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THE ADMINISTRATOR

DIRECTOR'S  
CORRESPONDENCE UNIT

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

Dear Dave:

This is in response to your December 29, 1983 request for our views on the Department of State draft Compact of Free Association and accompanying documents.

The draft Compact sets forth the nature and terms of the new Free Association relationship between the United States and two political jurisdictions of the Trust Territory of the Pacific Islands, namely the Federated States of Micronesia and the Marshall Islands. A third jurisdiction, Palau, may enter into the same relationship at a later date.

The Environmental Protection Agency is concerned with interpretation of section 219 of the draft Compact. The central issue for EPA is the disposition of existing and future EPA grants funds for the TTPI at the time that Free Association becomes effective. Section 219 speaks to the disposition of direct appropriations to the TTPI but we do not believe it clearly addresses EPA's concerns regarding disposition of grant funds. It is imperative that the process for disposition of these funds be clearly specified in the proposal about to be submitted to the Congress since, under the Compact of Free Association, all United States laws with certain limited exceptions will cease to apply to the freely associated governments as of the date of Free Association.

Our concerns have been discussed with the Office of Micronesian Status Negotiations (OMSN), and it is our understanding that the State Department acknowledges them and concurs with our recommendations.

Section 219 states: "All funds previously appropriated to the Trust Territory of the Pacific Islands which are unobligated by the Government of the Trust Territory of the Pacific Islands as of the effective date of this Compact shall accrue to the Governments of the Marshall Islands and the Federated States of Micronesia for the purposes for which such funds were originally appropriated as determined by the Government of the United States".

The State Department section analysis says that section 219 "provides that unobligated Trust Territory Government funds will remain available to the FAS Governments according to the purposes of the act appropriating such funds."



Section 219 could be interpreted as a source of authority for transferring to the governments of the Free Association states all unobligated grant funds allotted to them, as of the date of Free Association.\* This is contrary to the expressed concerns of EPA and OMB that unobligated grant funds be returned to the U.S. Government. It would also seriously cripple EPA's ability to determine how unexpended grant balances would be managed.

In order to make clear the intended interpretation of section 219 we recommend that the Compact's legislative history state, in the section analysis and any future report or other document: "While the Compact, when it takes effect, introduces a new and independent relationship of the Free Association states with this country, it is the intent of section 219 that grants made by the Environmental Protection Agency to those states remain available to them for the completion of the projects for which the grants were awarded. Those balances would be disbursed and managed according to procedures to be developed jointly by EPA and State. As for funds allotted to the Free Association states under EPA statutes but unobligated upon Free Association or unexpended upon completion of a grant project, it is the intent of section 219 that they be returned to the Environmental Protection Agency for reallocation by the Administrator."

OMSN has said it is willing to work out such a revision and to state in a letter to EPA its intent to work with us to establish procedures which will satisfy our requirements for disbursement and management of EPA grant funds after Free Association.

Consistent with the foregoing clarification, we intend also to conclude a Memorandum of Agreement with the State Department establishing all necessary procedures for accomplishing those purposes, including: (1) management, as of the date of Free Association, of all obligated but unexpended grant funds awarded to the TTPI; (2) return of all unobligated funds to EPA as of the date of Free Association; and (3) return of all EPA grant funds unexpended upon completion of a project to the U.S. Government for reallocation by the Administrator of the U.S. Environmental Protection Agency.

Regarding Palau, OMSN has confirmed to us that if Palau is not covered by section 219, or in an equivalent status, at the date of Free Association, the grants allocation and disbursement process for Palau will continue as at present.

\* A third construction of section 219 is that upon the inception of the Compact, all unobligated appropriations to the Trust Territory will accrue only to the two Compact signatories, leaving Palau and the Marianas bereft, yet this is not addressed in State's draft documents.

We cannot approve the State Department draft documents unless revised as discussed above, as they leave unresolved the nature of the arrangements for administration of EPA funds and management requirements which will be necessary once the Compact is in force.

Sincerely,



William D. Ruckelshaus

