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UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF THE GENERAL COUNSEL

January 17, 1984

DRAFT

NOTE TO NANCY HEINDEL

Re: Proposed "Compact of Free Association"

I am responding to your memorandum of January 10, 1984 concerning the draft proposal entitled "Compact of Free Association." Attached is a copy of a note from Ann Reilly to me concerning our comments on the proposed compact. As noted, we have several problems with the proposal.

Please let me know if we can be of any further assistance on this matter.

Philip Rosenfelt

Attachment



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF THE GENERAL COUNSEL

DRAFT

1-16-84

NOTE TO PHIL

Re: My comments on the proposed "Compact of Free Association"

Originally conceived to affect all three of the islands/<sup>or</sup> island groups of the Trust Territory (TT), the Compact as currently drafted would affect (in light of a Palau court decision) only two: the Marshall Islands (MI) and Micronesia. Palau would not be affected at this time.

Relevant here, Title II, Art. II, Sec. 221(b) of the Compact allows an amount of funds to MI and Micronesia based upon their special needs, "particularly in the fields of education and health care" and states that funds will be allocated in accordance with the provisions of the "separate agreement" in Title II, Art. II, Sec. 232.

Although only Title II was attached to the incoming, the cover letter to Congress and the section by section analysis indicates that Title I clarifies that the TT would no longer be subject to the laws of the U.S.

1. Status of Palau. Once the Compact is effective (upon, inter alia, termination of the TT agreement extant), the TT would not exist as an entity. As Palau is not currently affected, it must be determined how ED will treat Palau. Clearly the intent would not be to exclude Palau from receiving Federal program funds. Would Palau be treated as the sole entity under the TT designation (in that event, the TT agreement would be terminated only as to MI and Micronesia) or eligible by separate Act of Congress - e.g. read TT to be "Palau" where it is used in Federal legislation.

2. Effective Date. No effective date is given other than after approval of the Compact, agreement on its effective date and after "appropriate arrangements" for terminating the current TT agreement. Appendix A reflects an assumption that it would be effective for FY 85 funds.

There are obvious planning problems with an unclear effective date as to the allocation and use of funds to the TT. ED must determine when the program requirements "detach" - particularly for forward funded programs. The lack of an effective date hampers this.

3. ED's role in implementing the compact. It is unclear which Federal agencies are responsible for the annual audit requirement and the provision of technical assistance requirements of the compact. To the extent the MI and Micronesia use the funds for education, would ED be the responsible Federal agency for those activities?

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p.2 Ann to Phil


It is also unclear if ED would play any role in the development of plans that must be developed by MI and Micronesia (and concurred with by the U.S.) per the requirements of Title II, Art.I, Section 211(b).

4. Separate agreements. As noted earlier, the funds would be allocated according to a "separate agreement". No agreements were attached to the incoming; they may not have been negotiated yet with the MI and Micronesia.

5. Conforming amendments. Once the Palau issue is resolved, ED would need to make technical, conforming amendments to its regulations (in particular the program regulations and 34 CFR Parts 76 and 77) and seek technical, conforming amendments to legislation (e.g. amending the definition of "State" and amending legislative setasides applicable to the TT)

6. Extension of grant assistance, services and programs. Title II, Art.II, Sec.224 provides for mutual agreement to, inter alia, the extension of "grant programs". Because, but for specific language per postsecondary loans, ED's programs were not listed as those which would continue at current levels (e.g. unlike the FAA services), it is unclear if this refers to an extension solely of those already listed as "extended" in the Compact, or whether there could exist a mutual agreement to extend a grant program not so listed. Although it would appear to defeat the purpose (and possibly violate the terms) of the Compact to extend unlisted programs, this section seems unnecessarily vague and should be clarified.

In general, the Compact's language appears unnecessarily vague throughout Title II. Although I expect (given the comments on Title I in the section by section analysis) that Title I (not appended to the incoming) would resolve some of this, it would be helpful if an Appendix specifically set out those programs which would no longer be open to the MI and Micronesia. Again, the Palau issue needs an early resolution.

  
Ann Marie Reilly  
Attorney, Division of Elementary  
and Secondary Education

cc: Kay