

112TH CONGRESS
1ST SESSION

S. 343

To amend Title I of Public Law 99–658 regarding the Compact of Free Association between the Government of the United States of America and the Government of Palau, to approve the results of the 15-year review of the Compact, including the Agreement Between the Government of the United States of America and the Government of the Republic of Palau Following the Compact of Free Association Section 432 Review, and to appropriate funds for the purposes of the amended Public Law 99–658 for fiscal years ending on or before September 30, 2024, to carry out the agreements resulting from that review.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2011

Mr. BINGAMAN (for himself and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend Title I of Public Law 99–658 regarding the Compact of Free Association between the Government of the United States of America and the Government of Palau, to approve the results of the 15-year review of the Compact, including the Agreement Between the Government of the United States of America and the Government of the Republic of Palau Following the Compact of Free Association Section 432 Review, and to appropriate funds for the purposes of the amended Public Law 99–658 for fiscal years ending on or before Sep-

tember 30, 2024, to carry out the agreements resulting from that review.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. IMPLEMENTATION OF AGREEMENT BETWEEN**
4 **THE UNITED STATES AND THE REPUBLIC OF**
5 **PALAU.**

6 Title I of Public Law 99–658 is hereby amended by
7 inserting a new section 105 as follows:

8 **“SEC. 105. RESULTS OF COMPACT REVIEW.**

9 “(a) The Agreement between the Government of the
10 United States of America and the Government of the Re-
11 public of Palau Following the Compact of Free Associa-
12 tion Section 432 Review set forth in subsection (b) of this
13 section, is hereby approved.

14 “(b)

15 **AGREEMENT BETWEEN THE**
16 **GOVERNMENT OF THE**
17 **UNITED STATES OF AMERICA**
18 **AND THE**
19 **GOVERNMENT OF THE REPUBLIC OF PALAU**
20 **FOLLOWING THE COMPACT OF FREE**
21 **ASSOCIATION**
22 **SECTION 432 REVIEW**

23 “In recognition of the ties that were developed between
24 the United States of America and Palau during World

1 War Two, and the subsequent half century of United
2 States administration of Palau and the continuing close
3 relationship between the Governments of the United
4 States and Palau under the Compact of Free Association
5 ('Compact'), following the fifteenth anniversary review of
6 the relationship conducted pursuant to Section 432 of the
7 Compact (which provides: 'Upon the fifteenth and thir-
8 tieth and fortieth anniversaries of the effective date of this
9 Compact, the Government of the United States and the
10 Government of Palau shall formally review the terms of
11 this Compact and its related agreements and shall con-
12 sider the overall nature and development of their relation-
13 ship. In these formal reviews, the governments shall con-
14 sider the operating requirements of the Government of
15 Palau and its progress in meeting the development objec-
16 tives set forth in the plan referred to in Section 231(a).
17 The governments commit themselves to take specific
18 measures in relation to the findings of conclusions result-
19 ing from the review. Any alteration to the terms of this
20 Compact or its related agreements shall be made by mu-
21 tual agreement, the terms of this Compact and its related
22 agreements shall remain in force until otherwise amended
23 or terminated pursuant to Title Four of this Compact'),
24 and in light of the desire of the United States of America
25 and the Republic of Palau to deepen their relationship,

1 now, therefore, the Government of the United States of
2 America and the Government of the Republic of Palau
3 agree as follows:

4 “1. Compact Section 211(f) Fund

5 “The Government of the United States of America (the
6 ‘Government of the United States’) shall contribute
7 \$30.25 million to the Fund referred to in Section 211(f)
8 of the Compact in accordance with the following schedule:
9 \$3 million annually for ten years beginning with Fiscal
10 Year 2013 through Fiscal Year 2022, and \$250,000 in
11 Fiscal Year 2023.

12 “2. Infrastructure Maintenance Fund

13 “(a) The Government of the United States shall provide
14 a grant of \$2 million annually from the beginning of Fis-
15 cal Year 2011 through Fiscal Year 2024 to create a trust
16 fund (the ‘Infrastructure Maintenance Fund’) to be used
17 for the routine and periodic maintenance of major capital
18 improvement projects financed by funds provided by the
19 United States. The Government of the Republic of Palau
20 (the ‘Government of Palau’) will match the contributions
21 made by the United States by making contributions of
22 \$150,000 to the Infrastructure Maintenance Fund on a
23 quarterly basis from the beginning of Fiscal Year 2011
24 through Fiscal Year 2024. Implementation of this sub-

1 section shall be carried out in accordance with the provi-
2 sions of Appendix A to this Agreement.

3 “(b) The \$3 million owed to the Government of the United
4 States under paragraph 3(d) of Article V of the Agree-
5 ment Concerning Special Programs Related to the Entry
6 Into Force of the Compact of Free Association Between
7 the Government of the United States and the Government
8 of the Republic of Palau (the Guam Accords) done at
9 Guam, May 26, 1989, plus accumulated interest, shall be
10 paid into the Infrastructure Maintenance Fund. The \$3
11 million shall remain in the Infrastructure Maintenance
12 Fund and not be expended for any purpose. All past and
13 future income generated by the \$3 million shall be used
14 exclusively for the routine maintenance of the Compact
15 Road provided by the United States under Section 212
16 of the Compact.

17 “3. Fiscal Consolidation Fund

18 “The Government of the United States shall provide the
19 Government of Palau \$5 million in Fiscal Year 2011 and
20 \$5 million in Fiscal Year 2012 for deposit in an interest
21 bearing account to be used to reduce government payment
22 arrears of Palau. Implementation of this section shall be
23 carried out in accordance with the provisions of Appendix
24 B to this Agreement.

25 “4. Direct Economic Assistance

1 “(a) In addition to the \$13.25 million in economic assist-
2 ance provided to the Government of Palau by the Govern-
3 ment of the United States in Fiscal Year 2010, and unless
4 otherwise specified in this Agreement or in an Appendix
5 to this Agreement, the Government of the United States
6 shall provide the Government of Palau \$107.5 million in
7 economic assistance as follows: \$13 million in Fiscal Year
8 2011; \$12.75 million in Fiscal Year 2012; \$12.5 million
9 in Fiscal Year 2013; \$12 million in Fiscal Year 2014;
10 \$11.5 million in Fiscal Year 2015; \$10 million in Fiscal
11 Year 2016; \$8.5 million in Fiscal Year 2017; \$7.25 million
12 in Fiscal Year 2018; \$6 million in Fiscal Year 2019; \$5
13 million in Fiscal Year 2020; \$4 million in Fiscal Year
14 2021; \$3 million in Fiscal Year 2022; and \$2 million in
15 Fiscal Year 2023. The funds provided in any fiscal year
16 under this subsection shall be provided in four (4) quar-
17 terly payments (30 percent in the first quarter, 30 percent
18 in the second quarter, 20 percent in the third quarter, and
19 20 percent in the fourth quarter) unless otherwise speci-
20 fied in this Agreement or in an Appendix to this Agree-
21 ment.

22 “(b) Notwithstanding the provisions of Compact section
23 211(f) and the Agreement Between the Government of the
24 United States and the Government of Palau Regarding
25 Economic Assistance Concluded Pursuant to Section

1 211(f) of the Compact of Free Association, with respect
2 to Fiscal Years 2011 through Fiscal Year 2023 and except
3 as otherwise agreed by the Government of the United
4 States and the Government of Palau, the Government of
5 Palau agrees not to exceed the following distributions from
6 the Section 211(f) Fund: \$5 million annually beginning
7 in Fiscal Year 2011 through Fiscal Year 2013; \$5.25 mil-
8 lion in Fiscal Year 2014; \$5.5 million in Fiscal Year 2015;
9 \$6.75 million in Fiscal Year 2016; \$8 million in Fiscal
10 Year 2017; \$9 million in Fiscal Year 2018; \$10 million
11 in Fiscal Year 2019; \$10.5 million in Fiscal Year 2020;
12 \$11 million in Fiscal Year 2021; \$12 million in Fiscal
13 Year 2022; and \$13 million in Fiscal Year 2023.

14 “(c) No portion of the funds provided to the Government
15 of Palau under this section, including the funds distrib-
16 uted from the Section 211(f) Fund, shall be used, directly
17 or indirectly, to fund state block grants, or the activities
18 of the Office of the President of Palau, of the Olbiil Era
19 Kelulau (the Palau National Congress), or of the Palau
20 Judiciary. Annually, \$15 million of the funds provided to
21 the Government of Palau under this section, including the
22 funds distributed from the Section 211(f) Fund, shall be
23 used exclusively for purposes related to education, health,
24 and the administration of justice and public safety, recog-

1 nizing that these funds are subject to the provisions of
2 subsection 4(h) herein.

3 “(d) In order to increase the long-term economic stability
4 of Palau and to maximize the benefits of the economic as-
5 sistance provided by the Government of the United States,
6 the Government of Palau shall undertake economic, legis-
7 lative, financial, and management reforms, and shall give
8 due consideration to reforms such as those described in
9 the International Monetary Fund’s (IMF) Country Report
10 No. 08/162, Republic of Palau: Selected Issues and Statis-
11 tical Appendix, (May 2008), and the Asian Development
12 Bank’s (ADB) Strategy and Program Assessment, Palau:
13 Policies for Sustainable Growth, A Private Sector Assess-
14 ment (July 2007) and any other similar subsequent and
15 future reports and recommendations issued by the IMF,
16 the ADB, and other credible institutions, organizations or
17 professional firms. To the extent that anticipated fiscal
18 and economic reforms require substantial financial re-
19 sources to design, implement, or mitigate negative im-
20 pacts, the Government of Palau may propose and the two
21 governments may agree to the use of additional funds
22 from the Section 211(f) Fund, provided that the two gov-
23 ernments agree in writing that the additional withdrawals
24 from the Section 211(f) Fund will not impair the ability
25 of the fund to provide \$15 million annually from Fiscal

1 Year 2024 through Fiscal Year 2044, and that the pro-
2 posed reforms are a necessary and prudent use of the
3 funds. Government to government communications shall
4 be through diplomatic channels.

5 “(e) The Government of the United States and the Gov-
6 ernment of Palau shall establish, effective on the day this
7 Agreement enters into force, an Advisory Group on Eco-
8 nomic Reform (the ‘Advisory Group’). The purpose of the
9 Advisory Group is to contribute to the long-term economic
10 sustainability of Palau by recommending economic, finan-
11 cial, and management reforms. The Advisory Group shall
12 be composed of five (5) members, two (2) of whom shall
13 be designated by the President of Palau and two (2) of
14 whom shall be designated by the Government of the
15 United States, the fifth of whom shall be chosen by the
16 Government of the United States from a list of not fewer
17 than three (3) persons not residents of Palau submitted
18 by the President of Palau. In the event the Government
19 of the United States rejects the persons enumerated in
20 the list submitted by the President of Palau, then the fifth
21 member shall be chosen by the President of Palau from
22 a list of not fewer than three (3) persons submitted by
23 the Government of the United States. In making their des-
24 ignations, the President and the Government of the
25 United States shall give consideration to the mix of exper-

1 tise that would be most beneficial to the work of the Advi-
2 sory Group. The Advisory Group will be chaired by a
3 member chosen by the members from among their num-
4 ber. Its meetings will be held once a year in Palau and
5 once a year in Hawaii, unless otherwise agreed by the
6 members. Each government shall provide the necessary
7 support for its designated representatives on the Advisory
8 Group. Support for the fifth member shall be borne by
9 the government that recommended the member. Unless
10 otherwise agreed by the two governments the Advisory
11 Group shall terminate at the end of Fiscal Year 2023.

12 “(f) The Advisory Group shall recommend economic, fi-
13 nancial and management reforms and the schedule on
14 which the reforms should be implemented. The Advisory
15 Group shall report annually not less than thirty (30) days
16 prior to the annual bilateral economic consultations to be
17 held on or about June 1 every year on the Government
18 of Palau’s progress in implementing reforms recommended
19 by the Advisory Group or other reforms taken by the Gov-
20 ernment of Palau. The two governments are committed
21 to these annual economic consultations being meaningful,
22 substantive, and comprehensive.

23 “(g) The Government of Palau’s progress in achieving re-
24 forms shall be reviewed at the annual bilateral economic
25 consultations. Examples of significant progress in a fiscal

1 year would be, but are not limited to: meaningful improve-
2 ments in fiscal management, including the elimination and
3 prevention of operating deficits; a meaningful reduction in
4 the national operating budget from the previous fiscal
5 year; a meaningful reduction in the number of government
6 employees from the level the previous fiscal year; a mean-
7 ingful reduction in the annual amount of the national op-
8 erating budget dedicated to government salaries from the
9 previous fiscal year; demonstrable reduction of govern-
10 ment subsidization of utilities, and meaningful tax reform.

11 “(h) If the Government of the United States determines
12 after the annual bilateral economic consultations that the
13 Government of Palau has not made significant progress
14 in implementing meaningful reforms, then, after direct
15 consultation with the President of Palau, the Government
16 of the United States may, after ninety (90) days notice
17 to the Government of Palau, delay payment of economic
18 assistance under this section. The Government of the
19 United States shall determine the amount of the economic
20 assistance to be delayed. Any assistance delayed shall be
21 held and released when the Government of the United
22 States determines that Palau has made sufficient progress
23 on the reforms.

24 “5. Infrastructure Projects

1 “The Government of the United States shall provide
2 grants totaling \$40 million to the Government of Palau
3 as follows: \$8 million annually in Fiscal Years 2011
4 through Fiscal Year 2013; \$6 million in Fiscal Year 2014;
5 and \$5 million annually in Fiscal Years 2015 and 2016;
6 towards one or more mutually agreed infrastructure
7 projects in accordance with the provisions of Appendix C
8 to this Agreement.

9 “6. Reporting and Auditing

10 “Palau shall resolve all deficiencies in the Annual Single
11 Audit such that by 2018 no deficiency or recommendation
12 dates from before Fiscal Year 2016. By the first day of
13 the fourth quarter of each fiscal year or as soon as prac-
14 ticable thereafter, in the annual report it submits under
15 Section 231(b) of the Compact, the Government of Palau
16 shall report on the status and use of all funds provided
17 under this Agreement. The status and use of all funds
18 provided under this Agreement shall also be discussed in
19 the annual bilateral economic consultations. The financial
20 information relating to this funding shall conform to the
21 standards of the Government Accounting Standards
22 Board. All funds provided under this Agreement shall be
23 subject to a financial and compliance audit and other re-
24 quirements in accordance with the provisions of Appendix
25 D to this Agreement.

1 “7. Federal Programs and Services

2 “The Government of the United States shall make avail-
3 able to Palau through Fiscal Year 2024, in accordance
4 with and to the extent provided through amendments to
5 the Federal Programs and Services Agreement Concluded
6 Pursuant to Article II of Title Two and Section 232 of
7 the Compact of Free Association, signed at Palau on Jan-
8 uary 10, 1986, the services and related programs covered
9 in that agreement as amended herein. The amendments
10 to that agreement constitute Appendix E to this Agree-
11 ment.

12 “8. Telecommunication Services

13 “The Agreement Regarding the Provision of Tele-
14 communication Services by the Government of the United
15 States to Palau Concluded Pursuant to Section 131 of the
16 Compact of Free Association, signed at Koror, Republic
17 of Palau, January 10, 1986 and the Agreement Regarding
18 the Operation of Telecommunication Services of the Gov-
19 ernment of the United States in Palau Concluded Pursu-
20 ant to Section 132 of the Compact of Free Association,
21 signed at Koror, Republic of Palau, January 10, 1986 are
22 amended and these amended agreements constitute Ap-
23 pendix F to this Agreement.

24 “9. Passport Requirement

1 “Section 141 of Article IV of Title One of the Compact
2 shall be construed and applied as if it read as follows:

3 ‘Section 141

4 ‘(a) Any person in the following categories may
5 be admitted to, lawfully engage in occupations, and
6 establish residence as a nonimmigrant in the United
7 States and its territories and possessions without re-
8 gard to paragraphs (5) or (7)(B)(i)(II) of section
9 212(a) of the Immigration and Nationality Act, 8
10 U.S.C. § 1182(a)(5) or (a)(7)(B)(i)(II), provided
11 that the passport presented to satisfy section
12 212(a)(7)(B)(i)(I) of such Act is a valid unexpired
13 machine-readable passport that satisfies the inter-
14 nationally accepted standard for machine readability:

15 ‘(1) a person who, on September 30, 1994,
16 was a citizen of the Trust Territory of the Pa-
17 cific Islands, as defined in Title 53 of the Trust
18 Territory Code in force on January 1, 1979,
19 and has become and remains a citizen of Palau;

20 ‘(2) a person who acquires the citizenship
21 of Palau, at birth, on or after the effective date
22 of the Constitution of Palau; or

23 ‘(3) a naturalized citizen of Palau, who has
24 been an actual resident of Palau for not less
25 than five years after attaining such naturaliza-

1 tion and who holds a certificate of actual resi-
2 dence.

3 ‘Such persons shall be considered to have the permission
4 of the Secretary of Homeland Security of the United
5 States to accept employment in the United States.

6 ‘(b) The right of such persons to establish ha-
7 bitual residence in a territory or possession of the
8 United States may, however, be subjected to non-dis-
9 criminatory limitations provided for:

10 ‘(1) in statutes or regulations of the
11 United States; or

12 ‘(2) in those statutes or regulations of the
13 territory or possession concerned which are au-
14 thorized by the laws of the United States.

15 ‘(c) Section 141(a) does not confer on a citizen
16 of Palau the right to establish the residence nec-
17 essary for naturalization under the Immigration and
18 Nationality Act, or to petition for benefits for alien
19 relatives under that Act. Section 141(a), however,
20 shall not prevent a citizen of Palau from otherwise
21 acquiring such rights or lawful permanent resident
22 alien status in the United States.’.

23 “10. Effective Date, Amendment, and Duration

24 “(a) This Agreement, including its Appendices, shall enter
25 into force on the date of the last note of an exchange of

1 diplomatic notes by which the Government of the United
 2 States and the Government of Palau inform each other
 3 that all internal procedures necessary for its entry into
 4 force have been fulfilled.

5 “(b) This Agreement may be amended at any time by the
 6 mutual written consent of the Government of the United
 7 States and the Government of Palau.

8 “(c) This Agreement shall remain in full force and effect
 9 until terminated by mutual written consent, or until termi-
 10 nation of the Compact, whichever occurs first.

11 “IN WITNESS WHEREOF, the undersigned, duly au-
 12 thorized by their respective Governments, have signed this
 13 Agreement.

14 “DONE AT Honolulu, Hawaii, USA, in duplicate, this
 15 3rd day of September 2010, in the English language.

“FOR THE GOVERNMENT
 OF THE UNITED STATES OF
 AMERICA:

Frankie A. Reed
 [Title]

FOR THE GOVERNMENT
 OF THE REPUBLIC OF PALAU:

Johnson Toribiong
 [Title]

1 “APPENDIX A—INFRASTRUCTURE
2 MAINTENANCE FUND

3 “1. Subject to the terms of this Appendix, the Gov-
4 ernment of the United States shall provide the grants
5 specified in section 2(a) of the Agreement between the
6 United States of America and the Government of the Re-
7 public of Palau following the Compact of Free Association
8 Section 432 Review (the ‘Agreement’) to which this docu-
9 ment is an appendix.

10 “2. If, in a given Fiscal Year, the Government of
11 Palau does not make the contributions agreed to in section
12 2(a) of the Agreement, economic assistance funds to be
13 provided to Palau in the following fiscal year under section
14 4 of the Agreement will be redirected to the Infrastructure
15 Maintenance Fund to make up the contributions owed by
16 the Government of Palau.

17 “3. Grant funds from the Government of the United
18 States and Government of Palau contributions to the In-
19 frastructure Maintenance Fund shall be deposited in an
20 account established by the Government of Palau. Fiscal
21 control and accounting procedures shall be sufficient to
22 permit the preparation of required reports and to permit
23 the tracing of funds to a level of expenditure adequate to
24 establish that such funds have been used in compliance
25 with this Appendix.

1 “4. Palau shall report, at the annual bilateral eco-
2 nomic consultations, the sources of its contributions to the
3 Infrastructure Maintenance Fund.

4 “5. The Infrastructure Maintenance Fund, and any
5 interest accruing thereon, is to be used by the Government
6 of Palau for the maintenance of United States financed
7 capital improvement projects such as the road system
8 (Compact Road) provided by the United States under Sec-
9 tion 212 of the Compact and the capital improvements
10 provided by the United States to the Airai International
11 Airport. The Government of Palau may request in writing
12 the use of the Infrastructure Maintenance Fund for main-
13 tenance of U.S. financed capital improvement projects
14 other than these two, such as the U.S.-financed capital
15 improvements reflected in the Palau national hospital and
16 schools. The Government of the United States shall give
17 due consideration to any such request and shall endeavor
18 to make a determination within sixty (60) days of receipt
19 of the request. Although the primary purpose of the Infra-
20 structure Maintenance Fund is to provide for routine and
21 periodic maintenance, it may be used, when mutually
22 agreed upon in writing, to mitigate damage and make
23 emergency repairs to capital improvement projects funded
24 by the United States.

1 “6. The Government of Palau shall identify to the
2 Government of the United States the Government of
3 Palau official and office responsible for maintenance of the
4 infrastructure with Fund monies. The official shall be re-
5 sponsible for activities necessary to plan and implement
6 annual programs of maintenance of the Compact Road
7 and the International Airport at Airai, and all other public
8 infrastructure. The official shall be responsible for keeping
9 each facility as nearly as possible in its original condition
10 as constructed. The official shall develop an annual main-
11 tenance plan and related budget for reactive, preventive,
12 repetitive, non-recurrent, and emergency-generated main-
13 tenance of the infrastructure specified in paragraph 5 and
14 for all other public infrastructure. The plan will include
15 descriptions and schedules of planned activities and shall
16 identify the related costs. The plan for the infrastructure
17 specified in paragraph 5 shall be submitted to the Govern-
18 ment of the United States for its approval no less than
19 sixty (60) days prior to the beginning of each fiscal year.

20 “7. The Government of the United States will base
21 its approval or disapproval of the plan for the infrastruc-
22 ture specified in paragraph 5 on its consideration of the
23 effectiveness of the plan within the bounds of annual re-
24 sources. Approval by the Government of the United States
25 will be in the form of an annual grant which incorporates

1 the approved maintenance plan and budget. Acceptance of
2 the grant by the Government of the Republic of Palau will
3 obligate the Government of Palau to the implementation
4 of the annual maintenance plan and budget for the infra-
5 structure specified in paragraph 5.

6 “8. The grant, annual maintenance plan, and budget
7 for the infrastructure specified in paragraph 5 may be
8 amended by written mutual agreement.

9 “9. Use of the Fund monies shall be subject to 43
10 Code of Federal Regulations 12 and all other applicable
11 laws and regulations governing the use of grant funds pro-
12 vided by the Government of the United States. These
13 funds may not be used for any purpose other than that
14 for which they are offered.

15 “10. Any grant funds remaining unexpended at the
16 end of a fiscal year shall remain in the Infrastructure
17 Maintenance Fund and may be included in subsequent an-
18 nual maintenance plans and budgets.

19 “11. Reporting Requirements:

20 “(a) A Standard Form SF 425 (or successor
21 form) and a narrative project status report shall be
22 submitted quarterly.

23 “(b) Reports are due within thirty (30) days of
24 the end of each quarter. Final reports are due ninety

1 (90) days after the expiration or termination of the
2 award.

3 “(c) All required plans and reports must be
4 submitted to the U.S. Department of the Interior
5 Office of Insular Affairs grant manager for the
6 grant.

7 “APPENDIX B—FISCAL CONSOLIDATION FUND

8 “1. Subject to the terms of this Appendix, the Gov-
9 ernment of the United States shall provide the Govern-
10 ment of Palau the amounts specified in section 3 of the
11 Agreement of the United States of America and the Gov-
12 ernment of the Republic of Palau following the Compact
13 of Free Association Section 432 Review (the ‘Agreement’)
14 to which this document is an appendix. Until disbursed,
15 these funds will be deposited in an interest bearing ac-
16 count and the interest generated shall also be used to re-
17 duce Palau’s government payment arrears in accordance
18 with the provisions of this Appendix.

19 “2. The purpose of these funds is to allow the Gov-
20 ernment of Palau to discharge the level of debts accumu-
21 lated prior to September 30, 2009. None of the principal
22 or interest accrued on these funds may be disbursed to
23 discharge a debt until the governments agree upon a spe-
24 cific list of debts to be paid with each annual contribution.
25 The funds may not be used to pay off debt owed to an-

1 other government, to pay an international organization, or
2 to pay off debts which are the subject of current or pend-
3 ing litigation. Unless agreed to in writing by the Govern-
4 ment of the United States, the funds may not be used
5 to pay any entity owned or controlled by any member of
6 the government, elected or appointed; to pay any entity
7 owned or controlled by any member of the immediate fam-
8 ily of any member of the government; to pay any entity
9 from which a member of the government derives income;
10 or to pay any creditor if the creditor owes money to the
11 Government of Palau unless arrangements are made im-
12 mediately to offset amounts owed to the Government of
13 Palau from the funds made available to the creditor. Debts
14 owed to U.S. creditors must receive priority. All debts to
15 be paid with these funds must be properly documented as
16 legitimate debts of the Republic of Palau using generally
17 accepted accounting principles. The total amount of the
18 debt to be paid shall not exceed the general fund deficit
19 established by the Single Audit Report as of September
20 30, 2009.

21 “3. The Government of Palau shall report quarterly
22 to the Government of the United States on the use of these
23 funds until they are expended and, until expended, the sta-
24 tus and use of these funds shall be a regular agenda item
25 for annual bilateral economic consultations to be held

1 around June 1 of every year. If eligible debts do not
2 amount to \$10 million, upon the request of the Govern-
3 ment of Palau, the funds remaining after payment of the
4 eligible debts shall be added to the amounts provided for
5 infrastructure projects in section 5 of the Agreement.

6 “APPENDIX C—INFRASTRUCTURE PROJECTS

7 “1. Subject to the terms of this Appendix, the Gov-
8 ernment of the United States shall provide grants towards
9 one or more mutually agreed infrastructure projects as
10 specified in section 5 of the Agreement of the United
11 States of America and the Government of the Republic
12 of Palau following the Compact of Free Association Sec-
13 tion 432 Review (the ‘Agreement’) to which this document
14 is an appendix. These infrastructure grants shall be sub-
15 ject to 43 Code of Federal Regulations 12 and all other
16 applicable laws and regulations governing the use of grant
17 funds provided by the Government of the United States.
18 Grant funds may not be used for any purpose other than
19 that for which they are offered.

20 “2. Payment of grant funds shall be made as reim-
21 bursement of actual or accrued expenditures, using a for-
22 mat provided by the Government of the United States or
23 as mutually agreed.

24 “3. Prior to requesting reimbursement or payment,
25 the Government of Palau shall, as applicable, provide the

1 following documentation to the Government of the United
2 States:

3 “(a) Evidence of title, leasehold agreement, or
4 other legal authority for use of the land upon which
5 the capital improvement project(s) is (are) to be con-
6 structed.

7 “(b) A detailed project budget for each infra-
8 structure project. The budget shall include a break-
9 down of costs (in-house and contract) for planning,
10 engineering and design, real estate, supervision and
11 administration, construction, and construction man-
12 agement and inspection. The Government of Palau
13 and the Government of the United States shall mu-
14 tually agree to the format of this submission.

15 “(c) A scope of work that describes the work to
16 be performed and the schedule from planning
17 through completion of construction. A certified pro-
18 fessional engineer or architect shall sign both the
19 scope of work and budget for each construction
20 project.

21 “4. Prior to disbursing funds requested to reimburse
22 for actual project construction, the Government of the
23 United States may review construction plans and speci-
24 fications, any revised detailed cost estimate, and a detailed
25 construction schedule.

1 America and the Government of the Republic of Palau fol-
2 lowing the Compact of Free Association Section 432 Re-
3 view (the ‘Agreement’) for each fiscal year during which
4 the Agreement is in effect. The results of these Audits
5 shall be available not later than the beginning of the
6 fourth fiscal quarter following the end of the fiscal year
7 under review, as required by the Single Audit Act. The
8 costs of these audits are to be borne by the Government
9 of Palau, and may be a recognized expense to funds pro-
10 vided under section 4 of the Agreement. If the Govern-
11 ment of the Republic of Palau does not endeavor to per-
12 form a Single Audit in any given fiscal year, economic as-
13 sistance funds to be provided to Palau in the following
14 fiscal year under section 4 of the Agreement shall be redi-
15 rected to pay for the required Single Audit.

16 “2. In conducting the audits required under this Ap-
17 pendix, the auditors shall take into account relevant laws
18 and regulations of the United States and Palau, including
19 U.S. laws and regulations on the conduct of audits, and
20 Palauan laws and regulations which relate in a material,
21 substantial or direct way to financial statements and oper-
22 ations of the Government of Palau.

23 “3. The authority of the Government of the United
24 States set forth this Appendix shall continue for at least
25 three (3) years after the last Grant or element of assist-

1 ance by the Government of the United States under this
2 Agreement has been provided and expended.

3 “4. Audit officials or agents of the Government of
4 the United States may perform audits on the use of all
5 funding provided pursuant to this Agreement, including
6 grants and other assistance provided to the Government
7 of Palau. The Government of the United States is respon-
8 sible for all costs attendant to the discharge of this author-
9 ity.

10 “5. Audit officials from the Government of the
11 United States are the officials and employees of the Gov-
12 ernment of the United States who are responsible for the
13 discharge of its audit responsibilities, including those of
14 the Comptroller General of the United States and any In-
15 spector General of an agency of the Government of the
16 United States with programs operating in or otherwise
17 serving the Republic of Palau. While present in the Repub-
18 lic of Palau for the purposes of this Appendix, audit offi-
19 cials from the Government of the United States shall be
20 immune from civil and criminal process relating to words
21 spoken or written and all acts performed by them in their
22 official capacity and falling within their functions, except
23 insofar as such immunity may be expressly waived by the
24 Government of the United States. The Comptroller Gen-
25 eral and his duly authorized representatives, and other

1 audit officials from the Government of the United States,
2 shall not be liable to arrest or detention pending trial, ex-
3 cept in the case of a grave crime and pursuant to a deci-
4 sion by a competent judicial authority, and such persons
5 shall enjoy immunity from seizure of personal property,
6 immigration restrictions, and laws relating to alien reg-
7 istration, fingerprinting, and the registration of foreign
8 agents. Such persons shall enjoy the same taxation exemp-
9 tions as are set forth in Article 34 of the Vienna Conven-
10 tion on Diplomatic Relations. The privileges, exemptions
11 and immunities accorded under this paragraph are not for
12 the personal benefit of the individuals concerned but are
13 to safeguard the independent exercise of their official
14 functions. Without prejudice to those privileges, exemp-
15 tions and immunities, it is the duty of all such persons
16 to respect the laws and regulations of the Government of
17 the Republic of Palau.

18 “6. Audit officials from the Government of the
19 United States shall provide the Government of Palau with
20 advance notice of the specific dates and nature of their
21 visits prior to entering the Republic of Palau and shall
22 show verifiable identification to officials of the Govern-
23 ment of Palau when seeking access to records. In the per-
24 formance of their responsibilities under this Agreement,
25 audit officials from the Government of the United States

1 shall have due regard for the laws of the Republic of Palau
2 and the duties and responsibilities of the officials of the
3 Government of Palau. Officials of the Government of
4 Palau shall cooperate fully to the extent practicable with
5 the United States audit officials to enable the full dis-
6 charge of their responsibilities.

7 “7. The Comptroller General of the United States,
8 and officials of the United States Government Account-
9 ability Office acting on his or her behalf, shall have coex-
10 tensive authority with the executive branch of the Govern-
11 ment of the United States as provided by this Appendix.
12 The audit officials from the executive branch of the Gov-
13 ernment of the United States shall avoid duplication be-
14 tween their audit programs and those of the United States
15 Government Accountability Office. The Government of
16 Palau shall cooperate fully to the extent practicable with
17 the Comptroller General of the United States in the con-
18 duct of such Audits as the Comptroller General of the
19 United States determines necessary in accordance with
20 this Appendix to enable the full discharge of his respon-
21 sibilities.

22 “8. The Government of Palau shall provide audit offi-
23 cials from the Government of the United States with ac-
24 cess, without cost and during normal working hours, to
25 all records, documents, working papers, automated data,

1 and files which are relevant to the uses of funding received
2 pursuant to the Agreement by the Government of Palau.
3 To the extent that such information is contained in con-
4 fidential official documents, the Government of Palau shall
5 undertake to extract information that is not of a confiden-
6 tial nature and make it available to the audit officials from
7 the Government of the United States in the same manner
8 as other relevant information or to provide such informa-
9 tion from other sources.

10 “9. In order to reduce the level of interference in the
11 daily operation of the activities of the Government of
12 Palau, audit officials from the Government of the United
13 States shall, to the extent practicable, inform the Govern-
14 ment of Palau of their need for information, including the
15 type of information and its relation to their annual audit
16 schedule. To the extent practicable, the Government of
17 Palau shall make available the information requested by
18 audit officials from the Government of the United States
19 relevant to Audits and available in a manner consistent
20 with generally accepted accounting procedures that allows
21 for the distinction of the Grants, assistance, and payments
22 provided by the Government of the United States from
23 any other funds of the Government of Palau. Such infor-
24 mation shall be used and returned as quickly as accurate
25 audit testing and surveying allow.

1 “10. The Government of Palau shall maintain
2 records, documents, working papers, automated data,
3 files, and other information regarding each such Grant or
4 other assistance for at least three (3) years after such
5 Grant or assistance was provided.

6 “11. Audit organizations and officials from the Gov-
7 ernment of the United States, including the Comptroller
8 General of the United States and his duly authorized rep-
9 resentatives, shall provide the Government of Palau with
10 at least thirty (30) days to review and comment on draft
11 audit reports prior to the release of the reports. The com-
12 ments of the Government of Palau shall be included, in
13 full, in the final audit reports. Should a draft audit report
14 be revised based on the comments of the Government of
15 Palau, the Government of Palau shall have an additional
16 period to review and comment on the report prior to its
17 release.

18 “(c) The amendments to the Compact subsidiary
19 agreements referenced in sections 7 and 8 of the Agree-
20 ment set forth in section 105(b) above are hereby con-
21 sented to (except for the extension of Article X of the Fed-
22 eral Programs and Services Agreement Concluded Pursu-
23 ant to Article II of Title Two and Section 232 of the Com-
24 pact of Free Association).

1 “(d) There are authorized and appropriated to the
2 Department of the Interior, out of any funds in the Treas-
3 ury not otherwise appropriated, to remain available until
4 expended, such sums as are necessary to carry out the
5 purposes of sections 1, 2(a), 3, 4(a), and 5 of the Agree-
6 ment set forth in section 105(b) above.

7 “(e) If this section 105 and the Agreement set forth
8 in section 105(b) above become effective during fiscal year
9 2011, and if between September 30, 2010, and the date
10 the Agreement set forth in section 105(b) becomes effec-
11 tive, the Government of Palau withdraws more than
12 \$5,000,000 from the trust fund established under section
13 211(f) of the U.S.-Palau Compact, amounts payable under
14 sections 1, 2(a), 3, and 4(a) of the Agreement set forth
15 in section 105(b) above, shall be withheld from the Gov-
16 ernment of Palau until Palau has reimbursed the trust
17 fund for the amount, above \$5,000,000, withdrawn.

18 “(f) There are authorized to be appropriated to the
19 Departments, agencies, and instrumentalities named in
20 paragraphs 1, 3, and 4 of section 221(a) of the U.S.-Palau
21 Compact, and their successor Departments, agencies, and
22 instrumentalities, such sums as are necessary to carry out
23 the purposes of those paragraphs, to remain available until
24 expended.

1 “(g) There are authorized to be appropriated to the
2 Department of the Interior \$1.5 million annually for 14
3 years—Fiscal Year 2011 through Fiscal Year 2024—to
4 subsidize United States Postal Service (USPS) postal
5 services provided to Palau, the Republic of the Marshall
6 Islands, and the Federated States of Micronesia, to re-
7 main available until expended.

8 “(h) Section 105(f)(1)(B)(ix) of the Compact of Free
9 Association Amendments Act of 2003 (48 U.S.C.
10 1921d(f)(1)(B)(ix)) shall be applied by substituting ‘2024’
11 for ‘2009’.”

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