



# Micronesians in Hawaii: Migrant Group Faces Barriers to Equal Opportunity

A Briefing Report from the Hawaii Advisory Committee  
to the U.S. Commission on Civil Rights

March 2019

## Jurisdiction

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### **Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

**Hawaii Advisory Committee to the  
U.S. Commission on Civil Rights**

The Hawaii Advisory Committee to the U.S. Commission on Civil Rights submits this report detailing civil rights concerns associated with barriers to equal opportunities for Micronesians within the state. The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state of Hawaii. The contents of this report are primarily based on testimony the Committee heard during hearings on August 20, 2015 and October 17, 2018, in Honolulu, Hawaii.

This report documents a longitudinal study conducted by the Committee based upon concerns raised by panelists and members of the public regarding barriers to equal opportunity throughout the state of Hawaii for people migrating from Micronesia to Hawaii. Based on the findings of this report, the Committee offers to the Commission recommendations for addressing this issue.

**Hawaii State Advisory Committee**

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## Executive Summary

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Under the Compacts of Free Association (COFA) first approved in Public Law 99-239 (1986)<sup>1</sup>, and Public Law 99-658 (1994)<sup>2</sup>, and later amended in Public Law 108-188 (2003)<sup>3</sup>, citizens of the Freely Associated States (FAS) of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau are legal non-immigrants allowed, for indefinite periods of time, to live, work, and study in the United States without a visa. As a result, citizens from Micronesia<sup>4</sup> began migrating to Hawaii.

For the purposes of this report, COFA migrants, also known as qualified non-immigrants, are those FAS citizens who migrated from the Federated States of Micronesia or the Republic of the Marshall Islands during or after 1986, and from the Republic of Palau during or after 1994.

In 1996, under the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Act), COFA migrants living and working legally in the United States under the Compacts were deemed ineligible for most federal public benefits.<sup>5</sup> Hawaii, as a U.S. port of entry in the Pacific, has directly borne the cost of public services related to migration under the Compacts.

In 2003, as part of the Compact Amendments, the U.S. Congress allocated \$30 million annually to Hawaii, Guam, the Northern Mariana Islands, and American Samoa to assist in defraying costs due to increased demands placed on health, educational, social, or public sector services, or infrastructure related to such services due to Compact Impact. In order to disburse the appropriated funds to each affected jurisdiction, the COFA Amendments require a count of COFA migrants residing within the affected jurisdictions no less than every five years. Current allocations are based on a 2013 U.S. Census Bureau estimation put the number of Compact migrants in Hawaii at

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<sup>1</sup> Compact of Free Association Act of 1985, Pub. L. No. 99-239, 99 Stat. 1770 (codified at 48 U.S.C. § 1681-1695).

<sup>2</sup> Palau Compact of Free Association Act of 1986, Pub. L. No. 99-658, 100 Stat. 3672 (codified in scattered at 48 U.S.C. § 1681 note).

<sup>3</sup> Compact of Free Association Amendments Act of 2003, Pub. L. No. 108-188, 117 Stat. 2720 (codified in scattered sections at 48 U.S.C. § 1901, 48 U.S.C. § 1921(a)-(h), 5 U.S.C. § 3101).

<sup>4</sup> In this report, the terms Micronesia and FAS are used to refer to the three compact nations, in keeping with the commonly used definition. See Francis Hezel, *Strangers in their own land: A century of Colonial Rule in the Caroline and Marshall Islands*, (Honolulu, University of Hawaii press, 1995, xv).

<sup>5</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. 2105 (amending 8 U.S.C. § 1621).

14,700 and the allocation for the state at \$12.8 million. In 2018, the U.S. Census Bureau conducted a new estimation, to update the numbers used in the allocation of Compact Impact funding.<sup>6</sup> Under the current agreement, Compact Impact funding expires in 2023.

COFA allows most citizens of the signatory territories free immigration rights to live and work in the United States.<sup>7</sup> These immigrants, however, are not eligible for many federal services such as Medicaid and other needs-based social services.<sup>8</sup> The State of Hawaii independently meets many of the social, health and education needs of these migrants, placing further strain on an infrastructure already struggling to meet the needs of Hawaiians already living in the State.<sup>9</sup>

The Government Accountability Office estimated that the annual cost to Hawaii for the years 1996-2000 was \$86 million,<sup>10</sup> mainly in un-reimbursed health care and educational costs. In 2011, the State estimated the provision of services to COFA migrants now likely exceeds \$100 million annually.<sup>11</sup>

COFA migrants are disproportionately homeless, unemployed, and lacking healthcare. This, coupled with a general lack of language access serves to further fuel discrimination against this group, affecting their ability to acquire decent housing, obtain employment, and receive government services that they are legally entitled to receive. The Committee heard testimony revealing the social and institutional racism and discrimination endured by the COFA migrants. While much of it is outside of the scope of federal protection, there is ample room for federal and state intervention to mitigate the barriers to equal opportunity this migrant group faces.

The legal framework in the United States protects lawful residents from a denial of equal access to official benefits and services. The federal government and the state of Hawaii have obligations to deliver social service support to this migrant group, lawfully residing in the United States. As evidenced by the table on page 14, numerous pieces of legislation have been introduced in

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<sup>6</sup> U.S. Census Bureau, *Final Report 2018 Estimates of Compact of Free Association (COFA) Migrants* (Apr. 26, 2018) <https://www.doi.gov/sites/doi.gov/files/uploads/2018-cofa-report.pdf>.

<sup>7</sup> Compact of Free Association Act of 1985, Pub. L. No. 99-239, 99 Stat. 1770.

<sup>8</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. 2105.

<sup>9</sup> See Appendix C.

<sup>10</sup> Government Accountability Office, *Compacts of Free Association: Improvements Needed to Assess and Address Growing Migration*, 2011, GAO Publication No. GAO-12-64, Washington D.C.: Government Printing Office.

<sup>11</sup> Ibid.

Congress to mitigate the hardship on both the migrant community and the social service infrastructure in Hawaii. To date, the only piece of legislation that has been passed into law is a 2018 law extending the right to the COFA migrants to obtain a driver's license.<sup>12</sup>

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<sup>12</sup> Real ID Act Modification for Freely Associated States Act, Pub. L. No. 115-323, 132 Stat. 4443 (codified at 49 U.S.C. § 30301).

## I. Introduction

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice.<sup>13</sup> The Commission has established advisory committees in each of the 50 states and the District of Columbia. These Advisory Committees advise the Commission of civil rights issues in their states that are within the Commission’s jurisdiction.<sup>14</sup> “National origin” means “the country where a person was born, or, more broadly, the country from which plaintiff’s ancestors came.”<sup>15</sup> The U.S. Citizenship and Immigration Services defines national origin as “the individual’s place of birth, country of origin, ethnicity, ancestry, native language, accent, or the perception that they look or sound ‘foreign.’”<sup>16</sup>

Discrimination based on national origin happens when people are singled out and denied equal opportunity because “they or their family are from another country, because they have a name or accent associated with a national origin group, because they are limited English proficient, or because they participate in certain customs associated with a national origin group.”<sup>17</sup> Likewise, the Equal Employment Opportunity Commission defines discrimination on a basis of national origin as “including, but not limited to, the denial of equal employment opportunity because of an individual’s, or his or her ancestor’s, place of origin; or because an individual has the physical, cultural or linguistic characteristics of a national origin group.”<sup>18</sup> Additionally, while the Supreme

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<sup>13</sup> 42 U.S.C. § 1975a.

<sup>14</sup> 42 C.F.R. 703.2(a)-(f).

<sup>15</sup> *Espinoza v. Farah Mfg. Co., Inc.*, 414 U.S. 86, 88-89 (1973).

<sup>16</sup> U.S. Citizenship and Immigration Services, *Handbook for Employers M-274: 11.2.3 National Origin Discrimination*, July 2017, <https://www.uscis.gov/i-9-central/1123-national-origin-discrimination>.

<sup>17</sup> U.S. Dept. of Justice, *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, Nat’l Origin, Religion, Sexual Orientation, or Gender Identity* (Dec., 2014), <http://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf>.

<sup>18</sup> 29 C.F.R. § 1606.1. The EEOC issued updated guidance in 2016, generally defining national origin discrimination as mentioned above, and provided further guidance on examples of national origin discrimination. See U.S. Equal Emp. Opportunity Comm’n, *EEOC Enforcement Guidance on National Origin Discrimination*, 2016, <https://www.eeoc.gov/laws/guidance/national-origin-guidance.cfm>.

Court has distinguished between citizenship and national origin discrimination, the Court clarified that the Civil Rights Act prohibits “discrimination on the basis of citizenship whenever it has the purpose or effect of discriminating on the basis of national origin.”<sup>19</sup>

The Hawaii Advisory Committee (Committee) to the Commission conducted a study between 2015 and 2018 on Micronesian migrants in Hawaii who migrated under special treaties, known as Compacts of Free Association (COFA), between the United States and the Freely Associated States (FAS) located in the Pacific region known as Micronesia. Under the Compacts, citizens of the FAS can live and work in the United States for indefinite periods of time as legal non-immigrants. Following the ratification of the first of the COFA agreements in 1986, FAS citizens began migrating to Hawaii. This influx of COFA migrants has been met with controversy, debate, and has stirred resentment from many quarters in Hawaii, in part from the perception that these migrants are overburdening the State’s health, education, and social service resources.

There are several laws in the United States that guarantee civil rights and prohibit discrimination in several settings:

- Title VI of the Civil Rights Act of 1964<sup>20</sup> prohibits discrimination on the basis of race, color, sex, religion, or national origin.
- Title VII of the Civil Rights Act of 1964<sup>21</sup> prohibits employment discrimination based on race, color, religion, sex, and national origin.
- The 14th Amendment to the U.S. Constitution<sup>22</sup> prohibits any state from denying “to any person within its jurisdiction the equal protection of the laws.”
- The Fair Housing Act<sup>23</sup> prohibits discrimination in the sale, rental, and financing of housing based on race, color, national origin, religion, sex, familial status, and disability.

The Hawaii Advisory Committee sought to examine whether these protections when applied in practice, are sufficient to address the public service crisis within the COFA migrant population in

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<sup>19</sup> *Espinoza v. Farah Mfg. Co., Inc.*, 414 U.S. at 92.

<sup>20</sup> 42 U.S.C. § 2000(c) et seq.

<sup>21</sup> 42 U.S.C. § 2000(e) et seq.

<sup>22</sup> U.S. Const. amend. XIV, §1.

<sup>23</sup> 45 U.S.C. §36000 et seq.

Hawaii. As part of this effort, the Hawaii Advisory Committee to the United States Commission on Civil Rights hosted an in-person briefing in Honolulu, HI on August 20, 2015, and a community forum on October 17, 2018.<sup>24</sup>

During these briefings, the Committee received testimony from government officials, legal professionals, community leaders, educators, healthcare officials, advocates, members of the COFA migrant community, and other stakeholders. The committee heard testimony about discrimination suffered by the COFA migrants in Hawaii. The testimony of the panelists also identified the gap between federal aid and the cost to provide services to the COFA migrants. Lastly, the Committee heard about policy changes that could mitigate the economic impact COFA immigration has brought to Hawaii, as well as alternative practices to help COFA migrants successfully integrate into Hawaiian society.

This report is the result of the Committee’s review of the testimony, as well as data and reports submitted to Congress by the various agencies involved with and affected by the COFA treaties. There are four sections to the report, beginning with a brief background on the COFA treaties and subsequent migration of Micronesians to Hawaii. Second, is a legislative summary intended to provide an overview of the laws, policies, and practices associated with COFA, and the proposed legislation intended to mitigate the effect on the Hawaiian economy. Third, panel testimony provides an overview of the practices, themes, and factors that according to testimony, create and exacerbate the discriminatory impact against the COFA migrant community in Hawaii. The report concludes with a series of findings in Hawaii, and recommendations to the Commission which may help address the identified civil rights concerns.

## **BACKGROUND**

### **Trust Territory of the Pacific Islands**

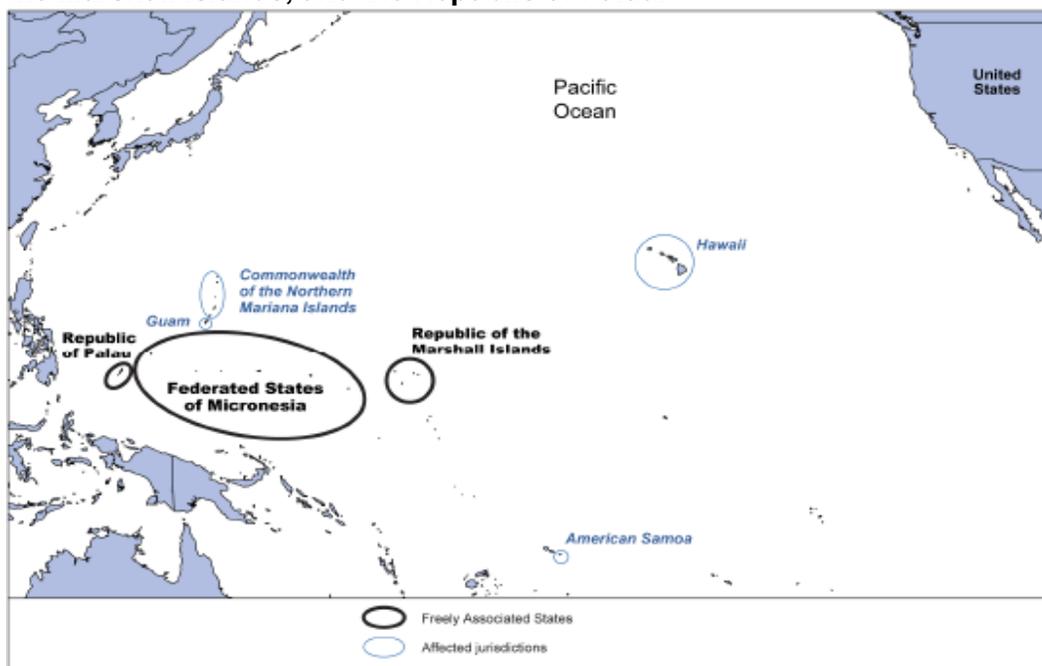
The origins of the COFAs extend back to the end of World War II, when the United Nations assigned administering authority over these Pacific Islands (See Figure 1) to the United States. The trusteeship, called the Trust Territory of the Pacific Islands, designated the islands as “strategic in

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<sup>24</sup> See Appendix A for briefing agendas.

order to enable the United States to safeguard its own national security,”<sup>25</sup> and gave the United States exclusive authority over 3,000,000 square miles of the Pacific Ocean.<sup>26</sup> Under the United Nations trusteeship system, the objectives for the United States were to (a) further international peace and security, (b) promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, (c) to encourage respect for human rights, and (d) ensure equal treatment in social, economic, and commercial matters.<sup>27</sup>

**Figure 1: Map of Freely Associated States: Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau.**



Source: U.S. Gov’t Accountability Office, GAO-13-773T, *Compacts of Free Association: Guidelines Needed to Support Reliable Estimates of Cost Impacts of Growing Migration*, p.5 (2013).

In the 1947 hearings to ratify the UN Trusteeship, Secretary of State George Marshall testified before the Senate Committee on Foreign Relations and stated “the American people are firmly resolved that this area shall never again be used as a springboard for aggression against the United States or any other member of the United Nations.”<sup>28</sup>

<sup>25</sup> Trusteeship Agreement for the Territory of the Pacific Islands, S.J. Res 143, 80th Cong. (1947) (Trusteeship Agreement approved by the United Nations Security Council on April 2, 1947, ratified by the United States on July 18, 1947).

<sup>26</sup> *Id.*

<sup>27</sup> U.N. Charter, Chap. XII, art.76, ¶ 1.

<sup>28</sup> *Statement of the Hon. George C. Marshall, Secretary of State, Before the S. Comm. on Foreign Relations*, 80th Cong. (1947), <http://marshallfoundation.org/library/digital-archive/trusteeship-agreement-territory-pacific-islands/>.

During the hearings, the Senate committee questioned Secretary Marshall about whether the U.S. would have absolute control over the islands,

The CHAIRMAN: Therefore, there is no limitation upon the freedom with which we can use these strategic areas in the scheme of national defense; is that not so?

Secretary MARSHALL: That is correct, sir.<sup>29</sup>

There was, however, concern over whether the security benefits outweighed the responsibilities the agreement would bring. One Senator's concerns were quite prophetic:

Secretary MARSHALL: They (island population) are on the decrease now. They have been on the decline, and possibly under our health measures they may, as you say, increase.

Senator HICKENLOOPER: And within, say, 20 or 25 years the population of those islands is going to be a tremendous factor; and, personally, I think we are going to have to be prepared to meet it, and probably should be thinking about it now, because they are going around with health measures, which are perfectly fine, and we have found some new kinds of diets. They do not like coconuts any more. They like K rations and meat and a little something besides fish, and I think it is one of the practical problems we are going to have to meet, although not now. I hope we are thinking about meeting it eventually... the whole point of my question is, we look at the fine benefits which we get from security, but there are some human problems we are going to have to take on, and they will be sizable 20 years from now.<sup>30</sup>

Between 1946 and 1958 the United States conducted at least 67 nuclear tests in the Marshall Islands.<sup>31</sup> The tests sent irradiated coral dust throughout the atolls.<sup>32</sup> These tests of nuclear weapons had a particularly devastating effect on Micronesia and its people. Residents were forced to relocate, traditional agriculture became impossible on lands rendered unusable by fallout or military operations, and the economy became dependent on the United States.<sup>33</sup> In short, the U.S. failed to fulfill the objectives outlined in the United Nations trusteeship.

### **Establishment of the Compacts of Free Association**

By the 1970's, the citizens of the Republic of the Marshall Islands and the Federated States of Micronesia opted for self-determination.<sup>34</sup> The islands remained strategic and national security

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<sup>29</sup> *Trusteeship Agreement for the Territory of the Pacific Islands: Hearing on S. J. Res. 143 Before the S. Comm. on Foreign Relations, 80th Cong. 7 (1947) [Washington: GPO, 1947].*

<sup>30</sup> *Id.*

<sup>31</sup> Compact of Free Association Act of 1985. Pub. L. 99-239. § 177(a).

<sup>32</sup> Radiochemistry Society, U.S. Nuclear Tests, at [http://www.radiochemistry.org/history/nuke\\_tests/index.html](http://www.radiochemistry.org/history/nuke_tests/index.html).

<sup>33</sup> *Ibid.*

<sup>34</sup> Compact of Free Association Act of 1985. Pub. L. 99-239, 99 Stat. 1770 (Preamble.).

concerns for the U.S.,<sup>35</sup> therefore in 1986, the U.S. entered into COFAs with the Federated States of Micronesia and the Republic of the Marshall Islands .<sup>36</sup> In exchange for unlimited and exclusive access to land and waterways, the compacts allow citizens of these Freely Associated States, among other things, to enter, work, and reside indefinitely in the United States.<sup>37</sup> The Compacts further provided that the parties would hold additional talks and negotiate a second and final financial package.

### **2003 Amended Compacts**

The negotiations culminated in 2003 with separate Amended Compact agreements between the United States and the Federated States of Micronesia, and the United States and the Republic of the Marshall Islands. The Amended Compacts call for U.S. financial assistance for a twenty-year period that began in fiscal year 2004 and ends in fiscal year 2024.<sup>38</sup> The FSM is to receive approximately \$2.1 billion and the RMI \$1.5 billion under the Amended Compacts.<sup>39</sup>

As part of the Amended compacts the President, who has since delegated the responsibility to the Secretary of the Interior, is required to submit annual reports to Congress regarding the Compacts.<sup>40</sup> Every 5 years, the annual reports include findings and recommendations from reviews that are required by law to be conducted at 5-year intervals.<sup>41</sup> The reports are intended to discover the overall nature and development of the U.S.-Freely Associated States relationships, including general social, political, and economic conditions; and among other things, to provide recommendations on ways to increase the effectiveness of U.S. assistance to meet the overall objectives.<sup>42</sup> The last reports were in 2008, 2013, and 2018.

The COFAs provide strategic defense and economic assistance from the United States in exchange for unrestricted and exclusive access to Freely Associated States' lands and waterways.<sup>43</sup> The

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<sup>35</sup> See *Statement of Vikram J. Singh, Deputy Assistant Sec'y of Def. for S. and S. E. Asia, Office of the Sec'y of Def. for Policy Before the S. Comm. on Energy and Nat. Res.* (July 11, 2013).

<sup>36</sup> Compact of Free Association Act of 1985, § 103.

<sup>37</sup> *Id.* at Art. IV § 141(a).

<sup>38</sup> Compact of Free Association Amendments Act of 2003, § 104.

<sup>39</sup> Government Accountability Office, *Compacts of Free Association: Issues Associated with Implementation in Palau, Micronesia, and the Marshall Islands*, 2016 (GAO Publication No. 16-550T). p5-6. Washington, D.C.: Government Printing Office.

<sup>40</sup> Compact of Free Association Amendments Act of 2003, Pub. L. No. 108-188, 117 Stat. 2720.

<sup>41</sup> *Id.* at 104(h).

<sup>42</sup> *Id.*

<sup>43</sup> Compact of Free Association Act of 1985 § 311.

COFAs further provide that the parties would hold additional talks and negotiate a second, and final, financial package.<sup>44</sup> The Amended Compacts provide U.S. financial assistance for infrastructure development over a twenty-year period which ends in fiscal year 2024.<sup>45</sup> Under the Amended compacts, the Federated States of Micronesia is to receive approximately \$2.1 billion and the Republic of the Marshall Islands \$1.5 billion.<sup>46</sup>

The compacts acknowledged the potential harm to jurisdictions due to immigration under the 1986 COFAs.<sup>47</sup> Congress recognized that there could be a significant economic impact on the resources of the states to which FAS citizens immigrated, and expressed its intent “not to cause any adverse consequences for an affected jurisdiction.”<sup>48</sup> Compact-Impact aid was included in the Amended compacts, providing \$30 million in formula aid each year, and another \$1.3 - \$3 million in discretionary funding to be distributed between Hawaii, Guam, the Northern Mariana Islands, and American Samoa.<sup>49</sup> The funds are intended to defray the costs incurred as a result of increased demands placed on health, educational, social, and public services.<sup>50</sup>

In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)<sup>51</sup>, commonly referred to as the Welfare Reform Act, changed the categories of persons eligible for certain federal safety-net programs including Medicaid and the Children’s Health Insurance Program (CHIP). As a result, COFA migrants are no longer eligible for these programs. In the aftermath of the Welfare Reform Act, Hawaii continued to provide health care services to COFA migrants using State funds, recognizing the contributions and health needs of COFA migrant populations in their State. A large number of COFA migrants suffer from chronic diseases and health conditions that can be linked to the “medical effects of U.S. nuclear testing in the region.”<sup>52</sup>

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<sup>44</sup> Compact of Free Association Act of 1985, Title II, Article III § 231.

<sup>45</sup> Compact of Free Association Act of 2003, Pub. L. 108-188, Title II, Article I § 211(a)

<sup>46</sup> Report to the Congress on the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, 2004, p. 2.

<sup>47</sup> Compact of Free Association Act of 2003 § 104(e).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104-193, 110 Stat. 2105.

<sup>52</sup> Asian & Pacific Islander American Health Forum, *Health Care for COFA Migrants*, July, 2015.

Hawaii's share of the annual Compact-Impact aid is approximately \$11 million per year.<sup>53</sup> The state government in Hawaii identifies its cost to provide basic services to the COFA migrants at over \$100 million per year.<sup>54</sup> There are limitations to these cost estimates which affect the reported costs' credibility and prevent a precise calculation of total compact impact on the Hawaii state budget.<sup>55</sup>

### **Healthcare, Economy, and Education, in the Freely Associated States**

The *Hawaii Medical Journal* reported that health indicators vary across Micronesia (Freely Associated States), but “in general are quite poor with high rates of chronic and infectious disease.”<sup>56</sup> According to the research, “Infant mortality and life expectancy are poor when compared to the US standards . . . malnutrition and Vitamin A deficiency remain serious problems . . . Type 2 diabetes rates are alarming affecting half of the population over 50 years of age.”<sup>57</sup> The impact to migration to Hawaii was noted in the report noting that “as they migrate to Hawaii, their health status mirrors the poor health indicators in their home nations. They bring significant burdens of infectious and chronic disease.”<sup>58</sup>

The economy of the Freely Associated States largely consists of sustenance farming, and government employment, which employs two-thirds of the adult working population.<sup>59</sup> The government is largely funded (58%) by COFA grants.<sup>60</sup> The Department of the Interior, Office of Insular Affairs is responsible for administering and monitoring the grants.<sup>61</sup>

The FAS islands have “few commercially valuable mineral deposits” and limited potential for tourism due to “isolation, lack of adequate facilities, and limited internal air and water

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<sup>53</sup> Testimony Before the Hawaii Advisory Comm. to the United States Comm'n on Civ. Rights, Morning Hearing, Honolulu, HI, 3-5 (2015) (Statement of Esther Kia'aina) [Hereinafter 2015 Briefing Transcript A].

<sup>54</sup> 2015 Briefing Transcript A, 5-8. (Wong Testimony).

<sup>55</sup> U.S. Government Accountability Office: Testimony Before the S. Comm. on Energy and Nat. Res., 114th Cong. 24 (2016) (Statement of David Gootnick, Director, International Affairs and Trade).

<sup>56</sup> Riklon, S. (2010) The Compact Impact in Hawaii: Focus on Health Care. *Hawaii Medical Journal*, 69, 7.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*, 8.

<sup>59</sup> Central Intelligence Agency. World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/fm.html>. (last visited Jan. 26, 2017).

<sup>60</sup> *Ibid.*

<sup>61</sup> Exec. Order No. 12569, 3 C.F.R. 234 (1986).

transportation.”<sup>62</sup> The economies of the FAS nations are fragile “because of dependence on U.S. assistance and lackluster performance of its small and stagnant private sector.”<sup>63</sup>

The economic development policy of the Compacts depends in part, on Freely Associated State citizens traveling abroad and sending remittances back to their families in the FAS.<sup>64</sup> The Department of the Interior Office of Insular Affairs reported the Federated States of Micronesia economic prospects remained limited due in part because, “although remittances from emigrants could provide increasing monetary support to the FSM, evidence suggests that *FSM emigrants are currently limited in their income-earning opportunities abroad, owing to inadequate education and vocational skills.*”<sup>65</sup>

The largest funded sectors under the amended Compacts are healthcare and education:

[I]mprovements in health and education will create a better workforce at home and ***bring more remittances from abroad***, and that these factors, together with improved infrastructure, will provide a foundation for long-term private sector economic development.<sup>66</sup>

Growth of the economy is tied to remittances, indicating a dependence in the plan on immigration.

### **Compact Migration**

The nations that comprise the Freely Associated States are among the smallest in the world. The total population of the FAS nations in 2014 was estimated at 173,627 persons (see Table 1), or roughly the 2015 population of Tempe, Arizona.<sup>67</sup> Accurate enumeration of Compact related migration proves difficult, but it is estimated that “roughly 56,000 compact migrants - nearly a quarter of all FAS citizens – were living in U.S. areas in 2005 to 2009.”<sup>68</sup>

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<sup>62</sup> Central Intelligence Agency. World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/fm.html>. (last visited Jan. 26, 2017).

<sup>63</sup> Ibid.

<sup>64</sup> *The Implementation of the Compact of Free Association with the Federated States of Micronesia: Hearing Before the H. Comm. on Nat. Res., Subcomm. on Insular Affairs*, 110th Cong. 1 (2008) (Statement of Thomas Bussanich, Acting Director, Office of Insular Affairs, Department of the Interior) (Emphasis added) [Hereinafter *The Implementation*].

<sup>65</sup> *Compact of Free Association: Micronesia Faces Challenges to Achieving Compact Goals*. 110<sup>th</sup> Cong. 1 (2008) (Statement of David Gootnick, Director, International Affairs and Trade Team, Government Accountability Office). (Emphasis added).

<sup>66</sup> *The Implementation*, *supra*, note 56.

<sup>67</sup> United States Census Bureau. Quick Facts. <https://www.census.gov/quickfacts/table/PST045216/0473000>. (Last visited Feb. 6, 2017).

<sup>68</sup> Government Accountability Office. (2011). *Compacts of Free Association: Improvements Needed to Assess and Address Growing Migration*. GAO Publication No. GAO-12-64. Washington D.C.: Government Printing Office.

**Table 1: Freely Associated States' Population, Gross Domestic Product (GDP), and Income, 2014**

	Federated States of Micronesia	Republic of the Marshall Islands	Republic of Palau
Population	102,166	53,753	17,708
GDP	\$318.1 million	\$186.7 million	\$249.1 million
Per capita GDP	\$3,115	\$3,474	\$14,066

Source: Graduate School USA, Pacific Islands Training Initiative, *Federated States of Micronesia Fiscal Year 2014 Economic Review* (September 2015); *Republic of the Marshall Islands Fiscal Year 2014 Economic Review* (September 2015); *Republic of Palau Fiscal Year 2014 Economic Review* (August 2015). | GAO-16-550T

Citizens of the Freely Associated States are not citizens or nationals of the United States, but are entitled to enter the United States as non-immigrants without visas.<sup>69</sup> If admissible under the Compacts, and other U.S. Immigration laws, Freely Associated State citizens may live, study, and work in the United States.<sup>70</sup> FAS residents, however, who “cannot show that they have sufficient means of support in the United States may be deportable.”<sup>71</sup>

The readiness of FAS citizens to leave their islands can be partially explained by the pressure of a growing population on a resource-poor economy.<sup>72</sup> One study suggests the infusion of grant money by the United States developed a wage-dependent economy that all-but-replaced a sustenance economy that had been in place since time immemorial on the islands.<sup>73</sup> The Compacts, in theory, increased the importance of money and the need for wage employment.<sup>74</sup> Fewer and fewer households produced their own foods.<sup>75</sup> Emigration to the United States has been seen as a way to lessen the impact of the population growth and to provide a chance at an economic future not available on the islands.<sup>76</sup>

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<sup>69</sup> U.S. Citizenship and Immigration Services, *Status of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands*, at 1 (2015). [https://www.uscis.gov/sites/default/files/USCIS/Verification/I-9%20Central/FactSheets/FactSheet-Status\\_of\\_Citizens\\_of\\_Micronesia\\_Marshalls\\_Islands.pdf](https://www.uscis.gov/sites/default/files/USCIS/Verification/I-9%20Central/FactSheets/FactSheet-Status_of_Citizens_of_Micronesia_Marshalls_Islands.pdf) (last visited Jan. 26, 2017)

<sup>70</sup> *Ibid.*, 2.

<sup>71</sup> *Ibid.*, 4.

<sup>72</sup> Migration Policy Institute. *The Federated States of Micronesia: The Push to Migrate*.

<http://www.migrationpolicy.org/article/federated-states-micronesia-push-migrate>. (Last visited Jan. 26, 2017)

[Hereinafter Migration Policy].

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

**Figure 2. Estimated Numbers of Compact Migrants in U.S. Areas, 2005-2009.**

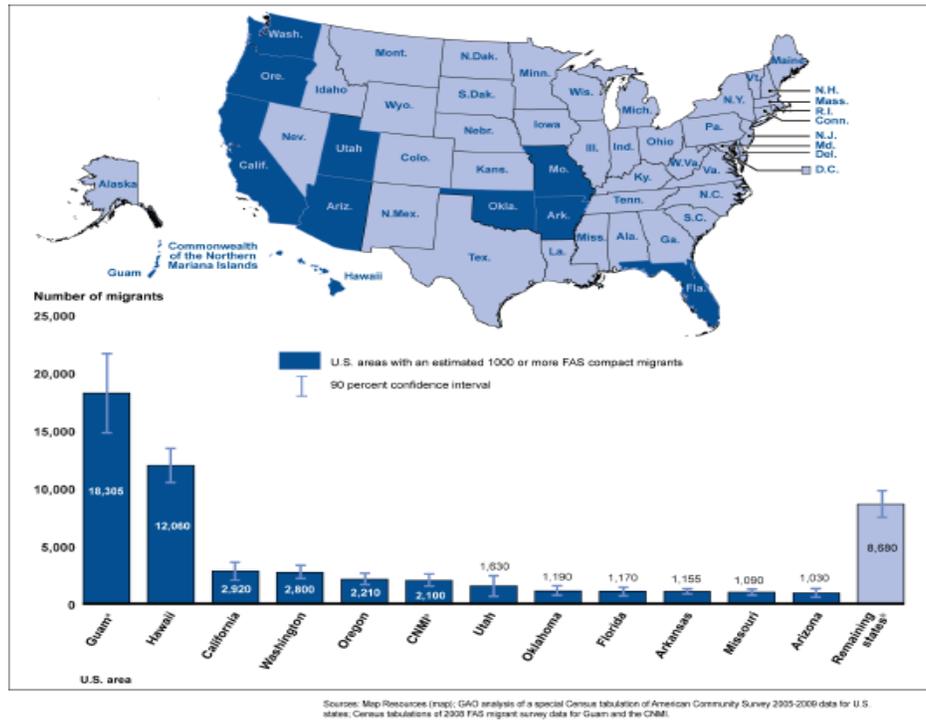


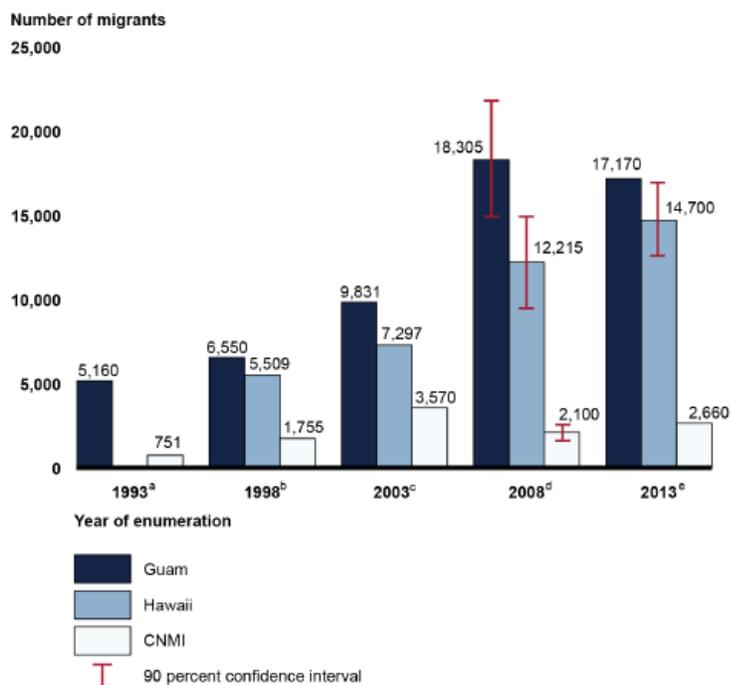
Figure 2 shows nearly a quarter of all Freely Associated State citizens live in the United States with the largest concentration in Guam and Hawaii. Nine mainland states each had an estimated COFA migrant population of more than 1,000 people.

Congress recognized that there could be a significant effect on the resources of the places to which FAS citizens migrated. Compact Impact Aid are the funds due to affected jurisdictions like Hawaii as a result of the financial impact of COFA. Congress acknowledged in approving the immigration provision of the Compacts that such could be the case and expressed its intent not to cause any adverse consequences for an affected jurisdiction. Annually the United States through the OIA provides \$30 million in mandatory Compact Impact Aid funding and another \$1.3-\$3 million in discretionary funding for the affected jurisdictions of Guam, Hawaii, the Northern Marianas, and American Samoa. The funds are used to defray the costs incurred as a result of increased demands placed on health, educational, social, or public services.

When the Compacts with Federated States of Micronesia and Republic of the Marshall Islands were re-negotiated, Congress included a permanent appropriation for 20 years of \$30 million per year from 2004 to 2024 to be shared by the affected jurisdictions.

Thousands of migrants from the Freely Associated States have established residence in Hawaii since the compacts went into effect, creating a strain on state resources and claims of disparate treatment from the compact migrants.<sup>77</sup> Although there is no definitive enumeration, a 2013 census commissioned by the Department of the Interior estimated there were 14,700 Freely Associated State citizens living in Hawaii (See Figure 2).<sup>78</sup>

**Figure 3. Compact Migrant Population Estimated by 1993-2013 Census Enumerations in Guam, Hawaii, and the Commonwealth of the Northern Mariana Islands (CNMI)**



Source: GAO analysis of Census surveys. | GAO-16-550T

<sup>a</sup>Census conducted the Guam survey in 1992 and the CNMI survey in 1993; Hawaii was not surveyed at that time. Because the Palau compact did not enter into force until 1994, Palauans are not included in the 1992 or 1993 totals.

<sup>b</sup>Guam and Hawaii were surveyed in 1997, and the CNMI was surveyed in 1998.

<sup>c</sup>The 2003 survey was conducted in the summer of 2003. Census did not use a probability sample for surveys before 2008; therefore, those surveys do not have an associated confidence interval.

<sup>d</sup>Within Census's 90 percent confidence interval, the 2008 estimate for Guam ranges from 14,866 to 21,744; for Hawaii, from 9,479 to 14,951; and for the CNMI, from 1,589 to 2,611. The 2008 Hawaii estimate used 2005-2007 Census American Community Survey data. The Guam and CNMI surveys were conducted in 2008. The decline in compact migrants in the CNMI from 2003 to 2008 mirrored a general decline in the CNMI population overall.

<sup>e</sup>Census's 90 percent confidence interval for the 2013 Hawaii estimate ranges from 12,459 to 16,941. The 2013 enumeration used data from previous years: 2009-2011 Census American Community Survey data from Hawaii and 2010 Census data from Guam and CNMI. Because the 2013 Guam and CNMI figures are derived from a census as opposed to a survey, there is not an applicable margin of error.

<sup>77</sup> See, e.g., United States Government Accountability Office. *Compacts of Free Association: Guidelines Needed to Support Reliable Estimates of Cost Impacts of Growing Migration*. GAO Pub. No. GAO-13-773T. July 11, 2013.

<sup>78</sup> *Id.* at 7.

In a survey utilizing respondent-driven sampling that gathered information on 2,522 Micronesians in Hawaii, the most frequently cited reason for migrating to Hawaii was health care (35%) followed closely by Education (33%).<sup>79</sup> Despite their reasons for relocating, FAS migrants do not qualify for most social benefits in the United States (See Table 2.).

**Table 2: Eligibility Status of Compact Migrants for Selected Federal Benefit**

<b>Program</b>	<b>Federal eligibility status<sup>a</sup></b>
Social Security Old Age, Survivors, and Disability Insurance	Eligible <sup>b</sup>
Social Security Supplemental Security Income (SSI)	Generally ineligible <sup>c</sup>
Medicaid	Generally ineligible <sup>d</sup>
Emergency Medicaid	Eligible
Medicare	Eligible <sup>b</sup>
Children's Health Insurance Program (CHIP)	Generally ineligible <sup>d,e</sup>
Temporary Assistance for Needy Families (TANF)	Ineligible
Supplemental Nutrition Assistance Program (SNAP)	Ineligible
School Lunch Programs	Eligible
Section 8 Housing Federal Rent Subsidies for Eligible Families	Eligible

Source: GAO-12-64, *Compacts of Free Association*, p. 27

Note: This information applies to compact migrants who are not U.S. citizens.

<sup>a</sup>Eligibility status shown is based solely on compact migrant status. Compact migrants may be eligible for some benefits for other reasons, such as membership in the military.

<sup>b</sup>Eligibility is based on work history.

<sup>c</sup>A compact migrant is eligible for SSI benefits if he or she was receiving such benefits on August 22, 1996.

<sup>d</sup>The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Pub. L. No. 111-3, permits states to cover certain children and pregnant women in both Medicaid and the Children's Health Insurance Program (CHIP) who are "lawfully residing in the United States"—a definition that includes compact migrants.

<sup>e</sup>HIP eligibility to unborn children and provide prenatal care and Reg. 61956 (Oct. 2, 2002).

In a recent report on COFA and the political and economic conditions of the three signatory nations, the Office of Insular Affairs of the U.S. Department of the Interior (OIA) noted resultant concerns among the public in Hawaii stemming from the immigration of persons from Freely Associated State nations. These concerns include additional health, education, and welfare costs borne by the public, and high rates of unemployment and homelessness among the migrants.<sup>80</sup>

<sup>79</sup> Pobutsky A., Krupitsky D., Yamada S. (2009). *Micronesian Migrant Health Issues in Hawaii: Part 2: An Assessment of Health, Language and Key Social Determinants of Health. Californian Journal of Health Care Promotion. 7.2:32-35.*

<sup>80</sup> U.S. Department of the Interior, Office of Insular Affairs, *Report to the Congress on the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands*, November 2011.

Hawaii's share of the annual Compact Impact assistance is estimated to be \$11 million; a report to the state legislature by the Attorney General in 2009 estimated the State's share of FAS migrant costs at that time exceeded \$100 million per year.<sup>81</sup>

## Legislative History

### **Compact of Free Association – Between the United States, the Federated States of Micronesia, and the Republic of the Marshall Islands**<sup>82</sup>

Enacted in 1986, the Compact of Free Association between the United States, the Federated States of Micronesia, and the Republic of the Marshall Islands ended a trusteeship that had been in place since 1947. The Compacts provide for economic aid and immigration rights in return for exclusive military use rights in these countries. The economic provisions of the Compacts were to expire in 15 years.<sup>83</sup> The Compact provided that, starting in 1999, the parties were to enter into negotiations regarding the expiring provisions.<sup>84</sup>

### **Personal Responsibility and Work Opportunity Act of 1996 (Welfare Reform Act)**<sup>85</sup>

Prior to the Welfare Reform Act, FAS citizens residing in the United States were able to obtain federal assistance because they were considered “permanently residing under color of law”, which was an eligibility standard that is not defined in statute.<sup>86</sup> Historically, the category “permanently residing under color of law” has been used to provide a benefit to certain foreign nationals who the government knows are present in the United States, but whom it has no plans to deport or remove.<sup>87</sup> The new means-tested eligibility requirements in the Welfare Reform Act effectively ended access to federal benefits for foreign nationals who had been considered “permanently residing under color of law.”<sup>88</sup> Consequently, citizens of the FAS residing in the United States became ineligible for most federal public benefits.

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<sup>81</sup> STATE OF HAW. DEP'T, Department OF THE ATTORNEY GEN.General, FINAL REPORT OF THE COMPACTS OF FREE ASSOCIATION TASK FORCE, Leg. GM166, 25th Sess., at 5 (2009).

<sup>82</sup> Compact of Free Association Act of 1985, Pub. L. No. 99-239.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Personal Responsibility and Work Opportunity Act (PRWOA) of 1996, Pub. L. No. 104-193.

<sup>86</sup> *Id.*

<sup>87</sup> *See Holley v. Lavine*, 553 F.2d 845 (2d Cir. 1977) (The court concluded that “permanently residing under color of law” standard for some government public assistance benefits could cover aliens known by the government to be undocumented or deportable.)

<sup>88</sup> Personal Responsibility and Work Opportunity Act (1985).

## Compact of Free Association Amendments Act of 2003<sup>89</sup>

The negotiations over the expiring portions of the 1985 COFA culminated in separate amended Compacts with the Federated States of Micronesia and the Republic of the Marshall Islands. The amended Compact extended economic support for another 20 years, terminating in FY 2023.<sup>90</sup> United States assistance will be for grants in the sectors of education, health care, private sector development, the environment, and infrastructure. Congress also appropriated \$30 million annually (2003-2023) to help defray costs associated with FAS citizen migration to U.S. jurisdictions<sup>91</sup>.

## Legislation Introduced in Congress to Address Compact-Impact

Congress’ intent “not to cause any adverse consequences for an affected jurisdiction” has not materialized for Hawaii either in policy or in fact. The confluence of an open immigration status for FAS citizens, endemic poor health of the Micronesians, and an migrant – hostile public assistance policy has led to budget deficits in Hawaii.

There have been numerous bills introduced in both houses of Congress over the years to address the COFA impact on the Hawaiian health, education, social, and public services. Table 3 identifies 22 bills that have been introduced in Congress that address the COFA Compact-Impact.

**Table 3. Medicaid and Social Services Parity for COFA Migrants - Legislative History**

U.S. Senate	Congress	U.S. House
<p><b>S. Con. Res. 3</b></p> <p>Notes: (1) the pending expiration of the Compact in 2023; (2) 1/3 of the population of the RMI lives in the U.S.; pay federal and state taxes but are ineligible for benefits under Medicare or Medicaid; were undercounted in the 2010 Census.</p>	116th	<p><b>H. Con. Res. 18</b></p> <p>Notes: (1) the pending expiration of the Compact in 2023; (2) 1/3 of the population of the RMI lives in the U.S.; pay federal and state taxes but are ineligible for benefits under Medicare or Medicaid; were undercounted in the 2010 Census.</p>
	115th	<p><b>H.R. 3398</b></p> <p>REAL ID ACT Modification for Freely Associated States Act.</p> <p>The bill amends the Real ID Act of 2005 to allow FAS citizens lawfully residing in the U.S. to be eligible for a driver’s license or ID card. (became law)</p>
<p><b>S. Con. Res. 50</b></p> <p>Noted: (1) the pending expiration of the Compact in 2023; (2) 1/3 of the population of the RMI lives in the U.S.; pay federal and state taxes but are</p>	115th	<p><b>H. Con. Res. 110</b></p> <p>Noted: (1) the pending expiration of the Compact in 2023; (2) 1/3 of the population of the RMI lives in the U.S.; pay federal and state taxes but are ineligible for</p>

<sup>89</sup> Compact of Free Association Amendments Act of 2003, Pub. L. No. 108-188.

<sup>90</sup> “About the Compact of Free Association”, *US Compact*, <http://uscompact.org/about/cofa.php>.

<sup>91</sup> Compact of Free Association Amendments Act (2003).

ineligible for benefits under Medicare or Medicaid; were undercounted in the 2010 Census.		benefits under Medicare or Medicaid; were undercounted in the 2010 Census.
<b>S.1391</b> Covering our FAS Allies Act The Bill amends PROWRA (1996) to permit Medicaid coverage for citizens of the FAS lawfully residing in the United States	115th	<b>H.R. 2982</b> Covering our FAS Allies Act The Bill amends PROWRA (1996) to permit Medicaid coverage for citizens of the FAS lawfully residing in the United States
<b>S. 1301</b> Restoring Medicaid for Compact of Free Association Migrants Act of 2015 (Sent to Committee on Finance, DIC)	114th	<b>H.R. 1974</b> HEAL for Migrant Women and Families Act of 2015 (Sent to Committee on Energy & Commerce, and Ways and Means, DIC)
	114th	<b>H.R. 2249</b> Restoring Medicaid for Compact of Free Association Migrants Act of 2015 (Sent to Committee on Energy & Commerce, DIC)
	114th	<b>H.R. 6307</b> Mark Takai Compact-Impact Aid Act (Sent to Committee on Energy & Commerce, DIC)
	114th	<b>H.R. 4370</b> Compact Impact Relief Act of 2016 (Sent to Committee on Energy & Commerce, Education and the Workforce, Financial Services, Foreign Affairs, and natural Resources. Died in all Committees)
<b>S. 744</b> Border Security, Economic Opportunity, and Immigration Modernization Act. Included in Section 4415. (Passed Senate, Died in the House)	113th	<b>H.R. 4240</b> HEAL Migrant Women and Families Act of 2014 (Sent to Committee on Energy & Commerce, and Ways and Means. DIC)
	113th	<b>H.R. 912</b> Restoring Medicaid for Compact of Free Association Migrants Act of 2013 (Sent to Committee on Energy & Commerce. DIC)
	113th	<b>H.R. 15</b> Border Security, Economic Opportunity, and Immigration Modernization Act (DIC)
<b>S. 1504</b> Medicaid Restoration for Citizens of Freely Associated States Act of 2011 (Sent to Committee on Finance, DIC)	112th	<b>H.R. 1035</b> Medicaid Coverage for Citizens of Freely Associated States Act of 2011 (Sent to Committee on Energy & Commerce. DIC)
<b>S. 2474</b> Health Equity and Accountability Act of 2012. Section 415 (Sent to Committee on Health, Education, Labor, and Pensions. DIC)	112th	<b>H.R. 2954</b> Health Equity and Accessibility Act of 2011 (Sent to 10 Committees, DIC)
	111th	<b>H.R. 2680</b> Territorial Health Parity Act of 2009 (Sent to Committee on Energy & Commerce. DIC)
<b>S. 1676</b> To Extend eligibility for certain Federal Benefits to the Citizens of the Freely Associated States. (Sent to Committee on Finance. DIC)	110th	<b>H.R. 3014</b> Health Equity and Accountability Act of 2007. Section 507 (Sent to Committee on Energy & Commerce, Ways and Means, Education and Labor, Natural Resources. DIC)
	110th	<b>H.R. 4000</b> To Extend Eligibility for Certain Federal Benefits to the Citizens of the Freely Associated States. (Sent to

		Committee on Energy & Commerce, Ways and Means, Agriculture. DIC)
<b>S. 2051</b> To Extend Eligibility for Certain Federal Benefits to citizens of the Freely Associated States. (Sent to Committee on Finance. DIC)	109 <sup>th</sup>	<b>H.R. 3561</b> Healthcare Equality and Accountability Act (Sent to Committee on Energy & Commerce. DIC)
<b>S. 1508</b> Healthcare Equality and Accountability Act. Section 132 (Sent to Committee on Finance. DIC)	109 <sup>th</sup>	
<b>S. 1632</b> To Extend Eligibility for Certain Federal Benefits to Citizens of the Freely Associated States (Sent to Committee on Finance. DIC)	108 <sup>th</sup>	
	107 <sup>th</sup>	<b>H.R. 5067</b> Compact of Free Association Children’s Health Improvement Act of 2002. (Sent to Committee on Energy & Commerce. DIC)

Source: “All legislation” & “COFA,” <https://www.congress.gov/>, (Last accessed 2/2/2017) (“DIC” represents that the bill Died in Committee, meaning it was not acted upon before the termination of the Congress in which it was introduced).

As indicated by Table 3, each of these pieces of legislation were assigned to at least one committee, where most expired with the termination of the respective Congress.

## Summary of Testimony

### The Compacts of Free Association

The Compacts of Free Association provide mutual benefit to the United States, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. The United States, for strategic defense and national security purposes, received unconditional and exclusive access to millions of square miles in the Pacific Ocean that are the sovereign province of the FAS states. The FAS nations receive, economic aid, and the freedom for its citizens to travel and work in the United States. As discussed below, the compacts have provided benefits to all three signatory nations, but the testimony of panelists before the Hawaii Advisory Committee consistently identified human costs and negative impacts stemming from the Compacts.

Esther Kia’aina, Assistant Secretary for the United States Department of the Interior Office of Insular Affairs, briefed the Committee on the relationship between the United States and the Compact States.<sup>92</sup> She called the relationship “unique compared to our foreign relations with other

<sup>92</sup> Kia’aina Testimony, *2015 Hearing Transcript A*, p.3.

nations in the world,”<sup>93</sup> and commented on how citizens of all three areas are allowed to “freely migrate into the United States for education, health, and employment purposes.”<sup>94</sup> Ms. Kia’aina continued by telling the Committee because of Hawaii’s proximity to the FAS, a large number of migrants migrate to this jurisdiction.<sup>95</sup> She cited estimates of 14,700 FAS citizens living in Hawaii.<sup>96</sup>

Ms. Kia’aina identified the federal policy considerations for the Hawaii Advisory Committee:

[T]here are three policy considerations resulting from the compacts of free association. First, is affirming our strong relationships with the FAS states based on our national security interests in the Western Pacific Region, and our long-standing diplomatic, economic, cultural, and social ties... second, is Federal oversight of the funds distributed annually to the FAS...and the third policy consideration of the issue of Compact-Impact aid...due to certain affected jurisdictions like Hawaii...<sup>97</sup>

According to Ms. Kia’aina’s testimony, the Office of Insular Affairs administers \$30 million in formula impact aid, and up to \$3 million in discretionary aid to defray the cost incurred by jurisdictions affected by the compacts.<sup>98</sup>She continued by explaining the limitations available to her office in that “budgetary constraints have stymied our office to adequately reimburse affected jurisdictions,”<sup>99</sup> noting that “over the years, costs by the most impacted jurisdictions, which is Guam and Hawaii, have ranged between \$100 to \$150 million...”<sup>100</sup>

Ms. Kia’aina contends one of the reasons why Hawaii has been adversely affected is a result of the 1996 Welfare Reform Act because “FAS citizens were made ineligible for four key programs: Medicaid, Temporary Assistance for Needy Families, Food Stamps, and Supplemental Security Income.”<sup>101</sup> She concluded her thoughts on the topic with an observation that other federal agencies have expanded the definition of federal benefit under the Welfare Reform Act and have excluded the Freely Associated State citizens from eligibility, further exacerbating the problem.<sup>102</sup>

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<sup>93</sup> Kia’aina Testimony, *2015 Hearing Transcript A*, p.3.

<sup>94</sup> *Ibid.*, 3.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*, 3-4.

<sup>98</sup> *Ibid.*, 3.

<sup>99</sup> *Ibid.*, 4.

<sup>100</sup> *Ibid.*, 3.

<sup>101</sup> *Ibid.*, 4.

<sup>102</sup> *Ibid.*

Keli'i Akina, president of the Grassroot Institute of Hawaii, an independent non-profit research institution, straightforwardly asserted that “the State of Hawaii currently lacks the financial capacity to meet the needs of the Micronesian migrants...and a long-term solution to the needs of the Micronesians requires the revitalization of the Micronesian economy.”<sup>103</sup>

### **COFA Migrant Access to Healthcare**

The Hawaii Department of Health and Human Services provides a wide range of essential employment, health, and social services to the State’s low-income population and vulnerable communities. These services include employment and support services, healthcare, youth services, vocational education, child welfare services, and adult protective and community services.<sup>104</sup>

In 2015, the Committee heard testimony from Rachel Wong, the Director of the Hawaii Department of Health and Human Services. Ms. Wong began her testimony by providing local data on the Freely Associated States population in Hawaii. She informed the Committee that in Fiscal Year 2014, 16,822 FAS citizens received medical insurance coverage in Hawaii.<sup>105</sup> She noted that the total amount of FAS citizens who utilized all services, not just insurance, numbered 21,733, a significantly higher number than the number of Freely Associated State citizens estimated by the Department of the Interior.<sup>106</sup>

Ms. Wong commented, in 2015, on the programs available to FAS citizens in Hawaii, noting that the 1996 Welfare Reform Act made FAS citizens ineligible for many federally funded programs. She said the state offers Temporary Aid for Other Needy Families (TAONF), Assistance to the Aged, Blind and Disabled (AABD), General Assistance (GA) for those that are temporarily disabled, and other programs such as foster care, adult protective services, juvenile justice programs and public housing.<sup>107</sup> During the public comment session of the 2018 briefing, John Ishoda indicated that conditions have not changed, noting “Micronesians, although they’re being

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<sup>103</sup> Esther Kia’aina, testimony before the Hawaii Advisory Committee to the United States Commission on Civil Rights, afternoon briefing, Honolulu, HI, Aug. 20, 2015, transcript, pp. 3-5 (hereafter cited as 2015 Briefing Transcript B).

<sup>104</sup> State of Hawaii, Department of Health and Human Services, at <http://humanservices.Hawaii.gov/overview>.

<sup>105</sup> Wong Testimony, *2015 Briefing Transcript A*, p.5.

<sup>106</sup> *Ibid.*, 6.

<sup>107</sup> *Ibid.*, 5-6.

taxed, they're not eligible for food stamps, not eligible for SSI and Medicaid.”<sup>108</sup> Ms. Wong’s testimony detailed the costs of providing these services, noting “we just added up the numbers for 2014, and it’s \$167 million.”<sup>109</sup> Ms. Wong told the Committee the state of Hawaii received \$11.2 million dollars of impact aid in FY 2014, leaving a deficit of \$155.8 million.<sup>110</sup>

In addition to Freely Associated State citizens’ ineligibility for public assistance based on their national origin, William Hoshijo, Executive Director of the Hawaii Civil Rights Commission, testified to the Committee addressing discrimination in employment, housing, and other state funded services.<sup>111</sup> Mr. Hoshijo described his agency’s work with the Freely Associated State citizen community and suggested “The Hawaii residents from these Compact nations are migrants in the sense that they are here to stay. They are emerging communities, an integral part of our broader community and society.”<sup>112</sup> Mr. Hoshijo offered the Committee an historical background of the Pacific Island Trusteeship and suggested the United States had created “economic dependence and degraded the environment” through nuclear weapons testing.<sup>113</sup>

In his testimony, Mr. Hoshijo said “Citizens of these nations, with a Compact nations, can travel freely to live and work in the U.S.”, and noted that many Freely Associated State citizens relocate to Hawaii “Driven by poor health, and insufficient healthcare, and seeking job and education opportunities.”<sup>114</sup> According to Mr. Hoshijo’s testimony, “Micronesian migrants in Hawaii have been scapegoated and described negatively as a burden and a drain on resources...media reports and anecdotal accounts confirm that these negative attitudes are manifested in discrimination against Micronesians in Hawaii.”<sup>115</sup>

Mr. Hoshijo commented that despite anecdotal accounts of discrimination against FAS citizens, there were few civil rights complaints filed by this population in Hawaii.<sup>116</sup> He suggested there are two main reasons for the low number: (1) demographic data on government forms does not specify

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<sup>108</sup> John Ishoda, testimony before the Hawaii Advisory Committee to the United States Commission on Civil Rights, hearing, Honolulu, HI, Oct. 17, 2018, transcript, p.17 (hereafter cited as 2018 Briefing Transcript).

<sup>109</sup> Wong Testimony, *2015 Briefing Transcript A*, p.6.

<sup>110</sup> *Ibid.*, 6-7.

<sup>111</sup> Hoshijo Testimony, *2015 Briefing Transcript A*, p.9.

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*, 9.

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*, 10.

FAS nationality, instead they are grouped in to *other Pacific islander*; and second is the social barrier between the cultures.<sup>117</sup> Mr. Hoshijo contends that language barriers, cultural factors, fear, lack of trust, and lack of knowledge about the system all play a part in discouraging the filing of complaints.<sup>118</sup> His testimony detailed instances where complaints had been facilitated by other agencies, such as the Medical Legal Partnership for Childern, and the Legal Aid Society of Hawaii.<sup>119</sup> Mr. Hoshijo suggested that building trust and general community outreach has increased willingness to file civil rights claims within the Freely Associated State community.<sup>120</sup>

Neal Palifox, at the 2018 briefing, equated the removal of COFA migrant eligibility from Medicaid and Medicare as the “State and the Federal Government [giving] permission for discrimination.”<sup>121</sup> He reasoned that eliminating their eligibility by the “stroke of a pen”<sup>122</sup> is a “blatant way of saying it’s ok to discriminate against these folks.”<sup>123</sup> Answering a question from the Committee on the impact of COFA migrants Medicaid ineligibility, Mr. Palifox said:

Medicaid as you know is a catchment program for people who can't afford medical care because of social economic status and so forth. If you have people who are migrating to this country, and don't have that kind of coverage, what tends to happen is they wait and they don't have early access to the programs that they need to have for prevention, and early treatment, so the disease advances quickly, and actually causes the system to have more costs. And this is a burden to everybody.<sup>124</sup>

Greg Edmond, also a part of the 2018 public forum, said he did not understand the Medicaid process. His employer did not offer health insurance, and when he applied for Medicaid he was told he could not be approved because of his citizenship status.<sup>125</sup> Mr. Edmond told the Committee “Then why am I paying medical taxes if I'm not allowed to have that? Shouldn't they take that out of my paycheck? Because it's my money. I'm working for it. So that was one of the things that I didn't understand. I'm paying medical taxes and yet I'm not qualified to get Medicaid.”<sup>126</sup>

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<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> *Id.* at 11

<sup>121</sup> Palifox Testimony, *2018 Briefing Transcript*, p. 19.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid., 20.

<sup>125</sup> Edmond Testimony, *2018 Briefing Transcript*, p.21.

<sup>126</sup> Ibid.

Emi Chutaro raised another issue regarding healthcare.<sup>127</sup> She noted that the Micronesian Islands are the highest, per capita, military recruitment sites for the U.S. military.<sup>128</sup> She said many veterans from the islands have been deployed in Iraq, Afghanistan, and Somalia, and many return with PTSD and other health concerns.<sup>129</sup> Ms. Chutaro said there are no VA facilities in the Freely Associated States, forcing veterans to move in order to seek treatment in VA facilities elsewhere.<sup>130</sup>

### **COFA Migrant Access to Housing**

According to Kimo Carvalho, community relations director at the Institute for Human Services shelter in Honolulu: “A lot of the COFA community relocated to Hawaii without a plan. They did not know our laws, and that is why a majority are here on the streets.”<sup>131</sup> While Micronesians and their advocates believe homelessness is exacerbated because landlords discriminate against people from the island communities, there are few actual complaints of housing discrimination by Micronesian migrants.<sup>132</sup> Since 2010, complaints about discrimination toward Micronesians represent less than one percent of the total number of complaints received by the Hawaii Civil Rights Commission. However, the low number of complaints is “more likely be the result of language barriers, fear of reprisal and a lack of awareness available for lodging complaints.”<sup>133</sup>

Gavin Thornton, executive director of the Hawaii Appleseed Center for Law & Economic Justice, a nonprofit law firm created to advocate on behalf of low-income individuals and families on civil legal issues, told the Hawaii Advisory Committee that native Micronesian migrants routinely encounter housing discrimination.<sup>134</sup> A study presented to the Committee by the Appleseed Center found that FAS citizens had been exposed to both blatant and subtle housing discrimination. The report cited the example of a Chuukese man who said that when he was searching for an apartment,

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<sup>127</sup> Chutaro Testimony, *2018 Briefing Transcript*, p. 31.

<sup>128</sup> *Ibid.*

<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.*

<sup>131</sup> Chad Blair, *The Micronesians*, CIVIL BEAT (. Oct. 14, 2015), <http://www.civilbeat.org/2015/10/an-untold-story-of-american-immigration/>.

<sup>132</sup> Hoshijo Testimony, *2015 Briefing Transcript A*, p.10.

<sup>133</sup> *Ibid.*

<sup>134</sup> Thornton Testimony, *2015 Briefing Transcript B*, p. 2

“landlords would tell him on the telephone that a unit was available. When he met them in person, it became unavailable. Other interviewees said they had heard of similar instances.”<sup>135</sup>

The Committee heard first-hand accounts of problems COFA migrants experience with housing in Hawaii. Ms. Satosy Santa told the Committee in 2018 that she travelled from her home in Hawaii to Tennessee on personal business.<sup>136</sup> While she was gone, she was notified by her landlord that her rent had increased from \$156 to \$200.<sup>137</sup> When she returned to Hawaii, and confronted the landlord about the increase, she was told the rent was now \$300.<sup>138</sup> The landlord also wanted Ms. Santa to sign a document about the increase, but she did not read English.<sup>139</sup> When she asked for a translator, the landlord offered one of his employees to translate.<sup>140</sup> Ms. Santa, leery that the translator would translate in good faith, refused the offer. She was ultimately evicted under other dubious circumstances.<sup>141</sup>

Joanne Moya also shared her experiences with housing problems.<sup>142</sup> She referenced the Waipahu area on Pupuhi Street in Honolulu and said:

A lot of the tenants there do not have electricity. Their windows are broken. Their tiles are damaged, and their doors are without locks, or broken. There are times when landlords will enter people's homes without notice, and just try to collect rent right then and there, and they do not give receipts.<sup>143</sup>

Several people offered testimony about unfair treatment at the hands of landlords. Greg Edmond said he was aware of landlords entering homes uninvited and unannounced.<sup>144</sup> Alden Beaut told the Committee that the landlords treat him unfairly, “throwing unnecessary difficulties and obstacles at us.”<sup>145</sup> He said when he reaches out to the landlords regarding issues in his home, the landlords do not respond or they tell him to fix it himself. He also said rents are increased without

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<sup>135</sup> “Broken Promises, Shattered Lives: The Case for Justice for Micronesians in Hawaii”, *Hawaii Appleseed Center for Law and Economic Justice*, at 16 (December 14, 2011), <http://www.hiappleseed.org/sites/default/files/COFA%20ReportFinal12-14-11.pdf>.

<sup>136</sup> Santa Testimony, *2018 Briefing Transcript*, p.3-4.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

<sup>142</sup> Moya Testimony, *2018 Briefing Transcript*, p. 18.

<sup>143</sup> Ibid.

<sup>144</sup> Edmond Testimony, *2018 Briefing Transcript*, p.22.

<sup>145</sup> Beaut Testimony, *2018 Briefing Transcript*, p.35.

warning or explanation.<sup>146</sup> Emi Chutaro summed up the mood of the public testimony when she said that “the landlords don’t treat us like humans.”<sup>147</sup>

### **COFA Migrant Access to Education**

Shari de la Cuadra-Larsen, Acting Director of the Hawaii Department of Education Special Projects Office, spoke to the Committee and said that based upon 2014-15 data, there are 8,138 COFA students, making up 4% of the total public and charter school population in the state of Hawaii.<sup>148</sup> Ms. Cuadra-Larsen testified that approximately 88% of COFA students “have benefited from or are currently in our English language learner program.”<sup>149</sup> She commented on anecdotal evidence of COFA students “feel uncomfortable in our school settings because of perceived discrimination, language barriers, and because formal schooling with compulsory education requirements is often a new concept to these students.”<sup>150</sup> She continued by stating most districts in the state do not have enough qualified interpreters that are bi-literate and culturally competent in the languages or cultures of the COFA students home nation.<sup>151</sup> According to her testimony, COFA students often show up needing uniforms, backpacks, slippers, supplies, and meals, which the school system readily supplies.<sup>152</sup> She added her observation that many COFA adults relocate to Hawaii due to medical needs, and do not have the resources to support their children.<sup>153</sup> Ms. Cuadra-Larsen suggested federal and state agencies provide “coordinated wrap-around services” to the adults, which would “alleviate the focus of our educational system on supporting the entire family, and allow our teachers and staff to focus on educating [their] students and their academic and behavioral success.”<sup>154</sup>

Jacky Moses shared a first hand account on how COFA migrants are made to feel inferior.<sup>155</sup> She told the Committee that a book went missing in her nephew’s classroom, and the teacher looked for the missing book only in the backpacks of the Micronesian children, and not the other

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<sup>146</sup> Ibid., 36.

<sup>147</sup> Chutaro Testimony, *2018 Briefing Transcript*, p.36-37.

<sup>148</sup> Cuadra-Larsen Testimony, *2015 Briefing Transcript A*, p.16.

<sup>149</sup> Ibid., 16.

<sup>150</sup> Ibid., 17.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

<sup>155</sup> Moses Testimony, *2018 Briefing Transcript*, p. 2-3.

students.<sup>156</sup> Her nephew was left with the impression that his teacher felt only Micronesians could steal.<sup>157</sup> Ms. Moses said Micronesian children get discouraged from attending school because they feel like they are not welcome in the classroom and because they are treated differently.<sup>158</sup>

John Ishoda told the Committee there is “a lot of discrimination in schools. If the [COFA] kids don’t speak English properly, they’ll be bullied and ridiculed, looked down on.”<sup>159</sup> Greg Edmond shared his experiences as a COFA migrant in fifth grade, recalling how the teacher and other students were surprised that he could read. He also said other classmates did not want to sit next to COFA kids on the school bus, because they thought they were “dirty.”<sup>160</sup> Mr. Edmond said he eventually either walked to school or paid to ride the city bus to escape the abuse.<sup>161</sup> Emily Chutaro recalled being referred to Special Education as a child.<sup>162</sup> She told the Committee that she was not turning in homework assignments because the teacher was writing the homework on the board, but Ms. Chutaro did not know the meaning of the word *homework*.<sup>163</sup> She said the teacher automatically assumed that she was not able to learn and needed to be in Special Education. Ms. Chutaro commented on the general assumption that Micronesians are unable to learn.<sup>164</sup>

Citing circumstances like these, Micronesian Counsel General Kandhi Elieisar told the Committee that he recommends the teaching of respect and tolerance at all school levels.<sup>165</sup>

### **COFA Migrant Access to Equal Employment Opportunity**

At the 2018 briefing, Tamera Heine told the Committee that her understanding is that as long as a person has a state ID and a social security card, they should be able to be verified for employment.<sup>166</sup> She said many times COFA migrants are required to produce a passport and an I-

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<sup>156</sup> Ibid.

<sup>157</sup> Ibid,

<sup>158</sup> Ibid. *Briefing*

<sup>159</sup> Ishoda Testimony, *2018 Briefing Transcript*, p.17.

<sup>160</sup> Edmond Testimony, *2018 Briefing Transcript*, p.21.

<sup>161</sup> Ibid

<sup>162</sup> Chutaro Testimony, *2018 Briefing Transcript*, p.27-28.

<sup>163</sup> Ibid.

<sup>164</sup> Ibid. *Briefing*

<sup>165</sup> Elieisar Testimony, *2018 Briefing Transcript*, p.11.

<sup>166</sup> Heine Testimony, *2018 Briefing Transcript*, p. 23.

94 form.<sup>167</sup> She also said the identification provided by the DMV is only valid for one year, and many employers are hesitant to hire them if they are “legal” only on a year-to-year basis.<sup>168</sup>

General Counsel Elieisar told the Committee that many COFA migrants face racial discrimination, and he has heard from many who have been taken advantage of by their landlords and have been mistreated by their employers.<sup>169</sup> He said Micronesians find it difficult to report discrimination even if they are able to identify it because they are concerned with retaliation from landlords and employers.<sup>170</sup> He also said Micronesians struggle with acculturation and for the most part hold multiple menial jobs just to make ends meet, and identified the COFA migrants as the social class at the bottom of a highly stratified and diversified Hawaiian society.<sup>171</sup>

### **COFA Migrant Language Access**

The testimony of other panelists consistently underscored the language access barrier. In his testimony, William Hoshijo described limited language access, such as interpreters or document translation, for limited English proficient Micronesians. He noted “Denial of language access has been and continues to be a major civil rights issue for Micronesians in Hawaii.”<sup>172</sup> Debi Tulang, the Director for the Office of Language Access, said the Judiciary is challenged in finding available qualified interpreters for COFA nation languages, often resulting delayed court proceedings.<sup>173</sup> She said the courts spent a total of over \$620,000 in interpreting expenditures in FY 2014, over a third of which was spent specifically on languages of the COFA nations.<sup>174</sup>

Rebecca Gardner, Legal Analyst for the State of Hawaii Office of Language Access, summarized the issue for the Committee: “The reality is that (Micronesian migrants) are subject to outright discrimination and hate speech, and just a lack of understanding.”<sup>175</sup> Gardner noted the “irony” that exists with respect to the issue of Micronesian immigration is that under the terms of COFA,

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<sup>167</sup> Ibid.

<sup>168</sup> Ibid.

<sup>169</sup> Elieisar Testimony, *2018 Briefing Transcript*, p. 9-10.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid.

<sup>172</sup> Hoshijo Testimony, *2015 Briefing Transcript A*, p. 10,

<sup>173</sup> Tulang Testimony, *2015 Briefing Transcript A*, p. 25.

<sup>174</sup> Ibid., 24.

<sup>175</sup> Gardner Testimony, *2015 Briefing Transcript A*, p. 21.

FAS citizens were given elevated immigration status to the United States, but then deemed ineligible for many federal benefits and services afforded other residents.<sup>176</sup> She also testified about the shortage of qualified translators and interpreters, leading many state agencies to rely on family members, even children, to serve as interpreters.<sup>177</sup> Obviously, this practice, she said, violates privacy laws, is subject to conflicts of interests, and can thrust children into roles they are not emotionally mature enough to understand.<sup>178</sup>

Ms. Gardner’s testimony described an all too common issue with language access compliance by state agencies. She said it was the “opinion of this office that some state agencies do not take their civil rights obligations with respect to language access serious enough...because Hawaii’s Micronesian population has such a great need for state and state-funded services, they experience the brunt of non-compliance.”<sup>179</sup>

Gardner indicated that her office had collected anecdotal evidence of the discrimination faced by this population. For example, she described the experience of one woman and her kindergarten aged child who were referred to public housing. The woman was given forms to fill out, in English, without benefit of an interpreter. According to the housing agent, it was the woman’s responsibility to let them know she needed an interpreter. The woman was apparently confused about the procedure, left, and did not return.<sup>180</sup>

Tina Tauasosi-Posiulai, from the University Of Hawaii Office Of Multicultural Student Services gave testimony about post-secondary education access. She told informed the Committee that FAS citizens pay at tuition rate that is 50% higher than other residents.<sup>181</sup> She also noted that COFA students attending post-secondary schools often “live illegal with their friends in the dorms in public housing, and oftentimes they have nothing to eat for the whole day.”<sup>182</sup> Ms. Tauasosi-Posiulai also described students enduring “racial stereotypes” and her department creating a “safe space for them to share their discrimination, to talk about it . . . the students don’t deserve this.”<sup>183</sup>

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<sup>176</sup> Ibid.

<sup>177</sup> Ibid., 20.

<sup>178</sup> Ibid., 18.

<sup>179</sup> Ibid., 20.

<sup>180</sup> Ibid.

<sup>181</sup> Tauasosi-Posiulai Testimony, *2015 Briefing Transcript A*, p. 22.

<sup>182</sup> Ibid.

<sup>183</sup> Ibid., 23.

General Counsel Elieisar noted that the lack of access because of limited English proficiency has another consequence in that COFA migrants fail to report discrimination because they lack understanding of their rights and the consequences of violation of these rights.<sup>184</sup>

John Ishoda told the Committee that barriers to services stem from language access. He believes there is cultural complicity on the part of service providers and called for more training for service providers.<sup>185</sup>

Joanne Moya said many service providers ask COFA migrants to bring their friends or family to interpret for them, causing an already scared client to feel unwilling to come forward with whatever they need to share, losing confidence and feeling hopeless.<sup>186</sup>

### **COFA Migrants and Cultural Competency**

The cultural differences between some of the COFA migrants and the citizens of Hawaii create misunderstanding and confusion. Shirley Irons described her experience as an interpreter on Guam by telling the Committee that in her culture, it is common to show respect by smiling and answering in the affirmative because it is considered rude to challenge authority.<sup>187</sup> This obviously becomes a problem for individuals in the criminal justice system who accept plea deals agreeing to whatever conditions are given, not really understanding what has been said.<sup>188</sup> He told the Committee of his cousin who lost a leg in an amputation she did not consent to because she did not understand what was happening and did not ask for an interpreter because she did not know that she had the right to one. Part of the problem he noted was that the COFA community has no political voice.<sup>189</sup>

Emi Chutaro explained to the Committee that in her culture, it is disrespectful to question authority.<sup>190</sup> She said most of the COFA migrants want to be good citizens and are trying to be respectful by not filing complaints, a dissonance between cultural norms and bureaucratic regulations.<sup>191</sup> Additionally, Ms. Chutaro said that for the Marshallese, it is cultural suicide to

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<sup>184</sup> Elieisar Testimony, *2018 Briefing Transcript*, p. 10.

<sup>185</sup> Ishoda Testimony, *2018 Briefing Transcript*, p. 17.

<sup>186</sup> Moya Testimony, *2018 Briefing Transcript*, p. 17.

<sup>187</sup> Irons Testimony, *2018 Briefing Transcript*, p. 6.

<sup>188</sup> Ibid.

<sup>189</sup> Elieisar Testimony, *2018 Briefing Transcript*, p. 12.

<sup>190</sup> Chutaro Testimony, *2018 Briefing Transcript*, p. 28.

<sup>191</sup> Ibid.

refuse an accommodation to a family member, a custom that has landed many COFA migrants in trouble with landlords enforcing occupancy limits.<sup>192</sup>

## Findings and Recommendations

### FINDINGS

1. The United States has a unique relationship with the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. These three independent states are collectively referred to as Freely Associated States (FAS).
2. The Compacts of Free Association allow virtually unrestricted immigration for most citizens of the signatory nations.
3. In approving the Compacts of Free Association, Congress stated that it was not its intent to cause any adverse consequences for U.S. territories and commonwealths and the state of Hawaii. Congress further declared that it would act sympathetically and expeditiously to redress any adverse consequences and authorize compensation for these areas that might experience increased demands on their educational and social services by COFA migrants.<sup>193</sup>
4. For fiscal years 2004 through 2010, Hawaii, Guam, and the CNMI reported more than \$1 billion in costs associated with providing education, health, and social services to compact migrants, far in excess of the \$210 million in compact impact grants over that time period.<sup>194</sup>
5. The federal government estimates there are currently over 14,700 FAS migrants living in the state of Hawaii.
6. In 1996, Congress rendered FAS citizens living lawfully in the United States ineligible for most social assistance programs, including Medicaid and Medicare.
7. The Government Accountability Office reports that migration from the Freely Associated States has had a significant negative economic impact on the State of Hawaii by placing demands on local government services for health, educational, housing, and other social assistance services.
8. FAS citizens who are residents of the United States for a minimum of 5 years are ineligible for social services, unlike other similarly situated migrants. FAS citizens are denied social services based on their *country of origin*.

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<sup>192</sup> Ibid., 29.

<sup>193</sup> United States Government Accountability Office. Compacts of Free Association: Guidelines Needed to Support Reliable Estimates of Cost Impacts of Growing Migration. GAO Pub. No. GAO-13-773T. July 11, 2013.

<sup>194</sup> Ibid.

9. Under the Compacts and Compact Amendments, insufficient sums have been appropriated to mitigate the negative impact incurred by the State of Hawaii, resulting from increased demands placed on health, educational, and other social services by COFA migrants.
10. The Compact Amendments provide financial assistance to the FAS nations that ends in 2023.
11. The Compact Amendments provide \$30 million in Compact Impact Aid to affected jurisdictions. Hawaii's share is approximately \$11 million per year.
12. The state of Hawaii estimates the Compact Impact on the state to be in excess of \$100 million per year.
13. There is widespread negative public perception of COFA migrants in Hawaii. This group continues to be scapegoated as a drain on resources, particularly in healthcare. COFA migrants also face discrimination in access to housing and employment.
14. Beginning with the 107<sup>th</sup> Congress, delegates from the state of Hawaii have introduced numerous pieces of legislation in the Congress to address the COFA compact impact. The only piece of legislation to make it out of committee was a 2018 bill to allow COFA migrants the privilege of a driver's license.
15. Language Access continues to be a barrier for the COFA migrant's successful integration into Hawaiian society.
16. On December 17, 2018 President Trump signed the REAL ID Act Modification for Freely Associated States Act, Public Law 115-323. The Act amended the REAL ID act of 2005 to authorize states to issue full-term REAL ID Compliant driver's licenses and identification cards to COFA citizens who have been admitted to the US as nonimmigrants.
17. The Department of Homeland Security interprets the REAL ID act of 2005 and the 2018 Modification to require COFA nonimmigrant applicants to present a valid unexpired passport, valid unexpired visa, and either an I-94 or Employment Authorization Document (EAD) as evidence of identity and lawful status.

## RECOMMENDATIONS

The Hawaii Advisory Committee to the United States Commission on Civil Rights makes the following recommendations to the Commission:

1. The United States Commission on Civil Rights (USCCR) should forward a copy of this report to the Secretary of the Interior as the President's delegate for reporting to Congress.

2. The USCCR should forward a copy of this report to the House and Senate leadership with the recommendation that the Welfare Reform Act (PROWARA) be amended to restore Medicaid and Medicare eligibility, SNAP eligibility, and SSI eligibility to COFA migrants.
3. The United States Commission on Civil Rights (USCCR) should send a letter to the Secretary of the Interior with the recommendation that the Office of Insular Affairs, as the entity responsible for administration and oversight of the compact grants, conduct a study on the expected COFA migrant impact on affected jurisdictions after the termination of Compact financial assistance in 2023.
4. The USCCR should send a letter to the Secretary of the Interior, as the President's delegate, and recommend that he negotiate with the FAS nations to establish mechanisms, through COFA grants already in place, to support the healthcare and educational needs of COFA migrants in the United States.
5. The USCCR should forward a copy of this report to the Secretary of Housing and Urban Development, and recommend:
  - a. HUD review of Section 8 practices in Hawaii as they pertain to COFA migrants.
  - b. HUD generate "fair housing" materials in FAS languages and make copies available to affected jurisdictions.
  - c. HUD generate flyers in native FAS languages explaining consumer housing rights and make copies available to affected jurisdictions.
6. The USCCR should forward a copy of this report to the Secretary of Health and Human Services with the recommendation that materials be made available, in native FAS languages, to affected jurisdictions explaining patient's rights and the right to informed consent (language interpretation).
7. The USCCR should forward a copy of this report to the Secretary of Education with the recommendations:
  - a. A "dear colleague" letter be disseminated specific to the affected jurisdictions referencing this report and calling for renewed training on cultural competency, tolerance, and anti-bullying.
  - b. The Department should review Title I and Title III eligibility and use of funds in the affected jurisdictions.
8. The USCCR should forward a recommendation to the Director of Homeland Security and request an audit of the REAL ID ACT. The Department interpretation of the Act currently is at odds with the COFA treaties in that otherwise eligible COFA citizens, who are authorized unrestricted travel to and from the United States, are now subjected to obtaining a passport and visa in order to qualify for a REAL ID and travel on commercial aircraft.

## Appendix A

### Panelists at the August 20, 2015 Public Hearing

Keli'i Akina	Grassroots Institute of Hawaii
Shari Dela Cuadra-Larsen	Hawaii State Department of Education
Rebecca P. Gardner	Hawaii Office of Language Access
Glory Gervacio Saure	U.S. Equal Employment Opportunity Commission
William Hoshijo	Hawaii Civil Rights Commission
Jocelyn Howard	We Are Oceania
Dominic Inocelda	Susannah Wesley Community Center
Tanya Harris Joshua	Office of Insular Affairs, U.S. Department of Interior
Tasha Kama	Faith Action for Community Equity
Esther Kia'aina	Office of Insular Affairs, U.S. Department of Interior
Joanne Loeak	Migrant Justice Center, Legal Aid Society of Hawaii
Connie Mitchell	Institute for Human Services
Joakim Peter	COFA-Community and Advocacy Network
Tina Tauasosi-Posiulai	Office of Multicultural Student Services, University of Hawaii
Gavin Thornton	Hawaii Appleseed Center for Justice
Debi Tulang-De Silva	The Judiciary, State of Hawaii
Rachael Wong	Hawaii Department of Human Services

## Appendix B

### Speakers at the October 17, 2018 Community Forum

Rensely Alik	Marshall Islands	Hawaii Department of Health
Alden Beaut	Marshall Islands	
Emi Chutaro	Marshall Islands	Self (Exec.Dir.of Pacific Islands Health Office Ass.)
Greg Edmond	Marshall Islands	Self
Kandhi Elieisar	Micronesian	General Counsel, Federated States of Micronesia
Tamera Hein	Marshall Islands	Self
Josie Howard	Micronesian	Self
Shirley Irons	Chuuk	Counselor
John Ishoda	Micronesian	Self
Jacky Moses	Micronesian	Non-Profit
Joanne Moya	Micronesian	Legal Aid Society of Kauai
Jancerine Oneisom	Micronesian	Self
Sha Ongelungel	Palau	Non-Profit
Neal Palifox	Marshall Islands	Self (University of Hawaii)
Satosy Santa	Chuuk	Self
Cinder Sonis	Chuuk	Self

## Appendix C



### Health care coverage available for COFA islanders

Starting January 1, 2019, the Health Care Authority will be paying the monthly premiums and out-of-pocket expenses for silver level Qualified Health Plans for Compact of Free Association (COFA) islanders. COFA islanders include people from the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

#### Am I eligible?

You are eligible if you are a COFA islander with income less than 133% of the federal poverty level (see chart below) and you must:

- Live in Washington
- Enroll into a silver level Qualified Health Plan
- Agree to file federal taxes (even if you do not meet tax-filing requirements)
- Not get other federal or state medical coverage

Household Size	1	2	3	4	5
Monthly Income	\$1,346	\$1,825	\$2,304	\$2,782	\$3,261
Household Size	6	7	8	9	10
Monthly Income	\$3,740	\$4,219	\$4,698	\$5,179	\$5,655

\*Based on April 2018 standards.

#### How and when can I apply?

You can submit an application for coverage:

- November 1 through December 15
- Online: [www.wahealthplanfinder.org](http://www.wahealthplanfinder.org)
- Phone: 1-855-923-4633

You may qualify for a special enrollment period for certain life changes. Find a list online at [www.wahbexchange.org/sep](http://www.wahbexchange.org/sep)

#### Where can I get more information?

To learn more about COFA Islander Health Care or assist others applying for coverage in your community contact us by:

- Online: [www.hca.wa.gov/cofa](http://www.hca.wa.gov/cofa)
- Email: [cofaquestions@hca.wa.gov](mailto:cofaquestions@hca.wa.gov)
- Phone: 1-800-547-3109

Washington State  
Health Care Authority

The Health Care Authority administers  
COFA Islander Health Care

Appendix D

Current Fair Housing Notice for COFA migrants in Hawaii

**FAIR HOUSING**  
**IT'S NOT**  
**AN OPTION**  
**IT'S THE**  
**LAW**

  
2007

[www.hud.gov](http://www.hud.gov)  
[espanol.hud.gov](http://espanol.hud.gov)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
ALPHONSO JACKSON, SECRETARY  
KIM KENDRICK, ASSISTANT SECRETARY, FHEO

39TH ANNIVERSARY OF THE FAIR HOUSING ACT

**HOUSING DISCRIMINATION HOTLINE**  
**1.800.669.9777 (VOICE) 1.800.927.9275 (TTY)**

## Appendix E: Current Discrimination Complaint form Hawaii DHS

STATE OF HAWAII

DEPARTMENT OF HUMAN SERVICES

### DISCRIMINATION COMPLAINT FORM

NAME	XXX-XX	PHONE (Home/Cell)	PHONE (Work)
	SSN (Last Four Digits)		
ADDRESS	CITY	STATE	ZIP CODE

EMPLOYER (Division/Unit), if applicable: \_\_\_\_\_

1. JOB TITLE: \_\_\_\_\_
2. BASIS OF ALLEGED DISCRIMINATION: Choose appropriate item(s).
 

<input type="checkbox"/> Age	<input type="checkbox"/> Genetic Information	<input type="checkbox"/> Sexual Orientation
<input type="checkbox"/> Arrest/Court Records	<input type="checkbox"/> National Guard Absence	<input type="checkbox"/> Veteran Status
<input type="checkbox"/> Breastfeeding	<input type="checkbox"/> National Origin/Ancestry	<input type="checkbox"/> Retaliation for Filing a Complaint or Participating in Complaint Process
<input type="checkbox"/> Child Support Assignment	<input type="checkbox"/> Political Belief	<input type="checkbox"/> Harassment (Based On)*
<input type="checkbox"/> Citizenship	<input type="checkbox"/> Race or Color	
<input type="checkbox"/> Credit History	<input type="checkbox"/> Religion	
<input type="checkbox"/> Disability (Physical or Mental)	<input type="checkbox"/> Relationship Status	
<input type="checkbox"/> Domestic/Sexual Violence Victim Status	<input type="checkbox"/> Sex/Gender (Expression or Identity)	

**\*Must Indicate Protected Class Basis**

Explain briefly what, if anything, you have done about the alleged discrimination. *(Attach additional sheets if you require more space.)*

3. Does your complaint concern alleged discrimination in services delivery?  Yes  No
4. Does your complaint concern alleged discrimination in employment?  Yes  No
5. Is the alleged discrimination against you?  No  Yes, By Whom: \_\_\_\_\_
6. Explain how and why you believe you were discriminated against. Please be *SPECIFIC* and include any names, dates, witnesses and places of the incident(s). *(Attach additional sheets if you require more space.)*
7. Is the alleged discrimination against others?  No  Yes. List Name(s), Address(es) and Phone Number(s). \_\_\_\_\_
8. What is the specific date or period of time of the alleged discrimination? \_\_\_\_\_
9. Please indicate the relief/remedy you are seeking. \_\_\_\_\_
10. I will notify the Department of Human Services, Personnel Office, Civil Rights Compliance Staff, P. O. Box 339, Honolulu, Hawaii 96809-0339, if I change my address or telephone number. I swear or affirm that I have read the above statements, and they are true to the best of my knowledge and belief.

**PLEASE COMPLETE, REVIEW, SIGN, DATE AND RETURN TO THE ABOVE ADDRESS.**

Signature \_\_\_\_\_

Date \_\_\_\_\_

The purpose of this form is to assist you in filing a complaint with the Department of Human Services.  
 You are not required to use this form; a letter is sufficient.  
 HOWEVER, THE INFORMATION REQUESTED ON THE FORM MUST BE PROVIDED; WHETHER THE FORM IS USED OR NOT.

(PLEASE READ THE NOTICE OF DISCRIMINATION COMPLAINTS AND NON-RETIALIATION REQUIREMENT)

NOTICE TO INDIVIDUALS FILING DISCRIMINATION COMPLAINTS

Individuals alleging discrimination treatment in services and/or employment have a right to file a complaint using the Department of Human Services (DHS) Discrimination Complaint Form, DHS 6000 (Rev. 06/2014). A letter with the same information requested on the form can be used if necessary. The complaint should be sent to:

State of Hawaii  
 Department of Human Services  
 Personnel Office/Civil Rights Compliance Staff  
 P. O. Box 339  
 Honolulu, Hawaii 96809-0339  
 Phone: (808) 586-4955      Relay: 711  
 Email: DHSCivilRightsBox@dhs.hawaii.gov

Individuals also have a right to seek redress for their complaint through the appropriate collective bargaining unit, state or federal compliance agencies, and/or civil court action.

**CONFIDENTIALITY:** All information shall be held with strictest confidentiality, and release of information shall be allowed only when necessary to resolve the issue(s) in the complaint. A complainant Consent/Release Form, DHS 6006, will be required to begin an investigation.

**NON-RETIALIATION:** Section 704(a) of the Civil Rights Act of 1964, as amended, states:

*"It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an lawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing this this subchapter."*

Persons filing charges of employment discrimination are advised of this non-retaliation requirement and are instructed to notify the DHS Civil Rights Compliance Staff if any attempt at retaliation is made as a result of their filing this complaint.

Additionally, laws enforced prohibit recipients of federal financial assistance from intimidating or retaliating against anyone because he or she has either taken action or participated in action to secure rights protected by these laws. Individuals seeking services and/or employment with DHS are advised of this non-retaliation requirement and are instructed to notify the department's Civil Rights Compliance Staff if any attempt at retaliation is made as a result of filing a discrimination complaint relative to DHS services or programs.

**RIGHTS AND RESPONSIBILITIES:** The following highlights some rights and responsibilities and is **not** all inclusive:

1. You have the right to have an attorney represent you, at your own expense, or to have any other personal representative of your choice at any level of a grievance or discrimination complaint. Such representative shall not be a departmental, state or federal equal employment opportunity representative or human resources specialist.

2. You have the right to discontinue your complaint at any time by submitting a Complaint Withdrawal Form (DHS 6007).
3. You have the right to be notified of the steps taken in the complaint procedure, to be notified ahead of time of any inquiry or conference, and to be notified in writing of the decision reached at any level.
4. You have the right to reasonable accommodation, including and not limited to, language interpreters/translators, auxiliary aids, and/or facilities and accessible parking for individuals with disabilities. You are responsible for requesting required accommodations.
5. At any point in time, you have the right to file your complaint with the state or federal agencies listed in this notice as appropriate. You are responsible to inquire directly with these agencies regarding the steps necessary for redress.

The following is a list of additional entities where you might file a complaint as appropriate:

State of Hawaii  
Hawaii Civil Rights Commission  
830 Punchbowl Street, Room 411  
Honolulu, HI 96813  
Telephone: (808) 586-8636

U. S. Department of Justice  
Office for Civil Rights  
810 7<sup>th</sup> Street, NW  
Washington, DC 20531  
Telephone: (202) 307-0690

U. S. Department of Labor  
Office of Contract Compliance Programs  
Prince Kuhio Federal Building, Room 7326  
300 Ala Moana Boulevard  
Honolulu, HI 96850  
Telephone: (808) 541-2933

U. S. Department of Housing and Urban Development  
Office for Civil Rights  
451 7<sup>th</sup> Street, SW  
Washington, DC 20410  
Telephone: (202) 708-1112  
TTY: (202) 708-11455

U. S. Department of Health and Human Services  
Director, Office for Civil Rights (OCR)  
Room 509-F, HHH Building  
200 Independence Avenue, SW  
Washington, DC 20201  
Telephone: 1-800-368-1019  
TDD: 1-800-537-7697  
<https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>  
<https://hhs.gov/ocr/office/file/index.html> (Forms)

U. S. Department of Education  
Region IX, Office for Civil Rights  
915 Second Avenue, #3310  
Seattle, WA 98174-1099

U. S. Department of Agriculture  
Office for Civil Rights  
Room 326-W, Whitten Building  
1400 Independence Avenue, SW  
Washington, DC 20250-9410  
Telephone: (866)632-9992 (Toll Free) (Voice)  
(800) 877-8339 (Relay)  
(800) 845-6136 (Spanish Relay)  
Email: [programintake@usda.gov](mailto:programintake@usda.gov)

OR

Office for Civil Rights  
Food and Nutrition Service Western Region  
90 7<sup>th</sup> Street, Suite 10-100  
San Francisco, CA 94103  
Telephone: (415)705-1322  
TTY: (800) 735-2922

## Appendix F: DHS COFA Fact Sheet

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services



U.S. Citizenship  
and Immigration  
Services

# Fact Sheet

October 26, 2018

### Status of Citizens of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands

#### **Background**

The Compact of Free Association (COFA) Act of 1985 (Public Law 99-239) approved a joint resolution between the United States, the Republic of the Marshall Islands (RMI), and the Federated States of Micronesia (FSM), which terminated U.S. trusteeship over the former Trust Territory of the Pacific Islands (TTPI). The resolution also established the FSM and the RMI as independent nations and established a special relationship between the United States and these nations. The COFA between the United States and the RMI took effect on Oct. 21, 1986, and the COFA between the United States and the FSM took effect on Nov. 3, 1986.

The COFA Amendments Act of 2003 (Public Law 108-188) amended the Compacts in a number of significant ways, including changing the immigration provisions. The Compacts, as amended, became effective for the RMI on May 1, 2004, and for the FSM on June 30, 2004.

**Note:** The United States also established a Compact of Free Association with the Republic of Palau effective on October 1, 1994. As the Compact with Palau has not been amended, this Fact Sheet applies *only* to the RMI and the FSM, and should not be used for any informational purpose regarding citizens of Palau. For information on Palau, see the U.S. Citizenship and Immigration Services (USCIS) Fact Sheet entitled "Status of Citizens of the Republic of Palau".

#### **Citizenship Status**

Citizens of the RMI or FSM are not citizens or nationals of the United States.

#### **Travel of Citizens of FSM OR RMI to the United States**

Citizens of the FSM and RMI by birth and those citizens of the former TTPI who acquired FSM or RMI citizenship in 1986 are entitled under the Compacts to travel and apply for admission to the United States as nonimmigrants without visas. However, admission is not guaranteed. Most grounds of inadmissibility under U.S. immigration laws, such as criminal convictions, are applicable.

[www.uscis.gov](http://www.uscis.gov)

If determined admissible under the Compacts, an FSM or RMI citizen may live, study, and work in the United States. The United States has the right to set terms and conditions on the nonimmigrant stay of FSM and RMI citizens. Currently, they are granted an unlimited length of stay.

**Types of Citizens Who May Exercise Compact Privileges**

In addition to citizens born in the FSM or RMI (birth citizen) and former TTPI citizens, the following citizens of the FSM or RMI may exercise privileges under the Compacts:

- An immediate relative (spouse or unmarried son or daughter under 21 years of age) of a birth citizen or former TTPI citizen provided that the immediate relative:
  - Is a naturalized FSM or RMI citizen,
  - Has been an actual resident of the FSM or RMI (as applicable) for at least five years after naturalization and has a certificate of actual residence, and
  - In the case of a spouse, has been married to the birth citizen or former TTPI citizen for at least five years and did not enter into the marriage primarily to obtain immigration benefits under the Compacts;

or

- A naturalized citizen of the FSM or RMI whose name is included on a list provided by the FSM or RMI governments that names people who have been residents for five years as of April 30, 2003, and who continues to be an actual resident with a certificate of actual residence.

Any person who obtained an FSM or RMI passport under any investment, passport sale, or similar program is not entitled to any immigration privileges under the Compacts.

For employment eligibility and other purposes, once admitted into the United States, it does not matter whether the person is a birth citizen, a former TTPI citizen, or has another basis of eligibility under the Compacts.

**Special Provision for Certain Family Members of RMI or FSM Citizens Serving in the Armed Forces or Active Reserves**

An immediate relative (spouse or unmarried son or daughter under 21 years of age) of one of the types of FSM and RMI citizens listed above is admissible to the United States, provided the FSM or RMI citizen is serving on active duty in any branch of the U.S. armed forces, or in the active reserves.

Note that this provision may apply to qualifying family members even if they are not citizens of the RMI or FSM. References in this Fact Sheet to FSM or RMI citizens admitted under the Compacts include these individuals.

### **Adoptions – Bar on Admission**

Any FSM or RMI citizen who is coming to the United States based on an adoption outside the United States, or for the purpose of adoption in the United States, is ineligible for visa-free admission as a nonimmigrant under the Compacts.

This bar on visa-free admission as a nonimmigrant applies to FSM or RMI citizens who are seeking to come to the United States for the purpose of placing a child for adoption in the United States. This restriction applies whether or not the child has already been born when the FSM or RMI citizen seeks visa-free admission as a nonimmigrant.

U.S. residents wishing to adopt an FSM or RMI citizen, or FSM or RMI citizens thinking of coming to the United States for any adoption-related purpose, should seek more information on the requirements of U.S. immigration law from a U.S. Embassy and U.S. Citizenship and Immigration Services (USCIS).

Anyone seeking to adopt a child abroad can find more information about the intercountry adoption process for particular countries at the Department of State's adoption website at [www.adoption.state.gov](http://www.adoption.state.gov).

### **Travel Documentation**

To gain admission to the United States under the Compacts, a citizen of the FSM or the RMI must possess a valid, unexpired FSM or RMI passport. Those applying for admission under the Compacts do not need a U.S. visa or any other travel documentation.

Individuals seeking admission under the Compacts (particularly those who are not birth citizens or former TTPI citizens) should bring copies of a marriage certificate, certificate of residency, a spouse's military orders, or other documents to demonstrate eligibility at the port of entry.

### **Documentation of Admission to the United States**

After arriving at a U.S. port of entry, FSM and RMI citizens will receive admission stamps in their passports upon admission by U.S. Customs and Border Protection (CBP) to the United States under the Compacts. The admission stamp will reflect that the admission relates to the Compacts.

The exact notation may vary and is subject to change, but at the present time it typically states "CFA/FSM" for an FSM citizen and "CFA/MIS" for an RMI citizen. Some older versions may be marked "CFA/RMI" for an RMI citizen.

CBP also issues Form I-94, Arrival/Departure Record, to nonimmigrants, such as FSM and RMI citizens, upon their admission to the United States. Form I-94 is created electronically upon arrival at an air or sea port of entry. FSM and RMI travelers can obtain a paper version of their Form I-94 by logging on to CBP's website ([www.cbp.gov/I94](http://www.cbp.gov/I94)) using identifying information and then printing the form. Both initial and replacement Forms I-94 may be obtained through CBP's website.

[www.uscis.gov](http://www.uscis.gov)

CBP will still issue paper versions of Form I-94 at air and sea ports of entry to those travelers who request paper versions when they arrive in the United States. These paper Forms I-94 will contain an admission stamp, but will not have an “admit until” date. However, Forms I-94 printed from the CBP website will show an “admitted until” date of D/S (duration of status).

The 11-digit admission/departure number on Form I-94 takes the place of the alien registration number (A-number) for those admitted under the Compacts who are not otherwise assigned an A-number. A person admitted under the Compacts should provide this Form I-94 number in place of an A-number in response to any official requests.

Either a printed Form I-94 or the admission stamp in the FSM or RMI passport is evidence of alien registration. All foreign visitors to the United States over the age of 18 (including FSM and RMI citizens) are required under penalty of law to have this evidence in their personal possession at all times.

#### **Terms and Conditions of Admission**

Persons admitted under the Compacts must abide by any terms and conditions of admission prescribed by the Department of Homeland Security, and must obey the laws of the United States and of the state and locality in which they reside or are present.

People who, following admission to the United States under the Compacts, cannot show that they have sufficient means of support in the United States may be deportable. Other grounds of deportability, such as conviction for an aggravated felony, also apply to persons admitted under the Compacts.

#### **Admission Under the INA and Lawful Permanent Residence**

FSM and RMI citizens admitted to the United States under the Compacts may reside, work, and study in the United States. They do not have the status of lawful permanent residents (also known as Green Card holders) under the Immigration and Nationality Act (INA).

FSM and RMI citizens admitted to the United States under the Compacts may become lawful permanent residents, however, if they are otherwise eligible under immigration laws, either through the immigrant visa process or by adjustment of status within the United States. People generally must be granted lawful permanent resident status in the United States before they can apply for naturalization as a U.S. citizen.

In certain circumstances, FSM and RMI citizens or residents who are not eligible for admission without a visa as nonimmigrants under the Compacts may be able to apply for a nonimmigrant or immigrant visa under the immigration laws generally applicable to all foreign nationals. A U.S. Embassy or U.S. Consulate can provide visa information. Visa information is also available from the U.S. Department of State at <http://travel.state.gov/content/visas/english.html>.

### **Employment Authorization – Documentation**

FSM and RMI citizens admitted under the Compacts may freely seek employment in the United States. However, like other employees working in the United States, must complete for their employers at the time of hire an attestation regarding their employment authorization and present document(s) showing identity and employment authorization for completing Form I-9, Employment Eligibility Verification. To satisfy the document presentation requirement, employees may choose a document or combination of documents listed on Form I-9, in the section “Lists of Acceptable Documents.”

While FSM and RMI citizens may have been issued a number of documents that are in the section “Lists of Acceptable Documents,” one option is specific to FSM and RMI citizens: the combination of FSM or RMI passport and Form I-94 reflecting the FSM or RMI citizens’ admission under the Compacts. This document combination is a “List A” document that shows both identity and employment authorization and satisfies the document presentation requirement for Form I-9. An RMI or FSM passport with a passport stamp is not acceptable for Form I-9 purposes; the Form I-94 must be printed and presented with the passport.

Another document listed in the section “Lists of Acceptable Documents” available to citizens of the RMI and FSM upon request from USCIS is Form I-766, Employment Authorization Document (EAD). While under the Compacts, citizens of the RMI and the FSM do not need to apply for, possess, or renew an EAD, USCIS encourages them to apply for one by completing [Form I-765, Application for Employment Authorization](#). USCIS will issue an EAD with a category code of A08 to them free of charge. Applicants properly filing EAD renewal applications under category A08 may receive automatic extensions of an expiring or expired EAD for up to 180 days. The extension begins on the date the EAD expires and continues for up to 180 days unless the renewal application is denied.

In addition to serving as evidence of both identity and employment authorization, the EAD is very useful in applying for a driver’s license or other situations where secure U.S. government-issued evidence of identity or immigration status may be requested.

While an unexpired FSM or RMI passport with an unexpired Form I-94 establishes identity and employment authorization for the purposes of Form I-9, this document combination does not have to be accepted for other purposes, such as applying for a driver’s license.

All other requirements and procedures relating to [Form I-9](#) and the employer sanctions laws apply to RMI and FSM citizens in the same manner as to other employees in the United States.

### **Social Security Card**

A person admitted under the Compacts may obtain a Social Security number (SSN) and Social Security card from the Social Security Administration. An FSM or RMI citizen who has been admitted under the Compacts is issued a Social Security card without the statement, “Valid for Work Only with DHS Authorization.” For Form I-9 purposes, this is a “List C” document that an FSM or RMI citizen can show his or her employer as evidence of employment authorization, but not identity.

The Social Security card must be obtained in the United States from the Social Security Administration. It cannot be issued by the U.S. Embassy in the FSM or RMI.

**Study**

FSM and RMI citizens admitted under the Compacts may study at any school in the United States. A school enrolling an FSM or RMI citizen admitted under the Compacts should not register the student with the Student and Exchange Visitor Program (SEVP), and the student does not need to present a Form I-20 or Form DS-2019.

**Rights of Persons Seeking to Come to the United States Under a Labor Recruitment Arrangement**

The Compacts and related agreements provide FSM or RMI citizens who seek to come to the United States under a labor recruitment arrangement with certain rights, including a full disclosure of the terms and conditions of the arrangement. These individuals should contact their respective embassy or other appropriate FSM or RMI government office for information about their rights to full disclosure before entering into any such agreement and departing for the United States.

**Military Service**

Under section 341 of the Compacts, FSM and RMI citizens entitled to admission to the United States under the Compacts are eligible to volunteer for service in the U.S. armed forces.

**Visa Requirements for FSM And RMI Diplomats**

FSM and RMI citizens coming to the United States to assume diplomatic duties or to work at an international organization must obtain the appropriate nonimmigrant visa in “A” or “G” classification in order for their official status to be recognized by the United States. The Department of State also strongly encourages other FSM and RMI citizens to have a visa if they are coming to the United States to engage in official activities on behalf of their government.

**U.S. Consular Assistance Abroad**

Under section 126 of the Compacts, the United States extends consular assistance to citizens of the FSM and RMI in foreign countries on the same basis as for U.S. citizens, subject to the consent of the foreign country.

U.S. Consular officers also help FSM and RMI citizens extend and renew their FSM and RMI passports. These services are available when the FSM or RMI has no diplomatic or consular representation in a foreign country.

– USCIS –

**Hawaii Advisory Committee to the  
United States Commission on Civil Rights**



**U.S. Commission Contact**

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USCCR Contact	Western Regional Office U.S. Commission on Civil Rights 300 N. Los Angeles Street, Suite 2010 Los Angeles, CA 90012 (213) 894-3437
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