



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

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The Honorable Harriet M. Hageman  
Chair  
Subcommittee on Indian and Insular Affairs  
Committee on Natural Resources  
U.S. House of Representatives  
Washington, DC 20515

Dear Chair Hageman:

Enclosed are responses to questions for the record submitted to the Department of the Interior's witness, Keone Nakoa, Deputy Assistant Secretary for Insular and International Affairs, following his appearance before your Subcommittee at a legislative hearing on January 18, 2024. These responses were prepared by the Office of Insular Affairs.

Thank you for the opportunity to respond to you on these matters.

Sincerely,

Pamela L. Barkin  
Acting Legislative Counsel  
Office of Congressional and  
Legislative Affairs

Enclosure

cc: The Honorable Teresa Leger Fernández, Ranking Member  
Subcommittee on Indian and Insular Affairs

**Questions from Chairman Westerman**

**1. Question: How would H.R. 6062 affect the Department of the Interior's process in approving amendments to American Samoa's constitution?**

**Response:** As mentioned in my written testimony, we have had several discussions with Governor Lemanu, Representative Radewagen, and members of their respective staffs about the process and the next steps for adoption of the amendments to the Revised Constitution of 1967. It has been their determination and our consensus decision that passage of H.R. 6062 is the best next step in the process to formally adopt the constitutional amendments and to honor the people's vote on November 8, 2022.

Following passage of H.R. 6062, the Department's subsequent approval would allow the five voter-approved constitutional amendments to enter into force at that time.

**2. Lead-up: Section 12 of Public Law 98-213 that H.R. 6062 would repeal, was enacted in 1983 because of fears of unilateral decision making in American Samoa by the Secretary of the Interior.**

**Question: How will the DOI assure the residents of American Samoa that the DOI will not act unilaterally and will work with the American Samoan local government on amendments to American Samoa's constitution?**

**Response:** The Representative of American Samoa is the sponsor of H.R. 6062, and the Governor of American Samoa has testified in support of the bill. Both actions speak to their confidence in the Secretary of the Interior to not act unilaterally and to work with the American Samoan local government on amendments to American Samoa's constitution. The Department provided funding for American Samoa's most recent constitutional convention and has been responsive to requests for support and to inquiries from the government of American Samoa.

Through the annual Interagency Group on Insular Areas meeting in Washington, DC, the now-annual Territorial Climate Infrastructure Workshop in Honolulu, and the dedicated Office of Insular Affairs (OIA) personnel, and other OIA programs that require close coordination, we are in regular communication with the American Samoa government, as well as the other insular area governments.

- 3. Lead-up: H.R. 6062 is designed to remove barriers and subsequently expedite the approval process for changes to the American Samoa Constitution. Yet, it is not Congress who has held up the process since 2022.**

**Question: How can we ensure that without Congressional approval DOI will continue to evaluate amendments to the American Samoan Constitution when there has been no answer regarding the 2022 amendments?**

**Response:** While the Department has not yet made an official determination on the five constitutional amendments approved by American Samoan voters in 2022, we have had several discussions with American Samoan officials about the process and next steps. Without the Congressional approval required by 48 U.S.C. § 1662a, the Secretary of the Interior could follow established precedent and make an official determination on the approval and adoption of amendments to the Constitution of American Samoa, as Secretaries of the Interior have done previously under the authority of Executive Order 10264.

- 4. Question: Would the Compact Impact Fairness provisions provide the individual territories and state governments the same level of funding provided under the Compact Impact grants?**

**Follow Up: Does the Administration believe the Compact Impact Fairness provisions alleviate the issues raised by officials from Guam regarding the impacts of the Compacts has had on Guam?**

**Response:** The Administration believes that the Compact Impact Fairness Act (CIFA) provisions will provide a net positive in economic impact for both states and territories compared to the Compact Impact grants, which ended last fiscal year. The CIFA provisions, as drafted, would not expire but would adjust in value to meet the actual needs of the current population and increase equity by applying to all eligible Compact migrants, regardless of where they reside within the United States and its territories. The Compact Impact provisions had none of these attributes, making the CIFA provisions the better long-term solution.

The Territory of Guam hosts a relatively large population of Compact migrants when compared to its total population. The Administration recognizes that the impact to Guam likely exceeds funding made available to the territory through the Compact Impact grants. We are hopeful that the new CIFA provisions will address some of these concerns. The self-reported impact to Guam from 2004 through 2018 was described by the Government Accountability Office (GAO) in its 2020 report.

- 5. Lead-up: In 2020, the Government Accountability Office published a report titled, “Compacts of Free Association: Populations in U.S. Areas Have Grown, with Varying Reported Effects.”**

**This report highlighted the issue of a misallocation of Compact Impact grant funds from FY 2015 through 2020 because of an enumeration error by the U.S. Census Bureau on the numbers of migrants from the FAS within each U.S. state and territory. As a result, Hawaii was underfunded while the Pacific territories were provided more grant funds than what they would have received without the error.**

**Question: Is there a risk that this type of error could happen again if Compact Impact grants were extended?**

**Response:** The CIFA provisions sought by the Administration would not distribute funds based on Census Bureau enumerations, thereby eliminating such risk.

However, if the Compact Impact program were extended without Hawai‘i as proposed by H.R. 6273, this would require a reliance on statistical enumerations, which carries a degree of risk of human error as well as statistical challenges related to data quality. For example, if the Census Bureau makes an error, it alerts the Department and corrects the enumeration promptly or takes other necessary measures.

- 6. Lead-up: Under the 2003 Compacts of Free Association, Hawaii and the Pacific territories were eligible to receive the Compact Impact grants. Under H.R. 6273, Hawaii would no longer be eligible to receive Compact Impact grants.**

**Question: With \$30 million for the annual Compact Impact grants under the 2003 Compacts, should there be an adjustment to the annual grant amount if Hawaii is excluded under H.R. 6273?**

**Response:** In 2023, the final year of Compact Impact grants authorized and appropriated under the Compact of Free Association Amendments Act of 2003 (P.L. 108-188), Hawai‘i received \$15.8 million (52.7%) of the \$30 million available. The funds were divided based on the Compact migrant populations in Hawai‘i, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and American Samoa. The exclusion of Hawai‘i as an eligible jurisdiction would leave its share of funding available to be divided among the three remaining eligible jurisdictions, if this authorization and appropriation were extended by Congress.

The exclusion of Hawai‘i aside, it is not clear that the \$30 million available through the Compact Impact grants was ever a needs-based calculation to reimburse affected jurisdictions for the full

costs of hosting Compact migrant communities. Indeed, Guam has consistently stated that the amount of funding provided for Compact Impact was always substantially below the true cost of services. Additionally, in 2020, GAO reported that Hawai'i, Guam, and the CNMI's estimated costs related to Compact migrants totaled \$3.2 billion during fiscal years 2004 through 2018. (GAO-20-491, "Compacts of Free Association: Populations in U.S. Areas Have Grown, with Varying Reported Effects"). Yet in fiscal years 2004 through 2019, the jurisdictions received a combined total of \$509 million in federal grants to help defray the costs of providing services to Compact migrants. Based on this, the Department would not oppose if Congress determined that some additional amount would be appropriate to address impacts from the Compact.

As a caveat on the costs referenced above, we note that the 2020 GAO report singularly focuses on the additional costs of hosting Compact migrant communities, as opposed to a more holistic approach to include the positive impacts of the Compact migrant presence on the economy and other positive impacts of the Compacts more generally. In determining the true impact of the Compacts on Guam, it would be helpful to have a more accurate calculation that includes both the costs and benefits.

**7. Lead-up: The witnesses from Guam have testified that the biggest impacts of hosting COFA migrants in Guam are on public safety and education.**

**Question: Does the Department agree with this assessment? What is the Department doing to help address these concerns?**

**Response:** The Department is not aware of any data that contradicts Guam's assessment. In consultation with Guam's leadership, the Department has provided grant funding to Guam departments and nongovernmental organizations to address various concerns regarding the impact of hosting Compact migrants, including these two areas of public safety and education.

**Questions from Representative Radewagen**

- 1. Deputy Assistant Secretary Nakoa, I want to thank Secretary Haaland as well as Assistant Secretary Cantor for supporting H.R. 6062, and I want to thank you for your leadership in consultations with American Samoa's government to develop an approach the Administration is supporting. Do you agree that the ability of Congress to direct the policies and actions of the Secretary and the American Samoa government in local constitutional affairs as determined by Congress is vested by the Territorial Clause, so that we do not need a statute to give that power to Congress?**

**Response:** Whether Congress needs statutory authority in addition to its powers vested by the Territorial Clause of the U.S. Constitution to direct the policies and actions of the Secretary of the Interior and the American Samoa government in local constitutional affairs is a novel legal question that requires significant analysis. Generally, however, the Territorial Clause provides that:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

U.S. CONST. art. 4, § 3, cl. 2.

- 2. At the hearing on H.R. 6062 on January 18, 2024, several statements were made to the effect that 48 U.S.C. 1662a is a source of Congressional authority to participate in or determine the outcome of the American Samoa constitutional amendment process. Rather, is it correct that:**
  - a. The source of the authority of the President delegated to the Secretary of the Interior to approve amendments to the American Samoa constitution is, in order of priority, Congressional enactment of 48 U.S.C. 1661, Executive Order 10264 signed pursuant thereto, and the 1967 Revised Constitutional of America Samoa approved the Secretary acting thereunder;**
  - b. 48 U.S.C. 1662a is not the source of and adds nothing to the power of Congress under the Territorial Clause to determine disposition of proposed amendments to the local constitution before, during and after any local constitutional amendment process or approval by the Secretary of the Interior under Executive Order 10264;**

- c. **Repeal of 48 U.S.C. 1662a will not reduce or restrain the power of Congress to determine disposition of any constitutional amendment proposed or approved for American Samoa under Executive Order 10264;**
- d. **The only actual effect 48 U.S.C. 1662a is to bar and prohibit entry into force or implementation of constitutional amendments approved by the Secretary under Executive Order 10264, for an indefinite period with no defined standard or process of review, unless and until Congress approves or disapprove any such amendment proposed and approved by the people and the Secretary thereunder?**

**Response:** These are novel legal questions that require significant analysis. As noted above, the Territorial Clause provides that “[t]he Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.” The Department reiterates its support of H.R. 6062, which would repeal Section 12 of Public Law 98–213 (48 U.S.C. § 1662a), a statutory requirement that amendments or modifications to the Constitution of American Samoa, as approved by the Secretary of the Interior pursuant to Executive Order 10264, may be made only by Act of Congress.

- 3. **Is it correct the provisions of 49 U.S.C. 1662 recognize that Swain’s Island and persons of U.S. nationality residing there have the same political status and rights as all other persons of American nationality residing anywhere in American Samoa as provided under 48 U.S.C. 1661?**

**Response:** It is our understanding that section 308 of the Immigration and Nationality Act confers non-citizen U.S. nationality on people born (or determined to be foundlings) in American Samoa and Swains Island. We must defer to the Department of State on questions regarding the political status and rights of U.S. nationals.

- 4. **Although the U.S. Department of Justice did not attend the hearing of this Committee on January 18, can you confirm that it is the legal position of the United States Government, including the U.S. Department of Justice, that 48 U.S.C. 1662a does not increase decrease or increase the power of Congress under the Territorial Clause to determine the disposition of amendments concerning proposed by the local government under the local constitution?**

**Response:** The Department defers to the U.S. Department of Justice (DOJ) regarding DOJ’s legal position concerning 48 U.S.C. § 1662a and any impact it may have on Congress’s power under the Territorial Clause.