Emil Friberg responses to Questions for the Record
House Committee on Natural Resources
Subcommittee on Indian and Insular Affairs
Oversight Hearing, May 16, 2023

Questions from Rep. Westerman:

1. **The news regarding the near depletion of the Bikini Resettlement Trust Fund and spike in expenditures by Bikini Claims Trust Fund has raised serious concerns about how these funds were managed and how any future funds would be managed. How can the U.S. ensure that these COFA trust funds under Section 177 and all COFA trust funds are managed responsibly and used for their intended purpose?**

Congressional actions.
For the U.S. to ensure that COFA trust funds are managed responsibly and used for their intended purposes, Congress can use implementing legislation to direct U.S. agency actions to:

- target the use of funds for priority sectors such as education and health;
- require transparency in the operation, expenditure, and accountability of U.S. funds;
- condition the transfer of funds or distribution of funds from a sub-account of the Compact Trust Fund on prior year compliance with use and accountability requirements; for example, requiring performance reporting, transparent budgets, and **timely** and **clean** financial audits; and
- strengthen its own engagement through oversight hearings and the reinstatement of required U.S. Government Accountability Office reviews and audits.

Cause for concern -- the Bikini Resettlement Trust Fund.
Congress provided $19.2 million in 1982 (PL 97-257) to establish a trust fund for the resettlement of the Bikini people in the RMI, with an additional $1 million payment immediately available to be used per the terms of the trust fund agreement. The 1982 public law stated that payments to the people of Bikini would be according to terms and conditions set forth in a trust fund agreement subject only to the **disapproval** of the Secretary of the Interior.[1] Congress provided an additional $90 million over FY1989-FY1992 (PL 100-447) to the Resettlement Trust Fund for the People of Bikini.

From 1982 to 2017, Interior exercised its right to **veto** expenditures from the resettlement fund. In 2017, when petitioned by the Kili-Bikini-Ejit Local Government to end this practice, Interior released its veto authority on Nov. 21, 2017. Interior determined that the monies were no longer “Federal funds” and the Department deferred to the Mayor and Council Leaders to assume control over the Resettlement Trust Fund. Immediately distributions soared, and the FY2018 trust fund distribution was three and one-half times the average distribution of the previous 4 years. Today, the trust fund is depleted.

Transparency and accountability must be guaranteed.
The dismal record of timely audits around the Bikini trust funds demonstrates the need to condition future U.S. grants and trust fund contributions/distributions on performance and accountability.

[1] 96 STAT. 840 PL 97-257, Sept. 10, 1982

- **Trust Fund Audits**. FY2016 is the last year of released audits for the Bikini Resettlement Trust Fund and the Bikini Claims Trust Fund. Since then, the two trust funds provide no transparency into any trust fund activities. The FY2016 and prior year audits were completed between one and nine months after the end of a fiscal year.

- **KBE Local Government Audits**. The FY2018 audit of the Kili-Bikini-Ejit Local Government (RMI), *which was not published until Feb. 4, 2023*, is the most recent. It shows the dramatic increase in trust fund disbursements that year, after Interior transferred authority for the disbursements to the mayor.

  Much like the Bikini trust funds, the local government provides no transparency about its recent actions. This lack of transparency is a continuation of its past performance. For example, of its last 10 posted audits, the most quickly completed was published *more than 5 years after the fiscal year ended*, while the longest audit report *took more than 9 years after the fiscal year ended* to be released.

Questions from Rep. Sablan:

1. **The President's FY24 budget supports the adoption of the Compact Impact Fairness Act (CIFA) in lieu of compact impact payments (currently $36 million annually in mandatory and discretionary funding) distributed to the affected jurisdictions. In your opinion, would extending to COFA migrants federal benefits normally only available to permanent residents residing in the states and territories be enough to justly compensate host jurisdictions like Hawaii, Guam, and the Marianas?**

<u>CIFA will support COFA families but only partially addresses host government Compact impact</u>.
Host jurisdictions like Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) have collected and reported on the fiscal impact of COFA migrants for over three decades. The three areas have consistently reported the cost of educating the children of COFA migrants, as well as health system costs. Other cost reporting among the three has varied, with Hawaii reporting high cost for social services and Guam reporting high costs for public safety.

The Compact Impact Fairness Act of 2023 (CIFA) would establish COFA migrant eligibility for several specific federal programs: Supplemental Security Income (SSI) program; Supplemental Nutrition Assistance Program (SNAP); Temporary Assistance for Needy Families (TANF); and certain social service block grants. To the extent that Hawaii, Guam, the CNMI, and other U.S. states are **currently** providing state-funded program benefits to COFA migrants who are ineligible for federal aid, CIFA would provide federal relief of ongoing state expenditures. Where such state-funded programs are not currently being provided, CIFA would directly benefit COFA migrant households.

However, CIFA does not address the large Compact impact expense areas of education and public safety, nor will it cover the state/territory share of Medicaid expenses.

2. **How do you think we can best assure that congressional priorities provided in the second Compact will continue? If Compact impact payments were to resume, would we need to establish, in law, the formula that will be used in the future to estimate impacts on jurisdictions and the allocation of payments?**

<u>Reestablish congressional COFA priorities in new Implementing legislation</u>.
The congressional priority to focus U.S. support on education and health was incorporated in the FSM/RMI amended Compacts. This incorporation recognized the nexus between improving the education and health of COFA citizens at home and reducing the impact cost of COFA citizens who migrate. The congressional priority for financial accountability was incorporated through the use of grants rather than transfers to COFA nations and the establishment of joint oversight committees.

To ensure that COFA funds are managed responsibly and used for their intended purposes, implementing legislation can direct U.S. agency actions and condition the distribution of funds for only specified uses and only after meeting accountability requirements. For example, legislation can:

- specify agency actions, providing clear objectives and instructions to the Secretaries of the Interior and State;

- require transparency in the operation, expenditure, and accountability of U.S. funds, whether provided directly or as distributions from U.S.-funded Compact Trust Funds;
- condition the transfer (or distribution) of funds on prior year compliance with use and accountability requirements; for example, requiring performance reporting, transparent budgets, and **timely** and **clean** financial audits; and
- strengthen its own engagement through oversight hearings and by reinstating required U.S. Government Accountability Office reviews and audits.

Distribution of Compact impact grants to date.
During the amended Compact period, Congress provided $30 million in annual Department of the Interior grant funds to be distributed between American Samoa, Guam, Hawaii, and the CNMI in proportion to a periodic count of the COFA migrant population in the four jurisdictions.

Interior contracted with the U.S. Census Bureau to conduct periodic population counts. In the most recent effort, Census counted FAS citizens who entered the United States after 1986 (from Micronesia and the Marshall Islands) or 1994 (from Palau) and also included their U.S.-born children (biological, adopted, and step-) and grandchildren younger than 18 years in the count of COFA migrants.

Distribution of Compact impact grants going forward.
Renewing Compact Impact grants going forward requires legislative action. While the current structure could be extended as currently written, this is an opportunity to modify the approach, including:

- Modify how the COFA population is defined for a per-capita distribution of grant funds. For example, should the U.S.-born children, and even grandchildren, of COFA migrants be counted?
- Modify the geographic scope of Compact Impact grant funds beyond the Pacific areas to states with significant COFA populations.
- Modify the allowed use of Compact Impact grants to focus on specific sectors or programming areas, such as education and public safety.
- Enforce or modify a requirement that Interior reports to Congress annually on Compact impact. Interior last reported on Sept. 8, 2017.
- If COFA-affected jurisdictions are required to report on Compact impact, require Interior to issue reporting and methodology guidance.[2]

3. **The accounting and identification of COFA migrants needs to be tightened it seems and more narrowly defined. For instance, I understand that U.S. citizen children and grandchildren of COFA migrants who are working, paying taxes, and contributing to a state's or territory's economy could still be counted by Census and Interior as COFA migrants. Do you think this is appropriate and that such individuals should still be counted as negatively impacting a state or**

[2] See unimplemented U.S. GAO recommendations in *Compacts of Free Association: Improvements Needed to Assess and Address Growing Migration* (GAO-12-64, November 14, 2011), https://www.gao.gov/products/GAO-12-64.

territory's finances and therefore requiring reimbursement? How would you recommend COFA migrants be defined and counted?

Recent Interior/Census enumeration efforts counted U.S.-born children/grandchildren of COFA migrants under age 18. Once they turn 18, they are no longer counted as COFA migrants in the population count for division of Compact impact grants. One rational for counting these US-citizen children is recognizing the cost of migrant households on the education system.

However, the counting of U.S. born children under age 18 in these households has been complicated for Census, and has resulted in data programming errors, that in turn resulted in enumeration errors, that in turn led to errors in Compact impact payments.[3]

Going forward, I recommend a simpler definition and method to count COFA migrants in the event that future Compact impact grants are distributed to states and territories based on COFA population:

- Count people present in the United States who were born in the FAS and are not US citizens. (Since they are not U.S. citizens, they will travel on a COFA passport and enter the U.S. under the terms of the Compacts.)
- For the 50 U.S. states, Census can present data from the American Community Survey (ACS) on this population. Since the ACS is a continuous survey effort, the estimated COFA population can be updated over time.
- For the Pacific U.S. territories (where the ACS is not implemented), the decennial census can be used by Census to establish a baseline COFA population. That number can be annually updated between each census using Department of Homeland Security, Customs and Border Protection passport scan data for arrivals and departures. (Inward annual migration to a U.S. territory would be the difference between COFA arrivals and COFA departures that year.) This cooperation between Census, DHS, and Interior may require a congressional mandate.

4. Can you discuss the viability of the trust funds and the payment of those funds through continued sector grants for healthcare and education?

FSM and RMI Compact Trust Funds.
By design, FSM and RMI Compact Trust Fund distributions cannot exceed the level of expiring Compact sector grants. They are **not** designed to cover the expiring Supplemental Education Grant (SEG) or the cost of any of the expiring federal services (Postal Service, Weather Service, FEMA funds).

Consequently, there is a looming hit to the FSM and RMI education sectors with the loss of the Supplemental Education Grant, with its final federal appropriation in FY2023. For example, Chuuk State in the FSM will lose 22 percent of its education budget (FY2019 data) due to the SEG's expiration.[4]

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[3] See: *Compacts of Free Association: Populations in U.S. Areas Have Grown, with Varying Reported Effects* (GAO-20-491, June 15, 2020), https://www.gao.gov/products/GAO-20-491, Appendix VI: Compact Migrant Enumeration Methods, Definitions, and Error.

[4] Chuuk State is selected for the example as it is the most dependent on U.S. funds among the FSM states and more dependent than RMI and Palau on U.S. funds.

Future education and health budgets are also at risk. Both trust funds can **initially** cover expiring grants, but under current trust fund rules there will be zero disbursements in future years when there is a downturn in stock market returns. The resultant fiscal crisis would be severe: in Chuuk State, the Compact grants covered by trust fund support represent 71 percent of education and 86 percent of health expenditures (FY2019 data).

Current Compact negotiations and signed agreements may alter the future prospects of the trust funds, either through additional deposits, by making necessary changes in trust fund distribution rules, or even by re-purposing the use of trust fund distributions.

Palau Compact Trust Fund.
The Palau Compact Trust Fund was designed as a sinking fund to make payments until 2045. It is very likely to achieve this goal and could continue to make payments in subsequent years.

Questions from Rep. Case for all witnesses.

1. **During my time for questions in our hearing, I misspoke when describing the Government Accountability Office's reported fiscal impact from Compact residents on local communities. I noted that localities collectively reported $1.8 billion in costs between 2004 and 2018 when in reality that figure in the GAO report is $3.2 billion. If Congress were to expand the same eligibility for federal benefits to Compact migrants as are currently extended to lawful permanent residents, what uncovered costs from delivering still-uncovered services would host communities have to cover without federal aid?**

<u>Updated Compact Impact Costs for FY2004 to FY2018</u>
At the time U.S. GAO reported on the Compact Impact for Guam, Hawaii, and CNMI, the available data summed to $3.2 billion for FY2004-FY2018. However, at the time of the GAO report, Guam had tabulated Compact Impact cost for FY2018. With that data now available from Guam, the TOTAL Compact Impact reported is $3.3. billion ($1.85 billion for Hawaii, $1.37 billion for Guam, and $116 million for CNMI). For FY2018 alone, Hawaii reported $198 million in Compact Impact, Guam reported $150 million, and the CNMI reported $10 million.

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However, CIFA does not address the large Compact impact expense areas of education and public safety, nor will it cover the state/territory share of Medicaid expenses. The cost of education is the primary area of reported Compact impact for Hawaii and Guam, representing $118 million or 64 percent of Hawaii Compact impact in FY2017, and $73 million or 49 percent of Guam Compact impact in FY2017.

The 2020 public law that restored Medicaid eligibility for COFA migrants is beneficial to the U.S. states who had used state funds for COFA medical coverage. However, with Medicaid extended, the states remain responsible for the state share of Medicaid expenses. Currently the state share is 44 percent for the State of Hawaii.[5] For the U.S. territories the benefit of Medicaid COFA eligibility is not certain as the federal program operates with a financial cap on federal expenditures in the territories.

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[5] This accounts for the Federal Medical Assistance Percentage (FMAP) FY2023 rate of 56 percent in Hawaii. The federal share of CHIP is 69 percent in Hawaii.

2. **Citizens of the Freely Associated States are eligible to join the U.S. military and frequently serve in our armed forces. What proportion of the population from the Freely Associated States joins the U.S. military compared to other U.S. communities? What are the challenges veterans in the Freely Associated States experience in accessing Department of Veterans Affairs health care and other benefits when they return home to their countries? What can be done to improve this?**

Data on COFA citizens in the U.S. military is seldom presented in DOD reports or other demographic reporting, possibly due to the small numbers. I am not aware of any current data analysis of this topic. There are two sources that could be used by researchers to answer this question:

- U.S. Census data: For the 50 U.S. states, the American Community Survey (ACS) can be used to answer the question about the proportion of COFA citizens in the U.S. military as compared to other U.S. communities. For example, there are questions in the survey that identify place of birth (COFA nations) and current as well as past service in the U.S. Armed Forces, Reserves, or National Guard. To make a comparison between COFA and other U.S. communities, the populations should be of the same age range (for example age 18-30), high school graduates or higher, and fluent in English. The latter two criteria are generally requirements to join the U.S. military. For the U.S. territories, the decennial census data is the only source for this information. Note, this data source can also be used to identify the number of prior military service members for providing veteran services. Due to the small numbers of COFA citizens in the ACS data and the requirement for confidentiality, Census may have to undertake this analysis.

- DOD: Defense Department manpower data also contains information that could be used to understand the contributions of COFA citizens to the U.S. military. For example, the *Population Representation in the Military Services* report (last published for FY2019) by the DOD Office of Military Personnel Policy compares the demographics of the armed forces and the applicants and accessions each year to civilian demographic benchmarks. The report uses data from the Defense Manpower Data Center (DOD) and the Current Population Survey (Bureau of Labor Statistics). Variables analyzed include age, gender, race/ethnicity, geography, and neighborhood income.

COFA nation veterans are not able to receive Veterans Administration (VA) benefits in their home nations. If they reside in their home nation, they need to buy an airplane ticket and fly to Guam or Hawaii to access health care. Previously introduced congressional legislation called for the VA to operate a pilot program to facilitate COFA veterans' access to health care in the Pacific. The importance of access to VA benefits is one reason that some COFA migrants stay in the United States. To improve on the status quo, having the VA implement a pilot program to address the access gap would be beneficial to COFA veterans and would, of course, honor the service of those veterans.

3. **Funding for the Compacts of Free Association is currently borne by the Department of the Interior and the Biden Administration suggests moving that funding the Department of State but to keep administration of the Compacts within the Department of the Interior. Given the**

critical role the Compacts of Free Association to our national security and to the Department of Defense, should the Department of Defense also bear some of these costs?

This is an appropriate issue to raise. The Compacts are based on three pillars: defense rights, economic assistance, and immigration. U.S. defense rights are secured with economic assistance to COFA nations and families. The history to date has little DOD contribution to the three Compact pillars; rather, Interior directly pays for DOD operational interests in the COFA nations for the benefit of the Department of the Defense:

- From FY1987 to FY 2023, Interior has provided the Marshall Islands with $352 million (current dollars) or $707 million (FY2023 dollars) for nuclear testing compensation and programs.
- Further, Interior has provided the Marshall Islands with $526 million (current dollars) or $738 million (FY2023 dollars) for military land lease payments.

Given the heightened strategic interest of the region, this is the right time for DOD to bring its substantial financial resources into the Compact relationship framework. Beyond finances, DOD can also make in-kind contributions: (1) re-establish its Civic Action Team program in the FSM and RMI, (2) continue its deployment of humanitarian missions, and (3) address illegal fishing that threatens COFA government revenue and maritime security.

4. **Last year the administration released the first ever Strategy for Pacific Island Partnership along with a more detailed Roadmap to a 21st Century U.S. Pacific Islands Partnership. How was this and recent efforts to reengage the region seen by the Pacific Islands? What role can Congress play to help implement the Pacific Islands Partnership Strategy?**

Congress can use its appropriations and oversight role to monitor U.S. engagement and implementation of the Strategy/Roadmap. The Roadmap provides an extensive list of project areas and numerous financial commitments. Congress can review U.S. agency operations to make sure they are coordinated and properly resourced. One area for review is that the United States coordinates with other country and international agency donors to the Pacific islands to avoid duplication and to allow an efficient division of labor. Regarding resources, are U.S. projects focused and scaled to be well resourced? Or are U.S. projects diffused and underfunded? U.S. efforts should be focused in order to succeed.

The recent establishment of U.S. Embassies across the Pacific and the promised deployment of Peace Corps is an essential demonstration of a new U.S. reengagement with the Pacific islands.

I believe other panel members will have more to contribute on these questions.

5. **The Pacific Islands Forum, a critical inter-governmental organization in the Pacific Islands region, laid out a regional vision for development of the Pacific Islands in its 2050 Strategy for the Blue Pacific Continent. How can the United States support this strategy?**

I believe other panel members will have more to contribute on this question.