



THE UNITED STATES VIRGIN ISLANDS

OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE

Charlotte Amalie, V.I. 00802
340-774-0001

February 20, 2013

Ms. Eileen Sobeck
Acting Deputy Assistant Secretary for Insular Areas
Department of the Interior
Office of the Secretary
1849 C Street, NW – Room 3152
Washington, DC 20240

Dear Ms. Sobeck:

Thank you for the opportunity to propose agenda items for discussion at the upcoming meeting of the Interagency Group on Insular Areas (IGIA) and Territorial governors. We have identified the following issues, which are of critical importance to the economic development and fiscal independence of the Virgin Islands, for the IGIA agenda:

Medicaid

1. Extension of “j” waiver authority to all U.S. Territories
2. Extension of state-like FMAP to all U.S. Territories

Taxes

3. Earned Income Credit Cost Sharing

Homeland security

4. Proposed Special Visa Waiver Program
5. Expansion of the Caribbean Basin Security Initiative to include the U.S. Territories in the Caribbean (or establishment of a comparable program)

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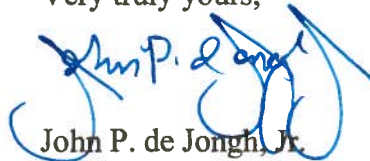
Early Education

6. Inclusion of the Territories in President Obama's Plan for Early Education for all Americans.

I have attached a memorandum that provides background information on these issues, along with a summary of requested administrative or legislative action.

Thank you for your consideration of these critical issues.

Very truly yours,

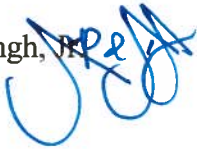


John P. de Jongh, Jr.
Governor

Attachment

MEMORANDUM

To: Ms. Eileen Sobeck
Acting Deputy Assistant Secretary for Insular Areas

From: Governor John P. de Jongh, JR. 

Date: February 20, 2013

Re: 2013 Meeting of Interagency Group on Insular Areas (“IGIA”) and Territorial Governors

Thank you for the opportunity to propose agenda items for discussion at the upcoming meeting of the Interagency Group on Insular Areas (IGIA) and Territorial governors. This memorandum provides background information on the proposed agenda items, which are of critical importance to the economic development and fiscal independence of the Virgin Islands, along with a summary of requested administrative or legislative action.

Healthcare

Notwithstanding the significant additional federal resources that the Affordable Care Act provides over the next several years, the task of implementing health care reform in the Virgin Islands has proven to be challenging, particularly in light of continued disparate treatment of the U.S. Territories under the Act. These challenges can be significantly ameliorated by two modest legislative changes to Medicaid provisions in the Social Security Act. (These changes were included in the House version of the healthcare reform bill passed in 2009 and enjoyed wide support.)

1. Amend the Social Security Act to extend the “j” waiver to all U.S. Territories

Section 1902(j) of the Social Security Act provides the Secretary of Health and Human Services with authority to waive or modify, for American Samoa and the Commonwealth of the Northern Mariana Islands, any Medicaid requirements otherwise applicable to a State (except for the FMAP, Medicaid cap, and/or the scope of allowable Medicaid services). This authority, known as “j” waiver authority, provides important flexibility for these Territories in meeting the myriad legal and administrative requirements of the federal Medicaid law. The House-passed bill (Section 1771(d)) extended “j” waiver authority to the Virgin Islands, Guam, and Puerto Rico. The Senate bill did not include such a provision, although the Senate leadership agreed to include it in the final conference bill (which never materialized as a result of the Massachusetts election). Precisely because “j” waiver authority would have no impact on the federal budget, the House provision could not, for procedural reasons, be added to the reconciliation bill which followed enactment of the Senate bill and, thus, is not part of the Act.

Because it would have no budget impact and because House, Senate, and Administration negotiators had earlier agreed to its inclusion in the final healthcare bill, the Government of the Virgin Islands urges the IGIA to seek inclusion of a “j” waiver authority extension in legislation during the current session of Congress.

2. Amend the Social Security Act to provide a fair and equitable (State-like) Medicaid FMAP for all U.S. Territories

The House-passed healthcare bill (Section 1771(c)) provided that (until a formal census study was completed) the U.S. Territories would be eligible for an FMAP equal to the highest FMAP (unadjusted by ARRA) accorded to any State (currently 78 percent). The Senate bill (Section 2205(c)) authorized a modest increase in the current statutory rate from 50 percent to 55 percent. Here, too, the Senate leadership and Administration negotiators agreed to accept the House language prior to the Massachusetts election for the open Senate. But because the FMAP provision would also have no budget impact (Medicaid is still a capped program for the U.S. Territories; the federal contribution is fixed by statute), the House language could not, for procedural reasons, be included in the reconciliation bill.

Because it would have no budget impact for CBO purposes, the Virgin Islands urges IGIA to seek in legislation during the current session of Congress an amendment to Social Security Act § 1905(b), 42 U.S.C. § 1396d(b), that would provide a fair and equitable (State-like) Medicaid FMAP for the Virgin Islands and other Territories. This amendment would ensure that the U.S. Territories are able to utilize all of their available Federal funds and to fully fund their Medicaid programs. For example, if the Virgin Islands’ FMAP were calculated according to the same formula used for States, its FMAP would be 91.59% (subject to a statutory maximum of 83%).

Coupling this amendment with a maintenance-of-effort (“MOE”) requirement—which could be added to Social Security Act § 1108, 42 U.S.C. § 1308—would ensure that the Territories will not be able to use Federal funds to reduce their commitment of local funds.

Taxes

3. Earned Income Credit Cost Sharing

Congress enacted the Earned Income Credit (“EIC”) as a refundable tax credit to assist low-income workers with little or no income tax liability. In particular, one of the principal purposes of the EIC is to offset the disproportionate burden of FICA (Social Security) taxes on such low-income persons. In the case of the Territorial “mirror code” jurisdictions, the cost of the EIC is a significant fiscal burden on local governments, a burden which has been exacerbated by recent increases in the value of the credit. To offset, in part, the burden of this unintended result, the Government of the Virgin Islands has proposed (with the support of the Government of Guam) an EIC cost-sharing arrangement based on existing Internal Revenue Code provisions.

Under this proposal, Insular Area governments with “mirror code” requirements would be authorized to make mandatory the employer “advance payment” program under section 3507 of the Code. Under this procedure, an employer would advance pay to qualifying employees an amount equal to 60 percent of such employee’s estimated EIC, which amount would be credited against the employer’s quarterly payments of FICA contributions pursuant to federal form 941 (relating to FICA payments for employees). The employer would thus be made whole on a quarterly basis, and the Federal Government would assume responsibility for approximately 60 percent of the Territory’s EIC obligations, with the local “mirror code” jurisdiction retaining responsibility for the remaining 40 percent (which would be paid or credited to the taxpayer upon the processing of the taxpayer’s income tax return by the local taxing authority). Alternatively, the taxing authority in each mirror code jurisdiction would be authorized to certify the total amount of EIC “paid” in any tax year and the Treasury would be required to reimburse such taxing authority 60 percent of such amount out of total FICA payments made to the Treasury from such jurisdiction.

The Virgin Islands submits that the IRS has adequate legal authority to execute a cost-sharing agreement between the United States and the mirror code jurisdictions, but understands that, as a practical matter, legislation may be necessary to clarify such authority and to facilitate such cost-sharing arrangements. Accordingly, the Virgin Islands request that the IGIA support that cost-sharing arrangement, either through administrative action or through legislation.

Homeland Security

4. Proposed Virgin Islands Special Visa Waiver Program

On January 19, 2012, President Obama signed an Executive Order entitled “Establishing Visa and Foreign Visitor Processing Goals and the Task Force on Travel and Competitiveness.” The Executive Order, among other things, provides for: (1) the Secretaries of Commerce and Interior to co-lead an inter-agency task force to develop recommendations for a “National Travel & Tourism Strategy”; (2) increasing non-immigrant visa processing capacity in China and Brazil by 40% this year; and (3) increasing efforts to expand the national Visa Waiver Program (“VWP”).

The Virgin Islands is a highly desirable tourist destination that would benefit both from the tourism promotion strategies and visa waiver expansions outlined in the President’s Executive Order. Consistent with efforts to expand the VWP, the Government of the Virgin Islands respectfully requests that the President seek authority from Congress to establish a special visa waiver program for the Virgin Islands that mirrors programs currently authorized for, and utilized successfully by, Guam and the Commonwealth of the Northern Marianas Islands (“CNMI”).

A special visa waiver program for the Virgin Islands would permit visa-less entry for citizens of certain Organization of Eastern Caribbean States (“OECS”) and other neighboring island countries. While such countries may not present sufficient benefit to United States economic or diplomatic interests to receive serious or expedited consideration for inclusion in

the VWP, their citizens do have substantial ties to the Virgin Islands and a targeted visa waiver program for such countries would create substantial economic benefits and opportunities for the Virgin Islands. For example, the Virgin Islands annually host special international events such as yacht shows and regattas. In March of this year, the Virgin Islands will host the “40th Annual International Rolex Regatta,” a three-day competition attracting competitive sailors from around the world and every corner of the Caribbean. While certain visitors qualify under the VWP to enter on a passport alone, others must go through a visa application and approval process before being permitted to enter the Islands. That visa application process, while serving the national interest, does not always serve the particular interests of the Virgin Islands, resulting in fewer visitors and economic benefits for the Territory. Further, where other Caribbean islands do not have similar visa application procedures and timelines, the Virgin Islands is placed at a comparative disadvantage in the region, including the ability to attract tourists and serve as host to large international special events.

A special visa waiver program for the Virgin Islands would lead to increased tourism and greater opportunities to host international special events of economic importance. In the specific case of the Rolex Regatta, the program would result in a greater number of guest charter brokers, charter vessels, foreign press, industry supporters and other related individuals entering the Virgin Islands without having to apply, in advance, for a visa. While extending visa waiver authority to citizens of countries not currently eligible for the VWP, the proposed special V.I.-only program would remain reasonably limited in scope to OECS and other neighboring countries that do not pose a security threat and that have close ties to the V.I. tourist economy. Additionally, as with the Guam and CNMI programs, the proposed V.I. program would include safeguards to protect the mainland United States.

5. Expand the Caribbean Basin Security Initiative to include the U.S. Territories in the Caribbean, or establish a comparable program for the U.S. Virgin Islands and Puerto Rico with similar financial resources and programs

The Caribbean Basin Security Initiative (“CBSI”) is a pillar of the federal government’s security strategy focused on citizen safety in the Caribbean. CBSI brings together all members of the Caribbean Community (CARICOM) and the Dominican Republic—but not the U.S. Territories in the Caribbean—to jointly collaborate with the federal government on regional security. The federal government and Caribbean countries have identified three core objectives to deal with the threats facing the Caribbean: (1) reducing illicit trafficking in narcotics and weapons, (2) increasing public safety and security by reducing crime and violence and improving border security, and (3) promoting social justice by, for example, assisting vulnerable populations at risk of recruitment into criminal organizations.

The United States is making a significant contribution to CBSI, committing \$203 million in funding for the first three years of the initiative in the following areas: Maritime and Aerial Security Cooperation (e.g., supporting regional maritime and aerial coordination by improving radar coverage in strategic locations and sharing radar information, and providing equipment and training, and sustaining those capabilities), Law Enforcement Capacity Building (e.g., enhancing

law enforcement effectiveness through equipment and training, and implementing anti-gang initiatives), Border/Port Security and Firearms Interdiction (e.g., providing technical support, technology upgrades, and training), Justice Sector Reform (e.g., rehabilitation services, and prison assessments and training to alleviate overcrowding and improving prison conditions), and Crime Prevention and At-risk Youth (increasing educational opportunities and providing workforce development and entrepreneurship training for at-risk youth as an alternative to crime and other harmful behavior, and funding to support drug demand reduction through the training of treatment and rehabilitation professionals). The U.S. Virgin Islands and Puerto Rico would greatly benefit from participation in the CBSI, and should be included. Alternatively, the federal government should establish a comparable program for the U.S. Virgin Islands and Puerto Rico with similar financial resources and programs.

Early Education

6. Inclusion of the Territories in President Obama's Plan for Early Education for all Americans

In his State of the Union address, President Obama called on Congress to expand access to high-quality preschool to every child in America. As part of that effort, the President indicated that he will propose a series of new investments, including a new federal-state partnership to provide all low- and moderate-income four-year old children with high-quality preschool, incentives for full-day kindergarten, new competitive grants for Early Head Start and Child Care, and extending and expanding voluntary home visiting to connect families to services and educational support. The children in the Virgin Islands and the other U.S. Territories would greatly benefit from these early childhood initiatives, and the programs should be designed and implemented to include children from the offshore areas.

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Finally, the Secretary should reach out to other Departmental offices to ensure that their programs and legislative initiatives, including those implementing the President's anti-gun violence programs, include language that explicitly includes the Territories (for example, by defining "State" to include Territories).

Please let me know if you have any questions.