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Federal Presence

Task Force #6

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Question: With the elimination of appointed governors, is there a need for a federal presence in the territories beyond that provided by the federal comptrollers?

Background

There have been enormous changes in political development in the U.S. territories, which contrast sharply with the former presence of appointed governors in Guam, American Samoa, and the U.S. Virgin Islands. In the case of the Virgin Islands and Guam, the powers of the appointed governors were derived from the Organic Acts. In the case of American Samoa the President was given executive, judicial and legislative powers by the U.S. Congress, which powers were then delegated to the Secretary of the Interior who appointed the Governor of American Samoa. Similarly, all powers for the Trust Territory were vested in the President who appoints the High Commissioner.

The powers of the appointed governors were extensive and constituted significant, direct federal control within each territorial executive and administrative department, bureau, and office. The governor appointed and commissioned all officers and employees of the executive branch, held veto power over legislation; had authority to grant pardons and reprieves; and held authority to call out the militia and suspend the writ of habeas corpus when circumstances warranted such actions. The role of the High Commissioner in the TTPI which has been similar to the role of the former appointed governors, is currently largely one of oversight in the Federated States of Micronesia and the Marshall Islands. Responsibility for actual administration of those areas has been placed almost entirely in locally elected governments, and the same will happen in Palau, when a Palauan constitution is adopted and goes into effect. The role of the High Commissioner will be completely eliminated with the termination of the trusteeship, now planned for 1981. With the elimination of appointed governors, major political powers within the territories (with some exceptions in the case of American Samoa) have been transferred to locally elected governors and legislatures.

Current Federal Presence in the Territories

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Presence as Mandated by Law or Statutory Requirements:

1. The High Commissioner, TTPI - The role of the High Commissioner of the TTPI will be eliminated when the trusteeship is terminated (planned for 1981), and freely associated states of Micronesia (or some other formal political arrangement) are established. The specific nature of the new political arrangements will be determined by the status negotiations.
  
2. Federal Comptrollers - The position of federal comptroller was established by Congressional actions for the U.S. Virgin Islands in 1954, and for Guam in 1968 (under the terms of the Organic Acts). In the early 1970's the jurisdiction of the federal comptroller for Guam was extended to the Northern Mariana Islands (NMI) and the TTPI. The position of federal comptroller for American Samoa was created by the Secretary of the Interior under authority delegated by the President. The federal comptrollers are appointed by the Secretary of the Interior and serve in effect as field employees of the Department of the Interior under the direct supervision of the Director, Office of Territorial Affairs (OTA). The responsibilities of the federal comptroller include the following:
  - a. audit and review all accounts of territorial governments
  - b. bring to the attention of the Secretary of the Interior failures to collect monies due to territorial governments and irregular expenditures of funds and uses of property
  - c. make recommendations on ways to improve the efficiency of territorial governments' programs (to the Secretary of the Interior and the territorial governors)
  - d. submit an annual report to the Secretary of the Interior on the fiscal condition of each territory
  - e. provide technical assistance in the development, operational training, and function of improved financial management systems and procedures
  - f. in the case of the U.S. Virgin Islands only, certify the net amount of government revenues which form the basis for matching grants under Section 28(b) of their Organic Act

The U.S. Government Comptrollers maintain a staff of 9 in American Samoa, 30 in the Virgin Islands, 18 in Guam and 14 in NMI/TTPI. Of these 71 federal positions, 59 perform a pure audit function, and 21 provide technical assistance in financial management.

3. **Federal/Territorial Judges** - There are three federal district courts serving the territories of Guam, the NMI, and the U.S. Virgin Islands. These are legislatively created territorial courts rather than constitutional Federal courts, however, their jurisdiction includes both Federal and territorial matters. There are two federal judges in the U.S. Virgin Islands, and one each in Guam and the NMI who, as in the case of all federal judges, are appointed by the President and who come under the administrative supervision of the U.S. court system.

There is no federal court in American Samoa as the Secretary of the Interior has executive, legislative, and judicial responsibility for American Samoa. Under this authority, the Secretary of the Interior appoints one chief justice and two associate justices. Similarly, the Secretary of the Interior has authority to appoint a chief justice and four associate justices for the TTPI. Upon termination of the trusteeship and the establishment of functioning court systems in the FAS, justices will no longer be appointed by the Secretary of the Interior.

4. **Federal Presence in the Territories Attendant to Program Implementation** - In addition to the U.S. Government Comptrollers and the Federal/Territorial judges, 15 federal agencies are represented in at least one of the territories. However, the number of federal personnel in the territories is negligible; a total of 266 federal employees (plus 213 Action volunteers), with a significant portion of these being short-term and non-permanent.

Almost all federal representation in the territories is related to ongoing, long term responsibilities (not attendant to specific grants) which require on-site administration. These include, among others, Weather Service activities (Commerce), activities of the Immigration and Naturalization Service (Justice), Public Building Service (GSA), food and drug inspection (HEW), air traffic control (Department of Transportation), and Customs Service (Treasury).

The federal presence in the territories attendant to specific grant implementation is particularly limited. For specific federal presence in each of the territories, by agency, see the addendum to this statement. (This information does not include defense presence in any of the territories.)

### The Need for Continued Federal Presence in the Territories

The value of continued federal presence in the territories can best be determined in relation to what functions the federal government will be obligated to carry out, as well as any additional functions it elects to undertake in light of particular problems in the territories.

For the near future, the basic relationship of the federal government to the territories of American Samoa, Guam, the Northern Marianas, and the U.S. Virgin Islands is likely to remain as it is. Additionally, until the termination of the trusteeship of the Trust Territory of the Pacific Islands, the relationship between the TTPI and USG will formally be that of a territory in trusteeship. In the event that the status negotiations are not successfully completed as planned, the current formal relationship between the USG and the TTPI will prevail until such time as this relationship is formally reconstituted. For administrative purposes, the primary responsibilities of the USG toward the TTPI prior to termination of the trusteeship, and toward the territories, will ensue from the current responsibilities of the Department of Interior, through the Office of Territorial Affairs which were delineated in the Task Force 5 report. There are other areas, however, where deficiencies in either the quantity or quality of federal presence have been noted.

During discussions held by representatives of the Task Force with people in the Pacific Territories, the severity of communications problems was frequently pointed out. Examples are easy to find:

Employee layoffs at military bases without advance notice to the local government.

New and sometimes arbitrary interpretations of laws and regulations which may have a direct effect on the economy of the territory, learned by the territory only after the fact. Sometimes these interpretations are such that what applies to one territory may not apply to its closest neighboring territory and may favor one over the other.

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3. Not knowing about and, therefore, not having a chance to comment on legislation and new regulations before they are promulgated. There are hundreds of laws passed every year which may affect the territories either by including or excluding them. This applies to virtually every major piece of legislation from tax reform to agricultural policy to labor laws.

One of the primary functions of any additional presence in the territories should be to facilitate communication and coordination so that the governments of the territories know what is happening in Washington which may affect them.

In regard to policy coordination there exists under current federal statutes no viable mechanism at the federal level for comprehensive coordination of USG policy or programs toward the territories. The Department of the Interior currently has only that limited authority derived from Secretarial Orders to coordinate services to the territories. Hence the territories are recipients of numerous federal grant programs approved unilaterally by individual departments and agencies in a process devoid of any apparent or deliberate policy thrust. Several shortcomings result from this process: limited leveraging of benefits which could be gained by providing complementary programs; a failure to prioritize federal spending in the territories in coordination with territorial priorities and in support of major problems; a generally inadequate information base as to which programs are being administered in the territories.

At the territorial level, reports by the federal comptrollers and the General Accounting Office continually point out major impediments to maximizing the benefits of federal monies in the territories: inadequate financial and grant management systems, shortage of managerial talent; poor program planning, etc. Although the federal comptrollers have begun to provide some technical assistance in light of these problems, inadequacies persist in some areas. Some believe, because of this situation, and because of the ever increasing requests for direct federal funds, that the Federal Government should enhance its presence in the territories.

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At the same time, if the federal government is to effectively develop, coordinate, and implement comprehensive policies in support of the territories, then it becomes important to establish a viable high level organizational arrangement at the federal level in support of such an effort. Such an approach does not and should not suggest that the federal government may attempt to dictate policy or program directions which are clearly territorial prerogatives. Rather, such an approach recognizes that the federal government must effectively organize to carry out its responsibilities to the territories. Whatever arrangement is made at the federal level to improve policy coordination could be accompanied by some administrative arrangement at the territorial level. The issues underlying the need for coordinated federal policy with administrative support at the federal and territorial level include the following:

- a. How best can the federal government organize to carry out its responsibilities to the territories?
- b. How best to ensure that adequate information is available at the territorial and federal level to provide a basis for a coordinated effort which recognizes the territories' priorities and needs?
- c. How to maximize the impact and efficiency of federal funds in the territories?
- d. How best to organize the federal effort to facilitate economic development and greater self-reliance in the territories?

The options presented below provide alternatives in response to three major needs for organizational support:

1. A general need for technical assistance in a range of areas to territorial governments (and possibly local organizations which receive federal grants) in support of general infrastructure development, program planning, program implementation, and financial management.
2. Administrative support for federal policy, programs, and grants coordination.
3. The unencumbered conduct of past audit requirements established by the U.S. Congress.

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It should be noted here that the specific relationship of the FAS with the federal government will be determined by the outcome of the status negotiations. We don't know what the form and substance of the FAS will include, although it appears that the federal government may assume major responsibilities in several areas:

- a. defense
- b. consultation in foreign affairs
- c. financial assistance yet to be determined
- d. auditing assistance

The extent of federal presence necessary or desirable is difficult to determine prior to the outcome of the status negotiations, although most of the options discussed in this report could be adapted to include the FAS.

I. Office of Federal Comptroller: Strict Audit Function

Under this option the office of Federal Comptroller would continue its traditional audit function but would eliminate its assistance to territorial governments in the area of financial management. Because of the dual responsibilities of performing financial audits and providing technical assistance to improve financial management, it is believed by some that the federal comptrollers could in time compromise their audit integrity.

To ensure total independence and objectivity, the Federal Comptrollers could report to the Inspector General. Those (21) members of the comptrollers; staffs who currently provide technical assistance in financial management would be transferred to a separate function with responsibility for provision of all technical assistance in financial management.

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Advantages

1. This option would permit federal comptrollers to return to the strict audit function for which they were originally established.
2. The objectivity and integrity of the audit function would be enhanced.

Disadvantages

1. This option would require the establishment of an alternative mechanism for providing technical assistance in financial management.

II. Office of Federal Coordination

Offices of federal coordination would be established at the territorial level to provide a range of services to the territorial governments. These offices would in no way attempt to set territorial priorities but would serve as a federal field office (as an arm of the cabinet department with responsibility for the territories as determined under Question 5 of this Policy Review) with major responsibilities for coordination of technical assistance across a range of program areas, and for communications between the federal government and the territorial governments. These offices would have the lead for coordinating in the field among all federal agencies with territorial programs. Under Question 5, for example these offices could be headed by special Assistants to the Assistant Secretary. These offices would have the following general responsibilities:

1. Maintaining communication between the federal government and the territorial governments.
2. Carrying out technical assistance in the area of financial management now provided by the federal comptrollers.
3. Coordinating provision of technical assistance in other areas as needed.
4. Establishing an information base for the federal government and the territorial government to include common definitions, format, and coordinating mechanisms regarding territorial funding requests.

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5. Developing proposals cooperatively with territorial governments for refining funding to the territories, to improve long range planning and coordination at the federal and territorial levels.
6. Working with territories to implement joint federal-territorial basic CIP and economic development planning including needs, goals, and funding arrangements. (The territories would retain responsibility for setting funding and development priorities).

#### Advantages

1. This option would help ensure the provision of a range of technical assistance that is currently requested but often not provided.
2. This option recognizes that the federal government has a major responsibility for assisting the territorial governments to become fiscally solvent and stable.
3. This option would establish an orderly and coordinated process for federal review of territorial funding at the territorial level.
4. The establishment of an information base that both the territories and the federal government understand and agree upon will give the territories greater credibility in the funding process and facilitate more efficient federal responses.
5. This option would relieve the federal comptroller of responsibility outside the traditional audit role and thereby enhance his audit objectivity.

#### Disadvantages

1. The effective provision of necessary technical assistance would require coordination among federal agencies which might be difficult without adequate administrative support.
2. If not actively supported by the territorial governments, this option could become a substitute for territorial initiative.
3. This could be seen by territorial governments as undue interference.
4. If responsibilities were not carefully delineated there could be some duplication or conflict with other federal agencies and their field staff.

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### III. Secretary's Policy Representative

The Secretary with major responsibility for the territories (as determined under Question #5 of this policy review) would assign a personal representative to the territories in the Pacific, and given the enormous distance separating the territories, a personal representative to the U.S. Virgin Islands. These individuals would have major responsibility for communication between the territorial governments and the federal government. The Secretary's Representatives would be supported by a small staff as appropriate, and would advise the Secretary regarding federal coordination needs and territorial priorities, and would make recommendations regarding appropriate federal action.

#### Advantages:

1. This would ensure greater visibility and cognizance of territorial problems.
2. This would improve communications with the territories.
3. This would help ensure high level policy attention to territorial matters.

#### Disadvantages

1. Day-to-day administrative needs might not be met under this arrangement.
2. The technical assistance needs of the territories would not be met under this option.
3. Although high level attention would be given to territorial matters, the necessary mechanism for followup would be lacking.

### IV. Status Quo: U.S. Government Comptrollers and Some Program Personnel

#### Advantages

1. no new personnel or funding would be required

#### Disadvantages

1. the technical assistance needs of the territories would not be met
2. no real coordination of communications and programs at the field level would occur

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FEDERAL PRESENCE IN U.S. TERRITORIES BY AGENCY:  
Staff and Number of Programs ( )

	<u>American Samoa</u>	<u>Guam</u>	<u>Northern Marianas</u>	<u>Virgin Islands</u>
ACTION			8 (1) 8 (1)	2 (3) 2 (3)
AGRICULTURE	3 (2)		1 (1)	19 (4)
COMMERCE	9 (2)	9 (2)		
JUSTICE		31 (4)		74 (3)
GSA				4 (1)
HEW	3 (1)	15 (3)	1 (1)	15 (3)
HUD			3 (1)	2 (1)
LABOR	2 (1)	4 (2)		4 (2)
OPM		1 (1)		2 (1)
STATE			2 (1)	
DOT	27 (2)			34 (2)
TREASURY				72 (2)

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**INTERAGENCY TASK FORCE #6**  
**Estimated Costs of Options**

		<u>Personnel</u>	<u>Dollars in Thousands</u>
	Current Comptroller Organization	71	2,982
	Less - Technical Assistance Staff	<u>12</u>	<u>505</u>
(a)	I Net - Comptrollers - Audit Only	<u>59</u>	<u>2,477<sup>1/</sup></u>
(b)	Current Technical Assistance Staff		
	Limited FMS	12	505
	Additional Resources need to		
	enhance FMS support	<u>9</u>	<u>415</u>
	Subtotal - Technical Assistance (FMS)	21	920
(c)	Plus Expanded TA Role - including		
	Budget, Comm., Education, etc.	<u>20</u>	<u>1,416</u>
	II Total - Technical Assistance	<u>41</u>	<u>2,336</u>
(d)	Secretary's Representatives:		
	At each location: (Pacific and Caribbean)		
	1 Representative		
	2 Staff Support		
		<u>Pacific</u>	<u>Caribbean</u>
	Salary	80	160
	Travel	15	10 (6) <u>25</u>
	III Total - Secretary's Representatives		

<sup>1/</sup> It should be noted that the current Comptroller Organization of 71 positions identifies 12 in Technical Assistance and 59 in Audit. However, because of several fiscal crises in TTPI, Guam, and American Samoa, 9 auditors are actually being utilized to augment the TA Staff.

- (a) = Option I  
(b) + (c) = Option II  
(d) = Option III

Estimated Costs of Options Above FY '79 Levels

	<u>Staff</u>	<u>Cost</u>
<u>Option I</u>		
Federal Comptroller Strict audit function	---	---
<u>Option II</u>		
Office of Federal Coordination within lead agency	20	\$1,416,000
<u>Option III</u>		
Secretary's Policy Representative (2)	6	185,000
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<u>Option IV</u>		
Status Quo	---	---
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These figures assume the following:

1. Option I alone is actually a net reduction in costs from the FY '79 level.
2. Option II assumes that the technical assistance staff of the comptrollers is transferred to the Office of Federal Coordination.