 1=17; No. 2=122; No. 3=90; No. 4=37; No. 5=7 for a total of 273 sessions compensated for three year), which were closed to the public without the necessity of the entire board. *SHEFA Response:* During FY 2004 through 2006, the board / committee was in session an average of 7.5 times monthly with each member compensated 1.5 times monthly per five (5) members or 1.8 times monthly per four (4) members, all things being equal.

SHEFA's enabling statute (SLL 13-21) mandates the Board "shall (a) administer and review applications..." and to "(d) do any and all other things necessary to the full and convenient exercise of (its) powers" and to "establish committee necessary for the conduct of its business...". The board complied with the applicable provisions of the seminal law by requiring the award committee to receive and review applications and present its recommendation to the full board for Board action.

Committee level sessions/meetings and board meetings are not closed (open) to the public to the extent guaranteed by the NMI Constitution in Article I, § 10, a person's right to privacy, as restated in 1 CMC 9903, and to the extent the student privacy act applies in any given situation. Neither in board nor in committee meetings / work sessions that carte blanche authority was promulgated or extended that would frustrate or do violence to applicable provisions of law(s) and regulations governing the SHEFA board or committee, or any committee, for that matter, just as would be perceived, real or imagined, an occasion that would deride at attendees out of diffidence on individual members of the SHEFA board, if any.

Moreover, for the period in question, SHEFA Board members may receive compensation in the performance of duties in accordance with applicable provisions in 1 CMC 8247 for meetings and other performance of duties directly related to SHEFA or incidental thereof.

The enabling statute neither envisioned nor intended for the Board to either be full-time or part-employees of SHEFA, much less act or serve in any

capacity as an administrative employee or independent contractor. Performing board duties and fully carrying out the responsibilities expected as members accords with the enabling statute in authorizing the Board to do any and all things necessary to the full and convenient exercise of its enumerated mandatory powers and duties, including securing the necessary and sufficient manpower resources to facilitate and expedite the implementation of existing program policies, rules, regulations, administrative procedures, and formulating new ones in the same order as well as performing follow-up activities, responding to or preparing responses to student, parent, and community concerns, develop reference handbook, provide guidance and technical support in the development of fiscal reports, negotiations for office space, drafting of cooperative agreement with agency in government, preparing statistical and narrative reports, press releases, comments on pertinent legislations, etc., including deliverables that are highlighted in the “review” as duplicative tasks to the extent that they are on-going activities driven by program needs and the priority set forth by the governing board.

From FY 2004 to FY 2006, the award committee received, reviewed, processed and forwarded to the full board 2,452 applications and support materials for board action and reported to the board on 531 deficient or application denials, 48 appeals and 49 reversals. The awards processed for FY 2004 to FY 2006 amounted to \$5,138,800. In addition, members performed board duties without compensation in various functions and activities (2004 to date), which include but not limited to meetings with the Secretary of Finance over funds allocation, issues on lapse funds, delays in processing and disbursement of SHEFA checks, etc.; in-chamber conference or summit with members of the legislative delegation on SHEFA matters and issues; meetings with the deputy attorneys from the Office of Attorney General on SHEFA issues; meetings with public school counselors on college preparatory activities, college guidance and counseling and computation of high school grade point average (GPA); participated in school fairs and annual school visits with Mayor Tudela; worked with the Saipan Chamber of Commerce, the Department of

Commerce, the Northern Marianas College (NMC), the Public School System (PSS), Department of Commerce and Office of Personnel and Management (OPM) on SHEFA's seminal priority field of study for Saipan and employment assistance for SHEFA graduates; appeared on television talk shows; held sessions in planning for the First Workforce Summit on Saipan on November 2006, among others.

Notwithstanding the multifaceted activities members were engaged and participated in, including the services rendered in the performance of their board duties, the total compensation payments for the members amounted to \$2,610 in FY 2004; \$3,330 in FY 2005; and \$3,030 in FY 2006. The board meeting / session expenses, when taken in the context that the Board has no option but instead mandated by the enabling statute to receive, review, process, and take final action on 2,452 applications coupled by hours, days, weeks and months of review together with the multi-paged support materials and still produced timely results by in the awarding of \$5,138,800 under highly compressed and unusual implementation schedule, is a phenomenal feat and a tall order, considering the true opportunity cost involved in accepting a \$30-dollar board duty fee for the opportunity cost to earn a higher duty fee instead of laboring for hours, days, and weeks at a time to review, process, and make informed decisions on every single application and support document packet.

Of the members, Board 2 chaired the award committee since its inception. The award committee has been tasked with the responsibility for performing initial review of applications and support materials for the committee recommendation to the full governing body, which bears two signatures at the committee level. Moreover, Board 2 has been the only non-government employee of the members, a status which has served the board well and beneficial for the program insofar as his ability to amply provide the program with the time and the least opportunity cost relative to the other appointed members. The review and screening function performed by the award committee is in accord with applicable provision of law in duly exercising due diligence in the performance of board duties, which the Board has no authority

to delegate or even allow a non-member of the Board (i.e., staff) to act on behalf of or to dispose of board duties and responsibilities, or to even assume the inherent Board powers and duties enumerated in the enabling statute.

The overriding goal of the Board in facilitating timeliness, predictability, responsiveness and sensitivity to program clients precipitated the establishment of board committees, as with the award committee, in addition to the board doing any and all other things necessary to the full and convenient exercise of its powers and duties, which is amply provided for in the seminal statute. In other words, the priority placed on timely review, processing, and action on applications is attributable to or in direct correlation to the amount of work sessions exerted by members of the board, notwithstanding the fact that most of the members are government employees, except Board 2 who is not an employee of the local government.

On the other hand, the perennial delay from the inception of the program deals more with the processing and issuance of SHEFA checks; errors in the amount, payee name, and the term in reference; delays which ensued in canceling checks, making the necessary corrections and subsequently reprinting and final disbursement of checks back to SHEFA, including delays in SHEFA not receiving ever timely reports on fund status, subsidiary ledger or expenditure report since 2005, or even for SHEFA to have the ability to access directly the JD Edwards system since it was first requested in 2005 and as of this writing. The same holds with overtures to reconcile the program records at SHEFA with the ones at Finance-an issue that has been mulled over since 2005, which seemingly appears to be an irreconcilable proposition, as it has yet to be accomplished as of this writing as well.

3. OPA Conclusion: SHEFA considered a half-day meeting as less than four (4) hours, and full-day as four (4) hours or more.

SHEFA Response: SHEFA neither claim authority nor act, much less pretend to be an authority over what qualifies as a half day meeting or a full day session for that matter, other than as provided for in 1 CMC 8247 or in the plain reading

of the applicable provisions thereof and upon appropriate agency determination outside of SHEFA and on the approval by Finance.

4. OPA Conclusion: OPA found nineteen (19) instances when Board members were compensated for duties performed but were not documented on SHEFA's activity list.

SHEFA Response: 1 CMC 8247 neither proscribes nor permits much less requires, defines or establishes any procedure or process that figures in the calculus of service time or in the accounting of performance of board duties, just as a member of the public is not required, as a condition of attendance at a meeting of a governing body such as SHEFA board meeting, to register his or her name or provide other information or to complete a questionnaire or otherwise fulfill any condition precedent to attendance of board meetings or in the performance of board duties though voluntary sign-in sheet or log sheet is not necessarily precluded. Actual presence of members is a necessary and sufficient condition in the determinative process for compensation in 1 CMC 8247.

Acting pursuant to the enabling statute in establishing a committee for and in the conduct of its business, the board tasked the award committee to perform the receipt and review function on applications and support documents for the board, and to thereafter forward the committee recommendation to the full board for final agency action. Board 2, who has served as head of the SHEFA award committee since the inception of the program, has continuously performed his board duty and function through the award committee together with Board 3, at other times assisted by Board 4 during the formative stages of program implementation in mid- to latter part of 2004. Typically, the committee begins the application and support material review process within a week following application deadline. Any two members of the board may participate in concurrent or in separate review sessions on the same day at the same time or on different days at different hours of the day, given the volume of applications and materials for committee review and processing action.

Given the highly compressed and unusual timeline in program implementation within three (3) months following confirmation, it was extraordinary for the award committee to have reviewed and processed 222 applications for the Fall 2004 semester and subsequently forwarded requests for checks to Finance in batches. The first batch consisted of 94 grant-in-aid for off-island recipients and 94 of the same for on-island applicants, all of which were transmitted to Finance on September 7, 2004, within weeks of review and action by the committee and the board respectively. On October 28, 2004, 34 more off-island and 19 on-island merit scholarships were forwarded to Capital Hill. This action was followed by another batch of 57 on-island and 49 off-island priority field awards on November 9, 2004 and 16 additional merit scholarships on December 9, 2004. All in all, there were a total of 188 awardees for a total award of \$447,900 in financial assistance in the three areas of assistance, which were acted upon three months following board confirmation at a total cost of \$2,610 on board compensation in FY 2004, the year at issue. Without the reviews undertaken by members of the board on applications and support materials, the full board would not be in a position to move forward in a timely manner in taking final actions on student applications for postsecondary financial assistance, among others.

5. OPA Conclusion: SHEFA's attendance log sheet indicates 83 instances when members did not time-in or time-out.

SHEFA Response: 1 CMC 8247 neither proscribes nor permits much less requires, defines or establishes any procedure or process that figures in the calculus of service time or in the accounting of performance of board duties, just as a member of the public is not required, as a condition of attendance at a meeting of a governing body such as SHEFA board meeting, to register his or her name or provide other information or to complete a questionnaire or otherwise fulfill any condition precedent to attendance of board meetings or in the performance of board duties though voluntary sign-in sheet is not precluded. Actual presence of members is a necessary and sufficient condition in the determinative process for compensation in 1 CMC 8247.

Notwithstanding this provision, SHEFA provided an internal log in Spring 2005 as an indication of member presence at the SHEFA office in performance of duties, and by no means to be construed, interpreted or in anyway limit board or member performance of duties or be an antecedent or a prerequisite to gain entry to the SHEFA office or a prerequisite in the performance of board duties at the office or outside of the office (e.g., school visit, career fair, workforce summit, chamber of commerce meetings, etc.).

Of the identified instances not logged in or out, Board 2 performed board duties, once (1) on December 2004, including February and April 2005 and twice (2) on March, May and June 2005, all of which were recorded in pertinent minutes of the board. Similarly, Board 3 performed board duties once (1) on November (award letter signing) and December 2004; twice (2) on May 2005 and February 2006, as did Board 4 once (1) on June 2005 and twice (2) on May 2005, all of which were conducted in the performance of board duties and reflected in pertinent minutes.

In performing their board duties, though clocking in and out is not mandatory, Board 4 did log in once (1) on June and July 2005, including Board 1 and Board 5 on December 2005 just as Board 3 did once (1) on January and September 2005; twice (2) January 2006; thrice (3) on June, July, and August 2005; and four (4) on October and December 2005, including March 2006.

Board 2 did clock in once (1) on October 2004 and January 2005; twice (2) on June, August, September and November 2005, including February and March 2006; thrice (3) on July 2005; four (4) on December 2005 and January 2006; and five (5) on October 2005, all instances of which heretofore comply with

1 CMC 8247 for Board compensation of no more than \$30 for a half or less day meeting / work sessions in the performance of SHEFA board duties.

6. OPA Conclusion: Prior to the enactment of PL 15-32 (i.e., 1 CMC 8247), OPA noted 15 instances of sessions compensated at less than two hours.

SHEFA Response: 1 CMC 8247 allows Board compensation of

no more than \$30 for a half or less day meeting / work sessions in the performance of SHEFA board duties.

7. OPA Conclusion: There were eight (8) instances when members were compensated for duties performed not on attendance log (after implementation on Spring 2005); seven (7) instances of compensation on dates when some members were logged on attendance sheet while others were not (with issue over appropriate compensation rate applied actual performance of duties for compensation); and two (2) instances of full documentation but the full day rate was applied for a half day performance of duties.

SHEFA Response: 1 CMC 8247 neither proscribes nor permits much less requires, defines or establishes any procedure or process that figures in the calculus of service time or in the accounting of performance of board duties, just as a member of the public is not required, as a condition of attendance at a meeting of a governing body such as SHEFA board meetings, to register his or her name or provide other information or to complete a questionnaire or otherwise fulfill any condition precedent to attendance of board meetings or in the performance of board duties, for that matter, though voluntary sign-in sheet or log sheet is not necessarily precluded. Actual presence of members is a necessary and sufficient condition in the determinative process for compensation in 1 CMC 8247.

Notwithstanding this provision, SHEFA provided an internal log in Spring 2005 as an indication of member presence at the SHEFA office in performance of duties, and by no means to be construed, interpreted or in anyway limit board or member performance of duties or be an antecedent or a prerequisite to gain entry to the SHEFA office or a prerequisite in the performance of board duties at the office or outside of the office (e.g., school visit, career fair, workforce summit, chamber of commerce meetings, etc.).

As to the eight (8) instances when members performed board duties for which they were compensated, except that the activity was not in the attendance log, were nonetheless reflected in pertinent board minutes as in Board 2, who was compensated for four (4) sessions in FY 2005; three (3) sessions for Board

3 and two (2) sessions for Board 4, all of which were reflected in pertinent board minutes, except for the performance of board duties on one session for Board 4.

On the seven (7) instances when some members were logged on an attendance sheet while others were not (with issue over rate applied) involved Board 2 as reflected on SHEFA activity sheet and meeting agenda for October 7, 2004 as was Board 4 on even date; Board 4 was also present along with Board 1, Board 2, and Board 3 for the October 21, 2004 meeting on program issues with Ms. Debra Covington from the A.G.'s Office, and on November 8, 2004 with Board 3.

The March 2005 compensation of Board 1 was reflected on pertinent board minutes. The reference date entered for Board 5 on September 22, 2005 was actually for October 1, 2005, an appeal hearing conducted by Board 5 on a Saturday with Board 1 while the date of September 23, 2005 was for October 22, 2005, when the board held a meeting on a Saturday. Notice the absence of overtime compensation for board members in the performance of their duties.

Similarly, no overtime cost was incurred by SHEFA by the presence of contractors throughout the board meeting held that Saturday or any holidays and weekends and after working hours beyond the typical 7:30am to 4:30 pm work schedule of civil servants.

With respect to the two (2) instances in which SHEFA incorrectly applied the full day rate for a half day performance of duties, the rate applied for Board 4 was correct, as Board 4 participated in the morning and afternoon sessions of the board meeting held that day: the morning session at 9:30AM to 1:00PM; the afternoon session at 2:30- 4:00 PM. The remedy on the typographical entry on Board 3 would be an offset an overage against future earnings.

8. OPA Conclusion: PL 15-32 governs compensation of Board members.

SHEFA Response: 1 CMC 8247 governs compensation of Board members in FY 2004 through FY 2006. PL 15-32 has no retroactive provision, which requires retroactive application and effect, and as such the statute at issue has prospective application and effect in conformance with PL 3-90.

9. OPA Conclusion: SHEFA work sessions are not compensable under PL 15-32.

SHEFA Response: The limits imposed in PL 15-32 on compensable meetings / sessions in compliance with applicable provisions of statute is duly noted. In performing board duties vis-a-vis work sessions, the board do recognize the compliance requirement with applicable provisions in PL 15-32.

10. OPA Conclusion: Board members continue to be compensated for meetings of less than two hours duration and certain members continue to be compensated for work sessions under PL 15-32.

SHEFA Response: SHEFA provide for the specific approval by Finance required information for an independent evaluation or determination on any and all board compensation requests by SHEFA under PL 15-32. Moreover, the statute in question mandates the rate of compensation for meetings to be fixed at \$60 for a full day meeting and \$30 for a half day or less meeting, provided no compensation is to exceed \$6000 annually. A half-day meeting is defined by law as not less than two (2) hours nor (sic) more than four (4) hours, and provides for compensation for less than a half-day meeting.

11. OPA Conclusion: On a request dated January 2008, OPA revealed the SHEFA Board used a pro-rata method in compensating members for less than two hours duration, one that is not in compliance with PL 15-32.

SHEFA Response: SHEFA would be amendable to any adjustments to the extent required by applicable provisions of law as an offset against subsequent or future payment (i.e., future earning) request to Finance. Moreover, the statute in question mandates the rate of compensation for meetings to be fixed at \$60 for a full day meeting and \$30 for a half-day or less meeting, provided no compensation is to exceed \$6000 annually. A half-day meeting is defined in PL 15-32 as not less than two (2) hours nor (sic) more than four (4) hour in duration, and provides for compensation of less than a half-day meeting.

Section 3. Program Eligibility

1. OPA Conclusion : Four (4) of fifteen (15) student files reviewed contained deficiencies.

SHEFA Response: The files reviewed as deficient contain the applicant information necessary to overcome the burden of proof on residency (2), citizenship (1), and deadline (1), all of which are in accordance with the enabling statute in SLL 13-21 and in applicable provisions of the SHEFA regulations. On the other hand, the Fall 2005 MOA in question was forwarded by SHEFA to the Mayor's Office for signature and not returned to the file, as in the case of a current student who is set to graduate next year in Massachusetts. The so-called missing transcript is in fact in the file which borne the official emblem of the institution of record.

2. OPA Conclusion: SHEFA did not comply with its stated deadline.

SHEFA Response: The issue involved one (1) application in Spring 2007. The applicant or a representative of the applicant caused the submission of an application intended for Spring 2007 prior to SHEFA's December 1, 2006 deadline. Upon discovery by staff that the applicant did not affix her signature and print her name on the application (note: reason the board reviewer did not affix his initial, much less his signature at the time of review) repeated attempts were carried out to reach the applicant by phone at her residence in San Antonio to return to SHEFA to affix her signature on the application. The attempts were performed prior to the 2005 Winter Break for Christmas. Applicant, however, did not show up until after the Christmas and New Year holidays on January 26, 2006, the same date when she came and signed the application. Making the date of actual signature retroactive would have been imprudent and is disallowed at any rate. The other so-called exception involved a situation in which SHEFA received an official transcript by mail passed the later deadline and was accepted by SHEFA. Accepting the Spring 2006 official transcript in question beyond an extended deadline would run afoul with standard industry practice to the extent that the postmark date had passed the deadline. This was not the case,

however. SHEFA based its acceptance of the transcript on the postmark date stamped outside the envelope, which contained the official transcript mailed in Massachusetts before the deadline. Moreover, the print date on the official transcript establishes prima facie evidence that the transcript was indeed ordered, prepared and printed prior to the extended SHEFA deadline for Spring 2006.

3. OPA Conclusion: Contrary to SHEFA Rules and Regulations, SHEFA's practice has been to consider an application good for one year.

SHEFA Response: Pertinent provision of the SHEFA regulations amply provide for annual application submission with a deadline of the 1st of July if applying for the Fall term and the 1st of December if applying for the Spring term. In other words, a Fall application submission on July 1st is valid for one year when the applicant is awarded for the Fall term, in which case the same applicant is not required to submit a renewal application for the subsequent Spring term on December 1st, for the applicant is a continuing recipient in the Spring term. This procedure applies to MOA's as an annual submission. If the applicant is not awarded or denied, then a re-submission is required the following term. On the other hand, when an applicant voluntarily cancels the application or unexpectedly withdraws from classes, the applicant may petition SHEFA to preserve (or to return the documents at the applicant's expense) the application and support materials and used at a later term within a year's time.

4. OPA Conclusion: The SHEFA review form in seven (7) of fifteen (15) file were deficient or completely absent.

SHEFA Response: None of the seven (7) files reviewed were deficient to the extent that a single sided in-take / review checklist was used exclusively by SHEFA from Spring 2005 to Spring 2006. In Fall 2006, SHEFA instituted a single double-sided in-take checklist *and* review form for internal administrative use and for the board to perform and conduct application and support material review and assessments. A file cited without a review form attachment is correct: there was no application to review. In other words, the file in question

did not file an application for the Fall 2006 term, which obviated the need to establish one in the file and is in fact both superfluous and fiscally imprudent.

5. OPA Conclusion: Three (3) instances had occurred when SHEFA checks were released or disbursed without proper log-out clearance, including authorization letters not found in the files in question for check pick-ups.

SHEFA Response: SHEFA's internal log-out system was first instituted in Spring 2005. In all instances, checks were logged out on the log sheet in Fall 2005 in two instances. The Fall 2004 check in question was logged out to the extent that a duplicate copy of a signed and dated check stub is on file, keeping in mind that the internal log out system was first instituted in Fall 2005, one academic year following Fall 2004. In cases when SHEFA checks were released to parents of recipients, in one instance all SHEFA checks were mailed directly to the recipient in Fall 2004, Spring 2005, and up to Spring 2007, except for Fall 2005, when the recipient (Seattle, Washington) orally requested SHEFA by phone to authorize his mother to pick up a Fall 2005 term check. Another instance occurred in Fall 2005: the recipient's mother, who is residing on Saipan and presently works at the Division of Environmental Quality (DEQ), was verbally authorized by her only son (California) to pick up his Fall 2005 and Spring 2006 SHEFA checks, owing to the purported lengthy delays in the local mail system. The third case involved a student in Massachusetts, a minor at the time of application, was required to have one of her parents as a co-applicant. Since then, the recipient has not revoked a prior authorization allowing her parents who are residing close to the SHEFA Office to pick up her checks. In fact, the recipient is expected to graduate from college in Massachusetts next year.

6. OPA Conclusion: SHEFA misclassified operational expenses as financial assistance expenditure in Fiscal Year 2004 and Fiscal Year 2005 for \$1,030 and \$22,384 respectively.

SHEFA Response: The "review" correctly explained "SLL 14-9 appropriated an *additional* \$150,000 for program operations", though overstated the "misclassified" expenses: the correct figure generated by Finance was \$1,029.92

in FY 2004, not \$1,030 and \$20,594.52 in FY 2005, not \$22,384 as reported. These expenses are directly related to and mutually inclusive and part of the SHEFA student assistance program expenses, unless the program has a self-executing provision all to its own. SLL 14-9, on the other hand, was a one-shot hodgepodge “special appropriation”. To be sure, it was an appropriation that is mutually exclusive from or in addition to what the seminal statute provided for “all monies accruing to the benefit of the SHEFA Board... and for the payments made therefrom as directed by the Board. The Board is further instructed in the seminal statute to monitor and record monies received for assistance and operations. Which is exactly what the Board has done. In short, SLL 14-9 was at best a temporary local enabling appropriation without preemptive application or effect. Assuming hypothetically that the expenses in question are not factually connected to or relate directly to and inclusive of SHEFA’s financial assistance program, an account journal voucher on the part of Finance accounting would have been an appropriate remedy consistent with standard industry practice, if indeed a remedy is called for and appropriate in the extant case.

Moreover, SLL 14-16 did not factually amend the pertinent section in the seminal statute in SLL 13-21, as it made incorrect citation and reference to a non-existent section in SLL 13-21, and thus under the strict rules of statutory construction is null and void. Working on a presumption that an amendment could be considered, notwithstanding error in statutory construction in SLL 14-16, which amended a “Section 6(b)” nowhere to be found in SLL 13-21, Section 5(b), the amendment would then apply prospectively to future “use of continuing appropriations” which are considered unrelated to student financial assistance activities and expenses under SLL 14-16, not fund balance.

7. OPA Conclusion: SHEFA charged \$200 in operation fund (i.e., reprogram) for one (1) floral arrangement wreath for the funeral of the mother of the SHEFA chairwoman on June 13, 2006.

SHEFA Response: The action was taken on the advice of staff at the Office of the Mayor, concurred by OMB and approved by Finance. The sum of \$200 was

sourced from non-program assistance fund pursuant to applicable statute (SLL 14-28) and journal voucher (intra-agency) to a local account with the mayor as the expenditure authority. Both mayor staff at SHEFA and SHEFA contractor 1 were together when the order was placed at a floral shop and signed by contractor 1. The floral shop is located near the SHEFA Office in Garapan.

On the other hand, the issue in the seminal statute over segregation and separation of local fund from the general fund (i.e., Commonwealth Fund) involved unexpended local fund balance at the end of the fiscal year not reverting back to the General Fund up to the time the applicable statute was amended. This was practiced by the central government agency in its effort to recoup and recapture un-obligated local or municipal fund balance at the end of a given fiscal year. Upon recapture of the identified local un-expended or un-obligated fund balances at the end of a given fiscal year it is then transferred to the general fund and recommitted the recaptured local balances as general fund revenues to be made available for outstanding CNMI general fund re-obligation or for re-appropriation. However, the recent enactment of a statute in 2005 (PL 14-74) halted the recapture of unexpended or un-obligated municipal or local funds. The applicable statute now requires any “un-obligated balance of any expired local appropriation shall be withdrawn and revert to the respective local fund account from which the appropriation was made if the local appropriation law does not provide otherwise.”

Dispute

The conflict or controversy generated in the assertion, claim and demand in the review over a preferred method of delivery and implementation as opposed to the approach or method taken by the SHEFA board in actually carrying out its powers, duties and responsibilities in pursuit of SHEFA’s program mission implicates SHEFA’s enabling statute and provisions of other applicable law(s) and regulations governing SHEFA. Accordingly, SHEFA asserts its own claims and proffers its responses based on relevant stipulated claims and conclusions contained in the review hereinafter summarized as follows:

1. That SHEFA should hire employees, not contractors whose deliverables appear duplicative and compensation schedule dictated in the contract. *SHEFA holds* the determinative decision over the manpower resource needs of the program comports with SHEFA's enabling statute and provisions of pertinent law governing hiring; on the other hand, the issue over repetitive deliverables are sufficiently addressed and established earlier to the contrary and further that meetings in the extant case were governed by applicable provisions in 1 CMC 8247.
2. That some board members were compensated with inadequate information (document) and for work other than Board meetings not in compliance with PL 15-32.

SHEFA holds that the office processed a total of seven (7) requests (FY 2004: Oct. 25, 2004; FY 2005: May 19, August 23, and November 28, 2005; and FY 2006: April 11, August 7, and Jan. 29, 2007) for board compensation payments for duties performed pursuant to Saipan Local Law 13-21 and in compliance with 1 CMC 8247 in Fiscal Year 2004, Fiscal Year 2005, and Fiscal Year 2006. At seven payment requests in three years, the number of payment request is approximately twice each year in 2004, 2005, and 2006 in varying frequencies by year. The board compensation in Fiscal Year 2004 was \$2,610. This amount increased slightly to \$3,330 in Fiscal Year 2005, but decreased back to \$3,030 in Fiscal Year 2006. The total amount of board compensation in the performance of their duties was \$8,970, or approximately \$249.17 monthly for 36 months or three (3) fiscal years. In a five-member governing board, this amounts to \$49.83 for every member every month for three years. Moreover,

SHEFA has adhered to and continues to submit all board compensation payment requests addressed directly to the Secretary of Finance for review, concurrence, processing, and disbursement of payment to SHEFA. The payment request for board compensation comports with the compensation rate of \$30 for *half or less day* meeting and / or reimbursement for extraordinary expenses in the performance of board duties referenced in 1 CMC § 8247 (a) and 1 CMC § 8247 (c) and 1 CMC 9902 on transaction of business of a public agency (i.e.,

board, commission, committee, etc.), including deliberation, discussion, consideration, review, evaluation and final action.

3. That SHEFA made determinative decisions on student eligibility with inadequate information, which likely caused exceptions being made on deadlines, including instances of deficiencies on the utility of internal review form and check disbursement log.

SHEFA holds that SHEFA relied on the preponderance of the evidence (and common sense) in justifying decisions on initial and continuing student eligibility in SHEFA. The application deadline for SHEFA is July 1st for Fall and December 1st for Spring. Support documents other than those due on the application deadline are due on or before September 30th for Fall and February 28th for Spring. A review form was first instituted in Spring 2005 for use by administration and used as reference by the board in its own review of SHEFA applications. This form was later bifurcated in Fall 2006 for separate board review and administration in-take. An inadequate and ineffective method or strategy of information gathering is likely to result in not obtaining the full picture in any given situation as was the case involving a case in which a file in question did not have a review sheet for Fall 2006 simply because there was no application to attach it to in the first place. Similarly, the first check log out was instituted in Spring 2005 and all three instances cited for lack of log out were in fact sufficiently documented in the file.

Recommendation

1. Based on SHEFA's experience with a "review" in the extant case, it is SHEFA's contention that any "review" of any agency in the future must be required to adhere to and be in compliance with the strictures of the Generally Accepted Auditing Standards and Auditing and Ethics Act.
2. That a minimum threshold of content validation be required in order to properly establish inter- or intra-agency program comparability relative to program delivery and / or program effectiveness in part or in whole referenced

in any introductory text to research, program review checklist or standard evaluation procedure and process in order to raise the bar and standard of review above and beyond discretionary due diligence.

3. That any review in the future shall be required to provide the agency in review a reasonable opportunity for an entry briefing to all appropriate parties at a time, date and venue determined by the agency involved, and not at the discretion of the reviewing agency conducting the review.

4. That any agency subjected to a review in the future shall be afforded a reasonable opportunity for an exit briefing to all appropriate affected parties at a time, date and venue as determined by the agency involved, and not at the discretion of the reviewing agency conducting the review.

5. That any agency subjected to a review in the future shall be afforded a reasonable opportunity to prepare and provide written response(s) in reference to information contained in a review during or before the conclusion of any review in part or in whole. In addition, no review should be available for distribution or discussion without receipt of written responses by respondent(s) on a deadline mutually set by all parties involved in or affected by a review.

Endnotes