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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

DRAFT

OCT 4 1983

MEMORANDUM

TO : Edward M. Elmendorf
Assistant Secretary for Postsecondary Education

FROM : Postsecondary Education Division
OFFICE OF THE GENERAL COUNSEL

SUBJECT: Impact of Micronesian Compact on Postsecondary
Programs -- Your memorandum of September 16

I

Background

This responds to your memorandum of September 16, 1983 to the Acting General Counsel in which you raised a series of questions concerning the effect of section 223 of the "Compact of Free Association" on the continuing eligibility of individuals residing in the Trust Territory of the Pacific Islands to participate in Federal postsecondary education programs. You indicate in your memorandum that the United States Government has been negotiating with representatives of the Trust Territory of the Pacific Islands regarding the termination of its territorial status. The product of this negotiation is the "Compact of Free Association." As we understand it from Jim Burg of the State Department, the Compact is intended to be enacted by the Congress and signed by the President. Thus it will be the equivalent of a public law of the United States.

II

Relevant sections of Compact

Section 171:

Except as provided in this Compact or its related agreements, the application of the laws of the United States to the Trust Territory of the Pacific Islands by virtue of the Trusteeship Agreement ceases with respect to Palau, the Marshall Islands and the Federated States of Micronesia as of the effective date of this Compact. (emphasis added)



Page 2 - Edward Elmendorf

Section 223:

The citizens of Palau, the Marshall Islands and the Federated States of Micronesia who are receiving post-secondary educational assistance from the Government of the United States on the day preceding the effective date of this Compact shall continue to be eligible, if otherwise qualified, to receive such assistance to complete their academic programs for a maximum of four years after the effective date of this Compact. (emphasis added)

III

Questions and answers

Our responses to the questions you raise are based solely on the two provisions of the Compact, which are, with regard to these questions, ambiguously phrased. Thus our responses do not take into account any legislative history which may emerge as the Congress considers the enactment of the Compact into law.

1. Your first question concerns two institutions located in the Trust Territory, the College of Micronesia and the Vocational College of Micronesia, that are currently eligible to participate in programs authorized by the Higher Education Act. You ask whether their students will continue to be eligible for Federal postsecondary assistance after the effective date of the Compact.

Institutions located in the Trust Territory and students residing in the Trust Territory are eligible to participate in postsecondary education programs authorized by the Higher Education Act of 1965 (HEA) by virtue of the provisions of that Act rather than by virtue of the "Trusteeship Agreement" referred to in section 171 of the Compact. Therefore, we believe that unless the Higher Education Act were amended by deleting the reference to the Trust Territory of the Pacific Islands from the definition of a "State" in section 1201(b), as well as from other provisions in legislation for individual programs (see, for example, sections 442(a), (e), and (f) of the HEA regarding the College Work-Study Program), the eligibility of institutions located in the Trust Territory and the students residing in the Trust Territory will be unaffected by the Compact.

However, we have been advised by Mr. Jim Burg of the State Department (Tel. 343-9143) and Mr. Bruce Sasser of the Office of Management and Budget (Tel. 395-4580) that in their opinion the language of section 171 of the Compact is sufficient to void the relevant provisions of the Higher Education Act regarding the Trust Territory. This question is certainly one that could be clarified by the legislative history of the Compact as the Congress considers enacting that document into law.

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Page 3 - Edward Elmendorf

2. With regard to your question concerning terms of agreement, by which we assume you mean the institutional participation agreement under the student financial assistance programs, the Department would be able to enter into such agreements with the College of Micronesia and the Vocational College of Micronesia for as long as their students are eligible to receive student financial assistance.

3. In response to your third question, you may, as part of the agreement referred to in response to question 2, include the biennial audit requirement for the student financial assistance programs.

4. With regard to your question concerning the continued receipt by students of "non-monetary assistance", students who are participants in ED postsecondary education programs other than the student financial aid programs will still be eligible to participate in those programs for at least four additional years after the Compact goes into effect. Thus, for example, students who are participants in Special Services projects will continue to be eligible to be served under those programs. Moreover, the Higher Education Act may be construed so as to continue to apply to the Trust Territory indefinitely despite the enactment of the Compact, as suggested in our response to your first question.

5. With regard to Title III of the Higher Education Act, section 223 of the Compact would not confer continuing eligibility on educational institutions in the Trust Territory, since that section covers only direct assistance to students. However, as stated above, the Higher Education Act may be construed so as to continue to apply indefinitely to the Trust Territory notwithstanding the enactment of the Compact. (Incidentally, Mr. Burg and Mr. Sasser have advised us that they do not expect the Compact to take effect by October 1, 1984, as your memorandum suggests.)

Harold Jenkins
Assistant General Counsel
for Postsecondary Education

by Stephen M. Kraut
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Attorney