

SUCCESSES AND CHALLENGES OF THE INTERAGENCY GROUP ON INSULAR AREAS

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON INSULAR AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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SUCCESSES AND CHALLENGES OF THE INTERAGENCY GROUP ON INSULAR AREAS

**Thursday, July 17, 2008
U.S. House of Representatives
Subcommittee on Insular Affairs
Committee on Natural Resources
Washington, D.C.**

The Subcommittee met, pursuant to call, at 2:00 p.m., in Room 1324, Longworth House Office Building, Hon. Donna Christensen [Chairwoman of the Subcommittee] presiding.

Present: Representatives Christensen, Faleomavaega, and Flake.

STATEMENT OF THE HON. DONNA CHRISTENSEN, A DELEGATE IN CONGRESS FROM THE TERRITORY OF THE U.S. VIRGIN ISLANDS

Mrs. CHRISTENSEN. Good afternoon. The oversight hearing by the Subcommittee on Insular Affairs will come to order. The Subcommittee is meeting today to hear testimony on the Successes and Challenges of the Interagency Group on Insular Affairs. Under Committee Rule 4(g), the Chairwoman, myself, and the Ranking Minority Member, who could not be here today, would make opening statements. If any members join us and have other statements, they will be included in the hearing record under unanimous consent.

As I said this afternoon, the Subcommittee is meeting to hear from witnesses representing some of the U.S. insular areas, as well as officials from the Department of the Interior and the former Clinton Administration. The subject of our attention is the Interagency Group on Insular Affairs.

As many of us here know, traveling to D.C. from islands involves great preparation both in time and resources, and the Subcommittee had hoped to have the participation of the Governors of Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands by piggybacking on the National Governors' Association summer session which is being held in Pennsylvania, or was held in Pennsylvania earlier this week. But due to prior commitments and some pressing business for our own Governor back at home, the majority of Governors were not able to attend the NGA session or this hearing. But written testimony has been submitted to the Subcommittee in lieu of their being here, and it will be entered into the record accordingly.

I will leave it to our witnesses then to provide the Subcommittee a more in-depth accounting and history of the IGIA in their testimony. However, as a brief background, the IGIA is an outgrowth of efforts taken by my predecessor, Insular Subcommittee Chair Ron de Lugo. Chairman de Lugo, along with Senator Bennett Johnston, both recognized the existence of a policy gap in the way the Federal Government interacted with U.S. insular areas. Chairman de Lugo and Senator Johnston, who chaired the Energy and Natural Resources Committee, introduced similar measures to bridge this gap in the 103rd Congress.

Chairman de Lugo's legislation would have established a Council on Insular Affairs comprised of policy level officials from all Federal agencies chaired by the President's chief domestic and foreign policy advisers and assisted by a staff in the President's Executive Office. The IGIA was born out of this legislation and the continuing dialogue and compromise between Congress, the Department of the Interior and the White House.

The IGIA, as originally established under President Clinton and reconstituted in 2003 by President Bush, is nearing its 10th anniversary as a working group. The Department of the Interior holds at least one annual meeting which coincides with the Governors traveling to D.C. in February. As it has seasoned, the IGIA has proven to be a regular activity of the Department of the Interior with occasional success.

The Subcommittee looks forward to the testimony being offered this afternoon and hopes that the interaction we have with our witnesses will assist in strengthening the efforts of the IGIA to address the very unique challenges faced by the insular areas.

So the Chair would now recognize the panel of witnesses, and will have you speak in this order: Resident Representative of the Commonwealth of the Northern Mariana Islands, The Honorable Pete Tenorio, Mr. Douglas Domenech, Acting Deputy Assistant Secretary for Insular Affairs at the U.S. Department of the Interior, and Mr. Jeffrey Farrow, Former Co-Chair of the White House Interagency Group on Insular Affairs during the Clinton Administration.

And I now recognize Mr. Pete Tenorio from the Northern Mariana Islands to testify for 5 minutes. And we would ask you to summarize your testimony, and all statements, the full statement, will be submitted into the record. You may begin.

[The prepared statement of Mrs. Christensen follows:]

**Statement of The Honorable Donna M. Christensen, Chairwoman,
Subcommittee on Insular Affairs**

This afternoon the Subcommittee is meeting to hear from witnesses representing some of our U.S. insular areas, as well as officials from the Department of the Interior and the former Clinton Administration. The subject of our attention is the Interagency Group on Insular Areas

As many of us here know, traveling to DC from the islands involves great preparation in both time and resources The Subcommittee had hoped to have the participation of the Governors of Guam, Virgin Islands, American Samoa, and the Northern Mariana Islands by "piggybacking" on the National Governors Association summer session held in Pennsylvania earlier this week. Due to prior commitments, the majority of Governors were not even able to attend the NGA session or this hearing. However, written testimony has been submitted to the Subcommittee in lieu of their absence and it will be entered into the record accordingly.

I will leave it to our witnesses to provide the Subcommittee a more in depth accounting and history of the IGIA in their testimony. However as brief background, the IGIA is an outgrowth of efforts taken by my predecessor—Insular Subcommittee Chairman Ron de Lugo. Chairman de Lugo, along with Senator Bennet Johnston, both recognized the existence of a policy gap in the way the Federal Government interacted with U.S. Insular Areas. Chairman de Lugo and Senator Johnston, who chaired the Senate Energy and Natural Resources Committee, introduced similar measures to bridge this gap in the 103rd Congress.

Chairman de Lugo's legislation would have established a Council on Insular Affairs, comprised on policy level officials from all Federal agencies, chaired by the President's chief domestic and foreign policy advisors, and assisted by a staff in the President's Executive Office.

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As it has seasoned, the IGIA has proven to be a regular activity of the Department of the Interior with occasional success.

The Subcommittee looks forward to the testimony being offered this afternoon and hopes that the interaction we have with our witnesses will assist in strengthening the efforts of the IGIA to address the very unique challenges faced by U.S. insular areas.

STATEMENT OF THE HON. PEDRO A. TENORIO, RESIDENT REPRESENTATIVE, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Mr. TENORIO. Thank you, Madam Chairwoman. I would make my testimony very brief. But before I do that I do want to extend to you the greetings from the people of the Commonwealth of the Northern Mariana Islands, and to also thank you and your committee for your recent visit to our islands, indeed a very historic visit when you conducted a public hearing on the Island of Saipan.

We also want to thank your Committee on Insular Affairs, and also the Committee on Natural Resources, for their very special initiative to pass U.S. Public Law 110-229, which contains the initiative for framing of a new immigration for the Commonwealth, as well as creating a Delegate position to represent the people of the Commonwealth in the U.S. Congress. We certainly appreciate this very, very important gesture and consideration on the part of Congress to finally provide representation to the people of the Commonwealth who have not been represented since 1986, when they were granted by a Presidential proclamation U.S. citizenship pursuant to the provision of the Covenant.

We look forward to working with this committee in improving our political relationship with the United States, and we feel very confident that with the kind of cooperation and consideration provided by this committee we will definitely have a much better relationship and a new beginning in our overall role as part of the American political family.

Chairwoman Christensen, members of this committee, I remember with great anticipation the signing of the Executive order that created the Interagency Group on Insular Areas. I was hoping that IGIA would move the territories from the realm of, forgive me for these words, forgotten stepchild into the mainstream where we would finally have powerful advocates on our side.

Since its inception twice I have been hopeful that the IGIA could help the CNMI address its critical infrastructure needs. Included in the Fiscal Year 2005 Omnibus Appropriations Act was a mandate by Congress calling for the Secretary of the Interior to develop a comprehensive, coordinated and detailed implementation program for the CNMI water system plans developed by the Corps of Engineers.

The Appropriations Act conference report noted that the magnitude of the funding needs to improve the CNMI water system far exceeds any possible resolution from funds made available to the Interior and Related Agencies Subcommittee on Appropriations, and that existing programmatic expertise of other Federal agencies is not being used fully.

The report required the Secretary of the Interior to provide the House and Senate Committees on Appropriations with an implementation plan that fully utilized and coordinated those authorities to ensure that the goals of the plans are achieved in a timely and cost effective manner. The report was to contain an implementation plan to identify projects, responsible agencies, funding needs, implementation schedule, any statutory or other changes necessary to implement the program, and a specific timetable for full completion.

This task was assigned to the IGIA, which acted very quickly. But even though various funding sources were identified, no funding for CNMI water system improvements were included in the following year's submission by the President or included in the appropriation. While water volume production has increased due to appropriations made by Congress in Fiscal Year 2004 and 2005 budgets, I can tell you that not a drop of water from the Saipan water system is potable at this point in time. We cannot drink our water from the households provided by our government.

Saipan's water system is unhealthy, causing residents to purchase expensive bottled water for drinking and cooking. It also greatly increases the cost of doing business by investors. I am sure everyone here remembers the Territorial Bank Bond Initiative developed under the auspices of IGIA. Congresswoman Bordallo generously introduced a bill to implement a plan, but unfortunately the bill was derailed by a lack of OMB support.

In concept, I believe the IGIA is crucial to increasing the communication about and the advocacy for insular areas within the Federal Government. I would like to see our next President again form the IGIA. I will recommend that it include a greater involvement by the Office of Management and Budget.

Finally, as I recommended in a past IGIA meeting, I would like very much that this group conduct its first meeting next year in one of the territories of the United States.

Thank you very much.

[The prepared statement of Mr. Tenorio follows:]

**Statement of The Honorable Pedro A. Tenorio, Resident Representative,
Commonwealth of the Northern Mariana Islands**

Madam Chairwoman, members of the Committee. I remember with great anticipation the signing of the Executive Order that created the Interagency Group on Insular Areas. I was hoping that IGIA would move the territories from the realm

of forgotten stepchild into the mainstream where we would finally have powerful advocates on our side.

But that was not to be. I am sure everyone here remembers the Territorial Bond Bank, developed under the auspices of IGIA, only to be cut down in its prime by OMB.

At the direction of Congress IGIA did form a working group to update the Army Corps of Engineers report on the Water Infrastructure Development Plans for the islands of Saipan, Tinian and Rota. The CNMI is America's only jurisdiction where the residents are unable to drink the water. The working group did an excellent job, unfortunately there was no follow through, and we have yet another report sitting on a shelf gathering dust.

The CNMI has real problems and unless our governor becomes a superhero, they are not going to be resolved anytime soon. Whether it is the nature of the bureaucratic beast or not, the problems facing the CNMI and the other territories must be resolved. I am not just talking about money, which does come in handy, but also expertise.

Mrs. CHRISTENSEN. Well, you know I like that idea, Mr. Tenorio, and of course we are the closest one, the one most nearby. But I think that is a good idea.

The Chair now recognizes Mr. Douglas Domenech to testify.

**STATEMENT OF THE HON. DOUGLAS W. DOMENECH, ACTING
DEPUTY ASSISTANT SECRETARY FOR INSULAR AFFAIRS, U.S.
DEPARTMENT OF THE INTERIOR**

Mr. DOMENECH. Thank you, Madam Chair. I would just say before I start it was good seeing you at the Energy hearing in St. Croix and again at the Guam Wreath Laying earlier this week, and I appreciate the opportunity to be here today.

Madam Chair and Subcommittee on Insular Affairs, thank you for the opportunity to discuss the activities of the Interagency Group on Insular Areas, or IGIA, which deals with the issues of concern in the United States Territories of Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. I would like to make a brief opening statement and submit my testimony for the record.

As you know, Secretary Kempthorne has shown great personal interest in the needs and concerns of our insular areas and affiliated island communities since his trip to the Pacific last summer. A little over 2 months ago, upon the departure of David Cohen, the Secretary named me Acting Deputy Assistant Secretary for Insular Affairs. One reason was to have the issues of the islands managed directly out of the Secretary's Office, since I also continue to serve as his Deputy Chief of Staff.

Over the last few months I have had the opportunity to travel to the Virgin Islands, Guam, and CNMI to see issues on the ground and visit with island leaders directly. As you know, the U.S. insular areas are uniquely beautiful and yet uniquely challenged. They have limited land resources, small populations and generally limited pools of experts, especially in professional, technical and scientific fields. And because these areas are not States, a number of legal issues often set a territory or all territories apart from the 50 States or from one another. This has resulted in different applications of issues like minimum wage requirements, customs and border regulations, census enumerations, trade policy and Medicaid treatment, to name a few, on the islands.

The previous administration created the IGIA to assist the territories with these unique challenges. President Bush on May 8, 2003, signed Executive Order 13299 to establish the IGIA and provide for deliberation within the executive branch on issues of consequence to the territories. The Secretary of the Interior serves as the Chairman. The IGIA consists of the heads of the executive departments and heads of such agencies as the Secretary of the Interior may designate. The IGIA is a consultative and collaborative body with a task of obtaining advice and information on policy issues that the insular areas face individually and as a group.

Since 2003 the IGIA has met annually. The last meeting of the IGIA was in February of 2008 in the Secretary's conference room at the Interior Department. Secretary Kempthorne chaired most of the meeting. The Governors of Guam, American Samoa and CNMI were present, along with Delegates to Congress from Guam and the USVI, as well as the distinguished CNMI Washington representative.

Executive branch agencies represented in the room, in addition to Interior, were Defense, Justice, State, Homeland Security, Labor, Transportation, Education, Agriculture, Energy, HHS, OMB, Treasury, the Office of the U.S. Trade Representative, OPIC, EPA, Postal Service, HUD, Small Business, CEQ and Social Security Administration. All present expressed appreciation for the productive nature of the meeting.

The IGIA is intended to act as a deliberative body and does not make executive, legislative or judicial decisions. It does not take positions on proposed legislation or policy on behalf of the Administration, and cannot compel any member agency to take any action or adopt any particular position. Instead, the goal of the IGIA is to provide a forum and mechanism for the elected leaders of the insular areas to frame issues for and participate in IGIA discussions leading to the formulation of Federal policy and work with Federal agencies that in turn work with them. Thus, island leaders have a channel of communication for voicing their concerns. We have always looked for ways to improve the operations of the IGIA and look forward to working with Congress to do that.

This concludes my opening statement and I am happy to take any questions.

[The prepared statement of Mr. Domenech follows:]

Statement of Douglas W. Domenech, Acting Deputy Assistant Secretary of the Interior for Insular Affairs, U.S. Department of the Interior

Madam Chair and members of the Subcommittee on Insular Affairs, thank you for the opportunity to discuss the activities of the Inter-Agency Group on Insular Areas (IGIA), which deals with issues of concern in the United States territories of Guam, American Samoa, the U.S. Virgin Islands (USVI), and the Commonwealth of the Northern Mariana Islands (CNMI).

The Commonwealth of Puerto Rico is not included in the activities of the IGIA and is not included under the administrative authority of the Department of the Interior.

The Unique Circumstances of the Insular Areas and the IGIA

As you know, the United States insular areas, or territories, of Guam, American Samoa, the U.S. Virgin Islands (USVI), and the Commonwealth of the Northern Mariana Islands (CNMI) are beautiful isolated island communities, remote from the mainland United States. They are also unique in that they have limited land resources, small populations and, generally, limited pools of experts, especially in professional, technical and scientific fields. They are generally located in areas prone

to typhoons, cyclones or hurricanes. They are relatively new to United States-style traditions of democracy and institutions of self-government.

In addition, because these areas are not states, a number of legal issues often set a territory or all territories apart from the 50 states and from one another. This has resulted in different applications of issues like minimum wage requirements, customs and border regulations, census enumerations, trade policy, and Medicaid treatment, to name a few, on the islands. I would add that people born in American Samoa are U.S. nationals, not U.S. citizens.

Insular areas do share common factors as well. For instance, residents of the insular areas do not pay Federal income taxes, cannot vote for President, and do not have full voting rights in the Congress. However, now with the CNMI added in 2009, all four territories will have non-voting delegates to the United States House of Representatives.

The factors I have just enumerated and others relating to the disparate histories and traditions of the territories show that there are important differences among the four territories and with the 50 states. It follows then that there may be unintended consequences when policies designed for the 50 states are applied to the insular areas. Just as Federal policy may produce unintended results, so too the territories may be excluded from Federal policies because they are not states. In addition, the special circumstances faced by the insular areas will sometimes merit policy initiatives designed especially for one or more of them. In view of the peculiar circumstances of the territories, it is important that the various Federal departments and agencies coordinate their activities that affect the insular areas, avoiding the incoherence of policy that may result when different parts of the Federal Government work at cross purposes or do not consider insular issues.

Executive Order—Interagency Group on Insular Areas

It is for these reasons that President Bush, on May 8, 2003, signed Executive Order No. 13299 to establish the IGIA and provide for deliberation within the Executive branch on issues of consequence for our four territories. The Secretary of the Interior is the chairman. The IGIA consists of the heads of the executive departments and the heads of such agencies as the Secretary of the Interior may designate. The Executive Order directs that the IGIA shall:

- provide advice on establishment or implementation of policies concerning the four U.S. territories to the President (through the Office of Inter-Governmental Affairs in the White House) and the Secretary of the Interior,
- obtain information and advice concerning insular areas from governors and other elected officials in the insular areas through meetings, at least annually, in a manner that seeks their individual advice and does not involve collective judgment or consensus advice or deliberation,
- obtain information and advice concerning insular areas, as the IGIA determines appropriate, from representatives of entities or other individuals in a manner that seeks their individual advice and does not involve collective judgment or consensus or deliberation, and
- at the request of the head of any agency who is a member of the IGIA, unless the Secretary of the Interior declines the request, promptly review and provide advice on a policy or policy implementation action affecting one of the insular areas proposed by the agency.

The IGIA as a Consultative Body

The Interagency Group on Insular Areas is a consultative and collaborative body with the task of obtaining advice and information on policy issues that the insular areas face individually and as a group. The Executive Order states:

- Nothing 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 was intended to act as a deliberative body and does not make executive, legislative or judicial decisions. It does not take positions on proposed legislation or policy on behalf of the Administration and cannot compel any member agency to take any action or adopt any particular position.

Instead, the IGIA provides a forum and mechanism for the elected leaders of the insular areas to frame issues for and participate in IGIA discussions leading to the formulation of Federal policy and work with Federal agencies that, in turn, work with them. Thus, island leaders have a channel of communication for voicing their concerns.

The provisions of the Executive Order and the fact that the IGIA has no dedicated budget or staff make it clear that the IGIA is intended to be a consultative and collaborative body, not a decision-making body.

Recent Meeting of the IGIA

The last meeting of the IGIA was held on February 26, 2008, in the Secretary's conference room at the Interior Department. Secretary Kempthorne, who has taken great and personal interest in the concerns of the islands, chaired most of the meeting. The Governors of Guam, American Samoa, and CMNI were present along with Delegates to Congress from Guam and the USVI, including the CNMI Washington Representative.

Executive Branch agencies represented, in addition to the Department of the Interior, were the Department of Defense, Department of Justice, State Department, Department of Homeland Security, Department of Labor, Department of Transportation, Department of Education, Department of Agriculture, Department of Energy, Department of Health and Human Services, Office of Management and Budget, Department of the Treasury, Office of the United States Trade Representative, Overseas Private Investment Corporation, Environmental Protection Agency, United States Postal Service, Department of Housing and Urban Development, Small Business Administration, Council on Environmental Quality, and Social Security Administration.

All present expressed appreciation for the productive nature of the meeting.

IGIA Issues

Numerous issues have been the subject of IGIA discussion with the island governors and representatives to Congress. The IGIA meetings have provided a forum for federal agencies to hear directly from elected leaders and, in some cases, provide answers to these issues.

For many of our colleagues across the Federal government, their first encounter with these issues came in an IGIA meeting. Federal agencies address their challenges in the territories as appropriate to its respective agency.

IGIA Working Groups

The IGIA has the flexibility to form working groups on special issues as needed. One example is related to the planned military build-up on Guam. Working with DOD, other Federal agencies, and the Government of Guam, the IGIA is addressing as many civilian issues as we can so the buildup proceeds in an efficient way.

The IGIA has provided a framework to discuss the many issues and challenges arising from these developments. Recently, the Government of Guam raised concerns about the adequacy of civilian infrastructure to support the many components of the military buildup. Many of these concerns were aired at the November 2007 and February 2008 meetings of the IGIA Working group dealing with the build-up, and were raised in Congressional hearings before this Committee.

One result of these discussions came recently, when OIA staff traveled to Guam with Janet Creighton, Deputy Assistant to the President for Intergovernmental Affairs to meet with Governor Camacho and other leaders and learn first hand the challenges facing Guam related to the buildup.

Conclusion

We believe the IGIA is a useful forum for the leaders of the territories to speak directly and frankly to the leaders of Federal agencies. One of the main advantages of this dialogue is educational. As both the Federal agencies and the territories learn more about each other's issues and how things work in the other's domain, they will be able to develop deeper understanding of each other's needs and how to resolve common problems. The IGIA members have taken on some big issues, and we hope this work will continue.

Mrs. CHRISTENSEN. Thank you, Acting Assistant Secretary. And now the Chair recognizes Mr. Jeffrey Farrow for his testimony.

STATEMENT OF JEFFREY FARROW, FORMER CO-CHAIR OF THE WHITE HOUSE INTERAGENCY GROUP ON INSULAR AFFAIRS (CLINTON ADMINISTRATION)

Mr. FARROW. Madam Chair and distinguished members, I am honored to have been invited to testify to the Subcommittee which I was privileged to serve during most of my years on the committee staff, and I am delighted to do regarding the Interagency Group on Insular Areas which I helped establish and co-chaired during the Clinton Administration.

Let me begin by complimenting you, Madam Chair, for this hearing. The Interagency Group should be a needed means for addressing problems concerning American Samoa, Guam, the Northern Mariana Islands, and our home of the U.S. Virgin Islands. In establishing it, President Clinton noted that the situations of unincorporated territories are sometimes different from those of the States. This creates issues. The issues span the range of agencies, and Federal officials have a special responsibility to consider territories' issues because the areas lack the representation that a State has in the Federal process.

Regrettably, the Interagency Group has not fulfilled its potential during the Bush Administration, despite the best efforts of its leadership. The reason is a fundamental change that the Administration made in the Interagency Group. Originally it was co-chaired by designees of the Secretary of the Interior and the Director of the White House Office of Intergovernmental Affairs. As reconstituted, it is presided over by an Interior Department official alone. White House co-leadership was an essential element of the Interagency Group and a reason for its establishment. Although Interior has responsibility for relations with the areas, its responsibility does not extend to programs within the jurisdiction of other agencies.

Most issues are within the jurisdiction of other agencies. Agencies rarely defer on matters within their jurisdiction to other agencies. Many decisions are made above the agency level by the Office of Management and Budget. Secretaries of the Interior can sometimes overcome opposition at other agencies but cannot do so on a regular basis. The issues are generally relatively small in the national and even interior context, and it is difficult to get high level attention to such matters. And White House influence is often needed to move agencies and OMB.

The Interagency Group was established after the Interior Department failed to convince the Department of Justice to support application of immigration laws to the Northern Marian Islands, and from the White House, at Interior's request, I got the Clinton Administration to advocate application. It also came after the President's Interagency Group on Puerto Rico had obtained changes in policy, including some benefiting the other insular areas. Interior Deputy Assistant Secretary Allen Stayman then convinced the Department of the Interior to support a compromise in the earlier proposed Interagency Group on Insular Areas that involved joint Interior and White House leadership. Interior had previously opposed White House leadership.

In fact, the Interagency Group was established years later than it would have been otherwise due to this opposition and opposition in the Senate comfortable with Interior and concerned unnecessarily about jurisdiction over an interagency group with White House co-leadership. As the Clinton Administration took office, members of this Subcommittee, including the Chair's predecessor, Ron de Lugo, Delegate Faleomavaega, and Chairman Miller, had promoted Executive Office of the President leadership of an interagency group but were rebuffed by Interior. Chairman de Lugo obtained White House staff commitment to the idea of White House co-leadership, but the agreement was not implemented because of the Senate objection.

The change in the Interagency Group's leadership in 2003 came after the Bush Administration did not fulfill the position that I held at the White House dealing with all insular areas matters. Puerto Rico's Commonwealth Party Governor and Resident Commissioner, shortsightedly, did not want it filled, fearing my replacement would be someone whom they believed favored the Statehood Party. In addition to my position, the Interagency Group on Puerto Rico was not continued. The Interagency Group on the less populous territories continued to exist only on paper and the work it had begun languished. The disengagement from Puerto Rican issues Puerto Rican officials sought has cost Puerto Ricans a lot. Another consequence was the virtual elimination of White House assistance on issues of the other territories. Executive Office of the President's attention could be assured by statute. You could also try to obtain White House involvement by asking the next President to restore White House co-leadership of the Interagency Group and staffing.

I note in this regard that Chairman Bingaman and Senators Akaka and Murkowski recently suggested that this Administration consider White House staffing and co-chairing. You may run into resistance, but I recommend that you press for White House involvement to have territories' issues more successfully addressed. This may be the most beneficial measure that you can initiate regarding the territories.

Madam Chair, I request that you include in the record a progress report of the Interagency Group on Insular Areas issued within months of its establishment and a list of accomplishments of the Interagency Group on Puerto Rico. These documents will help members evaluate the Interagency Group on Insular Areas without White House co-leadership.

I will be happy to answer questions.

[NOTE: The information submitted for the record by Mr. Farrow has been retained in the Committee's official files.]

[The prepared statement of Mr. Farrow follows:]

**Statement of Jeffrey L. Farrow, Former Co-Chair of the White House
Interagency Group on Insular Areas (Clinton Administration)**

Madame Chair and Distinguished Members,

I am honored to have been invited to testify to the subcommittee which I was privileged to serve as Staff Director during most of my nearly 13 years on the Committee Staff. And I am delighted to do so regarding the Interagency Group on Insular Areas, which I helped establish and co-chaired during the Clinton Administration.

Let me begin by complimenting you, Madame Chair, for calling this hearing. The Interagency Group was intended to—and should—be a needed means within the Executive Branch for addressing problems in policy concerning American Samoa, Guam, the Northern Mariana Islands, and our mutual home of the U.S. Virgin Islands. In establishing it, President Clinton noted, as he had earlier in the case of Puerto Rico, that the situations of unincorporated territories are sometimes different than those of the States, this creates issues, the issues span the range of federal agencies, and federal officials have a special responsibility to consider territories issues because the areas “lack the representation that a State has in the Federal process.”

Regrettably, however, the Interagency Group has not fulfilled its potential during the Bush Administration, despite what I trust have been the best efforts of its leadership.

The reason is a fundamental change that the Administration made in the Interagency Group. As originally established, it was co-chaired by designees of the Secretary of the Interior and the Director of the White House Office of Intergovern-

mental Affairs. As reconstituted, it is presided over solely by an Interior Department official.

White House co-leadership was an essential element of the Interagency Group and a reason for its establishment. It was recognized that:

- although the Department of the Interior has responsibility for relations with the areas in addition to some specific assistance functions, its responsibility does not extend to programs within the jurisdiction of other agencies;
- most of the issues are within the jurisdiction of other agencies;
- agencies rarely defer on matters within their jurisdiction to other agencies;
- many decisions are made above the line agency level by the Executive Office of the President's Office of Management and Budget;
- secretaries of the Interior can sometimes overcome lower-level opposition at other agencies and OMB with personal intervention but cannot do so on a regular basis;
- the issues generally are relatively small in the national and, even, Interior Department contexts and it is difficult to get high-level attention to such matters; and
- White House influence is often needed to move agencies and OMB.

The Interagency Group was established after the Interior Department failed to convince the Department of Justice to support application of immigration laws to the Northern Mariana Islands and, at Interior's request, from the White House I got the Clinton Administration to advocate application. It also came after the President's Interagency Group on Puerto Rico had obtained a number of changes in policy, including some benefiting other insular areas. Interior Deputy Assistant Secretary for Insular Affairs Allen Stayman then convinced his department to support a compromise in the leadership of the earlier-proposed Interagency Group on Insular Areas that involved joint Interior and White House leadership. Interior had previously opposed White House leadership.

In fact, the Interagency Group was established at least five years later than it would have been otherwise due to this opposition and opposition in the Senate comfortable with exercising jurisdiction over the Interior Department and concerned—unnecessarily as the Interagency Group on Puerto Rico later demonstrated—about jurisdiction over an interagency group with White House co-leadership. As the Clinton Administration took office, Members of this Subcommittee, including the Chair's predecessor—Ron de Lugo, Delegate Eni Faleomavaega, and Chairman George Miller had promoted Executive Office of the President leadership of an insular affairs interagency group but were rebuffed by the Interior Department. In 1994, Chairman de Lugo obtained White House staff commitment to the idea of White House co-leadership—but the agreement was not implemented because of the Senate objection.

The change in the Interagency Group's leadership in 2003 came after the Bush Administration in 2001 did not fill the position that I had held at the White House handling all insular areas matters. Puerto Rico's then "commonwealth" party governor and resident commissioner shortsightedly did not want it filled fearing that my replacement would be someone whom they believed favored the statehood party. The White House is inundated with requests for action on issues, and its staff routinely tries to shift responsibility for matters considered lesser in scope to agencies so that they can concentrate on priorities: The request for inattention was not a hard sell. In addition to my position, the Interagency Group on Puerto Rico was not continued. The Interagency Group on the less-populous territories continued to exist only on paper and the work it had begun languished. The broad disengagement from Puerto Rican issues that Puerto Rico officials sought has cost Puerto Ricans a lot. Another consequence, however, was the virtual elimination of White House assistance on issues of the other territory areas.

Madame Chair and Distinguished Members, Executive Office of the President attention to territory issues—and probably greater success in resolving issues—could be assured by statute. You can also try to obtain the White House involvement needed by asking the next president to restore White House co-leadership of the Interagency Group and staffing on territories matters. I note in this regard that Chairman Bingaman and Senators Akaka and Murkowski of the Senate Committee on Energy and Natural Resources recently suggested that this Administration consider White House staffing and co-chairing. You may run into resistance from Interior and from a White House staff consumed by existing responsibilities but I recommend that you press for White House involvement to have territories issues more successfully addressed.

Madame Chair, thank you for the invitation to testify. I request that you include in the record a progress report of the Interagency Group on Insular Areas issued in 2000 within months of its establishment and a list of accomplishments of the

Interagency Group on Puerto Rico to help Members evaluate the Interagency Group on Insular Areas without White House co-leadership. I will now be happy to answer questions.

Mrs. CHRISTENSEN. I would like to thank everyone for their testimony. We have been joined by Congressman Eni Faleomavaega of American Samoa and Congressman Jeff Flake of Arizona. And I was wondering if either of you had an opening statement that you would like to make.

Mr. Faleomavaega.

STATEMENT OF THE HON. ENI F.H. FALEOMAVAEGA, A DELEGATE IN CONGRESS FROM THE TERRITORY OF AMERICAN SAMOA

Mr. FALEOMAVAEGA. Madam Chair, I would like to personally welcome our witnesses this afternoon. Our Acting Deputy Assistant Secretary, and forgive me, sir, in pronouncing your name. Shall I just say Dennis—Doug. I can't even pronounce Dennis or Doug or whatever. And my good friend, the Representative from CNMI, Mr. Tenorio, and of course my long-term friend, and certainly I consider one of the few experts that we have left when it comes to insular affairs, Mr. Jeff Farrow.

I will wait for the questioning aspects of this, Madam Chair, but I do want to thank you for calling this hearing. I think it is important, and we need to pursue this issue a little more and hopefully that we can come up with some practical solutions whether or not interagency groupings that we have done for all these years has really been a help or a detriment to the needs of our territories.

Thank you, Madam Chair.

Mrs. CHRISTENSEN. Thank you, Mr. Faleomavaega.

Mr. Flake, would you like to make an opening statement.

Mr. FLAKE. No.

Mrs. CHRISTENSEN. Thank you. I now recognize myself for 5 minutes of questions. And I guess I would start with Mr. Tenorio and Mr. Farrow, just to follow up on the last part of your statement about comparing the outcome of the Interagency Working Group under the Clinton Administration, not just because it was under the Clinton Administration but because it was co-chaired by the White House and the Department as opposed to being co-chaired just by Interior at this point. And Mr. Tenorio, you mentioned one issue, at least the water issue.

Are there issues that you felt were adequately addressed that you had taken to the Interagency Working Group other than the water, which apparently was not?

Mr. TENORIO. There was another issue that I thought was handled very well through the Interagency Group, and that was the change on the taxation problem, the taxation issue on residency. And I thought that that particular issue was addressed very shortly, and the Northern Marianas was requested to participate in that discussion. I remember it, and believe that there was a final resolution to that in the form of amending the regulations to provide for an appropriate residence definition for the Northern Marianas for taxpayers there.

I couldn't recall any other issue because my primary issue, Madam Chairperson, has always been improving the water system as something that is so basic to us. Because being a hydrologist by profession and having worked in the Commonwealth for a long time developing privately owned water sources, I was very familiar with the weaknesses of the system since the trust territory time. Knowing that, you know, we are subject under the United States public health drinking water standards, we were always in violation of the standards in terms of drinking water because of the weak infrastructure, the dilapidated infrastructure on water, and the lack of funding to address the water issue once and for all.

We received a very, very strong report, very comprehensive report from the United States Corps of Engineers as to how best to deal with the water problem there. Those recommendations of course encompasses a huge amount of funding requirements, to the tune of about \$400 million, to fix the water systems throughout the populated islands of the Northern Marianas. Unfortunately, as I said in my statement, not much was done in that respect. Although we were thankful that the Congress appropriated \$3 million of over ceiling, a request from my office to enable us to at least drill some of the wells, some more wells to add volumes. And I am talking just volume of water to be able to provide and sustain the livelihood of our population in terms of convenience, washing and cooking. But nothing to speak of about drinkable water that ever happened.

Thank you.

Mrs. CHRISTENSEN. Mr. Farrow, do you feel that you can answer in terms of product outcome?

Mr. FARROW. Well, I hesitate to comment on specifics of what the IGIA has done.

Mrs. CHRISTENSEN. Let me re-ask the question, and I will direct it to both you and the Deputy Assistant Secretary. One of the biggest criticisms of the current IGIA process as it is currently constructed is that it lacks its ability to effectively achieve results on behalf of the insular areas. Do you believe that the current IGIA, which was set up as a consultative and deliberate body, has enough clout to get Federal agencies to respond to the issues of concerns brought by the island leaders?

Mr. FARROW. No, I do not. As I mentioned in my statement, a reason for the creation of the IGIA in the first place was to have the involvement of the White House to ensure that the territories were considered as policy was developed at the highest level and to address issues that are decided by agencies within the Executive Office of the President, such as OMB. Line agencies can't effectively direct OMB. It is the other way around. The Secretary of the Interior can personally sometimes go to the Director of OMB, sometimes personally go to the President to raise an issue. The Secretary cannot do that every day. He would not have credibility if he did. He has got his own department to mind. So it was recognized in the original creation of the IGIA that you needed higher level authority.

The purpose, as Mr. Domenech has described it of the IGIA, is a little different from that of the original IGIA, and I think it is great that the Administration has continued the IGIA to the extent

it has and that it is a consultative and deliberative body and that there is communication between agencies and some issues are resolved. But there are issues that cannot be resolved by communication alone among the agencies. You need policy guidance from the White House, you need budgetary guidance from the White House, you need to be able to say to the Secretary of the Treasury that the President wants to have X done as opposed to the Secretary of another department wants to have something done.

So I do not think it has been as effective as it should have been and was intended to be, and its current purpose is not all that the original purpose was intended to be. As I have communicated with—you mentioned the Governors in your opening statement—with Governors and others who represent the insular areas, I think there is a level of dissatisfaction with the IGIA, not that it has not accomplished some things, but it should be accomplishing more. It was meant to fill a gap in the policy process that is only partially filled, and that relates to the areas in particular not having voting representation in the Federal process and the full voting representation in the Congress, representation in the Senate, or electoral votes that get policy attention at the highest levels.

This is no criticism in particular of the current leadership of the IGIA. I think they have done the best that they could within the structure that they have been allowed to operate.

Mrs. CHRISTENSEN. Deputy Assistant Secretary.

Mr. DOMENECH. Thank you, Madam Chairman. And I also want to thank Mr. Farrow for the background and history on the IGIA, some of which I had not heard. So it is very helpful to hear that and I mean that sincerely.

There are a number of successes I think we can point to in the way the IGIA is currently established. That doesn't mean that it can't be improved certainly and that these problems aren't ongoing.

If I could use the example as a matter of fact that The Honorable Tenorio has said, in 2003 when the water situation on Saipan was initially brought up to the IGIA, we formed a working group. That working group was made up of EPA, USDA, HUD, DOI and the Army Corps. And the working group tried to establish essentially what was the situation there, made a request in the President's 2006 budget of \$1 million to do that infrastructure assessment, and continued to meet to try to solve that. Meanwhile, Interior itself in 2005 provided \$6.4 million, in 2006, \$5.6 million, 2007, \$1.4 million, 2008, \$2.3 million specifically on the issue of potable water in Saipan.

So I think there are accomplishments to be pointed to. That doesn't mean the problem still doesn't exist, and it is a problem that we are very concerned about, along with a power situation in the CNMI. In some ways they go hand in hand, as you well know.

There are other issues that we can point to as having some sort of success, whether that is the visa waiver situation or the work that is being done on the Guam military buildup, which of course again is another working group established to try to coordinate between what DOD and the Federal agencies are doing.

We have had a substantial amount of work through the IGIA related to economic development. That has resulted in trade missions to the USVI and other places to the business opportunity con-

ferences we have held, as well as other activities. So there are some successes to point there.

On cabotage, which has been an issue of course for many of the islands, that was brought up at the IGIA, and DOT responded by providing some emergency exemptions for American Samoa and for Guam. So there are a number of these. And as Mr. Farrow said often, maybe they are small things in the big scheme of the Federal Government, but it does provide an opportunity for the leaders to give us their priority list and then for us to get that in front of all the Federal agencies.

Mrs. CHRISTENSEN. Thank you. The Chair now recognizes Mr. Flake for any questions he might have.

Mr. FLAKE. Let me go back to the water issue. Would that have happened because it was a pressing issue? You are saying the IGIA was helpful. But would it have happened anyway, the solution or the actions that were taken, without the IGIA simply because it was a pressing issue, or was the IGIA actually helpful in resolving that?

Mr. DOMENECH. I think probably both. Obviously the water situation on CNMI is something Interior knew about, but the IGIA gave us an opportunity to have the leaders from CNMI explain that to the other Federal agencies who can be helpful on the water situation, the Corps and other people. So that is the advantage.

Mr. FLAKE. Without that forum, is it tough to have them return your calls or is it just easier coordination?

Mr. DOMENECH. I think they will return our calls. But it probably is just more of a communication opportunity. I think, as others have said, often, too often, people in the Federal Government don't think about the territories. And of course we think about them all the time and continue to try that drum beat of telling other people about them. So that we find that is the most valuable part of the IGIA, is getting these people in the same room with the leaders so that they can see these and hear about these problems firsthand.

Mr. FLAKE. Mr. Farrow, you are quite critical in your testimony. I am sorry I didn't hear that, but I did read it, about the IGIA and what has not happened in particular. Do you think it is a structural problem or has it just been personalities that haven't seen a need, or was it simply when it went from one administration to another it didn't have the importance in the new administration? Would you scrap the organization and start anew or just revive it?

Mr. FARROW. I think, Mr. Flake, it is a structural problem; it is not the personalities involved. I think they have done the best they could within the structure that they had to operate. I would not scrap the organization at all, but I would go back to the original organization to have White House co-chairmanship of the Inter-agency Group. You know, when Puerto Rico obtained local self-government, the responsibility for issues regarding Puerto Rico were shifted to the White House. When the other territories achieved the equivalent self-government, that did not occur. And the White House is in a position to relate to other agencies the way that an agency like Interior cannot.

Mr. FLAKE. Right, and your testimony basically says that Interior plays too, or just still all meaningful activity is centered at Interior and not in the other agencies.

Mr. FARROW. I think other agencies are meaningfully engaged by Interior. But what they don't get is when there are disputes between the agencies on taxes, on—when a budget request is made for CNMI water and it goes to OMB, the direction is not being given to OMB that this is something that we need to attend to and this is a priority. OMB can get that direction from the White House but not from Interior. They can get a request from Interior.

Mr. FLAKE. Mr. Tenorio, is there a structural change you would seek to have to the IGIA?

Mr. TENORIO. Well, I believe that the organization as is structured should continue on. But I want to be very specific about what the role is of the responsible Federal person in each of the agencies. And this was what was lacking, I thought. We had meetings over here in Washington, D.C. and, after the meeting and after having made a statement and declared our issues to the group, not much follow-up really took place. And what I would recommend as part of the reforming the structure is to specifically assign a person from each of these relevant agencies to be in charge of the issues that the territorial governments bring up and have a follow through by visitation or communication with the people back home so that there is a continuity in the process of addressing the issue.

I found this to be completely lacking. We communicated and we thought that, you know, finally we got somebody that would deal with us on a more prompt basis, but we found ourselves having to wait for a response to our letter, sometimes 6 months late. And issues like power generation or the lack of power in the Commonwealth is one huge issue that we feel has reached a critical level. And I would like to see that issue addressed and provide a plan that is doable and get our people engaged in how to go about helping them—you know, to the Federal initiatives to get the job done.

I could go on and on and talk about how bad the power situation is, but I know this is not the forum to address it, Madam Chairperson. That is one area where not only should the Congress and the Administration collaborate to help us, but we need to have some solid plan flexibility in how the Federal policies should be handled with respect to this critical issue. I am not talking about all issues, just basically power generation problem, because it is an issue that encompasses every single aspect of our life back home.

Thank you.

Mrs. CHRISTENSEN. Thank you. And if I could just interject before I recognize Mr. Faleomavaega. A simpler issue, and you have heard, all of us have heard testimony from the GAO and from the Department itself and the problems in financial management that the territories have. And in several years, over several years, I have some of my statements going back to 2002, my suggestion was that each of the agencies that send funding to the territory set aside a part of that funding to set up financial management systems over and over and over again. In the Virgin Islands we are on our way to setting up our own at this point. To me infrastructure is a major issue, and I think that that is something that you really need the White House clout to be brought to bear on it. But a simple issue such as setting aside funding for financial management from each agency was never addressed.

Let me recognize Mr. Faleomavaega for his questions.

Mr. FALCOMA. Thank you, Madam Chair. And Madam Chair, I would like to ask unanimous consent, and I notice that one of our—I will say not only an institutional memory, but someone who really understands the insular areas well, and especially our good friend Mr. Jeff Farrow, is Mr. Al Stayman who is there in the audience, and we would welcome his presence and have him sit there because I do have some extra questions that I want to address to him directly. And I just think is that possible? I ask unanimous consent. I think with unanimous consent anything is possible, if the Chair does not object. But I see no reason why Mr. Stayman cannot come and share with us the benefit of his historical activities in the things that he has done for the insular areas more than anybody that I can perceive. Is there any objection to that? He works for the Senate.

Mrs. CHRISTENSEN. Let me get a clarification from the staff.

Mr. FALCOMA. All right. Can we get a clarification?

Mrs. CHRISTENSEN. Can you go ahead in the meantime?

Mr. FALCOMA. Yes, Madam Chair.

I have always said with tremendous hesitancy about the establishment of the IGIA. And I do want to thank my good friend Mr. Farrow for giving us a real historical summary of exactly how this whole concept of an IGIA came about. It wasn't because of any interest in the insular areas, it was an interest toward Puerto Rico. And the fact that we have 4.4 million U.S. citizens living in Puerto Rico, the fact that Puerto Rico being a highly charged political issue because it has its potential of being a State, if it ever becomes a State with seven Members of Congress and two new senators, that is why Puerto Rico has always been part of the White House collaboration in making sure whatever Puerto Rico's future will be or has been or hopes to be. This is a never-ending issue that has been ongoing now for the last 50 years. And Mr. Farrow is smiling because he knows what I am talking about.

Madam Chair, historically we all know this, for the last 50 years, insular areas are not even on the map in any way or form as far as Washington, D.C. is concerned. Not because the Senators or Members of Congress don't like insular areas, simply because when you put it in terms of priorities insular areas were never a high priority in the minds of the Members of the Congress as well as the Administration.

So what has happened over the last 30 or 40 years perhaps, Congress decided to authorize providing these insular areas with congressional Delegates. And now we have the completion of this cycle now that finally Congress has said we want a congressional Delegate from the Commonwealth of the Northern Mariana Islands. So there it is. The picture is now completed. We have five congressional Delegates that will begin. I don't know if Mr. Tenorio is going to run for that office come this November. And I know that it is very unpolitical about this hearing, and what we are discussing is nonpartisan, whether Republican Or Democrat.

But the point I am making here is that that was the very reason why we have congressional Delegates elected. And if you really want to be realistic about the IGIA, with all due respect, Mr. Domenech, you were not there in the hearings that I have attended. You cited about 15 different agencies. As far as any real

policymakers coming up from those departments, come on, let us be serious. They were not policymakers. And if they were good for taking notes or for whatever reasons, my biggest criticism is that we have so many agency representatives each time we have this IGIA hearing or meeting. But in terms of—we ended up having to deal with 30 separate issues. And all cross-wired in the terms of it may relate to that territory's need and totally irrelevant to another territory.

So I would like to suggest that maybe we can do this a little better. And the fact that these congressional Delegates are supposed to be the mouthpiece, the liaison, or whatever you want to do in connection with any Federal issue in Washington now that CNMI is in the picture, I really don't see the relevance of why we should have to continue the IGIA the way it is currently structured. But in having a liaison, let us face the facts, the Interior Department's real administration is with the FSM, with Palau and the Marshall, administration of those funds, and American Samoa. But as to any other real policy in terms of any serious funding coming out of Interior appropriations going into these insular areas, I don't see it, with the exception of the Federated States that we are having to deal with now, right now, and even in the years to come.

So what I am saying, Madam Chair, is that I am seriously questioning whether there is any real relevance in having the presence of an IGIA. The way it is currently structured it just to me is totally overly cumbersome. And I think that is the very essence of what we are trying to eliminate here, is Federal layers of bureaucracy, so that we can cut right into the chase and get results of the issues and the questions that these territories have in relation to the Federal Government. It seems that we have a problem here even dealing with the Interior Department.

American Samoa is very unique and very different from all the other insular areas. We are an unincorporated and unorganized territory of the United States. And interestingly enough, even Puerto Rico is an unincorporated territory of the United States. So there is another gray area that we still have not really made a decision in terms of what is the future of American Samoa's relationship to the United States.

Have we found out from the counsel if we can invite Mr.—still waiting? Sorry, Al, I really wanted you to come and participate because I really think it is good. And Madam Chair, I want to say that this is great that we finally have this chance to hold this hearing.

I think it was Mr. Farrow that mentioned the whole essence of the IGIA is to give more clout, if it was Mr. Farrow or Mr. Domenech that made this statement, more clout to what? And the fact that there are avenues, there are procedures, there are ways that we can go about, I guess, trying to put a thread through the camel's eye—what do you call it, camel's—I don't know, the eye of a camel, the eye of a camel?

Mrs. CHRISTENSEN. The eye of a needle?

Mr. FALDOMAVEGA. Yeah, threading the camel, the eye of a needle or something like that.

The point is that I really think that maybe another way to suggest in how we can better—the whole idea is how we can better

streamline, how we can better produce results of the issues affecting the insular areas. I feel that now with Saipan now coming into the picture, maybe we should have an interagency of the congressional Delegates, regardless of party affiliation, and then work together with the Governors directly of each insular area and leave the interagency with Puerto Rico and the White House. And of course we would like to have a White House linkage in terms of what we are doing, because they have a domestic assistant to the President, they also have assistant to the President in other major areas that Mr. Farrow is very familiar with.

So in essence what I am suggesting here, Madam Chair, is that the way it is now structured I just don't see the practicality of having 15 or 20 subagency representatives that don't even make decisions. And when we talk about issues that in many instances doesn't relate to my needs, I am wasting my time being there.

So I think if we want to talk about an interagency organization, I see that now that Saipan is into the fold, we now complete the role of what congressional Delegates should be doing on behalf of their territories and making sure the information or the needs are brought to the attention of the Congress and that relevant Federal agency.

And so my time is up. I will wait for the second round, Madam Chair.

Mrs. CHRISTENSEN. While we wait for the legal counsel to get back to us, I will go ahead with my questions.

Acting Assistant Secretary Domenech, I have asked this question before, too, and I really have never gotten a good answer. It is a two-part question. Who within the Federal Government has the responsibility for setting the Federal policy for the territories and, more fundamentally, can you tell us what that Federal policy is?

Mr. DOMENECH. That is a very broad question, Madam Chairman. I believe the correct answer for that is every Federal department has its own piece of that pie. I think, shorthand, a nonlawyer's answer to that is the Secretary of the Interior retains the administrative authority over the territories in the areas essentially that no other department is involved in. So our piece of the pie is, we have one piece, and to the extent that the Department of Education is involved in each of the territories, they do their own thing, HUD, Labor, et cetera. And so there is not a single policy point for the territories per se, as you construct the question.

Mrs. CHRISTENSEN. It just seems to me that—I don't know if anyone else at the table wants to take a stab at answering or making a suggestion or if you want to make a suggestion as to how that policy is going to be set. Because I have not sensed in my 12 years here an overarching policy with regard, from the Federal Government, from the White House, the Administration, let me say, to the territories. So I don't know if anyone else wants to take a stab at answering that. Did one exist before that I missed?

Mr. FARROW. Madam Chair, I think that there has never been a clear, consistent policy in a simplified fashion with respect to the territories. President Carter submitted to the Congress a comprehensive policy, maybe 1979, 1980, I think it was. But I don't recall that since that time there has been a comprehensive policy proposal, either administratively or legislatively proposed.

And policy, I think if you look at it, as Mr. Domenech said, there is education policy and energy policy and tax policy, all of which have separate responsibilities and missions. One of the reasons for the Interagency Group was to coordinate those policies as they affect the insular areas, since the insular areas don't have the same representation that States have in the Federal process to get their concerns heard and their issues attended to. To the extent that there is a policy direction of an administration, it is set by the President and his office. And for that reason I think it is ineffective to have one agency try to assume that role.

Mr. Domenech I think correctly described the responsibility of Interior with respect to policy making in the territories and the other agencies. But there has been a change in the status of the territories since that arrangement was enacted into law, and it is law, with respect to all of the territories in the Revised Organic Act, I believe, of the Virgin Islands and other statutes. And that changes now that the insular areas all have local self-government and set their own priorities and chart their own direction. Prior to that time Governors were appointed by the President and reported to the Secretary of the Interior. The territories had limited self-government. So it made sense for the Secretary to be that preeminent authority. The Interior Department was local government, even in places like Samoa. Samoa now has substantial autonomy. As much as the Secretary may provide funding for the territory, Congress provided that the Constitution of American Samoa, written under the authority of the Secretary of the Interior, can only be amended with the approval of act of Congress.

So there is a great deal of autonomy that the territories now have, and they can relate to other agencies that in the past few decades they have been included in most Federal programs. At one point most of the budgetary support, programmatic support, even on education matters or health care matters, came through the Department of the Interior and now comes through HHS and Education, and so forth. And that is why you need a leadership and guidance on policy and budgets within the Executive Office of the President and not in any particular agency. Interior has tried, but can only do so much.

I would point out that it was Interior—Mr. Stayman, who is with the Senate committee staff now, who came to me in the Clinton Administration and said let us revive this idea of an Interagency Group on Insular Affairs when he was at the Department of the Interior, the Interior Department recognized that it did not have, to use Congressman Faleomavaega's words, the clout to have many decisions made on budgets and on fundamental policies, tax policies and others, that the territories were interested in. Most issues are not within this jurisdiction of Interior.

Mrs. CHRISTENSEN. Let me ask Mr. Flake if he might have another line of questioning, because I know a vote is on and he might have to leave.

Mr. FLAKE. No.

Mrs. CHRISTENSEN. Thank you. Then the Chair now recognizes Mr. Faleomavaega for any further questions he might have.

Mr. FLAKE. Let me just, to Mr. Faleomavaega's point, now that the Commonwealth is going to be represented, is it past time for

this, can we make do now that all the territories are now represented in Congress? I know it is not full representation of the Senate and what not. But, Mr. Tenorio, I would be interested in your response to that. Do you think that that would suffice or is it still useful or productive to have this body?

Mr. TENORIO. I always view the relationship between the United States and the Commonwealth of the Northern Mariana Islands with having in mind as a term of reference the Covenant. The Covenant of course is a very special document and it was entered into between two entities, and that was when the Northern Marianas was part of the trust territories. So we were able to fortunately negotiate an agreement that is unique and other jurisdictions just don't have it. And that is why I feel that the term of reference insofar as developing a policy to guide the Northern Marianas should be the Covenant. The Covenant is very specific on all of its 10 chapters; the political relationship, how we are to deal with citizenship and nationality, the provision on immigration and minimum wage, and other aspects that were spelled out.

So I feel that applying a common territorial policy to encompass all jurisdictions may be the wrong approach to addressing issues in the territories. There may be some similarities, some problems that all share, but there are also unique situations that each of the territories have that would not be addressed by having a common territorial policy throughout.

Mrs. CHRISTENSEN. Thank you. The Chair now recognizes Mr. Faleomavaega.

Mr. FALEOMAVAEGA. As I said earlier, we have such a mixed stew here among the different insular areas, you cannot make all of us in the same status because we are not. American Samoa does not even have an organic act; and we don't even have a government, technically, if you want to put it in those terms.

We have never—we had several attempts in the 1930s that—there were proposed bills to have an organic act for American Samoa, but it never came through. As Mr. Tenorio said earlier, CNMI has a covenant relationship which is very unlike the other insular areas, and to me it is a treaty relationship, very unique.

Then when we start talking about the Federated States of Micronesia—Palau and the Marshalls—then we really get into grey areas that are not very well addressed, in my opinion; but it is there, and we have to deal with that reality.

As Mr. Farrow has said earlier about the fact that now there is a provision as an amendment in the law that says that the local constitution—which, by the way, was never approved by the Congress; it is American Samoa's constitution. It was approved only by the Secretary of the Interior because of the preliminary authority that the Congress has under the Federal Constitution. In 1929, the Congress just simply said, all judicial, military, administrative authority of this island's territories is given to the President. And then the President, by executive order, now to this day has given it to the Secretary of the Interior.

My point here, when we had electing our Governor, it did not even require congressional approval, unlike other territories. It just required the executive authority of the Secretary of the Interior. To this day, this is how we end up electing our Governor through an

executive authority of the Secretary of the Interior and not because the Congress voted.

This is very weird, but that is the reality that we are faced with.

Now, a classic example where the stimulus package is an example, thanks to Donna, myself, and Madeleine Bordallo and Mr. Fortuño, we bound together and this is how the territories ended up in getting the benefits of the stimulus package. Ironically, too, there were serious questions raised: Because we don't pay Federal income taxes, why should these territories get the same benefit? But somehow friends like Charlie Rangel and all the others in the House supported this effort.

So I would say that I think, as has been stated earlier—I hate to say this, but sometimes our friends in the Interior Department make selective decisions. When they feel like getting involved in an insular area issue, they will be involved; otherwise, just let the territories swim on their own. If they can't make it, that is their tough luck.

And I don't know if that is really what we want to achieve here as far as getting a better, streamlined procedure in how to deal with the insular areas, as I am sure that this is not a personal attack on any of our friends who are working their darnedest.

And the Interior Department should try to provide assistance to the insular areas. As you said, Mr. Tenorio, the covenant relationship is the foundation in the standard that—however, CNMI has to deal with its issues.

You have mentioned about the fact that you had potable water issues. This is 4 years ago. We have 200 inches of rain in American Samoa. I wish we could give you some of our water, which is never our problem and our issue.

But sometimes I think this is something that I feel that the IGIA—I feel, as an issue, is totally irrelevant to my needs. But I am happy to sit there and listen to the problems that other territories have that does not pertain to me directly. So this is why I am a little fuzzy when it comes to IGIA continuance of putting some 15 or 20 representatives of the different Federal agencies, all meeting in this one room in the Interior Department, talking about some issues for only 1 hour. And then after that everybody goes back, and it seems like we have really accomplished something, and we ended up really accomplishing almost nothing.

Now, I hate to make that point in being critical about the issue, but I just feel that maybe there is a better way that we can streamline the IGIA in concept, as well as structurally, on how we can make this more forthcoming—or producing results is what we are trying to achieve here.

As Mr. Domenech has said earlier, some things we have done. But I think—by and large, I don't think our batting average has been very high, in my humble opinion, of all the things that we went through, discussing about twenty different issues and only accomplishing about one or two.

And that is not the reason why I didn't come to the February meeting, by the way. I think I was sick on that day, OK?

But I really do want to say that I think it is an important issue, Madam Chair, in the coming year or this season when we have a

new administration, new policy—assuming I get reelected; I don't know if I am still going to be around.

But this issue I think we need to address more seriously, and hopefully it will make a better structure out of it, because I really—in my personal opinion, Madam Chair, it is not working.

And, by the way, as Mr. Farrow said earlier, there was a policy—there was even a policy of getting rid of the entire agency of insular affairs altogether. So we have some structural challenges ahead of us, and hopefully we will continue this dialogue and see what—we need to make some good decisions to make this thing a go if we are going to continue it.

Thank you, Madam Chair.

Mrs. CHRISTENSEN. OK. I do have a—thank you, Mr. Faleomavaega. I share some of your concerns, but I think they can be fixed moving forward.

I want to ask about two particular issues that came up in the 2000 IGIA. Among the 15 action plans of phase one items that were listed in the progress—2000 IGIA progress report, that you asked to be made a part of the hearing record, was a question of applying U.S. statistical programs in insular areas.

And you may be aware that we recently held a joint hearing with the Subcommittee on Census to raise the issue of the lack of available data in the territories—something that again I have raised, I think, at every IGIA that I have attended—and the impact, in this case the impact it was having most recently preventing the U.S. Labor Department from being able to determine the likely impact of an additional 50 cent increase in the minimum wage on the economy of American Samoa.

In applying U.S. fiscal programs in the insular areas, do you recall what the outcome of the IGIA was on that issue?

I know I am asking a lot.

Mr. FARROW. Well, a little bit. There was an agreement that the Census Bureau and the Office of Insular Affairs would identify statistical programs, such as the American Community Survey, that did not apply in the insular areas and clarify the cost and other issues surrounding the application of the areas. And by “other issues surrounding the application,” they were talking about different forms of addresses that are used in some areas versus others that are different from the standard in the States and the complexity that that added to the process of fact gathering, the different information that the local governments themselves had available. So that was agreed to.

I know that, as well, we agreed with the Census Bureau, obtained an agreement that they would include information regarding Puerto Rico, at least in the 2000 census, equally with the States. I don't know what the implementation was after that, after 2000 when the administration changed. The Interagency Group on Insular Areas wasn't active for the next few years until 2003, so I don't think there was follow-up at that level. There wasn't—as I said, my position at the White House wasn't filled. So no one from the White House was following up with the Census Bureau.

I can't say for sure that nothing was done for the next few years, but I am not aware of it being done and maybe the Interior Department is.

Mrs. CHRISTENSEN. I think the Puerto Rico—the issue you raised about Puerto Rico was done. We are back to square one, but I think we are making some progress now on the American Community Survey, based on the responses we got from Census during our hearing.

Mr. FARROW. One of the issues that we dealt with was that I—was the economic census in the territories. And the Department of Commerce had sent up legislation to discontinue the economic census in the territories because of these same types of issues—budget was going to cost \$5 million and the different forms of address—and we successfully reversed and had the Administration actually recall that legislation that had been submitted by the Department of Commerce.

And I think that is an example of what I am talking about with the need for some White House direction, because OMB was sympathetic to the position of Commerce that this is a way to save \$5 million: On a per capita basis, it was going to cost a lot more to do the economic census in the territories than the States, so get the White House to push OMB to go along with the \$5 million.

Mrs. CHRISTENSEN. Let me ask a question on another issue that came up in the 2000 IGIA progress report.

One of the phase 2 issues by island was a question of the Virgin Islands' desire to receive a cover-over of taxes on gasoline. The report indicated that a working group meeting was held with the Department of Treasury in February of 2000, resulting in an action plan statement that said the Supreme Court ruled against the V.I. Gasoline tax claim, and there is no interest in the part—and this is a quote—"there is no interest on the part of the Federal Government to revisit this issue."

While that statement—the quote is fairly straightforward because this issue comes up over and over again at home. Can you elaborate a bit on the analysis that led to the conclusion of the lack of interest of revisiting this issue?

Mr. FARROW. I recall this more specifically because it is an issue that has come from my home territory, and it has come up over the years so often. And there are three elements of the analysis and they are simple and straightforward.

One you stated in the question, and I guess was stated in the report, which was, the Supreme Court of the United States had ruled that the Virgin Islands did not have a legal claim to the money, so as a matter of law, that argument from the territory was not valid.

Number two, the Congress and the President had agreed and a couple of administrations had agreed upon legislation that limited the cover-over provision of the revised organic act of the Virgin Islands, which provided the Federal taxes on products of the Virgin Islands transported to the United States and consumed in the United States would be covered into or transferred or granted into the Treasury of the Virgin Islands.

The Congress and the President had agreed that those—that would be amended to only provide to the product of rum. So Congress and the President had all reached this decision, and the Supreme Court had reached this decision before.

There was an effort to negotiate a settlement of the Virgin Islands' claim before the Supreme Court ruled, and the administration at the time, as part of that decision, offered to give the Virgin Islands \$30 million a year. This was, I believe, in the late 1970s. And the Virgin Islands turned down that offer.

But subsequent to that, as I said, the Supreme Court ruled, Congress and the President changed the law. So there is no legal basis and there is a policy decision. When the provision—and the third element, when the provision of the revised organic act was enacted in 1954, it was clear that everybody was talking about returning taxes on rum. The Virgin Islands sought—this same provision of law applied to Puerto Rico; it also applied to the Philippines before that. And the product used in Puerto Rico was rum, and the product that was intended in the Virgin Islands was rum.

Congress did not intend in enacting the cover-over to begin with that it would apply to gasoline. So because there was not congressional intent in the beginning and the law was not intended to cover gasoline, because the Supreme Court ruled that the Virgin Islands didn't have a valid legal claim because the Congress and the President had recently determined that not only—not gasoline, but not only other alcoholic beverages would not provide taxes that would be covered over, there was—the decision was made as it was.

Mrs. CHRISTENSEN. I have one last question, and then I will turn it over to Mr. Faleomavaega if he has any other questions.

There has been discussion this afternoon about the importance of the White House involvement in insular area issues being essential to assuring success. I am not sure if everybody agreed to that, but Mr. Farrow does, and I tend to agree.

So I would ask the panel, really, if you believe—if we were to propose putting the Executive Office of the President attendant to territorial issues in statute, would we encounter, do you think, the same opposition that Congressman de Lugo did when he proposed something similar in 1992 and 1993, or do you think the environment is more accepting of that type of a proposal?

I am asking everyone.

Mr. FARROW. I think you quite likely may encounter opposition as well. The opposition would come from an Interior Department, and I am not now talking about the current officials, but the officials of the next administration.

You may encounter an Interior Department that wants to keep as much responsibility and jurisdiction as it can. You may encounter a White House that has—or Executive Office of the President, in a broader context, that is overwhelmed with the new responsibilities it is facing; and every White House wants to shift responsibility for agencies to departments so it can concentrate on what it considers priorities.

You will also encounter, likely, a White House and OMB that will want to limit the staffing and budget within the Executive Office of the President. Every President has come in wanting to do that. And so they will not be anxious to assume responsibilities that will require additional staffing.

But I still think you need to go ahead in the interest of the insular areas and the interest of the Federal Government dealing with the insular areas and press for it.

I would note that the opposition that Chairman de Lugo encountered to this concept was not so much putting this in statute, although that will be an issue. Presidents don't like to be restricted more than they have to be, and they will try to resist that. But it really was the view of the Secretary of the Interior in 1993, who was an extraordinarily capable Secretary who thought that he could address and handle these issues himself. And he was very successful Secretary in a lot of ways and very capable.

But with the advice of Mr. Stayman, as I mentioned and with experience over the years, by 1999, the Secretary realized he was not in a position to successfully lead the administration on every issue involving the territories that needed leadership and policy guidance.

So I think you may have a new Secretary who thinks, I can do this; but I think experience will tell you and you should impress upon the new administration that the change needs to be made.

Mrs. CHRISTENSEN. Mr. Tenorio, do you have to be excused at this time or did you want to speak before you leave? I know you had a time constraint.

Mr. Tenorio. Yes, Madam Chairperson. I feel that there is always a need to have contact in the administration, whether it is IGIA as an official group or a smaller subgroup of IGIA. The main thing, at least from my own experience, is that we need to continue to have dialogue. We need to have an open channel of communication with the agencies that we feel can help us out. Not having a group like this or not having a formalized way of discussing things with them would just leave us in the dark in many cases, as I said before.

So I really do not have any major recommendations on how to structure. My main concern is that we need to have the Federal folks communicating with the local government folks as much as possible so that issues can be discussed timely and that possible solutions could be offered quickly.

Thank you.

Mrs. CHRISTENSEN. I want to thank you for being here and for your testimony and answering the questions, and you are excused if you need—

Mr. FALCOMAVEGA. If I could, Madam Chair, I would like to have Representative Tenorio stay for half a minute, 30 seconds, 45 or so.

The reason for my saying this, one question—and, Madam Chair, you had raised the issue of minimum wages. Secretary Kempthorne went to CNMI. Secretary Kempthorne also went to American Samoa. As you know, we authorized an economic study report through the Bureau of Labor Statistics that came out, and both Chairman Miller and Chairman Kennedy were very critical because the report was not comprehensive enough to really tell us whether or not to justify a raising the minimum wage to the 50 cent criteria that the law provided.

And what I want to ask you, Secretary Domenech—I would like to make this as an official request, because going through the legislative process is almost nearly impossible 3 months before—we are out of session in September. And I would very much appreciate it Secretary Kempthorne to take the initiative, using technical assist-

ance funds, and come out with funding some kind of a comprehensive economic report study—now, as soon as possible—so that we don't have to wait for another period of how many months before we come up in addressing this issue.

Because to all the efforts that we have made, our Members even on the Senate side, and Mr. Stayman's terrific help, and also with Governor Fitial and Mr. Tenorio, the problem that we are faced with, and rightly so, is the fact that even in our own situation, the report was not comprehensive enough, even though they made general statements to the effect that the economies of these territories will be affected negatively if the 50-cent increase was to be made.

Well, lo and behold, when Chairwoman Christensen and I went to American Samoa, we conducted the oversight hearing. And one of the first questions I asked the managers of our local two canneries, Were there any layoffs when we instituted the 50-cent increase? They said, No.

So if that does not encourage Chairman Miller and Chairman Kennedy says, we really don't have an economic problem here. It is a sense of honesty and being a little more forthright in telling us exactly—and this is the thing that really has bothered me so much. We really don't know what the economic status is of both CNMI, as well as American Samoa, and that is why we requested the Department of Labor to conduct this study, especially as it relates to the minimum wage issue, which was never properly addressed.

So I am making this as a formal request, Secretary Domenech, if you could take this issue quickly to Secretary Kempthorne, to see if an initiative could be taken by the Interior Department, which you have the authority—you don't need the authority from us—to use your technical assistance funds to conduct a comprehensive economic study as soon as possible and not have to wait for the next Congress to come out next year.

It will be too late. In May of next year, the next increase comes up. And I really, really—and I think this is what the Congress is trying to get.

Unfortunately, your Department of Labor was not very cooperative when questions were given—I don't know how it is with CNMI, but certainly with American Samoa—for follow-up questions on some of the economic study reports coming from our two main companies that do business there, was not very forthcoming.

So I would like to ask if there is any way possible that Secretary Kempthorne can take the initiative and see if we can do this, as soon as possible and not have to wait. Because, unfortunately, we have done everything we can from this end.

But the fact of the matter is, we still have not received a comprehensive economic report for both CNMI and American Samoa. And at this time, I would like to ask, Mr. Secretary, if the Interior Department can do this for us. And you can do it administratively, we can consult and find out exactly how we can go about doing it. But I really think this is something that the Interior Department should help us with as soon as possible.

And the second issue that I want to raise—and I am sorry, Ped, I didn't mean to delay your stay here, but I wanted you to hear that this is coming from the horse's mouth and making this as an

official request to our good friend here, Secretary Domenech, and see if we can get some results on this request.

The COLA issue, Mr. Secretary, has been a real—for some reason or another, American Samoa has simply been overlooked for all these years. And why we have never been part—of course, the Census Bureau has not been very cooperative either in going about and conducting possible surveys and whatever is necessary to give us better data and information.

And, by the way, this has been the complaint of all the insular areas. Census Bureau simply does not have the appropriate data information to give us a better understanding of what not only our economic status is, but just simply as it will relate to whether or not we have become beneficiaries to some of these—for several Federal grants programs simply because we don't have the proper information.

But I think my first request, Mr. Secretary, will—I really would appreciate it if you could take that immediately to Secretary Kempthorne. And I will develop a letter in support of this request with Madam Chair, and hopefully, she will accept this verbal request from me.

And with that, Madam Chair, I thank Ped—I am sorry, I didn't mean to delay you—and Secretary Domenech and Jeff and—sorry, Al; there is a House rule that we cannot allow Senate staffers to testify here.

So with that, Madam Chair, I actually withdraw my earlier request for you—to have you appear.

Mrs. CHRISTENSEN. Without objection.

Mr. FALCOMVAEGA. Thank you, Madam Chair.

Thank you so much for coming here and to testify.

And, Madam Chair, again, thank you for your leadership and initiative in conducting this oversight hearing. And I look forward in working closely with our friends here from the Interior Department.

And to Jeff and Mr. Secretary and Mr. Tenorio, thank you again for your testimonies.

Thank you, Madam Chair.

Mrs. CHRISTENSEN. Thank you, Mr. Faleomavaega. I also want to thank Mr. Flake for attending.

I thank the witnesses also for their valuable testimony and members for their questions. Members of the Subcommittee may have some additional questions for the witnesses. I will ask that you respond to those in writing, and the hearing record will be held open for 10 days.

Mrs. CHRISTENSEN. I also, in thanking the witnesses, I want to say that the personal experiences and the expertise from the standpoint of how the IGIA operates internally and the history of the IGIA has helped us to better understand where flaws may exist. In the past year and a half, the Subcommittee has held hearings on a number of issues important to our fellow Americans residing in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and my home—our home, Jeff—the U.S. Virgin Islands. Some of our work resulted in the House considering and passing legislation addressing outstanding war claims, the construction of schools,

the repeal of taxes, final financial accountability and the extension of U.S. immigration laws.

Our hearings have also built upon previous congressional efforts to resolve political status for our largest territory of Puerto Rico and to understand the challenges faced by U.S. territories in financial management accountability and implementing alternative energy, diversifying economies and raising the standards of living.

I am certain that we can all agree that because of the territories' unique status within the American family, there is a special obligation resting with the Federal Government to resolve issues and make policy recommendations reflecting the islands' distinct circumstances. This responsibility holds true for both unresolved problems of the past and challenges of the future.

The differences between the IGIA approaches of the Clinton and the Bush Administrations are clear and speak to the insular legacies one President has left behind and the other will soon follow. The Subcommittee is interested in building upon the lessons learned from two very different approaches to leadership; and what is clear to me is that the Federal Government should, at the very least, provide continuity for a group which can have a very serious impact for Americans residing in the U.S. territories.

In the near future, we hope to collaborate with you and other island leaders in putting something together that would offer the kind of continuity and reliability needed to move our islands forward.

And, again, I thank the witnesses and the members of the Subcommittee and the staff for their work on this hearing. If there is no further business, the hearing of the Subcommittee on Insular Affairs now stands adjourned.

[Whereupon, at 3:30 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

[A statement submitted for the record by The Honorable John P. de Jongh, Jr., Governor, U.S. Virgin Islands, follows:]

**Statement of The Honorable John P. de Jongh, Jr.,
Governor of the U.S. Virgin Islands**

Madam Chairwoman and Distinguished Members of the House Resources Committee, I am honored to present the views of the Government of the U.S. Virgin Islands ("GVI") on the effectiveness of the current interagency process for developing federal territorial policy under the mandate of the Interagency Group on Insular Areas ("IGIA"). For the reasons discussed below, the GVI believes that the IGIA process, while well-intentioned, is structurally deficient and unable to achieve its objective of ensuring fair consideration of territorial interests and proper coordination between federal agencies in the development of the federal-territorial policy.

Before describing these structural deficiencies and offering prescriptive remedies, I believe it would be useful to review the history leading to the formation of the IGIA, which history should inform the Committee in legislating, or making recommendations for, changes in the structure and mission of the IGIA.

The insular territories of the United States, including the U.S. Virgin Islands, historically were administered as agencies of the federal government. Acquired by war and by purchase, the territories in the beginning lacked sovereignty, self-government and representation in the policy-making processes of the administering departments of the U.S. government. Indeed, the U.S. Virgin Islands were initially administered by the U.S. Department of the Navy in 1917 and only later transferred to the Department of the Interior. With the enactment of the Revised Organic Act of 1954, the Virgin Islands assumed increasing powers of self-government, culminating in the popular right to elect the Governor of the Virgin Islands in 1968 and a non-voting Delegate to Congress in 1972. Today, the GVI exhibits, as the courts have

affirmed, the attributes of sovereignty similar to a state government, full autonomy in matters of local self-government (including the right to determine the size, form and powers of the local government pursuant to a constitution of its own making), but still lacks full voting representation in the Congress of the United States and the right to vote for President of the United States.

As an unincorporated territory of the United States, the Virgin Islands is subject to the plenary power of Congress pursuant to the Territorial Clause of the Constitution. Indeed, the Congress has authority, and exercises such authority, over such critical areas of territorial development as the income tax laws, customs regulations and trade policy, federal programs and appropriations. To the extent that federal policy towards the territories often originates in the Executive Branch, it is essential that the U.S. territories have full and fair access to the federal policy-making process, particularly in view of their lack of full voting representation in the Congress.

The Department of the Interior was chosen as the lead agency, first for administering, and later for developing, federal policy towards the territories because of its traditional role as the steward over the public lands and territories within the continental United States. With the tremendous expansion of the federal role in the national economy over the last 40-odd years, including in such vital areas as federal tax policy, trade policy and health care policy, the Department of the Interior is ill-equipped and ill-suited to properly represent the interests of the insular territories in those areas in which it has no jurisdiction or even expertise. Indeed, as former Chairman of the Senate Interior Committee, J. Bennett Johnston, observed over a decade and a half ago, the Department of the Interior often finds itself "in a weak and isolated position when advocating special treatment for the [territories]. Other agencies generally discount Interior's views regarding non-Interior programs, and they often give the [territories] a low priority when allocating program resources."

This structural weakness was most recently exhibited in the development of Treasury regulations implementing the provisions of the American Jobs Creation Act of 2004 ("Jobs Act") which has had a devastating impact on the Virgin Islands Economic Development Commission ("EDC") Program. The Department of the Interior supported the reasoned and balanced approach developed by the GVI to the implementing regulations, but the Department was unable to effectively engage Treasury or otherwise advance our cause on this critical issue.

Recognizing these structural weaknesses, the Chairmen of the House and Senate Insular Affairs Committees separately introduced legislation in the early 1990's to coordinate and centralize federal policymaking for the insular areas. Then-Chairman of the House Subcommittee on Territorial and Insular Affairs Ron de Lugo introduced a bill in 1992 entitled the "Insular Areas Policy Act" which would have established a Cabinet Council on Insular Affairs to "develop, coordinate, and oversee the implementation of [federal] policies regarding the U.S. insular areas." The Council would include representatives of the heads of all federal departments and agencies, chaired by the President's chief foreign policy and domestic advisors and would be located within the Office of the President.

Then-Chairman Johnston of the Senate Interior Committee in the same year introduced his own bill which would have established an interagency "Insular Areas Policy Council," which was also charged with coordinating "the activities of federal agencies" in the Territories, determining the "appropriate role of the [territories] in U.S. domestic and foreign policy," "considering" the policy recommendations of Council members and "proposing" policies to the President and the Congress. Significantly, the Senate bill would have retained the primary role of the Secretary of the Interior in federal-territorial policy by establishing the Secretary as Chairman of the Council.

Neither the House nor the Senate bill was enacted into law, primarily as a result of opposition at the time in both the Congress and the Administration. The need for some interagency mechanism to ensure greater coordination of federal-territorial policy persisted, and President Clinton, by executive memorandum, established the predecessor to the current IGIA on August 9, 1999. The IGIA, consisting of "senior officials selected by the heads of executive departments, agencies and offices," was mandated to "give guidance on policy concerning [the] insular jurisdictions." The White House memorandum established the Secretary of the Interior and the White House Director of Intergovernmental Affairs as the co-chairs of the IGIA.

The IGIA held its initial organizational meeting in January 2000 and a series of internal issues meetings in the months thereafter. The IGIA produced a draft report outlining major issues affecting the territories and a "roadmap" of follow-up and action items. Because the 1999 executive memorandum had no legal effect upon the expiration of the Clinton Administration, the IGIA did not automatically continue with the advent of the Bush Administration and the momentum of the first year died. The IGIA was not reconstituted until nearly three years later when President

Bush signed a Executive Order on May 8, 2003 reviving the interagency process. Importantly, the 2003 Executive Order established the IGIA “within the Department of the Interior,” altering in our view both the architecture and potential effectiveness of the IGIA process.

The Effectiveness of the Current IGIA Process

The subject matter of the present hearing is the “Successes and Challenges of the IGIA.” The IGIA, even under its current structure, offers an important opportunity for the governments of the U.S. territories to raise issues of concern directly to the attention of the Secretary of the Interior and the representatives of the federal departments and agencies. The ability of the IGIA, in its current form, to effect needed change and to develop fair and equitable policies towards the off-shore territories, however, is a different matter.

For example, at the February 26, 2008 annual meeting of the IGIA, the GVI presented a list of critical federal issues affecting the U.S. Virgin Islands, including recommendations for (1) support for legislation ensuring equal treatment of the territories in individual benefit programs, including Medicaid funding, S-CHIP funding and the Low Income Home Energy Assistance Program, (2) providing a reasonable cost-sharing formula for the administration of the Earned Income Credit (“EIC”) program in mirror tax code jurisdictions, and (3) support for legislation to remove the unfair cap limiting the amount of rum excise taxes returned to the Virgin Islands under long-established tax principles governing the relationship between the United States and the Virgin Islands. Many of the issues were previously raised by the GVI in earlier IGIA meetings. To date, there has been no significant reportable progress in resolving any of these long-standing critical issues. As previously noted, the GVI requested the Secretary of the Interior over three years ago to invoke the IGIA process to resolve the economically critical issue of the Jobs Act implementing regulations; the Secretary, however, was unable to persuade the Secretary of the Treasury to submit this issue to the IGIA process.

While there have been some modest advances and policy “successes” as a result of the IGIA process, it appears, at least from our perspective, that the larger and more important the issue, the more “territorial” and protective of its jurisdiction becomes the federal agency and the less effective becomes the IGIA. Indeed, it is our view that this record is reflective of the systemic or structural weaknesses of the IGIA itself. Pursuant to the terms of the 2003 Executive Order itself, the Secretary of the Interior has the power to “chair” a consultative body and to make “recommendations” to the President or to other agency heads, but lacks authority to effectively coordinate the policies emanating from the federal agencies themselves. It is our view that the IGIA process can only be effective if all agencies submit their policy-making, insofar as it relates to the territories, to the IGIA process. Unfortunately, the political realities are that that can be assured only if the IGIA chair is organizationally superior to the agency head itself. That is, in order to be effective, the IGIA must operate with the cloak of authority of, and be located within, the Office of the President.

Recommendations

Madam Chairwoman, I believe the interagency process, first proposed by your distinguished predecessor in 1992, offers an enlightened and thoughtful blueprint for this Committee. An effective interagency process should reflect the following important principles;

1. The IGIA process should be authorized by statute and administered according to criteria established by Congress exercising its constitutional function. The process cannot be left to the discretion of an executive memorandum or order.
2. The IGIA chair must be established within the Office of the President, rather than at the agency level. The IGIA chair must report to, and operate with the color of the authority of, the President of the United States in order to effectively coordinate the interests of competing agencies. And,
3. The IGIA must have independent staff and sufficient resources to be able to effectively carry out its mission.

Madam Chairwoman and Distinguished Members of the Committee, I look forward to working with you to elaborate on these thoughts and to strengthen the IGIA process. The welfare of all of our citizens in our offshore territories depends on it. Thank you very much.

