The Honorable Albert Bryan, Jr.
Governor
U.S. Virgin Islands

WRITTEN STATEMENT
BEFORE THE
HOUSE COMMITTEE ON NATURAL RESOURCES
FEBRUARY 11, 2020 OVERSIGHT HEARING ON FY2021 BUDGET REQUEST
FOR THE DEPARTMENT OF THE INTERIOR'S OFFICE OF INSULAR AFFAIRS

Good afternoon Chairman Grijalva, Ranking Member Bishop, and Committee members. Thank you for the opportunity to appear here today to outline the priorities of the U.S. Virgin Islands and the important role of the Department of the Interior's Office of Insular Affairs ("OIA") in helping us achieve our goals.

The Committee on Natural Resources (the "Committee") is primarily responsible for federal legislation impacting the U.S. Virgin Islands and the other U.S. Territories. The Committee also has an important role in working with other committees to ensure that those committees, in developing and considering federal legislation, fully consider the Territories' unique status and needs and the potential impact of legislation on the Territories. The Committee also oversees OIA, which is the federal agency tasked with assisting the Territories in promoting sustainable economic growth, fostering development, and otherwise improving the lives of their citizens, and acting as a liaison between the Territories and the federal government.

The timing of this hearing is fortuitous. As we recover from widespread damage and destruction caused by the two devastating Category 5 hurricanes that hit in late 2017, we must focus on fundamental, longer term issues that need to be addressed by Congress, including your Committee, and OIA. Further, as recent experiences in Puerto Rico have shown, the United States must recognize its special responsibilities for the U.S. Territories and the potentially deleterious effects that federal policies can have on the Territories and the U.S. citizens therein. The United States must face those responsibilities head-on and commit sufficient federal resources to fulfill its responsibilities to the Territories on a sustainable basis.

The Virgin Islands believes the time is right for a comprehensive revision of the Territory's economic relationship with the United States—one that will place the Territory on the path to true and sustainable fiscal health. I will focus today on issues of critical importance to the economic development and fiscal stability of the Territory, along with specific recommendations for action by the Committee and OIA.

Taxes

A logical starting point in considering how the federal government can help create the investment climate for sustainable economic growth is the critical role of federal tax policy. Federal tax policy has an outsized impact on the economy of the Virgin Islands—a positive impact when it is designed and applied properly, and a negative impact when it is not. As discussed below, Congress and OIA have a critical role to play in how the federal tax code impacts our Territory, our economy, and our quality of life.

Rum Tax Legislation

As part of its long-standing tax relationship with the Virgin Islands, Congress has historically provided that all federal taxes on all products—including rum—manufactured in the Virgin Islands be returned, or "covered-over," to the local treasury. Rum tax revenues covered-over to the Virgin Islands constitute a major source of funding for the Territory, and are used to finance essential public services and to securitize the Territory's bonds and facilitate the Territory's future access to the capital markets. Permanent law provides that $10.50 of the $13.50 per proof gallon tax is covered-over to the Virgin Islands, and $0.25 per proof gallon is retained by the U.S. Treasury. Cover-over of the remainder ($2.75 per proof gallon), however, has required a series of temporary fixes by Congress. Most recently, after Hurricanes Irma and Maria, Congress extended the temporary rate through December 31, 2022.

The timing of the temporary extensions often causes budget planning problems and uncertainties for the Virgin Islands. The Virgin Islands requests that OIA and the Committee support the Virgin Islands' efforts in Congress to make the temporary rate permanent and thereby avoid the need for periodic (often last-minute) increases.

Fuel Tax Legislation

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

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

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

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

The Virgin Islands requests that OIA and the Committee work with other committees to effect passage of an amendment that returns Section 7652(b) to its intended function and requires that fuel excise taxes be included in the cover-over program.

Economic Growth Incentives

Federal tax policy can play a critical role in creating the investment climate to help the Territory generate sustainable economic growth, create jobs, and improve its long-term fiscal health. In furtherance of these goals, the Virgin Islands requests that the Committee and OIA support fair and balanced tax rules for the Territories, including the possessions tax rules enacted as part of the American Jobs Creation Act of 2004 ("Jobs Act") and the "GILTI" rules enacted as part of the 2017 Tax Act.

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

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

The sourcing rules, particularly whether income may be deemed "effectively connected" with a V.I. trade or business ("V.I. ECI"), should be based on established tax precedents—specifically, the principles embodied in Treasury's model income tax treaty. At the very least, even under Treasury's narrower definition of V.I. ECI, Treasury should not discriminate against U.S. source income (in favor of foreign source income) in the determination of V.I. ECI. Accordingly, Congress should modify the U.S. income limitation in Internal Revenue Code ("IRC") Section 937 to exclude only U.S. source income generated by activities in the United States (attributable to a U.S. office or fixed place of business).

In addition, an anomaly in the Code allows Puerto Rico to provide more favorable treatment of capital gains from the sale of personal property held by a Puerto Rico taxpayer than is available to similarly situated taxpayers in the mirror-code Territories. There is no sound policy reason for treating mirror code possessions differently from non-mirror code possessions.

Congress should modify the "effectively connected" income rules for possessions in Section 937(b)(2)—enacted as part of the Jobs Act—by modifying the U.S. income limitation to exclude only U.S. source (or effectively connected) income attributable to a U.S. office or place of business. Congress should also ensure parity of capital gains tax treatment with Puerto Rico and other U.S. possessions by clarifying in Section 865(j)(3) that capital gains income earned by V.I. taxpayers should be deemed to constitute V.I. source income under the general sourcing rules without regard to the tax rate imposed by the V.I. government. This modification is reflected in H.R. 411 and H.R. 412, both as introduced by Congresswoman Stacey Plaskett on January 9, 2019, and referred to the Committee on Ways and Means. The Virgin Islands therefore requests that OIA and the Committee work with Treasury and other committees to effect passage of these Bills.

Legislation to modify rigid residency requirements

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

Under IRC Section 932, a "bona fide" resident of the Virgin Islands (*i.e.*, a tax resident) may satisfy his or her U.S. income tax obligation by filing in, and paying the applicable tax to, the Virgin Islands. Under Section 934, the Virgin Islands is authorized to reduce tax on V.I. source income and V.I. ECI. Prior to the Jobs Act, the determination of "bona fide" V.I. tax residency was based on the totality of an individual's facts and circumstances (the "facts and circumstances" test). However, Section 937, added by the Jobs Act, provides that a "bona fide" resident of the Virgin Islands is a person who meets all elements of a three-part test (physical presence, tax home, and closer connection tests). Treasury has provided only very limited flexibility from the physical presence test by allowing V.I. residents to treat up to 30 days of off-island travel outside of the U.S. as "constructive presence."

The proper test for bona fide V.I. residency should be the test the IRS applies under IRC Section 7701(b) to determine whether a foreign individual residing in the United States has sufficient presence in the United States to justify subjecting that individual to U.S. taxing jurisdiction in the same manner as U.S. citizens. Under that test, such foreign individual must be physically present at least 183 days in any one tax year, or an average of 122 days a year over any three-year moving period. Despite Treasury's ample discretionary authority to adopt the 122-day test, Treasury has taken the position that the Jobs Act prevents it from doing so. The Virgin Islands therefore requests that the Committee affirm to Treasury that it has authority to address the inequities in the Jobs Act residency requirements. This proposal is contained in H.R. 412.

Legislation to Address Inequities in the CFC Tax Regime

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

First, these rules inexplicably fail to provide Virgin Islands corporations with the benefit of an exclusion that benefits similarly situated corporations in other possessions. Under current

U.S. tax law, certain Virgin Islands corporations can be subject to classification as CFCs, causing negative U.S. tax consequences to their U.S. investors, while similarly situated Puerto Rico corporations (and other possessions corporations) are excluded from CFC classification. This is simply not fair. nor is it supportable from a tax policy perspective.

There is no rationale for this unfavorable treatment of Virgin Islands corporations and their shareholders, which diverts needed capital investments away from the Virgin Islands to other U.S. possessions. To rectify this unfavorable treatment and bring tax parity to investments in the possessions, we propose that Section 957(c) be amended to expand the exclusion from the definition of United States person to include bona fide residents of the Virgin Islands.

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

Under the GILTI rules, a corporate U.S. shareholder in a Virgin Islands corporation that is a CFC generally would be subject to tax at a rate of 10.5 percent (increasing to a rate of 13.125 percent beginning in 2026) on a broad class of the Virgin Islands corporation's income, even if that Virgin Islands corporation is conducting an active business and otherwise meets the applicable criteria to qualify for a lower rate of tax with respect to such income under a Virgin Islands economic development program and Section 934(b)(1) of the IRC.

To protect the viability of the Virgin Islands' Economic Development Commission (EDC) and other economic development programs and to encourage investment in economic development in the Territories, the GILTI inclusion received from CFCs formed in the Territories should be exempt from tax. This critical change could be accomplished by excluding corporations formed in the Virgin Islands and other Territories from the definition of "controlled foreign corporation" for purposes of Code Section 951A. Without this change, almost all potential investors in the Territories, other than investments from residents of the Territories, will be subject to the GILTI inclusion, including hotels, manufacturing operations, and high-tech businesses. Absent a full exemption, the effective rate of tax on GILTI inclusions from possessions corporation should be reduced. This could be accomplished for corporate U.S. shareholders by increasing the amount of the deduction for GILTI inclusions that are attributable to possessions corporations. The Virgin Islands therefore requests that OIA and the Committee work with Treasury and other committees to amend the GILTI provisions that would exempt, or reduce the rate of tax applicable to, GILTI inclusions attributable to possessions corporations.

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

The federal Earned Income Tax Credit ("EITC") and Child Tax Credit ("CTC") are intended to encourage and foster work among low-income individuals. The federal government effectively funds these programs for all States and the District of Columbia through the IRC. While a worthy goal, these tax credits have unintended and unfair consequences in the Virgin

Islands due to its status as a mirror tax code jurisdiction. Unlike in States and D.C., the cost of the EITC is borne solely by the fiscally-stressed Virgin Islands, a cost which the Territory cannot bear.

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

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

These provisions are critical for not only providing needed fiscal relief for the Virgin Islands but also for maintaining and growing a workforce needed to grow and sustain the Virgin Islands' economy. The Virgin Islands therefore requests that OIA and the Committee work with Treasury and other committees to provide for reimbursement to mirror code jurisdictions of the costs of both the EITC and the CTC.

Healthcare and Social Welfare

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

Medicaid

The Virgin Islands appreciates the disaster-related Medicaid relief, particularly the additional funding and temporary waiver of the local match in the aftermath of Hurricanes Irma and Maria, and for the recently-enacted relief in the final FY 2020 appropriations package, specifically a state-like FMAP and a deferral of the "fiscal cliff" for two years. This interim relief avoided the loss of health care coverage for thousands of U.S. citizens in the Virgin Islands and a possible collapse of our healthcare system. A permanent solution that provides for state-like treatment for the Virgin Islands and other Territories is needed in order to avoid the same dire consequences recently averted upon enactment of the final FY 2020 appropriations package. The Virgin Islands requests the support of OIA and the Committee for legislation that permanently guarantees state-like treatment for the Territories.

Medicare Reimbursement for Hospitals

The two hospitals in the Virgin Islands are reimbursed for Medicare expenditures based on an outdated methodology established under the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), resulting in under-reimbursement in the millions of dollars for each hospital each year. In 2011, the hospitals each submitted to the Centers for Medicare and Medicaid Services ("CMS") a request for assignment of a new base year. Those requests are still pending.

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

Extension of SSI to the Virgin Islands and other Territories

Supplemental Security Income ("SSI") is a federal need-based cash assistance program intended to equalize eligibility standards and benefit amounts for similarly situated aged, blind, and disabled people. The program was created to replace existing, disparate programs with one that provides an income source for the aged, blind, and disabled whose income and resources are below a certain level, and incentives and opportunities for those able to work or be rehabilitated.

SSI is a federal entitlement program, paid out of the general revenue of the U.S. However, residents of the Virgin Islands, Guam, and American Samoa are not under the SSI program, despite having needs similar to low-income aged, blind, and disabled persons in other Territories and the States. Instead of SSI, the former federal-state programs of Old-Age Assistance, Aid to the Blind, and Aid to the Permanently and Totally Disabled (AABD) continue to operate in the Virgin Islands. Benefits are capped, which means that the grant in no way considers actual need. There also is a 25% local match, and the responsibility to administer these programs falls on the Territory. As a result, benefits are far less than those under SSI and far less predictable (benefits can vary significantly from year to year and even within a year).

Including the Virgin Islands, Guam, and American Samoa in the SSI program would increase benefits for the elderly, blind, and disabled to a level on par with their counterparts on the mainland and CNMI. The Virgin Islands therefore requests that OIA and the Committee work with other committees to effect these necessary changes.

<u>Homeland Security</u>

Proposed Virgin Islands Special Visa Waiver Program

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

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

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

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

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

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

- Seasonal yachting and sporting events;
- Shopping visits from other Eastern Caribbean countries;
- Medical visits to the Territory's medical facilities and medical professionals;

- Arriving air passengers to the Territory's airports for transfer to any of the northeastern Caribbean islands; and
- Cruise line passengers on ships that customarily only service Eastern Caribbean islands because of their European Union no-passport or visa requirements.

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

The Virgin Islands seeks authority from Congress to establish a special visa waiver program for the Virgin Islands that mirrors programs currently authorized for, and utilized successfully by, Guam and CNMI. We urge OIA and the Committee to work with Homeland Security and other committees to authorize such a program in any immigration reform legislation that might be considered by Congress.

Infrastructure

Long-term under-investment by the federal government has resulted in a substantial portion of our infrastructure being dilapidated and inadequate. Further, the poor condition of our infrastructure has made it more susceptible to damage or destruction when natural disasters strike. Long-term improvement in the funding allocations for the Territories is needed to bring their infrastructure into the condition necessary to support a modern economy.

The disparities in funding are striking in surface transportation. In the final years of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users and extensions thereof, Congress allocated $62 million annually to the four Territories under the Territorial Highway Program (including a $50 million allotment and $12 million in lieu of High Priority Project funding). In 2012, the Moving Ahead for Progress in the 21st Century Act ("MAP-21") maintained highway funding levels for all states, DC, and Puerto Rico, but inexplicably cut the Territories' funding by a third (to $40 million a year).

The subsequent bill ("FAST Act") did not restore the funding cut in MAP-21; it provided only a small (5%) increase over the reduced MAP-21 allocation for the small Territories, (to $42 million a year). In contrast, the FAST Act increased funding to the states and DC ranging up to 14.8% over the life of the FAST Act (through FY 2020). Further exacerbating these funding shortfalls is the exclusion of the Territories from other surface transportation programs, which provide substantial funding to the States and DC.

Congress will have an opportunity to correct these inequities in the upcoming surface transportation reauthorization and any other infrastructure funding bills. For example, on January 29, 2020, House Democrats put forth a framework to invest $760 billion over five years in the nation's infrastructure. Earlier, the Trump Administration had proposed investing $2 trillion on infrastructure.

The small Territories need substantial investment in their aging and deficient infrastructure. Further, because of the increasing risk of damage from natural disasters, the Territories' infrastructure must be built to be more resilient and sustainable than most other areas of the United States. In order to provide the Territory a fair and equitable share of infrastructure funding, the Virgin Islands requests that in the upcoming surface transportation reauthorization bill funding for highways in the Virgin Islands be increased to not less than $35 million annually, and, further, that funding in any other infrastructure package provide a set-aside of not less than 1.5% for the four Territories. We urge OIA and the Committee to work with the Department of Transportation and other committees and federal agencies to achieve these necessary provisions.

Update to Insular Areas Act

Enacted in 1977, the Insular Areas Act, 48 U.S.C. § 1469a, expressed the policy of Congress that the four small Territories (the Insular Areas) should be provided certain flexibilities under federal grant programs. Importantly, the Act, as amended, mandates that the Department of the Interior shall waive matching requirements for all Insular Areas under all of its grant programs, and requires all other departments and agencies to waive any requirement for local matching funds under $200,000 otherwise required by law. Further, pursuant to the Act, all federal agencies have the discretion to waive the entire local match for the Insular Areas (the four small Territories) for federal funding programs. The Act also allows federal grants to Territories to be consolidated to minimize administrative burdens.

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

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

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

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