MEMORANDUM

To: The Honorable Douglas W. Domenech
Assistant Secretary for Insular and International Affairs

From: Governor Albert Bryan, Jr.

Date: February 3, 2020

Re: 2020 Meeting of Interagency Group on Insular Areas ("IGIA") and Territorial Governors

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Thank you for the opportunity to outline the key priorities for the United States Virgin Islands that we would like to highlight for the Interagency Group on Insular Areas ("IGIA") and other Territorial governors. The Virgin Islands believes the time is right for a comprehensive revision of the Territory's economic relationship with the United States—one that will place the Territory on the path to true and sustainable fiscal health. In furtherance of this goal, this memorandum provides background information on items of critical importance to the economic development and fiscal stability of the United States Virgin Islands, along with a summary of requested administrative or legislative actions. This Memorandum is presented in supplementation of the oral statement being made a the IGIA meeting on February 11, 2020.

Taxes

1. Rum Tax Legislation

As part of its long-standing tax relationship with the Virgin Islands, Congress has historically provided that all federal taxes on all products—including rum—manufactured in the Virgin Islands be returned, or "covered-over," to the local treasury. Rum tax revenues covered-over to the Government of the Virgin Islands ("GVI") constitute a major source of funding for the GVI, and are used to finance essential public services and to securitize the GVI's bonds and facilitate the Territory's future access to the capital markets. In 1984, Congress increased the excise tax on rum from $10.50 per proof gallon to $12.50, but provided that the proceeds of the $2.00 increase in the tax would—for the first time in the history of the Territorial relationship—be retained by the U.S. Treasury rather than be covered over to the Virgin Islands. After Congress increased the excise tax on rum (and other distilled spirits) to $13.50 per proof gallon, Congress acted to restore the principles of the original tax relationship and raised the amount subject to cover-over to $13.25 per proof gallon for a temporary two-year period. Congress has extended the "temporary" cover-over rate ever since, but the timing of the extensions often causes budget planning problems and uncertainties for the GVI that can be avoided by making the temporary cover-over rate permanent. After Hurricanes Irma and Maria, Congress extended the temporary rate for a six-year period, ending on December 31, 2022.

The GVI has urged Congress to enact legislation making the temporary cover-over rate permanent. The Virgin Islands, respectfully, requests that the IGIA support the GVI's efforts to *make the temporary rate permanent and thereby avoid the need to extend the rate in the future and the associated budgeting problems and uncertainties.*

2. Fuel Tax Legislation

The "cover-over" provision that results in the GVI receiving the federal tax revenues on rum products produced in the Virgin Islands applies broadly to tax revenues generated by *all* "articles produced in the Virgin Islands and transported to the United States." 26 U.S.C. §7562(b). From the mid-1960s through 2012, a major oil refinery operated on the island of St. Croix and generated substantial federal excise taxes, which—on the face of the governing statute—should have been covered over into the GVI treasury in the same manner as rum excise taxes. In the late 1970s, both the GVI and the government of Puerto Rico brought suit against the United States seeking to compel the "cover over" of gasoline excise taxes into their respective treasuries. The GVI initially prevailed in district court and was awarded hundreds of millions of dollars in gasoline excise tax revenues.

On appeal, however, the Court of Appeals for the District of Columbia Circuit reversed, thus extinguishing the GVI's legal claim as well as any basis for settlement. The D.C. Circuit based its decision to reject the GVI's claim on a judicially created distinction that—despite the statute's unambiguous application to "*all* taxes imposed by" the United States "on articles produced in the Virgin Islands and transported to the United States"—limited the types of federal taxes that were subject to cover-over. The GVI sought Supreme Court review of the decision, but was denied. Under the principles of res judicata, the D.C. Circuit's decision is final and cannot be re-litigated.

Congress, however, has the power to legislatively overturn the judiciary's decision, which essentially re-wrote the cover-over statute to limit its application in ways that cannot be justified under the statute's plain language. An amendment to Section 7652(b) clarifying the scope of the cover-over program would be sufficient, for future purposes, to right this historical wrong and return the cover-over provision to its original purpose and effect.

Restoring the cover-over provision to its original breadth would provide the GVI with a critical source of revenue that would play a key role in returning the Territory to long-term fiscal health. The St. Croix refinery, idled in 2012, is set to re-open in 2020 and resume refining operations on a smaller, environmentally friendlier scale. Because the refinery has not been operating, the excise tax revenues it generates will be new revenues, such that covering those revenues into the GVI treasury will not deprive the federal treasury of any existing revenue streams.

The Virgin Islands, respectfully, requests IGIA's support for the GVI's effort to obtain an amendment that returns Section 7652(b) to its intended function and requires that fuel excise taxes be included in the cover-over program.

3. Economic Growth Incentives

In addition to the cover-over statute, federal tax policy can play a critical role in creating the investment climate to help the Territory generate sustainable economic growth, create jobs, and improve its long-term fiscal health. In furtherance of these goals, the GVI requests that the IGIA consider the unique status and circumstances of U.S. Territories and provide for fair and balanced tax rules for the Territories, including the possessions tax rules enacted as part of the 2004 Jobs Act and the "GILTI" rules enacted as part of the 2017 Tax Act.

a. <u>Legislation to modify the qualified income rules and provide parity among Territories in treatment of capital gains</u>

The Virgin Islands and other insular areas face unique economic challenges as a result of their geographic distance, lack of natural resources, and general small island limitations on scale. In the case of the Virgin Islands, these challenges have been exacerbated by harsh income sourcing rules[1] implementing the possessions provisions of the American Jobs Creation Act of 2004 ("Jobs Act"). As a result, the once-promising Virgin Islands economic development programs dramatically slowed, and the Territorial government has been left with few tools to address its stagnant private sector economy and resulting fiscal problems.

The GVI has consistently maintained that the sourcing rules, particularly whether income may be deemed "effectively connected" with a V.I. trade or business, should be based on established tax precedents. The Government has proposed that Treasury should adopt the principles that Treasury follows in its model income tax treaty for determining whether the income generated by a V.I. trade or business may qualify as V.I. ECI. At the very least, even under the narrower definition of ECI adopted by Treasury in implementing the Jobs Act, it has been the Government's position that Treasury should not discriminate against U.S. source income (in favor of foreign source income) in the determination of V.I. ECI and should therefore modify the U.S. income limitation in Section 937 to exclude only U.S. source income actually generated by

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[1] Under the long-standing rules governing the tax relationship between the Virgin Islands and the United States, a bona fide resident of the Virgin Islands (*i.e.*, a tax resident) may satisfy his or her U.S. income tax obligations by filing in, and paying the applicable tax to, the Virgin Islands. Under Section 934 of the U.S. Internal Revenue Code, the Virgin Islands is authorized to reduce the otherwise applicable tax on "V.I. source income" and "income which is effectively connected with the conduct of a V.I. trade or business," regardless of source ("V.I. ECI"). This provision is a potentially powerful incentive for attracting U.S. (and foreign) investment to the Virgin Islands by allowing certain qualified U.S. source income (which would otherwise be subject to U.S. income tax rates under the V.I. mirror tax code) to be eligible for the concessionary tax rates under the Virgin Islands' economic development programs. The Jobs Act, however, sharply limited the scope of this incentive by adding new Section 937 to the Internal Revenue Code, which provides that no U.S. source income can qualify as V.I. ECI (the "U.S. income limitation"), unless specifically permitted under regulations promulgated by the U.S. Treasury. To date, Treasury has permitted only inventory sales of Virgin Islands manufactured goods in the U.S. market (which would constitute U.S. source income) to qualify as V.I. ECI. This limitation has hindered the growth and development of high tech, financial services, and information-based industries in the Territory.

activities in the United States.[2] In addition, an anomaly in the U.S. Internal Revenue Code ("Code" or "IRC") allows Puerto Rico to provide more favorable tax treatment of capital gains derived from the sale of personal property held by a Puerto Rico taxpayer than the tax treatment by the small mirror code territories of capital gains derived from the sale of similar property by U.S. citizen (and resident) taxpayers in such mirror code jurisdictions. The Virgin Islands submits that there is no sound tax policy reason for treating mirror code possessions differently from non-mirror code possessions.

Congress therefore should modify the "effectively connected" income rules for possessions in Section 937(b)(2) of the Code—enacted as part of the Jobs Act—by modifying the U.S. income limitation to exclude only U.S. source (or effectively connected) income attributable to a U.S. office or fixed place of business. Congress should also ensure parity of tax treatment with Puerto Rico and other U.S. possessions with respect to the treatment of capital gains, by clarifying in IRC Section 865(j)(3) that capital gains income earned by V.I. taxpayers should be deemed to constitute V.I. source income under the general sourcing rules without regard to the tax rate imposed by the V.I. government. The Virgin Islands requests that the IGIA support these efforts.

The foregoing requests are focused, reasonable, and necessary and have already been passed by the Senate as part of the Tax Cut and Jobs Act of 2017. However, during the conference with the House, the JTC provided erroneous budget scores (by wrongly assuming the Senate provision would also apply to Puerto Rico), and there was insufficient time to address and correct that mistake in conference. As a result, these critically-needed Jobs Act modifications were not included in the final package. *The Virgin Islands, respectfully, requests the IGIA's support for these necessary changes.*

b. Legislation to modify the rigid residency requirements

In addition, the Jobs Act created onerous residency requirements for the Virgin Islands that inhibit the Territory's ability to attract investment. In the Jobs Act, Congress provided Treasury authority to modify the rules for determining bona fide possessions residency. The Virgin Islands has urged Treasury to exercise its authority to review the existing rules, and to consider amendments, where appropriate, that would give greater deference to Congressional goals of encouraging economic and private sector development in the Virgin Islands and the other U.S. possessions.

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[2] The U.S. income limitation imposed by the Jobs Act has resulted in unjustified and sometimes illogical restrictions of the EDC program. For example, royalty income earned through licensing of software created by a Virgin Islands company to clients in foreign countries may qualify as V.I. ECI under the Jobs Act rules and thus eligible for EDC tax incentives, while licensing of the same software to U.S. customers would not, thus incentivizing Virgin Islands high tech companies to look to foreign markets rather than the U.S. market. Similarly, a Virgin Islands captive insurance company which insured foreign risks would qualify for EDC tax incentives, while the insurance of U.S. risks would not, ironically putting V.I. companies at a competitive disadvantage vis-a-vis Bermuda and other Caribbean companies.

Under Section 932 of the Code, a "bona fide" resident of the Virgin Islands (*i.e.*, a tax resident) may satisfy his or her U.S. income tax obligation by filing in, and paying the applicable tax to, the Virgin Islands. Under Section 934 of the Code, the Virgin Islands is authorized to reduce tax on V.I. source income and "income which is effectively connected with the conduct of a V.I. trade or business" ("V.I. ECI"). Prior to the Jobs Act, the determination of "bona fide" V.I. residency for tax purposes was based on the totality of an individual's facts and circumstances (the "facts and circumstances" test). However, Section 937 of the Code, as added by the Jobs Act, provides that a "bona fide" resident of the Virgin Islands is a person who (i) is present in the Virgin Islands for at least 183 days a year (an "average" of 183 days a year over a moving three-year period), unless otherwise provided in Treasury regulations ("physical presence test"), (ii) does not have a tax home outside of the Virgin Islands for the taxable year ("tax home test"), <u>and</u> (iii) does not have a closer connection to the United States (or anywhere else) than to the Virgin Islands ("closer connection test"). Under the Jobs Act, an individual must meet <u>all</u> <u>three</u> tests in order to establish tax residency in the Virgin Islands. Treasury has provided very limited flexibility for these requirements, by allowing V.I. residents to treat up to 30 days of off-island travel outside of the United States as "constructive presence" in the Virgin Islands, provided that the resident was still physically present for more days in the Virgin Islands than in the United States.

Notwithstanding this limited 30-day travel flexibility, the V.I. Government has consistently maintained that the proper test for bona fide V.I. residency should be the test the IRS applies under Section 7701(b) of the Code to determine whether a foreign individual residing in the United States has sufficient presence in the United States to justify subjecting that individual to U.S. taxing jurisdiction in the same manner as U.S. citizens. Under that test, such foreign individual must be physically present at least 183 days in any one tax year, or an average of 122 days a year over any three year moving period.

In light of the serious, continuing adverse impacts of the Jobs Act on the Virgin Islands economy and fiscal situation, there is a compelling need to restore balance in the Jobs Act rules and to restart the engines of growth in the Virgin Islands economy. Despite Treasury's ample discretionary authority to adopt the 122-day test, Treasury has taken the position that the Jobs Act prevents it from doing so.

The Virgin Islands, respectfully, requests that the IGIA support the GVI efforts in Congress to address the inequities in the Jobs Act residency requirements.

c. <u>Legislation to Address Inequities in CFC Tax Regime</u>

The U.S. tax system includes certain anti-deferral rules under which a "U.S. shareholder" that owns stock in a "controlled foreign corporation" (a "CFC") is required to include in gross income its pro rata share of, among other items, (i) the CFC's Subpart F income, and (ii) the CFC's "global intangible low-taxed income" ("GILTI"). A CFC's Subpart F income includes a range of items, including items of passive income such as dividends, interest, rents, royalties and annuities. Very generally, the amount of a CFC's GILTI is the CFC's income above a 10-percent annual return on the tax basis of its tangible assets.

As described under separate headings below, these rules result in unfavorable treatment of Virgin Islands corporations and their shareholders in at least two ways. First, these rules inexplicably fail to provide Virgin Islands corporations with the benefit of an exclusion that benefits similarly situated corporations in other possessions. Second, the application of GILTI to corporations in the Virgin Islands limits the effectiveness of the Virgin Islands EDC programs and is inconsistent with the longstanding tax relationship between Congress and the Virgin Islands.

i. Legislation to exclude Virgin Islands bona fide residents from the definition of "United States Person"

Under current U.S. tax law, certain investments by U.S. persons in U.S. Virgin Islands corporations are taxed less favorably than equivalent investments in Puerto Rico corporations (and corporations formed under the laws of other possessions). Specifically, due to an exclusion in Section 957(c) of the Code from the definition of a "United States person" that applies to bona fide residents of Puerto Rico (and other possessions) but not to bona fide residents of the Virgin Islands, certain Virgin Islands corporations can be subject to classification as CFCs, causing negative U.S. tax consequences to their U.S. investors, while similarly situated Puerto Rico corporations (and other possessions corporations) are excluded from CFC classification.

There is no rationale for this unfavorable treatment of Virgin Islands corporations and their shareholders, which could result in the diversion of needed capital investments away from the Virgin Islands to other U.S. possessions. To rectify this unfavorable treatment and bring tax parity to investments in the possessions, we propose that Code Section 957(c) be amended to expand the exclusion from the definition of United States person to include bona fide residents of the Virgin Islands. *The Virgin Islands, respectfully, requests that the IGIA support the GVI efforts in Congress to address this inequity.*

ii. Legislation to eliminate or mitigate impact of GILTI in Virgin Islands corporations

The Tax Cuts and Jobs Act of 2017 introduced a new tax on a U.S. shareholder's GILTI earned by a CFC. The GILTI tax, by increasing the tax on U.S. investment in Virgin Islands businesses, limits the effectiveness of the Virgin Islands' EDC programs and is inconsistent with the rules governing the long-standing tax relationship between Congress and the Virgin Islands. GILTI is particularly harmful to Virgin Islands corporations given that, as described above, they do not benefit from the Section 957(c) exclusion that benefits similarly situated corporations in other possessions.

The GILTI tax is set forth in Section 951A of the Code, which requires a U.S. shareholder of one or more CFCs to include in gross income its GILTI with respect to such CFCs for the tax year. Very generally, and subject to certain exclusions, a U.S. shareholder's GILTI for the tax year is the excess of the aggregate of the U.S. shareholder's pro rata shares of the CFCs' net income (subject to certain exclusions) over a fixed 10-percent return on the CFCs' average adjusted bases in foreign tangible assets, referred to as the "deemed tangible income return." Under Section 250 of the Code, a U.S. shareholder that is a corporation generally is allowed a deduction equal to 50 percent of its GILTI inclusion, which effectively reduces the corporate tax rate on the GILTI inclusion from 21 percent to 10.5 percent. Beginning in tax year 2026, the Section 250 deduction will be reduced from 50 percent to 37.5 percent (resulting in an effective rate of 13.125 percent on a corporation's GILTI inclusion, assuming the corporate tax rate remains at 21 percent).

Under these rules, a corporate U.S. shareholder in a Virgin Islands corporation that is a CFC generally would be subject to tax at a rate of 10.5 percent (increasing to a rate of 13.125 percent beginning in 2026) on a broad class of the Virgin Islands corporation's income, even if that Virgin Islands corporation is conducting an active business and otherwise meets the applicable criteria to qualify for a lower rate of tax with respect to such income under a Virgin Islands EDC program and Section 934(b)(1) of the Code. To protect the viability of the Virgin Islands EDC programs and encourage investment in economic development in the Virgin Islands and other possessions, the GILTI inclusion from possessions corporations should be exempt from tax. This could be accomplished by excluding possessions corporations from the definition of "controlled foreign corporation" for purposes of Section 951A of the Code. Absent a full exemption, the effective rate of tax on GILTI inclusions from possessions corporation should be reduced. This could be accomplished for corporate U.S. shareholders by increasing the amount of the Section 250 deduction for GILTI inclusions that are attributable to possessions corporations. *The Virgin Islands, respectfully, requests that the IGIA support amendment to the GILTI provisions that would exempt, or reduce the rate of tax applicable to, GILTI inclusions attributable to possessions corporations.*

d. <u>Legislation to reimburse the Virgin Islands and other mirror code Territories for the cost of the EITC and CTC tax credits</u>

The federal Earned Income Tax Credit ("EITC") is intended to encourage work among low-income individuals. In the United States, the federal government effectively funds this program for all States and the District of Columbia through the Internal Revenue Code. While a worthy goal, this federal tax credit has unintended and unfair consequences in the Virgin Islands due to its (and other small Territories) status as a mirror tax code jurisdiction. Under this system, the income tax liability of residents of the Territory is determined with reference to the income tax laws of the U.S. Consequently, unlike in the States and D.C., the cost of the EITC is borne solely by the fiscally-stressed GVI, a cost which the Territory cannot bear.

The EITC costs the GVI approximately from $18,045,792.29 in 2015 to $8,318,616.08 in 2018, given a reduction in population. As a matter of fairness, and to avoid imposing an onerous financial burden on the local treasury, Congress should provide for federal reimbursement for the cost of the EITC incurred by mirror code jurisdictions (i.e., the Virgin Islands and Guam). There is ample precedent for such reimbursement. *See, e.g.*, American Recovery and Reinvestment Act of 2009 (ARRA), Div. B, Sections 1001(b) (reimbursement to mirror code possessions for cost of Making Work Pay Credit) and 1004(c) (reimbursement for cost of American Opportunity Tax Credit). Other examples of such reimbursement date back to the 1970's.

The Child Tax Credit ("CTC") is another federal tax credit that imposes costs (in the form of lost local revenue) on the mirror code jurisdictions. Congress has provided to the mirror code jurisdictions federal reimbursement for the cost of the CTC for families with more than two children. Presently, the GVI was reimbursed $3,547,924.93 in 2018. However, there is no federal reimbursement for the cost of the CTC for families with one or two children. The CTC for such families has reduced the revenues of the GVI by $8,318,616.08 in 2018, down from $18,045,792.29 in 2015. As a matter of fairness, and to avoid imposing an onerous financial burden on the local treasury, Congress should provide for federal reimbursement for the cost of the CTC for families with any number of children incurred by the mirror code jurisdictions. There is ample precedent for reimbursement, as noted above. Indeed, in its final Report, the Congressional Task Force on Puerto Rico recommends that Congress provide federal reimbursement for the costs borne by the mirror code jurisdictions for the CTC. *See* Task Force Final Report, p. 31, fn. 38.

Last year, the House Ways & Means Committee passed the Economic Mobility Act of 2019 (H.R. 3300), which would increase and expand the EITC and provide for partial (75%) reimbursement of the cost of the EITC to mirror code jurisdictions such as the USVI. The bill would also provide for reimbursement of the cost of the CTC to mirror code jurisdictions.

More recently, the Chair of the House Appropriations Committee introduced an emergency supplemental appropriations bill (H.R. 5687) that would provide the same fiscal relief in the form of reimbursement to mirror code jurisdictions of the cost of the EITC and CTC as in H.R. 3300, as well as additional disaster-related aid. These provisions are critical for not only providing needed fiscal relief for the GVI but also for maintaining and growing a workforce needed to grow and sustain the Virgin Islands' economy. *The Virgin Islands, respectfully, requests that the IGIA support enactment of provisions that provide for reimbursement to mirror code jurisdictions of the costs of both the EITC and the CTC.*

Healthcare

Notwithstanding the additional federal resources that the Affordable Care Act provided through last year, the task of implementing health care reform in the Virgin Islands has proven to be challenging, particularly in light of the disparate treatment of the U.S. Territories under the Act. Significant progress has been made in addressing—in the short term—the Medicaid funding issues in the Territory, but a permanent solution is still needed. Further, under Medicare, the GVI-owned hospitals are under-reimbursed for the costs of providing care to the many Medicare-eligible U.S. citizens in the Territory. These challenges can be significantly ameliorated by permanent changes to Medicaid provisions in the Social Security Act and changes to the reimbursement methodology for the hospitals under Medicare.

4. Amend the Social Security Act to permanently provide fair and equitable (State-like) Medicaid treatment for U.S. Territories

The Virgin Islands is appreciative of the disaster-related relief, particularly the additional funding allotted to the Territory and the temporary waiver of the local match in the aftermath of Hurricanes Irma and Maria. The Territory is also grateful for the recently-enacted relief provided in the final FY 2020 appropriations package, specifically a state-like FMAP for two years and an additional allotment of funding that defers the impact of the "fiscal cliff" for two years. This interim relief avoided the possible loss of health care coverage for thousands of U.S. citizens in the Virgin Islands and collapse of the Virgin Islands' healthcare system. And because healthcare coverage is critical for maintaining and growing a workforce, the Territory's Medicaid program is needed to grow and sustain the Virgin Islands' economy.

A permanent solution that provides for state-like treatment for the Virgin Islands and the other Territories is still needed in order to avoid the same dire consequences recently averted upon enactment of the final FY 2020 appropriations package. The Virgin Islands requests the support of the IGIA for legislation that permanently guarantees state-like treatment for the Territories.

5. Medicare Reimbursement for Hospitals (TEFRA)

The two hospitals in the Virgin Islands, Governor Juan F. Luis Hospital on St. Croix and Schneider Regional Medical Center on St. Thomas, are reimbursed for Medicare expenditures based on an outdated methodology established under the Tax Equity and Fiscal Responsibility Act of 1982 (Pub.L. 97–248) ("TEFRA"), resulting in under-reimbursement in the millions of dollars for each hospital each year. In 2011, the hospitals each submitted to the Centers for Medicare and Medicaid Services ("CMS") a request for assignment of a new TEFRA base year. Those requests are still pending.

More recently, Hurricanes Irma and Maria damaged both hospitals to such an extent that they need to be replaced. The GVI understands that CMS, as a result, will provide the hospitals with new base years, at least going forward. *The Virgin Islands,respectfully, requests the support of the IGIA for new base years for both hospitals.*

Other Social Welfare Programs

6. Congress should extend the Supplemental Security Income program to the Virgin Islands and other Territories

Supplemental Security Income ("SSI") is a federal need-based cash assistance program. The program was created in reaction to disparate benefits from state to state in the prior assistance programs. SSI sought to equalize eligibility standards and benefit amounts for similarly situated aged, blind, and disabled people across the program (across the U.S.). The program was created under the view that existing, disparate programs should be replaced with a program that would provide an income source for the aged, blind, and disabled whose income and resources are below a certain level, as well as incentives and opportunities for those able to work or be rehabilitated that would enable them to escape from their dependent situations.

SSI has provided monthly payments to low-income aged, blind, or disabled persons in the 50 states, the District of Columbia, and the Northern Mariana Islands. SSI is a federal entitlement program, paid out of the general revenue of the U.S. However, residents of the Virgin Islands, Guam, and American Samoa are not provided for under the SSI program—despite having identical needs among low-income aged, blind, and disabled persons.

Instead of SSI, the former federal-state programs of Old-Age Assistance, Aid to the Blind, and Aid to the Permanently and Totally Disabled (AABD) continue to operate in the Virgin Islands. Benefit amounts are capped, which means that the grant in no way considers actual need among the aged, blind or disabled in the Virgin Islands. Further, there is a 25% local match, and the responsibility to administer these programs falls upon the Territory, not the federal government. The result is that benefits are far less than those under SSI, and far less predictable (benefits can vary significantly from year to year and even within a year).

Including the Virgin Islands, Guam, and American Samoa in the SSI program would increase benefits for the elderly, blind, and disabled to a level on par with their counterparts on the mainland and CNMI. *The Virgin Islands, respectfully, requests the support of the IGIA for including the Virgin Islands, Guam, and American Samoa in the SSI program.*

Homeland Security

7. Proposed Virgin Islands Special Visa Waiver Program

Tourism is the lifeblood of the Virgin Islands economy. The Virgin Islands is a highly desirable tourist and sporting event destination, and the Territory's ability to attract is limited by the lack of a visa waiver program similar to those in the Pacific Territories. The Virgin Islands seeks authority from Congress or administrative authorization from the Department of Homeland Security to establish a special visa waiver program for the Virgin Islands that mirrors programs currently authorized for, and utilized successfully by, Guam and CNMI.

Executive Order 13597, entitled "Establishing Visa and Foreign Visitor Processing Goals and the Task Force on Travel and Competitiveness" (Jan. 19, 2012), directed the Secretaries of Commerce and Interior to co-lead an inter-agency task force to, among other things, develop recommendations for a "National Travel & Tourism Strategy" and increase efforts to expand the national Visa Waiver Program ("VWP"). Pursuant to authority of the Immigration and Nationality Act ("Act"), 8 U.S.C. § 1184(a)(1), the Attorney General and Secretary have promulgated regulations establishing a national Visa Waiver Program ("VWP") which allows nationals of certain countries to travel to the United States (and U.S. Territories) for stays of up to 90 days without obtaining a visa. VWP-eligible countries include most European countries, plus Japan, Singapore, Brunei, and South Korea. Not all travelers from VWP countries, however, are eligible to use the program. VWP travelers are required to apply for authorization through the Electronic System for Travel Authorization ("ESTA"), must be screened at their port of entry into the U.S., and must be enrolled in the US-VISIT program administered by DHS.

The proposed special visa waiver program would permit the Department of Homeland Security to consider approving visa-less entry into the Virgin Islands for the same category of users specified in the Executive Order, PLUS residents of non-VWP countries, including residents of the Caribbean Community ("CARICOM") as determined by a tourism and economic need survey similar to that used in Guam and CNMI.

Such a visa waiver program is not without precedent. A separate and special visa waiver program for Guam ("GVWP") and the Commonwealth of the Northern Marianas ("NMVWP") was established pursuant to these same provisions. These special visa waiver programs are specifically authorized by statute. In particular, Section 214(a)(1) of the Act provides that "[n]o alien admitted to Guam or [the CNMI] without a visa … *may be authorized to enter or stay in the United States other than in Guam or [the CNMI] or to remain in Guam or [the CNMI] for a period exceeding 45 days from the date of admission* to Guam or [the CNMI]." Pursuant to this authority, GVWP-eligible countries include certain Pacific Island nations, Australia, New Zealand, and Taiwan.

As the USVI is outside of the US Customs Zone such waiver would pose no threat to the US and its other Territories because movement beyond the USVI would require any such visa-less guests to subject themselves to US immigration and customs inspection and control. Visitors arriving by sea or air would be notified that they cannot move beyond the boundaries of the USVI.

The economic impact for the USVI, however, would be significant as the USVI could then receive visitors in the following categories:

- Seasonal yachting and sporting events;
- Shopping visits from other Eastern Caribbean countries;
- Medical visits to the Territory's medical facilities and medical professionals;
- Arriving air passengers to the Territory's airports for transfer to any of the northeastern Caribbean islands; and
- Cruise line passengers on ships that customarily only service Eastern Caribbean islands because of their European Union no-passport or visa requirements.

Requests for such access has been increasing by residents of the Eastern Caribbean and by the Government of the British Virgin Islands and by the Florida and Caribbean Cruise Association (FCCA).

The Department of Homeland Security is currently reviewing a request from the GVI and should be providing a response on an administrative authorization for a special visa waiver, and we, respectfully, urge the IGIA to support such administrative action or inclusion of similar language in any immigration reform legislation that might be considered in the current Congress.

<u>Infrastructure</u>

8. Surface Transportation Funding

In the final years of the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" ("SAFETEA-LU") and extensions thereof, Congress allocated $62 million annually to the four small Territories under the Territorial Highway Program (including a $50 million annual allotment and $12 million annually in lieu of High Priority Project funding). In July 2012, the Moving Ahead for Progress in the 21st Century Act ("MAP-21") maintained highway funding levels for all states, as well as the District of Columbia and Puerto Rico, but inexplicably cut the Territorial Highway Program funding by a third (to $40 million). Singling out the four small Territories for funding cuts was unfair, discriminatory, and ignored the substantial pressing transportation funding needs of the Territories.

The subsequent bill (FAST Act) did not restore the funding cut in MAP-21; it provided only a small (5%) increase over the reduced MAP-21 allocation for the small Territories, (to $42 million a year). In contrast, the FAST Act increased funding to the states and DC ranging up to 14.8% over the life of the FAST Act (through FY 2020).

We urge Congress to correct this inequity in the next surface transportation bill, by increasing funding levels for the Territorial Highway Program, including restoring the SAFETEA-LU funding levels and providing post-SAFETEA-LU increases similar to those provided to states and the District of Columbia.

9. Other Infrastructure Funding

On January 29, 2020, the House Democrats put forth a framework to invest $760 billion over five years in the nation's roads, bridges, and transit systems ($434 billion), railways $55 billion), airports and airway infrastructure ($30 billion), ports ($19.7 billion), inland waterways and water resources ($10 billion), wastewater systems and clean water ($50.5 billion), drinking water systems and clean energy ($59.7 billion), brownfields ($2.7 billion), and broadband and communications ($98 billion). Earlier, the Trump Administration had proposed investing $2 trillion on infrastructure.

The small Territories need substantial investment in their aging and deficient infrastructure. Further, because of the increasingly high risk of damage from natural disasters, the Territories' infrastructure must be built to be more resilient and sustainable than most other areas of the United States. In order to provide the Territories a fair and equitable share of infrastructure funding, the GVI proposes that any final package provide a set-aside of not less than 1.5 % for the Territories.

<u>Update to Insular Areas Act</u>

10. Congress should update the Insular Areas Act

Enacted in 1977, the Insular Areas Act, 48 U.S.C. § 1469a, expressed the policy of Congress that the small Territories (the Insular Areas) should be provided certain flexibilities under federal grant programs. Importantly, the Act, as amended, mandates that the Department of the Interior shall waive matching requirements for all Insular Areas under all of its grant programs, and requires all other departments and agencies to waive any requirement for local matching funds under $200,000 otherwise required by law. Further, pursuant to the Act, <u>all</u> federal agencies have the discretion to waive the <u>entire</u> local match for the Insular Areas (*i.e.*, the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands) for federal funding programs. The Act also provides that federal grants to Territories can be consolidated in order to minimize application and reporting procedures.[3]

There is ample precedent for federal agencies to exercise their discretion under the Act to waive the local match. Indeed, the local match has been waived under the Insular Areas Act in a number of contexts in the past, particularly after catastrophic events. For example, in recognition of the severity of Hurricanes Irma and Maria, FEMA invoked the Insular Areas Act authority to waive the 25% non-federal matching requirement for the Hazard Mitigation Grant Program in the USVI. However, FEMA has not waived the local match for most categories (Categories C-G) of public assistance in response to Hurricanes Irma and Maria, requiring the GVI to come up with potentially hundreds of millions of dollars in local match under those programs, amounts that could and should be better spent on disaster recovery and economic development. In other instances, federal agencies have not used their discretion to waive the local share in other grant programs, despite the difficulty that the Virgin Islands and the other Insular Areas have in providing a local match.

Opportunities abound as well. As the world becomes increasingly interconnected, the opportunity for economic growth and expansion in our Territories has never been greater. Innovation, investment, entrepreneurialism: they are the building blocks that made America into one of the most dominant economies on Earth. We now have the opportunity to transform our natural blessings in the territories into unprecedented prosperity for our people, in partnership with our fellow US citizens and our federal government.

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[3] The policy reasons for the waiver are obvious. While the Insular Areas are in great need of federal funding, they do not have the resources available to come up with the local match in order to access those funds. As Delegate Ron DeLugo stated on the floor of the House of Representatives during consideration of the 1984 amendment as part of H.R. 5561:

> Also significant for the Virgin Islands is the exemption from up to $200,000 in local matching funds for Federal programs provided in section 601 of this bill. This provision responds to the developmental pressures faced by the Virgin Islands and the other territories, effectively cutting them out of needed Federal programs. … This is a good bill. The items for the Virgin Islands and the other territories provide needed changes in Federal law, and include funding for programs which address the special developmental concerns of the U.S. offshore possessions.

Cong, Rec. (House) 25479 (Sept. 14, 1984).

The breath of the wavier—it applies to <u>all</u> federal programs—was confirmed by a letter to the Secretary of Health and Human Services (HHS) from Morris K. Udall, Chairman of the House Committee on Interior and Insular Affairs, and Robert J. Lagomarsino, Vice Chairman of the House Subcommittee on Insular and International Affairs, dated August 5, 1986, which stated:

> As Members of the committee in which the waiver originated, we want to point out that it was intended to apply to **all** federal programs. The Committee most recently expressed itself on this point last September to clarify that the waiver applied to programs of the Corps of Engineers [Emphasis added].

Our goal is not just to survive. Our goal is to thrive.

The GVI proposes that the Act be amended to provide a statutory presumption in favor of waiving the local share; and to foster economic development and stability; and to update the relationship of the Territories to the federal government as partners in the global influence and economic dynamics of the United States of America.