



# Report of the Trustee

1st Qtr. FY 2023 through 4th Qtr. FY 2023

*October 20, 2023 Hearing*

*Betty Johnson v. Arnold I. Palacios, et al.*  
Civil Case No. 09-00023

# Topics

## I. Overview of the Settlement Fund's Operations

- Class membership data
- MAP and sources of funds
- Audit of member files
- Highlights of Consultant reports

## II. Financial Report of the Settlement Fund

- FY2023 Financial Performance and FY2024 Budget
- Investment Report

## III. Status of Administrative Matters and Litigation

## IV. Discussion Regarding Relevant Legislation



# Operation Highlights

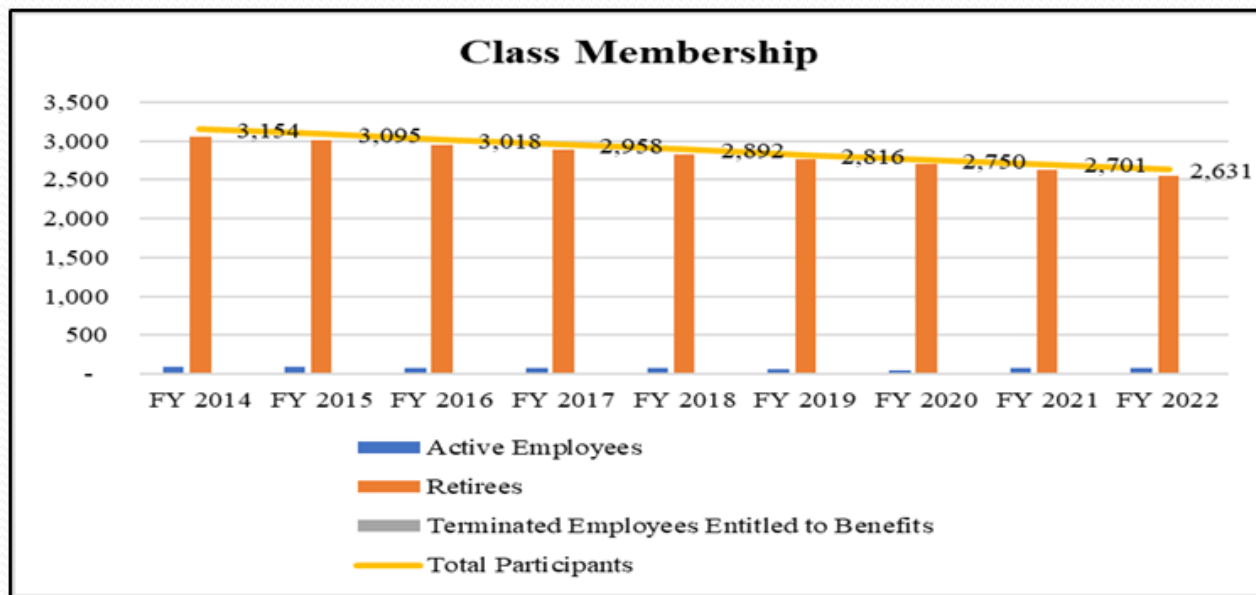
# Class Membership

	9/30/19	9/30/20	9/30/21	9/30/22	8/31/23
<b>Participant Counts</b>					
Active Employees (Class I)	54	45	58	56	48
Active Employees (Class II)	<u>4</u>	<u>3</u>	<u>13</u>	<u>17</u>	<u>14</u>
Total Active Employees	58	48	71	73	62
Retirees	<u>2,758</u>	<u>2,702</u>	<u>2,630</u>	<u>2,558</u>	<u>2,403</u>
Total Participants	2,816	2,750	2,701	2,631	2,465
Difference	(66)	(49)	(70)	(166)	

In FY 2023 (as of 8/31/23), there were 2,465 participants, a decrease of 166 from FY 2022.

Trustee's Report 9, ECF No. 865.

## Reduction in Class Membership (2014-2022)



- Class Membership decreased at the rate of 1.9% - 2.6%
- Total decrease 2014 – 2022 is 16.58%

## Breakdown of Members Based on 75% Benefit Payments as of 8/31/23

Benefit Range per Municipality	RETIREE DISABLED	RETIREE	SURV CHILD DISABLED	SURV CHILD	SURV SPOUSE	Grand Total
<b>ROTA</b>	<b>2</b>	<b>188</b>	<b>1</b>	<b>5</b>	<b>68</b>	<b>264</b>
<= \$6,000.00	0	20	1	3	21	45
6,000.01 - 10,000	1	19	0	1	19	40
10,000.01 - 20,000	1	94	0	1	24	120
20,000.01 - 30,000	0	39	0	0	4	43
30,000.01 - 40,000	0	13	0	0	0	13
40,000.01 - 50,000	0	1	0	0	0	1
50,000.01 - 60,000	0	1	0	0	0	1
60,000.01 - 70,000	0	1	0	0	0	1
70,000.01 - UP	0	0	0	0	0	0
<b>SAIPAN</b>	<b>12</b>	<b>1396</b>	<b>8</b>	<b>40</b>	<b>571</b>	<b>2027</b>
<= \$6,000.00	0	113	8	35	245	401
6,000.01 - 10,000	5	130	0	4	147	286
10,000.01 - 20,000	6	608	0	0	161	775
20,000.01 - 30,000	1	401	0	1	14	417
30,000.01 - 40,000	0	100	0	0	1	101
40,000.01 - 50,000	0	26	0	0	1	27
50,000.01 - 60,000	0	9	0	0	1	10
60,000.01 - 70,000	0	4	0	0	1	5
70,000.01 - 80,000	0	1	0	0	0	1
80,000.01 - 90,000	0	3	0	0	0	3
90,000.01 - UP	0	1	0	0	0	1
<b>TINIAN</b>	<b>1</b>	<b>115</b>	<b>0</b>	<b>5</b>	<b>53</b>	<b>174</b>
<= \$6,000.00	1	10	0	5	14	30
6,000.01 - 10,000	0	10	0	0	18	28
10,000.01 - 20,000	0	54	0	0	21	75
20,000.01 - 30,000	0	31	0	0	0	31
30,000.01 - 40,000	0	8	0	0	0	8
40,000.01 - 50,000	0	1	0	0	0	1
50,000.01 - 60,000	0	1	0	0	0	1
60,000.01 - 70,000	0	0	0	0	0	0
70,000.01 - 80,000	0	0	0	0	0	0
<b>GRAND TOTAL</b>	<b>15</b>	<b>1699</b>	<b>9</b>	<b>50</b>	<b>692</b>	<b>2465</b>

# Payments to Members Based on Current Residence and Classification

Chart 2  
(Period Ending 8/31/23)

PLACE OF RESIDENCE	Total # of Members	NMISF Class Member Classification					Total Benefit Payments	
		Retiree Disabled	Retiree	Surviving Child Disabled	Surviving Child	Surviving Spouse		
CNMI	1760	\$ 7,645.41	\$ 1,335,761.75	\$1,026.64	\$6,737.11	\$247,286.33	\$ 1,598,457.24	76%
CONTINENTAL U.S.	543	\$ 1,217.24	\$ 332,547.37	\$ 92.69	\$1,741.72	\$ 73,988.45	\$ 409,587.47	19%
FSM	9	\$ -	\$ 3,721.42	\$ -	\$ 303.86	\$ 2,685.43	\$ 6,710.71	5%
GUAM	85	\$ -	\$ 47,930.61	\$ -	\$ 388.37	\$ 8,520.48	\$ 56,839.46	
NON U.S.	44	\$ -	\$ 16,322.30	\$ -	\$ 54.10	\$ 6,461.71	\$ 22,838.11	
REPUBLIC OF PALAU	24	\$ -	\$ 16,561.20	\$ -	\$ -	\$ 2,448.20	\$ 19,009.40	
Total Payments @ 75%		2465	\$ 6,646.99	\$ 1,314,633.49	\$ 839.50	\$6,918.87	\$256,042.95	\$ 1,585,081.79

**Average Monthly Payments:**

**75% \$3.21M**

**25% \$1.1M**





# MAP and Sources of Funds



# Minimum Annual Payment

Fiscal Year	MAP	Source of Funds
FY 2014	\$25M (paid)	PL 18-18, PL 18-53
FY 2015	\$27M (paid)	PL 18-66
FY 2016*	\$30M (paid)	PL 19-08
FY 2017*	\$33M (paid)	PL 19-68
FY 2018*	\$45M (paid)	PL 20-33
FY 2019*	\$44M (paid)	PL 20-33, PL 20-67
FY 2020*	\$42M (paid)	PL 20-33, PL 21-8
FY 2021*	\$40M (paid)	PL 20-33, PL 21-35
FY 2022*	\$38M (\$35.4M paid as of 9/14/22)	PL 20-33, PL 22-8
FY 2023*	\$36M	PL 20-33, PL 22-22
FY 2024*	\$34M	PL 20-33, PL 23-9

# Government Has Been Compliant

- MAP for FY2023 of \$36M was paid
- MAP was paid weekly according to agreed up on schedule since 2018
- Settlement Fund has not had to draw down on investments to cover pension payments

# Schedule of Payments for MAP

1 <sup>st</sup> Quarter	\$415,385.56/week \$5.4M
2 <sup>nd</sup> Quarter	\$969,230.77/week \$12.6M
3 <sup>rd</sup> Quarter	\$553,846.15/week \$7.2M
4 <sup>th</sup> Quarter	\$830,769.23/week \$10.8M

Total MAP paid in FY2023 \$36M

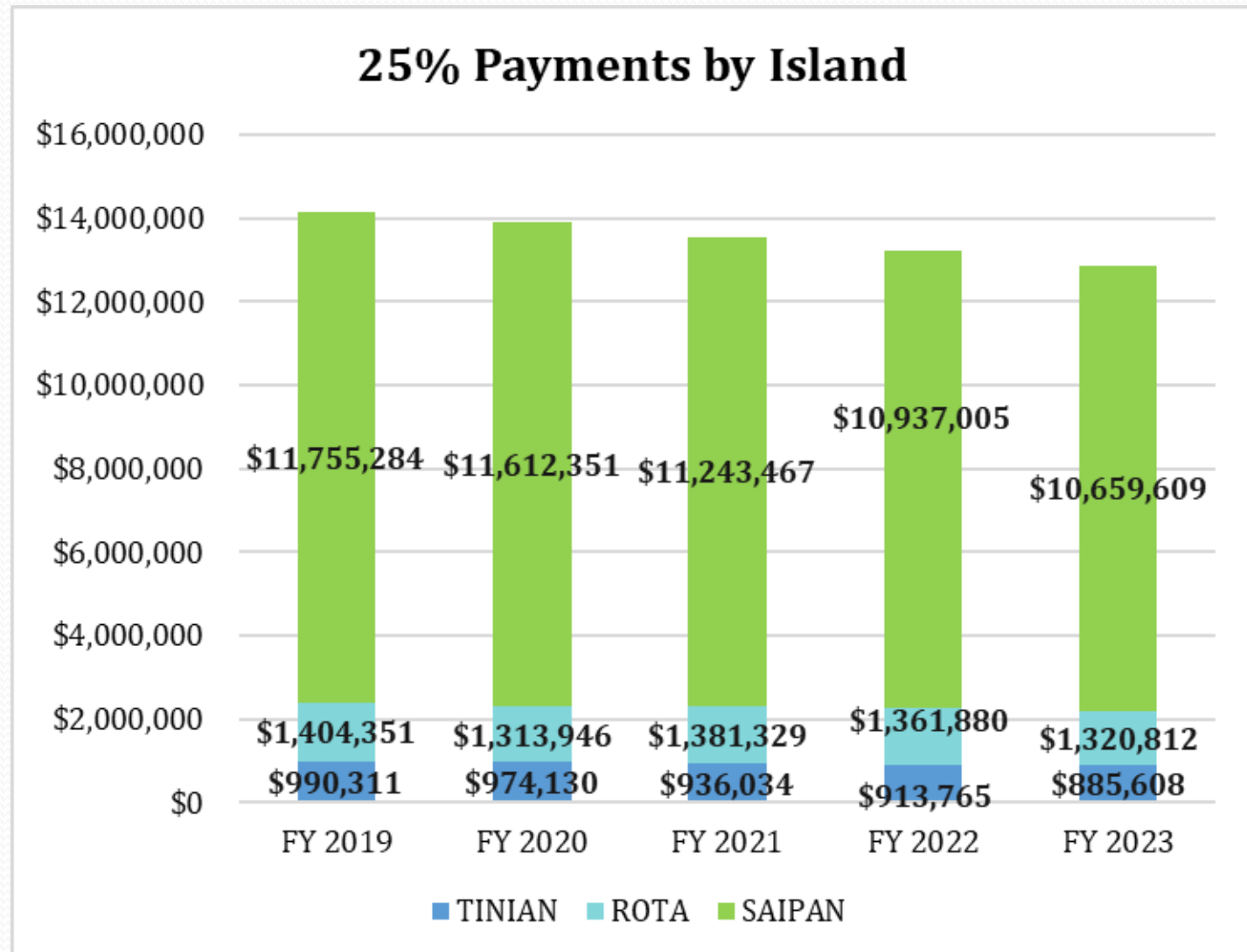
## Alternative Payment of a Greater Amount

- Settlement Agreement provides in Section 4.2 that Government will pay APGA equal to the difference of 17% of the Government's Total Annual Revenue, after deducting the amount of the MAP paid.
- APGA were paid for 2014, 2015, 2016 and 2017, totaling \$36.29 million

2014	\$5.9M
2015	\$1.2M
2016	\$11.5M
2017	\$17.69M
- APGA payments will not be due for 2020.
- APGA payments is unlikely for 2021, 2022, or 2023 because of Government's financial challenges

# Voluntary 25% Benefit Payments

FY 2019 \$14.2M  
 FY 2020 \$13.98M  
 FY 2021 \$13.6M  
 FY 2022 \$13.2M  
 FY 2023 \$12.9M  
**FY 2024 \$0**  
**(No provision in**  
**FY2024 Budget)**



# NMI GOVERNMENT FUNDING SOURCES

	MAP	APGA	25% Benefit Payment
<b>General Appropriations</b>	✓		
<b>Casino License Fee/GRT</b>			
PL 18-56		✓	✓
PL 20-09		✓	
PL 20-34			✓
PL 20-35			✓
PL 20-68		✓	
PL 21-10		✓	
<b>Settlement Fund Revolving Fund</b> (1 CMC § 25301)	✓		
<b>Hotel Occupancy Tax</b> (4 CMC § 1502)			✓
<b>Beverage Container Tax</b> (4 CMC § 1405)			✓

Trustee's Report 16-17, ECF No. 865; Trustee's Report 5, 28, ECF No. 842; Trustee's Report 4-6, 27-28, ECF No. 786; Trustee's Report 3, 20-21, ECF No. 767.

## Status of Payment of Employer Contributions As of 9/30/23

- CHCC Current through 9/9/23
- Government & NMC Current through 9/23/2023
- CDA & CPA Current through 10/7/2023
- CUC Current through 9/23/2023  
*Prior balance - \$3.5M*  
*settlement*  
*Pay \$50,000 per month*
- PSS Not current



# PSS Dispute Re Bonus Payments

- 23 Class Members received “Retention Incentive Bonuses” paid 2021 and 2022 (\$332,789.86)
- PSS owes \$124,433.12 / Employee owes \$35,125.22
- PSS position is ER contribution not required because 1 CMC §8313 excludes “any kind of bonus salary” from the definition of salary.
- Source of funds for the bonus payments are federal funds – DOE treats these payments as “extraordinary income” therefore PSS did not pay ER contribution
- PSS also did not withhold tax for employee’s portion

# Settlement Fund's Position

- W-2 Tax Statements issued by PSS included the Bonus payments in the reported Gross Income (Box 1)
- Internal Revenue Code 26 I.R.C. §61(a)(1):

“all income from whatever source derived, including (but not limited to) ... compensation for services, including fees, commissions, fringe benefits, and similar items.”
- Courts have found that bonuses are included in “gross income” calculation.
- Settlement Agreement requires autonomous agencies to “contribute a similar amount as the government contribution rate of the ***gross salary*** or wages of its active employees to the Fund....”



# Update Re Internal Audit of Member Files

# Results of Internal Audit

- March 2015, Audit software identified 400 overpayment and underpayment Member accounts (one duplicate)
- Member accounts were reviewed – Labor and time intensive 5 step review process
- Prioritized audit of under payments files and issued refunds

# Over/Under Payment Member Files Audit Progress

**March 13, 2015**

**Overpayment**

**Underpayment**

<b>Class 1</b>	75 members	\$617,293	33 members	\$58,201
<b>Class 2</b>	193 members	\$820,068	80 members	\$209,182
<b>Disability</b>	8 members	\$56,448	11 members	\$63,143
<b>TOTAL</b>	<b>276 members</b>	<b>\$1,493,809</b>	<b>124 members</b>	<b>\$330,526</b>

**Sept. 30, 2023**

**Overpayment**

**Underpayment**

<b>Class I</b>	16 members	\$167,973	10 members	\$18,580
<b>Class II</b>	117 members	\$1,823,482	6 members	\$15,750
<b>Disability</b>	0 members	\$ -	members	\$ -
<b>TOTAL</b>	<b>133 members</b>	<b>\$1,991,455</b>	<b>16 members</b>	<b>\$34,330</b>

# Priority Audits

- Death of retiree
- New retiree or survivor application
- Return to government service or reinstatement of retirement benefits upon termination
- Administrative appeals
- Probate cases

# Priority Audits Result

- 112 audits of member files were completed

- Results:

28 No issues

60 Payment issues (see table below)

10 Under legal review

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	Overpayment		Underpayment		Underpayment of Contributions	
<b>Class I</b>	10 members	\$11,777.99	2 members	\$5,874.46	3 members	\$5,283.95
<b>Class II</b>	40 members	\$579,881.45	3 members	\$23,277.02	2 members	\$25,137.42
<b>TOTAL</b>	<b>50 members</b>	<b>\$591,659.44</b>	<b>5 members</b>	<b>\$29,151.48</b>	<b>5 members</b>	<b>\$30,421.37</b>

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# Highlights of Consultant Reports

- **Wilshire Associates (Maggie Ralbovsky) – Investment Consultant**
  - Provides investment advice to the SF
  
- **Milliman, Inc. – Actuary**
  - Prepared and issued FY 2021 Actuary Report in December 2022
  - Anticipated completion of FY 2022 Actuary Report - October 2023
  
- **Ernst & Young – Auditor**
  - FY 2021 issued in September 2022
  - FY 2022 issued in October 2023

# Highlights of Independent Audits & Actuarial Valuation Report

- **Audited Financials**

Fund received clean audits for FY 2018 through FY 2022

- **Actuarial Valuation Report (Dec. 8, 2022 for FY 2021)**

Projected Minimum Annual Payment Amounts:

FY 2023	\$36 million
<b>FY 2024</b>	<b>\$34 million</b>
FY 2025 – 2034	Decline by \$2 million each year
FY 2035	\$13M per year
FY 2036-2044	\$12M per year



# FY2023 Financial Performance & Budget FY2024

# Sources of Funds

	FY 2022 as of 8/31/22	FY 2023 as of 8/31/23
MAP	\$32,738,462	\$31,846,154
Contributions	\$1,883,569	\$1,694,237
Investment Income	\$3,841,717	\$5,367,640
Rental	\$ -	\$ -
Other Income	\$7,740	\$8,601
<b>TOTAL INCOME</b>	<b>\$38,471,488</b>	<b>\$38,916,632</b>
 Total Expenses	 (\$37,782,321)	 (\$36,878,132)
 *Realized Gain/(Loss)	 <u>(\$4,395,036)</u>	 <u>\$ -</u>
<b>NET</b>	<b>(\$3,705,869)</b>	<b>\$2,038,500</b>

# FY2023 Financial Performance

	<b>Actual FY 2023 8/31/2023</b>	<b>FY 2023 Budget 8/31/2023</b>
<b>Benefits Payments (75%)</b>		
Total Benefits Payment	35,468,655	36,254,167
Total Refunds	23,619	34,375
Total Benefits and Refunds Payment	35,492,274	36,288,542
<b>General &amp; Administrative Expenses</b>		
Total Personnel Expenses	819,284	986,992
Total Professional Fees	374,496	795,208
Total General & Admin. Expenses	175,483	250,938
<b>Total Expenses</b>	<b>36,861,537</b>	<b>38,321,680</b>
<b>Total Fixed Assets</b>	<b>3,730</b>	<b>7,792</b>
<b>Total Expenditures</b>	<b>36,865,267</b>	<b>38,329,472</b>

Schedule 1 in Trustee's Report 22, ECF No. 865.

# Proposed FY 2024 Budget

	Approved FY 2022 Budget	Approved FY 2023 Budget	Proposed FY 2024 Budget	FY 2024 increase/ (decrease)	% (+/-) from previous budget
<b>Benefits Payments</b>					
Total Benefits Payment	40,965,000	39,550,000	39,050,000	(500,000)	-1.26%
Total Refunds	55,000	37,500	155,000	117,500	313.33%
Total Benefits and Refunds Payment	41,020,000	39,587,500	39,205,000	(382,500)	-0.97%
<b>General &amp; Administrative Expenses</b>					
Total Personnel Expenses	932,257	1,076,720	1,073,775	(2,945)	-0.27%
Total Professional Fees	815,000	867,500	717,000	(150,500)	-17.35%
Total General & Admin. Expenses	291,750	273,750	359,750	86,000	31.42%
<b>Total Expenses</b>	43,059,007	41,805,470	41,355,525	(449,945)	-1.08%
<b>Total Fixed Assets</b>	8,500	8,500	8,500	-	0.00%
<b>Total Expenditures</b>	43,067,507	41,813,970	41,364,025	(449,945)	-1.08%

Schedule 2 in Trustee's Report 23, ECF No. 865.

FY 2024 Proposed Budget \$41,364,025 (\$449,945 less than FY 2023)

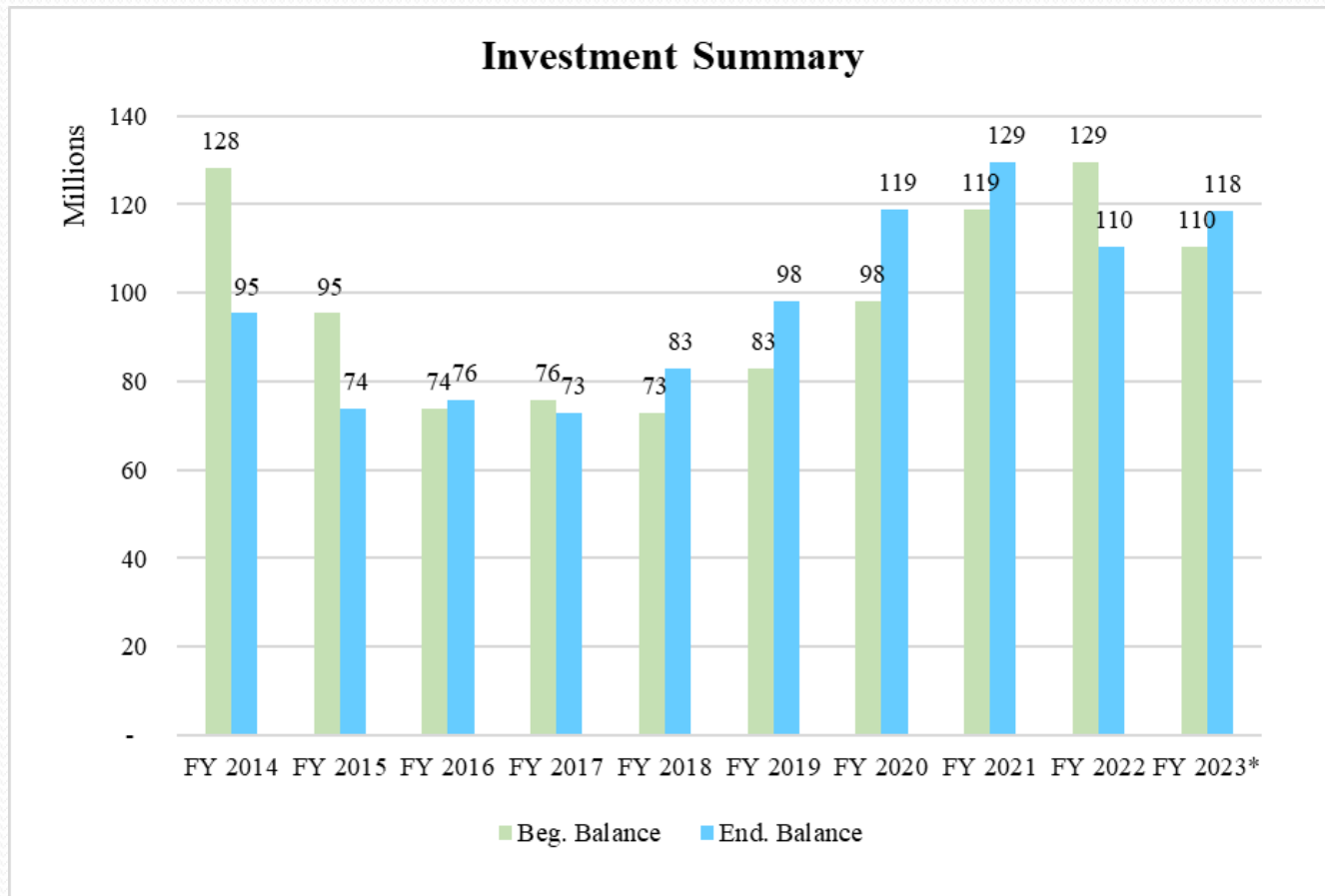




# Investment Report

## Investment trend due to:

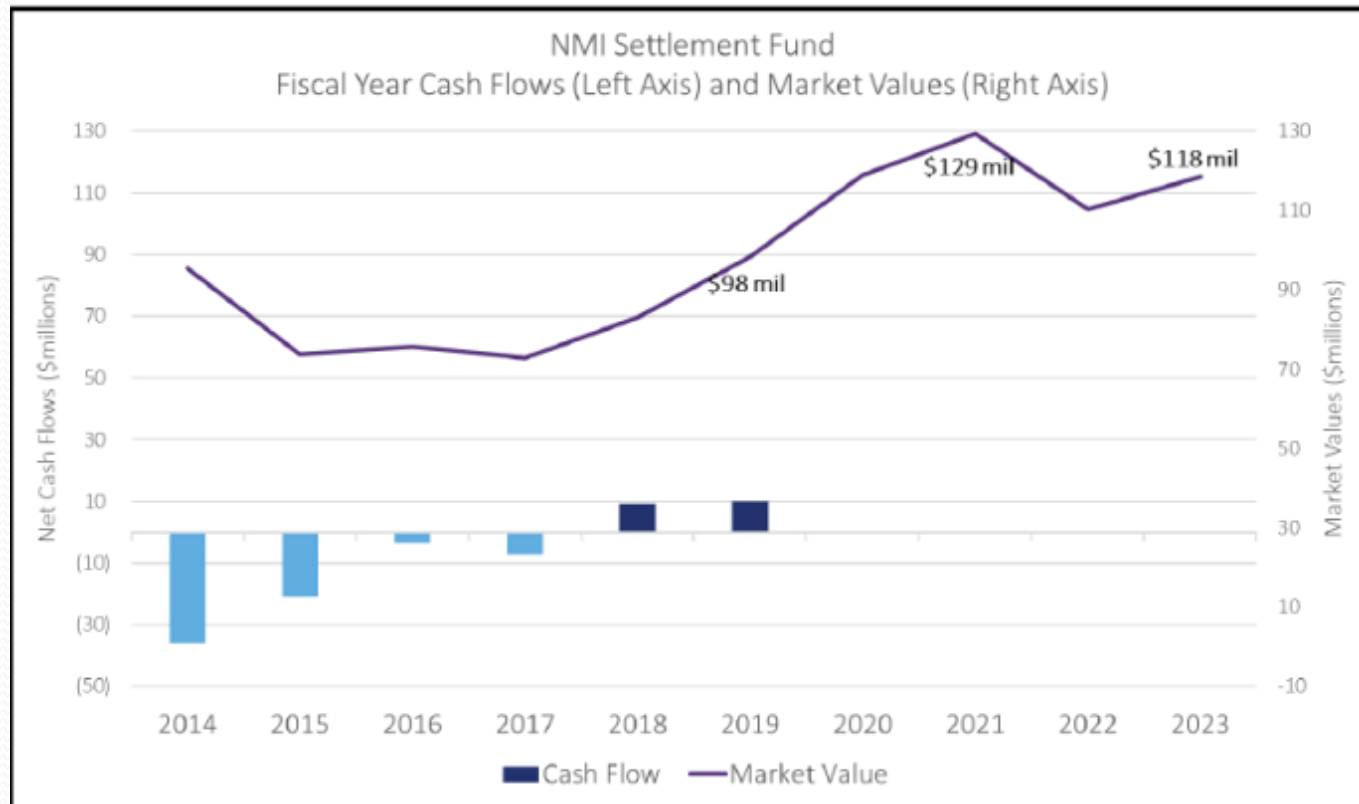
- Government's commitment to bi-weekly MAP payments
- Enactment of P.L. 20-33 (Settlement Fund Revolving Fund Account)



# 7.41% Return as of 9/30/23

- Achieved despite a volatile market caused by persistently high inflation and a hawkish Federal Reserve
- Outperformed the policy benchmark by 0.26%, net of fees and expenses
- Was aided by the recent inclusion of Real Assets, which outperformed nominal bonds in this environment

- Settlement Fund closed FY 2023 with a net positive gain of \$20.2 million compared to pre-pandemic levels



Investment Summary FY 2023						
	Beg. Balance	Net Contributions	Distributions & Adm Fees	Investment Gains/Losses	Inv. Fees	End. Balance
<b>1st Quarter</b> (Oct. - Dec. 2022)	\$ 110,349,648	\$ -	\$ (15,872)	\$ 4,621,100	\$ -	\$ 114,954,876
<b>2nd Quarter</b> (Jan. - Mar. 2023)	\$ 114,954,876	\$ -	\$ (16,360)	\$ 3,368,276	\$ -	\$ 118,306,792
<b>3rd Quarter</b> (Apr. - June 2023)	\$ 118,306,792	\$ -	\$ (16,529)	\$ 1,538,684	\$ -	\$ 119,828,948
<b>4th Quarter</b> (July - Sept. 2023)	\$ 119,828,948	\$ -	\$ (16,842)	\$ (1,350,220)	\$ -	\$ 118,461,887
		\$ -	\$ (65,603)	\$ 8,177,840		

Trustee's Report 25, ECF No. 865; Exhibit 10, ECF No. 865.

Balance in Investment Accounts:

FY 2019	\$98,260,000
FY 2020	\$118,899,043
FY 2021	\$129,393,294
FY 2022	\$110,349,648
FY 2023	\$118,461,887

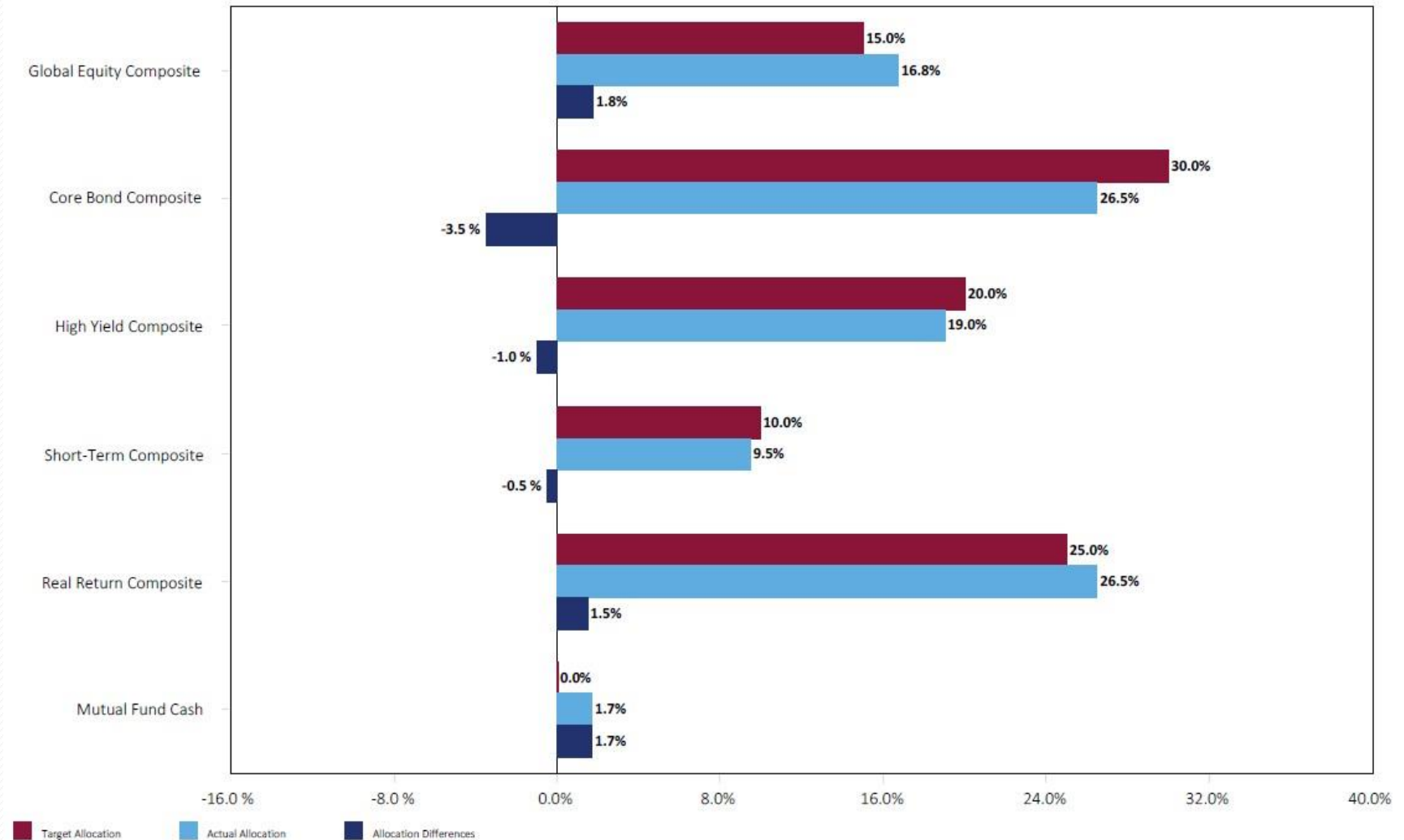
# Asset Allocation and Investment Strategy

- Continue to review available opportunities suitable to Fund's conservative risk profile

## 2023-2024 Portfolio Targets

	FY 2019	FY 2020	FY 2021- FY 2022	FY 2023
<b>Equity</b>	6%	25%	20%	15%
<b>High Yield</b>	22%	20%	30%	20%
<b>Core Bond</b>	60%	40%	40%	30%
<b>Short Term Bond</b>	-	-	-	10%
<b>Cash</b>	12%	15%	10%	-
<b>Balanced Real Return</b>	-	-	-	25%
<b>Expected Return</b>	3.75%	4.26%	2.75%	4.37%
<b>Expected Risk</b>	5.00%	6.38%	4.00%	6.09%

# Fund's Actual Allocation – As of 9/30/23







# Pending Litigation Matters

## ***NMISF v. CUC*, Filed in NMI Superior Court (Case No. 11-0114-CV)**

- Case initiated by the NMI Retirement Fund in May 2011 against CUC to collect outstanding employer contributions (\$3.5 million)
- Claim was assigned and transferred to Settlement Fund pursuant to Settlement Agreement
- Reached agreement in principle – pay \$50,000 per month
- Court notified of settlement agreement – awaiting approval of settlement

## ***In re Estate of Manuel B. Villagomez*, Filed in NMI Superior Court (Case No. 21-0234-CV)**

- Notice of Claim against Estate for overpayment of retirement benefits filed in November 2021
- Mr. Villagomez previously filed an appeal of an adverse decision letter issued by the NMI Retirement Fund in May 2012
- Administratrix requested an order declaring the NMI Superior Court has jurisdiction over pending administrative appeal involving Mr. Villagomez
- Settlement Fund filed an Emergency Motion for Declaratory Relief, Stay, and Injunctive Relief in January 2022
- In December 2022, Court granted Emergency Motion
- Parties have since settled

## ***Rosa A. Camacho v. NMI Settlement Fund*, Filed in 9th Circuit (Case No. 23-16074)**

- During pendency of administrative appeal, Ms. Camacho claimed an underpayment of benefits because she did not receive Cost of Living Adjustment (“COLA”) payments from the Settlement Fund
- Settlement Fund filed a Motion to Enforce and Confirm “Full Benefit Payments” and “Full Benefits” in December 2022
- Ms. Camacho filed a Cross-Motion to Enforce and Confirm “Full Benefit Payments” and “Full Benefits” in December 2022
- In July 2023, Court granted Settlement Fund’s Motion and denied Ms. Camacho’s Cross-Motion
- In August 2023, Ms. Camacho appealed the Court’s Order, which is pending before the Ninth Circuit

# Administrative Appeals

- Hon. Daniel Collins, U.S. Bankruptcy Judge for the District of Arizona - court appointed mediator
- Attorney Deborah Fisher – court appointed hearing officer
- Cases Pending Administrative Appeal Process (9/30/23)
  - Pending Mediation Cases: 105
  - Settled Mediation Cases: 6
- Hearing Officer:
  - Active Cases: 2
- Outside of formal mediation, 72 additional cases settled.

Trustee's Report 34-35, ECF No. 865; Exhibit 11, ECF No. 865-11; Exhibit 12, ECF No. 865-12; Exhibit 13, ECF No. 865-13.



# Bills, Legislative Initiatives and Resolutions

# Proposed Bonus

## **Senate Resolution 23-10**

- Requests Governor Palacios to reserve funds to provide a retiree bonus or COLA for equal distribution to all Settlement Class members and CNMI Fund members receiving an annuity.
- Pending in the Senate



# Funding Sources Related Legislation

## **House Bill 23-31, HS1, SS2, CCS1**

- To repeal and re-enact P.L. 22-22 in order to make revised appropriations for FY 2023.
- Signed into law as P.L. 23-04

## **House Bill 23-66, HS1, SS2, CCS1**

- To appropriate funds for the operations and activities of the CNMI Government for FY 2024, including the \$34 million FY 2024 MAP obligation and \$34,295 for Group Health and Life Insurance for retirees.
- Signed into law as P.L. 23-09



# Cont'd

## **House Concurrent Resolution 23-2**

- To identify revenues and resources for FY 2024, including the FY 2024 MAP obligation.
- Adopted by the House.

## **Senate Joint Resolution 23-02**

- Requests Governor Palacios to task the Division of Revenue and Taxation to collect all Business Gross Revenue Tax owed to the CNMI Government in an effort to prioritize mandatory payments, including the retiree benefit payments.
- Adopted by the Senate.

# Group Health and Life Insurance ("GHLI")

## **Senate Bill 23-05**

- To repeal 1 CMC §§ 8421-8424 in its entirety and transfer the administration of the GHLI from the Department of Finance to the Office of Personnel Management.
- Pending action by the House.

# Marriage Certificate Exemption – Assist Retirees Surviving Spouse

## **House Bill 23-10, HD1**

- To amend 8 CMC § 1204 to create an exemption to the requirement that a marriage certificate include the “places of residence” if it was executed during the Trust Territory of the Pacific Islands.
- Signed into law as P.L. 23-03

# New Government Pension Plan

## **Senate Bill 23-01**

- To create a CNMI Term Pension Plan, which will be partially funded by deficient employer contributions collected pursuant to Section 8.1 of the Settlement Agreement
- Pending further action by the Senate.



*Biba Retirees!*