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**DEPARTMENT OF HOMELAND SECURITY**

**RIN 1601-AA91**

**Designation of REAL ID Identity Documents for citizens of the Freely Associated States; Unexpired Foreign Passport with an approved Form I-94, documenting the applicant's most recent admission to the United States**

**AGENCY:** Office of Strategy, Policy, and Plans, Department of Homeland Security (DHS).

**ACTION:** Notice designating identity documents for citizens of the Freely Associated States applying for a REAL ID driver's license or identification card.

**SUMMARY:** This notice announces that the Department of Homeland Security (DHS) is designating an unexpired foreign passport and valid Form I-94 (Arrival-Departure Record) as acceptable identity documentation for purposes of obtaining a REAL ID driver's license or identification card for eligible citizens of the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands (collectively known as the Freely Associated States, or FAS).

**DATES:** This designation takes effect [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Steve Yonkers, Director, Biometrics and Credentialing/REAL ID Program, Department of Homeland Security, Washington, DC 20528, telephone (202) 282-9708; e-mail [realid@hq.dhs.gov](mailto:realid@hq.dhs.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

#### *A. The REAL ID Act*

The REAL ID Act (the Act) was enacted in 2005 in response to a recommendation from the 9/11 Commission to improve the security of forms of identification such as state-issued driver's licenses and identification cards.<sup>1</sup> The Act sets minimum standards for the issuance and production of state driver's licenses and identification cards in order for federal agencies to accept those documents for official purposes, which include accessing Federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purposes the Secretary of Homeland Security shall determine.

#### *B. The Compacts of Free Association*

The Compacts of Free Association (COFAs) between the United States and the Freely Associated States allow most citizens of the Federated States of Micronesia (FSM), the Republic of Palau, and the Republic of the Marshall Islands (RMI) to be admitted to the United States as nonimmigrants without having to obtain a visa, and to indefinitely reside, work and study in the United States.<sup>2</sup>

#### *C. REAL ID Act Modification for Freely Associated States Act*

In December 2018, President Trump signed the REAL ID Act Modification for Freely Associated States Act (REAL ID Modification Act).<sup>3</sup> The REAL ID Modification

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<sup>1</sup> The REAL ID Act of 2005 – title II of division B of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. 109–13, 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note).

<sup>2</sup> See Pub. L. 108-188 (48 U.S.C. § 1921 note) (Republic of the Marshall Islands and Federated States of Micronesia); Pub. L. 99-658 (48 U.S.C. § 1931 and 1931 note) (Palau).

<sup>3</sup> Pub. L. 115-323.

Act authorizes states to issue full-term REAL ID-compliant driver's licenses and identification cards to FAS citizens admitted under the COFAs. Prior to the enactment of the REAL ID Modification Act, FAS citizens were only eligible for temporary REAL ID driver's licenses and identification cards, valid during the period of the applicant's authorized stay in the United States or for one year where there is no definite end to the period of authorized stay, which is the case for FAS citizens.<sup>4</sup> The REAL ID Modification Act amended the REAL ID Act to create a separate lawful status category for FAS citizens to make them eligible for full-term driver's licenses and identification cards. It did not, however, address the regulatory requirements regarding acceptable documentation to establish identity for purposes of obtaining a REAL ID compliant license or identification card.

D. *REAL ID Identity Documents for FAS Citizens*

The REAL ID regulations require applicants for REAL ID compliant licenses or identification cards to present at least one of several listed documents for purposes of establishing identity.<sup>5</sup> For nonimmigrants, these documents could be either an unexpired foreign passport with a valid unexpired U.S. visa affixed, and an approved I-94 form; or an unexpired employment authorization document (EAD) issued by DHS.<sup>6</sup>

Under the Compacts of Free Association between the United States and the FAS, most FAS citizens are eligible to be admitted to the United States as nonimmigrants

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<sup>4</sup> REAL ID Act § 202(c)(2)(C)(ii).

<sup>5</sup> 6 CFR 37(c)(1).

<sup>6</sup> The source documents listed in 6 CFR 37.11(c)(1) are all acceptable, but most nonimmigrants do not have access to the other source documents listed. They are limited to the options of an unexpired EAD, or an unexpired foreign passport with a valid U.S. visa affixed with an approved Form I-94, per 6 CFR 37.11(c)(1)(v)-(vi). Most nonimmigrants are not eligible for an EAD (because either they are not eligible to be employed in the United States, or because they are authorized for employment with a specific employer incident to status and are not issued an EAD), but FAS nonimmigrants under the COFAs may apply for an EAD as evidence of their work authorization in the United States.

without a visa, and live and work in the United States indefinitely. As such, FAS citizens who are lawfully living and working in the United States under the terms of the Compacts may not have a visa or EAD, which would be necessary to satisfy the identity requirements in order to obtain a REAL ID compliant license or identification card.<sup>7</sup>

## **II. Designation of Identity Documents for FAS citizens**

The REAL ID regulations, at 6 CFR 37.11(c)(1)(x), authorize DHS to designate additional identity documents through a *Federal Register* notice. Pursuant to that authority, DHS is designating the following documentation as acceptable evidence of identity for purposes of 6 CFR 37.11(c)(1):

A valid unexpired passport issued by the Republic of the Marshall Islands, the Republic of Palau, or the Federated States of Micronesia with an approved Form I-94,<sup>8</sup> documenting the applicant's most recent admission to the United States under the Compact of Free Association between the United States and the nation that issued the passport.

DHS believes it is appropriate to designate this identity documentation for FAS citizens given the unique relationship between the United States and the FAS and considering that to live and work for indefinite periods, FAS citizens are not required to obtain a visa or EAD, which are documents currently required to establish identity for

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<sup>7</sup> Citizens of all three FAS nations admitted under the Compacts are authorized to work incident to that status, i.e., they can obtain an EAD as evidence of work authorization but do not need to obtain one in order to be authorized to work. Under the amended Compacts with the Federated States of Micronesia and the Republic of the Marshall Islands, an unexpired passport and I-94 combination is acceptable evidence of identity and employment authorization. As a result, many FAS citizens do not find it necessary to obtain an EAD in order to exercise their right to work in the United States, although some may still find it more convenient to obtain and use an EAD for this purpose, since many employers are much more familiar with the EAD and/or the individual's passport may have expired. The Palau compact does not include this provision, so as a practical matter, Palau citizens are more likely to need to obtain an EAD in order to exercise their right to work in the United States.

<sup>8</sup> See 8 CFR 1.4 for a definition of Form I-94.

REAL ID purposes. DHS also believes the designation is consistent with the intent of Congress to facilitate the issuance of REAL ID licenses and identification cards to FAS citizens as demonstrated by enactment of the REAL ID Modification Act. This accommodation for FAS citizens also is consistent with the spirit of the COFAs, although it is not required under any provision of the COFAs.

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**David Pecoske,**

**Senior Official Performing the Duties of the Deputy Secretary.**

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