

SECTION-BY-SECTION ANALYSIS  
OF  
THE COMPACT OF FREE ASSOCIATION  
AND  
DESCRIPTION OF ITS TERMS

The Compact of Free Association is divided into a preamble and four titles: Governmental Relations; Economic Relations; Security and Defense Relations; and General Provisions.

PREAMBLE

The Preamble states that the relationship which will exist between the United States and the three states emergent from the Trust Territory of the Pacific Islands is "Free Association."

The Preamble recognizes that the agreement is concluded on a government-to-government basis; that the peoples of the Trust Territory have and retain their sovereignty and their sovereign right to self-determination; that the Freely Associated States (FAS) are self-governing under their own constitutions; and that the political and legal relationship between the FAS and the United States is fully described and governed by the Compact. The Preamble recognizes the competence of the constitutional governments with the Trust Territory to enter into the Compact and supports the legitimacy of the new political status as consistent with the goals of the United Nations trusteeship system and consequently as a basis for termination of the Trusteeship.

TITLE ONE  
GOVERNMENTAL RELATIONS

Article I, Self-Government

Section 111. This section recognizes that the peoples of the FAS, acting through their constitutional governments, are self-governing. This recognition is the foundation of the government-to-government agreement and is consistent with the international political status of free association.

Article II, Foreign Affairs

Section 121. The United States, in this section, recognizes the capacity of the FAS to conduct foreign affairs in their own name and right. This includes the capacity to enter into treaties and other international agreements with other governments or international organizations, as appropriate. This recognition of foreign

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affairs capacity by the United States acknowledges the international legal personalities of the FAS. Thus, for example, while the United States will provide certain services under the Compact, these activities will take place on a government-to-government basis through an international agreement and the exercise by the FAS of foreign affairs authority, rather than by the direct extension of U.S. domestic programs as was done during the Trusteeship pursuant to Article 3 of the Trusteeship Agreement.

The FAS agree in this section to conduct their affairs of state in accordance with international law and settle disputes by peaceful means.

Section 122. In this section, the United States agrees to support FAS participation and membership in regional and international organizations as may be mutually agreed from time to time.

This section also obligates the United States to accept qualified FAS citizens for training in the Foreign Service Institute. This program will contribute to FAS capabilities to meet the demands of their new political status and promote intergovernmental cooperation between the FAS and the United States.

Section 123. In this section, the FAS agree to consult with the United States in foreign affairs matters in recognition of the authority and responsibility of the United States under Title Three.

This section also provides that the United States will consult with the FAS on foreign affairs matters which relate to or affect the FAS. This arrangement reflects reciprocal obligations of the parties for consultation, given the overall allocation of authority and responsibility under the Compact.

Section 124. This section authorizes the United States, upon request, to assist the FAS in foreign affairs matters, and includes a disclaimer of responsibility for actions of the FAS taken with the assistance or through the agency of the United States Government.

Section 125. This section is a disclaimer by the United States of responsibility for FAS actions in their exercise of their foreign affairs capacity.

Section 126. Under this section, the United States will provide, upon request, consular services to FAS citizens abroad as if they were United States citizens.

Section 127. This section provides for termination of all obligations, responsibilities, rights and benefits of the United States under any treaty made applicable to the Trust Territory during the Trusteeship. The continued application of such

treaties to the FAS will be determined in accordance with international law, and will thus depend upon the relations between the FAS and other signatories of such agreements. However, under Title III and the separate agreements concluded pursuant thereto, defense treaties and international security agreements will continue in force.

#### Article III, Communication

Section 131. This section recognizes FAS authority and responsibility to control domestic and foreign communications, and enables the United States to represent the FAS before the International Telecommunications Union with respect to frequency registration and broadcast scheduling until the FAS choose to undertake that function themselves. This section also extends Federal Communications Commission jurisdiction to the FAS as regards the operations of satellite earth terminal stations operated by U.S. common carriers. Under this arrangement, the details of which are set forth in separate agreements, the FAS will be included in the United States telecommunications system for rate-making and other operational aspects relating to United States common carriers.

Section 132. This section ensures United States ability to operate telecommunications systems in the FAS in connection with its obligations under the Compact.

#### Article IV, Immigration

Section 141. This section effectively exempts FAS citizens meeting specified criteria from certain United States visa and work permit requirements and enables FAS citizens to enter, reside, be employed, attend school or remain as visitors in the United States. Section 141 also recognizes the ability of the United States Congress to promulgate, or authorize the legislatures of United States territories to promulgate, non-discriminatory immigration laws or regulations applicable to FAS citizens who wish to establish "habitual residence" in those U.S. territories. Habitual residence is defined as establishment of a place of general abode or principal, actual dwelling place of a continuing or lasting nature and of at least one year duration.

Finally, Section 141 does not confer or deny the right of FAS citizens to establish residency necessary for naturalization or entitlement to benefits for alien relatives.

Section 142. FAS reciprocity for the open immigration arrangement provided under Section 141 is set forth in this section, under which United States citizens will be able to enter, reside and be employed in the FAS, subject only to FAS law providing for exclusion of undesirable aliens. Establishment of "habitual residence" in the FAS by United States citizens would also be subject to FAS law.

Section 143. The privileges set forth in Sections 141 and 142 will be lost to a citizen of an FAS or the United States who takes an affirmative step to preserve or acquire a citizenship or nationality other than that of an FAS or the United States or fails to renounce such an existing citizenship or nationality within two years after the effective date of the Compact. Section 143 does not deny the privileges conferred by Sections 141 and 142 where citizenship is held in both an FAS and the United States or in more than one FAS.

Section 144. This section enables United States citizens to enter and remain in FAS government service without losing their U.S. citizenship.

#### Article V, Representation

Section 151-152. These sections provide for the establishment of resident representatives in the capitals of the United States and the FAS. Designated representatives are entitled to limited or functional immunity, exemptions and privileges in connection with the performance of official duties.

Section 153. This section exempts United States citizens who are employed by or represent an FAS from the provision of the Foreign Agents Registration Act and the Logan Act.

#### Article VI, Environmental Protection

Sections 161-163. The sections within this article establish a regulatory structure for United States governmental activities in the FAS. The United States agrees that it will adhere to the National Environmental Policy Act in its activities in the FAS, and that it will also comply with standards substantively similar to those required by other specified United States environmental laws. The United States and the FAS agree to develop additional environmental protection standards suited to unique conditions in the FAS. Under this structure, the FAS governments, but not individual citizens, will be able to seek judicial review of United States compliance in designated federal courts. Finally, as a reciprocal obligation the FAS agree to develop and enforce substantively similar standards for environmental protection with respect to its activities which are substantively similar to United States activities. The President of the United States may, after appropriate consultations in the FAS, exempt federal agencies from compliance where such exemption is determined to be in the "paramount interest" of the United States, consistent with Title Three of the Compact and the obligations of the Government of the United States under international law.

This article was negotiated to address a fundamental FAS concern about preservation of the fragile ecology of their islands and their resultant desire that a commitment to adhere to the high standards of environmental care and protection embodied in United



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States law be articulated in the Compact.

Article VII, General Legal Provisions

Section 171. This section terminates the application to the FAS of any laws of the United States made applicable to the Trust Territory of the Pacific Islands or any part thereof pursuant to the Trusteeship Agreement, unless they are specifically made applicable by the Compact.

Section 172. This section provides that citizens of the FAS not residing in the United States shall be entitled to the same rights and privileges as any other non-resident aliens and that they shall be treated as "persons" within the meaning of the Administrative Procedures Act and of the Freedom of Information Act. A United States citizen who becomes a citizen of an FAS and who does not renounce his United States citizenship would retain his United States citizenship and continue to be entitled to the same rights and privileges as any other United States citizen.

Section 173. The United States and the FAS undertake positive obligations to protect the programs, personnel, property and facilities of the other which are connected with public and official functions specified in the Compact or its related agreements.

Section 174. Subsections (a) and (d), taken together, provide that the FAS governments will be immune from jurisdiction of the courts of the United States, and vice versa, except when the defendant government is sued in connection with commercial activities, personal injury, death or damage to or loss of property.

Subsections (b) and (c) of this section set forth the procedure for payment of claims against the Trust Territory Government or the United States arising from acts or omissions of either such government prior to the effective date of the Compact. All unpaid judgments against the Trust Territory Government or the United States entered prior to the effective date of the Compact, or settlements reached, will be paid by the United States. All claims against the Trust Territory or United States which are not resolved prior to the effective date of the Compact or which arise afterwards, will be adjudicated in the courts of the FAS, but any judgment of those courts will be presented for certification to the United States Court of Appeals for the Federal Circuit which shall order payment of such judgment, unless it is manifestly erroneous in law or fact, or is manifestly excessive. In this latter situation, that court shall have jurisdiction to modify the judgment.

Section 175. This section provides for the negotiation of separate agreements regarding extradition, mutual assistance in law enforcement and transfer of prisoners. These agreements shall

have the force of law and shall be similar to arrangements which the United States has with other nations.

Section 176. This section preserves the decisional law established in civil litigation during the Trusteeship by the courts of the Trust Territory, subject to the power of the courts of the FAS derived from their respective constitutions to modify judgments in appropriate cases.

Section 177. In this section, the United States accepts responsibility for compensation owing to citizens of the FAS for loss or damage to person and property resulting from the nuclear testing program conducted by the United States in the Northern Marshall Islands between 1946 and 1958. This section also provides that the United States Government and the Government of the Marshall Islands shall set forth in a separate agreement provisions for a full and complete settlement of all uncompensated claims which have arisen as to the Marshall Islands and its citizens. The separate agreement is also to contain agreed provisions for medical services and radiological monitoring as well as utilization of affected lands. This agreement has been concluded, is incorporated into the Compact, and provides for the establishment of a \$150 million fund to finance the purposes of this agreement. This agreement settles all Marshall Islands claims arising from the nuclear testing program.

Section 178. This section enables federal agencies providing services and programs in the FAS to settle and pay tort claims arising from their activities in the FAS pursuant to the administrative procedures set forth at 28 U.S.C. 2672. Claims not resolved through that procedure will be referred to arbitration under the conference and dispute resolution process set forth in Title Four, Article II, of the Compact, and paid in accordance with the arbitration award payment provisions of 31 U.S.C. 1304. The United States will be immune from suits based on claims arising under the provisions of this section.

## TITLE TWO ECONOMIC RELATIONS

(The chart attached at Appendix A displays the amounts and schedule for payment of grant funding and assistance set forth in the Compact and discussed in the following analysis.)

### Article I, Grant Assistance

Section 211. This section sets forth the basic grant assistance constituting the economic foundation of free association. The fundamental concept underlying the grant assistance is that the FAS will be provided with the resources to implement development programs and provide public services appropriate to conditions and needs as determined by the FAS. A capital account and a current

account will be established from grant funds, to be used for economic development and government operations, respectively.

In order to enable the FAS to undertake economic development programs at the outset of the initial fifteen year term of free association, the grant assistance package was structured to provide maximum "front-end loading" of grant funding, while at the same time spreading out funding levels over the entire fifteen-year period to ensure that minimum needs can be satisfied and that economic stability can be preserved throughout the initial period of free association. Thus, at the fifth and again at the tenth anniversary of the effective date of the Compact, the amounts of grants will be reduced from the higher levels provided during the first five years.

This section also calls for each of the FAS to establish official development plans and each FAS agrees that during the term of the Compact an average of no less than 40 percent of designated grant funding will have been dedicated to capital account activities as set forth specifically in the plans. This section recognizes that achievement of the goals of the economic development plans may be affected by the impact of exceptional, economically adverse circumstances. Each FAS is to report annually to the President and the Congress on the implementation of the plans and the use of grant money.

Section 212. The section provides for fourteen annual payments to the FSM, commencing on the first anniversary of free association, for development, which may be used to pay certain account expenditures for the operations of United States military Civic Action Teams made available to the FSM under Section 227.

Section 213. This section provides that the specified scheduled amounts provided therein to the Governments of the Marshall Islands and the Federated States of Micronesia shall be used by them to offset the impact of any United States military activities conducted pursuant to Section 321(a) and its separate agreements.

Section 214. This section provides for fourteen annual payments, commencing on the first anniversary of free association, for energy production in the FAS. These grants are provided with the goal of increasing FAS energy self-sufficiency.

Section 215. This section provides annual grants in support of current account communications operations and for other current or capital account activities which may include purchase of communications facilities and equipment now located in the Trust Territory, including the new COMSAT earth stations.

Section 216. This section provides annual grants for maritime zone surveillance and enforcement, medical referral transportation and other health services, and post-secondary educational scholarship programs. This funding is augmented by a United States



"start-up" contribution for surveillance, and is to be divided among the FAS as agreed among those governments.

Section 217. This section provides for an annual adjustment of the grants provided under Sections 211, 212, 214, 215 and 231 (including Sections 212, 213 and 216 funds as referenced therein) by two-thirds of the percentage annual change in the United States Gross National Product Implicit Price Deflator, or seven percent, whichever is less.

Section 218. This section provides that grant funds appropriated for any year will survive beyond the expiration of that year and remain available for expenditure without reducing subsequent grant payments.

Section 219. This section provides that unobligated Trust Territory Government funds will remain available to the FAS Governments according to the purposes of the act appropriating such funds.

#### Article II, Program Assistance

Section 221. While the FAS will fund the basic functions of government from grant assistance and FAS revenues, performance of certain activities may be beyond the capability of the new governments at the outset of free association. Thus, the United States has agreed in Section 221(a) to continue to provide services of the United States Weather Service, the United States Federal Emergency Management Agency, the United States Postal Service, the Federal Aviation Administration and the Civil Aeronautics Board. Enactment of Section 221(a) by Congress provides the legislative authority for provision of these services. The specific arrangements for provisions of these services are set forth in a separate agreement. The United States commitment is expressly limited to continuation of the essential services specified at levels equivalent to the last year prior to the effective date of the Compact. This will establish a ceiling on the nature and extent of United States programs.

Subsection (b) provides a \$10 million annual grant to be shared by the FAS as follows: Marshall Islands \$3 million; and FSM \$7 million. This grant funding, coupled with the scholarship and health service funding set forth in Section 216, will enable the FAS to augment current account expenditures in the field of education and health services and tailor such activities as scholarship programs and medical referral activities to FAS needs.

Subsection (c) provides that alternate energy development programs which were extended to the Trust Territory will continue after the effective date of the Compact and be available to the FAS subject to the terms set forth in United States law with respect to the scope and duration of such programs.



Subsection (d) defines United States authority incident to implementing program assistance.

Section 222. This section acknowledges that continuing consultation may be called for in order to ensure that the federal services provided under Section 221(a) are appropriate to the evolving developmental needs of the FAS.

Section 223. This section ensures that those Trust Territory students embarked upon a post-secondary course of study relying upon a particular United States assistance program, e.g. the Basic Educational Opportunity Grant, will be able to continue to receive such assistance for the duration of the individual academic programs up to four years following the effective date of the Compact.

Section 224. This section provides that the United States and the FAS may agree on the extension of federal programs, assistance, or services to the FAS in addition to those specified in the Compact. While the grant assistance and services provided by Title Two constitute a comprehensive negotiated package, this section enables the United States and the FAS to adjust to changing conditions and needs by establishing such additional programs as may be authorized by United States law.

Section 225. In order to enable the United States to fulfill its commitment to provide programs and services in support of FAS development efforts, the FAS will be obligated under this section to provide at no cost land required for federal agency activities, and to allow agencies already present in the Trust Territory to continue use of existing facilities at no cost, or make mutually agreeable alternative arrangements.

Section 226. Under this section, United States Government agencies which have statutory authority to provide technical assistance on an intergovernmental or international basis, or to territories or possessions of the United States, will be able to provide such technical assistance to the FAS upon request. In light of the free association relationship, FAS requests for technical assistance will be given priority consideration over requests of other nations eligible for such assistance.

Section 227. This section provides that United States military Civic Action Teams (CAT) will be provided to the Federated States of Micronesia under the terms set forth in a separate agreement which, among other things, defines FSM obligations to provide land, building materials and other support for CAT projects.

### Article III, Administrative Provisions

Section 231. This section provides for negotiations commencing on the thirteenth anniversary of the Compact regarding the future political relationship between the United States and the Marshall

Islands and the FSM.

If these negotiations are not concluded by the fifteenth anniversary, all of the provisions of the Compact, including U.S. defense rights under Title Three, will remain in effect for an additional two years and continue to be implemented according to their original terms. However, the United States will provide the average of annual amounts of the assistance which had been provided during the initial fifteen year period under Sections 211 (grant assistance); 212 (FSM Civic Action Teams funding); 213 (United States payments for military operating rights in FAS); 214 (FAS energy production funds); 215 (communications grants); and 216 (FAS marine surveillance, medical service and scholarship funding). The inflation adjustment provided under Section 217 will apply to these averaged annual amounts (excluding Sections 212, 213 and 216 funding). This continuation of support during the sixteenth and seventeenth years will ensure the preservation of the economic stability of the FAS and United States defense rights while the United States and the state concerned negotiate a continuation of free association or a different political relationship. Free association will not terminate automatically, but may be terminated by unilateral action of any signatory or mutual agreement between the United States and any or all of the FAS.

Section 232. This section provides that the program assistance to be made available under Section 221 be defined in separate agreements. The levels and duration of such assistance, and the legal parameters within which federal agencies will operate -- including the legal status of their employees, payment of claims, entry and departure of employees and other similar matters -- are dealt with in the comprehensive agreement negotiated pursuant to this section. Under that agreement, federal agency civilian employees will enjoy certain privileges, exemptions and limited immunity from FAS laws, including tax laws, and federal agencies are assured the operational freedom necessary to carry out their responsibilities.

Section 233. This section authorizes the United States to conduct audits of grant and program assistance provided to the FAS under Articles I and II of Title Two. These audits will enable the United States to determine if the FAS have met the requirements set forth in the Compact and its separate agreements regarding the purposes for which funds and program assistance are to be used and the propriety of their financial transactions. The procedures for conduct of the audits will be the subject of consultation to ensure that institutional integrity is preserved, and that the United States will have full access to financial information relating to Compact funding. The procedures for conducting the audit and obtaining annual reports and other financial information as required by the Compact are the subject of a separate agreement on fiscal procedures between the United States and the FAS.

Section 234. This section provides for the transfer to the FAS at



no cost United States property located in the Trust Territory for which there is no continuing U.S. need. This transfer process is largely complete. Transfer of federal property began in the Trust Territory in 1980, pursuant to Section 402 of United States Public Law 96-597.

Section 235. During the Trusteeship, trust funds have been established for the benefit of various groups of Trust Territory citizens, such as those affected by the United States nuclear testing programs in the Marshall Islands. This section provides for appointment by the United States of a new trustee to replace the High Commissioner as trustee of such funds, so that the initial legislative intent in creating the funds can be carried out. The United States also agrees to carry out such functions of government formerly exercised by the High Commissioner as are necessary to implement the provisions of a particular trust. For instance, the High Commissioner is currently required to make certain determinations and exercise certain administrative functions in connection with trust funds. Under the Compact, this will now be undertaken by the United States.

Section 236. This section pledges the full faith and credit of the United States for payment of the amounts provided for under Articles I and III of Title Two. A similar pledge is contained in the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States. This pledge is intended to create an enforceable obligation of the United States to pay the amounts provided for in Articles I and III. While this obligation will be discharged in the same manner as other financial obligations incurred through international agreements requiring an act of appropriation, the FAS are provided with a judicial remedy before the United States Claims Court in the event payments owing under the Compact are not made. Because the Compact will be both an international agreement and public law, this is a valid grant of jurisdiction which makes an express exception for the FAS from the restriction contained in 28 U.S.C. 1502 relating to actions arising from treaties with foreign nations. Any judgments resulting from an action by the FAS under this section would be paid under 31 U.S.C. 1304.

#### Article IV, Trade

Section 241-243. These sections provide that the FAS will not be within the customs territory of the United States, and will be able to export products to the United States duty free, provided that less than 70% of the products' value derives from foreign sources. This is the same treatment which United States insular possessions receive under General Headnote 3(a) of the United States Tariff Schedule. Articles not covered by General Headnote (3) will be entitled to most favored treatment.

#### Article V, Finance and Taxation

Section 251. This section establishes United States currency as the legal tender of the FAS, but gives each FAS the option to issue its own currency; in which case appropriate transitional arrangements would be agreed upon.

Section 252. This section recognizes the jurisdiction of the FAS to tax any United States persons income which is derived from FAS sources, and applies United States tax laws to determine income source.

Section 253. All FAS citizens domiciled in the FAS will be exempt from United States income tax on fixed and determinable income and inheritance and gift taxes. It is intended that questions of citizenship and domicile for individual persons in the FAS will be determined under the laws of the respective FAS (See Section 142(a) of the Compact).

Section 254. Persons who reside in the FAS will not have to pay any otherwise applicable United States tax on income which is taxed by the FAS, even where such income is derived from sources outside the FAS.

Section 255. While Sections 253 and 254 are intended to provide incentives for immigration to and investment in the FAS for individuals, this Section provides tax incentives for investments primarily by corporations. The tax incentives provided are those long-standing provisions of the United States Internal Revenue Code applicable to possessions of the United States that were designed, like the tax provisions of the Compact, to generate United States investment in developing areas that enjoy a special relationship with the United States. These incentives, as in effect on January 1, 1980, will apply to the FAS to the extent not in conflict with Compact Sections 253 and 254. If the provisions of the Internal Revenue Code applicable to the FAS under this Section are amended after January 1, 1980, the prior law will continue to apply for two years after the effective date of such amendment while alternative but equivalently beneficial tax arrangements are negotiated.

TITLE THREE  
SECURITY AND DEFENSE RELATIONS

Article I, Authority and Responsibility

Section 311. This section establishes as part of the free association relationship defined in the Compact the full authority and responsibility of the United States for security and defense matters in or relating to the Marshall Islands and the Federated States of Micronesia. This United States authority and responsibility includes the foreclosure of any third country access to the FAS for military purposes, and the ability to establish military facilities and the exercise of military operating rights in

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accordance with separate agreements authorized by this section. Of fundamental significance is the undertaking of the United States during the free association relationship to defend the FAS and their citizens as the United States and its citizens are defended.

Section 312. This section gives the United States the right to conduct military operations and activities in the FAS necessary for the exercise of its authority and responsibility for security and defense matters under the Compact. Such operations and activities are to be undertaken in accordance with separate agreements on military use and operating rights and status of forces.

Section 313. To ensure that the actions of the FAS governments do not impair the ability of the United States to exercise its authority and fulfill its responsibility in security and defense matters, the FAS agree in this section to refrain from actions which the United States determines to be incompatible with the United States security and defense role defined in the Compact. The purpose of this provision is to preserve the allocation of authority and responsibility for domestic and foreign affairs to the FAS, and for security and defense to the United States.

To ensure that any U.S. determination requiring the FAS to refrain from a particular action is made on the basis of full information, the United States will consult with the FAS prior to making any final determination. The FAS are entitled to raise with the Secretaries of State and Defense, personally and on an expeditious basis, any concerns which might arise for a United States action under this provision.

Section 314. This section provides that unless otherwise agreed the United States will not test by detonation, dispose or discharge within the FAS certain harmful substances or weapons, and will not store substances intended for use in such weapons except in the event of war declared by Congress, a national emergency declared by the President or to defend against actual or impending attack.

This section requires any storage by the United States of substances or materials referenced in this section in the FAS to be in a manner consistent with applicable international guidelines to which the United States adheres, as well as applicable United States laws, in order to protect public health and safety in the FAS.

Section 315. This section enables the United States to permit third countries to have access to United States military areas and facilities in the FAS. Except in the case of transit and overflight, the United States is required to consult with the FAS on third country access, and in the case of major units to obtain approval.

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Section 316. This section prohibits assignment or transfer of United States authority and responsibility for security and defense of the FAS to another country.

Article II, Defense Facilities and Operating Rights

Section 321. This section provides for separate agreements to be concluded between the United States and the FAS for the establishment and use of military areas and facilities of the United States in the FAS in connection with United States security and defense authority and responsibility. This section also sets forth the framework for agreement between the United States and the FAS for additional military areas and facilities should they be required in the future, and acknowledges that the United States will seek minimum areas necessary to carry out its security and defense responsibilities.

Section 322. In connection with its security and defense activities, the United States will provide and maintain certain fixed and floating aids to navigation in the FAS. This activity will also promote civilian shipping in the islands, which will continue to benefit from U.S. Coast Guard assistance with navigational aids.

Section 323. Pursuant to this section, the United States and the FAS have concluded comprehensive agreements on military use and operating rights (MUORA) and status of forces (SOFA). These agreements are modeled on similar arrangements the United States has entered into with other countries. Bilateral MUORAs have been concluded with each of the member states of the FAS addressing the specific needs and requirements of the United States in each of these states. The MUORAs make available to the United States certain defense sites and facilities for its use in the FAS and detail the operating rights that may be exercised in the use of such areas.

The SOFA is a multilateral agreement which defines the rights and obligations of United States Armed Forces and their personnel in the FAS. Specifically, the SOFA defines the personnel afforded the protections under the SOFA and addresses such issues as entry and exit requirements, use of contractors and employment of labor, tax and customs relief, criminal jurisdiction, applicability of local law, payment of claims, medical and postal services, telecommunications, and other related matters.

Article III, Defense Treaties and International Security Agreements

Section 331. In keeping with United States responsibility and authority for security and defense matters in the FAS, this section provides that security and defense agreements or treaties to which the United States is a party, and which have applied to

the Trust Territory during the Trusteeship, will continue in force and be applied by the United States in the exercise of its security and defense role in the FAS. In addition, the United States retains the authority to extend to the FAS any security or defense agreements or treaties it may determine to be applicable, after appropriate consultation with the FAS governments. This arrangement is necessary in light of United States treaty obligations in the region.

Article IV, Service in the Armed Forces

Section 341 and 342. FAS citizens will be entitled under these sections to serve voluntarily in the armed forces of the United States, but cannot involuntarily be inducted into such service unless habitual residence in the United States is established. In addition, upon nomination by their governments and qualification, FAS citizens will be enrolled in the United States Coast Guard Academy and in the United States Merchant Marine Academy. The service and training available in the armed forces and the designated academies will provide educational opportunities not available in the FAS.

Article V, General Provisions

Section 351. Under this section, two bilateral Joint Committees are established for the purpose of resolving disputes arising from implementation of Title Three and the separate agreements concluded pursuant to sections within Title Three. The senior United States military commander in the Pacific will represent the United States on each committee, and the FAS will designate appropriate senior officials as representatives. The purpose of the Joint Committee is to provide a forum for consultation regarding issues related to Title Three. Any matter which the Committee cannot resolve is referred back to the governments concerned for resolution. The FAS concerned may also raise the matter with the Secretary of Defense, if desired. It is contemplated that the Joint Committee system will enable the FAS and the United States to consult, and by consensus resolve problems arising under Title Three.

Section 352. This section contains a U.S. assurance that in fulfilling its security and defense role, and in making the specific determinations incident to its authority under Title Three of the Compact, the United States will accord due respect to the authority and responsibility as defined in the Compact.

Section 353. This section addresses FAS concerns arising in large part from the experience of World War II. Under this provision, the United States agrees not to include the FAS in a formal declaration of war without the consent of their governments.

In the absence of FAS consent to be named as parties in a declaration of war, this section preserves claims of FAS citizens

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arising from armed conflict incident to belligerence or war. Claims will be preserved under this provision which are in the form of petitions for redress to the Government of the United States, and in the case of third countries all types of claims will be unimpaired by this section. Where FAS citizens petition the United States for redress under this section, their claims will be treated as if they were the claims of United States citizens.

Section 354. Under subsection (a) of this section, the provisions of Title Three will survive and apply for a period of fifteen years in the Marshall Islands and the FSM, even if the Compact is unilaterally terminated earlier by any signatory government. In other words, the security and defense relationship established by Title Three will continue as agreed upon even if the political relationship of free association is terminated. Only by mutual agreement to terminate or amend Title Three can the security and defense relationship be altered.

In conjunction with Articles IV and V of Title Four (which provide for continuation of certain Compact sections, including economic assistance, in the event of Compact termination), subsection (a) represents United States and FAS agreement that their mutual interests will be served by maintaining, for an agreed minimum period, the security, defense and economic stability provided for in the Compact even if the free association relationship is terminated.

Subsection (b) provides that even if Title Three were to expire or be terminated, the United States will provide protection to the Marshall Islands or the Federated States of Micronesia for the period in which separate agreements concluded pursuant to Sections 321 and 323 are in effect. Under those separate agreements, the military use and operating rights of the United States (except those with the FSM) as well as U.S. authority to deny third country military access, have a duration which exceeds the initial term of the Compact (see analysis of Section 454) and the defense guarantee by the United States set forth in this provision will continue, consequently, for those longer periods. That United States commitment requires that a threat to the peace and security of the Marshall Islands or the Federated States of Micronesia be treated as a threat to the peace and security of the entire region and a danger to the United States. In the face of such a threat, the United States would take action to meet that danger in accordance with its constitutional processes.

TITLE FOUR  
GENERAL PROVISIONS

Article I, Approval and Effective Date

Sections 411-412. Under these sections there is established a



four-step process for approval and entry into force of the Compact. This process includes approval by the FAS governments in accordance with their constitutional processes and approval of the Compact by the peoples of the Marshall Islands and the Federated States of Micronesia. The procedure for popular approval is set forth in Section 412, which calls for a plebiscite on future political status constituting a free and informed act of self-determination.

The approval process also requires approval of the Compact by the United States, and agreement between the United States and the governments concerned on its effective date. Once so approved, the United States, as administering authority of the Trusteeship, will make appropriate arrangements for termination of the Trusteeship Agreement with the United States.

#### Article II, Conference and Dispute Resolution

Section 421-424. These sections establish the method for settlement of disputes arising in connection with the implementation and enforcement of the provisions of the Compact except for matters arising out of Title Three, which will be handled as provided for in Section 351. The procedure for dispute resolution requires that upon notification of a dispute, the parties confer on the matter. After a 90-day period, if the issue has not been resolved, the matter is referred to a three-person Arbitration Board consisting of one member appointed by each of the parties and a chairman jointly appointed by the parties or selected by lot from standing lists if mutual agreement cannot be reached. Decisions will be by majority vote and shall be binding on the parties unless it is agreed that the decision shall be advisory. The Board will also not have jurisdiction in matters arising under the environmental protection provisions of Article VI, Title One, and the general legal provisions of Article VII, Title One.

#### Article III, Amendment

Sections 431-432. These sections provide for bilateral and multi-lateral amendment of the Compact by mutual agreement of the parties affected by such amendments.

#### Article IV, Termination

Sections 441-443. The Compact provides three avenues for its termination. Under Section 441, the Compact may be terminated by mutual agreement of the United States and one, or all, of the FAS. Section 441 requires United States and FAS approval of the terms and conditions of termination, and contemplates termination only if the United States and the FAS are fully satisfied with the post-termination arrangements.

Section 442 provides for unilateral termination initiated by the United States, in which case prior notice of no less than six

months is required before termination is effective.

Termination by unilateral action of the FAS is provided for in Section 443, which requires an FAS government which intends to terminate to conduct a plebiscite on termination in accordance with its constitutional processes. A majority vote in favor of termination is required for termination to occur. The plebiscite can be conducted only upon three months' prior notice to the United States, and termination pursuant to an affirmative vote to end the agreement would not become effective until at least three months after certification of the results to the United States and notification that termination will occur.

#### Article V, Survivability

Sections 451-453. These sections identify which portions of the Compact would survive, and for how long, under the different termination procedures described in Article IV of Title Four.

Should the Compact be terminated by mutual agreement pursuant to Section 441, the continuation of economic relations between the United States and the FAS would be as mutually agreed.

Should termination occur at United States initiative under Section 442, provisions of the Compact relating to the following subjects would remain in effect until the fifteenth anniversary of the effective date of the Compact, or longer if mutually agreed: immigration, environmental protection, legal relations, the nuclear claims settlement with the Marshall Islands, grant assistance, audits, security and defense relations, dispute resolution, amendment, survivability and definitions of terms. In addition, the United States would continue to provide all grant assistance and either the Federal programs and services specified in Article II of Title Two, or their equivalent in funds -- as determined by the U.S. -- until the fifteenth anniversary of the effective date of the Compact.

Should termination result from unilateral FAS action under Section 443, provisions of the Compact relating to the following subjects would remain in effect until the fifteenth anniversary of the effective date of the Compact, or longer if mutually agreed: immigration, environmental protection, legal relations, the nuclear claims settlement with the Marshall Islands, security and defense relations and dispute resolution. In addition, the United States would consult with the FAS terminating the Compact to determine what economic assistance the United States would provide, after termination, until the fifteenth anniversary of the effective date of the Compact with the proviso that the grant assistance provided in Sections 211, 212(b), 214, 215 -- as adjusted pursuant to Section 217 -- and 216 would continue without diminution.

Section 454. Under subsection (a) of this section, the United



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States acknowledges its interest in promoting the long-term economic advancement and self-sufficiency of the peoples of the Marshall Islands and the Federated States of Micronesia.

Subsection (b) of this section provides that the separate agreements concluded pursuant to Article II of Title Three will remain in effect according to their terms notwithstanding termination of the Compact or the application of any other provision of the Compact. This provision will continue the SOFA and the following agreements in effect for these terms:

- Marshall Islands:
  - Military Use and Operating Rights -- up to thirty years.
  - Mutual Security -- until terminated or otherwise amended by mutual agreement.
- Federated States of Micronesia:
  - Military Use and Operating Rights -- fifteen years.
  - Mutual Security -- until terminated or otherwise amended by mutual agreement.

Section 454 also preserves, for the duration of the military use and operating rights agreements, the grant assistance obligations contained in Section 213, which relate to payments to offset the impact of U.S. defense activities in the FAS.

#### Article VI, Definition of Terms

Sections 461-462. These sections define various terms used in the Compact, and list the separate agreements concluded pursuant to the Compact.

Section 463. This section incorporates by references certain United States statutes, differentiating between those laws which, for purposes of the Compact, will remain as they were on January 1, 1980, and those which will change consistent with amendments of a general nature enacted thereafter.

#### Article VII, Concluding Provisions

Section 471. Under this section, all signatory governments agree that they are authorized by their constitutions and laws to enter into and implement the Compact and its related agreements. This section also provides that the FAS will conform their laws to the Compact prior to its effective date, so that they will be able to implement the Compact in a manner consistent with their domestic laws. Finally, in fulfillment of the obligation of the Government of the United States under paragraph (b) of this section to ensure that its laws conform with the provisions of the Compact, paragraph (c) of this section provides that the Compact will have the force and effect of a statute under the laws of the United States.

Section 472. This section provides for acceptance of the Compact by the signature of each government party to the agreement.

  
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APPENDIX A

APPENDIX A

United States economic assistance to the Marshall Islands and the Federated States of Micronesia

COMPACT OF FREP ASSOCIATION

\$ IN MILLIONS

	FY 19	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	TOTAL
<b>MARSHALL ISLANDS</b>																	
Current Account	18.90	17.90	17.90	17.90	17.90	17.90	15.60	15.60	15.60	15.60	15.60	13.80	13.80	13.80	13.80	13.80	237.50
Capital Account	10.50	10.50	10.50	10.50	10.50	10.50	8.80	8.80	8.80	8.80	8.80	7.60	7.60	7.60	7.60	7.60	134.50
Kwajalein Impact	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	28.50
<b>SUBTOTAL</b>	<b>31.30</b>	<b>30.30</b>	<b>30.30</b>	<b>30.30</b>	<b>30.30</b>	<b>30.30</b>	<b>26.30</b>	<b>26.30</b>	<b>26.30</b>	<b>26.30</b>	<b>26.30</b>	<b>23.30</b>	<b>23.30</b>	<b>23.30</b>	<b>23.30</b>	<b>23.30</b>	<b>400.50</b>
<b>FEDERATED STATES OF MICRONESIA</b>																	
Current Account	42.60	39.60	39.60	39.60	39.60	39.60	34.60	34.60	34.60	34.60	34.60	27.60	27.60	27.60	27.60	27.60	512.00
Capital Account	24.00	25.00	25.00	25.00	25.00	25.00	21.00	21.00	21.00	21.00	21.00	17.00	17.00	17.00	17.00	17.00	314.00
<b>SUBTOTAL</b>	<b>66.60</b>	<b>64.60</b>	<b>64.60</b>	<b>64.60</b>	<b>64.60</b>	<b>64.60</b>	<b>55.60</b>	<b>55.60</b>	<b>55.60</b>	<b>55.60</b>	<b>55.60</b>	<b>44.60</b>	<b>44.60</b>	<b>44.60</b>	<b>44.60</b>	<b>44.60</b>	<b>826.00</b>
<b>SPECIAL CATEGORIES</b>																	
Program Grants	150.00																150.00
Sec. 177(b)	0.16																0.16
Sec. 213(b)	6.70	5.37	5.37	5.37	5.37	5.37	5.37	5.37	5.37	5.37	5.37	5.37	5.37	5.37	5.37	5.37	81.87
Sec. 216	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	150.00
Sec. 221(b)																	
Federal Services	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	4.26
Sec. 122	8.30	6.30	4.88	2.46													21.94
Sec. 223	8.90	10.10	11.30	12.60	13.60	13.60	14.90	16.10	17.60	18.90	20.20	21.40	22.70	23.90	25.20	26.50	263.90
Sec. 232																	
<b>SUBTOTAL</b>	<b>184.35</b>	<b>32.05</b>	<b>31.83</b>	<b>30.71</b>	<b>29.25</b>	<b>30.55</b>	<b>31.75</b>	<b>33.25</b>	<b>34.55</b>	<b>35.85</b>	<b>37.05</b>	<b>38.35</b>	<b>39.55</b>	<b>40.85</b>	<b>42.15</b>	<b>42.15</b>	<b>672.13</b>
<b>TOTAL</b>	<b>282.25</b>	<b>126.95</b>	<b>126.73</b>	<b>125.61</b>	<b>124.15</b>	<b>122.45</b>	<b>113.65</b>	<b>115.15</b>	<b>116.45</b>	<b>117.75</b>	<b>104.95</b>	<b>106.25</b>	<b>107.45</b>	<b>108.75</b>	<b>110.05</b>	<b>110.05</b>	<b>1898.63</b>

Current Account and Capital Account amounts will be adjusted for inflation using the formula set forth in Compact Section 217. Funding provided by Compact Sections 122, 177, 221, 223, and 232 is not subject to the full faith and credit provisions of Compact Section 236.

