AUTHENTICATED
U.S. GOVERNMENT
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Calendar No. 42

110TH CONGRESS
1st Session

SENATE

REPORT
110–17

COMPACTS OF FREE ASSOCIATION AMENDMENTS ACT OF 2007

FEBRUARY 15, 2007.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 283]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 283) to amend the Compact of Free Association Amendments Act of 2003, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 283 is to approve subsidiary agreements to the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia, and to the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands, and to make other conforming, clarifying, and technical amendments to the Compact of Free Association Amendments Act of 2003 (CFAAA), (Public Law 108–188).

SUMMARY OF MAJOR PROVISIONS

S. 283 consists of nine sections. Section 1 provides a short title. Sections 2 and 3 approves agreements negotiated between the United States and the Federated States of Micronesia (FSM), and between the United States and the Republic of the Marshall Islands (RMI) regarding disaster assistance and makes conforming amendments to the CFAAA. Section 4 clarifies the eligibility of students from the FSM and RMI for certain education programs, and the eligibility of the Government, institutions, and people of the

Republic of Palau for certain programs, under the CFAAA. Section 5 clarifies that citizens of the FSM and RMI who legally reside in the United States are eligible for the programs and services of Legal Services Corporation. Section 6 makes numerous grammatical and technical edits to the CFAAA. Section 7 restores the authorization for FSM, Palau and the RMI to transmit videotaped programming. Section 8 allows Palau to deposit a payment, otherwise due the United States in connection with a Compact road project, into a trust fund for road maintenance. Section 9 clarifies the tax-free status of the trust funds established for the FSM and RMI under their respective Compacts.

BACKGROUND AND NEED

In 1947, the United States became Administrator of the United Nation's Trust Territory of the Pacific Islands, composed of the Marshall, Caroline, Palau and Mariana (except Guam) islands. All of these islands were captured from Japan in World War II and include those that now comprise the FSM and the RMI. U.S. obligations under the Trusteeship included promoting self-government or independence of the inhabitants. In the case of the FSM and RMI, negotiations on political status culminated with the signing of the Compact of Free Association, which was approved by Congress, under Public Law 99–239, in 1986. The new relationship of free association allowed for termination of the U.N. Trusteeship, international recognition of the FSM and RMI as sovereign nations, but also for the continuation of the special political, economic, and security relationship between the United States and these new nations.

In 2003, Congress enacted the CFAAA, which separated the Compact into two separate agreements, and approved amendments to extend and restructure the financial and program assistance provisions. One area that remained unresolved in the new law, however, was how disaster assistance would be handled. The Federal Emergency Management Agency (FEMA) objected to continuing to provide disaster assistance under the Compacts because, in its experience, the FSM and RMI governments lacked the capacity to properly meet their administrative and support responsibilities. Simply terminating FEMA's role was unacceptable to Congress because there would likely be disasters in the future, and a program would be needed to fund and coordinate disaster assistance to meet the needs of the population and to reconstruct essential infrastructure.

Accordingly, section 105(f)(1)(A) of the CFAAA directed the Secretary of State, in consultation with FEMA, to negotiate specific disaster assistance agreements with the FSM and RMI and report to Congress on the outcome of those negotiations, including recommendations on any changes to law.

On August 19, 2004, the State Department transmitted to Congress new agreements and the legislative language needed to bring them into effect. Generally, the agreements provide that FEMA and the Office of Foreign Disaster Assistance (OFDA) will jointly consult on any disaster damage assessments and on disaster declaration recommendations. FEMA will provide the funding to meet FEMA reconstruction and response requirements and other necessary expenses, and OFDA will be responsible for administering

disaster assistance and coordinating the U.S. response to declared disasters.

Prior to introduction of the legislative language as transmitted to the Congress, the sponsors agreed to use the bill as a vehicle to make other conforming, clarifying, and technical amendments to the CFAAA.

LEGISLATIVE HISTORY

S. 283 was introduced by Senator Bingaman (for himself and Senator Domenici) on January 12, 2007.

During the 109th Congress, the Committee considered similar legislation, S. 1830, introduced by Senator Domenici (for himself and Senators Bingaman and Akaka), at the request of the Administration. The Committee on Energy and Natural Resources held a hearing on S. 1830 on October 25, 2005 (S. Hrg. 109–291), and ordered the bill favorably reported, with amendments, on March 15, 2006. S. Rept. 109–237. The Senate passed the bill by unanimous consent, with amendments, on September 29, 2006. No further action occurred prior to the sine die adjournment of the 109th Congress.

At its business meeting on January 31, 2007, the Committee ordered S. 283 to be favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on January 31, 2007, by a voice vote of a quorum present, recommends that the Senate pass S. 283.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that this Act may be cited as the "Compacts of Free Association Amendments Act of 2007".

Section 2 amends section 101 of the Compact of Free Association Amendments Act of 2003 (CFAAA) (Public Law 108–188) to approve the two disaster assistance agreements negotiated pursuant to section 105(f)(1)(A) of that Act and transmitted to the Congress on August 19, 2004.

Section 3 deletes the interim disaster assistance provisions and negotiating instructions set forth in section 105(f)(1)(A) of the CFAAA, which will be rendered moot upon approval of the new agreements. The Administration more recently sent additional language contained in clause (ii) to clarify that funding to implement these agreements will be "transferred" from FEMA to OFDA.

Section 4 makes three clarifying amendments to section 105(f)(1)(B) of the CFAAA regarding the availability of certain U.S. education programs. The first two paragraphs clarify that students from the FSM and the RMI who are attending colleges in the United States or its territories—and also in Palau, which had been inadvertently omitted—shall continue to be eligible to receive benefits through the end of their current course of studies, up to four years, for programs that are otherwise terminated by the CFAAA.

The third paragraph clarifies that the "government, institutions, and people" of Palau shall continue to be eligible, until the end of fiscal year 2009, for those education programs for which they were eligible in fiscal year 2003. The existing language had generally

stated that the "Republic of Palau" would remain eligible, instead of specifying that the "students, institutions, and government of Palau" would remain eligible.

Section 5 clarifies that section 105(f)(1)(C) of the CFAAA is intended to continue eligibility for the programs and services of the Legal Services Corporation for FSM and RMI migrants who legally reside in the United States. Legal Services Corporation eligibility was extended by the first Compact Act in 1986 (Public Law 99–239), but in 1996, without any further action by Congress, the Legal Services Corporation, by rule, terminated the eligibility of FSM and RMI migrants. Section 104(e) of the original Compact Act, and of the CFAAA, states that it is "not the intent of Congress to cause any adverse consequences for an affected area," which are defined as Hawaii, Guam, the CNMI, and American Samoa. The Legal Services Corporation is one of those programs which had assisted local communities, in both the "affected areas" and in the mainland United States, in responding to the impacts and needs of FSM and RMI citizens who were residing in U.S. communities. This section would restore eligibility as it existed from 1986 to 1996.

Section 6 makes technical corrections to the CFAAA.

Section 7 authorizes the FSM, Palau, and the RMI to transmit videotaped programming. In remote and isolated communities of the United States, such as isolated communities in Alaska, Hawaii, and the Territories, Congress has provided an exception from the copyright laws to allow for the videotaping of television programming for rebroadcast in outlying areas. Section 7 would restore this exception for videotaping and rebroadcast of television programming for the freely associated states, which enjoyed the privilege during the Trust Territory period.

Section 8 allows the Government of Palau to deposit the payment, otherwise payable to the United States under section 111 of Public Law 101–219, into a trust fund if the earnings of the trust fund are expended solely for maintenance of the road system constructed pursuant to section 212 of the Palau Compact, and if this trust fund is established and operated pursuant to an agreement entered into between the United States and Palau.

Section 9 would clarify the tax-free status of the trust funds established for the FSM and RMI under their respective Compacts. Because these trust funds are to be incorporated in the District of Columbia and it is not a State, the intended tax-free status could otherwise be questioned.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

S. 283—Compacts of Free Association Amendments Act of 2007

S. 283 would amend the Compact of Free Association Amendments Act of 2003. The bill would make several amendments to the compact and would cancel a $3 million payment Palau owes to the federal government if Palau deposits $3 million into a trust fund controlled by the Republic of Palau. The earnings from the trust fund would be used for maintenance of the road system in Palau. Based on information from the Department of the Interior, CBO es-

timates that this provision would result in a loss of offsetting receipts (a credit against direct spending) of $3 million in fiscal year 2007. Enacting the legislation would not affect revenues.

S. 283 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 283. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 283, as ordered reported.

EXECUTIVE COMMUNICATIONS

Because S. 283 is similar to legislation considered by the Senate in the 109th Congress, the Committee did not request Executive Agency views on S. 283.

Following is a copy of the August 19, 2004, letter from the U.S. Department of State to the Chairman of the Committee transmitting the text of legislation that was included as section 2 of S. 283, as introduced. Copies of the two agreements to be approved by this language are retained in the Committee files.

UNITED STATES DEPARTMENT OF STATE,
Washington, DC, August 19, 2004.

Hon. JEFF BINGAMAN,
Committee on Energy and Natural Resources,
U.S. Senate.

DEAR SENATOR BINGAMAN: In accordance with section 105(f)(1)(A)(iii) of the Compact of Free Association Amendments Act of 2003 (P.L. 108–188), the Department of State has completed negotiations and signed subsidiary agreements to the amended Compacts of Free Association with the Republic of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM) with regard to future United States provision of disaster assistance.

Specifically, we have reached agreement with the RMI and FSM on amendments to the Federal Programs and Services Agreements necessary to address the continued extension of disaster assistance and response services by the U.S. Agency for International Development (USAID), Office of Foreign Disaster Assistance (OFDA), and continued support from the Department of Homeland Security's Federal Emergency Management Agency (FEMA). Accordingly, I am pleased to transmit to the Congress for consideration and enactment under section 105(f)(1)(A)(iii) of P.L. 108–188, the enclosed draft legislation to grant the consent of Congress to:

(1) the Agreement to Amend Article X of the Federal Programs and Services Agreement Between the Government of the United States and the Government of the Republic of the Marshall Islands Concluded Pursuant to Article III of Title One, Article II of Title Two, (including Section 222), and Section 231 of the Compact of Free Association, as Amended; and

(2) the Agreement to Amend Article X of the Federal Programs and Services Agreement Between the Government of the United States and the Government of the Federated States of Micronesia Concluded Pursuant to Article III of Title One, Article II of Title Two, (including Section 222), and Section 231 of the Compact of Free Association, as Amended.

The text of the signed Agreements is also enclosed,

The Department of State appreciates Congress' expeditious passage of the Compact of Free Association Amendments Act of 2003. The amended Compacts have entered into force with both nations, and the Department is working with the Department of the Interior, other executive branch agencies, and the respective governments to ensure their successful implementation.

The Office of Management and Budget advises that there is no objection to the submission of this legislation from the standpoint of the Administration's program.

Sincerely,

PAUL V. KELLY,
Assistant Secretary, Legislative Affairs.

Enclosures.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1830, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 108–188 [H.J. RES. 63]—DEC. 17, 2003

COMPACT OF FREE ASSOCIATION AMENDMENTS ACT OF 2003

108 P.L. 188; 117 Stat. 2720; 2003 Enacted H.J. Res. 63; 108 Enacted H.J. Res. 63

JOINT RESOLUTION

To approve the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia, and the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands, and to appropriate funds to carry out the amended Compacts.

* * * * * * *

TITLE I—APPROVAL OF U.S.-FSM COMPACT AND U.S. RMI COMPACT; INTERPRETATION OF, AND U.S. POLICIES REGARDING, U.S.-FSM COMPACT AND U.S.-RMI COMPACT; SUPPLEMENTAL PROVISIONS

SEC. 101. APPROVAL OF U.S.-FSM COMPACT OF FREE ASSOCIATION AND THE U.S.-RMI COMPACT OF FREE ASSOCIATION; REFERENCES TO SUBSIDIARY AGREEMENTS OR SEPARATE AGREEMENTS.

(a) FEDERATED STATES OF MICRONESIA.—The Compact of Free Association, as amended with respect to the Federated States of Micronesia and signed by the United States and the Government of the Federated States of Micronesia and set forth in Title II (section 201(a)) of this joint resolution, is hereby approved, and Congress hereby consents to the subsidiary agreements and amended subsidiary agreements listed in section 462 of the U.S.-FSM Compact, *including Article X of the Federal Programs and Services Agreement Between the Government of the United States and the Government of the Federated States of Micronesia, as amended under the Agreement to Amend Article X that was signed by those 2 Governments on June 30, 2004, which shall serve as the authority to implement the provisions thereof.* Subject to the provisions of this joint resolution, the President is authorized to agree, in accordance with section 411 of the U.S.-FSM Compact, to an effective date for and thereafter to implement such U.S.-FSM Compact.

(b) REPUBLIC OF THE MARSHALL ISLANDS.—The Compact of Free Association, as amended with respect to the Republic of the Marshall Islands and signed by the United States and the Government of the Republic of the Marshall Islands and set forth in Title II (section 201(b)) of this joint resolution, is hereby approved, and Congress hereby consents to the subsidiary agreements and amended subsidiary agreements listed in section 462 of the U.S. RMI Compact, *including Article X of the Federal Programs and Services Agreement Between the Government of the United States and the Government of the Republic of the Marshall Islands, as amended under the Agreement to Amend Article X that was signed by those 2 Governments on June 18, 2004, which shall serve as the authority to implement the provisions thereof.* Subject to the provisions of this joint resolution, the President is authorized to agree, in accordance with section 411 of the U.S.-RMI Compact, to an effective date for and thereafter to implement such U.S.-RMI Compact.

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SEC. 103. AGREEMENTS WITH AND OTHER PROVISIONS RELATED TO THE REPUBLIC OF THE MARSHALL ISLANDS.

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(c) SECTION 177 AGREEMENT.—

(1) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that in furtherance of the purposes of Article I of the Subsidiary Agreement for Implementation of Section 177 of the Compact, the payment of the amount specified therein shall be made by the United States under Article I of the Agreement between the Government of the United States and the Government of the Marshall Islands for the Implementation of [section 177] *Section 177* of the Compact

(hereafter in this subsection referred to as the "Section 177 Agreement") only after the Government of the Marshall Islands has notified the President of the United States as to which investment management firm has been selected by such Government to act as Fund Manager under Article I of the Section 177 Agreement.

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SEC. 104. INTERPRETATION OF AND UNITED STATES POLICY REGARDING U.S.-FSM COMPACT AND U.S.-RMI COMPACT.

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(b) IMMIGRATION AND PASSPORT SECURITY.—

(1) NATURALIZED CITIZENS.—The rights of a bona fide naturalized citizen of the Federated States of Micronesia or the Republic of the Marshall Islands to enter the United States, to lawfully engage therein in occupations, and to establish residence therein as a nonimmigrant, to the extent such rights are provided under section 141 of the U.S.-FSM Compact and the U.S.-RMI Compact, shall not be deemed to extend to any such naturalized citizen with respect to whom circumstances associated with the acquisition of the status of a naturalized citizen are such as to allow a reasonable inference, on the part of appropriate officials of the United States and subject to United States procedural requirements, that such naturalized status was acquired primarily in order to obtain such rights.

* * * * * * *

(e) IMPACT OF THE U.S.-FSM COMPACT AND THE U.S.-RMI COMPACT ON THE STATE OF HAWAII, GUAM, THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS AND AMERICAN SAMOA; RELATED AUTHORIZATION AND CONTINUING APPROPRIATION.

(1) STATEMENT OF CONGRESSIONAL INTENT.—In Reauthorizing the U.S.-FSM Compact and the U.S.-RMI Compact, it is not the intent of Congress to cause any adverse consequences for an affected jurisdiction.

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(8) REPORTING REQUIREMENT.—Not later than one year after the date of enactment of this joint resolution, and at one year intervals thereafter, the Governors of Guam, the State of Hawaii, the Commonwealth of the Northern Mariana Islands, and American Samoa may provide to the Secretary of the Interior by February 1 of each year their comments with respect to the impacts of the Compacts on their respective jurisdiction. The Secretary of the Interior, upon receipt of any such comments, shall report to the Congress not later than May 1 of each year **[**to include**]** *and include* the following:

(A) The Governor's comments on the impacts of the Compacts as well as the Administration's analysis of such impact.

(B) The Administration views on any recommendations for corrective action to eliminate those consequences as proposed by such Governors.

(C) With regard to immigration, statistics concerning the number of persons availing themselves of the rights de-

scribed in section 141(a) of the Compact during the year covered by each report.

(D) With regard to trade, an analysis of the impact on the economy of American Samoa resulting from imports of canned tuna into the United States from the Federated States of Micronesia and the Republic of the Marshall Islands.

(9) RECONCILIATION OF UNREIMBURSED IMPACT EXPENSES.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the President, to address previously accrued and unreimbursed impact expenses, may, at the request of the Governor of Guam or the Governor of the Commonwealth of the Northern Mariana Islands, reduce, release, or waive all or part of any amounts owed by the Government of Guam or the Government of the Commonwealth of the Northern Mariana Islands (or either government's autonomous agencies or instrumentalities), respectively, to any department, agency, independent agency, office, or instrumentality of the United States.

(B) TERMS AND CONDITIONS.—

(i) SUBSTANTIATION OF IMPACT COSTS.—Not later than 120 days after the date of the enactment of this resolution, the Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands shall each submit to the Secretary of the Interior a report, prepared in consultation with an independent accounting firm, substantiating unreimbursed impact expenses claimed for the period from January 14, 1986, through September 30, 2003. Upon request of the Secretary of the Interior, the Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands shall submit to the Secretary of the Interior copies of all documents upon which the report submitted by that Governor under this clause was based.

(ii) CONGRESSIONAL NOTIFICATION.—The President shall notify Congress of his intent to exercise the authority granted in subparagraph (A).

(iii) CONGRESSIONAL REVIEW AND COMMENT.—Any reduction, release, or waiver under this Act shall not take effect until 60 days after the President notifies Congress of his intent to approve a request of the Governor of Guam or the Governor of the Commonwealth of the Northern Mariana Islands. In exercising his authority under this section and in determining whether to give final approval to a request, the President shall take into consideration comments he may receive after Congressional review.

(iv) EXPIRATION.—The authority granted in subparagraph (A) shall expire on February 28, 2005.

(10) AUTHORIZATION OF APPROPRIATIONS FOR GRANTS.—There are hereby authorized to the Secretary of the Interior for each of fiscal years 2004 through 2023 such sums as may be necessary for grants to the governments of Guam, the State of Hawaii, the Commonwealth of the Northern Mariana Islands, and

American Samoa, as a result of increased demands placed on educational, social, or public safety services or infrastructure [related to service] *related to such services* due to the presence in Guam, Hawaii, the Commonwealth of the Northern Mariana Islands, and American Samoa of qualified nonimmigrants from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(j) INFLATION ADJUSTMENT.—As of Fiscal Year 2015, if the United States Gross Domestic Product Implicit Price Deflator average for Fiscal Years 2009 through 2013 is greater than United States Gross Domestic Product Implicit Price Deflator average for Fiscal Years 2004 through 2008 (as reported in the Survey of Current Business or subsequent publication and compiled by the Department of the Interior), then section 217 of the U.S.-FSM Compact, paragraph 5 of Article II of the U.S.-FSM Fiscal Procedures Agreement, section 218 of the U.S.-RMI Compact, and paragraph 5 of Article II of the U.S.-RMI Fiscal Procedures Agreement shall be construed as if "the full" appeared in place of "two-thirds of the" each place those words appear. If an inflation adjustment is made under this subsection, the base year for calculating the inflation adjustment shall be fiscal year 2014.

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SEC. 105. SUPPLEMENTAL PROVISIONS.

(a) DOMESTIC PROGRAM REQUIREMENTS.—Except as may otherwise be provided in this joint resolution, all United States Federal programs and services extended to or operated in the Federated States of Micronesia or the Republic of the Marshall Islands are and shall remain subject to all applicable criteria, standards, reporting requirements, auditing procedures, and other rules and regulations applicable to such programs when operating in the United States (including its territories and commonwealths).

(b) RELATIONS WITH THE FEDERATED STATES OF MICRONESIA AND THE REPUBLIC OF THE MARSHALL ISLANDS.—

(1) Appropriations made pursuant to Article I of Title Two and subsection (a)(2) of section 221 of article II of Title Two of the U.S.-FSM Compact and the U.S.-RMI Compact shall be made to the Secretary of the Interior, who shall have the authority necessary to fulfill his responsibilities for monitoring and managing the funds so appropriated consistent with the U.S.-FSM Compact and the U.S.-RMI Compact, including the agreements referred to in section 462(b)(4) of the U.S.-FSM Compact and U.S.-RMI Compact (relating to Fiscal Procedures) and the agreements referred to in section 462(b)(5) of the U.S.FSM Compact and the U.S.-RMI Compact (regarding the [Trust Fund] *Trust Funds*).

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(f) CONTINUING PROGRAMS AND LAWS.—

(1) FEDERATED STATES OF MICRONESIA AND REPUBLIC OF THE MARSHALL ISLANDS.—In addition to the programs and services set forth in section 221 of the Compact, and pursuant to section 222 of the Compact, the programs and services of the following agencies shall be made available to the Federated States of Micronesia and to the Republic of the Marshall Islands:

[(A) CONTINUATION OF THE PROGRAMS AND SERVICES OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY.—Except as provided in clauses (ii) and (iii), the programs and services of the Department of Homeland Security, Federal Emergency Management Agency shall continue to be available to the Federated States of Micronesia and the Republic of the Marshall Islands to the same extent as such programs and services available in fiscal year 2003.

[(i) Paragraph (a)(6) of section 221 of the U.S.-FSM Compact and paragraph (a)(5) of the U.S.-RMI Compact shall each be construed as though the paragraph reads as follows: "the Department of Homeland Security, United States Federal Emergency Management Agency.".

[(ii) Subsection (d) of section 211 of the U.S.-FSM Compact and subsection (e) of section 211 of the U.S.-RMI Compact shall each be construed as though the subsection reads as follows: "Not more than $200,000 (as adjusted for inflation pursuant to section 217 of the U.S.-FSM Compact and section 218 of the U.S.-RMI Compact) shall be made available by the Secretary of the Interior to the Department of Homeland Security, Federal Emergency Management Agency to facilitate the activities of the Federal Emergency Management Agency in accordance with and to the extent provided in the Federal Programs and Services Agreement.".

[(iii) The Secretary of State, in consultation with the Department of Homeland Security and the Federal Emergency Management Agency, shall immediately undertake negotiations with the Government of the Federated States of Micronesia and the Government of the Republic of the Marshall Islands regarding disaster assistance and shall report to the appropriate committees of Congress no later than June 30, 2004, on the outcome of such negotiations, including recommendations for changes to law regarding disaster assistance under the U.S.-FSM Compact and the U.S.-RMI Compact, and including subsidiary agreements as needed to implement such changes to law. If an agreement is not concluded, and legislation enacted which reflects such agreement, before the date which is five years after the date of enactment of this Joint Resolution, the following provisions shall apply: "Paragraph (a)(6) of section 221 of the U.S.-FSM Compact and paragraph (a)(5) of section 221 of the U.S.-RMI Compact shall each be construed and applied as if each provision reads as follows: "The U.S. Agency for International Development shall be responsible for the provision of emergency and disaster relief assistance in accordance with its statutory authorities, regulations and policies. The Republic of the Marshall Islands and the Federated States of Micronesia may additionally request that the President make an emergency or major disaster declaration. If the President declares

an emergency or major disaster, the Department of Homeland Security (DHS), the Federal Emergency Management Agency (FEMA) and the U.S. Agency for International Development shall jointly (a) assess the damage caused by the emergency or disaster and (b) prepare a reconstruction plan including an estimate of the total amount of Federal resources that are needed for reconstruction. Pursuant to an interagency agreement, FEMA shall transfer funds from the Disaster Relief Fund in the amount of the estimate, together with an amount to be determined for administrative expenses, to the U.S. Agency for International Development, which shall carry out reconstruction activities in the Republic of the Marshall Islands and the Federated States of Micronesia in accordance with the reconstruction plan. For purposes of Disaster Relief Fund appropriations, the funding of the activities to be carried out pursuant to this paragraph shall be deemed to be necessary expenses in carrying out the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). "DHS may provide to the Republic of the Marshall Islands and the Federated States of Micronesia preparedness grants to the extent that such assistance is available to the States of the United States. Funding for this assistance may be made available from appropriations made to DHS for preparedness activities.".]

(A) EMERGENCY AND DISASTER ASSISTANCE.—

(i) IN GENERAL.—Subject to clause (ii), section 221(a)(6) of the U.S.-FSM Compact and section 221(a)(5) of the U.S.-RMI Compact shall each be construed and applied in accordance with the 2 Agreements to Amend Article X of the Federal Programs and Service Agreements signed on June 30, 2004, and on June 18, 2004, respectively.

(ii) DEFINITION OF WILL PROVIDE FUNDING.—In the second sentence of paragraph 12 of each of the Agreements described in clause (i), the term "will provide funding" means will provide funding through a transfer of funds using Standards Form 1151 or a similar document or through an interagency, reimbursable agreement.

(B) TREATMENT OF ADDITIONAL PROGRAMS.—

(i) CONSULTATION.—The United States appointees to the committees established pursuant to section 213 of the U.S.-FSM Compact and section 214 of the U.S.-RMI Compact shall consult with the Secretary of Education regarding the objectives, use, and monitoring of United States financial, program, and technical assistance made available for educational purposes.

(ii) CONTINUING PROGRAMS.—The Government of the United States—

(I) shall continue to make available to the Federated States of Micronesia and the Republic of the Marshall Islands for fiscal years 2004 through

2023, the services to individuals eligible for such services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) to the extent that such services continue to be available to individuals in the United States; and

(II) shall continue to make available to eligible institutions in the Federated States of Micronesia and the Republic of the Marshall Islands, and to students enrolled in such institutions, and in institutions in the United States [and its territories], *its territories, and the Republic of Palau* for fiscal years 2004 through 2023, grants under subpart 1 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a et seq.) to the extent that such grants continue to be available to institutions and students in the United States.

(iii) SUPPLEMENTAL EDUCATION GRANTS.—In lieu of eligibility for appropriations under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.), title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), other than subtitle C of that Act (29 U.S.C. 2881 et seq.) (Job Corps), title II of the Workforce Investment Act of 1998 (20 U.S.C. 9201 et seq.; commonly known as the Adult Education and Family Literacy Act), title I of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2321 et seq.), the Head Start Act (42 U.S.C. 9831 et seq.), and subpart 3 of part A, and part C, of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070b et seq., 42 U.S.C. 2751 et seq.), there are authorized to be appropriated to the Secretary of Education to supplement the education grants under section 211(a)(1) of the U.S.-FMS Compact and section 211(a)(1) of the U.S.-RMI Compact, respectively, the following amounts:

(I) $12,230,000 for the Federated States of Micronesia for fiscal year 2005 and an equivalent amount, as adjusted for inflation under section 217 of the U.S.-FSM Compact, for each of fiscal years 2005 through 2023; and

(II) $6,100,000 for the Republic of the Marshall Islands for fiscal year 2005 and an equivalent amount, as adjusted for inflation under section 218 of the U.S.-RMI Compact, for each of fiscal years 2005 through 2023, except that citizens of the Federated States of Micronesia and the Republic of the Marshall Islands who attend an institution of higher education in the United States or its territories, the Federated States of Micronesia, [or the Republic of the Marshall Islands] *the Republic of the Marshall Islands, or the Republic of Palau* on the date of enactment of this joint resolution may continue to receive assistance under such subpart 3 of part A or part C, for not more than 4 academic years after such date to en-

able such citizens to complete their program of study.

(iv) FISCAL PROCEDURES.—Appropriations made pursuant to clause (iii) shall be used and monitored in accordance with an agreement between the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Interior, and in accordance with the respective Fiscal Procedures Agreements referred to in section 462(b)(4) of the U.S.-FSM Compact and section 462(b)(4) of the U.S.-RMI Compact. The agreement between the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Interior shall provide for the transfer, not later than 60 days after the appropriations made pursuant to clause (iii) become available to the Secretary of Education, the Secretary of Labor, and the Secretary of Health and Human Services, from the Secretary of Education, the Secretary of Labor, and the Secretary of Health and Human Services, to the Secretary of the Interior for disbursement.

(v) FORMULA EDUCATION GRANTS.—For fiscal years 2005 through 2023, except as provided in clause (ii) and the exception provided under clause (iii), the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands shall not receive any grant under any formula-grant program administered by the Secretary of Education or the Secretary of Labor, nor any grant provided through the Head Start Act (42 U.S.C. 9831 et seq.) administered by the Secretary of Health and Human Services.

(vi) TRANSITION.—For fiscal year 2004, the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands shall continue to be eligible for appropriations and to receive grants under the provisions of law specified in clauses (ii) and (iii).

(vii) TECHNICAL ASSISTANCE.—The Federated States of Micronesia and the Republic of the Marshall Islands may request technical assistance from the Secretary of Education, the Secretary of Health and Human Services, or the Secretary of Labor the terms of which, including reimbursement, shall be negotiated with the participation of the appropriate cabinet officer for inclusion in the Federal Programs and Services Agreement.

(viii) CONTINUED ELIGIBILITY FOR COMPETITIVE GRANTS.—The Governments of the Federated States of Micronesia and the Republic of the Marshall Islands shall continue to be eligible for competitive grants administered by the Secretary of Education, the Secretary of Health and Human Services, and the Secretary of Labor to the extent that such grants continue to be available to State and local governments in the United States.

(ix) APPLICABILITY.—The [Republic] *government, institutions, and people* of Palau shall remain eligible for appropriations and to receive grants under the provisions of law specified in clauses (ii) and (iii) until the end of fiscal year [2007] *2009*, to the extent the [Republic] *government, institutions, and people* of Palau [was] *were* so eligible under such provisions in fiscal year 2003.

(C) The Legal Services Corporation, *which shall also continue to be available to the citizens of the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands who legally reside in the United States (including territories and possessions).*

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TITLE II—COMPACTS OF FREE ASSOCIATION WITH THE FEDERATED STATES OF MICRONESIA AND THE REPUBLIC OF THE MARSHALL ISLANDS

SEC. 201. COMPACTS OF FREE ASSOCIATION, AS AMENDED BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA AND BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS.

(a) COMPACT OF FREE ASSOCIATION, AS AMENDED, BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA.—The Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia is as follows:

PREAMBLE

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA

* * * * * * *

Section 174

Except as otherwise provided in this Compact, as amended, and its related agreements:

(a) The Government of the Federated States of Micronesia, and its agencies and officials, shall be immune from the jurisdiction of the court of the United States, and the Government of the United States, and its agencies and officials, shall be immune from the jurisdiction of the [courts] *court* of the Federated States of Micronesia.

(b) The Government of the United States accepts responsibility for and shall pay:

(1) any unpaid money judgment rendered by the High Court of the Trust Territory of the Pacific Islands against the Government of the United States with regard to any cause of action arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to November 3, 1986;

(2) any claim settled by the claimant and the Government of the Trust Territory of the Pacific Islands but not paid as of [the] November 3, 1986; and

* * * * * * *

Section 177

Section 177 of the Compact entered into force with respect to the Federated States of Micronesia on November 3, 1986 as follows:

"(a) The Government of the United States accepts the responsibility for compensation owing to citizens of the Marshall Islands, or the Federated States of Micronesia[, or Palau] *(or Palau)* for loss or damage to property and person of the citizens of the Marshall Islands, or the Federated States of Micronesia, resulting from the nuclear testing program which the Government of the United States conducted in the Northern Marshall Islands between June 30, 1946, and August 18, 1958.

* * * * * * *

Section 179

(a) The courts of the Federated States of Micronesia shall not exercise criminal jurisdiction over the Government of the United States, or its instrumentalities.

(b) The courts of the Federated States of Micronesia shall not exercise criminal jurisdiction over any person if the Government of the United States provides notification to the Government of the Federated States of Micronesia that such person was acting on behalf of the Government of the United States, for actions taken in furtherance of section 221 or 224 of this [amended Compact] *Compact, as amended*, or any other provision of law authorizing financial, program, or service assistance to the Federated States of Micronesia.

TITLE TWO—ECONOMIC RELATIONS

ARTICLE I

GRANT ASSISTANCE

Section 211—Sector Grants

(a) In order to assist the Government of the Federated States of Micronesia in its efforts to promote the economic advancement, budgetary self-reliance, and economic self-sufficiency of its people, and in recognition of the special relationship that exists between the Federated States of Micronesia and the United States, the Government of the United States shall provide assistance on a sector grant basis for a period of twenty years in the amounts set forth in section 216, commencing on the effective date of this Compact, as amended. Such grants shall be used for assistance in the sectors of education, health care, private sector development, the environment, public sector capacity building, and public infrastructure, or for other sectors as mutually agreed, with priorities in the education and health care sectors. For each year such sector grant assistance is made available, the proposed division of this amount among these sectors shall be certified to the Government of the United States by the Government of the Federated States of Micro-

nesia and shall be subject to the concurrence of the Government of the United States. In such case, the Government of the United States shall disburse the agreed upon amounts and monitor the use of such sector grants in accordance with the provisions of this Article and the Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the [Compact, as Amended, of Free Association] *Compact of Free Association, as amended,* Between the Government of the United States of America and the Government of the Federated States of Micronesia ("Fiscal Procedures Agreement") which shall come into effect simultaneously with this Compact, as amended. The provision of any United States assistance under the Compact, as amended, the Fiscal Procedures Agreement, the [Trust Fund Agreement] *Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Implementing Section 215 and Section 216 of the Compact, as Amended, Regarding a Trust Fund (Trust Fund Agreement),* or any other subsidiary agreement to the Compact, as amended, shall constitute "a particular distribution . . . required by the terms or special nature of the assistance" for purposes of Article XII, section l(b) of the Constitution of the Federated States of Micronesia.

* * * * * * *

(b) HUMANITARIAN ASSISTANCE.—Federated States of Micronesia Program. In recognition of the special development needs of the Federated States of Micronesia, the Government of the United States shall make available to the [Government of the] Federated States of Micronesia, on its request and to be deducted from the grant amount made available under subsection (a) of this section, a Humanitarian Assistance—Federated States of Micronesia ("HAFSM") Program with emphasis on health, education, and infrastructure (including transportation), projects. The terms and conditions of the HAFSM shall be set forth in the Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Government of the Federated States of Micronesia Concluded Pursuant to [Sections 321 and 323 of the Compact of Free Association, as Amended] *Sections 211(b), 321, and 323 of the Compact of Free Association, as amended* which shall come into effect simultaneously with the amendments to this Compact.

(c) DEVELOPMENT PLAN.—The Government of the Federated States of Micronesia shall prepare and maintain an official overall development plan. The plan shall be strategic in nature, shall be continuously reviewed and updated through the annual budget process, and shall make projections on a multi-year rolling basis. Each of the sectors named in subsection (a) of this section, or other sectors as mutually agreed, shall be accorded specific treatment in the plan. Insofar as grants funds are involved, the plan shall be subject to the concurrence of the Government of the United States.

(d) DISASTER ASSISTANCE EMERGENCY FUND.—An amount of two hundred thousand dollars ($200,000) shall be provided annually, with an equal contribution from the Government of the Federated States of Micronesia, as a contribution to a "Disaster Assistance Emergency Fund (DAEF)." Any funds from the DAEF may be used only for assistance and rehabilitation resulting from disasters and emergencies. The funds will be accessed upon declaration by the

Government of the Federated States of Micronesia, with the concurrence of the United States Chief of Mission to the Federated States of Micronesia. The Administration of the DAEF shall be governed by the Fiscal Procedures Agreement *and the Federal Programs and Services Agreement referred to in section 231.*

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Section 215—Trust Fund

(a) The United States shall contribute annually for twenty years from the effective date of this Compact, as amended, in the amounts set forth in section 216 into a Trust Fund established in accordance with the Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Implementing Section 215 and Section 216 of the Compact, as Amended, Regarding a Trust Fund ("Trust Fund Agreement"). Upon termination of the annual financial assistance under section 211, the proceeds of the fund shall thereafter be used for the purpose described in section 211 or as otherwise mutually agreed.

(b) The United States contribution into the Trust Fund described in ⟦subsection (a)⟧ *subsection (a)* of this section is conditioned on the Government of the Federated States of Micronesia contributing to the Trust Fund at least $30 million, prior to September 30, 2004. Any funds received by the Federated States of Micronesia under section 111(d) of Public Law 99–239 (January 14, 1986), or successor provisions, would be contributed to the Trust Fund as a Federated States of Micronesia contribution.

* * * * * * *

Section 221

(a) SECTION.—The Government of the United States shall make available to the Federated States of Micronesia, in accordance with and to the extent provided in the Federal Programs and Services Agreement referred to in section 231, the services and related programs of:

(1) the United States Weather Service;

(2) the United States Postal Service;

(3) the United States Federal Aviation Administration;

(4) the United States Department of Transportation;

(5) the Federal Deposit Insurance Corporation (for the benefit only of the Bank of the Federated States of Micronesia); and

(6) the Department of Homeland Security *(Federal Emergency Management Agency),* and the United States Agency for International Development, Office of Foreign Disaster Assistance.

Upon the effective date of this Compact, as amended, the United States Departments and Agencies named or having responsibility to provide these services and related programs shall have the authority to implement the relevant provisions of the Federal Programs and Services Agreement referred to *in* section 231.

(b) PROGRAMS.—

(1) With the exception of the services and programs covered by subsection (a) of this section, and unless the Congress of the

United States provides otherwise, the Government of the United States shall make available to the Federated States of Micronesia the services and programs that were available to the Federated States of Micronesia on the effective date of this Compact, as amended, to the extent that such services and programs continue to be available to State and local governments of the United States. As set forth in the Fiscal Procedures Agreement, funds provided under subsection (a) of section 211 will be considered to be local revenues of the Government of the Federated States of Micronesia when used as the local share required to obtain Federal programs and services.

(2) Unless provided otherwise by U.S. law, the services and programs described in paragraph (1) of this subsection shall be extended in accordance with the terms of the Federal Programs and Services Agreement referred to in section 231.

(c) The Government of the United States shall have and exercise such authority as is necessary to carry out its responsibilities under this Title and the separate [agreements] *agreement* referred to in amended section 231, including the authority to monitor and administer all service and program assistance provided by the United States to the Federated States of Micronesia. The Federal Programs and Services Agreement referred to in amended section 231 shall also set forth the extent to which services and programs shall be provided to the Federated States of Micronesia.

(d) Except as provided elsewhere in this Compact, as amended, under any separate agreement entered into under this Compact, as amended, or otherwise under U.S. law, all Federal domestic programs extended to or operating in the Federated States of Micronesia shall be subject to all applicable criteria, standards, reporting requirements, auditing procedures, and other rules and regulations applicable to such programs and services when operating in the United States.

(e) The Government of the United States shall make available to the Federated States of Micronesia alternate energy development projects, studies, and conservation measures to the extent provided for the Freely Associated States in the laws of the United States.

Section 222

The Government of the United States and the Government of the Federated States of Micronesia may agree from time to time to extend to the Federated States of Micronesia additional United States grant assistance, services and programs, as provided under the laws of the United States. Unless inconsistent with such laws, or otherwise specifically precluded by the Government of the United States at the time such additional grant assistance, services, or programs are extended, the Federal Programs and Services Agreement referred to *in* section 231 shall apply to any such assistance, services or programs.

* * * * * * *

Section 232

The Government of the United States, in consultation with the Government of the Federated States of Micronesia, shall determine and implement procedures for the periodic audit of all grants and

other assistance made under Article I of this Title and of all funds expended for the services and programs provided under Article II of this Title. Further, in accordance with the Fiscal Procedures Agreement described in subsection (a) of section 211, the Comptroller General of the United States shall have such powers and authorities as described in [sections 102(c) and 110(c) of Public Law 99–239, 99 Stat. 1777–78, and 99 Stat. 1799 (January 14, 1986)] *section 102(b) of Public Law 108–188, 117 Stat. 2726, December 17, 2003*.

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Section 252

The Government of the Federated States of Micronesia may, with respect to United States persons, tax income derived from sources within its respective jurisdiction, property situated therein, including transfers of such property by gift or at death, and products consumed therein, in such manner as the Government of the Federated States of Micronesia deems appropriate. The determination of the source of any income, or the situs of any property, shall for purposes of this Compact, *as amended,* be made according to the United States Internal Revenue Code.

* * * * * * *

Section 341

Any person entitled to the privileges set forth in [Section 141] *section 141* (with the exception of any person described in section 141(a)(5) who is not a citizen of the Federated States of Micronesia) shall be eligible to volunteer for service in the Armed Forces of the United States, but shall not be subject to involuntary induction into military service of the United States as long as such person has resided in the United States for a period of less than one year, provided that no time shall count towards this one year while a person admitted to the United States under the Compact, or the Compact, as amended, is engaged in full-time study in the United States. Any person described in section 141(a)(5) who is not a citizen of the Federated States of Micronesia shall be subject to United States laws relating to selective service.

Section 342

The Government of the United States shall have enrolled, at any one time, at least one qualified student from the Federated States of Micronesia, as may be nominated by the Government of the Federated States of Micronesia, in each of:

(a) The United States Coast Guard Academy pursuant to [14 U.S.C. 195] *section 195 of Title 14, United States Code*.

(b) The United States Merchant Marine Academy pursuant to [46 U.S.C. 1295(b)(6)] *section 1303(b)(6) of the Merchant Marine Act, 1936 (46 U.S.C. 1295b(b)(6))*, provided that the provisions of [46 U.S.C. 1295b(b)(6)(C)] *section 1303(b)(6)(C) of that Act* shall not apply to the enrollment of students pursuant to section 342(b) of this Compact, as amended.

* * * * * * *

Section 354

(a) The Government of the United States and the Government of the Federated States of Micronesia are jointly committed to continue their security and defense relations, as set forth in this Title. Accordingly, it is the intention of the two countries that the provisions of this Title shall remain binding as long as this Compact, as amended, remains in effect, and thereafter as mutually agreed, unless earlier terminated by mutual agreement pursuant to section 441, or amended pursuant to Article III of Title Four. If at any time the Government of the United States, or the Government of the Federated States of Micronesia, acting unilaterally, terminates this Title, such unilateral termination shall be considered to be termination of the entire Compact, in which case the provisions of [section 442 and 452] *sections 442 and 452* (in the case of termination by the Government of the United States) or sections 443 and 453 (in the case of termination by the Government of the Federated States of Micronesia), with the exception of paragraph (3) of subsection (a) of section 452 or paragraph (3) of subsection (a) of section 453, as the case may be, shall apply.

* * * * * * *

Section 461

For the purpose of this Compact, as amended, only, and without prejudice to the views of the Government of the United States or the Government of the Federated States of Micronesia as to the nature and extent of the jurisdiction of either of them under international law, the following terms shall have the following meanings:

(a) "Trust Territory of the Pacific Islands" means the area established in the Trusteeship Agreement consisting of the former administrative districts of Kosrae, Yap, Ponape, the Marshall Islands and Truk as described in Title One, Trust Territory Code, section 1, in force on January 1, 1979. This term does not include the area of Palau or the Northern Mariana Islands.

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(h) The following terms shall be defined consistent with the 1998 Edition of the Radio Regulations of the International [Telecommunications] *Telecommunication* Union as follows:

* * * * * * *

Section 462

(b) The Government of the United States and the Government of the Federated States of Micronesia shall conclude prior to the date of submission of this Compact, as amended, to the legislatures of the two countries, the following related agreements which shall come into effect on the effective date of this Compact, as amended, and shall survive in accordance with their terms, as follows:

* * * * * * *

(4) Agreement concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact of Free Association, as Amended, [of Free Association] Be-

tween the Government of the United States of America and the Government of the Federated States of Micronesia;

* * * * * * *

Section 463

(a) Except as set forth in subsection (b) of this section, any reference in this Compact, as amended, to a provision of the United States Code or the Statutes at Large of the United States constitutes the incorporation of the language of such provision into this Compact, as amended, as such provision was in force on the effective date of this Compact, as amended.

(b) Any reference in [Articles IV] *Article IV* and Article VI of Title One and Sections 174, 175, 178 and 342 to a provision of the United States Code or the Statutes at Large of the United States or to the Privacy Act, the Freedom of Information Act, the Administrative Procedure Act or the Immigration and Nationality Act constitutes the incorporation of the language of such provision into this Compact, as amended, as such provision was in force on the effective date of this Compact, as amended, or as it may be amended thereafter on a non-discriminatory basis according to the constitutional processes of the United States.

* * * * * * *

(b) COMPACT OF FREE ASSOCIATION, AS AMENDED, BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS.—The Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands is as follows:

PREAMBLE

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS

* * * * * * *

Section 174

Except as otherwise provided in this Compact, as amended, and its related agreements:

(a) The Government of the Republic of the Marshall Islands, and its agencies and officials, shall be immune from the jurisdiction of the [court] *courts* of the United States, and the Government of the United States, and its agencies and officials, shall be immune from the jurisdiction of the courts of the Republic of the Marshall Islands.

* * * * * * *

Section 177

Section 177 of the Compact entered into force with respect to the Marshall Islands on October 21, 1986 as follows: "(a) The Government of the United States accepts the responsibility for compensation owing to citizens of the Marshall Islands, or the Federated States of Mirconesia[,] (or Palau) for loss or damage to property and person of the citizens of the Marshall Islands, or the Federated

States of Micronesia, resulting from the nuclear testing program which the Government of the United States conducted in the Northern Marshall Islands between June 30, 1946, and August 18, 1958.

* * * * * * *

Section 179

(a) The courts of the Republic of the Marshall Islands shall not exercise criminal jurisdiction over the Government of the United States, or its instrumentalities.

(b) The courts of the Republic of the Marshall Islands shall not exercise criminal jurisdiction over any person if the Government of the United States provides notification to the Government of the Republic of the Marshall Islands that such person was acting on behalf of the Government of the United States, for actions taken in furtherance of section 221 or 224 of this [amended Compact,] *Compact, as amended,* or any other provision of law authorizing financial, program, or service assistance to the Republic of the Marshall Islands.

TITLE TWO—ECONOMIC RELATIONS

ARTICLE I

GRANT ASSISTANCE

Section 211—Annual Grant Assistance

(a) In order to assist the Government of the Republic of the Marshall Islands in its efforts to promote the economic advancement and budgetary self-reliance of its people, and in recognition of the special relationship that exists between the Republic of the Marshall Islands and the United States, the Government of the United States shall provide assistance on a grant basis for a period of twenty years in the amounts set forth in section 217, commencing on the effective date of this Compact, as amended. Such grants shall be used for assistance in education, health care, the environment, public sector capacity building, and private sector development, or for other areas as mutually agreed, with priorities in the education and health care sectors. Consistent with the medium-term budget and investment framework described in subsection (f) of this section, the proposed division of this amount among the identified areas shall require the concurrence of both the Government of the United States and the Government of the Republic of the Marshall Islands, through the Joint Economic Management and Financial Accountability Committee described in section 214. The Government of the United States shall disburse the grant assistance and monitor the use of such grant assistance in accordance with the provisions of this Article and an Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the [Compact, as Amended, of Free Association] *Compact of Free Association, as amended,* Between the Government of the United States of America and the Government of the Republic of the Marshall Islands ("Fiscal Procedures Agreement") which shall come into effect simultaneously with this, Compact, as amended.

(b) KWAJALEIN ATOLL.—

(1) Of the total grant assistance made available under subsection (a) of this section, the amount specified herein shall be allocated annually from fiscal year 2004 through fiscal year 2023 (and thereafter in accordance with the [Agreement Between the Government of the United States and the Government of the Republic of the Marshall Islands Regarding Military Use and Operating Rights] *Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Republic of the Marshall Islands concluded Pursuant to Sections 321 and 323 of the Compact of Free Association, as Amended (Agreement Between the Government of the United States and the Government of the Republic of the Marshall Islands Regarding Military Use and Operating Rights)* to advance the objectives and specific priorities set forth in subsections (a) and (d) of this section and the Fiscal Procedures Agreement, to address the special needs of the community at Ebeye, Kwajalein Atoll and other Marshallese communities within Kwajalein Atoll. This United States grant assistance shall be made available, in accordance with the medium-term budget and investment framework described in subsection (f) of this section, to support and improve the infrastructure and delivery of services and develop the human and material resources necessary for the Republic of the Marshall Islands to carry out its responsibility to maintain such infrastructure and deliver such services. The amount of this assistance shall be $3,100,000, with an inflation adjustment as provided in section 218, from fiscal year 2004 through fiscal year 2013 and the fiscal year 2013 level of funding, with an inflation adjustment as provided in section 218, will be increased by $2 million for fiscal year 2014. The fiscal year 2014 level of funding, with an inflation adjustment as provided in section 218, will be made available from fiscal year 2015 through fiscal year 2023 (and thereafter as noted above).

* * * * * * *

(e) DISASTER ASSISTANCE EMERGENCY FUND.—Of the total grant assistance made available under subsection (a) of this section, an amount of two hundred thousand dollars ($200,000) shall be provided annually, with an equal contribution from the Government of the Republic of the Marshall Islands, as a contribution to a Disaster Assistance Emergency Fund ("DAEF"). Any funds from the DAEF may be used only for assistance and rehabilitation resulting from disasters and emergencies. The funds will be accessed upon declaration of a State of Emergency by the Government of the Republic of the Marshall Islands, with the concurrence of the United States Chief of Mission to the Republic of the Marshall Islands. Administration of the DAEF shall be governed by the Fiscal Procedures Agreement *and the Federal Programs and Services Agreement referred to in section 231.*

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Section 221

(a) SERVICES.—The Government of the United States shall make available to the Republic of the Marshall Islands, in accordance

with and to the extent provided in the Federal Programs and Services Agreement referred to in [Section 231] *section 231*, the services and related programs of:

(1) The United States Weather Service;

(2) The United States Postal Service;

(3) The United States Federal Aviation Administration;

(4) The United States Department of Transportation; and

(5) The Department of Homeland Security *(Federal Emergency Management Agency),* and the United States Agency for International Development, Office of Foreign Disaster Assistance.

Upon the effective date of this Compact, as amended, the United States Departments and Agencies named or having responsibility to provide these services and related programs shall have the authority to implement the relevant provisions of the Federal Programs and Services Agreement referred to in section 231.

* * * * * * *

Section 232

The Government of the United States, in consultation with the Government of the Republic of the Marshall Islands, shall determine and implement procedures for the periodic audit of all grants and other assistance made under Article I of this Title and of all funds expended for the services and programs provided under Article II of this Title. Further, in accordance with the Fiscal Procedures Agreement described in subsection (a) of section 211, the Comptroller General of the United States shall have such powers and authorities as described in [sections 103(m) and 110(c) of Public Law 99–239, 99 State. 1777–78, and 99 Stat. 1799 (January 14, 1986)] *section 103(k) of Public Law 108–188, 117 Stat. 2734, December 17, 2003.*

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Section 341

Any person entitled to the privileges set forth in [Section 141] *section 141* (with the exception of any person described in section 141(a)(5) who is not a citizen of the Republic of the Marshall Islands) shall be eligible to volunteer for service in the Armed Forces of the United States, but shall not be subject to involuntary induction into military service of the United States as long as such person has resided in the United States for a period of less than one year, provided that no time shall count towards this one year while a person admitted to the United States under the Compact, or the Compact, as amended, is engaged in full-time study in the United States. Any person described in section 141(a)(5) who is not a citizen of the Republic of the Marshall Islands shall be subject to United States laws relating to selective service.

Section 342

The Government of the United States shall have enrolled, at any one time, at least one qualified student from the Republic of the Marshall Islands, as may be nominated by the Government of the Republic of the Marshall Islands, in each of:

(a) The United States Coast Guard Academy pursuant to [14 U.S.C. 195] *section 195 of title 14, United States Code.*

(b) The United States Merchant Marine Academy pursuant to [46 U.S.C. 1295(b)(6)] *section 1303(b)(6) of the Merchant Marine Act of 1936 (46 U.S.C. 1295b(b)(6)),* provided that the provisions of [46 U.S.C. 1295b(b)(6)(C)] *section 1303(b)(6)(C) of that Act* shall not apply to the enrollment of students pursuant to section 342(b) of this Compact, as amended.

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Section 354

(a) The Government of the United States and the Government of the Republic of the Marshall Islands are jointly committed to continue their security and defense relations, as set forth in this Title. Accordingly, it is the intention of the two countries that the provisions of this Title shall remain binding as long as this Compact, as amended, remains in effect, and thereafter as mutually agreed, unless earlier terminated by mutual agreement pursuant to section 441, or amended pursuant to Article III of Title Four. If at any time the Government of the United States, or the Government of the Republic of the Marshall Islands, acting unilaterally, terminates this Title, such unilateral termination shall be considered to be termination of the entire Compact, as amended, in which case the provisions of [section 442 and 452] *sections 442 and 452* (in the case of termination by the Government of the United States) or sections 443 and 453 (in the case of termination by the Government of the Republic of the Marshall Islands), with the exception of paragraph (3) of subsection (a) of section 452 or paragraph (3) of subsection (a) of section 453, as the case may be, shall apply.

* * * * * * *

Section 443

This Compact, as amended, shall be terminated by the Government of the Republic of the Marshall Islands, pursuant to its constitutional processes, subject to section 453 if the people represented by that Government vote in a plebiscite to terminate the Compact*, as amended*. The Government of the Republic of the Marshall Islands shall notify the Government of the United States of its intention to call such a plebiscite, which shall take place not earlier than three months after delivery of such notice. The plebiscite shall be administered by the Government of the Republic of the Marshall Islands in accordance with its constitutional and legislative processes, but the Government of the United States may send its own observers and invite observers from a mutually agreed party. If a majority of the valid ballots cast in the plebiscite favors termination, the Government of the Republic of the Marshall Islands shall, upon certification of the results of the plebiscite, give notice of termination to the Government of the United States, such termination to be effective on the date specified in such notice but not earlier than three months [following the date of delivery of such notice. The time specified in the notice of termination may be extended.

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Section 461

For the purpose of this Compact, as amended, only, and without prejudice to the views of the Government of the United States or the Government of the Republic of the Marshall Islands as to the nature and extent of the jurisdiction of either of them under international law, the following terms shall have the following meanings:

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(h) The following terms shall be defined consistent with the [1978] *1998* Edition of the Radio Regulations of the International [Telecommunications] *Telecommunication Union* as follows:

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Section 463

(a) Except as set forth in subsection (b) of this section, any reference in this Compact, as amended, to a provision of the United States Code or the Statutes at Large of the United States constitutes the incorporation of the language of such provision into this Compact, as amended, as such provision was in force on the effective date of this Compact, as amended.

(b) Any reference in [Article] *Articles* IV and VI of Title One, and Sections 174, 175, 178 and 342 to a provision of the United States Code or the Statutes at Large of the United States or to the Privacy Act, the Freedom of Information Act, the Administrative Procedure Act or the Immigration and Nationality Act constitutes the incorporation of the language of such provision into this Compact, as amended, as such provision was in force on the effective date of this Compact, as amended, or as it may be amended thereafter on a non-discriminatory basis according to the constitutional processes of the United States.

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