

March 2008

COMMONWEALTH
OF THE NORTHERN
MARIANA ISLANDS

Pending Legislation
Would Apply U.S.
Immigration Law to
the CNMI with a
Transition Period





Highlights of [GAO-08-466](#), a report to congressional committees

Why GAO Did This Study

The Commonwealth of the Northern Mariana Islands (CNMI) is subject to most U.S. laws but, under the terms of its 1976 covenant with the United States, administers its own immigration system. It has applied this flexibility to admit substantial numbers of foreign workers, in addition to admitting tourists and foreign investors.

The covenant grants Congress the right to apply federal immigration law to the CNMI. On December 11, 2007, the House of Representatives passed legislation applying U.S. immigration law to the CNMI; as of report issuance, this legislation was pending in the Senate. If passed, it will amend the covenant and will apply federal immigration law to the CNMI 1 year after the legislation's enactment, subject to a transition period that begins 1 year after enactment but may be delayed 180 days.

GAO was asked to review key provisions of the pending legislation, current U.S. immigration law, and current CNMI immigration law, particularly regarding (1) foreign workers, (2) tourists, and (3) foreign investors.

The Departments of Homeland Security and the Interior generally agreed with the findings in this report, and the Department of Labor provided no comments. The CNMI government disagreed with some key findings related to GAO's interpretation of the legislation. GAO continues to interpret the legislation as stated in this report.

To view the full product, including the scope and methodology, click on [GAO-08-466](#). For more information, contact David Gootnick at (202) 512-3149 or gootnickd@gao.gov.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Pending Legislation Would Apply U.S. Immigration Law to the CNMI with a Transition Period

What GAO Found

The pending legislation applies U.S. immigration law to the CNMI and provides federal agencies some flexibility in preserving the CNMI's access to workers, tourists, and foreign investors as it transitions to a federal system. However, without implementing regulations, key details remain unknown.

- Foreign workers.** During the transition period, foreign workers may be admitted to the CNMI through exemptions from caps that restrict the number of U.S. visas for nonimmigrant workers. Workers not otherwise eligible under federal law may be admitted through a CNMI-only permit program, which may be extended indefinitely for up to 5 years at a time. Current workers who do not obtain U.S. immigration status may continue to live and work in the CNMI for a limited time. During and after the transition period, CNMI employers also can petition for nonimmigrant and employment-based permanent immigration status for workers under the same procedures as other U.S. employers. However, access to foreign workers in low-skill jobs will be limited after the end of the transition period in 2013 or 2014 and after any extensions of the CNMI-only permit program, because the demand for certain U.S. nonimmigrant worker visas recently has exceeded the supply and because no nonimmigrant visas are available for workers in continuous low-skill positions. While fees for the CNMI-only work permit will be determined by federal regulations and are unknown, the current fees for U.S. foreign worker permits that would apply after the end of the transition period and any extensions range higher than the CNMI's current foreign worker permit fees.
- Tourists.** The pending legislation establishes a joint visa waiver program by adding the CNMI to an existing Guam visa waiver program. The program exempts tourism and business visitors from certain countries to the CNMI and Guam from the standard U.S. visa documentation requirements. Citizens of countries not included in the CNMI-Guam or other U.S. visa waiver programs may apply for U.S. visitor visas, which require in-person applications and higher fees than the CNMI currently assesses. Changes in tourists' access to the CNMI will depend on the countries included in the CNMI-Guam visa waiver program. Until the joint program's implementing regulations are established, GAO cannot determine whether the program will be more or less restrictive than the current CNMI and Guam waiver programs.
- Foreign investors.** After federal immigration law applies, new CNMI foreign investors must meet federal law's more stringent investment requirements to obtain immigrant investor status, which allows investors to petition for U.S. permanent resident status that is currently unavailable in the CNMI. New investors also could apply for nonimmigrant treaty investor status. In addition, the pending legislation allows current CNMI foreign investors to convert to CNMI-only nonimmigrant treaty investors during the transition period.

Contents

Letter		1
	Results in Brief	4
	Background	6
	Pending Legislation Provisions for Foreign Workers	17
	Pending Legislation Provisions for Tourists	26
	Pending Legislation Provisions for Foreign Investors	31
	Agency Comments and Our Evaluation	35
Appendix I	Scope and Methodology	38
Appendix II	U.S. Nonimmigrant Classes of Admission	40
Appendix III	U.S. and CNMI Fees for Foreign Workers, Tourists, and Foreign Investors	43
Appendix IV	Country Participation in Current Waiver Programs in the United States, the CNMI, and Guam	44
Appendix V	Northern Mariana Islands Immigration, Security, and Labor Act (H.R. 3079)	46
Appendix VI	Comments from the Commonwealth of the Northern Mariana Islands	92
Appendix VII	Comments from the U.S. Department of Homeland Security	103

Appendix VIII	Comments from the U.S. Department of the Interior	104
Appendix IX	GAO Contact and Staff Acknowledgments	106

Abbreviations

CNMI	Commonwealth of the Northern Mariana Islands
DHS	U.S. Department of Homeland Security
DOI	U.S. Department of the Interior
DOL	U.S. Department of Labor
INA	U.S. Immigration and Nationality Act

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



United States Government Accountability Office
Washington, DC 20548

March 28, 2008

The Honorable Jeff Bingaman
Chairman
The Honorable Pete V. Domenici
Ranking Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Nick J. Rahall II
Chairman
The Honorable Don Young
Ranking Member
Committee on Natural Resources
House of Representatives

The Honorable Donna M. Christensen
Chairwoman
The Honorable Luis G. Fortuno
Ranking Member
Subcommittee on Insular Affairs
Committee on Natural Resources
House of Representatives

The Commonwealth of the Northern Mariana Islands (CNMI) is subject to most U.S. laws, and the United States has complete responsibility and authority for CNMI defense and foreign affairs. However, under the terms of its 1976 covenant with the United States,¹ the CNMI administers its own immigration system. Since 1978, it has applied this flexibility to admit

¹Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. No. 94-241, § 1, 90 Stat. 263 (Mar. 24, 1976), 48 U.S.C. § 1801 note). The covenant was approved by the U.S. and CNMI governments, as well as by the CNMI people in a voting plebiscite. Under the covenant, the CNMI is a self-governing commonwealth in political union with, and under the sovereignty of, the United States.

substantial numbers of foreign workers² from other countries, particularly China and the Philippines. In 2005, foreign workers represented two-thirds of all CNMI workers and outnumbered U.S. citizens in most industries, including the garment manufacturing and tourism sectors, which have been central to the CNMI's economy. The CNMI also admits tourists under its own entry permit and entry permit waiver programs, and it provides various types of admission to foreign investors.

Under the terms of the U.S.–CNMI covenant, Congress has the right to apply federal immigration law without the consent of the CNMI government. On December 11, 2007, the House of Representatives passed legislation applying U.S. immigration law to the CNMI; as of report issuance, this legislation was pending in the Senate.³ If passed, the legislation will amend the covenant to establish federal control of CNMI immigration, applying U.S. immigration law⁴ to the CNMI 1 year after the date of enactment with several exceptions affecting foreign workers and investors during a transition period⁵ ending in 2013 under H.R. 3079, passed by the House, or in 2014 under S. 2739, pending in the Senate. In addition, the U.S. Secretary of Labor will have the authority to extend indefinitely, for up to 5 years at a time, a transition period program

²In this report, we use the term foreign workers to refer to workers in the CNMI who are not U.S. citizens or lawful permanent residents. These workers are also sometimes called 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 of 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. § 1921 note).

³The Northern Mariana Islands Immigration, Security, and Labor Act (H.R. 3079) passed the House of Representatives on December 11, 2007, and was placed on the Senate calendar as Title VII of S. 2483 on December 14, 2007. On January 30, 2008, the Senate Committee on Energy and Natural Resources reported S. 1634, containing the text of H.R. 3079 as passed by the House. The text of the bill was included in S. 2616, introduced on February 8, 2008, and placed on the Senate calendar on February 11, 2008. The text of the bill with some revisions was also included in S. 2739, introduced on March 10, 2008, and placed on the Senate calendar on March 11, 2008. The Senate Committee on Energy and Natural Resources held related hearings on February 8 and July 19, 2007. The House Committee on Natural Resources, Subcommittee on Insular Affairs, held related hearings on April 19 and August 15, 2007.

⁴Immigration laws include the Immigration and Nationality Act (INA) and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens (8 U.S.C. § 1101(a)(17)). The INA defines an alien as any person who is not a citizen or national of the United States.

⁵Unless otherwise noted, transition period refers to the period ending in 2013 under H.R. 3079, passed by the House, or in 2014 under S. 2739, pending in the Senate.

providing CNMI-only work permits. Further, the legislation amends U.S. immigration law to add the CNMI to an existing visa waiver program for Guam visitors.⁶ Any changes to U.S. immigration law enacted by the Congress after the enactment of this legislation would also be applicable to the CNMI.

The stated intent of the pending legislation 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 program and maximizing the potential for economic and business growth. You asked us to review key provisions of the pending legislation, current U.S. immigration law, and current CNMI immigration law, particularly regarding (1) foreign workers, (2) tourists, and (3) foreign investors. We plan to issue a separate report examining the potential impact of the pending legislation on the CNMI's economy and labor market.

For this report, we reviewed relevant CNMI immigration and labor laws, current U.S. immigration law, and pending legislation that would apply U.S. immigration law to the CNMI. To examine CNMI immigration laws, we reviewed portions of the following CNMI laws relevant to this report: the Nonresident Workers Act, the Northern Mariana Islands Administrative Code, the Commonwealth Employment Act of 2007, and related immigration and labor laws and agreements. We also conducted a site visit in the CNMI and interviewed officials in the CNMI Office of the Governor, the CNMI Department of Immigration, the CNMI Department of Labor, and the Marianas Visitors Authority. We conducted additional interviews with CNMI officials in Washington, D.C. To examine U.S. immigration law, we reviewed the U.S. Immigration and Nationality Act (INA)⁷ and related regulations and interviewed officials from the U.S. Departments of Homeland Security (DHS) and the Interior (DOI). We did not review the extent to which CNMI or U.S. laws were properly enforced or implemented. We also reviewed proposed legislation applying U.S. immigration law to the CNMI, including H.R. 3079, passed by the House of Representatives, and S. 2739, pending in the Senate. We conducted this performance audit from December 2007 to March 2008 in accordance with generally accepted government auditing standards. Those standards

⁶The legislation includes several provisions related to Guam, including the expansion of options for nonimmigrants to enter and work in Guam.

⁷8 U.S.C. §1101 et. seq.

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. See appendix I for further details about our methodology.

Results in Brief

The pending legislation applies U.S. immigration law to the CNMI, and exceptions to U.S. law provide federal agencies with some flexibility in preserving the CNMI's access to workers, tourists, and foreign investors as it transitions to the federal system. However, without regulations implementing the pending legislation, key details related to foreign workers, tourists, and foreign investors remain unknown.

- **Foreign workers.** During the pending legislation's transition period, foreign workers may be admitted to the CNMI through exemptions from caps that restrict the number of U.S. nonimmigrant visas available for temporary workers. Workers not otherwise eligible under federal immigration law may be admitted through a CNMI-only permit program, which may be extended indefinitely for up to 5 years at a time by the U.S. Secretary of Labor. In addition, current workers who do not obtain U.S. immigration status may continue to live and work in the CNMI for a limited time. During and after the transition period, CNMI employers also can petition for nonimmigrant status and employment-based permanent immigration status for workers under the same procedures as other U.S. employers. However, access to foreign workers in low-skill jobs will be limited after the end of the transition period in 2013 or 2014 and after any extensions of the CNMI-only permit program, because the demand for certain U.S. nonimmigrant worker visas has exceeded the capped supply in recent years and because there are no nonimmigrant visas available for workers in continuous low-skill positions. The pending legislation also preempts all CNMI laws related to the admission⁸ or removal of aliens, which includes all CNMI immigration laws and may include some CNMI labor laws. Fees for the CNMI-only work permit will be determined by federal regulations and are currently not available. However, the current fees for U.S. foreign worker permits that would apply after the end of the transition period and any extensions range higher than the CNMI's current permit fees for foreign workers.

⁸Federal immigration law defines admission as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer" (8 U.S.C. §1101(a)(13)(A)).

-
- **Tourists.** The pending legislation establishes a joint visa waiver program by adding the CNMI to an existing Guam visa waiver program. The program exempts tourism and business visitors from certain countries who are traveling to the CNMI and Guam from the standard U.S. visa documentation requirements. Citizens of countries who do not qualify for entry under the CNMI-Guam or other U.S. visa waiver programs may apply for U.S. visitor visas for business or pleasure, which require in-person applications and higher fees than the CNMI currently assesses. Changes in tourists' access to the CNMI will depend on the countries included in the CNMI-Guam visa waiver program. Until the regulations implementing the new visa waiver program are established, we cannot determine whether the joint program will be more or less restrictive than the current CNMI and Guam waiver programs.
 - **Foreign investors.** After federal immigration law applies, new CNMI foreign investors must meet federal law's more stringent investment requirements to obtain immigrant investor status, which allows investors to petition for U.S. permanent immigration status that is currently unavailable in the CNMI. New investors also could apply for nonimmigrant treaty investor status. In addition, the pending legislation allows current CNMI foreign investors to convert to CNMI-only nonimmigrant treaty investors during the transition period. It also eliminates the CNMI's permit programs for retiree investors and long-term business travelers and allows these and other business travelers to apply to visit the CNMI under a visitor visa or other categories available under federal immigration law.

We received written comments on the draft report from the Department of Homeland Security, the Department of the Interior, and the CNMI government, which are reprinted in appendixes VI, VII, and VIII. We also received technical comments from the Department of Homeland Security, the Department of the Interior, and the CNMI government. We incorporated their comments as appropriate. The Department of Labor had no comments. We also provided a draft for technical review to the U.S. Department of State, and State had no comments. The Department of Homeland Security generally agreed with our findings regarding the pending legislation. The Department of the Interior generally agreed with our findings, saying that the report presents a fair and objective study on the effect of the pending legislation. The CNMI government disagreed with our analysis of the legislation in three particular areas. First, the CNMI government asserted that the legislation allows the exemptions from the numerical limitation on H visas to be extended beyond the end of the transition period in 2013. We continue to interpret the legislation to allow for an extension of the CNMI-only work permit program beyond 2013 at the discretion of the Secretary of Labor but not to allow for an extension

beyond 2013 of other provisions of the transition program, including the exemptions from the numerical limitations on H visas.⁹ Second, the CNMI disagreed with our interpretation that the H visas issued under the cap exemptions are a separate process from the CNMI-only work permit program. According to the CNMI's interpretation, employers of workers admitted under H visas would have to obtain a CNMI-only work permit. We continue to interpret the H visa cap exemptions and the CNMI-only permit program as separate processes. Third, the CNMI commented that we should not base any further work regarding the impact of the legislation on the CNMI economy on a single legal interpretation. While the legislation is highly technical, we believe we have provided a reasonable, objective interpretation of the legislation that is consistent with the implementing agencies' views. As such, we believe our interpretation of the legislation can be used appropriately as the basis of further work on the potential economic impact of the legislation, while acknowledging the range of possible federal decisions regarding implementation of the legislation. Our detailed evaluation of the CNMI government's comments is included in appendix VI.

Background

The CNMI consists of 14 islands in the Pacific Ocean, 3 of which are substantially inhabited, just north of Guam and about 5,500 miles from the U.S. mainland. In 2005, more than two-thirds of the CNMI's workers were non-U.S. citizens (noncitizens), who were predominantly Chinese or Filipino. Foreign workers make up more than two-thirds of the workforce for the CNMI's two major industries, garment manufacturing and tourism. Noncitizens also invest in the CNMI, contributing entrepreneurial skills and capital and owning businesses.

CNMI Economy

In 2007, we reported that the CNMI's economic potential was constrained, in part, by its lack of diversification and faced serious challenges owing to declines in garment manufacturing and tourism.¹⁰ Among factors affecting the garment industry, liberalization in trade law in the early 2000s reduced

⁹Both the CNMI's comments and the GAO response rely on H.R. 3079, passed by the House, as the basis for interpretation. Under S. 2739, pending in the Senate, the transition period would end December 31, 2014.

¹⁰GAO, *U.S. Insular Areas: Economic, Fiscal, and Accountability Challenges*, [GAO-07-119](#) (Washington, D.C.: Dec. 12, 2006); and GAO, *Commonwealth of the Northern Mariana Islands: Serious Economic, Fiscal, and Accountability Challenges*, [GAO-07-746T](#) (Washington, D.C.: Apr. 19, 2007).

the CNMI's trade advantage relative to low-wage countries such as China, causing CNMI exports to fall. The CNMI's tourism industry has been subject to fluctuations due to Asian economic trends in the late 1990s, as well as recent changes in airline practices. Until 2007, the CNMI's workforce was subject to a minimum wage set by the CNMI government that was lower than the U.S. mainland's; however, Congress enacted a law in 2007 that applied the U.S. minimum wage to the CNMI and will gradually increase the CNMI minimum wage until it meets federal minimum wage requirements.¹¹

CNMI-U.S. Covenant

In 1976, after almost 30 years as a trust territory of the United States,¹² the District of the Mariana Islands entered into a covenant with the United States establishing the island territory's status as a self-governing commonwealth in political union with the United States.¹³ The covenant grants CNMI citizens the right of self-governance over internal affairs and grants the United States complete responsibility and authority for matters relating to foreign affairs and defense affecting the CNMI. Under the covenant, the U.S. government may enact legislation in accordance with its constitutional processes that will be applicable to the CNMI.¹⁴ To respect the CNMI's right of self-government under the covenant, certain provisions of the covenant may be modified only with the consent of both the federal government and the CNMI government. These provisions include those relating to the political relationship between the United States and the CNMI; the CNMI Constitution, citizenship, and nationality; the application of the U.S. Constitution to the CNMI; and the land ownership rights of CNMI citizens. Most other provisions of the CNMI covenant may be modified by the federal government without the consent of the CNMI government, and local CNMI laws that were not inconsistent with federal laws or treaties of the United States when the covenant was

¹¹U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. No. 110-28, § 8103, 121 Stat. 188 (May 25, 2007)).

¹²In 1947, the United Nations gave the United States authority to administer the Trust Territory of the Pacific Islands, which included the Northern Mariana Islands. The trusteeship over the Northern Mariana Islands was formally dissolved in 1986.

¹³Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. No. 94-241, § 1, 90 Stat. 263 (Mar. 24, 1976), 48 U.S.C. § 1801 note).

¹⁴If such legislation does not apply generally to all states, it must specifically name the CNMI to become effective there.

enacted remain in effect. In addition, international treaty obligations between the United States and other countries apply to the CNMI through the covenant.

The covenant initially made many federal laws applicable to the CNMI, including laws that provide federal services and financial assistance programs.¹⁵ The covenant preserved the CNMI's exemption from certain federal laws that had previously been inapplicable to the Trust Territory of the Pacific Islands, including federal immigration laws with certain limited exceptions¹⁶ and certain federal minimum wage provisions. However, under the terms of the covenant, the federal government has the right to apply federal law in these exempted areas without the consent of the CNMI government.

Current CNMI Immigration Law

CNMI immigration law currently includes the following provisions for foreign workers, tourists, and foreign investors:

- **Foreign workers.** The CNMI currently retains legislative authority over most immigration laws. While it does not have embassies or issue visas in other countries, it regulates entry to the CNMI through a permit system. The CNMI recently passed a bill that establishes new immigration and labor rules for foreign workers in the CNMI, as of January 1, 2008. These rules continue to provide for, among other things, a nonresident worker entry permit for noncitizens entering the CNMI whom the CNMI Department of Labor has certified as eligible for temporary work. Employers seeking work permits for their temporary workers must be able to demonstrate that they advertised the position and were unable to find a qualified CNMI resident, with some exemptions available.¹⁷ CNMI law also contains an employment preference for citizens and permanent residents, requiring that most employers in the CNMI hire at least 20 percent of their

¹⁵The covenant also made certain provisions of the Social Security Act, the Public Health Service Act, and the Micronesian Claims Act applicable to the CNMI.

¹⁶Section 506 of the Covenant applies certain provisions of the INA relating to citizenship and family-based permanent immigration to the CNMI. The T and U nonimmigrant provisions of the INA also apply to CNMI. See 8 U.S.C. § 1101(a)(15)(T)-(U). In addition, the Covenant provided U.S. citizenship to legally qualified CNMI residents.

¹⁷Exemptions from this requirement can be granted for businesses that employ fewer than five people, construction projects of limited duration, light manufacturing, and for employers who fill other full-time positions with substantially more than 30 percent of the workforce from citizens and permanent residents.

employees from these groups, increasing in phases to 30 percent by 2013. Employers with fewer than five employees are exempt from this requirement, and the CNMI Secretary of Labor may grant waivers for construction projects of limited duration and for light manufacturing.¹⁸ CNMI law currently includes a general moratorium on hiring foreign workers, under which employers can renew contracts for foreign workers and can replace current workers with transfers for certain occupations but cannot add to the total number of foreign workers employed in the CNMI.¹⁹ Additional exemptions from the moratorium exist for visitor industry supporting services, certain light manufacturing operations, employers who have hired over 35 percent of their employees from CNMI citizens, and major new developments that benefit the CNMI economy. The moratorium for the tourism industry expired on January 1, 2008; after a gradual phase-out applicable to other industries ends in 2011, all employers will be able to hire foreign workers.

The CNMI has developed related regulations, effective February 1, 2008, for hiring and admitting foreign workers and for their subsequent employment. For entry into the CNMI, a foreign worker must provide certain documents to the CNMI immigration authority and sign a form in the worker's native language attesting to compliance with CNMI immigration requirements. The CNMI Director of Labor must approve the employment contract and the worker's right to be present in the CNMI. Foreign workers must attend an orientation session upon admission into the CNMI and must carry a valid entry permit with them at all times. Under the standards for employment, employers in the CNMI are required to provide foreign workers with medical insurance, and they may provide additional benefits, such as housing, food, and transportation. CNMI regulations also contain specific requirements for the renewal, nonrenewal, and termination of employment contracts for foreign workers.

Compared with previous CNMI law regarding foreign workers, the new law reduces the time for filing labor complaints; requires that almost all CNMI government employees be U.S. citizens or permanent residents; and

¹⁸We did not review the extent to which the resident hiring requirements were enforced or implemented.

¹⁹If a foreign worker's contract expires or terminates without renewal, the worker must be replaced with a citizen or permanent resident, unless the worker falls into an exempted job category. We did not review the extent to which the moratorium was enforced or implemented.

adds a requirement that most foreign workers leave the CNMI for at least 6 consecutive months during every 3.5 year period, among other changes. Immediate family members of foreign national workers may enter the CNMI for the term of the approved employment contract after the foreign worker has been in the CNMI for 90 days.

CNMI employers do not currently have the option to petition for immigrant status of workers under CNMI law. While U.S. lawful permanent residents may work in the CNMI, time spent in the CNMI generally does not count toward the time in the United States required to attain U.S. citizenship. Residence in the CNMI only counts as residence for naturalization purposes for immediate relatives of U.S. citizens; other lawful permanent residents residing in the CNMI currently do not accrue time for naturalization purposes.

- **Tourists.** According to the CNMI government, tourists from certain countries may enter the CNMI as part of its entry permit waiver program. The program allows eligible participants to enter for tourism or business for up to 90 days without a visitor entry permit. Noncitizens who are ineligible for a waiver may apply for a visitor entry permit, which is valid for a single entry for 30 days. Visitors entering the CNMI with a visitor entry permit must have a valid passport and a verified round-trip itinerary and must have either a CNMI sponsor or acceptable proof of the financial means to support the visit. According to the CNMI government, information on visitor permit applicants from China is collected and reviewed by the CNMI under the Electronic Visitor Entry Permit Program. No other countries have asked to participate in the program. In addition, Japanese, Korean, and certain other tourists ages 55 and above may enter for up to 90 days under a comity entry permit for citizens of countries that provide a comparable permit to CNMI residents.
- **Foreign investors.** The CNMI currently has a foreign investor permit available for an indefinite period of time for individuals who submit evidence of good moral character and who meet all of the requirements of the foreign investment certificate. Foreign investors in the CNMI must maintain an investment of at least \$250,000 by an individual in a single investment or \$100,000 per person in an aggregate investment exceeding \$2 million.²⁰ The CNMI also offers a retiree investor entry permit requiring a minimum investment of \$100,000 in residential property (or \$75,000 on

²⁰CNMI regulations for foreign investors also require a \$100,000 security deposit; however, CNMI officials were unable to verify this requirement.

the islands of Tinian or Rota) by an applicant 55 years or older. In addition, the CNMI's long-term business entry permit for holders of a long-term business certificate is valid for 2 years and requires an investment of at least \$150,000 in a public organization or at least \$250,000 in a private investment. They also must provide a security deposit of \$25,000. The CNMI also offers a regular-term business entry permit. Immediate relatives of aliens may obtain an entry permit if they satisfy other requirements of CNMI law and can post a cash bond in an amount of twice the cost of return travel.

Current U.S. Immigration Law

Noncitizens may apply for entry into the United States as either immigrants intending to reside permanently or as nonimmigrants. The immigrant categories include various employment-based categories for admission to the United States as lawful permanent residents, who are permitted to work in the United States as part of their immigration status. The nonimmigrant categories for temporary admission include diplomats, visitors for business or pleasure, treaty investors, students, journalists, teachers, fiancés or fiancées of U.S. citizens, extraordinary artists or athletes, and workers who meet certain requirements, among others.²¹ As a general rule, nonimmigrants temporarily admitted for an employment-based purpose are authorized to work only in the authorized position; lawful permanent residents and other immigrants may work for any employer. See appendix II for a list of U.S. nonimmigrant classes of admission. Standard U.S. fees for visas and immigrant petitions include DHS petition fees, Department of State visa fees, and for some foreign workers, Department of Labor fees for labor certification.

- **Foreign workers.** The INA includes several types of visas for nonimmigrant workers and their families (H visas) and sets caps for two of these types of visas. In particular, the H-1 category includes high-skill workers coming to the United States temporarily to perform in specialty occupations.²² H-1B visa holders may be admitted for an initial period of 3

²¹8 U.S.C. § 1101(a)(15).

²²For purposes of the H-1B visa, "specialty occupation" is defined as one that requires a theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in that specific specialty as a minimum for entry into the United States (8 U.S.C. § 1184(i)). H-1B(1) visas apply to specialty workers admitted under the U.S.-Chile Free Trade Agreement or the U.S.-Singapore Free Trade Agreement, and H-1C visas are available for temporary registered nurses. Unlike other nonimmigrant categories, H-1B and H-1C visa holders may lawfully seek to become a permanent resident of the United States at the end of the authorized nonimmigrant stay.

years that can be renewed for a total of 6 years, and they can work in employment of varied duration, depending on the terms of the visa.²³ The H-2 category includes H-2A visas for foreign workers providing temporary or seasonal agricultural labor services,²⁴ as well as H-2B visas for other temporary workers who can perform short-term service or labor in a job for which unemployed U.S. workers cannot be found.²⁵ H-2B visa holders may be admitted for an initial period of 1 year. The H-3 category exists for workers with residence in a foreign country who are coming to the United States temporarily as trainees in a program not designed primarily to provide productive employment or as participants in a special education exchange visitor program. H-4 visas provide entry, but not work authorization, to spouses and children of H visa holders. There is no H visa for workers performing continuous, rather than temporary, work who do not meet the high-skill requirements of the H-1 visas. In addition, both H-1B and H-2B visas are capped—only 65,000 H-1B visa holders and 66,000 H-2B first-time visa holders may be issued visas in each fiscal year.²⁶

²³Under certain circumstances, workers are permitted to stay in H-1B status longer than six years. Under federal law, H-1Bs who have had a labor certification application or an employment-based immigrant petition pending for more than one year may be granted one-year extensions of their H-1B status until a decision is made on their request for permanent residency (American Competitiveness in the Twenty-first Century Act of 2000, Pub. L. No. 106-313, §106(a) (Oct. 17, 2000)). In addition, an alien is eligible for an extension of H-1B status if he or she is the beneficiary of an I-140 petition and would be eligible to be granted immigrant status but for the application of per country limitations applicable to immigrants under INA §§ 203(b)(1), (2) or (3), (AC-21, Pub. L. No. 106-313, §104(c)).

²⁴H-2A employers must comply with the federal labor certification process, which determines whether the employment is agricultural in nature, whether it is open to U.S. workers and if qualified U.S. workers are available, the adverse impact of employment of a qualified alien, and whether employment conditions (e.g., housing) meet applicable requirements (8 C.F.R. § 214.2(h)(5)(ii)).

²⁵The H-2B category applies to residents of foreign countries who are coming to the United States temporarily to perform nonagricultural temporary labor or service if unemployed persons capable of performing such labor or service are unable to be found in the United States (8 U.S.C. § 1101(a)(15)(H)(ii)(B)).

²⁶In the past, Congress has revised the numerical limitations applicable to some nonimmigrant categories. For example, the limitation for H-1B visas was 115,000 workers in fiscal years 1999 and 2000 and was 195,000 workers in fiscal years 2001 to 2003 (8 U.S.C. § 1184(g)(1)(A)). In addition, numerical limitations exist for other H categories, including H-1B DOD project workers, which may not exceed 100 at any time; H-1C nurses, which may not exceed 500 in a fiscal year; and H-3 special education visitor exchange program participants, which may not exceed 50 (8 C.F.R. §214.2(h)(8)).

Other nonimmigrant visas available for foreign workers include, among others, L visas for intracompany transfers; O visas for individuals of extraordinary ability or achievement; P visas for artists, athletes, and entertainers; and R visas for religious workers. In addition to nonimmigrant visas, the INA contains permanent employer-sponsored immigrant visas for individuals seeking to reside permanently in the United States.

- **Tourists.** Under federal law, visitors may come to the United States for business on a B-1 visa, for pleasure on a B-2 visa, or for business or pleasure on a combined B-1-B-2 visa. Visitors with B visas are normally admitted for a minimum of 6 months, but not more than 1 year. B visa holders generally may not enroll in a course of study while in the United States on a B visa. Citizens of 27 countries may participate in the U.S. Visa Waiver Program, which allows stays of up to 90 days for business or pleasure in the United States without obtaining a nonimmigrant visa if they possess a valid passport, are determined by DHS not to be a threat to the United States, have a round-trip ticket, and execute the proper immigration forms, among other requirements.²⁷ In addition to the countries under the U.S. Visa Waiver Program, federal law allows nationals of 9 additional countries to visit Guam in B status for up to 15 days without obtaining a visa.²⁸
- **Foreign investors.** The INA allows foreign investors to enter the United States as nonimmigrants under treaty investor status with an E-2 visa. Treaty investors must invest a substantial amount of capital in a bona fide enterprise in the United States,²⁹ must be seeking entry solely to develop

²⁷In August 2007, Congress passed legislation that provides DHS with the authority to admit countries with refusal rates for business and tourism visas that are between 3 and 10 percent under the Visa Waiver Program if the countries meet certain conditions. For example, countries must meet all mandated Visa Waiver Program security requirements and cooperate with the United States on counterterrorism initiatives. Before DHS can exercise this new authority, the legislation requires that the department complete certain actions aimed at enhancing the security of the Visa Waiver Program. These include establishing a biometric air exit system that can verify the departure of at least 97 percent of foreign nationals departing through U.S. airports and certifying that an electronic travel authorization system is fully operational. See Implementing Regulations of the 9/11 Commission Act of 2007 (Pub.L. No. 110-53, §711, 121 Stat. 338 (Aug. 3, 2007)).

²⁸Federal law also waives visa requirements for B admissions of nationals from Canada and some other Western Hemisphere countries, including Bermuda.

²⁹Federal regulations distinguish investing “a substantial amount of capital in a bona fide enterprise” from a relatively small amount of capital in a marginal enterprise solely for the purpose of earning a living (8 C.F.R. § 214.2(e)(2)(iii)).

and direct the enterprise, and must intend to depart the United States when their treaty investor status ends. Treaty investors must be nationals of a country with which the United States has a treaty of friendship, commerce, or navigation, and must be entering the United States pursuant to the provisions of the treaty. E-2 status is valid for up to 2 years and may be extended in 2-year increments. Spouses or children may apply to join foreign investors under the E-2 visa, and spouses are authorized to work under an E-2 visa. The INA also allows foreign investors to seek permanent immigrant visas for employment-creation purposes. Individuals seeking immigrant visas have to meet higher thresholds than do E-2 visa holders, including the general requirement to establish a business that creates at least 10 full-time jobs and an investment of at least \$1 million.

Pending U.S. Legislation

The stated intent of the pending legislation is to ensure, through the application of federal immigration law to the CNMI, that effective border control procedures are implemented and observed and that national and homeland security issues are properly addressed. The legislation states that it includes special provisions to allow for the orderly phasing out of the CNMI's foreign worker program and the orderly phasing in of federal immigration responsibilities in the CNMI. The legislation also states that it intends to minimize the potential adverse economic and fiscal effects of phasing out the CNMI's own foreign worker program and to maximize the CNMI's potential for future economic and business growth.

In requiring the CNMI to be subject to federal immigration law, the pending legislation replaces all CNMI laws related to the admission and removal of aliens, including the CNMI's provisions of immigration law regarding nonresident contract workers. Federal agencies will be responsible for implementing and enforcing U.S. immigration law in the CNMI, including establishing offices and staff. Other CNMI laws related to admission and removal of aliens would also be preempted, which could include some local CNMI labor laws. However, all local labor and other laws not related to the admission or removal of aliens would remain in effect.

H.R. 3079, passed by the House, and S. 2739, pending in the Senate, include the same provisions applying U.S. immigration law to the CNMI but contain several exceptions. First, the transition period ends in 2013 under the House bill and in 2014 under S. 2739. Second, S. 2739 adds the Secretary of Defense to those with whom the U.S. Secretary of Labor must consult in determining whether to extend the CNMI-only work permit

program. In addition, S. 2739 contains the text of other bills unrelated to immigration law in the CNMI.

The legislation also includes several provisions related to Guam, such as the expansion of options for nonimmigrants to enter and work in Guam. Guam is an unincorporated U.S. territory south of the CNMI in the western Pacific. Under the legislation, the exemption for the CNMI from the numerical limitations for H visas until 2013 or 2014 also applies to Guam. The legislation also amends U.S. immigration law to add the CNMI to Guam's current visa waiver program to create a combined CNMI and Guam visa waiver program, under which DHS would promulgate a new list of countries that would be eligible for a Guam or CNMI visa waiver.

Transition Period in Pending U.S. Legislation

The pending legislation applies provisions of federal immigration law to the CNMI one year after the legislation's enactment, subject to a transition period that begins 1 year after enactment and ends on December 31, 2013, under H.R. 3079, passed by the House, and on December 31, 2014, under S. 2739, pending in the Senate. The Secretary of Homeland Security has sole discretion to delay the start of the transition period for up to 180 days, and the Secretary of Labor has the authority to extend indefinitely a provision related to the CNMI-only work permit program for up to 5 years at a time. Among other provisions, the legislation prohibits the CNMI government from allowing an increase in the total number of foreign workers who are present in the CNMI between the legislation's enactment and the effective date of the transition period. Also, the legislation states that CNMI-only visas are not valid for entry into other parts of the United States and that aliens leaving the CNMI must be rescreened for entry into the continental United States.

During the transition period, the Secretary of Homeland Security, in consultation with the Secretaries of the Interior, Labor, and State, has the responsibility to establish, administer, and enforce a transition program to regulate immigration in the CNMI. Each agency must issue regulations and implement agreements with the other agencies 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. The agreements also may allocate funding among the respective agencies tasked with related responsibilities.

The Secretary of Homeland Security is granted significant discretion and flexibility during the transition period, though DHS is required, in some

circumstances, to consult with other federal agencies or the CNMI on its decisions. Implementation decisions by DHS will determine the extent to which CNMI local laws and authority will be affected. Key rules and other aspects of the transition program require further development through regulation. In addition, federal agencies must determine how to implement and enforce the application of federal immigration law in the CNMI, including establishing offices, hiring staff, and implementing screening and enforcement systems.

Other Key Provisions of Pending Legislation

Other key provisions of the pending legislation establish the position of a nonvoting CNMI delegate to the House of Representatives, require several studies on the legislation's implementation, transfer responsibility for refugee protection in the CNMI to the federal government, and relate to lawful permanent resident status.

- The pending legislation establishes the position of a nonvoting CNMI delegate in the House of Representatives, to be filled by the Resident Representative to the United States, a position authorized by the CNMI covenant. The delegate must be elected at large by a plurality of votes at the federal general election of 2008 and at federal general elections every second year thereafter.³⁰ The delegate will not be allowed to vote on legislation before the full House of Representatives but may be able to participate in committee processes at the discretion of Congress.
- The pending legislation also requires several studies on the implementation of the legislation to be conducted by various federal agencies and other entities and submitted to Congress. The required reports include an administration report on the economic conditions in the CNMI, a DHS study on federal personnel and resource requirements, and a GAO assessment of the implementation of the legislation and its economic impact to be delivered no later than 2 years after enactment. DOI must also consult with DHS and the CNMI Governor and report to Congress on the status of the nonresident guest-worker population in the CNMI, including recommendations on whether Congress should consider permitting lawfully admitted nonresident workers to apply for long-term immigration status under the INA. Further, the CNMI Governor may provide annual reports to the President on the implementation of this

³⁰The Governor of the CNMI retains the authority to provide for primary elections for the delegate, in which case the delegate will be elected by a majority of the votes cast in any general election for which primaries are held. The delegate must be at least 25 years old, have been a citizen of the United States and a resident of the CNMI for at least 7 years prior to the election, be qualified to vote in the CNMI, and not be a candidate for any other office.

legislation and any future recommendations, which will be forwarded to Congress after internal review.

- The pending legislation federalizes the CNMI's responsibility for refugee protection, authorizing funding by DOI and designating DHS as the "protection consultant" for the CNMI.³¹ The CNMI is currently responsible for implementing U.S. obligations under international treaties that protect refugees from persecution and torture, and the legislation would transfer these responsibilities directly to the federal government.³² The legislation also allows aliens present in the CNMI to apply for discretionary asylum at the end of the transition period.
- In addition, other provisions of the bill would affect aspects of immigrant status, including requirements that could affect a lawful permanent resident's ability to stay in the United States. For determinations of whether a lawful permanent resident has been absent from the United States long enough to lose the right to remain in the United States under federal law, presence in the CNMI will retroactively be considered presence in the United States and will not count against the resident.

Pending Legislation Provisions for Foreign Workers

The pending legislation allows federal agencies to preserve access to foreign workers in the CNMI during the transition period but limits access to certain workers after the transition period ends. Under the transition program, employers have four key options for obtaining foreign workers in the CNMI. First, employers in the CNMI and Guam can petition for foreign workers under federal nonimmigrant H visas without counting against the

³¹Upon the date of enactment of the legislation, the CNMI is required to implement a refugee protection program under the terms of its 2003 memorandum of understanding with DOI regarding the protection of refugees and cannot remove any alien whom the DHS protection consultant has deemed to be eligible for protection from persecution or torture. On the transition program effective date, the U.S. government will begin direct implementation of its treaty obligations with respect to aliens in the CNMI.

³²Aliens physically present in the CNMI are protected by the provisions of the 1967 Protocol Relating to the Status of Refugees, which generally prohibits removal of an alien to a country where he or she would likely be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion. Aliens are also protected by the provisions of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, which prohibits removal of an alien to a country where he or she would likely be tortured. In addition to international treaty obligations, federal law requires protecting these aliens by withholding removal pursuant to INA § 241(b)(3), withholding removal under the Convention Against Torture pursuant to 8 C.F.R. § 208.16, and deferring removal under the Convention Against Torture pursuant to 8 C.F.R. § 208.17.

established numerical limitations for H-1B and H-2B visas. Second, during the transition period, employers of workers not otherwise eligible for admission under federal law can apply for temporary CNMI-only nonimmigrant work permits, and this program may be extended indefinitely by the U.S. Secretary of Labor for up to 5 years at a time. Third, during the transition period, existing CNMI-government-approved foreign workers lacking U.S. immigration status can continue to live and work in the CNMI for a limited time. Fourth, during and after the transition period, CNMI employers can petition for nonimmigrant status and employment-based permanent immigration status for workers under the same procedures as other U.S. employers. However, access to foreign workers in low-skill positions will be limited after the end of the transition period in 2013 or 2014 and after any extensions of the CNMI-only permit program. The CNMI's exemption from the visa caps expires at the end of the transition period in 2013 or 2014, and the demand for U.S. nonimmigrant worker visas has exceeded the capped supply in recent years. Furthermore, there are no nonimmigrant visas available for workers in continuous low-skill positions. In addition to superseding and replacing all CNMI immigration laws, the pending legislation eliminates any other CNMI laws that relate to the admission or removal of aliens, which could include some CNMI labor laws. Fees for the CNMI-only work permit will be determined by federal regulations and are not currently available. However, the current fees for U.S. foreign worker permits that would apply after the end of the transition period and after any extensions range higher than the CNMI's current permit fees for foreign workers. The pending legislation also requires a fee to be paid during the transition period by employers of nonimmigrant workers with CNMI-only permits to provide technical assistance and vocational education in the CNMI.

Uncapped Nonimmigrant H Visas for Workers in the CNMI during the Transition Period Ending in 2013 or 2014

The pending legislation, in contrast to existing U.S. law, provides for H nonimmigrant visas for temporary workers in the CNMI during the transition period ending in 2013 or 2014.³³ A qualified alien can seek admission to the CNMI or Guam during the transition period as a nonimmigrant temporary worker under the H visa process established in the INA without counting against the existing numerical caps defined by federal law.³⁴ Visa holders are limited to working in the CNMI or Guam. Spouses and minor children of H visa holders can accompany the principal alien under federal law. The length of admission and other terms and conditions for CNMI-only H nonimmigrants will be determined by DHS in its implementation of the transition program and, according to DHS officials, will adhere to federal requirements currently in place for H visa holders. According to the current federal requirements, (1) specialty workers who are admitted under H-1B visas may not be authorized to stay any longer than 3 years initially, and up to 6 years with extensions, and may not seek readmission for 1 year after leaving, and (2) foreign workers admitted under H-2B visas are authorized to stay for up to 1 year initially, and up to 3 years with extensions. Because the pending legislation authorizes exemption from federal law's numerical caps for H-1B and H-2B visas during the initial transition period only, the caps would limit the availability of new visas after the transition period ends on December 31, 2013, or on December 31, 2014. The numerical caps do not apply to foreign workers' spouses or children.

³³Previous versions of similar legislation included different authorities for extending provisions of the transition period. The current legislation grants the Secretary of Labor the discretion to extend the issuance of CNMI-only permits beyond the end of the transition period. We do not interpret this provision to allow for uncapped H visas beyond 2013 or 2014. The CNMI government, however, interprets the current legislation to allow for extensions of the H visa cap exemptions, the CNMI-only permit, and other provisions of the transition period program beyond 2013 (2014 under S. 2739). In addition, the CNMI government interprets the H visa cap exemptions as being part of the CNMI-only permit program.

³⁴In any fiscal year, H-1B visas for certain specialty workers are limited to 65,000, and H-2B visas for other temporary workers are limited to 66,000 (8 U.S.C. § 1184(g)(1)(A)(vii) and 8 U.S.C. § 1184(g)(1)(B)). Exemptions from the cap for H-1B visas exist for certain individuals, including those who hold a master's degree or higher from a U.S. institution and those who are employed with a nonprofit research or government research organization (8 U.S.C. § 1184(g)(5)).

CNMI-Only Nonimmigrant Work Permits during the Transition Period and Possible Extensions

In addition to allowing uncapped H visas during the transition period, the pending legislation establishes a temporary CNMI-only nonimmigrant work permit during the transition period to be issued to prospective employers for aliens not eligible for admission under the H visas or otherwise under federal immigration law.³⁵ Temporary workers with CNMI-only permits are to be treated as nonimmigrants under the INA and, like other nonimmigrants or applicants for immigrant status from outside the United States, may apply for a change of status, either to another nonimmigrant status or to permanent residency. Workers admitted under a CNMI-only permit may transfer freely between CNMI employers, but they may not enter or work in the rest of the United States.³⁶

Under the pending legislation, DHS determines the number, terms, and conditions of CNMI-only permits needed to meet labor demands in the CNMI and has full administration and enforcement authority over the implementation process. DHS has the discretion to use any reasonable method for implementing the permit system, provided that the department attempts to promote the maximum use of workers authorized to be employed in the United States and to prevent adverse effects of wages and working conditions on such workers. DHS may also authorize the admission of a spouse or minor child accompanying or following to join a worker admitted under a CNMI-only permit.

The pending legislation specifies that the CNMI-only permits will not be valid beyond the expiration date of the transition period and requires that the number of permits allocated be reduced on an annual basis to zero by the end of the transition period. However, the U.S. Secretary of Labor, in consultation with DHS, DOI, and the Governor of the CNMI, has the discretion to extend indefinitely the period for issuing the permits for up to 5 years at a time, based on the labor needs of legitimate businesses in

³⁵These ineligible workers include those who do not meet the skill or education requirements of the H-1B visa but who are performing continuous work and, thus, do not meet the seasonal or temporary requirements of the H-2 visas or other specific requirements in H visa categories.

³⁶The pending legislation also includes a provision stating that people present in the CNMI or arriving in the CNMI during the transition period are not eligible to apply for asylum under federal law before January 1, 2014. According to DHS, they could apply for other forms of protection from persecution or torture in defense to removal. Under federal law, aliens present in the United States may generally apply for asylum if certain conditions are met. Aliens can be provided asylum under federal law if they can demonstrate that they meet the requirements for refugee status and are not otherwise disqualified (8 U.S.C. § 1158).

the CNMI.³⁷ The Secretary could 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 extension thereof. The determination of what constitutes a legitimate business,³⁸ and the extent to which such business requires foreign workers to supplement its workforce, is at the sole discretion of DHS. In deciding whether to extend the period in which CNMI-only nonimmigrant work permits may be issued, the Secretary of Labor may consider workforce studies on the need for foreign workers in the CNMI; the unemployment rate of U.S. citizen workers residing in the CNMI; the number of unemployed foreign workers in the CNMI; and any other available evidence regarding U.S., CNMI, and foreign worker trends in the CNMI.

Temporary Work and Residence for CNMI-Government-Approved Foreign Workers Who Do Not Obtain U.S. Immigration Status

Under the pending legislation, 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. Foreign workers who are legally present in the CNMI under CNMI immigration laws on the transition period's effective date are temporarily protected from removal; they may not be immediately removed from the country for violating the INA on the basis of being present without having been admitted to the United States.³⁹ A foreign worker lawfully present under previous CNMI immigration laws but who does not obtain U.S. immigration status becomes subject to removal 2 years after the effective date of the transition program or when the CNMI-issued permit expires, whichever is earlier. To track the presence of aliens in the CNMI, the legislation allows DHS to require CNMI aliens to register with DHS and subjects to removal anyone who fails to comply with the registration requirement. The legislation also prohibits the CNMI government from allowing an increase in the total number of foreign workers who are present in the CNMI between the legislation's enactment and the effective date of the transition period. Since the 2-year clause applies to all aliens lawfully present in the CNMI on the transition program

³⁷Under S. 2739 pending in the Senate, the U.S. Secretary of Labor also must consult with the U.S. Secretary of Defense.

³⁸Illegitimate businesses include those that engage in prostitution, trafficking in minors, or any other activity that is illegal under federal or local law.

³⁹However, any alien who would be subject to removal under the INA for not having been properly admitted (i.e., not being legally present in the CNMI under CNMI or U.S. laws) would still be subject to removal under the proposed legislation.

effective date, not just to foreign workers, it would cover family members of the foreign workers to the extent of their previously authorized admission.

Access to Permanent Employment-Based Immigrant Visas for Foreign Workers

Under the pending legislation, when federal immigration law becomes applicable to the CNMI on the transition program effective date, CNMI employers will be able to petition to bring workers to the CNMI as employment-based permanent immigrants under the same procedures as other U.S. employers. Each fiscal year, about 140,000 employment-based immigrant visas are available for workers to enter the United States on a permanent basis. Up to 28.6 percent of these visas may be available for skilled nontemporary and nonseasonal workers, for professionals with baccalaureate degrees, and for qualified workers capable of performing unskilled nontemporary and nonseasonal labor for which qualified workers are not available in the United States. For the unskilled laborers, up to 10,000 visas may be issued each fiscal year to qualified immigrants after the Department of Labor certifies that qualified workers are not available in the United States.

According to a CNMI official, CNMI employers do not currently have the option to petition for immigrant status of workers under CNMI law. While U.S. lawful permanent residents may work in the CNMI, time spent in the CNMI generally does not count toward the time in the United States required to attain U.S. citizenship. According to DHS, residence in the CNMI only counts as residence for naturalization purposes for immediate relatives of U.S. citizens; other lawful permanent residents residing in the CNMI currently do not accrue time for naturalization purposes.

Access to Foreign Workers after the End of the Transition Period and after Any Extensions

After the end of the transition period and after any extensions of the CNMI-only work permit program, the pending legislation limits CNMI employers' access to foreign workers, particularly low-skill workers in continuous, nontemporary jobs. However, all INA immigrant and nonimmigrant categories would be available to qualified foreign workers attempting to enter the CNMI. After the transition period and after any extensions, the CNMI-only work permits can no longer be issued and are no longer in effect. In addition, the exemptions from the H visa caps no longer apply after the initial transition period ending in 2013 or 2014. Foreign workers applying for H nonimmigrant status are then subject to

the numerical limitations set out in federal law, and demand for the H-1B and H-2B visas has exceeded the capped supply in recent years.⁴⁰ H-2A visas are not capped and would be available for agricultural workers. However, no nonimmigrant visa categories are available for workers performing continuous, rather than temporary, work who do not meet the high-skill requirements of the H-1 visas. Some workers can apply for L visas for intracompany transfers, but these visas are available only to managers and executives, workers with specialized skills, and their spouses and children, and L visa holders must have spent at least 1 continuous year abroad with a qualifying organization prior to entering the United States. These options contrast with the CNMI government's current authority to admit as many foreign workers as its own laws and administrative procedures permit and with the CNMI-only work permit that the pending legislation establishes during the transition period and any extensions.

Changes in Worker Permit Fees during and after the Transition Period

The pending legislation changes permit fees for foreign workers and may increase annual fees for some employers and workers. Fees for the transition period programs will be determined by federal regulations and are currently not available. The CNMI-only work permit fee includes \$150 paid by employers annually to fund vocational education in the CNMI, but we do not know how the full fee will compare to the current CNMI foreign worker permit fee of \$250 per year.⁴¹ In addition, after the end of the transition period and after any extensions of the CNMI-only work permit program, standard U.S. fees would apply, including Department of Labor fees for labor certification, DHS petition fees paid by the employer, and Department of State visa fees paid by the worker. The current fees for U.S. foreign worker permits that would apply after the end of the transition period and any extensions range higher than the CNMI's current permit fees for foreign workers. Existing U.S. fees for H visa petitions range from

⁴⁰In fiscal year 2005, the limit was reached on the first day, and the limit for fiscal year 2006 was reached before the fiscal year began. The fiscal year 2008 H-1B cap was reached within the first 2 days petitions were accepted in April 2007. In addition, for H-2B visas, the cap for the first half of the visas available for fiscal year 2008 was reached in September 2007, and the cap for the second half was reached in January 2008.

⁴¹In addition to the annual fee of \$250 paid by employers, foreign workers in the CNMI are responsible for paying an annual alien registration fee of \$25.

\$107 to \$773 per year⁴² (see app. III).⁴³ Required bond costs for employers currently vary under CNMI law, but one option is for employers to pay \$75 per worker into a revolving trust account. U.S. laws provide discretionary federal authority to impose bonds of between \$5 and \$15 per worker on employers or \$500 on the alien.⁴⁴ The legislation also authorizes DHS to charge fees to recover the full cost of providing adjudication and naturalization services, including any administrative costs. The U.S.-CNMI covenant currently allows the CNMI government to collect fees levied for quarantine, passport, and immigration and naturalization services. The pending legislation would remove the CNMI's ability to collect fees for immigration and naturalization.

Possible Elimination of Some CNMI Labor Laws

Under the pending legislation, federal immigration law will supersede all CNMI immigration law. In addition, federal law would preempt some CNMI labor laws if the CNMI laws are determined to relate to the admission or removal of aliens. Because the intent of the legislation is to supersede all laws relating to the admission or removal of aliens, if local labor laws relate to the admission or removal of aliens, such laws will no longer be in effect. The CNMI's Office of the Governor concluded that the proposed federal legislation would preempt most of the CNMI laws establishing new immigration and labor rules that took effect on January 1, 2008. For example, as referenced above, the CNMI's bond requirement would presumably be preempted by any bond requirements already present in federal immigration law. Additionally, CNMI requirements to pay repatriation funds for foreign workers would be preempted by federal

⁴²For our analysis, we converted the U.S. H visa range of fees to an annual range. H-1B visas are typically valid for up to 3 years, and petition fees range from \$320 to \$2,320, depending on whether fraud prevention and other supplemental fees are required. H-1B visas may be renewed for an additional 3 years, and the petition renewal fees are the same as the initial petition fees; however, the \$500 fraud prevention and detection fee is required only the first time a petitioner files for a worker. H-2A visa fees are \$320, in addition to \$100 plus \$10 for each additional worker for labor certification by DOL. H-2B visa fees are \$470. See appendix III.

⁴³We did not analyze the full cost of obtaining a foreign worker in either the United States or the CNMI. Costs other than petition and visa fees and bonds may include renewal and status adjustment fees; biometric fees; fees for expedited service; user fees, such as immigration inspection fees included in the cost of airline tickets; legal costs; worker health examinations and care; transportation; benefits; and other costs.

⁴⁴U.S. immigration law provides authority to require nonimmigrant bonds on a case-by-case basis, but according to DHS, it is rarely used in practice. See 8 U.S.C. § 1184(a), 8 C.F.R. § 103.6(d)(2), and 8 C.F.R. § 214.1(a)(3)(iii).

law requirements to pay repatriation funds for nonimmigrant workers. In the agricultural sector, CNMI laws that apply to foreign agricultural workers would be replaced by federal requirements for the admission and treatment of H-2A workers or other relevant federal laws. Under federal law, employers of temporary agricultural workers must provide housing for the workers that meet certain federal requirements, insurance for the workers that covers injury or disease related to employment, three meals a day, and all necessary tools and equipment to perform the required labor. CNMI law requires that employers provide medical insurance to foreign workers and gives employers the option to provide additional benefits, such as housing, food, and transportation.

Other CNMI laws that are administered as part of the CNMI's permit program also might be affected because the CNMI's permit program will be replaced with federal law, and it is unclear whether these CNMI programs will continue to be administered. For example, a CNMI law requiring notice and orientation procedures for nonresident workers admitted to the CNMI, as well as laws requiring that employers of nonresident workers provide mandatory medical insurance to their employees and provide mediation procedures in the case of contract disputes, have no counterpart in the pending federal legislation. It is unknown whether these existing requirements would be administered after federalization. In addition, existing CNMI agreements with China and the Philippines regarding the treatment of those countries' workers in the CNMI could be affected by the pending legislation. After federal immigration law applies, it is unclear whether the agreements would be adhered to or would be superseded.

In addition, local CNMI law contains specific provisions for the hiring of local residents, while the federal legislation contains no set requirements for hiring a certain percentage of citizens. Under CNMI law, until January 2008, employers were required to hire 20 percent of their employees from local residents; this percentage increased to 30 percent on January 1, 2008, under the new CNMI labor and immigration law. CNMI law also stipulates that employers seeking work permits for their temporary workers must be able to demonstrate that they advertised the position and were unable to find a qualified CNMI resident. Exemptions from this requirement can be granted for businesses that employ fewer than 5 people, construction projects of limited duration, light manufacturing, and for employers who fill other full-time positions with substantially more than 30 percent of the workforce from citizens and permanent residents. Under the federal immigration system, no percentage requirement exists for the hiring of local residents. However, federal immigration law requires that employers

seeking to fill jobs with applicants for H-2B visas must demonstrate that they have been unable to identify a qualified U.S. worker for the position. Similarly, employers of H-2A applicants must certify through the Department of Labor that sufficient U.S. workers cannot be found to perform the labor and that the employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers. However, without regulations implementing the pending legislation, it is unknown whether the CNMI-only work permit program will include requirements related to U.S. workers.

Vocational Education Funding and Technical Assistance for the CNMI

The pending federal legislation requires the U.S. government to provide funding for vocational education, as well as technical assistance for the CNMI.

- **Vocational education.** The legislation requires DHS to charge prospective employers \$150 annually, in addition to other fees collected under the INA, for each CNMI nonimmigrant worker who is issued a CNMI-only permit during the transition period and any extensions. The fee is to be paid into the Treasury of the CNMI and used to fund ongoing vocational, educational curricula and program development by CNMI educational entities.
- **Technical assistance.** 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 lawful permanent residents in the CNMI; and to develop CNMI job skills as needed. In providing the technical assistance, the federal government should consult with the CNMI government, local businesses, regional banks, and other CNMI economy experts. The CNMI must contribute a nonfederal matching requirement of 10 percent for the provision of technical assistance.
- **Hiring U.S. citizens in the CNMI.** In addition to requiring the technical assistance, the pending legislation states that the federal government should, to the maximum extent practicable, hire citizens of the CNMI as staff to implement the transition program and new federal responsibilities.

Pending Legislation Provisions for Tourists

The pending legislation establishes a joint visa waiver program by adding the CNMI to an existing Guam visa waiver program. The program exempts visitors from designated countries who travel for business or pleasure to the CNMI from the standard federal visa documentation requirements.

Citizens of countries who do not qualify for entry under the joint CNMI and Guam visa waiver program or other U.S. visa waiver programs may apply for U.S. visitor visas valid for entry to any part of the United States, which generally require in-person applications and higher fees than the CNMI currently assesses. Changes in tourists' access to the CNMI will depend on the countries that are included in the CNMI-Guam visa waiver program. Until the regulations implementing the joint visa waiver program are established, we cannot determine whether the new visa waiver program will be more or less restrictive than the current CNMI or Guam waiver programs.

Visa Waiver Program for Tourism or Business

The pending federal legislation creates a joint visa waiver program for business or pleasure for 45 days or less, exempting visitors from participating countries who travel to the CNMI and Guam from the standard federal visa documentation requirements for nonimmigrants.⁴⁵ Under the pending legislation, DHS may waive the documentation requirements for nationals from designated foreign countries applying to visit for business or pleasure for a period of up to 45 days.⁴⁶ Admission would be granted only for entry into, and stay in, the CNMI or Guam, and visitors will be able to travel between the CNMI and Guam. The pending legislation allows DHS to waive the documentation requirements after consulting with other federal agencies and the Governors of the CNMI and Guam; determining that an adequate arrival and departure system has been developed in both places; and determining that the waiver would not represent a threat to the welfare, safety, or security of the United States or its territories.

Apart from the CNMI-Guam visa waiver program proposed under the federal legislation, the U.S. Visa Waiver Program, the current Guam visa waiver program, and the current CNMI entry permit waiver program have the following requirements:

⁴⁵Subject to waivers, federal law requires nonimmigrants to have a passport valid for at least 6 months from the date of expiration of their admission or contemplated initial period of stay authorizing them to go to another country and to have a valid nonimmigrant visa or border crossing identification card (8 U.S.C. § 1182(a)(7)(B)(i)).

⁴⁶Aliens admitted under the visa waiver program for tourism or business must waive all rights to appeal their admissibility under the INA or to contest removal, unless they are seeking asylum or protection from torture.

-
- The current U.S. Visa Waiver Program under federal immigration law allows nationals and citizens of 27 countries to travel to the United States, including Guam, for business or tourism for 90 days or less without obtaining a visa. Travelers admitted under the U.S. Visa Waiver Program must be nationals of a participating country, each of which must provide reciprocal privileges to U.S. nationals and citizens and meet other requirements.⁴⁷
 - Guam's federally-administered visa waiver program allows citizens of an additional 9 countries to enter Guam for up to 15 days for business or pleasure.⁴⁸ In total, citizens of 36 countries may enter Guam under its visa waiver program.
 - The CNMI's entry permit waiver program exempts aliens seeking to enter for tourism or business for up to 90 days from the required visitor entry permit if the aliens are eligible for the U.S. Visa Waiver Program or are nationals of a country listed by the CNMI as exempt. The list of countries is revised periodically by the CNMI Attorney General and contains all the countries in the U.S. Visa Waiver Program.⁴⁹

See appendix IV for countries included in the current U.S., CNMI, and Guam waiver programs.

⁴⁷8 U.S.C. §1187. In addition, applicants to the U.S. Visa Waiver Program must have machine-readable biometric passports if issued after October 26, 2006, execute proper immigration forms, follow proper procedures for entry into the United States, have been determined not to represent a threat to the United States, have no previous immigration violation, possess a round-trip transportation ticket, and have successfully passed an automated background check. Nationals of countries not on the general Visa Waiver Program list may apply for visitor visas at U.S. consulates around the world.

⁴⁸For countries to qualify for participation in the Guam visa waiver program, they must have a business and tourism visa refusal rate of 16.9 percent or less or a preclearance program pursuant to a bilateral agreement with the United States. Eligible countries must be in geographical proximity to Guam or have a substantial volume of nonimmigrants traveling to Guam and extend reciprocal privileges to U.S. citizens, cannot be designated by the Department of State as being of special humanitarian concern, and must pose no threat to the safety and security of the United States.

⁴⁹An order of the CNMI Attorney General dated March 23, 2004 includes the Republic of Korea, Hong Kong, and Canada in the CNMI's permit waiver program, but CNMI officials said that this order was no longer in effect. The officials said that the CNMI currently waives permit requirements only for visitors from countries included in the U.S. Visa Waiver Program. They could not identify any document specifically revoking the 2004 order, and an official said the CNMI planned to issue clarification to the policy in the near future. While Canada is not included in the U.S. Visa Waiver Program, nationals of Canada may also, in most circumstances, qualify for visa-free travel to the United States.

To implement the CNMI-Guam visa waiver program, DHS must consult with other appropriate federal agencies and promulgate regulations within 180 days of enactment of the proposed legislation. The regulations must include a list of all countries whose nationals may obtain the visa waiver. This list must include any country from which the CNMI has received a significant economic benefit for the year prior to the enactment of the legislation, unless DHS determines that the country's inclusion on the list would represent a threat to the welfare, safety, or security of the United States or its territories. The Governors of the CNMI and Guam may petition DHS to have countries added to the visa waiver program list. The regulations must also include any bonding requirements for nationals of some or all of the countries who may present an increased risk of overstays or other potential problems, if those requirements are different from those generally applicable to nonimmigrants under the INA. DHS is required to monitor the admission of nonimmigrant visitors to the CNMI and Guam and has the authority to suspend a particular country from the visa waiver program.⁵⁰

DHS's consideration of countries from which the CNMI has received a significant economic benefit for the previous year could result in the inclusion in the visa waiver program of key countries that have sent tourists to the CNMI. However, without the regulations implementing the CNMI-Guam visa waiver program, we cannot determine whether this program will be more or less restrictive than the current CNMI entry permit waiver program or the Guam visa waiver program, nor can we determine which countries' citizens would be required to obtain visitor visas. In addition, any changes to the U.S. Visa Waiver Program could also affect tourists' access to the CNMI.

Visitor Visas Available outside the Visa Waiver Programs

Under the pending legislation, citizens of countries who do not qualify for entry under the proposed CNMI-Guam visa waiver program may apply for a nonimmigrant visitor visa for either business or pleasure, known as a B visa. B visas are valid for entry into any part of the United States. The

⁵⁰DHS may suspend a country from the visa waiver program if DHS determines that an unacceptable number of visitors from that country are remaining unlawfully in either the CNMI or Guam, unlawfully obtaining entry into other parts of the United States, seeking asylum, or contesting removal. In addition, DHS may suspend a country from the program if it determines that the country poses a risk to the law enforcement or security interests of the United States, the CNMI, or Guam. DHS can also suspend the visa waiver program on a country-by-country basis for other good cause.

period of validity for B visas depends on federal regulations specific to the applicant's home country, as well as the reciprocal treatment that the home country provides to U.S. citizens traveling to that country. The validity period for B visas varies. Aliens may apply for admission at any time during the validity period to be admitted for up to 1 year and are typically admitted for 6 months at a time. Under the U.S. program, most visitor visa applicants must apply in person at a U.S. embassy or consulate. In addition, applicants for all nonimmigrant visas may be required to submit to a physical or mental examination at the discretion of the consular officer reviewing the application.

The CNMI has its own visitor entry permit process, which currently allows noncitizens not eligible under its entry permit waiver program to apply for a short-term entry permit valid for 30 days or a long-term entry permit valid for up to 60 days. Most visitors coming to the CNMI for business or pleasure with a visitor entry permit must have a CNMI sponsor, such as an individual or a hotel, which is not required of visitors entering the United States on a B visa. In addition, Japanese, Korean, and certain other tourists ages 55 and above may enter for up to 90 days under a comity entry permit.⁵¹ Currently, citizens of 31 countries are excluded from entering the CNMI, but they can be granted waivers on a case-by-case basis.⁵² This program would be eliminated by the pending legislation, and visitors seeking to enter the CNMI for business or pleasure could apply for a U.S. nonimmigrant B visa or could enter under the CNMI-Guam visa waiver program established by the legislation, if applicable.

Given the requirements for U.S. visitor visas, and depending on the countries included in the CNMI-Guam visa waiver program, the pending legislation could change access to the CNMI for visitors from some countries. For example, some tourists currently come to the CNMI from

⁵¹Countries currently included in the CNMI's comity entry permit program include Australia, Canada, Ireland, Japan, New Zealand, Singapore, Republic of Korea, and the United Kingdom.

⁵²Nationals of 31 designated countries and regions, including Iran, China's Fujian Province, and Indonesia, require waivers in order to enter the CNMI. The CNMI Attorney General has the authority to discontinue issuance of entry permits to residents of any country or subdivision thereof upon determining that the government of the country is unable to provide adequate information on backgrounds of persons embarking from that location; that the CNMI cannot promptly and accurately assess the backgrounds of such persons; or that the admission of such persons poses an unacceptable risk to the security, health, and welfare of the CNMI.

China⁵³ and Russia. Tourists' access to the CNMI would depend, in part, on whether their countries were included in the CNMI-Guam visa waiver program under the pending legislation. While China and Russia are not currently included in the CNMI's entry permit waiver program, the CNMI allows applicants from these and other countries to apply for a visitor entry permit by mail or fax. In addition, according to the CNMI government, information on visitor permit applicants from China is collected and reviewed by the CNMI under the Electronic Visitor Entry Permit Program. Most applicants would now be required to apply in person at a U.S. embassy or consulate, some of which have interview appointment wait times of 30 days or longer. They also would pay at least \$131 for a U.S. visitor visa, while most CNMI visitor entry permits are provided for free. In addition, visitors from the Republic of Korea who are ages 55 and above and meet other requirements currently may enter the CNMI for up to 90 days under a comity entry permit. The Republic of Korea is not currently included in the U.S. Visa Waiver Program,⁵⁴ and citizens' access to the CNMI will depend in part on whether the country is included in the joint CNMI-Guam waiver program.

Pending Legislation Provisions for Foreign Investors

After federal immigration law applies, new CNMI foreign investors must meet more stringent investment requirements in order to obtain immigrant investor status, which allows investors to petition for U.S. permanent immigration status that is currently unavailable in the CNMI. New foreign

⁵³The CNMI and China currently have a memorandum of understanding that facilitates tourist travel to the CNMI. Under the pending legislation, this would likely be replaced by a U.S.-China memorandum of understanding that will be implemented in spring 2008 for Chinese tourists seeking to enter the United States. The U.S. memorandum facilitates Chinese leisure group travel to the United States by complying with Chinese regulatory requirements for Chinese tourists traveling abroad, but it has no effect on U.S. visa requirements.

⁵⁴In July 2006, we reported that DHS and State were consulting with 13 countries, including the Republic of Korea, seeking admission into the U.S. Visa Waiver Program. The other countries were Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Romania, and Slovakia. As noted earlier, in August 2007, Congress passed legislation that provides DHS with the authority to admit countries with refusal rates between 3 and 10 percent under the Visa Waiver Program if the countries meet certain conditions and if DHS implements certain security measures. The Republic of Korea's refusal rate in fiscal year 2007 was 4.4 percent. GAO, *Process for Admitting Additional Countries into the Visa Waiver Program*, [GAO-06-835R](#) (Washington, D.C.: July 28, 2006) and GAO, *Visa Waiver Program: Limitations with the Department of Homeland Security's Plan to Verify Departure of Foreign Nationals*, [GAO-08-458T](#) (Washington, D.C.: Feb. 28, 2008).

investors also could apply for nonimmigrant treaty investor status. The pending legislation also allows current CNMI foreign investors who meet certain requirements to convert from a CNMI investor to a federal nonimmigrant treaty investor during the transition period. However, key details regarding the transition period program remain unknown. In addition, the pending legislation eliminates the CNMI's retiree investor and long-term business entry permit programs. Instead, it allows these and other business travelers to apply to visit the CNMI under the terms for general visitors described above or under other categories in federal immigration law.

More Stringent Investment Requirements for Immigrant Foreign Investors

After federal immigration laws apply, new foreign investors in the CNMI would have to meet the more stringent investment requirements imposed by federal law in order to be awarded immigrant investor status (EB-5). Under federal immigration law, foreign investor immigrant status generally requires the establishment of a business creating at least 10 full-time jobs and an investment of at least \$1 million.⁵⁵ However, U.S. investment requirements vary depending on the employment level in the area of investment; if the CNMI were considered a targeted employment area, the minimum investment required would be \$500,000.⁵⁶ According to DHS, qualification under the EB-5 program provides U.S. lawful permanent resident status after a 2-year period of conditional status and after demonstration of the required job creation.

In contrast, current CNMI law grants foreign investor status to qualified investors to engage in business in the CNMI for as long as they maintain an investment of at least \$250,000 by an individual in a single investment or \$100,000 per person in an aggregate investment exceeding \$2 million.⁵⁷ An applicant must be present in the CNMI to apply. The CNMI also considers the length of time the business is expected to operate, the number and type of jobs it would create, the extent to which it would employ nonresidents, its impact on power and water resources, and other factors. While the CNMI status requires a lower investment than the U.S. EB-5 program, it does not allow aliens to petition for permanent immigration status in the United States, as does the EB-5.

⁵⁵The new business must be established after 1990.

⁵⁶Federal law requires investments of between \$1 million and \$3 million in a high-employment area.

⁵⁷CNMI regulations for foreign investors also require a \$100,000 security deposit; however, CNMI officials were unable to verify this requirement.

The U.S. immigrant investor petition has a fee of \$1,435, plus a \$131 visa application fee, and visa issuance fees that vary by country. The CNMI long-term business entry permit fee is \$1,000, and the permit is valid for 2 years. The CNMI investor permit has a one-time fee ranging from \$500 to \$2,500, in addition to a one-time investment certificate fee of \$10,000. (See app. III.)

As an alternative to applying for U.S. immigrant investor status, new investors could apply for U.S. nonimmigrant treaty investor status (E-2). Under this status, an alien may enter the United States to develop and direct the operations of an enterprise in which he or she has invested or is in the process of investing a substantial amount of capital.⁵⁸ This category requires that the investor be a national of a country that has an appropriate treaty with the United States.⁵⁹ Though a specific financial threshold is not required by law, the capital must be substantial in relation to either the total purchase price or the cost of creation of the enterprise, must be sufficient to ensure the investor's financial commitment to successful operation of the enterprise, and must be of a magnitude to support the likelihood that the investor will successfully develop and direct the enterprise.⁶⁰ However, this status does not provide a path to apply for permanent resident status.

Grandfathered Status for Foreign Investors during the Transition Period

The pending legislation allows current CNMI foreign investors to remain in the CNMI as investors after the start of the transition period by authorizing DHS to provide CNMI-only nonimmigrant E-2 treaty investor status to those who have been admitted to the CNMI in long-term investor status under CNMI immigration laws before the start of the transition program. These "grandfathered" foreign investors attaining CNMI-only nonimmigrant status would not have to meet the federal treaty

⁵⁸Aliens may also enter under E-1 treaty trader status to carry on international trade of a substantial nature.

⁵⁹Treaty countries are defined as foreign states with which a qualifying treaty of friendship, commerce, or navigation, or its equivalent, exists with the United States.

⁶⁰Generally, the lower the cost of the enterprise, the higher, proportionately, the investment must be to be considered a substantial amount of capital. In addition, for an E-2 visa, investment is defined as the placing of capital at commercial risk with the objective of generating a profit, and the investor must be in possession of and have total control over the capital being invested. The capital must be subject to loss if investment fortunes reverse, must be the investor's unsecured personal business capital or capital secured by personal assets, and must be irrevocably committed to the enterprise.

requirements for E-2 nonimmigrant foreign investor status during the transition period. In order to be grandfathered, the investor must have continuously maintained residence in the CNMI under long-term investor status, must be otherwise admissible, and must maintain the investment that formed the basis for such long-term investor status.⁶¹ It is not clear whether the grandfathered status would cover current holders of the CNMI's long-term business permit, which requires an investment of at least \$150,000 in a public organization or at least \$250,000 in a private investment, in addition to current holders of the CNMI foreign investment permit. The legislation is silent on the length of time for which admission is authorized as a CNMI-only treaty investor, and it requires DHS to promulgate implementing regulations 60 days before the start of the transition program. Currently, federal law allows E admission for up to a 2-year period of initial stay and allows the investor to apply for renewal. Under federal regulations for E-2 visas, spouses or children may apply to join foreign investors under the E-2 visa, and spouses are authorized to work under an E-2 visa. Though regulations must first be developed for implementation, according to DHS, the regulations would likely create a new kind of E-2 visa applicable only to these grandfathered foreign investors that would include the CNMI financial threshold requirements for investment.

Elimination of CNMI Retiree Investor and Long-Term Business Permit Programs

Two other CNMI investor programs would be eliminated by the pending legislation. One of these programs is the CNMI's current retiree investor entry permit, which has no equivalent under U.S. law. To qualify for the permit and corresponding certificate, an applicant must be older than 55 years and must have a minimum investment of \$100,000 (or \$75,000 on the islands of Tinian or Rota) in residential property, among other requirements. In addition, the CNMI's long-term business entry permit, which allows individuals investing at least \$150,000 in a public organization or at least \$250,000 in a private investment and whose business activities have been approved and certified by the CNMI Secretary of Commerce to enter and exit the CNMI for 2 years, would be eliminated by the application of federal immigration laws. Nonimmigrant investors would instead be able to apply for the U.S. E-2 treaty investor visa.⁶² As noted above, it is not clear whether current holders of the

⁶¹Other requirements must be developed by DHS and published as regulations at least 60 days before the start of the transition period.

⁶²As noted above, during the transition period, CNMI foreign investors converting to E-2 status do not have to meet the treaty requirements for E-2 visa holders.

CNMI's long-term business permit would be grandfathered as treaty investors. In addition, under federal law, other business travelers could no longer enter under any CNMI permit category but could seek admission under an appropriate federal nonimmigrant visa or visa waiver.

DHS May Study the Creation of CNMI-Only Visas for Foreign Investors and Other Nonworkers

The pending federal legislation allows the Governors of the CNMI and Guam to request that DHS study the feasibility of creating additional CNMI- or Guam-only nonimmigrant visas to address needs not otherwise met by the legislation. These visas may include special nonimmigrant visa categories for investors and retirees. The visas also may include visa categories for students;⁶³ however, they may not include nonimmigrant status for workers in the CNMI or Guam. If DHS found that such additional visas were necessary, it would have to ask Congress to authorize their creation.

Agency Comments and Our Evaluation

We provided a draft of this report to officials within the U.S. Departments of Homeland Security, the Interior, and Labor and within the CNMI government for review and comment. We received written comments on the draft report from the Department of Homeland Security, the Department of the Interior, and the CNMI government, which are reprinted in appendixes VI, VII, and VIII. We also received technical comments from the Department of Homeland Security, the Department of the Interior, and the CNMI government. We incorporated their comments as appropriate. The Department of Labor had no comments. We also provided a draft for technical review to the U.S. Department of State, and State had no comments. The Departments of Homeland Security and the Interior generally agreed with our findings regarding the pending legislation. The CNMI government disagreed with some key findings related to the pending legislation.

The Department of Homeland Security commented that aliens in the CNMI could seek protection from persecution or torture, saying that the

⁶³ CNMI and federal immigration laws currently provide for the admission of students. To qualify for a U.S. F visa under federal law, students must demonstrate appropriate financial support and must show proof of admission by an approved school, among other requirements. F visas are issued for the duration of the period in which the student is pursuing a full course of study, and spouses and minor children are allowed to accompany the F-visa holder in some circumstances. Related nonimmigrant categories available for study purposes include J exchange visitors and M vocational students.

department is mindful of U.S. government treaty obligations during the transition period. While we had included information on this topic in the draft report, we further clarified the information in response to the department's comments. The department also noted that the pending legislation would have direct effects on U.S. Customs and Border Protection facilities, staffing, and training requirements. This topic was beyond the scope of our study.

The Department of the Interior generally agreed with our findings, saying that the report presents a fair and objective study on the effect of the pending legislation.

The CNMI government disagreed with our analysis of the legislation in three particular areas. First, the CNMI government contended that the legislation allows the exemptions from the numerical limitation on H visas to be extended beyond the end of the transition period in 2013. We continue to interpret the legislation to allow for an extension of the CNMI-only work permit program beyond 2013 at the discretion of the Secretary of Labor but not to allow for an extension beyond 2013 of other provisions of the transition program, including the exemptions from the numerical limitations on H visas.⁶⁴ Because the provision of the pending legislation authorizing exemptions from the H visa caps for aliens entering the CNMI confers no specific authority for extending this exemption beyond 2013, nor does any other related provision confer this authority, the exemption could not be extended beyond 2013 without further legislation. Second, the CNMI disagreed with our interpretation that the H visas issued under the cap exemptions are a separate process from the CNMI-only work permit program. According to the CNMI's interpretation, employers of workers admitted under H visas would have to obtain a CNMI-only work permit. We continue to interpret the H visa cap exemptions and the CNMI-only permit program as separate processes, because the CNMI-only work permits are to be issued for workers who would not otherwise be eligible for admission under U.S. immigration law. As H visas are clearly a part of U.S. immigration law, workers entering the CNMI with an H visa are necessarily excluded from the CNMI-only permit process, as are workers entering under all other available immigrant and nonimmigrant categories in U.S. immigration law. Third, the CNMI contended that we should not

⁶⁴Both the CNMI's comments and the GAO response rely on H.R. 3079, passed by the House, as the basis for interpretation. Under S. 2739, pending in the Senate, the transition period would end December 31, 2014.

base any further work regarding the impact of the legislation on the CNMI economy on a single legal interpretation. While the legislation is highly technical, we believe we have provided a reasonable, objective interpretation of the legislation that is consistent with the implementing agencies' views. As such, we believe our interpretation of the legislation can be used appropriately as the basis of further work on the potential economic impact of the legislation, while acknowledging the range of possible federal decisions regarding implementation of the legislation. Officials from the Department of Homeland Security, the agency responsible for implementing and administering the provisions of the transition period under the pending legislation, agreed in interviews with our interpretations of the above provisions. The CNMI government also recommended that the draft report be provided to the U.S. Department of Justice for comment. We did not provide the draft report to the Department of Justice for review because the pending legislation provides a limited role for the department.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the report date. We will then provide copies of this report to the U.S. Secretaries of Homeland Security, the Interior, Labor, and State, and to the Governor of the CNMI. We will make copies available to others on request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staffs have questions about this report, please contact me at (202) 512-3149 or at gootnickd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IX.



David Gootnick
Director, International Affairs and Trade

Appendix I: Scope and Methodology

To complete our work, we reviewed current immigration laws of the Commonwealth of the Northern Mariana Islands (CNMI), U.S. immigration law, and pending legislation that would apply U.S. immigration law to the CNMI. To examine CNMI immigration law, we reviewed relevant portions of the Nonresident Workers Act, the Northern Mariana Islands Administrative Code, the Commonwealth Employment Act of 2007, and related regulations, as well as other immigration and labor laws and agreements. We did not review all CNMI laws and regulations. Our discussion of CNMI laws and regulations was based in part upon secondary sources, including information provided by CNMI officials. We also visited the CNMI, where we interviewed officials in the CNMI Office of the Governor, the Department of Immigration, the Department of Labor, the Department of Commerce, and the Marianas Visitors Authority. We conducted additional interviews with CNMI officials in Washington, D.C. In addition, we reviewed CNMI agreements with other countries, including China and the Philippines, regarding foreign workers. We also reviewed CNMI documents explaining immigration laws and procedures to non-U.S. citizens.

To examine U.S. immigration law, we reviewed the U.S. Immigration and Nationality Act (INA) and related regulations.¹ We also interviewed U.S. Department of Homeland Security officials, and we reviewed information from the U.S. Department of State and U.S. Citizenship and Immigration Services related to visa and petition application fees and procedures. We did not review the extent to which CNMI or U.S. laws were properly enforced or implemented.

To examine the relationship between the CNMI and the United States, we reviewed the CNMI-U.S. Covenant² and the law applying U.S. minimum wage to the CNMI.³ We also reviewed proposed legislation applying U.S. immigration law to the CNMI, including H.R. 3079, passed by the House of Representatives, and S. 2739, pending in the Senate. In addition, we reviewed the House Committee on Natural Resources Report for H.R.

¹8 U.S.C. §1101 et. seq.

²Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. No. 94-241, § 1, 90 Stat. 263 (Mar. 24, 1976) and 48 U.S.C. § 1801).

³U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. No. 110-28, §8103, 121 Stat. 188 (May 25, 2007)).

3079.⁴ We interviewed officials from the U.S. Department of Homeland Security and the U.S. Department of the Interior. We also reviewed analyses of the pending legislation and related studies by GAO, the Congressional Budget Office, and the Congressional Research Service.

We conducted this performance audit from December 2007 to March 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.

⁴H.R. Rep. 110-469, Amending the Joint Resolution Approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands, and for Other Purposes (Dec. 4, 2007).

Appendix II: U.S. Nonimmigrant Classes of Admission

Foreign nationals seeking to enter the United States temporarily may apply for entry under the following classes of admission:

Class	Description
Transit aliens	
C-1	Aliens in continuous and immediate transit through the United States
C-2	Aliens in transit to the United Nations Headquarters District
C-3	Foreign government officials, attendants, servants, and personal employees, and spouses and children in transit
Temporary visitors for business	
B-1	Temporary visitors for business
GB	Visa Waiver Program—temporary visitors for business to Guam
WB	Visa Waiver Program—temporary visitors for business
Temporary visitors for pleasure	
B-2	Temporary visitors for pleasure
GT	Visa Waiver Program—temporary visitors for pleasure to Guam
WT	Visa Waiver Program—temporary visitors for pleasure
Temporary workers and trainees	
H-1B	Temporary workers with “specialty occupation”
H-1B1	Chile and Singapore Free Trade Agreement Aliens
H-1C	Nurses under the Nursing Relief for Disadvantaged Areas Act of 1999
H-2A	Seasonal agricultural workers
H-2B	Seasonal nonagricultural workers
H-2R	Returning H-2B workers
H-3	Trainees
H-4	Spouses and children of H-1, H-2, or H-3 visa holders
O-1	Temporary workers with extraordinary ability or achievement in the sciences, arts, education, business, or athletics
O-2	Temporary workers accompanying and assisting O-1 visa holders
O-3	Spouses and children of O-1 and O-2 visa holders
P-1	Temporary workers—internationally recognized athletes or entertainers for a specific competition or performance
P-2	Temporary workers—artists or entertainers under reciprocal exchange programs with a similar organization of a foreign state
P-3	Temporary workers—artists or entertainers under culturally unique programs
P-4	Spouses and children of P-1, P-2, or P-3 visa holders
Q-1	Temporary workers in international cultural exchange programs
R-1	Temporary workers in religious occupations
R-2	Spouses and children of R-1 visa holders
TN	North American Free Trade Agreement (NAFTA) professional workers

Appendix II: U.S. Nonimmigrant Classes of Admission

Class	Description
TD	Spouses and children of TN visa holders
Treaty traders and investors	
E-1	Treaty traders and spouses and children
E-2	Treaty investors and spouses and children
E-3	Australian Free Trade Agreement principals and spouses and children
Intracompany transferees	
L-1	Intracompany transferees
L-2	Spouses and children of L-1 visa holders
Representatives of foreign information media	
I-1	Representatives of foreign information media and spouses and children
Students	
F-1	Students—academic institutions
F-2	Spouses and children of F-1 visa holders
F-3	Canadian or Mexican national commuter students—academic institutions
M-1	Students—vocational/nonacademic institutions
M-2	Spouses and children of M-1 visa holders
M-3	Canadian or Mexican national commuter students—vocational/nonacademic institutions
Exchange visitors	
J-1	Exchange visitors
J-2	Spouses and children of J-1 visa holders
Other categories	
A-1	Ambassadors, public ministers, career diplomatic or consular officers, and spouses and children
A-2	Other foreign government officials or employees and spouses and children
A-3	Attendants, servants, or personal employees of A-1 and A-2 visa holders and spouses and children
BE	Bering Strait Agreement aliens
FSM	Federated States of Micronesia nationals
G-1	Principal resident representatives of recognized foreign member governments to international organizations, staff, and spouses and children
G-2	Temporary representatives of recognized foreign member governments to international organizations and spouses and children
G-3	Representatives of unrecognized or nonmember foreign governments to international organizations and spouses and children
G-4	Officers or employees of unrecognized international organizations and spouses and children
G-5	Attendants, servants, or personal employees of G-1, G-2, G-3, or G-4 visa holders and spouses and children
K-1	Alien fiancés(ees) of U.S. citizens
K-2	Children of K-1 visa holders
K-3	Alien spouses of U.S. citizens
K-4	Children of K-3 visa holders

Appendix II: U.S. Nonimmigrant Classes of Admission

Class	Description
MIS	Republic of the Marshall Islands nationals
N-1 to N-7	North Atlantic Treaty Organization (NATO) aliens, spouses, and children
N-8	Parents of international organization special immigrants
N-9	Children of N-8 visa holders or international organization special immigrants
PAL	Republic of Palau nationals
Q-2	Irish Peace Process Cultural and Training Program aliens
Q-3	Spouses and children of Q-2 visa holders
T-1 to T-5	Victims of a severe form of trafficking and spouses, children, parents, and siblings
U-1 to U-4	Aliens suffering physical or mental abuse as victims of criminal activity and spouses, children, and parents
V-1 to V-3	Spouses and children of a lawful permanent resident who has been waiting 3 years or more for immigrant visas and dependents

Source: U.S. Department of Homeland Security.

Appendix III: U.S. and CNMI Fees for Foreign Workers, Tourists, and Foreign Investors

	U.S. fee	CNMI fee	Transition period fee
Foreign workers (fees paid by employers)	<ul style="list-style-type: none"> Specialty workers (H-1B): \$320 to \$2,320 for petition (range includes supplemental fees of \$750 or \$1,500 and fraud prevention fee of \$500 required for some petitions); associated visa typically valid for up to 3 years Agricultural (H-2A): \$320 for petition and \$100 plus \$10 for each additional worker for DOL labor certification (to a maximum of \$1,000); associated visa typically valid for 1 year Non-agricultural (H-2B): \$470 for petition (\$320 plus \$150 fraud prevention fee); associated visa valid for up to 1 year 	<ul style="list-style-type: none"> Foreign worker (706K): \$250 per year 	<ul style="list-style-type: none"> \$150 fee paid annually by employers under CNMI-only visa to fund vocational education in the CNMI Other fees for CNMI-only permit to be determined by federal regulations U.S. fees that apply to existing federal programs
Tourists (fees paid by tourists)	<ul style="list-style-type: none"> Temporary visitor for business (B-1), pleasure (B-2), or combined (B1-B2): generally, \$131 visa application fee, and visa issuance fees varying by country; valid for periods ranging from 1 to 10 years Visa waiver: no fee or small fee for arrivals at land borders; valid for up to 90 days 	<ul style="list-style-type: none"> Tourist (703A): no fee or \$100 if submitted 7 days or less from intended arrival; valid for up to 30 days Entry permit waiver: no fee; valid for up to 90 days 	<ul style="list-style-type: none"> U.S. fees that apply to existing federal visas
Foreign investors (fees paid by investors)	<ul style="list-style-type: none"> Immigrant investor status: fee of \$1,435 for initial petition, plus \$131 visa application fee, and visa issuance fees varying by country Treaty investor (E-2): \$320 for up to 2 years, plus \$131 visa application fee, and visa issuance fees varying by country 	<ul style="list-style-type: none"> Foreign investor (706G): one-time permit fee ranging from \$500 to \$2,500, depending on investment level, and one-time certificate fee of \$10,000 Long-term business (706N): \$1,000; valid for 2 years 	<ul style="list-style-type: none"> CNMI-only E-2 visa requirements to be determined by federal regulations U.S. fees that apply to existing federal petitions and visas

Source: GAO analysis of pending legislation and information from the U.S. Department of Homeland Security, U.S. Department of Labor, U.S. Department of State, and the CNMI government.

Note: This table includes only petition fees and some visa or permit application fees, as of January 2008. U.S. fees include Department of Homeland Security petition fees, Department of State visa fees, and Department of Labor fees for labor certification. Some fees may be waived. The table omits renewal and status adjustment fees; biometric fees; fees for expedited service; user fees, such as immigration inspection fees included in the cost of airline tickets; and legal costs. H-1B petition renewal fees are generally the same as the initial petition fees; however, the \$500 fraud prevention and detection fee is required only the first time a petitioner files for a worker. The table omits other costs that may be associated with hiring a foreign worker, such as costs related to worker health examinations and care, transportation, and benefits. It also omits nongovernment fees that may be associated with tourist visas, such as those charged by travel agencies. In addition to the employer fees listed above, foreign workers may be responsible for U.S. visa fees. U.S. visa fees generally include a \$131 application fee and may include an issuance fee, depending on the country. Foreign workers in the CNMI are responsible for an annual alien registration fee of \$25.

Appendix IV: Country Participation in Current Waiver Programs in the United States, the CNMI, and Guam

	U.S. Visa Waiver Program ^a	CNMI entry permit waiver program ^b	Guam visa waiver program
Andora	Yes	Yes	Yes
Australia	Yes	Yes	Yes
Austria	Yes	Yes	Yes
Belgium	Yes	Yes	Yes
Brunei	Yes	Yes	Yes
Denmark	Yes	Yes	Yes
Finland	Yes	Yes	Yes
France	Yes	Yes	Yes
Germany	Yes	Yes	Yes
Hong Kong^c	No	No	Yes
Iceland	Yes	Yes	Yes
Indonesia^c	No	No (limited for shipping)	Yes
Ireland	Yes	Yes	Yes
Italy	Yes	Yes	Yes
Japan	Yes	Yes	Yes
Liechtenstein	Yes	Yes	Yes
Luxembourg	Yes	Yes	Yes
Malaysia^c	No	No (police clearance)	Yes
Monaco	Yes	Yes	Yes
Nauru^c	No	No	Yes
Netherlands	Yes	Yes	Yes
New Zealand	Yes	Yes	Yes
Norway	Yes	Yes	Yes
Papua New Guinea^c	No	No	Yes
Portugal	Yes	Yes	Yes
Republic of Korea^c	No	No	Yes
San Marino	Yes	Yes	Yes
Singapore	Yes	Yes	Yes
Slovenia	Yes	Yes	Yes
Solomon Islands^c	No	No	Yes
Spain	Yes	Yes	Yes
Sweden	Yes	Yes	Yes
Switzerland	Yes	Yes	Yes

Appendix IV: Country Participation in Current Waiver Programs in the United States, the CNMI, and Guam

	U.S. Visa Waiver Program^a	CNMI entry permit waiver program^b	Guam visa waiver program
Taiwan^c	No	No	Yes
United Kingdom	Yes	Yes	Yes
Vanuatu^c	No	No	Yes
Western Samoa^c	No	No	Yes

Source: GAO analysis of U.S. and CNMI immigration laws.

^aIn July 2006, we reported that DHS and State were consulting with 13 countries, including the Republic of Korea, seeking admission into the U.S. Visa Waiver Program. The other countries were Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Romania, and Slovakia. As noted earlier, in August 2007, Congress passed legislation that provides DHS with the authority to admit countries with refusal rates between 3 and 10 percent under the Visa Waiver Program if the countries meet certain conditions and if DHS implements certain security measures. The Republic of Korea's refusal rate in fiscal year 2007 was 4.4 percent. GAO, *Process for Admitting Additional Countries into the Visa Waiver Program*, GAO-06-835R (Washington, D.C.: July 28, 2006) and GAO, *Visa Waiver Program: Limitations with the Department of Homeland Security's Plan to Verify Departure of Foreign Nationals*, GAO-08-458T (Washington, D.C.: Feb. 28, 2008). While Canada is not included in the U.S. Visa Waiver Program, nationals of Canada may also, in most circumstances, qualify for visa-free travel to the United States, including Guam.

^bAn order of the CNMI Attorney General dated March 23, 2004 includes the Republic of Korea, Hong Kong, and Canada in the CNMI's permit waiver program, but CNMI officials said that this order was no longer in effect. The officials said that the CNMI currently waives permit requirements only for visitors from countries included in the U.S. Visa Waiver Program. They could not identify any document specifically revoking the 2004 order, and an official said the CNMI planned to issue clarification to the policy in the near future.

^cIndicates countries for which visa waiver participation for tourism or business differs among the United States, the CNMI, and Guam. Under U.S. visa waivers, visitors may enter for up to 90 days. Under CNMI entry permit waivers, the length of admission is also up to 90 days. Under Guam visa waivers, visitors may enter for up to 15 days, except that citizens from countries eligible for the U.S. Visa Waiver Program may enter for 90 days. This table does not include the Freely Associated States—the Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau—whose citizens are permitted to work in the CNMI and elsewhere in the United States under the Compacts of Free Association.

Appendix V: Northern Mariana Islands Immigration, Security, and Labor Act (H.R. 3079)

The Northern Mariana Islands Immigration, Security, and Labor Act (H.R. 3079) passed the House of Representatives on December 11, 2007, and was placed on the Senate calendar as Title VII of S. 2483 on December 14, 2007. On January 30, 2008, the Senate Committee on Energy and Natural Resources reported S. 1634, containing the text of H.R. 3079, as passed by the House. The text of the bill was included in S. 2616, introduced on February 8, 2008, and placed on the Senate calendar on February 11, 2008. The text of the bill with some revisions was also included in S. 2739, introduced on March 10, 2008, and placed on the Senate calendar on March 11, 2008. As of our issuance date, S. 2739 was pending in the Senate.

We re-printed the text of H.R. 3079, passed by the House, in this appendix.

110TH CONGRESS
1ST SESSION

H. R. 3079

AN ACT

To amend the joint resolution that approved the covenant establishing the Commonwealth of the Northern Mariana Islands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

2

1 **TITLE I—NORTHERN MARIANA**
2 **ISLANDS IMMIGRATION, SE-**
3 **CURITY, AND LABOR ACT**

4 **SECTION 101. SHORT TITLE.**

5 This title may be cited as the “Northern Mariana Is-
6 lands Immigration, Security, and Labor Act”.

7 **SEC. 102. STATEMENT OF CONGRESSIONAL INTENT.**

8 (a) IMMIGRATION AND GROWTH.—In recognition of
9 the need to ensure uniform adherence to long-standing
10 fundamental immigration policies of the United States, it
11 is the intention of the Congress in enacting this title—

12 (1) to ensure that effective border control pro-
13 cedures are implemented and observed, and that na-
14 tional security and homeland security issues are
15 properly addressed, by extending the immigration
16 laws (as defined in section 101(a)(17) of the Immi-
17 gration and Nationality Act (8 U.S.C. 1101
18 (a)(17)), to apply to the Commonwealth of the
19 Northern Mariana Islands (referred to in this title
20 as the “Commonwealth”), with special provisions to
21 allow for—

22 (A) the orderly phasing-out of the non-
23 resident contract worker program of the Com-
24 monwealth; and

•HR 3079 EH

3

1 (B) the orderly phasing-in of Federal re-
2 sponsibilities over immigration in the Common-
3 wealth; and

4 (2) to minimize, to the greatest extent prac-
5 ticable, potential adverse economic and fiscal effects
6 of phasing-out the Commonwealth's nonresident con-
7 tract worker program and to maximize the Common-
8 wealth's potential for future economic and business
9 growth by—

10 (A) encouraging diversification and growth
11 of the economy of the Commonwealth in accord-
12 ance with fundamental values underlying Fed-
13 eral immigration policy;

14 (B) recognizing local self-government, as
15 provided for in the Covenant To Establish a
16 Commonwealth of the Northern Mariana Is-
17 lands in Political Union With the United States
18 of America through consultation with the Gov-
19 ernor of the Commonwealth;

20 (C) assisting the Commonwealth in achiev-
21 ing a progressively higher standard of living for
22 citizens of the Commonwealth through the pro-
23 vision of technical and other assistance;

•HR 3079 EH

4

1 (D) providing opportunities for individuals
2 authorized to work in the United States, includ-
3 ing citizens of the freely associated states; and

4 (E) providing a mechanism for the contin-
5 ued use of alien workers, to the extent those
6 workers continue to be necessary to supplement
7 the Commonwealth's resident workforce, and to
8 protect those workers from the potential for
9 abuse and exploitation.

10 (b) AVOIDING ADVERSE EFFECTS.—In recognition of
11 the Commonwealth's unique economic circumstances, his-
12 tory, and geographical location, it is the intent of the Con-
13 gress that the Commonwealth be given as much flexibility
14 as possible in maintaining existing businesses and other
15 revenue sources, and developing new economic opportuni-
16 ties, consistent with the mandates of this title. This title,
17 and the amendments made by this title, should be imple-
18 mented wherever possible to expand tourism and economic
19 development in the Commonwealth, including aiding pro-
20 spective tourists in gaining access to the Commonwealth's
21 memorials, beaches, parks, dive sites, and other points of
22 interest.

•HR 3079 EH

5

1 **SEC. 103. IMMIGRATION REFORM FOR THE COMMON-**
2 **WEALTH.**

3 (a) AMENDMENT TO JOINT RESOLUTION APPROVING
4 COVENANT ESTABLISHING COMMONWEALTH OF THE
5 NORTHERN MARIANA ISLANDS.—The Joint Resolution
6 entitled “A Joint Resolution to approve the ‘Covenant To
7 Establish a Commonwealth of the Northern Mariana Is-
8 lands in Political Union with the United States of Amer-
9 ica’, and for other purposes”, approved March 24, 1976
10 (Public Law 94–241; 90 Stat. 263), is amended by adding
11 at the end the following new section:

12 **“SEC. 6. IMMIGRATION AND TRANSITION.**

13 “(a) APPLICATION OF THE IMMIGRATION AND NA-
14 TIONALITY ACT AND ESTABLISHMENT OF A TRANSITION
15 PROGRAM.—

16 “(1) IN GENERAL.—Subject to paragraphs (2)
17 and (3), effective on the first day of the first full
18 month commencing 1 year after the date of the en-
19 actment of the Northern Mariana Islands Immigra-
20 tion, Security, and Labor Act (hereafter referred to
21 as the ‘transition program effective date’), the provi-
22 sions of the ‘immigration laws’ (as defined in section
23 101(a)(17) of the Immigration and Nationality Act
24 (8 U.S.C. 1101(a)(17))) shall apply to the Common-
25 wealth of the Northern Mariana Islands (referred to

•HR 3079 EH

6

1 in this section as the ‘Commonwealth’), except as
2 otherwise provided in this section.

3 “(2) TRANSITION PERIOD.—There shall be a
4 transition period beginning on the transition pro-
5 gram effective date and ending on December 31,
6 2013, except as provided in subsections (b) and (d),
7 during which the Secretary of Homeland Security, in
8 consultation with the Secretary of State, the Attor-
9 ney General, the Secretary of Labor, and the Sec-
10 retary of the Interior, shall establish, administer,
11 and enforce a transition program to regulate immi-
12 gration to the Commonwealth, as provided in this
13 section (hereafter referred to as the ‘transition pro-
14 gram’).

15 “(3) DELAY OF COMMENCEMENT OF TRANSI-
16 TION PERIOD.—

17 “(A) IN GENERAL.—The Secretary of
18 Homeland Security, in the Secretary’s sole dis-
19 cretion, in consultation with the Secretary of
20 the Interior, the Secretary of Labor, the Sec-
21 retary of State, the Attorney General, and the
22 Governor of the Commonwealth, may determine
23 that the transition program effective date be
24 delayed for a period not to exceed more than
25 180 days after such date.

•HR 3079 EH

7

1 “(B) CONGRESSIONAL NOTIFICATION.—
2 The Secretary of Homeland Security shall no-
3 tify the Congress of a determination under sub-
4 paragraph (A) not later than 30 days prior to
5 the transition program effective date.

6 “(C) CONGRESSIONAL REVIEW.—A delay
7 of the transition program effective date shall
8 not take effect until 30 days after the date on
9 which the notification under subparagraph (B)
10 is made.

11 “(4) REQUIREMENT FOR REGULATIONS.—The
12 transition program shall be implemented pursuant to
13 regulations to be promulgated, as appropriate, by
14 the head of each agency or department of the United
15 States having responsibilities under the transition
16 program.

17 “(5) INTERAGENCY AGREEMENTS.—The Sec-
18 retary of Homeland Security, the Secretary of State,
19 the Secretary of Labor, and the Secretary of the In-
20 terior shall negotiate and implement agreements
21 among their agencies to identify and assign their re-
22 spective duties so as to ensure timely and proper im-
23 plementation of the provisions of this section. The
24 agreements should address, at a minimum, proced-
25 dures to ensure that Commonwealth employers have

•HR 3079 EH

8

1 access to adequate labor, and that tourists, students,
2 retirees, and other visitors have access to the Com-
3 monwealth without unnecessary delay or impedi-
4 ment. The agreements may also allocate funding be-
5 tween the respective agencies tasked with various re-
6 sponsibilities under this section.

7 “(6) CERTAIN EDUCATION FUNDING.—In addi-
8 tion to fees charged pursuant to section 286(m) of
9 the Immigration and Nationality Act (8 U.S.C.
10 1356(m)) to recover the full costs of providing adju-
11 dication services, the Secretary of Homeland Secu-
12 rity shall charge an annual supplemental fee of \$150
13 per nonimmigrant worker to each prospective em-
14 ployer who is issued a permit under subsection (d)
15 of this section during the transition period. Such
16 supplemental fee shall be paid into the Treasury of
17 the Commonwealth government for the purpose of
18 funding ongoing vocational educational curricula and
19 program development by Commonwealth educational
20 entities.

21 “(7) ASYLUM.—Section 208 of the Immigration
22 and Nationality Act (8 U.S.C. 1158) shall not apply
23 during the transition period to persons physically
24 present in the Commonwealth or arriving in the
25 Commonwealth (whether or not at a designated port

•HR 3079 EH

9

1 of arrival), including persons brought to the Com-
2 monwealth after having been interdicted in inter-
3 national or United States waters.

4 “(b) NUMERICAL LIMITATIONS FOR NONIMMIGRANT
5 WORKERS.—An alien, if otherwise qualified, may seek ad-
6 mission to Guam or to the Commonwealth during the
7 transition program as a nonimmigrant worker under sec-
8 tion 101(a)(15)(II) of the Immigration and Nationality
9 Act (8 U.S.C. 1101(a)(15)(H)) without counting against
10 the numerical limitations set forth in section 214(g) of
11 such Act (8 U.S.C. 1184(g)). This subsection does not
12 apply to any employment to be performed outside of Guam
13 or the Commonwealth. Not later than 3 years following
14 the transition program effective date, the Secretary of
15 Homeland Security shall issue a report to the Committee
16 on Energy and Natural Resources and the Committee on
17 the Judiciary of the Senate and the Committee on Natural
18 Resources and the Committee on the Judiciary of the
19 House of Representatives projecting the number of asylum
20 claims the Secretary anticipates following the termination
21 of the transition period, the efforts the Secretary has
22 made to ensure appropriate interdiction efforts, provide
23 for appropriate treatment of asylum seekers, and prepare
24 to accept and adjudicate asylum claims in the Common-
25 wealth.

•HR 3079 EH

10

1 “(c) NONIMMIGRANT INVESTOR VISAS.—

2 “(1) IN GENERAL.—Notwithstanding the treaty
3 requirements in section 101(a)(15)(E) of the Immi-
4 gration and Nationality Act (8 U.S.C.
5 1101(a)(15)(E)), during the transition period, the
6 Secretary of Homeland Security may, upon the ap-
7 plication of an alien, classify an alien as a CNMI-
8 only nonimmigrant under section 101(a)(15)(E)(ii)
9 of the Immigration and Nationality Act (8 U.S.C.
10 1101(a)(15)(E)(ii)) if the alien—

11 “(A) has been admitted to the Common-
12 wealth in long-term investor status under the
13 immigration laws of the Commonwealth before
14 the transition program effective date;

15 “(B) has continuously maintained resi-
16 dence in the Commonwealth under long-term
17 investor status;

18 “(C) is otherwise admissible; and

19 “(D) maintains the investment or invest-
20 ments that formed the basis for such long-term
21 investor status.

22 “(2) REQUIREMENT FOR REGULATIONS.—Not
23 later than 60 days before the transition program ef-
24 fective date, the Secretary of Homeland Security

•HR 3079 EH

11

1 shall publish regulations in the Federal Register to
2 implement this subsection.

3 “(d) SPECIAL PROVISION TO ENSURE ADEQUATE
4 EMPLOYMENT; COMMONWEALTH ONLY TRANSITIONAL
5 WORKERS.—An alien who is seeking to enter the Com-
6 monwealth as a nonimmigrant worker may be admitted
7 to perform work during the transition period subject to
8 the following requirements:

9 “(1) Such an alien shall be treated as a non-
10 immigrant described in section 101(a)(15) of the
11 Immigration and Nationality Act (8 U.S.C.
12 1101(a)(15)), including the ability to apply, if other-
13 wise eligible, for a change of nonimmigrant classi-
14 fication under section 248 of such Act (8 U.S.C.
15 1258) or adjustment of status under this section
16 and section 245 of such Act (8 U.S.C. 1255).

17 “(2) The Secretary of Homeland Security shall
18 establish, administer, and enforce a system for allo-
19 cating and determining the number, terms, and con-
20 ditions of permits to be issued to prospective em-
21 ployers for each such nonimmigrant worker de-
22 scribed in this subsection who would not otherwise
23 be eligible for admission under the Immigration and
24 Nationality Act (8 U.S.C. 1101 et seq.). In adopting
25 and enforcing this system, the Secretary shall also

•HR 3079 EH

12

1 consider, in good faith and not later than 30 days
2 after receipt by the Secretary, any comments and
3 advice submitted by the Governor of the Common-
4 wealth. This system shall provide for a reduction in
5 the allocation of permits for such workers on an an-
6 nual basis, to zero, during a period not to extend be-
7 yond December 31, 2013, unless extended pursuant
8 to paragraph 5 of this subsection, and shall take
9 into account the number of petitions granted under
10 subsection (i). In no event shall a permit be valid be-
11 yond the expiration of the transition period. This
12 system may be based on any reasonable method and
13 criteria determined by the Secretary of Homeland
14 Security to promote the maximum use of, and to
15 prevent adverse effects on wages and working condi-
16 tions of, workers authorized to be employed in the
17 United States, including lawfully admissible freely
18 associated state citizen labor. No alien shall be
19 granted nonimmigrant classification or a visa under
20 this subsection unless the permit requirements es-
21 tablished under this paragraph have been met.

22 “(3) The Secretary of Homeland Security shall
23 set the conditions for admission of such an alien
24 under the transition program, and the Secretary of
25 State shall authorize the issuance of nonimmigrant

•HR 3079 EH

13

1 visas for such an alien. Such a visa shall not be valid
2 for admission to the United States, as defined in
3 section 101(a)(38) of the Immigration and Nation-
4 ality Act (8 U.S.C. 1101(a)(38)), except admission
5 to the Commonwealth. An alien admitted to the
6 Commonwealth on the basis of such a visa shall be
7 permitted to engage in employment only as author-
8 ized pursuant to the transition program.

9 “(4) Such an alien shall be permitted to trans-
10 fer between employers in the Commonwealth during
11 the period of such alien’s authorized stay therein,
12 without permission of the employee’s current or
13 prior employer, within the alien’s occupational cat-
14 egory or another occupational category the Secretary
15 of Homeland Security has found requires alien work-
16 ers to supplement the resident workforce.

17 “(5)(A) Not later than 180 days prior to the
18 expiration of the transition period, or any extension
19 thereof, the Secretary of Labor, in consultation with
20 the Secretary of Homeland Security, the Secretary
21 of the Interior, and the Governor of the Common-
22 wealth, shall ascertain the current and anticipated
23 labor needs of the Commonwealth and determine
24 whether an extension of up to 5 years of the provi-
25 sions of this subsection is necessary to ensure an

•HR 3079 EH

14

1 adequate number of workers will be available for le-
2 gitimate businesses in the Commonwealth. For the
3 purpose of this subparagraph, a business shall not
4 be considered legitimate if it engages directly or in-
5 directly in prostitution, trafficking in minors, or any
6 other activity that is illegal under Federal or local
7 law. The determinations of whether a business is le-
8 gitimate and to what extent, if any, it may require
9 alien workers to supplement the resident workforce,
10 shall be made by the Secretary of Homeland Secu-
11 rity, in the Secretary's sole discretion.

12 “(B) If the Secretary of Labor determines that
13 such an extension is necessary to ensure an ade-
14 quate number of workers for legitimate businesses in
15 the Commonwealth, the Secretary of Labor may,
16 through notice published in the Federal Register,
17 provide for an additional extension period of up to
18 5 years.

19 “(C) In making the determination of whether
20 alien workers are necessary to ensure an adequate
21 number of workers for legitimate businesses in the
22 Commonwealth, and if so, the number of such work-
23 ers that are necessary, the Secretary of Labor may
24 consider, among other relevant factors—

•HR 3079 EH

15

1 “(i) government, industry, or independent
2 workforce studies reporting on the need, or lack
3 thereof, for alien workers in the Common-
4 wealth’s businesses;

5 “(ii) the unemployment rate of United
6 States citizen workers residing in the Common-
7 wealth;

8 “(iii) the unemployment rate of aliens in
9 the Commonwealth who have been lawfully ad-
10 mitted for permanent residence;

11 “(iv) the number of unemployed alien
12 workers in the Commonwealth;

13 “(v) any good faith efforts to locate, edu-
14 cate, train, or otherwise prepare United States
15 citizen residents, lawful permanent residents,
16 and unemployed alien workers already within
17 the Commonwealth, to assume those jobs;

18 “(vi) any available evidence tending to
19 show that United States citizen residents, law-
20 ful permanent residents, and unemployed alien
21 workers already in the Commonwealth are not
22 willing to accept jobs of the type offered;

23 “(vii) the extent to which admittance of
24 alien workers will affect the compensation, ben-
25 efits, and living standards of existing workers

•HR 3079 EH

16

1 within those industries and other industries au-
2 thorized to employ alien workers; and

3 “(viii) the prior use, if any, of alien work-
4 ers to fill those industry jobs, and whether the
5 industry requires alien workers to fill those
6 jobs.

7 “(6) The Secretary of Homeland Security may
8 authorize the admission of a spouse or minor child
9 accompanying or following to join a worker admitted
10 pursuant to this subsection.

11 “(c) PERSONS LAWFULLY ADMITTED UNDER THE
12 COMMONWEALTH IMMIGRATION LAW.—

13 “(1) PROHIBITION ON REMOVAL.—

14 “(A) IN GENERAL.—Subject to subpara-
15 graph (B), no alien who is lawfully present in
16 the Commonwealth pursuant to the immigration
17 laws of the Commonwealth on the transition
18 program effective date shall be removed from
19 the United States on the grounds that such
20 alien’s presence in the Commonwealth is in vio-
21 lation of section 212(a)(6)(A) of the Immigra-
22 tion and Nationality Act (8 U.S.C.
23 1182(a)(6)(A)), until the earlier of the date—

•HR 3079 EH

17

1 “(i) of the completion of the period of
2 the alien’s admission under the immigra-
3 tion laws of the Commonwealth; or

4 “(ii) that is 2 years after the transi-
5 tion program effective date.

6 “(B) LIMITATIONS.—Nothing in this sub-
7 section shall be construed to prevent or limit
8 the removal under subparagraph 212(a)(6)(A)
9 of the Immigration and Nationality Act (8
10 U.S.C. 1182(a)(6)(A)) of such an alien at any
11 time, if the alien entered the Commonwealth
12 after the date of the enactment of the Northern
13 Mariana Islands Immigration, Security, and
14 Labor Act, and the Secretary of Homeland Se-
15 curity has determined that the Government of
16 the Commonwealth has violated section 103(i)
17 of the Northern Mariana Islands Immigration,
18 Security, and Labor Act.

19 “(2) EMPLOYMENT AUTHORIZATION.—An alien
20 who is lawfully present and authorized to be em-
21 ployed in the Commonwealth pursuant to the immi-
22 gration laws of the Commonwealth on the transition
23 program effective date shall be considered authorized
24 by the Secretary of Homeland Security to be em-

•HR 3079 EH

18

1 employed in the Commonwealth until the earlier of the
2 date—

3 “(A) of expiration of the alien’s employ-
4 ment authorization under the immigration laws
5 of the Commonwealth; or

6 “(B) that is 2 years after the transition
7 program effective date.

8 “(3) REGISTRATION.—The Secretary of Home-
9 land Security may require any alien present in the
10 Commonwealth on or after the transition period ef-
11 fective date to register with the Secretary in such a
12 manner, and according to such schedule, as he may
13 in his discretion require. Paragraphs (1) and (2) of
14 this subsection shall not apply to any alien who fails
15 to comply with such registration requirement. Not-
16 withstanding any other law, the Government of the
17 Commonwealth shall provide to the Secretary all
18 Commonwealth immigration records or other infor-
19 mation that the Secretary deems necessary to assist
20 the implementation of this paragraph or other provi-
21 sions of the Northern Mariana Islands Immigration,
22 Security, and Labor Act. Nothing in this paragraph
23 shall modify or limit section 262 of the Immigration
24 and Nationality Act (8 U.S.C. 1302) or other provi-

•HR 3079 EH

1 sion of the Immigration and Nationality Act relating
2 to the registration of aliens.

3 “(4) REMOVABLE ALIENS.—Except as specifi-
4 cally provided in paragraph (1)(A) of this sub-
5 section, nothing in this subsection shall prohibit or
6 limit the removal of any alien who is removable
7 under the Immigration and Nationality Act.

8 “(5) PRIOR ORDERS OF REMOVAL.—The Sec-
9 retary of Homeland Security may execute any ad-
10 ministratively final order of exclusion, deportation or
11 removal issued under authority of the immigration
12 laws of the United States before, on, or after the
13 transition period effective date, or under authority of
14 the immigration laws of the Commonwealth before
15 the transition period effective date, upon any subject
16 of such order found in the Commonwealth on or
17 after the transition period effective date, regardless
18 whether the alien has previously been removed from
19 the United States or the Commonwealth pursuant to
20 such order.

21 “(f) EFFECT ON OTHER LAWS.—The provisions of
22 this section and of the immigration laws, as defined in
23 section 101(a)(17) of the Immigration and Nationality Act
24 (8 U.S.C. 1101(a)(17)), shall, on the transition program
25 effective date, supersede and replace all laws, provisions,

1 or programs of the Commonwealth relating to the admis-
2 sion of aliens and the removal of aliens from the Common-
3 wealth.

4 “(g) ACCRUAL OF TIME FOR PURPOSES OF SECTION
5 212(A)(9)(B) OF THE IMMIGRATION AND NATIONALITY
6 ACT.—No time that an alien is present in the Common-
7 wealth in violation of the immigration laws of the Com-
8 monwealth shall be counted for purposes of inadmissibility
9 under section 212(a)(9)(B) of the Immigration and Na-
10 tionality Act (8 U.S.C. 1182(a)(9)(B)).

11 “(h) REPORT ON NONRESIDENT GUESTWORKER
12 POPULATION.—The Secretary of the Interior, in consulta-
13 tion with the Secretary of Homeland Security, and the
14 Governor of the Commonwealth, shall report to the Con-
15 gress not later than 2 years after the date of the enact-
16 ment of the Northern Mariana Islands Immigration, Secu-
17 rity, and Labor Act. The report shall include—

18 “(1) the number of aliens residing in the Com-
19 monwealth;

20 “(2) a description of the legal status (under
21 Federal law) of such aliens;

22 “(3) the number of years each alien has been
23 residing in the Commonwealth;

24 “(4) the current and future requirements of the
25 Commonwealth economy for an alien workforce; and

1 “(5) such recommendations to the Congress, as
2 the Secretary may deem appropriate, related to
3 whether or not the Congress should consider permit-
4 ting lawfully admitted guest workers lawfully resid-
5 ing in the Commonwealth on such enactment date to
6 apply for long-term status under the immigration
7 and nationality laws of the United States.”.

8 (b) WAIVER OF REQUIREMENTS FOR NONIMMIGRANT
9 VISITORS.—The Immigration and Nationality Act (8
10 U.S.C. 1101 et seq.) is amended—

11 (1) in section 214(a)(1) (8 U.S.C.
12 1184(a)(1))—

13 (A) by striking “Guam” each place such
14 term appears and inserting “Guam or the Com-
15 monwealth of the Northern Mariana Islands”;
16 and

17 (B) by striking “fifteen” and inserting
18 “45”;

19 (2) in section 212(a)(7)(B) (8 U.S.C.
20 1182(a)(7)(B)), by amending clause (iii) to read as
21 follows:

22 “(iii) GUAM AND NORTHERN MARIANA
23 ISLANDS VISA WAIVER.—For provision au-
24 thorizing waiver of clause (i) in the case of
25 visitors to Guam or the Commonwealth of

22

1 the Northern Mariana Islands, see sub-
2 section (l).”; and

3 (3) by amending section 212(l) (8 U.S.C.
4 1182(l)) to read as follows:

5 “(l) GUAM AND NORTHERN MARIANA ISLANDS VISA
6 WAIVER PROGRAM.—

7 “(1) IN GENERAL.—The requirement of sub-
8 section (a)(7)(B)(i) may be waived by the Secretary
9 of Homeland Security, in the case of an alien apply-
10 ing for admission as a nonimmigrant visitor for busi-
11 ness or pleasure and solely for entry into and stay
12 in Guam or the Commonwealth of the Northern
13 Mariana Islands for a period not to exceed 45 days,
14 if the Secretary of Homeland Security, after con-
15 sultation with the Secretary of the Interior, the Sec-
16 retary of State, the Governor of Guam and the Gov-
17 ernor of the Commonwealth of the Northern Mar-
18 iana Islands, determines that—

19 “(A) an adequate arrival and departure
20 control system has been developed in Guam and
21 the Commonwealth of the Northern Mariana Is-
22 lands; and

23 “(B) such a waiver does not represent a
24 threat to the welfare, safety, or security of the

•HR 3079 EH

1 United States or its territories and common-
2 wealths.

3 “(2) ALIEN WAIVER OF RIGHTS.—An alien may
4 not be provided a waiver under this subsection un-
5 less the alien has waived any right—

6 “(A) to review or appeal under this Act an
7 immigration officer’s determination as to the
8 admissibility of the alien at the port of entry
9 into Guam or the Commonwealth of the North-
10 ern Mariana Islands; or

11 “(B) to contest, other than on the basis of
12 an application for withholding of removal under
13 section 241(b)(3) of this Act or under the Con-
14 vention Against Torture, or an application for
15 asylum if permitted under section 208, any ac-
16 tion for removal of the alien.

17 “(3) REGULATIONS.— All necessary regulations
18 to implement this subsection shall be promulgated
19 by the Secretary of Homeland Security, in consulta-
20 tion with the Secretary of the Interior and the Sec-
21 retary of State, on or before the 180th day after the
22 date of the enactment of the Northern Mariana Is-
23 lands Immigration, Security, and Labor Act. The
24 promulgation of such regulations shall be considered
25 a foreign affairs function for purposes of section

•HR 3079 EH

24

1 553(a) of title 5, United States Code. At a min-
2 imum, such regulations should include, but not nec-
3 essarily be limited to—

4 “(A) a listing of all countries whose na-
5 tionals may obtain the waiver also provided by
6 this subsection, except that such regulations
7 shall provide for a listing of any country from
8 which the Commonwealth has received a signifi-
9 cant economic benefit from the number of visi-
10 tors for pleasure within the one-year period pre-
11 ceeding the date of the enactment of the North-
12 ern Mariana Islands Immigration, Security, and
13 Labor Act, unless the Secretary of Homeland
14 Security determines that such country’s inclu-
15 sion on such list would represent a threat to the
16 welfare, safety, or security of the United States
17 or its territories; and

18 “(B) any bonding requirements for nation-
19 als of some or all of those countries who may
20 present an increased risk of overstays or other
21 potential problems, if different from such re-
22 quirements otherwise provided by law for non-
23 immigrant visitors.

24 “(4) FACTORS.—In determining whether to
25 grant or continue providing the waiver under this

•HR 3079 EH

25

1 subsection to nationals of any country, the Secretary
2 of Homeland Security, in consultation with the Sec-
3 retary of the Interior and the Secretary of State,
4 shall consider all factors that the Secretary deems
5 relevant, including electronic travel authorizations,
6 procedures for reporting lost and stolen passports,
7 repatriation of aliens, rates of refusal for non-
8 immigrant visitor visas, overstays, exit systems, and
9 information exchange.

10 “(5) SUSPENSION.—The Secretary of Home-
11 land Security shall monitor the admission of non-
12 immigrant visitors to Guam and the Commonwealth
13 of the Northern Mariana Islands under this sub-
14 section. If the Secretary determines that such admis-
15 sions have resulted in an unacceptable number of
16 visitors from a country remaining unlawfully in
17 Guam or the Commonwealth of the Northern Mar-
18 iana Islands, unlawfully obtaining entry to other
19 parts of the United States, or seeking withholding of
20 removal or asylum, or that visitors from a country
21 pose a risk to law enforcement or security interests
22 of Guam or the Commonwealth of the Northern
23 Mariana Islands or of the United States (including
24 the interest in the enforcement of the immigration
25 laws of the United States), the Secretary shall sus-

•HR 3079 EH

26

1 pend the admission of nationals of such country
2 under this subsection. The Secretary of Homeland
3 Security may in the Secretary's discretion suspend
4 the Guam and Northern Mariana Islands visa waiver
5 program at any time, on a country-by-country basis,
6 for other good cause.

7 “(6) ADDITION OF COUNTRIES.—The Governor
8 of Guam and the Governor of the Commonwealth of
9 the Northern Mariana Islands may request the Sec-
10 retary of the Interior and the Secretary of Home-
11 land Security to add a particular country to the list
12 of countries whose nationals may obtain the waiver
13 provided by this subsection, and the Secretary of
14 Homeland Security may grant such request after
15 consultation with the Secretary of the Interior and
16 the Secretary of State, and may promulgate regula-
17 tions with respect to the inclusion of that country
18 and any special requirements the Secretary of
19 Homeland Security, in the Secretary's sole discre-
20 tion, may impose prior to allowing nationals of that
21 country to obtain the waiver provided by this sub-
22 section.”.

23 (c) SPECIAL NONIMMIGRANT CATEGORIES FOR GUAM
24 AND THE COMMONWEALTH OF THE NORTHERN MARIANA
25 ISLANDS.—The Governor of Guam and the Governor of

•HR 3079 EII

27

1 the Commonwealth of the Northern Mariana Islands (re-
2 ferred to in this subsection as “CNMI”) may request that
3 the Secretary of Homeland Security study the feasibility
4 of creating additional Guam or CNMI-only nonimmigrant
5 visas to the extent that existing nonimmigrant visa cat-
6 egories under the Immigration and Nationality Act do not
7 provide for the type of visitor, the duration of allowable
8 visit, or other circumstance. The Secretary of Homeland
9 Security may review such a request, and, after consulta-
10 tion with the Secretary of State and the Secretary of the
11 Interior, shall issue a report to the Committee on Energy
12 and Natural Resources and the Committee on the Judici-
13 ary of the Senate and the Committee on Natural Re-
14 sources and the Committee on the Judiciary of the House
15 of Representatives with respect to the feasibility of cre-
16 ating those additional Guam or CNMI-only visa cat-
17 egories. Consideration of such additional Guam or CNMI-
18 only visa categories may include, but are not limited to,
19 special nonimmigrant statuses for investors, students, and
20 retirees, but shall not include nonimmigrant status for the
21 purpose of employment in Guam or the CNMI.

22 (d) INSPECTION OF PERSONS ARRIVING FROM THE
23 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS;
24 GUAM AND NORTHERN MARIANA ISLANDS-ONLY VISAS
25 NOT VALID FOR ENTRY INTO OTHER PARTS OF THE

•HR 3079 EH

28

1 UNITED STATES.—Section 212(d)(7) of the Immigration
2 and Nationality Act (8 U.S.C. 1182(d)(7)) is amended by
3 inserting “the Commonwealth of the Northern Mariana
4 Islands,” after “Guam,”.

5 (e) TECHNICAL ASSISTANCE PROGRAM.—

6 (1) IN GENERAL.—The Secretary of the Inte-
7 rior, in consultation with the Governor of the Com-
8 monwealth, the Secretary of Labor, and the Sec-
9 retary of Commerce, and as provided in the Inter-
10 agency Agreements required to be negotiated under
11 section 6(a)(4) of the Joint Resolution entitled “A
12 Joint Resolution to approve the ‘Covenant To Estab-
13 lish a Commonwealth of the Northern Mariana Is-
14 lands in Political Union with the United States of
15 America’, and for other purposes”, approved March
16 24, 1976 (Public Law 94–241), as added by sub-
17 section (a), shall provide—

18 (A) technical assistance and other support
19 to the Commonwealth to identify opportunities
20 for, and encourage diversification and growth
21 of, the economy of the Commonwealth;

22 (B) technical assistance, including assist-
23 ance in recruiting, training, and hiring of work-
24 ers, to assist employers in the Commonwealth
25 in securing employees first from among United

•HR 3079 EH

29

1 States citizens and nationals resident in the
2 Commonwealth and if an adequate number of
3 such workers are not available, from among
4 legal permanent residents, including lawfully
5 admissible citizens of the freely associated
6 states; and

7 (C) technical assistance, including assist-
8 ance to identify types of jobs needed, identify
9 skills needed to fulfill such jobs, and assistance
10 to Commonwealth educational entities to de-
11 velop curricula for such job skills to include
12 training teachers and students for such skills.

13 (2) CONSULTATION.—In providing such tech-
14 nical assistance under paragraph (1), the Secretaries
15 shall—

16 (A) consult with the Government of the
17 Commonwealth, local businesses, regional
18 banks, educational institutions, and other ex-
19 perts in the economy of the Commonwealth;
20 and

21 (B) assist in the development and imple-
22 mentation of a process to identify opportunities
23 for and encourage diversification and growth of
24 the economy of the Commonwealth and to iden-

•HR 3079 EH

30

1 tify and encourage opportunities to meet the
2 labor needs of the Commonwealth.

3 (3) COST-SHARING.—For the provision of tech-
4 nical assistance or support under this paragraph
5 (other than that required to pay the salaries and ex-
6 penses of Federal personnel), the Secretary of the
7 Interior shall require a non-Federal matching con-
8 tribution of 10 percent.

9 (f) OPERATIONS.—

10 (1) ESTABLISHMENT.—At any time on and
11 after the date of the enactment of this Act, the At-
12 torney General, Secretary of Homeland Security,
13 and the Secretary of Labor may establish and main-
14 tain offices and other operations in the Common-
15 wealth for the purpose of carrying out duties
16 under—

17 (A) the Immigration and Nationality Act
18 (8 U.S.C. 1101 et seq.); and

19 (B) the transition program established
20 under section 6 of the Joint Resolution entitled
21 “A Joint Resolution to approve the ‘Covenant
22 to Establish a Commonwealth of the Northern
23 Mariana Islands in Political Union with the
24 United States of America’, and for other pur-
25 poses”, approved March 24, 1976 (Public Law

•HR 3079 EH

31

1 94–241), as added by subsection (a) of this sec-
2 tion.

3 (2) PERSONNEL.—To the maximum extent
4 practicable and consistent with the satisfactory per-
5 formance of assigned duties under applicable law,
6 the Attorney General, Secretary of Homeland Secu-
7 rity, and the Secretary of Labor shall recruit and
8 hire personnel from among qualified United States
9 citizens and national applicants residing in the Com-
10 monwealth to serve as staff in carrying out oper-
11 ations described in paragraph (1).

12 (g) CONFORMING AMENDMENTS TO PUBLIC LAW 94–
13 241.—

14 (1) AMENDMENTS.—Public Law 94–241 is
15 amended as follows:

16 (A) In section 503 of the covenant set
17 forth in section 1, by striking subsection (a)
18 and redesignating subsections (b) and (c) as
19 subsections (a) and (b), respectively.

20 (B) By striking section 506 of the cov-
21 enant set forth in section 1.

22 (C) In section 703(b) of the covenant set
23 forth in section 1, by striking “quarantine,
24 passport, immigration and naturalization” and
25 inserting “quarantine and passport”.

•HR 3079 EH

32

1 (2) EFFECTIVE DATE.—The amendments made
2 by paragraph (1) shall take effect on the transition
3 program effective date described in section 6 of Pub-
4 lic Law 94–241 (as added by subsection (a)).

5 (h) REPORTS TO CONGRESS.—

6 (1) IN GENERAL.—Not later than March 1 of
7 the first year that is at least 2 full years after the
8 date of the enactment of this title, and annually
9 thereafter, the President shall submit to the Com-
10 mittee on Energy and Natural Resources and the
11 Committee on the Judiciary of the Senate and the
12 Committee on Natural Resources and the Committee
13 on the Judiciary of the House of Representatives a
14 report that evaluates the overall effect of the transi-
15 tion program established under section 6 of the
16 Joint Resolution entitled “A Joint Resolution to ap-
17 prove the ‘Covenant To Establish a Commonwealth
18 of the Northern Mariana Islands in Political Union
19 with the United States of America’, and for other
20 purposes”, approved March 24, 1976 (Public Law
21 94–241), as added by subsection (a) of this section,
22 and the Immigration and Nationality Act. (8 U.S.C.
23 1101 et seq.) on the Commonwealth.

24 (2) CONTEXTS.—In addition to other topics
25 otherwise required to be included under this title or

•HR 3079 EH

33

1 the amendments made by this title, each report sub-
2 mitted under paragraph (1) shall include a descrip-
3 tion of the efforts that have been undertaken during
4 the period covered by the report to diversify and
5 strengthen the local economy of the Commonwealth,
6 including efforts to promote the Commonwealth as a
7 tourist destination. The report by the President shall
8 include an estimate for the numbers of non-
9 immigrant workers described under section
10 101(a)(15)(II) of the Immigration and Nationality
11 Act (8 U.S.C. 1101(a)(15)(II)) necessary to avoid
12 adverse economic effects in Guam and the Common-
13 wealth.

14 (3) GAO REPORT.—The Government Account-
15 ability Office shall submit a report to the Congress
16 not later than 2 years after the date of the enact-
17 ment of this title, to include, at a minimum, the fol-
18 lowing items:

19 (A) An assessment of the implementation
20 of this title and the amendments made by this
21 title, including an assessment of the perform-
22 ance of Federal agencies and the Government
23 of the Commonwealth in meeting congressional
24 intent.

•HR 3079 EH

34

1 (B) An assessment of the short-term and
2 long-term impacts of implementation of this
3 title and the amendments made by this title on
4 the economy of the Commonwealth, including
5 its ability to obtain workers to supplement its
6 resident workforce and to maintain access to its
7 tourists and customers, and any effect on com-
8 pliance with United States treaty obligations
9 mandating non-refoulement for refugees.

10 (C) An assessment of the economic benefit
11 of the investors “grandfathered” under sub-
12 section (c) of section 6 of the Joint Resolution
13 entitled “A Joint Resolution to approve the
14 ‘Covenant To Establish a Commonwealth of the
15 Northern Mariana Islands in Political Union
16 with the United States of America’, and for
17 other purposes”, approved March 24, 1976
18 (Public Law 94-241), as added by subsection
19 (a) of this section, and the Commonwealth’s
20 ability to attract new investors after the date of
21 the enactment of this title.

22 (D) An assessment of the number of illegal
23 aliens in the Commonwealth, including any
24 Federal and Commonwealth efforts to locate
25 and repatriate them.

•HR 3079 EH

1 (4) REPORTS BY THE LOCAL GOVERNMENT.—
2 The Governor of the Commonwealth may submit an
3 annual report to the President on the implementa-
4 tion of this title, and the amendments made by this
5 title, with recommendations for future changes. The
6 President shall forward the Governor's report to the
7 Congress with any Administration comment after an
8 appropriate period of time for internal review, pro-
9 vided that nothing in this paragraph shall be con-
10 strued to require the President to provide any legis-
11 lative recommendation to the Congress.

12 (5) REPORT ON FEDERAL PERSONNEL AND RE-
13 SOURCE REQUIREMENTS.—Not later than 180 days
14 after the date of the enactment of this Act, the Sec-
15 retary of Homeland Security, after consulting with
16 the Secretary of the Interior and other departments
17 and agencies as may be deemed necessary, shall sub-
18 mit a report to the Committee on Natural Re-
19 sources, the Committee on Homeland Security, and
20 the Committee on the Judiciary of the House of
21 Representatives, and to the Committee on Energy
22 and Natural Resources, the Committee on Homeland
23 Security and Governmental Affairs, and the Com-
24 mittee on the Judiciary of the Senate, on the cur-
25 rent and planned levels of Transportation Security

•HR 3079 EH

36

1 Administration, United States Customs and Border
2 Protection, United States Immigration and Customs
3 Enforcement, United States Citizenship and Immi-
4 gration Services, and United States Coast Guard
5 personnel and resources necessary for fulfilling mis-
6 sion requirements on Guam and the Commonwealth
7 in a manner comparable to the level provided at
8 other similar ports of entry in the United States. In
9 fulfilling this reporting requirement, the Secretary
10 shall consider and anticipate the increased require-
11 ments due to the proposed realignment of military
12 forces on Guam and in the Commonwealth and
13 growth in the tourism sector.

14 (i) REQUIRED ACTIONS PRIOR TO TRANSITION PRO-
15 GRAM EFFECTIVE DATE.—During the period beginning
16 on the date of the enactment of this Act and ending on
17 the transition program effective date described in section
18 6 of Public Law 94–241 (as added by subsection (a)), the
19 Government of the Commonwealth shall—

20 (1) not permit an increase in the total number
21 of alien workers who are present in the Common-
22 wealth as of the date of the enactment of this Act;
23 and

24 (2) administer its nonrefoulement protection
25 program—

•HR 3079 EH

37

1 (A) according to the terms and procedures
2 set forth in the Memorandum of Agreement en-
3 tered into between the Commonwealth of the
4 Northern Mariana Islands and the United
5 States Department of Interior, Office of Insular
6 Affairs, executed on September 12, 2003 (which
7 terms and procedures, including but not limited
8 to funding by the Secretary of the Interior and
9 performance by the Secretary of Homeland Se-
10 curity of the duties of “Protection Consultant”
11 to the Commonwealth, shall have effect on and
12 after the date of the enactment of this Act), as
13 well as CNMI Public Law 13-61 and the Immi-
14 gration Regulations Establishing a Procedural
15 Mechanism for Persons Requesting Protection
16 from Refoulement; and

17 (B) so as not to remove or otherwise effect
18 the involuntary return of any alien whom the
19 Protection Consultant has determined to be eli-
20 gible for protection from persecution or torture.

21 (j) CONFORMING AMENDMENTS TO THE IMMIGRA-
22 TION AND NATIONALITY ACT.—The Immigration and Na-
23 tionality Act (8 U.S.C. 1101 et seq.) is amended—

•HR 3079 EH

38

1 (1) in section 101(a)(15)(D)(ii), by inserting
2 “or the Commonwealth of the Northern Mariana Is-
3 lands” after “Guam” each time such term appears;

4 (2) in section 101(a)(36), by striking “and the
5 Virgin Islands of the United States” and inserting
6 “the Virgin Islands of the United States, and the
7 Commonwealth of the Northern Mariana Islands”;

8 (3) in section 101(a)(38), by striking “and the
9 Virgin Islands of the United States” and inserting
10 “the Virgin Islands of the United States, and the
11 Commonwealth of the Northern Mariana Islands”;

12 (4) in section 208, by adding at the end the fol-
13 lowing:

14 “(e) COMMONWEALTH OF THE NORTHERN MARIANA
15 ISLANDS.—The provisions of this section and section
16 209(b) of this Act shall apply to persons physically present
17 in the Commonwealth of the Northern Mariana Islands
18 or arriving in the Commonwealth (whether or not at a des-
19 ignated port of arrival and including persons who are
20 brought to the Commonwealth after having been inter-
21 dicted in international or United States waters) only on
22 or after January 1, 2014.”; and

23 (5) in section 235(b)(1), by adding at the end
24 the following:

•HR 3079 EH

39

1 “(G) COMMONWEALTH OF THE NORTHERN
2 MARIANA ISLANDS.—Nothing in this subsection
3 shall be construed to authorize or require any
4 person described in section 208(e) of this Act to
5 be permitted to apply for asylum under section
6 208 of this Act at any time before January 1,
7 2014.”.

8 (k) AVAILABILITY OF OTHER NONIMMIGRANT PRO-
9 FESSIONALS.—The requirements of section 212(m)(6)(B)
10 of the Immigration and Nationality Act (8 U.S.C.
11 1182(m)(6)(B)) shall not apply to a facility in Guam, the
12 Commonwealth of the Northern Mariana Islands, or the
13 Virgin Islands.

14 **SEC. 104. FURTHER AMENDMENTS TO PUBLIC LAW 94-241.**

15 Public Law 94-241, as amended, is further amended
16 in section 4(c)(3) by striking the colon after “Marshall
17 Islands” and inserting the following: “, except that
18 \$200,000 in fiscal year 2009 and \$225,000 annually for
19 fiscal years 2010 through 2018 are hereby rescinded; Pro-
20 vided, That the amount rescinded shall be increased by
21 the same percentage as that of the annual salary and ben-
22 efit adjustments for Members of Congress”.

23 **SEC. 105. AUTHORIZATION OF APPROPRIATIONS.**

24 There are authorized to be appropriated such sums
25 as may be necessary to carry out this title.

•HR 3079 EH

1 SEC. 106. EFFECTIVE DATE.

2 (a) IN GENERAL.—Except as specifically provided in
3 this section or otherwise in this Act, this title and the
4 amendments made by this title shall take effect on the
5 date of the enactment of this title.

6 (b) AMENDMENTS TO THE IMMIGRATION AND NA-
7 TIONALITY ACT.—The amendments to the Immigration
8 and Nationality Act made by this Act, and other provi-
9 sions of this Act applying the immigration laws (as defined
10 in section 101(a)(17) of Immigration and Nationality Act
11 (8 U.S.C. 1101(a)(17))) to the Commonwealth, shall take
12 effect on the transition program effective date described
13 in section 6 of Public Law 94–241 (as added by section
14 103(a) of this Act), unless specifically provided otherwise
15 in this Act.

16 (c) CONSTRUCTION.—Nothing in this Act or the
17 amendments made by this Act shall be construed to make
18 any residence or presence in the Commonwealth before the
19 transition program effective date described in section 6 of
20 Public Law 94–241 (as added by section 103(a) of this
21 Act) residence or presence in the United States, except
22 that, for the purpose only of determining whether an alien
23 lawfully admitted for permanent residence (as defined in
24 section 101(a)(20) of the Immigration and Nationality Act
25 (8 U.S.C. 1101(a)(20))) has abandoned or lost such status
26 by reason of absence from the United States, such alien’s

•HR 3079 EH

41

1 presence in the Commonwealth before, on, or after the
2 date of the enactment of this Act shall be considered to
3 be presence in the United States.

4 **TITLE II—NORTHERN MARIANA**
5 **ISLANDS DELEGATE ACT**

6 **SEC. 201. SHORT TITLE.**

7 This title may be cited as the “Northern Mariana Is-
8 lands Delegate Act”.

9 **SEC. 202. DELEGATE TO HOUSE OF REPRESENTATIVES**
10 **FROM COMMONWEALTH OF THE NORTHERN**
11 **MARIANA ISLANDS.**

12 The Commonwealth of the Northern Mariana Islands
13 shall be represented in the United States Congress by the
14 Resident Representative to the United States authorized
15 by section 901 of the Covenant To Establish a Common-
16 wealth of the Northern Mariana Islands in Political Union
17 With the United States of America (approved by Public
18 Law 94–241 (48 U.S.C. 1801 et seq.)). The Resident Rep-
19 resentative shall be a nonvoting Delegate to the House of
20 Representatives, elected as provided in this title.

21 **SEC. 203. ELECTION OF DELEGATE.**

22 (a) **ELECTORS AND TIME OF ELECTION.**—The Dele-
23 gate shall be elected—

•HR 3079 EH

42

1 (1) by the people qualified to vote for the popu-
2 larly elected officials of the Commonwealth of the
3 Northern Mariana Islands; and

4 (2) at the Federal general election of 2008 and
5 at such Federal general election every 2d year there-
6 after.

7 (b) MANNER OF ELECTION.—

8 (1) IN GENERAL.—The Delegate shall be elect-
9 ed at large and by a plurality of the votes cast for
10 the office of Delegate.

11 (2) EFFECT OF ESTABLISHMENT OF PRIMARY
12 ELECTIONS.—Notwithstanding paragraph (1), if the
13 Government of the Commonwealth of the Northern
14 Mariana Islands, acting pursuant to legislation en-
15 acted in accordance with the Constitution of the
16 Commonwealth of the Northern Mariana Islands,
17 provides for primary elections for the election of the
18 Delegate, the Delegate shall be elected by a majority
19 of the votes cast in any general election for the of-
20 fice of Delegate for which such primary elections
21 were held.

22 (c) VACANCY.—In case of a permanent vacancy in the
23 office of Delegate, the office of Delegate shall remain va-
24 cant until a successor is elected and qualified.

•HR 3079 EH

1 (d) COMMENCEMENT OF TERM.—The term of the
2 Delegate shall commence on the 3d day of January fol-
3 lowing the date of the election.

4 **SEC. 204. QUALIFICATIONS FOR OFFICE OF DELEGATE.**

5 To be eligible for the office of Delegate a candidate
6 shall—

7 (1) be at least 25 years of age on the date of
8 the election;

9 (2) have been a citizen of the United States for
10 at least 7 years prior to the date of the election;

11 (3) be a resident and domiciliary of the Com-
12 monwealth of the Northern Mariana Islands for at
13 least 7 years prior to the date of the election;

14 (4) be qualified to vote in the Commonwealth of
15 the Northern Mariana Islands on the date of the
16 election; and

17 (5) not be, on the date of the election, a can-
18 didate for any other office.

19 **SEC. 205. DETERMINATION OF ELECTION PROCEDURE.**

20 Acting pursuant to legislation enacted in accordance
21 with the Constitution of the Commonwealth of the North-
22 ern Mariana Islands, the Government of the Common-
23 wealth of the Northern Mariana Islands may determine
24 the order of names on the ballot for election of Delegate,
25 the method by which a special election to fill a permanent

44

1 vacancy in the office of Delegate shall be conducted, the
2 method by which ties between candidates for the office of
3 Delegate shall be resolved, and all other matters of local
4 application pertaining to the election and the office of Del-
5 egate not otherwise expressly provided for in this title.

6 **SEC. 206. COMPENSATION, PRIVILEGES, AND IMMUNITIES.**

7 Until the Rules of the House of Representatives are
8 amended to provide otherwise, the Delegate from the Com-
9 monwealth of the Northern Mariana Islands shall receive
10 the same compensation, allowances, and benefits as a
11 Member of the House of Representatives, and shall be en-
12 titled to whatever privileges and immunities are, or herein-
13 after may be, granted to any other nonvoting Delegate to
14 the House of Representatives.

15 **SEC. 207. LACK OF EFFECT ON COVENANT.**

16 No provision of this title shall be construed to alter,
17 amend, or abrogate any provision of the covenant referred
18 to in section 202 except section 901 of the covenant.

19 **SEC. 208. DEFINITION.**

20 For purposes of this title, the term “Delegate” means
21 the Resident Representative referred to in section 202.

•HR 3079 EH

45

1 SEC. 209. CONFORMING AMENDMENTS REGARDING AP-
2 POINTMENTS TO MILITARY SERVICE ACAD-
3 EMIES BY DELEGATE FROM THE COMMON-
4 WEALTH OF THE NORTHERN MARIANA IS-
5 LANDS.

6 (a) UNITED STATES MILITARY ACADEMY.—Section
7 4342(a)(10) of title 10, United States Code, is amended
8 by striking “resident representative” and inserting “Dele-
9 gate in Congress”.

10 (b) UNITED STATES NAVAL ACADEMY.—Section
11 6954(a)(10) of such title is amended by striking “resident
12 representative” and inserting “Delegate in Congress”.

13 (c) UNITED STATES AIR FORCE ACADEMY.—Section
14 9342(a)(10) of such title is amended by striking “resident
15 representative” and inserting “Delegate in Congress”.

Passed the House of Representatives December 11,
2007.

Attest:

Clerk.

•HR 3079 EH

Appendix VI: Comments from the Commonwealth of the Northern Mariana Islands

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Timothy P. Villagomez
Lieutenant Governor

March 14, 2008

David Gootnick
Director, International Affairs and Trade
Government Accountability Office
441 G Street, NW
Washington, DC 20548 Re: Comments Regarding Draft GAO Report

Dear Mr. Gootnick:

At the request of Governor Benigno R. Fitial, I am providing the comments of the Commonwealth of the Northern Mariana Islands regarding the draft report of the Government Accountability Office ("GAO") dated March 2008 entitled "Northern Mariana Islands: Pending Legislation Would Apply U.S. Immigration Law to the CNMI With a Transition Period." We address three issues of particular concern to the Commonwealth: (1) the duration of the transition period during which the exemption from the statutory caps on H visas will remain in effect; (2) the relationship between the exemption from the statutory caps on H visas and the CNMI-only permitting system; and (3) the relationship between GAO's analysis of the legislation and its proposed study of the legislation's economic impact on the Commonwealth. In an attachment to this letter, we re submitting certain technical and stylistic comments regarding the draft report.

I. The Duration of the Legislation's Exemption from the Caps on H Visas

GAO asserts that the legislation's exemption for Guam and the Commonwealth from the numerical limitations for nonimmigrant workers seeking to enter the United States under either H-1B or H-2B visas expires on December 31, 2013. The agency's conclusion is based on its view that the transition period provided by the legislation cannot be extended beyond this date. Such an interpretation ignores the relevant language of the bill: subsections 6(a)(2) and 6(d)(5) both contemplate an extension of the transition period. The GAO contention also contradicts the only legislative history directly on point: the Report of the House Committee on Natural Resources regarding H.R. 3079 (page 16) states: "The Secretaries of Labor, Homeland Security, and State would be able to extend the transition period for an additional five years; Congressional notification is required."

The Commonwealth contends that the transition period does not end on December 31, 2013, but can be extended for an indefinite number of years by action of the Secretary of Labor

1

Caller Box 10007 Saipan, MP 96950 Telephone: (670) 664-2200/2300 Facsimile: (670) 664-2211/2311

See comment 1.

See comment 2.

See comment 1.

Appendix VI: Comments from the
Commonwealth of the Northern Mariana
Islands

pursuant to subsection 6(d)(5) of the legislation. We believe that this is the only reasonable reading of the bill's provisions.

Section 6 of the legislation amends the Covenant between the United States and the Northern Mariana Islands. It is entitled "Immigration and Transition" and has eight sections – (a) through (h). Subsection (a)(1) provides that the immigration laws will apply to the Northern Mariana Islands "except as otherwise provided in this section" on the "transition program effective date," which is established as "the first day of the first full month commencing 1 year after the date" on which the legislation was enacted.¹

Subsection (a)(2) is entitled "Transition Period" and provides:

"There shall be a transition period beginning on the transition program effective date and ending on December 31, 2013, except as provided in subsections (b) and (d), during which the Secretary of Homeland Security [in consultation with other federal officials] shall establish, administer, and enforce a transition program to regulate immigration in the Commonwealth, as provided in this section (hereafter referred to as the 'transition program')."

Subsection (b), authorizing the exemption from the numerical caps on H visas, contains no provision on the basis of which the transition period (or the exception from the numerical caps) could be extended. It provides: "An alien, if otherwise qualified, may seek admission to Guam or to the Commonwealth during the transition program as a nonimmigrant worker under section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C.1101(a)(15)(H) without counting against the numerical limitations set forth in section 214(g) of such Act (8 U.S.C.1184(g))." In the absence of a specific date in this subsection, the exemption from the numerical limitations exists so long as the transition program defined in the proposed legislation continues in effect.²

The only basis for an extension of the transition period is found in subsection (d)(5) of the legislation. Subsection (d) is entitled "Special Provision to Ensure Adequate Employment: Commonwealth Only Transitional Workers." The first sentence of subsection (d) provides: "An alien seeking to enter the Commonwealth as a nonimmigrant worker may be admitted to perform work during the transition period subject to the following requirements."

The subsequent numbered paragraphs of subsection (d) authorize a system whereby nonimmigrant foreign workers may be employed in the Commonwealth during the transition period so long as the Commonwealth employer seeking to employ any such worker has a permit issued by federal officials authorizing the employment of a foreign worker.

¹ Subsections (a)(3)(A)-(C) provide for a delay of the transition program effective date by 180 days if the Secretary of Homeland Security, after consultation with the other federal agencies and the Commonwealth, so determines, subject to notification of Congress of the proposed delay and a deferral of such extension for 30 days after the notification of Congress.

² As originally introduced in the House of Representatives, H.R.3079 made no reference to subsection 6(b) in subsection 6(a)(2) as providing any basis for a modification of the December 31, 2013 date terminating the transition period. No explanation is found in the House Committee report for the addition of this subsection in the version of the bill reported out by the Committee.

Appendix VI: Comments from the
Commonwealth of the Northern Mariana
Islands

Subsection (d)(2) provides “for a reduction in the allocation of permits for such workers on an annual basis, to zero, during a period not to extend beyond December 31, 2013, unless extended pursuant to paragraph 5 of this subsection....” The paragraph referred to, subsection (d)(5)(A), authorizes the Secretary of Labor, in consultation with other federal officials and the Commonwealth, to “determine whether an extension of up to 5 years of the provisions of this subsection is necessary to ensure an adequate number of workers will be available for legitimate businesses in the Commonwealth.”

The GAO contention that such an extension by the Secretary of Labor does not extend the transition period conflicts with the language of the legislation in three important respects:

First, the Secretary of Labor under subsection (d)(5)(A) has the authority to extend “the provisions of this subsection.” The “subsection” to which “this” refers is obviously subsection (d) in its entirety. The first sentence of subsection (d) specifies that the permit system for nonimmigrant workers applies only “during the transition period.” GAO contends that the Secretary can extend the permit system under subsection (d)(5) without extending the transition period. This interpretation conflicts squarely with the introductory sentence in subsection (d).

Second, subsection (a)(2) expressly provides that the transition period could be extended under the provisions of subsection (d). The only authority granted in subsection (d) to any federal official regarding the applicable time limits of any aspect of the transition program is the Secretary’s authority under subsection (d)(5). Unless this authority is interpreted as permitting extension of the transition period, it renders the language Congress used in subsection (a)(2) meaningless. Indeed, if GAO’s interpretation were accepted, there would be no statutory authority whatsoever in the legislation for any extension of the transition period, notwithstanding the bill’s provisions and the legislative history to the contrary.

Third, Congress used the date of December 31, 2013, in only two subsections of Section 6 – in subsection (a)(2) to establish the end of the transition period in the absence of an extension and in subsection (d)(2) to fix the date at which all employer permits authorizing the use of foreign workers would be reduced to zero. This was not an accident: the goal of the legislation is to reduce the number of foreign workers in the Commonwealth to zero, after which the federal immigration laws would apply in full force, and the transition period was designed to provide special conditions to ease the burdens on the Commonwealth’s economy until the statutory objective of zero was achieved. Congress could have fixed different deadlines for the transition period and the permit system, but chose not to do so. The legislative history of this bill provides no support for the fixing of different expiration dates for the various components of the transition program.

Accordingly, affirmative action by the Secretary under subsection (d)(5) will extend the transition period and the exemption from the numerical limitations regarding H visas “during the transitional program” will remain in effect under subsection (b) of the legislation.

See comment 1.

See comment 1.

See comment 3.

II. The Permitting System Mandated by the Legislation Applies to All Nonimmigrant Workers in the Commonwealth

The draft GAO report interprets the proposed legislation as enabling CNMI employers to sponsor an unlimited number of nonimmigrant foreign workers under the H visa program during the transition period to meet their labor needs without complying with the CNMI-only permit system established under subsection 6(d). GAO bases this assertion on two provisions of the legislation: (1) the exemption from the numerical caps on H visas provided by subsection 6(b); and (2) the provision in subsection 6(d)(2) to the effect that the permit system applies to “each such nonimmigrant worker described in this subsection who would not otherwise be eligible for admission under [the INA].” The Commonwealth disagrees with this reading of the legislation.

A. The Cited Statutory Provisions Do Not Support GAO’s Conclusions

See comment 3.

Neither subsection 6(b) nor the exclusionary clause in subsection 6(d)(2) supports GAO’s contention that nonimmigrant foreign workers can enter the Commonwealth during the transition period with H visas and work for employers who do not have the necessary permits under the system for transitional workers provided by subsection 6(d).

See comment 1.

As discussed above, subsection 6(b) permits foreign workers to seek an H-1B or H-2B visa authorizing them to work in the Commonwealth without regard to the numerical limitations that would otherwise apply. In the absence of this exemption, the decision of the federal officials to grant such visas to Guam or the Commonwealth would reduce the number available to employers in other parts of the United States. All the other requirements of the H visa program, however, would have to be met – in particular the need to have a sponsoring employer who makes the necessary labor certification with respect to its inability to find a qualified United States citizen to fill the particular job. Subsection 6(b) does not require federal officials to grant any H visas. It certainly does not specify that employers can obtain H visas for nonimmigrant foreign workers outside of the permit system set forth in subsection 6(d).

If the drafters of H.R. 3079 as approved by the House of Representatives had intended to exempt the workers coming in under the H visa program from the Commonwealth-only transition program, they knew how to do so. In the version of H.R. 3079 that was the subject of hearings in August 2007, there was a provision for the use of employment-based immigrant visas. Before such visas could be used, the Secretary of Labor under subsection 6(c)(3) of the bill had to conclude “that exceptional circumstances exist with respect to the inability of employers in the Commonwealth to obtain sufficient work-authorized labor, in addition to the Commonwealth-only transitional workers authorized under section 103(d)...” (emphasis supplied) As the United States Supreme Court has observed, “where Congress includes particular language in one section of a statute but omits it in another..., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Keene Corp. v. United States*, 508 U.S.200, 208 (1993) (quoting *Russello v. United States*, 464 U.S.16, 23 (1983)).

See comment 3.

The application of the permit system only to those nonimmigrant foreign workers “who would not otherwise be eligible for admission [under the INA]” cannot reasonably be interpreted to exclude all nonimmigrant foreign workers who would be eligible for H visas as GAO maintains. There was an obvious purpose for such an exemption – to make clear that the permit system would not apply to nonimmigrant workers who are entitled to enter the United States under treaties with foreign countries; under the compacts of free association with Palau, the Marshalls, and the Federated States of Micronesia; or under one of the many specialized visa programs referenced by GAO in its draft report. The GAO interpretation would potentially exclude from the permit system many of the foreign workers that it is intended to reach. Such an interpretation might exclude from the permit system some foreign workers currently employed lawfully in the Commonwealth, who might be eligible for H visas. It also suggests that employers would be entitled, without numerical limitations of any kind, to bring workers into the Commonwealth under H visas at the same time that the number of workers subject to the permit system was being reduced on an annual basis toward the eventual objective of eliminating all such permits.

B. The Permit System Necessarily Applies to All Foreign Workers in the Commonwealth

The provisions of the legislation dealing with the CNMI-only foreign worker program (with its permit system and annual reductions) indicate that they apply to workers entering the Commonwealth on H visas, as well as those workers currently in the Commonwealth who would be entitled to a nonimmigrant classification.

Subsection 6(d) begins with this statement: “An alien who is seeking to enter the Commonwealth as a nonimmigrant worker may be admitted to perform work during the transition period subject to the following requirements [of the permit system]” This certainly covers foreign workers seeking to enter on an H-1B or H-2B visa.

Subsection 6(d)(2) states: “No alien shall be granted nonimmigrant classification or a visa under this subsection unless the permit requirements established under this paragraph have been met.” This subsection indicates that the permit system will cover both those foreign workers entering the Commonwealth with a visa and those workers already in the Commonwealth who could seek a nonimmigrant classification which would enable the worker to be employed by an employer with the necessary permit.

Subsection 6(d)(3) provides that the Secretaries of Homeland Security and State shall establish the conditions for admitting such nonimmigrant workers during the transition period and states: “An alien admitted to the Commonwealth on the basis of such a visa shall be permitted to engage in employment only as authorized pursuant to the transition program.”

These subsections make clear that all foreign workers are covered by the permit system and will be allowed to work in the Commonwealth only so long as their employer has a permit entitling the company to hire a nonimmigrant foreign worker.

C. The GAO Interpretation Fails to Reflect the Purpose of the Legislation

The GAO interpretation is inconsistent with the principal objective of the legislation – to reduce the number of nonimmigrant foreign workers in the Commonwealth (19,824 as of December 31, 2007) to zero by December 31, 2013, unless the transition period is extended until some later date.

The legislation directs that the Commonwealth cannot increase the number of foreign workers present in the Commonwealth on the date of enactment of the legislation. It also provides that foreign workers currently employed lawfully in the Commonwealth may continue to be employed under their existing contracts after the transition program effective date, but no longer than two years after that date. The draft report's assertion that foreign workers will be available under the H visa program during the transitional period outside of the restrictions of the permit system cannot be squared with these provisions. As discussed earlier, the GAO draft report concludes also that all such H visas granted during the period up to December 31, 2013, must terminate no later than that date.

The cap on foreign workers in the Commonwealth after the legislation becomes effective will necessarily limit the access of employers to foreign workers outside the Commonwealth who would qualify to come in under the H visa program. In the absence of new development ventures requiring skills not presently available within the existing workforce, it can be reasonably expected that employers will resort to the H visa alternative principally to replace foreign workers currently employed in the Commonwealth who, for one reason or another, leave their current job.

Under these circumstances, it is difficult to reconcile the limitations of the permit system, where the number of permits must be reduced to zero, with the hypothetical H visa program under GAO's interpretation of the bill providing employers with access to an unlimited number of foreign workers entering on H visas, at least until December 31, 2013. Such dual, and conflicting, programs are inconsistent with the overall objectives of the legislation.

The GAO report appears to assume that the same federal officials required to enforce the stringent provisions of the Commonwealth-only foreign worker permit system would conclude that Congress intended them to admit all qualified H visa applicants seeking to work in the Commonwealth (subject to the overall cap on foreign workers) without regard to the permit system. Most federal officials charged with implementing a new program would prefer attributing to Congress a more consistent and plausible approach to achieving its legislative objectives.

III. The GAO Economic Analysis Should Not be Based on Any Single Legal Interpretation of the Legislation

The legislation currently awaiting action by the Senate is poorly drafted in two important respects. First, it is ambiguous and insufficiently clear in its meaning, which results in the different legal interpretations set forth in the GAO draft report and this letter. Second, the legislation grants the implementing federal agencies excessively broad discretion with respect to their shaping of the transition program for nonimmigrant foreign workers in the

See comment 4.

See comment 5.

Appendix VI: Comments from the
Commonwealth of the Northern Mariana
Islands

Commonwealth and the implementation of the visa waiver program for nonimmigrant visitors to Guam and the Commonwealth. The GAO draft report states repeatedly that it is unable to assess the likely impact of some of the bill's most important provisions in the absence of the future regulations to be drafted by the implementing agencies.

Under these circumstances, we believe that GAO should not limit its economic impact analysis to any single legal interpretation of the legislation's most important provisions. We recommend instead that GAO identify the principal alternative interpretations of the legislation that might be adopted by the implementing agencies and discuss separately, and clearly, the different economic consequences that would result under each such interpretation. A thoughtful and careful analytical effort along these lines would best serve the requesting Members of Congress, the Commonwealth, and the implementing agencies.

We are not suggesting that GAO has an obligation to address each and every possible interpretation of the legislation advanced by one or more imaginative commentators. We believe that the two substantive issues addressed in this letter provide examples of interpretations different from those advanced in the GAO draft report which might be the subject of separate economic analysis. Certainly the questions of when the transition period ends under the legislation, and whether workers entering the Commonwealth under H visas are exempt from the permit system, raise important issues that need to be acknowledged and analyzed by GAO in its economic impact report.

The Commonwealth has been assured that GAO intends to prepare a "neutral" report based on the legislation, which we take to mean that the agency's economic analysis will be presently on a purely factual basis and not reflect any bias regarding the need for, or the merits of, the legislation. Such an analysis should, in our opinion, look at some of the critical issues raised by the bill with a clear understanding of the relevant facts and the alternative consequences of different agency decisions. A good example is provided by the question of whether, and when, the transition program (in the Commonwealth's view) or the permit system (in GAO's view) is extended for a period of up to five years. The GAO draft report states (page 20) that "The Secretary could issue the extension as early as desired within the transition period and up to 180 days before the extension of the transition period or any extension thereof." That is an accurate statement of the relevant statutory provision. But we believe it is very unrealistic to assume that the Secretary would seek an extension early in the transition period, in light of the fact that the House of Representatives shortened the transition period by four years (from December 31, 2017 to December 31, 2013) without any stated reason for so doing. It would be fair to conclude from this action that the House of Representatives concluded that it was feasible and desirable to remove all nonimmigrant foreign workers from the Commonwealth in less than five years after the transition program effective date. A very early decision by the Secretary to extend the period would appear to conflict with that legislative judgment.

Because the extension decision is such a critical one in the administration of the transition program defined by the legislation, we suggest that the GAO analysis examine the economic impact of a decision not to grant an extension, a decision to grant in the last year of the period, and a decision to grant an extension at an earlier (but realistic) date. Such an analysis would be of valuable assistance to the implementing federal agencies, which are charged

**Appendix VI: Comments from the
Commonwealth of the Northern Mariana
Islands**

See comment 6.

See comment 7.

with the duty of enforcing the law with the least possible adverse effects on the Commonwealth, its citizens, and its foreign workers.

We continue to believe that a copy of the legislation should be included in the GAO legal report so that readers of the report and the attached comments may more conveniently examine the exact text of the bill under discussion. We have also recommended that the Department of Justice be requested to submit its views regarding the draft GAO report.

Thank you for your consideration of these comments.

Sincerely,



Howard P. Willens, Special Legal Counsel to the Governor

The following are GAO's comments on the Commonwealth of the Northern Mariana Islands' letter dated March 14, 2008.

GAO Comments

1. The CNMI government contended that the legislation allows the exemptions from the numerical limitation on H visas to be extended beyond the end of the transition period in 2013. We continue to interpret the legislation to allow for an extension of the CNMI-only work permit program beyond 2013 at the discretion of the Secretary of Labor, but not to allow for an extension beyond 2013 of other provisions of the transition program, including the exemptions from the numerical limitations on H visas.¹ As shown in appendix V, subsection 6(a)(2) of H.R. 3079 establishes a transition period “beginning on the transition program effective date and ending on December 31, 2013, except as provided in subsections (b) and (d).” Subsection 6(b) authorizes aliens to enter the CNMI with H visas without counting against the numerical caps established by law for H visas but confers no specific authority for extending this exemption beyond 2013. Subsection 6(d) authorizes CNMI-only work permits to be issued to employers for nonimmigrant workers who are not otherwise admissible under federal law. Subsection 6(d)(5) allows the Secretary of Labor to ascertain the labor needs of the CNMI and “determine whether an extension of up to 5 years of the provisions of this subsection is necessary to ensure an adequate number of workers” are available in the CNMI. The “provisions of this subsection” refers only to the provisions of subsection 6(d), the authorization for the CNMI-only work permit, and not to other programs available during the transition period. As the exemption from the numerical limitation on H visas is contained in subsection 6(b), the exemption could not be extended beyond 2013 without further legislation. Officials from the Department of Homeland Security, the agency responsible for implementing and administering the provisions of the transition period under the pending legislation, agreed in interviews with our interpretations of these provisions. The Department of Labor, which will have the authority to extend the CNMI-only work permit beyond 2013, reviewed the draft report and provided no comments. The Department of the Interior generally agreed with our findings.
2. The CNMI government relied in part on legislative history to support its assertion that the H cap extensions can be extended past 2013. We

¹Both the CNMI's comments and the GAO response rely on H.R. 3079, passed by the House, as the basis for interpretation. Under S. 2739, pending in the Senate, the transition period would end December 31, 2014.

reviewed the House Report on which the CNMI relied and found nothing inconsistent with our interpretation as stated in this report.

3. The CNMI government disagreed with our interpretation that the H visas authorized in subsection 6(b) are a separate process from the CNMI-only work permits authorized in subsection 6(d). According to the CNMI's interpretation, employers of workers admitted under H visas would have to obtain a CNMI-only work permit. However, the legislation does not state that H visas are to be provided under the CNMI-only permit work program. Also, subsection 6(d)(2) states that CNMI-only work permits are to be issued for workers "who would not otherwise be eligible for admission under the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.)." The CNMI's contention that foreign workers who enter the CNMI with an H visa must also obtain the CNMI-only work permit directly conflicts with the language of the legislation. As H visas are clearly a part of the Immigration and Nationality Act, workers entering the CNMI with an H visa are necessarily excluded from the CNMI-only permit process. Presumably, the federally-administered permitting process for employers of H visa holders that is already in place in the United States would apply to H visa holders in the CNMI once federalization occurs, though the specifics of implementation will be at the discretion of the Department of Homeland Security. Officials from the Department of Homeland Security, which has responsibility for implementing the legislation, agreed in interviews with our interpretation of this provision. The Department of the Interior generally agreed with our findings.
4. The CNMI incorrectly stated that "the GAO draft report concludes also that all such H visas granted during the period up to December 31, 2013, must terminate no later than that date." While the caps would limit the availability of new H visas for CNMI workers after the transition period ends on December 31, 2013 or on December 31, 2014, we note that the length of admission and other terms and conditions for CNMI-only H nonimmigrants will be determined by DHS in its implementation of the transition program and, according to DHS officials, will adhere to federal requirements currently in place for H visa holders the federal requirements. According to the current federal requirements, (1) specialty workers who are admitted under H-1B visas may not be authorized to stay any longer than 3 years initially, and up to 6 years with extensions, and may not seek readmission for 1 year after leaving, and (2) foreign workers admitted under H-2B visas are authorized to stay for up to 1 year initially, and up to 3 years with extensions.

5. The CNMI government contended that we should not base any further work regarding the impact of the legislation on the CNMI economy on a single legal interpretation. While the legislation is highly technical, we believe we have provided a reasonable, objective interpretation of the legislation that is consistent with the implementing agencies' views. Officials from the Department of Homeland Security, the primary implementing agency for the legislation, agreed in interviews with our interpretation of this legislation. The Department of Labor, the agency with the ability to extend the CNMI-only work permit program, reviewed the draft report and provided no comments. As such, we believe our interpretation of the legislation can be used appropriately as the basis of further work on the potential economic impact of the legislation. However, we agree such work should acknowledge the range of possible federal decisions regarding implementation of the legislation and regarding any extensions of the CNMI-only permit program.
6. The CNMI government suggested that we include the text of the pending legislation in this report. We have included the text of H.R. 3079, passed by the House, in appendix V.
7. The CNMI government also recommended that the draft report be provided to the U.S. Department of Justice for comment. We did not provide the draft report to the Department of Justice for review because the pending legislation provides a limited role for the department.

Appendix VII: Comments from the U.S. Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528

US GAO

2008 MAR 13 PM 1:29



**Homeland
Security**

March 12, 2008

Mr. David Gootnick
Director, International Affairs and Trade
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Gootnick:

RE: Draft Report GAO-08-466, Northern Mariana Islands: Pending Legislation Would Apply U.S. Immigration Law to the CNMI with a Transition Period (GAO Job Code 320567)

The Department of Homeland Security (DHS) appreciates the opportunity to review and comment on the draft report referenced above that addresses the expected impact of pending legislation that would apply U.S. immigration law to the Commonwealth of the Northern Mariana Islands (CNMI) with a transition period.

In previous comments provided to GAO before issuance of the draft report, DHS noted that aliens in the CNMI could seek protection from persecution or torture. We ask that language to this effect be included in the final report, so as to ensure readers understand that DHS is mindful of U.S. Government treaty obligations during this transition period.

In addition, DHS notes that the pending legislation would have direct effects on U.S. Customs and Border Protection (CBP) facilities, staffing and training requirements. Application of U.S. immigration law to the CNMI would require CBP, for example, to procure sufficient funding and human resources to establish CNMI ports of entry and/or expand existing facilities. Other DHS component agencies with a presence in the region also likely would be affected by the pending legislation in terms of staffing and resource requirements.

Technical comments have been provided under separate cover.

Sincerely,

A handwritten signature in black ink that reads "Steven J. Pecinovsky".

Steven J. Pecinovsky
Director
Departmental GAO/OIG Liaison Office

www.dhs.gov

Appendix VIII: Comments from the U.S. Department of the Interior



THE ASSOCIATE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON, DC 20240

MAR 24 2008

Mr. David Gootnik
Director, International Affairs and Trade
United States Government Accountability Office
Washington, DC 20548

Dear Mr. Gootnik:

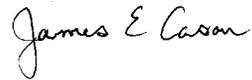
Thank you for the opportunity to review and comment on the Government Accountability Office Draft Report No. GAO-08-466, entitled *NORTHERN MARIANA ISLANDS, Pending Legislation Would Apply U.S. Immigration Law to the CNMI with a Transition Period*. In general, the Department of the Interior finds that the Report presents a fair and objective study on the effect of the new (pending) legislation. In addition, the Department's Office of Insular Affairs has provided the following information to your staff for consideration in the final report.

- Page 17 (the second bullet point regarding lawful permanent residence): The Report's footnote actually expresses the issue more thoroughly. Aliens in the United States who have Lawful Permanent Residence, i.e., green cards, must not be absent from the United States for a specified number of years, or they lose their LPR status. Immediate relatives who have this status and who have come to live in the CNMI were in danger of losing their LPR status because they were technically outside the United States. The pending legislation would fix that problem by specifying that any time in the CNMI should be considered time in the United States for the purpose of determining someone's continued presence in the United States.
- Page 25: The statement that the CNMI "law also stipulates that all employers seeking worker permits for their temporary workers must be able to demonstrate that they advertised the position and were unable to find a qualified CNMI resident." The Report fails to note Section 4526's litany of exemptions (included in Public Law 15-108). For example:
 - 4526(c) provides an incentive exemption to any employer who demonstrates that the local hire percentage for its management, professional, human resources or other specified high paying, skilled positions exceeds 30 percent of the employer's full-time workforce.
 - 4526(d) provides discretion to continue the waivers granted to the garment industry prior to January 1, 2007, regarding hiring of local employees.
- As applicable in the Report, CNMI worker permit fees are annual.

**Appendix VIII: Comments from the U.S.
Department of the Interior**

Thank you again for the opportunity to comment on the Draft Report. If you have any questions concerning the response, please communicate with Nikolao Pula, Acting Deputy Assistant Secretary of the Interior for Insular Affairs, at (202) 208-4736.

Sincerely,



James E. Cason

Appendix IX: GAO Contact and Staff Acknowledgments

GAO Contact

David Gootnick, (202) 512-3149 or gootnickd@gao.gov

Staff Acknowledgments

In addition to the contact named above, Emil Friberg, Assistant Director; Mark Speight, Assistant General Counsel; Marissa Jones, Analyst-in-Charge; Ashley Alley, Senior Attorney; and Reid Lowe, Senior Communications Analyst, made key contributions to this report. Diana Blumenfeld, Ben Bolitzer, Ming Chen, and Eddie Uyekawa also contributed to the report. Technical assistance was provided by George Taylor.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday, GAO posts newly released reports, testimony, and correspondence on its Web site. To have GAO e-mail you a list of newly posted products every afternoon, go to www.gao.gov and select "E-mail Updates."

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are \$2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. Government Accountability Office
441 G Street NW, Room LM
Washington, DC 20548

To order by Phone: Voice: (202) 512-6000
TDD: (202) 512-2537
Fax: (202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548