September 16, 2010

STATEMENT OF GOVERNOR BENIGNO R. FITIAL
BEFORE THE HOUSE OF REPRESENTATIVES SUBCOMMITTEE
ON INSULAR AFFAIRS, OCEANS AND WILDLIFE

On behalf of the Commonwealth of the Northern Mariana Islands, I appreciate the opportunity to submit a written statement to the Subcommittee with respect to its consideration of H.R. 6015 and, more generally, the implementation of the Consolidated Natural Resources Act of 2008 ("CNRA"). I commend Chairwoman Bordallo and the Members of the Subcommittee for taking the time during this abbreviated Congressional session to consider current issues affecting the economies of Guam and the Commonwealth of the Northern Mariana Islands.

Comments Regarding H.R. 6015

H.R. 6015 has two sections. Section 1 addresses the needs of the territories and the freely associated states for authoritative and timely data with respect to their economies. Section 2 proposes two technical corrections to the immigration provisions contained in the CNRA applicable to Guam and the Commonwealth. I will address each of these three subjects.

1. Section 1 of H.R. 6015: Economic Data

Section 1 proposes that the Director of the Bureau of Economic Analysis of the Department of Commerce ("BEA") shall publish an annual report on the gross domestic product of four territories, including the Commonwealth, and three freely associated states. The Commonwealth strongly supports the Subcommittee's interest in directing responsible federal agencies to provide economic data in timely fashion to the Commonwealth and the other territories. Our comments on Section 1 will deal with three issues: (a) the Commonwealth's critical need for the kind of economic data routinely provided to the States, counties, and cities on the Mainland; (b) the focus in Section 1 on the Bureau of Economic Analysis; and (c) the Commonwealth's particular data needs that could be provided by other federal agencies.

(a) The Need for Data

The Governor and the Legislature in each of the four territories need accurate, current economic data in order to make the best decisions about policy and allocation of resources. Our essential mission of delivering efficient services, advancing public safety, and encouraging economic growth is hindered every day because the territories are not provided with essential federal data services. Very sparsely populated counties on the Mainland get sophisticated data services; the Commonwealth and the other territories get no such services. Although annual data released18 months after the year in question is useful in assessing broad trends, more timely data on at least

a quarterly basis is critical. For example, the Commonwealth has no federally-generated quarterly employment and wage data, monthly unemployment data, or quarterly personal income data. Without such data, the elected officials in the territories – and the Members of Congress – are severely handicapped in their efforts to establish priorities, develop plans, and formulate policy for the insular areas.

(b) The GDP Reports of the Bureau of Economic Analysis

In May of this year BEA released its first set of estimates of gross domestic product for the Commonwealth, Guam, American Samoa, and the Virgin Islands. With the technical assistance and funding provided by Interior's Office of Insular Affairs ("OIA"), BEA adapted its methodology for measuring GDP so that it could be used for the territories. These BEA estimates covered the period 2002 to 2007 and show that the Commonwealth's GDP decreased at an average annual rate of 4.2%, whereas each of the other three territories showed increases in their GDP: American Samoa (0.4%), Guam (1.8%), and the Virgin Islands (2.9%). By contrast, the BEA report indicated that the average annual growth rate for the United States (excluding the territories) was 2.8% over this period.[1] BEA indicated that it plans on releasing estimates for both 2008 and 2009 in the spring of 2011. Under the circumstances, it is not clear that BEA needs any additional authority from Congress to continue producing annual GDP reports with respect to these four territories.

(c) The Need to Include Other Federal Programs

Three federal agencies provide the data that are essential to governing effectively. The U.S. Department of Labor's Bureau of Labor Statistics provides information on inflation and prices, employment, unemployment, pay and benefits, and other workplace information. The U.S. Department of Commerce has two key offices producing economic data: the first is the Bureau of Economic Analysis and the second is the U.S. Census Bureau which produces the Decennial Census, the American Community Survey, and the Current Population Survey. The third federal agency is the U.S. Department of Agriculture's National Agricultural Statistics Services, which produces the five-year Census of Agriculture and the monthly and annual crop production reports.

As confirmed by the BEA estimate of GDP in the Commonwealth during the 2002-2007 period, the Commonwealth entered a recession in 2005 that has worsened over the past five years and is forecast to take the economy back to 1985 levels. To enable both the Members of Congress and the Commonwealth's officials to combat this recession and develop plans for recovery, the Commonwealth urgently needs legislation to provide for timely and comprehensive economic data of the kind available elsewhere in the United States. When the American Recovery and Reinvestment Act of 2009 ("ARRA") was under consideration in early 2009, we urged the inclusion of a provision that would direct some of these agencies to produce economic data for the insular areas comparable to that supplied to States, counties, and smaller political entities on the Mainland.

[1] Bureau of Economic Analysis, Press Release (May 5, 2010).

Section 8104 (c) of the ARRA was the result. It provides as follows:

> "(c) Economic Information. To provide sufficient economic data for the conduct of the [annual GAO minimum wage] study under subsection (a) the Bureau of the Census of the Department of Commerce shall include and separately report on American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands in its County Business Patterns data with the same regularity and to the same extent as such Bureau collects and reports such data for the 50 States. In the event that the inclusion of [the four insular areas] in such surveys and data compilations requires time to structure and implement, the Bureau of the Census shall in the interim annually report the best available data that can feasibly be secured with respect to such territories. Such interim report shall describe the steps the Bureau will take to improve future data collection in the territories to achieve comparability with the data collected in the United States. The Bureau of the Census, together with the Department of the Interior, shall coordinate their efforts to achieve such improvements."

Although Section 8104 (c) was certainly a step in the right direction, it has several limitations with respect to the Commonwealth:

First, the County Business Patterns program is part of a series which excludes data on self-employed individuals, employees of private households, railway employees, agricultural production employees, most government employees, very small businesses, and business establishments that do not have an Employer Identification Number issued by the Internal Revenue Service.

Second, the Bureau of Census produces data under this program approximately 18 months after the conclusion of the year studied. It reported in July 2010 the data developed under the program for 2008. We do not know whether the Bureau has undertaken a report pursuant to Section 8104 (c) with respect to the Commonwealth for 2009 or has plans for doing so with respect to 2010.

Third, we are not aware of any annual report issued by the Bureau of the Census discussing as required by Section 8104(c) "the best available data that can feasibly be secured with respect to such territories" and describing "the steps the Bureau will take to improve future data collection in the territories to achieve comparability with the data collection in the United States."

After reviewing all the data collection under well-established federal programs that might be implemented for the Commonwealth, our tentative priorities are as follows:

First, the American Community Survey ("ACS") provided by the Census Bureau should be conducted every year so that the Commonwealth and the other insular areas will have one-year, three-year, and five-year averages for the demographic, social, economic, and housing characteristics of their economies. Under the rules of the ACS program, every geographic area that reaches 65,000 people in the latest year will receive these estimates. An exception should be made to include the Commonwealth notwithstanding an estimated population slightly below that level.

Second, the Current Population Survey provided by the Census Bureau for the Bureau of Labor Statistics should include the Commonwealth and the other insular areas. This monthly survey of households provides a comprehensive body of data on the labor force, employment, unemployment, persons not in the workforce, hours of work, and other demographic and labor force characteristics.

Third, the Personal Income Survey conducted by BEA should include the Commonwealth and the other insular areas. Personal income is a very important element in any economic recovery in the Commonwealth, and this data is urgently needed to facilitate government planning.

Fourth, the Quarterly Census of Employment and Wages conducted by the Bureau of Labor Statistics should include the Commonwealth and the other insular areas. This provides a quarterly count of employment and wages reported by employers.

In the past, concerns have been raised about the cost of providing these data services using Mainland-based federal employees. Given the unique economic circumstances and challenges facing the insular areas, such cost considerations cannot justify the denial of these services to the U.S. citizens living in these insular areas. With respect to the Commonwealth, we have developed a cadre of data survey personnel who have been trained with respect to the Decennial Census and special CNMI Department of Labor projects to survey jobs and employment this year. With additional training, these Commonwealth personnel can collect the raw data and transmit it to the responsible federal agencies for processing and publication in a cost-efficient manner.

The Commonwealth requests the Subcommittee to reconsider Section 1 of H.R. 6015 in light of these comments. Additional legislation is needed to ensure that the U.S. citizens in the Commonwealth and the other insular areas will have a better chance at economic revival and growth over the next five years.

2. Section 2(a) of H.R. 6015: Waiver of Numerical Limitations for Nonimmigrant Workers

Section 2(a) proposes, in essence, that any action by the United States Secretary of Labor under subsection 6(d)(5) to extend the transitional worker program authorized under subsection (d) shall operate to extend the provisions of section (b) of the CNRA providing an exemption from the numerical limitations on the number of H visas that might be issued to nonimmigrant workers seeking to enter Guam or the Commonwealth during the transition program authorized by the CNRA. This proposal is obviously intended to clarify the Congressional intent with respect to the continued availability of this exemption if the Secretary of Labor exercises her authority to extend the transitional worker program in order to ensure an adequate number of workers will be available for legitimate businesses in the Commonwealth.

The Commonwealth believes that Congress intended that an extension of the transition period by the Secretary of Labor, in order to permit continued access to transitional workers in the Commonwealth, would also operate to extend the two other programs authorized by the CNRA to take place during the transitional period. One of these is the exemption from the numerical limitations on H visas; and the other is the CNMI-only nonimmigrant investor visa program

authorized under subsection 6(c). The Commonwealth has prepared a short legal opinion supporting this interpretation of the CNRA and a copy is attached to this statement.

The Commonwealth's interpretation of the CNRA is supported by the Senate Report issued by the Senate Committee on Energy and Natural Resources to accompany the bill that ultimately became Title VII of the CNRA. The Committee discussed the power of the Secretary of Labor to extend the transition period and points out: "It is important to note that the transition period covers several policies and programs and is not limited to the Commonwealth Only Transitional Workers Program. For example, the transitional program also covers the Guam/CNMI waiver on numerical limitations on the INA H-visa program."

We recognize that the Department of Homeland Security ("DHS") has a different interpretation of the law. On many occasions DHS officials (supported by the Government Accountability Office) have asserted that the action by the Secretary of Labor extends only to the transitional worker program and does NOT extend the two other programs authorized by the law to be implemented during the transition period. In the Commonwealth's opinion, the fatal flaw in the Department's analysis is that the limitation which they impose on the Secretary of Labor means, in effect, that no federal official has the authority to extend the transition period beyond the December 31, 2014, termination date set forth in the law. Such an interpretation cannot be reconciled with the frequent references in the law to the possible extension of the transition period and would require new legislative action by Congress to extend the transition period.

Despite frequent requests by the Commonwealth, DHS has never provided any written opinion in support of its interpretation of the law. This Subcommittee may wish to make a similar request of DHS so that the Subcommittee can evaluate the conflicting opinions before it acts on H.R. 6015.

In light of this ongoing dispute, action on Section 2(a) of H.R. 6015 as currently drafted would permit DHS and others to contend that Congress deliberately excluded the CNMI-only nonimmigrant foreign investor visa program authorized by subsection 6(c) from being extended if the Secretary of Labor acts under subsection 6(d)(5). Although DHS has not yet issued final regulations dealing with CNMI-only investor visas, the Commonwealth believes that any provision "grandfathering" of current Commonwealth investors as directed by subsection 6(c) should remain in place after December 31, 2014, if the transition period is extended by the Secretary of Labor.

The Commonwealth recommends that Section 2(a) be amended to provide: "In any case in which the Secretary of Labor implements an extension of the provisions of subsection (d) pursuant to subsection (d)(5), the provisions of subsections 6(b) and 6(c) shall be extended for the same period."

3. Section 2 (b) of H.R. 6015: The Guam and CNMI Visa Waiver Program

I have repeatedly expressed to this Subcommittee the Commonwealth's frustration with the Interim Final Rule regarding the joint Guam-CNMI visa waiver and the exclusion of China and Russia from the list of approved countries. As the Subcommittee knows, the Commonwealth and Guam believe that this decision was contrary to the legislative intent of the CNRA and failed to

acknowledge the importance of these two countries to the Commonwealth's tourism industry. We are still awaiting further action by DHS with respect to amending the Interim Final Rule, which we were advised several months ago might be made later this year.

The Commonwealth supports Section 2(b) of H.R. 6015 and any other action by the Subcommittee that will encourage (or require) DHS to include China and Russia on the list of approved countries. We certainly believe that, in the absence of such final action, Guam should have the same benefits of the Department's parole program as has been in place in the Commonwealth since the effective date of the CNRA on November 28, 2009.

Although the Commonwealth welcomed the Secretary's October 2009 decision to use the Department's parole authority to admit tourists from China and Russia, it is not a substitute for issuance of final regulations including China and Russia on the approved list of countries for visa waiver. Although the differences between the parole program currently in place and a final visa waiver program that includes China and Russia may be less than generally assumed, exercise of parole authority with respect to such an important element of the Commonwealth's tourism business is commonly viewed as a "stop-gap" measure that at best seeks to preserve the status quo in the CNMI. But it does not provide the needed basis for the expansion of this tourism business, which depends substantially on airlines deciding to initiate new, scheduled service to the Commonwealth. Such commitments involve investments of millions of dollars and it is nearly impossible to persuade airlines to go forward with these investments in the face of a discretionary parole program that could be terminated with little, if any, notice based on criteria not communicated to the concerned businesses and governments.

China and Russia continue to be important markets for the Commonwealth. For the last several years the number of visitors coming to the Commonwealth has been relatively constant at slightly below 400,000 visitors each year. But there have been significant differences in the four key markets: Japan, Korea, China, and Russia. Although there were increased arrivals from Japan in June and July due to an increase in airline seats, the number of Japanese tourists through July has declined by 14% in the current fiscal year. Korea, on the other hand, shows a 14% increase in arrivals during this same period due also to an increase in the number of airline seats and strong economic recovery in the country. Arrivals from China have increased by 62% during the past ten months, including an increase of 87% in July over July 2009 due to more numerous charter flights (or to stabilization of regular charter flights as opposed to the previous year). Arrivals from Russia have declined by 37% to date in fiscal 2010, due (we believe) to the increased availability of less expensive resort destinations and the dependence on decisions by Asiana Airlines regarding the number of seats available for Russian visitors going from Korea to and from the CNMI.

Concerned with the decline in arrivals from Japan in recent years, the Commonwealth is considering a major program to increase substantially the number of airline seats over the next two years for Japanese visitors. The Marianas Visitors Authority, the Office of the Governor, and the CNMI Legislature have collaborated in this effort, which is designed to stabilize air service from Japan by securing additional year-round flights and stimulation of demand through promotions. We are hopeful that the U.S. Department of Commerce will be of assistance in

supporting this initiative. I will be visiting Japan in the next week to discuss this program with our Japanese travel trade partners.

Implementation of CNRA by the Department of Homeland Security

When I appeared before this Subcommittee on May 18, 2010, I presented the Commonwealth's views regarding the failure of DHS to implement the CNRA consistent with its language and intent. Four months later, the situation in the Commonwealth is even more serious because of the Department's continued failures to implement the law. Let me address briefly three areas of concern: (1) the failure to issue final rules on time; (2) the failure to follow the law's requirements with respect to the draft regulations issued by DHS; and (3) the failure to develop and enforce an effective program to identify and remove illegal aliens in the CNMI.

1. <u>The DHS Failure to Publish Final Regulations on Time Has Resulted in Unnecessary Injury to the Commonwealth's Economy and Residents.</u>

This Subcommittee is well aware of the timetable provided by the CNRA with respect to the issuance of final regulations. Once the extension of 180 days was provided by the Secretary of Homeland Security, the Department had a total of 18 months to do its job before the effective date of November 28, 2009. There are still no final regulations nearly ten months after the effective date. We have the Interim Final Rule regarding the joint Guam-CNMI visa waiver program which I have discussed earlier. The Department issued proposed regulations regarding CNMI-only investor visas in September 2009 and proposed rules regarding transitional workers in the CNMI in October 2009.

The Commonwealth does not know the reasons for this delay. We do not know whether the Department has taken nearly a year to consider the extensive comments on these proposed rules and to make appropriate changes before the final rules are issued. We do not know whether the final regulations are mired in the federal government's review processes. What we do know is that the informal guidance which we have received from DHS officials regarding the likely issuance of the final rules has been consistently wrong. We request the Subcommittee to explore this situation and use its good offices to persuade DHS to produce its final regulations promptly.

This is not a frivolous matter. The Department's delay in issuing the investor visa and transitional worker regulations has contributed to increased uncertainty and instability in a Commonwealth economy enduring the fifth year of a serious economic depression. I am now in the final stages of negotiations with the Commonwealth Legislature regarding our budget for fiscal 2011. Everyone recognizes that the significant decline in the Commonwealth's revenues will require drastic action in reducing government expenditures, which almost inevitably will limit our capacity to provide the full range of public services which our citizens require. The need to rebuild the Commonwealth economy – a goal shared by this Subcommittee and the federal government – requires the clarity and certainty that can only come with the issuance of final regulations by DHS.

In the absence of final CNMI-only investor visa regulations, many current CNMI foreign investors have left the Commonwealth. A few months ago, the Commonwealth's Department of

Commerce reviewed the 37 foreign investment applications that were not renewed. Based on the available information, Commerce officials concluded that 22 of these non-renewals were the result of the enactment of the CNRA. The total investment affected by these non-renewals was approximately $6.7 million involving these lines of businesses: retail, tour agency, scuba diving, real estate, development, restaurant, wholesale, photo service, and commercial space. Every investment dollar lost – and every small business closed – makes the Commonwealth's efforts to stop its economic decline and rebuild its economy even more difficult. With respect to current investors, many have refrained from increasing their financial commitments because of the uncertainty regarding the regulations.

The lack of a federal work-permitting program has contributed to uncertainty among employers and workers alike with respect to the status of foreign workers who have, or do not have, an "umbrella permit" from the CNMI Department of Labor. In the absence of timely federal regulations, the Commonwealth developed this permitting program in accordance with the provisions of the CNRA. The lack of federal worker regulations is being exploited by some federal employees and advocates for U.S. citizenship for all aliens in the Commonwealth, who are encouraging foreign workers to violate local law during the two-year period ending November 27, 2011.

2. The DHS Regulations Fail to Comply with the Congressional Intent

To date, the regulations issued and proposed by DHS fail to implement the directions set for in the CNRA. I have addressed above the failure of DHS to create a joint Guam and CNMI visa waiver program that includes China and Russia, which has prompted Section 2(b) of H.R.6015. There are similar deficiencies in the Department's proposed regulations dealing with the CNMI-only investor visa program and the transitional worker permitting system.

The proposed regulations dealing with the CNMI-only investor visa program fail to implement the provisions of the CNRA in three important respects. First, they reflect the DHS view (discussed earlier) that this program will not be extended if the Secretary of Labor exercises her authority to extend the transitional worker program. Second, the proposed regulations impose a financial requirement on some current CNMI foreign investors that is not authorized by the CNRA. Third, the Department's examination of the likely economic effects of the proposed regulations in compliance with Executive Order 12866 and the Regulatory Flexibility Act fails to assess accurately the likely impacts of the proposed regulations on the foreign businesses critical to a productive CNMI economy.

The DHS proposed transitional worker regulations have some very significant departures from the CNRA. Notwithstanding the clear language of the law, these regulations fail to specify any basis for "allocating" work permits among employers seeking to hire foreign workers and any methodology for reducing the number of work permits to zero by the end of the transition period on December 31, 2014, in the absence of an extension by the Secretary of Labor. Without some firm indication by DHS on these two points, all participants in the economy suffer. Investors, particularly potential new investors, have no guarantees with respect to how their businesses will be treated by federal officials. Current employers need to make investment and other decisions looking into the future and, without some clear indication of their continued access to foreign

workers, this planning becomes even more difficult and problematical. Individual foreign workers, whose fears have continued to mount in recent months, seek guidance about how they can continue to work, and live, in the Commonwealth if they cannot qualify for a standard INA visa.

3. The Department Has Not Developed and Enforced an Effective Program to Identify and Remove Illegal Aliens in the Commonwealth

The Commonwealth is very concerned by the slow pace of removal/deportation proceedings instituted by the Immigration and Customs Enforcement ("ICE") component of DHS since the effective date of the CNRA on November 28, 2009. Although earlier this year the Commonwealth provided ICE with identification information regarding more than 1,300 illegal aliens currently in the Commonwealth, together with a certification by the Deputy Secretary of Labor as to the illegal status of each of these individuals, very few removal proceedings in fact have been initiated. As of March 26, 2010, a report by the Government Accountability Office ("GAO") noted that not a single illegal alien has been deported by federal authorities.[2] We understand that a few cases over the last four months have resulted in deportation orders.

The number of illegal aliens in the Commonwealth is expanding rapidly, now that federal controls are in place, for three reasons. First, a perceived lack of enforcement by federal officials leads illegal aliens to conclude that there is no risk to staying in the Commonwealth. Second some federal officials have repeatedly suggested that green cards will be available to any alien who is in the Commonwealth when Congress addresses this question. Third, new federal policies with respect to food stamp assistance and free medical care allow these benefits to be claimed by illegal aliens. This provides a very substantial incentive to remain in the Commonwealth as these welfare benefits are not available in the home countries of these aliens. Under these circumstances, voluntary repatriation by aliens in the Commonwealth has almost entirely disappeared.

The resources and procedures used by ICE in processing removal cases are insufficient to deal with the number of illegal aliens in the Commonwealth. A single judge coming to Saipan for one week every month (or even two judges) cannot have any significant impact on the growing backlog of cases. Two alternatives are readily available: (a) ICE and the Department of Justice should use video-conferencing facilities in order to handle more cases; and (b) CNMI judges and lawyers experienced in the handling of deportation cases can be designated by the Department of Justice to assist ICE officials in the handling of these immigration hearings. Immigration judges are appointed by an official in the Department of Justice. No Congressional (or other) approval is required.

[2] The GAO report comments on one group of 264 aliens referred to ICE, 215 by the Commonwealth and 49 by others. The 215 referrals were pending deportation cases from the CNMI Attorney General's office, which meant that a CNMI prosecutor had already marshaled the evidence, determined the individual to be deportable, and filed the case with the Superior Court in order to obtain a deportation order. These prosecutor files were turned over to ICE. There was no need to obtain any further immigration status information from the Commonwealth with respect to these individuals.

More fundamentally, there is a critical policy issue here for the Subcommittee to consider. We are all aware of the well-publicized (and controversial) policy of the Department of Homeland Security to initiate removal proceedings first and foremost against aliens who have engaged in criminal activity. Even assuming that this Department priority is appropriate for enforcement purposes on the Mainland, it is clearly inappropriate to apply this policy to the Commonwealth for two important reasons.

First, the CNRA expressly mandates the removal from the Commonwealth by December 31, 2014, of all foreign workers who do not have a permit under the federal work permitting program created by the law or a standard federal visa. This requirement was imposed by the law in order to ensure that U.S. citizen workers (and freely associated state laborers) would be given priority for employment on the assumption that ultimately the number of foreign workers would be reduced to the minimum number necessary to support the CNMI economy. This statutory requirement applicable only to the Commonwealth overrides any DHS preference for instituting removal proceedings only for aliens engaged in criminal activity.

Second, the Department's policy also ignores the unique impact on the small CNMI community of those illegal aliens no longer entitled to work in the Commonwealth. They either disappear into the underground economy, or take jobs that should be held by U.S. citizens or legal foreign workers. They impose an enormous burden on the Commonwealth's public services – law enforcement, public health, and education – which the CNMI's depressed financial resources cannot support.

The CNRA was enacted in large measure because of the conviction that federal control was necessary to deal with, among other issues, the number of illegal aliens in the Commonwealth. Sooner or later, this Subcommittee will have to address seriously whether in fact the implementation of the CNRA by the Department of Homeland Security has aggravated, rather than improved, the security situation in the Commonwealth.

Amendments to the CNRA

The Commonwealth believes that the Subcommittee should consider the following legislative action with respect to the CNRA:

First, the Subcommittee should reinstate the cover over language in the Covenant that was eliminated by the CNRA. Specifically, the CNRA provides with respect to section 703(b) of the Covenant that the phrase "quarantine, passport, immigration and naturalization" should be struck and the language "quarantine and passport" should be substituted for the deleted language. This amendment has the effect of denying to the Commonwealth the right to have all immigration and naturalization fees collected by the federal government from CNMI companies or residents returned (or covered over) to the Commonwealth. The provision in the Covenant was virtually identical to comparable provisions in the organic acts of Guam and the Virgin Islands.

There was no opportunity for the Commonwealth to protest this amendment to the Covenant. The proposed deletion of the words "immigration and naturalization" was not included in the version of H.R. 3079 on which hearings were held in Saipan on August 15, 2007. There was no

indication from any witness or Member of the Subcommittee that such an amendment should be considered. The language was inserted in a "mark-up" of the bill which was considered by the House Committee on Natural Resources on November 7, 2007, and subsequently considered by the House of Representatives on December 11, 2007. A widely circulated summary of the revised H.R. 3079 before the action of the House did not include this proposed amendment to the Covenant. There was no explanation or justification for this amendment in the Committee report regarding H.R. 3079

There is no basis for discriminating against the Commonwealth in this manner. The "cover over" or return to local governments of taxes paid to federal agencies by residents of the insular areas has been well established for more than 50 years. The effect of this amendment will be to deny the Commonwealth tens of millions of dollars over time – and places the full financial burden of applying the immigration laws on the Commonwealth and its residents rather than assumed by the nation as a whole whose national security was believed to require this Congressional action. Given the precarious financial condition of the Commonwealth in 2008 and now, it is hard to believe that the Members of this Subcommittee would embrace this unfair action today.

Second, the Commonwealth believes that the statutory transition period should be extended from the end of 2014 to the end of 2019. The reduction in the length of the transition period was another amendment to H.R. 3079 that took place after the Subcommittee's hearings in August 2007. There was no suggestion by anyone during the hearings that the transition period should be shortened, among other reasons because all previous bills dealing with the application of the immigration laws to the Commonwealth also had a transition period of nine or ten years. No justification for this change was provided by this Subcommittee or the full Committee before final action on the bill was taken. Consideration of this amendment seems particularly appropriate because of (a) the delay by DHS is issuing the necessary regulations; and (b) the uncertainly engendered by DHS's legal position as to whether in fact the Secretary of Labor has the authority to extend the transition period.

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Thank you for the opportunity to participate in these hearings and to have our views considered by the Subcommittee.