

**THE IMPACTS OF THE COVID-19 PANDEMIC IN
THE TERRITORIES**

HEARING
BEFORE THE
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
ONE HUNDRED SIXTEENTH CONGRESS
SECOND SESSION

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JUNE 30, 2020
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CONTENTS

OPENING STATEMENTS

	Page
Murkowski, Hon. Lisa, Chairman and a U.S. Senator from Alaska	1
Manchin III, Hon. Joe, Ranking Member and a U.S. Senator from West Virginia	2

WITNESSES

Sablan, Hon. Gregorio Kilili Camacho, Congressman—Northern Mariana Islands, U.S. House of Representatives	4
Radewagen, Hon. Aumua Amata, Congresswoman—American Samoa, U.S. House of Representatives	10
Plaskett, Hon. Stacey, Congresswoman—U.S. Virgin Islands, U.S. House of Representatives	18
González-Colón, Hon. Jenniffer, Congresswoman—Puerto Rico, U.S. House of Representatives	27
San Nicolas, Hon. Michael F.Q., Congressman—Guam, U.S. House of Representatives	38

ALPHABETICAL LISTING AND APPENDIX MATERIAL SUBMITTED

Bryan, Jr., Hon. Albert: Letter for the Record	137
Garced, Hon. Wanda Vázquez: Letter for the Record	157
González-Colón, Hon. Jenniffer: Opening Statement	27
Chart entitled “Impact of COVID-19 Nutrition Assistance Program (NAP) in Puerto Rico”	28
Chart entitled “Pharmaceutical and Medical Device Manufacturing in Puerto Rico”	29
Written Testimony	32
Responses to Questions for the Record	112
Guerrero, Hon. Lourdes A. Leon: Letter for the Record	161
Manchin III, Hon. Joe: Opening Statement	2
Murkowski, Hon. Lisa: Opening Statement	1
Northern Marianas Business Alliance Corporation: Letter for the Record	165
Plaskett, Hon. Stacey: Opening Statement	18
Written Testimony	20
Responses to Questions for the Record	103
Radewagen, Hon. Aumua Amata Coleman: Opening Statement	10
Written Testimony	12
Responses to Questions for the Record	98
Sablan, Hon. Gregorio Kilili Camacho: Opening Statement	4
Written Testimony	7
Responses to Questions for the Record	84
San Nicolas, Hon. Michael F.Q.: Opening Statement	38

IV

	Page
San Nicolas, Hon. Michael F.Q.—Continued	
Written Testimony	40
Responses to Questions for the Record	133
Torres, Hon. Ralph DLG.:	
Statement for the Record	171

THE IMPACTS OF THE COVID-19 PANDEMIC IN THE TERRITORIES

TUESDAY, JUNE 30, 2020

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The Committee met, pursuant to notice, at 2:42 p.m. in Room SD-366, Dirksen Senate Office Building, Hon. Lisa Murkowski, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

The CHAIRMAN. Good afternoon, everyone. The Committee will come to order. It is good to be able to welcome you all this afternoon, although Congresswoman Radewagen, I think, it is probably your good morning there, so we will just say good day to everyone.

As folks may know, we have had a whole series of hearings on the impact of the COVID-19 pandemic over the past several weeks. We have looked at the impact on the energy sector, on our mineral supply chains, on wildfire preparedness, but today we are going to take a closer look at the virus' impact on the territories, at the implementation of existing law aimed at mitigating and preventing its spread and potential legislation that could benefit the territories in the future.

All of our states face challenges in fighting the spread and the impact of COVID-19, but I think it is fair to say that the territories face additional hurdles. You have limited capacity to handle a health pandemic, to the economies with fewer sources of revenue that are severely harmed by the economic shutdown, particularly those that are dependent upon tourism. And that is where I can certainly relate to USVI, to Puerto Rico, Guam, American Samoa, CMNI. These are all areas that see a flux of folks with tourism. Although the territories have limited ports of entry for the virus to arrive at their islands, the reality is that the virus spread well before travel restrictions were in place and, of course, once it is on an island it is difficult to contain. American Samoa is the only jurisdiction to keep the virus from reaching their shores, and while we certainly hope that remains the case, we don't take anything for granted nowadays.

Congress has passed four funding bills to address the COVID-19 outbreak and while I know these bills do not contain everything that everyone wanted to have included, we did seek to ensure that the measures work for the territories where federal programs are not necessarily implemented in the same manner as the states. The

Families First Coronavirus Response Act increased Medicaid funding for the territories and lowered the territory's Medicaid match rate. It provided additional SNAP funding and supplemental funding for those territories that utilize block grant funding instead of traditional SNAP. The CARES Act included language to allow all territories to participate in the Pandemic Unemployment Assistance Program regardless of whether they have unemployment insurance programs. In addition to financial assistance for governments through the Coronavirus Relief Fund, it included an additional \$55 million through DOI's Office of Insular Affairs for COVID-19 needs.

I think we are probably going to hear this afternoon that more is needed and know that we will be working on that as we head into July and this next work period coming up. My hope is that today's hearing will provide us with a better understanding of what has worked so far, what needs to be adjusted and what additional measures should be considered. I am pleased that we have all five representatives of the territories with us today to lead this discussion. Before I introduce our witnesses, I will turn to Ranking Member Manchin for his remarks and comments this morning.

Senator Manchin.

**STATEMENT OF HON. JOE MANCHIN III,
U.S. SENATOR FROM WEST VIRGINIA**

Senator MANCHIN. Thank you, Chair Murkowski, for holding the hearing to discuss the impacts of the COVID-19 pandemic in the U.S. territories. I want to thank all of our honorable guests for being here to help us through this so we can help you. To date, the Coronavirus pandemic has taken the lives of over 125,000 of our fellow Americans, including 166 individuals from the territories, and our heart goes out to the grieving families across the country and around the world. The scope of the Committee's jurisdiction includes the five territories of Puerto Rico, U.S. Virgin Islands, American Samoa, Guam and the Northern Mariana Islands. I welcome our panel of witnesses that represent these five territories in the United States House of Representatives and appreciate all of you joining us to share how the pandemic has impacted your island communities.

Each of these governments face unique challenges based on their geographic location. Import reliance, limited financial resources and different treatment under federal programs, these circumstances create both unique problems and risk of continued challenges throughout the pandemic. The island economies are taking a hard hit as a result of the pandemic, and I sure don't need to tell any of you that. The territories were quick to react to the spread of COVID-19 and by mid-March had instituted stay-at-home orders, travel restrictions and enhanced screening in an effort to keep the virus under control. In fact, American Samoa is the only place in the United States that has had no confirmed cases of COVID-19. And in 1918 they were able to avoid the Spanish Flu pandemic in large part due to swift action on travel restrictions and quarantine.

It should come as no surprise that the beautiful territories are heavily dependent on tourism, but tourism has come to a halt as

we attempt to flatten the curve. Unfortunately, this will not change anytime soon as we continue to urge social distancing and discourage travel during the ongoing global pandemic. This year, adding insult to injury, the National Oceanographic and Atmospheric Administration is predicting a busy hurricane season in the Atlantic in the midst of the pandemic. The territories have been hit by severe natural disasters including hurricanes, typhoons and earthquakes in recent years. Puerto Rico and the U.S. Virgin Islands are still recovering from the 2017 hurricanes that wreaked havoc in the islands and caused over \$140 billion in damages.

Hurricane and disaster preparation are crucial during this time of year and especially this year given we have a global pandemic on our hands too. This will require an entirely different approach from both emergency managers and the public. Although the local and Federal Government have been working hard to recover and rebuild, more needs to be done to prepare for natural disasters amid COVID-19. Over the past few months, Congress has passed four pieces of legislation providing authority and funding necessary for COVID-19 relief and recovery efforts. This is a result of over \$2 trillion in new direct spending for the U.S. Department of Treasury, the Small Business Administration, the Department of Health and Human Services and many other federal agencies and entities. We worked hard to ensure the territories were included and eligible for the funding and the various federal programs engaged in the response to the pandemic. For example, the territories received \$2.5 billion in the Coronavirus Relief Fund, \$2.2 billion in the Paycheck Protection Program, \$35.5 million in the Provider Relief Fund, \$55 million in the Office of Insular Affairs' Technical Assistance Program, direct payments to individuals and families and additional funding from other federal agencies and entities engaged in the pandemic response.

While there have been some economic relief success stories, I know our work is far from over and I know you know it too as we continue to hear from our families, small business owners, nonprofits, the local governments, health care providers and frontline workers across the country who are not getting the help that they desperately need now. I look forward to learning more from our witnesses about the impacts our island communities are facing in the unpredictable global pandemic. I am hopeful that we can work together to create and respond to the challenges facing the territories and find commonsense, bipartisan solutions that lay the foundation for a strong, sustainable economic growth for many years to come.

Thank you, Madam Chairman, and I look forward to hearing from our witnesses.

The CHAIRMAN. Thank you, Senator.

It is, indeed, a pleasure to be able to welcome you to the Committee, back to the Committee for several of you. Those of you who have walked the long distance from the House of Representatives, we appreciate that. We also recognize that we have the ability now to not only have you live and in person, but we can also do things virtually. So to have members that are either in their office in Washington, DC, or in their home offices in their districts in a territory like American Samoa, we are pleased to be able to accommo-

date via this venue. I am pleased to be able to, again, welcome you all and look forward to how you can educate us on the issues that have so directly impacted your constituents.

We will begin this afternoon, just going off of the order on the witness list. Congressman Gregorio Kilili Camacho Sablan, who is the Congressman from the Northern Mariana Islands, will begin our testimony. He will be followed by Congresswoman Amata Coleman Radewagen and, as I mentioned, the Congresswoman is in American Samoa this morning. We have here in the Committee room, Congresswoman Stacey Plaskett with the U.S. Virgin Islands. We welcome you back to the Committee, thank you. Congresswoman Jenniffer González-Colón from Puerto Rico, we are pleased that you are back before the Committee again. And Congressman Michael San Nicolas from Guam, we appreciate that you, as well, have joined us this afternoon.

I am going to ask everyone to try to limit your comments to about five minutes. You are from the House side, so you are used to doing things in one minute, so we are giving you five times the talking time. We will then have an opportunity for questions, not only from those of us here, but those members that are also online. Your full statements will be included as part of the record. So let us first begin with Congressman Sablan. If you can give us the perspective from the Northern Mariana Islands, and welcome to you.

**STATEMENT OF HON. GREGORIO KILILI CAMACHO SABLAN,
CONGRESSMAN—NORTHERN MARIANA ISLANDS, U.S. HOUSE
OF REPRESENTATIVES**

Mr. SABLAN. Well, thank you very much, Madam Chair, thanks to you and Ranking Member Manchin and the members of the Committee for taking the initiative to hold today's hearing. Moreover, thank you for the 12 years of attention and support you have all given to the Northern Mariana Islands. Thanks as well to your constituents and all the American people for the extraordinary generosity to the people of the Northern Mariana Islands, especially in this time of unprecedented crisis.

This hearing is about how Congress responds to the pandemic, but even before Congress' response could reach them, the people I represent and Marianas government officials had to take action. They did what was needed to be safe, and they succeeded.

We had two deaths initially, 30 cases total, but have now gone for 22 days with no new cases. So far we are keeping COVID at bay. The Marianas have a unique advantage in a pandemic; we can seal ourselves off from the rest of the world. As a matter of fact, all cases are reported on Saipan. There have been no reported cases of infection on Tinian and Rota or from the three partially inhabited islands of Pagan, Agrihan and Alamagan.

The flipside, however, is the disadvantage we face in reviving an economy that depends, as you said, almost entirely on high volume tourism. How can we welcome back visitors to the islands while ensuring those visitors are not bringing disease? Eventually, if there's a vaccine, we could return to some semblance of the old normal, as long as visitors could reliably certify they were vaccinated. But that is a big "if." I think we must face the reality that we may never

again exclusively base our economy on short-term, mass tourism and find alternatives. For instance:

—Our robust cable connections and the competitive advantage of our time zone, just this month the Colorado-based InteliSecure, Inc. began hiring for a cybersecurity operation in the Northern Marianas.

—We could grow our existing educational facilities which already attract long-term-stay students from Korea and other Asian locations.

—We could obtain new classes of visas that would permit longer-term, second homeowners in the Marianas.

Above all, and I always say this because we have no extractable resources—no oil or gold as in, say, Alaska, Madam Chair—we must relentlessly invest in our human resources, because with the better-trained and more educated population, the more likely that entrepreneurial ideas will emerge that will grow wealth and well-being.

And at the same time we nurture new sources of income, we can also reduce our expenses. We can become even more energy independent and more self-sustaining when it comes to food.

Governor Torres has recently taken the initiative. He brought the Marianas government and community leaders together in April to begin to search for the answer to questions of where we go from here and what steps we need to take. The two action items the Governor initially identified for Congress, we are already addressing: direct aid to the Commonwealth government (the CARES Act provided \$36 million to cover unbudgeted pandemic costs, for example) and a waiver of local match for FEMA grants. But there will be more for Congress to do. For the long-term, to facilitate economic changes the Marianas decides on, whether that means new classes of visas, support for energy independence or modernizing infrastructure. In the near-term, to prop up individuals, small business and the local government, all of which had incomes shredded by the pandemic, and always, Congress must direct resources to health care, to local providers and to researchers in national labs so that this disease does not overwhelm us.

Congress has already taken extraordinary action in response to the Coronavirus crisis and the territories have not been left behind: 414 businesses in the Marianas are receiving \$37 million through the Paycheck Protection Program, \$70 million has been initially set up for the Pandemic Unemployment Assistance, \$49 million has been credited to Marianas' taxpayers in Economic Impact Payments, and our schools are receiving in excess of \$30 million. We are eligible for the range of grants provided by the Families First and CARES Acts for health care, child care and food aid. And, as mentioned, the Commonwealth government received \$36 million to cover unbudgeted costs.

But we cannot be lulled into believing the worst is over. In World War II, America did not declare victory after the Battle of Midway. There were years, still long years of struggle ahead. There could well be years of struggle before us now to ward off the Coronavirus and rebuild economically, but if there is one legislation that could unleash the help we need to get us through this crisis, that is the HEROES Act that the House wrote and passed. The bill builds on

policies Congress previously enacted in the Families First and CARES Acts to help American families, businesses and state and local governments through this crisis. My fellow Delegates and I were listened to when the HEROES Act was drafted and passed in the House. We made sure our areas are provided for in measure equal to the needs we face.

So I close by respectfully urging the Senate to take up the HEROES Act immediately, because this struggle is just starting and is far from over.

Thank you for holding today's hearing and for the opportunity to testify. Thank you always for the care and attention you all have given to the American citizens residing in the territories. I look forward to working with you to ensure the territories and all of America find our way through this pandemic. Thank you. I went over my time.

[The prepared statement of Mr. Sablan follows:]

Testimony
The Honorable Gregorio Kilili Camacho Sablan
Senate Committee on Energy and Natural Resources
Hearing to Examine the Impact of COVID-19 to U.S. Territories
June 30, 2020

Madame Chair –

Thanks to you, Ranking Member Manchin, and all the Members of the Committee for taking the initiative to hold today’s hearing.

Thanks, also, to your constituents and all the American people for their extraordinary generosity to the people of the Northern Mariana Islands in this time of crisis.

This hearing is about how Congress responds to the pandemic. But even before Congress’ response could reach them, the people I represent and Marianas government officials had to take action. They did what was needed to be safe – and they succeeded.

We had two deaths initially but have now gone for 18 days¹ with no new cases. So far, we are keeping COVID at bay. For that, too, I give thanks.

The Marianas have a unique advantage in a pandemic: we can seal ourselves from the rest of the world.

The flipside is the disadvantage we face in reviving an economy that depends almost entirely on high volume tourism. How can we welcome visitors back to the islands, while ensuring those visitors are not bringing disease? Eventually, if there is a vaccine, we could return to the old normal, as long as visitors could reliably certify they were vaccinated. But that is a big “if.”

I think we must face the reality that we may never again exclusively base our economy on short-term, mass tourism—and find alternatives. For instance:

- Our robust cable connections and the competitive advantage of our time-zone, just this month led Colorado-based IntelSecure, Inc. to begin hiring for a cybersecurity operation in the Marianas.
- We could grow our existing educational facilities, which already attract long-term-stay students from Korea and other Asian locations.
- We could obtain new classes of visas that would permit longer-term, second-home owners in the Marianas.

¹ As of date of submission of testimony, 6/26/20.

Above all, and as I always say, because we have no extractable resources—no oil or gold, as Alaska, Madame Chair—we must relentlessly invest in our human resources. Because the more educated our population, the more likely that entrepreneurial ideas will emerge that will grow wealth and well-being.

And, at the same time we nurture new sources of income, we can also reduce our expenses. We can become more energy independent, more self-sustaining when it comes to food.

Governor Torres has already taken the initiative. He brought Marianas community leaders together in April to begin to answer the question of where we go from here and what steps we need to take. The two action items the Governor initially identified for Congress we are already addressing:

- Direct aid to the Commonwealth government (the CARES Act provided \$36 million to cover unbudgeted pandemic costs); and
- A waiver of the local match for FEMA grants.

But there will be more for Congress to do:

- For the long-term, to facilitate the economic changes the Marianas decides on, whether that means new classes of visas, support for energy independence, or modernizing infrastructure.
- In the near term, to prop up individuals, small businesses, and the local government—all of which had incomes shredded by the pandemic.
- And, always, Congress must direct resources to health care—to local providers and to researchers in national labs—so this disease does not overwhelm us.

Congress has already taken extraordinary action in response to the coronavirus crisis.

And the territories have not been left behind:

- 414 businesses in the Marianas are receiving \$37 million through the Paycheck Protection Program.
- \$70 million has been initially set aside for Pandemic Unemployment Assistance.
- \$49 million has been credited to Marianas taxpayers in Economic Impact Payments
- Our schools are receiving in excess of \$30 million.
- We are eligible for the range of grants provided by the Families First and CARES Acts, for health care, child care, and food aid.
- And, as mentioned, the Commonwealth government received \$36 million to cover unbudgeted costs.

But we cannot be lulled into believing the worst is over. In World War II, America did not declare victory after the battle of Midway. There were still long years of struggle ahead.

There could well be years of struggle before us now to ward off the coronavirus and rebuild economically. That is why the House has already passed the HEROES Act, which builds on policies Congress previously enacted in the Families First and CARES Acts to help American families, businesses, and state and local governments through this crisis.

My fellow Delegates and I were listened to when the HEROES Act was drafted and passed in the House. We made sure our areas are provided for in measure equal to the needs we face.

So, I close by urging the Senate to take up the HEROES Act immediately, because this struggle is far from over.

Thank you for holding today's hearing and for the opportunity to testify. I look forward to working with you to ensure the territories and all of America find our way through this pandemic.

The CHAIRMAN. Congressman, thank you. I appreciate your comments this afternoon.

Let us now proceed to Congresswoman Radewagen.

STATEMENT OF HON. AUMUA AMATA RADEWAGEN, CONGRESSWOMAN—AMERICAN SAMOA, U.S. HOUSE OF REPRESENTATIVES

Mrs. RADEWAGEN. Thank you, Madam Chairwoman and Ranking Member Manchin for holding this hearing today. I appreciate the work the ENR Committee does on behalf of American Samoa and all the territories, and I'm thankful for the opportunity to testify here today.

Let me begin by saying that the initial response to the COVID-19 pandemic, at least in American Samoa, has been very positive. Both Congress and the Trump Administration have made great efforts to include the territories in these massive response efforts the past few months. I've included the full funding highlights along with my written testimony and to suffice it to say, American Samoa has received well over \$100 million in much needed relief funding and grants through direct aid to our local ASG operations, stimulus checks, PPP and EIDL loans and forthcoming PUA and unemployment assistance payments, all for which we are extremely grateful.

With swift bipartisan Congressional funding and rapid implementation by President Trump's Administration, American Samoa and the country have avoided a much worse fate in this two-sided COVID war on both the health and economic fronts. We thank God everyday American Samoa has remained virus-free, but we're hardly immune to the economic fallout. We're in the same boat as the rest of the country with disruption to our churches, schools, small businesses and local government revenues as a result. We've had no commercial air travel to and from the islands since March. So due to these logistical problems, distribution of aid has had its challenges. I'm deeply thankful to Treasury, DOI, SBA, HHS, FEMA and the other agencies for working to overcome these long-distance challenges since we're more than 7,000 miles away. So please keep us in mind as Congress considers additional measures in response to the ongoing pandemic and to promote economic recovery.

There are several points I want to highlight, and my written testimony provides further details on these priority health and economic needs. More COVID testing and tracing support is needed. Continued healthcare resiliency and capacity support in the areas of testing and tracing will be needed for American Samoa to reopen safely and prepare for future crisis. Support for CDC initiatives are vital as well. We welcomed Congress granting us the full Medicaid funding formula and ask that the cap be lifted as well to attract more services and physicians. LBJ Hospital improvements are needed as the Army Corps report to Congress pointed out.

We're grateful to this Committee's directing DOI to study the cost of repairing and replacing our only hospital, LBJ Tropical Medical Center. The Army Corps report outlines millions are needed for LBJ's modernization. Long-term funding mechanisms need to be looked at by this Committee as Congress looks at providing

essential and emergency healthcare capabilities and funding for the future. An increase to the annual ASG operations at DOI OIA is needed to help us further plan and design an effective modernization in accord with the Army Corps findings.

More unemployment assistance is needed. Pandemic Unemployment Assistance (PUA) payments of \$600 expire July 31, but applications locally are just now being processed since we have no local unemployment program. So I thank Secretary Scalia and the U.S. DOL team for their implementation efforts to date. Please include American Samoa in any modification that extends and expands the PUA payments to all our valid workers under local law.

30A extension is needed. I encourage you to support multiyear continuation of the 30A American Samoa Economic Development Credit. Our sole remaining tuna cannery, two others have left for cheap foreign labor, it's nearly 20 percent of the workforce at 3,000+ jobs, and it relies heavily on the 30A tax credit. We cannot diversify our local economy without a five-year minimum extension. No business will invest in the developing territory when a job creation credit expires every year and is always uncertain of being renewed. We also need 30A to be included in any stimulus tax credit provision or qualifying list under IRS Section 38 or otherwise as well.

Finally, increasing the highway funding formula for the territories and providing additional grant opportunities for seawall construction and safer ports should be a part of any broad infrastructure stimulus.

In closing, I want to thank our Governor and our healthcare workers and first responders during this crisis and thank our military and note that American Samoa has one of the highest rates of service in the Army per capita and the highest rate of service per capita in NFL linemen and proudly play in college at West Virginia and all over. It takes a real tough Samoan to be a mountaineer in a lavalava.

Thank you, Chairman Murkowski, Ranking Member Manchin and Committee members for your time today. God bless.

[The prepared statement of Mrs. Radewagen follows:]

**U.S. Senate Committee on Energy and Natural Resources
Full Committee Hearing to Examine the Impact of COVID-19 to U.S. Territories
Statement Submitted by Rep. Aumua Amata Radewagen of American Samoa
June 30, 2020**

Opening

Thank you, Chairwoman Murkowski and Ranking Member Manchin, for holding this hearing today. I appreciate the work the ENR committee does on behalf of the territories, and I am thankful for the opportunity to testify here today.

Let me begin by saying that the initial response to the COVID 19 Pandemic, at least in American Samoa, has been very positive. Both Congress and the Trump administration have made great efforts to include the territories in these massive response efforts the past few months.

I have included the full funding highlights along with my written testimony, but suffice it to say, American Samoa has received over \$100 million in relief funding and grants thru direct aid to our local ASG operations, stimulus checks, PPP and EIDL loans and forthcoming PUA and unemployment assistance payments. All of for which we are extremely grateful.

By swift Bi-Partisan Congressional funding and rapid implementation of these new programs by President Trump's Administration, American Samoa and the Country have avoided a much worse fate in this 2 sided COVID-war on both the health and economic fronts, and thank God American Samoa is still currently virus free.

But we are hardly immune to the economic fallout –we are in the same boat as the rest of the country with major economic disruptions to our churches, schools, small businesses and local government revenues as a result.

While I am happy to say that American Samoa has had no confirmed cases of the virus so far, we stand vigilant. A primary reason for this was our Governor's rapid response in quarantining the entire island and banning travel since March 23. Pre-testing before flights, screening and tracing make sense and some quarantining in certain circumstances are still warranted. But we can't stay closed forever.

Our remote location, which is usually a negative, put us in the unique position to avoid the more devastating effects of this disease so far, as we did with the Spanish Flu of 1918 where we were similarly spared any infections or deaths.

Unfortunately, this situation has only compounded the other more negative aspects of our isolation especially our economic growth and access to off island resources. We have had no commercial air travel to and from the island since March.

U.S. Senate Committee on Energy and Natural Resources
Full Committee Hearing to Examine the Impact of COVID-19 to U.S. Territories
Statement Submitted by Rep. Aumua Amata Radewagen of American Samoa
June 30, 2020

Due to these logistical problems distribution of aid has lagged some. While I am deeply thankful to Treasury, DOI, SBA, HHS and the other agencies for working to overcome these challenges, I especially want the federal government to keep our isolation in mind going forward since we are nearly 7000 miles away.

As Congress considers additional measures in response to the ongoing pandemic and to promote economic recovery, there are several points regarding my district that I want to highlight.

Healthcare

First is healthcare resiliency, both in direct relation to COVID 19 and long term. We have been fortunate the virus has not reached our islands; however, this will be completely undone without continued support in the areas of monitoring and testing as American Samoa plans to reopen its ports of entry. Included with my written statement is data compiled by American Samoa's Medicaid Director highlighting what we have received so far, and continued support and funding for CDC initiatives to this effect are vital.

American Samoa is grateful to this Committee for directing DOI to study the cost of repairing and replacing our only hospital, LBY Tropical Medical center which according to the Army Corps report provided to Interior and the Congressional Committees will require tens to hundreds of millions for modernization so some long term funding mechanisms need to be looked at by this committee and others as congress looks at providing long term essential emergency healthcare capabilities and funding throughout the Country to prepare for other health events.

Aside from infrastructure projects like our hospital, one of the other ways we can achieve healthcare resiliency in the territories is through equitable treatment under federal healthcare programs. I am requesting your support of H.R. 6495 Insular Area Medicaid Parity Act introduced by Mr. Sablan of CNMI on behalf of myself and the other territorial members. This legislation would repeal the Medicaid cap for the territories and contribute greatly to our long-term healthcare needs.

Keep in my mind we have been in an emergency state for most of 2018 for Cyclone Gita, then we had a severe measles outbreak last year in Samoa, and now we have the COVID19 crisis. It had been a triple whammy these past 2 years. We are thankful for what we have received, and I hope we can continue to count on you going forward.

**U.S. Senate Committee on Energy and Natural Resources
Full Committee Hearing to Examine the Impact of COVID-19 to U.S. Territories
Statement Submitted by Rep. Aumua Amata Radewagen of American Samoa
June 30, 2020**

Unemployment Extension

As you know Madame Chairman, the PUA, Pandemic Unemployment Assistance, payment of \$600 expires July 31 but the local benefit of \$182 will remain through the year.

Our PUA applications locally are just now being processed--since we had no local unemployment program, and I thank Secretary Scalia and the USDOL team for their implementation efforts.

Please include American Samoa in any modification that extends and expands the PUA payment to all valid workers in American Samoa under local law.

30A Extension

As for other economic challenges, I encourage you to support continuation of the American Samoa economic development credit (section 30A). As you know, 30A is an essential credit that encourages investment in the territory and create jobs by reducing federal taxes on earned income in the territory.

Our sole remaining tuna cannery—2 have left for cheap foreign labor--is nearly 20% of the workforce at 3000 jobs – and it relies heavily on the tax credit-- but we cannot diversify our local economy without a 5-year minimum extension. No business will invest in developing territory when a job creation credit expires every year and is always uncertain of being renewed.

Current stimulus discussions include allowing some select businesses to monetize unused credits immediately using a list of General Business Credits under IRC Section 38 but section 30A, however, is not listed as a GBC under section 38.

This means that relying solely on the GBC designation to define the universe of eligibility still would have the result American Samoa's cannery as losing out on this needed benefit so please insure that the Senate Finance Committee includes us in any such tax credit stimulus provisions.

EB-5

Similarly, technical correction is needed to include U.S. Nationals as eligible workers for purpose of the EB-5 investment program. We are the only jurisdiction in the Nation without an eligible program with our local government having been turned down thus forfeiting millions of potential local investments because in 1993 someone forgot to add National after Citizen in drafting the bill.

We need this technical correction to allow further diversity of investment in the local economy. My bill HR 3892 makes that technical correction and I ask you both to support it as well and will provide the committee with additional information as needed.

**U.S. Senate Committee on Energy and Natural Resources
Full Committee Hearing to Examine the Impact of COVID-19 to U.S. Territories
Statement Submitted by Rep. Aumua Amata Radewagen of American Samoa
June 30, 2020**

Conclusion

These are some of the key items and I look forward to working with the Committee in the coming weeks on these and other issues to help aid American Samoa and our Country both heal and prosper.

American Samoa COVID-19 Response Highlights

COVID-19 STATISTICS AND FUNDING:

As of 2020 the population of American Samoa is approximately 55,212 people.

The LBJ Hospital, the only hospital on island, has received \$4.89 million from the Rural Medical Provider Relief Fund under the CARES Act.

After testing over 383 samples AS does not have any positive tests and no cases on island at this time.

The funds from the CARES Act are being used at LBJ for coronavirus related expenditures, which totaled more than \$3.64 million and includes over \$1.35 million in medical equipment; nearly \$2 million in medical supplies; and \$326,408 in infrastructure costs. According to LBJ, the hospital anticipates more expenditures for more COVID-19 projects, supplies and equipment.

As of June 14th, total test-kits on hand is 3,396 with 1,805 test-kits for the GeneXpert testing machine — reserved to test symptomatic patients and 1,591 test-kits for the Abbott ID now being used for d community testing, according to DoH.

They also have tested 147 first responders as of June 13th. — covering DoH, hospital, local Environmental Protection Agency, Port Administration, the MV Manu’atele crew who will be sailing the vessel to Hawaii for repairs, and 14 from local stevedoring companies which provides this service at the Port of Pago Pago.

American Samoa has not reopened to island to air travel.

Small Business Administration (SBA) assistance programs for American Samoa. The combined total is now 192 loans with another weekly increase of 17 approvals, arriving at a new sum of \$10,210,623. This includes both the Paycheck Protection Program (PPP) and the currently more narrowly targeted Economic Injury Disaster Loans (EIDL) program. To date, 92 American Samoa’s small business employers have accessed important EIDL emergency advances (differing from EIDL total loans) for a cumulative \$489,000. These advances provide much-needed assistance more quickly in smaller amounts topping out at a maximum \$10,000.

EIDL Loans: There were also ten new EIDL loan approvals, which now stands at 47 EIDL approvals, reaching \$3,166,800.

PPP Loans: Local employers have now acquired 145 PPP loans totaling \$7,043,823.

Below is a chart compiling other grants and direct funds we have received. It is not comprehensive, but contains the most important numbers as of June 15th.

<u>COVID-19/CARES ACT Funding Notable Grants/Projects</u>	
SBA	
Economic Injury Disaster Loans (EIDL) program, 47 approvals	\$3,166,800
Paycheck Protection Program (PPP), 145 approvals	\$7,043,823
EIDL emergency advances (differing from EIDL total loans), 92 approvals	\$489,000

American Samoa COVID-19 Response Highlights

HUD	
Dept. of Housing & Urban Development (HUD) Emergency Solutions Grants (ESG)	\$796,914
(HUD) Community Development Block Grant (CDBG) program	\$266,229
HUD, CBDG	\$532,457
HUD, Emergency Shelter Grants	\$269, 228
HHS	
Health Resources and Services Administration (HRSA), discretionary grant for COVID-19 testing	\$406,084
Centers for Disease Control and Prevention (CDC)	\$411,385
Health and Human Services (HHS), Provider Relief Fund	\$766,000
discretionary HRSA grant	\$745,580
Centers for Disease Control and Prevention (CDC)	\$740,000
COMMERCE	
National Oceanic and Atmospheric Administration (NOAA) CARES Act, Sec. 12005 fisheries grants	\$2,553,194
EDUCATION	
Governor's Emergency Education Relief (GEER) program	\$7,272,191
Elementary and Secondary School Education Relief (ESSER) Fund for State Education Agencies (SEA)	\$38,321,932
U.S. Department of Education, Higher Education Emergency Relief Fund	\$1,617,855
DOJ	
Dept. of Justice (DOJ) Coronavirus Emergency Supplemental Funding (CESF) to the American Samoa Criminal Justice Planning Agency	\$2,231,620
DHS	
Federal Emergency Management Agency (FEMA) Emergency Management Performance Grant Program Supplemental(EMPG-S)	\$259,066
DOT	
Federal Aviation Administration (FAA), Airport Grant Program	\$1,381,262
DOI	
Direct aid to the territories by population	\$38,964,275
TOTAL	\$106,961,824

The CHAIRMAN. Thank you, Congresswoman. I was wondering where you were taking that picture with the NFL lineman.

Let us now turn to Congresswoman Plaskett. Thank you for joining us this afternoon. Give us the view from U.S. Virgin Islands, please.

**STATEMENT OF HON. STACEY PLASKETT, CONGRESSWOMAN—
U.S. VIRGIN ISLANDS, U.S. HOUSE OF REPRESENTATIVES**

Ms. PLASKETT. Thank you so much, Chairwoman Murkowski and Ranking Member Manchin. You also have testimony submitted by Governor Albert Bryan of the U.S. Virgin Islands, and I think that will, as well, be informative along with my testimony.

The impact of the COVID virus in the territories has been tremendous. In the Virgin Islands, like other territories, the impact of disaster economic recessions, always much more negative in the territories than it is on the mainland. The first COVID case in the Virgin Islands was confirmed on March 13th. On that day, Governor Albert Bryan declared a local state of emergency. And on April 2nd, President Trump approved Governor Bryan's request for major disaster declaration. We are presently in the "open door" phase of the Virgin Islands and, as of Monday, June 29th, the Virgin Islands Department of Health has identified 84 positive cases with five remaining active cases, 73 recovered cases and 6 deaths. With the assistance of our federal partners, we're better supplied now than at the beginning; however, we remain concerned about the full and timely replacement of personal protective equipment, swabbing and testing. We received \$3.5 million federal support from the Provider Relief Fund but as airlines and visitors return to the territory, we are concerned about that.

As you know, the Virgin Islands is uniquely dependent on tourism. It generates 30 percent of the territory's gross domestic product and employs 25 percent of our civilian labor force. Because the COVID-19 impact reduced tourism revenues essentially to zero, the territory is suffering devastating economic losses. As I will discuss, the most support needed for the Virgin Islands' recovery from COVID is economic. The scale of the economic calamity is such that even sweeping relief provided by the CARES Act, while very much appreciated, is inadequate to prevent the territory from falling off our economic cliff. Economic models have projected a revenue shortfall of \$250 million in 2020, that's 25 percent of our annual budget, and another \$250 million in 2021, another 25 percent of our annual budget.

The sudden and dramatic drop in government revenues has reduced the territory's cash on hand to dangerously low levels, days of cash on hand, jeopardizing our ability to make payroll and perform basic public services. Unemployment claims jumped 100 percent between March and April, from 4.2 percent unemployment to 8.4, while government revenue drops have been to unprecedented lows. Tourist expenditures average \$1.2 billion a year as the territory brings in hundreds of thousands of air arrival and cruise visitors. Typically there's an average of 178,644 cruise ship visitors in March, based on data from 2013 to 2019. However, in March 2020, there were only 78,000, or 43 percent, of a typical monthly average due to the global suspension of cruise ship activities that started

on March 14th. It is unclear when we will receive even close to that monthly average again.

The CARES Act has ameliorated some of the harm and we appreciate that, but it will not prevent serious and lasting damages to the Virgin Islands' economy. Let's think about it. We received \$75 million. While the Virgin Islands' population is approximately one-fifth the size of the smallest state, under the CARES Act we received one-seventeenth the minimum funding of a smallest state. This is inequitable. The pandemic doesn't distinguish between an individual or a virus in the territories or the United States and help available to American citizens threatened should not be either. As a result, the Virgin Islands will need a significant infusion of operating funding for Fiscal Years 2020 and 2021, covering both the outlays for Coronavirus expenses and the loss of revenues. Otherwise, it will fall far short of the revenue lost because of the pandemic.

I have pages more to discuss, but I really just want to impress on you all the impact financially to the territories because of the pandemic. We have already faced significant losses and concern over the hurricanes, as you discussed, recovering from two Category 5 hurricanes, community disaster loan debt payments, FEMA local cost share for recovery funding. That has already crippled our economy. But now, to have to deal with this pandemic where 25 percent of our revenues of loss, inequitable treatment in how we are going to be receiving funds. Congress has got to do better. It is Congress' responsibility to take care of the territories. That, along with tax implications of the tax bill from this last tax bill and the 2004 one, which drove out economic diversification of our economy, we have got to make some changes that deal not just with the disaster right now but the underlying fundamental, economic disparities that are in the territories which keep us from being able to keep up.

So I've gone over my time. I will submit and answer any questions that you all have. Thank you so much.

[The prepared statement of Ms. Plaskett follows:]

Testimony of Congresswoman Stacey Plaskett (VI)
Senate Committee on Energy and Natural Resources
Hearing: “Full Committee Hearing to Examine the Impact of COVID-19 to U.S. Territories”
366 Dirksen Senate Office Building
June 30, 2020. 2:30pm

Good Afternoon Chairwoman Murkowski, Ranking Member Manchin, members of the Committee. My name is Stacey Plaskett. I represent the Virgin Islands of the United States in the Congress. Thank you for the opportunity to present testimony before the committee on the impact of COVID-19 in the territories, and specifically in the Virgin Islands. The economic impact in particular has been especially negative in the territories.

Coronavirus in the Virgin Islands

As far as the public health crisis is concerned, our first COVID case was confirmed on March 13th. On that day, Governor Albert Bryan declared a local State of Emergency. On March 21st, the Governor asked all non-essential businesses to close. On March 23rd, the Governor issued a stay at home order effective March 25th. On April 2nd, President Trump approved Governor Bryan’s request for a major disaster declaration. This past month, the territory has moved through the “stay at home” to “safer at home” and now the “open doors” phase. Our mitigation efforts remain consistent with a clear message of masks are the most important tool to staying COVID free.

As of Sunday, June 27th, the Virgin Islands Department of Health has identified 81 positive cases with 4 remaining active cases, 71 recovered cases, 2 hospitalized and 6 deaths. Like everyone else, we experienced a lack of supplies of all kinds. With the assistance of federal partners, we are better supplied now; however, we remain concerned about the full and timely replacement of personal protective equipment, swabbing and testing supplies. The more than \$3.5 million in federal support from the Provider Relief Fund established by the CARES Act has been greatly appreciated, though more will be needed with cases ticking up slightly as airlines and visitors return.

Economic impact of the pandemic

The Virgin Islands is highly dependent on the tourism industry. It generates 30% of the territory's Gross Domestic Product and employs 25% of its civilian labor force. Due to reduced tourism revenues because of the COVID-19 pandemic, the territory is suffering even more devastating economic losses than other U.S. jurisdictions. As I will discuss, the most support needed for the Virgin Islands to come back from the pandemic will be related to measures for economic recovery and development.

The scale of the economic calamity for the Virgin Islands is such that even the sweeping relief provided by the CARES Act, while very much appreciated, is inadequate to prevent the territory from sinking into serious economic crisis. Economic models have projected a revenue shortfall of \$250 million in 2020—more than 25% of the yearly budget—and another \$250 million in 2021. The sudden and drastic drop in government revenues has reduced cash on hand to dangerously low levels, jeopardizing the ability

to make payroll and perform basic public services. Unemployment claims jumped nearly 100% from March to April of this year, from 4.7% to 8.4%, while government revenues have dropped to unprecedented lows.

In the Virgin Islands, tourist expenditures usually average about \$1.2 billion per year as the territory brings in hundreds of thousands of air arrivals and cruise visitors. Typically, there is an average of 178,644 cruise ship visitors in March (based on data from 2013-2019); however, in March 2020, there were only 78,078, or 43% of the typical monthly average, due to the global suspension of cruise ship activity that started on March 14th. Until at least July 18th, there will be no cruise ship visitors. One cruise ship operator has announced a restart in August of just eight ships out of a fleet of 100. If the April to September 2020 cruise ship and air arrivals are 50% off from historical averages, the likely expenditures will be just \$43.8 million. At the same time, the relaunch of one of the territory's major non-tourism sector manufacturing businesses, the oil refinery on St. Croix, may be delayed by the drop in global oil prices and usage, depriving the local government of another expected source of significant revenues.

Federal response

The CARES Act has ameliorated some of these harms, and we appreciate that; but it will not prevent serious and lasting damages to the Virgin Islands economy. The Coronavirus Relief Fund has provided the Virgin Islands with approximately \$75 million in desperately needed funds, but those funds can only be used for expenses that were unbudgeted and specific to COVID-19 and will fall far short of the revenues lost to the pandemic.

There are other areas of the federal response that have been uneven in the territories or have left them behind. For example, the list of Social Security recipients in the Virgin Islands has still not been sent by the U.S. Treasury to our local tax agency, the Virgin Islands Bureau of Internal Revenue, for these beneficiaries to receive their Economic Impact Payments. VI BIR is responsible for paying out the stimulus checks because the Virgin Islands operates mirror tax code of the U.S., under which the federal tax code regarding income taxes is mirrored as the local tax code, with proceeds of the mirror code paid to the local government. While there was a provision in the CARES Act providing for federal reimbursement for the cost, because the list of Social Security recipients in the Virgin Islands has not been sent from U.S. Treasury to VI BIR, seniors in the territory are not getting checks.

The territories were also excluded from access to the Municipal Liquidity Facility set up by the Federal Reserve pursuant to Title V of the CARES Act. The territory's tourism industry is critically strained, and it needs access to this type of credit, which would be used to meet cash-flow needs with very low interest rates.

Hospitals in the small territories were also not made eligible for outlier payments under the CARES Act. This was the Medicare hospital inpatient prospective payment system [IPPS] add-on payment for COVID-19 patients during the emergency period. Hospitals in the small territories, along with other mostly rural hospitals in the United States, continue to be paid by Medicare solely under a reasonable cost-based system that pre-dates the IPPS, established under the Tax Equity and Fiscal Responsibility Act of

1982, or “TEFRA”, and there was no consideration for TEFRA hospitals in the provision for add-on payments.

In addition, while the Virgin Islands (population 106,631) is approximately one fifth the size of the smallest populated state, Wyoming (population 578,759), under the Coronavirus Relief Fund established by the CARES Act, it received approximately one-seventeenth the minimum funding of the smallest States. This is inequitable: the pandemic does not distinguish between the United States territories and the United States, and the help available to American citizens threatened by it should not either. The relatively small amount of Coronavirus Relief Fund payment provided to the Virgin Islands cannot nearly fill the revenue gap facing the territory. As a result, the Virgin Islands will need a significant infusion of operating funding for fiscal years 2020 and 2021, covering both the outlays for COVID expenses, and the loss of revenue. Otherwise, it will fall far short of the revenues lost to the pandemic. The HEROES Act passed by the House has the formula and the provisions necessary to provide this relief.

Going forward

Going forward, the Virgin Islands will need long-term economic recovery measures to ensure financial viability and stability. None of the stimulus efforts enacted to date has addressed the financial burdens still faced by the Virgin Islands in its slow recovery from consecutive category 5 hurricanes in 2017: Community Disaster Loan (CDL) debt payments, and FEMA local cost share for recovery funding. These are enormous financial burdens that force the territory to devote hundreds of millions of dollars it does not have to continue to recover from past crises, and when it now badly needs

resources to combat the current one. Both of these issues should be addressed in the next package – the CDLs cancelled (as they typically are) and the FEMA local cost share waived – for the islands to fully recover.

Secondly, the Virgin Islands will need significant federal aid for its marine ports. The rapid spread of COVID-19 has had a major impact on global shipping and cruising, and this has taken a severe toll on the operations of the Virgin Islands Port Authority's marine division. The CARES Act contained targeted support for airports, but not for marine port operations. I ask that you support all possible federal funding initiatives for the marine industry, including port-specific appropriations to the U.S. insular areas.

Lastly, and perhaps most importantly, Congress should address tax provisions that are inequitable to the Virgin Islands in order to allow the territory to diversify its economy outside of tourism, so that its economic future is not determined by the state of the tourism sector and the ebbs and flows of disposable income of visitors.

For many years, federal law has provided for bona fide residents of the Virgin Islands to pay their U.S. tax obligations to the government of the Virgin Islands. It also has allowed the Virgin Islands to offer an economic development program that relates specifically to Virgin Islands source income, and income "effectively connected" with the active conduct of a Virgin Islands trade or business. This arrangement proved to be successful for many years, providing the backbone for economic growth and diversification.

That successful arrangement changed with the American Jobs Creation Act of 2004. The Act limited income “effectively connected” to the Virgin Islands to exclude all U.S. source income—a restriction that effectively discriminates against U.S. possession source income vis-a-vis foreign source income. This has severely inhibited economic growth in the Virgin Islands. The territory has been working to solve this problem through a simple clarification of what income is properly attributable to U.S. source income limitations: income which is attributable to an office or fixed place of business within the United States. The Virgin Islands has also sought parity between the way capital gains in the territory are treated, to be the same way that they are treated with respect to other territories. These changes, which I have introduced in legislation, H.R. 411, the Territorial Tax Parity Act, are a simple matter of parity that the Internal Revenue Service has no objections to, and should be included in any economic recovery legislation to provide a path for the Virgin Islands to recover its own economy over the long term.

There should also be an equitable exemption for U.S. territories from new taxes on global intangible low-taxed income (GILTI) enacted under the Tax Cuts and Jobs Act, intended for foreign countries, so that unintended consequences for the territories may be avoided, such as erosion of the tax base in the territories and exacerbated unemployment on the islands at the worst possible time. This legislation is numbered H.R.6648/S.3940, the Territorial Economic Recovery Act.

We must confront the difficult reality that these U.S. islands, and their U.S. citizen residents, have been neglected and allowed to fall behind. Thank you for the opportunity to speak, and I look forward to your questions.

The CHAIRMAN. Thank you, Congresswoman.
Let's next go to Congresswoman González-Colón from Puerto Rico.

STATEMENT OF HON. JENNIFFER GONZÁLEZ-COLÓN, CONGRESSWOMAN—PUERTO RICO, U.S. HOUSE OF REPRESENTATIVES

Miss GONZÁLEZ-COLÓN. Thank you, Chairman Murkowski and Ranking Member Manchin, as Puerto Rico's sole representative in Congress, for this invitation today in this hearing. I have submitted a more detailed version of my testimony to the Committee, so I will go over some immediate priorities during this time and knowing as well that the Governor of Puerto Rico submitted for the record her position.

[Charts displayed during Oral Statement follow:]

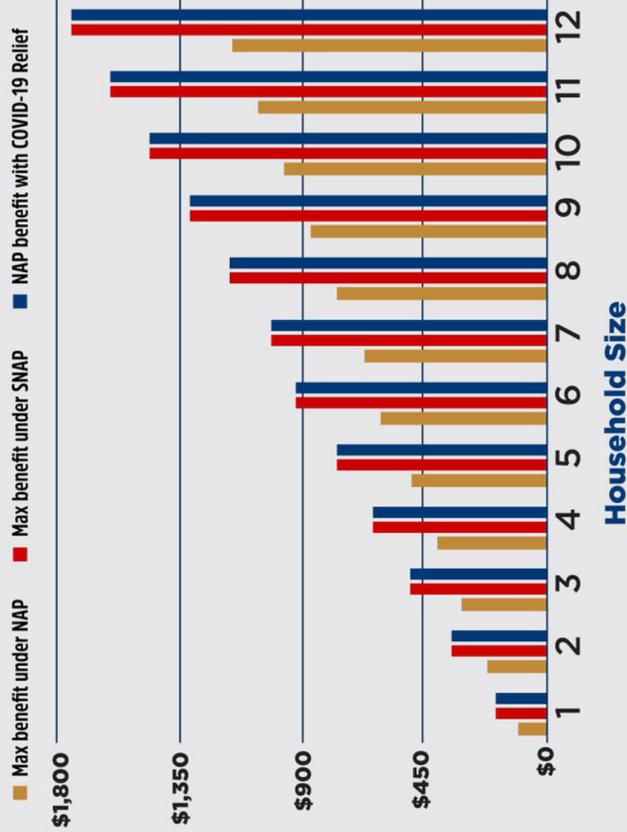
Impact of COVID-19 Nutrition Assistance Program (NAP) in Puerto Rico

Puerto Rico does not participate in SNAP; it has a capped block grant, NAP, funded every year at approximately **\$1.9 billion.**

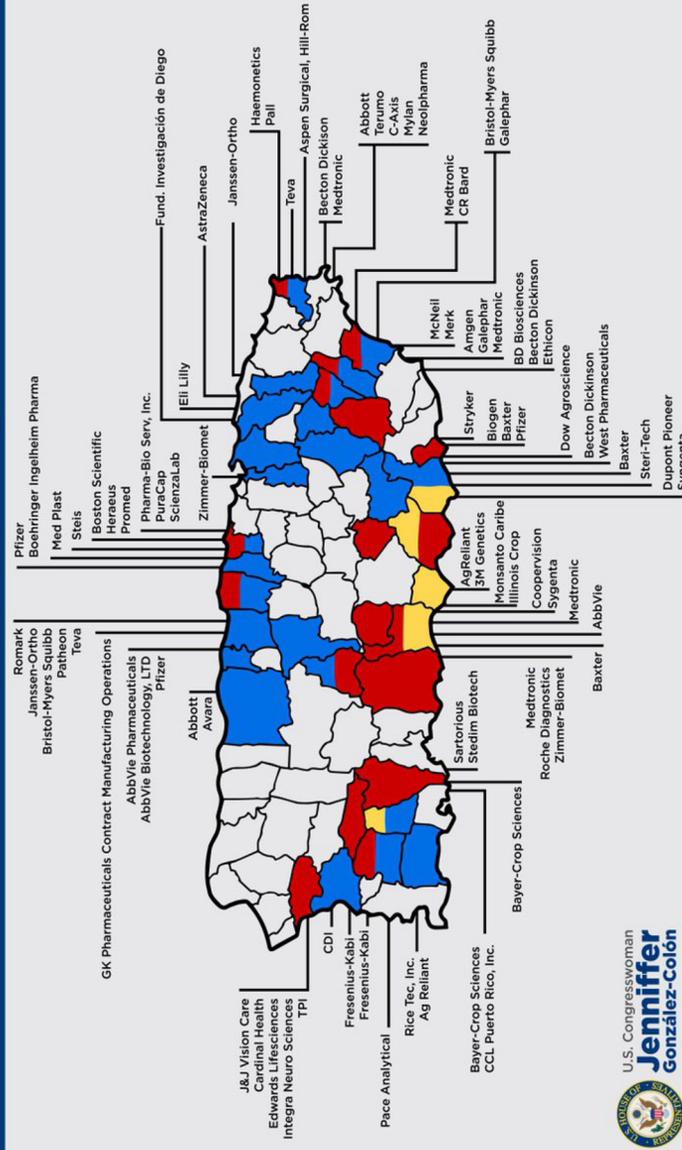
Current data:

- 1,462,878 participants in NAP
- 809,049 households
- Participation has increased by more than 100,000 beneficiaries during COVID-19 emergency period

Amount based on Income Eligibility



Pharmaceutical and Medical Device Manufacturing in Puerto Rico



Miss GONZÁLEZ-COLÓN. On March 15th, Puerto Rico became the first U.S. jurisdiction to implement the strictest lockdown with a mandatory curfew and a shutdown of all non-essential businesses. COVID-19 coupled with the 2017 hurricanes and this year's earthquakes have created major unexpected challenges for a territory that, because of its colonial and political status and the inability to fully participate in our nation's democracy, has always considerably lagged the states economically. One way to facilitate our recovery will be to include in any future emergency relief package, language similar to the ones that I have looked up from the bicameral Congressional Task Force—H.R. 302, the Child Tax Credit; H.R. 754, the Earned Income Tax Credit—that will provide equal treatment under both of these programs and an immediate impact on low income families in Puerto Rico which has a poverty level of 43.1, the highest in the nation.

Congress should—Puerto Rico's NAP to SNAP. Under the Family First and the CARES Act, we received \$297 million in supplemental funding for a capped blockgrant which is funded at \$1.96 billion and serve over 1.3 million beneficiaries on the island with benefits close to 50 percent less than SNAP which is in the states and we don't have the disaster portion of the SNAP program. However, this will not be enough to cover the actual demand. Congress should increase our capped grant by 30 percent to \$2.5 billion and provide an additional \$1.27 billion for NAP just to cover the current ongoing health emergency because we are going through the regular numbers in August. Also Puerto Rico was not included in the pandemic EBT program which provides nutritional benefit to students in light of school closures which started in mid-March and are still closed to this day. We have 218,000 students enrolled in child nutrition programs. Having access to the pandemic EBT will help counter food insecurity and hunger in those kids.

The Family First allowed testing for the uninsured, FMAP with 100 percent FMAP, even though the ongoing medical—Medicaid funding cap for the territories was raised for 3.5 percent in this year and 3.0 percent for the next year, but expenses for the uninsured remain 100 percent FMAP. That means that together with the testing and the treatment for Medicaid beneficiaries that will result in additional spending costing Puerto Rico to use up its capped Medicaid funding more quickly. Congress should exempt the coverage of the uninsured for the Medicaid cap or, what I prefer, eliminate the cap which is not in place in the states.

In Puerto Rico the best majority of Medicare beneficiaries receive their care through the local Medicare advantage organizations which accounted for nearly 50 percent of all healthcare expenses on the island. Congress should also provide emergency funding to providers of Medicare advantage so its funding can prevent hospitals from firing essential personnel during the emergency. Providers in Puerto Rico, so far, receive the lowest amount per capita of distribution of \$23 compared to the national per capita of \$174. Also, the providers in Puerto Rico are receiving \$930 compared to the national medium of \$9,700. That's a reason that won't be taken into account. This pandemic also demonstrated firsthand the risk posed by our country's heavy reliance on foreign manufacturing of medical supplies.

We need to increase domestic production of medical goods. That's why we introduced H.R. 6443, which is a bipartisan bill that would establish federal tax incentives for current and repatriated manufacturing operations in distressed zones in areas of the whole nation that are extremely high poverty and prevalent unemployment across the nation. This bill will also incentivize research, development and manufacturing of population health works that because of their low cost and especially prone of offshoring. Puerto Rico can play a leading role in our efforts to bring back that manufacturing to the U.S. Twelve of the top 20 pharmaceutical and biotechnology companies in the world have manufacturing operations in Puerto Rico. We also manufacture half of the 2018 world's top ten most sold drugs. Puerto Rico is also home to medical devices manufacturing sites producing surgical and medical instruments like Medtronic and Abbott. Puerto Rico has a long history of pharmaceutical manufacturing and accounts with a highly skilled workforce. The island's university system has also invested in the highly skilled workforce by turning out a steady stream of new talent, highly sought by the likes of NASA. This bill will have a unique opportunity to bring jobs back to the United States and spur the economy of distressed zones, areas, like Puerto Rico.

I look forward for answering any questions you may have and provide additional details and in the line of tourism, just with the COVID-19, we got 128 calls with Cruise Ship Council, 53 of them were upwards, 75 of them were transit. That means that more than 350,000 passengers less through the last year. We, and again, the cruises industry, major cruise line has extended their sailing suspension to September so that means that it will be 183 cancels. So with that, my time is over. Thank you.

[The prepared statement of Miss González-Colón follows:]

Statement of Congresswoman Jenniffer González-Colón (PR -At Large)
U.S. Senate Committee on Energy and Natural Resources Committee
Hearing to Examine the Impact of COVID-19 to U.S. Territories
June 29, 2020

As the sole representative in Congress for 3.2 million Americans in Puerto Rico, thank you Chairman Murkowski and Ranking Member Manchin, for the invitation to testify.

On March 15, two days after the President declared a national emergency due to the COVID-19 outbreak, Puerto Rico became one of the first U.S jurisdictions to implement a strict lockdown with a mandatory curfew and a shutdown of all non-essential businesses. Although the stay-at-home order ended May 3rd, and there is a phased-in reopening approach as the rest of the country, businesses are operating at a very limited capacity. Inbound tourism for example, which accounts for 10% of the Island's economy, will only be available July 15th. As you can imagine, this has only exacerbated the Island's economic challenges. According the Puerto Rico Fiscal Agency and Financial Advisory Authority, COVID-19 alone could cost the Island an estimated \$4 billion.

Throughout my tenure in Congress, I have sought to generate economic growth and turning many of the recommendations of the bicameral, bipartisan Congressional Task Force on Economic Growth in Puerto Rico into bipartisan legislation. The 2017 hurricanes, the earthquakes that began last December and continue, and, now the pandemic, have created major unexpected challenges for a territory that, because of its political status, has always lagged the states economically and has been in depression for almost all of the last 14 years. But Puerto Rico can recover, short term and long term.

The most immediate challenge that we have is on healthcare. I will briefly discuss some of these as it relates to the current health emergency.

Provide emergency funding to providers of Medicare Advantage

In Puerto Rico, the vast majority (90%) of Medicare beneficiaries with Medicare Part A and Part B, as well as almost all dual (97%) beneficiaries, receive their care through local Medicare Advantage (MA) organizations, which account for nearly half of all healthcare expenses in Puerto Rico.

Many of the mechanisms included in the CARES Act to provide immediate cashflow to healthcare providers were based on original Medicare. Because of the low percentage of original Medicare beneficiaries in Puerto Rico, the CARES Act provided very little funding. According to Department of Health and Human Services (HHS), 3,380 healthcare providers in Puerto Rico received a total amount of \$75,630,649 from the HHS Provider Relief Fund. Over 50% of healthcare providers in Puerto Rico received payments from this fund in an amount less than \$1,000 and 80% of healthcare providers received payments in an amount less than \$5,000.

Moreover, Puerto Rico has received fewer dollars per capita from the Provider Relief Fund than any State or territory, with a per-capita distribution for Puerto Rico of \$23.34 compared to the national average of \$159.70. HHS has also reported that, under the Medicare Advance Payments

Loan Program, Medicare Parts A and B providers in Puerto Rico received advances in the total amount of \$124,584,908. This also reflects the lowest per capital distribution, with a per-capita distribution for Puerto Rico of \$38.97 compared to the national average of \$305.72.

Remove Puerto Rico’s Medicaid cap to allow testing for the uninsured.

The Families First Coronavirus and Response Act allowed testing for the uninsured with a 100% Medicaid Federal Medical Assistance Percentage (FMAP). Even though the ongoing Medicaid funding cap for the territories was raised, the expenses for the uninsured remain at 100% FMAP. This, together with testing and treatment for Medicaid beneficiaries will result in additional spending causing Puerto Rico to use up its capped Medicaid funding more quickly. Congress should exempt coverage the uninsured from the Medicaid cap if it is unwilling to eliminate the cap, a multi-billion a year limitation not placed in the states.

Extend funding to Puerto Rico’s Nutritional Assistance Program.

Puerto Rico received additional funding for our limited, again capped program, in lieu of the Supplemental Nutrition Assistance Program block grant, known as NAP, in both the Families First Coronavirus Response Act and the CARES Act to respond to needs of those affected by the Coronavirus pandemic.

NAP funds provided under these two bills total approximately \$297 million. Typically, NAP is funded at \$1.96 billion and serves over 1.3 million beneficiaries, with benefits close to 50% less than their SNAP counterparts. Additionally, Puerto Rico is excluded from the provisions of Disaster-SNAP, that enable states to increase benefits in the aftermath of an emergency or disaster.

Congress should increase our capped grant by 30%, bringing us closer to SNAP levels, and provide an additional \$1.27 billion for NAP to cover the current ongoing health emergency. Also, Puerto Rico was not included in the Pandemic-EBT program, which provides nutritional benefits to students in light of school closures. In Puerto Rico, there are close to 218,000 students enrolled in child nutrition programs of the Department of Education. Allowing Puerto Rico to have equal participation would undoubtedly help counter food insecurity among our youth population during the pandemic.

Promote pharmaceutical and medical supply production in distressed zones.

Consistent with widespread, bipartisan advocacy for increased domestic production of medical goods, I am introducing the Medical Manufacturing, Economic Development, and Sustainability (MMEDS) Act. This bipartisan and bicameral bill — which Senator Rubio supports on this side of the Capitol would establish federal tax and other incentives for current and repatriated manufacturing operations in “distressed zones”, areas of extremely high poverty and prevalent unemployment, such as in the states that you, Madame Chairman and the Ranking Member represent.

The bill also seeks to incentivize research, development, and manufacturing of “population health drugs” that because of their low costs are especially prone to offshoring. This proposal has

garnered the support of the Government of Puerto Rico and of health organizations such as the American Heart Association.

Currently, 12 of the top 20 pharmaceutical and biotechnology companies in the world have manufacturing operations in Puerto Rico, including Amgen, Eli Lilly, Pfizer, Bristol-Myers Squibb, and AbbVie. Puerto Rico manufactures half of the 2018 world's top 10 bestselling drugs. Since 2005, manufacturers have invested more than \$65.9 million in infrastructure with Puerto Rico boasting the world's largest modular biotechnology plant for producing recombinant human insulin.

Puerto Rico is also home to over 70 medical devices manufacturing plants producing surgical and medical instruments, ophthalmic goods, dental equipment and supplies, orthodontic goods, dentures and appliances, and laboratory apparatus and furniture. Medtronic, Stryker, CR Bard, Abbott Medical Optics and Coopervision are among the top international medical equipment and supply companies that have found Puerto Rico to be a profitable location for manufacturing.

Puerto Rico has had a long history of pharmaceutical manufacturing and counts with a highly experienced workforce knowledgeable in GMP, FDA and other global regulations. The Island's university system has also invested in a highly skilled workforce by turning out a steady stream of new talent. According to statistics from the Government of Puerto Rico, colleges and universities in Puerto Rico had a total of 22,172 students involved in STEM-related concentrations during the 2017-2018 academic year.

We have a unique opportunity to bring jobs back, spur the economy of distressed areas like Puerto Rico, and enhance our national and health security.

CARES State Funding

I am also grateful and encouraged by the finding provided under the Coronavirus Relief Fund included in the CARES Act.

As you are aware, direct assistance for local governments under the Coronavirus Relief Fund established by the CARES Act was limited to those with populations of over 500,000. None of Puerto Rico's 78 municipalities meet this threshold.

While the Government of Puerto Rico will transfer \$100 million from its Coronavirus Relief Fund allocation to our 78 municipalities, this will not be enough. Should Congress allocate additional funding for State and territorial governments in a future package, I respectfully request that part of this funding be provided directly to municipalities and local governments, regardless of their population.

Small Business Loans

The Paycheck Protection Program (PPP) and the Economic Injury Disaster Loans have been instrumental in helping small businesses in Puerto Rico, enabling many to pay - instead of lay-off - their employees.

The pandemic and the earthquakes have cost more than 150 thousand jobs in just six major small businesses industries. As of June 20th, SBA lenders in Puerto Rico have approved more than 34 thousand PPP loans totaling of \$1.76 billion. As of today, nearly 80 percent of our 44,442 small businesses have been approved for PPP loans.

Allow use of CDBG-DR funds for COVID-19

If we truly want to keep pumping money into the Island's economy, Congress should allow use of CDBG-DR funds for hurricane relief for needs related to the earthquakes and COVID-19 as well.

Provide Equal Treatment of the Child Tax Credit (CTC) for residents of Puerto Rico

Workers in Puerto Rico with three or more children currently qualify for the refundable portion of the Child Tax Credit but, unlike in the states, workers with one child or two children do not. To correct this issue, I have introduced the bipartisan H.R. 302.

Extending this credit to workers with one or two children was a top recommendation of the Congressional Task Force on Economic Growth in Puerto Rico. Enacting this would not only assist working families but inject money into the local economy through purchasing of consumer goods. I am proud that Senators Rubio, Menendez and Rick Scott have sponsored the companion bill, S. 698.

Make residents in Puerto Rico eligible for the Earned Income Tax Credit (EITC)

Another tool for helping working families and the territorial economy would be the Earned Income Tax Credit. I have introduced H.R. 754 for this purpose. This year, the House has twice passed legislation to at least triple the amount that the territorial government plans to spend on a local EITC up to \$600 million a year.

Beyond its impact on individual families extending the EITC would provide a significant stimulus to the Puerto Rican economy. The stimulus would be both direct, by increasing consumer demand, and indirect, by encouraging a higher labor force participation rate. Studies have suggested that when all eligible Puerto Rico residents are applying for and receiving the EITC, the overall impact of the infusion of these funds would raise income by close to 4%.

Ensure Puerto Rico has access to reliable water

At a time when we are asking people to wash their hands to stop the spread of COVID-19, reliable water service is essential. Unfortunately, this has long been an issue in Puerto Rico, where as much as 59% of the water produced by the Puerto Rico Aqueduct and Sewer Authority—or about 299 million gallons per day (MGD)—is lost through a deficient distribution system.

To help address this issue and ensure Puerto Rico has access to additional resources to improve our water infrastructure and management practices, I filed H.R. 6050, the Puerto Rico WaterSMART Grants Eligibility Act, bipartisan legislation to make the territory an eligible for the Bureau of Reclamation's program of the same name. The WaterSMART Grants Program provides

cost-shared federal funding for water and energy efficiency projects, as well as water marketing strategy development. However, currently Puerto Rico is the only territory and noncontiguous jurisdiction in the United States where the competitively awarded WaterSMART Grants are not available. This despite the fact that we share many of the same water supply issues and vulnerabilities to droughts that differ from the mainland.

As the Committee of jurisdiction, I respectfully ask that you consider legislation similar to my H.R. 6050 to ensure Puerto Rico—just as Alaska, Hawaii, and rest of the U.S. territories—is eligible for WaterSMART Grants.

Offshore Wind for Territories Act

I also want to briefly mention another bill within the Committee's jurisdiction which, if enacted, could create jobs, address high energy costs, and boost revenue in Puerto Rico and the other territories. I'm referring to S. 499, the Offshore Wind for Territories Act, which was introduced by Senators Bill Cassidy of Louisiana and Brian Schatz of Hawaii. I introduced the House version, H.R. 1014, with bipartisan support from Delegates Sablan of the Northern Mariana Islands, Radewagen of American Samoa, Plaskett of the U.S. Virgin Islands, and with Representative Soto of Florida.

The Offshore Wind for Territories Act seeks to apply the Outer Continental Shelf Lands Act to the submerged lands off the territories and possessions of the United States for renewable energy purposes. Additionally, the bill directs the Department of the Interior to conduct feasibility studies on offshore wind lease sales off all territories. Should a study determine that a wind lease is viable, the Secretary is directed to conduct a lease sale off said territory.

Notably, the Offshore Wind for Territories Act would guarantee each territory a state-equivalent share of all royalty payments made to the federal government by offshore wind developers for projects in their respective Exclusive Economic Zones. Territories would receive 37.5% of qualifying revenues, consistent with the revenue sharing structure established for the Gulf Coast states under the Gulf of Mexico Energy Security Act. The bill also directs that 12.5% of revenues be deposited into a Coral Reef Conservation Fund, thus providing dedicated funding for coral reef conservation in U.S. territories and elsewhere, at no additional cost to the American taxpayer.

Last year, the House Natural Resources Committee passed H.R. 1014 with unanimous support. Similarly, last Congress, the House approved an identical bill by voice vote. The COVID-19 pandemic has made painfully clear the economic vulnerabilities faced by the U.S. territories. Any effort to address these challenges requires that we explore ways to tackle our high energy prices. The bipartisan Offshore Wind for Territories Act offers a sensible path to achieve this by providing American citizens on the islands cleaner access to electricity, while simultaneously boosting revenue and helping protect vulnerable coral reefs. I therefore respectfully request that the Committee move forward Senator Cassidy's S. 499.

Stimulus Checks

There is another issue that is very important to my constituents: the CARES ACT's Economic Impact Payments (EIPs).

Because of our unincorporated territory treatment under U.S. tax law, the U.S. Department of Treasury had to approve the Puerto Rico Treasury Department's plan for disbursement of the payments. This has delayed assistance to our most needy, particularly social security beneficiaries and veterans, many who until this day have not received their EIPs.

So, as we consider a new round of stimulus checks, I urge that we consider options for these vulnerable populations to have the same access to the tools that are available to social security beneficiaries and veterans across the rest of the nation.

Additionally, I urge the Senate to consider The All Dependent Children Count Act, which I co-sponsored in the House. This bill provides economic relief to a segment of the population such as dependents over the age of 17, who are in school and on their parent's income tax form, as well as disabled adults, who were left out of the CARES Act and make them eligible for payments.

In conclusion, I want to say that whether in Alaska, West Virginia or Puerto Rico, Americans should not be left behind by the federal government when it comes to our response during this pandemic.

I hope that this Committee will lead the Senate on behalf of the 3.2 million Americans in Puerto Rico. I look forward to answering any questions you may have. I would like to take this opportunity to also extend an open invitation to you to come to Puerto Rico!

Thank you, again, for inviting me to testify.

The CHAIRMAN. Thank you, Congresswoman. We appreciate that. And finally, we will hear from the Congressman from Guam, the Honorable Michael San Nicolas.

**STATEMENT OF HON. MICHAEL F.Q. SAN NICOLAS,
CONGRESSMAN—GUAM, U.S. HOUSE OF REPRESENTATIVES**

Mr. SAN NICOLAS. Good afternoon and *Hafa Adai*, Chairwoman Murkowski, Ranking Member Manchin and members of the Committee. I want to thank you for your leadership and advocacy in our combined efforts to provide equitable access of federal resources to the people of Guam and our U.S. territories in this global fight against the COVID-19 pandemic.

In accessing our COVID-19 circumstances and evaluating what further action must be taken federally in order to fully meet the needs of our territories, we can find one very specific parallel to the pandemic itself, preexisting conditions exacerbate risk factors. For Guam, in particular, the preexisting conditions of unfunded earned income tax credit (EITC) mandates, the lack of supplemental security income applicability and the underfunded costs of the migratory impacts and the Compacts of Free Association left us vulnerable and stall our efforts to recover.

From inception, the EITC costs for Guam have ballooned to roughly 30 percent of total income tax refund liabilities on Guam. The very nature of the EITC is that it is intended to pay a qualified recipient an amount in excess of their total banked income tax withholdings in order to incentivize work. While the EITC is a broad federal program is sustainable with the U.S. Treasury able to fund those costs using various deficit spending tools, applying them to Guam and leaving Guam to fund them is wholly unsustainable because a territory does not have similar access to such tools. As a result of this preexisting condition, Guam's capacity to meet COVID-19 threats was greatly diminished with less facility readiness and nurse recruitment and retention already inadequate to meet Guam's needs. The Congress must see to it that the Federal Government absorbs the cost of EITC by permanently funding it on a reimbursement basis in the territories. Additional thought should be put into a federal reserve facility to capitalize EITC costs to territories and direct payments from the Treasury to the Fed at the close of the Fiscal Year to reconcile it.

When the pandemic struck and our tourism-based economy contracted, we have seen many families go from making ends meet to not being able to provide. We must recognize that preexisting challenges facing our at-risk community and how their situations went from bleak to destitute as a result of the pandemic. At its core, supplemental security income, SSI, is intended to serve as a lifeline for those who qualify, particularly the aged and the disabled, who otherwise would have little means to provide for their basic needs. The lack of SSI on Guam means that thousands of children and families go without what otherwise would be a staple of American decency throughout this country.

Prior to the pandemic this at-risk group was cared for by aging parents and gracious family members, many of whom worked multiple jobs to supplement the cost of living and care for their loved ones. This preexisting condition already strained households and

the economic savaging of the pandemic has caused people to not only lose their jobs but lose the ability to care for the disabled loved ones who would be supported by SSI had they not been statutorily excluded. The Congress must end the discriminatory exclusion of territories from SSI. Recent Federal Court rulings are already indicating that such an outcome is forthcoming. It would be both pragmatic and magnanimous for the Congress to fully extend SSI to the territories, particularly during these COVID-19 times, so the people most in need, even before the pandemic, are finally made whole during the pandemic.

As the renegotiations for the Compacts of Free Association (COFA) Implementation Agreements begin in earnest, we must be mindful of how the preexisting condition of these agreements have created critical health, education and public safety vulnerabilities in the territory of Guam. To avail of the freedom to migrate, COFA citizens must either be doing so for education, health care or employment. The costs associated with hosting COFA migrants under either of these three prerequisites have vastly exceeded current funding levels. In 2019 the rate of federally-funded compact impact per COFA migrant was \$892 which is far short of the cost to educate at over \$9,000, the cost for government health care at almost \$3,000 and the cost of EITC should they be working and receiving that benefit at \$2,800 on a per citizen basis on Guam. These shortfalls create real systemic imbalances and right preexisting conditions for COVID-19 to go untested, untreated or undiagnosed as COFA migrants aren't eligible for Medicaid coverage and the cash shortfall underfunded migratory costs overburden the systems of care.

The Congress must strive to provide as much balance as possible to the costs associated of hosting COFA migrants, as failure to do so comes at a cost to health, education and public safety institutions provided by host communities. The Congress must also extend the applicability of Medicaid to COFA migrants as a common-sense component of the authorized migratory purpose of seeking healthcare and further consider extending Medicaid directly into COFA states as a means to ameliorate healthcare migration at the source. Addressing these preexisting conditions will certainly improve the outcome of all COVID-19 relief provided and permanently strengthen the Guam community to better withstand any future threats. While they represent longstanding issues within the territory of Guam, these pandemic circumstances have revealed the structural weaknesses caused by their systemic corrosion. To ensure our COVID-19 relief efforts are fully effective and to ensure that Guam and our territories are properly situated for any future risks, we must address the EITC, SSI and COFA inequities now, not later.

Thank you, Chairwoman Murkowski and Ranking Member Manchin and members of the Committee, for the opportunity to testify before you today. I stand ready to answer any questions you may have.

[The prepared statement of Mr. San Nicolas follows:]

TESTIMONY OF CONGRESSMAN MICHAEL F.Q. SAN NICOLAS (GU)
UNITED STATES SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
HEARING TO EXAMINE THE IMPACT OF COVID-19 TO U.S. TERRITORIES
ROOM 366, DIRKSEN SENATE OFFICE BUILDING
JUNE 30, 2020 | 2:30 P.M.

Good afternoon and *Håfa Adai* Chairwoman Murkowski, Ranking Member Manchin, and Members of the Committee. I want to thank you for your leadership and advocacy in our combined efforts to provide equitable access of federal resources to the people of Guam and our U.S. Territories in this global fight against the COVID-19 pandemic.

As you are aware, other than the United States military presence, tourism, specifically from our Asian neighbors, drives the economy of the island of Guam. In the last few years, Guam has received record numbers of tourists visiting our island. One point six (1.6) million tourists visited just last year alone, injecting over \$1.4B into our growing economy and supplying jobs for thirty percent of our workforce. While Guam has made great strides in this market, this pandemic has once again proved the need for a diversified economy to achieve a stable financial state. Our island's economic growth and risks uniquely tie to the economic successes and failures of our neighboring Asian countries due to our geographic proximity.

The global reach of this pandemic has shattered our island's economy along with the rest of the nation. While our rate of infection has not coincided proportionately, the ancillary economic impact has dealt a much more devastating blow by comparison. The significant reduction in commercial flights has brought a halt to our tourism industry. Over fifty percent of our workforce is unemployed and had no safety net due to our island's lack of an unemployment insurance program. For reference, Guam's unemployment rate prior to the pandemic was just above four percent (4%). I am deeply grateful for the bipartisan effort to ensure that the workforce in Guam has not been left to fend for themselves due to the lack of foresight and planning by its local government. The Pandemic Unemployment Assistance program set up in the CARES Act has provided reprieve for the many workers who found themselves out of a job through no fault of their own. I want to thank the Employment Training Administration for working diligently with our Guam Department of Labor team in standing up this much needed program. While various kinks are still being addressed, I am hopeful that our Guam Labor team will be able to streamline the process and set employer requirements to ensure that every displaced worker receives the benefits intended under the CARES Act.

Through various pandemic packages Congress has passed, including the FFCRA and the CARES Act, Guam is expected to receive over \$1.5B in pandemic related support. While Guam in the past has seen support and assistance from our federal government when major natural or man-made disasters have occurred, the efforts of this Congress to include Guam and the territories is remarkable and demonstrates that we are indeed woven into the fabric of this nation.

In spite of the historic relief provided to Guam, I have heard from many of my constituents back home and their pleas for assistance during these times resonates with me every single day. It is difficult not to be saddened by the stories of desperation and actual hunger that our families are going through. Cars filled with families are lining up for miles at two

o'clock in the morning just to ensure that they are able to get bags of food provided through the Emergency Food Assistance Program when distribution begins four hours later, and even then have been turned away at times due to demand exceeding supply. A massive influx of new families that need Supplemental Nutrition Assistance Program (SNAP) during these times has prevented many who have lost their income from receiving these benefits due to ongoing processing delays. Our unemployment rate coupled with administrative delays at the local level in implementing Economic Impact Payments (EIP) for over a month depleted the limited financial resources of families in a community that already had poverty levels over twenty percent before the pandemic. To date, also due to local administrative delay, over 20,000 people, approximately 75% of our unemployed, still await Pandemic Unemployment Assistance. Many families who otherwise would not qualify for federal public assistance programs find themselves desperately needing basic food assistance and seeking it by waiting in lines that rival those we have all seen in history books depicting failed communist regimes. Never in my life did I ever imagine I would bear witness to these kinds of circumstances in America.

Although federal agencies are allotting monies to our local government in accordance with the time frames provided by Congress to ensure immediate relief to Americans living in Guam, the delayed and inconsistent distribution of these funds by the local government have caused direct harm. Calls for transparency in the local process to fully understand and address the cause of impediments and inconsistencies are met with resistance, and my office and the local media are resorting to Freedom of Information Act requests to get basic information with even these actions unsuccessful. For example, our request to review the implementation plan to identify and distribute EIP to eligible recipients was rejected by both the Internal Revenue Service and the Guam Department of Revenue and Taxation, claiming that 26 U.S.C 6105 covered such information as "protected" and therefore not subject to review. Consequently, we are unable to determine why certain eligible EIP recipients are not receiving their full amounts, to include new mothers who had their babies in 2019, couples who were married in 2019, or single parents who filed on their own for the first time in 2019 but find their former spouse receiving what otherwise should have been intended for them and the children now under their sole care. While recent news has captured the alarming circumstances of deceased individuals receiving EIP it is far more tragic that the living, especially the children, are not. With such realities in desperate times, I find it unfathomable that a Member of Congress is unable to review implementation plans of federally funded programs to provide answers to constituents, proffer solutions for constituents, or craft legislation to remedy such challenges, when such federal programs are authorized and appropriated by the Congress.

As a number of my constituents have yet to receive an economic impact payment, and others have questioned the amount received without explanation, we are unable to provide general information because the local government claims procedures and agreements it has with the Internal Revenue Service is unreviewable (Exhibit A). This is a blatant disregard to transparency and accountability that is tantamount to the federal government's relief efforts. Moving forward, we must provide mandates that require local territorial governments to report to Congress its activities in carrying out Congressionally instituted programs, particularly when such programs are not already subject to some form of federal agency oversight and review. Without this much needed transparency, how are we as Representatives of our constituents able to come here and advocate for what our people need if our local territorial

governments refuse to disclose? How is this Congress, with plenary power over the territories, able to fully assess the efficacy of its programs and appropriations?

In assessing our COVID-19 circumstances and evaluating what further action must be taken federally in order to fully meet the needs of our territories we can find one very specific parallel to the pandemic itself; pre-existing conditions exacerbate risk factors. For Guam in particular, the pre-existing conditions of unfunded Earned Income Tax Credit (EITC) mandates, the lack of Supplemental Security Income (SSI) applicability, and the underfunded costs of the migratory impacts in the Compacts of Free Association (COFA) left us vulnerable and stall our efforts to recover.

From inception the EITC costs for Guam have ballooned to roughly thirty percent of total income tax refund liabilities on Guam. The very nature of the EITC is that it is intended to pay a qualified recipient an amount in excess of their total banked income tax withholdings in order to incentivize work. While the EITC as a broad federal program is sustainable with the U.S. Treasury able to fund these costs using various deficit spending tools, applying them to Guam and leaving Guam to fund them is wholly unsustainable because the territory does not have similar access to such tools. As a result, other locally funded programs to include health, education, and public safety are underfunded as these EITC costs are now court-ordered to be paid within six months of the close of income tax return filing deadlines, adversely impacting cash flow. This pre-existing condition has weakened the Guam healthcare in particular, as the Guam Memorial Hospital, Guam's local government hospital, has suffered serious operational deficits and grossly deferred maintenance over the last 12 years when the EITC mandate was applied to Guam. As a result of this pre-existing condition Guam's capacity to meet COVID-19 threats was greatly diminished with less facility readiness, and nurse recruitment and retention already inadequate to meet Guam's needs. The Congress must see to it that the federal government absorbs the cost of EITC by permanently funding it on a reimbursement basis in the territories. Additional thought should be put into a Federal Reserve facility to capitalize EITC costs to territories, and direct payment from the Treasury to the FED at the close of the fiscal year to reconcile it.

When the pandemic struck, and our tourism-based economy contracted we have seen many families go from making ends meet to not being able to provide. While we have discussed these circumstances earlier, we must recognize the pre-existing challenges facing our at-risk community, and how their situations went from bleak to destitute as a result of the pandemic. At its core, SSI is intended to serve as a lifeline for those who qualify, particularly the aged and the disabled, who otherwise would have little means to provide for their basic needs. The lack of SSI on Guam means that thousands of children and families go without what otherwise would be a staple of American decency throughout the country. Prior to the pandemic, this at-risk group was cared for by aging parents and gracious family members many of whom worked multiple jobs to supplement the cost of living and care for their loved ones. This pre-existing condition already strained households, and the economic savaging of the pandemic has caused people to not only lose their jobs but lose the ability to care for their disabled loved ones who would be supported by SSI had they not been statutorily excluded. The Congress must end the discriminatory exclusion of territories from SSI. Recent federal court rulings (Exhibit B) are already indicating that such an outcome is forthcoming. It would be both pragmatic and magnanimous for the

Congress to fully extend SSI to the territories particularly during these COVID-19 times, so that the people most in need even before the pandemic are finally made whole during the pandemic.

As the renegotiations for the Compact of Free Association implementation agreements begin in earnest, we must be mindful of how the pre-existing condition of these agreements have created critical health, education, and public safety vulnerabilities in the territory of Guam. To avail of the freedom to migrate COFA citizens must either be doing so for education, healthcare, or employment. The costs associated with hosting COFA migrants under either of these three pre-requisites have vastly exceeded current funding levels. In 2019, the rate of federally funded compact impact per COFA migrant was \$892, which is far short of the cost to educate (\$9,186), the cost for government healthcare (\$2,995) and the cost of EITC (\$2,800) on a per citizen basis on Guam. These shortfalls create real systemic imbalances and ripe pre-existing conditions for COVID-19 to go untested, untreated, or undiagnosed, as COFA migrants are ineligible for Medicaid coverage and the cash shortfall of underfunded migratory costs over-burden the systems of care. The Congress must strive to provide as much balance as possible to the costs associated with hosting COFA migrants, as failure to do so comes at a cost to the health, education, and public safety institutions provided by host communities. The Congress must also extend the applicability of Medicaid to COFA migrants as a common-sense component of the authorized migratory purpose of seeking healthcare, and further consider extending Medicaid directly into COFA States as a means to ameliorate healthcare migration at the source. Furthermore, it was brought to my attention that the economic contribution of COFA migrants in their host communities should be factored in considering the true cost of the impact, and I fully welcome this consideration, as part of this should also include any EITC liability accrued payable to eligible COFA migrants.

Addressing these pre-existing conditions will certainly improve the outcomes of all COVID-19 relief provided, and permanently strengthen the Guam community to better withstand any future threats. While they represent long standing issues within the territory of Guam these pandemic circumstances have revealed the structural weaknesses caused by their systemic corrosion. To ensure our COVID-19 relief efforts are fully effective, and to ensure that Guam and our territories are properly situated for any future such risks, we must address the EITC, SSI, and COFA inequities now, not later.

Thank you, Chairwoman Murkowski, Ranking Member Manchin, and Members of the Committee, for the opportunity to testify before you today. I stand ready to answer any questions you may have.

EXHIBIT A



Dipattamenton Kontribusion yan Adu'aña

DEPARTMENT OF

REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guåhan

EDDIE BAZA CALVO, Governor Mags'låhi
RAY TENORIO, Lt. Governor Titilente GubetnadorJOHN P. CAMACHO, Director
Direktor
MARIE M. BENITO, Deputy Director
Sigundo Direktor

May 7, 2020

Honorable Michael F.Q. San Nicolas
Member, United States Congress
330 Hernan Cortes Avenue Suite 300
Hagatna, Guam 96910
671-472-6453

Re: Sunshine Reform Act of 1999 request dated 4/20/2020 (received via email dated 4/21/2020)

Buenas yan Saluda Congressman San Nicolas,

The Department of Revenue & Taxation (DRT) is providing you the following response and documents.
As stated in your request;

- 1. Any and all documents related to instructions, directives, and guidance issued to employees of the Guam Department of Revenue and Taxation in processing filer information for eligibility and payments related to the issuance of Economic Impact Payments, pursuant to Sec. 2201 of Public Law 116-136, the federal Coronavirus Aid, Relief, and Economic Security Act.**

As requested, documents related to instructions, directives, and guidance issued to employees are provided. These documents represent data that have led up to the program implementation for the Economic Impact Payment to include published guidance for eligibility, announcement of a non-filer claim (EIP-NF), and our more recent FAQ's on the matter. Please see attached documents.

- 2. Any and all documents related to agreements issued between the Government of Guam and the United States Internal Revenue Service related to the issuance of Economic Impact Payments, pursuant to Sec. 2201 of Public Law 116-136, the federal Coronavirus Aid, Relief, and Economic Security Act.**

Regarding item #2, DRT is unable to provide any data related to the agreement pursuant to "26 U.S. Code § 6105 - Confidentiality of information arising under treaty obligations".

If you have any further questions, please contact me at 635-1815 or email at Dafne.Shimizu@revtax.guam.gov.

Senseramente,


DAFNE MANSAPIT-SHIMIZU
Director

21

MICHAEL F.Q. SAN NICOLAS
GUAM

1632 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-1188

**Congress of the United States
House of Representatives
Washington, DC 20515-990**

330 HERRAN CORTES AVENUE SUITE 300
HAGATNA, GU 96910
(671) 475-0453

April 20, 2020

Dafne Mansapit-Shimizu
Director
Department of Revenue and Taxation
Government of Guam
1240 Army Drive
Barrigada, GU 96913

Via email: dafne.shimizu@revtax.guam.gov

Dear Director Shimizu,

Pursuant to the authority provided by Chapter 10 of Title 5 of the Guam Code Annotated, I hereby request copies of the following documents:

1. Any and all documents related to instructions, directives, and guidance issued to employees of the Guam Department of Revenue and Taxation in processing filer information for eligibility and payments related to the issuance of Economic Impact Payments, pursuant to Sec. 2201 of Public Law 116-136, the federal Coronavirus Aid, Relief, and Economic Security Act.
2. Any and all documents related to agreements issued between the Government of Guam and the United States Internal Revenue Service related to the issuance of Economic Impact Payments, pursuant to Sec. 2201 of Public Law 116-136, the federal Coronavirus Aid, Relief, and Economic Security Act.

Please make available these copies in electronic form to be sent to me via email at Michael.SanNicolas@mail.house.gov. I appreciate your consideration and your dedicated staff's time in complying with this request for information.

Respectfully,



Michael F.Q. San Nicolas
Member of Congress
Guam

EXHIBIT B

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DISTRICT COURT OF GUAM

KATRINA SCHALLER, by and through her
legal guardians KIMBERLY A. FEGURGUR
and JOHN A. FEGURGUR,

Plaintiff,

vs.

U.S. SOCIAL SECURITY
ADMINISTRATION and

ANDREW M. SAUL, in his official capacity as
Commissioner of Social Security
Administration

Defendants.

CIVIL CASE NO. 18-00044

ORDER

1. Denying Defendants’ Motion to Dismiss for Lack of Jurisdiction;
2. Granting Plaintiff’s Motion for Summary Judgment; and
3. Denying Defendants’ Cross Motion for Summary Judgment.

In this action, Plaintiff, a Guam resident, challenges the Defendants’ refusal to grant her Supplemental Social Security benefits established under Title XVI of the Social Security Act, 42 U.S.C. § 1381 *et seq.*, and asserts that said refusal violates the equal protection clause of the Fifth and Fourteenth Amendments of the U.S. Constitution and the Organic Act of Guam, 48 U.S.C. § 1421b.

Pending before the court are the following motions: (1) Defendants’ Motion to Dismiss for Lack of Jurisdiction, ECF No. 22; (2) Plaintiff’s Motion for Summary Judgment, ECF No. 39; and (3) Defendants’ Cross Motion for Summary Judgment, ECF No. 46. The court heard argument on said motions and thereafter took the matters under advisement. The court ordered further briefing on certain issues after the Court of Appeals for the First Circuit issued its decision in *United States v. Vaello-Madero*, 956 F.3d 12 (1st Cir. 2020). *See* Order, ECF No. 73. Having reviewed relevant case law and the parties’ filings, the court hereby issues this Order DENYING the Defendants’

1 Motion to Dismiss and Cross Motion for Summary Judgment and GRANTING the Plaintiff's
 2 Motion for Summary Judgment.

3 **I. BACKGROUND:**

4 A. Jurisdiction and Venue

5 The Complaint, filed on December 6, 2018, asserts that the case presents a federal question,
 6 and thus jurisdiction is proper under 28 U.S.C. § 1331. Additionally, because the Plaintiff is a
 7 citizen residing in Guam, venue is proper in this district. *See* Compl. at ¶¶7-8.

8 B. Statutory Framework

9 The Social Security Administration (“SSA”) administers two primary programs that
 10 provide benefits to aged persons, blind persons, and persons with disabilities who meet certain
 11 income and resource requirements. At issue here is the Supplemental Security Income (“SSI”)
 12 program, established by Title XVI of the Social Security Act, 42 U.S.C. § 1381 *et seq.* Congress
 13 created the SSI program “[f]or the purpose of establishing a *national* program to provide
 14 supplemental security income to individuals who have attained age 65 or are blind or disabled.”
 15 *Id.* at 1381 (emphasis added). SSI benefits are paid from the general revenues that are funded by
 16 federal income taxes. The statute as enacted provided that eligibility for SSI benefits was limited
 17 to individuals residing inside the “United States,” which, by definition, meant “the 50 States and
 18 the District of Columbia.” 42 U.S.C. § 1382c(e). Residents of the U.S. territories were not included
 19 in this definition, however, in 1976 Congress made SSI benefits available to residents of the CNMI
 20 by virtue of a joint resolution which approved the CNMI’s political union with the United States.¹

21 C. Factual Background

22 Plaintiff Katrina Schaller and her 50-year old twin sister Leslie were born on January 25,
 23 1970, and grew up in Pennsylvania with their parents and older sister Kim. Compl. at ¶5. After
 24 their parents separated, Plaintiff moved to live with her mother. *Id.* Plaintiff applied for and
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26 ¹ *See* Covenant to Establish a Commonwealth of the Northern Mariana Islands, Pub. L. No.
 27 94-241, §502(A)(1), 90 Stat. 263, 268 (1976) (codified at 48 U.S.C. § 1801 *et seq.*) (“The
 28 following laws of the United States . . . will apply to the [CNMI] . . . Title XVI of the Social
 Security Act as it applies to the several states[.]”).

1 received SSI benefits after the SSA determined she was disabled on August 28, 2001. Decl. K.
2 Fegurgur at ¶5 attached as Ex. 1 to Pl.'s Concise Stmt., ECF No. 41.

3 After her mother's death in October 2007, Plaintiff moved to Guam temporarily to live with
4 her sister Kim and Kim's husband John Fegurgur, who are Plaintiff's legal guardians. *Id.* 7 and
5 Compl. at ¶5, ECF No. 1. Before leaving for Guam, the Plaintiff and Kim visited the SSA office
6 in Washington, Pennsylvania to inquire if it was still possible for the Plaintiff to receive SSI
7 coverage in Guam. Decl. K. Fegurgur at ¶7, ECF No. 41. An SSA officer informed them that if
8 and when the Plaintiff leaves the covered geography of the United States for over 30 days, her SSI
9 benefits would be lost. *Id.* The SSA agent confirmed that Guam was not part of the covered
10 geography of the United States for citizens to receive SSI benefits. *Id.* The Plaintiff's SSI benefits
11 stopped while she was on Guam. *Id.*

12 The Plaintiff and her sister Kim returned to Pennsylvania in 2008, and the Plaintiff's SSI
13 benefits resumed while they were in Pennsylvania. Decl. K. Fegurgur at ¶8, ECF No. 41. When
14 the Plaintiff permanently moved to Guam in 2008, her SSI benefits were again terminated, and she
15 has not received any such payments since. *Id.* at ¶10.

16 Plaintiff and twin sister Leslie both suffer from "myotonic dystrophy, a debilitating,
17 degenerative genetic disorder affecting muscle function and mental processing." Compl. at ¶5, ECF
18 No. 1. This disorder inhibits some aspects of Leslie's mobility, but she otherwise leads a full,
19 independent life in Pennsylvania based in part on the monthly SSI payments (about \$755) she
20 receives because she lives in the "United States." *Id.* On the other hand, Plaintiff Katrina "lacks
21 the functionality to perform many activities of daily living, let alone earn a steady income, and is
22 permanently disabled." *Id.* As noted, Plaintiff stopped receiving SSI benefits when she permanently
23 moved to Guam 12 years ago in 2008.

24 On December 6, 2018, this suit was initiated on the Plaintiff's behalf because her legal
25 guardians believed "SSI benefits could significantly improve her quality of life as soon as Katrina
26 starts receiving them." Decl. K. Fegurgur at ¶12, ECF No. 41. The Complaint asserts Equal
27 Protection claims under the Fifth and Fourteenth Amendments and the Organic Act of Guam. The
28 Plaintiff essentially claims that the Government violated the equal protection clause by terminating

1 her SSI benefits based solely on her residency on Guam, while similarly situated citizens in the
2 CNMI are afforded those same benefits. *See* Compl. at ¶¶5-6, 15.

3 **II. LEGAL STANDARDS**

4 A. Rule 12(b)(1) - Lack of Jurisdiction

5 Defendants move to dismiss, pursuant to Fed. R. Civ. P. 12(b)(1), asserting that the
6 Complaint fails to allege that Plaintiff presented her claims to the Commissioner of Social Security
7 and received the Commissioner's final decision before bringing suit. Rule 12(b)(1) allows the court
8 to dismiss a claim for lack of jurisdiction. "It is a fundamental principle that federal courts are
9 courts of limited jurisdiction." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978).
10 Thus, the plaintiff bears the burden of establishing subject matter jurisdiction. Federal subject
11 matter jurisdiction must exist at the time the action is commenced. *Morongo Band of Mission*
12 *Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988). A court must
13 presume lack of jurisdiction until the plaintiff establishes otherwise. *Kokkonen v. Guardian Life*
14 *Ins. Co. of America*, 511 U.S. 375 (1994); *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986) (The
15 party seeking to invoke federal court jurisdiction has the burden of establishing that jurisdiction is
16 proper.).

17 A party bringing a Rule 12(b)(1) challenge to the court's jurisdiction may do so either on
18 the face of the pleadings or by presenting extrinsic evidence for the court's consideration. *See*
19 *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000) ("Rule 12(b)(1) jurisdictional attacks can be
20 either facial or factual"). "In a facial attack, the challenger asserts that the allegations contained in
21 a complaint are insufficient on their face to invoke federal jurisdiction." *Safe Air for Everyone v.*
22 *Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In evaluating a facial attack to jurisdiction, the court
23 must accept the factual allegations of the complaint as true. *See Lacano Invs., LLC v. Balash*, 765
24 F.3d 1068, 1071 (9th Cir. 2014). However, legal conclusions in the complaint are not accepted as
25 true, even if they are cast as factual allegations. *See id.*

26 B. Rule 12(b)(6) - Failure to State a Claim

27 Defendants' Motion to Dismiss also asserts that the Complaint fails to state a claim on
28 which relief can be granted. A defendant is entitled to dismissal under Rule 12(b)(6) when a

1 complaint fails to state a cognizable legal theory or alleges insufficient facts under a cognizable
2 legal theory. *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013). The Ninth Circuit has
3 explained that the purpose of a Rule 12(b)(6) motion is to test a complaint’s legal sufficiency, not
4 to decide its merits. *See Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Generally, the
5 plaintiff’s burden at this stage is light since Rule 8(a) requires only that a complaint “shall contain
6 . . . a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.
7 Civ. P. 8(a). “All allegations of material fact are taken as true and construed in the light most
8 favorable to the nonmoving party.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.
9 2001). The court may dismiss based on lack of cognizable legal theory or on the absence of facts
10 that would support a cognizable theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th
11 Cir. 1990). And, while the plaintiff’s burden is light, it is not nonexistent – the complaint must
12 “contain either direct or inferential allegations respecting all the material elements necessary to
13 sustain recovery under some viable legal theory.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562
14 (2007) (internal quotation marks omitted). “To survive a motion to dismiss, a complaint must
15 contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its
16 face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 570) (internal
17 quotation marks omitted). A claim is facially plausible if “the plaintiff pleads factual content that
18 allows the court to draw the reasonable inference that the defendant is liable for the misconduct
19 alleged.” *Id.* at 678 (citing *Twombly*, 550 U.S. at 556). The court must “draw on its judicial
20 experience and common sense” to determine the plausibility of a claim given the specific context
21 of each case. *Id.* at 679.

22 C. Motions for Summary Judgment

23 The parties have also filed competing summary judgment motions. Summary judgment is
24 appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file,
25 together with the affidavits, if any, show that there is no genuine issue as to any material fact and
26 that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). Summary
27 judgment is not proper if material factual issues exist for trial. *See, e.g., Celotex Corp. v. Catrett*,
28 477 U.S. 318, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Warren v.*

1 *City of Carlsbad*, 58 F.3d 439, 441 (9th Cir.1995). In evaluating a motion for summary judgment,
2 the district courts of the United States must draw all reasonable inferences in favor of the
3 nonmoving party, and may neither make credibility determinations nor perform any weighing of
4 the evidence. *See, e.g., Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 554-55, (1990); *Reeves v.*
5 *Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000).

6 **III. DISCUSSION**

7 **A. Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction**

8 Defendants move to dismiss, pursuant to Fed. R. Civ. P. 12(b)(1), asserting that the
9 Complaint fails to allege that Plaintiff presented her claims to the Commissioner of Social Security
10 and received the Commissioner's final decision before bringing suit. As noted in the Defendants'
11 motion, the Social Security Act expressly provides that 42 U.S.C. § 405(g) is the exclusive
12 jurisdictional basis for a claimant seeking judicial review of claims arising under the Act. 42 U.S.C.
13 § 405(g) and (h). The Supreme Court has stated that §405(g) "consists of a nonwaivable
14 requirement that a claim for benefits shall have been presented to the Secretary, and a waivable
15 requirement that the administrative remedies prescribed by the Secretary be pursued fully by the
16 claimant." *Heckler v. Ringer*, 466 U.S. 602, 617 (1984) (quotation marks and citation excluded).

17 In her Opposition, the Plaintiff rebuts the Defendants' allegations that she failed to present
18 her claims to the SSA. The Plaintiff notes that she met the presentment requirement twice – first,
19 when she initially applied to the SSA to qualify for benefits in Pennsylvania; second when she
20 notified the SSA that she would be temporarily and then permanently moving to Guam, prompting
21 the SSA to terminate her benefits each time. *See* Decl. K. Fegurgur at ¶5, 7-10, attached as Ex.
22 1 to Pl.'s Concise Stmt., ECF No. 41. With regard to exhausting administrative remedies, the
23 Plaintiff asks the court to waive this requirement because it would have been futile for her to have
24 appealed the SSA's decision to terminate her SSI benefits when she moved to Guam.

25 The Defendants, in their Reply brief, have conceded this issue. *See* Reply at 2, n.1, ECF
26 No. 45. After having read the Declaration of Kimberly Fegurgur with regard to her meeting with
27 SSA about the Plaintiff's plan to move to Guam, the Defendants "are no longer challenging the
28 subject matter jurisdiction of this [c]ourt[.]" *Id.* Counsel for the Defendants reaffirmed this

1 position at the hearing on the motions. In light of this concession, the court hereby denies the
2 Motion to Dismiss insofar as it asserts this court lacks subject matter jurisdiction.

3 **B. Defendants' Motion to Dismiss for Failure to State a Claim**

4 The Defendants next contend that dismissal is warranted because the Complaint fails to
5 state a claim on which relief can be granted since the Supreme Court of the United States has
6 already stated that Congress may limit eligibility for the SSI programs to residents of the 50 states
7 and the District of Columbia. *See Califano v. Gautier Torres*,² 435 U.S. 1 (1978). In *Gautier*
8 *Torres*, a recipient who qualified for SSI benefits while residing in Connecticut but had his benefits
9 discontinued when he moved to Puerto Rico brought an action in the District Court of Puerto Rico
10 claiming that the exclusion of Puerto Rico from the SSI program was unconstitutional. *Id.* at 2-3.
11 A three-judge court was convened and ultimately found the statute unconstitutional as applied to
12 *Gautier Torres* because it interfered with his right to travel. *Id.* at 3. Two other individuals (Colon
13 and Vega) also brought similar suits, and, based on the earlier decision, the district judge enjoined
14 the SSA from discontinuing said individuals' SSI benefits on the basis of their change of residency
15 to Puerto Rico. *Id.* The government appealed, and the Supreme Court reversed.

16 The Supreme Court in *Gautier Torres* primarily addressed the right to travel claim but noted
17 in a footnote that the appellee *Torres*'s

18 complaint had also relied on the equal protection component of the Due Process
19 Clause of the Fifth Amendment in attacking the exclusion of Puerto Rico from the
20 SSI program. Acceptance of that claim would have meant that all otherwise
21 qualified persons in Puerto Rico are entitled to SSI benefits, not just those who
22 received such benefits before moving to Puerto Rico. But the District Court
23 apparently acknowledged that Congress has the power to treat Puerto Rico
24 differently, and that every federal program does not have to be extended to it.

25 *Gautier Torres*, 435 U.S. at 3, n.4.

26 The Supreme Court instructed that when faced with a constitutional attack on a law
27 providing for governmental payments of monetary benefits, such "statute is entitled to a strong
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² The parties have referred to this case in their briefs as the *Torres* case. "According to Spanish naming conventions, if a person has two surnames, the first (which is the father's last name) is primary and the second (which is the mother's maiden name) is subordinate." *United States v. Martínez-Benítez*, 914 F.3d 1, 2 n.1 (1st Cir. 2019). The court's decision will refer to this case using both surnames.

1 presumption of constitutionality. So long as its judgments are rational, and not invidious, the
2 legislature's efforts to tackle the problems of the poor and the needy are not subject to a
3 constitutional straitjacket." *Id.* at 5 (quotation marks and citations omitted). The Supreme Court
4 further noted that

5 [a]t least three reasons have been advanced to explain the exclusion of persons in
6 Puerto Rico from the SSI program. First, because of the unique tax status of Puerto
7 Rico, its residents do not contribute to the public treasury. Second, the cost of
8 including Puerto Rico would be extremely great Third, inclusion in the SSI
9 program might seriously disrupt the Puerto Rican economy.

10 *Id.* at 5, n.7.

11 Two years later, the Supreme Court decided the case of *Harris v. Rosario*, 446 U.S. 651
12 (1980), which dealt with another federal program – the Aid to Families with Dependent Children
13 ("AFDC") program, which provides financial assistance to states and Territories to aid families
14 with needy dependent children. *Id.* AFDC recipients residing in Puerto Rico had filed a class
15 action against the Secretary of Health and Human Services challenging the constitutionality of
16 certain provisions of the program, "claiming successfully that the lower level of AFDC
17 reimbursement provided to Puerto Rico violates the Fifth Amendment's equal protection
18 guarantee." *Id.* The Supreme Court, relying on *Gautier Torres*, disagreed, stating:

19 Congress, which is empowered under the Territory Clause of the Constitution, U.S.
20 Const., Art. IV, § 3, cl. 2, to "make all needful Rules and Regulations respecting the
21 Territory . . . belonging to the United States," may treat Puerto Rico differently from
22 States so long as there is a rational basis for its actions. In [*Gautier Torres*], we
23 concluded that a similar statutory classification was rationally grounded on three
24 factors: Puerto Rican residents do not contribute to the federal treasury; the cost of
25 treating Puerto Rico as a State under the statute would be high; and greater benefits
26 could disrupt the Puerto Rican economy. These same considerations are forwarded
27 here in support of §§ 1308 and 1396d(b) . . . and we see no reason to depart from
28 our conclusion in [*Gautier Torres*] that they suffice to form a rational basis for the
29 challenged statutory classification.

30 *Harris*, 446 U.S. at 651-52 (internal citations omitted).

31 Based on these precedents, the Defendants contend that the Complaint fails to state a claim
32 upon which relief can be granted. The Defendants assert that the Plaintiff's equal protection claims
33 have no merit because the Supreme Court has made it abundantly clear that Congress may limit
34 eligibility for SSI benefits to residents of the 50 states and the District of Columbia.

35 The Plaintiff, on the other hand, argues that reliance on *Gautier Torres* and *Harris* is

1 misplaced. The Plaintiff notes that her Complaint alleges the Government violated her right to
2 Equal Protection when “Congress intentionally provided CNMI residents access to the benefits it
3 had denied Guam.” Compl. at ¶19. The Plaintiff here challenges what she claims is an irrational
4 line-drawing between CNMI and Guam, *not* between Guam and the 50 States. The Plaintiff asserts
5 *Gautier Torres* and *Harris* are not controlling to the facts herein since said cases dealt with
6 disparate treatment between the Territories and the 50 States, whereas the Plaintiff’s claims focus
7 on the differential treatment she experienced as a U.S. citizen on Guam compared to similarly
8 situated citizens in the CNMI.

9 Plaintiff contends that she has appropriately pled Equal Protection claims. To state an Equal
10 Protection claim, a plaintiff must allege that (1) she is a member of an identifiable class, (2) the
11 defendant treated her differently from other similarly situated persons, and (3) the defendant acted
12 with an intent or purpose to discriminate against her based on her membership in the identifiable
13 class. *See Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1134 (9th Cir. 2003). Here,
14 the Plaintiff’s Complaint sufficiently pleads that she is a U.S. citizen residing on Guam. Compl.
15 at ¶¶1 and 9. The Complaint also asserts that Plaintiff qualified for and received SSI benefits due
16 to her financial status and hereditary medical disorder, that she continues to suffer from this
17 disorder, but her benefits were terminated when she moved to Guam. *Id.* at ¶¶1, 6 and 9. Finally,
18 the Complaint asserts that the Government has expressly and therefore intentionally excluded Guam
19 but not the CNMI from the definition of the “United States” under the SSI program. *Id.* at ¶¶1-2,
20 6, 9 and 15.

21 The court concurs with the Plaintiff that her Complaint alleges “sufficient factual matter,
22 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft*, 556 U.S. at 678.
23 And, as noted previously, the purpose of a 12(b)(6) motion to dismiss is to test the sufficiency of
24 the complaint, not to decide its merits. *Navarro*, 250 F.3d at 732. The *Gautier Torres* and *Harris*
25 cases are factually distinguishable from the Plaintiff’s claims, such that this court can not conclude
26 – at least at the motion to dismiss stage – that these cases *require* dismissal. As noted above,
27 *Gautier Torres* was not decided on equal protection grounds. Even Defendants acknowledge that
28 *Gautier Torres* “primarily involved a right-to-travel claim[.]” Defs.’ Resp. to Pl.’s Suppl. Br. at 3,

1 ECF No. 75. Additionally, *Harris* involved an equal protection challenge to the lower level of
2 reimbursement provided to Puerto Rico under the AFDC program, not the SSI program.
3 Accordingly, the court denies the Rule 12(b)(6) motion as the Plaintiff has adequately alleged Equal
4 Protection claims.³

5 C. Plaintiff's Motion for Summary Judgment and Defendants' Cross Motion

6 Plaintiff asserts the exclusion of Guam from the SSI program violates the Equal Protection
7 clause under the Fifth Amendment and the Organic Act of Guam. "Equal protection analysis in the
8 Fifth Amendment area is the same as that under the Fourteenth Amendment." *Buckley v. Valeo*,
9 424 U.S. 1, 93 (1976). "[L]egislation is presumed to be valid and will be sustained if the
10 classification drawn by the statute is rationally related to a legitimate state interest." *City of*
11 *Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). The burden is on the party
12 attacking the legislation "to negate every conceivable basis which might support it." *FCC v. Beach*
13 *Commc'ns, Inc.*, 508 U.S. 307, 315 (1993) (quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410
14 U.S. 356, 364 (1988)); *see also Hernandez-Mancilla v. Holder*, 633 F.3d 1182, 1185 (9th Cir.
15 2011). The parties agree that rational basis review applies.

16 The Defendants have proffered various grounds for Guam's exclusion from the SSI
17 program. First, just as in *Gautier Torres and Harris*, the Defendants contend that Guam's "unique
18 tax status" justifies the limitation at issue here. *See* Defs.' Combined Mem. in Supp. of Cross Mot.
19 for Summ. J. and in Opp'n to Pl.'s Mot. for Summ. J. at 7, ECF No. 47. The Defendants assert that
20 SSI benefits are paid from general revenues that are funded by federal income taxes, and because
21 Guam (and Puerto Rico) residents generally do not pay federal income tax, it was logical to limit
22 SSI benefits to residents of the fifty States and the District of Columbia. *Id.* at 7-8.

23 Plaintiff rebuts this basis and asserts that "U.S. citizens residing in CNMI and Guam have
24 the same relationship with federal income tax – neither group pays it." Pl.'s Combined Mem. in
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26 ³ The remaining arguments raised in the Motion to Dismiss, the Opposition and the Reply
27 addressing the merits of whether there are or are not rational bases to treat the CNMI differently
28 from Guam under the SSI program are better reserved for the summary judgment stage and will be
addressed by the court in the section below.

1 Opp'n to Defs.' Mot. for Summ. J. and Reply in Supp. of Pl.'s Mot. for Summ. J. at 14, ECF
2 No. 51. Because Guam's tax status is not "unique" when compared to the CNMI, the Plaintiff
3 contends that the Defendants' tax status argument has not merit.

4 The court agrees with the Plaintiff. While Guam's tax status might explain why it is treated
5 differently from the fifty States and the District of Columbia, it does not justify the distinction in
6 treatment between Guam and the CNMI with regard to SSI benefits. Guam's tax status is not
7 unique when contrasted with the tax status of the CNMI. The parties do not dispute that neither
8 Guam nor the CNMI pay federal income taxes. Yet, the U.S. citizens in the CNMI residents are
9 eligible for SSI benefits that are withheld from U.S. citizens residing in Guam. This proffered
10 reason to justify Guam's exclusion from the SSI program when the CNMI is included is illogical
11 and irrational.

12 Additionally, because SSI benefits are not dependent on an individual's contributions, it
13 would appear irrational for Congress to limit SSI benefits to exclude populations that do not pay
14 federal income taxes. As the First Circuit reasoned in *United States v. Vaello-Madero* ("*Vaello-*
15 *Madero II*"),

16 We are unaware of . . . any instance where the government has justified the
17 exclusion of a class of people from welfare payments (which are untied to income
18 tax receipts) because they do not pay federal income tax. . . . [T]he sort of welfare
19 benefits at issue here are distinguishable from federal insurance programs, like
20 Social Security Disability Insurance, which may legitimately tie the amount of
21 benefits [awarded] to the individual's contributions. . . . However, because SSI is
22 a means-tested program, by its very terms, only low-income individuals lacking in
23 monetary resources are eligible for the program. . . . Consequently, any individual
24 eligible for SSI benefits almost by definition earns too little to be paying federal
25 income taxes. Thus, the idea that one needs to earn their eligibility by the payment
26 of federal income tax is antithetical to the entire premise of the program. How can
27 it be rational for Congress to limit SSI benefits to exclude populations that generally
28 do not pay federal income taxes when the very population those benefits target do
not, as a general matter, pay federal income tax?

24 *Vaello-Madero II*, 956 F.3d 12, 26-27 (1st Cir. 2020) (internal citations, quotation marks and
25 footnotes omitted).

26 Having found the tax status argument irrational, the court turns to Defendants' next
27 argument: that the cost of including Guam in the SSI program would be extremely great and
28 conserving the public fisc is a rational justification for excluding residents of a particular territory

1 from SSI benefits eligibility. As discussed above, the Supreme Court in *Gautier Torres* recognized
2 that one conceivable rationale for the exclusion of Puerto Rico from SSI benefits eligibility was that
3 “the cost of including Puerto Rico would be extremely great.” 435 U.S. at 5, n.7. The Defendants’
4 maintain that here “it is similarly conceivable that the cost of extending benefits eligibility to Guam
5 residents would be high, [and thus] the exclusion of Guam residents relates rationally to the
6 legitimate governmental interest in preserving public funds.” Defs.’ Reply at 10, ECF No. 57. *See*
7 *also* Defs.’ Concise Stmt. of Material Facts #6, ECF No. 48).

8 The court acknowledges that “protecting the fiscal integrity of Government programs, and
9 of the Government as a whole,” is a legitimate concern for Congress. *Lyng v. Int’l Union, United*
10 *Auto., Aerospace & Agr. Implement Workers of Am., UAW*, 485 U.S. 360, 373 (1988). The Plaintiff
11 argues, and the court also recognizes, that cost-savings alone cannot justify a discriminatory regime
12 by the government. *See, e.g., Plyler v. Doe*, 457 U.S. 202, 227 (1982) (“a concern for the
13 preservation of resources standing alone can hardly justify the classification used in allocating those
14 resources.”). The United States concedes this. *See* Defs.’ Reply at 10, ECF No. 57. Thus, the court
15 must analyze the underlying facts to the Defendants’ claim that including Guam in the SSI program
16 would be extremely great.

17 According to the figures provided by the Defendants, a 1987 Government Accountability
18 Office Report estimated that if Guam residents were eligible for SSI benefits, annual federal
19 spending would increase by \$7.8 million, which is equivalent to \$17 million in 2019 dollars. *See*
20 Defs.’ Concise Stmt. of Material Facts #1-2, ECF No. 48. “Assuming that a monthly SSI benefits
21 rate for Guam residents would be similar to that of residents of the CNMI,⁴ the annual federal
22 spending increase if Guam residents were eligible for SSI benefits would be approximately \$175
23 million (\$608.57 x 12 months x 24,000 residents⁵).” In 2017, the SSA paid approximately \$54.5

24 _____
25 ⁴ The average monthly SSI benefit payments for CNMI residents was \$608.57. Defs.’
26 Concise Stmt. of Material Facts #5, ECF No. 48

27 ⁵ In 2013, the Guam Legislature estimated that 24,000 residents could be eligible for SSI
28 benefits if the program were extended to include Guam residents. Defs.’ Concise Stmt. of
Material Facts #4, ECF No. 48.

1 billion under the SSI program. See SSA's SSI Annual Statistical Report, 2017 at 16,
2 https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2017/ssi_asr17.pdf. Thus, based on the
3 Defendants' range of \$17 million to \$175 million, including eligible Guam residents in the SSI
4 program would increase the overall budget by a mere 0.03% to 0.3%. As Plaintiff notes, such a
5 minimal increase in cost does not qualify as "extremely great" so as to justify the unequal treatment
6 of eligible citizens residing in Guam. As Chief Judge Gustavo A. Gelpi stated in his opinion,

7 Aside from the fact that the cost is minimal compared to the government's budget
8 for such program, this is not a valid justification for creating classifications of
9 United States citizens and justifying the same under the lax scrutiny of social and
10 economic legislation. While line drawing is necessary for Congress to pass social
and economic legislation, it is never a valid reason for disparate treatment of United
States citizen's fundamental rights.

11 *United States v. Vaello Madero* ("Vaello Madero I"), 356 F. Supp. 3d 208, 215 (D.P.R. 2019), *aff'd*,
12 956 F.3d 12 (1st Cir. 2020). This court whole heartedly agrees with Chief Judge Gelpi.

13 Having determined that the cost to include Guam in the SSI program is relatively small and
14 not substantial, the court next examines the Defendants' claim that Congress could have rationally
15 concluded that extending SSI benefits to Guam could disrupt its economy. In *Gautier Torres*, the
16 Supreme Court acknowledged that inclusion of Puerto Rican residents in the SSI program "might
17 seriously disrupt the Puerto Rican economy." 435 U.S. at 5, n.7. Similarly, the United States
18 asserts that providing eligibility for SSI benefits to Guam residents "could 'disrupt [Guam's]
19 economy' by creating 'appreciable inflationary pressure.'" Defs.' Reply at 12-13, ECF No. 57
20 (citations omitted).

21 The Plaintiff refutes this assertion, arguing that the government has not provided any
22 evidence to support this contention. See Pl.'s Combined Mem. in Opp'n to Defs.' Mot. for Summ.
23 J. and Reply in Supp. of Pl.'s Mot. for Summ. J. at 20, ECF No. 51. Additionally, the Plaintiff
24 claims that even if Congress may have reasonably concluded in the past that including Guam in the
25 SSI program would have disrupted Guam's economy, "such a conclusion is no longer rational."
26 *Id.*

27 The *Gautier Torres* and *Harris* cases relied upon by the Defendants were decided in 1978
28 and 1980 respectively. In *Vaello-Madero II*, the court noted that the appellant (the United States)

1 was not claiming that granting SSI benefits to Puerto Rico residents could presently disrupt the
2 island's economy. *Vaello-Madero II*, 956 F.3d at 21. This court thus directed the parties to address
3 whether the passage of time eroded the United States' claim that extending SSI benefits to Guam
4 residents could disrupt Guam's economy. See Order re Supp. Briefing, ECF No. 73.

5 In its supplemental brief, the Plaintiff urges this court to consider present day
6 circumstances, arguing that "[e]ven if the [Defendants'] concern for the potential negative impact
7 of an influx of aid on the territory's economic stability could have been legitimate three decades
8 ago, that concern can no longer provide rational basis" for Guam's exclusion from the program
9 today. Pl.'s Suppl. Br. at 7, ECF No. 74. The Defendants, on the other hand, assert that "it remains
10 rational to believe that inclusion of Puerto Rico (and Guam) residents in the SSI program could
11 result in economically disruptive effects. This case thus provides no opportunity to consider
12 whether materially changed circumstances could be relevant to an equal protection analysis." Defs.
13 Resp. to Pl.'s Suppl. Br. at 5, ECF No. 75. The Defendants further argue that "the Ninth Circuit
14 has made clear that '[t]he Supreme Court has been ambivalent on whether changed circumstances
15 can transform a once-rational statute into an irrational law.'" *Id.* (quoting *Burlington N. R.R. Co.*
16 *v. Dep't of Pub. Serv. Regulation*, 763 F.2d 1106, 1111 (9th Cir. 1985)).

17 Economic statutes are accorded deference under rational basis review. Nevertheless, in
18 *Burlington*,⁶ the Ninth Circuit cited to four cases where the Supreme Court acknowledged that it

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⁶ In *Burlington*, a railroad company challenged a Montana statute that required the company to maintain and staff certain freight offices in the state, asserting that said statute was unconstitutional under the due process clause, the equal protection clause and the commerce clause. 763 F.2d at 1108-09. The railroad company claimed that station agents were no longer needed in certain towns because "many of the duties historically performed by station agents [were] currently performed in centralized, computerized service centers," thus resulting in "redundant and economically wasteful" operations. *Id.* at 1109. Applying a rational basis test, the Ninth Circuit found that the railroad company "presented no evidence to establish that the Montana legislature, in 1969, acted irrationally when it fixed a statutorily-defined population criteria for minimum rail-station service." *Id.* at 1111. The court further stated that even if it were to "consider the rationality of the Montana requirement as of 1985 instead of 1969," the railroad company "failed to meet its burden" because it had "not presented evidence sufficient to persuade the court that changes in rail service in the last 16 years have so drastically altered the need for stations that the bases for the 1969 enactment no longer exist." *Id.*

1 would be proper for a court to consider more recent information to determine whether significant
2 changes since a statute's enactment might impact a legislative finding supporting such a statute.

3 *Id.* The Ninth Circuit cited to the following cases:

4 *Leary v. United States*, 395 U.S. 6, 38 n.68 (1969) (a statute is subject to
5 constitutional attack if legislative facts upon which statute was based no longer
6 exist[;] *United States v. Carolene Products, Co.*, 304 U.S. 144, 153 (1938)
7 (constitutionality of a statute may be attacked on the basis that the facts upon which
8 it is premised have ceased to exist); *Nashville C. & St. L. Ry. v. Walters*, 294 U.S.
405, 415 (1935) (“[a] statute valid when enacted may become invalid by change in
the conditions to which it is applied”); *Chastleton Corp. v. Sinclair*, 264 U.S. 543,
547 (1924) (“[a] Court is not at liberty to shut its eyes to an obvious mistake, when
the validity of the law depends upon the truth of what is declared”).

9 *Id.* (parallel citations omitted).

10 Based on the Ninth Circuit's discussion in *Burlington*, the court concurs with the Plaintiff's
11 contention that the court's constitutional review of the SSI program may take into account present
12 day circumstances. As noted by the United States Supreme Court 96 years ago in *Chastleton*, as
13 quoted above, no longer should “. . . [a] court[, including this court, be] at liberty to shut its eyes
14 to an obvious mistake, when the validity of the law depends upon the truth of what is declared.”
15 264 U.S. at 547. First, the court examines the Defendants' assertion that the Supreme Court's
16 determination that potential economic disruption constitutes a rational basis justifying the exclusion
17 of Puerto Rico residents from SSI eligibility controls this court's analysis. The Supreme Court
18 originally endorsed this rationale in *Gautier Torres*. 435 U.S. at 5, n.7. This footnote in *Gautier*
19 *Torres* cited to the 1976 Department of Health, Education and Welfare's Report of the
20 Undersecretary's Advisory Group on Puerto Rico, Guam and the Virgin Islands (the “1976
21 Report”)⁷ to support an economic theory for why Puerto Rico's inclusion in the SSI program would
22 disrupt its economy. *Id.* However, as discussed by the First Circuit, “the 1976 Report expressly
23 rejected concerns about an influx of aid disrupting the economy as a justification for disparate
24 treatment, concluding that ‘the current fiscal treatment of Puerto Rico [and the Territories under the
25 Social Security Act] is unduly discriminatory and undesirably restricts the ability of these

26 _____
27 ⁷ A copy of the 1976 Report is appended as Exhibit 1 to Congresswoman Nydia M.
28 Velazquez's Amicus Curiae Brief in Support of Plaintiff's Opposition to Defendants' Motion to
Dismiss, filed in *Pena Martinez v. Azar*, No. 18-CV-1206 (D. P.R.), ECF No. 43-1.

1 jurisdictions to meet their public assistance needs.” *Vaello-Madero II*, 956 F.3d at 23 (quoting
2 1976 Report at 6-7) (insertions in original). The First Circuit questioned the “dubious nature of this
3 once-accepted rationale,” and stated that “this now defunct argument and citation to . . . the 1976
4 Report” permitted the court “to consider present-day circumstances surrounding Puerto Rico’s
5 exclusion from SSI and whether the current classification is unrelated to a legitimate government
6 interest.” *Id.*

7 The court has had an opportunity to also review the 1976 Report that was cited in the
8 *Gautier Torres* decision. Specifically with regard to Guam and the Virgin Islands, that report
9 recommended that the Department of Health, Education and Welfare “should initiate steps to plan
10 for the extension of the SSI program to Guam and the Virgin Islands.” 1976 Report, Tab C at 17.
11 The Report concluded that [the exclusion[] from SSI . . . benefits [is] viewed as unfairly denying
12 a higher standard of living to low-income elderly citizens in the Territories.” *Id.* at 16.

13 Beside the fact that the 1976 Report does not support the Defendants’ economic theory of
14 excluding Guam residents from the SSI program so as not to disrupt the island’s economy, the
15 rationale for this third factor has also been questioned by Justice Marshall’s dissent in *Harris*, where
16 he stated:

17 This rationale has troubling overtones. It suggests that programs designed to help
18 the poor should be less fully applied in those areas where the need may be the
19 greatest, simply because otherwise the relative poverty of recipients compared to
20 other persons in the same geographic area will somehow be upset. Similarly,
21 reliance on the fear of disrupting the Puerto Rican economy implies that Congress
22 intended to preserve or even strengthen the comparative economic position of the
23 States vis-à-vis Puerto Rico. Under this theory, those geographic units of the
24 country which have the strongest economies presumably would get the most
25 financial aid from the Federal Government since those units would be the least
likely to be “disrupted.” Such an approach to a financial assistance program is not
so clearly rational as the Court suggests, and there is no citation by the Court to any
suggestion in the legislative history that Congress had these economic concerns in
mind when it passed the portion of the AFDC program presently being challenged.
Nor does appellant refer to any evidence in the record supporting the notion that
such a speculative fear of economic disruption is warranted. In my view it is by no
means clear that the discrimination at issue here could survive scrutiny under even
a deferential equal protection standard.

26 *Harris*, 446 U.S. at 655-56 (Marshall, J., dissenting) (footnote omitted).

27 As discussed above, both Justice Marshall and the First Circuit have cast doubt on the
28 Defendants’ claim that Congress could have rationally concluded that extending SSI benefits to

1 Guam could disrupt its economy back in 1972. Even if the court were to accept this contention
2 (which the court does not), the court finds that this third factor is no longer valid because of
3 changed circumstances that have occurred over the last 40 years. Clearly, there is no “. . . evidence
4 in the record supporting the notion that such a speculative fear of economic disruption [on Guam]
5 is warranted.” *Id.*

6 As noted by the Plaintiff, since the 1970s Congress has extended various comparable federal
7 benefit programs to Guam without disrupting the island’s economy. Guam received approximately
8 \$176 million⁸ of annual federal SNAP and Medicaid benefits, and there is no evidence to suggest
9 that the influx of these federal funds have negatively impacted Guam’s economy. To the contrary,
10 these public assistance dollars from the federal government have benefitted Guam’s economy.

11 The payment of SSI benefits to citizens in the CNMI further supports the finding that it is
12 irrational to conclude that Guam’s economy would be disrupted if it were included in the SSI
13 program. The SSI benefits afforded to citizens in the CNMI has not disrupted its economy in the
14 past three decades, and this would tend to indicate that the same would hold true for Guam.
15 Although the Defendants maintain that Congress may have rationally concluded that SSI benefits
16 would have disrupted Guam’s economy in the past, the CNMI’s experience of decades of SSI
17 payments and Guam’s own receipt of federal public assistance funds have shown that an influx of
18 federal funds through the SSI program would not disrupt Guam’s economy at this time. Any
19 conclusions that Congress may have had cannot be rationally supported by the facts known today.
20 Accordingly, the court finds that the third factor proffered by the Defendants does not provide a
21 rational basis for the exclusion of U.S. citizens residing on Guam from the SSI program.

22 _____
23 ⁸ For Fiscal Year (“FY”) 2016, Guam issued \$106 million in SNAP funds as reported in
24 FNS *Supplemental Nutrition Assistance Program State Activity Report Fiscal Year 2016* at 5,
25 (U.S.D.A. Sept. 2017) , a copy of which is available on the U.S. Department of Agriculture’s
26 website <https://fns-prod.azureedge.net/sites/default/files/snap/FY16-State-Activity-Report.pdf> (last
27 visited June 19, 2020). Additionally, in FY 2016, federal Medicaid spending in Guam was \$45.8
28 million, and federal CHIP (Children’s Health Insurance Program) funding totaled \$24.1 million.
See MACPAC Fact Sheet, *Medicaid and CHIP in Guam* at 4 (Mar. 2019) (fact sheet is available
at <https://www.macpac.gov/wp-content/uploads/2016/09/Medicaid-and-CHIP-in-Guam.pdf> (last
visited June 19, 2020)).

1 Finally, in justifying why the CNMI was included in the SSI program, the Defendants assert

2 “[i]t is conceivable . . . that Congress distinguished between U.S. Territories that
 3 existed at the time of the [SSI] program’s enactment and a United Nations Trust
 4 Territory, because the United States was not a sovereign over the Trust Territory,
 only a trustee. . . . [E]xtending SSI benefits eligibility to CNMI residents rationally
 relates to the government’s interest in complying with its treaty obligations.

5 Defs.’ Reply at 15, ECF No. 57.

6 The United States cites to the case of *Besinga v. United States*, 14 F.3d 1356 (9th Cir. 1994),
 7 to support its claim that historical distinctions justify the difference in treatment between Guam and
 8 the CNMI. There, the court was faced with a constitutional challenge to a federal statute that treated
 9 two veteran groups from the Philippines differently. In *Besinga*, World War II Filipino veterans
 10 who served with the Philippine Commonwealth Army were ineligible for all U.S. veterans benefits
 11 afforded to those who served in the Old Philippine Scouts group. *Id.* at 1358-39. Among various
 12 factors discussed in upholding the statute under the rational basis test, the Ninth Circuit noted that
 13 the Commonwealth Army was formed by an act of the Philippine legislature while the Old
 14 Philippine Scouts were organized pursuant to an Act of Congress, and said forces were incorporated
 15 into the U.S. Army and were paid directly by the War Department. *Id.* at 1362. “Given this history,
 16 it is conceivable that Congress viewed the Old Philippine Scouts as more integrally a part of the
 17 United States armed forces.” *Id.*

18 The United States acquired Guam as a territory in 1898 and its residents have enjoyed U.S.
 19 citizenship since 1950.⁹ The Northern Mariana Islands (“NMI”), on the other hand, were part of
 20 the Trust Territory of the Pacific Islands after World War II and were administered by the United
 21 States pursuant to a Trusteeship Agreement with the United Nations Security Council. *Mtoched*
 22 *v. Lynch*, 786 F.3d 1210, 1213 (9th Cir. 2015). The NMI

23 elected to enter into a closer and more lasting relationship with the United States.
 24 Years of negotiation culminated in 1975 with the signing of the Covenant to
 25 Establish a Commonwealth of the Northern Mariana Islands in Political Union with
 the United States (hereinafter “Covenant”)[.] After a period of transition, in 1986
 the trusteeship terminated, and CNMI was fully launched.

26
 27
 28 ⁹ The Organic Act of Guam conferred U.S. citizenship to all persons born or living on
 Guam on or after April 11, 1899.

1 *Id.* (citation omitted).

2 “Although described as a commonwealth, the relationship is territorial in nature[.]” S. Rep.
3 No. 94-433,¹⁰ at 15 (1975). When the Covenant was signed it envisioned that “[t]he Marianas
4 commonwealth relationship will be significantly closer to the Guam territorial relationship than to
5 the Puerto Rican commonwealth arrangement.” *Id.* See also *Saipan Stevedore Co. Inc. v. Dir.,*
6 *Office of Workers’ Comp. Programs*, 133 F.3d 717, 721 (9th Cir. 1998) (“The Covenant codifies
7 the [CNMI]’s determination that its legal rights and obligations more closely parallel those of the
8 residents of Guam, rather than any other United States territory.”). Despite the historical distinction
9 in the islands’ political relationships with the United States, “[g]eographically, culturally and
10 ethnically, Guam and the [NMI] are one entity, . . . [and t]hroughout the 20th century political
11 separation . . ., the Chamorro people of these islands retained their common culture and language,
12 and their close kin ties.” S. Rep. No. 94-433,¹¹ at 17 (1975).

13 Although Guam has been more integrally a part of the United States than the CNMI,¹²
14 Congress extended SSI benefits to the CNMI when the Covenant was negotiated. Unfortunately,
15 Guam does not have the similar ability to negotiate with the United States government with regard
16 to the applicability or inapplicability of federal laws to the island. Citizens living on Guam cannot
17 vote in national elections and do not have voting representation in the final approval of legislation
18 by Congress. Similar to the observations of Chief Judge Gelpi, the court highlights that U.S.
19 citizens residing in Guam “are the very essence of a politically powerless group, with no
20 Presidential nor Congressional vote, and with only a non-voting [delegate] representing their
21

22 ¹⁰ This report, entitled “The Covenant to Establish a Commonwealth of the Northern
23 Mariana Islands,” was prepared by the Committee on Interior and Insular Affairs of the U.S. Senate
24 to accompany House Joint Resolution 549 and recommended approval of the Covenant.

25 ¹¹ This report, entitled “The Covenant to Establish a Commonwealth of the Northern
26 Mariana Islands,” was prepared by the Committee on Interior and Insular Affairs of the U.S. Senate
27 to accompany House Joint Resolution 549 and recommended approval of the Covenant.

28 ¹² As noted above, Guam became a territory in 1898 – approximately 50 years prior to the
United States’ trusteeship over the NMI and 88 years prior to CNMI’s establishment as a
commonwealth.

1 interests in Congress.” *Vaello Madero I*, 356 F. Supp. 3d at 214. United States citizens residing
2 in Guam are deprived of receiving SSI benefits based solely on the fact that they reside in a U.S.
3 territory.

4 Aside from where they live, the otherwise SSI-qualifying residents of [Guam] and
5 of the Northern Mariana Islands have the legally-relevant characteristics in common,
6 *i.e.*, they are (1) low-income and low-resourced, (2) elderly, disabled, or blind, and
7 (3) generally exempted from paying federal income tax. These shared traits
8 undermine [Defendants’] already weakened arguments.

9 *Vaello-Madero II*, 956 F.3d at 30.

10 There is no relevant difference between Guam and the CNMI that would rationally justify
11 the denial of SSI benefits to otherwise eligible U.S. citizens residing in Guam, benefits enjoyed by
12 their Chamorro neighbors just 60 miles north of and a 40-minute flight from Guam. Accordingly,
13 the court holds that the equal protection guarantees of the Fifth Amendment forbid the arbitrary
14 denial of SSI benefits to residents of Guam.

15 **IV. CONCLUSION**

16 Based on the above discussion, the court hereby DENIES the Defendants’ Motion to
17 Dismiss in its entirety, DENIES the Defendants’ Cross Motion for Summary Judgment, and
18 GRANTS the Plaintiff’s Motion for Summary Judgment. Having considered all the grounds
19 proffered by the United States, the court finds that there is no rational basis for excluding Plaintiff
20 from receiving SSI benefits based solely on her residency in Guam. The court finds that the
21 discriminatory provisions of the SSI statute and any related implementing regulations that
22 discriminate on the basis of status as a resident of Guam violate the Constitution and Organic Act’s
23 guarantees of Equal Protection. The court hereby enjoins Defendants from enforcing against the
24 Plaintiff such discriminatory provisions of the SSI statute and any relevant implementing
25 regulations.

26 The Clerk’s Office shall enter judgment accordingly.

27 IT IS SO ORDERED.



28 /s/ Frances M. Tydingco-Gatewood
 Chief Judge
 Dated: Jun 19, 2020

The CHAIRMAN. Thank you so very much, and we appreciate the testimony of each of you here today.

I am going to start off. There has been a great deal of focus, as there necessarily should be, on the economic impact due to COVID-19, but I am going to start my questions off with regard to healthcare capacity. As I look through the numbers out there, all of the island territories are very similar to Alaska in that you have either a mandatory 14-day quarantine or require some level of testing as we do in Alaska. The question to you is that I understood that in the early days of the COVID testing the results were either flown to Hawaii for testing or to Atlanta for results which, of course, just adds to the days and sometimes weeks to get a turn-around. Has that been resolved? Do you have the ability to get test results on island at this point in time in all five that are represented today?

Puerto Rico says yes. Guam, yes. USVI?

How about out in CNMI and American Samoa?

Mr. SABLAN. Yes.

Mrs. RADEWAGEN. Yes.

The CHAIRMAN. Okay, okay.

I think it was you, Congresswoman Plaskett, that mentioned that there was a worry or a concern about replacement PPE. Are there any other medical equipment shortages, PPE, that you all are currently worried about that FEMA is not being responsive, that HHS is not being responsive, that you have not addressed here today that any one of you would wish to share with us? I will start with our two individuals that are online, either Congresswoman Radewagen or Congressman Sablan?

Mr. SABLAN. Thank you, Madam Chair. Yeah, in the beginning, when I wasn't, I'm not sure if it was at the direction of FEMA or if it was locally, but the Commonwealth government purchased testing agents, reagents, and test swabs from a company from South Korea and the swabs were not approved, CDC approved, FDA approved. Subsequent to that, I asked Dr. Fauci if he could help get FDA to approve it and eventually they're now approved but there was recently also a raid by the FBI on the company, both on Guam and on Saipan; it's the same company that sold us those unauthorized swabs and reagents.

The CHAIRMAN. Okay.

Mr. SABLAN. Thank you.

The CHAIRMAN. Anything else, Congresswoman or any of the panelists here?

Ms. PLASKETT. I just wanted to add that yes, we have the supplies that we need and FEMA is very responsive, because they're on the ground already in the Virgin Islands and Puerto Rico related to our other disaster. We also have capacity issues just based on our hospitals not having the facilities in the manner that they're supposed to be. On the island of St. Croix, we are just this past couple of weeks, put up the temporary facility before the rebuild of our hospital from the 2017. So having the beds necessary if there's a surge has been a problem that we are dealing with and because the territories, the smaller territories, also are still being reimbursed based on TEFRA rather than on another reimbursable. There's a question of whether or not we're going to be able to get

the add-on payments that are needed if those patients are Medicaid or Medicare.

The CHAIRMAN. So, it is, and I was out there on St. Croix and saw the devastation to that hospital, incredible to see what you had experienced and then to recognize just how long it was going to be until you actually had another facility.

Ms. PLASKETT. Right.

The CHAIRMAN. I know that Congresswoman Radewagen, you also mentioned American Samoa's LBJ Hospital. I have not seen that one myself, but it kind of speaks to the capacity issues that you face when, you know, fortunately for American Samoa, you do not have any cases. You want to keep it that way, but your capacity is limited, at least in a couple of these areas because you have had a disaster visit you before and we have not been able to get on top of that to this point in time.

Ms. PLASKETT. And while FEMA and the Army Corps are very good about identifying other locations and putting up the beds and the capacity that's needed, the cost of that, the share that we have to pay for each one of those beds is really exorbitant.

The CHAIRMAN. Congresswoman.

Miss GONZÁLEZ-COLÓN. One of the issues that is related to that hospital capacity is actually that hospitals in Puerto Rico use 50 percent for Medicaid Advantage. So although Family First and CARES had included money for Medicaid, many of those hospitals are firing personnel, essential personnel, because they are not having any activity or payments or advancement by the Medicare Advantage Program and that's not only in Puerto Rico, that's happening in Florida, Oregon and many other states. But in our case, that represent more than 50 percent.

So even when we do have 3,800 beds in use, of them just 102 from COVID and more than 2,400 available, that doesn't mean that the hospitals are going to continue to maintain their operations because they are not receiving the Medicaid Advantage funds. So that is a critical issue and we saw a lot of layoff from hospitals and nurses during this emergency time, at least on the island.

The CHAIRMAN. I appreciate that.

Mrs. RADEWAGEN. Chairman Murkowski?

The CHAIRMAN. Go ahead, you can finish up.

Mrs. RADEWAGEN. The funds from the CARES Act are being used at LBJ for the virus-related expenditures which total more than \$3.6 million and includes over \$1.3 million in medical equipment, nearly \$2 million in medical supplies and \$320,000 in infrastructure costs. According to LBJ, the hospital anticipates more expenditures for more COVID-19 project supplies and equipment. And just to make a long story short, as of June 14th, total test kits on hand is 3,300 with 1,800 test kits for the GeneXpert testing machines which serve to test symptomatic patients and 1,500 test kits for the Abbott ID NOW being used. So we're okay so far.

The CHAIRMAN. Good, good.

Senator Manchin.

Senator MANCHIN. Thank you, Madam Chairman.

First I would like to start with Congresswoman Radewagen since you have no reported cases in American Samoa. Can you tell us about what time period you all took action when you had heard of

COVID-19? This will go down the line to all of you, but your timetable and what you did immediately that you think was able to have the outcome you have had so far?

Mrs. RADEWAGEN. Yes, Ranking Member Manchin. The borders were closed right away in March—

Senator MANCHIN. Was that early March, about March 19th or earlier than that?

Mrs. RADEWAGEN. About the third week in March, I believe it was.

Senator MANCHIN. Okay.

Mrs. RADEWAGEN. And commercial flights were suspended and they still are suspended as of now and it's been a big help but we have a lot of angry constituents who are stuck up in the states wanting to come home and ones who want to go up to the states, but that has been very effective for us. And as you mentioned, the Spanish Flu in 1918, it's exactly what they did. They closed the borders.

Senator MANCHIN. We will just go right down the line, if we can. Congressman Sablan.

Mr. SABLAN. Yeah, thank you, Senator Manchin.

We did as well. We closed just around the same time. Our tourists come from South Korea, China and Japan, primarily. And we were able to, we closed just as early as we could, although, we were, I think, a week or two behind but still we were blessed. We were very fortunate that we had no tourists coming into the Marianas. There were two missionaries from the Philippines, they all came to Saipan, just to Saipan and they both, they were already infected and they both, they're the only two infected individuals that actually passed away. But we have been just very lucky. Thank God.

Senator MANCHIN. Congressman Plaskett.

Ms. PLASKETT. I would say that we closed early and our numbers remained very low until just recently. Most of our infections have been travel-related, that is the—

Senator MANCHIN. Is that when you opened back up?

Ms. PLASKETT. Right. Yes, sir.

Our Governor closed our hotels. While he was unable to close the airlines, the fact that there were not hotel rooms meant that people were not able to come. And Virgin Islanders, like the other territories, are used to disaster, so when the Governor says everything is shutdown, people usually comply. We understand that.

We just, in this week, started to have some community transmissions. That's a concern and so, thankfully, we will begin the tracing. We have been doing a good job of the tracing as well. But I think shutting down early and people following has been what has helped us. Wouldn't you say, Jenniffer?

Miss GONZÁLEZ-COLÓN. Thank you.

In our case, in Puerto Rico, of 3.3 million, we got 1,600 cases confirmed molecular test and 5,700 serological tests, probable cases for a total of 7,400, but again, Puerto Rico closed. It was in a strict curfew and shutdown on March 15. So we were the first jurisdiction in the nation to do that. And right now, the Governor just yesterday announced that there's going to be a new requirement for all passengers arriving to Puerto Rico to provide test results, mo-

lecular test or serological test, before arriving to the island. We are doing those tests onsite. They're voluntarily right now, but there's going to be a requirement of providing at least 72 hours before arriving. And if you are noncompliant with that, you're going to have a 14-day quarantine on the island.

Mr. SAN NICOLAS. We closed early as well, Senator, similar to our colleagues in the CNMI, around the same time.

What the reality is on the ground now, however, is because of these social programs that I mentioned earlier, not applying to Guam and the various impact that it's having on our local revenue streams, we're really running into that very real sticky place where, you know, people want to stay safe and secure and not bring the virus in but we're such a tourism dependent economy, that if we don't open up and if we don't begin having flights coming in, the financial circumstances are going to result in, perhaps, equally damaging healthcare realities for many of our people.

And so, in the earlier question, Senator Murkowski, about the PPE needs. While FEMA has been wonderful and HHS has been wonderful in meeting our status quo needs, the reality is when we bring these tourists in, we're going to have an exponential need. We have 160,000 people living on Guam, but we bring in 1.6 million tourists a year, the most per capita of anywhere else in the country. If we don't have PPE for those visitors, we're just going to be inviting catastrophe and once that spirals out of control, the tourism will shutdown all over again.

And so, we have a very unique set of circumstances where we need to understand that opening up eventually is going to have to happen, but we're also going to need the resources and the plans in place in order to do so responsibly so that it's sustainable.

Senator MANCHIN. Let me just say, if I can take one more liberty here. We know the economies are all struggling in all states and all territories. We know that the economy is not going to come back until we have a vaccine where people feel safe, so they can really go out and operate like we have done before.

So without the economy coming back the way you would like for it to, can you, real quickly, just all of you, say what is your greatest need you have? Do you think it is food that is going to be the greatest concern you have sustaining your citizens? Is it going to be your healthcare services, being able to sustain your healthcare services that they might be needing? What would you term or define as your greatest need? I would assume you all are looking forward to another round of COVID assistance in the CARES Act?

Mr. SAN NICOLAS. Well, Senator, from our perspective we're able to provide some unique set of eyes on that. Our unemployment program is only now getting stood up. And so, we can, kinda, give you an example of what happens when unemployment isn't around anymore. On top of that, the eviction moratoriums are expiring on the 25th of July. The Federal Pandemic Unemployment Compensation is expiring at the end of July.

And so, we're going to be facing multiple threats. Right now, because unemployment has taken so long to roll out, we have people literally lining up at two in the morning in their cars waiting for food assistance to get handed out. And they'll wait for four hours and then when they show up, when they finally make it up to the

front of the line, food's out. And so, you know, food can be looked at as one definite need, but definitely health care and it's all multifaceted. The reality is until our economies are working again, those are all going to be needs to include rental assistance, housing assistance.

And so, as my colleague from the CNMI mentioned earlier, the HEROES Act does provide a significant amount of support that we think would help carry us into where a vaccine would probably be available. But absent any additional COVID relief, similar to the CARES Act and on a continuous and ongoing basis, particularly for our tourism-oriented economies, we're going to be in a very, a very bad place.

Miss GONZÁLEZ-COLÓN. In the case of Puerto Rico I think the PPP is a very important program and everything is going to be in during this summer, equal to unemployment. I will say health care is one of the most important, in terms of Medicare and, of course, the food assistance through NAP and I will say EBT.

In the agricultural program, I don't know what they said happened with the territories, although we all qualify. In the case of Puerto Rico, all specialty crops, like coffee, bananas, plantains, many other of our produce are not listed as qualifying. So our farmers are not eligible to receive all that was approved just because our crops in the Caribbean or in the islands are not listed as the main ones. We sent letters to address that issue so we are waiting for USDA just to clarify. But at least in our case, we're talking about mangos, pineapple, all lettuce, peppers, jams, cilantro, passionfruit, many others, all that the island produces is not included as a regular crop.

Senator MANCHIN. I am sorry—

Mr. SABLAN. If I may also, Senator.

In the Northern Marianas, you know, we have a cap on Medicaid just like the rest of the territories and just as of April, just after the COVID, of course, people lost their jobs and additional 2,606 individuals are signed up for Medicaid, qualified for Medicaid. And right now, Medicaid covers over 50 percent of the total U.S. citizens in the Marianas as of the swabs, for example, and reagents, as of yesterday, testing supplies available are the SolGent, of Korean products, 1,502 of test kits. The Abbott ID is 3,474 and the GeneXpert is 2,749. So yeah, we could expect to see these things run out in a very short time.

Thank you.

Ms. PLASKETT. Senator, I believe it's economic. The support for unemployment and the equitable treatment, if there are funding to states to have that funding to go to the territories which are going to take a long time in coming back up, I think, are the most important.

Mrs. RADEWAGEN. The short answer for American Samoa is all of the above. We need everything. As a matter of fact, I would say almost 90 percent of the goods and supplies are imported and many of the things that are taken for granted in the United States are things that we still have a tremendous need for.

Thank you.

The CHAIRMAN. Thank you, Senator Manchin.

Let's go to Senator Hirono, who is online.

Senator HIRONO. Thank you, Madam Chair.

It is good to see all of you. Thank you so much for coming to tell us what is happening in your countries.

So I have a question for Representative San Nicolas. Hawaii and Guam are home to sizable populations of COFA citizens who are not covered under Medicaid and this happened in my view, inadvertently when the 1996 welfare, we will call it the Welfare Reform Act, was enacted, and so the pandemic has underscored the need for everyone to be covered by health insurance and access to health care is really important.

Last July, I introduced the Covering our FAS Allies Act in the Senate, and I am thankful to you, Representatives Sablan and Radewagen, for cosponsoring the House companion bill. How would restoring Medicaid benefits to COFA citizens by passing the Covering our FAS Allies Act improve Guam's ability to respond to the COVID-19 pandemic?

Mr. SAN NICOLAS. Thank you very much, Senator, for the question.

Because COFA migrants are not covered under Medicaid, they fall under what Guam refers to as the medically indigent program which is basically 100 percent local funded—

Senator HIRONO. Yes.

Mr. SAN NICOLAS. —care to be provided for the COFA migrant. Because we're not able to use those funds to get the matching that we're able to get under Medicaid, we basically are suffering from a loss of buying power, significant loss of buying power because right now, I think, if recent legislation passed, I believe that we're able to get over 80 percent Medicaid matching now for every Medicaid dollar that Guam spends. But we're not able to do that for the COFA migrants. So basically, we're suffering from not being able to service three times as many migrants who might need COVID treatments because we're not able to leverage our dollar using Medicaid matching resources.

Senator HIRONO. So it would make a huge difference to Guam as well as to Hawaii and there are other places now, Arkansas, there are other places where COFA citizens live and they are not covered under Medicaid. And so, it would make a huge difference. For Hawaii, it would be a difference of millions and millions of dollars.

I want to thank the members of the House, all of you, for putting this item into, I believe it is in your CARES Act. Thank you very much.

A question for Congresswoman Radewagen. Both of us are—both for where you are, American Samoa, Hawaii—we are very dependent on air travel for our tourists, of course, and right now we do not have national standards for how to reopen air travel faithfully. I have written a letter to the Department of Transportation, Homeland Security, Secretary of State and others for them to work together to come up with common standards that airlines can follow rather than all the airlines doing their own thing, the states, the airports, everybody doing their own thing. Knowing how important travel is to both American Samoa and, in fact, all of our territories, do you agree that we should have national standards to enable air travel to open safely?

Mrs. RADEWAGEN. Well, right offhand it makes a lot of sense.

Senator HIRONO. What about the rest of you? Do you agree? The rest of the panel?

Ms. PLASKETT. I'm reluctant to impose national standards on airlines throughout the country and I think, however, that it's Congress' responsibility to continually question and have some oversight over the airlines as they engage in what their practices are going to be. You know, there are constitutional issues that, kind of, make me cringe when I think about what may need to be done for our airlines and airports, restrictions that can and cannot work. And you know, I'm looking to see what your bill looks like, Senator, that would be very interesting to review to see how that can be done in a manner that is safe for all Americans but still keeps businesses competitive and independent.

Mr. SABLAN. Senator, if I may?

Senator HIRONO. Actually, Representative Plaskett, it is not a bill. It is a request to the federal agencies that have oversight over various aspects of air travel to come together with some common kinds of standards. For example, the FAA imposes all kinds of standards on our airlines and our airports all the time. So this is really a request that we have some common standards because what you are now going to face are different airports having different requirements, different airlines having different requirements.

Ms. PLASKETT. Right.

Senator HIRONO. And it makes air travel pretty tough, I would say.

Ms. PLASKETT. Yes, it does.

Senator HIRONO. And since we are so dependent, it is not a bill. I hope that you all can agree with me that that would probably be a good thing.

Ms. PLASKETT. Thank you.

Senator HIRONO. Congressman Sablan, would you like to add anything to that? If not, I will go on to the next question.

Mr. SABLAN. Yes, I'm willing to look at what you're offering, Senator Hirono.

You know, I just flew in. I have to fly to Guam.

Senator HIRONO. Yes.

Mr. SABLAN. A whole day in Guam, fly to Hawaii, Senator.

Senator HIRONO. Yes.

Mr. SABLAN. To Houston, then DC. It is difficult and it's scary to ride in an airplane.

Senator HIRONO. Not to mention, by the way, that the CARES Act and the COVID bills provided billions for the airlines.

Mr. SABLAN. Yes.

Senator HIRONO. And now they are getting back to, pretty much, packing their airplanes and I do not think that is what the CDC is recommending in terms of spacing and social distancing. So I think we need to remain very concerned about what is going on with air travel.

Mr. SABLAN. Right. Between San Francisco and Honolulu there are actually full flights often—

Senator HIRONO. Yes, and I think that is not particularly safe. Am I, Madam Chair, am I over my time? I can't tell.

The CHAIRMAN. Yes, Senator Hirono, you are.

Senator HIRONO. Thank you.

The CHAIRMAN. Thank you.

Senator HIRONO. I will submit my other questions, but I thank the panelists.

The CHAIRMAN. Senator Hirono, thank you. I think you offer a very important perspective coming from our islanded state.

Several of you, well, just about everybody does have to some extent a reliance on the cruise industry to bring your tourists and for many of you it is a significant part of your tourist base. We have been talking about the restrictions and limitations on air travel and, believe me, in Alaska we know what it means to have your summer visitors decide that they are going to go somewhere else when they look and see that well, there is a 14-day quarantine if I come to your state and I don't want to spend my whole vacation in a hotel somewhere. So that is not a good option for us.

For us, we were expecting 1.4 million tourists to come to Alaska this summer on cruise ships. As you all have indicated, we are, as they say, dead in the water. There are no cruise ships that are coming, possibly in September, but it does not make for a season. And for us, that season is over in September. As much as everybody wants to come to Alaska, they do not view it as their winter vacation and that is why they don't sell those cruises then.

But for you all that is an opportunity when the industry, kind of, gets back to work here. But I recognize that right now we have an industry that is not ready to receive the passengers and in many of the communities, the communities do not want to receive people that are coming off a cruise ship. So the question that I would have to you and all of you who welcome the cruise industry to your regions is what movement you have seen from the CDC to work to develop these health and safety protocols so that not only do the passengers feel that it is safe to get on these ships but the communities feel safe in receiving them—because I know in Alaska's experience, we have several of our communities that have said as much as we want the revenues that are going to come in when you stop, we are not sure that we want to run that risk if this is still high risk for COVID.

So if you can speak to that, Miss González?

Miss GONZÁLEZ-COLÓN. Madam Chair.

The CHAIRMAN. Congresswoman.

Miss GONZÁLEZ-COLÓN. We agree on what you are experiencing in Alaska. We're having the same thing in San Juan which is our major port for cruise ships. And having said that, they're going to be suspended, all cruise ships, to December. Right now, the impact between March 14 and now is pretty much \$66 million, at least in Puerto Rico.

So we're talking about a direct impact in tourism, even though tourism is seven percent of the GDP of the island, many people think that number is higher. It's just seven percent. We're talking about the airlines coming to the island as well, passengers. We've got several airports and now we're just serving San Juan as a way to try to receive all of them and do the voluntary test. The National Guard in Puerto Rico are doing voluntary testing of all passengers that are arriving. But again, if you are not complying with that,

that's the reason the new Executive Order from the Governor requesting 72-hours before a test be made by the passenger.

And I know the Senator was explaining before, and I agree with Congresswoman Plaskett, is the issue that we can do that, Hawaii can do that or any different jurisdiction but we need to have a uniform way to address this issue, not just where the passenger is coming from, but how are we going to comply with legal issues and at the same time how you balance health and economy because we need to learn how to live with this because today is COVID-19 but maybe in several months it's going to be another virus.

So we need, in terms of the CDC or what are going to be the guidelines? We did a hearing in the House, not just in T&I Committee, Transportation and Infrastructure, but several others just for the tourism industry about cruises and planes because we don't want to lose a lot of the airplane's routes that are serving smaller airports across our island. And I assume that's the same thing happening in Alaska because one thing is the international airport but the local ones are, right now, directly impacted because all those flights are cancelled.

The CHAIRMAN. And some of those companies are now going bankrupt.

Congresswoman Plaskett.

Ms. PLASKETT. Senator, may I point something out that I find really interesting about how we attempted to deal with CARES Act and the economic impact? We have, the CARES Act put money in airports. We gave money to airlines. We also gave to local economies based on the number of individuals infected. But there has not been money given to marine ports, you know, for us, like Puerto Rico and these other islands, our ports are our lifeline for supplies, Senator Manchin, like you were talking about food and others. There's not been funding given to that.

And there have not been given funding to places like Alaska and others that have, were reliant on cruise ship passengers and what that means to their economies. We spent a lot of time focused on airlines throughout this, whether it's CDC guidelines for how airlines were going to open, but not much in effort has been put on shipping, ports and these cruise lines. And I think that's something that you're, we're recognizing and I'm glad you raised that question because I don't think there's been a lot of, a lot of effort put in there.

The CHAIRMAN. I think it is something that we need to be engaged with the CDC on this to make sure that, again, but that there is this back and forth, if you will, in terms of understanding what these protocols are and a recognition that we are dealing with health safety issues, but we are also dealing with significant economic repercussions as well.

Let me turn to Senator Manchin.

Senator MANCHIN. My heart goes out to all of you. It really does. I have been able to visit some, and I have enjoyed every time I have been there, but I know on top of the disasters, the natural disasters, the hurricanes coming through, folks are still trying to recover from that and hitting on top of this and economies flattening out completely.

I don't know what the next round is going to be. I really can't tell you that. It is not going to be as robust as you all have done over in the House, but what we are going to do is, we are going to pinpoint. We want to find out really and I think you all can help us, all of you. Tell us what has not worked, because we are all different. West Virginia is different than Texas and California. Puerto Rico is going to be a little bit different than American Samoa and the Virgin Islands, and we all have different needs. We have got to be able now to do a surgical attack. This has to be a surgical attack the next time, how we are able to help and assist and where it may be, unemployment?

Okay, I am having a problem with unemployment compensation right now because the \$600 on top of the unemployment, people won't go back to work. They are just not going back. They won't go back until it runs out on July 31st. Now with that being said, you can't take a sinister approach and say, okay, no more. What I thought from day one, it should be, "keep them whole." Whatever their paycheck was, we will keep that paycheck whole until we get this economy moving again. We have bumped up an incentive and it really just incentivized people to want to get back into action. It is going to be a rude awakening on July 31st to a lot of people. It is going to stop.

Yes, Stacey?

Ms. PLASKETT. May I say something, Senator?

Senator MANCHIN. Sure.

Ms. PLASKETT. One area that I think we need to be careful of because the territories usually receive reimbursement in terms of stipends, I know for us, our seniors are still waiting for funding for social security.

Senator MANCHIN. Yes.

Ms. PLASKETT. We're still waiting for the IRS and Treasury to send the list to the Governors so that they can get that money out to individuals. But one of the good things I want to tell a story about is for us the PPP program for small businesses has worked tremendously well, particularly in the second round of funding when it was targeted toward smaller banks because we're in a small community and the banks know the businesses.

Senator MANCHIN. Oh, yes.

Ms. PLASKETT. We were able to get large amounts to our small businesses—

Senator MANCHIN. That was the second round you are talking about?

Ms. PLASKETT. Yes.

Senator MANCHIN. Yes, we all got hit, every rural area in America got hit the same as the islands got hit, money was not going out to them.

Ms. PLASKETT. And then how did the second round do for your—

Senator MANCHIN. Much better. Oh, yes, much better on that and we have looked at that and, you know, there is a lot of money left. There is over \$400 billion left in the large loan programs which the corporations would not take—

Ms. PLASKETT. Right.

Senator MANCHIN. —because they did not want to be held to the strict guidelines that you could not give bonuses and you could not have stock buybacks. So there is a lot of money in play right now that we can retransfer, if you will, and surgically put it in areas it is really needed. That is what we are looking at and we just have not done enough in evaluating it. We are going to wait until everything runs out and someone says, let's throw a chunk of more money to it. I don't think that is going to happen. So the more we can do right now to surgically help each one of you all, the same as all of our states need help, too, is what we really should be doing.

Ms. PLASKETT. Mr. San Nicolas, my junior colleague there, I like reminding him that he is a freshman, has been doing some tremendous work on financial services, and one of the letters that he wrote was about municipal credit facilities which the territories were not eligible for. The Treasury decided that they were not going to include us. They interpreted on their own that we weren't eligible to receive that funding.

Senator MANCHIN. You all did receive—the same as the states, every state got a minimum. The smallest states in America got \$1.25 billion that went to their states to assist them in trying to help to the expense of Coronavirus. Did all of the territories, didn't you all receive—

Ms. PLASKETT. We did not receive—

Mr. SABLAN. No.

Ms. PLASKETT. No.

Senator MANCHIN. You received some but not \$1.25, I know that.

Mr. SAN NICOLAS. Specifically, to the municipal liquidity facility that's administered by the Fed, territories are not able to access that at all and that's an issue because our liquidity is incredibly strained. And I've raised this issue with Chairman Powell, my Chairwoman in the FSC Committee—Chairman Waters raised it today again. They're saying that they're looking at it, but if we can get help to have the Fed really understand that, you know, getting territories access to that liquidity facility is critical at this time.

Ms. PLASKETT. We did receive the federal funding that each one of the states got. It's just that our percentage was very different than the rest of the states were.

Senator MANCHIN. Was it because of the infection rate or—

Ms. PLASKETT. No, because they decided that they were going to create a separate amount of funding for the territories and then allow us to split that up in the same way that they do Medicaid. They came up with a number that they—

Senator MANCHIN. Are any of you hurting right now, basically not being able to meet your Coronavirus expenses, the expenses directly to the virus?

Mr. SABLAN. Yes. Yes.

Senator MANCHIN. You are?

Mr. SABLAN. Yes. And Senator Manchin, may I?

Senator MANCHIN. Sure.

Mr. SABLAN. Just as a matter of, you know, a matter of law, the PUA and FPUA, the unemployment compensation, for example, the Department of Labor, the U.S. Department of Labor has interpreted that and for purposes of the COFA nation citizens who re-

side in the United States, has interpreted, they have gone instead, instead of interpreting it based on the law, they have gone actually to FEMA and asked FEMA to give them an interpretation on how it's interpreted based on the Stafford Act.

Now, the Stafford Act is different. I mean, this unemployment compensation has eligibility requirements for unemployment, especially in the Pacific Island nations, but citizens of COFA are not eligible because the U.S. Department of Labor went to FEMA and got their interpretation in terms of the Stafford Act which first, they're not eligible, but they meet the eligibility under the CARES Act, unfortunately. And so, I'm sure there's a whole lot more in Guam, Hawaii. You know, just as of last night when I found out that 1,100 citizens of COFA who work for Tysons are infected, 1,100. That's a large number and I don't know who is going to pay for their hospital bills.

Mrs. RADEWAGEN. Senator Manchin, getting back to your question on what hasn't worked. I would say that for American Samoa, getting funding to the people—the SBA waiting period and the deadlines, and the unemployment funds are just beginning to come in.

Senator MANCHIN. Yes.

Mrs. RADEWAGEN. Those are some of the key things that haven't worked for American Samoa.

Senator MANCHIN. Thank you.

Yes?

Miss GONZÁLEZ-COLÓN. Mr. Senator, I think one of the issues that we've got back home, even when we receive the full amount for the state the municipalities were not allowed to receive because all of them do not meet the 500,000 people threshold. So that's an issue when you've got municipalities suffering from the earthquakes, same thing to still recovering from the hurricanes and then now we've got the COVID-19 and us, in the Caribbean, now facing the Sahara dust that is, you know, another issue.

So housing is an issue for Puerto Rico and even though we receive \$20 billion from CDBG funds, not all of them are already on the islands. So one of the asks that we're trying to have is if we can, schools and houses that were impacted by the hurricanes were impacted as well with the earthquakes, so if we can use those funds to repair, no matter if it was the hurricane or the earthquake, those facilities, because right now, it's just labeled that money and you can't use it to repair in that sense. So it's common-sense. You cannot touch the money from the earthquakes to the money from the hurricanes.

Senator MANCHIN. Let's see if we can help you on that.

Miss GONZÁLEZ-COLÓN. Thank you.

Senator MANCHIN. It is crazy.

Thank you, all.

The CHAIRMAN. Thank you, Senator Manchin.

That was a great question, what has not worked, and I think it is important that we understand from lessons learned. Again, I think we recognize that when we put in place the CARES Act, we were moving a lot of money out real quick and we were going to either undershoot or overshoot or miss the mark altogether. And we have learned, we have made some adjustments on that. Some

of them have not come in a very timely manner, but they have come. But if we are going to be moving forward in yet another round, it does not make sense to just add money to a program that has clearly demonstrated that it fails certain constituencies. And if we need to make those adjustments, we need to do just that.

As I think about how this country, our territories, move forward, and thinking about economic recovery, so much of it is in what you all have outlined with regards to things that are just, really, critically important when it comes to health care and Medicaid and just all of the reimbursement issues. But I want to talk hard infrastructure just for a moment because there is a lot of discussion around here, oh, yes, we are going to do an infrastructure bill. Well we have been talking about that for a long while, and we are running out of daylight here.

But, one of the things that we have really come to appreciate, I think, during this time of COVID is that our healthcare, our education system is made stronger if you have good broadband, you have the ability to do telehealth or distance learning. So I am curious to know from those of you if internet broadband is a consideration, an issue for you. In other hard infrastructure I know that we passed legislation here five years ago directing DOI to develop energy action plans for the territories. And so, you know, that often is viewed, energy infrastructure to deliver clean energy solutions where you are not relying on diesel that is shipped in, is something that, I think, we all look to as a future.

Congresswoman González, you mentioned the Puerto Rico Aqueduct and Sewer Authority, the WaterSMART grants, recognizing that, again, when you are talking about a pandemic it is really important that you have clean water for your citizens.

As we think about infrastructure, I would be curious to hear from the five of you what could be beneficial from an economic recovery perspective that you would classify in this particular bucket. We will go down this direction, so we will start with you, Congressman San Nicolas.

Mr. SAN NICOLAS. Thank you. Thank you, Senator.

I'd first like to recognize my colleague, Congresswoman Plaskett, because she's done tremendous work to increase the allotment for our roadways in the territories and that's being included in our infrastructure bill in the House that we're currently working on. I know that my colleague also, Congresswoman González-Colón, actually wanted to increase that amount further. Roadway infrastructure is a serious issue, especially on Guam. Our weather conditions make for a very short lifespan for even a well-built road. On top of that, because we don't have the same kind of investment in public transportation that a lot of the states have, we have a lot of drivers on these roads. And so, road wear and tear from use, road wear and tear from environmental conditions result in a lot of roadwork that needs to be taken care of.

And so, these additional road resources are very welcomed, but I would like to ask if there is a way for us to consider, at least for our territories, those road resources are specifically for routed roads, but we have a lot of secondary roads on our island that do not have any kind of funding resources. They are, perhaps, not perhaps, they absolutely are in worse shape than our federally-routed

roads that do have the federal resources. And with the COVID-19 circumstances and our tax revenue base dropping out of the bottom, I don't see any local resources being available to maintain secondary roads anytime soon. And so, I mean, road infrastructure, all the way back to Roman times, has been critical for economic sustainability. That's something that I would very much like to ask to be a priority for the infrastructure bill.

The CHAIRMAN. Very good.
Congresswoman.

Miss GONZÁLEZ-COLÓN. In the case of Puerto Rico, I need to say that we are right now having a drought. So beside all the situation, our condition is living in the Caribbean add more pressure to the resources. So we are the only territory, the only state in the whole nation that is excluded from the WaterSMART Grants Eligibility Act that actually works with drought resiliency and fresh water. So that's an easy one, right? Just including us as the rest of the states.

The second, I will say, is the rural areas for broadband. There's a reality that right now you need to move forward a lot of schools to go to remote work with kids. We've still got a problem with schools in the south part of the island because those municipalities were impacted by the earthquakes. So you get one town like, Guanica, all six schools are closed. So you've really got a situation back home in terms of access to broadband in the rural areas on the island.

In terms of the infrastructure for, I'll say, ports, being an island, ports should be in the best condition ever and not just the San Juan area, but the rest of the ports on the island. In terms of the, we receive a block grant as a territory for roads and highways. Our problem is that having the same metrics that you use for lines in the rest of the states who are receiving that allocation, Puerto Rico is just receiving \$200 million when the states that make, compared to us, will be receiving \$418. So we are asking to remove the cap or, at least, increase the amount of funds going to highways and local roads because we are, I mean, we are not receiving, using the same metrics, the money that should be used for infrastructure. And Puerto Rico's infrastructure serves a lot of the pharmaceutical that supplies the national supply chains and many others.

So, and social security incomes, supplemental, SSI, I mean, a lot of our elderly people are not receiving those resources and you see the poverty level line of 43 percent is because all this program, instead of having SNAP, which is the program all states got for food assistance, in the territories we receive NAP, at least in Puerto Rico. That means it's the less of the funds and resources as well.

So I say, infrastructure for taking the cap for the blockgrant, moving us from the rural areas for broadband in rural areas and, of course, the WaterSMART. And I'm not talking here about energy that you may know, you were on the island that we are having a lot of, 40 percent of petroleum, 39 percent of gas and 18 percent of coal, just two percent of renewables and all the infrastructure suffer by the hurricanes and the earthquakes and we don't have access yet to the \$1.9 billion allocated by Congress to manage the energy area.

The CHAIRMAN. Here we go, we have three more to finish this up and then we will turn to Senator Cantwell.

Congresswoman Plaskett.

Ms. PLASKETT. I'll be very quick.

In terms of infrastructure I think one of the major ones is trans-shipment which would include ports, but I think we have the potential and there had been discussion previously about utilizing either Puerto Rico, the Virgin Islands for LNG trans-shipment to the rest of the Caribbean. And I think that's something that needs to be put back on the plate.

I'm working with a colleague, the Dean of the House from Alaska, Don Young, about support for ferry systems in our areas which are remote needed, but I think also your discussion about broadband. In my estimation, broadband is for transportation the same way that the railroads were in the 1800s. It is the way that goods and services, information is going to be transported in this country and we need to make the investment in it. The Virgin Islands has some of the—has the largest broadband capacity in the United States, outside of New York City, more than Silicon Valley, elsewhere because Global Crossing put their North American hub on the island of St. Croix. But our children have the lowest bandwidth capacity. They have the lowest speed because they do not have that access in that last mile coming to their homes. That's inexcusable, and so the investment in that is really, I think, key to us being also able to grow our economy.

So thanks.

The CHAIRMAN. That is very interesting information.

Let's go to Congressman Sablan.

Mr. SABLAN. Yeah, thank you.

I'd also echo broadband. I come from a place where no less than 60 percent of our students fall below the poverty level, and so many of them do not have access to broadband. But also in terms of schools, the Army Corps of Engineers did a study in 2013, Senator, and actually made an inventory of school facilities and found that the schools were just in need of repair, and a middle school in Saipan—which was built right after the war has finally—was destroyed by our recent super typhoon and students are now taking classes in tents.

Having said that, again, in H.R. to consider today we have the reopen and restore schools language from the Ed & Labor and provide money for \$100 million, \$100 billion to restore or to cancel deferred maintenance for school facilities throughout the nation. And so yes, schools are also very in need.

And if I may, Senator, the Energy Task Force that was by law assigned to Interior, nothing has come out of that except the organization of the task force. I've been bringing that up twice a year at least.

The CHAIRMAN. Yes.

Mr. SABLAN. Thank you.

The CHAIRMAN. I figured as much.

Congresswoman Radewagen, you get the last word here.

Mrs. RADEWAGEN. Thank you, Chairman Murkowski.

With regard to infrastructure, my written testimony that's being submitted addresses many of the details and key needs there for

us. But thank you also for bringing up interconnectivity, the internet. I'm not the most tech savvy person, but in short, yes, we need both more high-speed connectivity and more tech training for our young professionals and students at the American Samoa Community College, our only community college. Additional broadband grants will provide this generation with must-have tools to be part of the virtual and teleworking economy that's growing more rapidly than ever due to the ongoing health crisis and our local CBOC for veterans also heavily relies on internet connectivity for telehealth. Investment into telecommunications has increasingly become the most important lifeline to the outside world for these remote islands, but we are making progress here. And as I am live from 7,000+ miles away. Thank you.

The CHAIRMAN. Thank you, Congresswoman.

Senator Cantwell.

Senator CANTWELL. Thank you, Madam Chair, and thank you for this hearing.

If I could go back to Congresswoman Radewagen. Samoa has, I think, no cases so far but as travel is starting to open up, obviously we have had various hearings in the Commerce Committee about standards that we would like to see in the aviation sector so that there are uniform health standards across. What steps do you think need to be taken by the Federal Government to have confidence in reopening commercial air travel to the island?

Mrs. RADEWAGEN. Well, I think that, I want to complement the Governor here and his task force and the working team on the things that they've put into place that has worked very well for us at this point in time. And I think that, of course, we need more resources, but the Federal Government has been working closely with the local government to see that we can continue to be the only state or territory that has not a single positive case. That's a good thing.

Senator CANTWELL. How do you think people feel about air travel at this point?

Mrs. RADEWAGEN. Well, I think that there are a lot of angry constituents out there. People want to travel, always want to travel, and it's been tough for us. We only have one airline and when that shuts down, nothing moves and it's really by the Grace of God that I haven't—here after spending two weeks of quarantine in Hawaii and then I managed to get on a flight to come down and then immediately into another two weeks of quarantine here in American Samoa. I don't know if I'm answering your question, but—

Senator CANTWELL. We all care about air travel and it is essential for moving goods and services and for our mail, medical supplies, so we want our airlines to operate. I am asking you because, obviously, it is so much a part of your economy, tourism, and my feeling is if we get this right and we could get national standards in place, if we could get some distancing and some processes and procedures that had to be followed, you might get to a level where the public feels more comfortable in flying.

So we have just been pushing for standards, even if they are, you know, guidelines that would be implemented by all the airlines. Again, we know that American Samoa has a strong tourism econ-

omy and probably really counts on this, so we are just looking for the day that we can get that restarted. Thank you.

Thank you, Madam Chair.

Mrs. RADEWAGEN. Yes, and as I mentioned to Senator Hirono, it makes sense. I think it makes sense to take a good look at that.

The CHAIRMAN. Thank you, Senator Cantwell.

Thank you, all. I appreciate what you have provided us. I think there has been a good review on some lessons learned but also how COVID-19 has really helped shine a spotlight on some of the disparities that we have, not just within how our territories are treated, but some of the disparities that we see here in mainland United States. You look at the vulnerabilities of so many of our minority populations and you think about how we can work to be responsive, again, not only when it comes to the health and safety of individuals but then how we are responsive to the economic impact as a follow-on from COVID-19.

It is a challenge, but hearing what you have provided the Committee today, I think, is a reminder, certainly to me as a state that while we are not an island, sometimes we feel like an island up there not sharing a common border with the rest of the Lower 48, but in a recognition of the reliance of your economies on a tourism base that can literally be shutdown overnight and be cut off then for not just the period where the health is at risk, but again, once you lose that season, you lose that season for possibly a year. The fact that so many of our territories are still struggling to recover from various natural disasters, whether it is the hurricanes in the Caribbeans or the most recent earthquakes or the typhoons out in the Pacific. These are still very real natural disasters that you have not even been able to take a deep breath in your recovery to move on to this next one.

I think the reason that we wanted to have this discussion today was to make sure that as we work toward a broader national effort toward recovery, that we are not forgetting our territories. I don't care, Congresswoman Radewagen, whether you are 7,000 miles away or you are 700 miles away, we have a responsibility here, and it is just more challenging in certain places than others because of the geography, but it is respecting the people on the ground where ever they may be.

I think you are probably going to be fielding some questions for the record from other colleagues, and we will appreciate your weighing in.

But use us here in the Energy and Natural Resources Committee as a resource if you have more information following on that you think we need to know in anticipation of the work that we are going to be doing over here in the month of July. That would be very helpful and truly, very welcome.

We thank you for your partnership in this, and we thank you for the representation that you provide for your constituents as well.

With that, the Committee stands adjourned.

[Whereupon, at 4:23 p.m. the hearing was adjourned.]

APPENDIX MATERIAL SUBMITTED

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Gregorio Kilili Camacho Sablan

Questions from Ranking Member Joe Manchin III

Question 1: The pandemic has completely transformed our health care system, and the need for personal protective equipment (PPE) has increased dramatically. While we have a Strategic National Stockpile for emergency medical supplies, we are seeing significant shortages of PPE in the United States and its territories.

a. Do you currently have the proper medical supplies and equipment you need?

Currently, the Commonwealth Health Care Corporation (CHCC), the sole hospital in the Marianas, has all needed medical supplies and is closely monitoring inventory levels, especially on fast-moving items like PPE. However, the Marianas' distance from the mainland US creates logistical issues and the national medical supply shortage makes obtaining certain medical gowns through local vendors nearly impossible.

While testing equipment is currently adequate, test kits/consumables and reagents are in short supply for the GeneXpert, Abbott ID, and ABH 7500 testing platforms. A BioFire testing machine is also available for use, but the DoD has exclusivity on supplies and CHCC is not able to use that platform.

b. What has been the primary method for your territory in acquiring these life-saving drugs and equipment?

Since local vendors have been unable to meet supply demands, CHCC has relied heavily on shipments from FEMA and some supplies from the Commonwealth's State Emergency Operation Center and Commonwealth Department of Homeland Security.

For test kits/consumables and reagents, CHCC relies on the CDC's International Reagent Resource and HHS.

The Commonwealth's government also has a Memorandum of Agreement with the VA's National Acquisition Center (VANAC) for any needed pharmaceuticals. The agreement creates a framework under which CHCC's pharmacy will place procurement requests for ordering and delivery of pharmaceutical items listed on the Federal Supply Schedule (FSS) with VA's Pharmaceutical Prime Vendor (PPV). CHCC also has an existing contract with McKesson for any Over the Counter (OTC) drugs and general supply needs for out-patient services.

Question 2: State, territory, and local governments are facing drastic revenue shortfalls due to the impact of COVID-19 on their economies. The Coronavirus Relief Fund is supposed to provide flexible funding to state, territory, and local governments to respond to the crisis, but there is no guarantee that the funding will reach communities with fewer than 500,000 residents, and more flexible and dedicated funding is needed.

[Responses provided by Marianas Governor Ralph Deleon Guerrero Torres]

U.S. Senate Committee on Energy and Natural Resources
June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
Questions for the Record Submitted to the Honorable Gregorio Kilili Camacho Sablan

a. Has the Coronavirus Relief Fund been helpful to your territory and local governments?

Certainly, the Coronavirus Relief Fund has played a significant role in providing the necessary resources the Commonwealth of the Northern Mariana Islands (CNMI) needed to immediately respond to the spread of this deadly disease. Although we have sought emergency reimbursement programs in areas we could, the Coronavirus relief fund enabled the CNMI to acquire resources that may otherwise be unaffordable or not readily available to the CNMI given the unprecedented circumstances. For this, we are immensely grateful for the relief aid provided to continue our effort to safeguard our community.

As we have noted in the past, however, the Coronavirus Relief Fund covered one, while significant, distinct category of need for the CNMI's finances. In only covering expenses that were not covered by the most recent CNMI appropriations bill, the fund was not capable of assisting the CNMI in addressing its severe, and unprecedented fiscal revenue shortfall caused by the collapse of the economy. Should the opportunity arise for additional resources to be provided, we ask for consideration to assist with this dramatic loss.

b. Are there any challenges to accessing this funding?

The CNMI has not experienced challenges with accessing funding from the Coronavirus Relief Fund. The Department of Finance received two remittances from the United States Department of the Treasury: \$18,142,108.85 on April 16, 2020 and another \$18,142,108.85 on April 22, 2020. Altogether, these transactions culminate to a total of \$36,284,217.70.

c. How are territory and local governments addressing the projected revenue shortfalls?

Prior to the COVID-19 reaching our shores and following the revised budget reduction of 28.3% as a result of diminished revenue in the first quarter of fiscal year 2020, the Office of the Governor issued Directive 2020-002: "Implementation of 64-hour work schedule and cost containment measures". Contained within this directive is a list of cost mitigation controls implemented expeditiously in alignment to the new projected level of funds. The effort includes the following:

- i. Implementation of 64-hour work schedule;
- ii. Cost Containment Measures:
 - a. No Personnel Actions under General Fund;
 - b. No Overtime;
 - c. Travel Restrictions;
 - d. No New or Renewal of Government Contracts;
 - e. No New Purchases of Capital Items;
 - f. Utility Conservation;
 - g. Fuel Conservation

On March 11, 2020, the CNMI Department of Finance reported an updated budget reduction of 48% (SFL2020-318) as a result of the near elimination of tourist arrivals in line with foreign and

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Gregorio Kilili Camacho Sablan

domestic travel restrictions. Due to severely diminished revenue, the outlined cost mitigation measures within Directive 2020-002 are expected to continue for the remainder of the Fiscal Year 2020, apart from the COVID-19 Prevention and Mitigation Effort.

Through the Office of Insular Affairs, the CNMI collaborated with Graduate School USA to hold the CNMI Fiscal Reform Summit in March of 2020, where a whole of government discussion on the fiscal solvency of the government took place. The outcome of the Summit set forth action items to address the financial challenges of the CNMI, which among other initiatives, included the recommendation to furlough approximately 500 government employees. This significant reduction in the workforce coupled with stringent cost mitigation controls allowed the Department of Finance to witness a reduction in expenses moving closer to the new budget level.

Question 3: Congress implemented the Paycheck Protection Program (PPP) to aid small businesses to help them weather the storm of the COVID-19 crisis. So far, the territories have received about \$2.2 from the PPP. However, despite the PPP's intended purpose of supporting small businesses, many of the local mom and pop shops have had difficulty accessing the funding.

a. Are your constituents getting access to PPP loans?

Small Business Administration data suggests PPP applicants from the Northern Marianas are accessing loan funding. As of June 30, 473 applicants from my congressional district were approved for loans worth \$39,333,708.

b. Do you have any recommendations on how we can find a better way to get help into the hands of struggling small businesses?

To help ensure truly small businesses are able to access funding, 25 percent of PPP funds should be carved out for those firms with 10 or fewer employees as called for in the Heroes Act.

Question 4: Many states, including my state of West Virginia, have received billions in aid from the Coronavirus Relief Fund that has still gone unspent. We must take inventory of the money that has already been approved by Congress but remains unspent or unavailable to people on the ground.

[Responses provided by Marianas Governor Ralph Deleon Guerrero Torres]

a. Has your government transferred money from the Coronavirus Relief Fund to local governments or municipalities in your territories? If so, do you know how much?

Yes, the CNMI allotted \$4,732,187.76 of Coronavirus Relief Funds to local municipalities, leadership offices, and agencies listed below:

- i. Senate Members & Leadership
- ii. House Members & Leadership

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Gregorio Kilili Camacho Sablan

- iii. Saipan Mayor's Office
- iv. Tinian Mayor's Office
- v. Rota Mayor's Office
- vi. Commonwealth Utilities Corporation
- vii. Division of Revenue and Taxation
- viii. CNMI Office of Attorney General
- ix. CNMI Judiciary

These transfers were also submitted to the US Treasury Department as part of the CNMI's Coronavirus Relief Interim Report.

Question 5: During the COVID-19 pandemic, we have seen a growing problem of utility nonpayment as customers have had trouble paying their energy and water bills. Congress has already appropriated \$900 million in the CARES Act for low-income household utility assistance, but it's clear we need more.

[Responses provided by Marianas Governor Ralph Deleon Guerrero Torres]

a. What are you seeing in terms of rates of nonpayment and do you have disconnection moratoria in place to prevent customers being cut off for nonpayment?

Based on the information provided by the Commonwealth Utilities Corporation (CUC), we see a consistent pattern of payments from the pre-COVID-19 period and the ongoing COVID-19 period with the greatest variance in anticipated revenue exceeding actual collections in the months of February and March, corresponding with the CNMI's first efforts to mitigate the spread of the virus, through large-scale restrictions to business activity, international tourism arrivals, and these factors corresponding impacts to employment. The government's ability to maintain sufficient cash flow to make timely payments on utilities is present in the pre-COVID-19 period, highlighting the pre-existing negative fiscal conditions caused by already diminishing tourism arrivals and ongoing impacts caused by Super Typhoon Yutu.

Moreover, the loss of business activity and the widespread shutdown of commercial activity is present in the dramatic reduction in energy demand within CUC's commercial customer base. Between the most recent period (June 2020) and the pre-COVID-19 period, the commercial demand for electricity shrank by a consistent month-to-month decline totaling a reduction of 45%. Payment remains consistent on these accounts, but the severe loss of business activity caused by COVID-19 should be noted. For detailed information, please refer to Table 1.0.

Table 1.0: CUC Revenue vs. Collection

U.S. Senate Committee on Energy and Natural Resources
June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
Questions for the Record Submitted to the Honorable Gregorio Kilili Camacho Sablan

COMMONWEALTH UTILITIES CORPORATION						
REVENUE VS COLLECTION PER CLASS						
For the period January 2020 to June 2020						
COMMERCIAL CUSTOMERS:						
Description	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20
Revenue	\$3,907,118	\$3,851,680	\$3,772,508	\$3,132,363	\$2,230,862	\$2,142,426
Collection	\$4,090,573	\$3,110,150	\$3,865,541	\$3,295,745	\$2,392,800	\$2,688,157
%	105%	81%	102%	105%	107%	125%
RESIDENTIAL CUSTOMERS:						
Description	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20
Revenue	\$2,062,599	\$1,969,046	\$1,963,148	\$2,051,498	\$2,012,191	\$1,999,331
Collection	\$2,299,759	\$1,949,315	\$1,818,575	\$1,768,179	\$2,391,378	\$2,121,326
%	111%	99%	93%	86%	119%	106%
GOVERNMENT CUSTOMERS:						
Description	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20
Revenue	\$1,724,168	\$1,406,911	\$1,411,293	\$1,180,318	\$1,221,000	\$1,249,574
Collection	\$136,980	\$514,943	\$67,137	\$1,470,151	\$886,344	\$981,348
%	8%	37%	5%	125%	73%	79%
TOTAL						
Description	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20
Revenue	\$7,693,885	\$7,227,637	\$7,146,950	\$6,364,178	\$5,464,053	\$5,391,331
Collection	\$6,527,313	\$5,574,408	\$5,751,253	\$6,534,076	\$5,670,522	\$5,790,830
%	85%	77%	80%	103%	104%	107%

b. Are there concerns about nonpayment increases impacting utility cash flow? If so, what do you think is needed?

Although we are not privy of the detailed transactions between the Commonwealth Utilities Corporation and its customers, as a Commonwealth we are gravely concerned with the threat of increasing nonpayment on utilities throughout the community. This period creates considerable uncertainties for resident, commercial, and government customers of CUC. The CNMI requests that, in hopes of mitigating any compounding fiscal constraints on CUC's resources, additional funding be made available for territories like the CNMI to ensure utility fuel, maintenance, and services are not susceptible to cash flow fluctuations; and basic living necessities remain available for the people of the CNMI.

Furthermore, the CNMI has seen a rise in the number of household applicants needing utilities assistance. Between the months of March and June, LIHEAP beneficiaries have increased from 130 to 266. Eligibility for LIHEAP assistance is income-based. So far, the CNMI has been able to manage the provision of subsidies with the available funds by directing funding for several non-subsidy programs to the utility subsidies. Our Crisis Assistance, Weatherization, and Assurance 16 funding have all been redirected to the utility subsidies in order to meet the increase in eligible households. Thus far, the CNMI has managed to do this without incurring a waiting list.

U.S. Senate Committee on Energy and Natural Resources
June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
Questions for the Record Submitted to the Honorable Gregorio Kilili Camacho Sablan

The amount of federal assistance received by the LIHEAP is based on population. The additional amount provided to the LIHEAP from the total CARES Act pot of \$900 million for low-income utility assistance, was a mere \$52,000.00 and was also population-based. Because of the relatively minimal amount of federal dollars made available for the LIHEAP, the program is highly reliant on CNMI local appropriations. For FY 2020, the LIHEAP received \$235,064 in federal funding and \$112,190 through local appropriation.

The LIHEAP has projected an increase of up to 300 additional households. The current federal and local funding combined for subsidies will not address this projection. The LIHEAP is only meeting the current demand because of the funding it has redirected from the crisis assistance fund, weatherization fund, and the assurance 16. In order to address the projected number of households at the current subsidy levels, and reinstate the crisis assistance, weatherization, and assurance 16 programs, the LIHEAP would need an approximate additional \$400,000 in federal and/or local funding resources, of which local resources are already severely diminished.

Questions from Senator Bernard Sanders

Questions: **As the lead sponsor of the Equitable Nutrition Assistance for the Territories Act in the Senate, I understand the importance of providing the Northern Mariana Islands with a clear transition path from the Nutrition Assistance Program (NAP) to the Supplemental Nutrition Assistance Program (SNAP) as quickly as possible. With that in mind, could you explain the following:**

[Responses provided by Marianas Governor Ralph Deleon Guerrero Torres]

- a. What is the full level of nutrition aid required by Northern Mariana Islands through the end of this year?**

The full level of nutrition aid required by the Northern Mariana Islands for Fiscal Year 2020 is approximately \$29,624,861. This includes the projected cost for program benefits of \$26,223,932 and \$3,400,929 for administrative costs. In June 2020, the CNMI issued approximately \$3,431,584 in nutrition aid; \$2,694,944 for NAP program benefits and \$646,640 in supplemental benefits. Supplemental benefits are funded from the Families First Coronavirus Response (FFCR) Act and the CARES Act for a combined total funds of \$1,860,563 that has been approved for distribution from June to August 2020. Through the end of this year, beginning September 1, 2020, the CNMI requires \$10,671,392 for NAP program benefits for October to December 2020 to retain the current approved benefit levels and income thresholds, and \$2,586,560 for supplemental benefits for September to December 2020. The CNMI's current income eligibility standards are based on the FY 2020 SNAP 100 percent poverty level and comparable level of Guam SNAP maximum benefit allotment for FY 2019.

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Gregorio Kilili Camacho Sablan

b. Can you describe how Northern Mariana Islands' exclusion from SNAP has affected food security during the COVID-19 pandemic?

The CNMI Nutrition Assistance Program has provided benefits under the Enhanced Nutrition Assistance Program (ENAP), designed to bring some of the NAP processes in line with the SNAP, see the completion of an eligibility system (necessary to transition to an EBT), and see increases in both income eligibility and benefits, to more closely resemble that of the SNAP.

The disaster relief funding provided from HR 2157 in the amount of \$25.2M allowed the CNMI the opportunity to increase the income eligibility standards to the SNAP's FY 2020 100 percent poverty level. Without the disaster relief funding, CNMI's income eligibility standards would fall far below the poverty level, including a significant decrease in benefit allotments. Without sufficient block grant funding and supplemental funding, the CNMI is prevented from implementing income eligibility standards at the SNAP 130 percent of poverty level, which potentially could qualify an additional 1,500 households for NAP assistance. Thus, this affects food security to these many potential households during the COVID-19 pandemic and beyond.

That said, the ENAP is ideal in some ways, as the CNMI is not currently responsible for 50% of administrative costs, as would be required under the SNAP, and the ENAP accommodates the NAP requirement that 25% of benefits be used for the purchase of local agriculture, and may also be used for farming and fishing implements. These are not permitted under SNAP.

The ENAP was designed to sunset originally in 2019 – 2020, with income eligibility levels and benefits stepped down to pre-ENAP levels. The life of the ENAP has been prolonged due to the disaster relief funding provided by HR 2157.

c. In your view, how would Northern Mariana Islands benefit from participating in SNAP?

The Northern Marianas Islands would benefit from increases to the income thresholds and maximum benefit allotment comparable to the SNAP levels for eligible households that would be fully covered by the USDA-Food and Nutrition Service.

The alternative to the SNAP that would allow for either the long-term maintenance of increased income eligibility at the 100% poverty level, or increase income eligibility to 130% of the poverty level, and retain current benefit levels, would be a significant increase in the traditional block grant funding provided to the CNMI.

As mentioned in an earlier response, however, SNAP comes with both increased opportunities as well as costs and a reduction in the usages of benefits provided to the recipient.

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Gregorio Kilili Camacho Sablan

Questions from Senator Mazie K. Hirono

Question 1: **Congressman Sablan, your testimony notes the importance of passing H.R. 6800, the HEROES Act in the Senate. How are families, communities, and small businesses in the Marianas dealing with the impacts of the COVID-19 pandemic, and how will passage of the HEROES Act help the Marianas and the rest of the country respond to and recover from the pandemic?**

Families, communities, and small businesses in the Marianas continue to struggle with the impacts of COVID-19's shutdown of our sole industry, tourism since January. The Administration's delayed distribution of CARES Act funding to the Marianas have made it even more difficult for everyone. The delays have meant children's schools continue to be closed, learning has been interrupted, their teachers furloughed due to budget shortfalls, and their families increasingly distressed without the relief they need. Passage of the Heroes Act would provide the additional relief needed to keep schools open, reverse cuts to essential services, and help families out of work survive. The urgent passage of the Heroes Act is critical to the well-being our islands and the rest of the nation.

Question 2: **Late last month, FEMA released its COVID-19 Pandemic Operational Guidance for the 2020 Hurricane Season. How have the Marianas' hurricane preparedness and planning efforts been impacted by COVID-19? What if any additional resources or guidance does the Marianas need to prepare for hurricanes in the midst of the pandemic?**

An official response to the question from the CNMI Homeland Security and Emergency Management is pending. The following information is based on the congressional office's requests for the status of recovery efforts to Typhoons Yutu and Mangkhut and COVID-19.

The Commonwealth was still recovering from super typhoons Mangkhut and Yutu which struck our islands in September and October 2018 when President Trump declared the coronavirus pandemic a national emergency. COVID-19 social distancing requirements, travel restrictions, the suspension of routine visa services, and temporary suspension on entry of certain nonimmigrant workers have led to stops and delays of Yutu recovery projects critical to typhoon preparation.

The public health emergency declaration led to the temporary shutdown of FEMA's Voluntary Agencies Leading and Organizing Repairs (VALOR program) leaving residents who were ineligible for, or did not receive enough federal disaster assistance, with damaged homes. Many affected residents continue to live in tents and will have to go to emergency shelters when storms and typhoons approach.

Travel restrictions and the suspension of routine visa services has prevented health care workers coming to the Marianas. The health care workers petitioned by the Commonwealth Health Care Corporation which runs the only hospital and leads the Commonwealth's pandemic task force, are needed to help CHCC respond to the pandemic and carry out routine health care operations. Additionally, employers working on disaster recovery and mitigation projects have come to the

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Gregorio Kilili Camacho Sablan

congressional office seeking help as their operations are hampered because their workers are unable to obtain visas. Employers rely on these foreign workers because of the lack of workers skilled in those areas in our islands.

Questions from Senator Catherine Cortez Masto

Question 1: Throughout the global Coronavirus pandemic and the accompanied economic crisis, Medicaid have played a major role in providing coverage and care. What are the challenges of capped Medicaid funding during a crisis, be it a pandemic, a natural disaster, or a recession?

The Marianas responded quickly to the Coronavirus pandemic and is doing well compared to other states and territories. As of July 17, 2020, there have been 37 confirmed cases cumulatively and two reported deaths. The interventions of shutting down tourism, introducing port of entry screening at the airports, requiring 14-day quarantines and facial coverings, expanding community-based testing, and temporarily closing businesses has so far proven successful. But these interventions have come at a great economic cost.

The Marianas' economy is wholly dependent on tourism and is still recovering from Typhoon Yutu, the Category 5 typhoon that devastated the islands in 2018. Layoffs and furloughs of employees in both the public and private sectors, coupled with an approved temporary Medicaid state plan amendment for presumptive eligibility determinations, in just the past four months have led to a 32.72% increase in Medicaid enrollment.

Medicaid is designed to step in and ramp up financial protection for health care expenses that individuals may incur, especially during periods of economic downturn prompted by any reason, including natural disasters and pandemics. However, with a capped Medicaid program, the safety net can only support so many. We know that care utilization tends to increase during a crisis. With enrollment also swelling from 15,970 to 21,196, the Marianas may exhaust its FY20 federal funding cap of \$63,100,000 before the fiscal year ends, threatening access to care for thousands and driving up uncompensated care costs. The cap on federal funding to the Marianas' Medicaid program cuts against the intention of the program to not only provide a safety net for individuals, but also to function as an automatic stabilizer during a downturn in the economic cycle.

The Marianas' Medicaid program is essential, not only for the health of beneficiaries, but also for the stability of our health care services system. The successful operation of the Commonwealth Healthcare Corporation (CHCC), the Marianas' sole hospital, and other health care services providers depends heavily on revenues generated by Medicaid. Fortunately, the Further Consolidated Appropriations Act, (P.L. 116-94), which passed in December of 2019, enabled the Marianas to finance its obligations for the next two years. This, however, is only a short-term solution. The Marianas Medicaid program will need to be supported with longer-term funding commitments from Congress if it is to fulfill its entitlement to the growing enrollee population. Without a fundamental redesign of Marianas Medicaid program, the health and well-

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Gregorio Kilili Camacho Sablan

being of Americans residing in the Marianas will always in jeopardy, especially during times of crisis.

Question 2: What differences would you expect to see in health access if it were to operate under an open-ended financing structure similar to the rest of the country where Medicaid helps respond to the needs of a particular state at that particular time?

Medicaid is an entitlement program built on a federal-state partnership. For the Marianas, this partnership with the federal government to fulfill the entitlement is one-sided, leaving the burden on the Marianas to either come up with 80% of the Medicaid expenses, or regularly face a fiscal chasm while hoping for congressional action to provide temporary relief once more.

It is because of this one-sided relationship that the Commonwealth's Medicaid Agency operates in constant fear that the annual Medicaid program expenditures will exceed the Medicaid cap for any given year. As such, it is difficult to plan for expanding health access to services that are authorized under Title XIX when the threat of not having a sufficient annual Medicaid funding to cover current services exists every year. The Medicaid program must instead consider eliminating current services and/or restricting eligibility if Congress fails to provide timely funding support as it did in June 2019. A looming Medicaid funding cliff in September 2019 forced Governor Torres to restrict Medicaid access to conserve funding, diverting all patients to seek services at the hospital instead of their normal providers.

Eliminating the cap is critical for the Marianas to reliably fulfill its obligation to provide Medicaid beneficiaries with affordable, quality care and would enable the exploration of the many innovations in health care that other states have undertaken. Given provider reliance on Medicaid revenues, an uncapped Medicaid program would promote the expansion of providers, making improved access to health care and quality of care a reality. The Marianas might then be able to explore the use of Medicaid waiver programs for diabetes care and other related comorbidities, improving the overall effectiveness and efficiency of health care delivery.

Question 3: Do you have an estimate of how many more citizens would be served, or what additional services could be provided if Medicaid funding was no longer capped?

The Marianas currently covers all mandatory Medicaid benefits, except for freestanding birth center services since these facilities do not exist. If the cap is lifted, then, the Medicaid program would be able to provide additional services, including, adult diagnostic, screening, preventive, rehabilitative services, personal care services, health homes for enrollees with chronic conditions, and others.

It is difficult to estimate how many more citizens would be served if the cap is removed. But what we are seeing with the increase in unemployment, furloughs of workers, and the temporary Medicaid state plan amendment for presumptive eligibility determinations is a 32.7 percent increase in Medicaid enrollment – That is, 5,226 additional individuals now availing of Medicaid since February 1, 2020.

U.S. Senate Committee on Energy and Natural Resources
June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
Questions for the Record Submitted to the Honorable Gregorio Kilili Camacho Sablan

The table below, provided by the Commonwealth's Medicaid office, shows how Medicaid enrollment increased from February 1, 2020 to July 10, 2020. Only the case number is reflected in the table and does not indicate all eligible beneficiaries. The total increase in enrollment includes 1,035 persons that became eligible based on presumptive eligibility. Enrollment is expected continue increasing throughout the year.

As of July 10, 2020						
	February	March	April	May	June	July
Total Enrollment at beginning of Month	15,970	16,966	17,518	18,037	19,179	20,555
Total Applications Received	1,089	665	857	1,377	2,517	754
Applications Approved	1,033	587	519	1,144	1,381	287
Applications Denied	16	8	12	13	9	-
Pending Application/Awaiting Final Decision	-	4	32	8	79	22
Pending Application - Incomplete Application	3	31	294	210	362	91
Closed (past 30 days after expiration without renewal or documents were not submitted within 30 days of application submission)	37	35	-	2	5	-
CHCC PE	-	-	-	-	598	268
Rota Health Center PE	-	-	-	-	66	58
Tinian Health Center PE	-	-	-	-	17	28
Total Enrollment as of July 10, 2020						21,196

Question 4: What are some of the long-term impact of the hurricanes, typhoons, previous epidemics and other natural disasters on your health care system and infrastructure and how does your government anticipate covering these additional expenditures?

The Marianas shouldered more than its fair share of major disasters and other events that have had negative short and long-term impacts on the health care system.

The great recession in 2008 forced the Commonwealth's government and private sector entities to institute furloughs and layoffs. The Medicaid program enacted the use of Certified Public Expenditures (CPE) in response, relying on the expenditures of the hospital to meet Medicaid

U.S. Senate Committee on Energy and Natural Resources
June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
Questions for the Record Submitted to the Honorable Gregorio Kilili Camacho Sablan

matching requirements since the Commonwealth's Government did not have funds to appropriate.

Federal Medical Assistance Percentage (FMAP) at that time was statutorily set at 50% and then increased to 55 percent by the Affordable Care Act (ACA). With such a disproportionately low FMAP, it meant that the hospital, operating on CPE's for Medicaid, did not receive roughly 45 percent of the revenues it would have received under the Medicaid Fee-For-Service (FFS) reimbursement model from 2012 until 2019. For comparison, the poorest state per capita Mississippi, has had a FMAP that fluctuated between 73 percent and 77 percent during the same time period.

With revenue limited, it meant that improvements to care through investments in medical specialists, technologies, and services could not be made.

Despite an additional \$109 million made available by the ACA for the Medicaid program, the Commonwealth's limited capital due to the recession made program improvements and the utilization of innovation waivers impossible as the Commonwealth could not afford to make Medicaid Enterprise System (MES) or Health Information Technology (HIT) investments. As a result, the health care system limped along.

For the past three major natural disasters of Super Typhoon Soudelor, Typhoon Mangkhut and Super Typhoon Yutu, the hospital has needed to rely on other revenues to fund expenditures. FEMA reimbursements help, but become available almost two years post disaster, impacting the hospital's cash position and further limiting the commonwealth's ability to make systemic improvements.

For COVID-19, the CARES Act has augmented the hospital's cash flows by \$5.2 Million. However, there is still an estimated shortfall of \$2.8 million. With depressed revenues, the Commonwealth's government is unable to appropriate additional funds and seeking to apply FEMA pandemic assistance for all costs allowable to make up the difference.

The chronology over the past decade follows:

- 2009 The great recession devastates the Marianas economy leading to layoff and furloughs in both the public and private sectors.
- 2010 The Affordable Care Act (P.L. 111-148) provides additional \$109 million in Medicaid funding with \$100 million expiring on September 30, 2019 and the remaining \$9 million expiring on December 31, 2019.
- 2012 The Marianas Medicaid program works with CMS to establish CPE as the payment methodology for the Commonwealth Healthcare Corporation.
- 2015 August – Super Typhoon Soudelor devastates the Marianas – President Obama declares the Marianas a federal disaster area.

U.S. Senate Committee on Energy and Natural Resources
June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
Questions for the Record Submitted to the Honorable Gregorio Kilili Camacho Sablan

- 2018 September – Typhoon Mangkhut impacts areas of the Marianas, stifling recovery from the recession and Super Typhoon Soudelor.
- 2018 October – Super Typhoon Yutu, devastates the Marianas – The President issues a Major Disaster Declaration.
- 2019 March – The Medicaid program exhausts all federal funding leaving only CHCC to provide services for the Medicaid population through CPE.
- 2019 June – Governor Torres restricts Medicaid provider access, requiring patients to seek care at CHCC which can provide services using the CPE methodology.
- 2019 June 6 – Additional Supplemental Appropriations for Disaster Relief Act, 2019 (P.L. 116-20) passes and provides an additional \$36 million in stopgap funding to keep the Marianas Medicaid program funded through September.
- 2019 October – FY20 begins and the Marianas has \$6.9 million to budget for the year. Expenditures in FY19 were \$60.2 million.
- 2019 December 20 – Further Consolidated Appropriations Act, 2020 (P.L. 116-94) passes, providing 2 years of funding at \$60 million per year and increasing the FMAP to 83 percent.
- 2020 January – COVID-19 emerges.
- 2020 March – travel from China and other locations is restricted due to COVID-19. Given the fragility of the economy, the private and public sector immediately institutes layoffs and furloughs.
- 2020 March 18 – The Families First Coronavirus Response Act (P.L. 116-127) passes providing an additional \$3.1 million in Medicaid funding for FY20 and \$2.325 million for FY21. The Marianas FMAP is temporarily increased by 6.2 percent.
- 2020 March 27 – CARES Act (P.L. 116-136) passes, providing relief funding for hospitals and providers who lost revenue due to COVID-19. CHCC receives a total of \$5.2 million from the provider relief fund.
- 2020 April – The proposed FY21 budget for the Commonwealth’s government is submitted to the Commonwealth’s Legislature. The proposed budget reflects a 48% reduction from the proposed budget for FY 2020.

In summary, the Marianas health care system is fragile and has had to find ways to mitigate over 10 years of short and long-term impacts from natural disasters and the great recession– all while chronically underfunded due to inequitable federal policies. Until the cap is removed, health care access in the Marianas and the Commonwealth’s ability to effectively respond to and recover from disasters, will always be limited.

U.S. Senate Committee on Energy and Natural Resources
June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
Questions for the Record Submitted to the Honorable Gregorio Kilili Camacho Sablan

[Response provided by Marianas Governor Ralph Deleon Guerrero Torres]

The CNMI has experienced three major disasters in the past five years. First, with the devastation by Typhoon Soudelor in 2015, then followed by the historic severity of Super Typhoon Yutu, and now by the disproportionate impacts of the COVID-19 global pandemic on the CNMI people and its fragile economy, it is clear that to expect a small island economy to withstand global-scale natural disasters on its own is not a possibility. Congress should be aware of the disadvantages natural disasters place on the struggling and fragile community here in the CNMI, and recognize these fragilities in the totality of its approach to territorial issues. It is said often, and evidence is provided time and time again, that the CNMI's position economically, geographically and demographically is unique among communities in the United States, yet when federal programs choose to distinguish the territories, like the CNMI, it is often to our detriment in the reduction of proportional aid, or the segmentation from national funding pools.

Further, despite the limited benefits provided to the CNMI compared to communities in the U.S. mainland through programs such as Medicaid, U.S. Census Bureau, the Bureau of Labor Statistics, SNAP, and Wagner-Peyser, the CNMI is saddled by the full weight of federal regulations on economic activity, use of lands, and growth.

For the CNMI to be positioned to cover the additional expenditures caused by natural disasters, it is the ongoing interest of the CNMI government to grow its economy, and in doing so, create greater levels of government revenue, and critical cash reserves, to use in times of urgent need. In attempting to do this, however, attempts at economic development in the CNMI have been met with opposition, zealous regulatory enforcement and statutory restrictions limiting the capacity for growth. If Congress or the CNMI wishes to not become wards of the federal government in perpetuity, the ability for the CNMI to obtain the necessary resources to effectively respond to increasing occurrences of natural disasters, lies solely in the consistent and continual development of our economy.

If the goal of Congress is to support this effort in future disasters, and to build a more resilient territory of the United States in this geopolitically sensitive region of the world, we would welcome an engagement to discuss the many ways in which Congressional action can be taken to support economic growth beyond the current regime in place today.

One area that can be a positive step toward enhancing the CNMI's ability to build resiliency within our infrastructure is in recognizing the limitations of existing funding sources. I ask once more for your consideration on the issue of ever decreasing purchasing power of Capital Improvement Program (CIP) funding. As you are aware, CIP funding for the development and reconditioning of the CNMI's critical infrastructure as provided under our Covenant agreement with the United States has not been adjusted for inflation since its creation in 1978. Moreover, as inflation reduced the purchasing power of this important funding source, the limited amount was further divided among the territories, decreasing its impact across a wider geographical area. Allowing for a stable funding source for infrastructure development in the CNMI that adjusts with inflation, will allow for our infrastructure to find the necessary resources to obtain resiliency without having to first be impacted by natural disasters.

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Amata Coleman Radewagen

Questions from Ranking Member Joe Manchin III

Question 1: The pandemic has completely transformed our health care system, and the need for personal protective equipment (PPE) has increased dramatically. While we have a Strategic National Stockpile for emergency medical supplies, we are seeing significant shortages of PPE in the United States and its territories.

- a. Do you currently have the proper medical supplies and equipment you need?

Thankfully, we still have no confirmed cases with an island travel ban in effect and I respond in more detail in the overview response below on the current state of affairs.

- b. What has been the primary method for your territory in acquiring these life-saving drugs and equipment?

The federal funding provided thru the CARES relief Act.

Question 2: State, territory, and local governments are facing drastic revenue shortfalls due to the impact of COVID-19 on their economies. The Coronavirus Relief Fund is supposed to provide flexible funding to state, territory, and local governments to respond to the crisis, but there is no guarantee that the funding will reach communities with fewer than 500,000 residents, and more flexible and dedicated funding is needed.

- a. Has the Coronavirus Relief Fund been helpful to your territory and local governments?

Yes-they have helped us prepare.

- b. Are there any challenges to accessing this funding?

The funding has been accessible and questions to the agencies have been answered on a timely basis.

- c. How are territory and local governments addressing the projected revenue shortfalls?

The local government has indicated there will be minimal shortfall due to budget adjustments and increased federal funding thru the PPP, local government grant and health and education grants helping offset local revenue losses.

Question 3: Congress implemented the Paycheck Protection Program (PPP) to aid small businesses to help them weather the storm of the COVID-19 crisis. So far, the territories have received about \$2.2 from the PPP. However, despite the PPP's intended purpose of supporting small businesses, many of the local mom and pop shops have had difficulty accessing the funding.

- a. Are your constituents getting access to PPP loans?

U.S. Senate Committee on Energy and Natural Resources
June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
Questions for the Record Submitted to the Honorable Amata Coleman Radewagen

The PPP program got off to a slow start with only 2 loans for less than half a million approved in the first round but the last report showed over 449 loans for over \$23.4 million for our small business relief, including the 204 EIDL advances averaging over \$5,000 apiece so it has proved a great benefit. We only had 1 FDIC insured lender on the island approved, ANZ Bank of New Zealand; the SBA later approved the Territorial Bank of American Samoa also and subsequent direction from Congress to insure additional set aside of PPP funds for smaller jurisdictions was very helpful.

- b. Do you have any recommendations on how we can find a better way to get help into the hands of struggling small businesses?

Small businesses in American Samoa would benefit from a microloan program. There are many small businesses in American Samoa that don't need much but would benefit greatly in the long run from small easily accessible loans. A streamlined process to quickly receive a microloan would help our smallest businesses thrive.

Question 4: Many states, including my state of West Virginia, have received billions in aid from the Coronavirus Relief Fund that has still gone unspent. We must take inventory of the money that has already been approved by Congress but remains unspent or unavailable to people on the ground.

- a. Has your government transferred money from the Coronavirus Relief Fund to local governments or municipalities in your territories? If so, do you know how much?

Because our territory is so small, we don't have the same municipality or city structure you would find in the States or larger territories like Puerto Rico. The dispersal funds to specific areas in American Samoa is unlikely to be an issue for that reason.

Question 5: During the COVID-19 pandemic, we have seen a growing problem of utility nonpayment as customers have had trouble paying their energy and water bills. Congress has already appropriated \$900 million in the CARES Act for low-income household utility assistance, but it's clear we need more.

- a. What are you seeing in terms of rates of nonpayment and do you have disconnection moratoria in place to prevent customers being cut off for nonpayment?
- b. Are there concerns about nonpayment increases impacting utility cash flow? If so, what do you think is needed?

While we await response and data from ASG it appears utility issues not a significant concern at this time out of the ordinary need for infrastructure upgrade and replacement to our 100 year old lead pipes that are a legacy from the original U.S. naval buildout.

Recent reports from July is that the American Samoa Power Authority is undercharging for the services it provides according to a rate study by an independent consultant from off island conducted in 2019.

U.S. Senate Committee on Energy and Natural Resources
June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
Questions for the Record Submitted to the Honorable Amata Coleman Radewagen

The Acting CEO of American Samoa Power Authority explained that in 2018 ASPA was charging 35.2 cents per kilowatt hours and the current rate of under \$.30 cents per kilowatt is less.

Questions from Senator Mazie K. Hirono

Questions: Late last month, FEMA released its COVID-19 Pandemic Operational Guidance for the 2020 Hurricane Season. How have American Samoa's hurricane preparedness and planning efforts been impacted by COVID-19? What if any additional resources or guidance does American Samoa need to prepare for hurricanes in the midst of the pandemic?

American Samoa is no stranger to hurricanes, and to my knowledge, COVID-19 has not directly impacted hurricane preparedness. However, I am concerned that while our self-imposed quarantine is keeping us safe from the virus, it has accentuated our physical isolation. Should we suffer a natural disaster such as a hurricane, your continued support in getting resources from off-island while protecting the health of our local population will be necessary. We would also appreciate further support in setting up a safe screening process for airline passengers. This would help in quickly repatriating non-locals and/or any evacuation efforts in the brief period leading up to a storm.

Question from Senator John Hoeven

Question: You mention in your testimony the need to extend the American Samoa economic development credit for five years, and how some select businesses could take advantage of these credits immediately.

Could you expand on the type of business investment opportunities American Samoa might attract should this credit be extended?

As you know, the American Samoa economic development credit (ASEDC) is a tax credit located in Section 30A of the Internal Revenue Code. This credit offsets the tax imposed on taxable non-U.S. source income from (1) the active conduct of a trade or business within a U.S. possession, (2) the sale or exchange of substantially all of the assets that were used by taxpayer in such a trade or business, or (3) qualified possessions investment.

The ASEDC is incredibly important for the economy of American Samoa, and makes it possible for business to overcome the competitive disadvantages faced by many companies in American Samoa. Businesses are increasingly moving their business overseas to take advantage of cheap labor and subsidization by foreign governments. By choosing to locate their businesses on U.S. soil, employing Americans, companies based in American Samoa run the risk of losing ground to their competitors. The ASEDC helps to mitigate that cost.

The ASEDC is vital to the operation of StarKist, the largest private employer in American Samoa employing roughly 2,400 workers at its main Pago Pago cannery. StarKist has been dedicated to maintaining its entire production process, from canning to the fishing itself, within the United States and American Samoa. The cost differential between a fully U.S. manufacturing process and an outsourced manufacturing process, however, is

U.S. Senate Committee on Energy and Natural Resources
June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
Questions for the Record Submitted to the Honorable Amata Coleman Radewagen

very significant. Without the ASEDC, StarKist would be forced to either significantly reduce its operations or seriously explore ceasing operations in American Samoa and relocating its facilities to more viable economic environments. The resulting effect on the American Samoan economy would be devastating.

But the ASEDC doesn't just benefit StarKist. It also provides opportunities to other businesses that may want to take advantage of the economic situation in American Samoa. As the United States begins to push back more firmly against the unfair fishing and economic practices of China, companies may see the wisdom of ensuring that they are located within the U.S., exempt from any trade penalty that may arise. Specifically, the ASEDC may serve to lure back fishing industry entities that have moved from American Samoa. With the ASEDC extended for several years, American Samoa, as a component part of the United States, may provide companies with the most favorable economic conditions to succeed. First and foremost, American Samoa is a fishing community. The credit goes a long way in maintaining and growing our seafood industry.

Expansion of the credit also has the potential to diversify our economy. My office has received occasional inquiries from businesses interested in taking advantage of our tropical climate to produce specialty agriculture products such as copra (cocomut) and honey. I am also of the opinion that the stabilizing effect new industries will have on our economy could lay down the infrastructure to bolster tourism and create demand for increased flights on and off the island alleviating some of the issues we have with being so isolated.

Additional Comments on the Current State of Affairs:

American Samoa continues to be the only U.S. jurisdiction with not a single confirmed case of Coronavirus. Due to early action with closure of commercial flights March 23 our Islands 60,000 residents have been blessed to be spared any illness or death from the pandemic as was also the case during the 1919 pandemic. Its isolation and remoteness though could rapidly complicate things if an outbreak were to occur due to our high-risk population and lack of emergency care capability with only one hospital with less than 200 beds. Our large Veteran population rely heavily on access to the Tripler VA Complex in Hawaii.

Gov. Lolo Matalasi Moliga has recently requested Hawaiian Airlines to continue the suspension of flights between Honolulu and Pago Pago through the end of October. The local Health Dept. has presented a plan and will be carrying out practice exercises for a possible repatriation flight to the U.S. The Health Department (DOH) has identified hotels for quarantine in Honolulu as well as medical partners to assist with COVID-19 testing for travelers if there is a repatriation flight to bring home American Samoa residents stranded off island. As of September 22nd, the governor has yet to make a decision on a US repatriation flight.

We likely will need emergency flight and other additional assistance if an outbreak were to occur so I ask the Committee to review the House passed appropriation increase of \$500,000 to the Department of Interior Office of Insular Affairs account for the American Samoan Government operations dedicated to the LBJ Tropical Medical Center, our only hospital, which was a pre-covid based request and hope the Senate can at least concur if not increase our allocation given the extraordinary circumstances that have intervened since my testimony March 10 before the House Subcommittee on Appropriations.

U.S. Senate Committee on Energy and Natural Resources
June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
Questions for the Record Submitted to the Honorable Amata Coleman Radewagen

Thank you again to every Member of the Senate Committee on Energy and Natural Resources for this hearing on the COVID-19 health crisis in the insular areas and the opportunity to respond to your questions.

Committee on Environmental and Natural Resources
Full Committee Hearing to Examine the Impact of COVID-19 to U.S. Territories
June 30, 2010

Questions from the Record Submitted to Congresswoman Stacey E. Plaskett

Questions from Ranking Member Joe Manchin III

Question 1: The pandemic has completely transformed our health care system, and the need for personal protective equipment (“PPE”) has increased dramatically. While we have a Strategic National Stockpile for emergency medical supplies, we are seeing significant shortages of PPE in the United States and its territories.

- a. Do you currently have the proper medical supplies and equipment you need?

The hospital on St. Croix, the Governor Juan F. Luis Hospital & Medical Center, has informed me that it is running low on N95 masks and protective coverall apparel like Tyvek suits. The hospital on St. Thomas, the Schneider Regional Medical Center, has also informed me that it could use additional personal protective equipment (PPE) for its workers, as cases of COVID-19 in the Virgin Islands continue to rise, and as it can be difficult to obtain medical supplies and equipment across the country. In addition, it is critical that the Homes for the Aged in St. Croix and St. Thomas, skilled nursing facilities which serve up to 40 high-risk residents each, obtain additional quantities of PPE.

As COVID-19 infection numbers have been increasing significantly in the Virgin Islands since the Committee’s hearing on June 30th, 2020, all healthcare facilities have been asked to treat all incoming patients as potential carriers. This has drastically increased the territory’s use of PPE, and reduced the stockpile established by the Virgin Islands Department of Health and the Virgin Islands Emergency Management Agency (VITEMA). Fifteen ventilators have been received in each district, for a total of 30, in the event that critical care units outside of the existing Intensive Care Units need to be activated. With the increase in viral spread, the territory will need:

- N95 masks
- Surgical masks
- Nitrile gloves
- Protective suits
- Level 2, 3, and 4 gowns
- Head coverings
- Shoe and boot coverings
- Normal saline
- Medication: Remdesivir
- Medication: tocilizumab
- Convalescent plasma
- Goggles and face shields

- Powered Air Purifying Respirators (PAPRs)
- Lab testing supplies
- Hologic control sets and reagents
- Pipettes

b. What has been the primary method for your territory in acquiring these life-saving drugs and equipment?

The Virgin Islands Department of Human Services has used a variety of funding sources to acquire life-saving medical equipment and drugs, including Government of Virgin Islands funds, federal funding provided through the CARES Act, and funds provided by the Virgin Islands Department of Health and the Virgin Islands Territorial Emergency Management Agency (VITEMA). The supplemental funding provided through the CARES Act has been instrumental.

The U.S. Department of Health and Human Services (HHS) has provided the stock of Remdesivir on hand. The hospitals utilize their existing vendors for procurement. VITEMA has assisted with requests submitted by the Federal Emergency Management Agency (FEMA) and HHS for the supplies and equipment that is unattainable due to national supply shortages. The Virgin Islands need an additional supply of both Remdesivir and more importantly tocilizumab, which we have not been able to procure.

From March through May, due to the high demand of PPE, the only successful sourcing came from the Strategic National Stockpile. Commercial procurement during this time period proved very difficult as the minimum order quantity for most suppliers stood at 1 million masks, with full payment required prior to shipment. Even then, shipping times exceeded 60 days.

Through FEMA's resource request form (RRF), VITEMA has been the primary source for PPE to cover hospitals, the Department of Health, first responders (Police, EMS, Fire, Mortuary Affairs, Bureau of Corrections), and National Guard soldiers supporting the Department of Health's COVID-19 screening mission at the territory's two airports.

A Coronavirus Emergency Relief Supplemental Funding grant for law enforcement has provided the ability to source non-hospital grade masks (KN95), coveralls, and face shields, but it took until mid-July for the PPE to reach the Virgin Islands.

Finally, while not our primary source of supplies, the Government of Taiwan has made donation shipments of PPE through our economic development partnership to the Governor Juan F. Luis Hospital on St. Croix.

Question 2: State, territory, and local governments are facing drastic revenue shortfalls due to the impact of COVID-19 on their economies. The Coronavirus Relief Fund is supposed to provide flexible funding to state, territory, and local governments to respond to the crisis, but there is no guarantee that the funding will reach communities with fewer than 500,000 residents, and more flexible and dedicated funding is needed.

- a. Has the Coronavirus Relief Fund been helpful to your territory and local governments?

Yes. The Coronavirus Relief Fund has proved essential to the ability of the Virgin Islands to cover unforeseen costs. For example, the funds have assisted the territory with being able to afford the payroll for critical health and safety employees, which has amounted to at least \$11 million so far. Without such assistance, the Virgin Islands may not have been able to ensure that sufficient personnel were available to address the increased demand on the public health and safety departments.

- b. Are there any challenges to accessing this funding?

Fortunately, there have been no immediate challenges to accessing these funds by the Government of the Virgin Islands. The eligible uses of funds, however, should be expanded to include replacement of lost, delayed, or decreased revenues stemming from the public health emergency with respect to COVID-19.

- c. How are territory and local governments addressing the projected revenue shortfalls?

The Virgin Islands has projected a budget shortfall of approximately \$82 million in FY2020 due to the economic downturn caused by the COVID-19 pandemic. In order to address the shortfall, the Virgin Islands has taken several steps.

First, it has secured legislation that allows for the borrowing of up to \$120 million in a Revenue Anticipation Note (RAN). Private-sector borrowing has proved to be difficult, in part because of onerous restrictions placed on the territory by the terms of the federal Community Disaster Loans that it received after the 2017 hurricanes. Nevertheless, after negotiation, the Government of the Virgin Islands and financial institutions have reached a preliminary agreement providing the Virgin Islands a RAN of \$60 million. While the agreement remains in the negotiation stage, it will hopefully be closed soon.

Second, the Government of the Virgin Islands has put in place a hiring and salary-increase freeze for government employees. As a result of the telework required by the pandemic, less utility and fuel expenses have been incurred by government properties.

Finally, the Virgin Islands has proposed a FY 2021 budget that attempts to alleviate unnecessary spending and costs. Additionally, the Virgin Islands has mandated a more aggressive approach to revenue collection by revenue-generating agencies, and each agency must provide monthly updates on their collections and explanations for failing to meet their goals.

Question 3: Congress implemented the Paycheck Protection Program (PPP) to aid small businesses to help them weather the storm of the COVID-19 crisis. So far, the territories have received about \$2.2 from the PPP. However, despite the PPP's intended purpose of supporting small businesses, many of the local mom and pop shops have had difficulty accessing the funding.

- a. Are your constituents getting access to PPP loans?

Generally, yes. As of July 17th, 2020 businesses in the Virgin Islands have received 1,909 loans, totaling \$124,389,979. PPP loans are available from each of the five commercial banks in the territory, the University of the Virgin Islands Research & Technology Park / National Development Council (NDC), and directly from the Virgin Islands Economic Development Authority / Economic Development Bank (EDB). The EDB has also been able to assist several small businesses that have met the established requirements of the PPP program.

While PPP loans have been helpful, it is important to keep in perspective that there are over 15,000 businesses in the territory. The number of businesses that have received loans represent just a small fraction of the total businesses on the islands.

- b. Do you have any recommendations on how we can find a better way to get help into the hands of struggling small businesses?

Yes. Stay-at-home orders and other local policies related to COVID-19 have greatly impacted the profitability of businesses during this pandemic, and continue to do so. First, more information on the program should be marketed in a more public manner, so that more of those qualified to participate in the PPP program are aware of their eligibility.

Secondly, there are some businesses in the Virgin Islands that I believe have been unfairly denied eligibility for PPP loans. An example is the privately run corporation that operates the main cruise ship dock on St. Thomas, the West Indian Company, Limited (WICO), whose sole shareholder is the Government of the Virgin Islands. Because of its Government ownership, WICO, and its thirty-seven employees, have been shut out of eligibility from receiving a PPP loan. Although "Government Owned Entities" are generally excluded from PPP under 13 C.F.R. 120.110(j), the interim final rules governing PPP have made accommodations for some government-owned entities, including hospitals that receive less than fifty percent of their funding from government sources. I believe that WICO should receive similar treatment as a U.S. business that receives no government funding. WICO has been devastated by the complete shutdown of the cruise ship industry, resulting in ninety percent of its revenues disappearing overnight, with no indication of when the industry will come back. I have asked the Small Business Administration and the Department of the Treasury that the interim final PPP rulemaking allow businesses that receive no government funding to be eligible for PPP, regardless of whether such entities are government-owned entities.

Third, universities should be included in any future extension of the PPP loan programs. Universities are vulnerable to the same employee payroll challenges as other types of businesses, and access to PPP loans would be a tremendous help in mitigating their financial challenges during the pandemic.

Finally, local governments should be given more autonomy in the determination of eligibility for these loans.

Question 4: Many states, including my state of West Virginia, have received billions in aid from the Coronavirus Relief Fund that has still gone unspent. We must take inventory of the money that has already been approved by Congress but remains unspent or unavailable to people on the ground.

- a. Has your government transferred money from the Coronavirus Relief Fund to local governments or municipalities in your territories? If so, do you know how much?

The U.S. Virgin Islands has a unified government structure that does not include separate local or municipal governments.

Question 5: During the COVID-19 pandemic, we have seen a growing problem of utility nonpayment as customers have had trouble paying their energy and water bills. Congress has already appropriated \$900 million in the CARES Act for low-income household utility assistance, but it's clear we need more.

- a. What are you seeing in terms of rates of nonpayment and do you have disconnection moratoria in place to prevent customers being cut off for nonpayment?

It is clear from the Virgin Islands Water and Power Authority's governmental and non-governmental accounts receivable that many are struggling to pay their utility bills during the pandemic. Since March 2020, government accounts receivable increased by \$8.3 million and non-governmental accounts receivable increased by \$8.2 million. Nonetheless, the Authority suspended its disconnection policy in March 2020.

- b. Are there concerns about nonpayment increases impacting utility cash flow? If so, what do you think is needed?

Yes, there are concerns about nonpayment increases impacting utility cash flow. The Water and Power Authority has struggled financially during the pandemic, and collections have been down. That makes it increasingly difficult to meet operating expenses. I believe that additional stimulus assistance is needed for residents, businesses, and organizations that have been negatively impacted as a result of the pandemic.

Questions from Senator Mazie K. Hirono

Question 1: Like the territories, Hawaii is reliant on imports and waterborne commerce. It's estimated that over 80% of goods consumed in the state of Hawaii are imported. Approximately 98% of those imports travel through our state's marine ports. Our marine ports are our lifeline to the outside world, and play a critical role in connecting people, goods, and services within Hawaii.

Your testimony highlights the need for significant federal aid for the U.S. Virgin Islands' marine ports. What impacts has COVID-19 had on the Virgin Islands' marine ports? What challenges

would the US Virgin Islands, the territories, and other noncontiguous areas of the country like Hawaii face if additional support is not provided to our marine ports?

The COVID-19 pandemic has severely impacted the operations of the Virgin Islands Port Authority's Marine Division. The Port Authority has seen a 30% reduction in its revenues and is projecting a \$7.9 million loss for FY 2020 in the Port Authority's Marine Division.

Marine ports in the noncontiguous areas of the United States face many challenges that ports on the U.S. mainland do not. Primarily, due to their remote location, seaports in noncontiguous areas represent a much more vital supply line because there is nowhere else for commodities and supplies to enter. Air cargo is subject to weight restrictions and is expensive. Marine ports in noncontiguous areas do not have as much access to private funding due to factors related to economies of scale. That leaves these ports at the mercy of public funding, which is not available at this time, to service local subsistence needs. The vast majority of what is used or consumed by the residents and servicemembers in noncontiguous areas like the Virgin Islands enters through the ports. This includes essentials like food, clothing, vehicles, furniture, machinery, medical supplies, building equipment, and other goods and materials. In addition, it is not only the residents of these areas that rely on the public financing of port infrastructure, but also visitors, transshipment operators, the U.S. armed forces, and others. This only enhances the local public cost burden on operation and the state of repair and maintenance.

For the foregoing reasons, marine ports of the Virgin Islands and the other noncontiguous areas of the United States face a far different situation than those on the mainland. That is why I support equitable or separate consideration of the marine ports in noncontiguous areas of the United States for additional federal support.

While the Centers for Disease Control and Prevention, the U.S. Coast Guard, and the Department of Homeland Security have been working with stakeholders to determine the most appropriate public health strategy to limit the impact of COVID-19 at our ports of entry, the Virgin Islands Port Authority's Marine Division continues to suffer greatly.

Question 2: Late last month, FEMA released its COVID-19 Pandemic Operational Guidance for the 2020 Hurricane Season. How have hurricane preparedness and planning efforts been impacted by COVID-19 in the US Virgin Islands? What if any additional resources or guidance does the US Virgin Islands need to prepare for hurricanes in the midst of the pandemic?

The pandemic has forced the Virgin Islands to plan for infection control and prevention of COVID-19 among any potential hurricane shelters. We would need approval from FEMA to use non-congregate sheltering as part of our planning process. This would allow us to shelter families living in the same home in one location and decrease the possibility of viral transmission. Any congregate shelters that are activated will have to include plans to ensure social distancing, environmental cleanliness, and possible quarantine areas for any suspected COVID-19 cases. This limits the capacity of shelters and necessitates additional resources for additional non-congregant shelters. The

hurricane planning discussions with FEMA must also include the need for appropriate PPE in the event of a hurricane.

The Virgin Islands Department of Human Services and FEMA have participated in a series of stakeholders' virtual meetings over a period of weeks. That resulted in an updated Territory Mass Care Shelter and Feeding Plan with COVID-19 pandemic considerations.

Further planning for the provision of non-congregate sheltering after a natural disaster, especially if COVID-19 cases continue to grow, must continue with FEMA. More clear explanation and guidance as to what federal assistance will be the responsibility of FEMA, versus HHS, or other federal departments or agencies, would be appreciated. To date, both FEMA and HHS guidance has left a lot to be desired in terms of clarity.

Lastly, the Virgin Islands cannot afford to take revenue desperately needed for the current crisis and use it to fund debt service from the previous one. Cancellation of the outstanding balances of Community Disaster Loans issued to the Virgin Islands, as provided in the House Homeland Security Appropriation Bill for FY 2021, would remove the restrictions imposed on the territory's ability to obtain financing to help it smooth out the massive revenue losses caused by the COVID-19 pandemic.

Questions from Senator Catherine Cortez Masto

Question 1: Last week the Trump administration reaffirmed its position supporting overturning the Affordable Care Act which would effectively eliminate health care for 20 million Americans amidst this global pandemic and gut pre-existing condition protections for millions more.^[1] In Nevada alone it's estimated that over 300,000 people would lose their health coverage.^[2] While the fate of the ACA will be playing out in the courts, my Republican colleagues have been pushing so-called "repeal and replace" schemes in Congress for a decade. Capping and block granting Medicaid funding is on the table almost every time. In the US Virgin Islands the Medicaid program is capped under a block granted system. Can you elaborate on how this type of capped funding and related funding cliffs have impacted the health care system in the islands?

The Virgin Islands faces high rates of poverty and its citizens are heavily dependent on federal programs like Medicaid to obtain medical care. The Affordable Care Act has been tremendously helpful in expanding coverage to childless adults, increased payment rates, and covered services. Prior to its enactment, the Balanced Budget Act, and the most recent FY 2020 Appropriations Act, the Virgin Islands was subject to a federal funding cap for Medicaid that was less than \$19 million per year and essentially a 50% federal Medicaid matching rate. That greatly limited the Virgin Islands' ability to expand enrollment. When the Medicaid cap was exhausted each year, the Virgin Islands had to pay for Medicaid expenditures with local funding that was not available. This inequitable treatment has resulted in a lack of access to medical care for many Americans, including

^[1] <https://www.npr.org/2020/06/26/883819835/obamacare-must-fall-trump-administration-tells-supreme-court>

^[2] <https://lasvegassun.com/news/2020/jun/26/report-309k-nevadans-will-lose-coverage-if-trump-a/>

children, for no other reason than where they reside. Now, thanks to the Affordable Care Act and the FY 2020 Appropriations Act, and the Families First Act more recently, the Medicaid cap was increased substantially and so were the federal matching rates.

Accordingly, from FY 2014 to the current period, we have seen the Virgin Islands Medicaid program expenditures increase from \$48 million to projected expenditures of \$139.5 million in FY 2020. The Virgin Islands has increased its enrollment during that same period from 15,000 to over 31,000 today. Without the increase in federal funding and matching rates, this would not have been possible.

However, at the end of FY 2021, the Virgin Islands will face another fiscal cliff when the increased Medicaid cap funding will end, thus returning the Virgin Islands to the annual cap of less than \$19 million and a 55% matching rate cap. When that happens, our current Medicaid program will become unsustainable, and the Virgin Islands will be forced to drastically reduce enrollment and limit payments and services, unless Congress and the Administration act to address this situation. That is why I have sponsored the Territories Health Equity Act (H.R.1354/S.1773) to address these issues on a permanent basis.

Question 2: How does the capped funding system impact the ability of the US Virgin Islands to respond to the needs of your constituents?

The capped funding system hinders the Virgin Islands' ability to respond to the medical needs of our constituents and has resulted in a lack of access to medical care for many Americans. Moreover, it has had unfair and deleterious impacts on the finances of our local governments and hospitals. As previously mentioned, supplemental funding for the Medicaid programs on our islands expires at the close of the next fiscal year – FY 2021. Cuts to that funding put healthcare delivery at risk—not just for Medicaid recipients, but for the population at large.

Accordingly, the bipartisan Congressional Task Force on Economic Growth in Puerto Rico found, in its final report in 2016, that the “territories should be treated in a more equitable and sustainable manner under the Medicaid program.” I agree, and that is why I sponsored the Territories Health Equity Act (H.R.1354/S.1773), to follow these bipartisan recommendations and correct long-standing inequities in Medicaid and other federal health programs. Specifically, the bill would remove the territories' annual Medicaid funding cap, and the arbitrary cap on the rate of federal matching funds (FMAP), allowing for a health care safety net that is available to expand and contract based on local need like everywhere else. It would also provide for the equitable inclusion of Medicaid and Medicare DSH payments to the territories.

Question 3: The Virgin Islands is highly dependent on the tourism industry and that you have seen economic devastation before, but never like this. The pandemic, in terms of the economic impact, is almost like a hurricane that does not end. How important is it that federal policy enable to the Virgin Islands to diversify its economy beyond the tourism sector to sustain a long-

term economic recovery? What are some of the federal tools or initiatives that could facilitate this?

It is crucial for the Virgin Islands to diversify its economy so that it is not primarily reliant on tourism. I personally believe that prosperity in the Virgin Islands will come from economic diversification and the creation of multiple sources of income from a range of sectors. One of those leading sectors is technology. I believe the Virgin Islands can become a major player in the technology industry. That is why I am continuing to work to apply more income that is attributable to active business in the Virgin Islands as possession source income and, therefore, eligible for tax benefits of our Economic Development Commission, authorized under the Internal Revenue Code. The Territorial Tax Parity Act (H.R.411) that I sponsored in the House would take this step, and would allow the Virgin Islands to attract more businesses outside of the tourism industry, including in the research and technology sectors.

Another high priority of mine is the work to alleviate the negative impact of President Trump's 2017 tax law on the territories, and new taxes on Global Intangible Low-Taxed Income (GILTI), intended for foreign jurisdictions, on the efforts of the Virgin Islands Economic Development Authority to foster new technological industry in the territory. I have sponsored the Territorial Economic Recovery Act (H.R.6648/S.3940), which would exclude income effectively connected with the active conduct of trade or business in a U.S. territory from GILTI tax. This simple change requires certain criteria related to active business in a U.S. territory, but is also simple enough to provide a desperately needed boost to new investment.

The Virgin Islands is also seeking to attract small to medium manufacturing through inclusion in other pending legislation to bring back more domestic manufacturing to the United States. Additionally, the Virgin Islands is seeking to implement a free trade production and transshipment zone, and is utilizing Qualified Opportunity Zone funding mechanisms to encourage investment.

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

Question from Chairman Lisa Murkowski

Question: Congresswoman Gonzalez-Colon, you have expressed support for the Puerto Rico Recovery Accuracy and Disclosures (PRRADA) Act, which seeks to increase disclosure by those parties who contract with the Puerto Rico Financial Oversight and Management Board to prevent conflicts of interest. What other efforts are being made, or can be made, to provide greater transparency so that the public has confidence that their tax dollars are being used responsibly?

Madam Chair, being able to assure that those who work for the trustees of Puerto Rico's recovery be free from conflicts or appearances of conflicts is essential to build confidence both among the people and among the parties to the settlements, as well as to the federal government.

Back when the process to pass PROMESA started, I did not favor the notion of creating a body that would be so insulated from being accountable to the people of Puerto Rico yet be financed without restriction from our own depleted coffers. However, right now this is the structure we have to deal with, and we need to trust that its primary focus is the well-being of our people. I understand that there is concern in some sectors that the kind of expertise required entails having been at some point involved, even if only indirectly, with the business sector and the transactions being reviewed. But the people truly need to know that the professionals they are paying for are in fact working for them. It is not a matter of exclusion but of openness, and transparency that builds trust, something that is in low supply.

Although this Board is technically a Territorial Body, they are subordinate to nobody in Puerto Rico and their legal and administrative structure is entirely controlled by PROMESA, a federal law, so it is legislation such as PRRADA that needs to proceed, unless and until there is bipartisan will to take a different approach to how the settlement process should be governed. I still am of the belief that we could have and still could manage this process with the necessary political will in San Juan and DC and look forward to a good faith bipartisan and bicameral effort to make necessary improvements.

Questions from Ranking Member Joe Manchin III

Question 1: The pandemic has completely transformed our health care system, and the need for personal protective equipment (PPE) has increased dramatically. While we have a Strategic National Stockpile for emergency medical supplies, we are seeing significant shortages of PPE in the United States and its territories.

- a. Do you currently have the proper medical supplies and equipment you need?

According to the Government of Puerto Rico we do not. At this moment the PR Department of Health (PRDoH) does not have enough stock of medical supplies and equipment to manage an increase in COVID-19 cases. The PRDoH's PPE stock that we had, decreased dramatically in the past weeks due to the increase of COVID-19 cases. Moreover, hospitals are reporting issues with the supply chain of personal protective equipment from different vendors.

- b. What has been the primary method for your territory in acquiring these life-saving drugs and equipment?

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

At the beginning of the pandemic, the PRDoH had a limited PPE cache to manage the emergency. Since then, the Strategic National Stockpile and FEMA has been our primary method in acquiring PPE and medical supplies.

Question 2: State, territory, and local governments are facing drastic revenue shortfalls due to the impact of COVID-19 on their economies. The Coronavirus Relief Fund is supposed to provide flexible funding to state, territory, and local governments to respond to the crisis, but there is no guarantee that the funding will reach communities with fewer than 500,000 residents, and more flexible and dedicated funding is needed.

- a. Has the Coronavirus Relief Fund been helpful to your territory and local governments?

Puerto Rico has received \$2.24 billion from the Coronavirus Relief Funds that we passed in the CARES Act. The Government of Puerto Rico has designed a comprehensive strategic disbursement plan covering the following categories:

*Private Sector Payroll Protection Program
 Assistance Program to Small Businesses
 COVID-19 Testing and Contact Tracing Program
 Allocation to the Unemployment Fund Trust
 Assistance Program to Self-Employed Individuals
 Allocation to the 78 Municipalities for eligible expenses
 Acquisition of Materials and Personal Protective Equipment
 Assistance Program to Private Hospitals
 Assistance Program to Medium Businesses
 Emergency Assistance - Public Hospitals
 Assistance Program to the Tourism Industry
 Remote Work and Distance Education Program of the Government of Puerto Rico
 Telemedicine Program in Puerto Rico
 COVID—19 Emergency Expenses - Prisons
 Workshops and Training Program for SMEs
 Program of Assistance and Care - Homeless Population*

While this funding has made an initial impact, only \$521.6 million, less than 25 percent of the total funding has been disbursed. To achieve the full benefit of the CARES Act funding, this money needs to be more flexible and allocated to local and municipal levels of government to ensure that the funding needs to reach the communities and people in need.

- b. Are there any challenges to accessing this funding?

While the CARES Act has provided support for Puerto Rico, none of the 78 municipalities in Puerto Rico have a population of 500,000 people, which makes them ineligible for receive additional federal support.

While some municipalities were adequately supported, some received as little as \$9,000 for their COVID-19 support and needs. According to the National Association of Counties and the National League of Cities, of

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

the 3,100 counties across the country only 130 have a population greater than 500,000 and there are only 36 cities the qualify as well. However, more than half of the country's population live in cities or towns of fewer than 50,000 people. In fact, 16 states, including the Chairwoman's state of Alaska, and every territory lack any county, city, or other municipality that has a population over 500,000 thresholds. This threshold must be lowered to make more communities eligible for this much needed support.

Without a mechanism that allows or requires states to share coronavirus relief money, there's no clear way to prevent them from keeping the entire pot to help make up their own budget shortfalls.

- c. How are territory and local governments addressing the projected revenue shortfalls?

Currently, the Government of Puerto Rico is dealing with the revenue shortfalls by utilizing cash reserves, however, local governments are having to make adjustments to deal revenue shortfalls, however support from the federal government is critical to ensure that citizens are not impacted by the cutting or elimination of basic services.

With the Centers for Disease Control no-sail order lasting until at least September of this year, tourism – the Island's fourth largest industry (approximately seven percent (7%) of our GDP) will continue to experience losses with no way to make up this revenue shortfall. Construction, maintenance and repair of our roads and bridges, primarily funded through a local fuel tax, generating \$210 million a year, is in jeopardy this year due to reduced revenues already estimated to be \$35 million because people are no longer driving as much. This loss alone puts jobs at risk and sets back new construction and repairs years while the American Society of Civil Engineers most recent rating for Puerto Rico's infrastructure at a D-. These are just two examples of the effects of COVID-19 being felt across two sectors of the Island.

The inability to make up this revenue shortfall as a result of the COVID-19 pandemic will have devastating impacts across Puerto Rico for years to come, which is why robust Federal support is crucial now more than ever.

Question 3: Congress implemented the Paycheck Protection Program (PPP) to aid small businesses to help them weather the storm of the COVID-19 crisis. So far, the territories have received about \$2.2 from the PPP. However, despite the PPP's intended purpose of supporting small businesses, many of the local mom and pop shops have had difficulty accessing the funding.

- a. Are your constituents getting access to PPP loans?

Yes. Out of the \$2.2 billion in PPP funds for the territories, Puerto Rico has secured more than \$1.8 billion. Over 85 percent of small businesses on the Island have been approved for these funds while saving around 189 thousand jobs across all industries.

- b. Do you have any recommendations on how we can find a better way to get help into the hands of struggling small businesses?

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

It is imperative to continue prioritizing small businesses in underserved communities who are struggling the most during this unprecedented crisis. In order to facilitate PPP access to more of these communities, we must approve more Community Development Financial Institutions and Minority Depository Institutions. These lenders are intended to give small businesses with no prior banking relationship access to the loans. Additionally, allocating PPP funds to these types of lending institutions will also ensure local mom and pop shops are not directly competing with enterprises served by big corporate banks. Finally, because SBA has had to review and approve an incredible amount of applications that have been submitted, I believe additional resources to SBA need to be allocated so additional bilingual staff can be hired and applications are processed more expeditiously.

Question 4: Many states, including my state of West Virginia, have received billions in aid from the Coronavirus Relief Fund that has still gone unspent. We must take inventory of the money that has already been approved by Congress but remains unspent or unavailable to people on the ground.

- a. Has your government transferred money from the Coronavirus Relief Fund to local governments or municipalities in your territories? If so, do you know how much?

The Government of Puerto Rico has transferred \$100 million from the \$2.24 billion Coronavirus Relief Fund allocation to the 78 municipalities across the Island.

Question 5: During the COVID-19 pandemic, we have seen a growing problem of utility nonpayment as customers have had trouble paying their energy and water bills. Congress has already appropriated \$900 million in the CARES Act for low-income household utility assistance, but it's clear we need more.

- a. What are you seeing in terms of rates of nonpayment and do you have disconnection moratoria in place to prevent customers being cut off for nonpayment?
- b. Are there concerns about nonpayment increases impacting utility cash flow? If so, what do you think is needed?

The Puerto Rico Electric Power Authority (PREPA) and Puerto Rico Aqueduct and Sewers Authority (PRASA) have put in place a disconnection moratorium during this current health emergency from the start of the lockdown until otherwise determined by the government. PREPA is offering reduced structured payment plans to those who can show they lost their income due to the emergency, and so is PRASA which is also offering pay-as-you-can and extended terms for their regular payments. The utilities have certainly faced a cash flow disruption, especially in the case of PREPA during the initial hard lockdown of as much as a third to a half, which is recovering as the economy reopens. Although there were cash reserves in place in part because of the debt renegotiation processes, this can only go so far. In addition, we are faced with the peak demand period of July and August, and that will be followed by the peak of the hurricane season from mid-August to mid-October. PREPA in particular has to face all this in the middle of a process to contract out grid operation and maintenance so this complicates both the operation and business sides.

As if this were not enough, nature has also thrown us two unexpected challenges:

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

First: The swarm of earthquakes over the past six and a half months took down the public utility's largest power plant, representing one fourth of the normally available base load generation capacity and one third of the usual peak demand, and it is still offline further notice. This means PREPA faces peak season carrying its base load with what would normally be its reserves and keeping on units that were due to be stood down for maintenance or replacement. This means higher operating expenses. All that combines with the still drawn out recovery process for the grid after the disasters from almost three years ago: the grid is still fragile and outages are still common, as the necessary redundancy and reserve are just not there.

Second: The unusual weather pattern that caused the arrival of a historically high Saharan dust cloud across the Atlantic has resulted in drought conditions that have led several reservoirs to drop below critical levels. Already, on the date I write this, over 100,000 customers are on one day on, one day off service interruptions.

Puerto Rico's utilities need the funding that has already been appropriated through the CDBG-DR program under the Bipartisan Budget Act to be sped up and flexible. This past few months we have finally seen movement in that direction, and I am glad, since the funds include specific portions aimed at strengthening the grid and building it back to a higher resiliency standard. However, as they stand, they are limited to that which is to be proven to be caused by the 2017 Hurricanes. A provision that would allow the funds to be used for utilities rebuilding and resiliency upgrade regardless of the cause of the infrastructure's damage would be greatly advantageous

Questions from Senator Bernard Sanders

Question 1: Congresswoman González-Colón, thank you for being an original cosponsor of the Equitable Nutrition Assistance for the Territories Act. As the lead sponsor of this legislation in the Senate, I understand the importance of providing Puerto Rico with a clear transition path from the Nutrition Assistance Program (NAP) to the Supplemental Nutrition Assistance Program (SNAP) as quickly as possible. With that in mind, please answer the following questions:

- a. What is the total spending level for nutrition aid required by Puerto Rico through the end of this calendar year?

In order to maintain the all of the current participants, at the current benefit levels, until the end of 2020, we would need an allotment of \$618 million. Please bear in mind that for the last 20 years the child poverty rate in Puerto Rico has been at 58%.

- b. Can you describe how Puerto Rico, Northern Mariana Islands and American Samoa's exclusion from SNAP has affected food security in the territories during the COVID-19 pandemic?

In the case of Puerto Rico, exclusion from SNAP partly results in limited funds to address nutritional needs during emergency periods. The ongoing COVID-19 pandemic has increased demand for the Nutrition Assistance Program, or NAP. In April, shortly after lockdown measures were enforced, there were 1,334,528 participants enrolled in NAP. By July 16, the number has increased to 1,486,749 participants, representing over 152,000 new participants. Both the Families First Coronavirus Response Act and the CARES Act provided a total of \$296,941,905 in nutrition funds to be used during the COVID-19 emergency. These funds helped

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

accommodate the increase in participation and a temporary increase in benefits. However, they will run out in August, which means that starting next month, the NAP program returns to the base block grant funding. Unless additional funds are secured, current participants will notice a decrease in benefits while still trying to make ends meet during the pandemic.

If we participated in SNAP, my constituents who depend on nutrition assistance could count on an entitlement program that expands and contracts based on demand. We would also have the disaster component of SNAP, Disaster-SNAP, which allows a temporary increase in benefits during the aftermath of a natural disaster or any other emergency, such as a pandemic that has left so many families out of work. Lastly, we would not have to continuously depend on Congress to allocate additional disaster funds for NAP, which can often take long periods of time when what we need is immediate response.

c. In your view, how would Puerto Rico would benefit from participating in SNAP?

As previously stated, if we participated in SNAP, we would have access to an entitlement program that accommodates increases in demand. Beneficiaries in Puerto Rico would also have an increase in the amount of monthly benefits, resulting in greater food security. Additionally, we would have access to D-SNAP, which would be remarkably helpful given the recent history of hurricanes, earthquakes and now the COVID-19 pandemic.

Question 2: Southern and southwestern municipalities in Puerto Rico have been severely impacted by hundreds of sporadic tremors and earthquakes since December 2019. The Governor of Puerto Rico has said that the island needs close to [\\$8.3 billion](#) in order to properly rebuild after these natural disasters. This February, the House of Representatives passed the Emergency Supplemental Appropriations for Disaster Relief and Puerto Rico Disaster Tax Relief Act. With that in mind, could you answer the following questions:

a. As Puerto Rico's sole elected representative in Congress, do you support this legislation, and does it do enough to support Puerto Rico's efforts to rebuild the affected areas impacted by the tremors?

Yes, I support this legislation and advocated for its passage when the House of Representatives considered it on February 7, 2020. I believe the bill would provide critical resources to help Puerto Rico recover from this year's earthquakes (which have continued to impact the southern and southwestern municipalities of Puerto Rico to this day) including funding to address the education, housing, infrastructure, and disaster nutrition assistance needs of my constituents.

I am also pleased that it includes important tax provisions to help working families on the Island, including bipartisan legislation I introduced. For instance, it incorporates my bill, H.R. 302, the Child Tax Credit Equity for Puerto Rico Act, to provide families in Puerto Rico with one or two children the same treatment currently given to Island-families with three or more children under the Child Tax Credit. It also contains a provision to expand the Earned Income Tax Credit for the Island, which is similar to legislation I introduced, H.R. 754, the Earned Income Tax Credit Equity for Puerto Rico Act.

It is my hope that we can secure bipartisan and bicameral support to help move forward this legislation. That is why I have continuously urged my colleagues on the House to work with our Senate counterparts on both

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

sides of the aisle to ensure the assistance this bill provides reaches those communities that are currently in need.

b. How would these bills benefit Puerto Rico should they become law?

This bill would provide Puerto Rico critical assistance to address multiple needs that arose from the earthquakes' impact. For example, it includes \$100 million to meet the educational needs of those impacted by earthquakes in 2019 and 2020. As you are aware, the seismic events were particularly severe to Puerto Rico's students and their educational attainment. The Puerto Rico Department of Education (PRDE) had to delay the start of the semester in order to conduct structural inspections of all public schools. While many were able to reopen, others were deemed structurally deficient and unsafe, forcing PRDE to relocate students and identify alternate sites to continue their education, including outdoor camps.

Regarding housing and infrastructure needs, the legislation would provide Puerto Rico access to \$2 billion allocated to the Department of Housing and Urban Development's (HUD) Community Development Fund, for activities related to disaster relief and recovery in areas most impacted by earthquakes in 2020 or any future major disaster that may take place this year. It also allocates \$1.25 billion under the Federal Highway Administration's Emergency Relief Program to help disaster-stricken jurisdictions in the United States. This would ensure Puerto Rico has access to additional funding to repair roads, bridges, and infrastructure damaged by the earthquakes.

Importantly, the bill would also allow comingling of Community Development Block Grant – Disaster Recovery (CDBG-DR) funds provided in the legislation and previous emergency supplementals. This would ensure Puerto Rico can utilize CDBG-DR funds allocated in the aftermath of Hurricanes Irma and Maria to also meet needs related to the earthquakes.

I also introduced and secured an amendment during House passage of the supplemental to increase the disaster nutrition assistance grant for Puerto Rico included in the bill to \$210 million. This would benefit close to 397,000 Nutrition Assistance Program (NAP) beneficiaries in the affected municipalities, of which over 92,000 are children.

The bill similarly includes important tax provisions for Puerto Rico. As mentioned before, it incorporates legislation I introduced to allow residents of the Island with children to receive the refundable child tax credit. Under current law, only Puerto Rico residents with 3 or more children are able to claim this credit. It also includes a provision extending the Earned Income Tax Credit for the Island, which is similar to my bipartisan H.R. 754. These two changes would provide additional support for families and workers in Puerto Rico, in turn stimulating our economy.

Lastly, it incorporates H.R. 1786, bipartisan legislation I introduced to repeal the limitation on cover over of distilled spirits taxes to Puerto Rico and the U.S. Virgin Islands, providing the two territories additional revenues.

c. What other actions should Congress take to support Puerto Rico in the wake of the earthquakes Puerto Rico has experienced in recent months?

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

As I have stressed in the past, moving forward, it is crucial that we work in a bipartisan manner to reach a bicameral agreement on supplemental legislation that helps us address the impact of the earthquakes in Puerto Rico and other natural disasters that have stricken other United States jurisdictions this year.

Beyond that, Congress should provide the Island the necessary flexibility to utilize part of the CDBG-DR funds allocated in the aftermath of Hurricanes Irma and Maria for needs related to the earthquakes. Equal treatment under the Child Tax Credit and the Earned Income Tax Credit would also ensure we have the necessary support to recover from these and other disasters.

Moreover, ensuring we have the scientific understanding of seismic activity and hazards in Puerto Rico will be vital to better prepare the Island for future earthquakes and minimize deaths, injuries, and economic losses that may result from these events. Congress should therefore provide the U.S. Geological Survey (USGS) the necessary resources to carry out its Earthquake Hazards Mitigation Program and support the Advanced National Seismic System Regional Network, which includes the Puerto Rico Seismic Network at the University of Puerto Rico.

Congress could also help increase our understanding of earthquake hazards by ensuring USGS updates the seismic hazard models and maps for Puerto Rico and the U.S. Virgin Islands, which were last published in 2003. As you are aware, these models help describe the likelihood and potential impacts of earthquakes in a particular area and serve as the basis for seismic provisions in building codes. I am pleased that we secured language and funding to update the seismic hazard map for Puerto Rico and the U.S. Virgin Islands in the House version of the Fiscal Year 2021 Department of the Interior, Environment, and Related Agencies Appropriations Bill. Maintaining this provision in a future, bicameral agreement to fund the government for Fiscal Year 2021 would help Puerto Rico have the necessary tools to improve earthquake-resilient construction and better understand seismic hazards in the region.

Question 3: Puerto Rico Housing Department Secretary Luis Carlos Fernández Trinche acknowledged the [unequal treatment received by Puerto Rico](#) at the hands of the federal government concerning disaster relief. I would like to know:

- a. What can Congress do now to improve the process for future emergency relief funds?

I think that throughout this process, communication, transparency and quick response are key. We need to ensure there is good communication between the federal and local government, and clear expectations of what the requirements and guidelines for emergency relief programs and access to funds will be observed. I also think there is a learning process at hand. In the case of Hurricane Maria, we had not experienced a hurricane of that magnitude in about a century and could not fathom the destruction that ensued.

Congress should maintain strict oversight on these programs, not only to identify shortfalls, but also to notice what improvements should be made and whether additional funds are required. We should ensure federal agencies have proper tools to help state officials manage these programs, advertise them to communities, and enough funds to provide ample technical assistance so that every single dollar allocated is ultimately used.

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

- b. In your written testimony, you said, “If we truly want to keep pumping money into the Island’s economy, Congress should allow use of [Community Development Block Grant Disaster Response] funds for hurricane relief for needs related to the earthquakes and COVID-19 as well.” Rather than taking money away from previous unmet disaster relief needs, would it be more helpful to the Commonwealth to have the federal matching requirements waived for federal disaster aid?

I believe the most helpful alternative during an emergency is the one that is available the quickest. Puerto Rico has an allocation of close to \$20 billion in CDBG-DR funds for disaster recovery related to Hurricane Maria. In my view, broadening the use of these funds to include recovery work from the earthquakes in the southwestern region of the Island would be beneficial because there already is an infrastructure in place for the use of CDBG-DR in Puerto Rico and local officials have acquired experience managing these funds, designing the programs and ultimately, helping constituents recover. Most importantly, this is something we can do now through simple text in legislation.

However, I do recognize that waiving the federal matching requirement for some of the federal disaster programs would undoubtedly be beneficial given the financial circumstances in Puerto Rico. I think this is something that would require greater review and analysis so that it does not negatively impact the very same programs we need to help us recover.

Question 4: More than [500,000](#) people in Puerto Rico have requested some form of unemployment benefits since the start of the current global pandemic. In your assessment, how could the federal government better support the Puerto Rico Department of Labor in processing and fulfilling these unemployment requests?

The Puerto Rico Department of Labor faced a problem very similar to that of many states: its technology infrastructure was behind the times and not prepared to absorb this kind of surge, which included not only the regular program but the PUA payments that extended to workers normally not covered, and precisely at the time when its onsite workforce reduced only to essential staff. Then in the rush of trying to catch up with these sudden demands, it is no surprise there were stumbles in setting up new procedures. It took almost to the end of the PUA program to catch up.

Many states and territories faced having to do in a month the updating that should have been done over years. We saw for example New Jersey and others calling out for retired COBOL programmers to help scale up their systems. It should have not come to that, through all these years of administrations of both parties both in Washington and in the state houses. It may behoove the federal government side to look to the future in supporting the state and territorial entities in the establishment of a more uniform set of standards, procedures and technologies, and in helping the states keep their technology up to date. To identify also which states and territories are doing it best and then provide support to the others in adopting those best practices.

Question 5: Scientists are predicting a “[very active hurricane season](#)”. With that in mind, please answer the following questions:

- a. Do you believe that the federal government is prepared to provide all necessary emergency resources to Puerto Rico if the island is struck by another Category 5 hurricane? If not, how else could the federal government best prepare for a hurricane response?

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

- b. Do you believe the federal government is prepared to safely evacuate people while avoiding further spread of COVID-19? How could the federal government better prepare the people of Puerto Rico for emergency response during the COVID-19 pandemic?

That last question is the biggest concern right now. Once there is a hurricane warning, you cannot avoid congregated indoor sheltering, that's the reality everywhere that natural disasters may hit not just in Puerto Rico.

The Puerto Rico Emergency Management Bureau and Housing Department have adopted shelter protocols based on the CDC guidance, including arrival screening, distancing between cots, identifying locations with separate quarters for possible quarantining, and additional cleanup measures. But this means a net reduction in total capacity of the existing shelters by perhaps half, and that intensifies the need to identify alternative locations and habilitate them for this purpose. And, of course, the time during which the plans for this season were being drafted was also the time while we were still in the learning curve as to how you handle the Covid threat. So, we will need to keep updating plans even as we go, and the federal and local agencies must be proactive at that.

And we must remember, during the immediate emergency most evacuations are not "by" the federal government and virtually no shelter is "federal", it's the local Emergency Management bodies who are in charge. FEMA and other federal agencies must provide prior preparedness support and, in the aftermath, then help obtain post-disaster shelter, housing and services and provide individuals and the local and state agencies with resources for their recovery. So, it is really about two stages in the response.

Now let's add another twist: after the earthquake swarm of the last six months, many of the structures that were the shelters have been damaged, destroyed or compromised to some extent, representing up to 23% of the nominal capacity according to our Emergency Managers. So now we also are forced to find new shelters AND to provide mass transport for people in vulnerable communities when and if the order comes. Our Mayors are doing a titanic job at identifying such alternatives, but their resources are limited. So, resources to facilitate evacuation under safe conditions and to identify and rehabilitate alternate shelters will be needed and will have to come from federal sources – recognizing of course not even the federal government can just make shelters and supplies appear.

If we had the luxury to set aside the Covid problem, we could say the level of federal preparedness in Puerto Rico this time was well above that in 2017, ironically to a degree because the scale of that catastrophe meant a very long recovery effort so resources and teams from FEMA, USACE, and other such entities remained on the ground for almost three years, and that allowed them to learn. Prepositioned supplies are several times greater and better located, personnel are permanently assigned, prearranged contracts and collaboration agreements have been updated.

But this does not mean we can rest easy. The earthquakes at the beginning of the year and now Covid have shown we still must improve. It was clear to me early on that the problems in the past 3 years came in part for not having foreseen the nature or scale of the disasters, or from failures of communication and coordination leading sometimes to switching strategies or turning over staff midstream. I must say I NEVER experienced, myself, any denial of a reasonable request for assistance or resources, nor actual bad faith from any level of

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

the administration. So, what is most necessary, I would say efficient coordination, retention of the experienced staff, reliable communication and conscientious but fast decision making, and continuous effort to make sure that everyone has the newest information and the system is ready to surge. There has been improvement but of course, whether that improvement is enough is something we don't want to ever test.

Question 6: The Governor of Puerto Rico recently announced a [state of emergency](#) due to a severe drought in the island. In your view, what do the people of Puerto Rico need from the federal government during this ongoing drought?

In order to make Puerto Rico more resilient to droughts, the federal government should ensure the Island has access to additional resources to improve our water infrastructure and management practices. One way to achieve this would be to amend current law to make the territory an eligible applicant location for the Bureau of Reclamation's WaterSMART and Drought Resiliency Project Grants. I have introduced legislation—H.R. 6050, the Puerto Rico WaterSMART Grants Eligibility Act—that would achieve just that.

WaterSMART Grants provide cost-shared federal funding for projects that conserve and use water more efficiently and contribute to water supply reliability. Drought Resiliency Project Grants seek to increase resiliency to drought and climate change by funding on-the-ground projects that improve water management flexibility during periods of low water supply. Funding under both programs is awarded on a competitive basis and requires a minimum nonfederal cost-share of 50%.

Eligible applicants for WaterSMART and Drought Resiliency Project Grants include state, tribe, irrigation district, water district, or other organizations with water or power delivery authority. Originally, applicants also had to be located in one of the 17 western states or U.S. territories identified in the Reclamation Act of 1902, as amended. These are: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands.

However, last year, Congress included language in the John D. Dingell, Jr. Conservation, Management, and Recreation Act (P.L. 116-9) to make Alaska and Hawai'i eligible applicant locations as well. This means that Puerto Rico is now the only territory and noncontiguous jurisdiction in the United States where these water conservation and drought management grants are not available.

Water supply issues and vulnerability to droughts in ways that differ from the mainland—features shared with Hawai'i and the rest of the eligible territories—have been a recurring problem in Puerto Rico. In 2015, extreme drought conditions on the Island resulted in water rationing for 1.2 million people and over \$14 million in agricultural losses, primarily in livestock, grazing lands, bananas, and plantains. The current drought has already forced the Government of Puerto Rico to implement water rationing measures impacting over 140,000 households.

Making Puerto Rico eligible for the competitive WaterSMART and Drought Resiliency Project Grants would provide water managers on the Island access to additional funding sources to implement measures that conserve and use water more efficiently. This would in turn strengthen our capabilities to respond to future droughts.

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

Question 7: The Middle States Commission on Higher Education (MSCHE), which is the college accreditation body, put the University of Puerto Rico's (UPR) eleven campuses on "[show cause](#)" in January 2019. One of the main reasons for this was the failure to submit audited financial statements on time. [The MSCHE has long been concerned](#) with the University's financial stability. With that in mind, please answer the following questions:

- a. The Financial Oversight and Management Board (FOMB) recently announced that the UPR would have to [restructure its debt under Title III of the Puerto Rico Oversight, Management and Economic Stability Act \(PROMESA\)](#). Dr. Jorge Haddock, President of the UPR, said the following when he was asked about the UPR's debt restructuring process: "All of our advisers, and my own findings, agree that the risk is imminent, it is dangerous and it is unnecessary." Do you agree with this assessment and what can Congress do to support this valuable and much needed institution of higher education?
- b. What else can the federal government do to better support all eleven campuses of the UPR system to ensure the University is not at risk of losing its accreditation and remains a viable, thriving institution for the thousands of students who depend on it?

Just so we can share updated information, Senator, at the MSCHE meeting of 27 June 2019, all 11 units of the University of Puerto Rico system were removed from "show cause" and had their accreditation reaffirmed following compliance with the Commission's standards for accreditation and requirements of affiliation. The University has done its part to catch up with the Single Audit schedule, the documents for FY2019 having been submitted, as of March 2020.

From the beginning of the process that led to PROMESA while I was still a candidate for this office, and after being elected, I have argued that this mechanism should not, cannot, be the automatic or primary or preferred answer to every fiscal or administrative issue in the Puerto Rico public sector. Bankruptcy or its equivalent, for organizations as much as individuals, must be the last resort and not the immediate alternative when you can't get your perfect answer. I was and I remain convinced that Puerto Rico's institutions can find a way, if there is the will and the commitment, to put their fiscal house in order and live within our means while still serving the people.

This is even more so for the University where I earned my Bachelor's degree: it is our best higher education center, it is where our best minds in planning, in public administration, in business management, do their teaching and research. They must be able to prepare plans that secure the institution's fiscal and academic future.

Of course, the best relief for the UPR would be an economic and fiscal recovery for Puerto Rico, since UPR's baseline funding is based on a percentage of the yearly General Fund revenue plus shares in various other tax revenue streams. Because of the rest of our economic and fiscal shortfalls, this has fallen considerably already – the baseline dropped by over \$300 million between FY 2017 and FY 2020 and UPR's total global budget by \$200 million from \$1.473 Billion to \$1.270 Billion in spite of tuition increases and administrative adjustments. The overall process to return Puerto Rico to solvency and our economy to growth needs to work, to provide true security to UPR.

The primary objective must be that the University continues to provide its educational and research mission and to contribute to the uplift of Puerto Rico's whole community, beyond only the 53,000 students. In that

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

process we must be careful to avoid tying either academic or fiscal goals absolutely to pre-determining there must be one or another program or policy that must be eliminated or be changed in a particular way, and we must also be very careful about saying or implying that there are things that can “never” be touched in any way and to we should give “whatever it takes”. The latter would be an easy, popular thing to say but not necessarily realistic.

Since part of accreditation involves evaluating the institution’s ability to set its goals and policies, I believe the Oversight Board should not be in the business of managing the UPR as to what programs it keeps or drops or forcing it go into Title III. That limit on its authority must be made explicit. Though to be consistent with that I would not support an unfunded mandate from Congress dictating what it keeps or drops or what the budget amount must be. Requiring a thorough accounting of the use of public funds and compliance with regulations, yes, but not ordering what administrative or academic policy to adopt or picking winners and losers of the budget up front.

If UPR themselves say they can make it, and they are showing they can, I believe they should be allowed to prove it.

Question from Senator Steve Daines

Question: It is long overdue that we end our reliance on China to produce our medical supply equipment like PPE as well as life-saving drugs. Over 70 percent of our personal protective equipment and over one third of our antibiotics are imported from China. America will be safer and America will be stronger when we bring our pharmaceutical and medical manufacturing supply chains and jobs back to America. Your testimony states that 12 of top 20 pharmaceutical manufacturing operations in the world have operations in Puerto Rico. Can you expound upon how Puerto Rico can grow the medical manufacturing supply chain and bring drug manufacturing jobs back to the United States?

Yes, I will be introducing the Medical Manufacturing, Economic Development, and Sustainability (MMEDS) Act, which as you know from my testimony would establish federal tax and other incentives for current and repatriated manufacturing operations in “distressed zones”, areas of extremely high poverty and prevalent unemployment. This benefits Puerto Rico for several reasons. First, The Island has long served as a medical device and pharmaceutical manufacturing center. As a U.S. territory, Puerto Rico is subject to all federal laws and regulations, including those promulgated by the FDA and EPA. The majority of pharmaceuticals established in Puerto Rico are U.S.-owned, which employ American citizens in Puerto Rico and are considered well-paying jobs. According to the Puerto Rico Department of Economic Development and Commerce (DEDC), five of the world’s top 10 selling drugs in 2018 were manufactured on the Island (Humira, Eliquis, Opdivo, Enbrel and Xarelto). Internationally, eight of the 15 top-selling biopharmaceutical products are made in Puerto Rico.

Throughout the years, Puerto Rico has accumulated a robust inventory of facilities to serve every aspect of the pharmaceutical industry’s supply chain. The scope of properties ranges from state of the art and highly specialized manufacturing plants to industrial parks ready to break ground and host a completely new facility. According to the DEDC, Puerto Rico has several existing Active Pharmaceutical Ingredient (“API”) plants

U.S. Senate Committee on Energy and Natural Resources
June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
Questions for the Record Submitted to the Honorable Jenniffer González-Colón

that are still operating which could see expanded capacity, and some other API plants that were operating in recent years that can be refurbished and reactivated to produce API.

Moreover, Puerto Rico's talent availability and workforce capacity is second to none, as the influence of a strong pharmaceutical presence on the Island has developed a highly skilled and sophisticated workforce specifically trained to handle the specificities required by said industry. That long history has produced a highly specialized, educated, and skilled labor force in this sector nowhere else to be found in the nation. It would take years, which with the ongoing pandemic we cannot afford, for another jurisdiction within the U.S. to develop such highly trained and skilled workers.

Puerto Rico's public university system is well established, and its robust curriculum produces the required talent to further develop the bioscience industry in the Island. In 2019 alone it graduated over 20,000 STEM students, most of which, have relocated to the mainland due to the lack of job opportunities in the Island. Many of these students are now working with companies such as Dupont, Accenture, UTC, IBM, P&G, Lockheed Martin, Intel, and the US Federal Government, among many other top US employers.

Additionally, due to Puerto Rico's geographical location, the Island is positioned to produce and timely supply the medical device and pharmaceutical health ecosystem. Puerto Rico is no stranger to the pharma supply chain, as it currently hosts all the quintessential logistic components to ensure the operational success of any pharmaceutical engagement in Puerto Rico. The Island has an established air and maritime access on all four cardinal points of the Island, with many ports of entry already going through a modernization process as result of the Hurricane recovery efforts.

Moreover, I have been leading an effort in Congress through H.R. 2357, that would turn the Island into an air carrier hub. With the Government's support, it was able to administratively achieve through DOT, a temporary waiver that allows foreign cargo to be serviced and transferred in Puerto Rico. This should support a shift in passenger and cargo traffic from foreign airports in the region like Dominican Republic, Colombia, and Panama to U.S. airports via Puerto Rico. In addition, it will give way to the development of warehouses, manufacturing and other economic activities that will spur an exponential injection into Puerto Rico's economy.

As a pillar to any manufacturing operation, infrastructure sets the bases for the establishment of any successful operation. Recent natural disasters have opened a path for the Island to revitalize its infrastructure and make it more resilient. Medical manufacturing companies on the Island have the footprint, infrastructure, and financial capacity to facilitate the distribution and flow of population health products.

The Puerto Rico Government supports my MMEDS Act legislation, and it is to my understanding that it also is looking to attract investment on the Island by working with private-public organizations so that an entrepreneurial habitat is fostered, and that the enabling infrastructure is in place to make it an even more attractive destination. Finally, in Puerto Rico we also have great local IP legal framework to offer companies the protections they need in the development of their products.

Questions from Senator Mazie K. Hirono

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

Question 1: Congresswoman Gonzales-Colon, we have both cosponsored the Puerto Rico Recovery Accuracy in Disclosures Act of 2019, which would require advisors to the Financial Management and Oversight Board to disclose their business connections to ensure that they are disinterested. Transparency is an essential component of disaster recovery efforts, and the citizens of Puerto Rico deserve to know that the Board's decisions are made in a transparent and ethical manner. How important is that this Committee pass this legislation?

Senator, thank you for being part of putting forward this legislation. You and I know that being able to assure that those who work in Puerto Rico's fiscal recovery are free from conflict or appearance of conflicts is essential to build confidence both among the people and among the parties to any settlements, as well as to the federal government.

Back when the process to create PROMESA started, I did not favor the notion of creating a body that would be insulated from being accountable to the people of Puerto Rico, to be financed virtually without restriction from our own depleted coffers. I continue to prefer that it would be otherwise, but if this is what we have right now, then we need to be confident that everyone connected to it acts in the public interest. The reality is that in our age, any least instance of a piece of information that was not disclosed up front becomes magnified and erodes trust. Transparency from the start is the way to prevent this.

I understand that there is concern in some sectors that a large part of the people with the kind of expertise and know-how needed will have some point been involved or had dealings even if only indirectly or incidentally with the players in the industry, but really this is not a matter of excluding people or of creating guilt by association. It is a matter of openness; the people need to know that the professionals they are paying for are working for them and what is in their background.

Although this Board is technically a Territorial Body, it is subordinate to no one in Puerto Rico and its functioning and legal structure are entirely controlled by a federal law, so it is legislation in Congress, such as PRRADA, that needs to proceed unless and until there is bipartisan will to take a different approach to how the settlement process should be governed. I am glad to have members in both chambers supporting this work.

Question 2: Late last month, FEMA released its COVID-19 Pandemic Operational Guidance for the 2020 Hurricane Season. How have Puerto Rico's hurricane preparedness and planning efforts been impacted by COVID-19? What if any additional resources or guidance does Puerto Rico need to prepare for hurricanes in the midst of the pandemic?

That is one of our biggest concerns right now, Senator. In the middle of an actual hurricane warning, you cannot avoid congregated indoor sheltering, and the reality is it's not just Puerto Rico, it's the whole nation's disaster sheltering system. Florida, the Gulf Coast, the Carolinas, Hawai'i, the Pacific Territories, the areas prone to tornados and river floods, all are thinking of that right now.

The Puerto Rico Emergency Management Bureau and Housing Department have adopted a new set of shelter guidelines based on the CDC guidance, including arrival screening, distancing, identifying facilities with separate quarters for possible quarantining, and additional cleanup measures. But this means a net reduction in total capacity of the shelters by maybe half, and thus the need to identify alternative locations and habilitate

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

them for this purpose. FEMA has further recommended that the authorities plan on preemptively evacuating high vulnerability populations in flood zones before the storm, rather than wait for a flood warning.

Now let's add another twist: after the earthquake swarm of the last six months, many of the structures that were the shelters in Puerto Rico have been damaged, destroyed or compromised to some extent, representing up to 23% of the nominal capacity according to our Emergency Managers. So now we also are forced to find new shelters AND to provide mass transport for people in vulnerable communities. Our Mayors are doing a titanic job at identifying such alternatives, but their resources are limited. So, resources to facilitate evacuation under safe conditions and to rehabilitate alternate shelters will be needed and that will have to come from federal sources – recognizing of course that the federal government cannot just command shelters and supplies to appear.

If we had the luxury to set aside the Covid problem, I would say the level of response preparedness in Puerto Rico this time is far superior to what it was in 2017, but with Covid even the experts are still learning on the go and what we know changes as time goes on. Our own Emergency Management Bureau is experiencing leadership turnover. Territorial and federal emergency managers are having to change their plans even as we speak, and whether the adjustments being made are enough is something we don't want to test, but the agencies need to step up.

Questions from Senator Catherine Cortez Masto

Question 1: Puerto Rico has a population that is both older and lower income than the mainland United States. Over 60% of the Island's residents receive their health care through Medicaid and Medicare, primarily via Medicare Advantage. What policies could Congress pursue to help the Island's Medicaid and Medicare Advantage providers and plans serve Puerto Ricans through COVID-19, but also with an eye towards strengthening them for the future?

One way would be to ensure that the different resources that Congress has approved for COVID-19 prevention and management adequately match the composition of health insurance reimbursement for the Island providers. Initial relief was based on original Medicare utilization, which is notably low in Puerto Rico. Measures should be taken to ensure that Medicaid and Medicare Advantage utilization are also considered for COVID-19 relief funding; otherwise, the funds available for almost all hospital and medical providers will be very small compared with the services provided to Medicaid and Medicare Advantage beneficiaries.

In the long run, Congress and Puerto Rico should collaboratively work out a formula for Medicaid funding that does away with the clearly insufficient matching funds cap and provide for a formula similar to that used in the States. The 2017 Hurricanes and the COVID-19 pandemic have starkly revealed the inherent fragility of PR's health system, which may be largely remedied by equalizing hospital and physician's reimbursement to levels similar to those of the States. This measure alone will strengthen Puerto Rico's notoriously fragile hospital system and also prevent, even revert, the physician exodus that has taken place over the last decade and half, as physicians abandon the Island due in great part to the very low reimbursement rates for Medicaid and Medicare Advantage services. Furthermore, it will allow Puerto Rico's Medicaid program to provide all mandatory benefits, only about half of which it is currently able to provide.

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

Question 2: Recently, concerns have been raised about Puerto Rico's contracts to secure COVID-19 testing. According to several reports, two companies were given contracts to provide the territory with coronavirus tests, and were paid approximately \$40 million. However, these companies had no experience in the medical supply industry. This is part of a trend across the country where companies with no history providing medical tests, masks, and other supplies were able to get lucrative contracts in the middle of a crisis. Did those initial contracts to inexperienced companies delay effective testing for the territory?

The matter of whether the correct procedures for awarding these contracts were followed and whether there was any undue influence in obtaining the contracts are currently under investigation by the authorities.

From our interviews with public health officials and healthcare providers, it appears that these contracts did not delay effective COVID-19 testing for the territory. At the time that the contracts were executed, Puerto Rico was experiencing systemic problems affecting availability of reagents, testing kits and other implements which affected all States and territories to a similar degree. At that time, there were few diagnostic tests approved by the FDA and every country was vying for the limited number of tests that were being produced at that time. It is to my understanding that private laboratories—which had no relation to these contracts—were also unable to secure diagnostic testing materials because of their general unavailability in the market.

Question 3: How can Congress better ensure that testing is widely available in Puerto Rico?

Last week, laboratories in Puerto Rico ran out of testing reagents because HHS' test distribution policy is tied to the number of positive cases in a jurisdiction. Thus, the less testing that is done, fewer positive cases are reported, and proportionally fewer testing supplies are sent to the jurisdiction.

Although a new, larger supply of diagnostic testing materials was just received, the distribution policy should be adjusted to take into account the population of the jurisdiction rather than the reported positive cases. This would put the availability of testing supplies for Puerto Rico on par with other States with similar populations.

Question 4: Do you have any thoughts on how we can ensure that bad actors are excluded from the government contracting process, particularly during a crisis like a hurricane or pandemic?

Senator, we all know it is fundamental for every public official to be ready to uphold our oath to faithfully execute our duties. Even in the middle of an emergency, if it sounds too good to be true it probably is and being in a crisis with lives at stake can lead to bad decisions. There is a well-known saying in Spanish which is "La prisa es mala consejera" – "haste is a bad advisor". People involved in the process must have the integrity to tell those in positions of authority when a directive or request just cannot be satisfied as desired. I should prefer to be told: "sorry, no serious contractor can give you that, this is instead what we can get" than be flattered with hollow promises of making me look good. We have seen this happen in multiple states and countries, it has not been exclusive to Puerto Rico, nor has the Island been the one with the largest scale in regard to this problem. But we do need to be on alert because we can't afford it. Even if the public officials are themselves going strictly by the book, having to look out for or intervene against a bad actor takes time and resources away from the actual response to the crisis at hand.

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

On the other hand, one of the reasons to declare a state of emergency is to speed up the process of delivering what is needed to those affected. Sometimes, aid comes from unexpected directions. There ARE for example enterprises producing PPE or ventilators today that were not doing that three months ago, so we can't exclude them because of that. But at the same time, producing cloth masks is not the same thing as producing molecular assay kits, and replacing a streetlight pole is not the same thing as repowering an 820MW power plant. One thing we saw back in the immediate aftermath of the Hurricanes was the need for a well-designed system of prearranged contracting for response supplies and work, where you have those you will call upon vetted for their history and for their capacity to deliver what is needed when it is needed, before an emergency is upon you.

A centralized, updated registry of vetted providers of goods and services is an important component of any procurement system in normal circumstances, as it is in an emergency. With the 2017 hurricanes, the prior arrangements were not sufficient, and we have seen the same with the pandemic. The pandemic has driven home the lesson of not depending on single outsourced providers or on ordering things just-as-needed. We could have had Puerto Rico-based suppliers, under FDA and HHS regulation, instead of having to scour the world for whoever was offering whatever we could get, which is why I have presented legislation to bring back that industry to U.S. soil via Puerto Rico.

Question 5: In your testimony you mentioned that funding limitations that the Nutritional Assistance Program is facing and that the program serves over 1.3 million beneficiaries, with benefits close to 50% less than what people in the United States receive under (the Supplemental Nutrition Assistance Program) SNAP. With this program being block grant funded as well, what challenges does Puerto Rico face? Since the pandemic began have you noticed any increases in demand regarding nutrition assistance?

Compared to SNAP, the block grant does not accommodate fluctuation in demand, does not provide for equal benefits and therefore challenges food security. Because we have a limited amount of funds at our disposal for NAP, Puerto Rico has had to enforce strict income restrictions and eligibility guidelines that often disqualify constituents from participating. During emergency periods, because we do not have a program that can accommodate increases in demand, we have relied on Congress to appropriate disaster nutrition funds. I am pleased to say that up until now, we have received multiple allotments for disaster relief that include additional NAP funds. Most recently, the Families First Coronavirus Response Act and the CARES Act allocated a total of \$296,941,905 for NAP. However, these funds run out in August, which means that Puerto Rico will return to base-level NAP funds while still struggling to assist over 152,000 new participants. This is why I will continue asking for additional funds for nutrition assistance, but the reality is that, if we participated in SNAP, we would have the funds we need and the flexibilities to better respond to nutritional needs and demands in general.

We have seen an increase in demand since the pandemic began. In April, shortly after curfew measures were implemented in Puerto Rico, there were 1,334,528 participants in NAP. By July 16, there are 1,486,749 individuals registered in the program, over 150,000 new participants.

Question 6: By most accounts Puerto Rico has been relatively successful to date in its containment measures, with the Island having under 7,000 confirmed and probable cases and fewer than 160 deaths over a three-month period. As the Island enters Phase 3 and airport operations are ramping up, the future containment of COVID

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Questions for the Record Submitted to the Honorable Jenniffer González-Colón

will rely on increased testing and contact tracing. What would the government need to establish a system that works and that is closely aligned with the municipalities for greater control? How could Congress help?

Thank you, Senator. I only pray that this holds up. The decision in Puerto Rico to go into a "hard" lockdown early in the game, including actual overnight curfews, and single-point-of-entry commercial airline arrivals, helped in avoiding a catastrophe in the early stage. At least Puerto Rico has been fortunate when it comes to basic PPE and medical gear and health care capacity up until now, but like everywhere in the nation more testing is still needed, we can't let our guard down. To be clear, the truth is that by now community transmission is a reality. We just had two holiday weekends that have caused much consternation due to large displays of risky behavior, and most of those people were not recent travelers but Island residents.

Even so we need to be alert in the phase of ramping up travel again. As if things were not tense enough, let us remember the Puerto Rican communities in the continental states are centered in the New York/New Jersey region, a past hotspot, and in Florida that's a current one, with significant presence in Texas and California, and because of our culture you may imagine how after four months there is enormous drive for members of our community to break with social distancing as soon as possible, be it down the street or across 2,000 miles. We have seen a number of "family reunions" outbreaks as the summer progresses and though testing does not protect you from an exposure in the last day, it helps.

We need measures to enable broad availability of testing to all in the community, so it's also readily available to everyone who plans to travel within 72 hours of departure; to require carriers to enforce safety protocols, to provide the arrival-side teams of our Health Department, National Guard and first responders with the resources to carry out arrival screenings. But we need measures to increase availability of testing and reliable contact tracing everywhere across the nation are needed and should be considered in any future relief package, including if necessary DPA authority for test production and a flat-out mandate for healthcare coverages to include testing, unconditionally. That relief package should also contemplate having more assistance filter down directly to the municipalities, through a lower population threshold, so those localities that do have their own health care or first response resources can themselves be able to pick up this effort.

Questions from Senator John Hoeven

Question 1: You mention in your testimony Puerto Rico's water supply issue, and the fact that up to 59% of your water authority's produced water is lost through a "deficient" distribution system. I think we all agree with your assessment of how important it is to have access to a reliable supply of water, particularly with the need to maintain good hygiene as a key part of helping to stop the spread of COVID-19.

Could you describe further some of the water infrastructure needs, and your legislation to make Puerto Rico eligible to compete for the WaterSMART grant program?

The Puerto Rico Aqueduct and Sewer Authority (PRASA) is the sole provider of water and wastewater services in Puerto Rico. According to its latest fiscal plan, it has one of the most complex systems when compared to other utilities in the United States, serving over one million customers. The complexity of its network, coupled with the age of assets and years of underinvestment in the maintenance procedures, have contributed to safety and water reliability risks. This includes high levels of water loss.

U.S. Senate Committee on Energy and Natural Resources
June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
Questions for the Record Submitted to the Honorable Jenniffer González-Colón

Per the utility's 2020 Fiscal Plan, PRASA produces an average 557 million gallons per day (MGD) of water, of which 299 MGD is lost and not billed. Approximately 64 MGD of water losses can be attributed to unauthorized consumption, inaccurate consumption estimates, inaccurate meters, and outdated technology. The remaining 235 MGD correspond to physical losses, which result from pipe ruptures, leakages, aged infrastructure, or water tank overflows. Given this reality, PRASA has been forced to process substantially more water than is required, incurring in additional costs and aggravating water availability issues during periods of droughts, which increases the likelihood of rationing measures like the ones that have been recently implemented.

PRASA also faces under investments in its metering infrastructure, which complicates efforts to address water losses. For instance, the utility's fiscal plan states that some of its old, mechanical meters have an estimated error margin of up to 15%. Moreover, during the current COVID-19 emergency, PRASA was forced to rely on consumption estimates rather than meter measurements due to old metering technology and the inability for meter readers to perform their duties.

Puerto Rico's water infrastructure and supply challenges are further complicated by the Island's vulnerability to droughts. In fact, according to data from the U.S. Drought Monitor, 72.20% of Puerto Rico is currently under abnormally dry conditions. Approximately 54.54% of the Island is experiencing a moderate drought, while 32.19% is facing a severe drought. The Government of Puerto Rico has already begun rationing water to over 140,000 PRASA customers.

To ensure the Island can address these challenges and improve its water infrastructure, I introduced H.R. 6050, the Puerto Rico WaterSMART Grants Eligibility Act. This bipartisan legislation would amend Section 9504 of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364) to include Puerto Rico as an eligible applicant location for the Bureau of Reclamation's WaterSMART and Drought Resiliency Project Grants.

WaterSMART Grants provide cost-shared federal funding for projects that conserve and use water more efficiently and contribute to water supply reliability. Drought Resiliency Project Grants seek to increase resiliency to drought and climate change by funding on-the-ground projects that improve water management flexibility during periods of low water supply. Funding under both programs is awarded on a competitive basis and requires a minimum nonfederal cost-share of 50%.

Originally, eligible applicants for these grants had to be located in one of the 17 western states or U.S. territories identified in the Reclamation Act of 1902, which does not include Puerto Rico. However, last year, Congress included language in the John D. Dingell, Jr. Conservation, Management, and Recreation Act (P.L. 116-9) to make Alaska and Hawai'i eligible applicant locations as well.

This means that Puerto Rico is now the only territory and noncontiguous jurisdiction in the United States where these water conservation and drought management grants are not available. The Puerto Rico WaterSMART Grants Eligibility Act seeks to address this, following the same language Congress adopted last year to make Alaska and Hawai'i eligible applicant locations.

U.S. Senate Committee on Energy and Natural Resources
June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
Questions for the Record Submitted to the Honorable Jenniffer González-Colón

Question 2: What additional flexibility should Congress consider so that Puerto Rico is able to better utilize assistance provided under the CARES Act, as well as other enacted legislation to date?

Congress should provide Puerto Rico the necessary flexibility to utilize part of the Community Development Block Grant – Disaster Recovery (CDBG-DR) funds allocated in the aftermath of Hurricanes Irma and Maria to also meet needs related to the earthquakes and the ongoing pandemic.

U.S. Senate Committee on Energy and Natural Resources
June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
Responses to Questions for the Record
Submitted by the Honorable Michael F.Q. San Nicolas

Questions from Ranking Member Joe Manchin III

Question 1: The pandemic has completely transformed our health care system, and the need for personal protective equipment (PPE) has increased dramatically. While we have a Strategic National Stockpile for emergency medical supplies, we are seeing significant shortages of PPE in the United States and its territories.

- a. Do you currently have the proper medical supplies and equipment you need?

MSN Response: Guam is thankful for the supplemental funding received from the three coronavirus pandemic relief packages that have prevented the island from a shortage of medical supplies and equipment. The additional support from the U.S. Department of Health and Human Services (HHS) and the Federal Emergency Management Agency (FEMA) has helped sustain our levels for medical care. Unfortunately, Guam is seeing a recent spike of COVID-19 cases and deaths from the beginning of the pandemic, which has alarmed medical professionals as we near full capacity utilization of the available life-saving equipment. Guam's close relationship with our federal agencies including FEMA and the U.S. Department of Defense (DOD) is a saving our local government hundreds of thousands of dollars by providing critical care facilities and resources that have also been made available to our affected troops.

- b. What has been the primary method for your territory in acquiring these life-saving drugs and equipment?

MSN Response: Representatives from FEMA have been incredibly helpful in providing guidance and support as we acquire the necessary life-saving supplies, drugs, and equipment. We depend on our federal counterpart and our local businesses to help procure the essential medical assets.

Question 2: State, territory, and local governments are facing drastic revenue shortfalls due to the impact of COVID-19 on their economies. The Coronavirus Relief Fund is supposed to provide flexible funding to state, territory, and local governments to respond to the crisis, but there is no guarantee that the funding will reach communities with fewer than 500,000 residents, and more flexible and dedicated funding is needed.

- a. Has the Coronavirus Relief Fund been helpful to your territory and local governments?

MSN Response: For the Government of Guam, the additional \$117M to support the unforeseen impact caused by the coronavirus pandemic, especially considering the revenue shortfalls caused by drastic economic downturn, has provided significant reprieve. \$20M of the funds had been set aside for additional grants to local small businesses. The maximum \$30,000 grant has been helpful in supplementing the federal Payroll Protection Program loans.

- b. Are there any challenges to accessing this funding?

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Responses to Questions for the Record
 Submitted by the Honorable Michael F.Q. San Nicolas

MSN Response: The government of Guam, through the Office of the Governor of Guam, has not reported any challenges to accessing this funding.

- c. How are territory and local governments addressing the projected revenue shortfalls?

MSN Response: Unfortunately, the Guam Legislature was forced to implement budget cuts throughout all agencies within the government of Guam, including critical agencies tasked with ensuring public health and public safety. Additionally, the FY2021 budget passed with reduced funding to the Guam Department of Education, further jeopardizing the loss of millions of dollars in federal grants.

Question 3: Congress implemented the Paycheck Protection Program (PPP) to aid small businesses to help them weather the storm of the COVID-19 crisis. So far, the territories have received about \$2.2 from the PPP. However, despite the PPP's intended purpose of supporting small businesses, many of the local mom and pop shops have had difficulty accessing the funding.

- a. Are your constituents getting access to PPP loans?

MSN Response: Yes, however, while our constituents have access to the PPP, access to loans created by the program have not been available to all small business who have attempted to apply. Given our population size and geographic location, small businesses in Guam are limited in options to access PPP loans. While our local financial institutions have provided PPP loans to their clients, smaller businesses who are limited in their resources and who are not banked with the financial institutions providing PPP loans, have been disenfranchised in the process. Understanding that our local financial institutions would like to provide loans to new customers, their respective limited capital prevent them from doing so.

- b. Do you have any recommendations on how we can find a better way to get help into the hands of struggling small businesses?

MSN Response: Providing incentives to national, larger-capital banking institutions that offer PPP loans to eligible small businesses in disenfranchised areas across the nation, with preference to U.S. territories.

Question 4: Many states, including my state of West Virginia, have received billions in aid from the Coronavirus Relief Fund that has still gone unspent. We must take inventory of the money that has already been approved by Congress but remains unspent or unavailable to people on the ground.

- a. Has your government transferred money from the Coronavirus Relief Fund to local governments or municipalities in your territories? If so, do you know how much?

MSN Response: No

U.S. Senate Committee on Energy and Natural Resources
 June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
 Responses to Questions for the Record
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Question 5: During the COVID-19 pandemic, we have seen a growing problem of utility nonpayment as customers have had trouble paying their energy and water bills. Congress has already appropriated \$900 million in the CARES Act for low-income household utility assistance, but it's clear we need more.

- a. What are you seeing in terms of rates of nonpayment and do you have disconnection moratoria in place to prevent customers being cut off for nonpayment?

MSN Response: Fortunately for our constituents in Guam, the Guam Power Authority and the Guam Waterworks Authority, both semi-autonomous agencies of the Government of Guam, issued resolutions suspending its disconnection policy over nonpayment for customers who face financial hardship due to the impact of the coronavirus pandemic. Customers are in turn placed on a payment arrangement plan that will allow them to pay monthly as much as they can to reduce the overall deferred payments when it becomes due six months after the plan is in place. Although Guam has received \$164,177 from the supplemental funding appropriated to the Low Income Home Energy Assistance Program in the CARES Act, the Government of Guam has yet implement the disbursement of funds. It is our understanding that federal administrative bureaucracy and timelines may be hindering distribution.

- b. Are there concerns about nonpayment increases impacting utility cash flow? If so, what do you think is needed?

MSN Response: I have received many concerns from representatives of the Guam Waterworks Authority. While they have graciously provided temporary relief to those financially affected by the coronavirus pandemic, the reduction in payment from continued services will have a great impact to maintaining the agency's bond covenants. The agency is seeing a severe loss in revenues, experiencing a rapid increase in delinquencies, as well as higher personnel expenses related to the pandemic. Passing important provisions included in the HEROES Act that provide financial housing assistance for rent, mortgage, and utilities payments that go directly to landlords and utility agencies should be central to any assistance provided to our citizens.

Questions from Senator Mazie K. Hirono

Questions: Late last month, FEMA released its COVID-19 Pandemic Operational Guidance for the 2020 Hurricane Season. How have Guam's hurricane preparedness and planning efforts been impacted by COVID-19? What if any additional resources or guidance does Guam need to prepare for hurricanes in the midst of the pandemic?

MSN Response: Guam's Office of Civil Defense has informed my office that at the start of Guam's typhoon season, in June and July of this year, Guam engaged stakeholders in a Guam-FEMA Joint COVID-19 Pandemic All-Hazards Planning effort including various Emergency Support Functions (ESFs) from the government of Guam, federal, respective military partners, private and non-profit organizations in providing leadership considerations for managing concurrent typhoon

U.S. Senate Committee on Energy and Natural Resources
June 30, 2020 Hearing: *The Impacts of the COVID-19 Pandemic on the Territories*
Responses to Questions for the Record
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and COVID-19 operations. A result of this effort was the draft creation of the "COVID-19 Pandemic All-Hazards Operational Guidance for 2020" for stakeholder reference. The planning efforts are impacted when reviewing considerations and assumptions such as the tyranny of distance from resources, COVID-19 effects on health and medical, emergency shelter operations during inclement weather to include proper social distancing, etc. As Guam utilizes public schools as emergency shelters, planning considerations are underway to accommodate the maximum capacity with social distancing measures in mind. Part of the preparedness and planning effort included meetings throughout June for a Joint Guam-FEMA Planning Assessment (All-Hazards in a COVID Environment), with breakout groups for health and medical, safety and security, mass care, shelter management, etc. Planning efforts continue as the COVID-19 situation evolves and as typhoon season is still prevalent.

Guam continues to receive additional guidance from local and federal counterparts to include planning tools provided by FEMA. Guam's emergency management agency, the Offices of Guam Homeland Security and Civil Defense (GHS/OCD), work closely with FEMA Region IX for any resource requests that cannot be fulfilled locally. Any additional resources needed to prepare for any typhoon during the pandemic would be funneled through there.



THE UNITED STATES VIRGIN ISLANDS
OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE
CHARLOTTE AMALIE, V.I. 00802
340-774-0001

The Honorable Albert Bryan, Jr.
Governor
U.S. Virgin Islands

**WRITTEN STATEMENT
BEFORE THE
U.S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
JUNE 30, 2020 HEARING TO EXAMINE THE IMPACT OF COVID-19 TO U.S.
TERRITORIES**

Good morning, Chairwoman Murkowski, Ranking Member Manchin, and Committee members. Thank you for the opportunity to discuss the impact of COVID-19 on the U.S. Virgin Islands and other United States Territories.

First, I wish to thank you and your colleagues in Congress for your concern and support for the U.S. Virgin Islands in responding to and recovering from the most recent disaster that has inflicted damage in the Territory. When I appeared before you on February 26, 2019, I thanked you and your colleagues in Congress for your concern and support for our recovery from the unprecedented damage, estimated in excess of \$10 billion, caused by two back-to-back Category 5 hurricanes—Hurricanes Irma and Maria—in September 2017. With federal assistance, we are making progress in our longer-term recovery from those catastrophic storms, but that recovery will take several years. Your continued assistance and support are needed for us to recover from the physical, economic, and social damage from the hurricanes, and to rebuild our Territory to be stronger and more resilient to increasingly more frequent natural disasters.

We, unlike our fellow Americans across the United States, are now faced with the combined impact from the hurricanes with a very different kind of disaster—the COVID-19 pandemic. Strictly from a public health standpoint, efforts to limit the spread of the virus have been relatively successful because of our geographic isolation and the shutdown of non-essential travel into and out of the Territory, as well as measures we have implemented locally to limit exposure and community transmission. However, the economic fallout from the pandemic has hit the Virgin Islands particularly severely. Without exaggeration, I believe we have suffered more economically than any other state or territory in the United States because of the serious health and economic impact of COVID-19 combined with continuing recovery from Hurricanes Irma and Maria.

The Territory is *overwhelmingly* dependent on the tourism industry, which normally generates 30% of our Gross Domestic Product and employs 25% of our civilian labor force. Because the COVID-19 pandemic has reduced the USVI's tourism revenues to almost zero, the Territory is suffering even more devastating economic losses than other U.S. jurisdictions. Our April 2020 unemployment claims were up 3000% over the previous April. Our revenue shortfall in 2020 is projected to be in the 150 millions of dollars. This sudden and dramatic drop in government revenues has reduced the Territory's cash on hand to dangerously low levels, jeopardizing our ability to make payroll and perform basic public services.

The Territory has had a total of 81 positive cases out of a total of 2863 tested and a total of 6 fatalities. This equates to a rate of 8.1 cases per 1,000 persons of population and a testing positive rate of 2.8% of those tested. But these figures belie the serious economic impact of the pandemic to the Territory.

In terms of healthcare costs, the Territory had to build healthcare capacity based on the uncertainty of how many cases the Territory might have with the return of residents and the influx of tourists from the US Mainland, on top of attending to heavily damaged hospital and healthcare facilities from the Hurricanes. The following is a snapshot of the additional costs that we had to incur for pandemic preparation and response:

- \$6.9M (three months of Paramedic, supplies, PPEs, ambulance services and education and training of EMS staff on COVID related cases.)
- \$12M additional cost for Paramedics projected (July to November 2020)
- \$60K (Housing for IMANA physicians and nursing staff)
- \$360K (Nursing staff at JFL and RLS) CDC Grant funding

Most of all these costs are expected to be reimbursed by FEMA funding, but the Territory was burdened with the initial cost outlay and having to apply FEMA funding to such costs removed availability of such funding for other response purposes.

We also have substantial social impact costs in the form of social services that had to be implemented as part of the COVID-19 response. Sample snapshots of the impacts include the following:

- Medical Assistance Program (MAP) processed 30,064 claims as of April 1st, with a total payment of \$18,686,570.00.
(See Schedule A attached for new enrollment breakdown)
- On March 26th, an increase of \$2,712,500.00 was made to the current MAP budget. These funds are available through September 20, 2020. MAP received an increase of 6.2% in our Federal Medical Assistance Percentage (FMAP), which increases our current FMAP to 89.2%. This increase is retroactive to January 1st and will expire on September 30, 2020.

- To date there have been approximately 2,200 new applications submitted for **SNAP** benefits territory wide.
- In April 2020, the Department of Human Services issued additional Emergency Allotment of SNAP benefits to all those eligible households who were not previously receiving the Maximum Allotment. A total of **\$1,345,187.00** was issued to **6,973 SNAP Households**. In May, another **\$1,216,271 SNAP Emergency Allotment** was issued to **6,498 households**.
- We anticipate an approximate total of \$5,622,171.94 in P-EBT Benefits to households composed of 14,810 children across the U.S. Virgin Islands. Of the 14,810 children for whom P-EBT benefits will be issued, 9,523 were not previously EBT benefit recipients and 5,287 are in previously active EBT benefits- receiving households.

We also have incurred a substantial list of additional costs and revenue shortfalls engendered from the COVID-19 occurrence and the consequent response. These costs and revenue shortfalls. The following is a summary of the economic effects of the COVID-19 pandemic on the Territory projected by our Division of Economic Research:

- The worst-case scenario would be direct reduction in direct tourism expenditures of approximately \$440 million, concentrated in Quarter II of the year due to ongoing travel restrictions and cruise ship suspensions. Average annual tourism expenditures in the territory tends to average \$1.2 billion. This would be a 36.6% reduction in tourist spending.
- Using a multiplier of 1.36, the total impact on the economy could be on the order of a minus \$600 million, captured indirect effects such as reduced consumer spending of laid off hospitality and leisure workers. This would imply that the USVI Gross Domestic Product (GDP) will shrink from approximately \$4 billion in nominal terms to \$3.4 billion, a decline of 15 percent.
- Tax revenue collection is likely to be reduced by 15-20 percent. The reduction in revenue will increase operating deficits and worsen government liquidity and debt servicing situation, especially given that the territory cannot access capital markets due to below investment grade credit rating.
- Unemployment will likely increase from the official April rate of 8.4 percent to low double digits in the months of May and June as we proceed into the off season for tourists.

Visible Early Indications of Adverse Effects.

- Cruise ship expenditures lost in the period of March 13- April 13, 2020, due to suspension of service is estimated to be \$35.8 million.
- Hotel occupancy is below average and during the high tourism season that runs from December to March, occupancy is normally above 80%. The information received from the Department of Tourism, for the period of March 1-18, 2020, reports an occupancy rate for the hotel properties in the St. Thomas and St. John district is 62% and for properties in

the St. Croix district, the occupancy rate is 48%. Further, the pandemic has delayed the rebuilding of our major resort property indefinitely, eliminating 9000 room nights per month of revenue on that property alone.

- Passenger load on major airline carriers are showing declines from historical averages for corresponding periods in previous years. Passenger load for the period March 10-14, 2020 was 55%. Historically, load factor would be 85% or higher. Passenger load has dramatically decreased since that time until beginning to increase on June 15th.

And the cost and service impact was not only felt in the Executive Branch. Certain Court proceedings were limited or suspended pending the ability of the overall Government to reopen offices. COVID-19 has also required our Courts to adopt new proceedings based on technology and new physical set up of offices and personnel at substantial additional costs. Please see the attached State of the Judiciary Message by the Chief Justice of the VI Supreme Court on these effects and costs. (See Attachment B).

We greatly appreciate the significant federal support provided in the CARES Act, which has helped us so far to navigate these challenging times. But the CARES Act funding will not be sufficient to make up for much of our revenue shortfall. Further, the prospect for a near-term rebound in revenue has been threatened by the recent announcement that cruise lines—our largest source of tourism visitors—do not intend to restart cruises until October or November. We therefore urgently need an infusion of cash to support the government's ability to operate and provide essential public services.

To that end, I summarize below the initial assistance provided for in the CARES Act, the need for additional financial support, and the funding that would be provided in the House-passed HEROES Act and the SMART Act recently introduced in the Senate, as well as our requests for changes to the HEROES Act and SMART Act to address our continued fiscal situation.

The CARES Act

Congress has taken initial measures to help the Territory navigate the COVID-19 disaster. The CARES Act provided an important first step, creating a \$150 billion Coronavirus Relief Fund ("CRF") to assist State governments in responding to the pandemic. Each of the 50 States was guaranteed a minimum payment of \$1.25 billion. The CRF set aside \$3 billion for the District of Columbia, Puerto Rico, and the four small Territories, but divided that money by population; as a result, the great majority of CRF funding went to Puerto Rico, and the four small Territories combined (population about 350,000) received only about \$250 million—one-fifth of the amount received by the smallest State (population about 575,000). The Virgin Islands received just \$75 million—far less than the Territory's projected budget shortfall in 2020 alone, and, in any event, the CRF money cannot be used to pay previously budgeted costs, which are substantial.

The Virgin Islands is grateful for the assistance provided in the CARES Act, but more is needed to prevent an economic and financial crisis.

The HEROES Act

The House-passed HEROES Act would create a \$540 billion “Coronavirus State Fiscal Relief Fund” for States, Territories, and tribal governments “to mitigate the fiscal effects stemming from” the COVID-19 pandemic. Of that amount, \$20 billion would be set aside for the four small Territories and Puerto Rico, of which \$10 billion would be allocated equally among the five recipients and the remaining \$10 billion would be allocated using a population-based metric. The Virgin Islands would receive approximately \$2.25 billion.

Importantly, the HEROES Act would also expand the permissible uses of CRF funds to include revenue replacement; provide for reimbursement to the Virgin Islands and other Mirror Code jurisdictions of the costs of the Earned Income Tax Credit and Child Tax Credit; eliminate local cost share requirements for COVID 19-related disaster funding; appropriate \$1 billion for “assistance to [the small] Territories,” most of which would be used for hospital capital improvement projects; and appropriate \$90 billion for the State Fiscal Stabilization Fund, originally established by the American Recovery and Reinvestment Act of 2009 (ARRA), of which one-half of 1% (about \$450 million) would be set aside for the four small Territories.

The funding that would be provided under the HEROES Act would go far to address our near-term needs and provide a stable fiscal platform to enable us to continue to provide critical governmental services. We urge the Senate to consider adopting the funding levels for the Territories in the HEROES Act when fashioning its own bill.

The SMART Act

The SMART Act, co-sponsored by Ranking Member Manchin, would create a new \$500 billion Coronavirus Local Community Stabilization Fund, to be allocated among States and Territories in three equal tranches to fund COVID-19-related costs and lost revenues. The first tranche would be allocated based on the State’s/Territory’s percentage of the total U.S. population; the second based on the State’s/Territory’s percentage of total U.S. COVID-19 infections; and the third (to be paid in 2021) based on the State’s/Territory’s revenue losses as a percentage of all States’/Territories’ revenue losses.

The Act guarantees that the 50 States, DC, and Puerto Rico will each receive a minimum of \$2 billion from the first two tranches combined. Tribal governments would receive a \$16 billion set-aside. The four small Territories, by contrast, would receive no minimum payment or set-aside, and, because of their small size and relatively lower infection rates, the Territories would receive very small allocations under the first two tranches.

Our preliminary estimates indicate that in the first two tranches, the USVI (population 105,000) would receive a total of less than \$60 million, or about 3% of what the smallest State (population 575,000) would receive. That is, the Virgin Islands has about one-fifth the population of the smallest State, but it would receive less than one-thirtieth of the SMART Act funding that the smallest State would receive in the first two tranches. The other three small Territories would similarly be disadvantaged.

USVI's Proposal for Achieving Equity with the SMART Act

If the Senate does not adopt the provisions and funding levels in the HEROES Act, the SMART Act, with tweaks, could provide a strong vehicle to provide assistance to the Territories. Specifically, we request your support for a change in the allocation of SMART Act funds to provide the four small Territories—like the States, DC, Puerto Rico, and Tribal governments—with a set-aside on the first two tranches. If the minimum allocation formula would not be considered, the proposed set-aside could be limited to one-half of 1% of the funds appropriated for those tranches. This set-aside formula has been used successfully to provide equitable treatment for the small Territories in multiple contexts for more than a decade, including in the CARES Act itself.

In the context of the SMART Act, this set-aside approach would increase the small Territories' combined SMART Act funding for the first two tranches to about \$1.6 billion. The Virgin Islands would receive about \$430 million of that—which is not enough to replace lost revenues, fund critical medical infrastructure for pandemic response, ensure continuity of essential public services, and establish a base for economic stabilization. However, this revised allocation would more equitably treat the Virgin Islands vis-a-vis the smallest State.

Other Means for Aiding the USVI's Faltering Economy

The HEROES Act or a more equitable SMART Act could materially assist the USVI's effort to prevent the pandemic from causing a fiscal disaster. But even before the pandemic and the hurricanes, the Virgin Islands and the other Territories faced unique challenges not encountered on the U.S. mainland. Many of these challenges are the result of factors beyond the control of the federal government, such as geographic distance and isolation, lack of natural resources, and general small island limitations on scale and their related impact on economic development options. But some challenges we face are exacerbated by—and, in some cases, the direct result of—federal policies, which are within the power of Congress and the Administration to change. To that end, the Territory has also proposed several other measures that would provide immediate relief and greatly assist efforts to achieve economic stability and sustainable economic growth. I urge the Senate to include these measures in the next round of COVID-19-related legislation.

1. Waiver of Local Cost Share for FEMA Disaster Recovery Projects

On April 2, 2020, President Trump declared a federal disaster in the Virgin Islands because of the coronavirus pandemic. The Territory is now eligible for FEMA COVID-19 funds with a 25% local match requirement. The House's HEROES Act would waive that local match. This provision needs to be carried over into the SMART Act.

The Territory is also the recipient of \$4-5 billion in appropriated but unspent FEMA funds for disaster recovery projects relating to the two 2017 Category 5 hurricanes (Irma and Maria) that devastated the Islands. The Territory's local match requirement for accessing those funds is 10%, or \$400-500 million—money the Territory simply does not have.

Waiving the local cost share for hurricane disaster recovery projects, and for new projects to mitigate the COVID-19 economic crisis, would free up hundreds of millions of dollars for

immediate infusion into the Virgin Islands economy.

Because the monies for hurricane-related projects have already been appropriated, the Congressional Budget Office has recognized that the budget score for the local cost waiver under the Congressional Budget Act would be zero.

2. Cancellation of Existing Community Disaster Loans

In the aftermath of the 2017 hurricanes, the Government of the Virgin Islands and three of its instrumentalities—the Territory’s two publicly owned hospitals and its Water and Power Authority—obtained Community Disaster Loans (“CDLs”) to offset revenues lost from the physical and economic devastation caused by those natural disasters. The aggregate principal amount of those loans is approximately \$300 million.

Even before the COVID-19 outbreak, the Territory was likely to qualify for loan cancellation under the terms of the CDL promissory notes, as well as under applicable regulations. The fiscal crisis resulting from the pandemic makes cancellation eligibility a certainty and a necessity. The Government of the Virgin Islands cannot afford to take revenue desperately needed for the current crisis and use it to fund debt service from the previous one. Despite several requests to FEMA and the Department of Treasury, neither agency has been willing to exercise statutory authority to cancel the CDL notes.

Because the USVI’s CDLs were very likely assigned a subsidy amount by the Treasury Department under the Federal Credit Reform Act, the budgetary cost of cancellation will be substantially lower than the face amount of the debt. We therefore urge Congress to step in and provide for cancellation of the loans.

* * *

The USVI faces an escalating economic and financial crisis from the COVID-19 pandemic. We are taking every possible measure to improve our situation to attain economic and financial stability and sustainability, but we cannot succeed without more federal help to encourage recovery and investment in the Territory. We are very grateful for your longtime support for the Territory and urge and thank you for favorable action on these requests.

Madame Chair, I also want to invite you and Ranking Member Manchin, the committee members, and staff to visit the US Virgin Islands to see firsthand the combined effects of two Category 5 hurricanes and the COVID-19 pandemic.

Thank you for considering this statement and for your support of your fellow Americans in the U.S. Virgin Islands.



Albert Bryan, Jr.
Governor

Medical Assistance Program (MAP)**New Eligibility & Enrollment applications as of April 1st**

District	Number of applications
St. Croix	166
St. Thomas/St. John	247
TOTAL	413

Prior Authorizations as of April 1st

District	Number of Authorizations
St. Croix	564
St. Thomas/St. John	673
TOTAL	1237

Provider Enrollment as of April 1st

Provider Total – On island	239
Provider Total – Off island	475
TOTAL ENROLLED PROVIDERS	714

STATE OF THE JUDICIARY AND VIRGIN ISLANDS COURT SYSTEM-2020

Good morning President Christian-Hendrickson and members of the Bar. I am Rhys Hodge, Chief Justice of the Virgin Islands, and it is my honor to deliver the State of the Judiciary at this virtual Midyear Meeting of the Virgin Islands Bar Association.

The state of the Virgin Islands Judiciary today is considerably different from what it was even three months ago. The spread of the novel coronavirus (COVID-19) has impacted the operations of court systems around the world, and the courts of the Virgin Islands have been no exception. Like the Virgin Islands Bar Association, the Virgin Islands courts had to not just adapt, but adapt quickly. For this reason, I would summarize the state of the Virgin Islands court system as “resilient.”

Throughout this public health emergency, the courts of the Virgin Islands always remained open to discharge their constitutional and statutory duties. Although the COVID-19 pandemic was a sudden and unexpected occurrence, the Virgin Islands Judiciary was not completely unprepared to function in such an emergency health pandemic. Over the course of the past decade, the Supreme Court of the Virgin Islands worked tirelessly to transition itself into an “e-everything” court with respect to all aspects of its operations. In addition to electronic filing and online public access to court dockets and proceedings, the Supreme Court already had not just the capability to host remote oral arguments but experience actually doing so. With respect to administrative operations, virtually all tasks were already handled electronically, and many employees already were equipped for working from remote locations. In sum, the Virgin Islands Judiciary was a leader among court systems in this area, to the extent that I was asked to present on our continuity of operations plan

at the 2018 Annual Meeting of the Conference of Chief Justices and Conference of State Court Administrators.

In addition to already making use of technology to improve our operations, the Virgin Islands Judiciary had also prepared for the possibility of a pandemic. In May 2019, myself and other representatives of the Virgin Islands Judiciary, the Executive and the Legislative Branches attended the National Pandemic Summit sponsored by the Supreme Court of Nebraska and the National Center for State Courts with a grant from the State Justice Institute. The Summit, which was hosted at the University of Nebraska Medical Center, brought together court leaders, public health officials, and other stakeholders to start a collective conversation on how state and territorial courts should prepare for a health pandemic, including issues related to quarantines, stay-at-home orders, and holding court proceedings remotely.

Although we did not expect to apply our newly acquired knowledge so quickly, due to our prior preparedness, the Supreme Court, the Superior Court, and the Judicial Branch Administrative Office responded quickly to protect the health and safety of judicial officers, court personnel, attorneys, litigants, and others who utilize the court system. On March 13, 2020, the Judicial Branch restricted those diagnosed with or exposed to COVID-19 from accessing its facilities, placed a moratorium on new jury trials, suspended the use of its facilities for non-judicial functions, and implemented protocols to avoid situations that bring together large numbers of people in confined areas. This was followed by further restrictions on March 17, 2020, including continuing most in-person hearings, suspending issuance of new marriage licenses, and permitting judicial officers and court staff to work remotely, as well as additional orders of the Presiding Judge supplementing those directives. During these early days of the COVID-19 emergency, the Judicial Branch expedited the completion of the “Bench Book” it began to draft after the National

Pandemic Summit, which among other things outlined how court operations would continue in the event a pandemic necessitated the closure of Judicial Branch facilities.

When it became clear that even these measures were no longer sufficient to prevent the potential spread of COVID-19 in our community, on March 20, 2020, I, with the concurrence of the Presiding Judge and the Administrator of Courts, made the reluctant decision to suspend all non-essential services of the Judicial Branch, effective March 23, 2020. Although both courts would remain open to accept document filings, consider emergency matters and to hold advice of rights hearings, arraignments, bail and release hearings and certain family matters, such hearings would all be held remotely utilizing video or audio technologies. Most filing deadlines were suspended, tolled, or otherwise extended, although the Clerk's Office would remain open to accept any documents that attorneys or self-represented parties chose to file. Moreover, the Office of the Clerk of the Superior Court established a procedure for accepting filings by e-mail, so that individuals could file documents without making an unnecessary trip to the courthouse. And given the uncertainty about how long public health authorities would direct or recommend individuals to stay home or social distance, the July 2020 administration of the Virgin Islands Bar Examination was postponed, with additional bar admissions requirements suspended or otherwise modified, such as the requirement that new members of the Bar be administered the oath of office in-person in the Supreme Court.

After more than two months of operating in this state, the Judicial Branch, like the rest of the Government of the Virgin Islands, began the re-opening process. On May 14, 2020, the Presiding Judge, with the approval of the Supreme Court, designated additional types of matters eligible for remote hearings, including guilty pleas and all fully-briefed civil, criminal, and probate matters. We also established the Virgin Islands Judicial Branch COVID-19 Task Force, which was

charged with developing a proposed plan for the resumption of some or all of the operations of the Judicial Branch. The Task Force timely submitted its report on May 27, 2020, and on May 28, 2020, I issued an administrative order implementing many of its recommendations, including authorizing the resumption of certain in-person proceedings on June 15, 2020, and the resumption of jury trials on August 1, 2020. Both Presiding Judge Willocks and Administrator Petersen acted quickly to implement that Administrative Order, and we were successfully able to resume most in-person proceedings, except jury trials, on June 15, 2020, although remote proceedings are still encouraged.

Although I am proud of how both courts and the Judicial Branch Administrative Office responded to the COVID-19 crisis, there were unnecessary obstacles that made it significantly more difficult for the Virgin Islands Judiciary to act quickly and decisively. In the State of the Judiciary delivered on May 31, 2018, I outlined the response of the Virgin Islands Judiciary to the twin disasters of Hurricanes Irma and Maria in 2017, and emphasized the need for legislation addressing continuity of operations for the Judicial Branch, including explicit authorization to extend statutes of limitations, jurisdictional time limits, and other legislatively-set deadlines in the event a hurricane or other disaster interfered with the orderly operations of the Judicial Branch. On June 12, 2019, Senate President Novelle E. Francis, Jr. acted on our recommendation by introducing Bill No. 33-0092, a comprehensive piece of legislation which would provide for the continuing operation of the Judicial Branch in the event of a natural disaster or other emergency. Unfortunately, although the Legislature unanimously passed the bill, it was vetoed and never became operative. It is our hope that the Legislature act to provide the Judicial Branch with the authority contained in Bill No. 33-0092, so that the response of the Virgin Islands Judiciary to a future disaster, pandemic, or other emergency is not unnecessarily delayed or hamstrung.

While the coronavirus pandemic affected nearly all aspects of our society in a relatively short period of time, it should not overshadow our accomplishments, or the other challenges facing the Virgin Islands Judiciary. On October 18, 2019, the Judicial Branch launched its new website, located at www.vicourts.org. The new website serves as a “one-stop shop” for the public and the Bar for all Judicial Branch services and information, so that the Bar and the public may access information for all judicial business in both the Superior Court and the Supreme Court on a single website. Among the new features implemented on the website is the ability to pay for traffic citations online.

On February 24, 2020, the Judicial Branch officially launched the Superior Court Enterprise C-Track Case Management System. This system replaces the Superior Court’s legacy system, ENACT, and will enhance and streamline case management as well as otherwise improve the level of service we provide to the public. The launch of the enterprise system represents the conclusion of Phase I of this project, which will culminate in enabling electronic filing for all Superior Court matters.

Although the pandemic necessarily slowed some of our progress, I am happy to report that the Judicial Branch remains on track to enable e-filing in the Superior Court this year as promised. On June 15, 2020, we launched the online public access portal for the Superior Court, available at <http://usvipublicaccess.vicourts.org>. Cases will be added to the public access portal through a staggered implementation, and presently the public can view Probate, Litter, Traffic, and Conservation cases in which documents had been filed after June 1, 2020. We are doing a staggered implementation so that both attorneys and Clerk’s Office staff can become used to the new system, including the mandatory redaction requirements that are necessary to prevent

confidential or sensitive information like Social Security Numbers from being publicly viewable. We hope to include additional case types to the public access portal in the coming weeks.

Perhaps most importantly, we remain on track to launch e-filing in the Superior Court on August 28, 2020. As many of you know, the Superior Court began accepting electronic filings through e-mail at the beginning of the COVID-19 crisis, and that process has been well received. We are looking forward to the commencement to electronic filing in the Superior Court as the culmination of a decade long effort to achieve the paperless processing in that court with the full implementation of e-filing.

The Advisory Committee on Rules has also continued its important work, under the leadership of its new Chair, the Honorable Douglas A. Brady. I am pleased to report that on January 1, 2020, all of the provisions of the Virgin Islands Rules of Family Division Procedure went fully into effect, along with the new Virgin Islands Traffic Rules. This concludes the first phase of a multi-year effort to establish rules of practice and procedure for the Superior Court, which previously resulted in the promulgation of the Virgin Islands Rules of Civil Procedure, the Virgin Islands Rules of Evidence, the Virgin Islands Rules of Criminal Procedure, the Virgin Islands Small Claims Rules, the Virgin Islands Habeas Corpus Rules, and the Virgin Islands Rules of Probate and Fiduciary Procedure. The Advisory Committee will now move to the next phase of its important work, which will include assessing the effectiveness of the previously promulgated rules and proposing amendments, as well as evaluating the Virgin Islands Rules of Appellate Procedure. Moreover, the Committee on Virgin Islands Model Jury Instructions established last year has continued to meet and is actively drafting a set of Model Criminal Jury Instructions for use in the Superior Court.

In the past year, the Supreme Court also adopted several important rule changes with respect to the regulation of attorneys and judges. On February 5, 2019, in response to concerns from the Virgin Islands Bar Association and the Executive Branch, the Supreme Court amended the rules governing *pro hac vice* admission to, among other things, clarify what matters an attorney admitted *pro hac vice* may work on without obtaining an additional *pro hac vice* admission, and establish a streamlined procedure for a *pro hac vice* attorney to obtain such additional admissions on an expedited basis. These procedures were consistent with the unwritten practices of the Supreme Court and its Office of Bar Admissions, but were codified in order to provide clarity to *pro hac vice* attorneys and their sponsors.

In two promulgation orders issued on March 1, 2020, the Supreme Court acted on separate requests of the Office of Disciplinary Counsel and the Virgin Islands Bar Association. The first order, docketed as S. Ct. Prom. No. 2019-0006, enacted Supreme Court Rule 207.30 to reestablish a fee mediation program. The purpose of fee mediation to provide an informal way to resolve fee disputes between attorneys and their clients which do not involve allegations of serious ethical misconduct, and therefore are not necessarily appropriate for resolution through the ordinary grievance process. The fee mediation service is free for both the attorney and the client, and the mediation proceeding remains confidential even if the attorney and client cannot reach a resolution.

The second order docketed as S. Ct. Prom. No. 2019-0008, makes significant changes to Supreme Court Rule 208, which governs mandatory continuing legal education (CLE) for Virgin Islands attorneys. The amended Rule 208, which went into effect on January 1, 2020, adopts new requirements, including requiring that in each reporting period attorneys earn a certain number of credits in the areas of Technological Competence, Mental Health and Substance Use Disorders,

and Virgin Islands Law. With these amendments, the Virgin Islands established itself a leader in the field of attorney regulation, becoming only the third jurisdiction—besides Florida and North Carolina—to adopt the Technological Competence requirement, and the fourth jurisdiction—besides Illinois, Nevada, and South Carolina—to make Mental Health and Substance Uses Disorders its own requirement. In addition to these substantive changes, the amended Rule 208 changes several procedural aspects of the CLE compliance process, such as switching to a two-year reporting cycle. You are all encouraged to view the online program on the new CLE rule which is being made available to all members of the Bar who registered for this meeting.

With respect to judicial regulation, on April 9, 2020, the Supreme Court promulgated the Virgin Islands Code of Judicial Conduct as Supreme Court Rule 213. Although the Code of Judicial Conduct has been previously adopted by the Supreme Court through case law, the formal promulgation of the Code as Rule 213 will minimize confusion going forward by ensuring that any future amendments to the American Bar Association’s Model Code of Judicial Conduct will not automatically modify the Virgin Islands Code of Judicial Conduct unless the changes are approved by the Supreme Court.

Also, on the judicial regulation front, on June 20-21, 2019, the Virgin Islands Judiciary held its inaugural Judicial Conference in accordance with 4 V.I.C. § 6. The Judicial Conference was a gathering of all active justices, judges, and magistrate judges, as well as other invited guests, and included two days of educational programming, as well as a meeting of all judicial officers to discuss matters related to the administration of justice in the Virgin Islands. The Judicial Conference was a great success, and the Judicial Branch Administrative Office is currently in the early stages of planning the next such event which has had to be rescheduled due to the COVID-19 emergency conditions.

In the coming year, the Supreme Court will consider further changes to the professional regulation system. During the COVID-19 pandemic, it came to the attention of the Supreme Court that some attorneys had difficulty during the application process for Paycheck Protection Program loans from the United States Small Business Administration because they could not provide documentation showing that their law firm had a business license. Because the Virgin Islands Department of Licensing and Consumer Affairs (DLCA) has ceased issuing business licenses to law firms in 2015 as a result of the judgment entered against it in *Pate v. Gov't of the V.I.*, 62 V.I. 271 (V.I. Super. Ct. 2015), in which the DLCA was ordered to “immediately cease issuing, revoking or suspending attorney business licenses” law firms and attorneys were unable to demonstrate that they were authorized to operate a legal practice in the Virgin Islands. Although these attorneys were ultimately able to submit a certificate of good standing from the Supreme Court in support of their loan applications, it is clear that a certificate of good standing—which only signifies that one is authorized to practice law—does not perform the same function as a business license. The Supreme Court, with input from the Virgin Islands Bar Association and other stakeholders, will explore the feasibility of establishing a licensing mechanism for law firms and other legal services providers who cannot obtain a license from the DLCA.

The Supreme Court will also again re-examine the efficacy of the current system for disciplining attorneys and enforcing the prohibition on the unauthorized practice of law. The Supreme Court first established the Office of Disciplinary Counsel (ODC) in 2010, after receipt of a report from the American Bar Association providing recommendations as a result of its study of the attorney discipline system in the Virgin Islands, and gradually expanded the role of the ODC so that by January 1, 2015, the ODC was vested with the authority to investigate and prosecute all allegations of attorney and judicial misconduct and disability, as well as all unauthorized practice

of law complaints. These changes to the disciplinary system were not taken lightly, and were enacted for the stated purpose of reducing the backlog of grievances filed against attorneys, and substantially increasing the speed in which new grievances were resolved. In the coming year, the Supreme Court will evaluate the processes employed by the ODC and the Board on Professional Responsibility, with the goal of improving disposition rates so that disciplinary matters are investigated, prosecuted, and adjudicated in a timely manner.

In the state of the judiciary delivered on May 31, 2019, I announced that the Judicial Branch would begin developing its first five-year strategic plan as an administratively unified branch. Unfortunately, due to COVID-19 and other intervening circumstances, we will likely not be able to commence the strategic planning process in 2020, as had been previously envisioned. Strategic planning, however, remains an important priority for the Judicial Branch, and it is my hope that we will formally kick-off the process in 2021.

Finally, I must acknowledge the recent events in both the U.S. Virgin Islands and the mainland United States have drawn attention to issues of racial justice and institutionalized racism within the legal system. To become admitted as a member of the Virgin Islands Bar, a lawyer must take an oath to support the Constitution and laws of the United States and the laws of the Virgin Islands; to pledge fairness, integrity, and civility in all written and oral communications whether in court or out of court; and to abstain from all offensive personality and to in all other respects conduct oneself personally and professionally in conformity with the high standards of conduct imposed upon members of the Bar. As judges, we all take an additional oath to administer justice without respect to persons and do equal right to the rich and the poor, and possess an obligation under the Virgin Islands Code of Judicial Conduct not just to perform all our official

duties without bias or prejudice, but to refrain from even the appearance of approval of invidious discrimination in our personal lives as well.

The Virgin Islands Judicial Branch will continue to do its part to ensure that all individuals receive equal justice under the law in the courts of the Virgin Islands, regardless of race, sex, religion, national origin, or other characteristic.

I conclude by recognizing those who have become new members of the Judiciary, been elevated to other positions within the Judiciary, or have concluded their judicial service. On September 27, 2019, the Honorable Harold W.L. Willocks succeeded the Honorable Michael C. Dunston as Presiding Judge of the Superior Court – the first such succession to occur under the new selection system established by Act No. 7888. Although Judge Dunston officially retired from active service on September 26, 2019, I am pleased to report that he has agreed to continue to serve temporarily as a senior sitting judge. I also wish to recognize the Honorable Jessica Gallivan, who in 2019 was elevated from the Magistrate Division to that of Judge of the Superior Court in the Family Division of the Superior Court, as well as the Honorable Ernest E. Morris, Jr., who has succeeded her as a Magistrate Judge, as well as the Honorable Douglas A. Brady and the Honorable Denise M. Francois, who were both confirmed to second terms as Superior Court judge. On behalf of the Judiciary, I would also like to thank two departing judicial officers—the Honorable Denise Hinds Roach and the Honorable Robert A. Molloy—for their service to the Superior Court. I also congratulate Judge Molloy, who has left the Superior Court bench in order to serve as a judge of the United States District Court of the Virgin Islands and wish him continued success in that new position. Finally, I would like to acknowledge the departure of two long-tenured court employees, Director of Bar Admissions Elsie-Mae King, and Clerk of the Superior

Court Estrella George. Ms. King and Ms. George have made significant contributions to the success of the Judicial Branch, and I wish them all the best in their future endeavors.

There is much uncertainty, not just in the Virgin Islands and the United States but throughout the whole world. However, the people of the Virgin Islands can be certain that the judicial officers, administrators, and staff of the Virgin Islands Judiciary will remain resilient and continue to rise to the occasion, and that the courts of the Virgin Islands will remain open and operational during these difficult times. Because of the foundation laid over the last decade with respect to utilizing technology and attempting to transition to an “e-everything” court system, the Virgin Islands Judicial Branch was able to act quickly and avoid some of the issues encountered by courts in other states and territories. The Judicial Branch, however, does not and cannot operate in a silo, particularly during a public health crisis such as COVID-19. I look forward to working with my colleagues in the Judicial Branch as well as the leaders of the Executive and Legislative Branches to ensure not just the safe resumption of Judicial Branch operations, but that the Judicial Branch has sufficient resources to adapt to the “new normal,” whatever that might look like.

Thank You.



Governor of Puerto Rico
WANDA VÁZQUEZ GARCED

June 30, 2020

The Honorable Lisa Murkowski
Chair
Senate Energy and Natural Resources
Committee
304 Dirksen Senate Office Building,
Washington, DC 20510

The Honorable Joe Manchin III
Ranking Member
Senate Energy and Natural Resources
Committee
304 Dirksen Senate Office Building,
Washington, DC 20510

Dear Chair Murkowski and Ranking Member Manchin:

Thank you for your continued interest and support of Puerto Rico in the face of the Coronavirus (COVID-19) pandemic. In addition to the pandemic, the island is also recovering from the potent mix of the disastrous hurricanes in 2017 and the ongoing earthquakes that began on December 28, 2019. Congressional response is instrumental in our ability to deliver essential government services, recover from the ongoing disasters, and rebuild to provide for our collective future. While our response and ongoing efforts to rebuild are robust, the challenge is formidable. Thus, the people of Puerto Rico need Congressional action to rebuild and restore the island to prosperity.

The Government of Puerto Rico's response to COVID-19 has been clear, strong, and effective. On March 15, 2020, I signed Executive Order OE-2020-023, which mandated an island-wide lockdown and curfew; the closure of business; and social distancing procedures. This was the first such measure taken by any jurisdiction in the U.S. On March 23rd, the Federal Aviation Administration (FAA) approved my request to redirect all commercial air traffic to the Luis Muñoz Marín International Airport (SJU) in San Juan. I was the first Governor in the nation to activate the National Guard to impose 100 percent passenger health screening at the airport. I also closed our ports to all cruise ships. Doing so enabled us to focus our screening efforts of incoming travelers to one location, at SJU. These strategies have been welcomed by both our visitors as well as our residents.

Additionally, I issued executive orders to care for our students amid school closures, our vulnerable populations, and announced a comprehensive relief package of \$787 million of Puerto Rico's resources for the island to mitigate the effects of the Coronavirus. I created a Coronavirus Medical Task Force to provide counsel and recommendations to my office. We have acquired personal protective equipment (PPE) and related goods and services, as well as mobilized the National Guard while attempting to balance the gradual reopening of a delicate economy. Taken together, these measures have protected the physical,

mental, and economic health of the people of Puerto Rico, while preserving the social fabric of the island's diverse communities.

Our additional COVID-19 responses efforts include coordinating the disbursement of federal emergency funding through the Coronavirus Relief Fund (CRF) Disbursement Program (Program). The below timeline provides a summary of our accomplishments and stewardship of federal COVID-19 emergency funding:

- On April 22, 2020, the Government of Puerto Rico announced that it received over \$2.2 billion from the U.S. Treasury Department as part of the CARES Act (P.L. 116-136) stimulus package to assist the island with emergency expenses, mitigate the effects of the global pandemic, and dampen the subsequent economic downturn.
- On May 15, 2020, after carefully reviewing the provisions of the CARES Act as well as the guidelines issued thereunder by the U.S. Treasury, I issued Executive Order OE-2020-040, establishing Puerto Rico's Strategic Disbursement Plan for the CRF under the CARES Act. The Strategic Disbursement Plan (Plan) outlined 16 specific programs and funding allocations to effectively distribute the \$2.2 billion allocation from the U.S. Treasury Department. At a high-level, my Plan allocates \$965 million for economic stimulus, \$500 million for health-related expenses, \$290 million for government-related expenses, and \$485 million as a reserve for future programs that will be determined based upon evolving needs in Puerto Rico.
- The Government's goal is to distribute funds as quickly as possible getting them into the hands of organizations and individuals that need them the most, while ensuring transparency, compliance, and accountability of those funds. It is paramount to our efforts to implement policies and procedures that minimize fraud, waste, and abuse as well as duplication of benefits. With this in mind, the Puerto Rico Fiscal Agency and Financial Authority (AAFAF) established a CRF Disbursement Oversight Committee (DOC) composed by the Executive Director of AAFAF, as its Chairman, the Secretary of the Puerto Rico Department of the Treasury, and the Director of the Puerto Rico Oversight and Management Office. The DOC's objective is to facilitate the necessary operations, compliance, disbursement oversight, and independent third-party audit and reporting functions required.
- To maintain the highest program integrity, we have issued a Request for Proposals for a strategic auditor to provide centralized financial oversight, management, and compliance monitoring. We have also established an online COVID-19 resource center, accessible from the public AAFAF website, where information regarding programs, policies, procedures, guidelines, and disbursement progress is readily available.
- Every CRF Strategic Disbursement Plan Program has a Lead Agency Review Panel (Panel), comprised of senior representatives from each lead agency for individual

programs to provide input and recommendations regarding Program guidelines and disbursement allocations. This unbiased Panel provides our Program with the strategic guidance and subject matter expertise required to ensure funds are targeted in a manner that maximizes impact for each strategy defined in the Plan.

- To expedite the disbursement of funds, the programs are leveraging existing disbursement methods and are being released in a staggered approach to meet areas of need not fully addressed by existing Federal and Commonwealth programs.

Certainly, we have developed a robust structure that will provide centralized oversight authority for such funds as well as transparency and accountability. Such structure will be also supported by an independent third party auditor that will audit the disbursements of all funds pursuant to the Plan, evincing our commitment to establishing mechanisms that ensure transparency and accountability in handling federally assigned funds while ensuring the efficient, effective, expedient distribution of these funds. As evidenced by our actions, as of today, Puerto Rico has put in place the most complete, comprehensive, and robust disbursement plan for the CRF of the Nation.

As a result of coordinated efforts across Puerto Rico's agencies, approximately \$2.7 billion have been disbursed to our U.S. citizens on the island under the CARES Act—approximately \$600 million under the CRF Programs and approximately \$1.6 billion under the Economic Impact Payment. With these swift actions, my administration has been able to specifically impact hospitals, self-employed individuals, and municipalities. By the end of July 2020, we anticipate launching the remaining CRF Programs that will provide direct assistance to individuals, businesses, and Government entities in need.

However, like the states represented on this Committee and our sister territories who are appearing before you today, Puerto Rico's economy has been negatively impacted by the COVID-19 pandemic. Territorial receipts are down and demands for services are up. These factors require additional Congressional action be taken on such legislative vehicles as the House-passed HEROES Act, H.R. 6800, which provides for \$20 billion for Puerto Rico and the other territories. These funds would provide us with the necessary funding to continue to provide essential government services, healthcare, and nutrition to those in need, and to continue to educate our next generation of leaders. As you know, Puerto Rico is temporarily blocked from accessing capital markets by PROMESA (P.L. 114-187) and is thus directly reliant upon specific supplemental Congressional action.

Congress responded, definitively, to the hurricanes of 2017, and for that, we are grateful, and continue our work. However, in response to the ongoing earthquakes affecting the island, we ask that the Senate pass H.R. 5687, which would provide Puerto Rico with much needed emergency supplemental appropriations for disaster relief to assist in our recovery from the earthquakes that continue to affect the island, in conjunction with its efforts on behalf of the COVID 19 pandemic. Puerto Rico is moving towards a full recovery, and I have faith that with your support we will be able to restore prosperity to the 3.2 million U.S. citizens on the island.

160

Thank you in advance for your attention to this matter. If you require additional information or have any questions, please do not hesitate to contact Jennifer M. Storipan, Esq., Executive Director of the Puerto Rico Federal Affairs Administration at (202) 778-0710 or via email at jstoripan@prfaa.pr.gov.

Sincerely,



Wanda Vázquez Garced
Governor of Puerto Rico

cc: Rep. Jenniffer González-Colón, Resident Commissioner of Puerto Rico

UFISINAN I MAGA'HAGA
OFFICE OF THE GOVERNOR

LOURDES A. LEON GUERRERO
MAGA'HAGA • GOVERNOR



JOSHUA F. TENORIO
SIGUNDO MAGA'LÁHI • LIEUTENANT GOVERNOR

July 08, 2020

The Honorable Lisa Murkowski
Chair
Senate Energy and Natural Resources
Committee
304 Dirksen Senate Office Building,
Washington, DC 20510

The Honorable Joe Manchin III
Ranking Member
Senate Energy and Natural Resources
Committee
304 Dirksen Senate Office Building,
Washington, DC 20510

Re: FOR THE JUNE 30 HEARING RECORD

Dear Chair Murkowski and Ranking Member Manchin:

On behalf of the people of Guam, thank you for your continued support of our island and the other U.S. territories during this COVID-19 pandemic.

On March 14, I declared a state of emergency in response to COVID-19 prior to our first confirmed cases. On March 16, I instituted a mandatory quarantine of all individuals entering Guam, 10 days before Hawaii issued a similar order. On March 19, the Social Isolation Directive was implemented, closing all nonessential businesses and prohibiting any form of large gatherings. This order came before California, New York, Hawaii, and Texas issued theirs. Guam's response was quick, aggressive, and effective.

To date, Guam has a total of 303 confirmed cases of COVID-19 with 5 deaths, 184 released from isolation, and 114 active cases. Of those cases, 257 are classified as civilians and 46 are military service members. We have a 1.6% case fatality rate and a 1.9% positivity rate of those tested.

These numbers reflect not only my Administration's proactive measures to stop the spread of COVID-19 but the people of Guam's vigilance as well. However, we cannot deny the major financial impact COVID-19 has had on our economy.

Statement to the U.S. Committee on Energy and Natural Resources
 July 8, 2020
 2 of 5

Tourism supports about 34% of Guam's employment and generates around 34% of local GDP. Before the start of the pandemic, we were achieving record highs in tourism arrivals into Guam. However, the pandemic has decreased our arrival numbers by 99.5%, completely stalling our tourism industry.

Because one of our major industries has been severely impacted, we have suffered job losses never before seen on the island. Revenue was lost but demand for services has gone up. From March 2020 to June 29, 2020, we've received nearly 3,000 applications for public assistance. Before this pandemic, Guam did not have an unemployment insurance program. With the hardwork from the Guam Department of Labor, we were able to build one from the ground up within two months and we were able to disperse Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC) payments to our people.

To address these issues, my Administration created local programs for immediate help. While we waited for federal approval of our Economic Impact Payment (EIP) disbursement plan, we advanced stimulus payments for our most economically vulnerable using local funds. With CARES Act funding, we developed *Prugrãman Salãppe' Ayudon I Taotao*, a direct disaster aid program for individuals who meet the qualifications for federal public assistance.

While these programs help our people in the short term, it is important to plan and invest in the long-term future of Guam and address our current issues with that in mind. However, even before this pandemic, Guam and our sister territories faced challenges unique to our status—many of which are exacerbated by or a direct result of federal policy.

EITC

On average, the Government of Guam receives over 55,000 tax returns annually from local taxpayers and refunds about \$120 million each fiscal year—over \$50 million of those refunds are attributed to the Earned Income Tax Credit (EITC) reimbursements. While the federal government reimburses states for EITC payments, Guam is required to pay EITC for the tax reimbursements using local funds and without reimbursement. EITC is our second-largest unfunded mandate, second only to the costs associated with providing services to citizens of the Freely Associated States (FAS).

The federal government has also failed to reimburse Guam for EITC amounts owed to FAS citizens. While the Federal Government reimburses states paying EITC to eligible FAS citizens living in the U.S. mainland, Guam continues to pay EITC to eligible FAS citizens from its General Fund without federal reimbursement. We estimate that at least 30 percent of the total EITC paid annually goes towards FAS citizens residing on Guam.

Statement to the U.S. Committee on Energy and Natural Resources
July 8, 2020
3 of 5

This money can be used to develop additional programs in response to COVID-19 and continue providing essential services. I ask Congress to fund this mandate required of us by law and ensure that the Compact reimbursement funds are adjusted to account for EITC payments to FAS citizens.

Compacts of Free Association

We cannot discuss Guam's future without discussing the Compacts of Free Association. I, and many governors before me, have testified on the costs associated with this bilateral agreement. While we all can acknowledge the importance of the Compacts to help offset China's growing influence in the Western Pacific and preserving our national security interests, Guam and other affected jurisdictions are left to bear the consequences of unmitigated migration. We have documented our costs at \$150 million dollars per/year.

COVID-19 has exacerbated these costs. Unlike Guam, the Compact of Free Association States have total control over their borders and ports of entry. To prevent transmission of COVID-19, they cancelled flights into their islands. This was an effective strategy, but it left hundreds of their citizens stranded in Guam. Under the current Agreement, FAS citizens are not able to avail of federal health programs like Medicaid.

With the upcoming negotiations to extend the terms of the current Compact drawing near, I ask the Committee to advocate for the following agenda items: 1) an executable screening program by the Department of Homeland Security or the FAS to ensure that migration to US jurisdictions complies with the Compact, 2) reimbursing Guam 100% of our total costs or, at minimum, define "offset" to be 75% of our total expenditures hosting FAS citizens, and 3) providing greater support to FAS countries in developing their economies and opportunities for their people.

Federally Funded Unemployment

As I mentioned earlier, Guam did not have a local unemployment program prior to this pandemic. What may have taken years to develop and implement for many states was done in two to three months. For the many workers who have suffered loss of employment due to this pandemic, this program is a relief. These benefits help put food on the table and pay the rent at a time of extraordinary and unexpected economic weakness.

However, because of the immediate need to implement this program, we do not have the local resources to continue this program without federal assistance. As such, I ask for an appropriation to fund Guam's unemployment program for three years.

Military Build-up

RICARDO J. BORDALLO GOVERNOR'S COMPLEX - HACÁTNA, GUAM 96910
P.O. BOX 2950 - HACÁTNA, GUAM 96932
671.472.8931 - 671.472.8932/6

Statement to the U.S. Committee on Energy and Natural Resources
 July 8, 2020
 4 of 5

Due to our strategic location in the Asia-Pacific region, Guam has been a primary focus for military investment. Guam is home to Naval Base Guam, Andersen Air Force Base, and the THAAD Missile Defense System. In a short time, Guam will also be the home to the newest Marine Corps Base constructed in more than 50 years. However, as I have said before, this investment must be done at a pace that will benefit our local people, our island, *and* the U.S. military. This requires close partnership between us and military leadership.

The health of our economy—and our people—is a national security issue. The morale, welfare, safety, and recreation of our U.S. military personnel stationed on Guam are directly tied to our economy. The division of “inside the fence” and “outside the fence” does not work on an island 30 miles long and 8 miles wide, and it certainly does not work against the invisible enemy.

For the military buildup to work during and post COVID-19, we need the support of the military and the federal government. Guam currently does not have the regulatory staff to adequately prepare for the buildup, and we do not have the safety and health personnel to support a dramatic increase in our population. No good partnership leaves either party in a deficit, and I ask that Guam receives the necessary assistance for the buildup to be a success.

Waiver for Medicinal Cannabis Exportation

Guam was the first territory to legalize medicinal cannabis. This program provides patients with greater options and freedom in treating their conditions. It is also an industry that has much potential for growth. With a greater focus on health and supplemental care, it is in the best interest of our island to be granted a waiver that would allow us to export medicinal cannabis in the Asia-Pacific region.

* * *

Guam, along with many jurisdictions in the nation, is experiencing unprecedented economic impact due to COVID-19. While my Administration will continue to do what we can under my current legal authority, much needs to be done on the federal level to ensure that we are not left behind.

Thank you for the opportunity to submit this statement and for your continued support of the territories.

Senseramente,



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



NORTHERN MARIANAS BUSINESS ALLIANCE CORPORATION

**Testimony of
Alex A. Sablan, President
Northern Mariana Islands Business Alliance Corporation**

**United States Senate
Committee on Energy and Natural Resources**

Hearing to Examine the Impact of COVID-19 to U.S. Territories

June 30, 2020

Chairman Murkowski, Ranking Member Manchin, and distinguished Members of the Committee, thank you for the opportunity to provide written comments for this important hearing on the Impact of COVID-19 to the U.S. Territories.

I am Alex A. Sablan, and I am the president of the Northern Mariana Islands Business Alliance Corporation (NMBAC). On behalf of the members of our organization, I would like to thank the Senate Committee on Energy and Natural Resources for your commitment to the complex issues facing the Commonwealth of the Northern Mariana Islands (CNMI) economy and the bipartisan efforts the members have put forward to ensuring the CNMI economy and its people have the opportunity for success as a part of the diverse American family.

NMBAC is a coalition of business leaders in the CNMI committed to supporting the economic growth of the CNMI and continual communication and collaboration with the federal government stakeholders in our economy. Founded to support the good faith dialogue between the CNMI and Congress toward the proposed sunset of the CNMI immigration transition period in 2019, we are greatly appreciative of the dialogue put forward to measure the interests of Congress with the unique circumstances of the CNMI economy in the creation and passage of the Northern Mariana Islands U.S. Workforce Act (U.S. Public Law 115-218).

NMBAC is proud to have contributed to this process and of our continued role in using the tools and time provided by the Act toward creating more jobs for our citizens and building a viable economy in the Western Pacific region.

The topic of today's hearing is of great significance to this ongoing effort. In envisioning the ability of the CNMI economy to grow and prosper under the transition into the U.S. immigration system, an impact of the size and magnitude experienced by the global outbreak of COVID-19 was unimaginable. Across the world, economies are truly faced with unprecedented challenges, and many of the worldwide struggles relating to the collapse of the global tourism market and especially pronounced in the CNMI.

We believe that there is a necessary dialogue relating to the transition period in the context of economic sustainability in the CNMI in the wake of COVID-19. In my testimony, I wish to provide you with 4 main points to highlight the impacts to the intents of U.S. Public Law 115-218 and offer our recommendations for how federal policy can assist in mitigating any adverse impacts to our islands during these times of significant turmoil in the CNMI economy:

- The CNMI private sector and economy has been disproportionately impacted by COVID-19 outbreak.
- Statutory clarification of the requirement for temporary departure is necessary to ensure proper implementation of impending institution of the “touch back” requirement.
- Localized processing of Temporary Labor Certification will better respond to the emerging need for transitioning government personnel to private sector jobs
- Consideration of the impacts of COVID-19 on annual calculation of Prevailing Wages is warranted given the unprecedented labor disruptions caused by economic shutdown.

Current Economic Conditions in the Aftermath of COVID-19

The CNMI economy relies solely on government expenditures and private sector economic activity created by the influx of foreign tourists. The Accommodations and Amusement sector, which incorporates the variety of hotels and tourism related amenities of our location, accounts for 54% of the value private industries contribute to the CNMI economy and constitute the second highest source of employee compensation across the Commonwealth workforce after the local government. The sector provides 42% of private industry and nearly 30% of all employee compensation.¹

The outbreak of COVID-19 inevitably resulted in the prolonged closure of airports, travel accommodations and borders across the world. While economies with greater diversity and sources of continued employment and revenue proved to be more resilient against this deep undercurrent of economic disruption, yet even in the most diversified communities, the conditions warrant concern. The CNMI is in far more dire straits. The nature of our economy and the centralization of our resources in foreign travel to our islands has crippled our ability to remain solvent and maintain employment of all individuals regardless of citizenship.

The CNMI government, alongside federal partners, and civic organizations in the CNMI have truly stepped up in response to this global threat. The CNMI was among the first communities in the nation to implement emergency action to limit the spread and risk of infection through executive action. It was estimated that the peak infection totals for the CNMI were to reach in

¹ U.S. Bureau of Economic Analysis. CNMI Gross Domestic Product for 2018. November 2019

excess of 6,000 by the end of May.² However, thanks in large part to the seriousness in which our community joined the effort to flatten the curve, we now sit at total positive cases of only 30.

These efforts certainly saved lives, but they also came at the cost of business owners, family run commercial operations, and financial security of employees as the complete and total loss of our tourism market ground commercial activity to a halt.

In the months following the first emergency action by our government, the private sector joined with the administration to attempt to chart a path toward resumption of commercial activity in a manner that placed the health and safety of the population at the forefront. We joined in the creation of a 5-part phased resumption schedule for the economy based on the results of the CNMI government's wide-spread community testing initiative.

At present, the low rate of positive cases and the high proportion of tests provided relative to our population has allowed some level of business activity to resume and life to settle into a new normal as operations have been modified to place the health of employees and consumers ahead of all else. We cannot begin to climb toward pre-pandemic levels of economic activity however, without a path forward to resuming tourist arrivals.

To achieve this end, the CNMI is working toward the implementation of a tourism resumption blueprint that seeks to establish a pathway for tourists to enter into the CNMI following assurance that they present no risk to the population and that the visitors themselves are not at risk for visiting our islands. As with all things in this unprecedented environment, much is dependent upon factors we cannot foresee, but we are still working to help foster an island community that has standards of living equal to that of other American communities in our nation albeit while contending with struggles and challenges that are significant and unique to our environment.

Requirement for Temporary Departure

On June 22, 2020, in comment to the proposed Interim Final Rule for the implementation of U.S. Public Law 115-218, signed by a bipartisan, bicameral working group which developed the law, wrote that the manner in which the U.S. Citizenship and Immigration Services (USCIS) crafted rule on the issue of the Temporary Departure Period (8 CFR 214.2(w)(18)(v), was "not consistent with the [Consolidated Natural Resource Act of 2008]'s requirement to minimize adverse economic effects nor is it consistent with Congressional intent in the [Northern Mariana Islands U.S. Workforce Act]..."³

The requirement for the Temporary Departure Period proposed in USCIS's IFR, put forward that a CW-1 visa holder must return to their country of origin after the third renewal permit, which is misaligned with the Congressional intent.

² Manglona, Thomas, "CNMI begins COVID-19 rapid testing". KUAM News. April 20, 2020.

³ Comments to DHS Docket No. USCIS-2019-0003, signed by Senator Lisa Murkowski, Congressman Rob Bishop, Congressman Raul M. Grijalva, Congressman Gregorio Kilili Camacho Sablan. June 22, 2020.

We appreciate the recognition of Congress, and members of this Committee, that this provision as proposed by USCIS will result in unnecessary harm to the CNMI economy. It is imperative that Congress further recognize the compounding effects of the ongoing economic collapse caused by COVID-19 and the dramatic and prolonged reduction in available skilled labor will result in a upheaval of the last remaining remnants of the CNMI's ability to recover, rebuild, and maintain viability in the eventual post-COVID-19 progression toward normalcy.

If provided the opportunity, we ask for your consideration in providing clarifying language to further highlight the legislative intent of this requirement of the law, so employers and stakeholders in our community have ample resources and confidence to continue to contribute to the success of our struggling economy.

Severe Labor Force Disruptions Highlight the Need for Federal-CNMI Cooperation on CW-1 Processing

In the early implementation period for the Pandemic Unemployment Assistance program in the CNMI, the government estimated that the demand for unemployment assistance between 2,000 and 3,000 individuals who have met the eligibility criteria. Hundreds of private sector employees were forced to furlough staff, and many of these businesses will be closed for good. This increase in labor supply is coupled with the potential addition of more than 500 employees across the CNMI central government, who is currently experiencing severe budget shortfalls.

This glut of workers presents both an opportunity and a tremendous challenge in meeting the mandates of the immigration transition period. While workers may be available to fill labor demands, there will be a painful period of transition for many in retooling, retraining, and seeking out employment outside of their previous fields. This coming stage of transition for the CNMI labor force requires careful management to ensure the gains in U.S. worker opportunity are not lost. This level of management required will not be accomplished by the U.S. Department of Labor as the Department has limited experience and resources in the CNMI workforce.

Partnership in this effort is essential. The CNMI Department of Labor, in managing both the Pandemic Unemployment Assistance, and the Federal Pandemic Unemployment Compensation Program are at the forefront of the present employment crisis. The CNMI government understands the present workforce needs and has a greater idea of the workforce resources available. In contrast, the United States Department of Labor does not produce labor force data for the CNMI, the Bureau of Labor Statistics does not conduct labor market surveys in the CNMI, and the CNMI is not included in USDOL's Occupational Employment Statistics (OES) program.

If we are not able to adequately manage this period of incredible disruption in the CNMI labor force, we will not maximize gains to U.S. worker employment and most disastrous of possibilities will be that the highest skilled and educated of our domestic workforce population will leave the islands, draining our human capital at a period in our history where we need talent most.

We ask that Congress consider these circumstances in allowing the CNMI government to administer the Temporary Labor Certification process as is currently in place in the neighboring island of Guam. This simple change will allow for greater control of the precarious next years as our workforce recovers. This could be a pivotal moment in the history of this transition period if Congress were to allow for the greatest level of support to the local circumstances and needs of the CNMI.

Annual Wage Survey Has Countercyclical Impacts to Labor force Conditions

Under U.S. Public Law 115-218, employers in the CNMI are required to pay employees petitioned under the CW-1 program the prevailing wage for that individual's specific occupation. Under this system, the Governor is required to produce a wage survey among employers throughout the CNMI and calculate the mean wage per occupation. The CNMI is currently finalizing the first year of this prevailing wage process, and the Office of the Governor is once again working toward the production of the second annual wage survey. If occupations do not meet the sampling size requirements of U.S. Department of Labor regulations⁴, then the employer must pay the prevailing wage in Guam or a wage determined by U.S. Department of Labor for the petitioned occupation.

Guam's economic circumstances are in no way indicative of the economy of the CNMI. Guam's workforce and economy are comprised of different industries and resources. Further, Guam in population and economy is much larger than that of the CNMI. Naturally, the wages in these two areas will be different and, as is the case, Guam wages are greater than that available in the growing CNMI economy. The inability to showcase enough workers in occupations to meet the sampling requirements leaves occupations only available at an artificially inflated rate present in Guam.

The requirement to produce and utilize an annual survey makes this scenario more precarious for employers as the frequency does not allow for unprecedented and momentary impacts to the labor force. Instead the labor rate across the islands resets to a new level every year regardless of unnatural impacts to the number of workers or the number of businesses.

No one could have predicted the impact COVID-19 would have on the global labor force. Similarly, no one can predict when the economy will reach pre-crisis levels of normalcy. However, it can be well accepted that the present circumstances of global labor supply are experiencing unprecedented levels of disruption. Yet, where communities across the world will reset and slowly recover from this crisis, the CNMI labor force through the results of this period's wage survey will find that the new normal will be framed on today's volatile and unnatural circumstances.

With the number of furloughs and business closures as a result of COVID-19, the CNMI runs the risk of being unable to reach adequate sample sizes that are indicative of typical normal economic conditions, and wages across industries will be forced to reset to inflated Guam levels. For many, this will be unaffordable. This will potentially force additional closures and stave off the hiring and training of new and inexperienced U.S. workers.

⁴ Sampling size required under 20 C.F.R. 655.410(e)(4)-(5) requires three employers and thirty workers be sampled per occupational category to be accepted as a CNMI prevailing wage for that particular occupation

It should be noted that no current U.S. visa classification in the United States is required to utilize wages paid annually in the determination of wages for a foreign worker. In visa classifications with similar Prevailing Wage requirements, wages paid for particular SOC codes are valid for up to two years prior to the submission of a Prevailing Wage Determination ("PWD") to the U.S. DOL. The annual requirement for Prevailing Wage calculations creates a system vulnerable to intermediate fluctuations in the business cycle and permits an unnecessary degree of uncertainty among employers and business owners. This structure heightens the effects of wage inflation during times of growth and will result in widespread business closures during times of economic contraction, as wages, by the arithmetic calculation of the requirement, will be unable to adjust to a new equilibrium below the previously recorded wage level.

We ask that the law allow for a prevailing wage determination to be made on the basis of the arithmetic mean of wages paid within a two-year period prior to the submission of a request for foreign worker. Further the CNMI Department of Labor should be granted the authority to determine the appropriate wage level, in an identical fashion to the system currently authorized for Guam. Lastly, the law should allow for a reconsideration of the statistical standards employed to determine a suitable prevailing wage for a given occupation. The CNMI's labor force is small and meeting the sample requirements developed for larger communities in the United States is a statistical impossibility, especially so in the aftermath of COVID-19. The lack of conformity to the unique circumstances in the CNMI within its labor force creates unacceptable influence on the labor market and will be counterproductive to the goal of hiring greater numbers of U.S. workers

On behalf of NMBAC and our members, I thank you for holding this important hearing and allowing consideration of our concerns and recommendations. We are all hopeful that we can build a strong and vibrant economy in the CNMI through the hard work and talent of our U.S. labor force. It is important to recognize that even in the present crisis, opportunity to meet this end is great. Your continued assistance in allowing our islands the ability to succeed is appreciated.

We hope that the members of this Committee, your families and your constituents remain safe and healthy through this period of great uncertainty for our country.

Sincerely,



Alex A. Sablan
President
Northern Marianas Business Alliance Corporation

RALPH DLG. TORRES
Governor



ARNOLD I. PALACIOS
Lieutenant Governor

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
OFFICE OF THE GOVERNOR

**WRITTEN TESTIMONY
OF
RALPH DLG. TORRES
GOVERNOR
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
BEFORE THE**

**U.S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
HEARING TO EXAMINE THE IMPACT OF COVID-19 TO U.S. TERRITORIES**

June 30, 2020

Hafa Adai yan Tiroow from the Commonwealth of the Northern Mariana Islands (CNMI)!

Thank you Chairman Murkowski, Ranking Member Manchin and Members of this Committee for holding this important hearing to hear about the impact the Coronavirus Disease 2019 (COVID-19) pandemic has had on the communities in the U.S. Territories.

This pandemic has resulted in unprecedented impacts to our way of life. No matter where you live in the United States, the breadth of this crisis has influenced even the most basic decisions made on a daily basis. This is truly a global crisis that does not discriminate by border, or geography.

Yet, the secondary impacts of the crisis and the ramifications of our necessary responses to mitigate its spread did levy a disproportionate burden on small, tourism-focused economies like that of the CNMI. Historically, as is the case in critical federal government programs, such as Medicaid, Wagner-Peyser, and many provisions of the recently enacted CARES Act, the CNMI and the territories have been treated separately from the greater states of our nation, often times segregated to receive less than what would ordinarily be available. Congress has the opportunity to rectify some of the inequity in treatment by recognizing the exceptionality of our hardships given the nature of this virus, and act with an equally unique response that allows for long-term success in our islands.

In this discussion of the impacts COVID-19 has had in the CNMI, it is important for me to include into the record an account of our story of response to this global threat.

Our first official action in an effort to prevent the spread of COVID-19 to the CNMI occurred via the signing of Executive Order 2020-01 on January 29, 2020, in which I declared a state of significant emergency regarding the COVID-19 outbreak. This action exercised my authority under the CNMI Emergency Health Powers Act and called on the Commonwealth Healthcare Corporation (CHCC) to implement quarantine and preventive measures to protect our residents

Juan A. Sablan Memorial Building • Capitol Hill, Saipan
Caller Box 10007 • Saipan, MP 96950 • 670.237.2200 • governor.gov.mp
@GovernorCNMI [f](#) [i](#) [t](#)

from risk of exposure to this disease. The CNMI was the first in the nation to recognize this threat and take preventative measures on the state-wide level. We further sought, among other measures, to seek ways to limit inbound flights to the Saipan International Airport and soon saw the complete elimination of flights from China and the swift reduction of flights from South Korea.

This is absolutely critical as the loss of these two markets represented the complete shutdown of the CNMI's tourism industry. As the Committee may be aware, the CNMI's sole industry which drives the resources for the majority of private sector activity and employment is tourism; and visitors from China and Korea together represent nearly 90% of the tourist market to the islands.

In early February, CHCC sent out the CNMI's first specimen of suspected COVID-19 to Atlanta, Georgia, the closest laboratory able to determine a positive case, and after 10 days of waiting for a result, the island breathed a sigh of relief as the specimen was determined to not possess the virus. Still, the length of time before receiving a result was worrisome and spoke to the remoteness of our population from the necessary facilities in the mainland.

The CNMI is uniquely vulnerable to the threat of contagious diseases. Being 8,000 miles away from Washington, DC, the CNMI healthcare system is geographically difficult to reach due to distance and the limited number of routes to the mainland United States in addition to the exorbitant cost of undertaking such travel. Further the on-island facilities are limited if expected to manage wide-spread infection. At the start of this outbreak, our sole hospital had a total of 86 hospital beds, and 17 ventilators.

Our efforts intensified as we progressed through our COVID-19 pandemic response plan in the early months, but concern grew as reports arose that the neighboring island of Guam had its first confirmed COVID-19 cases in mid-March. Immediately, the CNMI strengthened its mitigation efforts, closing government offices, schools, and working through the necessary steps to strengthen our healthcare system through the assistance of our federal partners in the U.S. Department of Health and Human Services, the Centers for Disease Control, the Federal Emergency Management Administration, and the Department of Defense. On March 19, through the authority under the CNMI Emergency Health Powers Act, the CNMI government instituted a Commonwealth-wide curfew for residents and encouraged strict social distancing guidelines.

Further in March, I wrote to President Donald J. Trump about the impending fiscal crisis that loomed over the CNMI following the full elimination of international flights and my concerns over the CNMI government's ability to obtain the necessary resources to continue payments on critical expenditures such as Medicaid and the Children's Health Insurance Program. On March 20, President Trump approved federal assistance to the Commonwealth through FEMA response and Small Business Administration assistance. On March 22, sad news arose from Guam that they had experienced the first COVID-19 related death. Soon thereafter, on March 23, I initiated an Enhanced Social Distancing program limiting commercial activity, curtailing restaurant and bar services, and further limiting allowable public gatherings.

On March 24, the CNMI received \$366,900 from the Office of Insular Affairs for the acquisition of critical Personal Protective Equipment through the Technical Assistance grant program and the

assistance of Assistant Secretary Douglas Domenech. This equipment bolstered the ability for our first responders to attend to the crisis and protect their wellbeing in doing so. Two days after, I wrote to our Congressman, Gregorio Sablan, requesting federal assistance to support our public education system, provide relief to the local cost-share for the ever more critical Medicaid program, and highlighted the fiscal strains present in the provision of government services due to the severe and dramatic loss of government revenue that came as a result of COVID-19.

Federal relief arrived through the enactment of the Coronavirus Aid, Relief and Economic Security Act (CARES Act) on March 27, which aided in large part, the financial resources available to the CNMI government to respond to the urgent healthcare needs of our population. For the effort and consideration placed into ensuring the CNMI and the territories were included in much of the relief provided, I offer the members of this committee and of the U.S. Congress my sincere gratitude.

Sadly, the following day, the CNMI received confirmation of its first two confirmed cases of COVID-19 in the Commonwealth following specimen testing at the Guam Public Health Laboratory. Shortly thereafter, on March 31, the CNMI mourned the loss of its first resident to succumb to the disease. Following these events, the last of the commercial flights to the CNMI were suspended and the islands were completely closed to incoming travel.

In April, epidemiological models from FEMA forecasted the CNMI's peak infection to reach more than 6,000 cases by the end of May. At this point, the CNMI was facing two unprecedented crises – a global pandemic that originated and surged in our region and a fiscal crisis of catastrophic proportions. To tackle these fiscal challenges, the CNMI assembled a Fiscal Response Task Force to determine the extent of the shortfall. This process was supported with the technical assistance and support of Graduate School USA and the Office of Insular Affairs. The culminating document of this work outlined the impacts to the CNMI's fiscal position as a result of the collapse of our only industry. The Briefing Paper states the document "Facing the Challenge: Addressing the CNMI's Fiscal Crisis" showcased the origins of the Commonwealth's \$64.4 million deficit for Fiscal Year 2020 and the projection of three years of sustained deficits going forward.

In response to these unanticipated shortfalls in revenue, the CNMI was forced into the most austere budgetary practices in recent history, ultimately leading to the reduction in government work hours to 64-hour pay periods, and the furloughing or impacting of approximately half of the government workforce.

The creation of the Pandemic Unemployment Assistance Program through the CARES Act is of tremendous benefit for the Commonwealth. To date, the CNMI is well underway in administering the program, with 3,500 applications distributed, and an anticipation of providing benefits to 10,000 through the duration of the program. This represents nearly half of the CNMI workforce who have lost employment or hours due to the COVID-19 pandemic.

Aid came in the distribution of Economic Impact Payments provided by the CARES Act as well. To date, the CNMI has paid to eligible CNMI taxpayers approximately \$47.9 million in funds to support diminished economic conditions of 30,793 individuals and families and to encourage domestic economic activity. Further, government resources were bolstered through the infusion of

\$36 million in Coronavirus Relief Funds which supported the procurement of COVID-19 test kits, PPEs, disinfectants, ventilators, ICU beds, monitors, health care and laboratory testing services, payroll expenses for first responders, off-site quarantine rentals and transportation of equipment among other related expenses.

Further, the CNMI's education system was supported through an infusion of \$22.35 million in direct aid to the CNMI's Public School System and an additional \$5.58 million available through the Governor's Emergency Education Relief Fund.

As the work toward addressing the fiscal crisis progressed, the CNMI made extraordinary efforts to ensure the health and safety of the population. Recognizing the limitations of our healthcare system to respond to the threat of COVID-19, the assembled CNMI COVID-19 Task Force, the CHCC, and the entirety of the CNMI government committed to bolstering the capabilities of our system and engage in a full defense against the spread of the disease. Within the first month of recognizing our first case of the virus, the CNMI established a herculean effort to quarantine, test, diagnose, and trace the population clocking more than 18,000 staff hours in doing so.

Efforts in this front began with the acquisition of support and materials from FEMA, US HHS, and the Department of Defense, who coordinated to ship critical medical supplies and equipment, including a 50-bed Federal Medical Station (FMS) from the Strategic National Stockpile. Teams initiated from the Defense Support of Civil Authorities Process with the assistance of U.S. Indo-Pacific Commander, Admiral Phillip Davidson aided in the deployment of medical teams, equipment, laboratory testing capabilities and airlift support.

On April 14, in coordination with FEMA and HHS, the CNMI made a significant step toward containing the virus through the acquisition of 60,000 test kits, and clinical pathologist services from South Korea to support the community testing of the CNMI's 55,000 resident population. This critical lifeline to Polymerase Chain Reaction tests and laboratory services, created the local capabilities to test residents at scale and process results domestically without the lengthy cost of time in transport.

A Saipan resort, unused due to the loss of all tourist markets, was quickly converted into an alternative quarantine site and began the process to be fitted to comprise an Alternate Care Site with medical resources and capabilities to treat large-scale infections.

Utilizing the availability of tests and the capabilities of quarantining and tracing cases of concern, the CNMI engaged in a wide-spread community testing initiative that has to date tested, 15% of our population on Saipan, Tinian and Rota – one of the largest relative populations tested in the nation.

Early May, the CNMI transitioned COVID-19 treatment to the newly constructed Medical Care and Treatment Site (MCATS) supported by collaboration between the COVID-19 Task Force, CHCC, FEMA and the Department of Defense, which greatly expanded treatment capabilities to respond to this crisis.

Through these efforts, as the estimated peak of the COVID-19 infection was to be hit in the CNMI and the projected 6,000 cases were to be assumed, the CNMI to date has confirmed 30 cases, and has mourned two fatalities as a result of the virus.¹

I am deeply grateful for the partnership and support of our local and federal partners in this effort. The Office of Insular Affairs, FEMA, the Department of Defense, Centers for Disease Control, and the Department of Health and Human Services have answered our call for help and aided us in saving countless lives throughout the Commonwealth. But unfortunately, our work and the threats ahead have not subsided.

The dramatic fiscal shortfall resulting in from the elimination of the CNMI's sole industry will have deep and lasting impacts to the lives of our people for years to come. With the assistance of PUA, FPUC, and Economic Impact support payments, we have mitigated some of the suffering, but the path ahead is still presenting cause for serious concern. The CNMI, like many states in the nation, is in dire need of direct financial support to alleviate the deep budget shortfalls that have complicated the administration of necessary public services such as public safety and social services. Relief to state budgets provided through the CARES Act supported the large and unappropriated obligations required of the Commonwealth to respond to the urgent health care needs of the population, but much is needed in government resources to retain viability of government operations. As a result of the COVID-19 pandemic, the CNMI budget was reduced in half due to the loss of resources in the later months of this fiscal year. With no certain end to this pandemic in site, the future for the CNMI's tourism industry, and government income derived from this economic activity is bleak.

Additionally, critical components that would have otherwise aided in this effort to support government services was not made available to the territories under the CARES Act. In particular, the Municipal Liquidity Facility (MLF) created by Section 4003(b)(4) of the CARES Act, which would allow the issuance of municipal debt to special purpose vehicles operated by the federal government to cover, among other things, the reductions of tax and other revenues related to or resulting from the COVID-19 pandemic. It is apparent that this program has been deemed inaccessible to territorial governments and the lack of access to financial tools such as these greatly impacts the government's ability to finance necessary obligations in the environment of severely limited revenues. We have showcased our commitment to downsizing government operations through furloughs and deep austerity measures, however, we can only cut so much before the residents of our community will further experience disproportionately the impacts of this crisis in levels unseen in communities in the mainland United States.

The largest and most concerning obligation of the CNMI is the obligations outlined in the Settlement Agreement with the United States District Court on the CNMI's pension program. The Settlement Fund that was established as a result of this agreement provides for mandatory minimum payments to the fund to ensure continued benefits for the CNMI government's retirees. This year, the \$44 million obligation is the largest single item of the Commonwealth's budget.

¹ For updated figures, visit <https://chcc.gov.mp/coronavirusinformation.php>

Efforts have been made to safeguard this payment while allowing flexibility within the CNMI's finances for this trying period. Through the Constitutionally-authorized Pension Obligation Bond (POB) vehicle, the shifting of this judgment obligation to a long-term debt service obligation would provide greater levels of resiliency to manage cyclical downturns in the economy or unexpected shocks to our community in the form of natural disasters or, as we see now, global pandemics.

The CNMI however, cannot at this time, offer the financial markets the security necessary to obtain affordable financing options. This is due to the structural deficiencies of our economy that are inherent in a location the size and nature of ours, and the persistent risks of external threats such as typhoons, tourism volatility, and negative ramifications of federal government actions and policy.

Further, I feel this an appropriate time in our history to fully commit to discussing the economic development policy of the U.S. government as it relates to the territories. This crisis has showcased that the territories lack resiliency in our healthcare systems and our economies to withstand regional and global crises, and our residents and citizens are forced to contend with greater challenges and less resources than their mainland counterparts. The special and significant effort done on the part of the federal government agencies and departments in aiding our fight against this pandemic has been truly remarkable, but laws and regulations exist within the federal government that make the foundations of our community weaker to withstand these threats alone.

In April 2019, I wrote to HHS Secretary Alex Azar about the challenges of operating a healthcare system in the face of challenges brought on by geographic remoteness, fragile economic health and an overwhelming rise in the burden of chronic disease among our population. Despite these challenges, the CNMI and other territory health systems have largely been left out of reforms and improvements to the Medicaid and Medicare programs, such as the allowance to obtain the benefits of classification as a subsection (d) hospital. Exclusion from these programs shut out territory hospitals from eligibility in other programs such as the 340B Drug Discount Program and the Medicare EHR Incentive Program.

More broadly, programs established for the nation, such as the Payroll Protection Program (PPP) created under the CARES Act, was inaccessible to many small businesses in the CNMI because of the limited access to banking services offering slots. Many of our local banking institutions are headquartered outside of the CNMI and local branches had to compete with slots for local applicants against applications in larger economies of Guam and Hawaii. This is a critical example of the differences in circumstances small businesses in the CNMI have to face and these challenges make it incredibly difficult to build a stable domestic economy.

I ask for your consideration of these circumstances, and for your continued interest in viewing the efforts performed in the past months in the CNMI as an example of our interest in building and protecting the lives of our American citizens living in this region of the world and of the possibilities that are possible through collaboration and understanding.

We will overcome these challenges and I pray that our people will remain strong, resilient, and healthy throughout these trials. I also pray for you, your families, and the many good people you represent that they too remain healthy and able to continue to live productive and happy lives.

Thank you for allowing the inclusion of this testimony into the hearing record. It is important that the hard work of both local and federal partners are recognized along with the continual need our people will have in the months and years ahead.

Sincerely,



RALPH DLG. TORRES
Governor

