



# NMI SETTLEMENT FUND

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April 8, 2024

Honorable Edith E. Deleon Guerrero  
Senate President  
23<sup>rd</sup> Northern Marianas Commonwealth Legislature  
P.O. Box 500129  
Saipan, MP 96950

**RE: Senate Bill 23-61**

Dear Senate President Deleon Guerrero:

The Settlement Fund became aware of Senate Bill No. 23-61 (“SB 23-61”) through media reports rather than the usual requests from the senators or representatives themselves for comments. We have worked and continue to work with the NMI Legislature on bills and resolutions so they understand the legal implications of the Settlement Agreement entered into by the NMI Government and incorporated in the Final Judgment issued by Chief Judge Frances M. Tydingco-Gatewood.

The Saipan Tribune reported in a March 24, 2024 article that you “introduced a bill that will allow the Settlement Fund to adjust benefit payments to reflect the correct calculation going forward and to authorize waivers of overpayments of retirement benefits.” The report further states that you are relying on “the laws of the U.S. Government, as well [as] most of the states and territories, provide for waivers of overpayments of various benefits, including social security benefits, state retirement benefits, state retirement benefits, unemployment benefits, veteran’s benefits, family and medical leave benefits.” It is not clear from this article or SB23-61 what legal authority you are relying on to support the change in the NMI Benefit Laws proposed in SB 23-61.

By way of background, the Settlement Fund was created with the settlement of the *Betty Johnson* class action lawsuit (Case No. 09-000023) against the NMI Government and agencies for failure to pay the legally mandated contributions. The Settlement Agreement is available on the NMI Settlement Fund website and a copy is attached as well. The Settlement Agreement defines a Settlement Fund member’s “Full Benefit Payments” as:

benefit payments in the amount defined by 1 CMC §8301 et seq. (excluding any changes by P.L. 17-82 or P.L. 18-02) as those laws existed on June 26, 2013, or guaranteed by N. Mar. I. Const. art. II, §20 (a) *as it existed in June 26, 2013.*

Settlement Agreement at §§ 1, 13 (emphasis added). This means that laws in existence *as of June 26, 2013* relating to how retiree's benefit payments are calculated and the Settlement Fund's right to collect overpayments under 1 CMC § 8390 shall control and cannot be modified by the Legislature ("NMI Benefit Laws"). The reason for this provision is to protect the retirees' 75% benefit payments under the Settlement Agreement, and to prevent efforts by the Legislature to change the NMI Benefit Laws as of June 26, 2013, or to subvert the intent and agreements reached under the Settlement Agreement and the Final Judgment incorporating the terms of the Settlement Agreement.

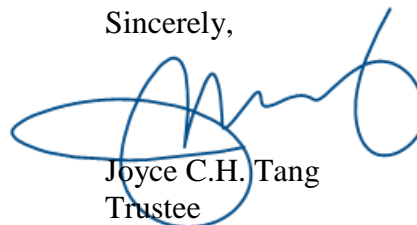
Based on the terms of the Settlement Agreement, any laws passed after June 26, 2013 to change or modify the NMI Benefit Laws has no legal effect. SB 23-61 proposes to amend 1 CMC § 8390 to prohibit the recovery of overpayments and waive any overpayments retroactively to May 7, 1989, and provide an appeals process for notices of overpayments or underpayments. SB 23-61 runs afoul of the Settlement Agreement and the Court Order.

SB 23-61 also attempts to circumvent the appeal process and divest the Settlement Fund of its right to collect overpayments. The NMI District Court approved the Settlement Fund's Administrative Appeal Rules and Procedures pursuant to a Court Order dated December 18, 2015 which govern all NMI Retirement Fund and Settlement Fund appeals. *See* Order, ECF No. 739. "[T]he process set forth in the appeal rules is the exclusive remedy for resolving a dispute between a member and the Settlement Fund." Order at 14-15, ECF No. 855. Thus, any legislation attempting to modify the Settlement Agreement without the consent of the Settlement Fund and the NMI District Court's approval is invalid.

If SB 23-61 were signed into law, it would have no legal effect and the Settlement Fund is not required to comply. More concerning to the Settlement Fund is that SB 23-61 misleads the retirees into believing that laws passed by the Legislature to change or modify the NMI Benefits Law controverting the Settlement Agreement provisions are enforceable. I believe the message sent by SB 23-61 is a disservice to the retirees and I hope that as Senate President you correct this misunderstanding of the law.

Please let me know if you would like to meet to discuss these issues further.

Sincerely,



Joyce C.H. Tang  
Trustee

Enclosure

cc: Honorable Arnold I. Palacios, Governor  
Honorable David M. Apatang, Lt. Governor  
Edward E. Manibusan, Attorney General