S. HRG. 107–399

EXTENSION OF FUNDING AND PROGRAM ASSISTANCE UNDER THE COMPACT OF FREE ASSOCIATION

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

TO RECEIVE TESTIMONY ON NEGOTIATIONS ON EXTENSION OF FUNDING AND PROGRAM ASSISTANCE UNDER THE COMPACT OF FREE ASSOCIATION

DECEMBER 6, 2001

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THURSDAY, DECEMBER 6, 2001

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room SD–366, Dirksen Senate Office Building, Hon. Daniel K. Akaka presiding.

OPENING STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

Senator AKAKA. The hearing will come to order. Good morning to everyone. This morning's hearing will focus on the Compact of Free Association between the United States and the Federated States of Micronesia and the Republic of the Marshall Islands. Negotiations on the compact have been ongoing between the United States, and the FSM, and the RMI for the past 2 years.

During this process, we have met with the partners in this process to discuss the progress of negotiations. I thank Chairman Bingaman, as well as Senator Murkowski, for agreeing to hold this hearing this morning. Together, we have been monitoring the progress of the negotiations. As we all know, the compact expired on September 30 of this year. Those who worked on the compact 15 years ago, however, had the foresight to include a provision that extends the compact provisions for an additional 2 years, while negotiations are ongoing. And this is playing very well.

The final product of these negotiations must be enacted by Congress and signed by the President of the United States by September 30, 2003. So I look forward to continuing to work with you to meet this deadline. We have lots of work to do, lots of talking to do, and we hope to do the best we can for the people of FSM and RMI in the negotiations.

Before proceeding to the panels, we have one of our colleagues from the House to testify today, Representative Underwood. Welcome to the Senate, Representative Underwood. We look forward to your statement.

[A prepared statement from Senator Bingaman follows:]

PREPARED STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Good morning. First, I would like to thank Senator Akaka for suggesting that the Committee hold this hearing to review the current status of ongoing negotiations

between the United States and the Freely Associated States—the Republic of the Marshall Islands and the Federated States of Micronesia.

I appreciate and support Senator Akaka's commitment to the Freely Associated States. He truly is your Ambassador to the Senate.

In 1985, when this Committee first approved the unique agreement, the Compact of Free Association, I was a relatively new Member of the Committee. Sixteen years later, I am glad to see that, overall, many of you consider the Compact a success.

Since the Congress ultimately will have to approve extensions or modifications to the current Compact, it makes sense for all of us to work together from the beginning. The deadline for enacting amendments to the Compact, September 2003, is quickly approaching so I encourage the negotiators to complete their work as expeditiously as possible.

I appreciate the Freely Associated States' willingness to consider improved accountability, planning, and management of Federal funds. At the same time, I was glad to read Mr. Short's statement that the United States has strong interests in these countries which justify continuing our relationship and cooperation with them.

I would like to welcome our distinguished guests who are here to testify today, especially those that have traveled a great distance. I also would like to welcome the newly appointed Compact Negotiator for the Administration, Mr. Al Short.

I look forward to working with all of you during the ongoing negotiation and during the subsequent Committee consideration of a final agreement that you submit to Congress for approval. Thank you.

STATEMENT OF HON. ROBERT A. UNDERWOOD, U.S. DELEGATE FROM GUAM

Mr. UNDERWOOD. Thank you, Mr. Chairman, and good morning, Senator Akaka and other members of the committee as they may show up. I want to thank you, Mr. Chairman, for holding this very important hearing, especially during these difficult and trying times. I also appreciate the opportunity to speak about the importance of the ongoing negotiations of the Compacts of Free Association between the United States and the Republic of the Marshall Islands, and the Federated States of Micronesia.

I certainly would like to welcome the negotiators from the FSM and the RMI, as well as Mr. Albert Schwartz, the newly appointed Director to the Office of Compact Negotiations at the State Department. I was able to meet with him a couple of weeks ago, and I understand, and he certainly demonstrated that he has firsthand knowledge of Micronesia, having worked on the compact agreement during the first negotiations.

I'm here to express my strongest support for the compact agreements and for continuing U.S. assistance to the Federated States of Micronesia and the Republic of the Marshall Islands. Given Guam's geographical proximity and economic and political interdependence with each of these two nations, I believe that the Compacts of Free Association have been beneficial to Guam, to the region, and U.S. national security in the Western Pacific.

In light of the tragic events of September 11, I would highly recommend an increase in assistance for security measures to these two nations, as it is vital to our national defense and because they are amongst the strongest of U.S. allies. Many issues will be legitimately raised in the negotiations and the process of congressional review, issues about accountability, the nature of economic development, the role of various Federal agencies in the implementation of the compacts. However, we must always be mindful of the fundamental basis for the compacts and the historical development of the region.

We were and still are the primary force in the region's development. If there are economic difficulties or political setbacks, we have to clearly examine our own historical record and influence. We have a fundamental obligation to adequately fund the compacts, to ensure political stability, and most importantly, to foster economic development. The fruits of our efforts, in collaboration with the Micronesian nations, will be enjoyed by Micronesians and Americans alike in the region.

We must recognize that the economies of Guam, the Commonwealth of the Northern Marianas, and even Hawaii are enhanced by the economic assistance of the compacts.

Lastly, as we look at the issues of financial assistance and continuing Federal services for these nations, I simply want to say that the issue of migration should be reviewed. In Congress, we must redouble our efforts to address adverse impact on the U.S. areas of the Pacific, which result from the migrations of people. I look forward to working with the members of the Senate Committee on Energy and Natural Resources and the delegation of these two nations towards a meaningful solution for all parties involved. And I certainly commend you for your leadership in holding this hearing.

I had hoped that we would have the hearing first in the House, but you know, the Senate was there first, and I certainly appreciate your leadership and interest, Mr. Chairman. Thank you.

Senator AKAKA. Well, thank you very much, Congressman Underwood, for your statement. It's good to have you there in the Pacific. You've been doing a great job in the House with the Pacific Islands, and I commend you and thank you for your statement. I have no questions for you.

Mr. UNDERWOOD. Oh, great. I'm off the hook.

[Laughter.]

Senator AKAKA. Our first panel will focus on the status of the negotiations. We are honored to have Senator Peter Christian, chief negotiator for the Federated States of Micronesia, and the Honorable Gerald Zackios, minister of foreign affairs and trade for the Republic of the Marshall Islands. I also want to welcome Al Short, Director of the Office of Compact Negotiations with the Department of State. We hope to hear your thoughts about the negotiations process, including the expected timeline for the negotiations process.

I want to thank all of you for coming, and the two of you for traveling this far to this hearing. This hearing is important for us in trying to bring up to date what's been happening and to begin to set a course for the negotiations. I'm delighted to have here my friend and colleague, Senator Murkowski. And I'd like to ask him, if he's ready, to make any statement he wishes on this. While he's getting ready, I want to thank all of you here present for coming. As I look into the audience, I begin to see so many familiar faces. And I thank all of you for coming here to this hearing.

Senator Murkowski.

STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you very much, Senator Akaka. And I too recognize several faces from our travels. And I want to commend you, Senator Akaka, for your sensitivity to the obligation the United States has with regard to the hearing this morning.

The East Asian and Pacific affairs responsibility of the State Department, I think, is one that we need to continually emphasize. Many of our friends depend upon not only the State Department, but the legislative body as well, for guidance and direction. And we've seen situations exist that clearly need addressing, and you've led the way in that regard, Senator Akaka. I gather that your group is going to meet in Hawaii, hopefully this weekend, to discuss the levels and terms of future financial assistance. And I hope the discussions are fruitful. I would even hope that we'd be out of here for that timeframe, but I guess there's no reason to be particularly optimistic about this weekend.

When Senator Akaka and I visited the Federated States and the Republic of Marshalls in 1996, both President Alta and President Kabua expressed concern that if the United States waited until the 13th year to begin discussions, there would not be enough time to coincide with discussions adequately and allow for congressional review. And when we returned, we collectively addressed a letter to President Clinton and suggested that he begin the review. But unfortunately, I seem to have got the bottom of the list of things to do.

Also in response to concerns raised during that trip, and to prepare for congressional review, we asked the GAO to look at how compact assistance was administered, what the actual levels were, and how effective the assistance had been. We worked with the House Committee on International Relations, which also asked the GAO to examine the approach of other donor nations and organizations in the Pacific Basin, as well as the effects of migration under the compact—a concern that Guam, the Marianas, and Hawaii had raised.

We have considerable experience with the compacts in this committee. We had representatives at each of the negotiating rounds. We met regularly with both the administration and representatives from, then, the trust territory local governments. We made several changes in implementing legislation, including provisions for future ex gratia assistance for the populations in the Marshalls affected by the nuclear testing program, and for the extension of the Farmers' Home Loan Program to the Federated States.

We also ensured that the U.S. commitments on basic infrastructure would be fulfilled after the compacts went into effect. I think Senator Akaka would agree, in some respects, the development of governmental institutions, the establishment of international presence, and the political relationship between our countries—in general, the compacts have been a success. In other respects, however, such as health, education, economic development, results have not been up to our expectations.

GAO found that the agencies of the United States entrusted with monitoring the use of funds and reviewing development plans did a rather poor job. Some suggest they failed to do their job. I hope

we learn from these experiences so that we can structure future financial and program assistance so that it is more effective and more targeted, and that we have measurable and enforceable standards. It's going to require some flexibility, as it should.

That also means that the administration will need to make a serious commitment in monitoring, and auditing, and providing the necessary technical and other assistance to make these provisions effective. I look forward, Senator Akaka, to the testimony. I would hope to have an opportunity to visit the area again with you, and thank you for the opportunity to participate in this hearing this morning.

Senator AKAKA. Thank you very much, Senator Murkowski. We've traveled a lot together, and I look forward to traveling some more, and especially into the Pacific areas. We've certainly seen a lot and heard a lot, and I'm sure we together feel that we want to do the best for the people out there.

Mr. Short, please proceed, followed by Minister Zackios and Senator Christian.

Mr. Short.

STATEMENT OF ALBERT V. SHORT, DIRECTOR, OFFICE OF COMPACT NEGOTIATIONS, DEPARTMENT OF STATE

Mr. SHORT. Senator Akaka, Senator Murkowski, I am the newly appointed negotiator for the administration's efforts to renegotiate the Compact of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands. And it's my pleasure this morning to give you the administration's position and goals in the ongoing negotiations.

In summarizing my comments in the written statement, I'd like to emphasize four areas: first of all, an assessment of the compact to date; second, discuss roles for continuing U.S. assistance, provide an update on the negotiations, and lastly, share our general approach on negotiations and identify certain problem areas that we perceive in those negotiations. First of all, an assessment of the compact.

The administration shares the view of the GAO that the compact has been successful in its primary goal of providing a stable transition from a trusteeship arrangement to a very vibrant and functioning sovereign self-government. And we note that we have very close bilateral relations with the two governments concerned. They basically are very supportive of the U.S.' positions in the area, in the Pacific, and also in the United Nations.

However, the record of the last 15 years has not been without some problems, and as noted in GAO reports, there's been a lack of accountability and, in some cases, ineffective use of U.S. economic assistance. A principal task of the renegotiation is to find and put in place effective measures of accountability, transparency, and measures of progress, so that when we get further down the road, we can look back and have basically a template to measure progress, or the lack thereof, against. Also in the process, we are looking towards an ending of the annual payments by the United States to the respective governments.

What are our goals in compact assistance? First of all, the United States has a strong and continuing interest in these nations that

justifies continued assistance. First of all, we intend to maintain economic stability. While we are the primary benefactors of the FSM and the Marshalls, we also recognize that the Asian Development Bank, the International Monetary Fund, and our partners at the ADB Consultant Group, which includes Japan and Australia, have also made increasing contributions to economic stability. But we are still the primary benefactor of the FSM and Marshalls.

We also intend to focus our efforts on improving health and social conditions, including education in the two nations and, in the same process, sustaining our long, now developed, close ties. And part of this, of course, is self-interest on the part of the United States. We have continuing interest in the area, which is primarily strategic denial, which is to neutralize this vast ocean area to any hostile third party.

And further, the use and continued unfettered use of the Kasan Missile Facility. And, of course, that was in the news only a couple of days ago, where a missile was launched from that facility to intercept a missile launched off the West Coast of the United States.

The other goal that we hope to achieve is ending the annual payments, and I'll have more to say about that later. But any sort of ending of annual payments or change in level of economic assistance has to recognize that too sharp a reduction can lead to economic instability and, in fact, increase some of the impacts that we're going to talk about later here this morning, if there were to be an economic downturn.

Let me briefly update you on the status of the negotiations. I was appointed as the negotiator on the 30th of October this year, and I have had substantive discussions with the FSM and Marshalls leadership in New York at the time of the U.N. General Assembly, and also when the Marshalls president was here earlier this month. I'll be traveling this weekend, and my two counterparts here will be on the other side of the table in Honolulu next week for a round of negotiations to move the process forward.

What I hope to come out of that session with is basically a roadmap to conclusion of these negotiations and to lay the groundwork for the presentation of a compact document that we want to put on the table early in the new year. The negotiations will come to closure only when we have such a document. I would note also that while we are renegotiating the Compact of Free Association, we are conducting two parallel, and separate, and unlinked negotiations. We are dealing with the Marshall Islands and the FSM as separate, sovereign nations, and that will be the outcome of the negotiations. Neither are tied to the other.

I would note that we received on the 30th of November an excellent plan from the Republic of the Marshall Islands that lays out their desires for U.S. assistance over the coming years. It's a very professional document, and we look forward to their oral presentation of that document in Honolulu. So that's going to put a marker down for the Marshalls. We have received a similar document from the FSM some time ago, and they're further along on the process. We'll also be looking at some subordinate agreements and basically moving forward on a number of parallel tracks with these negotiations to keep them moving.

Our overall approach to the negotiations by this administration, envisions four elements: financial assistance, a trust fund, a squad of Federal programs and services, and the last item is a modification or an addressing of the issue of impact, which ultimately is tied to the immigration provisions of the compact. First of all, financial assistance. We recognize there simply has to be a greater effort to account for the funds, and that's through a formal structure that would require United States and Micronesian participation.

And I would also note, there has to be the requisite resources put on the U.S. side; that's basically personnel and monetary resources to support not just a one-year, but a multi-year oversight of these expenditures.

We intend to take a focused, sectoral approach on compartmenting the monies between different areas, with the highest priority on health and education, but also addressing infrastructure, private sector development, capacity building, and good governance and the environment. And the details of how that process will be worked out is a matter that we're going to take on early in the new year with the two parties. But effective oversight and a mechanism to carry out that oversight is key to that process.

With regard to the trust fund, this is a major goal. And what we hope to do is terminate the annual payments to the FSM and the Marshall Islands by a date certain. The concept is that the U.S. Government, over a period of years, would fund this trust fund. It would be open to contributions from other sources, the respective governments, and even third parties. That an administrative organization would be put in place with joint oversight of the trust fund, and that at the end of the compact extension that we are now negotiating, this trust fund would come into play and provide sufficient funds that, along with local resources, that the governments could be politically and financially viable.

With regard to Federal programs and services, I respectfully submit that Federal program coordination under the compact that's now expired has been basically ineffective. This doesn't mean that the programs themselves have been ineffective, but in many cases, the coordination between the various departments within the U.S. Government and the provision of these services on the ground. We're going to take a hard look at them, but we're also recognizing that U.S. services, as opposed to Federal programs—such things as weather service, the postal, safe air transportation, FDIC. And some of these, if you will, professional services that we provide, will be required in the future.

In that regard, the Micronesian governments, over time, have developed their capabilities in these service areas. For example, telecommunications, where we used to represent them, and the ITU and various other international bodies, they have taken over those responsibilities. They are running their own postal service. So they're, over time, taking over more and more of these technical functions or facilities, and we intend to facilitate that process as we go forward.

Migration and its resultant impact on Guam, the Northern Marianas, and Hawaii is pursuant to section 141 of the compact. And that states, "Citizens of the RMI and FSM may enter into and law-

fully engage in occupations and establish residence as a non-immigrant in the United States." And as the GAO will testify to this morning, we're dealing with about 15,000 Micronesian citizens who, over the years, have migrated to the Northern Marianas, Guam, and Hawaii, and have had a fairly significant impact on the education, health and welfare services in those areas.

Further, the compact provides that the President shall annually report to the Congress on the impact of the compact. And these annual reports, as well as the GAO studies, have highlighted that impact, and that over time, it has shifted and it's also increased. We propose three responses to the issue of impact. First of all, we're looking for ways to provide compensation to Hawaii, Guam, and the CNMI for the negative impacts of migration.

Second of all, we're looking at a series of actions and interactions between the U.S. Government and the respective Micronesian governments to mitigate and to rationalize the movement of personnel. And part of this is impacted by the 9/11 situation. We're also concerned that Micronesia not become a conduit for third country nationals who want to enter the United States through the back door.

And our counterpart from the FSM and Marshalls is going to address some very creative and timely actions that their governments have taken over the past few months. And they're continuing to address that issue, and to address the whole issue of documentation of their citizens who enter the United States. And many of these will be taken outside the context of the actual compact negotiation. There's no reason to wait for enactment of a piece of legislation to do things that we can do today.

And I might draw a parallel. When we initiated the compact 15 years ago, we had newly constituted States, we had no representation on the ground in Micronesia; they had no embassies here. We now have a fully functioning government to government relationship, and a lot of the issues that are on the table are best settled in that government to government context, as opposed to taking them into the compact.

We will address those issues in the compact renegotiations that are appropriate, but we're not going to wait to settle issues for a piece of legislation that will be coming along in the coming years. If things are clear and present that a problem needs to be solved, we'll do it on a government to government basis and move the situation forward.

Also for the long term, we're looking at health and education in Micronesia, from the standpoint that a well educated and healthy population, should they migrate to the United States, is simply better able to enter the workforce and not be a burden on the welfare systems of the respective jurisdictions.

Sir, this is a very brief summary of my statement, and it's a pleasure for the administration to present its position on the progress and challenges we see in the compact negotiations. We will keep you and the committee fully informed of our progress as we move towards an expeditious conclusion. Thank you, sir.

[The prepared statement of Mr. Short follows]

PREPARED STATEMENT OF ALBERT V. SHORT, DIRECTOR, OFFICE OF COMPACT NEGOTIATIONS, DEPARTMENT OF STATE

Mr. Chairman and Members of the Committee, thank you for this opportunity to testify on the Administration's position and goals in ongoing Compact negotiations with the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI).

I would like to begin by noting that although I recently assumed the responsibility of Negotiator, you will see that our basic approach to these negotiations has not changed. I am honored to outline the priorities of President Bush in the negotiations. The context for the current effort to renegotiate the expiring provisions of the Compact demands that the Administration realign U.S. priorities. Our past efforts have been successful in fostering a political transition from Trust Territory Administration to stable, self-governing democracies in the Freely Associated States (FAS). We are now facing a similar, critical challenge effecting the economic transition toward increased budgetary self-reliance. I will work hard to assure that future U.S. assistance will be used effectively to meet the object of Title Two of the Compact: "to assist the RMI and FSM in their efforts to advance the economic self-sufficiency of their peoples."

As you know, Senators, the relationship of free association is not up for renegotiation. This special tie with the Marshall Islands and the Federated States of Micronesia continues indefinitely. Only Title Two (Economic Relations) which provides for U.S. financial and program assistance, and Title III, which contains, inter alia, the so-called "defense veto" and provisions regarding additional base rights, are subject to renegotiation. Two other important defense provisions, the United States' right of "strategic denial" and the agreement to use Kwajalein, are not among the expiring provisions. Under the Compact and the Guam Omnibus Opportunities Act, an extension of U.S. assistance for FY-2002 and FY-2003 is currently in effect.

In the wake of the September 11th terrorist attack on the United States, I have reemphasized to the FSM and the RMI the need to examine our immigration procedures to ensure that the security and safety of both our peoples are safeguarded and terrorists are apprehended and shut down. Accordingly, the United States will continue to review the desirability of amending the migration provisions of the Compact in the negotiations, even though they are not among the expiring provisions.

There are four things I hope to accomplish today: 1) present our assessment of the Compact to date; 2) discuss the goals of continued U.S. assistance; 3) provide an update on the negotiations; and, 4) share with you our general approach to the negotiations.

I. ASSESSMENT OF THE COMPACT

The Administration shares the view of the GAO that the Compact has successfully met its primary goal of providing for a stable transition from the United Nations Trusteeship to sovereign self-government. At the same time, the Compact has protected U.S. security, maritime, and commercial interests in the Pacific by assuming defense responsibilities for the vast sea and air space of the Freely Associated States and by maintaining a missile testing site at Kwajalein Atoll in the Marshall Islands.

The Compact has been successful in transforming the relationship between these islands and the United States from one of trust Administrator and ward to being among our closest bilateral relationships and among our staunchest friends in the United Nations. These achievements are solid and lasting, in my opinion, and the American and FAS peoples can be rightly proud of them.

However, the past fifteen years have also recorded the lack of accountability and the ineffective use of U.S. economic assistance. Therefore, the principal task of our negotiations is to improve the effectiveness and accountability of U.S. assistance and to develop a strategy for ending the annual payments by the United States to these countries. These are the key priorities of this Administration.

Finally, the past fifteen years have ushered in an era of increased impact on the health, education, and welfare programs of U.S. jurisdictions in the Pacific because some migrants from the Freely Associated States have come with low work skills, poor health, and dependent children. The Administration will address the need to reimburse U.S. jurisdictions for the added costs they bear in honoring our commitment on migration to the FAS peoples. I should note that every new arrival in our country imposes costs on our communities by drawing on social services. But, many arrivals also add to our economy and pay taxes that support those public services. Many FAS arrivals to the U.S. come with job skills, work hard like any American, spend money here, and pay U.S. taxes. Their contribution should not be ignored or

forgotten in reaching an understanding of the impact of migration on U.S. jurisdictions.

Just as importantly, these migratory flows follow established trade and business routes. U.S. business looms large in the trade and commerce of the Freely Association States, earns money for many U.S. companies, and reinforces our special relationship.

II. THE GOALS OF COMPACT ASSISTANCE

The United States has strong interests in these countries which justify continued economic assistance. These interests include:

- Maintaining economic stability. (In this regard, we believe the United States should continue its commitment to the economic strategies that the RMI and FSM have developed with the support of the United States, the Asian Development Bank (ADB), the International Monetary Fund, and our partners in the ADB Consultative Group, including Japan and Australia);
- Improving the health and social conditions of the people of the RMI and FSM.
- Sustaining the political stability and close ties which we have developed with these two emerging democracies;
- Assuring that our strategic interests continue to be addressed; and,
- Developing a strategy for ending annual payments by the United States by the end of the next Compact funding term.

We recognize that too sharp a reduction in U.S. assistance at this stage of economic development of the RMI and the FSM could result in economic instability and other disruptions, and could encourage an increase in the level of migration to the United States by citizens of those countries. We continue to believe that maintaining substantial financial and other assistance will help to assure economic stability while the RMI and FSM continue to implement economic development and reform strategies.

III. UPDATE ON THE NEGOTIATIONS

We continue to negotiate with the FSM and the RMI separately. In general, the talks with the FSM are progressing well. We have had three negotiating sessions with the FSM, and the fourth round will be held next week. During our December session, I hope to present several subsidiary agreements involving programs and services of the U.S. Postal Service, Federal Aviation Administration, Federal Deposit Insurance Corporation, and the Department of Defense. More importantly, I intend to lay the groundwork for the presentation of a U.S.-proposed Compact text early next year. I am encouraged by President Falcam's personal commitment to make upcoming talks as successful as possible.

Formal talks with the RMI were delayed by a governmental change following elections in November 1999. We are pleased that President Kessai Note was able to visit the U.S. in November of this year and to confirm his administration's readiness to present its proposal on Compact assistance. We received the Marshall Islands proposal on November 30 and look forward to exchanging views on it during our upcoming third round, scheduled for next week. I am impressed by the serious commitment of President Note and his cabinet to uphold good governance, transparency, and accountability.

IV. OUR APPROACH TO NEGOTIATIONS

To meet the priorities outlined above, the negotiating approach of the Administration has four main elements:

- financial assistance,
- a trust fund as a mechanism to allow for the end of U.S. annual financial assistance at the end of the next Compact funding term,
- U.S. federal services and program assistance, and
- modifications to the current migration provisions.

Financial Assistance

There must be more effective accountability with respect to future U.S. economic assistance to the FSM and the RMI. It is time to stop pass-through funding in favor of assistance with accountability. In the future, we believe that financial assistance should no longer be made available through transfers that co-mingle U.S. funds with local funds, thereby rendering it difficult to track and monitor their use. Instead, we believe that future funds should be provided through targeted, sectoral assistance, each with clearly defined scope and objectives.

We have proposed to the FSM and RMI that any future financial assistance be aimed at six sectors:

- health,
- education,
- infrastructure,
- private sector development,
- capacity building/good governance, and
- the environment.

Built into each sectoral goal would be regular planning, monitoring, and reporting requirements. The Administration is also seeking the necessary authority and resources to assure effective oversight and reasonable progress toward the agreed objectives.

Trust Fund

The Administration believes that a major goal of the new Compact provisions should be to terminate annual payments to the FSM and the RMI by a date certain. In its initial proposals to the U.S., both the FSM and RMI anticipated the U.S. interest in the eventual termination of mandatory annual financial assistance by proposing that the U.S. capitalize a trust fund over the next term of Compact assistance. The two Freely Associated States proposed that U.S. mandatory annual financial assistance be terminated at such time as the fund generates sufficient revenue to replace the mandatory annual assistance.

Like the FSM and the Marshalls, the Administration is interested in the concept of using a trust fund to support our objective of terminating annual financial assistance. We are still analyzing what the appropriate trust fund balance and level of funding would be. The Administration has not yet determined what restrictions should be placed on any such trust funds, or what level of contributions should be anticipated from foreign sources.

Congress has previously authorized and funded the use of trust funds to achieve similar objectives, including one established under the Compact with the Republic of Palau, and three established in the Marshall Islands as a part of the United States' compensation for the U.S. nuclear weapons testing program.

Federal Services and Program Assistance

I respectfully submit that Federal program coordination under the existing Compact is ineffective. We are still considering how these important functions could best be carried out.

I believe some U.S. Federal services should continue for the same term as the next Compact period. Generally, these services are targeted to priority economic objectives such as weather monitoring, supporting the postal system and assuring safe air transportation. Nevertheless, in order to move toward our goal of greater self-reliance, we are exploring the establishment of a policy that no new Federal program would be extended to the FSM and RMI unless an assessment is first done of its potential to advance the goal of economic self-sufficiency. To the same end, we are considering a policy whereby the Administration would annually recommend to Congress actions that could be taken to increase the effectiveness of U.S. program assistance, including the possible consolidation of federal programs that might be duplicative. Such grant consolidation authority exists for federal programs operating in the U.S. territories.

Migration

In the wake of the September 11th attack, we are reexamining section 141 of the Compact. This section provides that citizens of the RMI and FSM "may enter into, lawfully engage in occupations, and establish residence as a nonimmigrant in the United States." Our examination has led us towards establishing passport or other documentary requirements for Micronesian migrants to the U.S. in an effort to halt the entry of inadmissible people such as terrorists who might seek to exploit this route of entry into the U.S. In support of this effort, we are using our regular government-to-government consultations to review specific migration issues and procedures.

Section 104(e) of the Compact requires the President to report annually to Congress on the impact of the Compact. The annual reports and a recent GAO study document the substantial impact of FAS migration to the State of Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI). Of particular concern are migrants who have communicable diseases, criminal records, or are likely to become a public charge as a result of chronic health or other problems. These conditions are currently all grounds for inadmissibility to the United States under the Immigration and Nationality Act.

One way to address the issue of Compact impact on Hawaii, Guam, and the CNMI is to increase the compensation to those jurisdictions for the negative impacts of migration, as authorized by section 104 of the Compact. This solution, while helpful, would not decrease the adverse impact of migration from the RMI and the FSM. It would, instead, shift the cost burden to the U.S. Government.

Compact impact can also be addressed, in part, through our plan to commit a substantial portion of future U.S. assistance through sectoral assistance to improve the general health and education of citizens of the FSM and the RMI. We believe that improving the quality of life in the FSM and the RMI will reduce the incentives for citizens of those countries to migrate to the United States. Further, it would ensure that those persons who do migrate would be healthier and better educated, and therefore in a better position to contribute to the communities where they choose to live within the United States.

In conclusion, we are considering three new responses to the migration issue.

- First, we are looking at ways to provide compensation to Hawaii, Guam, and the CNMI for the negative impacts of migration, as authorized by section 104 of the Compact.
- Second, we are exploring various mechanisms for improving our ability to ensure on a timely basis that RMI and FSM migrants to the United States are eligible for admission.
- Third, we believe our approach of committing a substantial portion of U.S. assistance during the second Compact term to improve the health and education of potential migrants from the FSM and RMI can significantly reduce Compact impact.

CONCLUSION

Thank you for this opportunity to present the Administration's views on the progress and challenges in the Compact negotiations. Let me assure you that we welcome any and every opportunity to keep the Committee informed as these negotiations advance.

Senator AKAKA. Thank you very much for your statement, Mr. Short.

Minister Zackios.

STATEMENT OF GERALD M. ZACKIOS, MINISTER OF FOREIGN AFFAIRS, REPUBLIC OF THE MARSHALL ISLANDS

Mr. ZACKIOS. Thank you, Mr. Chairman. Honorable members of this committee, ladies and gentlemen, on behalf of President Note and the people in government of the Republic of the Marshall Islands, I bring you warm greetings and thank you for the opportunity to appear before you today. I would also like to acknowledge the presence of Congressman Underwood at this hearing this morning, and his continued support and encouraging statements.

I want to begin by underscoring the messages that President Note shared with representatives in the U.S. Government during his visit to Washington D.C. 3 weeks ago. We stand with the United States in its effort to defeat global terrorism. We are with you in this war on terrorism, we have a common defense, and indeed, we share a common destiny with you.

We are more than an ally. The RMI has closer strategic ties with the United States than any other Nation in the world. We are one with you under the compact when it comes to threats to international peace and security. And we are proud of our Marshall citizens who are serving in every branch of the U.S. Armed Services.

I would like to take this opportunity to congratulate the United States on the successful completion of the recent missile intercept test that was conducted from Kwajalein. We believe this is a great step forward in your program to protect the free world from weapons of mass destruction and our joint efforts to preserve inter-

national peace and security. Mr. Chairman, we believe that free association is a success. Free association is a model for decolonization and transition to greater self-reliance that has been proven to be effective.

From the perspective of the RMI, the success of the compact can be measured by comparing where we started and how far we have come. Since 1986, my country has grown from a dependent State into a self-governing nation. We now have mature political and economic relations with the United States and the rest of the world. Of course, there are always those who seek to find faults, and it is true that our progress has, by no means, been ideal. But I believe firmly that any objective evaluation of free association can only conclude that our unique relationship is a success.

As renegotiations of the expiring provisions of the compact are underway, we are prepared to expand negotiations with the United States to include certain non-expiring provisions of the compact, with a view toward further improving the very successful relationship that already exists. In addition, we have asked the administration to consider elements of our changed circumstances petition and issues related to title III and Kwajalein as part of our renegotiations. Mr. Chairman, with the permission of your committee, I would like to ensure that the record before you is complete, and I request your permission to submit a summarized copy of the RMI's Changed Circumstances Petition for the hearing record.

As friends and allies of the United States, we believe that it is in both of our nations' interests to address the full scope of damages and injuries from the U.S. nuclear weapons testing program. Since the compact of free association came into effect in 1986, new and additional information about the consequences of the testing program have come to light. We have put together a petition to outline these changes for you. All we request is that Congress and the administration evaluate our petition and provide a response to us. The RMI government would also welcome a congressional hearing to consider the petition so we can collectively discuss the components of our submission.

In addition to the Changed Circumstances Petition, I would also like to submit the RMI government's responses to each of the GAO studies conducted for the compact renegotiations. The responses have offered testimony to our shared concerns about addressing and improving our fiscal and financial management and accountability. In this context, the RMI appreciates GAO's careful review of these important issues. The imperfections in this transition process during the first 15 years of the compact, as well as deficiencies in the RMI's performance, have been identified and are manageable.

As you may know, Mr. Chairman, our economic proposal was recently submitted to the U.S. Government for consideration. We have submitted a copy of this proposal to the committee as well. As the chief negotiator for the RMI, I look forward to hearing the U.S. Government's responses to our proposal at our next round of discussions that will take place in Hawaii next week. We believe that our compact proposal provides a viable framework for future economic relations between the RMI and the United States, and addresses the monitoring and accountability issues that have been

raised by the GAO. It also includes mechanisms that will ensure the sustainability of the RMI economy.

The RMI is pleased with the renegotiations that are under way. We have every confidence in the U.S. Government's representative for compact renegotiations, and the U.S. Government's ambassador at the embassy in Majuro. By the same token, we look forward to the active involvement of Congress, as to the future oversight hearings, so that we can continue to have constructive discussions in our renegotiation efforts.

In conclusion, Mr. Chairman, I want to say that it is indeed a privilege and an honor to appear before you today, and to tell you with certainty that our bilateral relationship is a success, a success we want to continue to build upon. I am fully confident in our ability to renegotiate an outcome that will serve the interests of both our nations. On behalf of the Marshallese people and government, thank you again for the honor of appearing here today.

[The prepared statement of Mr. Zackios follows:]

PREPARED STATEMENT OF GERALD M. ZACKIOS, MINISTER OF FOREIGN AFFAIRS, REPUBLIC OF THE MARSHALL ISLANDS

The Compact of Free Association is a success. The special and unique relationship that binds our two nations together has made a substantial contribution to the transformation of the Marshall Islands into a democratic and stable nation. At the same time it has contributed to crucial U.S. strategic interests. I believe the record of this hearing should reflect that the Compact has been a great success for both nations.

I also believe we have achieved the principal goals that were defined by both President Carter and President Reagan during the political status negotiations, and as affirmed by Congress when it overwhelmingly approved the Compact with large bipartisan majorities in both Houses: I am pleased to say that the Compact has also fulfilled the primary goals and aspirations of the people of the RMI.

From the perspective of the Marshall Islands, the success of the Compact can be measured by comparing where we started and how far we have come. Since 1986, the Marshall Islands has grown from a dependent state into an independent nation. We now have mature political and economic relations with the U.S. and the rest of the world. Of course there are always those who seek to find fault and it is true that our progress has by no means been ideal but I firmly believe that any objective evaluation of free association can only conclude that our unique relationship is a success.

Having said this, I would like to touch on some important aspects of the first 15 years of the Compact.

By the late 1970s it was clear that the relationship based upon the U.N. Trusteeship no longer suited either the Marshallese people or the U.S. The establishment of our special and unique relationship under the Compact of Free Association allowed the Marshallese people to achieve their long-held goal of self-government while at the same time protecting the interests of the U.S.

The transition from Trusteeship to independence has been a difficult process. We always expected the transition to present challenges and it is fair to say that the process proved even more difficult than expected. However, we have met these challenges and are now much stronger and more resourceful for the experience.

In my view, our single most important achievement is the establishment of a politically stable nation where democracy and human rights are respected and the rule of law is firmly in place. The rule of law is enshrined in our Constitution and effectively administered by our courts. Our successful adoption of a participatory democratic system while retaining the strengths of our traditional culture is something of which I am proud. I strongly believe our efforts and successes stand in comparison to those of any other country.

Notable economic achievements include major improvements in the quality and extent of the basic infrastructure, a small but growing and resourceful private sector, a health service that reaches most Marshallese and a significant increase in the number of tertiary trained Marshallese. While we have had several successes we have also made some misjudgments. For example, there are several examples where direct Government investments in commercial enterprises were not successful. We

have learned from these mistakes and Government policy is to avoid such investments and focus more on creating an enabling environment for the development of the private sector. We have also reduced direct Government involvement in utilities and other services through the commercialization and privatization of the entities. In addition we have succeeded in attracting investment in fish processing, other marine and maritime activities and in tourism.

While there remains much yet to be done we have made significant advances in the provision of health and education services. For health, most indicators have improved significantly and we continue to improve health care. The new Ebeye Health Center that is to be opened in early 2002 will be second to none in the Pacific. In education, the number of students graduating from all levels of school has increased significantly. While we are pleased with these successes, we recognize that issues such as teacher training and curriculum development must be addressed more effectively. In addition, the construction and maintenance of schools and other public infrastructure needs more attention.

Regarding the performance of our public sector, we have also dealt with the reality of a Government that was too large and a financial administration system that was inadequate to the needs of the nation. Both of these issues were legacies from the time of the Trusteeship.

First, over the past 5 years we have implemented major reforms to the public service. Most notably, the size of Government was reduced by nearly one-third between 1997 and 2000. We continue to monitor and evaluate our public sector and are striving to create a professional public service that is both effective and efficient.

Second, the transition to a more effective system has proven to be difficult and we are still making efforts to improve our financial systems. As you know, having such financial systems, and the people to work them, is a challenge in all countries, including the United States. We continue to address these concerns by strengthening our own fiscal and financial management and accountability. In addition, we appreciate GAO's careful review of some of these issues. The RMI has responded to all the relevant GAO reports and is submitting our responses for the record.

As part of the current negotiations for the renewal of the economic provisions of the Compact, the RMI is proposing a range of measures that will improve the monitoring and accountability for funds provided under the Compact. This time we want to see a system in place and implemented from the outset that ensures the legitimate interests of the U.S. are protected while ensuring that the sovereign rights of the RMI are respected.

We have proposed the adoption of a Medium Term Budget and Investment Framework. This 5 year Framework will allow us to effectively allocate our resources and monitor the performance of Government agencies. We also suggest that a U.S.-RMI Joint Economic Review Board be established and that this Board undertake annual reviews of this Framework and the expenditure of the funds provided under the Compact. We believe the Board should use a Performance Scorecard covering a range of socioeconomic indicators to monitor, evaluate and report of the progress of the RMI economy. Related to this, we have requested that the U.S. appoint two additional staff members at the U.S. Embassy in Majuro to act as liaisons on Compact related matters. These measures, together with strengthened auditing and enforcement capabilities will enhance the financial management on an ongoing basis. We do not think it is in the interests of either the RMI or the U.S. to wait another 13 years before such a comprehensive review is undertaken.

A key component of our strategy for the future is the establishment of an intergenerational trust fund. In 1999, with assistance from the Asian Development Bank, the RMI enacted into law the Marshall Islands Intergenerational Trust Fund Act. The Fund will help the Government to achieve budgetary self-reliance while providing for future generations. To date the Government has already set aside $17.5 million to invest in the Fund, and is actively seeking contributions from bilateral donors and international agencies. In our proposal for the extension of the economic provisions of the Compact we have proposed that the U.S. also contribute to this Fund and participate in its management.

As mentioned earlier, the RMI and the U.S. are undertaking negotiations for renewal of the economic assistance provisions of the Compact that expired on the 15th anniversary of free association. In addition, the RMI is agreeable to expanding negotiations with the U.S. to include certain non-expiring provisions of the Compact with a view toward further improving the very successful relationship that already exists.

One important issue is the mechanism for addressing responsibility for injuries to people and damage to property as a result of the U.S. Nuclear Weapons Testing Program. In Section 177 of the Compact, the U.S. accepted responsibility for compensation owing to citizens of the Marshall Islands for loss or damage resulting from the U.S. Nuclear Weapons Testing Program conducted between 1946 and 1958.

Many of those Marshallese who were exposed to near-lethal levels of radiation received some assistance to begin their rehabilitation and resettlement of damaged lands and compensation for injuries and losses. However, more recent evidence proves that the effects were more widespread and insidious than originally thought. Fortunately, the Congress recognized the possibility of this eventuality and provided a mechanism in the Section 177 Agreement of the Compact to address such changed circumstances. In September 2000, the RMI presented a formal petition to Congress for additional compensation based on Section 177 of the Compact. This petition explains new information about the extent of damages and injuries, and new scientific and medical knowledge that was not known when our nations signed the Section 177 Agreement. The RMI requests that Congress hold a hearing on this petition, and that the Executive Branch of the U.S. Government respond to the petition. This is a matter of great concern for the Marshallese people and the RMI Government will pursue these issues until they have been adequately addressed.

Our strategic and defense relationship with the U.S. is unique among sovereign nations—we have entrusted our defense wholly to the U.S., without reservation, and in turn delegate to the United States plenary powers that enable the U.S. to use our country for our mutual defense and security. This agreement has ensured that the United States strategic interests in the Central Pacific have been protected. The establishment of the right of strategic denial and military operating rights in the Marshall Islands has been as effective strategy for the U.S. and the RMI. The political stability of the RMI and the nation's unreserved commitment to supporting the U.S. has been fundamental in enabling the U.S. to project its interests throughout the region and beyond. The missile development and testing facilities at Kwajalein have been critical to the development of long-range strategic missiles and defenses against much missiles, including successful testing as recently as this past Monday, December 3rd, of interceptor missiles to defend the U.S. against missile attack. These developments undoubtedly played an important part in preserving peace throughout the past 50 years. I am proud of our contribution to this process and am confident that the use of Kwajalein will continue to make a substantial contribution to peace throughout the world.

The facilities at Kwajalein have also been of great benefit to the RMI in providing jobs, training, and other consequent benefits to our citizens. The RMI believes that this mutual success can be built upon through the establishment of a Kwajalein Trust Fund and a greater shared effort dedicated to the special needs of Ebeye. In this regard the RMI stands ready to extend the Title Three Defense and Security provisions beyond the next 15-year period.

The RMI Government welcomes the Committee's decision to hold this hearing. While the negotiations for the renewal of the expiring Compact provisions are between the administrations of our two nations, the Congress and Nitijela have crucial oversight roles. We believe that this meeting is an important step in ensuring that the Congress is fully briefed on the issues that affect this special and unique relationship between the RMI and the U.S.

The integral and important role of Congress in this process is highlighted by the extensive amendments made during the establishment of the initial Compact. Title One of the Compact of Free Association of 1985 [P.L. 99-239] contains exhaustive enabling and implementing provisions that Congress added to the original agreement. These amendments came out of over thirty hearings before five House and two Senate committees during a two-year period from 1984 to 1986. The lesson of that long and difficult approval process is that Congress needs to be informed and consulted from the very outset of the process.

It is also important that negotiations between the RMI and the Administration reflect the fact that this in neither a domestic territorial matter nor entirely a foreign policy matter. It is an agreement, which enshrines a unique relationship that encompasses an insular policy legacy with strategic significance. The relationship is embodied in an international agreement approved by both Houses of Congress in the form of a joint resolution signed by the President.

In closing, let me reiterate what President Note recently told Vice President Cheney, the Administration, and Members of Congress during his recent visit about the threat we all face from terrorism. We stand with you in this war on terrorism, we have a common defense and indeed we share a common destiny with you. We are proud that our sons and daughters are serving in all branches of the U.S. Armed Forces. We are more than an ally; we are one with you when it comes to threats to international peace and security.

I thank you for this opportunity to testify, and I look forward to answering any questions you may have.

Senator AKAKA. Thank you very much, Minister Zackios. Thank you very much for your country's sentiments, and please thank your president for us.

Senator Christian.

STATEMENT OF PETER CHRISTIAN, SENATOR AND CHIEF NEGOTIATOR OF THE FEDERATED STATES OF MICRONESIA

Mr. CHRISTIAN. Thank you very much, Chairman Akaka. Senator Murkowski, Congressman Underwood, ladies and gentlemen, good morning. My chair squeaks, Senators, so I believe that many jittery witnesses have sat here before me, so I'm comforted by that thought.

[Laughter.]

Mr. CHRISTIAN. For the record, I am Senator Peter Christian, member of the Congress of Confederated States of Micronesia. Today, I testify before your committee as the Chief Negotiator for the Joint Committee on Negotiations on behalf of the Federate States of Micronesia.

With me today is the chairman of the Joint Committee on Negotiations, Lieutenant Governor Gerson Jackson of Kosrae, who also serves as the chairman of JCN. Also with me today is Asterio Takesy, who serves as the executive director of JCN, who was the former secretary of our foreign affairs department. Also with me today are members of our key staff who are based here in Washington. And I take this moment to introduce one of the individuals to the panel, Mr. Stovall, who was with the first round of negotiations, and who is helping the FSM——

Senator AKAKA. Peter, will you draw the mike a little closer to you?

Mr. CHRISTIAN. Thank you very much. As I said, I am a bit nervous. I have never sat on this side of the witness table for a long time. But thank you very much. I wanted to introduce Mr. James Stovall, who has served with the FSM as chief consul for the first round of negotiations, and he is serving as our chief consul on this second round. We are especially very proud of his services, and I welcome him today.

Our government is grateful to have been invited to participate in this hearing in order to provide, first, our perspective on the implementation of the compact during the initial 15 years period, and second, to outline for the committee our vision for the future of this relationship, and also the future of our nation. But before I go further, Mr. Chairman, let me express the appreciation of the Federated States of Micronesia to Mr. Alan Stayman. Much of the progress before us today in the negotiations is the result of the efforts of Mr. Stayman and his staff.

At the same time, it has been our pleasure to meet and speak with the new U.S. Chief Negotiator, Mr. Short. Mr. Short, or Colonel Short, is well known to us from his experience in the original compact negotiations. We welcome him aboard again and hope to see him soon in Honolulu. Mr. Chairman, I thank you for allowing us to submit a full copy of our written statement to you. And with your permission, if I would proceed to give my oral testimony.

The FSM has a small but very culturally diverse population. It is widely dispersed over some one million square miles of water. It

has limited resources, both natural and human. It is isolated from potential markets, both for import and export purposes. But for most of our history, we have been a subsistence economy, and I am happy to say, to note for the committee, that many of our people still live quite well from their farms and from the seas.

The 20th century brought the first sustained contact with the West for the Islands, and with it, a fundamental change for our societal and economic structures. The friendship and cooperation that our two nations enjoy today was forged after the liberation of the Micronesia Islands by the U.S. Armed Forces in the war in the Pacific. This relationship has been strengthened over the years, during the U.S. administration of the Micronesia Islands as a trust territory. And for the next 40 years, this relationship continued to flourish.

During this time, work began on the establishment of a constitutional Micronesian government, a goal that is of the United States, of the Micronesian people, and also of the United Nations. This was achieved in 1979. As has been said many times before, the compact was a landmark document, taking 15 years in the formation. It facilitated the return of self-government to the Micronesian entities. For the Federated States of Micronesia, it started in November 1986.

Clearly, there have been mistakes on both sides during the 15 year history of the compact, beginning in 1986. However, by all accounts, the agreement has been a success, and we in Micronesia today believe that it is a better Micronesia today than it was 15 years ago. The FSM, as you may know, is a stable and democratic nation, and one that respects the basic human rights of its citizens and others who live in that country.

Since 1986, our Nation has gone through six peaceful changes in leadership. Currently, we just finished the first part of a constitutional revision, which is currently examining needed changes in the constitution. We are happy to report that the conclusion of this constitutional change will occur in the next month or so. I say this to imply to you that we have now formed a very stable and very ably led government in preparation for our work toward the development of a good economic base.

With this in mind, we welcome the series of recent GAO reports. These reports contain a great deal of useful material that will assist the Federated States of Micronesia and the United States in correcting past mistakes and better—for the future. However, Mr. Chairman, Senator Murkowski, we continue to have significant difficulties with the underlying negative assumptions applied by the GAO in the course of its investigations, especially when such assumptions are read and interpreted without the benefit of post audit consultations. Our objections to elements of the report are a matter of record. But given the time constraints, and having your permission to do so, we will submit our full report on this matter.

Since 1995, the FSM has been engaged in a sweeping, often painful, program of economic and administrative restructuring. These measures are intended to enhance the effectiveness of the FSM and the use of resources available to it. The reforms are ongoing, and the FSM remains deeply committed to seeing these through to their completion. In our negotiations with the United States, both

sides have been working to develop mechanisms that will reinforce the work that has already been done and put in place.

Mr. Chairman, on the issue of migration, of late, there has been much attention given to the fact that many Micronesian citizens, pursuant to compact provisions, travel to and establish residence in the United States and its territories. The majority of these citizens travel to the United States for limited periods and for specific purposes. These are the law-abiding taxpayers employed in a wide range of jobs. And while it is true that new Micronesian migrants, like many migrants from elsewhere, tend to be concentrated in low paying, service sector positions, they fill an important niche in many local economies where they reside and work.

Employment in these sectors is often crucial to the local economy. And, in many instances, residents are either not available or unwilling to perform in some low paying, menial jobs, leaving such opportunities open to our citizens.

In Micronesia, there are just over 100,000 persons in the FSM today. Our entire population, Mr. Chairman, could fit well into a Rose Bowl, and probably with seats left to spare. Of course, the actual numbers will come to the United States in only a small fraction of this figure. The latest figures from the U.S. Bureau of Census estimated that 16,300 have migrated. While larger than we like, these numbers barely register in the overall United States immigration totals.

On the issue of compact impact reimbursement, Mr. Chairman, we support reimbursement of the governments of the United States, to the States, to the territories, and the positions in the region for any compact related expenses. However, we encourage an impartial, detailed, and accurate accounting of these costs. Clearly, there are economic benefits for these areas through Micronesian employment, and this important factor must be taken into account in the course of any assessment.

From the first round of negotiations, the FSM has been in complete agreement with the United States that a primary goal is greater responsibility in expenditures of compact funds. Not so much so, just in where money is spent, but more so in more efficient and effective use of resources, using, as a benchmark, long range economic, social benefits as a result of such expenditures. This principle is at the core of the future agreement between the United States and the Federated States of Micronesia, and is reflected in the joint statement issued at the Honolulu talks in January 2001.

Mr. Chairman, if I may, I would like to submit a copy of this agreement and a brief chronology of the negotiations for the record. We tried to understand, Mr. Chairman, the underlying principles in the U.S. proposal tabled last year as a constructive first step by the United States. Unfortunately, this proposal invoked too many memories of the trust territory administration, an era our two nations left behind for a more noble future.

We, therefore, have since proposed a mechanism by which the both the United States and the Federated States of Micronesia would jointly, in a partnership, guide and oversee the expenditure of funds and the development of economic development in the Federated States of Micronesia. This is an organization that we have

chosen to call the Joint Economic Management Mechanism, or JEMM. We have briefly discussed this with the former negotiators, and we have also briefly discussed this with Mr. Short. And it is our hope that both sides will accept the JEMM as a working mechanism to oversee our progress.

If implemented, Mr. Chairman, the JEMM would provide constant rather than occasional oversight by both the United States and FSM of all compact funding, and thereby avoid most of the difficulties of the past concerning timely reports, incompatible standards, and other problematic administrative aspects. The result will be a hands on partnership to guide and manage funds, and full accountability for all assistance provided under the compact.

With regard to the negotiations, the key objective of the FSM is to consolidate the gains made over the past 15 years. Of course, also, the secure basis for continued sustainable growth. We note that the United States shares these objectives, as reflected in the various joint statements that have emerged from the earlier rounds. However, Mr. Chairman, I must state frankly that the continued progress and economic stability cannot be maintained at the level of compact assistance currently proposed by the United States.

When we commenced these negotiations 2 years ago, we had hoped to be able to move quickly towards an agreement. However, we do recognize that several very important and very tragic factors have combined to slow the pace of the work over the past 12 months. Nevertheless, we are optimistic, with the help of Colonel Short, that the potential for rapid progress from this point on will be very good.

As we have forged a unique relationship through the hard work, determination, and commitment of many in both countries, let us now resolve to temper this unique relationship with renewed commitment and vigilance so that both your country and my country may benefit from and be safeguarded by this compact of free association. Having said that, Mr. Chairman, I say this to close my statement. God bless the people of America, god bless the people of New York, as he has always blessed the Federated States of Micronesia.

[The prepared statement of Mr. Christian follows:]

PREPARED STATEMENT OF PETER CHRISTIAN, CHIEF NEGOTIATOR OF THE FEDERATED STATES OF MICRONESIA

Mr. Chairman and members of the committee, good morning. I am Senator Peter Christian, Member of Congress of the Federated States of Micronesia (FSM) and Chief Compact Negotiator for the FSM. Thank you for the opportunity to appear before this Committee to discuss the progress on the renegotiations of expiring provisions of the Compact of Free Association. I am accompanied today by the Chairman of our negotiating committee, the Honorable Gerson Jackson, Lt. Governor of the State of Kosrae, and by the Executive Director of the JCN, former Secretary of Foreign Affairs, the Honorable Asterio Takesy. We are all very grateful to have been invited to participate in this hearing. We welcome this opportunity to provide our own perspective on. the implementation of the Compact during the initial 15 years of Free Association between our two nations and to outline our vision for the future of this relationship and of our nation.

Before I go further, Mr. Chairman, let me express the appreciation of the Federated States of Micronesia to the former Director of the Office of Compact Negotiations, Mr. Alan Stayman. Much of the progress made in these negotiations is the result of the efforts of Al and his staff. At the same time it has been our pleasure to meet and talk with the new U.S. Chief Negotiator, Albert V. Short (Col. USA

Ret.). Col. Short is well known to us from his experience in the original Compact negotiations. From his comments to date, we are very encouraged by his desire to move these talks along quickly. We look forward to meeting with Al Short and his staff at our meetings next week in Honolulu.

Mr. Chairman, I know that you and many on this Committee are well versed in the history of Micronesia. But for the benefit of others, please allow me to trace a brief sketch of what has brought us to where we are today.

The FSM has a small but culturally diverse population, widely dispersed across thousands of miles of ocean. It has limited natural resources and is isolated from potential markets. For most of our history, we were a subsistence economy. The twentieth century brought the first sustained contact with the West to our islands, and with it a fundamental change in our societal and economic structures.

The long and strong bonds of friendship and cooperation that we enjoy today were forged between our two nations after liberation of the Micronesian islands by the U.S. at the end of World War II, and were strengthened during U.S. administration for the next forty years. During the mid-1970s, work began on establishing a Constitutional Micronesian government, a goal of the U.S., Micronesia and the United Nations. After nearly 15 years of arduous negotiations, an agreement to achieve this goal was reached in the form of the Compact of Free Association, which was implemented in late 1986.

As has been said many times before, the Compact was a landmark document, not only in U.S.-Micronesian relations, but in terms of international agreements as a whole. It recognized and facilitated the return of self-government to the Micronesian entities (the Federated States of Micronesia [FSM], Republic of the Marshall Islands [RMI], and later the Republic of Palau.) It was a unique initiative, with little if any precedent in international relations to guide its implementation.

Clearly, there have been mistakes on both sides during the fifteen year history of the Compact, and we recognize our shortcomings in this regard. However, by all accounts the agreement has been a success. Micronesia today is much better off than it was fifteen years ago. Despite the recent slowdown associated with the second step-down in assistance, and contrary to the GAO's findings, the FSM has experienced real growth during the Compact period. In recent years, this growth has been spearheaded by the private sector, which has been increasing its share in the overall economy. Our nation has also gone through six scheduled, peaceful changes in leadership. Our political institutions are secure and increasingly accountable. There is widespread and growing optimism concerning the future of the country and our relationship with the U.S.

This is a record in which both of our nations can take pride. The FSM is a stable and democratic nation, and one that respects the basic human rights of its citizens. It has achieved a respectable level of economic growth during the period in which the Compact has been in place. These are not insignificant accomplishments, taking into account the significant obstacles that the country has faced. In fifteen years we have seen the adoption of Western governance practices, accounting standards, and the emergence of a thriving international affairs capacity. The introduction of a monetary economy has not been without its bumps in the road, but as of now the prospects for economic self-sufficiency within the global economy can be discussed, and the ground for this new phase in our history is being broken.

With this in mind, we welcomed the series of recent GAO reports. These contain a great deal of useful material that will assist the FSM and the U.S. in correcting past mistakes and better adapting for the future. While we would not agree with all of the conclusions of these reports as they reflect upon the FSM, we acknowledge that there have been significant shortcomings in the past, and that problems persist in some areas. Some of these are already being addressed, as part of a generalized focus on improvements in management. In other cases, we will be looking closely at what can be done to resolve those weaknesses that persist.

However, and this is a key point Mr. Chairman, we continue to have significant difficulties with the underlying negative assumptions applied by the GAO in the course of its investigations. It is disheartening to note that these have continued in recent reports, despite having made our concerns known and having provided additional and often contradictory data.

We understand that it is the nature of GAO review to examine problems rather than to develop a balanced picture. Still, we can't help but fear that these reports have created an unjustly negative portrait of the FSM that threatens to cloud our ongoing Compact negotiations with the U.S.

One of our major problems with the reports is that they were compiled on the basis of negative anecdotal evidence from visits to selected locations within the FSM, and not from the experiences of all four-FSM states. The GAO conclusions re-

garding education in the FSM, for example, took no notice whatsoever of the truly remarkable accomplishments in education in the State of Yap.

Our objections to elements of the reports are a matter of record. Given time constraints during this hearing I will not go into specific areas, and would refer Members to our responses provided earlier to the GAO. Unfortunately, many of our comments seem to have been lost on the GAO in subsequent reports. To cite but one example, the FSM Government objected strongly to treatment of the FSM and RMI as one entity in the first report. Clearly, the situation and circumstances of both countries warrant separate examinations. Still, we are concerned to see that inadequate separation has been maintained in all reports since. This is not fair to either the FSM or RMI, and results in a series of inaccurate conclusions.

Some of the conclusions reached by the GAO are made all the more troubling given the steps the FSM has already taken to address economic and administrative challenges. As the Members of the Committee are undoubtedly aware, since 1995, the FSM has been engaged in a sweeping (and often painful) program of economic and administrative restructuring. The main factor behind the decision to undertake these measures was the need to accommodate the step-down in Compact funding that occurred in 1998. At the same time, the FSM took advantage of the opportunity to enhance accountability and improve transparency in government operations.

In the late 1990s, a series of economic summits were held at the state and national levels, in order to identify key priorities, goals and strategies. Two rounds of these meetings have now been held. The results of these meetings, which involved a broad cross-section of stakeholders, form the basis of the FSM's Strategic Development Framework. This is our ongoing, continuing development plan, which, with U.S. agreement, has replaced the outmoded five-year cycle of development planning referred to in the Compact.

Finally, the state and national governments have begun implementing performance-based budgeting procedures. These procedures strengthen the linkage between the identified objectives and strategies and government expenditure.

These measures are intended to enhance the effectiveness of the FSM to use the resources available to it. In our negotiations with the U.S., both sides have been working to develop mechanisms that will reinforce the work that has already been done.

The reforms are ongoing, and the FSM remains deeply committed to seeing these through to their completion. Obviously, these measures have required a good deal of political courage and the foregoing of short-term economic benefits in favor of the broader, longer-term economic health of the nation. There is no doubt that the resulting changes have hit many Micronesian citizens hard, as they have the national, state, and local governments. Thus, there is a natural temptation to seek short-term sources of revenue to cover pressing expenses. Nevertheless, my people are steadfastly committed to charting a sustainable economic course. Our commitment to the Trust Fund mechanism as a workable component of the FSM's future economic planning stands as testament to this long-term view.

Mr. Chairman, of late there has been much attention given to the fact that many Micronesian citizens have come to the U.S. for various periods of time and for various purposes. However, I believe that the term "migration" is inappropriate to describe these movements.

The majority of FSM citizens travel to the U.S. for limited periods of time and for specific purposes. These are law-abiding taxpayers employed in a wide range of jobs. While it is true that new Micronesian migrants, like many migrant groups, tend to be concentrated in low-paying, service-sector positions, they fill an important niche in many local economies where they reside and work. Employment in these sectors is crucial to the local economy. I refer especially to our workers in the tourism and construction sectors, most notably in Guam, Hawaii and Saipan. The GAO would suggest that these are somehow "parasitic" on the local economy. I suggest otherwise.

Another important factor prompting the short-term movement of Micronesians to the U.S. is enrollment in post-secondary educational institutions. This was deemed to be an important benefit of the new relationship by both sides in the first Compact negotiations, and has proven to be a tremendous success in improving the capacity of Micronesians to self-govern and achieve a viable economic future. Those who graduate from U.S. colleges and universities often return to the FSM and put their newly-acquired skills to work for the betterment of the county. Still, not as many return as we would like due to the comparatively low wages for scarce professional positions in the FSM. Increasing the number and profitability of private-sector employment in the country represents a primary goal of the ongoing reform process, and is a key objective for both sides in the negotiations now underway.

A third factor prompting Micronesians to travel to the U.S. is access to health care. There currently exist inadequate primary health care facilities in the FSM, let alone secondary and tertiary-level treatment facilities. As such, our people have little choice but to travel to health facilities overseas. Many offset the cost of treatment through productive employment in the local economy while they are there.

Finally, a large group of "migrants" come to the U.S. for opportunities that simply are unavailable at home. One segment of this group is Micronesians who volunteer to serve in the U.S. armed forces. Today Micronesians serve alongside U.S. servicemen and women throughout the world. FSM citizens in the U.S. military have tended to concentrate in some of the more dangerous specialty areas, such as Special Forces and airborne units.

I would ask you, Mr. Chairman, and the distinguished Members of this Committee, to approach the movement of FSM citizens into and out of the United States with a proper perspective. There are just over 100,000 persons in the FSM today. Our entire population could fit in the Rose Bowl, with a few seats to spare. Of course, the actual number who come to the U.S. is only a small fraction of this figure. The latest figures from the U.S. Bureau of the Census, point to 1,503 citizens of the FSM living in the Commonwealth of the Northern Mariana Islands (CMNI); 6,325 in Guam; and 3,312 in Hawaii. The total number of FSM citizens throughout the United States, its Territories and Possessions, is estimated at 16,346. While larger than we would like, these numbers barely register in the overall U.S. immigration totals. Please, Mr. Chairman, let us keep this discussion in perspective.

We know that the numbers indicated above impact far more significantly on the U.S. insular areas, but we also know that these same areas are host to other visiting nationalities in even larger numbers. We do not wish to be singled out unfairly.

Obviously, it is in the best interest of the FSM to reduce these numbers. The primary motivations for migration—wage levels in the FSM, educational opportunities and health care, are all centerpieces of the Compact agreement now being negotiated. If successful in improving these aspects of life in the FSM, we can reasonably expect these figures to decline. However, unrestricted movement of persons throughout the region will remain as important as ever, and these flows, in both directions, must be maintained.

The FSM Government has pledged its full cooperation in working with the U.S. authorities, and particularly the authorities of Hawaii, Guam and the CNMI, to ensure that immigration concerns are addressed. We maintain the position that the immigration provisions of the current Compact grant sufficient authority to the U.S. to allow these concerns to be met through administrative means, rather than necessitating a renegotiation of the Compact's immigration provisions.

We support reimbursement of the governments of the U.S. States, Territories and Possessions in the region for any Compact-related expenses. However, we encourage an impartial, detailed, balanced and accurate accounting of these costs. There are clear economic benefits for these areas through Micronesian employment, and this important factor must be taken into account in the course of any assessment.

Throughout the life of the first Compact agreement, there have been persistent attempts by some Congressional offices to cut back on educational assistance provided through the Compact to Micronesians studying abroad and at home. This is directly counter to the goals expressed by the U.S. at the time of Compact signing. Through the tireless efforts of some in the U.S. Senate, including some in this Committee, we have succeeded in maintaining these benefits. However, doubt over the continuation of educational assistance creates great difficulties for our students and economic planners, who cannot rely on continuation of these funds from one year to the next.

There is much more that time does not permit here to be discussed on this topic, and I would refer the Committee to review the documents provided by the FSM Government in response to the GAO report entitled "Level and Characteristics of Migrants from the FSM."

From the first round of negotiations, the FSM has been in complete agreement with the U.S. that a primary goal is greater accountability in expenditures of Compact funds. This has not changed. The principle is at the core of any future agreement between our two countries, and is reflected in the Joint Statement issued at the Honolulu talks in January 2001. I would request that this statement be placed in the record of this hearing.

We welcomed the underlying principles in the recent U.S. proposal as a constructive first step. However we believed that there should be a greater partnership in overseeing mechanisms to ensure accountability for it to be truly effective. We therefore have proposed the Joint Economic Management Mechanism, or "JEMM." Our proposal has met with an encouraging response from the U.S. negotiators, and

we hope to agree on the principle and the framework of the mechanism during upcoming negotiations.

If implemented, the JEMM would provide constant, rather than occasional, oversight by both the U.S. and FSM of all Compact funding, and thereby avoid most of the difficulties of the past concerning timely reporting, incompatible standards, and other administrative aspects. The result will be a hands-on partnering approach to funds management and full accountability for all assistance provided under the Compact.

I wish to stress that the mood in Micronesia today is hopeful and optimistic. We look forward to maintaining our steadfast relationship with the U.S. and will work constructively to address its concerns. Most importantly, we recognize the tremendous success of the Compact of Free Association, and encourage Members of this Committee to keep these aspects in mind when considering the materials presented today, and in the future.

With regard to the negotiations, the key objective of the FSM is to consolidate the gains made over the past fifteen years and to secure a basis for continued sustainable growth. We feel that the U.S. shares these objectives, as reflected in the various joint statements that have emerged from the earlier rounds. However, Mr. Chairman, I must state frankly that continued progress and economic stability cannot be maintained at the level of Compact assistance currently proposed by the United States.

When we commenced these negotiations two years ago, we hoped to be able to move quickly towards an agreement. However, we do recognize that several factors have combined to slow the pace over the past few months. Nevertheless, we are optimistic about the potential for rapid progress from this point on.

The FSM has been prepared at every stage of the negotiations thus far. We have presented data as requested by the U.S. and have maintained the initiative in presenting proposals and counter-proposals. In short, we have pushed for a swift conclusion to the talks. I am providing a brief chronology of the renegotiations for your background, and would ask that this be placed in the record.

We have forged a unique relationship through the hard work, determination and commitment of many in both countries. We look forward to strengthening these bonds during the next twenty years and to working together to ensure an economically self-sufficient Micronesia for the future.

In closing Mr. Chairman, let me again thank you and your Committee for scheduling this oversight hearing into the status of Compact negotiations. We are pleased to be negotiating with our long-time friend and ally, and fully expect that the U.S. will continue to honor and respect the unique relationship between our two countries.

Senator AKAKA. Thank you very much, Senator, and I thank you for your sentiments from your country to ours. I thank all of you for your testimonies, and would like to begin a round of questions to each of you. I want to first pose a question to Director Short. I thank you very much for your statement, your goals, and your priorities for the financial assistance trust fund, the Federal programs, and the impact issues. Do you plan, Mr. Short, to request additional funds from Congress for fiscal year 2003 and beyond to ensure oversight?

Mr. SHORT. Sir, I would envision that the package that embodies the compact would include in there a mechanism and necessary funding for oversight. If you reflect back on the previous compact legislation, there was the negotiated document embedded in that piece of legislation, but there were a number of other provisions in that legislation that addressed internal U.S. Government matter and also some government to government relationships and activities.

So I would see it as being part of the overall package that comes to the Congress to renew the compact. It would definitely have to address resources for that purpose.

Senator AKAKA. Each of you have mentioned GAO and its report. GAO has completed several reports related to the compact of free

association. Do you agree, Mr. Short, with their findings, and why or why not?

Mr. SHORT. Yes, sir, we do. In fact, my office has been the lead office within the State Department that has coordinated the review of the three reports that we have under discussion here today and also some others that are still in the preparation process. So the bottom line is, we agree with their findings, yes, sir.

Senator AKAKA. Minister Zackios, you testified that RMI is proposing that both military and economic relations provisions of the compact that were initially limited to 15 years be extended up to 50 years. Can you share any general thoughts you may have on this proposal?

Mr. ZACKIOS. Thank you, Mr. Chairman. As was stated several weeks ago during President Note's visit, we find that both defense and economic relations under the compact are a 15 year period. We feel that an extension of the term, generally, and looking at the possibilities of that extension will bring greater stability in the relationship that exists between the RMI and the United States.

Senator AKAKA. As I understand it, the RMI recently submitted its development plan to the administration, which will serve as a basis for the U.S. response in the economic area. Could you briefly describe your development plan?

Mr. ZACKIOS. Thank you very much again, Mr. Chairman. Our development plan, as I indicated in my summary of the presentation, has been submitted for your further review. But in general terms, our plan has addressed a lot of the concerns and a lot of the areas that the United States has requested that we negotiated, and we have proposed that we negotiated upon. I would like to say that the main core of that being better accountability and fiscal monitoring and management, but at the same time, dealing with the crucial areas of health and education, and other infrastructure and environment issues.

Also in that, the concept of a trust fund is very crucial. In fact, in that concept, the Marshall Islands, from transitional funds that have been provided for these next 2 years have invested, with the assistance of the Asian Development Bank, the enactment of a legislation called the Marshall Islands Intergenerational Trust Fund, and from the first bump of money, invested $14 million into this trust fund concept from that one. And from money outside, from other donors, including the Asian Development Bank, over $3 million, which brings the current trust fund to $17.5 million currently.

And it's anticipated that in the next year, when we get future additional funds, we'll inject another $14 million, bringing it to over $30 million within the next 2 years to commence this trust fund concept, which is a core element of the proposal.

Senator AKAKA. Thank you for that. Minister Zackios, critics contend that the RMI has a wavering commitment to economic reform. What is your response to that statement?

Mr. ZACKIOS. Mr. Chairman, even prior to the GAO reports, the Marshall Islands had taken economic reforms, commencing in 1985. And, in fact, we have, from 1995, done a public sector reform downsizing of government. In addition to that, we have entered into, prior also the GAO report, a fiscal and financial management

loan that will help fiscal and monetary accountability with the Asian Development Bank, and this is currently in progress.

Senator AKAKA. As I said, each of you has mentioned GAO. GAO suggests that targeting financial assistance to health and education sectors in the RMI could decrease motivations of RMI residents to migrate to Hawaii and U.S. territories. Do you agree with that statement?

Mr. ZACKIOS. I'm sorry, Mr. Chairman, could you rephrase your statement?

Senator AKAKA. GAO suggests that targeting financial assistance to health and education sectors in the RMI could decrease motivations of RMI residents to migrate to Hawaii and U.S. territories, and I'm asking whether you agree to that statement, that it would decrease motivations of RMI residents to move to Hawaii and other U.S. territories.

Mr. ZACKIOS. Mr. Chairman, in general terms, I think we agree, to a certain extent, with the findings of the GAO investigations. And, in fact, the RMI has been addressing them since well before. A lot of the issues raised by the GAO have been submitted in our responses to you, but I think generally that we agree, to a certain extent, with the findings of the GAO.

Senator AKAKA. Thank you for your response. Senator Christian, again, I'm lifting GAO and its report. GAO reports that business ventures that received compact funding have generally failed. Do you agree to that? I'll repeat that.

Mr. CHRISTIAN. I understood the question, sir. I'm just trying to figure out what GAO meant by business ventures, whether they were referring to business ventures that had government ownership or private sector business.

Senator AKAKA. Yes, I'm asking about business ventures.

Mr. CHRISTIAN. Strictly private sector led business. You know, I thought I would be let off the hook here like Congressman Underwood, but I guess not.

[Laughter.]

Mr. CHRISTIAN. I would say that I would disagree with that.

Senator AKAKA. Are you willing to consider, in extensions of compact provisions, increased accountability measures for the Federal funds you receive?

Mr. CHRISTIAN. Absolutely, sir. I think that is the core of our negotiations. It is part of our ongoing dialogue with the U.S. negotiating team to put into place and implement a system by which both sides could monitor and help in the execution of projects for developmental purposes.

Senator AKAKA. As I understand it, you view the migration rights in the compact as key to easing problems associated with limited economic opportunities and population growth. Conversely, are you concerned about your declining population?

Mr. CHRISTIAN. At the moment, sir, no, because we see from statistics that the number of people traveling out to the U.S. mainland and to its territories, the State of Hawaii, Guam, CNMI, are relatively small in comparison with the number that chooses to remain at home. It is our hope that through the new compact and the new partnership program, the invigoration of assistance, we would be able to develop the economy to a level where we could

probably and most likely be able to attract back some of these who have traveled out for the purpose of finding jobs.

Senator AKAKA. Mr. Short, I have three questions for you at this time. As I see it, one of the most challenging parts of your job is to address this agreement among various Federal agencies, as well as different factions within each agency regarding the many different programs and provisions of the Compact.

Have you thought about how you will avoid losing sight of the big picture as you struggle with the warring factions within the Federal Government?

Mr. SHORT. Yes, sir. There is in place a so-called IG, interdepartmental group structure, that's chaired by Assistant Secretary James Kelley of the Department of State, and it consists of senior members from each of the relevant departments. The core group of that of course is State, Defense and Interior, but includes all other agencies who have interests and/or programs in the Micronesian States. That organization is in place and my game plan is to meet in Honolulu in December, flesh out the issues and then convene with Secretary Kelley and the chair of that organization in January basically to get everyone onboard the administration's plan for closure on the negotiations.

Senator AKAKA. As I understand it, in 1987 the Secretary of the Interior determined that the most effective method for U.S. Federal agencies to provide continuing Federal programs to the FSM and RMI was to create direct grant relationships between the other agencies and the island governments. Do you believe this is still the best approach?

Mr. SHORT. I think what we have seen is that these direct relationships really have not been coordinated either at the Washington level or on the ground in Micronesia, so you have various Federal agencies and sub elements of those agencies carrying out actions and activities and programs with little or no coordination, and we intend to address that.

Senator AKAKA. What is your timeline for completing the negotiations?

Mr. SHORT. Well, I'm always reluctant to lay down markers, but realistically, as you pointed out in your opening statement, we have some budgetary considerations here with the 2-year extension, and OMB, of course, has their cycle. And as I've discussed with my Micronesian counterparts, we need to have basically an agreement by next summer and a number for OMB in the fall to make the gate to keep this process where we want it, and to not have to go into some sort of a subroutine of special legislation.

Senator AKAKA. Well, I thank you for the timeline. The other end of this is what would you do in case whatever that line we have set there is not a firm agreement?

Mr. SHORT. Well, I think first of all we're going to make a concerted effort, and I believe an attainable effort to reach that goal by the summer. I don't foresee any major roadblock that would prevent us getting there, either on our side or the other side. We have some issues to deal with and my approach on the negotiations is let's do the tough things first and the easy stuff will take care of itself along the way. And so that's going to be the thrust of our ap-

proach in the administration. And I've had good responses from the Micronesian counterparts that they want to do the same thing.

Now, should we not make that objective, then we're going to have to consult with you and members of the Congress very early on to make sure that there is some additional transition action taking place. But I do not foresee that.

Senator AKAKA. Well, I want to thank the three of you for your testimony. It will be helpful to the committee. I also want to wish you well. There's no question in my mind that by going to Hawaii things will work out.

[Laughter.]

Mr. SHORT. The venue is definitely great.

[Laughter.]

Senator AKAKA. And I know you all will be working very hard to try to come about with the best agreements that you can. We look forward to meeting the deadlines as we propose them, but above all we are looking forward to agreements that can best help the people of FSM and RMI. And that's what we're here for. My intention here for calling this hearing is to hear from you and to move this along, so that we can help these countries, as well as our country, and to help the peoples there.

So I wish you well and thank you so much for coming and for your testimonies. Thank you.

At this time I'd call a short recess.

[Recess.]

Senator AKAKA. The hearing will be in order. I hope you appreciated the short recess as much as I did.

Our second panel will discuss the implementation of the current Compact. Mr. Chris Kearney, Deputy Assistant Secretary for Policy and International Affairs for the Department of the Interior will discuss the department's role in the Compact of Free Association. Ms. Susan Westin, Managing Director for International Affairs and Trade for the General Accounting Office will discuss the GAO's findings regarding the implementation of the Compact. And I look forward to your statements. So I call on Mr. Kearney to begin.

STATEMENT OF CHRISTOPHER KEARNEY, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. KEARNEY. Thank you, Mr. Chairman and good morning.

Thank you very much for inviting me to discuss the status of the Compact negotiations with the freely associated States, the Federated States of Micronesia and the Republic of the Marshall Islands. It is a pleasure to be with you here today.

I want to focus my remarks primarily on the accountability aspect of my statement and dispense somewhat with the background. The factual information I think is fairly self-explanatory and is somewhat historical in nature, but I'd be happy to answer any questions in that area.

Regarding the administration's overall position, I would commend you to what Mr. Short has said in his statement. He articulates our view well as it relates to the importance of FSM and RMI to the United States and identifies the goals and challenges as we enter the negotiations.

Let me say at the outset that the Department of the Interior is fully committed to participating in discussions designed to meet the objectives of title II of the Compact of Free Association to "Assist the Marshall Islands and Federated States of Micronesia in their efforts to advance the economic self-sufficiencies of their people."

In particular, Mr. Short's recent arrival is welcome news. For a number of reasons, negotiations to this point have not advanced further for any of us. We now look forward to working with the State Department and the Defense Department and others in the administration to formulate policy positions that address many of the issues stemming from the real-world experiences of the Compact, the General Accounting Office reports and indeed the budget framework we face in the aftermath of September 11.

As I said, let me focus my remaining remarks on the accountability and oversight aspects as we go forward, which we believe to be very, very important.

Accountability and oversight are critical elements that have been lacking in the Compact to this point. While the Department is still formulating specific oversight and accountability proposals, we view increased accountability and developing performance measures as critical priorities for the negotiations. It is our responsibility to strike a balance between ensuring that taxpayer dollars are spent wisely while meeting our obligations to the FSM and RMI.

In the future, increased accountability may require a range of actions that are a change in practices from the past, including a change in the way U.S. dollars are administered in the FSM and RMI, more stringent reporting of expenditures to DOI and other U.S. agencies, more specific standards by which to measure results, changes in how services are provided, enhanced auditing by the Office of the Inspector General and GAO, and indeed a greater degree of communication with the governments of FSM and RMI than has occurred in the past.

The U.S. Government must ensure that it is doing everything possible to advance the economic progress of the peoples of the two island nations, while addressing the concerns and difficulties that have been documented in the past by GAO and others regarding monies the two countries have received.

Working with the Congress, we believe there are a number of tools at our disposal that can ensure we meet many of the overall objectives of economic progress, with respect to the two nations.

First, the Government Performance and Results Act provides a framework for developing enhanced accountability and measurable results for domestically administered programs. Each department and agency is required to administer a 5-year strategic plan submitted to Congress, as well as submit annual performance plans with their budgets each year. This process holds promise for enhanced accountability of the monies that we provide as we go forward.

Second, in August of this year the President's Management Agenda was released, which we believe is an integrated plan to reform the Federal Government. The PMA established the specific steps to accomplish management reform through five government wide initiatives and nine program specific initiatives. In particular, improving financial performance, expanding electronic government

and budget and performance integration we believe has the potential for particular application in the Compact negotiations.

While I'm not able to tell you specifically how we and other agencies will apply the management agenda to funding and oversight, please rest assured that the President and Secretary Norton are committed to bringing significant reform to the way we carry out our mission, including our responsibilities to island nations.

Third, the Congress has required that several specific statutes that did not exist in 1986 apply to how Federal agencies conduct their business. These statues provide real guideposts and tools for increased accountability as we go forward, including the Chief Financial Officers Act and the Klinger-Cohen Act. So many of the tools we believe are there or have the potential for being there.

Finally, let me say that we face significant challenges with FSM and RMI in enhancing financial accountability, efficiency and coordination of spending on services. However, we are committed to significant improvement in all three areas and welcome the suggestions of the committee, others in Congress and the GAO regarding this effort.

We are also confident that the senior leadership of the FSM and the RMI are committed to reform and will work cooperatively with us to ensure that in the future spending of Compact dollars reflects measurable results, transparency, accountability and responsible management.

Thank you very much for the opportunity to appear before you today, and I'd be happy to answer any questions that you might have.

[The prepared statement of Mr. Kearney follows:]

PREPARED STATEMENT OF CHRISTOPHER KEARNEY, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman, and members of the committee, thank you very much for inviting me to discuss with you the status of compact negotiations with two freely associated states (FAS): the Federated States of Micronesia (FSM) and the Republic of the Marshal Islands (RMI). It is a pleasure and an honor to appear before you today.

You will hear testimony from several distinguished speakers addressing several aspects of the compact and the negotiations. Regarding the Administration's overall position, I would commend you to what Mr. Short has said in his statement. He articulates the Administration's position as it relates to the importance of the FSM and RMI to the United States, and identifies the goals and challenges as we pursue negotiations. The Department of the Interior is fully committed to participating in discussions designed to meet the objectives of Title II of the Compact of Free Association, to "assist the . . . Marshall Islands and Federated States of Micronesia in their efforts to advance the economic self-sufficiency of their peoples. . . ."

Mr. Short's recent arrival is welcome news. For a number of reasons, negotiations to this point have not advanced further. We now look forward to working with the State Department to formulate policy positions that address many issues stemming from "real world" experience with the compacts, the General Accounting Office (GAO) reports, input from others, and the budget framework we face in the aftermath of September 11th.

My remarks will address two matters: our role under the compact, namely administration of title II; and issues that have arisen regarding accountability and effectiveness in overseeing the implementation of the compact.

COMPACT BACKGROUND

Under the direction of the Interagency Group on Micronesia, chaired by the Department of State, the President's Personal Representative for Micronesian Status Negotiations negotiated a Compact of Free Association with the RMI and FSM that was implemented in 1986.

The documents that define the relationship between the United States and the freely associated states (FAS) include: the compacts as negotiated; the numerous subsidiary agreements to the compacts; Public Laws 99-239 and 99-658, through which the Congress approved the compacts; and other legislation subsequently enacted by the Congress.

As negotiated, the compact with the RMI and FSM set forth the elements of the relationship in four titles: Governmental Relations, Economic Relations, Security and Defense Relations, and General Provisions. However, titles I and II were substantially altered by the Congress during and after the approval process. Title I of the negotiated compacts did not envision recognition of the freely associated states as fully independent nations in the international community. Shortly after the RMI and FSM compact was implemented in 1986, the Administration proposed legislation, which Congress approved, upgrading diplomatic relations so that they conformed to the standards of the Geneva Convention. This change had significant implications for how the FAS and the relationship of free association were perceived.

The role of the Department of the Interior is focused on title II—Economic Relations—because the Congress, in section 105(b)(2) of Public Law 99-239, stipulated that all appropriations under the compact must be made to the Secretary of the Interior. Congress also assigned responsibility to the Secretary of the Interior to coordinate and monitor United States domestic programs.

Title II is composed of two key elements: financial assistance and program assistance.

First, I will briefly describe financial assistance. Over the 15-year life of compact funding, it is expected that the United States will pay $945 million to the RMI, and $1.345 billion to the FSM in direct title II financial assistance. This financial assistance, most of which is guaranteed, is provided with maximum flexibility and requires that 40 percent of the financial assistance must be spent on capital development. A table displaying the estimates of the value of the 15 years of financial assistance for the FAS is provided as an addendum to my written statement.

Second, with respect to program assistance, under section 221(a), the United States agreed to provide the FSM and RMI with the services of the Weather Service, Federal Emergency Management Agency, Postal Service, and Federal Aviation Administration. While the costs of these services cannot be determined exactly until after they are rendered, our current 15-year estimate is $139 million for the two countries.

Section 224 of the compacts provides that additional United States program assistance may be extended from time-to-time by the Congress. This provision has been used extensively. In fact, section 105(h)(1) of the legislation approving the compacts (P.L. 99-239) extended the programs of the Legal Services Corporation, Public Health Service, and the Farmers Home Administration (currently the Rural Housing Service, the Farm Service Agency, and the Rural Business-Cooperative Service of the Department of Agriculture). The compact legislation, in sections 102(a) and 103(a), extended law enforcement and illegal drug enforcement programs to the RMI and FSM, and section 103 also extended agricultural and food programs and radiological health care to the RMI. Additionally, the Congress extended, in section 111(a), the programs of the Federal Deposit Insurance Corporation, Small Business Administration, Economic Development Administration, Rural Electrification Administration (currently the Rural Utilities Service of the Department of Agriculture), the Labor Department's Job Training Partnership Act (later replaced by the Workforce Investment Act) and Job Corps programs, and the marine resource and tourism programs of the Department of Commerce. Finally, all United States domestic programs originally scheduled for immediate termination upon implementation of the compact were instead subject to a three-year phase-out under sections 105(c)(2) and 105(i)(2).

This pattern of extending eligibility for United States domestic programs and services under compact section 224 has continued since enactment of the compact approval legislation. Citizens covered by the compact were made eligible for Pell post-secondary education grants beyond the first four years negotiated in the compacts. Each country was also allowed to receive Department of Education programming through the Pacific Regional Education Laboratory.

Although there is significant fluctuation each year in the total value of these United States domestic programs, these programs have totaled approximately $700 million over the 15-year period for the RMI and FSM.

The compacts, as originally negotiated, anticipated that all United States domestic programs would be budgeted under compact section 221(a) and through the Department of the Interior. When the Congress extended additional programs, however, it did not direct that they be budgeted and administered through this unified appropriation to the Department of the Interior. They were and are, instead, admin-

istered by each Federal agency. This significantly eased program administration but has made it more difficult to track such programs. For example, it is impractical to track the relatively limited funding paid directly to individuals, small businesses, or non-governmental agencies.

ACCOUNTABILITY AND OVERSIGHT

Accountability and oversight are critical elements that have been lacking in the administration of the monies spent over the life of the compact.

While the Department is still formulating specific oversight and accountability proposals, the Administration views increasing accountability and performance measures as critical priorities for the negotiations. It is our responsibility to strike a balance between ensuring that taxpayer dollars are spent wisely while meeting our obligations to the FSM and RMI.

In the future, increased accountability may require: (1) a change in the way United States' dollars are administered in the FSM and RMI; (2) more stringent reporting of expenditures to DOI and other United States agencies; (3) more specific standards by which to measure results; (4) changes in how the services are provided; (5) enhanced auditing by the Office of Inspector General, and GAO; and (6) a greater degree of communication with the governments of the FSM and RMI than has occurred in the past.

The U.S. government must ensure that it is doing everything possible to advance the economic progress of the peoples of the FSM and RMI, while addressing the concerns and difficulties that have been documented in the past by the GAO and others regarding monies the two countries have received.

Working with the Congress, a number of tools at the administration's disposal can ensure that we meet our overall objective of economic progress for the FSM and RMI. First, the Government Performance and Results Act (GPRA) provides a framework for developing enhanced accountability and measurable results for domestically administered programs. Each department and agency is required to administer a five-year strategic plan (submitted to Congress) as well as submit annual performance plans to Congress along with their budgets every year. This process holds promise for enhanced accountability of monies provided to the FSM and RMI. I understand that the FSM and RMI are implementing performance budgeting in their government framework.

Second, in August 2001, the President's Management Agenda (PMA) was released, which is an integrated plan to reform the Federal Government. The PMA establishes specific steps to accomplish management reforms through five government wide initiatives and nine program-specific initiatives. The five government-wide initiatives include: competitive sourcing, strategic management of human capital, improving financial performance, expanding electronic government, and budget and performance integration. While I am not able to tell you specifically how Interior and other agencies will apply the management agenda to funding and oversight of the FSM and RMI, the President and Secretary Norton are committed to bringing significant reforms to the way we carry out our mission including our responsibilities to the FSM and RMI. We are excited about the prospects for real change in the way the government meets its obligations through implementation of the PMA.

Third, the Congress has required that several specific statutes that did not exist in 1986 apply to federal agencies to provide guideposts and tools for accountability as we pursue negotiations, including the Chief Financial Officers Act, the "Clinger-Cohen Act," and others.

Finally, let me say that we face significant challenges with the FSM and RMI in enhancing financial accountability, efficiency, and coordination of spending on services. However, we are committed to significant improvement in all three areas and welcome the suggestions of the Congress, the GAO, and others regarding this effort. We are confident that the senior leadership of the FSM and the RMI are also committed to reform and will work cooperatively with us to ensure that, in the future, spending of compact dollars reflect measurable results, transparency, accountability, and responsible management.

Thank you very much for the opportunity to appear before you today.

Senator AKAKA. Thank you very much, Mr. Kearney.

We'll hear from Ms. Westin.

STATEMENT OF SUSAN S. WESTIN, MANAGING DIRECTOR, INTERNATIONAL AFFAIRS AND TRADE, GENERAL ACCOUNTING OFFICE

Ms. WESTIN. Mr. Chairman, I'm pleased to be here today to testify on the Compact of Free Association between the United States and the Pacific Island nations of the FSM and the RMI. During the past 2 years, as negotiations have been underway, we have been asked to review how key Compact provisions have functioned since the agreement went into effect.

Today, I will discuss the results of our work that address three issues: The impact of and accountability over U.S. direct economic assistance to the FSM and the RMI, the experience and impact of migration from the FSM and the RMI to Guam, Hawaii and the Commonwealth of the Northern Mariana Islands or CNMI, and third, lessons learned from other nations that have provided development assistance to Pacific islands nations.

Mr. Chairman, I'd asked that my entire written statement be made part of the record, and I will just summarize.

Senator AKAKA. Your full statement will be made a part of the record.

Ms. WESTIN. The title of my testimony really captures the essence of our message, that negotiations should address both the effectiveness and accountability of future assistance, as well as addressing migrant impact on U.S. areas.

Let me turn first to direct economic assistance. Direct U.S. Compact funds amounting to $1.6 billion for the FSM and the RMI from 1987 through 1998 have limited impact on economic development and were subject to limited accountability. The FSM and the RMI used these funds for general government operations, capital projects such as building roads or investing in businesses.

However, funds used for general government operations helped maintain high government wages in public sector employment that have discouraged private sector growth. Spending to create and improve infrastructure has not contributed to significant economic growth.

Moreover, Compact funded business ventures have generally failed due to poor planning, inadequate construction and maintenance or misuse of funds.

Furthermore, while the Compact set out specific obligations for reporting and consulting regarding the use of Compact funds, we found that the governments of the FSM, the RMI and the United States have provided limited accountability over Compact expenditures and have not ensured that the funds were spent effectively.

With regard to the impact of migration, thousands of citizens of the FSM and RMI have migrated to the United States. Employment opportunities, education and family ties were the main reasons given for migrating.

The U.S. island areas of Guam, Hawaii and the CNMI have been key destinations for these migrants, who have generally worked in jobs requiring few skills and receive low wages. As a result, many were living in poverty in all three of these U.S. island areas.

The reported impact of this migration on Guam, Hawaii and the CNMI has been significant, at least $371 million in cost to local

governments for 1986 through 2000, primarily for health and education services.

The U.S. Government has provided Compact impact funding in the amount of $41 million to Guam and $3.8 million to the CNMI through fiscal year 2001. However, the governments of both island areas consider this funding inadequate. Hawaii received no compensation through fiscal year 2001.

Third, our review of major donors' experiences in the Pacific could provide some guidance to the United States as it negotiates further economic assistance to the FSM and the RMI. These lessons include the following:

Assistance strategies involve tradeoffs between costs, effectiveness and accountability.

Flexible strategies are important to adapt assistance to changing circumstances and needs.

And well-designed trust funds can provide a sustainable source of assistance and reduce long-term aid dependence.

As you know, we have made several recommendations in our report for executive action regarding the effectiveness and accountability of future assistance to the FSM and the RMI, and I would like to note that it was gratifying to hear from all the negotiators this morning, as well as from the Department of the Interior that everyone is taking seriously the issue of accountability as we extend the Compact.

I'd like to close by noting our recommendations to reduce the impact of migration on U.S. island areas.

With respect to migration, we recommended that the Secretary of State direct the Compact negotiator to consider how to target future health and education funds provided to the FSM and RMI in ways that also effectively address adverse migration impacts identified by Guam, Hawaii and the CNMI. For example, the negotiator could consider whether a specific portion of health sector assistance should be targeted at treating and preventing the communicable diseases in the FSM and the RMI that are of public health concern in the U.S. island areas.

Mr. Chairman, this completes my oral statement. I'd be happy to respond to any questions.

[The prepared statement of Ms. Westin follows:]

PREPARED STATEMENT OF SUSAN S. WESTIN, MANAGING DIRECTOR, INTERNATIONAL AFFAIRS AND TRADE, GENERAL ACCOUNTING OFFICE

Mr. Chairman and members of the committee, I am pleased to be here today to testify on the Compact of Free Association between the United States and the Pacific Island nations of the Federated States of Micronesia, or FSM, and the Republic of the Marshall Islands, or RMI. The United States entered into this Compact with these countries in 1986 after almost 40 years of administering the islands under the United Nations (U.N.) Trust Territory of the Pacific Islands. The Compact is a separate international agreement with each country. It provides direct U.S. economic assistance and extends selected U.S. domestic programs and federal services to the FSM and the RMI. Total U.S. Compact assistance-direct funding, program assistance, and federal services to the two countries for fiscal years 1987 through 2001 is estimated to have been at least $2.6 billion.[1] Further, the Compact allows for mi-

[1] This is an estimate of U.S. assistance (excluding nuclear compensation). We reported on total U.S. assistance for fiscal years 1987 through 1999 in Foreign Relations: Better Accountability Needed Over U.S. Assistance to Micronesia and the Marshall Islands (GAO/RCED-00-67, May 31, 2000). This report also contained information on U.S. expenditures in the RMI made prior to the Compact related to nuclear testing.

gration from the FSM and the RMI to the United States, with limited restrictions, and establishes U.S. defense rights and obligations in the region. Provisions of the Compact that deal with economic assistance were scheduled to expire in late 2001; however, they will remain in effect up to 2 additional years while the United States and each of these Pacific Island nations renegotiate the affected provisions. These expiring provisions must be renegotiated and reauthorized by the Congress by late 2003 in order for Compact economic assistance to continue uninterrupted.[2]

During the past 2 years, as negotiations have been underway, we have been asked to review how key Compact provisions have functioned since the agreement went into effect. My testimony today will draw on the Compact-related reports that we have published since September 2000. Specifically, I will discuss the results of our work that addressed (1) the impact of and accountability over U.S. funding provided to the FSM and the RMI for fiscal years 1987 through 1998;[3] (2) the experience and impact of migration from the FSM and the RMI to the U.S. island areas of Guam, Hawaii, and the Commonwealth of the Northern Mariana Islands, or CNMI;[4] and (3) the experiences of and the assistance strategies used by other donors to Pacific Island nations.[5] While they address separate issues, these reports are related because they provide insight into how key Compact provisions have functioned over the past 15 years and identify issues that the U.S. government might consider as it renegotiates expiring Compact provisions with the FSM and the RMI.

Finally, before I continue, I should point out that we will publish two more Compact-related reports in January that address (1) effectiveness and accountability issues related to U.S. program assistance (such as Head Start) to the FSM and the RMI; and (2) the use of the Compact's defense and security provisions, as well as U.S. defense interests in the region. However, because these reports have not been finalized, I will not be discussing our work in these areas at this hearing.

SUMMARY

Direct U.S. Compact funds amounting to $1.6 billion for the FSM and the RMI from fiscal year 1987 through 1998 had limited impact on economic development and were subject to limited accountability. The FSM and the RMI used these funds for general government operations, capital projects such as building roads, or investing in businesses. However, funds used for general government operations helped maintain high government wages and public sector employment that have discouraged private sector growth; and spending to create and improve infrastructure has not contributed to significant economic growth. Moreover, Compact-funded business ventures have generally failed due to poor planning, inadequate construction and maintenance, or misuse of funds. In addition, both the FSM and the RMI remain highly dependent on U.S. assistance despite having made some improvements in economic self-sufficiency, as measured by their governments' lower reliance on U.S. funding. Further, while the Compact set out specific obligations for reporting and consulting regarding the use of Compact funds, we found that the governments of the FSM, the RMI, and the United States have provided limited accountability over Compact expenditures and have not ensured that the funds were spent effectively. In the case of the U.S. government, oversight was limited by interagency disagreements between the Departments of Interior and State, a lack of resources dedicated to Compact oversight, and Interior's belief that Compact provisions restricted the Department's ability to require accountability and withhold funds.

In part due to the lack of economic opportunities in the FSM and the RMI, thousands of citizens of these countries have migrated to the United States resulting in significant impact on three nearby U.S. island areas—Guam, Hawaii, and the

[2] Other Compact provisions are also due to expire in 2003 if not renegotiated and approved. These include (1) certain defense provisions, such as the requirement that the FSM and the RMI refrain from certain actions that the U.S. government determines are incompatible with its defense obligations in the region and (2) federal services listed in the Compact.

[3] See Foreign Assistance: U.S. Funds to Two Micronesian Nations Had Little Impact on Economic Development (GAO/NSIAD-00-216, Sept. 22, 2000). This report did not address U.S. programs and federal services that are extended to the two countries. We also provided this information during a hearing before the House Committee on International Relations, Subcommittee on Asia and the Pacific. See Foreign Assistance: U.S. Funds to Two Micronesian Nations Had Little Impact on Economic Development and Accountability Over Funds Was Limited (GAO/T-NS1AD/RCED-00-227, June 28, 2000).

[4] See Foreign Relations: Migration From Micronesian Nations Has Had Significant Impact on Guam, Hawaii, and the Commonwealth of the Northern Mariana Islands (GAO-02-40, Oct. 5, 2001).

[5] See Foreign Assistance: Lessons Learned From Donors' Experiences in the Pacific Region (GAO-01-808, Aug. 17, 2001).

CNMI—which are the key destinations for migrants.[6] Employment opportunities, education, and family ties were the main reasons for migrating, according to Department of the Interior surveys and information we collected. Further, we found that the migrants to Guam, Hawaii, and the CNMI have generally worked in jobs requiring few skills and received low wages. As a result, most were living in poverty in all three U.S. island areas.[7] The reported impact of this migration on Guam, Hawaii, and the CNMI has been significant: at least $371 million in costs to local governments for 1986 through 2000, primarily for health and education services. The U.S. government has provided Compact impact funding in the amount of $41 million to Guam and $3.8 million to the CNMI through fiscal year 2001; however, the governments of both island areas consider this funding inadequate to fully cover the estimated financial impact of these migrants. Hawaii received no compensation through fiscal year 2001. Our work indicated that a reduction in the level of future Compact assistance could spur migration, while targeting assistance to the FSM and the RMI's health and education sectors could reduce the impact of migration.

Several donor nations and multilateral organizations, including the United States, have given $11.9 billion to Pacific Island nations since 1987, with the primary goal of advancing their economic self-sufficiency and alleviating poverty. However, the major donors believe that many Pacific Island nations will not be able to achieve improvements in development without continued assistance in the foreseeable future or will need assistance indefinitely. They also acknowledge that important trade-offs exist in providing assistance, such as taking into consideration foreign policy objectives. These different motivations for providing assistance have led some countries to place a lower emphasis on accountability and effectiveness issues. In addition, donors have found that there are trade offs between ensuring effectiveness and accountability and the costs of administering aid. Taking into account these factors, donors have explored and adopted various assistance strategies such as establishing trust funds and stopping assistance under undesirable conditions, such as political instability. Some of these strategies may be useful to negotiators of future U.S. aid.

To address concerns about future U.S. assistance to the FSM and the RMI, in our reports we recommended that the U.S. Secretary of State work with the Congress to develop guidelines regarding the policy objectives for the assistance as well as the amount of assistance and its duration. We also recommended that the Secretary of State direct the Compact negotiator to negotiate provisions that provide greater control over and effectiveness of further U.S. funding to those two nations in any future Compact provisions. With respect to migration, we recommended that the Compact negotiator be charged with considering how to target future health and education funds for the FSM and the RMI in order to address the effect of migration on Guam, Hawaii, and the CNMI.

BACKGROUND

Located just north of the equator in the Pacific Ocean are the two island nations of the FSM and the RMI (see fig. 1).[7a] The FSM is a grouping of 607 small islands—including 65 of which are inhabited—in the western Pacific totaling 270 square miles. The country, which is comprised of four states Pohnpei, Chuuk, Yap, and Kosrae, was home to an estimated 107,000 people in 2000. The RMI, which is made up of more than 1,200 islands, islets, and atolls, has a total land area of about 70 square miles and a population that numbered 50,840 in 1999.[7] The islands of both of these countries are spread out over vast stretches of the Pacific Ocean.

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[6] Citizens of the FSM and the RMI have this right under the Compact. Government officials in the two countries view migration as a key safety valve for easing problems associated with the limited economic opportunities in these small nations.

[7] Migration data also include migrants from the Republic of Palau, another Pacific Island nation. The United States has a Compact of Free Association with Palau as well. This Compact went into effect in 1994 and established the same migration rights provided in the Compact with the FSM and the RMI. The U.S. mainland is reportedly the destination for an increasing number of Compact migrants.

[7a] All figures have been retained in committee files.

[8] The populations of both countries have shown little growth in recent years. From 1995 through 1999, the FSM population grew by only about 1,500 people (0.2 percent annually). In the RMI, population growth has slowed to 1.5 percent annually. The 1999 RMI census reported 50,840 persons in the RMI, which was about 10,000 fewer people than the RMI government had projected. Emigration was reported as the primary reason for the lower population growth in both countries. Birth rates remain high in the FSM and the RAU.

In 1986, after 17 years of negotiations, the United States and the FSM and the RMI entered into the Compact of Free Association.[9] This Compact represented a new phase of the unique and special relationship that has existed between the United States and these island areas since World War II. The three main U.S. goals for the Compact—(1) to secure self-government for the FSM and the RMI, (2) to assure certain national security rights for all the parties, and (3) to assist the FSM and the RMI in their efforts to advance economic development and self-sufficiency represent a continuation of U.S. rights and obligations first embodied in the U.N. trusteeship agreement that made the United States the Administering Authority of the Trust Territory of the Pacific Islands. The Trust Territory included the area that currently comprises the FSM and the RMI, as well as other Pacific islands liberated from Japan during World War II.[10]

The Compact of Free Association provided a framework for the United States to work toward achieving its three main goals. Two goals have been met through the Compact and its related agreements: (1) the FSM and the RMI became Freely Associated States, independent in all respects except for defense and security matters; and (2) national security rights for all the parties have been assured.[11] Through the Compact and related agreements, the United States assumed full authority and responsibility for security and defense matters in the FSM and the RMI.

The third objective of the Compact, promoting economic development and self-sufficiency, was to be accomplished primarily through direct financial payments from the United States to the FSM and the RMI. The provisions governing the amount and distribution of this economic assistance are due to expire, unless renegotiated and subsequently reauthorized by the Congress, in late 2003.[12] The Department of the Interior's Office of Insular Affairs has the responsibility for disbursing and monitoring this assistance, which includes a requirement to work with the Department of State to consult annually with both countries.

Another aspect of the special relationship between the FSM and the RMI and the United States involves the unique immigration rights that the Compact granted. Through the Compact, citizens of both nations are allowed to live and work in the United States as non-immigrants, without limitations on their length of stay.[13] Further, the Compact exempts FSM and RMI migrating citizens from meeting U.S. passport, visa, and labor certification requirements. Unlike economic assistance provisions, the Compact's migration provisions are not scheduled to expire in 2003. In recognition of the potential adverse impacts that Hawaii and nearby U.S. commonwealths and territories could face as result of an influx in migrants, the Congress authorized Compact impact payments to address the financial impact of migrants on Guam, Hawaii, and the CNMI.

Finally, the Compact served as the vehicle to reach a full settlement of all compensation claims (past, present, and future) related to U.S. nuclear tests conducted on Marshallese atolls between 1946 and 1958. In a Compact-related agreement, the U.S. government agreed to provide $150 million to create a trust fund, targeted to produce at least $18 million in annual income to be disbursed in specified amounts over 15 years to persons displaced from the four affected RMI atolls—Bikini, Enewetak, Rongelap, and Utirik—and to the RMI government for health care for

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[9] The agreement had previously been approved in separate U.N.-observed plebiscites conducted in the FSM and the RMI in 1983.

[10] From 1947 to 1986, the United States administered these places under a trusteeship agreement that obligated it to foster the development of political institutions and move the Trust Territory toward self-government and promote economic, social, and educational advancement as well as economic self-sufficiency. In addition, the agreement, which established the only U.N. strategic trust, allowed the United States to establish military bases and station forces in the Trust Territory and close off areas for security reasons, as part of its rights.

[11] This included, among other things, a U.S. obligation to defend the FSM and the RMI as the United States and its citizens are defended, a U.S. right to deny military access to the islands by other countries, and a U.S. option to establish and use military areas and facilities in the FSM and the RAU. These security provisions will continue indefinitely unless mutually terminated. Through a Compact-related agreement with the Republic of the Marshall Islands, the United States has secured continued access to military facilities on Kwajalein Atoll through 2016. These facilities are used for missile and missile defense testing and space-tracking activities.

[12] The largest Compact funding provision, section 211(a), provides specific levels of direct funding for the Federated States of Micronesia and the Republic of the Marshall Islands over a 15-year period (1987-2001), with amounts decreasing every 5 years. Direct funding for the 2-year negotiating period (2001-03) is based on the average of the annual amounts provided to the FSM and the RMI during the first 15 years.

[13] Typically, non-immigrants include only those individuals who are in the United States temporarily as visitors, students, and workers.

the population of the four RMI atolls and to fund a Nuclear Claims Tribunal.[14] While the Compact and its related agreements represented the full settlement of all nuclear claims, it provided the RMI the right to submit a petition of changed circumstance to the U.S. Congress requesting additional compensation. Such a petition has recently been prepared and submitted.

COMPACT FUNDS HAD LIMITED IMPACT AND ACCOUNTABILITY

While the FSM and the RMI spent nearly $1.6 billion in Compact direct funding during 1987 through 1998, these funds have contributed little to improving economic development. The FSM and the RMI used the funds mainly for government operations, physical and social infrastructure, and business ventures. However, many business ventures and infrastructure investments did not succeed. They failed mainly because of poor planning, construction and maintenance problems, and misuse of funds. Despite some growth in economic self-sufficiency, the FSM and the RMI remain dependent on U.S. assistance. In addition, the FSM, the RMI, and the United States have not complied with accountability requirements specified in the Compact for all three countries. As a result, the U.S. government's ability to oversee the use of Compact funds and ensure that they are used effectively has been limited.

Compact Funds Have Led to Little Improvement in Economic Development

From 1987 through 1998, during the first 12 years of the Compact, the FSM spent about $1.08 billion in Compact direct funding provided by the U.S. Department of the Interior, while the RMI spent about $510 million. Nevertheless, these expenditures contributed little to advancing economic development in those two countries. The FSM and the RMI spent the nearly $1.6 billion on government operations, physical and social infrastructure, and business ventures.

Government Operations

The FSM spent $510 million for general government operations, while the RMI spent $107 million. This spending generally helped to maintain high levels of public sector employment and wages but acted as a disincentive to private sector growth. However, in response to scheduled reductions in U.S. assistance under the Compact, the FSM and the RMI have begun economic reform efforts. These efforts are aimed at, among other things, decreasing their large public sectors through reductions in government personnel and wage freezes.

In addition, the Compact did not preclude the FSM or the RMI from borrowing funds in anticipation of U.S. assistance. Using this flexibility, from the late 1980s to the mid-1990s, the FSM and the RMI issued nearly $389 million in Compact revenue-backed bonds in order to obtain greater funding in the earlier years of the Compact. Repayments on bond debt have limited the availability of Compact funds for other uses in the RMI, particularly in recent years. For example, in 1998, the RMI spent $39 million in Compact funds. Of this total amount, $25 million went to service debt. The RMI was also required to spend an additional $8 million to compensate landowners for U.S. military use of Kwajalein Atoll. This left only $6 million (15 percent) in Compact expenditures to support new capital investment, general government operations, or other areas.

Physical and Social

The FSAI and the RMI have spent at least $256 million in Compact funds Infrastructure for physical infrastructure improvements and operations. Both nations viewed this area as critical to improving the quality of life and creating an environment attractive to private businesses. While these improvements have enhanced the quality of life, they have not contributed to significant economic growth in the two countries. Expenditures in this area for the years 1987 through 1998 included (1) over $122 million in both countries to operate and improve energy and communications; (2) about $5.9 million in the FSM to maintain ships that haul cargo between islands and $27 million for the RMI national airline (through fiscal year 1997); and (3) $114 million in both countries to invest in social institutions, including schools and hospitals.[15]

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[14] Including the trust fund, the United States has spent more than $380 million since 1987, related to the effects of nuclear testing, to the people of four RMI atolls. Also, prior to the Compact, the U.S. government spent about $250 million to address nuclear testing-related issues in what is now the RMI. This included direct payments to the islands' governments and individuals, rehabilitation and resettlement services, and health care and monitoring of islanders exposed to radioactive fallout.

[15] Both nations show some improvement in social indicators over the life of the Compact but still rank in the bottom half in terms of human development among Pack Island nations.

Business Ventures

Compact funds spent in the two countries for business ventures amounted to $188 million, according to our analysis. These funds were invested in fisheries, agriculture, aquaculture, livestock, business advisory services, handicrafts, tourism, and manufacturing. When we visited the FSM and the RMI, government officials reported that few Compact-funded business ventures were operating at a profit, if at all. Government officials from both countries told us that investing in business ventures has been a bad strategy, and using Compact funds for this purpose had been a failure. Some examples of failed business ventures include (1) $60 million in the FSM spent on fish processing plants that were inactive when we visited in March 2000 (see fig. 2) and (2) a garment factory in the RMI that received almost $2.4 million in Compact funds but was never operated and is closed (see fig. 3).

Reasons for Infrastructure

During our visit to the FSM and the RMI in March 2000, we determined that many Compact-funded projects (both infrastructure and business ventures) experienced problems as a result of poor planning and management, construction and maintenance difficulties, and misuse of funds. These problems reduced the effectiveness of Compact expenditures. A few examples of such problems included the following:

Poor planning and management: The RMI government spent $9.2 million in Compact funds to build a road, or "causeway," from Ebeye, an extremely crowded island in the Kwajalein Atoll, to a planned development on a nearby island. The causeway was meant to relieve population problems on Ebeye by allowing residents to move to additional islands connected by the road. However, the causeway remains unfinished. Ebeye officials told us that the causeway is covered with water in places during high tide.

Construction and maintenance difficulties: The capitol building in the RMI, built during the 1990s using $8.3 million in Compact funding, had visible signs of deterioration when we visited. Stairs were rusting, elevators were inoperable, and roof leaks were evident throughout the building.

In addition, we found inadequate or nonexistent maintenance in numerous FSM schools and hospitals we visited, despite the government's spending $80 million in Compact funding designated for health and education. We visited schools in the FSM states of Pohnpei and Chuuk where sections of ceilings were missing, bathrooms were in disrepair, and electricity had been disconnected. At the Pohnpei hospital, the Director told us the hospital lacked adequate funding, drugs, and supplies. As a cost-cutting measure, the hospital no longer provided sheets to patients.

Misuse of funds: As an example of what appeared to be a misuse of funds, the FSM used funds in what the U.S. embassy described as "cars and boats for votes." The FSM Public Auditor reported that $1.5 million was spent on cars and boats that were simply given away to individuals for their personal use (see fig. 4).[16] Although the procurement documents for purchasing boats stated that they were to be used for economic purposes, we learned in interviews with two different recipients that they had received the boats with no restriction placed on their use. Furthermore, the embassy reported that another 187 cars had arrived in May 1999 and were used for "re-election assistance."

The FSM and the RMI Have Made Some Improvements in Economic Self-sufficiency

Since 1987, the FSM and the RMI have reduced their dependence on Compact funds. Total U.S. funding (Compact direct funding as well as U.S. program funds) as a percentage of total government revenue has fallen in both countries, particularly in the FSM. However, both countries remain highly dependent on U.S. assistance, which still provides more than half of total government revenues in each country. In 1998, U.S. funding accounted for 54 percent and 68 percent of total FSM and RMI total government revenues, respectively. This assistance has maintained standards of living that are artificially higher than could be achieved in the absence of Compact funding, according to our analysis.

The U.S., FSM, and RMI Governments Have Provided Limited Accountability Over Compact Expenditures

Although the Compact established accountability requirements for all three countries, none of them has fully complied with the requirements. The FSM and the RMI are required to submit 5-year economic development plans and annual reports. Both countries have, for the most part, submitted the required development plans and an-

[16] We were unable to determine the portion of this $1.5 million that was comprised of Compact funding.

nual reports, but these documents fell short of meeting their intended purposes. For example, 5-year FSM and RMI economic development plans gave inadequate attention to broad development goals and plan implementation, as the Compact required. Further, the RMI submitted only 7 of the 13 required annual reports on development plan implementation and Compact fund expenditures. These plans inadequately described how Compact funds were used to achieve development goals and were submitted too late to be relevant for timely U.S. oversight.

In addition, the FSM and the RMI have not demonstrated adequate control over the use of Compact funds. According to their annual financial audits, the FSM and the RMI did not maintain or provide sufficient financial records to allow for effective auditing of Compact funds. Further, program audits by the FSM Public Auditor found inappropriate use of Compact funds and extensive management weaknesses in accounting for Compact funds.

The U.S. government also did not meet its oversight requirements. For example, the United States did not initiate required annual consultations with the two countries until 1994-7 years after the Compact went into effect. U.S. agencies took little action to address questioned costs identified in the annual independent audits of the FSM and the RMI. Moreover, Interior resources devoted to Compact oversight were minimal. At the time of our report, Interior had one person in Washington, D.C., who worked with the two Compact nations, as well as one person in the FSM and no one in the RMI. Interior officials have claimed that interagency disagreements between the Departments of State and the Interior concerning the level of and responsibility for oversight, and a Compact provision guaranteeing payment of Compact funds ("full faith and credit"), have limited the U.S. government's ability to oversee the use of Compact funds and ensure that they are used effectively.

FSM AND RMI MIGRANTS HAVE HAD A SIGNIFICANT IMPACT ON U.S. ISLAND AREAS

The migration of citizens from the FSM and the RMI has had a significant impact on three U.S. island areas: Guam, Hawaii, and the CNMI. As of 1998, about 14,000 Compact migrants were living in these areas. Migrants were working mainly in low-skill, low-wage jobs and costing the islands' governments an estimated $371 million to $399 million mainly in health care and education costs. In addition, the migrants have raised public health concerns in Guam, Hawaii, and the CNMI. The Compact provided for two options to address the impact of migrants from the FSM and the RMI-compensation for Guam, Hawaii, and the CNMI and limitations on the amount of time migrants can stay in U.S. territories without being self supporting. However, government officials in Guam, Hawaii, and the CNMI have expressed dissatisfaction with the options' use. Finally, changes in U.S. assistance to the FSM and the RMI might affect the rate of migration. For example, a significant reduction in aid that also led to a decline in government employment would be expected to increase migration. Conversely, if funds were targeted for health and education, migration and migrant impact might decrease.

Thousands of FSM and RMI Citizens Have Migrated to Guam, Hawaii, and the CNMI Since 1986

According to Department of the Interior surveys, almost 14,000 Compact migrants (i.e., those migrants who came to a U.S. area after Compact implementation in 1986) were living in Guam and Hawaii in 1997 and the CNMI in 1998.[17] Guam had the largest number of Compact migrants at 6,550, followed by Hawaii at 5,500 and the CNMI at 1,755. Migrants from Compact nations (regardless of when they migrated) accounted for 5 percent of Guam's total population and around 4 percent of the CNMI's total population. In contrast, they accounted for only 0.5 percent of Hawaii's total population. For those migrants surveyed, employment opportunities were the primary reason for moving to U.S. areas, while those pursuing education and dependents of those employed also were living in the U.S. areas. The majority of Compact migrants were living in poverty in all three U.S. areas, with the CNMI having the lowest poverty rate (51 percent of all migrants living below the poverty level) and Guam having the highest (67 percent). In all three areas, many Compact migrants were working in jobs that required few skills and paid low wages, such as cleaning or food services. U.S. island government officials and migrant community members told us that Compact migrants often accept jobs that local workers refuse to take. Compact migrants surveyed were not highly educated, with few hav-

[17] As noted previously, in addition to FSM and RMI data, Compact migrant data presented include citizens of the Republic of Palau. This is because Palauans are included in migrant impact data and cannot be isolated and removed from those estimates. Further, Compact migrant data include U.S.-born children of migrants.

ing college degrees and just over 50 percent of adults having graduated from high school.

Cost of Migrant Impact Has Been Significant

The Guam, Hawaii, and CNMI governments have identified significant costs for services provided to Micronesian nation migrants. For 1986 through 2000, these three governments have estimated a collective impact of between $371 million and $399 million (see table 1). Guam's impact estimate for that period totaled $180 million, while the CNMI's estimate was $105 million to $133 million. The government of Hawaii, which prepared impact estimates from 1996 through 2000 but only had partial data for 1986 through 1995, estimated a total impact of $86 million.

Table 1.—COMPACT IMPACT ESTIMATES FOR GUAM, HAWAII, AND THE CNMI, 1986-2000

[Dollars in millions] [1]

Year	Guam	Hawaii [2]	CNMI	Total
1986-95	$69.8	[3] $23.4	[4] $43.7-$71.7	$136.9-$164.9
1996	16.9	6.4	[5] 11.0	4.3
1997	[6] 16.9	12.2	13.7	42.8
1998	21.9	12.4	15.1	49.4
1999	23.0	14.1	12.3	49.4
Total	$180	$86	$105-$133	$371-$399

[1] The data in this table cannot be converted into constant dollars, since some of the impact data reported by the U.S. island governments are not assigned to specific years.

[2] While Guam and the CNMI have calculated costs on a fiscal year basis, Hawaii's costs are a combination of fiscal year and calendar year costs.

[3] This figure represents Hawaii's education and inmate incarceration costs for Freely Associated States migrants from 1988-95; these costs were provided in later estimate reports.

[4] This 1986-95 impact cost range was provided in a 2000 CNMI congressional testimony.

[5] This figure was calculated by the Hay Group/Economic Systems, Inc., for the government of the CNMI.

[6] This figure was calculated by Ernst & Young LLP for the government of Guam. The government of Guam estimates for 1996, 1998, and 1999 were derived from the 1997 Ernst & Young calculations, though costs associated with the hospital that receives government funding were added beginning in 1998.

Source: Yearly impact reports of Guam (1987-95, 1997, 2000), Hawaii (1996-2000), and the CNMI (1996-2000), supplemented by additional totals provided by Guam and the CNMI for years when separate impact reports were not prepared.

Costs for the three areas have been focused in the areas of health care and education, though government officials identified public safety and welfare costs as well. While the reported impact costs of Guam and Hawaii have been increasing over time, the CNMI's impact estimates decreased by almost 40 percent from fiscal year 1998 to fiscal year 2000. This reduction was reportedly due to a decreasing presence of Micronesian migrants in the CNMI. The 2000 impact estimates that the three areas prepared showed that impact amounts represented about 7 percent, 0.5 percent, and 4 percent of the budget revenues of Guam, Hawaii, and the CNMI, respectively, for that year.

Health Care Costs

The health care systems of the FSM and the RMI are viewed by U.S. island area government officials as inadequate to meet the needs of the population, providing incentives to travel or move to the United States in order to receive appropriate health care. Health costs were the greatest area of impact for the CNMI in 2000, accounting for 43 percent of all identified impact costs. According to a CNMI Department of Public Health Services official, neonatal intensive care is a key issue for Compact migrants. This official noted that expectant mothers often have no insurance and receive no prenatal care at all until they arrive at the government's Community Health Center, ready to deliver. Guam officials also noted that expectant mothers arrive at Guam Memorial Hospital (which receives government funding) close to delivery and with no prior prenatal care. Officials from the Guam hospital also expressed frustration that Compact migrants often rely on the hospital's

emergency room for primary health care and that many conditions treated are not urgent. Hawaii's health care costs in 2000 went to support migrants who, as of April 2000, no longer received federal health benefits (Medicaid), due to U.S. welfare reform legislation.[18] A Hawaii Department of Health official noted that it is illogical for the United States to make migration to the United States easily accessible for poor FSM and RMI citizens but then make health care difficult to obtain. As with all other non-immigrant groups, health screenings are not required of Compact migrants prior to entering the United States.

Education Costs

Inadequate school systems in the FSM and the RMI are another reason for migration. According to Guam and CNMI education officials, there is an incentive for FSM students to come to those two U.S. locations for public education, as teachers in the FSM do not have 4-year university degrees, and the education infrastructure is inadequate. Guam and Hawaii's costs in 2000 for the migrants were primarily in education, accounting for 54 percent and 58 percent, respectively, of total impact. In their most recent impact reports, students from Compact nations accounted for about 11 percent, 1 percent, and 9 percent of the total student population in Guam, Hawaii, and the CNMI, respectively. Officials from the Departments of Education in Guam and Hawaii noted that these students have a tendency to be transient, entering and leaving school a few times each year. Moreover, education officials in Guam and the CNMI said that some students have never been in a school classroom prior to moving to a U.S. area. This makes their integration into the school system difficult.

Public Health Concerns

In addition to financial costs, public health concerns have been raised as migrant impacts, particularly by Hawaii, due to the number of Compact migrants with communicable diseases entering U.S. island areas. For example, in its 1997 impact assessment, Hawaii stated that public health was the state's most pressing concern and noted a recent outbreak of Hansen's Disease (leprosy) on the island of Hawaii among Compact migrants. A CNMI Department of Public Health Services official told us that the number of cases of tuberculosis and Hansen's Disease diagnosed for citizens of Compact countries is increasing. Also, a Guam Department of Public Health and Social Services official reported that concerns exist regarding these migrants and communicable diseases, low immunization rates, and noncompliance with treatment regimens.

Use of Options to Address Impact Has Not Satisfied U.S. Island Government

The Compact and its enabling legislation include two options to address the impact of migrants. The extent to which these two options have been used has not met with the satisfaction of any of the three U.S. island area governments who believe, among other things, that additional funding for impact costs is necessary. The law[19] states that the Congress will act "sympathetically and expeditiously" to redress adverse consequences of Compact implementation. It provided authorization for appropriation of funds to cover the costs incurred, if any, by Guam, Hawaii, and the CNMI resulting from any increased demands placed on educational and social services by migrants from the FSM and the RMI. Guam has received about $41 million in compensation (about 23 percent of total estimated impact costs) since the Compact went into effect, and the CNMI has received almost $3.8 million (between about 3 to 4 percent of total estimated impact costs). Hawaii received no compensation through fiscal year 2001.

Further, the Compact states that nondiscriminatory limitations may be placed on the rights of Compact migrants to establish "habitual residence" (continuing residence) in a territory or possession of the United States. The "habitual residence" restriction is only applicable to Guam, as the CNMI is a commonwealth that controls its own immigration, and Hawaii is a state. Such limitations went into effect in September 2000 and provide that, in part, migrants who have been in the U.S. territory for a total of 365 cumulative days are subject to removal if they are not, and have not been, self-supporting for a period exceeding 60 consecutive days or have received unauthorized public benefits by fraud or willful misrepresentation. Immigration and Naturalization Service officials we interviewed viewed the regulations as difficult to enforce and, therefore, unlikely to have much impact.

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[18] While the Welfare Reform Act was passed in 1996, Hawaii disputed the exclusion of Compact migrants from the program and continued to submit Medicaid claims and receive federal funding for these patients until April 2000.

[19] Public Law 99-239, January 14, 1986.

Changes in Compact Assistance and Provisions Might Affect Migration Levels and Impact

Changes in U.S. economic assistance to the FSM and the RMI may alter the rate of migration. For example, significant reductions in aid to the FSM and the RMI that reduce government employment would be expected to spur migration. On the other hand, targeting future U.S. assistance to the FSM and the RMI for health and education purposes could reduce some of the motivation to migrate (although migration will continue as long as employment opportunities in both countries remain limited). Furthermore, improvements in migrant health and education status would be expected to reduce migrant impact on U.S. destinations. Additionally, changes in Compact provisions, such as requiring health screening, could reduce the impact of migrants on U.S. areas, though government officials from the two Pacific Island nations do not view migration provisions as subject to renegotiation.

DONORS' EXPERIENCES HIGHLIGHT TRADE-OFFS BETWEEN AID MOTIVATIONS AND ACCOUNTABILITY AND EFFECTIVENESS CONCERNS

Major donors to Pacific Island nations, including Australia, Japan, New Zealand, the United Kingdom, the United States, the Asian Development Bank (ADB), and the European Union, expect that most of these countries will need assistance for the foreseeable future in order to achieve improvements in development. In addition, they have stated that one of their primary goals-promoting economic self-sufficiency-is a difficult Accountability and challenge for many of these island nations and an unrealistic goal for others. Further, their experiences have shown that providing aid involves significant trade-offs, such as dealing with multiple policy objectives, historical ties, and administrative costs. In an attempt to improve the effectiveness and efficiency of their assistance, these donors have tried a variety of strategies, some of which may provide useful examples for future U.S. aid.

Donors Recognized Challenges in Promoting Economic Self-Sufficiency and Alleviating Poverty

Major donors to Pacific Island nations have provided about $11 billion to this region from 1987 through 1999. Two of the main objectives of this assistance, according to planning documents and interviews with officials, were to promote economic self-sufficiency and alleviate poverty. However, the donors realize that achieving economic self-sufficiency will be a difficult goal for some and an unrealistic goal for others. For instance, according to an ADB report, "[I]t is widely understood that the smallest and least-endowed states will need to be assisted by free transfers of resources indefinitely, if they are to maintain standards of welfare that the donors of the aid can bear to look at. . . ." One measure that illustrates the degree to which countries are dependent on aid to maintain standards of living is aid as a percentage of gross domestic product (GDP). In 1998, the FSM and the RMI were two of three most aid-dependent places in the Pacific region, with economic assistance making up over 50 percent and 70 percent of their respective GDPs, according to our analysis.[20] In addition, the FSM and the RMI received a high level of aid per capita compared to most other Pacific Island nations.

Providing Aid Involves Significant Trade-Offs

The major donors (including the United States) to the Pacific Island nations are aware that providing assistance for economic development often involves trade-offs among policy issues and other interests. For example, Australia, New Zealand, and the United States initially chose to provide unrestricted budget support to their former territories or administrative "districts" as a means of helping them to separate themselves from "colonialist" administration. This choice required a trade off between political goals and oversight concerns. In the case of the Compact, the U.S. Department of State counseled the Department of the Interior to be lenient in reviewing the use of Compact funds by the FSM and the RMI during the early years of the Compact. In those years, State placed a high priority on maintaining friendly relations with the FSM and the RMI. As a result, a trade-off was made between the foreign policy goals and the need for providing accountability. Trade-offs also exist between the administrative costs associated with aid disbursement and oversight and accountability and effectiveness goals. Again, in the current Compact, the United States chose a strategy of providing relatively unrestricted cash transfers to

[20] The 14 Pacific Island nations that we reviewed all received assistance.

the FSM and the RMI.[21] This low-cost approach has contributed to some of the problems related to effectiveness and accountability that we have identified today.

Variety of Strategies Attempted to Improve Effectiveness and Efficiency of Assistance

Based on their experiences, major donors have used a range of assistance strategies in striving to reach the desired balance of aid effectiveness, accountability, and efficiency. Taking into account the trade-offs involved in various approaches, the major Pacific donors have adopted the following strategies to improve the effectiveness and efficiency of their assistance:

- Five of the major donors have supported projects to improve governance in recipient countries, such as developing a rule of law, as a foundation for effective development.
- ADB has adopted an approach to development that tailors aid to the individual characteristics of recipients rather than applying the same strategy to all island nations. ADB has advocated a trust fund for the RMI, based on its assessment of the country's growth potential, while it has put forth a different strategy for the FSM.
- Two donors have built flexibility into their assistance strategies, which enables them to provide incentives for positive achievements or to stop assistance to recipients under undesirable conditions, such as political instability. For example, New Zealand suspended funding to the governments of Fiji, in response to a coup, and to the Solomon Islands, in response to civil unrest, while maintaining the assistance to community organizations, such as nongovernmental health providers, so that aid for basic human services could continue.
- Australia is trying a sectorwide approach to assistance. This approach consists of a pilot project in the health sector in Papua New Guinea in an effort to encourage the recipient country to take ownership of the development process on a limited basis. To reduce its administrative costs while trying to maintain aid effectiveness, Australia began moving from a portfolio of 16 individual health projects to cofunding (with other donors) sectorwide projects and programs identified in Papua New Guinea's national health plan. In exchange for giving up control over the projects, Australia gained a voice in developing the national strategy and allocating resources for health projects.
- Six of the major donors have relied on trust funds in Pacific Islands, such as Tuvalu, Kiribati, and Nauru, as a means of providing recipients with a self-sustaining source of future revenue. According to ADB, the Tuvalu and Kiribati trust funds have been successful because they were designed to protect the investment capital from misuse. The United Kingdom was able to discontinue its annual budget support for Tuvalu because the trust fund provided the means to balance the budget.

Potential Lessons for Compact Assistance Strategies

Our review of major donors' experiences in the Pacific could provide some guidance to the United States as it negotiates further economic assistance to the FSM and the RMI. These lessons include the following:

- Assistance strategies involve trade-offs between cost, effectiveness, and accountability. In the current Compact, the United States chose a low administrative cost strategy of providing relatively unrestricted cash transfers, which led to problems with the effectiveness of and accountability over the assistance. State and Interior officials have said that the United States will need significantly more staff to administer an assistance program to the FSM and the RMI that has increased accountability as an objective.
- Strategies tailored to specific island conditions may be more effective by better adapting to the recipient's needs, resources, and capacities. The current structure of the Compact, which generally applies the same objectives and strategies for both the FSM and the RMI, does not account for these differences.
- Flexible strategies are important to adapt assistance to changing circumstances and needs. The U.S. assistance to the FSM and the RMI through the first 15 years of the Compact was distributed according to a negotiated formula that did not allow changes in the distribution of the funds. Moreover, Interior officials believed that the provision of assistance backed by the "full faith and credit"

[21] The experience of other donors has confirmed that higher levels of control involve greater administrative costs. For instance, when Australia gradually eliminated its annual budget support to Papua New Guinea from 1990 to 2000 and replaced it with more than 100 separate project grants, the staff administering the programs went from 1 or 2 in 1990 to 73 staff from the Australian Agency for International Development, 30 Papua New Guinea staff, and at least 1 contractor for each project by 2000-01.

of the United States, combined with a lack of controls typically available with domestic grant assistance, severely limited its ability to withhold funds, even in cases of misuse.
- Well-designed trust funds can provide a sustainable source of assistance and reduce long-term aid dependence. Such a trust fund may provide the United States with the opportunity to end its annual assistance.

CONCLUSIONS

Compact funds spent on economic development have been largely ineffective in promoting economic growth. Many development efforts have been unsuccessful because of poor planning and management and the apparent misuse of funds. Bad investments in business ventures and the maintenance of a large public sector also limited improvements in economic development. Both the FSM and the RMI remain highly dependent on U.S. assistance and, thus, economic self-sufficiency at current living standards remains a distant goal for those countries.

Compact migration has clearly had a significant impact on Guam, Hawaii, and the CNMI and has required government services in key areas. Compact migrants have required local expenditures in areas such as health and education and, further, have particularly affected the budgetary resources of Guam and the CNMI-U.S. island locations that have relatively small populations and budgets. The budgetary impact on Hawaii can be expected to grow as Hawaii begins to absorb health care costs that the U.S. government once covered. Public health problems are also an important concern for all three U.S. island areas.

The negotiation of new economic assistance presents an opportunity for the United States to benefit from its 15-year experience under the Compact and the experiences of other aid donors to Pacific region, in order to potentially increase the effectiveness of the assistance it provides. The United States can strengthen accountability over funds, introduce flexibility into how assistance is provided, and consider different approaches for the FSM and the RMI, such as the use of trust funds. Providing increased accountability requires additional investment, on the part of the U.S. government, in administrating Compact assistance.

RECOMMENDATIONS FOR EXECUTIVE ACTION

In order to help determine the extent and nature of future assistance to the FSM and the RMI, we have previously recommended that the Secretary of State, in consultation with the Congress, develop guidelines regarding U.S. policy objectives for such assistance and its level, duration, and composition as well as U.S. oversight.

Further, in order to provide greater control over and effectiveness of any future U.S. assistance, we have made certain recommendations to the Secretary of State regarding the negotiation of Compact provisions. For example, we have recommended that

- funds be provided primarily through specific grants that, among other things, direct the money to mutually agreed-upon priority areas and projects and that funds, either Compact or from local revenues, be set aside for capital project maintenance;
- annual reporting requirements for the FSM and the RMI be expanded and the consultation process with the United States strengthened;
- "full faith and credit" provisions be excluded from any future economic assistance agreement; and
- provisions be included that will provide that funds can be withheld from the FSM or the RMI for noncompliance with spending and oversight requirements.

With respect to migration, we previously recommended that the Secretary of State direct the Compact negotiator to consider how to target future health and education funds provided to the FSM and the RMI in ways that also effectively address adverse migration impact problems identified by Guam, Hawaii, and the CNMI. For example, the negotiator could consider whether a specific portion of health sector assistance should be targeted at treating and preventing the communicable diseases in the FSM and the RMI that are a public health concern in Guam, Hawaii, and the CNMI.

Mr. Chairman and Members of the Committee, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Committee may have at this time.

Senator AKAKA. Thank you very much, Ms. Westin, for your testimony.

I would like to begin with questions to Deputy Assistant Secretary Kearney. I know that your Department has been engaged in this for a number of years in implementing the Compact. And over those years you've had many, many kinds of experiences.

My question to you is what lessons have you learned over the past several years in implementing the Compact?

Mr. KEARNEY. I think part of my statement speaks to that, and let me preface by saying my own personal experience on this issue is not as extensive as I would like even in the time that I've been at the department, but I have, particularly over the last couple of weeks and will be, assuming things don't intervene, be able to dedicate considerably more time and perhaps have a more informed and detailed answer for you in the weeks to come.

But my experience to this point is that the lessons have focused on accountability issues, on managing, taking the money that we have, ensuring it goes for the things it's supposed to go to, that there has been for a variety of reasons, for a variety of decisions that were made at the time of this Compact, that were outside the scope, and candidly I have the sense much larger than our particular activity at the time there was a lot of reasons why we did the things we did.

I think one of the biggest lessons is that both the Congress, this administration and the taxpayer have a different level of expectation and frankly knowledge of how their government should manage this money, how it should be provided and what they get for it so that it can benefit the people it's intended for.

So I think that's probably one of the biggest lessons to this point that I've learned, and as I indicate in my statement I think there are a number of tools and opportunities and knowledge that we can bring to the process as we go forward to learn from those lessons and ensure that the people who are getting this money get it for the things that they're supposed to, and it benefits them the way that it should, as we all are trying to strive for.

Senator AKAKA. It has been emphasized that accountability is needed in the process and in the continuing Compact agreement, and that the monitoring needs to be done.

What resources do you think are required for proper monitoring of the Compact?

Mr. KEARNEY. It's an excellent question, and it's one we're trying to get a handle on right now. It's one of the issues we're going to be looking at hard, that we're going to be talking to the State Department with, that we're going to be talking to Defense and OMB and others to make a determination of just exactly what we can effectively do to ensure that we have adequate accountability with the resources we have available.

I agree and acknowledge that it is easy to say that it's important to enhance the accountability and ensure that you have accountability, and turning that into practice is critical, and we've got to do it right, and that's exactly one of the places we are right now is making that determination of exactly what resources, what kind of electronic information technology can we take advantage of, what kind of reporting requirements can we take advantage of, what kind of existing processes do we already have in place that we can build from.

So we hope that there are an array of things that we can draw on to make the best determination of what resources we're going to need.

Senator AKAKA. That question leads to a kind of service we can give these nations in accountability, and I think whatever services we can give them will help them in this.

We're then again mentioning GAO and I will tell you that in any family there are disagreements. GAO mentioned that disagreements have occurred between the Departments of State and the Interior regarding staffing issues. Can these issues be resolved between Interior and State, do you think?

Mr. KEARNEY. I'm optimistic that they will, yes, sir. I've had an opportunity to meet briefly with Mr. Schwartz and I think going forward that we will be able to do that, yes, sir.

Senator AKAKA. Let me ask Ms. Westin a few questions. What do you see as the economic prospects for the FSM and RMI? And I know the answer is correct when I say there are differences between the two. What would the differences be?

Ms. WESTIN. Well, a couple of the differences, of course, relate to the resources of the two countries. They're both island nations. The RMI is essentially a collection of atolls. The FSM is quite different and spread over more than a million square miles and some of the States are basically one island.

One of the things that we learned from our work of looking at what other donor experiences had been with Pacific island nations is that the other major donors to these areas have found that it's not just the FSM and the RMI that will face difficulties in becoming economically self sufficient. It's a concern for all the Pacific island nations in the area. And I think that that was one of the reasons that we wanted to highlight the lesson learned about a well-established trust fund can be a mechanism that can provide some assistance in the future without constant annual payments from the United States.

I think that both countries though, in direct response to your question, would agree that it hasn't been easy to establish economic self sufficiency, and they do remain quite dependent on U.S. assistance to maintain their present standard of living.

Senator AKAKA. In your September 2000 report you agree that FAS, Free Associated States, have improved self sufficiency since their dependence on the U.S. aid is decreasing. Why then is the title of the report U.S. funds in two Micronesian nations had little impact on economic development?

Ms. WESTIN. Senator, the level of self sufficiency and the level of economic development are a little bit different. When we measure self sufficiency we looked at what proportion of the government's overall revenue were they able to generate and what came from the United States. And so that ratio did go down over time partly because they were able to generate some more tax revenue, but partly also because of the step down in the Compact that every five years the level of assistance went down. So when you figured out the ratio, the level of self sufficiency was going up a bit, becoming less dependent, although they still remain quite dependent.

In terms of economic development, as our report indicated, we went in and looked at many, many of the projects that had received

direct Compact funding, and that's what we were looking at with the level of economic development, particularly with regard to the direct economic assistance.

Senator AKAKA. You know, travel out there to the region we hear from the folks out there, including their government officials, and sometimes we hear some criticism of the United States.

Could you elaborate on the implications of your findings that the U.S. Government failed to meet these accountability obligations under the Compact?

Ms. WESTIN. There were accountability provisions within the current Compact. I think one of the biggest opportunities that was lost was for the first 7 or 8 years of the Compact there were no annual meetings or discussions between the United States, particularly with the Interior Department that had responsibility to take the lead and the government nations about how the funds were being spent. And I think that was an example of an opportunity that was lost.

Also, I think it's recognized that there have not been adequate resources for monitoring the use of this money in both the FSM and the RMI, resources on the part of the Interior Department to provide oversight.

Senator AKAKA. We've spoken of the impact of the U.S. regions in the Pacific, and you pointed out that Hawaii, I think you stated, did not receive any compensation for the impact problem. And I know some of the Hawaii health institutions have mentioned to me that they have been treating folks from FSM and RMI without compensation. So that's becoming a problem there.

Compact impact aid has traditionally come from the Department of the Interior's budget. So the question is should there be an effort to utilize other agency budgets for Compact impact aid, for example, the Department of Education and Health and Human Services, since that's where a lot of the impact occurs for Guam, CNMI and Hawaii? Can both of you make comments on that?

Mr. Kearney.

Mr. KEARNEY. I can certainly comment that, and we recognize impact aid is an important issue, and it's something that's going to have to be evaluated in the course of the discussion and the details, and certainly that's a context in which a whole range of issues will be discussed, and that would certainly be one of them for sure.

Ms. WESTIN. I believe in the present Compact with regard to the compensation for the impact of migration on these areas it states that Congress should sympathetically and expeditiously consider the request from these areas for funds to mitigate the impact. But as I understand from our legal counsel, this is authorizing money but it isn't appropriating money and there's no legal obligation for Congress to do this. And as far as I know, they haven't appropriated that much money. As I stated, the governments of Guam and CNMI do not believe that they have received adequate compensation.

I'm not sure whether the negotiator is considering in his negotiations that perhaps more of this money should come from other departments, particularly the departments that deal with education and health.

Senator AKAKA. Time moves along and some improvements are made. I want to tell you, because you mentioned it, but I want you to know that Hawaii will receive $4 million in Compact impact for fiscal tear 2002. And so that will help and this is for the first time.

I want to thank you so much for your responses. Again what we've been doing today was to bring together several agencies and folks that could give us a better idea of where we are at this point in time, with the hope that this will be a springboard to the negotiations and meetings of the future.

And again I want to emphasize that what we are trying to do is to help the people of that region and to do the best that we can for them.

I want to thank all of the witnesses here. It's good to have our visitors who have come here to attend this hearing and to wish all of you a safe trip on your way home, and that again what has occurred will certainly be a big help to the Committee.

Before we conclude this morning, I would like to announce the hearing record will remain open for one week if anyone wants to submit additional comments.

Again, thanks so much for being here and thank you again, witnesses. And if there are no further comments from our witnesses or anyone, the hearing is adjourned.

[Whereupon, at 11:10 a.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

EMBASSY OF THE REPUBLIC OF THE MARSHALL ISLANDS,
Washington, DC, January 18, 2002.

Hon. JEFF BINGAMAN,
Chairman, Senate Committee on Energy & Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for holding the December 6 hearing on Compact renegotiations.

My Government welcomes as much Congressional participation in the renegotiations as possible including participation in the formal renegotiation talks.

I am pleased to provide you with responses to your questions from the hearing. If you need further explanation on any of the issues please feel free to contact me for clarifications.

I look forward to working with you, your wonderful staff and the Committee throughout the New Year.

Sincerely,

BANNY DE BRUM,
Ambassador.

RESPONSES OF THE REPUBLIC OF THE MARSHALL ISLANDS (RMI) TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. In an effort to promote our mutual goal of advancing economic self-sufficiency, we would like FASs to commit to the US-ADB-FAS partnership process (i.e. develop or subcontract essential planning and management capacity and use of future U.S. assistance to move toward specific development objectives in health, education, private sector growth, public sector accountability, etc.)

Answer. The Republic of the Marshall Islands is committed to the U.S.-ADB-RMI partnership process with the goal of fiscal management capacity building in support of development. The RMI is committed to achieving growth and development by effectively using the resources it has available as well as maintaining adequate living standards for its people.

The RMI has implemented several initiatives, with the assistance of the ADB, to strengthen its economic management and implementation capacities. The main initiative is the implementation of the ADB-sponsored Fiscal and Financial Management Program (FFMP). The FFMP is a program that is designed to enhance the Government's financial management capabilities as well as institute economic management capabilities. The program involves further strengthening of the Ministry of Finance (MOF) and by establishing the RMI-inspired Economic Policy, Planning and Statistics Office (EPPSO) for which the ADB is providing technical assistance for its start-up.

The EPPSO, with the MOF, will be responsible for coordinating the preparation of sector strategies in some of the areas indicated in your question. And, for instance, sector strategies are already complete for health and education. The result will be the preparation of a Medium Term Budget and Investment Framework (MTBIF). This Framework will allow the Government to plan, manage and evaluate funding on a cyclical basis. It will also allow the Government and its partners, mainly the U.S. and ADB, to review the funding and its effectiveness on an annual basis. In addition, the RMI has proposed to the U.S. that a Performance Scoreboard be maintained to measure progress on social and economic indicators.

Such instruments as the MTBIF and the Performance Scoreboard will be reviewed annually within the proposed RMI-US Joint Economic Review Board. The RMI also envisions sponsoring a Consultative Group Meeting of Donors to explain the Compact negotiation process and to explain the Marshall Island Intergenerational Trust Fund and future donor assistance to assist the Fund.

Question 2. The FSM and RIM will be receiving a significant increase in U.S. financial assistance for FY02 and FY03. How will these funds be used? Rather than increasing public expenditures, will these funds be set aside for deposit in any trust funds that may be agreed to?

Answer. The so-called "bump-up" funds are an increase from the last 5-year step-down of the Compact assistance. We have set aside these "bump-up" funds in a separate escrow account far FY 2002 and will do the same in FY 2003. In fact, the amounts being set aside are significantly higher than the anticipated "bump-up" levels as we have included additional un-tied Compact funds and RMI revenues. To date we have set aside $17 million and we are targeting $30 million as the residual balance in the escrow account by the end of FY 2003. These funds, as we have presented in our Compact proposal, will be the initial seed funds in the Marshall Islands Intergenerational Trust Fund to which we hope the United States will also be a main contributor.

APPENDIX II

Additional Material Submitted for the Record

REPUBLIC OF THE MARSHALL ISLANDS,
MINISTRY OF FOREIGN AFFAIRS,
Majuro, Marshall Islands, July 19, 2001.

LOREN YAGER,
Director, International Affairs and Trade, General Accounting Office, Washington, DC.

DEAR DIRECTOR YAGER: At the direction of President Note, I am pleased to respond on behalf of the Government of the Republic of the Marshall Islands (RMI) to the GAO draft report, *Foreign Assistance: Lessons Learned From Donors' Experience in the Pacific Region.* I would like to take this opportunity to thank your Office for providing a copy of the draft report to the RMI for comment.

The RMI would like to provide several comments in respect to the GAO draft report.

In reference to the GAO figure of $1.7 billion provided to the RMI and FSM under the Compact of Free Association Agreements (page 1). Furthermore, it was also pointed out in the report that "U.S. assistance to the FSM and the RMI, through the Compact of Free Association, is one of three elements (political, economic, and defense) of the Compact. The defense element includes a right granted to the United States by the FSM and the RMI to deny access by third countries for military use" (page 11). In this context, the RMI considers the following point essential in establishing a more complete understanding of the figure mentioned above in respect to the Marshall Islands:

The U.S. provides economic assistance to the RMI in exchange for military and strategic benefits that the RMI provides to the U.S. However, the report fails to point out that in addition to the strategic denial clause of the Compact, a major element of the U.S. assistance provided to the RMI is towards land rent payment for defense sites in the Marshall Islands. Thus, it is a misrepresentation to state that the $1.7 billion provided under the Compact is "Foreign Assistance".

The RMI would also like to provide the following specific comments in respects to the objective review of the report.

1. More explicit recognition that one size does not fit all with economic development assistance.

The Asian Development Bank has begun to recognize the inherent differences among Pacific Islands states and how these differences can potentially impact development programs and projects. The paper discusses the one size fits all approach of the Compact of Free Association with Palau, RMI and FSM. The U.S. is stressing the new sectorial approach and should recognize the different environments and resources that will impact development in the RMI and the FSM under the re-negotiated Compact. A document or aid package that stresses the same sectors in the RMI and FSM will be missing out on the important points learned from the ADB. Different factor endowments will dictate different approaches toward development. These factor endowments will also have an impact on the eventual success or failure of economic development programs and projects. In terms of development and the potential for development there are important differences that must be recognized by the United States when considering the different development paths in the RMI and FSM. There must be some understanding as to how these differences will impact the sectorial approach being developed by the United States for the Compact.

For example, since RMI has little in terms of natural resources on land, the development of the Marshall Islands Intergenerational Trust Fund should have more weight assigned towards its future development than say agriculture. This natural resource situation may not be so lopsided in the FSM. However, when the topic of the environment is brought up, what is being considered? In the RMI issues of ma-

rine resources and their management should be a major focal point in the discussion. Again, the assignments of weights, or relative value, should be explored; to what extent are programs delivered for natural resource development and protection and marine resource development and protection? Every development topic or sector needs to be evaluated in this manner.

2. In theory and practice, what are the strengths and weaknesses of the sector based aid delivery approach?

There is discussion on the sector-based approach and how it could strike a balance between flexibility and accountability. But there is little evidence provided. The report mentions that this sector-based approach is being applied on a pilot basis only in Papua New Guinea in the health sector. The report mentions there has been substantial literature produced over the last two decades as well as experience with program implementation in Africa. The report also mentions that it appears where sectors are well defined the sector approach has the potential to work well. In those areas where it appears sectors are less well defined, such as capacity building and the environment, program implementation can be problematic.

There should be a section that surveys the development literature concerning the sectorial approach for aid delivery. What are the strengths and weaknesses of this approach? What has been learned in Africa that MIGHT be applicable to the Pacific region and the RMT/FSM more specifically? As for the Pacific, there is only one pilot program in the entire region, PNG with health programs, but no evaluation or partial evaluation of results. Therefore, in order to make a more appropriate response to this proposed sector based aid delivery policy, more information and evaluation of work in Africa should be undertaken so a more thoughtful Pacific plan can be thought out and developed. The report makes allusions to these sector development topics, but the reader is left without much tangible, experienced based, insight on this important and timely policy matter.

The RMI Government hopes that the comments provided will assist the GAO in finalizing the draft report and looks forward to seeing these issues incorporated and explained thoroughly in the final report.

Sincerely,

GERALD ZACKIOS,
Minister of Foreign Affairs.

REPUBLIC OF THE MARSHALL ISLANDS,
MINISTRY OF FOREIGN AFFAIRS,
Majuro, Marshall Islands, November 19, 2001.

LOREN YAGER,
Director, International Affairs and Trade, General Accounting Office, Washington, DC.

DEAR MR. YAGER: The Government of the Republic of the Marshall Islands (RMI) once again welcomes the opportunity to offer its comments on a draft GAO report on implementation of the Compact of Free Association between the RMI and the United States. Like previous GAO reports on free association, the draft report on the security and defense elements of the Compact presents a great deal of useful information.

However, as with earlier installments in this serial process for releasing reports on the Compact, the draft report on security and defense relations requires substantial commentary to put the information and analysis presented into what the RMI would regard as a more objective and accurate context. Even where it is based upon the threat assessments and opinions of U.S. military experts and planners, the GAO report's analysis uses those views as the point of departure for its own opinions about how the Compact has operated, and will in the future, to promote the mutual security interests of the parties.

The RMI respects but cannot concur in many of the GAO's opinions.

For example, the fact that the U.S. has not formally exercised the "defense veto" over foreign policy actions of the RMI, at least not overtly in a manner recognized as such, is cited by the GAO as a case of U.S. defense rights not exercised. However, the RMI's view is that if the defense veto did not have to be invoked overtly and regularly it has been because the mechanisms and procedures for consultation that are part of the architecture of security and defense relations under the Compact have worked precisely as contemplated.

Similarly, it apparently did not occur to the GAO that the right of strategic denial was never exercised because the Compact put the whole world on notice that the U.S. has the same military operating authority in the RMI that it has in Hawaii.

Instead, the GAO argues that U.S. strategic denial rights have been exaggerated because ". . . these rights are identical to those that the United States exercises in its own territorial waters." If the GAO will advise the RMI how it can grant the U.S. greater defense and security rights than plenary power identical to U.S. powers over its own waters, the RMI certainly will sympathetically consider doing so.

Indeed, only grudgingly does the GAO admit at page 19 that strategic denial of access by third country military to land facilities ". . . limits the ability of other nations to undertake long-term naval operations in the area, and makes activities in the region, such as surveillance, more costly." Of course, since the GAO apparently has concluded that the hostile actors or foreign powers will never again attempt to transit RMI waters or develop a presence in our islands, even the recognized and tangible security benefits for the U.S. are thematically discounted in the report.

The RMI has experienced unrestrained warfare, as well as the peacetime use of high-yield nuclear weapons, in our territory. We do not share the GAO's assessment as to the predictability, the nature, or the consequences of future threats to international peace and security.

That is one of the reasons the RMI is committed to the strategic partnership defined by the Compact. However, the RMI's commitment to its alliance with the U.S. is not motivated only by the protection the RMI receives, nor economic assistance. As discussed in some detail below, the RMI rejects the attempt to oversimplify the RMI-U.S. relationship under the Compact. Specifically, free association cannot accurately be characterized as a *quid pro quo* exchange of defense rights for economic benefits.

Most recently, the RMI has made it clear at the highest level that our nation stands with the United States in the war on terrorism without condition or exception. The U.S. is on the side of rule of law, human liberty and freedom from violence in the world. The RMI is on the same side and stands with the U.S. in this struggle, and that will be the policy whether free association continues or not. Even if our citizens were not serving today in the uniform of the United States, even if we were not supporting the U.S. missile defense program, even if we did not delegate full powers of government over all security and defense matters arising in our territory to the United States, the RMI will align itself with the U.S. on these matters of international peace.

However, we would also note that the U.S. has benefited far in excess of what the GAO seems to regard as the burdens and cost of the relationship. The ability of the U.S. to conduct nuclear tests in the RMI and the missile defense program at Kwajalein played a role in the success of U.S. strategic policy in the post-WWII era that is hard to overstate. What price tag would the GAO put on the role that the Marshall Islands played in support of the U.S., at a time when the world was divided in two camps and the stakes were not just life and death for the generation, but the very survival of civilization?

With respect to the value of the Compact to the U.S., the termination of the trusteeship in favor of free association was itself important to the Reagan Administration's efforts to develop the Strategic Defense Initiative without Soviet interference in the Trusteeship Council. Not only does the GAO ignore some of these significant historical facts in its historical account of the relationship at pages 5-6, but any mention of the nuclear testing program and its legacy for the people in the RMI is omitted entirely. Yet, this and many other matters were part of the public policy equation Congress embedded in the Compact, and the GAO report is the best evidence that the institutional memory of the U.S. government about this relationship needs to be refreshed.

The litany of oversimplification in this report must also include the statement that "Ongoing negotiations to renew these expiring provisions provide the United States with the opportunity to reexamine its defense and security interests in the region in light of the end of the Cold War and the current use of Kwajalein Atoll in the Marshall Islands as a test site for missile defense." This might not be an unreasonable statement were it not for the fact that the reexamination urged by GAO includes the strategic denial right, which by the terms of the mutual security agreement concluded under the Compact can only be altered by mutual agreement.

The U.S. may be able to renounce the mutual security agreement and terminate the Compact. However, the GAO suggestion that expiration of the economic provisions of the Compact entitles the U.S. to unilaterally reexamine the mutual security agreement ignores the terms of mutuality and comity set forth in a treaty that has the force and effect of U.S. Federal law.

Similarly, in support of the thematic insinuation that the RMI is as much or more of a military obligation to the U.S. than an asset, the GAO report characterizes the commitment of the U.S. to defend the RMI as a higher level of defensive burden than the mutual defense obligations of the U.S. under the NATO pact. Yet, the GAO

report fails to mention that the strategic denial power, the defense veto power, the plenary authority of the U.S. to exercise sovereign power over all security and defense matters in the RMI as delegated under the Compact, and the military operating rights in the lands and waters of the RMI, separately and especially in combination, all provide the U.S. with a greater degree of rights and powers that the U.S. enjoys in NATO nations or as a NATO partner.

Perhaps the GAO opinion that demands the most scrutiny and correction of the record is the heavily-emphasized assertion that the Compact's security and defense provisions reflected "Cold War concerns . . . that existed at the time of the negotiations". This is a pivotal assumption around which much of the logic and analysis in the draft report revolves. The accompanying recital of the levels of direct economic assistance and costs of Federal programs provided under the Compact would tend, as mentioned above, to lead the reader to conclude that the Compact is simply or primarily a *quid pro quo* arrangement involving a bargained-for exchange of military rights for Federal payments. This presentation of facts and the related analysis is so incomplete and misleading that it fairly can be characterized as historical revisionism.

The negotiations and the status resolution process spanned the better part of two decades, from 1969 to 1985 (including Congressional ratification, during which some leaders in Congress actively engaged in negotiations with the Executive Branch and the island leaders to alter the effects of the agreement, resulting in formulation of the elaborate implementing provisions in Title I of P.L. 99-239). Five House and two Senate committees conducted somewhere near 30 hearings on the legal, political, economic, social, and cultural, as well as strategic and military, implications of the Compact.

This was during the Cold War era, and to be sure the Soviet threat to international peace and security from the end of WWII forward was a significant factor in U.S. policy for administering the trust territory, including the nuclear testing program at Bikini and Enewetak and the missile systems development program at Kwajalein. However, these strategic programs of the U.S. in the trust territory did not operate in a vacuum, and both before and after the Compact was implemented the relationship between the RMI and the U.S. was much more complex than this or previous GAO reports reveal.

To begin with, during the 38-year period from approval of the trusteeship agreement by Congress in 1947 to 1985 when the Compact was approved, the RMI and other parts of the trust territory were administered in much the same manner as U.S. territories had been. Military occupation government was replaced by civilian administration under the Department of the Interior. The committees in Congress that exercised plenary powers over the U.S. territories under article IV, section 3, clause 2 of the U.S. Constitution acquired jurisdiction over the trust territory, and the prevailing view reflected in the record of Congressional oversight during these years favored treatment of trust territory citizens as much as possible like U.S. citizens in the territories.

The most notable exception to treatment not the same as but comparable to U.S. national status was that trust territory citizens had no vested rights in the U.S. political and legal system, and whatever treatment was received was at the discretion of the U.S. under the trusteeship system. Thus, as a privilege rather than as a result of rights, there was a policy of gradual extension of Federal programs and services to the trust territory on the same or similar basis as the U.S. territories.

Many members of Congress and influential Congressional staff openly advocated territorial status for the islands, and some even asserted that somehow a defacto annexation had already occurred under which the Territorial Clause of the Federal Constitution applied in the trust territory. The proponents of this view openly argued that only termination of the "obsolete" trusteeship was required to complete the conversion to territorial status. The RMI would be glad to assist the GAO in locating in the records of Congressional hearings and correspondence the materials that reflect this legislative history of the Compact.

Although the Executive Branch officials responsible for the status resolution process did not accept or adopt the "de facto annexation" theory, a status process was agreed to in the early 1970s that resulted in succession of the Northern Mariana Islands to territorial status. This was subject to the legal requirement of trusteeship termination at such time as the future status of the other island groups was achieved.

However, the status resolution process in the rest of the trust territory proved far more complicated than in the CNMI. Indeed, by the time the negotiations clarified the probable features of the available political status options for the other islands (territory, independence or free association), which did not occur until 1980, the U.S. negotiators and Congressional leaders of committees of jurisdiction had made it

clear that significant elements of U.S. domestic policy were at play in the negotiations and approval of any agreement reached.

Thus, the Soviet threat had little or nothing to do with the intense political debate in Congress over whether the Executive Branch negotiators were "abandoning" islands with populations to which the U.S. had commitments and obligations more analogous to those owed to U.S. citizens. The "cutting off" of Federal programs was criticized in Congress, and in the Compact ratification process Congress added the very Federal programs cited by the GAO as part of the cost of the Compact with strong bipartisan support.

The record of over 30 hearings in the House and Senate committees with jurisdiction over both the U.S. territories and the trust territory also reflect the fact that, in the case of the Marshall Islands, economic development in the islands was precluded by closure of the islands and relocation of their populations during decades of U.S. nuclear weapons and missile testing. The population of the RMI had been both forced and induced to rely upon and, in turn, to become dependent upon, U.S. support and assistance, including woefully inadequate measures to address the effects of nuclear testing.

At the same time our people in the Marshall Islands despaired at the hardship and injury inflicted on us during nuclear testing, there also developed a friendship with the U.S. based on decades of common experience living under the trusteeship. Even though that common experience involved a man-made crisis of survival due to the effects of the U.S. strategic programs on the population, somehow a residual mutual respect and understanding grew between our peoples and governments. Even as the Marshallese slowly were angered and refused to accept the actions of the U.S. that damaged land and injured people, the virtues of Americans and the U.S. model of a political economy were recognized and admired by our people.

The people of the Marshall Islands experienced the horrors of nuclear contamination and learned about radiation in the environment in a way that few populations ever have. At the same time they held the U.S. responsible for their hardship, they had the collective wisdom to recognize that the U.S. was engaged in a struggle to prevent, rather than cause, nuclear war. The compassion Americans showed even as they created the conditions of hardship required that the Marshall Islanders learn to live with the contradictions and paradoxes of the modern world in a way that perhaps no other culture ever has. It speaks volumes about who the Marshallese people are that we seek justice with forgiveness in our hearts, and that we chose to become allies with the U.S. based on all that we knew about Americans instead of just what we suffered from nuclear testing.

The GAO report notes that several landowner demonstrations have taken place at Kwajalein in the past, but fails to point out that all of these demonstrations took place prior to the effective date of the Compact and Military Use and Operating Rights Agreement (MUORA). Although there have been issues which needed to be addressed over the course of the last fifteen years, the fact is that the mechanisms and framework established in the Compact through the Community Relations Council (CRC), Joint Committee Meeting (JCM) and other bi-lateral means have been largely successful in addressing these concerns. Nonetheless, the special needs of Ebeye and the Kwajalein Atoll communities must continue to be addressed in the future.

The programs of the United States to provide economic assistance to the people of the Marshall Islands, and the blessings and benefits of friendship with the U.S. in terms of education, business, transportation, communications, medical science, technology and capital infrastructure development, all were an integral part of the legacy of the trusteeship era, including the policy of "compensation" for the impact of security and defense programs in the RMI. This was well known and understood by those in Congress and the U.S. Executive Branch who negotiated the Compact. It was no accident, no lapse in judgment, and it was not simply the excesses of the Cold War era, that led to the structuring of a package that included significant economic assistance and a close strategic partnership under the Compact.

Thus, when it came time to approve a political status option, the people of the Marshall Islands were able to balance their desire to control their own destiny through attainment of sovereignty with their aspirations to share that destiny with the U.S. based on mutual agreement. The Cold War may have been the backdrop for this dramatic model of decolonization based on separate sovereignty but a continued close relationship, but neither the Cold War nor economics of the Compact were what defined the interests and motivations of the parties to that relationship. The GAO's "analysis" here is both simplistic and ahistorical.

For its part, in addition to defense rights, the U.S. honorably ended its role as administering power and substituted it with the role of an ally to democratic governments. The RMI assisted the U.S. in this foreign policy success, and Congress

not only agreed but insisted that the economic and social features of the Compact reflect the close and special relationship embodied in the Compact.

The last GAO opinion that requires correction appears in the title and throughout the report. It is the misleading reference to Kwajalein as an interest the U.S. has in two "Micronesian nations".

The rights, powers and obligations of the United States with respect to security and defense matters under the Compact of Free Association between the U.S. and the RMI, including most particularly the use of Kwajalein Atoll by the U.S. as a military facility, is not an interest of the United States that arises from, or is legally, politically, or in any other respect directly related to, the free association relationship between the U.S. and the Federated States of Micronesia (FSM).

The Compact is a multilateral agreement only because, for reasons of practicality and diplomacy in the U.N. Trusteeship Council, the U.S. originally sought to negotiate free association and terminate the U.N. trusteeship contemporaneously for the RMI, FSM, and Palau. If the GAO were to carefully examine the record of Congressional oversight from 1970 to 1985 regarding the political status process, it would discover that there was intense international and domestic political pressure on the Executive Branch negotiators and the emerging island governments to preserve "Micronesian unity", and to conclude a status agreement with a single "Micronesian entity".

The only problem was that Micronesian unity would have had to been imposed against the will of the bodies politic that constituted themselves through the self-determination process in the trust territory. Specifically, the people of the Marshall Islands, Palau and the Northern Mariana Islands did not share the aspirations of those island peoples who voted to ratify the constitution of the Federated States of Micronesia, and thereby to be part of a "Micronesian nation".

The U.S. abandoned the idea of a single multilateral document when it asked Congress to approve free association for the RMI and FSM without Palau, due to the delay in Palau's internal ratification process. Thus, the Compact approved by P.L. 99-239 is a multilateral document that defines two separate bilateral relationships. The government-to-government relationship between the U.S. and the FSM does not confer, secure or in any other legal and political sense bear upon the U.S. security and defense relationship between the RMI and the United States.

Thus, the GAO recital of the costs of the Compact to the U.S. incorrectly combines the amounts provided to the FSM with the amounts provided to the RMI, and then devalues the U.S. defense rights in the RMI along with those in the never-militarized FSM. This obviously invites the reader to engage in a cost/benefit analysis that is unfair and misleading.

For these and other reasons set forth above, the RMI questions the premise of this GAO report, as well as its value for those trying to determine if the Compact security and defense provisions embody important U.S. government interests.

Sincerely,

GERALD M. ZACKIOS,
Minister of Foreign Affairs.

EMBASSY OF THE REPUBLIC OF THE MARSHALL ISLANDS,
Washington, DC, April 21, 2000.

MS. GARY JONES,
Associate Director, Energy, Resources, and Science Issues, General Accounting Office, Washington, DC.

DEAR MS. JONES: It is my distinct pleasure to deliver the response of the Government of the Republic of the Marshall Islands (RMI) to the GAO draft report, *Compact of Free Association: Better Accountability Needed Over Payments to Micronesia and the Marshall Islands.* I sincerely hope that our comments will be helpful to the GAO as it finalizes the report.

At this time, I would also like to extend my personal thanks to you and your staff for working closely with the Embassy from the beginning. If you would need any further information or assistance in the future, please do not hesitate to call on the Embassy.

Sincerely,

BANNY DE BRUM,
Ambassador.

REPUBLIC OF THE MARSHALL ISLANDS,
MINISTRY OF FOREIGN AFFAIRS AND TRADE,
Majuro, Marshall Islands, Apri1 13, 2000.

MS. GARY JONES,
Associate Director, Energy, Resources, and Science Issues, General Accounting Office, Washington, DC.

DEAR MS. JONES: At the direction of H.E. President Kessai H. Note, I am pleased to respond on behalf of the Government of the Republic of the Marshall Islands (RMI) to the draft report of the GAO. I would like to take this opportunity to first thank the GAO for providing a copy of the draft report, *Compact of Free Association Better Accountability Needed Over Payments to Micronesia and the Marshall Island*, to the RMI for comment. The RMI Government realizes the significance of this report in developing our mutual understanding of assistance and/or allocation of funds provided to the Marshall Islands both prior to and during the Compact of Free Association. In that context, I am pleased to forward to you the RMI Government's comments on the GAO report.

The attached comments reflect the RMI's serious concerns that both the request made to the GAO and its response are based on misconceptions about the terms of the Compact in certain respects. As a result, we believe some of the information in the draft report is misleading and inaccurate at times. The unique history of the Marshall Islands vis-a-vis the United States is not adequately explained in the draft. In our comments, the RMI Government has provided the necessary context and background within which the figures cited in the report can be critically examined.

You will note that we have organized our comments into three parts. Part I summarizes our position in brief. In Part II, we address the text of the draft page by page. Finally, Part III briefly concludes our commentary, We thank you in advance for your consideration of these comments and hope they will be reflected in the final draft.

Again, we welcome the opportunity you have afforded the RMI Government to review and comment on this report. Please do not hesitate to contact me should you have any questions.

Sincerely,

ALVIN JACKLICK,
Minister of Foreign Affairs and Trade.

PART I: OVERVIEW

The Government of the Republic of the Marshall Islands (RMI), having reviewed the General Accounting Office's (GAO) draft report, is seriously concerned that the report misrepresents and confuses the unique history of U.S. financial assistance to the RMI. The confusion stems from the report's repeated failure to provide any background or context to the figures for U.S. assistance that it cites. The RMI considers the following points to be essential to establishing a more complete understanding of U.S. assistance in the islands:

1. Under the Compact of Free Association, the U.S. provides economic assistance to the RMI in exchange for military and strategic benefits that the RMI provides to the United States. Thus, it is a misrepresentation to frame the discussion in terms of "foreign assistance."

2. It further confuses the case to present the total amount of U.S. assistance as money given to the RMI to benefit the RMI. Under the Trust Territory of the Pacific Islands (TTPI) regime, U.S. funds were completely controlled by U.S. federal agencies and administrators with responsibility for programs and activities conducted in the region. Even after the RMI became self-governing, indirect U.S. program assistance remained outside of the RMI's control.

3. For this reason and others, it is extremely misleading that $250 million is reported as prior "compensation" for the effects of the testing on the people and lands of the Marshall Islands.

4. The Section 177 Agreement provided for the first time a framework for compensation to affected communities and individuals. However, it must be noted that a significant portion of that money continues to benefit the U.S. through the DOE driven scientific and medical research conducted in the Marshalls.

In the following pages, these points are explained in full.

PART II: SECTION SPECIFIC COMMENTS

• "*Foreign Assistance*" (Title Page)

Although the report's title is "Better Accountability . . .", the large bold print words "Foreign Assistance" on the title page should be deleted. Compact funding is not provided under the Foreign Assistance Act of 1961, as amended, codified in Title 22 of the U.S. Code. Rather, it is provided under statutes printed in the Historical and Statutory Notes accompany Section 1681 in Title 48 of the U.S. Code. Compact funding is therefore not included in the budget of the State Department or the Agency for International Development (AID). Compact funding is instead provided through the "850 Account" for domestic spending programs including those administered by the Department of the Interior. In this context, the reference to "Foreign Assistance" is both confusing and misleading.

• "*The Compact granted these two former Trust Territory districts their independence . . .*" (Page 1).

As a matter of technical accuracy, it should be clarified that the Federated States of Micronesia (FSM) comprises islands that were organized into four of the six Trust Territory districts. The Republic of the Marshall Islands (RMI) was also one of these six districts. It should be further clarified that the Compact provided the basis for U.S. and international recognition of the FSM and RMI as sovereign nations in free association with the United States. However, subsequent admission of both nations as members of the United nations with support from the U.S. constitutes full recognition under U.S. and international law that free association as defined under the Compact is consistent with the status of independent nationhood.

• "*Prior to the Compact, the United States provided about $250 million to the Republic of the Marshall Islands as compensation for the effects of the U.S. nuclear weapons testing program . . .", and that the ". . . Departments of Defense, Energy, and the Interior provided this compensation in the form of direct payments to the Islands' governments and individuals' rehabilitation and resettlement services, and health care and monitoring of islanders exposed to radioactive fallout*" (Page 2).

The incomplete and often inaccurate description of U.S. "compensation" for the effects for the Nuclear Testing Program throughout this document is deeply troubling to the RMI.

First, it should be clarified that the $250 million expended prior to the Compact was not provided to the Republic of the Marshall Islands since it did not then exist as a nation. The $250 million in question was in fact controlled by the Departments of Interior, Defense and Energy to fund programs that addressed in various ways the effects of the nuclear testing on the people of Marshall Islands and their homelands. This was not actual "compensation" based on any legal determination of damages or adjudication of costs for recovery, and the purpose of most of these programs was not compensation to manage public needs created by the testing program. For example, it is misleading to describe the cost of evacuation and funding subsistence living for dislocated people as "compensation."

Furthermore, the bulk of the funding was expended for U.S. programs and activities that were part of the process for carrying out the nuclear testing program and then closing down the testing grounds. Of the amounts expended that assisted the Marshallese in any direct way, most of the funding was for carrying out the U.S. role as the administering authority responsible for civil governance of the islands and the affected population, including the discretionary provision of assistance and services to the dislocated populations and communities recognized as exposed.

Small amounts were paid to individuals and local communities as ex gratia or compassionate payments, without any attempt to provide actual compensation. For example, under P.L. 95-134, victims whose thyroids were removed due to tumors were paid $25,000.00 as "compassionate" assistance. This program was a small fraction of the $250 million cited by GAO, and was not part of any full or final compensation program.

During this period, the Mashallese had limited recourse to legal process and even more limited forms of constitutional self-government. We were subject to virtually unfettered discretion of U.S. military and civilian authorities, under a trusteeship regime that had no precedent in U.S. political history other than military occupation and martial law. Thus, this paragraph is extremely inaccurate especially as it suggests there was an orderly system of compensation for the Marshallese people individually or as a nation.

• "*As Freely Associated States, the government may engage in world affairs as sovereign states with very limited restraint and operate their own fiscal systems*" (Page 4).

In light of this very narrow description of our unique relationship with the United States, the RMI cannot emphasize enough the importance of adding the following background information to this section.

First, under Title III of the Compact the U.S. retains "full authority and responsibility for security and defense matters in or relating to . . ." the Freely Associated States. This includes the authority under Section 313 to veto any exercise of sovereignty by the RMI which the U.S. determines unilaterally to be incompatible with U.S. security policy. Since the RMI has been a close ally and strong supporter of U.S. policy in the United Nations, the impression may be that delegation by the RMI of plenary governmental authority to the U.S. for a core element of national power is a "limited restraint." However, this is hardly the case. Indeed, the strategic alliance referred to here by the GAO and the accompanying characterization of the RMI ability to operate its own fiscal system cannot be understood without reference to Title III. Specifically, the logic of the Compact's goals of self-sufficiency, fiscal autonomy and mutual security is repeatedly reiterated throughout the Compact and its related agreements. For example, pursuant to Section 321 and 323 of the Compact, the parties agreed and Congress ratified in P.L. 99-239 a Mutual Security pact, Article V of which states:

> The Government of the United States and the Government of the Marshall Islands recognize that sustained economic advancement is a necessary contributing element to the attainment of the mutual security goals expressed in this Agreement. The Government of the United States reaffirms its continuing interest in promoting the long-term economic advancement and self-sufficiency of the people of the Marshall Islands.

Thus, the close strategic alliance in the Compact is underpinned by a close economic relationship. The fact that the RMI has a separate fiscal system and as a sovereign nation is not part of the U.S. federal system directly does not diminish the linkage that Congress created in the Compact between its military and economic goals. In minimizing this linkage, the GAO fails to fully inform Congress of the nature of the assistance provided under the Compact.

- Description of the nuclear legacy (Pages 5-6, 10-11, 29)

Once again, the RMI is extremely concerned with the misleading information that is presented by the GAO regarding the nuclear testing legacy in the Marshall Islands. The following discussion addresses several inaccuracies in the report.

1. The suggestion that Enewetak rehabilitation was complete "after the cleanup and reconstruction . . . in 1980" (6) is misleading. The people of Enewetak continue to have limited use of their atoll given lingering contamination in the northern islands and the environmental degradation that occurred as a result of cleanup activities. In addition, the cement-capped dome built to house long-lived nuclear waste not only constrains access to the land but remains unmonitored. The people of Enewetak continue to pursue claims before the RMI Nuclear Claims Tribunal for their losses.

2. In the one sentence explanation of U.S. measures on behalf of the Utrik community, the draft report fails to inform Congress that while the people of Utrik "were returned a few months after being removed" (6), there remains a deep-seated concern within the community about the consequent health effects they attribute to living in a contaminated environment. In this regard, the Utrikese share many of the same concerns that led to the evacuation of Rongelap.

3. The statement that since the time of the testing, "the U.S. has compensated the people of the Marshall Islands for hardships they experienced . . ." (6) represents the crux of the problem in this report's description of the RMI's nuclear legacy. While some compensation has been paid, this statement is grossly misleading in that it implies much more. First, under programs prior to the Compact, the U.S. provided certain limited measures to address the effects of the testing on the Marshallese people and their lands. Recognizing the inadequacy of those measures, the Section 177 Agreement then established a more comprehensive program to address the nuclear testing legacy. However, even after all the funding under the Section 177 Agreement has been fully expended, it may or may not be true that the U.S. "has compensated" the people of the RMI for the effects of the nuclear testing. Rather, the Section 177 Agreement specifically establishes a framework under which the U.S. accepts responsibility for compensation, but the scope and amounts of compensation are yet to be determined. Please note the attached submission to Congress by the former U.S. legal advisor to the first Compact negotiations, Howard Hills, confirming that the Section 177 payments were not based on an actual calculation of damages, but were based on the political figure of $150 million. The $150

million dollar trust fund and other measures taken under the Section 177 Agreement now and in the future, including any additional assistance provided due to changed circumstances, are all part of the compensation owing to the Marshallese.

4. In this context, the statement repeated at page 10 that the U.S. previously provided $250 million in addition to the compensation provided under Section 177 is again misleading. Among other things, the breakdown of this "prior compensation" appearing at pages 10-11 confirms the analysis presented above that the earlier measures were ad hoc, random, served U.S. program purposes rather than first and foremost the interests of the affected population, and were inadequate. For example, the Enewetak cleanup cited on page 10 occurred in a limited attempt to mitigate contamination and advance but by no means complete a general environmental rehabilitation. It stretches the meaning of compensation to suggest that the $134 million spent by the Department of Defense to close down the proving grounds and leave the test sites in a partially restored condition should be considered as the bulk of $250 million dollars in "compensation" already given to the Marshallese people.

The report further suggests that the $52 million that the Department of Energy expended conducting medical programs should be counted as compensation. The RMI believes that the GAO's logic is extremely flawed in this case. Considering as "compensation" the DOE's emergency measures to treat Marshallese exposed to nearly fatal doses of radiation as a result of U.S. testing is akin to giving the negligent party in a car crash credit against a court ordered judgment for serious bodily injuries and long term losses based on the first aid given at the scene by the ambulance team. Moreover, given that scientific and medical research programs represented a major portion of DOE's expenditures, it remains in question whether or not the DOE programs were a case of continuing trespass by the U.S. upon the persons and lands of the Marshallese people. The reliance on the DOE program in many cases prevented more comprehensive measures that should have been taken during these critical years.

Finally, the report's analysis of the $250 million "prior compensation" package ends with a one paragraph description $66 million that supposedly went to the people. Of the $66 million, only $15 million was actually paid out to those recognized as having suffered from the test. This $15 million is further divided such that only 34% went to relieve the hardship of actual victims, and 64% went into trusts for the communities involved. In other words, the victims of the testing received just $5,100,000 in direct payments prior to the Compact. This analysis once again reveals the misleading nature of the assertion that $250 billion dollars in "compensation" was provided to the people of the Marshall Islands prior to the Compact.

5. As mentioned in the above discussion, the Section 177 Agreement established a framework for compensation within which the U.S. Government recognized its moral and legal obligation to provide for injuries caused by the U.S. testing program. This obligation cannot be characterized as "foreign assistance."

6. Furthermore, the $75 million that the Department of Energy received to provide "assistance" in the form of environmental and medical monitoring programs in the Marshall Islands funded scientific and medical research that the U.S. Government wanted to undertake to better understand the effects of radiation on human beings and the environment. Thus, the expenditure of this money has enormously benefited the DOE specifically and the U.S. Government generally. This is just one of many examples in which the United States and its citizens benefited from allocation of Compact funds.

PART III: CONCLUSION

The RMI Government hopes that the issues and information raised in the above commentary will assist the GAO in finalizing a report that provides not just numbers but a thorough explanation of the data on financial assistance.

The bilateral relationship established under the Compact of Free Association between the Republic of the Marshall Islands and the United States is so unique that understanding the relationship in context becomes particularly critical. The history of U.S. nuclear testing and its continuing legacy in the RMI further complicates the picture. Therefore, it is essential that the GAO provide the necessary background information when describing U.S. assistance in the Marshall Islands.

The RMI Government welcomes the opportunity to raise the above issues. We hope to see these complexities more thoroughly explained in the final report.

EMBASSY OF THE REPUBLIC OF THE MARSHALL ISLANDS,
Washington, DC, August 30, 2000.

Dr. SUSAN S. WESTIN,
Associate Director, International Relations and Trade Division, U.S. General Accounting Office, Washington, DC.

DEAR DR. WESTIN: As directed by H.E. President Kessai H. Note and relevant Ministries, I am pleased to provide the RMI Government's response to the GAO draft report entitled *U.S. Funds to Two Micronesian Nations Had Little Impact on Economic Development.* I would like to acknowledge GAO's consideration in allowing the RMI the opportunity to comment on the draft report.

As you will note, our comments consist of three critical parts: Part I provides a brief overview of the draft report; Part II gives a more detailed assessment of the test by page number: and Part III briefly concludes our commentary. Thank you again for including these comments in the final report and we look forward to assisting in providing further input upon request.

Please feel free to contact the Embassy should you require further clarification on the attached.

Sincerely,

BANNY DE BRUM,
Ambassador.

PART I: OVERVIEW

The Government of the Republic of the Marshall Islands (RMI) extends its appreciation for the opportunity to comment on the General Accounting Office (GAO) draft report entitled "U.S. Funds to Two Micronesian Nations Had Little Impact on Economic Development." In this regard, the RMI takes issue with the GAO's assertion that the funds provided pursuant to the Compact of Free Association essentially failed to advance economic development in the Marshall Islands. The RMI Government believes that by domestic standards that there have been both economic successes and failures over the rears. Without a doubt, these successes and failures reflect the unique status of and concurrent resource-level available to the RMI through the Compact. Applying U.S.-based standards of success in this case once again confuses the contest of the situation on the ground in the Marshall Islands.

The RMI considers the Compact of Free Association a mutually beneficial agreement that not only provided a successful model of self-government and a means of economic advancement for the Marshallese people, but also ensured U.S. security and defense rights at a reduced cost to the United States of America. The Compact must be judged in this content. Its successes and failures cannot be fairly-judged otherwise.

The following points summarize in brief the background information that the RMI would like to see added to this report:

1. As previously noted by the RMI and agreed to by the GAO in its first report, it is a misrepresentation to frame the discussion of Compact funding in terms of "foreign assistance."

2. The statement that the Compact of Free Association ended U.S. Administration of the RMI is misleading. The Compact may have ended the U.S. role as administering power under U.N. Trusteeship but continues U.S. powers and functions of government as agreed to by Congress and the Government of the Republic of the Marshall Islands.

3. The report's characterization of "private sector growth" or lack thereof does not include important background information on the relatively remarkable expansion of the private sector in the Marshall Islands and the measures taken by the RMI Government to ensure that this expansion continues.

4. The report further provides inaccurate information concerning the progress of the public sector reform program. It is a gross misrepresentation on the GAO's part to claim that the RMI Government reneged on its reform policies when, in fact, reform targets such as the reduction in force have been realized.

5. Contrary to the claims of the GAO report, the modernization of the woefully inadequate social and physical system of infrastructure left behind by the Trust Territory Administration has not only enhanced the quality of life in the RMI, but has also provided the necessary foundation for private sector growth.

6. Finally, the GAO report evaluates investments and outcomes without considering contextual factors affecting the outcome of government business ventures.

In the detailed response below, this necessary background information is provided.

PART II: SPECIFIC COMMENTS

• Reference to "Foreign Assistance" (Title Page).

It is both surprising and disappointing to the RMI that the GAO would persist in using the misleading term "Foreign Assistance" in large, bold print on the title page after agreeing in its report of May 2000 that the "title page heading 'Foreign Assistance' may have presented some confusion."[1] The RMI firmly believes this reference should be changed as it was in the May report. For the sake of clarity, the Government of the Republic of the Marshall Islands reiterates that Compact funding is not provided under the Foreign Assistance Act of 1961, as amended, codified in Title 22 of the U.S. code but defined under Historical and Statutory Notes in Section 1681, Title 48 of the U.S. Code. Compact funding is therefore not included in the budget of the State Department or the Agency for International Development (AID). Rather, it is provided through the "850 Account" for domestic programs including those administered by the Department of the Interior.

• "*Compact ended U.S. administration of the Federated States of Micronesia and the Republic of the Marshall Islands*" (Page 18).

As the Administering Power under the trusteeship the United States exercised plenary powers of government, including all legislative, executive and judicial functions. These powers were based not upon the direct exercise of U.S. national sovereignty as in the case of the states of the union or the U.S. territories, but from a treaty between the U.N. as an international organization and the U.S. as a member state. The entry into force of the Compact ended the role of the U.S. as Administering Power under the trusteeship treaty between the U.S. and the U.N. as a multilateral body, and replaced it with the multilateral compact between three sovereign nations, which actually defines two separate bilateral relationships within a multilateral framework.

Under the Compact, approved by a Joint Resolution of Congress with the full force and effect of U.S. law, the U.S. has retained without cessation or interruption plenary powers of government with respect to security and defense, and also carries out major functions of government, based on the mutually agreed terms of the treaty. The retained powers of the U.S. in the FSM and RMI are the result of a delegation of those powers by the governments of the Freely Associated States, just as the plenary powers under the trusteeship were delegated to the U.S. by the U.N. before the Compact was approved. This arrangement continues the relationship established under the trusteeship, but does so on the basis of self-determination and self-government for the peoples concerned in fulfillment of the purposes of the trusteeship system and U.S. policy.

In this context, Compact assistance and U.S. federal programs and services in the FAS were intended to operate as alternative to the system for managing the cost of government and administering government funding provided to the states and territories under U.S. sovereignty. In this way, the role of the U.S. in administering the functions of government in the FAS is carried out directly in many respects and through the FAS governments in other respects. However, the funding and costs associated with this arrangement should be seen as the alternative to both domestic spending for government in the states and territories, and also as the alternative to foreign assistance and aid for nations where the U.S. does not retain direct powers of administration or perform functions of government.

The hybrid features of the Compact in this regard were proposed and in some cases insisted upon by the U.S. in light of the estimated cost of administering the FAS as U.S. territories. If the Compact had not been structured to make free association sufficiently attractive to the voting populations in the trust territory, the alternative for the U.S. and the peoples concerned was territorial status. In that case, the inhabitants of the islands would have voted for and in all likelihood would have been granted U.S. nationality. In that event, the U.S. would have been required to embark on a program to bring the islands into the national economic and political system on a trajectory aimed at convergence with the U.S. territories.

The investment that would have been required to accomplish integration of the trusteeship islands into the nation would have far exceeded the cost of governing the islands under free association, which along with the aspirations of the peoples concerned for separate national sovereignty and citizenship is one reason why the U.S. proposed and the FAS agreed to the arrangements under the Compact. Any attempt to analyze in the year 2000 the cost of government under the Compact must take into consideration these realities.

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[1] General Accounting Office. *Foreign Relations: Better Accountability Needed Over U.S. Assistance to Micronesia and the Marshall Islands.* May 2000.

• "*Substantial Compact funds were used to support general government operations that have, among other things, maintained high level of public sector employment and have acted as a disincentive to private sector growth*" (Page 48).

First, it is important to note that the domestic private sector, especially in the retail and construction areas, have greatly benefited from Compact funds. Since the Compact went into effect, the number of domestic businesses has doubled and many existing businesses have grown exponentially. With the exception of Guam and Saipan, the RMI's capital of Majuro holds some of the largest retail and wholesale businesses throughout the Micronesia.

Regarding the future growth of the private sector, it is important to note the significant steps the RMI has taken to improve its business environment. These steps include meeting necessary infrastructure needs, reducing the public sector, and offering clear incentives for foreign investment in the RMI. These measures stand in stark contrast to the closed and stagnant economic environment inherited by the RMI from the Trusteeship Administration.

It has been the policy of the government to strengthen the economy by continuing reforms in public sector and improving the environment for private sector development. A recent of example of these efforts is evidenced in the parliamentary approval of amendments to the Foreign Investment Business Act transferring the responsibility of registering foreign companies from the Cabinet to the duly appointed Registrar of Corporations. The registration process is thus depoliticized as well as more efficient for potential investors. The *Nitijela* has passed and is currently reviewing a number of similar legislation focused on improving constraints in the RMI business environment related to land leases, alternate dispute resolution, bankruptcy and more.

• "*In the case of RMI, the evaluation found that momentum for reform has been lost partly due to the considerable confidence within the government that external aid could be increased. The sources of this aid would be the Republic of China, which RMI recognized in late 1998, and successful renegotiations of the Compact.*" (Page 49).

The above statement is completely inaccurate. The RMI Government has met most of the conditions it first set with the Asian Development Bank when undertaking the reform program. The "momentum for reform" was slightly delayed after the passing of the late President Amata Kabua who initiated the reform policy, and not because of external aid or optimism in renegotiating the Compact. After the transitional period, RMI recently reached the target level of reducing the public sector work force from 2,200 to present 1,450 employees. Furthermore subsidies to public enterprises significantly went down from $10 million in 1994 to $1.25 million in 1999. The momentum for reform may have been delayed; it was certainly not lost.

The external aid mentioned is a matter between the RMI and ROC as two sovereign nations joining in mutual benefits. As to Compact renegotiations, this process is yet to commence which makes it difficult to project an outcome much less comment on any level of optimism as to its result.

• *"Targeted Compact Funds Spent on Physical and Social Infrastructure Have Not Directly Contributed to Economic Growth"*

> *"The FSM and RMI have spent at least $255 million in Compact funds for physical infrastructure improvements and operations. Both nations viewed this area as critical to improving the quality of life creating an environment attractive to private businesses. While these improvements have enhanced the quality of life, they have not contributed directly to the economic growth of the countries"* (Page 50).

Once more the RMI wishes to state its disagreement with the above GAO claim. Updated physical and social infrastructure is essential for the basic operational necessities of a private sector that needs to grow. The decision to expend funds on infrastructure is a direct result of the woefully inadequate system of infrastructure left by the Trust Territory Administration. A case in point is the passing reference made by the report to the tuna processing plant due to the dependable electricity there. Additional results for direct infrastructure improvement include commercial banks, private clinic, hotels, restaurants, real estates, office rental, and much more.

• Full Description of the Government Business Ventures (Page 60-76)

The Government of the Republic of the Marshall Islands is also extremely concerned with the incomplete information presented by the GAO regarding contextual factors that provide the necessary background to the success and failure of government business ventures. The following information addresses these inaccuracies.

Confined by the remoteness, natural landscape, highly rigid environment, and young private sector, the RMI Government boldly undertook ambitious investment ventures by contracting out or forming partnerships with the private sector. As in any business, the RMI took some calculated risks based on advice given—at times by the United States Government—and learned many valuable lessons in the process. It is important that the project outcome be understood in context of the process that took place.

1. Garment Factory

The RMI and the People's Republic of China (PRC) went into a joint venture in the garment factory operation. Prior to the initial manufacturing stage of the operation, an internal dispute amongst the PRC stakeholders divided the management and directly ended the business enterprise. This was an incident RMI never have foreseen. Numerous garment companies from abroad continue to submit proposals to revamp the operation indicating that the initial investment was not poorly made. However, the Government currently plans to transform the facility into school buildings to replace the older school facility in Laura.

2. Resort Hotel (Page 66)

Tourism is a potential source of revenue for the economy. In the early 1990s, Majuro offered a limited number of hotel rooms, particularly with premium services. Recognizing this need, the Government built a resort hotel and contracted a hotel management firm to run the daily tasks. The 150 room resort has managed to attract large groups to hold their seminars, conferences and special international meetings in Majuro. With anticipated revenue increase, the hotel will eventually cease to receive Government subsidy. It also continues to provide job opportunity and excellent training to Marshallese employees.

3. Dry Dock (Page 66)

The statement about the dry dock present status "According to an official at the U.S. embassy, the facility is currently not operable . . ." (Page 66) is not accurate. It is fully operational and continues to provide shipping services to the Government and private shipping enterprises.

4. Ebeye Causeway (Page 68)

Construction is soon to resume from the generous capital fund provided by the Republic of China (Taiwan). Development and the relocating residents from the crowded Ebeye to Gugeegue is expected to follow upon the causeway completion.

Public Enterprises

Another important issue is the GAO's failure to show the overall reduction in Government subsidies. The Government has taken number of steps to reduce its annual subsidies to government's owned agencies. The RMI Government has aggressively pursued increased private sector participation in all government agency boards, appointing commercially oriented management, and selling off Government shares. This process has been taken a step further with the establishment of the Private Sector Unit to implement the overview process to commercialize or privatize Government owned enterprises. Currently the Office is reviewing the utility agency Kwajalein Atoll Joint Utility Authority in Ebeye, and has successfully transferred and granted all its functions to a private management firm. Institutional strengthening and a more efficient collection system have now generated steady increase in revenue, which will eventually no longer require subsidy from the RMI. A similar process is to follow with the Air Marshall Islands, Outrigger Marshall Islands Resort. Tobolar Processing Plant, and many others.

PART III: CONCLUSION

Due to time constraint, RMI has been not able to fully respond to the context the GAO has provided but nevertheless we hope our comments have provided a more complete picture for the RMI. As Honorable Benjamin A. Gilman of New York once stated about the bilateral relationship between the U.S. and RMI:

> This is a special relationship which we cannot allow to be neglected or unduly diminished as a result of ill-conceived policies which do not take into account the legacy of the past and prospects for the future. Narrow thinking based on short-term priorities should not control the determination of how this relationship will be managed as the first term of the Compact of Free Association comes to an end.

In joining with Congressman Gilman, the RMI Government continues to recognize this special relationship based on mutual respect and common objectives. It should be recognized that a return to Trust Territory policies and restrictive provisions goes against the objectives of the Compact and, in fact, will slow the economic progress already in place. We must move forward with a renewed bilateral understanding and put our efforts into a mutual commitment to sound and stable economic developments over the long-term.

The Government of the Republic of the Marshall Islands once again welcomes the opportunity to discuss these issues. We hope that the above details will enhance the understanding of economic development in the RMI.

EMBASSY OF THE REPUBLIC OF THE MARSHALL ISLANDS,
Washington, DC, August 31, 2001.

Mr. MICHAEL BIGGS,
Assistant Director, Residence and Status Services, Office of Adjudications, Immigration and Naturalization Services, Washington, DC.

Reference: INS No. 2047-00

DEAR MR. BIGGS: With respect to the referenced proposed INS rule on entry of RMI and other FAS citizens to the U.S. under Section 141 of the Compact of Free Association, attached is a legal analysis of issues and questions arising from the document that the RMI would wish to discuss and have the benefit of a response before commenting further on this matter. Please note that while the attached legal analysis addresses the effect of the proposed order could have on RMI citizens as it would apply to all Free Associated States (FAS) citizens, the RMI submits this document on its own behalf without prejudice or any presumption as to the views of the governments of the Federated States of Micronesia or Palau.

Thank you very much for your kind attention.

Sincerely,

BANNY DE BRUM,
Ambassador.

LEGAL ANALYSIS OF INS PROPOSED RULE ON ENTRY REQUIREMENTS FOR CITIZENS OF THE FREE ASSOCIATED STATES

(Federal Register: July 18, 2001, Volume 66, Number 138, pp. 37429-37432)

The above referenced proposed rule would have the following effects:

1. The proposed rule would establish categories of persons who are citizens of the RMI, FSM or Palau, but who would not be eligible for the visa waiver, employment and residence privileges in the U.S. otherwise accorded to citizens of those countries under the Compact of Free Association. (See, U.S. Public Law 99-239, "Compact of Free Association Act of 1985", Title One, Article IV, Sections 141-143).

2. The proposed rule would require citizens of the three Free Associated States (FAS) to possess a passport "or similar travel document" issued by the FAS government concerned in order to establish eligibility to enter, reside and be employed in the U.S. pursuant to the immigration provisions of the Compact.

LEGAL ANALYSIS OF PROPOSED RULE

General Comments

A detailed examination of legal issues is presented below. Perhaps the most important general point to make by way of an overview is that the single element which is at the heart of the proposed order—the provision purporting to apply visa requirements to FAS citizens eligible under applicable federal statutes for entry without a visa—is fatally flawed and invalid as a matter of law. The INS does not have the authority by regulation to take away a privilege conferred by statute.

Specifically, the proposed rule seeks unilaterally to amend the Compact in order to prevent the perceived abuse of the nonimmigrant entry privileges under the Compact for purposes of immigration to the United States. Fortunately, as a treaty the Compact cannot be amended without agreement of the parties (see, Title Four, Article 3, Section 431-432), and as a federal statute the Compact Act cannot be amended by an INS regulation.

More importantly, the Compact immigration provisions as approved by Congress already anticipate and operate to prevent the very abuses and conflicts of law the alleged existence of which supposedly make this proposed rule necessary. There is no conflict between the operation of the Compact immigration provisions and other

federal immigration laws, and the U.S. and the RMI already have agreed that entry to the U.S. under the Compact does not in and of itself entitle FAS citizens to permanent resident alien status in the U.S. or naturalization as a U.S. citizen.

Thus, the goal of preventing abuse of the privileges afforded FAS citizens can best be realized under the existing immigration provisions of the Compact, as well as applicable U.S. immigration laws and regulations. There may be no need for further rules or revision of regulations in this regard, and even if there are regulatory issues that should be addressed, that must be accomplished consistent with the laws and treaties that governs these matters.

The issue of immigration through adoption is one of the pretexts for the proposed rule. The RMI has an interest in protecting the welfare of adopted children. It may be that application of certain procedures followed under U.S. the Immigration and Nationality Act regarding foreign adoptions should be reviewed to determine how those practices that promote child welfare might be applied in the case of the FAS by mutual agreement. However, the proposed rule seeks to "legislate by regulation" the application of the U.S. foreign adoption procedures unilaterally and in contravention of the Compact as both a treaty and as a federal statute.

In addition, the proposed rule does not limit the "exceptions" to the privileges granted under the Compact to adoption cases, or even those exceptions arguably consistent with the Compact as approved by Congress. Rather, the proposed rule also would impose the result that any person who "seeks" to be an immigrant in the U.S. should be barred from entry under the Compact's visa waiver provisions, and instead must first obtain an immigrant visa.

Clearly, the proposed rule goes too far, and fails to conform its proposed remedy for perceived abuses to the governing law. Again, FAS citizens and their government must not be distracted by the adoption issue from the fact that the proposed rule would not only require visas for children who have been or at some point may be adopted in the FAS or the United States.

Unless the INS can offer some other explanation of how this rule would operate, it would appear that the effect of the rule is to restrict visa waiver entry for all FAS citizens who also may be, or seek to become, eligible for naturalization. That notion is totally at odds with the clear language of the Compact as approved by Congress in P.L. 99-239, and has no legitimacy under the applicable law. Yet, that very outcome is precisely what the proposed rule attempts to bring about.

As already stated above and discussed in considerable detail below, the Compact immigration provisions state that entry and residence under the Compact visa waiver for FAS citizens does not satisfy requirements for naturalization. At the same time, the visa waiver clearly is without prejudice to the ability of an FAS citizen to "otherwise" acquire immigrant status as a permanent resident alien status and seek naturalization. The effect of the proposed rule would be to make entry under the Compact's visa waiver a bar to steps seeking immigrant status, and/or it would mean that anyone taking steps to seek immigrant status would be barred from entry under the Compact's visa waiver.

This would mean that FAS citizens who are working in the U.S., going to school, serving in the U.S. military, or are engaged in other activities authorized under the Compact without a visa, but who may be seeking to become "otherwise" eligible for immigrant status under the U.S. Immigration and Nationality Act, would lose their ability to travel back and forth between the U.S. and the FAS without a visa. Such open travel while engaged in otherwise lawful activities is precisely what the Compact authorizes.

Thus, the proposed rule is fatally flawed and must be withdrawn or scaled back to operate within the bounds of the law.

Fatal Legal Flaw in Proposed Rule

The mistake of law that undoes the proposed rule appears repeatedly through the text as published in the Federal Register notice cited above, but is first introduced fully at page 37430 in an explanatory passage that reads as follows:

> . . . the rule codifies in 8 CFR 212.1(d)(2) the Compact limitations on the privileges of citizens of the Compact Countries to enter the United States as nonimmigrants. These limitations, found in Section 141(a)(3), (c) and 143 of the Compacts, were inadvertently omitted from 8 CFR 212.1(d) when that regulation was first issued. These exceptions to the privileges of section 141(a) are briefly . . .

The proposed rule then goes on to list four of what alternately are referred to as both "limitations" and "exceptions" to the privilege to enter under the Compact visa waiver provisions in Article III of Title One of the Compact, Sections 141-143.

The first three such provisions can accurately be described exceptions that properly should be understood as operating to bar an FAS citizen from entry under the Compact visa waiver if applicable:

> The first legitimate "exception" is the Section 141(a)(3) restriction which prevents third country nationals from abusing the visa waiver by requiring physical presence in the FAS for 85% of a five year period after naturalization in an FAS, as well as documentation of compliance.
>
> The second "exception" arises under Section 143(a), under which FAS citizens who take steps to acquire third country nationality thereby lose eligibility for the visa waiver, thus precluding those who want to become third country nationals from also benefiting from a privilege intended only for those who have and seek no nationality other than that of the FAS or United States.
>
> The third actual "exception" is the Section 143(b) requirement that any FAS citizen who already has a third country nationality other than FAS or U.S. nationality must renounce it or lose Compact visa waiver privileges.

It is in the inclusion of the fourth so-called "exception" that the proposed rule exceeds the bounds of the law and attempts to re-write Section 141(a), thereby "amending" the meaning of the Compact, and converting the visa waiver provision into a visa screening process for an FAS citizen who may ultimately seek U.S. citizenship. Specifically, the fourth "exception" which would trigger ineligibility for visa waiver entry is described at page 37430 as follows:

> (iv) Citizens of a Compact country who seek to obtain a residence status leading to naturalization (Section 141(c) of the Compact).

The incorrect and misleading assertion that Section 141(c) operates as an "exception" or "limitation" on the Compact's visa waiver for FAS citizens is repeated in the actual operative provisions of the proposed rule at page 37432, in the proposed revision to 8 CFR 212.1(d), by inclusion of the following provision:

> (2) Exceptions. The following citizens of the Compact countries are not eligible for the privileges described in paragraph (1)(d) of this section and must follow standard procedures for obtaining immigrant or nonimmigrant visa, as appropriate, for entry into the United States, its territories and possessions . . .

Here the proposed rule once again presents a list of categories of FAS citizens who purportedly are not eligible for the Compact visa waiver. This second list of "exceptions" to appear in the proposed rule includes the first three categories of ineligible FAS citizens based on the three actual legally valid statutory exceptions already reviewed above, as well as the assertion of the fourth "exception" that would appear at 8 CFR 212.1(d)(2)(v), triggering denial of visa waiver for FAS citizens seeking permanent resident status leading to U.S. citizenship, again incorrectly citing Section 141(c) of the Compact.

Because the proposed rule misleadingly cites Section 141(c) as the authority for the "exception" triggering denial of Compact immigration provisions, it is important to review the contents of Section 141(c) of the Compact, which reads as follows:

> Section 141(a) does not confer on a citizen of the Marshall Islands or the Federated States of Micronesia the right to establish residence necessary for naturalization under the Immigration and Nationality Act, or to petition for benefits for alien relatives under that Act. Section 141(a), however, shall not prevent a citizens of the Marshall Islands or the Federated States of Micronesia from otherwise acquiring such rights or lawful permanent resident status in the United States.

A plain reading of Section 141(c) leaves no room for debate as to its clear effect. Explicitly, in unambiguous and unequivocal terms, this provision prescribes the relationship between the immigration provisions of the Compact and the applicable provisions of the U.S. Immigration and Nationality Act.

The clear intent and effect of the first sentence in Section 141(c) is to prevent the immigration policy established by Congress under the Compact from intruding on standard procedures for obtaining visas and immigrant status under the U.S. Immigration and Nationality Act. It states that FAS citizens cannot rely upon entry or residence under the Compact visa waiver and related residency provisions in order to seek or establish eligibility for immigrant status or naturalization.

Equally clear is the intent and effect of the second and last sentence in Section 141(c), which employs the qualifying term "however" to limit the effect of the first sentence, preventing the standard procedures for obtaining visas and immigrant status under the U.S. Immigration and Nationality Act from intruding upon immi-

gration policy established separately by Congress under the Compact. Indeed, the very purpose of the second sentence is to make it absolutely and unmistakably clear that the enjoyment of the privilege to enter, reside and work in the U.S. without a visa under Section 141(a) would not limit, restrict, prejudice or encumber the ability of any person eligible for the visa waiver from "otherwise" acquiring the right to become an immigrant.

The second sentence of Section 141(c) would be meaningless if FAS citizens are prevented by INS regulations from seeking and otherwise qualifying for immigrant status while contemporaneously enjoying the visa waiver and nonimmigrant residence allowed under Section 141(c). The idea that an FAS citizen who is entitled to the visa waiver under one U.S. statute can be deprived of that entitlement under another more general federal statute might be open to debate if it were not for the fact that Congress precluded that very result by providing in Section 141(c) for bifurcation of the Compact immigration regime from the standard procedures for applying for visas under the U.S. Immigration and Nationality Act.

In that regard, the visa waiver for FAS citizens under Section 141(c) is a more recent and much more specific statutory requirement than the visa provisions of the U.S. Immigration and Nationality Act, particularly as applied to FAS citizens. Even in the absence of the second sentence of Section 141(c) the visa waiver provisions of Section 141(a) would be interpreted under standard rules of statutory construction as superseding provisions of federal law. The second sentence of Section 141(c) makes that argument unnecessary.

Similarly, it defies logic to suggest that an FAS citizen could come to the U.S. as a nonimmigrant under the Compact, and thereupon engage in lawful activities (i.e. marriage, adoption, military service, relation to a U.S. citizens child, etc.) which would otherwise make him or her eligible to seek immigrant status, as expressly authorized under Section 141(c), only to then be denied the ability to travel freely back and forth between the U.S. and the FAS. This in essence penalizes the FAS citizen for otherwise qualifying for immigration and naturalization, which is manifestly what Congress sought to prevent in the second sentence of Section 141(c).

The proposed order would be entirely consistent with the Compact if it codified "exceptions" based on the three statutory provisions relating to third country nationality (see, discussion of Section 141(a)(3) and Section 143(a) and (b), above). However, this order is nothing less than an attempt to convert Section 141(c) from a firewall between the visa waiver and nonimmigrant residence privileges and immigrant visa procedures under the U.S. Immigration and Nationality Act into a mandate for the INS to selectively impose the U.S. INA visa requirements on those categories of FAS citizens for which the INS determines that to be "necessary" in order to "prevent abuse" and "clarify" and "codify" what it determines to be "exceptions" and "limitations" on the visa waiver as conferred by Congress.

In addition, it must be pointed out that the "exceptions" to the visa waiver in the proposed rule which are valid under Section 143 of the Compact are based on a policy decision by Congress that FAS citizens should not enjoy the visa waiver, residence and employment privileges if they seek or acquire third country nationality and citizenship. Yet, both subsections of Section 143 explicitly state that FAS citizens will not lose their Section 141(a) privileges if the citizenship they are seeking other than FAS citizenship is U.S. citizenship:

This feature of Section 143 preserving the Section 141(a) privileges for FAS citizens seeking U.S. citizenship, perhaps more than all the other arguments set forth above, makes clear the intent of Congress that seeking U.S. citizenship is permissible for FAS citizens enjoying the Compact immigration privileges under Section 141(a). This statutory mandate is impossible to reconcile with the statutory theory at the core of the proposed rule, which is that Section 141(c) allows the pursuit of U.S. citizenship to be used as a basis to deny an FAS citizen Section 141(a) privileges. Yet, the so-called "exception" based on that unsupportable theory is the linchpin of the proposed rule, and with it falls the house of cards that the proposed rule turns out to be.

As an additional consideration, it should be noted that the proposed rule is not a regulation of the United States with regard to right of habitual residence in the U.S. territories, as authorized under Section 141(b) of the Compact. Rather, the proposed rule is an attempt to impose by regulation a so-called "exception" to the right to enter any part of the U.S. as accorded all FAS citizens Section 141(a), subject only to the restrictions set forth in Section 141(a)(3), and Section 143. The "exception" purporting to nullify the visa waiver privilege to enter the U.S. for FAS citizens seeking U.S. citizenship is not authorized by Congress as are United States regulations regarding habitual residence in the territories, and would directly contravene Section 141(c).

Consequently, it is incontrovertible that the so-called "exception" from Section 141(a) visa waivers proposed as a revision to 8 CFR 121.1(d)(2)(v) would breach the Compact as an international agreement, conflict with Section 141(c) as a federal statute, and give the INS the power to exclude persons from entry to the U.S. who are entitled by federal law to enter and reside in the U.S. as nonimmigrants even while seeking immigrant status.

Additional "Exception" for Adopted FAS Citizens Also Legally Invalid

Added to the second proposed "exceptions" list appearing at page 37432 of the Federal Register notice cited above is the additional category of FAS citizens who have been adopted by U.S. citizens, who then seek to enter the U.S. and reside with their adopted child in the United States, presumably intending to apply for immigrant status on behalf of their child. Unlike the other four "exceptions", this new exception for adopted children is the only one based not on the Compact provisions approved by Congress under P.L. 99-239, but rather on the provisions of the U.S. Immigration and Nationality Act governing entry of adopted children of U.S. citizens from third countries which are not parties to the Compact of Free Association.

This additional so-called "exception" to the Compact visa waiver for adopted FAS citizens suffers from the same legal infirmity as the "exception" for persons seeking immigrant status under Section 141(c). Specifically, the attempt by the INS to apply in the case of adopted FAS citizens the "standard procedures for obtaining immigrant or nonimmigrant visas, as appropriate, for entry into the United States, its territories and possessions" would violate the federal law and policy embodied in Section 141(c) as reviewed above.

In addition, it is understood to be common for adult citizens of the FAS who have entered under the Compact to petition for a change of status upon becoming eligible for naturalization through marriage to a U.S. citizen. The proposed rule would establish by regulation a different procedure in the case of an FAS citizen in the U.S. under the Compact who is a minor and becomes eligible for naturalization through adoption.

Specifically, the proposed rule would codify at 8 CFR 212.1(d)(2)(i) the ineligibility for Compact immigration privileges of any FAS child adopted by a U.S. citizen, unless a visa is obtained under the U.S. Immigration and Nationality Act. The statutory authority for this proposed regulation is cited in the proposed order as Section 101(b)(1)(F) and Section 204(d) of the U.S. Immigration and Nationality Act.

However, the proposed rule cites no provision of the P.L. 99-239 or the U.S. Immigration and Nationality Act that provides for the application of the domestic law of the U.S. regarding foreign adoptions in a manner which conditions or limits the visa waiver or other immigration privileges conferred under Section 141(c) of the Compact. Thus, the proposed rule requires the Compact's immigration provisions to be read as inconsistent with the foreign adoption procedures of the U.S. Immigration and Nationality Act in order to justify the proposed rule.

The proposed rule has the confusing effect of distracting attention to the adoption issue on one hand, while the visa procedures in the U.S. Immigration and Nationality Act are inserted into the Compact immigration process for all FAS citizens seeking immigrant status on the other hand, giving rise to anomalies of legal interpretation and creating the illusion of a conflict of law where there is none. Thus, the explanation of the "clarification" and the "exceptions" in the proposed rule are presented as necessary to prevent FAS citizens who seek naturalization and adoptive parents from being able to "evade, as a matter of law, the statutory mandates" that are assumed under the terms of the proposed rule to apply.

The problem is that the proposed rule appears to be wrong. The provisions of the U.S. INA regarding foreign adoptions that the INS may be familiar and comfortable with do not apply as asserted in the proposed rule, because Congress has spoken and set forth other statutory mandates that redeem the U.S. national interest and achieve important national policy purposes through measures other than those provided in the U.S. INA provisions cited in the proposed rule. Section 141(a) of the Compact as approved by Congress is the statutory mandate that as a matter of law governs the entry of FAS citizens, and it is the proposed rule that would operate in a manner that would enable the INS to deviate from the rule of law under P.L. 99-239.

Under Section 141(a), there is no need to apply for or obtain a visa that complies with the foreign adoption or other standard procedures under the INA to obtain a visa. Foreign adoptions from third countries are not adoptions under the Compact, and only in the case of an FAS citizens adoption is the entry of the FAS citizen within the scope of the visa waiver privilege granted by Section 141(a).

In this sense the proposed rule seeks to prevent abuses and reconcile a conflict of laws that the rule itself conjures up to justify the measures proposed to prevent

abuses and reconcile the laws. Only there is no conflict in the applicable law and the abuses defined by the proposed rule are based on a misapplication of the laws. That is not to say there are no issues and problems in the Compact implementation process that should be addressed, but the proposed rule would only make improved implementation impossible and create disarray in the carefully ordered statutory scheme for separation of INA and Compact immigration procedures that Congress created under Section 141(c).

Indeed, by approving Section 141(a) and Section 141(c) Congress precluded and preempted the very situation in which the provisions of the U.S. Immigration and Nationality Act that are triggered by a visa application, including the foreign adoption procedures, would apply in the case of an FAS citizen entering the United States. Congress did this by waiving the visa requirement for FAS citizens (as long as they did not become ineligible under the third country principles of Section 141(a)(3) and Section 143).

Nevertheless, there are reports that in some cases INS has made people with children adopted in the FAS, as well as where the FAS citizen child was adopted, or was to be adopted, in the states, leave the country and re-enter with an immigrant visa for the baby. In other cases, more flexible INS agents have allowed a petition for change of status to be filed without leaving the country.

The practice of making an FAS citizen who has entered with an I-94 under the Compact, and who is a minor lawfully in the custody of adults who have adopted or intend to adopt the child, leave the country and re-enter with a visa issued under the foreign adoption provisions of the U.S. Immigration and Nationality Act seems clearly to be taking away something Congress has granted. What it amounts to, in effect, is requiring a visa screening process to determine the purpose for which the FAS citizen is entering the country.

The whole purpose of Section 141 is to allow FAS citizens to enter without having to comply with visa requirements that go to the purpose and intent of entry. Section 141 establishes an objective criteria for entry, i.e. FAS citizenship. We see no authority under Section 141 for the INS to begin classifying FAS citizens according to their subjective intent.

Section 141(b) authorizes federal and local regulations regarding habitual residence in U.S. territories, but not exclusion, and not even the type of regulation authorized for the territories in the case of FAS citizens entering the States.

In fairness to the INS, it can be argued that the Compact authorizes only non-immigrant entry, that is, people are not entering for the purpose of naturalization (i.e. immigrants). The INS would presumably argue that in the case of adoption it is using the Compact to bring in a baby that is entering for the purpose of becoming an immigrant through naturalization, and that this converts the visa waiver for non-immigrants into a visa waiver for immigrants.

However, Section 141(c) expressly states that while entry under Section 141(a) of the Compact does not create rights to naturalization, "Section 141(a) shall not prevent a citizen of the Marshall Islands or the Federated States of Micronesia from otherwise acquiring such rights or lawful permanent resident alien status in the United States."

So the question is this: Does the recognition by Congress in Section 141(c) that FAS are not prevented from becoming lawful immigrants under Section 141(a) mean that an FAS citizen who has entered under the Compact must return to the FAS and get an immigrant visa in order to "otherwise acquire" the right to be naturalized? Wouldn't a petition for change of status to permanent resident alien be more in order so that the person who thinks he or she is eligible for naturalization can apply?

Again, there are cases in which FAS citizens who marry U.S. citizens simply petition for change of status to permanent resident alien and then apply for naturalization. So then the question is whether FAS citizens who are minors in the custody of adults who have adopted or intend to adopt should be treated differently than adults who come here and then get married. The INS may argue that there is an even stronger case for acquiring a visa as an immigrant when it is the intent of the adults, whether the FAS citizen parents or the adoptive parents, at the time of entry that the child will be adopted and apply for naturalization.

The thinking would be that it is one thing for an FAS citizen already in the U.S. who becomes eligible for naturalization and petitions for a change of status from non-immigrant with an I-94 visitor's status to a permanent resident alien with the intent applying for naturalization, but quite another thing when entry is with the intent and purpose of immigration and naturalization.

The problem with this anticipated INS argument is that Section 141 does not allow the INS to treat FAS citizens differently based on their intent or the purpose of entry. If it did, then it could exclude people from the FAS who intend to get mar-

ried and seek permanent residence, or who intend to apply for permanent resident status on any other basis. That is why Section 141(c) explicitly states that Section 141 does not operate to prevent an FAS citizen from "otherwise" acquiring immigrant status and rights under other provisions of the Immigration and Nationality Act.

The clear intent of Congress is that in addition to rights under Section 141, an FAS citizen may otherwise acquire immigrant rights under other provisions of the INA. I do not think one needs to look behind the clear meaning of the statute. However, the question remains whether a person properly can be required to leave the country and get a visa for the baby and not allowed to petition for a change of status.

That would mean that entry under the Compact in effect disqualifies an FAS citizen from otherwise acquiring the right to naturalization while in the U.S. under Section 141. That seems contrary to Section 141(c), and if there is an INS regulation or policy that purports to authorize exclusion of FAS citizens based on their intent to attempt to otherwise acquire a right of naturalization, then it appears to be without statutory basis.

Attached is a document provided by the U.S. Department of State in response to a request for guidance on Section 141 in 1994. At paragraph 8 this document states, "If already in the United States, citizens of the FSM or RMI, if married to a U.S. citizen or permanent resident alien *or otherwise qualifying under conditions for any other immigrant status, may apply for adjustment of status at any INS office with jurisdiction over their place of residence."* (emphasis added)

This is consistent with the view that Section 141 does not require exclusion of FAS citizens who enter under the Compact in order for them to change to an immigrant status. The fact that an FAS citizen enters with the intention to marry or for the purpose of adoption does not extinguish the right Congress created to enter under Section 141.

Marriage or adoption of a minor child are just two of many purposes FAS citizens may have in taking advantage of the rights created by Section 141. Certainly, two FAS parents could bring their own children to the U.S. with the intention to meet with prospective adoptive parents, and could not be excluded by the INS simply because that is their subjective state of mind.

Marriage and adoption are simply inchoate possibilities that may or may not be realized, and even if likely to be realized, Section 141 does not give the INS the authority to inquire into these matters in the same manner as if FAS citizens were applying for a non-immigrant visitor's visa or an immigrant visa. As the above-cited 1994 State Department document states, "Citizens of the FSM and RMI . . . have unrestricted access to the United States to live, work, study and assume "habitual residence" with no U.S. visa requirement . . ."

Thus, an FAS citizen who hopes or intends to marry a U.S. citizen or who is being brought here lawfully for adoption has a right to enter and reside here without restriction based on the intentions of the individuals involved, and even if the adoption or marriage never takes place. If it does take place, it creates a right to petition for change of status and naturalization. This constitutes "otherwise acquired" rights as expressly contemplated by Section 141(c).

The proposed rule attempts to graft onto the Compact immigration provisions the foreign adoption procedures of the U.S. Immigration and Nationality Act. That is prohibited by Congress under Section 141(c) of the Compact, as approved under P.L. 99-239.

A final additional question raised by the proposed rule is whether upon petitioning for a change of status for immigration and naturalization the FAS citizen married to or adopted by a U.S. citizen would cease to be eligible to enjoy the Compact immigration privileges while waiting INS disposition of that petition. If the proposed rule is adopted that would be the apparent result, thereby frustrating the purpose of the Compact immigration provisions.

Passport Issue

This element of the proposed rule is consistent with current practices of the FAS. Those FAS citizens who do not have passports are generally able to obtain a travel document. The statutory requirement is FAS citizenship, and this can be established with birth certificates as well as travel documents. Nevertheless, requiring passports or travel documents does not seem unduly onerous.

However, this passport proposal is tainted by its inclusion in an otherwise fatally flawed proposed rule. Specifically, there are some grounds for concern that the combination of "exceptions" to the Compact immigration privileges and a requirement for passports was not a coincidence. For requiring a passport for entry would facili-

tate enforcement of procedures to exclude those FAS citizens who fall within the overly broad and legally flawed "exceptions" in the proposed order.

Assuming the proposed order is withdrawn or modified to comply with applicable law, the passport proposal would appear less menacing.

EMBASSY OF THE REPUBLIC OF THE MARSHALL ISLANDS,
Washington, DC, September 4, 2001.

Mr. LOREN YAGER,
Director, International Affairs & Trade, U.S. General Accounting Office, Washington, DC.

DEAR MR. YAGER: Thank you for your letter to President Note of August 10, 2001, inviting the RMI to review and comment on the draft GAO report regarding implementation of the immigration provisions of the Compact of Free Association. Attached are the RMI's comments on the draft report, as well as recommendations for revisions which my government believes would enhance the value of the report for Congress and all those in the U.S. and RMI who will have the benefit of the information it provides.

While the RMI's views on the draft report are set forth in the attachment, please allow me to add that in my view the GAO has done an important service for both the U.S. and the RMI by gathering and presenting the information contained in the draft report. While the RMI does not concur with every statement or recommendation in the report, the conscientious professional effort clearly made in preparing this document reflects admirably on the GAO.

If open and accurate information is essential to the success of democracy, this report is an example of how facts can be gathered and shared to give political leaders and the public the knowledge needed for informed self-government. What we do with this information and additional facts that should also be considered remains to be seen, but the presentation of important factual information in this draft report is certainly consistent with GAO principles of accountability, integrity and reliability.

Sincerely,

BANNY DE BRUM,
Ambassador.

RMI COMMENTS ON DRAFT GAO REPORT REGARDING MIGRATION UNDER COMPACT OF FREE ASSOCIATION

General Comments

The national government of the Republic of the Marshall Islands welcomes the focused attention that the United States General Accounting Office has brought to bear on the effects in the RMI and the U.S. of the immigration provisions of Title One, Article IV of the Compact of Free Association. The overall effect of the draft GAO report is to remind us that the Compact does not embody a simple exchange of U.S. military rights for economic assistance. Rather, free association between the RMI and the U.S. involves complex elements of the historical, strategic, social, political, moral and economic relationships that exist between our nations and our peoples.

Thus, the GAO draft report's examination of the issue of migration illuminates as well a larger truth. It is that in order to sustain the success of free association as a political status model Compact implementation policies must both recognize the separate national interests of the U.S. and the RMI, and at the same time respect, preserve and promote the complex and carefully woven fabric of mutual interests embodied in the Compact.

The GAO's draft report addresses some of the legal, fiscal and administrative issues of concern to the national and local governments in both our nations arising from implementation of the immigration provisions of the Compact. The issues identified by the GAO are among those that most immediately and directly affect individual citizens of both nations as they rightfully and properly engage in activities that are authorized by the Compact and beneficial to both nations. Like our governments themselves, the Compact exists to serve the people of our nations and ensure their ability to exercise their rights and privileges under applicable laws and treaties. For the private enterprises and civic endeavors of individual citizens are at the heart of the political, economic and social association created under the Compact.

The political, economic and social activities in which our peoples engage under the Compact include:

- Increasing levels of commerce between RMI businesses and businesses in the U.S. territories and states;
- Enjoyment of special travel, residence and employment rights for RMI citizens in the U.S. under the Compact;
- Business, governmental, social and educational activities of U.S. citizens who come to live and be employed in the RMI;
- Cross-cultural relationships form in the U.S. and in the RMI in connection with RMI-U.S. marriages, adoptions, business partnerships and inter-family visitation;
- Service by RMI citizens in the U.S. military;
- Presence of U.S. military, Defense Department and other federal personnel in the RMI;
- Frequent travel and prolonged residence in the U.S. by increasing numbers of RMI citizens, including nuclear test survivors and their caregivers, for medical care not available in the RMI;
- Religious worship and faith-based social activism of U.S. citizens in the RMI and RMI citizens in the U.S.;
- Dual RMI-U.S. citizenship resulting from marriage, birth of children of RMI citizens in the United States and vice versa, RMI citizen service in the U.S. armed forces;
- Joint RMI and U.S. military, diplomatic and other governmental activities in the region and globally;
- Bonds formed due to presence of U.S. teachers in RMI schools and experience of RMI students and teachers in the U.S.;
- Formation of RMI and U.S. corporations and capital base for RMI-U.S. enterprises.

The political, economic and social activities and relationships described above are sufficiently complex when conducted between U.S. citizens in the U.S., or RMI citizens in the RMI, under our respective legal and political systems. As headlines remind us every day, some of the same as well as much greater migration related problems than those reviewed by the GAO report arise from the conduct of the same complex relationships involving citizen and corporate nationals of third countries outside the special framework of free association.

At least where third countries are involved the ground rules for operation of the legal and political process governing more conventional international immigration policies are well defined and well established. In contrast, the mutually agreed special relationship of free association, including the immigration policy it established, perhaps inevitably has given rise to some of the unique issues identified in the GAO draft report. The report makes a good case that the RMI and the U.S. should work out additional measures to deal with some of the anomalies and burdens arising from the overall success of free association.

Mutually agreed upon measures by both the RMI and U.S. to address the issues identified in the GAO draft report may well be appropriate in order for free association to continue to evolve as a political status model, as the RMI and U.S. intended under the terms of the Compact. Effective response to the GAO report will help prevent the success of the Compact as a unique combination of foreign and domestic policy measures based on the free association model from being impeded. The draft GAO report is a call to action by both governments affirmatively to adopt measures to improve upon the association so that it will grow stronger and become even more beneficial than it already has proven to be, and better serve the national interests of both the RMI and the United States.

Compact as Historical and Political Framework for Understanding Immigration Issues

If the RMI has a thematic criticism of the GAO draft report, it would be that the document tends to focus on the admittedly difficult but manageable problems facing the RMI and U.S. as partners in the strategic alliance and its inter-societal mechanisms, without adequately placing those issues into the larger context of the mutually beneficial, and by the most important criteria extremely successful, features of free association. However, the thoroughness and professionalism of the draft report invite a constructive rather than simply critical response by the RMI in this regard, and the RMI views the draft report as so important, revealing and useful to policymakers in both the RMI and U.S. governments that it must be taken very seriously and even improved so that its value is enhanced. In short, commenting on and recommending revisions to the report appears worthwhile because the report merits a serious response.

That having been said, and without belaboring the point, the RMI is compelled to state for the record that applying U.S. standards for classifying people as, for ex-

ample, "impoverished" or "uneducated" requires further explanation and qualification. Without taking offense where we believe none was intended, these terms may be hurtful and evoke painful feelings and memories among our people. However, the GAO report itself is a testimonial of sorts to the fact that the Compact is the instrumentality through which the people of the U.S.—the most powerful, prosperous and enlightened nation in the history of civilization—is redeeming its own national values, honor and obligations with regard to an ally nation which only recently in historical terms was a hunting and gathering society. As a result of U.S. exercise of plenary powers over the RMI for thirty years under the trusteeship, and the resulting close relationship continued under the Compact for the last fifteen years, the U.S. and the RMI now have a shared social, political, legal and economic legacy going back into the first half of the last century.

Against this backdrop, the GAO report must be understood, like the Compact itself, in the context of the historical facts in order to have legitimacy. Those facts include that the people of the Marshall Islands were well adapted to their environment and had a self-sustaining and culturally rich traditional way of life before the U.S. used its international political, diplomatic, economic and military power to assert and persuade the international community formally and legally to endorse U.S. assumption of control over—and responsibility for—nothing less than the very destiny of our people. While the people of the RMI were and remain largely unprepared to cope with the full burdens of the alliance that was formed by and with the U.S., true to the principles and precepts of the American system of government and law the U.S. also promoted self-determination. Thus, by agreement between our democratically instituted governments we adopted free association as a political status model that allows the people of the RMI to gradually assume greater and more effective control over our destiny, sustained by an alliance with the U.S. from which both nations benefit. There is dignity in free association because in return U.S. global leadership in preserving international peace is sustained in a small but special and important way by its alliance with the RMI.

This political status model was freely chosen by our people over the U.S. offer of full independence and autonomy, as well as the offer of territorial annexation and political union, for the very reason that in offering terms for free association the U.S. promised that it would not walk away from its commitments and obligations after decades of imposing a political, social and economic order that served U.S. interests. The U.S. proposed the terms of free association that form the core of the Compact, and this was the beginning of a process for defining mutually agreed special relations under the Compact as approved by our nations in 1986.

The immigration provisions of the Compact that are the subject of the GAO report were critical to the viability of the free association political status model as proposed by the U.S. and negotiated by our governments. Without the immigration terms developed in the Compact negotiations the RMI may not have been able to accept the free association model.

The alternative might have been full independence, but perhaps only after many more years of trusteeship, possibly long after the U.S. asked the RMI to support early resolution of the status issue and termination of the trusteeship. In addition, independence probably would have come many years after the U.S. asked the RMI to support its desire to secure long-term rights to use Kwajalein missile range, and then only after political and legal processes to address the nuclear test claims had run their course in the U.S. and RMI courts without the benefit of the Compact's claims settlement provisions.

Or, without the immigration provisions and other features of free association that assured future close relations between our peoples, the RMI might have opted to accept the offer of commonwealth status in political union under the U.S. federal constitution. This would have required health care, education and federal programs to be brought up to the same standards as the U.S. territories and added the RMI to the domestic U.S. political system as an unincorporated territory.

The options of independence and commonwealth status were offered by the U.S., and were part of the self-determination education process prior to the U.N. observed status plebiscite in the RMI. This is history that the GAO report does not mention, but which needs to be recalled in order to understand the issues raised by the draft report.

Instead of simple independence or commonwealth status, the RMI accepted the U.S. offer of free association, including the immigration provisions that are the focus of the GAO report. Here is not the place to resolve this question, but in commenting on the draft report the RMI would note that to date U.S. has been unwilling to address, in the current Compact negotiations on expiring economic provisions, issues of concern to the RMI such as the need for additional measures to address the nuclear test claims as contemplated by the Section 177 nuclear claims settlement. At

the same time, the U.S. unilaterally has made the non-expiring and technically non-economic immigration provisions an item on the agenda of those negotiations.

This selective tolerance for adding some items arising under non-expiring Compact provisions to the negotiating agenda, while declining to add other matters outside the immediate scope of expiring economic provisions at the request of the RMI, not only defies logic and simple fairness, it ignores one of the central realities of which the GAO report reminds us. That reality is that all the political, social and economic elements of the Compact are too closely inter-related to be understood and addressed separately or in isolation from one another.

The GAO report makes a compelling case that the immigration provisions of the Compact are too closely related to the economic relationship to be viewed in a vacuum of legal and procedural law and policy. Reform of INS policy for implementing Section 141 of the Compact alone is not the problem or the solution. The results of the immigration provisions of the Compact in the RMI and the U.S. are closely related to how successful our governments are in working together to deliver appropriate health care in the RMI within available resources, achieve sufficient economic stability to enable family providers to stay home rather than going to Honolulu, sustain progress in the RMI schools that began during the trusteeship and must continue under the Compact, and respond to the changing circumstances of the nuclear test survivors.

The connections between strategic, political, economic and social aspects of the relationship between the U.S. and the RMI is the basis for the Compact and its related agreements implementing the negotiated relationship, including the strategic relations agreement referred to in Section 462(k) of the Compact, Article V of which includes the following provision:

> The Government of the United States and the Government of the Marshall Islands recognize that sustained economic advancement is a necessary contributing element to the mutual security goals expressed in this agreement.

Managing Immigration Issues

Contrary to what the GAO report implies, the RMI government does not as a matter of official policy view migration to the U.S. as a solution to the economic and social challenges facing our nation and our people. The immigration provisions of the Compact were accepted by the U.S. and RMI in the status negotiations because of the recognition that the U.S. had for decades implemented a policy of encouraging and even requiring RMI citizens to come to the U.S. for education and health care. In the case of health care, this was due to the fact that the U.S. acknowledged that its nuclear testing program had contributed to and caused the most serious and widespread health problems of the people in the RMI.

While travel to the U.S. for education and employment is a positive experience that the RMI encourages, the RMI government hopes that its citizens will not just send money home, but will come home with new skills, new ideas, new ambitions and new enterprises to help build our nation. The notion of viewing migration of our population to the U.S. as a means of dealing with economic challenges in our homeland is nothing new to anyone familiar with these issues. Indeed, policies encouraging migration of islanders to the U.S. were more pronounced during the trusteeship than they are today. Any discussion of these matters in the policy development process aside, the RMI has not adopted a social engineering theory based on the export of population for purposes of alleviating economic problems at home. Our people are the RMI's most valuable resource, not just as wage earners, but as family and community members.

Similarly, instead of sending people to Honolulu for medical care, the RMI government also would like to improve health care so the significant travel of patients and family in connection with costly referrals to Honolulu can be reduced. If the RMI could, for example, afford to maintain permanent, high quality and widely available kidney dialysis in Majuro, the exodus of RMI citizens associated with that disease alone could be significantly reduced.

Similarly, the desire and motivation of the RMI to identify, treat and eradicate leprosy among our people is far greater in Majuro than in Honolulu. This is an example of an issue on which the RMI would be quite willing to work with the U.S. to adopt new procedures to address the concerns raised in the GAO report.

The GAO report also reminds us that it was a U.S. government policy during the status negotiations that RMI citizens could become U.S. citizens if they chose territorial commonwealth status instead of free association, but the U.S. supported free association as proposed in the Compact because it would enable the RMI to have its own nationality, sovereignty and citizenship, while still enjoying special immigration rights not available to any other nations. This special immigration policy was

viewed as part of the unique alliance that gave the U.S. the same military operating rights in the RMI as it has in the territories and states, and so it was the U.S. position that it was fitting to offer freedom of cross-border travel, residence and employment rights effectively more similar to the treatment given to U.S. citizens in territories and the states than to foreign countries.

In offering open immigration, the U.S. was quite aware that it would make less difficult the decision to reject territorial status and chose separate sovereignty, nationality and citizenship. The RMI believes the national government and the people of the RMI made the right choice. However, we cannot pretend that the U.S. did not intend and benefit from the awareness by the RMI and its citizens that open immigration would mean access to the U.S. would not be cut off in the future under the Compact.

In this context, the GAO report properly and quite powerfully poses the question: By what standard will the federal, state and territorial government now treat the RMI citizens to whom the U.S. offered—and by approval of the Compact provided—open immigration? The Compact negotiators did their best, but could not have contemplated precisely the problems that have arisen from the implementation of the immigration provisions of the Compact. Now we have a successful political status association, and it demands that we adapt and address the implementation challenges.

In a sense, the migration problems identified by the GAO draft report mean we are facing the consequences of our success under the Compact. So it is important that the GAO report not become the occasion for another round of confusion and selective memory about how these problems came about. Instead, the RMI hopes the GAO report will remind all concerned of the special relationship that Congress created in its exercise of its powers over the trust territory, leading to treatment of the RMI under the Compact as a unique ally with some of the features of a domestic territory, but with full sovereignty, nationality and citizenship in its own name and right.

In its discussion of the status of RMI residents in the U.S. under federal and state social programs, the GAO report raises important questions about how the Compact's immigration provisions can and should be implemented in the future. For RMI citizens must not be included in American society for some purposes, only to be excluded from the norms of civilized and humane treatment of all persons legally enjoying long term or "habitual" residence and employment rights in the U.S.

The RMI is very concerned and interested in helping to address the problems that the local governments in the states and territories are experiencing. The RMI does not want its citizens to be perceived only as a dependent population, when in fact they are contributing to both capital and labor resources making possible economic growth in the U.S. territories and the mainland. The commerce between the RMI and both Hawaii and Guam is significant, and RMI citizens are participating in the economy at the middle and high end of the economy, as well as at the entry level.

The more fundamental question is whether RMI citizens, as non-immigrant aliens lawfully in the U.S. for indefinite periods of time, are to be treated the same as immigrant aliens for purposes of federal, state and local programs. In a sense, the Compact immigration provisions arguably create within the U.S. immigration system a sub-category of aliens somewhere in between immigrant aliens with permanent resident status and non-immigrant aliens with a visa. However, because migrants under the Compact do not have to meet visa criteria does not mean they can or should be treated as if they were legal aliens with only temporary residence rights, much less as illegal aliens.

Rather, RMI citizens should be allowed to enjoy the immigration rights agreed to by the U.S. under conditions and policies the recognize them as citizens of an ally nation who have a special right to be in the U.S. and enjoy a status most closely analogous to that of permanent resident aliens.

At the same time, the RMI recognizes that the absence of visa screening of RMI citizens who remain non-immigrant aliens represents a unique challenge for the INS and federal, state and local authorities. Thus, the RMI is prepared to review the issues raised by the GAO report further and cooperate with the U.S. is determining how these matters can be addressed in a mutually agreed manner consistent with the Compact for Free Association.

The RMI's specific comments on the contents of the draft report are attached.

RMI Proposals for Revision of GAO Draft Report

The following suggestions are of a technical nature and do not address policy matters presented in the GAO draft report. Rather, these are editorial revisions that the RMI views as necessary to produce a more accurate and informative final report.

RMI policy relating to how the recommendations of the GAO report should be addressed in the Compact negotiations or otherwise will be determined by the RMI in due course.

1. Title page, delete "Foreign Assistance" heading and sub-heading that follows, and in lieu thereof insert "Free Association: Legal Migration Under Compact with Micronesian Nations Has Had Significant Impact on U.S. Island Areas".

Explanation: The Compact and assistance to the RMI under it is not part of the U.S. foreign assistance program or foreign assistance budget. Compact funding is not authorized or appropriated under the Foreign Assistance Act of 1961, as amended, nor as part of the State Department budget account. Compact assistance is appropriated under the Department of the Interior budget account and is implemented under federal statutes and executive policy instruments which recognize the historical role of DOI, as well as the role of the State Department and Congress in managing the free association relationship. This results from the fact that free association is a separate field of federal policy distinct from foreign assistance for non-associated nations, as well as domestic territorial affairs. In addition, the specific issue of Micronesian and Marshallese migration should not be confused. with general subject of cross border migration between non-associated nations that often involves illegal migration. Normally the RMI prefers not to be referred in a political context by the geographic term "Micronesia", but rather than unduly complicate this matter the RMI would accept and support as more accurate the heading suggested above.

2. Page 1, first line, sentence of letter to Members, after "United States" delete "has international agreements, referred to as Compacts of Free Association, that grant" and in lieu thereof insert "is party to international agreements, in the form of Compacts of Free Association, that include provisions under which". Explanation: The compacts are not merely "referred to" as compacts, but rather "Compact of Free Association" is the name and term of art under these particular international agreements agreed to and promulgated on behalf of the United States by the President and Congress.

3. Page 1, footnote, first sentence, between "and" and "defense" insert "certain of the Compact". Explanation: Not all defense obligations expire, including Kwajalein missile defense systems base rights and strategic denial powers of U.S. over third country military access to waters, airspace or territory of the RMI.

4. Page 1, footnote, second sentence, after "provisions" delete all after "can" and in lieu thereof insert "continue from the 2001 expiration date to 2003 as provided in the Compact while negotiations are underway but not completed". Explanation: This would be a more accurate characterization of Section 231 of the Compact.

5. Page 3, last sentence, before "Government" insert, "In an anecdotal context rather than as a statement of official policy,", and after comma change "g" in word "Government" to smaller case. Explanation: The RMI acknowledges that GAO may have been told this as an informal view, but it is not official policy of RMI.

6. Page 3, last sentence, after ""limited" insert "education, health care and". Explanation: The RMI believes the GAO and those who gathered the statistical and polling data relied upon in the report underestimate the extent to which travel, particularly to Honolulu, is motivated by health care needs, including for nuclear test survivors. As a result of nuclear testing legacy RMI citizens tend to be very health conscious and concerned about diagnosis and treatment of disease. Many of those who come and go to school or work in Honolulu and elsewhere originally come for health reasons, but often patients and family members stay and work to be near care services and to avoid costly travel back and forth between Honolulu and Majuro for on-going treatment for themselves or relatives.

7. Page 6, delete paragraph from beginning at the top of page and end deletion before the sentence beginning "The Department of the Interior's Office of Insular affairs (OIA) . . .", and in lieu of deleted material insert:

> In accordance with provisions of Chapter XII of the Charter of the United Nations regarding the international trusteeship system for administration of non-self-governing areas, in 1947 the United States and the Security Council entered into a Trusteeship Agreement under which the U.S. governed the Trust Territory of the Pacific Islands (TTPI) until the Compact of Free Association entered into force in 1986. The TTPI comprised the islands which under the Compact are within the national borders of the FSM, RMI, Palau, as well as the islands under U.S. sovereignty in the Commonwealth of the Northern Mariana Islands, which became an unincorporated U.S. territory under a political status agreement approved in 1976 and fully implemented with the Compact for the RMI and FSM in 1986. [footnote 7]. The TTPI was the only U.N. trusteeship recognized as "strategic" and placed under Security Council rather than General Assembly oversight pursuant to Article 83 of the U.N. Charter. This reflected,

among other things, that in 1946 the U.S. had begun, and at the time the trusteeship was established was continuing, a program of atmospheric nuclear testing in the Marshall Islands. As Administering Authority under the trusteeship, the U.S. exercised all executive, legislative and judicial powers of government, including plenary powers with respect to military operations and use of the islands, as well as financial and administrative responsibility for the social, political and economic advancement of the inhabitants. In accordance with self-determination procedures prescribed by the Secretary of the Interior, limited civilian government authorities devolved upon the Federated States of Micronesia upon adoption of its local constitution, following its ratification by the voters of Pohnpei, Chuuck, Yap and Kosrae in a 1978 referendum. The Marshall Islands established its constitutional government and declared itself a republic in 1979, but both the FSM and the RMI remained subject to the authority of the Secretary of the Interior under the U.N. trusteeship until the Compact of Free Association entered into force in 1986 and the U.S. recognized both as sovereign nations with the political status of free association with the United States. In addition to the political and strategic provisions of the Compact that define the political status of free association and relations between the parties until it is terminated or amended in accordance with its terms, under financial terms of the Compact that expire after the first fifteen years the U.S. has been providing substantial direct economic assistance to the free associated states. These economic assistance provisions and some of the defense authority of the U.S. are subject to renegotiations as already noted.

Explanation: The U.N. did not unilaterally create the TTPI. The islands concerned were simply categorized as the "formerly Japanese mandated islands" under U.S. occupation until the terms for trusteeship proposed by the U.S. were accepted and included in the trusteeship agreement which prescribed the terms for both creation of the TTPI and designation of the U.S. as the Administering Authority. Similarly, the FSM did not vote to become independent in 1978, nor did the RMI vote to be a Republic per se in 1979. Those U.N. observed votes were to establish constitutional government competent to represent the peoples concerned in political status negotiation with the U.S. that produced the Compact of Free Association in 1986. The description of this history suggested above is far more accurate and informative for Congress than the version prepared by GAO. The RMI would not expect the GAO staff to be entirely familiar with details of the events set forth above, but given the extremely high quality of the other material presented in the draft report, the RMI has made this effort to offer what we view as an objective and neutral version of those events.

REPUBLIC OF THE MARSHALL ISLANDS,
November 14, 2001.

Senator JEFF BINGAMAN,
Chairman, Senate Energy and Natural Resources Committee, Senate Dirksen Office Building, Washington, DC.

DEAR CHAIRMAN BINGAMAN: I have the honor of submitting to you a copy of the Changed Circumstances Petition of the Government of the Republic of the Marshall Islands (RMI) to the Congress of the United States. This petition was submitted to the U.S. Congress in September 2000. The purpose of the petition is to request expansion of measures and remedies provided under the nuclear claims settlement approved by Congress under the Compact of Free Association Act of 1985 (P.L. 99-239, 99 Stat. 1778). This petition was authorized by Congress under Section 177 of the Compact of Free Association between our governments, and addresses the inadequacy of measures, and the need for funding of adjudicated damage and injury awards, related to the effects of radiological contamination in the Marshall Islands resulting from the U.S. nuclear weapons testing program conducted from 1946-1958.

During that 12-year period, 67 atmospheric nuclear tests were conducted on island and lagoon surfaces in the Marshall Islands, as part of the U.S. Cold War era atomic and thermonuclear weapons proving program. The federal government conducted those tests, as well as all radiological monitoring and remediation measures for four decades after the test began, while the Marshall Islands was part of a U.S. administered territory. Today, the RMI must continue to rely on U.S. funding, and on the Department of Energy technical and scientific capabilities to monitor and address the radiological effects of the testing program.

Consequently, under Section 177 of the Compact of Free Association ending the trust territory status of the RMI, Congress enacted a nuclear claims settlement as U.S. law (P.L. 99-239, 99 Stat. 1778). Article IX of the nuclear claims settlement provides that the RMI Government has a statutory right to petition Congress di-

rectly for additional measures and remedies within the framework of the Section 177 nuclear claims settlement based on the following criteria:

1. New and additional information about the radiological effects of U.S. nuclear weapons testing program on the lands and people of the Marshall Islands is discovered;

2. That this information was not known, or otherwise available, when the nuclear claims settlement was being negotiated and later when it was ratified by the Marshall Islands and the United States as provided for in U.S. Public Law 99-239; and

3. That this new information renders the provisions of the 177 Agreement manifestly inadequate to address the full scope of damages and injuries resulting from the testing program, including payment of awards by the Nuclear Claims Tribunal created as the alternative forum of adjudication of additional claims.

This Changed Circumstances Petition, in my mind, satisfies the three requirements listed above. New and additional information about the consequences of the testing program is abundant and compelling. In 1993, the Executive Branch of the U.S. Government began declassifying thousands of documents pertaining to the testing program in the Marshall Islands. These documents demonstrate that the atolls received more radiation than previously understood. Furthermore, atolls received cumulative exposure to radiation produced by multiple tests rather than a single shot, the Bravo test of March 1, 1954. This alone was a significant changed circumstance due to the extremely limited exposure data made available by the Department of Energy at the time the settlement was approved by Congress and in a U.N. observed plebiscite in the Marshall Islands.

Additionally, radiological science and medicine have progressed significantly. As a result of new scientific and medical understandings, we now know that lower doses of radiation are more dangerous to human beings than was previously understood in the 1982-1985 period when the settlement was approved. Recognizing that these changed circumstances might occur, Congress expressly and explicitly authorized this petition process.

Our requests for assistance in the Changed Circumstances Petition focus on the medical needs of the communities most acutely affected by radiation exposure and the inability of the Nuclear Claims Tribunal to pay for awards that have already been adjudicated. In order to address these matters, the RMI Government is requesting that the Congress exercise its oversight responsibilities; conduct hearings in the committees of jurisdiction, and respond to this petition in accordance with the provisions of P.L. 99-239.

In addition, the RMI Government is also prepared to engage in a detailed review of this petition in the context of current negotiations between the U.S. and the RMI taking place under Section 231 of the Compact of Free Association as approved by Congress under P.L. 99-239, particularly for requests number 3, 4, and 5 in the petition. If the Executive Branch is willing to include requests 3, 4, and 5 as part of our bilateral negotiations to extend certain provisions of the Compact of Free Association, then the RMI Government's current request for changed circumstances is limited to the need to provide the Nuclear Claims Tribunal with the resources to make its awards.

The RMI has proposed to the Bush Administration that the Executive Branch evaluate and develop a position and recommendations for Congress regarding disposition of this petition as part of the negotiations under the Compact. This entire matter arises pursuant to the Compact as a treaty approved by both Houses of Congress in the form of a joint resolution signed by the President. Therefore, Executive Branch review is constitutionally appropriate and would no doubt assist Congress in exercising its oversight responsibilities under the nuclear claims settlement enacted into federal law under P.L. 99-239.

Congress provided funding for the Nuclear Claims Tribunal to make personal injury and property damage awards. The funding is insufficient to pay awards that have been made on adjudicated claims. The Nuclear Claims Tribunal has developed a plan to address current personal injury awards, but it does not have adequate funding to pay for its property awards. To date, the communities of Enewetak and Bikini have adjudicated property claims with the Nuclear Claims Tribunal, but there is no means to make payments on these awards due to the inadequacy of funds in the Nuclear Claims Trust Fund established by Congress. A property award for Rongelap is expected in the next few months, and the Utrik property claim will be adjudicated in the near future.

Since the petition was originally submitted to Congress in September 2000, there have been two significant developments in relation to the petition. First, the Nuclear Claims Tribunal has taken steps to complete payments for personal injury awards within the next twelve months using the corpus of the Nuclear Claim's Fund. Consequently, the first request in the Changed Circumstances Petition, a re-

quest for funds to address the personal injury awards made by the Nuclear Claims Tribunal is no longer required. While the RMI Government is pleased that existing personal injury awardees will receive the full amounts of their claims, the decision to use the corpus of the Nuclear Claim's Fund means that the Tribunal does not have the means to address future awards (including cancers that have a latency period of several decades). In place of the first request in the petition, the RMI Government hopes that the U.S. Congress will restore the corpus of the Nuclear Claim's Fund and provide the Tribunal with the means to address future awards. Second, the Nuclear Claims Tribunal made a property damage award in March 2001 to the Bikini community for the amount of $563.3 million dollars. As the judgment was not complete when the RMI Government first submitted the changed circumstances petition to Congress last year a summary of the Bikini award is herewith attached.

As strategic partners and allies of the United States, the RMI is pleased to host the Ronald Reagan Ballistic Missile Testing facility on Kwajalein Atoll and to have our Marshallese citizens serve in every branch of the U.S. armed forces. As a result of our relationship, the people of the Marshall Islands believe they played a critical and indispensable role in the success of the policy of nuclear deterrence that preserved international peace during the Cold War. From World War II until the present we have stood by the United States and demonstrated our willingness to support U.S. strategic interests, both when the Marshall Islands was a U.S. administered trust territory, and since the RMI became a free associated state pursuant to the Compact with the United States.

By the same token, we look to the United States to adequately address the damages and injuries that have incurred as a result of our strategic partnership. The RMI Government seeks equity with comparable nuclear sites in the U.S. mainland both in terms of cleanup and response to the medical needs of communities.

The RMI Government looks forward to working with Congress to determine the disposition of this petition. The RMI Government also looks forward to an Executive Branch evaluation of the proposal. If you have any questions about this matter, the Ambassador and staff of the RMI Embassy in Washington, D.C. would be pleased to meet with you or your staff to provide further information.

With Best Regards,

KESSAI H. NOTE,
President.

PETITION PRESENTED TO THE CONGRESS OF THE UNITED STATES OF AMERICA REGARDING CHANGED CIRCUMSTANCES ARISING FROM U.S. NUCLEAR TESTING IN THE MARSHALL ISLANDS

EXECUTIVE SUMMARY

Overview

In 1985, the United States Congress appropriated $150 million to address known consequences of the U.S. Nuclear Weapons Testing Program in the Republic of the Marshall Islands (RMI) and to establish a bilateral political process for continuing to address the legacy of the nuclear tests, including any future claims based on new information or damages. The $150 million appropriation was politically determined and was not intended to represent a comprehensive assessment of damages, a legally adjudicated settlement, or a monetary damages award.

Since 1985, it has become clear that the cumulative levels of radiation to which the RMI was exposed caused substantially greater injury to people and to property (land, reefs, etc.) than was previously known or made public. The Nuclear Claims Tribunal, which was created to settle claims as an alternative to judicial means, has been awarding claims for personal injury and property damages, including $72.6 million in personal injury claims, over $386 million to the inhabitants of the Enewetak Atoll, and over $563 million to the people of Bikini to compensate for the loss of their land, restoration of the atolls, and hardship endured during 33 years of forced resettlement. All of the Tribunal's funding has been used to pay for personal injury awards. The Tribunal does not have the funding necessary to either make awards for already adjudicated property claims, nor the funding for expected future personal or property claims—including pending land claims from Rongelap and Utrik.

In addition, the health care system envisioned as part of the compensation for the affected communities has proven inadequate to handle the growing health care needs of those impacted by the nuclear testing program. In fact, those most adversely affected by radiation exposure only receive health care for pennies on the dollar of what would be given in the United States. Citizens of the Marshall Islands who were exposed to radiation deserve nothing less than the level of care provided to U.S. citizens—but instead are receiving a great deal less.

Cognizant that circumstances such as these might arise, Congress authorized a process under which the RMI could petition Congress for additional money to cover the full cost of damages and injuries if new information renders the initial $150 million payment as manifestly inadequate. Pursuant to this, in September, 2000, the RMI submitted this *Petition To The Congress Regarding Changed Circumstances Arising from U.S. Nuclear Testing in the Marshall Islands* ("Changed Circumstances Petition"). President Kessai Note resubmitted this petition to Congress in November 2001. The November 2001 submission includes a summary of the Bikini land claim, and signals the RMI Government's willingness to discuss inadequacies in the health care system for radiation survivors as part of the ongoing Compact negotiations.

Background

The Law

In U.S. Public Law 99-239, which enacted as federal law the Compact of Free Association and the nuclear claims settlement ("Section 177 Agreement"), Congress provided that the purpose of the Agreement is to "create and maintain, in perpetuity, a means to address past, present, and future consequences of the nuclear testing program."

Thus, the U.S. recognized at the time of Compact approval that the full extent of injuries to persons and damage to property was not yet known, or not public due to national security classification, and that the initial damage assessments were limited to a "best effort" at the time of the Compact. Accordingly, Congress authorized a petition for continuation of measures and remedies within the framework of the Section 177 Agreement where there exists new and additional information about the radiological effects of U.S. nuclear weapons testing programs on the lands and people of the RMI, not known when the nuclear claims settlement was negotiated and ratified by both parties, and where this new information renders the provisions of the Section 177 Agreement manifestly inadequate to address the full scope of damages resulting from the testing program, including payment of awards by the Nuclear Claims Tribunal.

Summary of the Petition

The petition covers four broad areas, as summarized below.

1. New and Additional Information Not Available at the Time of Negotiation and Agreement: In 1993, the U.S. Government declassified thousands of documents pertaining to the testing program that demonstrated that the atolls of the RMI received far more radiation from multiple tests than previously thought. Also, scientific and medical advancements have shown that much lower doses of radiation are more harmful than the levels thought to be dangerous at the time of the Compact.

2. Personal Injury Awards: The Nuclear Claims Tribunal has awarded over $72.6 million for personal injuries to more than 1,600 individuals, all of whom had medical conditions directly linked to the nuclear testing program. More than 600 awardees have died without receiving full compensation. Because of the severity of the claims, and the sheer number of individuals harmed, the Tribunal has awarded over $26.9 million more than the total available for payment during the Compact period. The Changed Circumstances Petition asks Congress to authorize and appropriate funds so that the Tribunal can make full payments to those still living and to the estates of those already deceased.

3. Property Damage Awards: Two communities, Enewetak and Bikini, have adjudicated claims with the Tribunal and have been awarded money to compensate them for damages. Due to a shortfall in the Nuclear Claims Trust Fund, the Tribunal is unable to disperse the awards. The Changed Circumstances Petition asks Congress to authorize and appropriate funds to settle the two adjudicated claims, as well as to settle forthcoming claims based on the criteria used in the Tribunal's first two decisions.

4. Medical Care: The Compact envisioned that the people of the RMI would be compensated through a health care program for the impacted populations and the awardees of personal injury claims from the Tribunal. But the current program has proven manifestly inadequate. The program was expected to deliver care through the RMI health infrastructure, which was not prepared or equipped to deliver the necessary level of care. The funding provided also has proven grossly inadequate, with only $2 million appropriated annually and an average per patient expenditure of only $14 per month. (This compares with an average U.S. expenditure of $230 per person per month for similar services.)

To adequately address the real medical costs associated with the nuclear testing program, the Changed Circumstances Petition asks Congress to: (1) authorize and appropriate money to cover the initial capital costs to build and supply a medical infrastructure that could provide adequate primary and secondary care to the af-

fected populations; (2) authorize and appropriate $45 million annually for the next 50 years to provide a health care program for the affected communities and awardees of personal injury claims; and (3) extend the U.S. Department of Energy medical monitoring program for exposed populations to any groups that can demonstrate high levels of radiation exposure.

BIKINI DECISION SUMMARY

This claim is a class action for and on behalf of the People of Bikini for damage to property resulting from the U.S. Nuclear Testing Program brought pursuant to § 123 of the Nuclear Claims Tribunal Act of 1987, as amended.

Bikini Atoll is located in the northwestern Marshall Islands and was used by the Government of the United States as a testing site for nuclear weapons from 1946 to 1958. The People of Bikini were removed from Bikini Atoll on March 7, 1946. Subsequently, 23 atomic and hydrogen bombs were detonated there over the course of the next 12 years changing the atoll's topography and leaving it in a highly contaminated condition from residual radioactivity.

Damages arising from the results of those tests have been awarded to the people of Bikini in three general categories: loss of use; costs to restore; and consequential damages for hardship suffered by the Bikinians resulting from their removal.

The Bikinians have not had use of their atoll since March 7, 1946, and this loss of use will continue on into the future until the necessary remediation takes place to restore full use and habitability. Despite this long period of time, it was never the intention of the United States or any governmental authority to permanently preclude the Bikinians from returning to their home atoll. Rather, the use of Bikini as a nuclear testing site has always been considered "temporary" by all parties. Accordingly, the Tribunal finds that these facts support a "temporary taking" under applicable case law. Expert appraisal witnesses provided reports and gave testimony on the fair market rental value of the land for the period of denied use. After setting off prior compensation paid to the people of Bikini, the Tribunal has determined that the value for loss of use both past and into the future is $278,000,000.

Radiological conditions at Bikini today remain in excess of radiation protection standards established by the U.S. Environmental Protection Authority applied to severely contaminated sites in the United States. Thus, radiological clean up remains necessary so that Bikini can support human habitation again with access to and use of the atoll's resources. The Tribunal received detailed written reports and heard expert testimony with respect to various remediation strategies to accomplish the required clean up. Over 20 different strategies were considered ranging in cost from $217.7 million to $1.419.6 billion. From this list, four strategies were identified which would best accomplish the required clean up in a cost effective manner. These four remediation strategies were evaluated utilizing U.S. EPA clean-up criteria and further assessed and balanced in view of Tribunal concerns, which resulted in the final selection of a remediation strategy consisting of potassium treatment and soil removal with the waste utilized for construction of a causeway. After deducting prior compensation received by the people of Bikini, the Tribunal has determined that the net award for restoration costs is $251,500,000.

The people of Bikini have also suffered many hardships through their years in exile from Bikini Atoll. These hardships, consisting of severe food shortages and hunger, disease, loss of culture and other types of pain and discomfort, were more severe at certain times than at other times. The period of relocation to Rongerik Atoll from 1946 to 1947 was the most severe with the Bikini community suffering from starvation. The period of habitation in Kili up to 1982 also presented severe hardships to the people of Bikini with frequent food shortages and no available lagoon resources. Consequently, the Tribunal has devised a scheme of compensation based on the level of hardship during those two periods on the Bikini community. The total compensation per individual for the periods specified is consistent with the parameters and compensation paid by the Tribunal under its personal injury compensation program and with the award made to the people of Enewetak. The Tribunal has awarded the people of Bikini $33,814,500 for consequential damages resulting from the Nuclear Testing Program.

The Tribunal has determined that the total net amount of compensation due to claimants in this case for the categories of damages described above is $563,315,500.

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