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WILMER CUTLER & PICKERING
[redacted] STREET, N.W.
WASHINGTON, D.C. [redacted]

MEMORANDUM FOR THE MARIANAS POLITICAL STATUS COMMISSION

Subject: Applicability of Existing Federal Laws in the Marianas Under a General Formula Approach

The Joint Communique of December 19, 1973 set forth the tentative agreement of the parties that:

> "The parties will explore, through the joint legal working group a general formula to govern the interim applicability of existing federal laws in the future Commonwealth of the Marianas."

The Joint Communique also stated that such a general formula should (1) be consistent with other provisions of the status agreement now being negotiated and (2) take into account the body of federal legislation presently applicable to the Trust Territory. It was further agreed that "each side will be free to propose any specific exceptions, which appear necessary."

In the period since the December 1973 session of the status negotiations, we have studied the question of whether a general formula, based essentially on the federal laws that now apply in Guam, would protect the interests of the Marianas. This memorandum reports on the results of our research and, in addition, analyzes Section 401 of our present draft of the Commonwealth Agreement. Section 401

deals with the application of existing federal law to the Marianas in the period between the establishment of the Commonwealth Government and the coming into effect of the recommendations of the proposed Joint Commission on the Application of Federal Law to the Commonwealth of the Marianas.

This memorandum is divided into two sections. Section I discusses the results of our study of the practical and legal consequences of applying the major federal regulatory and financial aid laws to the Marianas under a general formula based on the federal laws that now apply in Guam. Section II of this memorandum analyzes Section 401 of our present draft of the Commonwealth Agreement. Section 401, which deals with the applicability of existing federal law to the Marianas, is attached to this memorandum at Tab A. Section 401 has been drafted in light of the results of the study reflected in the memoranda at Tab C. For comparison, there is attached at Tab B the U.S. provision on the applicability of federal laws contained in the U.S. draft Status Agreement of December, 1973.

SECTION I

To determine whether a general formula approach would protect the interests of the Marianas, we selected a general formula based on the laws that apply in Guam and tested the practical and legal consequences of that formula against the body of federal law. Set out in the memoranda attached at Tab C are the results of that test.

The General Formula. As we discussed in our memorandum to the Commission of November 16, 1973, */ the most promising general formula approach is one based on those laws which are applicable in Guam and which are also of general application in the several States. The formula which we tested in our review of federal law was expressed as follows:

> "Every law of the United States which has provisions making it effective within the territory of Guam and which is of general application in the several States, shall be applicable within the Commonwealth of the Marianas in the same manner and to the same extent as it is applicable within the several States."

This formula requires two tests to be met for any law to apply in the Marianas.

Under the first test, the law must have provisions effective in Guam. Many federal laws do not apply outside of the several States. We believe the Marianas would be generally better off not to be subject to such laws because their provisions are not likely to be appropriate to the Marianas. Thus, the first test is designed to prevent the

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*/ See, Memorandum for the Marianas Political Status Commission, General Report on the Applicability of Federal Laws in the Marianas, pp. 11-19 (November 16, 1973).

application to the Marianas of those federal laws which apply only to the several States. In selecting a particular territory to serve as a standard for the first test, we chose Guam. Because Guam is a close neighbor to the Marianas, the laws applicable to Guam are more likely to be suitable to the Marianas than those applicable to the Virgin Islands or some other territory. */

The second test that must be met is that the law must also be of general application in the several States. This test is designed to prevent the application to the Marianas of a law that is aimed solely at Guam. Under Congress' plenary power to regulate the internal affairs of the territories, **/ such a law may subject Guam to special burdens which Congress could not impose on a State. Other laws peculiar to Guam, such as the Guam Organic Act, are, on their face, not appropriate for the Marianas. To avoid these results, the second test requires that a law applicable in Guam also be applicable in the several States.

The general formula which we tested in our review of major federal laws also provides that a law which met the two requirements discussed above would apply to the Marianas as that law applied to the several States. As a general

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*/ It can also be said that political reasons point to using Guam as a standard in the general formula. It is more likely that the U.S. Congress will favor a general formula based on the laws applicable in Guam than on a territory that may strike the Congress as representing a different set of geographic, economic and other conditions than those that exist in the Western Pacific.

**/ Art. 4, § 3(2), of the U.S. Constitution.

proposition, it is not desirable that federal regulatory laws apply in the Marianas as they apply in the territories because such application often includes the regulation of intra-territory or strictly local activities. Such a result would be inconsistent with the principle of local self-government. */

Areas of Federal Law Reviewed. Our review of federal law was organized around the 50 Titles to the U.S. Code. Excluded from our review were those Titles whose applicability is to be treated separately in the Commonwealth Agreement. **/ After a preliminary review of the remaining

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*/ See, Memorandum for the Marianas Political Status Commission, supra, p. 15. Some federal laws, on the other hand, are less restrictive, in the territories than in the States, or, in the case of financial aid laws, result in more generous treatment than if a territory were treated like a State. As discussed, infra,, our review of federal laws identified several such laws.

**/ These Titles are:

Title 8	Aliens and Nationality (the U.S. Immigration Laws)
Title 19	Customs Duties
Title 26	Internal Revenue Code
Title 28	Judiciary and Judicial Procedure
Title 33	Navigation and Navigable Waters
Title 46	Shipping

Titles, we tentatively determined that a number of Titles, although containing provisions which would be applicable to the Marianas under the general formula approach, nevertheless did not merit detailed study because they concerned areas that did not appear to raise significant problems for the Marianas.*/ (We are prepared, however, to study further any of these Titles that may be of particular concern to the Commission.) Our study of federal laws contained in the memoranda at Tab C encompassed the major provisions of the U.S. Code Titles and special subject areas listed below:

Title 7 Agriculture
Title 15 Commerce and Trade
Title 20 Education
Title 21 Food and Drugs
Title 29 Labor (and other statutes setting wage standards for federal contracts)
Title 42 Public Health and Welfare
Title 49 Transportation

Housing Laws
Environmental Laws
Banking Laws

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*/ These Titles are:
Title 1 General Provisions
Title 2 The Congress
Title 3 The President
Title 4 Flag and Seal, Seat of Government, and the States
Title 6 Surety Bonds
Title 9 Arbitration
Title 10 Armed Forces
(footnote continued on following page)

These Titles and subject areas were chosen because they either (1) regulate activity of possible significance to the Marianas or (2) provide financial assistance that may be desirable for the Marianas to obtain.

Set out below is a discussion of the results of our review of these federal law areas and their applicability to the Marianas under the general formula discussed above. For ease of comprehension, that discussion is divided into two parts. Part 1 discusses the federal regulatory laws. Part 2 discusses federal financial aid legislation. */

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Title 11	Bankruptcy
Title 13	Census
Title 14	Coast Guard
Title 17	Copyrights
Title 18	Crimes and Criminal Procedure
Title 22	Foreign Relations and Intercourse
Title 24	Hospitals, Asylums, and Cemeteries
Title 25	Indians
Title 30	Mineral Lands and Mining
Title 31	Money and Finance
Title 32	National Guard
Title 34	Navy
Title 35	Patents
Title 36	Patriotic Societies and Observances
Title 37	Pay and Allowances of the Uniformed Services
Title 38	Veterans' Benefits
Title 39	Postal Service
Title 44	Public Printing and Documents
Title 45	Railroads
Title 50	War and National Defense

*/ For detailed treatment, see the memoranda at the numbered tabs behind Tab C.

1. Federal Regulatory Laws

In reviewing the federal regulatory laws, we sought to answer the following questions:

a. Does the proposed general formula prevent the application to the Marianas of regulatory laws aimed solely at the territories?

b. Does the proposed general formula prevent the regulation of purely local activity within the Marianas?

c. Are there regulatory laws which treat the territories more favorably than the several States? If so, an exception to the general formula must be made if such laws are to apply in the Marianas as they do in the territories.

d. Are there regulatory laws which are unduly burdensome in view of local conditions in the Marianas so that an exemption from the general formula should be made.

In summary, we found that the general formula did prevent the regulation of purely local activity within the Marianas as well as the application of laws aimed solely at the territories. We also found that the federal banking laws apply more favorably in the territories than in the several States. And we have tentatively concluded that the federal minimum wage law may be unduly burdensome. Set out below is a discussion of these matters.

a. Regulatory Laws Aimed Solely at Guam or the Territories and Possessions

Federal regulatory laws generally follow a pattern of regulating activities connected with commerce with respect to both the several States and the territories and possessions. If this were the case in every instance, it might not be necessary to specify in the general formula that for a law to be applicable in the Marianas it must also be of general application in the several States as well as in Guam. If every regulatory law applied to both Guam and the several states, special language would not be required to limit the type of laws to be applied in the Marianas to those that met both tests.

In our review of federal laws, no case was found where a regulatory law was aimed solely at Guam. However, Chapter 10 of Title 48 of the U.S. Code, entitled "Territorial Provisions of a General Nature" does contain a few provisions which are aimed solely at the territories and possessions. For example, Section 1489 of Title 48 provides that the United States cannot lose title to land "in any

territory or possession" through adverse possession or prescription.*/ There is no similar provision with respect to U.S.-owned land in the several States. Consequently, without the second test of the general formula, i.e., that a law must also be applicable in the several States, Section 1489 would apply to the Marianas under the general formula. The second test of the general formula, however, does prevent the application to the Marianas of such laws aimed solely at the territories.

b. Regulation of Local Activity.

Federal regulatory laws generally do regulate purely local, i.e., intra-territorial, activity in Guam and the other territories. The antitrust laws are a typical example. The Sherman Act, which prohibits contracts and combinations in restraint of trade, outlaws such restraints "in any Territory of the United States." 15 U.S.C. § 3.

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*/ Other provisions of Chapter 10 are directed at the "Territories" and thus probably apply only to incorporated Territories. For example, Section 1480, derived from an act of 1862, prevents a religious or charitable corporation from holding real estate of a value greater than $50,000 in any "Territory." Although the staff of the Guam Commission on the Application of Federal Laws to Guam stated its belief that the section was intended to apply only to Territories in the continental United States, it cautioned: "There is always a danger that 'Territories' might be interpreted to mean 'territories' and consequently that Puerto Rico, the Virgin Islands and Guam might all be included in the application of the sections." Resource Material Used in the Preparation of the Report of the Commission on Application of Federal Laws to Guam, p. 234. (1952).

Similarly, the Clayton Act, which forbids, among other things, the acquisition of one corporation by another where the result "may be to substantially lessen competition" reaches intra-territorial activity. The Clayton Act regulates commerce "within . . . any Territory, or any insular possession." 15 U.S.C. § 12. However with respect to the several States, the Sherman and Clayton Acts regulate only commerce between one State and another, i.e., interstate commerce. 15 U.S.C. § 1 (Sherman Act), 15 U.S.C. § 12 (Clayton Act). */

The general formula provision set out above would prevent the regulation of purely local activity in the Marianas. The general formula provides that laws in effect in Guam and in the several States shall apply in the Marianas as such laws apply in the States. Consequently, only commerce between the Marianas and other territories or States would be regulated under the antitrust and other regulatory laws. Purely local trade and commerce in the Marianas would not be subject to federal regulation.

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*/ Other examples of federal regulatory laws which regulate local activity in the territories but only interstate commerce with respect to the States are discussed at Tab C-2.

c. Laws Which Treat the Territories More Favorably Than the States

A third question which we explored in our review of federal regulatory laws was whether there were any laws which treated the territories (and Guam) more favorably than the States. If that were the case, it would be desirable to make an exception to the general formula so that such laws would apply in the Marianas as they do in Guam, rather than as in the several States. The only area of law where we found that Guam received more favorable treatment was in the federal banking laws. As discussed in the memorandum on the federal banking laws at Tab C-10, the banking laws afford somewhat greater flexibility to territorial banks than to banks in the several States. In the main, this flexibility centers around the lack of any requirement that national banks (i.e., banks charted by the Comptroller of the United States) be members of the Federal Reserve System. In contrast, such membership is required for national banks in the States. The banking laws provide that charters may be issued by local authorities and that federal insurance of deposits is available to both local and national banks in the territories. Thus, banks in the territories have the same advantages under the banking laws as banks in the several States, yet without the Federal Reserve System membership requirement. Thus, to obtain for the Marianas the more favorable application of the banking

laws, we have made an exception to the general formula to provide that such laws shall apply as they do in Guam rather than as they apply in the States.

d. Unduly Burdensome Regulatory Laws

A fourth question which we considered in our review was whether any federal regulatory laws imposed unduly burdensome requirements in view of local conditions in the Marianas. We have tentatively identified the minimum wage requirement in the Fair Labor Standards Act (FLSA) as such a law. As discussed in detail in the memorandum on federal labor laws at Tab C-5, pages 2-7, the FLSA sets a minimum wage for employees engaged in interstate commerce of $2.00 per hour for 1974, $2.10 for 1975 and $2.30 beginning January 1, 1976. The FLSA applies to Guam in the same manner as it does to the several States. The FLSA does not however apply to the Trust Territory and thus not to the Marianas.*/ If the

*/ Under 29 U.S.C. § 213(f), enacted in 1957, the substantive provisions of the FLSA (minimum wage, maximum hours, equal pay between sexes, and child labor prohibitions) were declared inapplicable to employees working "within a foreign country" (i.e., on foreign military bases of the U.S.) or "within territory under the jurisdiction of the United States" other than certain such territories specifically named. The Trust Territory was not so named and thus these FLSA provisions do not apply there. The rationale for the exemption was that application of the U.S. minimum wage would seriously disrupt the local economy in the countries where U.S. bases were located or in U.S. territories other than those named in Section 213(f). E.g., Sen. Rep. No. 987, 85th Cong., 1st Sess. (1957), reprinted in 1957 U.S. Code Cong. and Admin. News, 1756, 1757:
(footnote continued on next page)

payment of such wages to employees engaged in interstate commerce in the Marianas would disrupt the Marianas economy, the Commission may wish to propose an exception to the application of the FLSA under the general formula.

Two alternatives to making the FLSA applicable to the Marianas can be advanced.*/ First, the present non-applicability of the FLSA could be continued by specifically

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> "To pay the minimum wage specified in the act would often give local laborers wages several times higher than they had earned before or that they could expect to earn after completion of the defense contracts. Moreover, the payment of the minimum specified in the act may disturb the local economy by drawing workers away from vital tasks and by conceivably making recruitment of workers to these desirable jobs on the overseas bases a subject of local political interest."

*/ Our discussion here is centered on the arguments for not applying the minimum wage provisions of the FLSA to the Marianas. The FLSA also requires premium pay for overtime work, prohibits discrimination in pay between men and women performing the same job, and prohibits certain types of child labor. It is the initial judgment of the Commission's economic consultant that the Marianas should be exempted from all provisions of the FLSA on the principle that the Marianas should be free to determine its own needs in these areas and legislate accordingly. These other FLSA provisions, however, can be viewed as ones protecting the interests of particular groups; i.e., women, children, and employees whose jobs require longer hours, and thus should be made applicable in the interest of those groups. It is also necessary to weigh the extent to which a complete exemption from the FLSA may create opposition among representatives of organized labor in the United States. These considerations can be the subject of further study if the Commission desires.

providing in the status agreement that the minimum wage provisions of the FLSA shall not apply to the Marianas. (Our present draft of Section 401 so provides.) It can be argued that Congress' rationale for originally exempting the Trust Territories and the Marianas from the FLSA is still valid. The change in political status contemplated in the proposed status agreement does not alter the economic circumstances that caused Congress to exempt the Marianas from the FLSA. Moreover, it can be argued that any such shift in the balance of the Marianas' economy as would be produced by the applicability of the FLSA's minimum wage provisions should at least await the study and consideration of the proposed Joint Commission on the Applicability of Federal Laws.

A second alternative, or at least a fall-back position for the negotiations, would be to follow the procedures applicable to Puerto Rico and the Virgin Islands, prior to the 1974 FLSA amendment (and still applicable to American Samoa). This would, as outlined at pp. 4-5 at Tab C-5, call for the establishment of industry committees which would recommend to the Secretary of Labor the minimum wage level for various industries in accordance with the standard set out in 29 U.S.C. § 208(c), i.e., "the highest minimum wage rates for the industry which it determines,

having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry [in the territory] a competitive advantage over any industry in the United States. . . ."

There are, however, drawbacks to this second alternative. It may not be worthwhile to have the Marianas go through this elaborate procedure. The danger of giving a competitive advantage to the Marianas over other parts of the United States where the FLSA applies does not appear to be substantial. The Marianas have never been subject to the FLSA, and there is no reason to think this danger will arise immediately upon the creation of a new political status. Moreover, the Marianas are so far removed from the United States mainland, unlike Puerto Rico and the Virgin Islands, that competition between local and U.S. industry is likely to be slight in the foreseeable future. And the burden on the Marianas of establishing and staffing such industry committees should not be disregarded.

Before reaching a decision as to whether the federal minimum wage should not apply in the Marianas, the Commission will want to consider the fact that without a further special exception to the general formula the Service Contract Act will apply to the Marianas. Under that

Act,*/ the minimum wage provisions of the FLSA must be paid to employees engaged in work under service contracts with the Federal Government. Thus persons employed under service contracts with the U.S. military to provide food, janitorial, guard, or laundry services will be paid the federal minimum wage. If wages for such services in the Marianas private sector are lower than the federal minimum wage, it can be expected that persons will be attracted away from private sector employment or that private employers will have to pay competing wages. On the other hand, it may be beneficial for government service contractors in the Marianas to pay the federal minimum wage. The cost of such wage payments will be borne by the Federal Government and not by local Marianas contractors. The result may be to infuse these wage payments into the local economy without a corresponding burden on the Marianas.**/

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*/ See pp. 7-9 of Tab C-5 for a discussion of the Service Contract Act.

**/ It is the initial judgment of the Commission's economic consultant that the Service Contract Act (and other federal laws which require payment of minimum or prevailing wages under federal contracts on federally assisted projects) should apply in the Marianas. For a discussion of these laws, see the Memorandum at Tab C-5, pp. 7-9.

In addition to the requirements of the federal minimum wage laws, we want to bring to the attention of the Commission the requirements imposed by two environmental laws which would apply under the general formula. These requirements are contained in the Clean Air Act and the Water Pollution Control Act.

The Clean Air Act, codified in 42 U.S.C. § 1857, et seq., is designed to protect the quality of the Nation's air resources. Each State must submit a plan showing how it intends to meet the national air quality standard. 42 U.S.C. § 1857c-5. The Act authorizes technical and financial assistance to state and local governments for their air pollution control programs.*/ Provisions for federal enforcement are provided, including civil actions for injunctions and damages.

If there is no significant air pollution problem in the Marianas, it may be unduly burdensome to develop a State implementation plan as required by the Act. Consequently, the Commission may wish to consider an exemption from this requirement in the Commonwealth Agreement.

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*/ The Clean Air Act also sets standards for exhaust emissions applicable to new motor vehicles. The Act prohibits the sale in interstate commerce or the importation of new motor vehicles into the United States which do not conform to these standards. Used vehicles are not subject to these standards. These provisions should benefit the Marianas by preventing air pollution.

The Water Pollution Control Act codified in 33 U.S.C. § 1251, et seq., makes unlawful the discharge of pollutants into the navigable waters, territorial seas (i.e., 3 miles outwards from the coastline of the United States) or the ocean, except as permitted under the Act. 33 U.S.C. § 1311, et seq. In relevant part, the Act requires that industrial pollution sources apply the "best practicable technology" to control pollutant discharge by July 1, 1977. Publicly owned sewage treatment works must meet discharge standards that require secondary treatment of sewage by July 1, 1977. Federal Water Quality Standards are to be established by the Environmental Protection Agency. A number of reporting and implementation requirements are placed upon the States. 33 U.S.C. § 1313(c)(d). Under the Act, the term "State" means "a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands." 33 U.S.C. § 1362(3).

Since the Act now applies to the Trust Territory, it is perhaps the case that steps have been taken to comply with the Act. However, the burden on the Marianas of complying with the Act may be unduly harsh. If this is the case, an exemption, either complete or tailored to

fit the Marianas, may be warranted. Any such exemption, however, should be drafted so as not to lose the federal financial aid which is available under the Act. To decide whether such an exemption is warranted, the Commission may wish to investigate whether sewage treatment works and industrial pollution sources in the Marianas are experiencing difficulty in meeting the Act's standards.

With respect to the general environmental law area, it is the initial judgment of the Commission's economic consultant that the environmental laws do not pose significant problems for the Marianas.

2. Federal Financial Aid Legislation

In reviewing federal financial aid legislation, we found that, with a few exceptions, Guam is eligible for most federal grant and loan programs. Guam is either expressly named as an eligible recipient (as is the case in most recent aid legislation) or is eligible by virtue of the inclusion of the term "territory and possession" among the eligible recipients.*/ Under the general formula, the Marianas will be thus eligible for most federal financial aid programs. However, special provision must be made in two respects where the general formula would result in the loss of

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*/ See the list of grant programs in the health and welfare area in the memorandum at Tab C-6 for examples of these two approaches.

provisions favorable to the Marianas. These are explained below. Following that explanation, we discuss those federal aid programs for which Guam is not eligible and thus will require special provisions in the Commonwealth Agreement if they are to apply to the Marianas.

a. Adjustments to the General Formula

The general formula must first be tailored so as not to lose for the Marianas the "set-aside" amounts often reserved for use by Guam and other territories in federal aid programs. Federal aid legislation often contains provisions reserving for the use of Guam and the other territories a percentage of the funds authorized to carry out the programs under the legislation in question.*/ These set-aside formulas are to the advantage of the territories, since in most cases they would otherwise be competing with the States for funds under a formula based on the number of people in a State. With their smaller population, the territories would

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*/ For example, Chapter 24 of Title 20 (Education) provides for a variety of federal grant programs to States and territories for educational purposes. Of the first 95% of the money appropriated, the Commissioner of Education is directed to reserve such amount as he may determine--up to 2% of such 95%--for use in Guam, Puerto Rico, American Samoa, the Virgin Islands, and the Trust Territory. 20 U.S.C. § 862.

The Food Stamp Program, discussed at p. 3 of the memorandum at Tab C-1, also treats Guam differently than the several States in that special eligibility standards reflecting the cost of food in Guam are established.

receive less than they receive under the set-aside provisions. To insure that the Marianas receive the benefit of these set-aside provisions, it is necessary to modify the general formula so that laws which provide federal financial aid shall apply as they do in Guam rather than in the several States.*/

A second adjustment to the general formula is required to protect the interests of the Marianas. As outlined in the memorandum at Tab C-6, on January 1, 1974 a new, wholly federal program of "Supplemental Security Income" ("SSI") replaced the federal-state programs of aid to the aged, blind, and disabled, except in Guam, Puerto Rico and the Virgin Islands. By amendments to the Social Security

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*/ This is also necessary to avoid a result that would certainly be unacceptable to Congress, i.e., that the Marianas would be treated as a State in a formula for distribution of funds in aid legislation. Many such formulas provide that each State shall receive a flat amount, usually much higher than that distributed to the territories under the set-aside formulas. It is not realistic for the Marianas to receive the amounts accorded to the States under such formulas.

Act,*/ Titles 1, 10, 14 and 16 of the Act were repealed with respect to the fifty states; it was, however, specifically provided that these titles shall continue to apply to Guam, Puerto Rico, and the Virgin Islands and that the term "State" in such titles (except for Title 16**/) includes these three territories. 42 U.S.C. § 1301(a). Thus, for these three territories, aid to the aged, blind and disabled is still provided by federal grants through "State" programs to eligible persons.***/

Although in effect in Guam, these programs do not apply in the several States and thus do not meet the second test of the general formula. Consequently, it will be necessary to specifically provide in the status agreement that Titles 1, 10, 14 and 16 shall apply to the Marianas in order for the Marianas to have the benefit of federal grants under those titles. We have inserted such a specific provision in the present draft of Section 401 of the Commonwealth Agreement. (See Tab A, p. 2). The Commission's economic consultant is prepared to discuss with the Commission an alternative approach

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*/ Pub. L. Nos. 92-603, 93-66 and 93-233.

**/ Title 16, as amended in 1972 by Pub. L. No. 92-603, provides for SSI aid to needy people residing in the fifty States. The previous Title 16 continues to apply to Puerto Rico, Guam and the Virgin Islands, but these three territories are excluded from eligibility for the amended Title 16. 42 U.S.C. § 1301(a).

***/ For the fifty States, the SSI program provides a monthly income payment of $140 for an individual and $210 for a couple effective January 1, 1974 (and raised to $146 and $219, respectively, in July 1974).

that would apply the new SSI program in the Marianas.*/

b. Federal Aid Legislation Not Applicable in Guam

Our review of federal aid legislation revealed four instances where Guam is not an eligible recipient, and thus under the general formula such legislation would not be applicable in the Marianas.**/ These instances are (1) certain programs under the Public Health Service Act, (2) loans to small farmers under the Consolidated Farm and Rural Development Act, (3) the Federal Crop Insurance Act, and (4) grants to States under the National Defense Education Act. These Acts are discussed below.

(1) Public Health Services Act

This Act, codified in Chapter 6A of Title 42, 42 U.S.C. § 201 et seq., contains the statutory authorization for a very large number of federal grant and loan programs in the health and medical area; e.g., construction of hospitals, training and education of medical personnel and establishment of Health Maintenance Organizations.

Guam is not included in the Act's definition of a "state" (although Puerto Rico and the Virgin Islands are), 42 U.S.C. § 201(f). Nor is Guam specifically named in the definition of the term "possession." The Act provides that

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*/ Although it is not expressed in the Congressional Committee reports on the bills to enact the SSI program, we understand that Congress did not extend the SSI program to the territories on the rationale that the uniform monthly payments under SSI were based on conditions in the several States and were thus too high for the territories.

**/ It should be noted that there may be other programs for which Guam is not eligible. Federal financial aid legislation is complex and extensive. Within the time available, it was not possible to examine each piece of legislation. However, we believe our review encompassed the major areas of financial aid legislation

"possession includes, among other possessions, Puerto Rico and the Virgin Islands." 42 U.S.C. § 201(g). Thus, Puerto Rico and the Virgin Islands are specifically named in both the definition of a state and a territory, while Guam is not.

However, a number of subchapters and individual provisions of Chapter 6A do include Guam by name in their definitions of the term "State," e.g., subchapter IV, which provides grants and loans for the construction and modernization of hospitals and other medical facilities. 42 U.S.C. § 291(o). */ And since a number of Chapter 6A programs are directed towards the aid of individuals or institutions, without reference to geographic limitations, Guamanian individuals and institutions would presumably be eligible for such programs. **/

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*/ In addition to Subchapter IV, Guam is named as an eligible recipient for grants to establish and maintain public health services, 42 U.S.C. § 246(d)(5); communicable disease control grants, 42 U.S.C. § 247(b)(2); grants for nurse training under Subchapter VI, 42 U.S.C. § 298(b); grants for regional medical programs under Subchapter VII, 42 U.S.C. § 299(b); and grants for voluntary family planning under Subchapter VIII, 42 U.S.C. § 300(a).

**/ For example, Subchapter XI of Chapter 6A, which codifies the Health Maintenance Organization Act of 1973, provides for federal grants, contracts and loan guarantees to "public or nonprofit private entities" and to "public or nonprofit private health maintenance organizations." There is no provision in Subchapter XI requiring such entities to be in a "State." We are informed by Rep. Won Pat's office that Guam is preparing to establish a Health Maintenance Organization under the Act. Under the proposed general formula, the Marianas would thus be eligible for aid to a Health Maintenance Organization because Guam is eligible.

Nevertheless, the fact that Guam is not included in the definition of the term "State" for purposes of the entire Chapter does render Guam ineligible for several federal programs. For example, under Section 246(a) and (b) of Title 42, there are authorized grants and services to "States" for comprehensive health planning. Since there is no special definition of the term "State" in Section 246(a) the general definition for the entire chapter in Section 201(f) controls, and Guam is thus ineligible for such grants. The same is true of Section 215, which authorizes the Surgeon General to detail Public Health Service personnel "for the purpose of assisting [a] State or a political subdivision thereof" in health work.

Rep. Won Pat of Guam has prepared a bill to include Guam in the definition of the term "State" in Section 201(f) of Title 42.*/ His office believes that this bill will be enacted within the next year or two as no opposition in committee is expected. Since Puerto Rico and the Virgin Islands are included in the State definition, there is sound precedent for including Guam as well.

In view of the importance of the health and medical grants provided under Chapter 6A, the status agreement should

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*/ Section 201(f) was enacted in 1944 when Guam was occupied by the Japanese. This probably accounts for the fact that Guam is not included in the definition of a state, rather than any Congressional intent that Guam be excluded at the present time from that definition.

provide that the Public Health Services Act shall be applicable in its entirety to the Marianas. The precedent set by the inclusion of Puerto Rico and the Virgin Islands in the definition of the term "State" in 42 U.S.C. § 201(f) can be used as argument for such inclusion. If the Virgin Islands is treated as a State, there seems to be no good reason for the Marianas not to be treated on the same basis.

(2) Loans to Small Farmers

Chapter 50 of Title 7 of the U. S. Code */ authorizes the Secretary of Agriculture to make and insure various real estate, operating, and emergency loans to farmers and ranchers.

Loans under this chapter are authorized only to eligible farmers and ranchers (i.e., owners and operators of family farms who are unable to obtain credit elsewhere at reasonable rates) in the United States, Puerto Rico and the Virgin Islands. 7 U.S.C. §§ 1922, 1941, 1961. Thus, small farmers in Guam are excluded from the benefits of this chapter. If such federal financing is desirable for the Marianas, the Commonwealth Agreement should specifically provide that farmers in the Marianas shall be eligible for Chapter 50 programs. It can be argued that the eligibility of farmers in Puerto Rico and the Virgin Islands for such programs is strong precedent for the eligibility of the Marianas.

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*/ Chapter 50 codifies Title III of the Consolidated Farmers Home Administration Act of 1961 and contains the major federal aid programs of that Act. The short title for Title III of the 1961 Act is the "Consolidated Farm and Rural Development Act."

(3) Federal Crop Insurance

Chapter 36 of Title 7, codifying the Federal Crop Insurance Act, authorizes the Federal Crop Insurance Corporation to provide insurance to farmers against loss of their crops due to a variety of "unavoidable" causes, including hurricanes and plant disease.

Chapter 36 contains no provisions indicating whether Guam is eligible for such insurance. The Joint Commission on the Applicability of Federal Laws to Guam found that the provisions of Chapter 36 did not apply to Guam and recommended that it not be extended to cover Guam.*/ If such insurance would be useful to the Marianas, the Commonwealth Agreement should specifically provide that the Federal Crop Insurance Act shall be applicable in the Marianas.

(4) National Defense Education Act

Chapter 17 of Title 20 provides for loans to students in colleges and universities (NDEA loans), and

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*/ The Commission Staff reasoned that Congress did not intend to have the Crop Insurance Act apply outside areas of large-scale farming in the several States because the Act does not include any territory or possession and the program was initially authorized for only a limited number of counties. Resource Material Used in the Preparation of the Commission on the Application of Federal Laws to Guam, pp. 58-61 (1952). Without a more detailed study of the legislative history of the Act than was possible to undertake here, it is not possible to determine whether the Guam Commission's conclusion was accurate.

grants to States and local educational agencies for strengthening instruction in academic subjects.

Chapter 17 expressly applies to Guam with respect to NDEA loans to students and grants to local educational agencies. However, Guam and the other territories are expressly excluded from the definition of a State for purposes of the grants to States. Since no other territory is eligible for the State grant programs under Chapter 17, it may be unrealistic to have the Commonwealth Agreement provide that the Marianas shall be eligible for these grants. */ For that reason we have not provided in Section 401 of the present draft Commonwealth Agreement that Chapter 17 State grant programs shall be applicable in the Marianas. However, our draft of Section 402 does provide that the three other financial aid laws discussed above which would not apply under the general formula shall apply in the Marianas.

Local Matching Contributions.

There is one further area in the field of financial aid legislation with respect to which the Commission may wish to make a proposal. This is the matter of local "matching" contributions. Federal grant legislation often requires, as a condition for the receipt of grant money, that the State or territory also contribute towards the cost of the program

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*/ The grants to States are for the purpose of purchasing equipment and minor remodeling, 20 U.S.C. § 441, and to establish and maintain counseling programs. 20 U.S.C. § 481.

aided by a federal grant. In the past, the usual pattern was to require that the local contribution equal one-half of the cost of the program. More recent legislation requires a local contribution of from one-third to twenty percent of the program's cost. Moreover, grant legislation often prohibits the use of federal funds received from other sources to be used to meet the local contribution. Both of these requirements are illustrated in the Coastal Zone Management Act, perhaps an especially important source of federal aid for the Marianas.*/ Annual federal grants are authorized under the Act to "coastal states" (expressly including Guam) which establish coastal land and water management programs. However, the federal grants may not exceed two-thirds of the cost of the program. 16 U.S.C. § 1454(c). In effect, this would require the Marianas to finance at least one-third of any program it would establish to receive federal grants. And federal funds received from other sources are not permitted to be used towards the local share contribution. 16 U.S.C. 1455(a).

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*/ The Coastal Zone Management Act may be of great use to the Marianas in establishing a program to control and plan land use and development.

Since a good portion of the revenue of the Marianas in the first years of the Commonwealth may be derived from federal payments, a requirement that federal funds may not be used to meet local share contributions appears unrealistic and unnecessary. Consequently, the Commission may wish to propose that this requirement shall not apply to the Marianas in the first five or ten years after the effective date of the Commonwealth Agreement, or until termination of the Trusteeship. Secondly, the Commission may wish to propose that any requirement for a local share contribution be modified in the case of the Marianas. Two alternative modifications can be considered. On the one hand, the Commission may propose that the administrator of a federal grant program may increase the federal share contribution where he determines that the Marianas does not have sufficient funds available to meet the local contribution requirement. There is a precedent for such a provision in federal grant legislation and it can be argued that this precedent supports a similar provision with respect to the Marianas.*/ We have drafted a provision along these lines, which is set forth below.**/

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*/ The precedent is found in the Law Enforcement Administration Act, 42 U.S.C. §3731(c). It is there provided that if the Administrator of the Act determines that an American Indian or Alaskan Eskimo group does not have sufficient funds available to meet the local share required by the Act, the Administrator may increase the federal share to the extent "he deems necessary."

**/"Where the Commonwealth of the Marianas is eligible for a federal grant or other assistance to a program or project under a law of the United States which requires a local share contribution and the federal administrator of such program determines that the Commonwealth of the Marianas does not have sufficient funds available to meet such local share contribution, the federal administrator may increase the federal share of the cost of such program or project to the extent he deems necessary."

Although the approach discussed above is supported by precedent, it has the disadvantage of resting total discretion in the federal administrator. Consequently, there is no assurance that in a given case the local share contribution would be reduced. An alternative approach, however, might specifically provide that for a certain period of time after the effective date of the Commonwealth Agreement the local share contribution in the case of the Marianas shall be no more than one-half of the share required of Guam. Or it might be provided that the local share requirement be altogether waived for a certain period, e.g., five or ten years. Pending further consideration by the Commission of these alternatives, we have reserved a section in the draft of the Commonwealth Agreement for the insertion of a provision to deal with this matter of local share contributions.

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Conclusion: With the exceptions and modifications discussed above, we have concluded from our view of federal legislation that the proposed general formula approach will protect the interests of the Marianas in the application of existing federal law.

We have also concluded that the general formula approach should be limited, as the Joint Communique of December 1973 contemplated, to existing federal law, and that no special

provision should be made for the application of federal laws enacted after the effective date of the Commonwealth Agreement. In our study of this question, we had considered provisions that would apply to the Marianas only those laws enacted after the effective date of the Commonwealth Agreement which were expressly made applicable to the Marianas. Our reasons for not specifically addressing the question of future federal legislation center on two considerations. In the first place, Congress recently repealed a section in the Guam Organic Act that provided no federal law shall apply in Guam unless specifically made applicable either by reference to Guam by name or by reference to possessions.*/ Thus it is unlikely Congress would favor a similar provision in the the Commonwealth Agreement. Secondly, we believe the greater danger under such a provision is that beneficial financial aid legislation will not be made applicable in the Marianas, rather than that burdensome regulatory laws will apply. The limits elsewhere in the Commonwealth Agreement on U.S. authority to enact legislation affecting local Marianas activity will reduce the risk of burdensome regulatory legislation. Financial aid legislation will in the usual case apply to the Marianas by virtue of a reference to

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*/ The House Report termed this an "unusual provision and inconsistent with standard references in federal laws to the territories." H.R. Rep. No. 1521, 90th Cong. 2d Sess., 9 (1968).

"territories and possessions" in the definition of eligible recipients. However, if there is a requirement that the Marianas be expressly named, there is the chance that Congress will overlook the Marianas.

In light of the these considerations, we do not believe it is necessary or desirable to address the question of the applicability of future federal laws in the Commonwealth Agreement.

SECTION II

It is the purpose of this Section to set forth an explanation of the provisions of Section 401 of the present draft of the Commonwealth Agreement (Section 401 is attached at Tab A). That section deals with the applicability of the existing general body of federal law to the Marianas. Substantive differences between that section and the draft section on the same subject provided by the United States in December 1973 (attached at Tab B) will be explained.

Subsection (a) of Section 401

In general, subsection (a) employs the general formula discussed earlier in this memorandum to govern the applicability of federal law in the Marianas. However, it also provides that applicability of certain federal laws shall be governed by special rules rather than by the general formula. And subsection (a) contains two introductory "except" clauses which subject the provisions of

subsection (a) to other provisions of the Commonwealth Agreement. The provisions of Subsection (a) are explained below.

Introductory "Except" Clauses. The first "except" clause provides that the provisions of subsection (a) shall apply except insofar as other sections of the Commonwealth Agreement determine the applicability of a federal law. This clause is to insure that the applicability provisions of subsection (a) do not conflict with those other sections of the Commonwealth Agreement which specially provide for the applicability of certain federal laws, subject to the mutual consent of the parties.

The second introductory clause refers to the limits elsewhere in the Commonwealth Agreement that are placed on the authority of the United States to make new laws applicable within the Marianas. Although the laws to be applied under Section 401(a) are laws now in existence, it might be possible to interpret them as "new" laws when they are applied for the first time to the Marianas. This clause insures that the applicability of existing federal law under Section 401(a) is consistent with the limits on the authority of the United States to apply new laws to the Marianas and rules out any uncertainty that might otherwise arise.

The U.S. draft employs only the very general phrase "except as herein otherwise provided" to limit its provisions for the applicability of general federal law. The U.S. phrase is not sufficiently specific. We believe it is important to expressly spell out that the applicability of some federal laws is determined by sections of the Commonwealth Agreement other than Section 401(a), and that the application of federal laws under Section 401(a) is subject to the limits placed on the law-making authority of the United States elsewhere in the Commonwealth Agreement.

Subparagraph (1) of Section 401(a). This paragraph provides that laws of the United States which meet the two tests in the general formula shall apply in the Marianas as they apply in the several States. The two tests are that a federal law (1) has provisions making it effective within Guam and (2) is of general application within the several States. In addition, it is specified that the laws referred to are those which meet these tests on the effective date of Section 401. Thus, the applicability of laws enacted after the effective date of Section 401 will not be governed by that section.

In contrast, the U.S. draft, before reaching its expression of a general formula based on the federal laws applicable in Guam, provides that there shall be applied those

federal laws expressly made applicable to the Marianas, as well as the "existing" federal laws applicable to the Trust Territory. We do not believe it is necessary to specify that the existing federal laws applicable in the Trust Territory shall apply to the Marianas. In our review of federal law, we found in every case that where a law was applicable to the Trust Territory, it was also applicable to Guam (except for Executive Order No. 1102 of May 7, 1962 and the various Secretarial Orders dealing with the Administration of the Trust Territory). Congress either specifies that a law is applicable to the "territories and possessions" or expressly names those entities other than the several States to which a law applies. Both Guam and the Marianas would be subject to a law where the phrase "territories and possessions" is employed. And where Congress names the entities to which a law is applicable, as in the more recent financial aid legislation, the more frequent pattern is for the law to be applicable to Guam but not to the Trust Territory. On the other hand, in making laws of general application to the several States and territories, Congress does not include the Trust Territory but exclude Guam. Under the general formula in Section 401(a)(1), all existing laws applicable to the Trust Territory will be applicable to the Marianas because all such laws are also applicable to Guam (except Executive Order No. 1102 and the Secretarial Orders, which are not to be applied

in the new Commonwealth). The language in the U.S. draft applying the existing laws in the Trust Territory is surplusage since it does not accomplish anything that the general formula does not accomplish by itself, except to give rise to the possible interpretation that Executive Order No. 1102 and the Secretarial Orders are to be applicable. To avoid the use of surplus language and any possible confusion regarding the applicability of the Executive and Secretarial Orders we have not referred to the existing laws applicable to the Trust Territory.

The provision in the U.S. draft that laws "expressly made applicable to the Northern Mariana Islands" shall apply refers to laws enacted after the effective date of the Commonwealth Agreement. This is so since under the U.S. draft there is no political entity by the name of the "Northern Mariana Islands" until such date. For the reasons set out at p. 33, supra, we have concluded that it is best not to specifically address the question of the applicability of those federal laws enacted after the effective date of the Commonwealth Agreement.

There is no substantive difference between the general formula in the U.S. draft and the general formula in Section 401. The U.S. draft contains the two tests of applicability in Guam and in the several States, as does Section 401. And the U.S. draft provides that such laws

shall apply "in the same manner and to the same extent" as those laws are of "general applicability."*/

It is not clear from the U.S. draft, however, whether it is the intent of the United States to have the general formula govern the applicability of future federal legislation. For the reasons explained above, we believe it should not. The U.S. draft of the general formula refers only to "the laws of the United States."**/ Our draft specifies that such laws must be those in effect "on the effective date of this section," thus excluding legislation enacted later than such date. There may have been an oversight on the part of the U.S. However, the U.S. draft of the reference to laws applicable to the Trust Territory does specify that it is "existing laws" which are there covered, indicating that the U.S. consciously chose not to use the word "existing" to limit its general formula.

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*/ Section 401 employs the phrase "within the several States" rather than "general applicability"; we believe the former phrase has a specific meaning which is not conveyed by the U.S. phrase.

**/ The U.S. draft contains a provision that attempts to define the term "laws of the United States." We see no reason to address this question in the Commonwealth Agreement. It is our belief that this definitional task is best left to judicial decision on a case-by-case basis. If the U.S. wishes to include this definition in the Commonwealth Agreement, we believe they should explain the purpose they believe such a provision serves.

Paragraph (1) of Section 401(a) makes two exceptions to the general formula for laws which meet the two tests of the general formula. The first exception provides that the federal banking laws and any law which provides financial assistance shall apply as such laws apply in Guam. As explained in the attached memorandum on the federal banking laws (Tab C-10), the federal banking laws apply more favorably in the territories than they do in the several States. To retain this favorable application for the Marianas, it is provided that the federal banking laws shall apply as they do in Guam rather than, as called for by the general formula, as they do in the several States. Laws which provide financial aid often contain provisions reserving for the use of the territories a certain percentage of the funds authorized to carry out the law's programs. Such provisions are favorable to the territories since they would otherwise receive a lower amount under the per capita distribution often established for the States. As a territory, Guam is a beneficiary of such provisions. To permit the Marianas similar beneficial treatment, it is provided that financial aid laws shall apply as they do in Guam.

The second exception deals with the minimum wage provisions of the Fair Labor Standards Act. For the reasons,

explained in the memorandum on the federal labor laws (Tab C-5) these provisions may be harmful to the Marianas. It is thus provided that they shall not apply to the Marianas.

Paragraph (2) of Section 401(a)

Subparagraph (i) provides that the four titles of the Social Security Act which provide for grants to "states" for aid to the aged, blind and disabled shall apply in the Marianas as those titles apply in Guam. As explained in the addendum to the memorandum at Tab C-6, these titles are no longer applicable in the several States (although they do still apply in Guam). Thus, under the general formula, these titles would not apply to the Marianas. It is thus specifically provided that these titles shall apply as they do in Guam.

Subparagraph (ii) concerns three laws which provide financial aid. These laws, however, are not effective in Guam and thus would not apply to the Marianas under the general formula. It is thus specifically provided that these laws shall apply to the Marianas as they do in the several States.

Subsection (b) of Section 401

This subsection is reserved for any provisions that may be inserted to provide that (1) the Marianas shall be permitted to pay a lower local contribution towards a

program that requires a certain local share payment as a condition for federal aid, (2) that the Marianas shall be exempt from any requirement that funds from federal sources may not be used for such contributions, or (3) that there shall be a gradual imposition of the taxes required to finance social security or unemployment compensation programs.*/

Subsection (c) of Section 401

The ultimate applicability of existing federal law will be determined pursuant to Section 402 of the present draft Commonwealth Agreement.**/ Subsection (c) provides that until such determination, the applicability or inapplicability of laws treated under Section 401 shall continue.

The U.S. draft employs the phrase "until such time as they may by law be made inapplicable." The U.S. draft is apparently referring to action by Congress on the recommendations of the proposed Joint Commission on the Application of Federal Laws. However, the U.S. draft is not sufficiently specific to make this clear. More importantly, the U.S. draft is not tailored to the mechanism we have set out for implementation of the Joint Commission's recommendations.

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*/ As discussed in the memorandum at Tab C-6 (p. 4 of Addendum on Social Security Act) Guam is not eligible for federal aid to state unemployment programs, and thus a specific provision would have to be made in Section 401 for the Marianas to be eligible for such aid. The Commission's economic consultant is prepared to address the relative costs and benefits of making the Marianas so eligible.

**/ That section deals with the proposed Joint Commission on the Application of Federal Laws.

Section 401. (a) Except insofar as the applicability of a law of the United States is determined by other sections of this Commonwealth Agreement, and except insofar as the authority of the United States to make laws applicable within the Commonwealth of the Mariana Islands is limited by other provisions of this Commonwealth Agreement,

(1) every law of the United States which has provisions making it effective within the Territory of Guam on the effective date of this section and which is of general application within the several States on the effective date of this section, shall be applicable within the Commonwealth of the Mariana Islands in the same manner and to the same extent as it is applicable within the several States; provided, however,

(i) that any such law which provides financial assistance or which is part of the federal banking laws shall apply in the same manner and to the same extent as it applies within the Territory of Guam, and

(ii) that the minimum wage provisions of the Fair Labor Standards Act shall not apply within the Commonwealth of the Mariana Islands; and

(2) the following laws shall apply within the Commonwealth of the Mariana Islands as follows:

(i) Titles I, X, XIV, and XVI of the Social Security Act shall apply within the Commonwealth of the Mariana Islands in the same manner and to the same extent as they apply within the Territory of Guam; and

(ii) Those provisions of the Public Health Services Act which do not come within the provisions of subsection (a)(1) of this section, Title III of the Consolidated Farmers Home Administration Act, and the Federal Crop Insurance Act shall apply within the Commonwealth of the Mariana Islands in the same manner and to the same extent as they apply within the several States.

(b) [Reserved for any provisions relating to lower local matching contributions, use of funds from federal sources for such contributions, or to gradual imposition of certain taxes, e.g., taxes to finance social security or to provide flexibility for the introduction of unemployment compensation.]

(c) The laws made applicable or inapplicable by this Section 401 shall continue to be applicable or inapplicable as the case may be until such time as their applicability or inapplicability shall be altered pursuant to the Commonwealth Agreement.

Section 403. Upon the effective date of this section and until such time as they may by law be made inapplicable (except as herein otherwise provided) the following laws will be applicable to the Northern Mariana Islands:

(a) The laws of the United States expressly made applicable to the Northern Mariana Islands.

(b) The existing laws of the United States applicable to the Trust Territory of the Pacific Islands;

(c) The laws of the United States applicable in the territory of Guam as well as in the several states in the same manner and to the same extent those laws are of general applicability;

(d) The laws of the Trust Territory of the Pacific Islands, of the Marianas District Legislature and local municipalities, and all other executive and district orders of a local nature now applicable to the Mariana Islands District, and not inconsistent with the laws of the United States set forth in subsection (a) to (c), will remain in force and effect until amended unless repealed by the Government of the Northern Mariana Islands.

The term "laws of the United States" includes statutes, joint resolutions, treaties and Executive Agreements, proclamations, Executive Orders, judicial decisions, and regulations issued by the several departments, agencies, and regulatory commissions.

TABLE OF CONTENTS TO TAB "C"

TITLE 7: AGRICULTURE

This memorandum examines major provisions of Title 7 (Agriculture) of the U.S. Code that may be pertinent to the Marianas. These provisions are (1) legislation authorizing federal loans for rural electrification and telephone service, (2) federal crop insurance, (3) federal loans to family farm operators and (4) the Food Stamp Program.

1. Rural Electrification and Telephone Service

Chapter 31 of Title 7 authorizes loans from the federal government for rural electrification and for the purpose of furnishing and improving telephone service in rural areas.

The chapter's provisions apply "in the several States and Territories of the United States." 7 U.S.C. § 902. Section 913 defines the term "Territory" as including "any insular possession of the United States." Therefore, Guam would be eligible for loans under this chapter.

2. Agricultural Credit

This chapter authorizes the Secretary of Agriculture to make and insure various real estate, operating, and emergency loans to farmers and ranchers. */

Loans under this chapter are authorized only to eligible farmers and ranchers (i.e., owners and operators of

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*/ Chapter 50 codifies Title III of the Consolidated Farmers Home Administration Act of 1961 and contains the major federal aid programs of that Act. The short title for Title III of the 1961 Act is the "Consolidated Farm and Rural Development Act."

family farms who are unable to obtain credit elsewhere at reasonable rates) in the United States, Puerto Rico and the Virgin Islands. 7 U.S.C. §§ 1922, 1941, 1961. Thus, small farmers in Guam are excluded from the benefits of this chapter. If such federal financing is desirable for the Marianas, the status agreement should specifically provide that farmers in the Marianas shall be eligible for Chapter 50 programs. It can be argued that the eligibility of farmers in Puerto Rico and the Virgin Islands for such programs is strong precedent for the inclusion of the Marianas.

3. Crop Insurance

Chapter 36 of Title 7, codifying the Federal Crop Insurance Act, authorizes the Federal Crop Insurance Corporation to provide insurance to farmers against loss of their crops due to a variety of "unavoidable" causes, including hurricanes and plant disease.

Chapter 36 contains no provisions indicating whether Guam is eligible for such insurance. The Joint Commission on the Applicability of Federal Laws to Guam found that the provisions of Chapter 36 did not apply to Guam and recommended that it not be extended to cover Guam.*/ If such insurance would be useful to the Marianas, there would have to be an exception to the Guam formula to make Chapter 36 applicable to the Marianas.

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*/ The Commission Staff reasoned that Congress did not intend to have the Crop Insurance Act apply outside areas of large-scale farming in the several States because the Act does not include any territory or possession and the program was initially authorized for only a limited number of counties. Resource Material Used in the Preparation of the Commission on the Application of Federal Laws to Guam, pp. 58-61 (1952).

4. Food Stamp Program

Chapter 51 of Title 7 authorizes a food stamp program under which, at the request of a "State agency," low income families "within the State" can purchase food at retail stores with coupons.

"The term 'State' means the fifty States and the District of Columbia, Guam, Puerto Rico, and the Virgin Islands . . . ." 7 U.S.C. § 2012(j). Regarding eligibility standards, however, Section 2014(b) provides that the uniform national standards shall not apply to Puerto Rico, Guam, or the Virgin Islands. The Secretary of Agriculture is authorized to establish special standards of eligibility which reflect the average per capita income and cost of obtaining a nutritionally adequate diet in Puerto Rico, Guam, and the Virgin Islands. Therefore, Guam is treated differently from the several states. The TTPI is not eligible to participate in the Food Stamp Program since it is not included in the definition of the term "State."

Under a formula that applies to the Marianas those laws applicable to Guam, the Marianas would be eligible for the Food Stamp Program. However, if the Marianas were to be treated like a state, it would presumably lose the special eligibility standards applicable in Guam. It is probably not reasonable to expect the Marianas to be granted the same eligibility standards as are prescribed for the several States. Standards set for Guam would likely reflect the cost of purchasing food in the Marianas and would thus be appropriate for the Marianas.

TITLE 15: COMMERCE AND TRADE

This memorandum discusses the major provisions of Title 15 (Commerce and Trade) of the United States Code that may be pertinent to the Marianas. These provisions are (1) the antitrust and trade competition laws, (2) securities legislation, (3) aid to small business provisions, (4) regulation of insurance, (5) regulation of flammable fabrics, (6) motor vehicle safety legislation, (7) fair packaging and labeling legislation, (8) legislation for the special packaging for the protection of children, (9) consumer credit provisions, and (10) regulation of interstate land sales.

1. Antitrust and Trade Competition Laws

These laws comprise the Sherman Act, the Clayton Act, and the Federal Trade Commission Act.

The Sherman Act, 15 U.S.C. § 1-7, prohibits contracts and combinations in restraint of trade and commerce. The Clayton Act, 15 U.S.C. § 12-27, makes illegal discriminations in price or in the granting of rebates, commissions or services in commerce. The Clayton Act also forbids the acquisition by a corporation of another corporation where the effect of such acquisition "may be to substantially lessen competition, or tend to create a monopoly." 15 U.S.C. § 18. The Federal Trade Commission Act, 15 U.S.C. § 41-58, makes unlawful the use of unfair methods of competition in commerce,

TITLE 29: LABOR AND STATUTES SETTING LABOR STANDARDS FOR FEDERAL CONTRACTORS

This memorandum examines the major provisions of the federal labor laws. These are (1) statutes governing the collective bargaining process and labor-management relations, (2) the Federal Labor Standards Act, which sets the federal minimum wage, (3) the Davis-Bacon Act and other similar Acts which set wage standards for government contracts, (4) the Occupational Safety and Health Act of 1970, and (5) the Wagner-Peyser Act.

1. Labor-Management Relations

Chapter 7 regulates labor-management relations in all enterprises "affecting" commerce. In general, the chapter guarantees to employees the right to form, join, or assist labor organizations, to bargain collectively, and to engage in other concerted activities for the purpose of collective bargaining. It also guarantees to employees the right to refrain from such activities unless the activity is part of an authorized collective-bargaining agreement.

The term "commerce" is defined as commerce "among the several states" or "within any territory." 27 U.S.C. § 152. The term "territory" is not further defined, but would clearly appear to include Guam. */

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*/ The National Labor Relations Board (NLRB), which administers the provisions of Chapter 7, has held that an employer on Guam was subject to NLRB jurisdiction. RCA Communications, Inc., 154 NLRB (No. 2) (1965); 1965 CCH NLRB ¶ 9594.

Although under the statutory definition of the term "commerce," the NLRB has jurisdiction over purely local as well as interstate commerce within the territories, the NLRB decided in 1955 that it would intervene in the territories only in those cases where interstate commerce was involved. Forestier, d.b.a. Cantera Providencia, 111 NLRB 848 (1955) (Puerto Rico). Thus, in practice, Guam is treated on the same basis as a state with respect to the provisions of Chapter 7.

There does not appear to be any conflict between the interests of the Marianas and the provisions of Chapter 7.

2. Fair Labor Standards

Chapter 8, which codifies the Fair Labor Standards Act (FLSA), provides for a federal minimum wage, maximum hours that can be worked without overtime pay, prohibitions on differences in wages based on sex, and prohibitions on certain labor by children. Under legislation signed into law on April 8, 1974, the federal minimum wage for employees covered by the FLSA before 1966 is set at $2.00 per hour for 1974, $2.10 for 1975, and $2.30 beginning January 1, 1976. Pub. L. No. 93-259, § 2. */

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*/ Persons employed in the fish catching business, including the first processing or packing of fish at sea, are exempt from the FLSA provisions with respect to minimum wage and overtime limits without premium pay. 29 U.S.C. § 213(5). For seafood canning and processing employees, the 1974 amendment to the FLSA provided for a phasing out of the exemption from the limits on hours in excess of 40 hours per week that could be worked without overtime pay. Such hours were reduced to 48 hours in the first year after the 1974 amendment, 44 hours in the second year, with the exemption repealed thereafter. Pub. L. No. 93-259 § 11.

The FLSA applies to employees and businesses (unless otherwise exempt under the FLSA) engaged in "interstate" commerce. The term "interstate commerce" is defined solely as "commerce among the several states" or foreign commerce. 29 U.S.C. § 203(b). The term "state" is defined to include "any territory or possession of the United States." 29 U.S.C. § 202(c). The FLSA thus applies to Guam and, by virtue of the limitation of the FLSA to solely "interstate commerce," applies to Guam in the same manner as it does to the fifty states.

The FLSA does not, however, apply to the TTPI. Under 29 U.S.C. § 213(f), the substantive provisions of the FLSA (minimum wage, maximum hours, equal pay between sexes, and child labor prohibitions) were declared inapplicable to employees working "within a foreign country" (i.e., on foreign military bases of the U.S.) or "within territory under the jurisdiction of the United States" other than certain such territories specifically named.*/ The rationale for the exemption was that application of the U.S. minimum wage would seriously disrupt the local economy in the countries where U.S. bases were located

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*/ Those territories named in 29 U.S.C. § 213(f) and thus not exempt from the FLSA were "a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands . . . [certain outer continental shelf lands], American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island and the Canal Zone.

or in U.S. territories other than those named in Section 213(f). */

The concern that the U.S. minimum wage would disrupt local conditions also resulted in special provision for setting a minimum wage in the Virgin Islands, Puerto Rico and American Samoa, lower than that in the U.S. Based on the recommendations of special industry committees, the Secretary of Labor is directed to set highest minimum wage in these territories that will not disrupt local economic and competitive conditions or adversely affect the amount of local employment but that, at the same time, will prevent local businesses from securing a competitive advantage over U.S. businesses. 20 U.S.C. §§ 205, 206(3).

Prior to the 1974 amendment to the FLSA, the same percentage increases which were applied to the U.S. minimum

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*/ E.g., Sen. Rep. No. 987, 85th Cong., 1st Sess. (1957), reprinted in 1957 U.S. Code Cong. and Admin. News., 1756, 1757:

> "To pay the minimum wage specified in the act would often give local laborers wages several times higher than they had earned before or that they could expect to earn after completion of the defense contracts. Moreover, the payment of the minimum specified in the act may disturb the local economy by drawing workers away from vital tasks and by conceivably making recruitment of workers to these desirable jobs on the overseas bases a subject of local political interest. Payment of the minimum dollar an hour wage would create a privileged group within the foreign country and, in most of the countries where the United States is now engaged in the construction of military bases, the foreign governments have often provided, in the defense base agreements, that local standards of employment shall govern."

wage were required for the Virgin Islands and Puerto Rico. The theory behind this provision was that maintaining the same relative wage scales would prevent those territories from gaining a competitive advantage over areas where the U.S. minimum wage applied. The 1974 amendment, however, provides for specified yearly increases in the minimum wage for Puerto Rico and the Virgin Islands until parity with the U.S. minimum wage is achieved. Id. § 5. */

Since the FLSA does not now apply to the TTPI (and thus not to the Marianas), it is likely that to apply it under the proposed status agreement would cause serious disruptions in the Marianas economy. Two alternatives to making the FLSA applicable to the Marianas can be advanced. First, the present non-applicability of the FLSA could be continued by specifically providing in the status agreement that the FLSA shall not apply to the Marianas. It can be argued that Congress' rationale for originally exempting the Marianas from the FLSA is still valid. The change in political status contemplated in the proposed status agreement does not alter the economic circumstances that caused Congress to exempt the Marianas from the FLSA. Moreover, any such drastic shift in the balance of the Marianas' economy as would be produced by the wholesale applicability of the FLSA

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*/ However, the 1974 amendment to the FLSA establishes the U.S. minimum wage, as of the effective date of the 1974 legislation, for employees in the hotel and restaurant business in Puerto Rico and the Virgin Islands.

should at least await the study and consideration of the proposed Joint Commission on the applicability of federal laws.

A second alternative, or at least a fall-back position for the negotiations, would be to follow the procedures applicable to Puerto Rico and the Virgin Islands, prior to the 1974 FLSA amendment (and still applicable to American Samoa). This would, as outlined above, call for the establishment of industry committees which would recommend to the Secretary of Labor the minimum wage level for various industries in accordance with the standard set out in 29 U.S.C. § 208(c), i.e., "the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry [in the territory] a competitive advantage over any industry in the United States . . . ."

There are, however, several drawbacks to this second alternative. First, the danger of giving a competitive advantage to the Marianas vis-a-vis other parts of the United States where the FLSA applies does not appear to be substantial. The Marianas have never been subject to the FLSA, and there is no reason to think this danger will suddenly arise upon the creation of a new political status. Moreover, the Marianas are so far removed from the United States mainland, unlike Puerto Rico and the Virgin Islands, that their attraction as a haven for industry competing with mainland industry seems

negligible. And the burden on the Marianas of establishing and staffing such industry committees should not be lightly disregarded.

3. Labor Standards for Federal Contractors

There are a number of federal laws that require government contractors to pay the "prevailing wage" (as determined by the Secretary of Labor for various localities) to employees engaged in work under contracts with the Federal Government. The Davis-Bacon Act, 40 U.S.C. § 276(a), et seq. requires that construction contracts for public buildings or public works to which the United States is a party must stipulate that all laborers and mechanics directly employed at the work site will be paid not less than the "prevailing wage."*/ The Walsh-Healey Act sets a similar prevailing wage standard for supply contracts with the Federal Government. 41 U.S.C. § 35, et seq. The Service Contract Act, 41 U.S.C. § 351, et seq. requires that wages no lower than the federal minimum wage as established in the Federal Labor Standards Act (i.e., not the local prevailing wage) be paid to employees engaged in work under service contracts with the Federal Government.**/

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*/ Such "prevailing wage" is defined as that based upon "wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city . . . of the State in which the work is to be performed." 40 U.S.C. § 276(a).

**/ Examples of contracts to provide services, as set out in the regulations, include cafeteria and food service, janitorial services, guard and watchman service, laundry services, trash removal, etc. 29 C.F.R. § 4.130.

In addition to these three Acts, other legislation, e.g., the Federal Airport Act, Federal Housing Acts, provides for minimum wage requirements in government contracts. Moreover, the requirements of the Davis-Bacon Act are often incorporated by reference in other federal statutes.

By its own terms, the Davis-Bacon Act does not apply to Guam or any other territory. Its coverage is limited to construction projects "within the geographical limits of the States of the Union and the District of Columbia." 40 U.S.C. § 276(a). The Walsh-Healey Act contains no such limitation; under the words of the statute, it would appear to apply to contracts made anywhere within the jurisdiction of the United States and to which the Federal Government was a party. See 41 U.S.C. § 35. By administrative determination, however, the minimum wage determinations of the Walsh-Healey Act are not enforced in Puerto Rico and the Virgin Islands. Wages and Hours Opinion Letter No. 275 (July 13, 1964), cited in CCH Labor Law Rep. § 26,103.03. Rather, the rates set by the industry committees established in the FLSA are used for supply contracts in Puerto Rico and the Virgin Islands. Liebowitz, "The Applicability of Federal Law to the Commonwealth of Puerto Rico," 56 Geo. L. J. 219, 252 (1967). The Service Contract Act is, however, specifically made applicable to Guam since Guam is named in the definition of the term "United States."*/

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*/ Also included in the Service Contract Act's definition of "State" are Puerto Rico, the Virgin Islands, American Samoa, Wake Island, Eniwetok and Rwajalein Atolls and Johnston Island.

41 U.S.C. § 357(d). The TTPI is excluded from that definition since "any other territory under the jurisdiction of the United States" apart from those specifically named are not included in the term "United States." Id.

It is most likely beneficial to have government contractors in the Marianas pay a minimum or prevailing wage. The cost of such wage payments will be borne by the Federal Government and not by local Marianas' employers. The result will be to infuse these wage payments into the local economy, without any corresponding burden.

4. Job Safety and Health

Chapter 15 codifies the Occupational Safety and Health Act of 1970. That Act authorizes the Secretary of Labor to set mandatory occupational safety and health standards applicable to "businesses affecting interstate commerce." 29 U.S.C. § 651(3). Among other things, the Act requires employers to keep records and make periodic reports, as prescribed in regulations, concerning work-related injuries, illnesses and deaths.

The Act names Guam and the TTPI in specifying those areas to which the Act applies. 29 U.S.C. § 653. Guam is treated differently than the several States, as the term "commerce" is defined as commerce among the several States, i.e., only interstate commerce, and also as commerce "within a possession of the United States (other than the Trust

Territory of the Pacific Islands)." 29 U.S.C. § 652(3). Thus, the TTPI is treated as a State since intra-TTPI commerce is excluded from the definition of commerce.

5. Federal Employment Service

Chapter 4B of Title 29 codifies the Wagner-Peyser Act. That Act provides federal financial and technical assistance to States to establish a state employment office designed to help people find jobs.

Guam is included in the definition of the term "State" and is thus eligible for assistance under Chapter 4B.

the use of unfair and deceptive acts and practices in commerce, and the dissemination of false advertisements.

These three statutes apply to Guam differently than they do to the States. With respect to Guam, the three statutes govern intra-territorial activity. With respect to the states, only interstate activity is within the scope of these statutes. Thus, the Sherman Act outlaws restraints of trade or commerce "in any Territory of the United States," 15 U.S.C. § 3, but for the states the Sherman Act only outlaws restraints of trade or commerce "among the several states." 15 U.S.C. § 1 (emphasis supplied). Similarly, the Clayton Act regulates intra-territorial activity since "commerce" is defined in that Act as trade or commerce "within . . . any Territory, or any insular possession . . . of the United States." 15 U.S.C. § 12 (emphasis supplied). Intra-state activity, on the other hand, is not covered by the Clayton Act, since with respect to the states "commerce" is more narrowly defined to mean trade or commerce "among the several States." Id. The Federal Trade Commission Act defines commerce in terms identical to the Clayton Act, i.e., "among the several states" and "in any territory." 15 U.S.C. § 44 (emphasis supplied).

Under the Guam formula, the antitrust and trade competition laws discussed above would be applied to the

Marianas as they are applied to the several states. Consequently, activity within the Marianas not affecting interstate or inter-territorial commerce would not come within the structures of these laws under the Guam formula.

2. Securities Legislation

Federal law relating to the issuance and regulation of various securities is contained in Chapters 2A through 2D of Title 15. These chapters reach transactions which involve the use of the mails or facilities of interstate commerce, and they contemplate state regulation of related intrastate activities. Under these chapters, Guam is treated in a manner no different from the several states. For example, the term "interstate commerce" in the Securities Act of 1933, which provides for the registration with the Securities and Exchange Commission of new issues of securities, is defined as "trade or commerce . . . among the several states or between . . . any Territory of the United States and any state or other Territory . . ." 15 U.S.C. 77b(7). Guam is included within the definition of a Territory in the Securities Act of 1933, since that Act defines Territory to include "the insular possessions of the United States." 15 U.S.C. 77(b)(6).

In general, Chapters 2A through 2D of Title 15 provide for (1) registration with the Securities and Exchange

Commission and regulation of disclosures in connection with the distribution of new issues of securities; (2) the requirement that bond issues of substantial size be subject to certain prescribed requirements as to the indenture provisions and qualifications of the indenture trustee; (3) the registration and regulation of securities exchanges and of persons who act as brokers and dealers in nonexchange securities transactions; (4) regulation of holding companies with subsidiaries engaged in the gas and electric utility business; (5) regulation of investment companies; and (6) registration of those who act as investment advisers.

Apart from enforcement activities of the Securities and Exchange Commission, the statutes afford civil remedies for fraud and related injuries to investors, which are in addition to remedies at common law or under any local, State or Territorial statute.

As stated above, these chapters apply uniformly to Guam and the States. There does not appear any need for the Marianas to request an exception to the application of these chapters.

3. Aid to Small Business

Chapters 14A and 14B of Title 15, 15 U.S.C. §§ 631-639, provide for a variety of lending and assistance programs to small business. These programs are administered by the Small Business Administration.

The definition of the term "United States" in Chapter 14A and the definition of the term "State" in Chapter 14B include the "territories and possessions of the United States." 15 U.S.C. §§ 633, 662(4). Small business concerns in Guam, therefore, are eligible for the programs of assistance in Chapters 14A and 14B on the same basis as are such concerns in the several States.*/ Consequently, under the Guam formula, small business concerns in the Marianas would be eligible for this assistance in the same manner as small businesses in the States.**/

4. Regulation of Insurance

Chapter 20 of Title 15, 15 U.S.C. §§ 1011-1015, reflects a congressionally-declared policy that the continued regulation and taxation by the states of the insurance business is in the public interest. This Chapter provides that no Act of Congress shall be construed to impair or invalidate state laws taxing or regulating the insurance business unless such Act specifically relates to the insurance business. 15 U.S.C. § 1012.

Chapter 20 specifically includes Guam in the definition of the term "State." 15 U.S.C. § 1015.

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*/ The Small Business Administration has a field office in Agana, Guam. Small Business Administration, SBA Business Loans (January 1974).

**/ The Trust Territory of the Pacific Islands is specifically included in the definition of the term "United States" in Chapter 14A, 15 U.S.C. § 633. However, the term "State" in Chapter 14 B does not specifically name the Trust Territory, but rather defines "State" to include "the territories and possessions of the United States."

5. Regulation of Flammable Fabrics

Chapter 25 of Title 15 prohibits the manufacture for sale in "commerce," or the transport, sale or offering for sale in "commerce" of any fabric or product which fails to meet the standards for flammability set by the Secretary of Commerce. 15 U.S.C. § 1192. The Federal Trade Commission is charged with enforcement of the provisions of Chapter 25.

The term "commerce" is defined to include commerce "in any territory of the United States," or "between any such territory and another." 15 U.S.C. § 1191(b). The term "territory" is defined as including "the insular possessions of the United States and also any territory of the United States." 15 U.S.C. § 1191(c). While Chapter 20 thus regulates intra-territorial commerce, with respect to the states it reaches only interstate commerce, since commerce is defined with respect to the states as "commerce among the several states or with foreign nations." 15 U.S.C. § 1191(b).

Consequently, under the Guam formula, the Marianas would be treated as a state for purposes of Chapter 20, and intra-territorial activity would not be covered under that Chapter's provisions.

6. Motor Vehicle Safety Legislation

Chapter 38 of Title 15 empowers the Secretary of Transportation to set safety standards for motor vehicles. The Chapter prohibits the offer for sale, or sale in inter-

state commerce of any motor vehicle or item of motor vehicle equipment that does not conform to the applicable standards. 15 U.S.C. § 1397(a)(1). However, this prohibition does not reach used vehicles or equipment, i.e., transactions "after the first purchase . . . in good faith for purposes other than resale." 15 U.S.C. § 1397(b)(1).

While Chapter 38 is applicable to Guam by virtue of Guam's inclusion in the definition of the term "state," intra-Guam transactions are not covered by the Chapter. Interstate commerce is defined solely as "commerce between any place or a State and any place in another State, or between places in the same State through another State." 15 U.S.C. § 1391(8)(9).

Since neither used vehicle and equipment nor intra-territorial activities transactions are covered by the chapter, it does not appear that the applicability of Chapter 38 presents any special problems for the Marianas.

7. Fair Packaging and Labeling

Chapter 39 prohibits the distribution in "commerce" of any consumer commodity whose package or label does not conform to federal packaging and labeling standards. 15 U.S.C. § 1452.

The term "commerce" is defined to include interstate and inter-territorial commerce, and "commerce within any territory or possession of the United States not organized with a legislative body." 15 U.S.C. § 1459(e). Since Guam has a legislative body, intra-Guam activity is not covered by Chapter 39's provisions. Moreover, since Guam is treated in

the same manner as a state under Chapter 39, i.e., only inter-territorial activity is reached, Chapter 39 will apply to the Marianas under the Guam formula in the same manner as it applies to the states.

8. Special Packaging for Protection of Children

Chapter 39A empowers the Secretary of Health, Education and Welfare to set standards for the special packaging of any household substance if he finds that special packaging is required to protect children from serious injury resulting from handling or ingesting such substance.

Chapter 39A contains no definitions regarding the scope of coverage with respect to states and territories. The term "household substance" is defined to mean "any substance which is customarily produced or distributed for sale or consumption or use, or customarily stored, by individuals in or about the household" and which is a certain type of fuel, poison, drug, etc. as defined in the Chapter.

The Chapter does provide for federal preemption. Thus, "no State or political subdivision thereof" shall establish standards different from any federal standards promulgated under Chapter 39A.

It appears from the language of the Chapter that the Chapter's provisions apply to both inter- and intra-state activity. There is no reference to coverage of the territories in the Chapter. Further research is required to determine if the Chapter is applicable to Guam.

9. Consumer Credit Protection

Chapter 41 contains three subchapters dealing with, respectively, (1) disclosure to consumers of the cost of credit, (2) restrictions on garnishment, and (3) preparation and use of credit reports. Only Subchapter 1 is discussed here as the provisions of the other subchapters (which would apply in the same manner as Subchapter 1) do not appear to raise significant problems for the Marianas.

Subchapter 1 empowers the Federal Reserve Board to prescribe regulations to carry out the purposes of the subchapter, which are defined as "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." 15 U.S.C. §§ 1601, 1604. Administrative enforcement is lodged with a variety of federal agencies that regulate banking activities and overall enforcement responsibility is placed in the Federal Trade Commission. 15 U.S.C. § 1607.

Subchapter 1 applies to all extensions of credit and credit sales. No distinction is made between inter- or intrastate transactions, presumably because the credit system, as dependent on the federal banking system, is a subject for federal regulation. The Subchapter expressly provides that it does not affect the laws of any state relating to disclosure of information in credit transactions, except to the extent such state laws are inconsistent with the Subchapter. 15 U.S.C. § 1610. The term "State" includes "any territory or possession of the United States." 15 U.S.C. § 1602(p).

The provisions of Subchapter 1 of Chapter 41 would apply to credit transactions in the Marianas in the same manner as is applicable to transactions in the states. It does not appear that a special exception or treatment for the Marianas is necessary.

10. Interstate Land Sales

Chapter 42 makes it unlawful for any land developer to use the mails or interstate instruments of commerce to sell or lease any lot in a subdivision, unless a registration statement has been filed with the Secretary of Housing and Urban Development, and unless a property report disclosing prescribed information is furnished to a purchaser before the signing of the contract. It is also made unlawful to use any scheme to defraud in connection with the sale or lease of subdivision lots or to misrepresent any information in the registration statement or property report. 15 U.S.C. § 1703. Chapter 42 defines "subdivision" as land divided into fifty or more lots for sale or lease as part of a common promotional plan.

Chapter 42 applies to Guam, and does so in the same manner as it applies to the states. "Interstate commerce" is defined solely as "trade or commerce among the several states." 15 U.S.C. § 1701. The "territories and possessions of the United States" are included in the definition of the term "State." 15 U.S.C. § 1701(8).

It does not appear that a special exception is desirable to the application of Chapter 42 to the Marianas.

TITLE 20: EDUCATION

This memorandum describes the major provisions of Title 20 (Education) of the United States Code. The legislation in Title 20 consists principally of federal financial assistance to State and local school districts. As discussed below, Guam and the other territories (Puerto Rico, American Samoa, and the Virgin Islands, among others) are eligible for these grant programs by virtue of their specific inclusion by name in the definition of the term "State." However, funds are often apportioned to Guam and the territories under formulas different from those under which funds are apportioned to the States.

School Construction in Areas Affected by Federal Activities

Chapter 19 of Title 20 provides for federal payments to local school districts for construction of schools where there has been substantial increases in school population as a result of new or increased federal activities. Assistance is also available where a local school district's financing abilities have been impaired as a result of the immunity from taxation of federal property.

This chapter applies to Guam as Guam is specifically named in the definition of the term "State." 20 U.S.C. § 645(13). The chapter does not apply to the TTPI as the definition of "State" includes no reference to the TTPI. Under the chapter, there is no difference in treatment between Guam and the several States and other territories.

National Defense Education Program

Chapter 17 provides for loans to students in colleges and universities (NDEA loans), and grants to States and local educational agencies for strengthening instruction in academic subjects.

Chapter 17 expressly applies to Guam with respect to NDEA loans to students and grants to local educational agencies. However, Guam is excluded from the definition of a State for purposes of the grants to States, which are limited to the fifty States and the District of Columbia. 20 U.S.C. § 403(a). The TTPI is eligible for the above-mentioned programs on the same basis as is Guam.

Grants for Educational Materials, Facilities and Services, and Strengthening of Educational Agencies

Chapter 24 provides for a variety of federal grant programs to States for educational purposes.

Guam is eligible for all grant programs under Chapter 24 as the term "State" includes Guam by name. The TTPI is also included in the definition of a "State." 20 U.S.C. § 881(j).

For each grant program in Chapter 24 the Commissioner of Education is given wide discretion in reserving funds for use by Puerto Rico, Guam, American Samoa, the Virgin Islands, and the TTPI. Grant money is apportioned among the States under a formula separate from that used for the above-mentioned territories. For example, of the first

95% of the money appropriated for grants to strengthen State and local educational agencies, the Commissioner of Education is directed to reserve such amount "as he may determine" for these territories but not in excess of 2% of such 95%. The Commissioner is further granted the discretion to apportion the amount so reserved among the territories "according to their respective needs." The remainder of the funds appropriated are then distributed among the States according to a fixed formula. 20 U.S.C. § 862.

Higher Education Resources and Student Assistance

Chapter 28 establishes a wide variety of grant programs to assist students and educational programs at the college level and beyond.

Chapter 28 is applicable to Guam as Guam is specifically named in the definition of the term "State." The TTPI is not included in the definition of a State. 20 U.S.C. § 1141(b).

There are separate formulas for apportioning grant money among the fifty States on the one hand and the territories and possessions on the other. These formulas vary from program to program, but in general it can be said that the Commissioner of Education is given discretion to set aside a certain percentage of the funds appropriated for a particular program to be alloted among Guam and other territories "according to their respective needs." E.g.,

20 U.S.C. § 1109 (grants to States to support the efforts of local communities to hire and train teacher aides.)

Basic Education for Adults

Chapter 30 provides for federal grants to States to establish adult basic public education programs so as to enable adults to complete secondary school and raise their facility in the English language so as to enable them to get and retain employment.

Guam and the TTPI are eligible for Chapter 30 grants as they are named in the definition of a "State." 22 U.S.C. § 1202(f). Set-aside formulas and administrative discretion for allotment of funds to Guam and other territories is provided for in a manner similar to the education grant programs in Chapter 28, discussed supra. 20 U.S.C. § 1204.

Vocational Education

Chapter 32 provides for a great number of grant programs to States to assist vocational education programs and to provide part-time employment for youths who need such employment to continue their vocational training.

Chapter 32 programs are applicable to Guam and the TTPI as they are specifically named in the definition of the term "State." 20 U.S.C. § 1248(7).

An "allotment ratio" is prescribed for determining the amount of grant money to be allocated to the States. There is a separate allotment ratio for Guam, the TTPI and other territories which, unlike the ratio for the fifty States, substitutes a uniform factor for all such territories in place of a factor based on per capita income.

Emergency School Aid

Chapter 36 provides financial assistance to local school districts to meet special needs related to the elimination of segregation and to reduce "the educational disadvantages of minority group isolation." 20 U.S.C. § 1601.

Guam is eligible in a limited way for grants under Chapter 36. Guam, the TTPI and other territories are "deemed to be States" for purposes of Section 1607(a) of Chapter 36. Section 1607(a) authorizes grants to States, local school districts or other public organizations for conducting "special programs and projects carrying out activities otherwise authorized" by Chapter 36, and which the Assistant Secretary of Health, Education and Welfare determines "will make substantial progress toward achieving the purposes" of the chapter. Since the definition of a "minority group" includes persons from environments in which a dominant language is other than English and who do not have an equal educational opportunity as a result of language barriers and cultural differences, it appears that the Marianas would be eligible for grants by virtue of their inclusion in Section 1607(a).

TITLE 21: FOOD AND DRUGS

This memorandum examines three major provisions of Title 21 (Food and Drugs) of the U.S. Code that may be pertinent to the Marianas. These provisions are (1) the Federal Food, Drug and Cosmetic Act, (2) the Poultry Products Inspection Act, and (3) the Federal Meat Inspection Act.

1. Federal Food, Drug, and Cosmetic Act

Chapter 9 of Title 21, 21 U.S.C. §§ 301-392, codifies the Federal Food, Drug, and Cosmetic Act. That Act prohibits the introduction of any food, drug, device, or cosmetic that is adulterated or misbranded into interstate commerce. The authority to promulgate regulations to enforce the Act and to inspect and test regulated items is vested with the Secretary of Health, Education, and Welfare.

Under the Act, Guam is treated in a manner identical with that accorded the several states. Interstate commerce is defined as "(1) commerce between any State or Territory and any place outside thereof, and (2) commerce within the District of Columbia or within any other territory not organized with a legislative body." 21 U.S.C. § 321(b). Because Guam does possess a legislative body, it is accorded the same treatment as the several states. The term "State" is defined as "any State or Territory of the United States." 21 U.S.C. § 321(a)(1).

Thus, as the Act applies to Guam and to the States, only interstate commerce is regulated. Since the Act provides basic health protection, there does not appear to be any

conflict between the provisions of the Act and the interests of the Marianas.

2. Poultry and Poultry Products Inspection

Chapter 10 of Title 21, which codifies the Poultry Products Inspection Act, prohibits the sale or transport in "commerce" of adulterated or misbranded poultry products.

The term "commerce" is defined as interstate or foreign commerce with respect to the several states and territories, and intrastate commerce with respect to "any territory not organized with a legislative body." 21 U.S.C. § 453(a). The Act is expressly applicable to Guam as Guam is named in the definition of the term "territory." 21 U.S.C. § 453(c). Since Guam has a legislative body, only interstate commerce is regulated in Guam, and thus Guam is treated as a state.

There appears to be no conflict between the interests of the Marianas and the provisions of the Act. Under the Guam formula, only interstate commerce involving the Marianas would be regulated.

3. Meat Inspection

Chapter 12, 21 U.S.C. §§ 601-91, establishes a federal inspection process for meat and meat food products and prohibits the sale or transport in "commerce" of unwholesome, adulterated, or misbranded meat items. Chapter 12 is a codification of the Wholesome Meat Act and Federal Meat Inspection

Act. The federal inspection program is directed at the slaughter and carcass preparation phases; retail stores and restaurants are exempted from the Act. 21 U.S.C. § 661(c)(2). Subchapter III of this chapter authorizes the Secretary of Agriculture to cooperate with States having equivalent inspection programs by furnishing advisory, technical, and laboratory training and financial assistance. States not enacting equivalent programs will be subject to federal inspection for "operations and transactions wholly within such State . . . ." 21 U.S.C. § 661(c)(1).

Intrastate commerce is regulated only with respect to territories organized without a legislative body. 21 U.S.C. § 601(h). Interstate commerce is regulated among the several States and territories, and Guam is expressly named in the definition of the term "territory." There appears to be no conflict between the interests of the Marianas and the provisions of Chapter 12. Only interstate commerce involving the Marianas would be regulated.

TITLE 42: PUBLIC HEALTH AND WELFARE

This memorandum examines the major provisions of Title 42 (Public Health and Welfare) of the U.S. Code.*/ Chapter 6A of Title 42, which codifies the Public Health Services Act and which authorizes a large number of federal aid programs in the health field is discussed in detail. Other provisions of Title 42 are set out in tabular form, indicating whether such provisions apply to Guam and the TTPI. As indicated in these tables, Guam is eligible for these Title 42 programs. However, with respect to the Public Health Services Act, Guam is not included in the Act's overall definition of the term "State" and thus is ineligible for some of the Act's programs.

1. Public Health Services

Chapter 6A is a codification of the Public Health Services Act, as amended, 42 U.S.C. § 201 et seq. Chapter 6A contains the statutory authorization for a very large number of federal grant and loan programs in the health and medical area; e.g., construction of hospitals, training and education of medical personnel and establishment of Health Maintenance Organizations.

Guam is not included in the Act's definition of a "state" (although Puerto Rico and the Virgin Islands are), 42 U.S.C. § 201(f), nor is Guam specifically named in the

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*/ Chapter 7 of Title 42, which deals with Social Security, Medicare and grants to States for public assistance programs, is discussed in an addendum to this memorandum.

definition of the term "possession." The Act provides that "possession includes, among other possessions, Puerto Rico and the Virgin Islands." 42 U.S.C. § 201(g). Thus, Puerto Rico and the Virgin Islands are specifically named in both the definition of a state and a territory, while Guam is not.

However, a number of subchapters and individual provisions of Chapter 6A do include Guam by name in their definitions of the term "State," e.g., subchapter IV, which provides grants and loans for the construction and modernization of hospitals and other medical facilities. 42 U.S.C. § 291(o). */ And since a number of Chapter 6A programs are directed towards the aid of individuals or institutions, without reference to geographic limitations, Guamanian individuals and institutions would presumably be eligible for such programs. **/ Nevertheless, the fact that Guam is not

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*/ In addition to Subchapter IV, Guam is named as an eligible recipient for grants to establish and maintain public health services, 42 U.S.C. § 246(d)(5); communicable disease control grants, 42 U.S.C. § 247(b)(2); grants for nurse training under Subchapter VI, 42 U.S.C. § 298(b); grants for regional medical programs under Subchapter VII, 42 U.S.C. § 299(b); and grants for voluntary family planning under Subchapter VIII, 42 U.S.C. § 300(a).

**/ For example, Subchapter XI of Chapter 6A, which codifies the Health Maintenance Organization Act of 1973, provides for federal grants, contracts and loan guarantees to "public or nonprofit private entities" and to "public or nonprofit private health maintenance organizations." There is no provision in Subchapter XI requiring such entities to be in a "State." We are informed by Rep. Won Pat's office that Guam is preparing to establish a Health Maintenance Organization under the Act. Under the proposed general formula, the Marianas would thus be eligible for aid to a Health Maintenance Organization because Guam is eligible.

included in the definition of the term "State" for purposes of the entire Chapter does render Guam ineligible for several federal programs. For example, under Section 246(a) and (b) of Title 42, there are authorized grants and services to "States" for comprehensive health planning. Since there is no special definition of the term "State" in Section 246(a) the general definition for the entire chapter in Section 201 (f) controls, and Guam is thus ineligible for such grants. The same is true of Section 215, which authorizes the Surgeon General to detail Public Health Service personnel "for the purpose of assisting [a] State or a political subdivision thereof" in health work.

Rep. Won Pat of Guam has prepared a bill to include Guam in the definition of the term "State" in Section 201(f) of Title 42. His office believes that this bill will be enacted within the next year or two as they believe the bill will meet no opposition in committee. Since Puerto Rico and the Virgin Islands are included in the state definition, there is sound precedent for including Guam as well.

In view of the importance of the health and medical grants provided under Chapter 6A, the status agreement should perhaps provide that the Marianas shall be included in the definition of a State in 42 U.S.C. § 201(f). The precedent set by the inclusion of Puerto Rico and the Virgin Islands in that definition can be used as argument for such inclusion. Even though Guam is presently eligible for many of the programs

under Chapter 6A, as discussed above, Rep. Won Pat's staff believes that it is desirable that Guam be made eligible for all programs under the Public Health Services Act. If the Virgin Islands is treated as a State, there seems to be no good reason for Guam or the Marianas not to be treated on the same basis.

2. Other Major Provisions of Title 42

Listed below are the other major chapters of Title 42 which provide federal financial aid in the health and welfare area. All such aid would be desirable for the Marianas. Guam is eligible for the assistance authorized in the case of each chapter examined. The list is divided into two parts. The first part lists those chapters in which Guam's eligibility results from Guam being specifically named in the definition of a State or in other eligibility provisions. The second part lists these chapters which do not specifically name Guam, but define the term "State" to include "the territories and possessions of the United States," thus rendering Guam eligible for the assistance program. The list also indicates whether the TTPI is included in the State definition section.

Although no attempt has been made to describe the specific type of assistance provided under these chapters, the chapter titles set out in the list below give a clear indication of the nature of the assistance provided.

Most of the chapter contain set-aside provisions for Guam, the TTPI, and other territories; a few chapters

make no such distinction in the apportionment of funds between the States and Territories since funds under such chapters are made available to private or public institutions, such as medical schools, colleges, or individuals.

1. Title 42 Chapters which specifically name Guam as an eligible recipient

Chapter No. and Title	Citation to Section making Chapter applicable to Guam	Applicability to TTPI
13 School Lunch Programs	42 U.S.C. § 1759(b)	Not applicable
13A Child Nutrition	42 U.S.C. § 1773 (b)	Not applicable
30 Manpower Development and Training Program	42 U.S.C. § 2618	Applicable
34 Economic Opportunity Program	42 U.S.C. § 2949	Applicable with respect to certain sub-chapters only
35 Programs for Older Americans	42 U.S.C. § 3002 (3)	Applicable
38 Public Works & Economic Development	42 U.S.C. § 3216	Not applicable
47 Juvenile Delinquency Prevention & Control	42 U.S.C. § 3890	Applicable
58 Disaster Relief	42 U.S.C. 4402 (2)	Applicable
60 Comprehensive Alcoholism & Alcohol Abuse Prevention, Treatment & Rehabilitation Program	42 U.S.C. 4571	Not applicable

2. Title 42 Chapters In Which Guam Is Not Specifically Named But Which Are Applicable To the "Territories and Possessions" In General

Chapter No. and Title	Citation to Section Applying Chapter to "Territories and Possessions"	Applicability to TTPI
8 - Low Rent Housing	42 U.S.C. § 1401 (12)	TTPI specifically named
8A - Slum Clearance, Urban Renewal, Farm Housing	42 U.S.C. § 1460 (h)	TTPI specifically named
8B - Public Works Or Facilities	42 U.S.C. 1496	TTPI specifically named
11 - Compensation For Disability Or Death To Persons Employed At Military Bases Outside The U.S.	42 U.S.C. 1651	No special reference to TTPI
12 - Compensation For Injury, Death, Or Detention Of Employees Of Contractors With The U.S. Outside the U.S.	42 U.S.C. § 1701	No special reference to TTPI
37 - Community Facilities (Aid For Basic Sewer And Water Facilities)	42 U.S.C. § 3106	No special reference to TTPI
41 - Demonstration Cities And Metropolitan Development	42 U.S.C. § 3338	No special reference to TTPI
46 - Law Enforcement Assistance	42 U.S.C. 3781 (c)	No special reference to TTPI
50 - National Flood Insurance	42 U.S.C. § 4121 (2)	TTPI specifically named
61 - Uniform Relocation Assistance And Real Property Acquisition Policies For Federal And Federally Assisted Programs	42 U.S.C. § 4601	TTPI specifically named

ADDENDUM

TITLE 42: SOCIAL SECURITY ACT

This memorandum discusses the applicability to Guam and the TTPI of the Social Security Act, codified in Chapter 7 of Title 42, 42 U.S.C. § 301, et seq. */

For convenience, this memorandum is divided into three sections. Section I discusses the provisions of the Act dealing with (a) Old Age, Survivors, and Disability Insurance (Title 2) and (b) Health Insurance for the Aged, i.e., "Medicare" (Title 18). Section II discusses the public assistance provisions of the Act. Section III discusses miscellaneous provisions of the Act.

I. Social Security and Medicare

Title 2 of the Act provides for federal insurance benefits payments, financed out of payroll taxes, to the elderly, to survivors and to the disabled. Title 18 provides for federal health insurance for the aged ("Medicare").

Guam is expressly named in the definition of the term "State" in both Title 2 and Title 18. 42 U.S.C. § 410(h); 42 U.S.C. § 1395x. Consequently, the programs in Titles 2 and 18 apply to Guam. These two Titles do not, however, apply to the TTPI.

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*/ Since the substantive provisions of the Social Security Act are treated in detail in separate economic studies, no attempt will be made in this memorandum to describe the nature of the substantive provisions of the Act.

II. Public Assistance

The public assistance titles of the Social Security Act can be listed as follows:

Title 1	Federal Grants for Old Age Assistance
Title 4	Federal Grants for Aid and Services to Needy Families with Children ("AFDC") and Child Welfare Services
Title 10	Federal Grants for Aid to the Blind
Title 14	Federal Grants for Aid to the Permanently and Totally Disabled
Title 16	Federal Grants for Aid to the Aged, Blind or Disabled
Title 19	Federal Grants for Medical Assistance Programs ("Medicaid")

Effective January 1, 1974, a new, wholly federal program of "Supplemental Security Income" ("SSI") replaced the federal-state programs of aid to the aged, blind, and disabled, except in Guam, Puerto Rico and the Virgin Islands. By amendments to the Social Security Act,*/ Titles 1, 10, 14 and 16 of the Act were repealed with respect to the fifty states; however, it was specifically provided that these titles shall continue to apply to Guam, Puerto Rico, and the Virgin Islands and that the term "State" in such titles (except for Title 16**/) includes these three territories. 42 U.S.C. § 1301(a). Thus, for these three territories,

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*/ Pub. L. Nos. 92-603, 93-66 and 93-233.

**/ Title 16, as amended in 1972 by Pub. L. No. 92-603, provides for SSI aid to needy people residing in the United States. The previous Title 16 continues to apply to Puerto Rico, Guam and the Virgin Islands, but these three territories are excluded from eligibility for the amended Title 16. 42 U.S.C. § 1301(a).

welfare is still provided by federal grants through "State" programs to eligible needy persons. For the States, the SSI program provides a monthly income payment of $140 for an individual and $210 for a couple effective January 1, 1974 (and raised to $146 and $219, respectively, in July 1974).

Thus, under a general formula for applying federal laws to the Marianas that relies on all laws of general application and in effect in Guam, the grant programs replaced by the SSI programs would not apply in the Marianas. Although in effect in Guam, these programs are not of "general application" and would thus not apply under the formula. Consequently, it will be necessary to specifically provide in the status agreement that Titles 1, 10, 14 and 16 shall apply to the Marianas in order for the Marianas to have the benefit of federal grants under those titles.

The two remaining public assistance titles of the Act, however, continue to be applicable to the several States. These titles are Title 4, which provides for grants to States for aid to needy families with children (AFDC), and Title 19 (Medicaid). Guam is expressly included by name in the definition of the term "State" for both of these titles. 42 U.S.C. § 1301(a). Consequently, under the formula for applying federal laws described above, the Marianas would be eligible for the federal grants available under these two titles.

The TTPI is not eligible for aid under any of the public assistance titles of the Social Security Act.

III. Miscellaneous Provisions

Title 5 of the Act provides federal grants to States for maternal, child health and crippled children's services. Guam and the TTPI are expressly named in the definition of the term "State" for Title 5. 42 U.S.C. § 1301(a). Under the formula described above, the Marianas would be eligible for aid under Title 5.

Title 17 of the Act provides federal grants to States for planning action to combat mental retardation. Guam is expressly named as eligible for aid under Title 17. 42 U.S.C. § 1391.

Titles 3 and 12 of the Act provide federal aid to State unemployment compensation programs. Title 3 authorizes grants to States to pay the cost of administering such programs. Title 12 provides for federal monthly loans to States to pay unemployment benefits under State programs. Neither Guam nor the TTPI are eligible for aid under Titles 3 and 12.

TITLE 49: TRANSPORTATION

This memorandum examines the major provisions of Title 49 (Transportation) of the United States Code. These provisions are (1) Interstate Commerce Act, Part I (General Provisions and railroad and pipeline carriers), (2) Interstate Commerce Act, Part II (motor carriers), (3) Interstate Commerce Act, Part III (water carriers), (4) Interstate Commerce Act, Part IV (freight forwarders), (5) the Federal Aviation Act, and (6) the Airport and Airway Development Act of 1970.

1. Interstate Commerce Act, Part I: General Provisions and Railroad and Pipeline Carriers

Chapter 1 of Title 49 provides for the regulation of railroads and oil pipelines engaged in transport "from one state or territory of the United States . . . to any other state or territory of the United States . . . or from one place in a territory to another place in the same territory." 49 U.S.C. § 1. The Act established the Interstate Commerce Commission as the regulating agent for all such carriers with the power to establish reasonable rates, approve mergers and consolidation, and prohibit unfair or discriminatory practices.

Neither Guam nor the Trust Territory of the Pacific Islands are mentioned by name, but the language used in the first section makes clear that regulation of railroads and oil pipelines in U.S. territories is provided for in this chapter. The phrase "from one place in a territory to another

place in the same territory" in Section one reveals that intra-territorial activity is subject to regulation. The several States, however, are subject to regulation only with respect to interstate commerce. However, this chapter may have little relevance to the Marianas if railroads and oil pipelines are not significant features of the Marianas transport network.

2. Interstate Commerce Act, Part II: Motor Carriers

Chapter 8 of Title 49 comprises Part II of the Interstate Commerce Act and extends the Interstate Commerce Commission authority to regulate to motor carriers (e.g., buses, trucks) engaged in interstate and foreign commerce.

Only motor carriers operating on the highways of the fifty states in interstate and foreign commerce are subject to regulation. Thus, motor carriers engaged in commerce involving the territories are regulated only while in the fifty states. */ Consequently, it can be said that the provisions of Chapter 8 do not apply to Guam or to the TTPI.

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*/ Interstate commerce is defined as commerce between the States and the District of Columbia (State being defined as only the several States and the District of Columbia). 49 U.S.C. §§ 303(a)(8), (10). Foreign commerce is defined in part as being commerce between the United States and its territories and possessions, but only insofar as such transportation takes place within the United States. 49 U.S.C. § 303(a)(1). The term "United States" is defined to mean only the several States and the District of Columbia. 49 U.S.C. § 303(a)(8).

3. Interstate Commerce Act, Part III: Water Carriers

Chapter 12 of Title 49 extends to the Interstate Commerce Commission the power to regulate transportation by common carriers and contract carriers by water. The water carriers regulated are those which engage in interstate and foreign commerce, but as defined, only to the extent that such transportation takes place within the United States. The meaning of both State and United States is confined to the 50 States and the District of Columbia. 49 U.S.C. § 902 (i)-(k).

This chapter is entirely concerned with transportation with or between points in the United States and does not apply either to Guam or to the TTPI. Regulation of water carriers engaged in commerce between the U.S. and its territories and possessions is controlled by the Federal Maritime Commission.

4. Interstate Commerce Act, Part IV: Freight Forwarders

A further extension of the Interstate Commerce Act, Chapter 13 of Title 49, authorizes the Interstate Commerce Commission to regulate "freight forwarders," i.e., persons who in the performance of contracts to transport property for the general public employ the services of rail, water and other carriers which are subject to Parts I, II and III of the Act. 49 U.S.C. § 1002(5). As was the case in the Title 49 chapters regulating water and motor carriers, this chapter

provides for regulation only of commerce within the fifty States and the District of Columbia. Commerce within a territory, or between two or more territories is not subject to regulation. Commerce between a State and a Territory is subject to regulation, but only to the extent that commerce takes place within the several States. 49 U.S.C. § 1002(3), (4), (6). Consequently, Chapter 13 does not apply to Guam or to the TTPI.

5. Federal Aviation Act

Chapter 20, which codifies the Federal Aviation Act of 1958, establishes the Civil Aeronautics Board and the Federal Aviation Administration and provides for the regulation of interstate air commerce and transportation.

The Act is applicable to Guam. Although Guam is not specifically named in the Act, interstate air commerce and transportation are defined to include commerce within the territories and possessions of the United States, as well as foreign and interstate commerce involving the territories and possessions. Guam is treated differently from the several states, since air commerce within a state is not subject to the provisions of the Act. 49 U.S.C. § 1301(20), (21).

6. Aviation Facilities, Expansion and Improvement

Chapter 25 codifies the Airport and Airway Development Act of 1970. That Act provides, among other things, for grants for airport development projects and airport

system planning.

Guam is specifically named as an eligible recipient for grants under Chapter 25. 49 U.S.C. § 1713(b)(3) (planning grants); 49 U.S.C. § 1714(a)(1), (2) (airport development). Certain percentages of the funds authorized under Chapter 25 are reserved for use in Guam, as well as Hawaii, Puerto Rico and the Virgin Islands. 49 U.S.C. § 1715.

The TTPI is not eligible for grants under this chapter.

HOUSING LAWS

This memorandum examines selected provisions of the federal housing laws. The federal housing laws comprise a vast body of legislation. It is beyond the scope of this memorandum to enumerate every federal aid or subsidy program in the housing field. Three major programs are discussed in this memorandum: (1) federal grants to States for comprehensive planning, (2) federal mortgage insurance to low and moderate income families in non-urban areas, and (3) the whole range of mortgage insurance and special mortgage insurance programs contained in the National Housing Act, 12 U.S.C. § 1701, et seq.

1. Comprehensive Planning Grants

Section 701 of the Housing Act of 1954, 40 U.S.C. § 460 et seq., authorizes federal grants to States for development planning in both urban and rural areas.

Guam is eligible for such grants. Although not expressly named in the definition of the term "State," that term does include "any territory or possession of the United States." 40 U.S.C. § 460.

2. Housing Renovation and Modernization

The National Housing Act is codified in major part in 12 U.S.C. § 1701, et seq. (Chapter 13). Sections 1702-1706(d) of Title 12 provide for federal mortgage insurance to families of low and moderate income in "suburban and outlying areas."

These sections are made expressly applicable to Guam. 42 U.S.C. § 1706(d).

3. Mortgage Insurance

Subchapter II of Chapter 13 authorizes a wide range of mortgage insurance and other housing subsidy programs. */

The basic definition for Subchapter II is contained in 12 U.S.C. § 1707. There Guam is expressly named in the definition of the term "State" for purposes of basic mortgage insurance. The definition sections for other mortgage insurance provisions refer back to Section 1707 to define the term "State," e.g., 12 U.S.C. § 1715(1) (Housing for Moderate Income Families), or also name Guam in their own definition of "State," e.g., 12 U.S.C. § 1713(7) (Rental Housing Insurance). Thus, Guam is generally eligible for the mortgage insurance and other programs of the National Housing Act.

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*/ These include basic mortgage insurance, rental housing insurance, cooperative housing insurance rehabilitation and neighborhood conservation housing insurance, housing for moderate income and displaced families, mortgage insurance for elderly persons, for nursing homes, for experimental housing, for cooperative association for lower income families, and for non-profit hospitals.

ENVIRONMENTAL LAWS

This memorandum examines the major federal legislation in the environmental area that may be pertinent to the Marianas. This legislation consists of (1) the National Environmental Policy Act, (2) the Clean Air Act, (3) the Federal Water Pollution Control Act, (4) the Solid Waste Disposal Act, and (5) the Coastal Zone Management Act.

1. National Environmental Policy Act

Under this Act, codified in 42 U.S.C. § 4321, et seq., all federal agencies are required to include a detailed environmental impact statement in every recommendation or report on proposals for legislation and other "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

Since there is no geographic restriction in the Act, an environmental impact statement would be required for major federal actions that would significantly affect the environment in the Marianas.

2. Clean Air Act

This Act, codified in 42 U.S.C. § 1857, et seq., is designed to protect the quality of the Nation's air resources. Each State must submit a plan showing how it intends to meet the national air quality standard. 42 U.S.C. § 1857c-5. The Act authorizes technical and financial assistance to state and local governments for their air pollution control programs. Provisions for federal enforcement are provided,

including civil actions for injunctions and damages. The Act also sets out emission standards for new motor vehicles.

The term "State" when used in this Act "means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa." 42 U.S.C. § 1857(h)(d). Under the Act, there is no difference in treatment of those entities included in the definition of the term "State."

If there is no significant air pollution problem in the Marianas, the burden of developing a State implementation as required by the Act may not be in the interest of the Marianas. Consequently, it may be advisable to exempt the Marianas from this requirement in the status agreement.

3. Federal Water Pollution Control Act

This Act, codified in 33 U.S.C. § 1251, et seq., makes unlawful the discharge of pollutants into the navigable waters, territorial seas (i.e., 3 miles outwards from the coastline of the United States) or the ocean, except as permitted under the Act. 33 U.S.C. § 1311, et seq. In relevant part, the Act requires that industrial pollution sources apply the "best practicable technology" to control pollutant discharge by July 1, 1977. Publicly owned sewage treatment works must meet discharge standards that require secondary treatment of sewage by July 1, 1977. Federal Water Quality Standards are to be established by the Environmental Protection Agency. A number of reporting and

implementation requirements are placed upon the States. 33 U.S.C. § 1313(c)(d). Under the Act, the term "State" means "a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands." 33 U.S.C. § 1362(3).

Since the Act now applies to the TTPI, it is perhaps the case that steps have been taken to comply with the Act. However, more detailed study of the applicable regulations and economic studies may show that the burden in the Marianas of complying with the Act may be unduly harsh. If this is the case, an exemption, either complete or tailored to fit the Marianas, may be warranted. In any event, the United States should be required to spell out just what will be required of the Marianas under the complex Act and the applicable regulations and administrative practices.

4. Solid Waste Disposal Act

This Act provides technical and financial assistance to States and local governments and interstate agencies in the planning and development of resource recovery and solid waste disposal programs.

The term "State" when used in this Act means "a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa." U.S.C. § . All of the above are treated equally.

5. Coastal Zone Management Act of 1972

This Act codified in 16 U.S.C. §§ 1451-1464 authorizes the Secretary of Commerce to make annual grants to "coastal states" to assist in developing programs for coastal land and water management and to administer such programs in compliance with minimum standards set by the Secretary. The term "coastal state" expressly includes Guam, and Guam is thus eligible for grants under the Act. 16 U.S.C. § 1453(c).

The federal grants may not exceed 66 2/3% of the costs of the State program. Federal funds received from other sources are not permitted to be used to match federal grants under this Act. 16 U.S.C. §§ 1454(c), 1455(a).

FEDERAL BANKING LAWS

Title 12 includes, inter alia, most provisions of Federal law concerning bank regulation.*/ Subjects covered include chartering and operation of national banks, insurance of bank deposits, and establishment of, membership in, and operation of the Federal Reserve System. Three agencies perform these functions: the Board of Governors of the Federal Reserve System ("FRB") and the Federal Deposit Insurance Corporation ("FDIC"), both "independent" agencies and the Office of the Comptroller of the Currency (the "Comptroller"), a "bureau" of the Treasury Department.

The regulatory systems these agencies administer are, for two reasons, complex and overlapping. The first source of confusion is the tradition of a "dual system" of banking in the United States: commercial banks, all of which perform the same function, may be chartered as national banks by the Comptroller or as state banks under state law. Both types of banks are, however, subject to pervasive Federal regulation.

Moreover, Congress has never addressed the question of bank regulation in a comprehensive manner.

*/ Legislation relating to the role of commercial banks in certain aspects of housing finance is codified in Title 42.

Instead, legislation has taken two forms: restrictive "band aid" measures addressed to a particular abuse, or a broadening of bank authority to serve an unrelated political objective.

The Federal Agencies

Set forth below is a summary of the principal functions of the Federal bank regulatory agencies:

1. Comptroller. Chartering of national banks. Supervision and regulation, including the conduct of detailed examinations of each national bank three times every two years and approval power over branching and national bank mergers. The Comptroller (a presidential appointee) is one of three members of the FDIC board.

2. FRB. Administration of the Federal Reserve System, a mechanism which facilitates check clearing, funds transfer and borrowing between and among both national and state banks. Membership in the system is mandatory for national banks and optional for state banks. */ Exercises supervisory and regulatory authority over state bank members ("state member banks") similar to Comptroller's authority over national banks.

3. FDIC. Two functions: insures deposits in all banks; supervision and regulation of state banks which are not state member banks.

*/ Approximately 60% of U. S. Banks are members.

Fundamental Substantive Considerations

All banks, national or state, may engage in similar banking functions -- e.g. demand and time deposits, loans, trust services (if special authority is obtained), underwriting and dealing in general obligations of Federal, state and local governments, etc. All banks are prohibited from underwriting and dealing in securities (other than as described above) and from paying interest on demand (checking) deposits. To preserve the "doctrine of competitive equality"*/ branching powers of national banks are governed by state law. 12 U.S.C. § 36.

The principal differences which do exist are not between national banks and state banks as such, but between members of the Federal Reserve System (all national and some state banks) and non-members. As noted above, approximately 40% of the 14,000 U. S. banks are non-members. Non-members are denied access to the borrowing facilities and certain other services of the twelve regional Federal Reserve Banks and members are restricted in the size of transactions they may engage in with non-members. As a practical matter, these restrictions make membership mandatory for any large bank.

Many smaller, locally-oriented, banks, however, view one aspect of membership -- the "reserve requirement" --

*/ First National Bank in Plant City v. Dickinson, 396 U.S. 122 (1969).

as outweighing the benefits of access to the System. Each member is required to maintain on deposit with its local Federal Reserve Bank a portion -- which ranges from 13 to 17 percent -- of its customers' demand deposits. While prudent banking clearly requires the maintenance of some funds in fully liquid cash, current reserve requirements exceed these levels of prudence. Instead, the FRB-imposed requirements are a means of effecting monetary policy and, in addition, a source of funds for each Federal Reserve Bank's own banking operations.*/ Non-members are free to lend or otherwise invest any of their funds above the prudent cash level.**/

Bank Regulation in the Territories***/

Existing law affords slightly greater flexibility to territorial banks than is available to banks in the United States. Charters may be issued by local authorities; national

*/ A discussion of the structure and operations of the twelve Federal Reserve Banks is beyond the scope of this memorandum. To oversimplify, however, it can be said that the Reserve Banks are the banks for privately held banks.

**/ Contending that its ability to control monetary policy is severely hampered, the FRB perenially seeks authority to impose reserve requirements upon non-members. Support for such legislation is growing and enactment may be possible in the next Congress.

***/ Federal banking law is uniform with respect to Guam, Puerto Rico, the Virgin Islands and other possessions and territories. The term "territories" will be used collectively to refer to all such political entities.

banks are also expressly permitted.*/ FDIC insurance is available to all territorial banks. FRB membership is optional, for both local and national banks.**/ Territorial banks are supervised and regulated by one of the three Federal agencies, pursuant to the same division of responsibility which applies to domestic banks. The prohibitions against securities activities and interest on demand deposits apply to territorial banks.

Domestic banks are permitted to operate branches and other banking operations in the territories.***/ However, permission to engage in such activities must be obtained from the FRB which, as a practical matter, has respected strong expressions of local policy in opposition to such intrusions.

Conclusions and Recommendations

It would not appear feasible to seek different treatment for banking in the Marianas. The most meaningful drawback of existing law is the restriction on securities activities. Sound arguments can be made for permitting broader bank participation in the securities markets and there is little doubt that any such broader authority would be most useful in attracting capital to the Marianas. However, both the Senate and House are in the early stages of a re-evaluation of all existing securities restrictions,

*/ 12 U.S.C. §§ 40-42.

**/ See 12 U.S.C. § 466. Non-member national banks are, however, subject to a 15 percent reserve requirement. 12 U.S.C. § 143.

***/ 12 U.S.C. §§ 601-605.

and the pendancy of these studies would probably preclude the enactment of special rules for the Marianas.