

Congress of the United States

Washington, DC 20510

June 6, 2019

The Honorable Mark Koumans
Acting Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue N.W.
Washington, DC 20529

Mr. Chad Wolf
Senior Official Performing the Duties of the Under
Secretary
Department of Homeland Security
Office of Strategy, Policy, and Plans
2707 Martin Luther King Jr. Avenue S.E. MS 0445
Washington, DC 20528-0445

Dear Acting Director Koumans and Mr. Wolf,

As Members of Congress who drafted, introduced, cosponsored, or directly supported enactment of the REAL ID Act Modification for Freely Associated States Act, we write to express our deep concern regarding the Department of Homeland Security's (DHS) recent guidance implementing this law. The new guidance requires citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau (collectively known as the Freely Associated States, or FAS) to provide an Employment Authorization Document (EAD) to obtain REAL ID Act-compliant driver's licenses and identification cards ("REAL ID-compliant cards"). FAS citizens, however, generally do not have EADs because, unlike other nonimmigrants, they do not need an EAD to live and work in the United States under decades-old Compacts of Free Association (Compacts). We strongly urge you to eliminate this unnecessary and unfair EAD requirement for FAS citizens, which has imposed serious hardships on FAS citizens and generated significant concerns from their governments, which are critical national security partners of the United States.¹

As you are aware, the REAL ID Act of 2005 sets national standards for state-issued driver's licenses and ID cards and prohibits federal agencies from accepting noncompliant IDs for official purposes. States are expected to complete implementation of the REAL ID Act standards by October 2020. Under the REAL ID Act, DHS allows non-U.S. citizens and non-permanent residents to obtain REAL ID-compliant cards by providing either their passport with a visa and a Form I-94, or an EAD, which are documents they generally need to live and work in the United States. But under the Compacts, which recognize the important national security partnership between the United States and the Freely Associated States, FAS citizens are able to live and work indefinitely in the United States as nonimmigrants without a visa or an EAD. Accordingly, states have issued driver's licenses and ID cards to FAS citizens with their passport and a Form I-94, which shows their lawful admission to the United States under the Compacts.

¹ See, e.g., Anita Hofschneider, *New Federal Rules Block Driver's Licenses For Micronesians In Hawaii*, HONOLULU CIVIL BEAT (May 6, 2019), <https://www.civilbeat.org/2019/05/new-federal-rules-block-drivers-licenses-for-micronesians-in-hawaii/>.

In recognition of the United States' special obligations to FAS citizens, Congress enacted the REAL ID Act Modification for Freely Associated States Act in 2018 to ensure that FAS citizens could obtain full-term REAL ID-compliant cards, which are critical for accessing important services and maintaining employment.² Our intent was to allow FAS citizens to obtain full-term REAL ID-compliant cards in accordance with the Compacts—by providing their passports and proof of admission into the United States (*i.e.*, Form I-94). The law makes no reference to an EAD and simply requires FAS citizens to provide documentary evidence of their citizenship and admission to the United States “pursuant to a Compact of Free Association” to establish lawful status. In passing this law, we sought to eliminate an unnecessary burden on FAS citizens of having to renew annually temporary driver’s licenses and ID cards.

In April 2019, however, DHS issued guidance that adds another unnecessary burden on FAS citizens by explicitly requiring FAS citizens to provide an EAD to obtain a REAL ID-compliant card.³ This new guidance unfairly ignores the fact that FAS citizens are entitled to lawfully live and work in the United States under the Compacts without the additional barrier of having to obtain visas or EADs. The Compacts also allow FAS citizens to serve in the U.S. military, and FAS citizens enlist to serve at per capita rates higher than most U.S. states.⁴

Requiring FAS citizens to provide EADs to obtain REAL ID-compliant cards is inconsistent with our obligations under the Compacts and the intent of the REAL ID Act Modification for Freely Associated States Act enacted in 2018. Indeed, when the Compacts with the Federated States of Micronesia and the Republic of the Marshall Islands were amended in 2003, a provision was included to make explicitly clear that for FAS citizens in the United States, an unexpired passport “with unexpired documentation issued by the Government of the United States evidencing admission under the Compact or the Compact, as amended, [*i.e.*, DHS’s Form I-94] *shall be considered to be documentation establishing identity and employment authorization*” under the employment verification system provisions of the Immigration and Nationality Act.⁵

It makes little sense for the Compacts to entitle FAS citizens to *obtain* employment with only their FAS passport and DHS’s Form I-94 for verification, but allow an agency to administratively require FAS citizens to undergo a burdensome and lengthy process of applying for an EAD to *maintain* that employment. Moreover, these barriers that FAS citizens face in accessing REAL ID-compliant cards create hardships not only for FAS citizens, but also for the many U.S. employers who rely on FAS workers.

² REAL ID Act Modification for Freely Associated States Act, Pub. L. No. 115-323 (2018).

³ *See, e.g.*, Department of Homeland Security, *REAL ID Frequently Asked Questions for State Implementation*, <https://www.dhs.gov/real-id-faq-implementation>.

⁴ *See, e.g.*, <https://www.state.gov/r/pa/ei/bgn/1839.htm>; <https://www.state.gov/r/pa/ei/bgn/26551.htm>; <https://www.state.gov/r/pa/ei/bgn/1840.htm/>.

⁵ *See* Compact of Free Association Amendments Act of 2003, Pub. L. No. 108-188 (2003), *available at* <http://uscode.house.gov/statutes/pl/108/188.pdf> (emphasis supplied).

We, therefore, ask that you remove the unnecessary and onerous EAD requirement for FAS citizens and allow them to obtain REAL ID-compliant cards in accordance with the intent and spirit of the law we passed in 2018 and the Compacts of Free Association between the United States and the Freely Associated States. Given the urgency of the situation, we look forward to an expeditious response. Thank you for your consideration.

Sincerely,



MAZIE K. HIRONO
United States Senator



DON YOUNG
Member of Congress



LISA MURKOWSKI
United States Senator



RON WYDEN
United States Senator



TOM COTTON
United States Senator



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