

**Interagency Group on Insular Areas
2004 Annual Report**

I. Background

President George W. Bush established the Interagency Group on Insular Areas (IGIA) by signing Executive Order 13299 (Executive Order) at a White House ceremony on May 8, 2003. The IGIA was established to obtain information and provide advice regarding American Samoa, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and the U.S. Virgin Islands (Insular Areas).

Although each of the Insular Areas is unique, they have a number of important characteristics in common. Each is an island community that is remote from the mainland U.S.—Guam, known as “America in Asia,” is the westernmost place in the U.S.; American Samoa, in the Polynesian South Pacific, is the southernmost place in the U.S.; and the U.S. Virgin Islands, in the Caribbean, is the easternmost place in the U.S. Each has very limited land resources, a small population, and a limited pool of expertise. Each is located in an area that is highly prone to destructive typhoons, cyclones, or hurricanes. Each is relatively new to self-government.

The foregoing factors, taken together, present the Insular Areas with unique challenges. Because of the remoteness and resource poverty of each Insular Area, each faces high transport costs to import basic necessities. Each of the Insular Areas is heavily reliant on air links to the outside world, but these links are often characterized by a lack of competition, high prices, and unreliable service. Each of the Insular Areas faces the challenge of providing a full range of government services that must cover, with the exception of Guam, multiple islands. These services must be provided with a very limited pool of experienced, trained personnel and no nearby communities from which to supplement the pool of talent and resources. Each of the Insular Areas has a fairly limited private sector that is dominated, in most cases, by one or two major industries. Each of the Insular Areas has a standard of living that is lower than most of the 50 states, yet minimum wages in each of the Insular Areas are at a level that can make it difficult for businesses to compete in the low-wage regions of the world in which they are located.

A number of important legal issues distinguish the Insular Areas from the 50 states and from one another. Two of the Insular Areas are subject to Federal immigration laws and to the standard Federal minimum wage; two are not. The U.S. Constitution does not fully apply in any of the Insular Areas, although most provisions do apply. All of the Insular Areas are outside of U.S. customs territory. All of the Insular Areas other than the CNMI have non-voting delegates to the U.S. House of Representatives. Residents of the Insular Areas generally do not pay Federal income taxes, cannot vote for President, and do not have voting representation in the U.S. Congress. People born in American Samoa are U.S. nationals, not citizens, at birth.

All of the factors cited above indicate that there are important differences between the Insular Areas and the 50 states. It follows that often there may be unintended consequences when policies designed for the 50 states are applied to the Insular Areas. (A classic example was the Federal legislation that required all airport screeners to be U.S. citizens, which prevented American Samoans from being screeners at their own

airport; this has since been corrected.) Just as Federal policy can apply to the Insular Areas in an inappropriate manner, so too can the Insular Areas be inappropriately excluded from Federal policy, usually as an oversight. In addition, the special circumstances faced by the Insular Areas will sometimes merit policy initiatives designed especially for one or more Insular Area. It is also important that the various departments and agencies of the Federal Government properly coordinate their activities that affect the Insular Areas, avoiding the incoherence of policy that results when different parts of the Federal Government are working at cross purposes.

The IGIA consists of the heads of the executive departments and the heads of such agencies as the Secretary of the Interior may designate. A head of a department or agency may designate another official to carry out his or her functions with respect to the IGIA, but that designee must be a Presidential appointee or a member of the Senior Executive Service.

The Secretary of the Interior is tasked with convening and presiding over meetings of the IGIA, determining its agenda, directing its work and, as appropriate, establishing and directing subgroups.

The Executive Order directs the IGIA to provide to the President and the Secretary of the Interior advice on the establishment or implementation of policies concerning the Insular Areas. The IGIA is further directed to obtain information and advice concerning the Insular Areas from Insular Area governors, other elected officials, and other appropriate parties. The IGIA is required to hold a meeting at least once a year, and meet with the governors of the Insular Areas once per year.

Additionally, the Executive Order provides that the Secretary of the Interior may, as the Secretary deems appropriate, make recommendations to the President, or to the heads of agencies, regarding policy or policy implementation actions of Federal agencies that affect the Insular Areas.

The Executive Order makes it clear that the IGIA is not to act as a decision-making body. The group is directed to obtain advice and information “in a manner that does not involve collective judgment or consensus advice or deliberation.” Furthermore, the Executive Order provides that “[n]othing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.” The IGIA does not, therefore, act as a deliberative body and does not make collective decisions. The IGIA does not take positions on legislation or policy matters on behalf of the Administration and cannot demand any member agency to take any action or adopt any position.

The purpose of the IGIA is not to circumvent existing channels of authority for the formulation of Federal policy. Rather, the purpose is to provide a mechanism for ensuring that the circumstances of the Insular Areas are taken into account in the formulation of Federal policy, and that the various agencies of the Executive Branch

work together to ensure that Federal policy towards the Insular Areas is properly coordinated.

From the perspective of officials from the Insular Areas, the IGIA can be a valuable tool for ensuring that their concerns are recognized. Insular Area officials have long encountered difficulties in getting the Federal bureaucracy to focus on situations where the application of Federal policies to the Insular Areas has had unintended consequences, or where the Insular Areas have been inadvertently excluded from Federal programs.

The IGIA will help to ensure that the Insular Areas' concerns are brought to the attention of the appropriate parties in policy-making positions.

II. Implementation of the Executive Order

Shortly after the President signed the Executive Order, the Department of the Interior set out to identify appropriate participants from each department and agency. The White House Office of Intergovernmental Affairs, White House Office of Cabinet Affairs, and White House Liaisons from the various Federal agencies were all consulted in this process. Secretary of the Interior Gale Norton selected as her designee the Deputy Assistant Secretary of the Interior for Insular Affairs, David B. Cohen, under section 1(b) of the Executive Order.

An initial planning meeting for Federal officials only was held on July 10, 2003, at the White House. The meeting was chaired by Secretary Norton and hosted by White House Director of Intergovernmental Affairs Ruben Barrales. The meeting's purpose was to educate the other Federal participants on the requirements of the Executive Order, provide a brief overview of the history and conditions in the territories, and prepare for the first plenary session of the IGIA.

In preparation for the first plenary session, OIA contacted the territorial governors and delegates to solicit their input. OIA's desk officers requested from the governors a list of issues and questions that they wished to raise. The governors were asked to select five priority issues to be discussed and to prepare brief presentations. These issue lists and their supporting materials were organized into an agenda for consideration.

The first plenary session of the IGIA was held on September 10, 2003. The governors of American Samoa, the CNMI, Guam, and the U.S. Virgin Islands all made presentations at the meeting. Attendees from the Federal Executive Branch included Secretary Norton, Assistant Secretary of the Interior for Policy, Management, and Budget P. Lynn Scarlett, and Director Barrales. Congresswoman Madeleine Bordallo of Guam, Congresswoman Donna Christian-Christensen of the U.S. Virgin Islands, and Resident Representative Pete A. Tenorio of the CNMI also addressed the IGIA.

Following the first plenary session, OIA staff began follow-up on the substantive issues that were raised by Insular Area officials at the meeting. The issues raised were assigned to the relevant agencies for review and action. OIA staff developed a database and tracking system for issues raised before the IGIA. Each issue was summarized by OIA staff and the summary was forwarded to the appropriate agency or agencies for comment and action. For each issue, an OIA staff member was assigned responsibility for monitoring its progress and conducting any necessary follow-up. Follow-up efforts consisted primarily of telephone conferences and meetings with representatives of the appropriate Federal agencies.

The second plenary session of the IGIA was held on February 24, 2004. The meeting was timed to coincide with the annual meetings of the National Governors Association, when all of the governors of the Insular Areas would be in Washington, D.C. It is intended that all future plenary sessions be held in February for this reason. The governors and delegates were again in attendance, as was Secretary Norton. Because of

the short period of time between the first and second plenary sessions, it was decided that the primary focus of the second plenary session would be to update the Insular Area representatives on progress made on issues raised in the first plenary session. Nonetheless, the Insular Area representatives were invited to raise new issues and did so. These issues received follow-up similar to issues raised in the first plenary session.

At the second plenary session, it was determined that, in addition to addressing the various individual issues raised by the Insular Area representatives, the IGIA would obtain information and advice on the Insular Areas' needs in the areas of: (a) environmental infrastructure financing; (b) health care; and (c) economic development. In addition, it was decided that an additional subgroup would be convened to obtain information and advice on the Federal Government's role in a Memorandum of Understanding that was being negotiated between OIA and the government of the U.S. Virgin Islands to promote fiscal reform.

III. IGIA Activities

A. *Ongoing Special Projects*

1. Working Group on Environmental Infrastructure Financing

a. *Background*

One of the most critical problems plaguing all four Insular Areas is the condition of their water, wastewater treatment, and solid waste disposal systems. Guam and the U.S. Virgin Islands are both subject to consent decrees requiring major improvements in their water and wastewater systems. Saipan, in the CNMI, does not have 24-hour access to potable water. All four Insular Areas face serious solid waste issues. Guam, in particular, is under a Federal consent decree to shut down its major landfill at Ordot and build a replacement landfill.

Federal assistance can only be expected to address a small portion of the problem: While the Insular Areas are currently eligible for some \$80 million per year from various Federal agencies for funding environmental infrastructure in the Insular Areas, this amount includes moneys that are available for other critical needs as well. Realistically, about \$20 million could be expected annually to finance environmental infrastructure in the Insular Areas under Federal programs as currently constituted and funded. The Insular Areas have often turned to the bond market to finance a portion of their environmental needs, but their ability to do this cost-effectively is generally limited by poor credit ratings and, particularly in the case of the U.S. Virgin Islands, excessive borrowing.

Because of the urgency of these problems, staff at the Environmental Protection Agency (EPA) Region IX office in San Francisco (which administers EPA programs in the Pacific Insular Areas) proposed that the IGIA form a working group to address the Insular Areas' environmental infrastructure financing needs.

In addition, the conference report for the FY 2005 Omnibus Appropriations Bill directed the Secretary of the Interior, in consultation with the members of the IGIA, to produce a detailed and comprehensive implementation plan for improvements to the CNMI water and wastewater systems recommended by the Army Corps of Engineers.

b. Objectives

The environmental infrastructure working group is exploring ways for the Insular Areas to expand their options for financing their environmental infrastructure needs, particularly from non-governmental sources. The group is also exploring whether it is possible for Federal agencies to better coordinate their environmental infrastructure assistance to the Insular Areas, both as an end in itself and as a means for improving the access of the Insular Areas to non-governmental financing. Finally, in accordance with the conference report on the FY 2005 Omnibus Appropriations bill, the group will produce a plan to implement the recommendations of the Army Corps of Engineers regarding the water system in the CNMI.

c. Participants

Army Corps of Engineers
Department of Agriculture
Department of Energy
Department of Housing and Urban Development
Department of the Interior
Department of the Navy (Installations and Environment)
Environmental Protection Agency
Federal Emergency Management Agency

d. Action to Date

A private firm, Northbridge Environmental Management Consultants, was retained by EPA and OIA to study the problem and produce recommendations for financing options that could satisfy some or all of the needs of the Insular Areas. Northbridge initially performed a survey of existing needs and available funding, and has been researching various types of infrastructure financing. In June 2004, officials from the participating Federal agencies met in Washington, D.C., to develop an agenda for the working group. Also in June 2004, representatives of EPA, OIA, and Northridge met on Saipan with various Insular Area officials to enlist their support for the project. The results of Northbridge's preliminary research were presented in a September 2004 meeting in Los Angeles that was attended by officials from EPA, OIA, and the Insular Area governments. A preliminary report on available funding, needs, and possible funding mechanisms was prepared at the end of October and distributed to all participants in the group for comments. A further report with more details on the bond bank option was completed in February, 2005.

The group received the CNMI water plan implementation assignment in January of 2005, and initial information-gathering efforts are nearing completion.

e. Next Actions

A second draft report including recommendations on financing alternatives is has been circulated for comment to the participating Federal agencies and to the Insular Area governments. Its recommendations will be presented at the March 2005 plenary session of the IGIA. The report will be finalized after the meeting. This report will include an examination of how the various financing options could be implemented, and what (if any) legislative, regulatory, or procedural hurdles must be cleared for implementation. The group will also focus its efforts on producing the mandated report on the CNMI water system.

2. Health Disparities in the Insular Areas

a. *Background*

The Insular Areas are confronted with a number of daunting health challenges. One of the most important problems is the lack of good, current information: The last comprehensive study on health systems and services in the Insular Areas was published in the mid-1990s. In spite of the absence of a more recent study, it is widely known that the Insular Areas have high rates of diabetes, hypertension, obesity, many types of cancer, and other diseases.

The Insular Areas face a number of obstacles that hamper their ability to deal with health problems. These include poverty, insufficient funds to build and maintain adequate health care facilities, leading to difficulties meeting standards established for the mainland, insufficient funds to attract the necessary health care professionals, inadequate training, large populations of migrants from poor nations, and unhealthy lifestyle choices that frequently result from cultural practices or the lack of education. These problems are exacerbated by the geographical isolation of the Insular Areas and other small island communities. This isolation requires the Insular Areas to pay high shipping costs and suffer delays to acquire medical supplies and equipment; exacerbates the difficulty in attracting qualified health care personnel who are willing to serve the Insular Areas on a long-term basis; and makes off-island referrals, which are frequently needed because of the lack of medical expertise in the Insular Areas, costly.

In February 2004, the House Subcommittee on Human Rights and Wellness held a hearing on health care problems in the Insular Areas. The hearing was called by the subcommittee's chairman, Congressman Dan Burton of Indiana, after he toured health facilities in Guam and Saipan. Governor Camacho of Guam also presented a series of requests for assistance in bolstering Guam's local health infrastructure at the IGIA meeting that same week.

b. *Objectives*

- Inventory existing health information on the Insular Areas.
- Identify significant gaps in current information and determine the most effective manner to fill those gaps.
- Produce a report on the current health and healthcare status in the four territories.

c. *Participants*

Department of the Interior
Department of Health and Human Services
 Office of Minority Health
 Office of Science and Data Policy
 Office of Global Health Affairs
 National Center for Health Statistics
 Centers for Disease Control
 HHS Region IX
 Region IX Federal Regional Council Outer Pacific Affairs
 Committee

d. *Action to Date*

Consultations with several offices at HHS have been ongoing. Much discussion has focused around the collection and analysis of existing data. Most recently, in December 2004, representatives of the Department of the Interior participated in a meeting and conference call with several HHS officials, including the Deputy Assistant Secretary for Science and Data Policy, the acting Deputy Assistant Secretary for Minority Health, the Director of Intergovernmental Affairs, representatives of HHS's regional office in San Francisco, and others to discuss a strategy for assessing health and healthcare disparities in the Insular Areas. Also, at the request of Congressman Burton, the Government Accountability Office has also opened a full review of Federal programs that finance health services in the Insular Areas, and the extent to which the mechanisms used to allocate Federal health funds to the territories are consistent with or differ from those in the mainland.

e. *Next Actions*

HHS officials are in the process of gathering available data on health and healthcare in the Insular Areas. These data include basic vital statistics such as infant mortality rates, death rates in each age group, standard causes of death, and information from needs assessments prepared in connection with block grant applications. On the basis of this information, the working group will determine the feasibility of sponsoring a comprehensive assessment of health and healthcare needs in the Insular Areas. In addition, the working group will continue to assist the GAO in its ongoing review.

The Outer Pacific Committee also plans to expand the use of videoconferencing by Outer Pacific Committee members with both the territories and the freely associated states, to provide technical

assistance and improve levels of training, following up on successful pilot projects in 2003 and 2004.

3. Economic Development

a. Background.

The Insular Areas have a number of common advantages for business investment, especially when compared to sovereign nations in their respective regions. Each of the Insular Areas enjoys the protection of the American flag and the U.S. legal system. The Insular Areas are English-speaking and business is transacted in U.S. Dollars in accordance with American business practices. Each of the Insular Areas has a well-trained English-speaking work force, and two of the Insular Areas, as mentioned above, control their ability to import additional labor as needed. The Insular Areas also receive substantial support, directly and through tax benefits, from the Federal Government. Goods manufactured in the Insular Areas generally enjoy duty-free access to the U.S. market.

In addition to the advantages shared by all Insular Areas, each Insular Area has a number of important competitive advantages that could make them attractive for private sector investment: American Samoa has the best deep water port in the South Pacific and a beautiful National Park in a tropical rainforest. It has yet to realize its potential for tourism. The territory also is not subject to the standard U.S. minimum wage and controls its own immigration.

The CNMI also controls its own immigration and sets its own minimum wage. It enjoys proximity to important markets in Asia. It recently won Approved Destination Status from China, which is expected to have a major positive impact on the tourism industry.

Guam, like the CNMI, has great access to Asia. It also appears to be primed for a major expansion of the military presence on the island, which could have a positive impact on its economy.

Among other advantages, the U.S. Virgin Islands has the potential to benefit from the tremendous bandwidth capacity afforded by the two trans-Atlantic fiber-optic cables that pass by the island of St. Croix.

Secretary of the Interior Gale Norton has noted that the Administration's top priority for the Insular Areas is to help them realize their economic potential through private sector development. As noted earlier in this report, each of the Insular Areas has a fairly narrow economic base, and the economy in each

of the Insular Areas relies on public sector employment at a level that cannot be sustained without heavy subsidy by the Federal Government.

American Samoa has the narrowest economic base of the Insular Areas. Its only major private sector industry is the tuna canning industry, which has been estimated to account for as much as 85 percent of its economy. American Samoa's extreme reliance on the tuna industry puts it in a very vulnerable position. Ironically, the proliferation of free trade agreements with the U.S., which has brought such significant economic benefit to the U.S. and much of the rest of the world, is eroding the importance of what is perhaps American Samoa's most important competitive advantage in the tuna canning industry: duty-free access to the U.S. market. Another important advantage for American Samoa, the possessions tax credit under Section 936 of the Internal Revenue Code, is set to expire in 2006. Legislative efforts to extend Section 936 have, as of yet, made little progress. As the inevitable march towards free trade continues and with the expiration of the Section 936 tax credit looming, many have speculated that the tuna canneries will soon leave American Samoa. There is therefore a great urgency to efforts to bring private sector development to American Samoa.

The advancement of free trade poses similar challenges for the CNMI. Over the last several years, the garment industry has been one of the two pillars of the CNMI economy, along with tourism. The success of the CNMI garment industry has depended largely on two important trade provisions: the quotas which limited the amount of garments that could be exported from China and other low-wage countries, and the CNMI's duty-free access to the U.S. market. The quotas, by far the most important of these two advantages, expired on January 1, 2005. The future of the CNMI garment industry is therefore very much in doubt. The significant downsizing of the garment industry could cause social as well as economic problems for the CNMI: The labor for that industry is almost exclusively imported from China and other countries. There is concern that many of those workers may seek to find ways to stay in the CNMI, perhaps by applying for asylum, even if they are no longer needed by the garment industry.

Guam also relies almost exclusively on two major industries: tourism and the military. This has made Guam (as well as the CNMI) vulnerable to downswings in tourism, especially from Japan. Guam has been hard hit in recent years by reductions in travel resulting from the Asian economic crisis, 9/11, and SARS.

The economy of the U.S. Virgin Islands is more diversified than those of the other Insular Areas. Rum distilling, oil refining, watch manufacturing, and financial services help to balance out the U.S. Virgin Islands' heavy reliance on the highly competitive Caribbean tourism market. The U.S. Virgin Islands nonetheless has a very fragile economy with high unemployment, especially on the island of St. Croix. The American Jobs Creation Act of 2004, which could potentially make important U.S. Virgin Islands businesses ineligible for tax benefits that lured them to the U.S. Virgin Islands in the first place, may have a very disruptive impact on the U.S. Virgin Islands' economy.

b. Objectives

The Department of the Interior is spearheading a number of ongoing initiatives, many in partnership with other IGIA member agencies, to promote private sector development in the Insular Areas. The objectives of these efforts include:

- Researching economic conditions in the Insular Areas and identifying areas of competitive advantage.
- Identifying business and investment opportunities in the Insular Areas.
- Reaching out to businesses in the 50 states to make them aware of “win-win” business opportunities that will benefit both the Insular Areas and the 50 states.
- Educating businesses from the 50 states about Federal programs that might support projects that would simultaneously benefit the Insular Areas and the 50 states.
- Facilitating contact between businesses in the 50 states and Insular Area businesses for the purpose of forming strategic partnerships.
- Facilitating contact between businesses in the 50 states and Insular Area government officials.
- Working with Insular Area government leaders to improve the business and investment climate

c. Participants

Department of the Interior
Department of Commerce
 Economic Development Administration
 International Trade Administration
 Minority Business Development Agency
Export-Import Bank of the United States
Overseas Private Investment Corporation
Small Business Administration

d. Action to Date

In 2003, OIA provided a grant to a private consulting firm, which enabled the firm to sponsor six MBA students to travel to the Insular Areas to evaluate the prospects for private sector economic development. This program, known as the “Island Fellows Program”, was repeated in 2004 with a grant provided to the Pacific Business Center at the University of Hawaii’s College of Business Administration. In 2004, the Island Fellows focused on identifying specific business opportunities that could benefit both the Insular Areas and the rest of the U.S. In two years, the Island Fellows Program has sent 14 MBA students or recent graduates to all of the Insular Areas as well as to the Freely Associated States: the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau.

In September 2003, the Secretary of the Interior hosted the Investment Development Conference for the Insular Areas in Washington, D.C. A number of Federal agencies, including the Department of Commerce, the Small Business Administration, the Export-Import Bank of the United States, and the Overseas Private Investment Corporation, worked with the Department of the Interior to put on the conference. The conference was designed to introduce the Insular Areas to a mainland business audience, explore opportunities for investment and facilitate networking between potential partners from the mainland and the islands. The conference attracted over 500 attendees, and was attended by the governors of each of the Insular Areas.

In September 2004, the Department of the Interior and its Federal partners held the Secretary of the Interior’s Conference on Business Opportunities in the Islands in Los Angeles. This conference was essentially an expanded version of the 2003 conference, and covered the Freely Associated States as well as the Insular Areas. The 2004 conference featured twice as many sessions as the 2003 conference, and the attendance figure also roughly doubled, to approximately 1000. Significantly, the percentage of attendees who were presidents, CEOs, or owners of their respective businesses stayed consistent with the first year’s number, accounting for nearly 30 percent of all attendees; most of the other private sector representation was made up of high-ranking corporate officers.

The final afternoon of the 2004 conference was devoted to private business-to-business and business-to-government meetings that were arranged through the facilitation of the conference organizers.

In October 2004, Deputy Assistant Secretary of the Interior David Cohen and OIA economist Dr. Wali Osman traveled to the CNMI (as well as several islands in the Freely Associated States) as a follow-up to the 2004 conference. In the CNMI, Cohen and Osman held separate private meetings with the Governor and his cabinet, with several CNMI legislators, and with the Chamber of Commerce to discuss how CNMI government and business leaders can work together with the Federal Government to improve the business climate in the CNMI. Similar trips are planned for the other Insular Areas.

e. Next Actions

OIA has engaged consultants to help track opportunities that were discussed at both conferences and, as appropriate, facilitate contact between parties.

As a follow-up to the 2004 conference, the Department of the Interior, in partnership with the Department of Commerce and the Overseas Private Investment Corporation, is planning to lead a business opportunities mission to Guam, the CNMI and Palau in May 2005. The purpose of the business opportunities mission is to bring businesses from the 50 states out to the islands to pursue opportunities that were discussed at the conferences. Preparations are currently underway. Business opportunities missions to the other Insular Areas will, it is hoped, be scheduled in the future.

To assist in its ongoing efforts to provide good economic research on the Insular Areas, OIA in 2004 hired Dr. Wali Osman, one of the foremost experts on Pacific economies. Dr. Osman is known for the economic reports that he authored on several island jurisdictions in his many years with the Bank of Hawaii and the East-West Center. Mr. Osman's first economic report for OIA, on the U.S. Virgin Islands, will be published in 2005.

4. International Trade Agreements (All Insular Areas)

a. Background

Insular Area leaders have often expressed the desire to be consulted regarding the international trade agreements that the U.S. enters into, as these can have a profound impact on Insular Area economies; Governor Turnbull first raised this issue at the first plenary session of the IGIA, and the other governors have raised it as well. The growth of free trade agreements, which has provided a general benefit for the American economy as a whole, has implications for the tuna industry in American Samoa, upon which most of the territorial economy depends. The impending removal of textile quotas presents challenges for the CNMI, which has a large garment industry.

Despite their isolation from the U.S. mainland, the territories are located near other regional markets. The Pacific Islands Forum Secretariat has requested that the U.S. Government allow Pacific Islands Forum officials to begin informal discussions with representatives of Guam, American Samoa, and the CNMI about the possibility of those Insular Areas participating in the Pacific Island Countries Trade Agreement (PICTA) and the Pacific Agreement on Closer Economic Relations (PACER).

b. Objectives

- Evaluate the feasibility of allowing the Insular Areas to participate to the same degree that states can participate in the review of trade policy, to ensure that concerns over unintended effects are aired and addressed.
- Enable the territories to participate as fully as possible in the global economy, and take advantage of their unique locations near growing markets.

c. Participants

Office of the U.S. Trade Representative
Department of State
Department of the Interior

d. Action to Date

Following the initial inquiries from the governors, the Office of the U.S. Trade Representative provided a written outline of several established mechanisms that would enable the Insular Areas to weigh in on pending trade agreements. This was forwarded to the Insular Area governors. In particular, USTR has invited the Insular Areas to participate in the Inter-Governmental Policy Advisory Committee, which allows state and local governments to

express their views on U.S. trade policy and pending trade agreements.

In May 2004, Congressman Jeff Flake introduced H.R. 4308 to amend, among other things, the Trade and Tariff Act of 1984. Currently, that Act authorizes the Federal Government to consult with state and local governments on issues of trade policy. It allows for the establishment of policy advisory committees to facilitate communication between state and local governments and the Federal Government on trade policy, and authorizes the Federal Government to provide data, analysis, and information regarding U.S. trade policy to state and local governments. H.R. 4308 would give the Insular Area governments the same standing as state and local governments under these provisions.

In December 2004, representatives of the Department of State, the Office of the U.S. Trade Representative, and the Department of the Interior met to discuss (a) the possible participation of the Pacific Insular Areas in PICTA and PACER and (b) H.R. 4308.

e. Next Actions

The USTR has been requested to provide an analysis of PICTA and PACER to determine whether the Pacific Insular Areas' participation would be feasible in the context of U.S. trade law and policy. It was preliminarily determined by the State Department that the Insular Areas could not, under the U.S. Constitution, become direct parties to PICTA and PACER, and any participation by the Insular Areas in those agreements would have to be arranged through the U.S. If the USTR does not identify major obstacles to the Pacific Insular Areas' indirect participation in PICTA and PACER, the IGIA will consult with the Insular Area governments to determine whether there is an interest in pursuing this.

The USTR is also in the process of reviewing H.R. 4308.

5. Virgin Islands MOU

a. *Background*

A Memorandum of Understanding executed by the Secretary of the Interior and the Governor of the U.S. Virgin Islands in 1999 required, among other things, that the government of the U.S. Virgin Islands make several structural reforms to improve its fiscal condition over the long term. Although the U.S. Virgin Islands has made much progress in accordance with the terms of the Memorandum of Understanding, including in catching up with audits that were overdue under the Single Audit Act, a number of fiscal challenges remain.

Much has happened since the Memorandum of Understanding went into effect. In 2002, the U.S. Department of Education entered into a Compliance Agreement with the U.S. Virgin Islands that required, among other things, that several financial management improvements be implemented over a three-year period. In August 2003, the Department of Housing and Urban Development seized control of the Virgin Islands Housing Authority because of financial management problems. In May 2003, the *Virgin Islands Daily News* reported that the U.S. Virgin Islands' projected budget shortfall at the time was greater, on a per capita basis, than that of any state.

In October 2004, the Federal Emergency Management Agency forgave its \$185 million Community Disaster Loan to the U.S. Virgin Islands for damage inflicted by Hurricane Marilyn in 1995. Also, in recent years, the Virgin Islands Economic Development Commission program has attracted a number of businesses to the U.S. Virgin Islands that have generated a substantial amount of revenue for the territory's treasury. It is possible, however, that the revenue from this program will be significantly reduced by certain provisions of the American Jobs Creation Act of 2004.

The 1999 Memorandum of Understanding has never officially expired, but the foregoing developments and others have caused it to be out of date. The Governor of the U.S. Virgin Islands and OIA have agreed to negotiate a new Memorandum of Understanding that would supersede the existing one.

b. *Objectives*

OIA and the Governor's office are negotiating a Memorandum of Understanding that would require the U.S. Virgin Islands to make additional fiscal reforms in exchange for technical assistance and other financial support. Since several Federal agencies have

important relationships with the U.S. Virgin Islands and since many of those agencies have requested the territorial government to make financial management improvements, an IGIA working group was convened to provide advice on ensuring that the provisions of any new Memoranda of Understanding are properly coordinated with the objectives that are being pursued by other Federal agencies in the territory.

c. Participants

Department of the Interior
Department of Housing and Urban Development
Department of Agriculture
Department of Education.

d. Action to Date

The working group met in March 2004. On the basis of that meeting, OIA prepared a revised draft Memorandum of Understanding and submitted it to the Governor's office for consideration. OIA has had a number of discussions with the Governor's representatives since then, most recently a December 2004 conference call with several U.S. Virgin Islands government officials and a representative of the office of Congresswoman Donna Christian-Christensen of the U.S. Virgin Islands. Following the conference call, OIA officials briefed officials from the U.S. Department of Education on status.

d. Next Action

The Governor's office has agreed to provide comments to the latest draft, and OIA will circulate those comments to the working group. It is hoped that the Memorandum of Understanding can be finalized and executed in early 2005.

B. Action Items Completed

1. Better Assistance for Veterans (Guam and American Samoa)

Issue: The territories in the Pacific, due to their isolated locations, historically have not had full-service Veterans' Affairs facilities. Guam's veterans' assistance facilities operated on a partial schedule, with no full-time staff. American Samoa has no services in place, although personnel assigned to Hawaii would visit the territory on scheduled intervals. The delegates from Guam and American Samoa both requested full-service facilities for their jurisdictions.

Source: Congresswoman Bordallo raised the issue at the September 2003 plenary session, and Congressman Faleomavaega raised it at the February 2004 plenary session.

Agencies Involved: Department of Veterans' Affairs.

Action to Date: VA has upgraded the facility on Guam; it now operates five days a week and has hired a full-time physician and nurse-practitioner, in addition to some other staff. VA has also agreed to staff a facility on American Samoa.

2. Telemedicine Programs (All Insular Areas)

Issue: Telemedicine, or distance medicine, provides many benefits to outlying areas. Telemedicine is well suited for the Insular Areas, due to the remoteness of their locations and their limited facilities and personnel. Potentially, telemedicine would allow medical facilities in remote Insular Areas to tap into expertise in Hawaii or the mainland United States, providing remote diagnosis and treatment without the need for patient transport. The Federal Communications Commission manages the Universal Service Program for Rural Healthcare Providers. This program is a component of the Universal Service Fund, which reimburses rural health providers the difference between their telecommunications costs and the lowest rate in any metropolitan area in that provider's state. In 2003, American Samoa was denied access to the program because it had no "urban center", a requirement of the program. American Samoa requested FCC reconsideration of the issue based on alternative FCC authority.

Source: Governor Togiola raised this issue at the 2004 plenary session and has requested the FCC to clarify or modify its regulations regarding American Samoa's eligibility for the program.

Agencies Involved: Federal Communications Commission.

Action to Date: On December 17, 2004, the FCC made its Universal Service Program available to American Samoa and "states" (and territories) that are "entirely rural." The FCC established a telecommunications discount "equal to 50 percent of the monthly cost of advanced telecommunications and information services reasonably related to the health care needs of the facility." The Universal Service Program now also will be available to Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

- 3. Exemption of all American Samoa government bonds from income taxation – H.R. 982 (American Samoa)**
Issue: Governor Togiola sought to clarify tax treatment of bonds and obligations issued by the American Samoa Government. Congressman Faleomavaega introduced legislation (H.R. 982) that would exempt interest received from bonds issued by American Samoa from taxation by local governments (bonds are already exempt from federal and state income tax). The bill would grant bonds issued by the American Samoa government the “triple exemption” enjoyed by other U.S. territories. Additionally, it would extend this treatment to all bonds issued by the American Samoa Government, and not merely Industrial Development Bonds.
Source: Governor Togiola raised this issue at the September 2003 plenary session.
Agencies Involved: Department of the Treasury.
Action to Date: Department of Treasury indicated that it would not oppose H.R. 982. The bill has since passed both the House of Representatives and the Senate without amendment, and was signed into law by President Bush on October 16, 2004.
- 4. Cost Share Adjustment for 2002 Pongsona Disaster (Guam)**
Issue: The Governor requested a Federal-local cost share adjustment from 90-10 to 100-0 on the payments for response and recovery after Typhoon Pongsona, which caused extensive damage on Guam in December 2002. The per capita cost of the damage exceeded the standard FEMA threshold for cost adjustment by 16 times.
Source: Governor Camacho of Guam raised the issue at the September 2003 plenary session.
Agencies Involved: Department of Homeland Security, Federal Emergency Management Agency.
Action to Date: FEMA has adjusted the cost-sharing arrangement to meet the Governor’s request.
- 5. Restoration of Old Hagatna (Guam)**
Issue: Governor Camacho requested assistance in repairing and restoring historic buildings in the center of Guam’s capital, Hagatna.
Source: Governor Camacho raised this issue at the February 2004 plenary session.
Agencies Involved: Department of Housing and Urban Development.
Action to Date: The matter was forwarded to the Department of Housing and Urban Development for comment and recommendations. HUD determined that the government of Guam could apply its annual allotment of Community Development Block Grants to the project, if it so desired, and provided the necessary contact for this program. The information was forwarded to the Governor’s office for it to consider further action.

- 6. Administration Support for Congressional Delegate (CNMI)**
Issue: The CNMI, unlike the other three Insular Areas, does not have a non-voting delegate to the U.S. House of Representatives. Governor Babauta has requested that the Administration support the establishment of a non-voting delegate from the CNMI.
Source: Governor Babauta and Resident Representative Tenorio both raised this issue at the 2003 plenary session of the IGIA.
Agencies Involved: The White House, Department of the Interior.
Action to Date: At a hearing of the House Resources Committee on February 25, 2004, Deputy Assistant Secretary of the Interior David Cohen testified on behalf of the Administration in favor of granting the CNMI a non-voting delegate to the U.S. House of Representatives. A bill to provide for this was subsequently introduced by House Resources Committee Chairman Richard Pombo and Ranking Member Nick Rahall. The bill was read out of the House Resources Committee in September, but has yet to be approved by the full House.
Next Action: The specific request has been fulfilled—that the Administration indicate its support for a delegate representing the CNMI. The matter is now for Congress to decide.
- 7. TSA Screeners for the Tinian International Airport (CNMI)**
Issue: The CNMI has completed a new, \$30 million airport on Tinian to support the local tourist market, but due to a lack of TSA personnel, the airport could not open. Governor Babauta requested additional logistical and personnel support. While there are a limited number of security screeners in Saipan, there were none for Tinian.
Source: Governor Babauta raised the issue at the 2003 plenary session of the IGIA.
Agencies Involved: Transportation Security Administration.
Action to Date: TSA advised the CNMI on the qualifications to “federalize” the airport and qualify for up to eight screeners. The CNMI submitted the requisite paperwork. In the meantime, TSA also authorized the hiring of part-time inspectors not from the Federal pool. The screeners and requisite equipment have been identified, an Airport Security Plan drafted, and the airport manager has received the requisite TSA training. The only remaining action item, the confirmation of flight schedules from China Southern Airlines, is the responsibility of the CNMI.
- 8. Emergency Cabotage Exemptions (American Samoa)**
Issue: American Samoa has requested several emergency exemptions from cabotage laws that prohibit foreign-flag airlines from carrying passengers between stops on U.S. territory, to ensure that service between Tutuila and the outer islands of the territory remains uninterrupted. In the fall of 2003, a locally-based airline, Samoa Air, discontinued service to Manu’a from Tutuila, and there was no alternative U.S.-flag airline in place. Polynesian Airlines, from the Independent State of Samoa, had the

capability to fill the void but could not due to the cabotage restriction. If an exemption was not granted, there would have been no air service to the outer islands, severely hampering communications, especially the ability to rapidly evacuate local residents for medical care.

Source: Governor Togiola has raised this issue on several occasions, including the 2003 plenary session of the IGIA

Agencies Involved: Department of Transportation.

Action to Date: Governor Togiola met with Transportation Secretary Mineta in September of 2003, and obtained a 30-day emergency exemption to allow Polynesian Air to fly from Tutuila to Manu'a, with an option to extend if need be. Another airline, InterIsland, which had an American parent company certificate, picked up the route in December of 2003, but the certificate expired in the spring of 2004, and the service was discontinued once more. The Governor sought and received a 30-day exemption with an option to extend; Polynesian was again the service provider, and remains so. The temporary exemption is still in force.

C. *Action Items Ongoing*

1. Environmental Issues

a. *Scrap Metal Disposal (American Samoa)*

Issue: Governor Togiola of American Samoa requested EPA assistance in dealing with increasing amounts of scrap metal and other materials that are accumulating on the territory. American Samoa does not have enough space or facilities to adequately dispose of or reprocess metal, rubber, and other materials. The territory is even considering limitations on the import of motor vehicles, in view of the present difficulties in handling existing waste materials. The governor requested EPA assistance and/or an exemption from regulations that govern ocean dumping.

Source: Governor Togiola raised this issue at the February 2004 plenary session.

Agencies Involved: Environmental Protection Agency, Office of Solid Waste.

Action to Date: The inquiry was forwarded to EPA in March 2004; EPA responded with a contact point and follow-up questions for American Samoa, and expressed willingness to work with the American Samoa government on this issue. This information was forwarded to the American Samoa government, whose responsibility it now is to follow up.

b. *Potable Water (CNMI)*

Issue: The condition of the water system on Saipan is well below Federal standards, with intermittent service and poor water quality due to excessive leakage from water pipes, low water pressure at peak hours of usage and considerable intrusion of salt water into local water supplies. The EPA has long cited the CNMI for failing to provide the population with potable water. Other problems include contamination from disposed munitions and other military equipment left over from World War II, reported gas and oil spill contamination dating back to World War II at the Saipan airport, and an oil spill north of the islands that has yet to be addressed.

Source: Governor Babauta and Resident Representative Pete A. Tenorio of the CNMI raised this question at the September 2003 plenary session; they reiterated it at the February meeting.

Agencies Involved: Department of the Interior, Environmental Protection Agency, Army Corps of Engineers, Department of Agriculture.

Action to Date: This issue falls under the direct purview of the working group on environmental infrastructure; addressing this specific issue is one of the objectives of that initiative. The

administration requested \$1 million in the President's 2006 budget for CNMI systems repair.. The FY 2005 appropriations bill also directs the Secretary of the Interior to prepare an implementation plan regarding improvements to Saipan's water system that were identified in an Army Corps of Engineers Report. The implementation plan is due on July 31, 2005, and is to examine available resources from EPA, the Army Corps of Engineers, the U.S. Department of the Interior's Bureau of Reclamation and the Department of Agriculture.

Next Actions: The agencies identified above met in January 2005 to begin work on the Secretary of the Interior's report. A work plan has been established.

c. Possession of Submerged Lands (CNMI)

Issue: The CNMI, through statute, has asserted ownership, sovereignty and exclusive jurisdiction over submerged lands and marine resources extending offshore to a distance of 200 miles. The CNMI claims that the U.S.-CNMI Covenant never transferred sovereignty of the submerged lands to the U.S. The Federal Government has disputed that claim, contending that the Federal Government automatically obtained sovereignty over the submerged lands when the Northern Mariana Islands became a U.S. commonwealth. In August 2003, the Federal District Court in Saipan ruled that the U.S. has sovereignty over the submerged lands. The decision was appealed, and the Federal Court of Appeals for the Ninth Circuit heard oral arguments in November 2004. Congress has granted the other Insular Areas and all of the coastal states rights to submerged lands extending three miles from the shoreline. The CNMI has not officially requested a similar grant of rights to a three-mile zone, because of its assertion that it already has sovereignty over its submerged lands.

Source: Governor Babauta raised this issue at the September 2003 plenary session.

Agencies Involved: National Oceanographic and Atmospheric Administration, Department of the Interior, Department of Justice, Department of State.

Action to Date: The litigation history of this issue is noted above.

Next Action: Although the issue remains in litigation, the possibility of settlement discussions has been explored by the parties.

2. Economic and Fiscal Policy

a. *U.S. Virgin Islands Economic Development Commission Beneficiary Companies (U.S. Virgin Islands)*

Issue: Under Federal law, *bona fide* residents of the U.S. Virgin Islands pay their taxes to the U.S. Virgin Islands treasury, rather than the U.S. Treasury, pursuant to a U.S. Virgin Islands tax code that generally “mirrors” the Internal Revenue Code. The government of the U.S. Virgin Islands has the authority to reduce taxes to *bona fide* residents of the territory, but Section 934 of the Internal Revenue Code provides that such tax reductions may only apply to income whose source is the U.S. Virgin Islands or that is effectively connected with the conduct of a trade or business in the U.S. Virgin Islands. The U.S. Virgin Islands has offered substantial tax reductions to businesses that provide specified economic benefits to the territory, including hiring a minimum number of local residents. In 2001, the U.S. Virgin Islands reorganized the tax incentive program under the auspices of the new Economic Development Commission (EDC), and expanded the program to accommodate emerging industries such as financial services and high technology in addition to the manufacturers that had traditionally participated in the program.

The EDC program has become a major source of tax revenue for the U.S. Virgin Islands, generally contributing in excess of \$100 million per year. It has also become apparent that some have abused the program, claiming benefits on the basis of very flimsy claims of having established *bona fide* residency in the U.S. Virgin Islands or with respect to income with no genuine connection to the territory. The U.S. Attorney for the U.S. Virgin Islands is currently prosecuting a company for tax fraud under the EDC program, and so far one individual has pleaded guilty to criminal tax evasion. *The New York Times* has reported on other EDC beneficiaries that appear not to have a *bona fide* presence in the territory.

The government of the U.S. Virgin Islands tightened controls on the EDC program in order to reduce the likelihood of abuse. It has also requested the U.S. Department of the Treasury to provide regulatory guidance to define the concepts of “*bona fide* residency” in the U.S. Virgin Islands and income “effectively connected” to the conduct of a trade or business in the U.S. Virgin Islands.

The issues of *bona fide* residency and effectively connected income were addressed in the American Jobs Creation Act of

2004. That Act generally provides, among other things, that presence in any of the Insular Areas for at least 183 days is required to establish *bona fide* residency in that Insular Area in any calendar year.

The Act also provides that U.S.-source or effectively connected income cannot also be effectively connected to the U.S. Virgin Islands. This might mean, for example, that a U.S. Virgin Islands-based software developer would not be eligible for EDC tax reductions on income on software licensed to U.S. customers.

The Act does, however, give the Treasury Department authority to craft exceptions to these general rules through regulation. Governor Turnbull and Congresswoman Christensen have both expressed the concern that many legitimate businesses who were induced to relocate to the U.S. Virgin Islands by the EDC tax incentives will now leave the territory because of the new restrictive provisions. They have requested that exceptions be crafted to these general rules that would minimize the exodus of legitimate businesses from the U.S. Virgin Islands, and that the Department of the Interior and other Federal agencies whose work would be impacted by a major disruption to the U.S. Virgin Islands economy work with the Treasury Department, as appropriate, to craft a fair and sensible policy on behalf of the Administration.

Source: The issue was raised by Governor Turnbull in March 2004 in a letter to Secretary Norton. Following the passage of the American Jobs Creation Act of 2004, Governor Turnbull again expressed his concerns in a letter to Secretary Norton.

Agencies Involved: Department of the Treasury, Department of the Interior.

Action to Date: Treasury and Interior officials have held meetings to discuss how tax fraud concerns relating to the EDC program be addressed in a manner that does not harm legitimate businesses operating in the U.S. Virgin Islands and the other Insular Areas. According to Treasury officials, Treasury and IRS personnel have been working actively on regulations to implement the new legislation.

Next Action: According to Treasury officials, regulations implementing the American Jobs Creation Act of 2004 will be promulgated in the near future.

b. *Removal of Cap on Rum Excise Tax Cover Over (U.S. Virgin Islands)*

Issue: Congress has provided that certain federal excise taxes on products manufactured in the U.S. Virgin Islands would be paid or “covered over” to the local treasury; the excise tax on rum

accounts for about \$60 million annually in revenues to the local treasury. The Federal excise tax on Virgin Islands rum is \$13.50 per proof gallon. Since 1984 the VI share of this tax has been capped, at \$13.25 per proof gallon, with the remaining \$0.25 per gallon remaining in the U.S. Treasury. The Virgin Islands share would be further reduced to \$10.50 per proof gallon unless the current level is extended beyond the end of 2006. The Governor sought Administration support for a legislative proposal that would allow the U.S. Virgin Islands to keep the entire rum excise tax on a permanent basis.

Source: Governor Turnbull raised this issue at the 2003 meeting of the IGIA.

Agencies Involved: Office of Insular Affairs, Department of the Treasury.

Action to Date: Treasury officials have determined that the cover-over rate is not a tax policy matter. OIA will examine the policy issues relevant to permanent extension of the cover over.

c. Federal Tax Cover-Over (CNMI)

Issue: Section 703(b) of the U.S.-CNMI Covenant requires to be paid into the CNMI treasury, among other things, “the proceeds of all customs duties and Federal income taxes derived from the Northern Mariana Islands” and “the proceeds of any other taxes which may be levied by the Congress on the inhabitants of the Northern Mariana Islands.” These amounts generally have not been paid to the CNMI over the years. According to the IRS, the failure of the CNMI to sign a tax information sharing agreement with the IRS prevented Section 703(b) from being properly implemented. Such an agreement was recently executed by the CNMI and the IRS, and the CNMI has now requested that the parties agree on the amount that the Federal Government owes to the CNMI for prior years. The records are incomplete; IRS has records for the 2003 tax year, the military has records back to 1996, and there is scattered information from 2002 and before. An important issue is whether estate taxes are covered by Section 703(b). Treasury officials have also raised the issue of whether the CNMI has been obligated to transfer to the U.S. Treasury tax revenues collected by the CNMI in respect of non-CNMI income

Source: The issue was raised by the office of the governor of the CNMI in April of 2004 in meetings with the Office of Insular Affairs.

Agencies Involved: Department of the Interior, Department of the Treasury, Internal Revenue Service, Department of Defense, other Federal agencies with employees in the CNMI.

Action to Date: Several meetings on this subject have taken place between representatives of the governor’s office and both the

Department of the Treasury and the IRS, on the one hand, and the Department of the Interior, on the other hand. Consultations between the Department of the Interior and the Department of the Treasury are also ongoing. IRS and CNMI officials have also met several times to exchange information on amounts subject to cover-over. Treasury has reached tentative conclusions on issues involving the estate tax and other issues.

Next Action: A determination should be made on the various outstanding issues in early 2005.

d. Section 936 Extension (American Samoa, U.S. Virgin Islands)

Issue: Governor Togiola has expressed concern about the effects on American Samoa's economy when Section 936 of the Internal Revenue Code-- the Possessions Tax Credit--sunsets at the end of 2005. Tuna canneries in American Samoa, which support virtually the entire private sector there, rely heavily on this tax credit and may move if it expires on schedule. Section 936 was repealed by Congress in 1996, subject to a 10-year phase-out for companies that were utilizing the tax credit at the time of the repeal. In March 2003, Congressman Faleomavaega introduced legislation (H.R. 1424), which would extend Section 936 for American Samoa until January 1, 2016. Governor Turnbull also proposed a modification to Internal Revenue Code Section 956, the Possessions Tax Investment Incentive, which would have allowed U.S. companies with subsidiaries in the territories to be treated in a manner analogous to U.S. companies with subsidiaries in foreign nations, but with additional incentives to invest in the U.S. territories rather than in foreign nations.

Source: Governor Togiola raised this issue at the September 2003 plenary session; both he and Congressman Faleomavaega subsequently raised the issue at the February 2004 plenary session.

Agencies Involved: Department of the Treasury.

Action to Date: No action was taken on H.R. 1424 in the last session of Congress. According to Treasury officials, Congress repealed Section 936 after finding that it was not a cost-effective way to support economic development in the Insular Areas and, according to Treasury officials, the decision was sound and should not be revisited. In addition to Treasury, all agencies with a responsibility for the welfare of American Samoa, particularly the Department of the Interior, should participate in the formulation of the Administration's position. Treasury officials also rejected the proposal from Governor Turnbull, citing significant tax policy concerns.

Next Action: Further efforts are likely in Congress to extend the benefits of section 936.

e. ***Earned Income Tax Credit Burden Sharing (U.S. Virgin Islands and Guam)***

Issue: The U.S. Virgin Islands and Guam proposed that employers in “mirror code” jurisdictions be required to use the “advance payment” program for Earned Income Tax Credits under section 3507 of the Internal Revenue Code, with a cost-sharing arrangement whereby the Federal Government would ultimately bear 60 percent of the Earned Income Tax Credit obligations and the territorial government 40 percent.

Source: Governor Turnbull first raised this issue at the 2003 plenary session; it was subsequently raised by Governor Camacho and Congresswoman Bordallo at the 2004 meeting.

Agencies Involved: Department of the Treasury, Internal Revenue Service.

Action to Date: Treasury officials have asserted that current law does not appear to provide a sound basis for requiring the advance payment program of Internal Revenue Code Section 3507 in mirror code jurisdictions. In addition, such a program would, according to Treasury officials, involve significant administrative difficulties. Treasury officials note, however, that the territories have the authority to adopt income tax codes that differ from the Internal Revenue Code (after entering into a implementation agreement with the IRS), and can thus avoid the fiscal burden of the Earned Income Tax Credit.

Next Action: Congress would have to decide whether to address this matter.

3. Homeland Security/Emergency Preparedness

a. *National Flood Insurance Program (Guam)*

Issue: Guam has been threatened with suspension from the National Flood Insurance Program (NFIP) for failure to comply with certain requirements. The Governor has written to the Director of FEMA Region IX requesting that Guam's existing NFIP study be reconsidered and that FEMA grant Guam an extension to comply with NFIP requirements. The Governor also requested assistance in funding a new study.

Source: Governor Camacho raised this issue at the September 2003 plenary session.

Agencies Involved: Department of Homeland Security, Federal Emergency Management Agency.

Action to Date: FEMA has no recommendation on how to proceed in view of Guam's failure to respond to requirements to establish a flood plan despite assistance from the agency and Guam is now subject to suspension. The Army Corps of Engineers has received an appropriation to re-design a flood control plan for the Hagatna River, which would satisfy some but not all of the NFIP requirements. Guam is still seeking a new NFIP study.

Next Action: A meeting with representatives of FEMA, the Army Corps of Engineers, and Guam's government should be held to cover the existing NFIP study and its possible shortcomings, Army Corps' timetable for its re-design of the flood control system, and the impact, costs, and necessity of carrying out the construction of the flood control system. Following that meeting, a determination should be made to either refer the issue to the government of Guam for action to meet FEMA requirements or to recommend that FEMA conduct a new NFIP study on the Hagatna area.

b. *Public Assistance Insurance Requirements (Guam)*

Issue: In the wake of the Pongsona Supertyphoon disaster, the government of Guam had been unable to draw down Federal funds to support restoration efforts because of a Public Assistance Insurance Requirement, which mandates "proof of insurance" on the structure to be restored before disbursement. Over 350 projects remain on hold, totaling over \$16 million. The Governor requested that FEMA authorize a time extension to January 10, 2004, on all projects affected by the insurance requirement. The Governor also sought FEMA support for dispatching a working group on insurance to Guam to determine the applicability of implementation of the insurance regulations.

Source: Governor Camacho raised the issue at the September 2003 plenary session.

Agencies Involved: Department of Homeland Security, Federal Emergency Management Agency.

Action to Date: FEMA granted Guam the extension, but the proof of insurance requirement was still not met. FEMA also dispatched a team to Guam to assess the insurance market. Their report indicated that insurance products were available on the private market; FEMA has not granted an exemption.

Next Action: Follow-up with the government of Guam is necessary to study how the local government could meet the requirements laid out in the FEMA report.

c. Coast Guard Presence (CNMI)

Issue: Governor Babauta requested that the U.S. Coast Guard establish a permanent presence in the CNMI. Currently there is no permanent U.S. Coast Guard presence in the CNMI; the territory is served by the station on Guam.

Source: Governor Babauta raised the issue at the 2003 plenary session of the IGIA.

Agencies Involved: Department of Homeland Security, U.S. Coast Guard.

Action to Date: The issue was forwarded for consideration to the Coast Guard; the Coast Guard considered the request and responded that although Coast Guard Marianas Section and District 14 personnel will remain engaged with officials from the government of the CNMI to ensure that operational commanders are aware of the needs of the CNMI and include those needs in planning and resource allocation, no funding is expected for manpower or resources to be stationed in the CNMI.

Next Action: Consultations with DHS, Coast Guard, and Coast Guard MARSEC should continue, taking into account an expected increase in tourist and other traffic to the Northern Marianas in the next few years.

d. Visa Waivers for China and the Philippines (Guam)

Issue: Congresswoman Bordallo requested consideration for visa waivers for tourists to Guam from China and the Philippines.

Tourism is one of two dominant components of Guam's economy. Unlike the CNMI, however, Guam does not control its own immigration. It does, however, have a special exemption in Federal immigration law that waives visas for citizens of certain nations traveling on holiday to Guam (and Guam alone).

Congresswoman Bordallo requested that this benefit be extended to citizens of China and the Philippines.

Source: Congresswoman Bordallo raised this issue at the 2003 plenary session; Governor Camacho reiterated this issue at the 2004 meeting.

Agencies Involved: Department of State, Department of Homeland Security, Bureau of Customs, and Immigration Services.

Action to Date: Several discussions with the Department of State have taken place on this subject. Several nations are already on visa waiver programs for the territories or even the mainland United States; however, China and the Philippines are not among them. A major determining factor is the percentage of visa requests from a candidate nation that are rejected each year; according to State Department figures, the percentage denied in both cases is nearly double the number specified in the authorizing legislation. State has indicated that it does not believe the initiative could be advanced under the current legislation.

4. Other Items

a. *Permanent Cabotage Exemption (American Samoa)*

Issue: Governor Togiola has raised concerns about the hardships caused by air cabotage restrictions which, among other things, prevent a foreign carrier from taking passengers between two stops in the U.S. The Governor has claimed that current cabotage rules, by artificially restricting air transport options for the people of American Samoa, have increased the cost of air travel, have resulted in inadequate postal and cargo service, and limited the ability to evacuate patients to Honolulu for medical emergencies. Currently, only two U.S.-flag carriers, Aloha Airlines and Hawaiian Airlines, service American Samoa; Aloha's service was discontinued in January 2005. The Governor sought support for amending current Federal legislation and/or regulations that would allow American Samoa to obtain cabotage exemptions similar to those benefiting Alaska.

Source: Governor Togiola raised the issue at the September 2003 plenary session.

Agencies Involved: Department of Transportation.

Action to Date: The Government of American Samoa received a temporary suspension of cabotage regulations in the Fall of 2003.

Next Action: The appropriate agencies will participate in the formulation of the Administration position if legislation is introduced in Congress and the Administration is asked to testify.

b. *Meat Importation (American Samoa)*

Issue: The Governor requested authorization for temporary importation of meat products from the Independent State of Samoa until those products can obtain USDA certification. According to the Governor, the ability of the isolated territory to import food from its closest neighbor is an important food supply security issue, as the territory normally has to depend on imports originating in ports on the west coast of the mainland United States. The situation nearly became critical during last year's dockyard strike. The Governor claims that the territory has the ability to ensure that meat imported from the Independent State of Samoa is fit for consumption.

Source: Governor Togiola raised the issue at the September 2003 plenary session.

Agencies Involved: U.S. Department of Agriculture, Food and Drug Administration.

Action to Date: Awaiting response from USDA.

Next Action: Meetings with representatives of USDA, the FDA, and the American Samoa government should be arranged. Topics covered should include but not be limited to risks posed by the

territory's isolation from mainland and other certified sources of meat products, any known issues with meat products from the Independent State of Samoa, and American Samoa's ability to address quality control issues.

c. Medicaid Caps (All Insular Areas)

Issue: The Medicaid cost-share for the Insular Areas is 50-50. In contrast, for the poorest states, the Federal Government assumes 77 percent of Medicaid costs. Furthermore, the annual amount of the Medicaid reimbursement to each Insular Area is capped. All of the Insular Areas have very high rates of poverty and fiscal problems. All of the governors and Congressional delegates from the Insular Areas have supported moving to a 77-23 cost-share formula and lifting the caps as a means to ease the strain on Insular Area budgets and improve the delivery of health care to the poor.

Source: Governor Togiola, Governor Camacho, Governor Babauta, and Governor Turnbull have all raised or commented on this issue at both meetings, as have all three delegates.

Agencies Involved: Health and Human Services.

Action to Date: HHS officials have indicated that the agency is not empowered to change the cost sharing arrangements or to remove or lift the cap. The Centers for Medicare and Medicaid Studies Region IX staff has been exploring ways to use existing authority to allow greater flexibility on the application of expenditures within the capped limits, and has been providing systems resources where possible. Any changes to the cost sharing arrangements or lifting of the caps would require Congressional action.

There has been legislative action on this matter; the three delegates introduced an amendment to the 2005 Labor and Health and Human Services appropriations bill that would have provided a temporary, 30% increase in Medicaid funding. The amendment, however, was tabled until the next session.