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THE SECRETARY OF HEALTH AND HUMAN SERVICES  
WASHINGTON, D.C. 20201

E7-5/83.1  
Coleman

JAN 27 1984

The Honorable David A. Stockman  
Director  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Stockman:

This is in response to your request for a report on the Compact of Free Association, and on the accompanying draft Presidential letter and section-by-section analysis.

Although we agree with the objectives of the draft Compact, we do have several concerns relating to its interpretation and implementation that need to be addressed by OMB and the Department of State. These concerns are discussed in the attached staff memorandum. Provided that the concerns can be resolved, we have no objection to submission of the draft Compact to the Congress.

Sincerely,

*Margaret M. Heckler*  
Secretary

Attachment



## Compact of Free Association

### Staff Memorandum

The Compact, in its four titles, establishes basic principles of governmental and economic relations, and of security and defense. Most aspects of the draft Compact are of direct concern, and affect the responsibilities and interests, of other Federal agencies. Three provisions are related to the responsibilities and mission of this Department: section 171, discussed below; section 216(a), which provides annual grants for health and medical programs (\$1.791 million) and for a scholarship fund for post-secondary study in the United States (\$2.687 million); and section 221(b), which provides annual grants to the Free Associated States for health and education services (\$10 million). As we indicated in previous discussions with the staff of the Office of Micronesian Status Negotiations, both the proposed form and level of assistance outlined in sections 216(a) and 221(b) are appropriate to the Free Associated States and to the intended relationship between the United States and those entities.

It is our understanding that the Department of State and OMB believe that congressional action on the Compact is all the legislative action required for implementation and that there will be no legislation submitted to conform existing program authorizations to the Compact. We cannot wholly agree. Section 171 of the Compact provides:

... 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 the Marshall Islands and the Federated States of Micronesia as of the effective date of this Compact.  
(emphasis supplied).

It is open to question whether the Trusteeship Agreement, which was entered into in 1947, could legally have applied laws to the Trust Territory that were enacted only subsequently. In fact, programs of federal financial assistance administered by the Department, and enacted after 1947, apply to the Trust Territory by reason of specific provisions contained in the assistance statutes themselves. Thus, the effect of the above-quoted language on these later-enacted laws is

unclear. If the Compact is construed as dissolving the Trust Territory, then these later-enacted laws will presumably cease to require the Department to make payments to the Marshall Islands and the Federated States of Micronesia. This interpretation, however, would create a significant problem if the Compact is adopted in its present form, i.e., with the exculsion of Palau. In such case, Palau would also cease to be entitled to participate in these programs.

If, however, the Compact were construed to continue the Trusteeship Agreement, but only with respect to Palau, some of the programs of federal financial assistance administered by this Department would compel us to pay to Palau amounts that would otherwise have been paid with respect to the Marshall Islands and the Federated States, thus providing Palau with far more federal financial assistance than the assistance statutes originally contemplated.

If, differently interpreted, the Compact is read to leave these later-enacted statutes untouched, and they are then construed as requiring payment to the legal successors in interest to the Trust Territory, i.e., The Marshall Islands, the Federated States, and Palau, the Department would be compelled to continue to pay federal financial assistance to the Marshall Islands and the Federated States, in addition to the amounts payable under the Compact.

We believe that section 171 should be clarified. If this is not feasible, we suggest that the sectional summary accompanying the Compact make clear that section 171 includes laws enacted after the Trusteeship Agreement. Supplementary legislation will need to be proposed, in that case, to ensure that Palau is treated appropriately under the statutes affected.

We understand that all funds required by the Compact will be included in the FY 1985 State Department budget. If Palau is not covered by the Compact, this Department and OMB must ensure that funds for their use under our current program authorities remain in our FY 1985 budget.

Although the separate agreements referred to in section 232 are not included in the package submitted for our review, it is our understanding that this Department will have no authority or responsibility for administering sections 216(a) or 221(b)--rather, this will be the responsibility of the Department of State. Should the need for further relations between this Department and the Free Associated States be contemplated, this should be clarified as soon as possible.