

**MEMORANDUM**

July 3, 2023

**To:** House Committee on Natural Resources  
Attention: Ransom Fox

**From:** Thomas Lum, Specialist in Asian Affairs, [tlum@crs.loc.gov](mailto:tlum@crs.loc.gov), 7-7616  
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**Subject:** **Hearing on “How the Compacts of Free Association Support U.S. Interests and Counter the PRC’s Influence”: Questions for the Record**

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Please see responses below to questions for the record following the June 14, 2023, oversight hearing before the Indo-Pacific Task Force of the House Committee on Natural Resources on “How the Compacts of Free Association Support U.S. Interests and Counter the PRC’s Influence.” Portions of the text below may appear in other CRS products. If you need further assistance, please contact Thomas Lum.

## Questions for the Record and CRS Responses

1. The U.S. economic assistance to the Republic of Palau under the current compact agreement is unique in that assistance was extended through a U.S.-Palau Compact Review Agreement (CRA) in 2010, rather than through an amended Compact of Free Association (COFA). When looking at the CRA, we see provisions refer to the original COFA with Palau. This has made the Palau’s compact agreements more complex than the compact agreements with the other [Freely Associated States (FAS)] countries, as Palau’s compact provisions are laid out across multiple documents. Meanwhile, the 2003 agreements with the Federated States of Micronesia and the Republic of the Marshall Islands agreements do not require such reference as economic assistance was extended through amended COFAs with each country.

**Question: Do you have any recommendations on how the U.S. and Palau could resolve this issue?**

**CRS Response:** The unique process by which the U.S. economic or grant assistance provisions (Title Two) of the COFA with Palau are extended does not appear to have delayed past or recent negotiations of CRAs with Palau, although the congressional budget process delayed the allocation of funds for Palau following the 2010 CRA. The U.S.-Palau Compact of Free Association (Palau Compact of Free Association Act, P.L. 99-658, Section 432) states in part:

Upon the fifteenth and thirtieth and fortieth anniversaries of the effective date of this Compact, the Government of the United States and the Government of Palau shall formally review the terms of this Compact and its related agreements and shall consider the overall nature and development of their relationship. In these formal reviews, the governments shall consider the operating

requirements of the Government of Palau and its progress in meeting the development objectives set forth in the plan referred to in Section 231(a). The governments commit themselves to take specific measures in relation to the findings of conclusions resulting from the review.

Section 231(a) of the Palau Compact of Free Association Act states:

The annual expenditure by the Government of Palau of the grant amounts specified in Article I of this Title shall be in accordance with an official national development plan promulgated by the Government of Palau and concurred in by the Government of the United States prior to the effective date of this Compact. This plan may be amended from time to time by the Government of Palau.

A CRS review of news reports, expert analysis, congressional testimony, and U.S. government statements does not find evidence to suggest the review process or any related conditions pursuant to the Palau Compact hindered negotiations to renew economic assistance provisions of the Compact prior to the 2010 CRA. Compared to the other two Compact states, the Marshall Islands and Micronesia, Palau had “proved more responsible in how it handle[d] its funding.”<sup>1</sup>

The Government Accountability Office (GAO) reported in 2008:

Despite limited capacity to address persistent internal control weaknesses, Palau made progress in providing financial accountability and met most of the compact’s and related agreements’ accountability requirements; however, [the Office of Insular Affairs] provided limited monitoring of Palau’s accountability for compact assistance.<sup>2</sup>

The GAO report suggested, furthermore, that the review process was not rigorous. The report stated that Palau provided annual reports to the U.S. government but that there was “no documentation regarding...whether the U.S. government agreed or disagreed that Palau used compact funds as set forth in its economic development plan.” Economic consultations were “informal” and “did not provide any documentation.”<sup>3</sup> Some analysts call for greater U.S. oversight of Compact assistance, particularly in the Marshall Islands and Micronesia, which might suggest a need to strengthen Palau’s oversight mechanisms and apply them to the other COFA states.<sup>4</sup>

To the degree that Palau may have fallen short on benchmarks related to its national development plan, the U.S. government offered additional, targeted assistance to help Palau meet its economic goals during the second Compact assistance period (2010–2024). According to 2011 testimony by Anthony Babauta, then-Assistant Secretary of the Interior for Insular Affairs, the Compact Section 432 review focused in part on four areas for further Compact assistance: (1) the Compact trust fund; (2) implementation of fiscal reforms; (3) foreign investment and private sector growth; and (4) the continuation of U.S. economic assistance.<sup>5</sup>

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<sup>1</sup> Elke Larsen, “Prioritizing Palau: Why the Compact Budget Matters,” Center for Strategic and International Studies,” October 10, 2013.

<sup>2</sup> Government Accountability Office, Compact of Free Association: Palau’s Use of and Accountability for U.S. Assistance and Prospects for Self-Sufficiency,” June 2008, p. 4.

<sup>3</sup> *Ibid.*, p. 31.

<sup>4</sup> Emil Friberg, Testimony before the House Natural Resources Committee on Indian and Insular Affairs—“Preserving U.S. Interests in the Indo-Pacific: Examining How U.S. Engagement Counters Chinese Influence in the Region,” May 16, 2023; Michael Walsh, “Congress Should Strengthen Oversight on Pacific Islands Affairs,” *The Hill*, March 28, 2023; David Gootnick, Government Accountability Office, Testimony before the Committee on Energy and Natural Resources, U.S. Senate, April 5, 2016.

<sup>5</sup> Hearing before the Committee on Energy and Natural Resources, U.S. Senate, “To Review S. 343, a Bill to Amend Title 1 of P.L. 99-658 Regarding the Compact of Free Association between the Government of the United States of America and the Government of Palau...,” June 16, 2011.

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In 2010, the United States and Palau concluded the U.S.-Palau Compact Review Agreement, to extend economic assistance for another 15 years, worth \$229 million.<sup>6</sup> The 2010 agreement was not fully funded by Congress until FY2018, largely due to budgetary constraints. The Budget Control Act of 2011 (P.L. 112-25) required new mandatory spending to be offset by spending cuts elsewhere; negotiations over this process delayed funding for Palau.<sup>7</sup>

As talks to renew economic provisions of the Compact with Palau for the 2025-2044 period progressed in 2022 and 2023, the U.S. and Palau governments discussed Palau's economic development, but any issues related to Palau's meeting Compact objectives or to its national development plan did not appear to impede negotiations or thwart increased funding levels.<sup>8</sup> The Palau Economic Advisory Group (EAG) was formed in 2022 pursuant to the 2010 CRA.<sup>9</sup> Its first report noted, among other observations, that the financial situation of the economy and government of Palau was "dire," due in part to the collapse of tourism. The report did not place economic conditions on Palau for renewing the Compact, but rather made policy recommendations to carry out during and after completion of negotiations.<sup>10</sup> During the 2022-2023 U.S.-Palau Compact negotiations, Palau President Surangel Whipps negotiated an increase in total grant assistance to \$889 million, more than twice the amount the U.S. government had proposed at the start of bilateral discussions in 2020. President Whipps reportedly had found the initial offer "unacceptable."<sup>11</sup>

2. In 2003, the U.S. State Department changed the security and defense provisions of the RMI and the FSM compact agreements. These include creating linkages between access to COFA trust funds and compliance with U.S. strategic denial rights.

**Question: Do you think the State Department's linkage of economic assistance and defense and security rights have created uncertainty in the FAS about the permanence of COFA and that this gave the PRC an opening to exert influence in the RMI and the FSM?**

**CRS Response:** Several factors suggest the Republic of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM) prefer to work with the United States on issues related to the Compacts and are wary of the influence of the People's Republic of China (PRC or China). The Compact of Free Association Amendments Act of 1985 (P.L. 108-188, Section 354), and the Trust Fund Agreements between the United States and the RMI and FSM contain provisions that allow the United States to withdraw its contributions from the Compact trust funds if the RMI or FSM government takes any action

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<sup>6</sup> Department of the Interior, "Budget Justifications and Performance Information, Fiscal Year 2024, Office of Insular Affairs;" Agreement between the Government of the United States of America and the Government of the Republic of Palau Following the Compact of Free Association Section 432 Review, September 3, 2010 at <https://www.state.gov/18-919-2/>.

<sup>7</sup> Elke Larsen, "Prioritizing Palau: Why the Compact Budget Matters," Center for Strategic and International Studies, October 10, 2013; David Walter, "Sequestration in Paradise," *Wall Street Journal*, February 28, 2013.

<sup>8</sup> Heritage Foundation, "Pacific Islands Roundtable," April 26, 2023.

<sup>9</sup> The EAG is composed of five members. The U.S. and Palau governments each appoint two members, and the fifth is selected by the United States and nominated by Palau.

<sup>10</sup> First Annual Report of the Palau Economic Advisory Group, April 2023. See also Department of State, "Completion of the Palau Bilateral Economic Consultation Meetings," media note, June 23, 2023 and Department of State, "Secretary Blinken Witnesses the Signing of the U.S.-Palau 2023 Agreement Following the Compact of Free Association Section 432 Review," media note, May 22, 2023.

<sup>11</sup> Leilani Reklai, "Palau and US Formally Sign Compact Review Agreement," *Island Times*, May 23, 2023; Ongerung Kambes Kesolei, "Looking at Palau's Approach to the Compact Negotiation," *Pacific Island Times*, February 7, 2023; Leilani Reklai, "US-Palau Compact Review MOU Promises Double Financial Assistance," *Island Times*, January 13, 2023.

that the U.S. government determines to be incompatible with the U.S. responsibility for security and defense matters related to the Compact states.<sup>12</sup>

The RMI and FSM governments do not appear to have explicitly challenged these Compact provisions, have supported their security and defense relationships with the United States, and, according to at least one report, have not seriously considered withdrawing from the Compacts.<sup>13</sup> China's growing influence in the region, rather than providing an incentive to embrace China, reportedly has given the RMI and FSM more leverage in negotiations with the United States to extend Compact economic assistance. And while some RMI and FSM citizens have expressed distrust of U.S. military engagement, news reports suggest that local sentiment generally has favored the United States over China.<sup>14</sup>

Although the PRC's influence in the Pacific Islands region is growing, its engagement among the FAS compared to its relations in the rest of the region has been limited, due to the U.S. political, economic, and security presence among the COFA states and to the PRC's lack of diplomatic relations with the Marshall Islands and Palau.<sup>15</sup> China's engagement is greater in Micronesia, with which it has diplomatic relations, as well as a "comprehensive strategic partnership."<sup>16</sup> Nonetheless, in May 2022, when China proposed a sweeping diplomatic, economic, and security pact between the PRC and ten Pacific Island countries (PICs) with which it has diplomatic relations, then FSM President David Panuelo and some other PICs opposed the agreement, causing China to shelve it.<sup>17</sup>

On May 22 and May 23, 2023, the United States signed agreements with Palau and Micronesia, respectively, on extending the economic assistance provisions of the Compacts of Free Association for another 20 years.<sup>18</sup> A final U.S. agreement with the Marshall Islands has not yet been reached.<sup>19</sup> Marshall Islands resistance to signing an agreement with the United States stems largely from dissatisfaction with the way the U.S. government has provided compensation for the effects of past nuclear testing over the country.<sup>20</sup> According to U.S. government sources, between 1958 and 2019, the United States provided \$600 million to the Marshall Islands for nuclear test damages, environmental cleanup and restoration, resettlement, and health and medical programs.<sup>21</sup> The RMI government and local communities long have

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<sup>12</sup> See, for example, "Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Implementing Section 216 and Section 217 of the Compact, as Amended, Regarding a Trust Fund," at Trust Fund Agreement – Joint Committee on Compact Review and Planning (JCRP) (gov.fm).

<sup>13</sup> "America's Pacific Island Allies: The Freely Associated States and Chinese Influence," RAND, 2019.

<sup>14</sup> Peter McKenzie, "Marshall Islands, Feeling Neglected by the U.S., Enjoys New Leverage," *Washington Post*, January 27, 2023; Ashley Westerman, "The US is Building a Military Base in the Middle of the Pacific Ocean. Micronesian Residents Have Questions," *The World*, August 24, 2021.

<sup>15</sup> Of 14 countries worldwide that recognize Taiwan diplomatically, four are in the Pacific (Marshall Islands, Nauru, Palau, and Tuvalu). China does not recognize countries that have diplomatic relations with Taiwan, which it considers to be a part of the PRC. The Marshall Islands and Palau governments have pledged continued commitment to Taiwan. "Marshall Islands says 'Strongly Committed' to Taiwan Ties," Reuters, March 22, 2022; "Palau Says Committed to Supporting Taiwan Despite 'Mounting Aggressions'," Reuters, October 6, 2022.

<sup>16</sup> Cao Desheng, "President Hails Ties with Micronesia in Greetings," *China Daily*, May 21, 2019.

<sup>17</sup> Kirsty Needham, "China Seeks Pacific Islands Policing, Security Cooperation—Document," Reuters, May 25, 2022.

<sup>18</sup> Department of State, "Secretary Blinken Witnesses the Signing of the U.S.-Palau 2023 Agreement Following the Compact of Free Association Section 432 Review," media note, May 22, 2023; Department of State, "Signing of the U.S.-FSM Compact of Free Association-Related Agreements," media note, May 23, 2023.

<sup>19</sup> In January and February 2023, the United States signed memoranda of understanding with all three Compact countries on the basic levels and types of Compact assistance for the next 20 years.

<sup>20</sup> "Marshall Islands Compact Held Up by Nuclear Legacy," *RNZ*, June 27, 2023.

<sup>21</sup> Susanne Rust, "How the U.S. Betrayed the Marshall Islands, Kindling the Next Nuclear Disaster," *Los Angeles Times*, November 10, 2019; Embassy of the United States, Majuro, Marshall Islands, "The Legacy of U.S. Nuclear Testing and Radiation Exposure in the Marshall Islands."

sought greater compensation from the U.S. government, but so far have not turned to China for assistance related to U.S. nuclear legacy issues.

While the RMI and FSM governments remain committed to the Compacts, according to some observers, one area of possible concern is political fragmentation, particularly in Micronesia. Some residents of two FSM states, Chuuk and Yap, have supported separating from the federation, citing economic and other reasons. Political fragmentation could possibly lead to new political entities outside of the Compacts' authorities, stronger local relations with China, and/or greater vulnerability to PRC influence, including corruption.<sup>22</sup>

3. In the March 17, 2023, CRS report, "The Compacts of Free Association," it is stated that "More than 94,000 FAS citizens live in the United States, including children under the age of 18 who were born in the United States and hold dual citizenship." Given the importance of clarifying issues unique to the Compacts and related statutes, we would note that on May 5, 2023, the Department of the Interior (DOI), Office of Insular and International Affairs (OIA), issued a press release also reporting the FAS resident population in U.S. at 94,000.

In this respect, the DOI/OIA press release cited GAO Report 20-491, dated June 15, 2020, as the source for OIA's assertion that "...more than 94,000 Compact Migrants..." from the FSM, the RMI, and Palau "...live and work in..." the U.S. and its territories. The OIA statement added that among the 94,000 "Compact Migrants" an "...estimated 43% are U.S. citizens."

The estimate of 43% U.S. citizenship rate among what GAO and OIA refer to as "Compact Migrants" is confirmed at Appendix VI, p. 67 of the GAO report. The GAO report cited by OIA also states that, "From 2013 to 2018 an estimated 50 percent of compact migrants lived on the U.S. mainland."

While the U.S. does not treat acquisition of a citizenship of other nations under the laws thereof as relinquishment or grounds for loss of U.S. nationality, in general the U.S. does not create dual citizenship by operation of U.S. law. The suggestion that by conflation of COFA Section 141 non-immigrant visa waiver residence and the Section 104(e) definition of qualified nonimmigrant combine to recognize or establish a form of dual nationality is problematical.

Children of FAS parents born in a state acquire U.S. nationality and citizenship under Section 1 of the 14th Amendment, and children of FAS parents born in a territory acquire birthright nationality and/or citizenship under 8 U.S.C. 1401-1408. Thus, unless there is a statute mandating that a permissibly defined class of U.S. citizens with FAS heritage shall be treated as nonimmigrants, interpretation of COFA Sections 141-143 as a dual nationality scheme in combination with Section 104(e) of the COFA Act of 2003 is unavailing.

Each of the three FAS constitutions requires FAS citizens who acquire a second citizenship to make an election between FAS citizenship and citizenship of any other nation, including the United States. The FSM and RMI bar to dual citizenship seems to apply to children born outside the FSM and RMI, since both those constitutional prohibitions require election at age 18.

**Question: Do you think it would be more consistent to conclude that the number of FAS citizens in the U.S. under the COFA visa waiver provisions, as well as those counted for**

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<sup>22</sup> United States Institute of Peace, "China's Influence on the Freely Associated States of the Northern Pacific," September 2022; Jonathan Barrett, "Chuuk Independence Vote Postponed as China-U.S. Pacific Contest Builds," Reuters, February 26, 2020; "Falan: Yap Is Increasingly Finding Itself at the Mercy of China," *Pacific Island Times*, July 17, 2022; China Meets Its Limits in Micronesia, East Asia Forum, April 8, 2020.



**purposes of Compact impact assessment, should be reduced by the percentage of that 94,000 figure that represents U.S. citizens, regardless of age?**

**CRS Response:** FAS citizens have the right to reside and work in the United States and its territories as lawful non-immigrants. According to the Department of the Interior, Office of Insular Affairs, more than 94,000 Compact migrants from the RMI, FSM, and Palau are estimated to live and work in the United States and its territories. Among FAS migrants living in U.S. states in 2013-2017, an estimated 43% were U.S. citizens, including naturalized citizens and minor-age children of FAS migrants who were born in the United States and hold dual citizenship.<sup>23</sup> The proportion of FAS migrants in U.S. states plus its Pacific territories who are U.S. citizens is likely to be roughly the same. In terms of assessing the impact or costs to U.S. states and territories where FAS migrants live, some FAS people may be both counted as FAS migrants and hold U.S. citizenship. Although FAS migrants generally are ineligible for most federal program benefits due to restriction on non-U.S. citizens under the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193), some people counted as FAS migrants for purposes of assessing costs may be eligible for federal programs due to their U.S. citizenship status.<sup>24</sup>

The Compact of Free Association Act of 1985 requires the President to report annually to Congress on the impact of the Compact on U.S. territories and commonwealths in the Pacific and on the State of Hawaii, and to cover the costs “resulting from any increased demands placed upon education and social services” by migrants from the FAS.<sup>25</sup> The Compact Amendments Act of 2003 mandated \$30 million in Compact Impact funds be allocated annually for 20 years (2004-2023).<sup>26</sup> The apportionment of these funds among the impacted U.S. Pacific areas is based upon Census enumerations done roughly every five years.<sup>27</sup> Since 2012, Congress has annually appropriated additional discretionary Compact Impact funds, including \$6 million for FY2023.<sup>28</sup>

**Question: Do you agree that FAS law determines FAS nationality and citizenship, and U.S. law determines U.S. nationality and citizenship, so U.S. laws including the Compacts do not create a formal or legally defined dual nationality or citizenship for FAS citizens in the U.S. or U.S. citizens in the FAS?**

**CRS Response:** The Immigration and Nationality Act (INA),<sup>29</sup> the basis of U.S. immigration law, does not contain provisions on dual citizenship. Under the Citizenship Clause of the Fourteenth Amendment to the Constitution and INA Section 301(a) (8 U.S.C. §1401(a)), persons born within the United States, on federally recognized tribal lands, and in designated territories (currently, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands) generally are U.S. citizens at birth, regardless of the citizenship or immigration status of their parents.<sup>30</sup>

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<sup>23</sup> The total number of FAS migrants in U.S. states, the District of Columbia, and Puerto Rico was 72,965 according to this estimate. Department of the Interior, “U.S. Department of the Interior Supports Solution for Compact Impact,” May 5, 2023; Government Accountability Office, Report to the Chairman of the Committee on Energy and Natural Resources, U.S. Senate, “Compacts of Free Association: Populations in U.S. Areas Have Grown, with Varying Reported Effects,” June 2020, p. 18.

<sup>24</sup> For an example of how U.S. impacted areas assess costs of FAS migration, see State of Hawaii Department of Business, Economic Development & Tourism, “COFA Migrants in Hawaii,” February 2020.

<sup>25</sup> P.L. 99-239, Section 104(e).

<sup>26</sup> P.L. 108-188, Section 104(e).

<sup>27</sup> United States Census Bureau, Final Report, “2018 Estimates of Compact of Free Association (COFA) Migrants, April 16, 2019.

<sup>28</sup> Department of the Interior, *Congressional Budget Justifications, Fiscal Year 2024, Office of Insular Affairs*.

<sup>29</sup> The INA is codified in Title 8 of the U.S. Code (8 U.S.C. §1101 et seq.).

<sup>30</sup> For more information, see CRS Legal Sidebar LSB10214, *The Citizenship Clause and “Birthright Citizenship”*: A Brief Legal Overview and CRS Report R47223, *U.S. Citizenship for Children Born Abroad: In Brief*.

Individuals who are not U.S. citizens at birth may naturalize pursuant to requirements specified in the INA.<sup>31</sup> Generally, an individual must first be a lawful permanent resident (LPR) in order to be eligible to naturalize. Citizens of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands admitted to the United States under the Compacts are not LPRs; however, they may become LPRs if they are otherwise eligible under the INA.<sup>32</sup>

An individual who naturalizes in the United States may retain the citizenship of another country if that country permits it. The United States has no authority to prohibit another country from continuing to treat an individual as its citizen. See, for example, this guidance from the Department of State:

Each country has its own nationality laws based on its own policy. Persons may have dual nationality by automatic operation of different laws rather than by choice. For example, a child born in a foreign country to U.S. national parents may be both a U.S. national and a national of the country of birth. Or, an individual having one nationality at birth may naturalize at a later date in another country and become a dual national. U.S. law does not mention dual nationality or require a person to choose one nationality or another.<sup>33</sup>

A native-born or naturalized U.S. citizen may lose their citizenship by committing certain expatriating acts if those acts are committed voluntarily and with the intention of relinquishing U.S. citizenship.<sup>34</sup> These include voluntary naturalization in a foreign country after age 18, making a formal declaration of allegiance to a foreign country after age 18, serving in the armed forces of a foreign country engaged in hostilities against the United States, and serving in the armed forces of a foreign country as an officer. An individual may also voluntarily renounce their U.S. citizenship before a U.S. diplomatic or consular officer abroad.

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<sup>31</sup> Generally, in order to naturalize, a foreign national must be a lawful permanent resident (LPR), meet certain U.S. residence and physical presence requirements, demonstrate knowledge of U.S. history and civics and English language ability, have good moral character, and show attachment to the U.S. Constitution by taking the Oath of Allegiance in a public ceremony. See INA §§316, 319 (8 U.S.C. §§1427, 1430). Individuals must be at least 18 to naturalize; children derive citizenship through their parents. The INA contains special provisions for the naturalization of members of the U.S. Armed Forces at INA §328 and §329 (8 U.S.C. §§1439, 1440). For more information, see CRS In Focus IF12322, *Naturalization: Policy Overview and Selected Trends*.

<sup>32</sup> See U.S. Citizenship and Immigration Services, “Status of Citizens of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands: Fact Sheet,” <https://www.uscis.gov/sites/default/files/document/fact-sheets/FactSheetVerifyFASCitizens.pdf>, September 2020, and “Status of Citizens of the Republic of Palau: Fact Sheet,” [https://www.uscis.gov/sites/default/files/document/fact-sheets/FactSheet-Status\\_of\\_Citizens\\_of\\_Palau.pdf](https://www.uscis.gov/sites/default/files/document/fact-sheets/FactSheet-Status_of_Citizens_of_Palau.pdf), October 2019.

<sup>33</sup> U.S. Department of State, Bureau of Consular Affairs, “Dual Nationality,” <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/Advice-about-Possible-Loss-of-US-Nationality-Dual-Nationality/Dual-Nationality.html>.

<sup>34</sup> INA §349; 8 U.S.C. §1481.