

GAO

Testimony

Before the Subcommittee on Insular  
Affairs, Oceans and Wildlife, Committee  
on Natural Resources, House of  
Representatives

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COMMONWEALTH OF  
THE NORTHERN  
MARIANA ISLANDS

Coordinated Federal  
Decisions and Additional  
Data Are Needed to Manage  
Potential Economic Impact  
of Applying U.S.  
Immigration Law

Statement of David Gootnick, Director  
International Affairs and Trade



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Madame Chairwoman and Members of the Subcommittee:

Thank you for the opportunity to discuss our work on factors that will affect the potential economic impact of implementing the legislation applying U.S. immigration law to the Commonwealth of the Northern Mariana Islands (CNMI).<sup>1</sup>

Although subject to most U.S. laws, the CNMI has administered its own immigration system since 1978, under the terms of its 1976 Covenant with the United States. The CNMI has applied this flexibility to admit substantial numbers of foreign workers<sup>2</sup> through a permit program for non-U.S. citizens (noncitizens) entering the CNMI. In 2005, these workers represented a majority of the CNMI labor force and outnumbered U.S. citizens in most industries, including garment manufacturing and tourism, which have been central to the CNMI's economy. The CNMI also has admitted tourists under its own entry permit and entry permit waiver programs and has provided various types of admission to foreign investors. As we have reported previously, the CNMI faces serious economic challenges, including the decline of garment manufacturing and fluctuations in tourism.<sup>3</sup>

The recent immigration legislation amends the U.S.-CNMI Covenant to establish federal control of CNMI immigration and includes several provisions affecting foreign workers and investors in the CNMI during a transition period that ends in 2014. The Secretary of Homeland Security decided to delay the start of the transition period for 180 days, from June 1, 2009, to November 28, 2009, as allowed under the law in consultation with the Secretaries of the Interior, Labor, and State, the Attorney General,

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<sup>1</sup>Consolidated Natural Resources Act of 2008, Pub. L. No. 110-229, Title VII, 122 Stat. 754, 853 (May 8, 2008).

<sup>2</sup>In this testimony, "foreign workers" refers to workers in the CNMI who are not U.S. citizens or U.S. lawful permanent residents. Other sources sometimes call these workers "nonresident workers," "guest workers," "noncitizen workers," "alien workers," or "nonimmigrant workers." We do not use the term to refer to workers from the Freely Associated States—the Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau—who are permitted to work in the United States, including the CNMI, under the Compacts of Free Association (48 U.S.C. § 1901 note, 1921 note, and 1931 note).

<sup>3</sup>For a list of related products, see GAO, *Commonwealth of the Northern Mariana Islands: Managing Potential Economic Impact of Applying U.S. Immigration Law Requires Coordinated Federal Decisions and Additional Data*, [GAO-08-791](#) (Washington, D.C.: Aug. 4, 2008).

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and the CNMI Governor.<sup>4</sup> Unless otherwise noted, “transition period” refers to the period beginning November 28, 2009, and ending on December 31, 2014. During the transition period, the Secretary of Homeland Security, in consultation with the Secretaries of the Interior, Labor, and State, as well as the Attorney General, are responsible for establishing, administering, and enforcing a transition program to regulate immigration in the CNMI.<sup>5</sup> This program will provide foreign workers temporary permits to work in the CNMI (CNMI-only work permits); the number of these permits must be reduced to zero by the end of the transition period or the end of any extensions of the CNMI-only work permit program. The legislation also establishes a joint visa waiver program by adding the CNMI to an existing visa waiver program for Guam visitors. The legislation’s stated intent is to ensure effective border control procedures and protect national and homeland security, while minimizing the potential adverse economic and fiscal effects of phasing out the CNMI’s own foreign worker permit program and while maximizing the CNMI’s potential for economic and business growth. (See attachment I for a summary of the legislation’s provisions with regard to foreign workers, tourists, and investors in the CNMI.)

My remarks today will summarize findings from our report, issued in August 2008, examining factors that will affect the potential impact of the legislation’s implementation on the CNMI’s labor market, particularly foreign workers; on its tourism sector; and on foreign investment in the

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<sup>4</sup>The Secretary of Homeland Security announced the delay of the transition period on March 31, 2009.

<sup>5</sup>The legislation requires the Secretary of Homeland Security, in consultation with the Secretaries of the Interior, Labor, and State, and the Attorney General, to negotiate and implement interagency agreements to identify and assign their respective duties for timely implementation of the transition program. The agreements must address procedures to ensure that CNMI employers have access to adequate labor and that tourists, students, retirees, and other visitors have access to the CNMI without unnecessary obstacles. Some federal decisions require consultation with the CNMI Governor. In addition, the legislation requires the CNMI government to provide the Secretary of Homeland Security all immigration records or other information that the Secretary deems necessary to assist its implementation.

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CNMI.<sup>6</sup> Our report also included recommendations to the heads of the agencies responsible for implementing the legislation. We conducted the performance audit for our August 2008 report from June 2007 to August 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.<sup>7</sup>

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## Summary

The potential impact of the legislation's implementation on the CNMI's labor market, and therefore on its economy, will largely depend on decisions that the U.S. Departments of Homeland Security (DHS) and Labor (DOL) make in implementing the CNMI-only work permit program. DHS will decide on the number of permits to allocate each year, the distribution of the permits, their terms and conditions, and the permit fees; DOL will decide whether and when to extend the CNMI-only permit program past 2014. The interaction of the rate and timing with which DHS reduces the available number of permits and the timing of any DOL extensions of the program will significantly impact the availability of foreign workers; however, we reported in August 2008 that federal agencies had not yet identified an interagency process to coordinate these decisions. Although modest reductions in CNMI-only permits for foreign workers would cause minimal impact, any substantial and rapid decline in the availability of CNMI-only work permits would have a negative effect on the economy, given foreign workers' prominence in key CNMI industries. However, because key federal sources of labor market data do not cover the CNMI, the agencies may have difficulty obtaining the data needed to make decisions. At the same time, the decline in the garment industry, challenges to the tourism industry, and the scheduled increases in the minimum wage may reduce demand for foreign workers, lessening any potential adverse impact of the legislation on the CNMI's economy.

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<sup>6</sup>GAO, *Commonwealth of the Northern Mariana Islands: Managing Potential Economic Impact of Applying U.S. Immigration Law Requires Coordinated Federal Decisions and Additional Data*, [GAO-08-791](#) (Washington, D.C.: Aug. 4, 2008). This report was based on our March 2008 review of the then pending legislation, which was signed into law on May 8, 2008. See GAO, *Commonwealth of the Northern Mariana Islands: Pending Legislation Would Apply U.S. Immigration Law to the CNMI with a Transition Period*, [GAO-08-466](#) (Washington, D.C.: Mar. 28, 2008).

<sup>7</sup>See [GAO-08-791](#), appendix I, for a full description of our report's scope and methodology.

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Any impact of the legislation on the CNMI's tourism sector will depend largely on DHS decisions about the countries to be included in the joint CNMI-Guam visa waiver program. The legislation's impact will be minimal for tourists from countries included in the joint visa waiver program. However, increases in costs and time associated with obtaining visitor visas, likely for countries not included in the joint program, could influence tourists from those countries to choose destinations other than the CNMI. At present, most CNMI tourists are from Japan and South Korea, both of which will probably be included in the joint visa waiver program because they currently are included in the Guam visa waiver program. China and Russia are currently not included in the Guam visa waiver program and are excluded under a DHS interim final rule for the joint visa waiver program; they are therefore most likely to be affected by the legislation. They account, respectively, for about 10 percent and less than 1 percent of CNMI tourist arrivals but are nevertheless considered important markets. If China and Russia are not included in the joint visa waiver program, tourists from these countries will face increased visa fees, more time-consuming procedures, and uncertainties related to possible visa refusal.

The legislation's potential impact on CNMI foreign investment will depend, in part, on key DHS decisions regarding foreign investor entry permits; however, lack of data makes it difficult to assess the likely impact of these decisions and may hamper federal decisions. In implementing the legislation, DHS will decide whether to grant holders of several types of CNMI foreign investor permits "grandfathered" status as U.S. nonimmigrant treaty investors during the transition period. DHS also will decide how long the grandfathered status will be valid. Although available CNMI data suggest that DHS's decision regarding the application of grandfathered status will partly determine the impact of the legislation, critical data—showing, for instance, current overall foreign investment and amounts associated with each type of permit—are not available. This lack of critical data makes it difficult to estimate the legislation's likely impact and limits DHS's ability to make informed decisions regarding the grandfathered status.

In our August 2008 report, we recommended that the Secretary of Homeland Security lead other relevant federal agencies, including the Departments of the Interior, Labor, and State, in identifying the interagency process that they will use to coordinate their decisions—and

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consult with the CNMI government as required<sup>8</sup>—in jointly implementing the legislation. We also recommended that the Secretaries of Homeland Security and Labor jointly develop strategies for obtaining critical data on the CNMI labor market and on CNMI foreign investment.

Prior to our August 2008 issuance, we provided a draft of our report to officials in DHS, DOI, DOL, and in the CNMI government for review and comment and received written comments on the draft report from DHS and DOI and from the CNMI government.<sup>9</sup> At that time, DHS agreed with our findings and recommendations, and DOI generally agreed with our findings. The CNMI government raised concerns or issues about some aspects of our report methodology and analysis and expressed concern that the report's discussion of possible consequences to the CNMI economy could itself harm the CNMI. We believe our methodology is a sound approach for analyzing the potential impact of federal implementation decisions on the CNMI economy. Moreover, we believe that reporting the key decisions facing federal agencies and illustrating the range of those decisions' potential impacts on the CNMI economy is essential to effective implementation of the legislation.

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## Legislation's Potential Impact on CNMI Labor Market

Decisions that DHS and DOL must make in implementing the CNMI-only work permit program will largely determine the legislation's potential impact on the availability of foreign workers and, as a result, on the CNMI labor market and economy. Under the legislation, DHS is to decide on the number of CNMI-only work permits to allocate each year, the distribution of the permits, the terms and conditions of the permit program, and the fee

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<sup>8</sup>Decisions requiring consultation with the CNMI Governor include, among others, whether to delay the start date of the transition period by up to 180 days and which countries to include in the CNMI-Guam visa waiver program.

<sup>9</sup>See [GAO-08-791](#) for a fuller description of the agencies' and the CNMI's written comments and our response; reproductions of DHS's, DOI's, and the CNMI government's comments appear in appendixes X, XI, and XII, respectively. DHS, DOI, and the CNMI government also provided technical comments regarding our August 2008 report, which we incorporated in the report as appropriate.

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for the permit.<sup>10</sup> DOL will decide whether to extend the CNMI-only work permit program, based on the unemployment rates of foreign workers and U.S. citizens, as well as other CNMI-specific data.<sup>11</sup> (See attachment II for a summary of the agencies' key implementation decisions.)

- **Number of permits.** The number of CNMI-only work permits that will be available each year of the initial transition period will depend on the strategy that DHS adopts for reducing CNMI-only permits to zero. For example, if DHS uses a linear strategy—reducing the permits by the same number each year—the number of permits will decline by about half by the midpoint of the initial transition period. In contrast, DHS may apply a strategy that reduces the number of permits modestly or even minimally by the midpoint of the initial transition period. (See attachment III for illustrations of alternative DHS decisions regarding the annual reduction in CNMI-only work permits.)
- **Distribution of permits.** The method that DHS chooses to distribute the CNMI-only work permits will also affect employers' access to workers, particularly if demand for the permits exceeds the supply. For example, DHS could decide to distribute the permits through a lottery or to distribute the permits among certain industries according to some measure of those industries' importance to the CNMI economy.
- **Terms and conditions of the permit program.** The terms and conditions that DHS sets for the CNMI-only work permit program will affect employers' access to foreign workers. For example, any

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<sup>10</sup>The legislation instructs DHS to reduce annual allocation of CNMI-only permits to zero by the end of the transition period or any extensions of the CNMI-only permit program; attempt to promote the maximum use of U.S. citizens and, if needed, lawful permanent residents and citizens of the Freely Associated States, and attempt to prevent adverse effects on the wages and working conditions of those workers; and set fees for the permits so as to recover the full cost of providing services, including administrative costs, by charging employers an annual supplemental fee of \$150 per permit to fund CNMI vocational education.

<sup>11</sup>According to the legislation, DOL may extend the program indefinitely for up to 5 years at a time. DOL may issue the extension as early as desired within the transition period and up to 180 days before the end of the transition period or any extensions of the CNMI-only permit program. The legislation instructs DOL to base its decision on the labor needs of legitimate businesses in the CNMI. To determine these needs, DOL may consider (1) workforce studies on the need for foreign workers, (2) the unemployment rate of U.S. citizen workers in the CNMI, and (3) the number of unemployed foreign workers in the CNMI, as well as other information related to foreign worker trends. In addition, DOL is to consult with DHS, DOI, the Department of Defense, and the Governor of the CNMI.

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requirements regarding workers' skill levels or qualifications could limit the pool of available workers.

- **Permit fee.** The fee that DHS sets for the CNMI-only work permit may affect access to foreign workers. If DHS sets a higher fee for the CNMI-only permit than the annual fee of \$250 that employers currently pay for CNMI foreign worker permits, this will increase employers' costs and reduce employers' ability or incentive to hire foreign workers.
- **Extension of the permit program.** A decision by the Secretary of Labor to extend the CNMI-only work permit program past 2014 would maintain access to the permits for up to 5 years at a time. Alternately, the Secretary may decide not to extend the program, thus ending access to CNMI-only work permits after 2014.

The legislation requires DHS and DOL to coordinate their implementation of the legislation, including the CNMI-only work permit program, with one another and with other relevant agencies. However, we reported in August 2008 that although DOI convened an interagency meeting to discuss coordination of the legislation's implementation, the agencies had not yet identified the interagency process that they will use.

In addition, to minimize any potential adverse economic effects of implementing the legislation, DHS and DOL will need to consider up-to-date information about the CNMI labor market, such as data on the wages, occupations, and employment status of CNMI residents and foreign workers. However, the agencies may have difficulty in obtaining these data because the federal sources generally used to generate such data for the United States, including the Current Population Survey and the Current Employment Statistics program, do not cover the CNMI.<sup>12</sup>

The interaction of the rate and timing with which DHS lowers the available number of permits with the timing of any DOL extensions of the program will significantly affect the permits' availability. For example, if DHS

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<sup>12</sup>U.S. Department of Labor, Office of the Assistant Secretary for Policy, *Impact of Increased Minimum Wages on the Economies of American Samoa and the Commonwealth of the Northern Mariana Islands* (Washington, D.C., 2008). DOI's Office of Insular Affairs has provided technical assistance to the CNMI to help with data collection, including funding for the 2005 Household, Income, and Expenditures Survey (HIES) and past surveys of the CNMI. However, this assistance has not generated the scope of data collected by federal sources for the United States more generally.

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lowers the annual allocation of CNMI-only permits by the same number each year (a linear decline) and DOL extends the program every 2 years, the number of permits will decline less rapidly than if DOL extends the program every 4.5 years.<sup>13</sup> Alternatively, if DHS decides not to substantially decrease the number of CNMI-only permits until the last month of the 5-year period and DOL extends the program every 2 years, the number of permits will never rapidly decline, and by 2028, will not have substantially declined. (See attachment IV for illustrations of the potential joint effects of alternative DHS and DOL decisions regarding the CNMI-only work permit program.)

The rate at which the availability of CNMI-only work permits for foreign workers declines as a result of DHS's and DOL's decisions will partly determine the legislation's impact on the CNMI labor market and, therefore, on the CNMI's economy. Because of foreign workers' prominence in the CNMI labor market, any substantial and rapid reduction in the number of CNMI-only permits for foreign workers would have a negative effect on the size of the CNMI economy. However, federal agencies may make more modest reductions in CNMI-only permits, resulting in minimal effects on the economy. To illustrate a range of possible impacts on the CNMI economy given varying rates of reduction in the number of available CNMI-only work permits, we generated simulations that estimate the impact on the CNMI's economy. Attachment V presents the results of these simulations, based on several of the scenarios shown in attachment IV.<sup>14</sup>

Although U.S. agencies' implementation of the legislation may reduce the availability of foreign workers, possible lower demand for these workers may lessen the economic impact of any such reduction. The decline of the garment industry and challenges to the tourism industry have contributed to a drop in the number of foreign workers in the CNMI;<sup>15</sup> since the

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<sup>13</sup>We selected the frequency of DOL extensions to be 4.5 years in order to reflect an extension just before permits would have been reduced to zero at the end of the 5-year period.

<sup>14</sup>Because these simulations do not allow for other changes in the CNMI over the coming years, they should not be considered as predictive of future GDP. Rather, these simulations are intended to illustrate a range of potential impacts on the CNMI's GDP that could result from some of the joint U.S. agency decisions depicted in attachment IV.

<sup>15</sup>From 2000 to 2005, the number of noncitizen workers, many of whom are foreign workers, dropped from about 35,000 in 2000 to about 28,000 in 2005, and we reported in August 2008 that CNMI data showed that the number of foreign workers had continued to fall.

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elimination of textile quotas in 2005, all garment factories in the CNMI have closed, with the last factory closed as of February 2009. In addition, the tourism sector has faced challenges as visitor arrivals have declined from historic levels. Any further declines in these sectors would likely result in reduced demand for foreign workers. Moreover, ongoing scheduled increases in the CNMI's minimum wage are likely to further reduce the demand for foreign workers.<sup>16</sup>

The CNMI has begun efforts to prepare CNMI residents to replace foreign workers, which, if successful, could lessen any impact of the legislation's implementation on access to foreign workers. In addition, the federal legislation requires the U.S. government to provide funding for vocational education, as well as technical assistance, to the CNMI.<sup>17</sup> Although it is too early to assess the CNMI's efforts to replace foreign workers with CNMI residents, a number of factors may limit the effectiveness of these efforts. For instance, according to CNMI government representatives, some CNMI residents are leaving the CNMI for opportunities in the United States. Moreover, the number of nonworking residents who might accept a job is less than the total number of foreign workers.

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<sup>16</sup>Until 2007, the CNMI's workforce was subject to a minimum wage set by the CNMI government. At the beginning of 2007, the CNMI's minimum wage was \$3.05 per hour, substantially lower than the U.S. federal minimum wage of \$5.15 per hour but higher than wages for comparable positions in China, the Philippines, Vietnam, and other Asian countries. In 2007, Congress enacted the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, gradually increasing the CNMI minimum wage until it meets federal minimum wage requirements, Pub. L. No. 110-28, § 8103, 121 Stat. 188 (May 25, 2007). The American Recovery and Reinvestment Act of 2009 mandates that GAO issue a study in April 2010 of past and future minimum wage increases in the CNMI and American Samoa, and in each year thereafter, until the minimum wages in the insular areas reach \$7.25 per hour.

<sup>17</sup>For example, the \$150 fee charged to employers obtaining a CNMI-only work permit is to be used to fund ongoing vocational education curricula and program development by CNMI educational entities. Moreover, the legislation requires the Secretary of the Interior to provide technical assistance to the CNMI to promote economic growth; to assist employers in recruiting, training, and hiring U.S. citizens and, if necessary, lawful permanent residents in the CNMI; and to develop CNMI job skills as needed.

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## Legislation's Potential Impact on CNMI Tourism Sector

Any impact of the legislation on the CNMI's tourism sector will depend largely on federal regulations specifying the countries to be included in the joint CNMI-Guam visa waiver program.<sup>18</sup> DHS, in consultation with the Department of State, DOI, and the Governors of the CNMI and Guam, will decide on the countries to be included in the joint CNMI-Guam visa waiver program.<sup>19</sup> We reported in August 2008 that because both Japan and South Korea were part of the Guam visa waiver program, they will likely be included in the joint CNMI-Guam program. Currently, approximately 80 percent of tourists visiting the CNMI come from Japan (55 percent) and South Korea (25 percent). We also reported that a key DHS decision would be whether to include China and Russia, which are not part of the existing Guam visa waiver program, in the joint CNMI-Guam visa waiver program. Tourists from China and Russia account for a smaller proportion of the overall CNMI tourist arrivals—approximately 10 percent and less than 1 percent of CNMI tourist arrivals, respectively. However, according to representatives of the CNMI tourism sector, China and Russia are considered important markets because of their recent and potential future growth. On January 16, 2009, DHS issued an interim final rule for the CNMI-Guam joint visa waiver program that includes Japan and South Korea and excludes Russia and China, citing political, security, and law enforcement concerns, including high nonimmigrant visa refusal rates. DHS has not yet issued a final rule.<sup>20</sup>

For tourists from countries not included in the joint CNMI-Guam visa waiver program, the legislation will likely increase the costs and time associated with obtaining visitor visas. For example, if China is not included in the program, visa fees could add close to 20 percent to tour

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<sup>18</sup>The joint visa waiver program exempts tourism and business visitors from certain countries who are traveling to the CNMI and Guam for up to 45 days from the standard U.S. visa documentation requirements. One stated intent of the legislation is to expand tourism and economic development in the CNMI, including aiding prospective tourists in gaining access to the CNMI's tourist attractions, such as memorials, beaches, parks, and dive sites.

<sup>19</sup>The legislation required DHS to identify countries within 180 days of enactment of the legislation, by November 4, 2008. The countries shall include any country from which the CNMI has received a significant economic benefit from the number of visitors for pleasure for the prior year, unless the country's inclusion would pose a security threat. Governors of the CNMI and Guam may petition to have countries added.

<sup>20</sup>74 Fed. Reg. 2824-02 (2009). The rule also states that DHS will determine whether nationals of China and Russia can participate in the CNMI-Guam visa waiver program after additional layered security measures, which may include, but are not limited to, electronic travel authorization to screen and approve potential visitors to Guam and the CNMI, and other border security infrastructure measures.

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package costs for Chinese tourists, and in-person visa interviews will impose additional inconvenience and cost. To the extent that increased costs and time in obtaining a visa may influence tourists to choose destinations other than the CNMI, the legislation could have a negative impact on CNMI tourism. However, the likely impact on the CNMI of sharing the joint program with Guam is unclear.

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## Legislation's Potential Impact on CNMI Foreign Investment

The impact of the legislation on CNMI foreign investment will depend, in part, on DHS decisions regarding foreign investor entry permits. In implementing the legislation, DHS will make two key decisions that will affect foreign investors' access to the CNMI (see attachment II). First, DHS will determine which current CNMI foreign investors will receive the grandfathered CNMI-only U.S. treaty investor status during the transition period. In particular, DHS will determine whether the grandfathered status applies only to investors holding the CNMI perpetual foreign investor entry permit or also to investors holding the CNMI long-term business entry permit.<sup>21</sup> Second, DHS will determine the validity period of the grandfathered treaty investor status and decide whether to extend it past the initial transition period.<sup>22</sup>

If DHS restricts the grandfathering of foreign investors to perpetual foreign investor entry permit holders, available CNMI data suggest that a small number of investors will qualify for grandfathering under the new legislation. However, if DHS extends the grandfathering provision to long-term business entry permit holders, many more investors will qualify.

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<sup>21</sup>The CNMI offers a perpetual foreign investor entry permit, valid for an indefinite period of time, to individuals who maintain certain levels of investment in the CNMI, among other requirements. In addition, the CNMI offers a long-term business entry permit (valid for 2 years at a time) with specified investment requirements, as well as a regular-term business entry permit (valid for up to 90 days) with no investment requirements. The CNMI also offers a retiree foreign investor entry permit requiring a minimum investment in residential property by an applicant 55 years or older; however, because the retiree foreign investor entry permit does not require investment in a CNMI business, we assume that investors holding this permit will not be grandfathered.

<sup>22</sup>Although the status can be awarded only during the transition period, the legislation imposes no limit on the grandfathered status's length of validity. If and when the grandfathered status expires, and for new CNMI foreign investors, DHS will adjudicate applications under the regular treaty investor status and under the other immigrant or nonimmigrant categories generally available under U.S. immigration law. See [GAO-08-466](#) for more information about the legislation's requirements related to foreign investment in the CNMI.

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CNMI data show that of 562 long-term business and perpetual foreign investor entry permits active and valid in July 2008, perpetual foreign investor entry permits accounted for about 10 percent (56 permits) and were associated with 30 businesses, and long-term business entry permits accounted for 90 percent (506) and were associated with 448 businesses.

A lack of key data on foreign investment in the CNMI makes it difficult to determine any economic impact of this and other implementation decisions and limits DHS's ability to make informed decisions regarding the grandfathering of foreign investors. Neither the CNMI government nor the federal government has complete data on the overall level of foreign investment in the CNMI, which are needed as a baseline for assessing the impact of key agency decisions on foreign investment.<sup>23</sup> In addition, the CNMI government lacks readily accessible and compiled data on the sizes and types of permit holders' investments, which DHS needs to determine the relative importance of each type of entry permit and the likely impact of possible implementation decisions. Also unavailable are data showing the extent to which foreign investors' decisions are currently affected by their access to particular entry permits.

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## Concluding Remarks and Prior Recommendations

Given the serious challenges already facing the CNMI economy, it is critical that federal agencies implement the legislation in ways that minimize potential adverse effects to the CNMI economy and maximize the CNMI's potential for economic and business growth, following the legislation's stated intent. Because the interaction of key federal decisions involving different departments will have a significant impact on the CNMI economy, coordination of these decisions is critical and necessitates an established interagency process, which did not exist as of our August 2008 report. In addition, developing strategies for obtaining critical data that are unavailable on the CNMI labor market and foreign investment is essential to federal agencies' ability to make appropriate and effective decisions in implementing the legislation and fulfilling its goals.

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<sup>23</sup>The U.S. Department of Commerce's Bureau of Economic Analysis collects information on foreign direct investments in states and other territories, but data for the CNMI are combined with data for other territories such as Guam, American Samoa, and the U.S. Virgin Islands. In addition, the 2002 Economic Census of the Northern Mariana Islands includes information on CNMI businesses by owner citizenship status; however, these data are incomplete.

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Because of the importance of federal agencies' key implementation decisions and the interaction of those decisions, our August 2008 report recommended that the Secretary of Homeland Security lead other relevant federal agencies, including the Departments of the Interior, Labor, and State, in identifying the interagency process that will be used to collaborate with one another—and consult with the CNMI government, as required—to jointly implement the legislation.

In addition, because current data gaps limit federal agencies' ability to make key implementation decisions to best meet the goals of the legislation, we recommended that the Secretary of Homeland Security and the Secretary of Labor

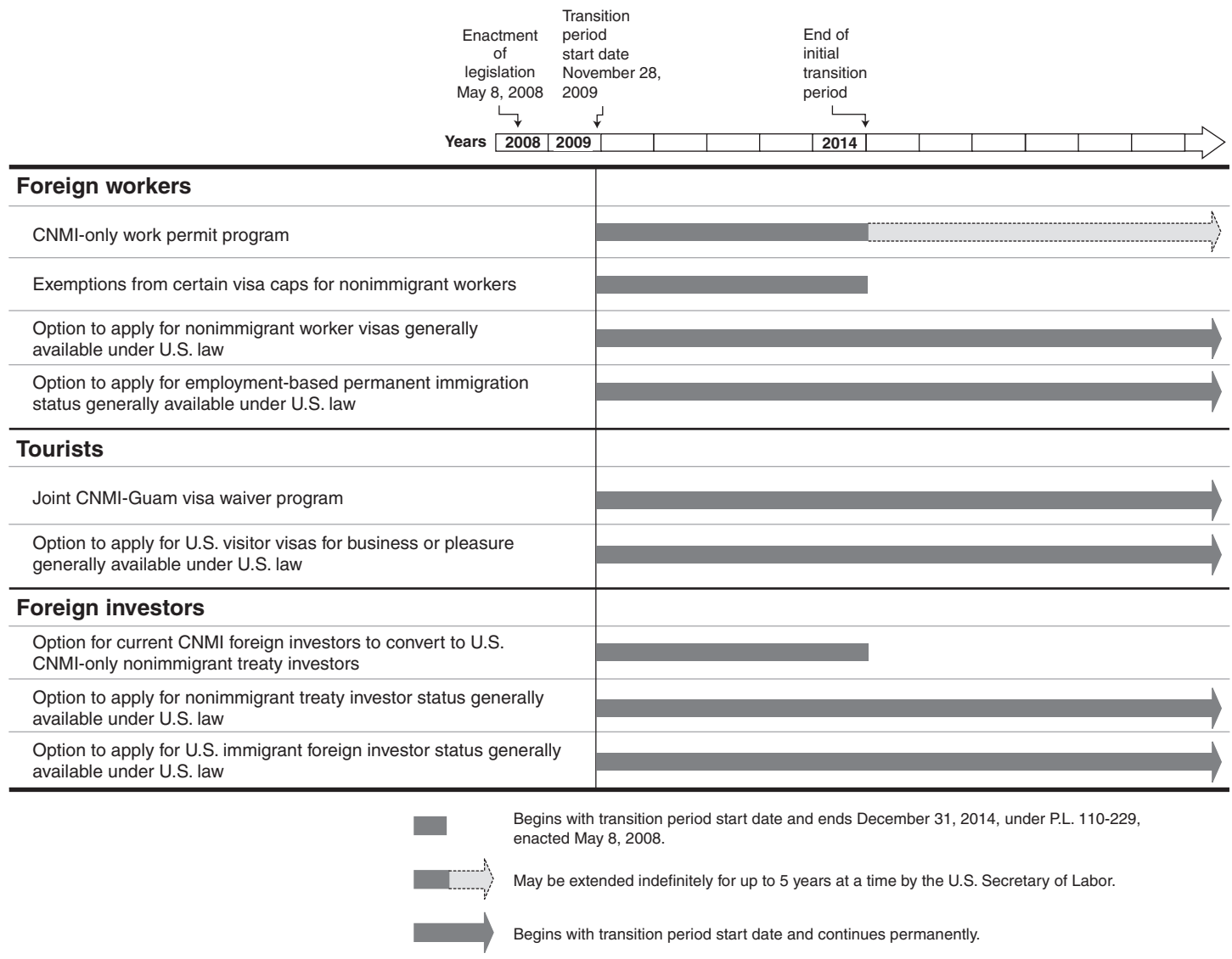
- develop a strategy for obtaining critical data on the CNMI labor market that are not currently available on an ongoing basis, such as data on the wages, occupations, and employment status of CNMI residents and foreign workers; and
- develop a strategy for obtaining critical data on CNMI foreign investment, such as overall levels of foreign investment and the investment amounts associated with various types of foreign investor entry permits.

DHS agreed with our recommendations in its written comments, and DOL had no comments.

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Madame Chairwoman, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

# Attachment I: Federal Immigration Legislation's Provisions for Foreign Workers, Tourists, and Foreign Investors in the Commonwealth of the Northern Mariana Islands (CNMI)



Source: GAO analysis of P.L. 110-229 and current U.S. immigration law.

# Attachment II: Key Federal Implementation Decisions Related to CNMI Foreign Workers, Tourism, and Foreign Investors

| Key federal implementation decisions                                                                                                                                                         | Legislative requirements and authorizations                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Key federal implementation decisions related to CNMI foreign workers</i>                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Secretary of Homeland Security</b>                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Determine the number of permits to provide under the CNMI-only work permit program.<br>Determine the way the permits are distributed.<br>Determine the terms and conditions for the permits. | Reduce annual allocation of CNMI-only permits to zero by the end of the transition period or any extensions of the CNMI-only permit program.<br>Attempt to promote the maximum use of U.S. citizens and, if needed, lawful permanent residents and citizens of the Freely Associated States, and to prevent adverse effects on the wages and working conditions of those workers.                                        |
| Determine fees to charge employers and workers for CNMI-only work permits.                                                                                                                   | Set fees for the permits so as to recover the full cost of providing services, including administrative costs.<br>Charge employers an annual supplemental fee of \$150 per permit to fund CNMI vocational education.                                                                                                                                                                                                     |
| <b>Secretary of Labor</b>                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Decide whether and when to extend the CNMI-only permit program past 2014 (indefinitely, for up to 5 years at a time).                                                                        | Base decision on the labor needs of legitimate businesses in the CNMI.<br>May consider (1) workforce studies on the need for foreign workers, (2) the unemployment rate of U.S. citizen workers in the CNMI, and (3) the number of unemployed foreign workers in the CNMI, as well as other information related to foreign worker trends.<br>Consult with DHS, DOI, Department of Defense, and the Governor of the CNMI. |
| <i>Key federal implementation decisions related to CNMI tourism</i>                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Secretary of Homeland Security</b>                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Determine countries to include in the CNMI-Guam visa waiver program, in consultation with the Department of State, DOI, and the Governors of the CNMI and Guam.                              | Shall include any country from which the CNMI has received a significant economic benefit from the number of visitors for pleasure for the prior year, unless the country's inclusion would pose a security threat.<br>Governors of the CNMI and Guam may petition to have countries added.                                                                                                                              |
| <i>Key federal implementation decisions related to CNMI foreign investors</i>                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Secretary of Homeland Security</b>                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Determine which current CNMI foreign investors will be "grandfathered" as U.S. E-2 treaty investors when the transition period begins.                                                       | May provide grandfathered status to those who were admitted to the CNMI in long-term investor status under CNMI immigration laws before the transition program start date, who maintain the investment(s) that formed the basis for such status, and who meet other requirements.                                                                                                                                        |
| Decide the validity period for the grandfathered treaty investor status.                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                          |

Source: GAO analysis of P.L. 110-229, Consolidated Natural Resources Act of 2008, May 8, 2008.

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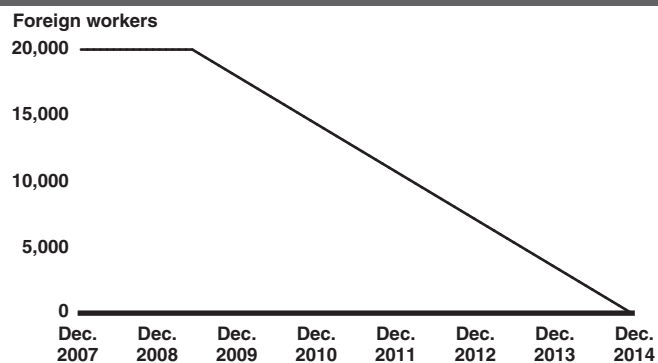
Notes: During the transition period, the Secretary of Homeland Security, in consultation with the Secretaries of the Interior, Labor, and State, and the Attorney General, has the responsibility to establish, administer, and enforce a transition program to regulate immigration in the CNMI.

On January 16, 2009, DHS issued an interim final rule for the CNMI-Guam joint visa waiver program. DHS has not yet issued a final rule.

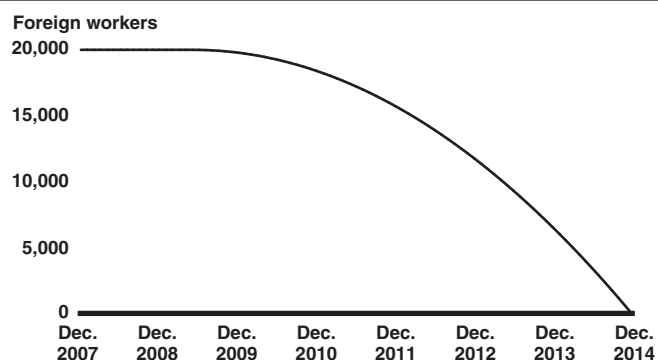
The legislation does not clearly define what constitutes a "significant economic benefit."

# Attachment III: Illustrations of Alternative Department of Homeland Security Decisions Regarding Annual Reductions in CNMI-Only Work Permits for Foreign Workers

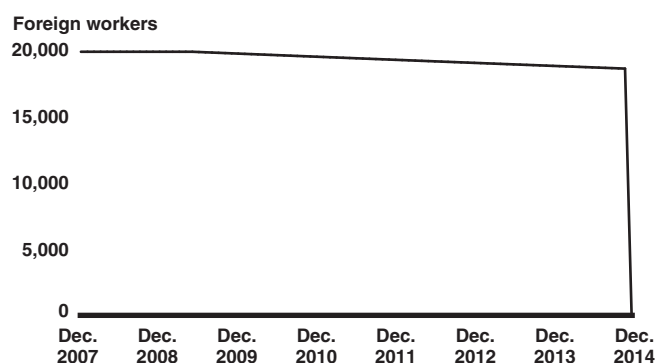
**Linear: Reduces the permits at a constant rate to zero**



**Increasing rate: Increases the rate of reduction over the period to zero**



**Last Month: Slight decline until sharp drop in last month to zero**



Source: GAO analysis of CNMI Labor and Immigration Identification and Documentation System (LIIDS) data.

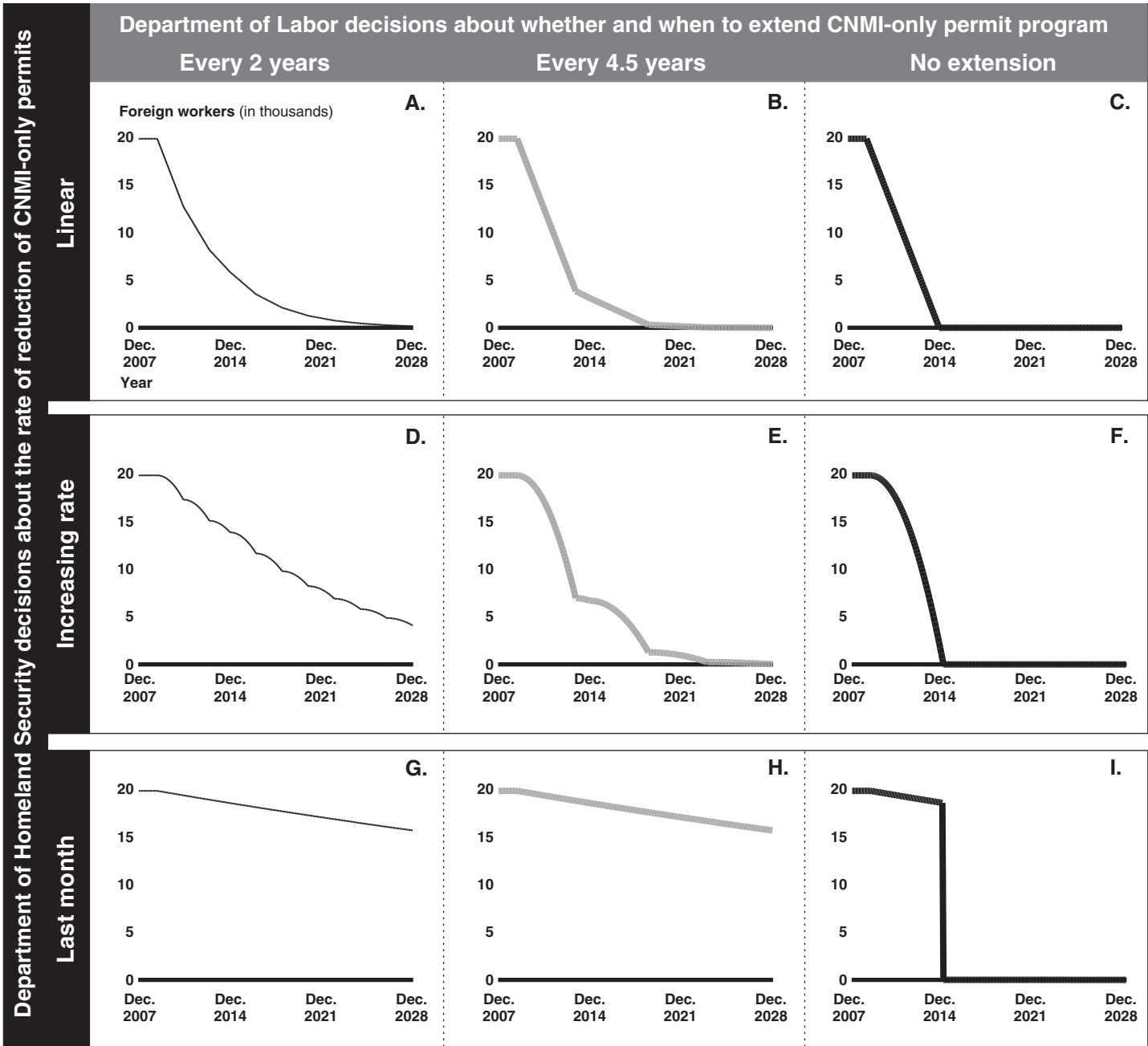
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Notes: Figures show numbers of CNMI-only work permits for foreign workers after the beginning of the transition period, assuming that the transition period begins on June 1, 2009, and that the number of available CNMI-only work permits never increases. Our analysis does not address the duration of the permits' validity, which DHS will determine. Although our analysis assumed that the transition period begins on June 1, 2009, the delay of the start date to November 28, 2009, does not affect the general findings of our analysis.

For the number of foreign workers before and at the beginning of the transition period, we relied on CNMI Labor and Immigration Identification and Documentation System (LIIDS) data showing 19,823 706K foreign worker permits active as of December 31, 2007; commenting on a draft of our August 2008 report, the CNMI government stated that the number of 706K permits as of June 30, 2008, was 18,942.

In this analysis, foreign workers shown after the beginning of the transition period on June 1, 2009, are those with CNMI-only work permits; this analysis does not include any foreign workers allowed to remain in the CNMI without a CNMI-only work permit. The legislation specifies that foreign workers legally present in the CNMI as of the transition program effective date, but who do not obtain U.S. immigration status, may continue residing and working in the CNMI for a limited time—2 years after the effective date of the transition program or when the CNMI-issued permit expires, whichever is earlier.

# Attachment IV: Illustrations of Potential Department of Homeland Security and Department of Labor Decisions' Joint Effects on Access to CNMI-Only Work Permits for Foreign Workers



Source: GAO analysis of P.L. 110-229 and CNMI Labor and Immigration Identification and Documentation System (LIIDS) data.

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Notes: The thin lines represent DOL's decision to extend the CNMI-only permit program every 2 years, the heavy gray lines represent DOL's decision to extend the program every 4.5 years, and the heavy black lines represent DOL's decision not to extend the program. We selected the frequency of DOL extensions to be 4.5 years in order to reflect an extension just before permits would have been reduced to zero at the end of the 5-year period.

Figures show numbers of CNMI-only work permits, based on the assumptions that the transition period begins on June 1, 2009, and the number of permits never increases. Our analysis does not address the length of the permits' validity. Although our analysis assumed that the transition period begins on June 1, 2009, the delay of the start date to November 28, 2009, does not affect the general findings of our analysis.

For the number of foreign workers before and at the beginning of the transition period, we relied on CNMI LIIDS data showing 19,823 706K foreign worker permits active as of December 31, 2007; commenting on a draft of our August 2008 report, the CNMI government stated that the number of 706K permits as of June 30, 2008, was 18,942.

In this analysis, foreign workers shown after the beginning of the transition period on June 1, 2009, are those with CNMI-only work permits; this analysis does not include any foreign workers allowed to remain in the CNMI without a CNMI-only work permit. The legislation specifies that foreign workers legally present in the CNMI as of the transition program effective date, but who do not obtain U.S. immigration status, may continue residing and working in the CNMI for a limited time—2 years after the effective date of the transition program or when the CNMI-issued permit expires, whichever is earlier.

Although DOL may extend the program for 5 years or less at a time, our analysis assumes a 5-year duration for any extensions occurring after the transition period. Our analysis also assumes that if the program is extended after the end of the initial transition period, the timing for frequency of extensions will begin in January 2015.

The figures extend through 2028 to show the year in which CNMI-only work permits approach zero for the majority of the joint decisions.

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## Attachment V: Examples of Scenarios Illustrating U.S. Agency Decisions' Potential Joint Impact on Access to CNMI-Only Work Permits for Foreign Workers and CNMI Gross Domestic Product

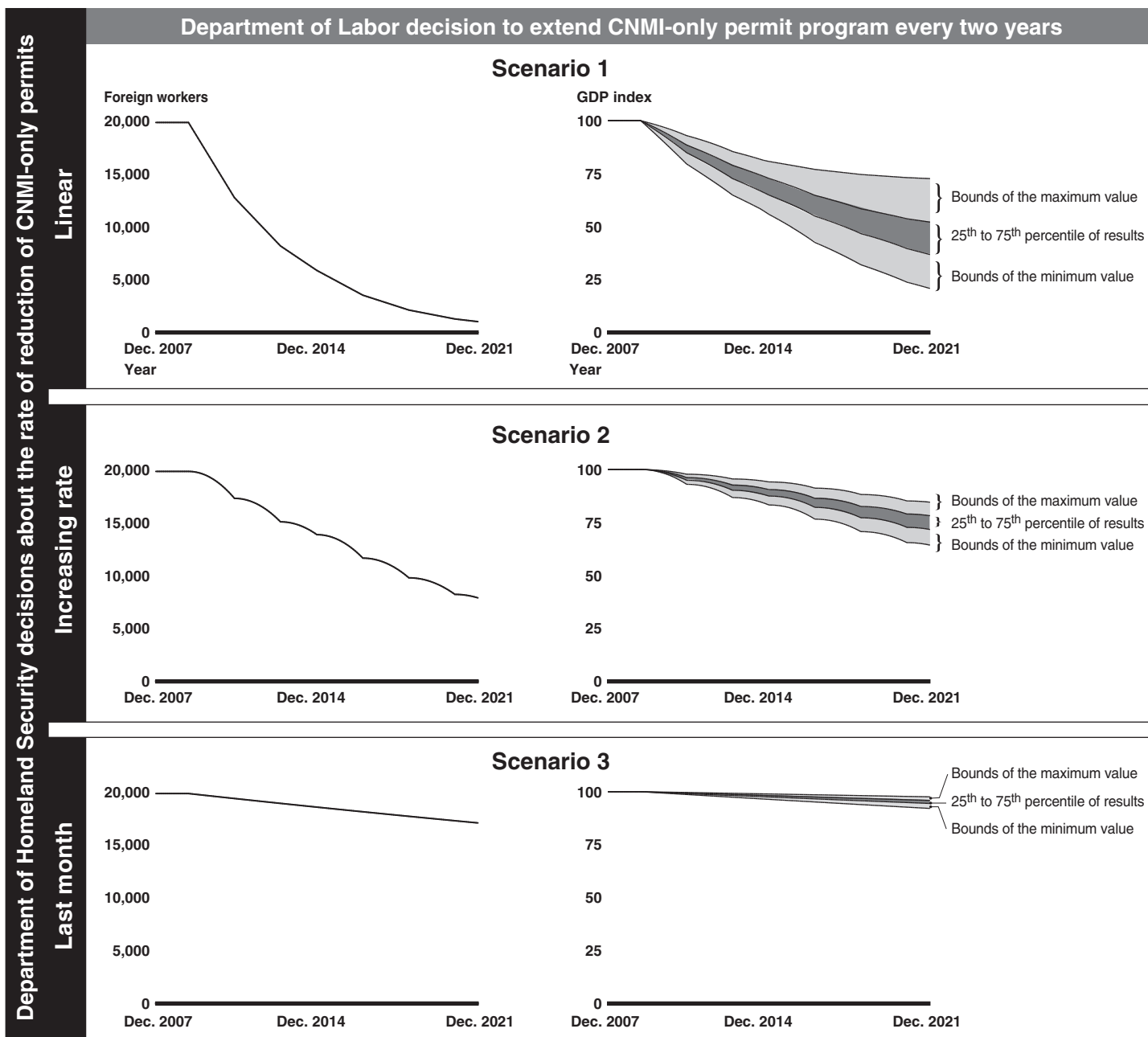
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As the scenarios in the figure below demonstrate, a greater decline in permits for foreign workers leads to a larger drop in gross domestic product (GDP), as well as a greater range of possible effects across the simulations.

- Scenario 1 shows that a steep decline in CNMI-only permits for foreign workers, from about 20,000 to about 1,000 by 2021<sup>1</sup>—caused by a linear reduction in the number of CNMI-only work permits and a renewal of the permit program every 2 years—would lower the CNMI's GDP to a range of about 21 percent to 73 percent of its current value by 2021.
- Scenario 2 shows that a less precipitous decline in CNMI-only permits for foreign workers, from about 20,000 to about 8,000 by 2021—caused by an increasing reduction in the number of CNMI-only work permits and a renewal of the permit program every 2 years (before the years with the steepest decline in foreign workers)—would lower the CNMI's GDP to a range of about 64 percent to 85 percent of its current value by 2021.
- Scenario 3 shows that a much smaller decline in CNMI-only permits for foreign workers, from about 20,000 to about 17,000 by 2021—caused by a rapid reduction in the number of CNMI-only permits in the last month of the program and a renewal of the permit program every 2 years (before the month when the greatest reduction in permits occurs)—would lower the CNMI's GDP to a range of about 98 percent to no less than about 92 percent of its current value by 2021.

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<sup>1</sup>Because foreign workers comprise 60 percent of the CNMI labor market, the decline in these workers shown in scenario 1 would reduce total CNMI employment by almost 60 percent.



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In the graphs on the left-hand side of each scenario, the lines represent the reduction in the numbers of CNMI-only work permits for foreign workers. The graphs on the right-hand side of each scenario represent 10,000 simulations of the CNMI GDP (indexed to be 100 in 2007) under various assumptions. The darker area represents the middle 50 percent of results, specifically the 25th to 75th percentile, while the lighter area represents the bounds of the minimum and maximum value.

This analysis assumes that technology, capital, and the total number of employed CNMI residents remain constant. In addition, this analysis treats all foreign workers as being employed in full-time positions. Further, this analysis does not reflect potential changes in demand for foreign workers absent the legislation. Finally, this analysis does not account for the role of foreign workers under programs other than the CNMI-only permit program. See appendix VI of [GAO-08-791](#) for more details.

In this analysis, foreign workers shown after the beginning of the transition period on June 1, 2009, are those with CNMI-only work permits; this analysis does not include any foreign workers allowed to remain in the CNMI without a CNMI-only work permit. The legislation specifies that foreign workers legally present in the CNMI as of the transition program effective date, but who do not obtain U.S. immigration status, may continue residing and working in the CNMI for a limited time—2 years after the effective date of the transition program or when the CNMI-issued permit expires, whichever is earlier. Although our analysis assumed that the transition period begins on June 1, 2009, the delay of the start date to November 28, 2009, does not affect the general findings of our analysis.

Because of the nature of the functional form used, we could not use it to evaluate the portion of those scenarios in which the number of CNMI-only work permits is equal to zero.

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# Attachment VI: GAO Contacts and Staff Acknowledgments

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## GAO Contacts

For more information regarding this testimony, please contact David Gootnick at (202) 512-3149 or [gootnickd@gao.gov](mailto:gootnickd@gao.gov), or Tom McCool at (202) 512-2642 or [mccoolt@gao.gov](mailto:mccoolt@gao.gov).

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## Staff Acknowledgments

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