

LOURDES A. LEON GUERRERO
GOVERNOR



JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

Via Hand Delivery
and E-mail: speaker@guamlegislature.org

August 13, 2021

HONORABLE THERESE M. TERLAJE

Speaker

I Mina'trentai Sais Na Lihelaturan Guåhan

36th Guam Legislature

Guam Congress Building

163 Chalan Santo Papa

Hagåtña, Guam 96910

RE: Executive Order No. 2021-18

Hafa Adai Madame Speaker:

Pursuant to Public Law 34-16, transmitted herewith is the following Executive Order:

**EXECUTIVE ORDER NO. 2021-18:
RELATIVE TO RESCINDING EXECUTIVE ORDER NO. 2021-11 AND
RE-ESTABLISHING THE ALL-RISE PROGRAM**

Thank you.

Senseremente,

Handwritten signature of Sophia Santos Diaz in black ink.

SOPHIA SANTOS DIAZ

Legal Counsel

Enclosure: Executive Order No. 2021-18

cc via email: *Maga'hågan Guåhan*
Sigundo Maga'låhen Guåhan
Hon. F. Philip Carbullido, Chief Justice of Guam
Compiler of Law
Central Files
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**ISLAND OF GUAM
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EXECUTIVE ORDER NO. 2021-18

RELATIVE TO RESCINDING EXECUTIVE ORDER NO. 2021-11

AND RE-ESTABLISHING THE ALL-RISE PROGRAM

WHEREAS, on March 14, 2020, I, Lourdes A. Leon Guerrero, *I Maga'hågan Guåhan*, Governor of Guam, acting pursuant to the power provided by the Organic Act of Guam and the laws of Guam, declared a public health emergency in the island of Guam due to dangers posed by the 2019 novel coronavirus ("COVID-19"); and

WHEREAS, the COVID-19 pandemic has, without question, affected economies the world over and has severely impacted industry here in Guam, in particular, tourism and its ancillary industries; and

WHEREAS, our administration has implemented numerous diverse programs to assist businesses and individuals weather the economic uncertainty caused by this pandemic, including small business assistance, bereavement grants, mortgage, and rental assistance, additional cash assistance to needy families, displaced worker job placements, unemployment benefits, and food commodity distribution; and

WHEREAS, notwithstanding the substantial assistance provided to the community, our island continues to suffer from the adverse economic effects of the COVID-19 pandemic; and

WHEREAS, on December 29, 2020, Public Law 35-136, the bill commonly known as the Recovery Income Support and Empowerment ("RISE") Act, lapsed into law, and in my statement regarding the RISE Act I noted that the Act likely amounted to supplanting and could not be legally implemented; and

WHEREAS, the RISE Act authorized a one-time payment of up to Eight Hundred Dollars (\$800.00) for each eligible individual with a maximum adjusted gross income of less than Forty Thousand Dollars (\$40,000.00) and One Thousand Six Hundred Dollars (\$1,600.00) for individuals filing a joint return with a maximum adjusted gross income of less than Eighty Thousand Dollars (\$80,000.00), subject to specific eligibility requirements; and

WHEREAS, the RISE Act expressly excluded individuals employed by the government of Guam or the federal government at any time during the tax year 2020 and their retirees from eligibility to receive payments under the Act; and

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WHEREAS, payments under the RISE Act were capped at Thirty Million Dollars (\$30,000,000.00) plus administrative costs, to be funded by General Fund appropriations and federal appropriations including any federal coronavirus relief package available for the purposes of the Act, provided that no local funds may be used if federal funds are available; and

WHEREAS, in an effort to assist communities throughout the United States recover from the adverse effects of the COVID-19 global pandemic, the United States Congress passed, and President Joseph R. Biden, Jr. signed, Public Law No. 117-2, which establishes what is known as the American Rescue Plan (“ARP”); and

WHEREAS, the ARP provides direct financial assistance to states and territories to support urgent pandemic response efforts to decrease the spread of the virus, replace lost revenue for governments to strengthen support for vital public services and help retain jobs, support immediate economic stabilization for households and businesses, and address systemic public health and economic challenges that have resulted in some communities suffering more severely from the pandemic’s impacts than others; and

WHEREAS, ARP monies are federal grants provided directly for use by the executive branches of states and territories to use according to federal guidelines; and

WHEREAS, the Guam Legislature is not authorized to appropriate ARP funds, and, as with any federal grants, such funds may not be used to supplant local funds; and

WHEREAS, notwithstanding the lack of authority on the Legislature’s part to appropriate ARP funds, believing the purpose and intent of the RISE Act to be consistent with the goals of this administration, in Executive Order No. 2021-17, I established the ALL-RISE Program, expanding eligibility of the RISE Act to include otherwise eligible local and federal government employees and retirees, for whom such funds would likewise provide much-needed support; and

WHEREAS, on May 21, 2021, ARP funds were partially disbursed to the Guam Department of Administration; and

WHEREAS, on May 10, 2021, the United States Department of Treasury issued its Interim Final Rule (“Interim Rule”), which established eligibility criteria for the use of ARP funds, compliance and financial reporting, and key dates for local government actions; and

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WHEREAS, it is anticipated that the U.S. Department of Treasury will issue its Final Rule regarding ARP in the fall of 2021; and

WHEREAS, the Interim Rule provides that ARP funds are eligible for use to provide assistance to households or populations facing negative economic impacts due to COVID-19; and

WHEREAS, the Interim Rule specifically provides that in considering whether a potential use of ARP funds is eligible under the aforementioned category, the recipient jurisdiction must consider the extent to which the household experienced a negative economic impact from the pandemic, including unemployment or increased food or housing insecurity; and

WHEREAS, the RISE Act did not include these eligibility requirements as provided in the Interim Rule, rendering use of the ARP funds for the purposes of the RISE Act potential violations of federal guidance that may be subject to a recoupment; and

WHEREAS, in addition to the potential conflict between the RISE Act and the permitted use of ARP funds under the Interim Rule, the RISE Act itself created numerous challenges making it difficult to implement; and

WHEREAS, these challenges included the requirement that applicants submit a mayor's verification, an onerous requirement intended to ensure residency that overwhelmed our mayor's offices with requests despite the fact that residency could be easily and efficiently ascertained by referring to filed tax returns already in the possession of the Department of Revenue and Taxation; and

WHEREAS, the RISE Act further required that applicants submit an "employment certification"; and

WHEREAS, "employment certification" is not defined in the RISE Act or in any other Guam statute; and

WHEREAS, these eligibility requirements are cumbersome and unnecessary, and have created substantial logistical difficulties for the Department of Revenue and Taxation, who is charged by the RISE Act with administering the program provided for by the Act; and

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WHEREAS, on August 7, 2021, the Guam Legislature passed two bills, Bill Nos. 75-36 and 164-36, in an apparent effort to cure the problems with the original RISE Act; and

WHEREAS, Bill Nos. 75-36 and 164-36 are irreconcilably in conflict; and

WHEREAS, Bill No. 164-36 maintains the payment of the original RISE Act of \$800 for individual filers and \$1600 for joint filers while Bill No. 75-36 amends the RISE Act to allow up to \$1000 for individual filers and \$2000 for joint filers; and

WHEREAS, it is incomprehensible and defies all logic that the Guam Legislature would pass such conflicting bills, which, if signed into law, would be impossible to reconcile, operationalize, and implement; and

WHEREAS, neither bill brings the RISE Act within compliance with the Interim Rule's eligibility requirements for assistance to households or populations facing negative economic impacts due to COVID-19; and

WHEREAS, on July 28, 2021, I personally met with officials from the U.S. Department of Treasury to ascertain whether implementation of the RISE Act would be a permitted use of ARP funds, and I was advised that any such program must comply with the limitations provided in the Interim Rules; and

WHEREAS, as would be the case with the RISE Act, implementation of either Bill Nos. 75-36 or 164-36 would potentially result in a finding by the Department of Treasury that ARP funds were improperly used and are subject to recoupment; and

WHEREAS, Bill Nos. 75-36 and 164-36 are both ultimately unenforceable because, the Guam Legislature is simply not authorized to appropriate ARP funds; and

WHEREAS, the Guam Legislature has proven ill-equipped to pass a law that creates and allows the Executive Branch to implement a program that gives our people direct aid and also complies with federal mandates regarding the use of ARP funds; and

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WHEREAS, it is appropriate that the Executive Branch create and implement any such direct assistance program in order to ensure that such program complies with the stated limitations of ARP funding use as provided in the Interim Rules, particularly since the Executive Branch is the only branch authorized to use such funds in the first place; and

WHEREAS, in an effort to implement an efficient program to get the most economically vulnerable members of our community the help they need as soon as possible, I am working with the Department of Revenue and Taxation to ensure that the All RISE program provides direct aid to individuals with adjusted gross income of no more than Forty Thousand Dollars (\$40,000) in the case of an individual return or no more than Eighty Thousand Dollars (\$80,000) in the case of a joint return, with limited eligibility requirements and a straightforward application process, including government employees and retirees; and

WHEREAS, in coordination with the Department of Revenue and Taxation, the ALL-RISE Program will begin accepting applications on September 1, 2021, and will be paid out according to an aggressive schedule on a first-in, first-out basis until the \$30M allocation is exhausted; and

WHEREAS, the ALL-RISE Program is the first of many programs our administration intends to implement in its multi-prong approach towards utilizing ARP funds to provide meaningful and long-term assistance to our community as it recovers from the deleterious effects of the COVID-19 pandemic; and

WHEREAS, in order to avail of the immediate aid available under the ALL-RISE Program, it will be necessary for individuals to certify that they were adversely affected economically due to COVID-19, and to ensure individuals do not attempt to claim multiple direct aid payments, they will have to elect to receive the payment available pursuant to this Order instead of any payment which may be available under the inefficient, confusing, and likely illegal RISE Act and its proposed amendments through Bill Nos. 75-36 and 164-36; and

WHEREAS, it is my hope that the ALL-RISE Program puts money in our people's pockets and ultimately into our economy as quickly and efficiently as possible, and provides some measure of immediate relief for the members of our community who need it the most.

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NOW, THEREFORE, I, LOURDES A. LEON GUERRERO, *I Maga'hågan Guåhan*, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam as amended, do hereby order:

1. **RESCISSION OF EXECUTIVE ORDER NO. 2021-11.** Executive Order No. 2021-11 is hereby rescinded in full.
2. **ESTABLISHMENT OF ALL RISE PROGRAM.** There is hereby established a direct aid cash assistance program for individuals and households called the ALL-RISE program. Amounts disbursed under the ALL-RISE program shall be capped at Thirty Million dollars (\$30,000,000.00).
 - a. The Department of Revenue and Taxation (“DRT”) shall be responsible for administration of the ALL-RISE program, including the development of an application process that includes the following eligibility requirements:
 - i. Individuals must have a validly filed and processed Guam income tax return for tax year 2020 with adjusted gross income of no more than Forty Thousand Dollars (\$40,000) in the case of an individual return or no more than Eighty Thousand Dollars (\$80,000) in the case of a joint return.
 - ii. Individuals must certify that their household experienced a negative economic impact from the COVID-19 pandemic and that they were residents of Guam in 2020.
 - iii. Individuals must submit a Form 8821 or equivalent to the DRT.
 - iv. Individuals must elect to receive payments under this program in lieu of any payments that may be available under the RISE Act, Executive Order No. 2021-11, and Bill Nos. 75-36 and 164-36.
 - b. Based on these eligibility requirements, the DRT shall develop an application process and begin accepting applications no later than September 1, 2021. DRT shall make every effort to process payments to eligible individuals no later than two (2) weeks from the date of verification of eligibility.

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- c. Cash assistance under the ALL-RISE Program shall be Eight Hundred Dollars (\$800) for individual filers and Sixteen Hundred Dollars (\$1600) for joint filers.
- d. The DRT is to provide a system of reporting, to include auditable certification, to ensure accountability.
- e. Amounts paid under this Program are to assist individuals and families who have experienced adverse economic impact as a result of the COVID-19 pandemic, and are not income and not subject to local income taxation.

3. **SEVERABILITY.** If any provision of this Executive Order or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Order that can be given effect without the invalid provision or application, and to this end, the provisions of this order are severable.

4. **PRIOR ORDERS REMAIN IN EFFECT.** Except as noted in Item 1, above, all prior Executive Orders remain in full force and effect except to the extent they conflict with this Order.

SIGNED AND PROMULGATED at Hagåtña, Guam, this 12th day of August 2021.

LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

Attested by:

JOSHUA F. TENORIO
Sigundo Maga'låhen Guåhan
Lieutenant Governor of Guam

