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# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

## Additional DHS Actions Needed on Foreign Worker Permit Program



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#### Why GAO Did This Study

In November 2009, the United States applied U.S. immigration law to the CNMI, as required by CNRA. To minimize the potential for adverse effects on the CNMI economy, CNRA established a 5-year transition period scheduled to end in 2014. CNRA required DHS to establish a transitional work permit program for foreign workers in the CNMI and annually reduce the number of permits issued, reducing them to zero by the end of the transition period. CNRA also required DOL to determine whether to extend the transition period past 2014, based on an assessment of the CNMI's labor needs. CNRA further required GAO to report on the implementation and economic impact of federal immigration law in the CNMI. This report (1) assesses the status of federal implementation of the transitional work permit program, (2) examines economic implications for the CNMI of pending federal actions, and (3) provides the status of federal efforts to support worker training in the CNMI. GAO reviewed CNRA, U.S. regulations, and information from federal agencies and the CNMI government; and interviewed U.S. government officials and private sector representatives.

#### What GAO Recommends

GAO recommends that the Secretary of Homeland Security (1) provide, on publication of its permit allocations, the methodology used and (2) use DOL analyses as a factor in deciding future permit allocations. DHS agreed to publish its methodology but will wait to review DOL analyses until they are available before deciding to use them.

#### What GAO Found

On September 7, 2011, the Department of Homeland Security (DHS) issued a final rule establishing a transitional work permit program in the Commonwealth of the Northern Mariana Islands (CNMI) for foreign workers not otherwise admissible under federal law. The final rule addressed key requirements of the Consolidated Natural Resources Act of 2008 (CNRA); for example, the rule sets the permit allocations for fiscal years 2011 and 2012. As of July 2012, DHS had processed about half of the petitions for work permits that employers submitted in fiscal year 2012. The DHS decision on its permit allocation for fiscal year 2013 and a Department of Labor (DOL) decision on whether and when to extend the transition period, both required by CNRA, are both pending.

- DHS plans to announce the permit allocation for fiscal year 2013 by the end of September 2012. DHS has identified one source of CNMI workforce data that it intends to use for its annual work permit allocations. However, the data source does not provide numbers of U.S. and foreign workers by industry, which could help DHS predict future demand for foreign workers. According to a senior DHS official, DHS has not made public the types of information, including its methodology, that it will publish with future permit allocations. Knowledge of DHS's methodology could help allay any public uncertainty regarding future access to foreign workers in the CNMI.
- DOL has not determined whether to extend the transition period, according to DOL officials, and is not required to do so until July 2014. DOL has identified multiple sources of data on the CNMI labor market, including a source that provides the number of workers in the CNMI by citizenship and industry. DOL has also identified the methodology it plans to use in making its determination. According to DOL officials, DOL plans to estimate changes in CNMI employment and gross domestic product that might result from a reduction in foreign workers. These data sources and analyses could help DHS assess workforce needs and determine its annual permit allocation.

Uncertainty about the impact of the pending DHS and DOL decisions on access to foreign workers may be limiting business investment in the CNMI. Foreign workers made up more than half of the CNMI workforce in 2012, and CNMI businesses reported challenges in finding replacements for foreign workers. Some CNMI businesses indicated that uncertainty over pending federal actions has caused them to limit their plans for future investments in the CNMI.

DOL, the Department of the Interior (DOI), and DHS made available a combined total of about \$6.5 million to train workers in the CNMI in fiscal years 2010 through 2012. DOL provided annual grants that support worker services. DOI provided a grant in 2011 to support on-the-job training programs, in response to CNRA requirements. As of July 2012, DHS had transferred to the CNMI Treasury about \$1.8 million it had collected through its permit program for CNMI vocational educational curricula and program development, as required by CNRA. Information on the use of DOL and DOI grants is available to Congress on request, but DHS does not collect information on the use of funds it transfers to the CNMI Treasury.

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## Abbreviations

BEA U.S. Bureau of Economic Analysis  
Chamber Saipan Chamber of Commerce  
CNRA Consolidated Natural Resources Act  
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  
GDP Gross Domestic Product  
State U.S. Department of State  
USCIS U.S. Citizenship and Immigration Services  
WIA Workforce Investment Act

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United States Government Accountability Office  
Washington, DC 20548

September 27, 2012

The Honorable Jeff Bingaman  
Chairman  
The Honorable Lisa Murkowski  
Ranking Member  
Committee on Energy and Natural Resources  
United States Senate

The Honorable Doc Hastings  
Chairman  
The Honorable Edward J. Markey  
Ranking Member  
Committee on Natural Resources  
House of Representatives

In 2008, the Consolidated Natural Resources Act (CNRA) established that U.S. immigration law would be applied in 2009 in the Commonwealth of the Northern Mariana Islands (CNMI),<sup>1</sup> amending a 1976 covenant between the United States and the CNMI that had given the CNMI government the authority to administer its own immigration system.<sup>2</sup> From 1978 to 2009, the CNMI government used its authority under the covenant to admit to the CNMI substantial numbers of foreign workers.<sup>3</sup> In November 2009, when the United States applied U.S. immigration law to the CNMI in accordance with CNRA, foreign workers made up more than half of the CNMI workforce.

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<sup>1</sup>Pub. L. No. 110-229, Title VII, 122 Stat. 754, 853 (May 8, 2008). 48 U.S.C. § 1806 note.

<sup>2</sup>The covenant also provided U.S. citizenship to certain CNMI residents. Covenant 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).

<sup>3</sup>In this report, “foreign workers” refers to workers in the CNMI who are not U.S. citizens or U.S. lawful permanent residents. Other sources sometimes call these workers “nonresident workers,” “guest workers,” “noncitizen workers,” “alien workers,” or “nonimmigrant workers.” “Foreign workers” does not refer to workers from the freely associated states—the Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau—who are permitted to work in the United States, including the CNMI, under the Compacts of Free Association (48 U.S.C. § 1901 note, 1921 note, and 1931 note). In this report, foreign workers may include aliens who are immediate relatives of U.S. citizens or U.S. permanent residents.

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CNRA's statement of congressional intent includes phasing out the CNMI government's admission of foreign workers and phasing in federal responsibilities over immigration in the CNMI. The statement also expresses the intent to minimize the potential adverse economic effects of phasing out the CNMI's immigration program and to maximize the CNMI's potential for future economic and business growth, including providing opportunities for individuals authorized to work in the United States. To achieve these aims, CNRA required the Secretary of Homeland Security to establish a transitional work permit program in the CNMI for foreign workers who are not otherwise eligible for admission under federal immigration law. The number of permits must be reduced on an annual basis and reach zero during a transition period, initially set for a 5-year period that ends in December 2014 but subject to a possible extension. The Secretary of Labor may extend the transition period based on the labor needs of the CNMI, to ensure an adequate number of workers are available for legitimate businesses. In addition, CNRA authorized technical assistance to be provided for worker training in the CNMI, and required immigration fees to be paid by CNMI employers to fund CNMI vocational educational curricula and program development.

CNRA additionally required that we report on the implementation of federal immigration law in the CNMI and its potential impact on the CNMI economy.<sup>4</sup> In May 2010 and July 2011, we reported on the status of U.S. efforts to establish federal border control in the CNMI and to implement all required CNRA programs for workers, visitors, and investors.<sup>5</sup> In this report, we (1) assess the status of federal implementation of the CNMI transitional work permit program for foreign workers, (2) examine the economic implications for the CNMI of pending federal actions related to this permit program, and (3) provide the status of federal efforts to support worker training in the CNMI.

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<sup>4</sup>We reported in August 2008 on factors that would affect the legislation's impact in the CNMI, focusing particularly on the law's potential impact on the CNMI's labor market, including foreign workers; the tourism sector; and foreign investment. GAO, *Commonwealth of the Northern Mariana Islands: Managing Potential Economic Impact of Applying U.S. Immigration Law Requires Coordinated Federal Decisions and Additional Data*, [GAO-08-791](#) (Washington, D.C.: Aug. 4, 2008).

<sup>5</sup>GAO, *Commonwealth of the Northern Mariana Islands: DHS Should Conclude Negotiations and Finalize Regulations to Implement Federal Immigration Law*, [GAO-10-553](#) (Washington, D.C.: May 7, 2010); and *Commonwealth of the Northern Mariana Islands: Status of Transition to Federal Immigration Law*, [GAO-11-805T](#) (Washington, D.C.: July 14, 2011).

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In preparing this report, we reviewed CNRA; the Department of Homeland Security's (DHS) interim and final rules containing regulations for a transitional worker classification program in the CNMI; documents from DHS and the Departments of Labor (DOL), State (State), and the Interior (DOI); and economic literature on the effects of uncertainty about future economic conditions on business owners' investment decisions. We obtained and analyzed data from DHS, the U.S. Bureau of Economic Analysis (BEA), and the CNMI Department of Finance and found all data to be sufficiently reliable for the purposes of this report. In addition, we interviewed officials from DHS, State, DOL, DOI, and the Saipan Chamber of Commerce and obtained information from the CNMI government and members of the Saipan Chamber of Commerce. See appendix I for more details about our scope and methodology.

We conducted this performance audit from January 2012 to September 2012 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 we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

The CNMI consists of 14 islands in the western Pacific Ocean, just north of Guam and 5,500 miles from the U.S. mainland. Most of the CNMI population—53,883 in 2010, according to the U.S. Census—reside on the island of Saipan, with additional residents on the islands of Tinian (3,136) and Rota (2,527).

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## CNMI Political History

The 1976 covenant between the CNMI and the United States established the islands' status as a self-governing commonwealth in political union with the United States.<sup>6</sup> The covenant granted the CNMI 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. The covenant also provided U.S. citizenship to certain CNMI residents. Further, the covenant exempted the CNMI

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<sup>6</sup>While some provisions of the covenant went into effect in 1976 and 1978, the full covenant became effective in November 1986.



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from federal immigration laws and certain federal minimum wage provisions. However, under the terms of the covenant, the U.S. government has the right to apply federal law in these exempted areas without the consent of the CNMI government. Acting under this authority, Congress enacted CNRA in 2008 to apply federal immigration laws to the CNMI; in November 2009, the U.S. government began its application of immigration laws to the CNMI.

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## Role of Foreign Workers in the CNMI Economy

Between 1980 and 2009, the CNMI used its authority over its own immigration policy to bring in foreign workers under temporary renewable work permits and to allow the entry of foreign business owners and their families. Owing primarily to the influx of these workers between 1980 and 2000, the CNMI population increased from about 16,800 in 1980 to 69,200 in 2000, and the CNMI economy became dependent on foreign labor. Most of these foreign workers were employed in the garment and tourism industries, which together accounted for about 80 percent of all employment in the CNMI in 1995. However, beginning in the late 1990s, the tourism industry experienced a sharp decline, as total visitor arrivals to the CNMI dropped by more than half, from a peak of 736,117 in 1996 to 340,957 in 2011. In addition, in 1999, the garment industry was central to the CNMI economy and employed close to a third of all workers; however, by early 2009, the last garment factory had closed.

Because of the decline in the tourism industry and the departure of the garment industry, employment in the CNMI has fallen. Between 2002 and 2010, the number of foreign workers in the CNMI dropped by more than 60 percent, according to CNMI Department of Finance tax data.<sup>7</sup> CNMI tax data also show that in 2010 there were 14,958 foreign workers and 11,336 U.S. workers in the CNMI, with foreign workers outnumbering U.S. workers in all industries but government and banking and finance.<sup>8</sup>

Figure 1 shows the numbers of foreign and U.S. workers in the CNMI labor force from 2002 through 2010.

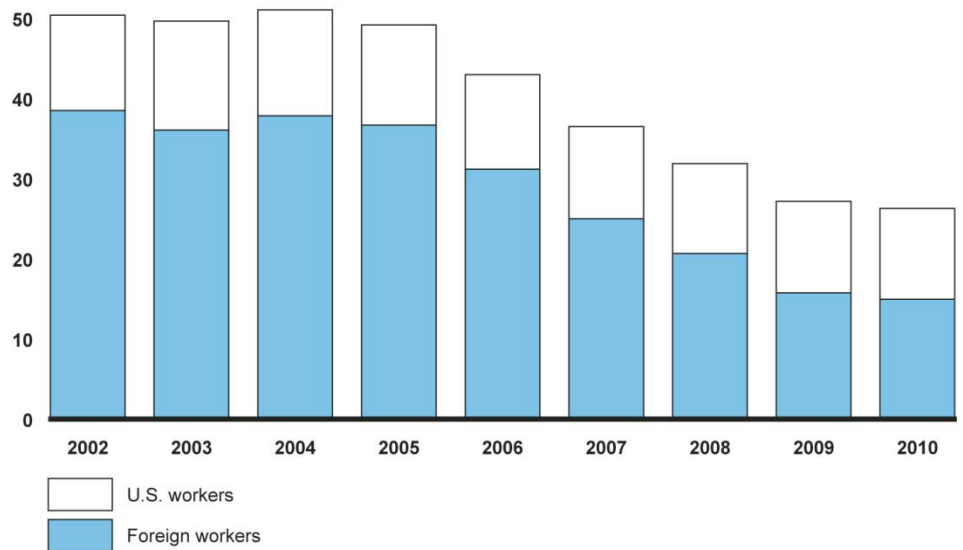
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<sup>7</sup>CNMI tax data for 2011 are not yet available.

<sup>8</sup>For this report, we define “U.S. workers” as citizens of the United States (including certain CNMI residents); citizens of the Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau; and U.S. lawful permanent residents.

**Figure 1: Total Numbers of Foreign Workers and U.S. Workers in the CNMI Labor Force, 2002-2010**

Number of workers (in thousands)  
60



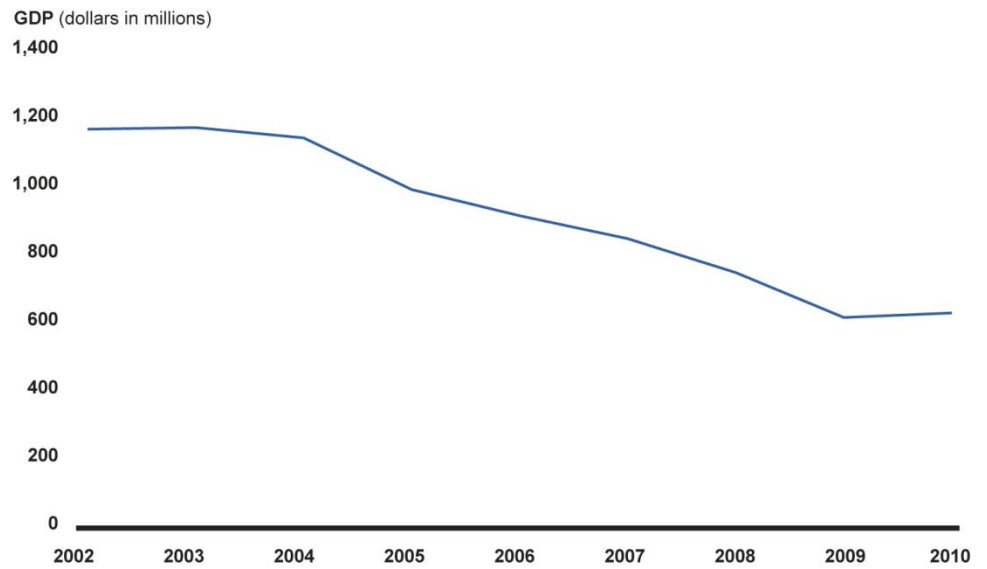
Source: GAO analysis of CNMI Department of Finance tax data.

Notes: Employees who submitted multiple W-2s (if employed by multiple employers) were counted only once. The data do not show whether U.S. lawful permanent residents were counted as foreign or as U.S. workers.

As the number of foreign workers has declined, the CNMI's real gross domestic product (GDP) has also fallen sharply, declining by 49 percent between 2002 and 2009. Figure 2 shows the CNMI's real GDP from 2002 through 2010.<sup>9</sup>

<sup>9</sup>CNMI's 2011 GDP was not available as of September 19, 2012.

**Figure 2: CNMI Real GDP, 2002-2010**



Source: U.S. Bureau of Economic Analysis.

Note: GDP has been adjusted for inflation to 2005 dollars.

The CNMI government's revenues have also fallen by 45 percent, from \$240 million in fiscal year 2005 to an estimated \$132 million for fiscal year 2011. In addition, the cost of labor in the CNMI increased after application of the federal minimum wage began there in 2007.<sup>10</sup> Labor costs may increase further because of the potential application of Federal Insurance

<sup>10</sup>In 2007, the United States enacted legislation that incrementally applies the U.S. minimum wage to the CNMI, increasing the wage by \$0.50 per hour each year until the minimum wage reaches the U.S. minimum wage, which is set to occur in 2016. See U.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), as amended by Pub. L. No. 111-244, 124 Stat. 2618 (Sep. 30, 2010), *codified at* 29 U.S.C. § 206 note. Also see GAO, *America Samoa and Commonwealth of the Northern Mariana Islands: Employment Earnings, and Status of Key Industries Since Minimum Wage Began*, [GAO-11-427](#) (Washington, D.C.: June 23, 2011).

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Contributions Act (FICA) payroll taxes to some previously exempt workers.<sup>11</sup>

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## Key CNRA Provisions Affecting CNMI Labor Force

CNRA's stated intent in establishing federal immigration law in the CNMI is in part to minimize, to the extent practicable, any potential adverse economic and fiscal effects of phasing out the CNMI's own foreign worker permit program and to maximize the CNMI's potential for economic and business growth. To that end, CNRA provides, among other things, opportunities for individuals authorized to work in the United States, including citizens of the Freely Associated States, and provides a mechanism for the continued use of foreign workers as needed to supplement the CNMI's resident workforce. (See app. II for the complete statement of congressional intent.)

CNRA required that DHS, DOL, and DOI take the following actions, among others:

- **DHS.** CNRA required that the Secretary of Homeland Security establish a transitional work permit program for foreign workers in the CNMI during the initial 5-year transition period. In administering this program, the Secretary must determine the number, terms and conditions,<sup>12</sup> and fees for the permits. The Secretary must also provide for an annual reduction in the allocation of permits for foreign workers that results in zero permits by the end of the transition period;

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<sup>11</sup>This matter has recently been the subject of litigation. In October 2011, the U.S. Internal Revenue Service wrote a letter to the CNMI government indicating that Filipino workers and their employers may have to pay FICA taxes. The CNMI government filed a lawsuit in federal district court asking the court to find the Internal Revenue Service's imposition of the FICA tax liability on Filipino workers to be a violation of the 1976 covenant and federal law. The CNMI government also sought a court injunction against imposing the tax. On August 27, 2012, the CNMI government filed a motion to voluntarily dismiss the case. The outcome of the application of FICA taxes to Filipino workers in the CNMI is currently unknown. According to CNMI Department of Finance tax data, Filipinos made up a majority of the foreign workforce in the CNMI in 2010.

<sup>12</sup>Although the Secretary of Homeland Security is responsible for setting the conditions for admission under this program, the Secretary of State is responsible for issuing visas under this program to foreign workers abroad. This applied to foreign workers living abroad who have obtained a transitional work permit from DHS and need to be admitted to the CNMI, as well as to foreign workers living in the CNMI who are granted a transitional permit by DHS, travel abroad, and need re-admittance to the CNMI. However, these visas are valid only for admission to the CNMI and not to the rest of the United States.

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however, the length of the transition period can be repeatedly extended by the Secretary of Labor (see the following subsection). The system for allocating permits may be based on any reasonable method and criteria determined by the Secretary of Homeland Security. CNRA also requires DHS to collect from CNMI employers \$150 per worker per year, which the Secretary must transfer to the Treasury of the CNMI for the purpose of funding ongoing vocational educational curricula and program development in the CNMI by CNMI educational entities. In adopting and enforcing the program, DHS must consider in good faith any comments and advice submitted by the Governor of the CNMI within 30 days of receipt.

- **DOL.** CNRA required that the Secretary of Labor, in consultation with the Secretaries of Homeland Security, Defense, the Interior, and the Governor of the CNMI, ascertain the current and anticipated labor needs of the CNMI and determine whether an extension of the transition period by up to 5 years at a time is necessary to ensure that an adequate number of workers will be available for legitimate businesses in the CNMI. DOL must determine the extension no later than 180 days before the end of the transition period. DOL is to base its decision on the labor needs of legitimate businesses in the CNMI and may consider a number of factors, such as CNMI unemployment rates and efforts to train U.S. citizens, lawful permanent residents, and unemployed foreign workers in the CNMI. (See app. III for a list of the factors that CNRA states DOL may consider.)
- **DOI.** CNRA required that the Secretary of the Interior, in consultation with the Governor of the Commonwealth, the Secretary of Labor, the Secretary of Commerce, and CNMI private sector representatives, provide technical assistance to the CNMI, including assistance for recruiting, training, and hiring of workers to assist employers in the CNMI to hire U.S. citizens and nationals and legal permanent residents. Technical assistance must also be provided for identifying

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economic opportunities and for job skills identification and curricula development.<sup>13</sup>

In addition, CNRA required that the Secretaries of Homeland Security, Labor, the Interior, and State negotiate and implement interagency agreements to assign their respective duties in order to ensure the timely and proper implementation of CNRA requirements.

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### Prior Work on Economic Impact of CNRA Provisions

In our August 2008 report, we found that the interaction of DHS and DOL decisions—on how many CNMI transitional work permits to allocate annually and whether to extend the transition period, and therefore the CNMI transitional work permit program, past 2014—would significantly affect employers’ access to foreign workers.<sup>14</sup> We also found that because of the prominence of foreign workers in the CNMI labor market, any substantial and rapid decline in permits for foreign workers would have a negative effect on the size of the CNMI economy. However, a more modest reduction in the annual permit allocations would result in minimal effects on the CNMI economy.

To illustrate a range of possible effects on the CNMI economy given varying rates of reduction in the annual allocation of CNMI transitional work permits for foreign workers, for our 2008 report we generated simulations that estimated the impact on the CNMI’s economy by an index representing total GDP. We generated these simulations for several scenarios, using a range of assumptions regarding the effect of a reduction of labor on production and the ability of the CNMI resident workforce to substitute for the foreign workers in production. In the first scenario, we found that a steep reduction in the transitional work permits for foreign workers—from 20,000 in 2007 to 1,000 by 2021—would lower the CNMI’s GDP to a range of about 21 percent to 73 percent of its 2007

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<sup>13</sup>CNRA also required the Secretary of the Interior to report to Congress on any recommendations he may deem appropriate related to whether or not the Congress should consider permitting lawfully admitted guest workers lawfully residing in the Commonwealth on CNRA’s enactment date to apply for long-term status under the immigration and nationality laws of the United States. See 48 U.S.C. § 1806(h)(5). In April 2010, the Secretary issued such a report. See appendix IV for information on the Secretary’s recommendations.

<sup>14</sup>Our August 2008 report refers to the permits as CNMI-only work permits and refers to the program as the CNMI-only work permit program. See [GAO-08-791](#).

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value by 2021. In the second scenario, we found that a less precipitous decline in the transitional work permits—from about 20,000 in 2007 to about 8,000 by 2021—would lower the CNMI's GDP to a range of about 64 percent to 85 percent of its 2007 value by 2021. In the third scenario, we found that a much smaller decline in the transitional worker permits—from 20,000 in 2007 to 17,000 by 2021—would lower the CNMI's GDP to a range of no less than about 92 percent to about 98 percent of its current value by 2021.<sup>15</sup>

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## CNMI Transitional Work Permit Program Has Been Established, and Federal Decisions Affecting Future Access to Foreign Workers Are Pending

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<sup>15</sup>Our analysis should not be considered predictive of future GDP, because we did not make any assumptions about future demand for CNMI foreign workers. Future demand could be affected by increases in the minimum wage or changes in the tourism industry. While these assumptions may also affect the size of the CNMI economy, they were outside the scope of our earlier analysis. After reviewing a draft of this report ([GAO-12-975](#)), DHS noted that this analysis appears to assume that all of the permits are used each year and that it could choose to set a permit allocation that well exceeds demand for the permits. If it set such a permit allocation, DHS noted that it could then reduce its next permit allocation significantly but the number of permits used that year and therefore the number of foreign workers employed could increase. For more information on our 2008 findings and simulations, see [GAO-08-791](#).

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## DHS Issued Final Rule to Implement Transitional Work Permit Program That Addresses Key CNRA Requirements

On September 7, 2011, DHS issued a final rule to implement a CNMI transitional work permit program, as required by CNRA, for foreign workers who would not otherwise be admissible under federal law.<sup>16</sup> The final rule creates a classification of CW-1 status for transitional foreign workers and a CW-2 status for dependents of CW-1 workers.<sup>17</sup> DHS delayed issuing a final rule for almost 2 years, following a court injunction on its October 2009 interim rule that prohibited it from issuing a final rule until it followed notice-and-comment rulemaking procedures to consider public comments on its interim rule. DHS received 146 public comments on the interim rule and made some changes in the final rule in response to those comments. (For more information on DHS's actions to issue the final rule and respond to public comments on its interim rule, see app. V.)

As required by CNRA, DHS's final rule on the CNMI transitional work permit program addresses (1) the number of permits to be issued; (2) the terms and conditions for the permits; and (3) the fees for the permits, including a \$150 vocational education fee. United States Citizenship and Immigration Services (USCIS), a component of DHS, is responsible for processing petitions for these permits.<sup>18</sup> Table 1 describes how DHS's final rule addresses these implementation decisions.

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<sup>16</sup>*Commonwealth of the Northern Mariana Islands Transitional Worker Classification*, 76 Fed. Reg. 55502 (Sept. 7, 2011). The final rule was effective October 7, 2011.

<sup>17</sup>DHS deemed CW status to be synonymous with the term "permit" referenced in the legislation. In this report, "permit" refers to CW status. In our 2008, 2010, and 2011 reports, "CNMI-only work permit" referred to CW-1 status.

<sup>18</sup>USCIS is responsible for processing applications for immigration benefits in the United States—that is, the ability of aliens to live and in some cases to work in the United States permanently or temporarily or to apply for citizenship. Applications for immigration benefits are classified into several different categories, such as employment-based and family-based, with many subcategories.



**Table 1: DHS Implementation Decisions Reflected in Final Rule**

Implementation decision	Final rule
Number of permits	DHS will grant up to 22,417 CW-1 work permits for fiscal year 2011 and up to 22,416 CW-1 work permits for fiscal year 2012. Unused permits will not carry over to the next year. Future permit allocations will be smaller than in the prior year and will be determined on an annual basis and announced in the <i>Federal Register</i> .
Terms and conditions of permits	Employers must petition for nonimmigrant workers to obtain status. When filing a petition for a nonimmigrant worker, employers must attest that (1) they are eligible to petition for a CW-1 work permit; <sup>a</sup> (2) they will continue to comply with eligibility requirements while the nonimmigrant worker is employed; (3) no qualified U.S. worker is available to fill the position; (4) the position is nontemporary or nonseasonal and is in an occupational category that DHS has determined requires foreign workers to supplement the resident workforce; and (5) if a foreign worker is in the CNMI, the foreign worker is there lawfully. The final rule also sets certain limitations on travel abroad for CW-1 workers. <sup>b</sup> The final rule requires CW-1 workers and CW-2 dependents to submit biometric information as requested by USCIS.
Fees related to permits	Employers petitioning for CW-1 work permits will pay a fee of \$325 per petition. <sup>c</sup> Employers petitioning for CW-1 work permits will also pay \$150 per worker per year to fund CNMI vocational educational curricula and program development and are required to submit a biometric fee of \$85 per worker for workers currently living in the CNMI who are older than 14 years and younger than 79.

Source: Commonwealth of the Northern Mariana Islands Transitional Worker Classification, 76 Fed. Reg. 55502 (Sept. 7, 2011).

<sup>a</sup>DHS's final rule specifies that, to be eligible to petition for a CW-1 work permit, an employer must be engaged in a legitimate business; consider all available U.S. workers for the position being filled by the CW-1 work permit holder; offer terms and conditions of employment that are consistent with the nature of the occupation, activity, and industry in the CNMI; and comply with all federal and CNMI requirements relating to employment. The final rule states that a business is not legitimate if it engages directly or indirectly in prostitution, trafficking in minors, or any other activity that is illegal under federal or CNMI law. DHS will determine whether a business is legitimate. DHS notes that, although an individual household employing a domestic worker would not qualify as a legitimate business, it is possible for a domestic worker to qualify for a CW-1 work permit if employed through a legitimate business that places domestic workers in individual households.

<sup>b</sup>If a CW-1 permit holder leaves the CNMI for a foreign destination for any period of time, the permit holder must obtain a CW-1 nonimmigrant visa, issued by the Department of State, before returning to the CNMI.

<sup>c</sup>An employer may name more than one foreign worker on each petition, provided that the workers are in the same occupational category, for the same period of time, and in the same location.

DHS's methodology for the allocation of CW-1 permits for fiscal years 2011 and 2012 included considering, among other factors, requests by the CNMI governor (as required by CNRA) not to reduce the number of permits in the program's first 2 years; CNRA's mandate that it reduce the number of permits annually; and the potential demand for the permits, according to DHS's final and interim rules for the program. DHS's final rule states that DHS set the fiscal year 2011 allocation of 22,417 CW-1 permits based on the CNMI government's estimate of the number of

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foreign workers in the CNMI when CNRA was enacted in May 2008.<sup>19</sup> The final rule also states that DHS's reduction of the number of permits by one permit for fiscal year 2012 was intended to (1) effectively maintain a steady level of permits available to CNMI employers for the first 2 years of the CW-1 permit program and (2) accommodate potential demand for the permits expected because CNMI government-issued work permits for foreign workers were set to expire in the first quarter of fiscal year 2012.<sup>20</sup> Further, DHS's interim rule stated that when making its permit allocation, DHS considered the Governor's request not to reduce the number of permits in the program's first 2 years as well as CNRA's requirement that DHS reduce the number of permits on an annual basis.

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<sup>19</sup>After the passage of CNRA in 2008, the Governor of the CNMI requested that DHS set the first permit allocation at 22,417 permits—the total number of foreign workers in the CNMI at that time, according to the CNMI government. See letter from CNMI Governor Benigno R. Fitial to Richard C. Barth, DHS Assistant Secretary for Policy Development, and Stewart A. Baker, DHS Assistant Secretary for Policy. *Re: Public Law 110-229*. July 18, 2008.

<sup>20</sup>Under CNRA, foreigners who lack U.S. immigration status but were admitted under the CNMI's immigration laws prior to November 2009 could continue to live and work in the CNMI for 2 years after that date or until their CNMI-government-issued permits expired, whichever was earlier. The CNMI issued temporary "umbrella" permits authorizing the holders to remain in the CNMI after November 28, 2009, for a maximum of 2 years, consistent with the terms of the permit. CNRA's authorization for individuals with these permits to remain in the CNMI without U.S. immigration status expired on November 27, 2011.

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## DHS Has Processed about Half of CW-1 Petitions Received for Fiscal Year 2012

DHS's USCIS had processed 49 percent of the petitions it had received for fiscal year 2012 as of July 1, 2012, approving 45 percent and denying or rejecting about 5 percent.<sup>21</sup> USCIS received 5,777 petitions for 11,830 CW-1 permits—about half of its annual allocation of 22,416 permits for fiscal year 2012.<sup>22</sup> According to USCIS officials, USCIS plans to complete an initial review of all of the CW-1 petitions by September 1, 2012, and to process all of the petitions by December 31, 2012.<sup>23</sup> Employers who have filed petitions that are still pending are permitted to continue to employ workers who were living and working lawfully in the CNMI at the time the petition was filed.<sup>24</sup>

Figure 3 shows the status of petitions for CW-1 permits that USCIS received between October 1, 2011, and June 30, 2012.

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<sup>21</sup>DHS did not receive any petitions in fiscal year 2011, because the final rule did not become effective until fiscal year 2012. In the final rule, DHS predicted that approximately 13,216 foreign workers already working in the CNMI would be granted a CW-1 work permit in 2011.

<sup>22</sup>As of July 1, 2012, 430 dependents of CW-1 workers had applied for CW-2 status. DHS had approved 126, denied 2, and rejected 73 applications for CW-2 status; 229 dependents had applications that were still pending.

<sup>23</sup>USCIS also plans to complete an initial review of all CW-2 dependents of CW-1 workers by September 1, 2012, and to process all CW-2 applications by December 31, 2012.

<sup>24</sup>Workers who held a valid CNMI-government-issued work authorization at the time their employer filed a petition on their behalf for a DHS-issued CW-1 work permit may continue to work in the CNMI for that employer in their current position without obtaining additional legal status during the adjudication of the petition. However, according to a USCIS official, workers who had been granted parole by DHS—that is, official permission for an otherwise inadmissible alien to be physically present in the United States temporarily—and work authorization in the CNMI when their petition was filed must maintain this status and authorization until the petition is adjudicated.

**Figure 3: Status of CW-1 Petitions and Corresponding Worker Permits Received as of July 1, 2012**



Source: GAO analysis of U.S. Citizenship and Immigration Services data.

<sup>a</sup>According to a USCIS official, a petition is recorded as approved if at least one worker listed on the petition has been approved. However, an approved petition may list a denied worker. As a result, the official said that the number of workers listed as approved is the maximum number of workers listed on the approved petitions.

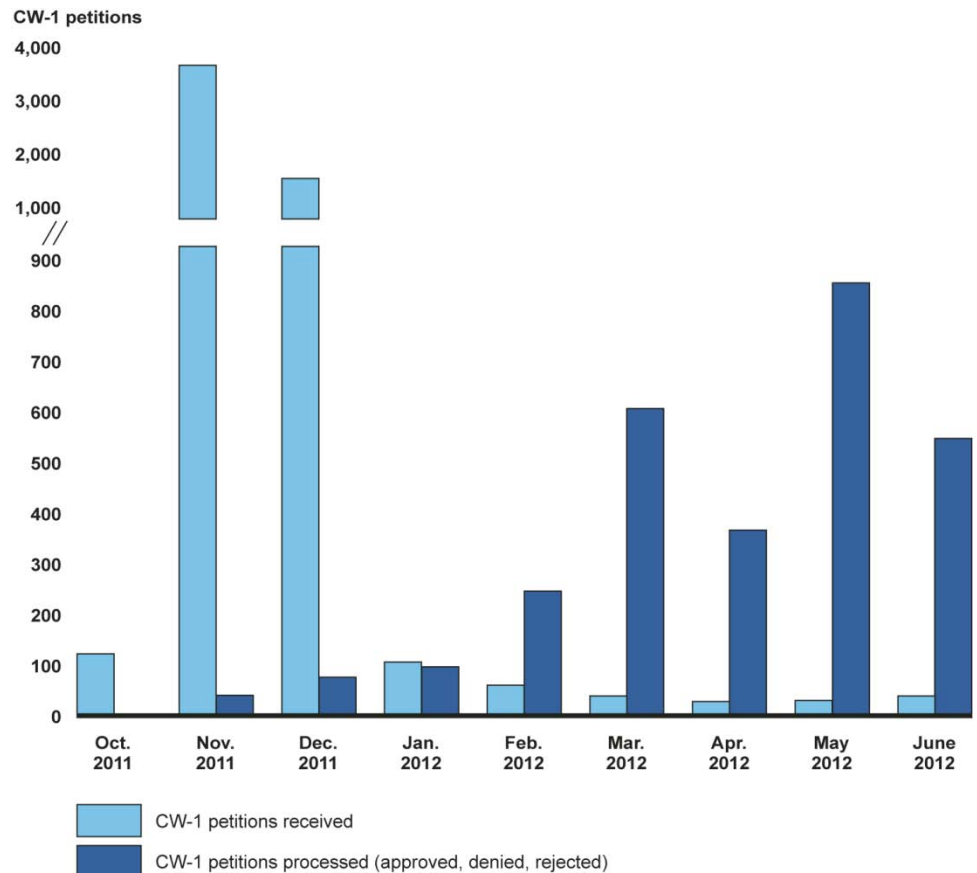
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<sup>b</sup>Petitions were denied because (1) the petitioner failed to demonstrate eligibility for the CW-1 permit (22 petitions); (2) the petitioner requested that the petition be withdrawn from consideration (40 petitions); or (3) USCIS requested additional evidence from the petitioner but did not receive a response within 120 days (7 petitions).

<sup>c</sup>Petitions were rejected because (1) the petitioner submitted the incorrect permit fee or (2) the petitioner did not sign the petition. Petitions may be resubmitted with the correct permit fee or signature.

USCIS received almost 93 percent of the CW-1 petitions in November and December 2011, shortly before and after the expiration of temporary CNMI-government-issued authorizations for foreign workers on November 28, 2011. Since November 2011, USCIS has substantially increased the number of CW-1 petitions it has processed each month, processing over 850 petitions in May 2012 compared with only 40 petitions in November 2011 (see fig. 4).

**Figure 4: Numbers of CW-1 Petitions Received and Processed Each Month, October 2011-June 2012**



Source: GAO analysis of U.S. Citizenship and Immigration Services data.

According to USCIS officials, USCIS has encountered two main challenges in completing the processing of CW-1 petitions:

- Many CW-1 petitions require further evidence from the petitioner. For example, some petitions do not contain evidence that the petitioner is engaged in a legitimate business and has considered all U.S. workers for the position, among other things. As of July 2012, USCIS had requested additional evidence for 3,200 petitions, or more than half of the CW-1 petitions submitted in fiscal year 2012.
- The office responsible for obtaining biometric information, such as fingerprints, from workers seeking a CW-1 work permit has had difficulty meeting added workload demand. USCIS only has one office

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in Saipan that is able to obtain biometric information from workers seeking CW-1 status, and it is staffed to capacity. To help meet the demands of obtaining biometric information from workers seeking CW-1 status in remote areas, USCIS deployed teams of two staff members to the outlying islands of Rota for 9 business days and Tinian for 16 business days. USCIS has also trained additional officers at the USCIS California Service Center to help process, as needed, petitions and applications related to the CW-1 work permit program.

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Agency Decisions on  
Fiscal Year 2013 Permit  
Allocation and Any  
Extension of Transition  
Period Are Pending

DHS officials stated that they are working to determine the permit allocation for fiscal year 2013 and will announce the allocation in the *Federal Register* by October 1, 2012. CNRA requires that DHS provide for an annual reduction in the number of permits. DHS's final rule states that DHS will determine the permit allocation on an annual basis and announce it in the *Federal Register*.

DOL officials told us that, as of July 2012, the department had not decided whether or when it will extend the transition period. Officials said the department does not expect to announce a decision before the end of 2012 and pointed out that DOL is not required by CNRA to make its determination until July 5, 2014.<sup>25</sup> DOL officials said they plan to comply with CNRA requirements to consult DHS, DOI, the Department of Defense (DOD), and the Governor of the CNMI before making the determination.<sup>26</sup>

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<sup>25</sup>CNRA requires that DOL make its determination 180 days prior to the end of the currently scheduled transition period, which is December 31, 2014.

<sup>26</sup>In July 2012, the President of the Saipan Chamber of Commerce, a private business organization in the CNMI representing 170 members and the CNMI business community at large, wrote a letter to DOL asking the department to consider extending the transition period. In his letter, the Chamber's President said that the Chamber did not believe that enough U.S. workers are available and qualified to replace the CW-1 workers if the transition period ends in 2014.

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DHS Has One Data Source for Pending Decision but Has Not Made Public Its Methodology, while DOL Has Identified Multiple Data Sources and Methodology

DHS has identified a single source of CNMI workforce data that it intends to use for its annual allocation of transitional work permits and has not made public the types of information, such as its methodology, that it will publish with future permit allocations. In commenting on a draft of this report, DHS stated that it will provide its methodology for its fiscal year 2013 permit allocation upon publishing the allocation. In contrast, DOL has identified multiple sources of data on the CNMI labor market and plans to conduct a number of analyses of these data in making its determination of whether and when to extend the transition period.

DHS Data and Methodology for Determining Permit Allocations

DHS has identified one data source that it will use for implementing CNRA requirements, including its annual permit allocation decision, according to a department official. In 2008, we recommended that DHS develop a strategy for collecting data to help it meet CNRA goals. According to the DHS official, the department subsequently identified one data source that it will use to help it implement CNRA requirements: the U.S. Census Bureau's County Business Patterns, which provides data on the number of paid workers, businesses, and payroll by industry in the CNMI annually. However, the source does not provide numbers of U.S. and foreign workers by industry, which could help DHS predict future demand for foreign workers.<sup>27</sup>

DHS has also not made public the methodology it will use in allocating CW-1 permits for fiscal year 2013, and the September 2011 final rule does not state whether DHS will publish its methodology for future allocations.<sup>28</sup> According to a senior DHS official, the department has not made public the types of information—including its methodology for the allocation—that it will publish with future permit allocations. In commenting on a draft of this report, DHS stated that it will provide the methodology for the fiscal year 2013 permit allocation upon publishing the allocation. The final rule states that DHS will assess the CNMI's workforce needs annually when determining the annual permit allocation.

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<sup>27</sup>An agency should obtain any relevant external information that may affect the achievement of its missions, goals, and objectives, particularly related to legislative or regulatory developments and political or economic changes. GAO, *Internal Control Management and Evaluation Tool*, [GAO-01-1008G](#) (Washington, D.C.: August 2001).

<sup>28</sup>The final rule states that DHS believes publishing the allocation annually in the *Federal Register* will provide sufficient notice to the public of the permit allocation.



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DOL Data and Methodology for  
Determining Whether to  
Extend Transition Period

However, DHS also notes that economic analysis is hampered by significant uncertainty regarding future demand for foreign workers and by a general lack of CNMI economic and production data that would allow DHS to estimate the impact of the final rule on the broader CNMI economy.<sup>29</sup>

In June 2012, DOL outlined a strategy for obtaining data on the CNMI labor market that it will use to determine whether to extend the transition period. DOL outlined this strategy in responding to a recommendation in our 2008 report that it develop a strategy for collecting data to help it meet CNRA goals. This strategy includes the data source DHS identified to help it implement CNRA requirements as well as other data sources, one of which identifies the number of workers by citizenship and industry in the CNMI.<sup>30</sup> According to DOL's strategy, the department will review multiple data sources, including the following:

- **U.S. County Business Patterns (U.S. Census Bureau).** DOL will request data for 2008 and 2011.
- **U.S. Census (U.S. Census Bureau).** DOL will request data for 2010 that includes, among other types of data, social and demographic data by age, sex, race, household relationship, and household type.
- **CNMI tax records (CNMI Department of Finance).** DOL will request data for 2008 through 2011 that includes, among other types of data, the number of workers in the CNMI by citizenship, industry, and occupation.

Regarding DOL's methodology, DOL officials indicated that the department plans to analyze the data identified in its strategy, as well as other types of information, to address the factors that CNRA suggested

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<sup>29</sup>The final rule notes that the limit on the number of permits for any fiscal year will be less than the previous fiscal year and the permit allocation will be a number reasonably calculated, at DHS's discretion, to reduce the number of nonimmigrants with CW-1 work permits to zero by the end of the transition period.

<sup>30</sup>In May 2008, we recommended that DOL develop a strategy for obtaining critical data on the CNMI labor market to help it make key implementation decisions. For more information on our findings and recommendation, see [GAO-08-791](#).

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DOL consider when making its determination (see app. III for a listing of the factors suggested by CNRA). For example:

- DOL plans to request from the U.S. Census Bureau special cross tabulations from the 2010 U.S. Census data by citizenship status, employment status, and place of birth to help it estimate the current unemployment rate of different populations within the CNMI.
- DOL plans to use the U.S. Census Bureau's County Business Patterns data, CNMI Department of Finance tax data, U.S. Bureau of Economic Analysis estimates of the CNMI's GDP, and government studies to help it determine CNMI businesses' need for foreign workers.
- DOL plans to conduct structured interviews with representatives and officials from the CNMI Office of the Governor, officials from the CNMI Department of Labor, officials from and members of the Saipan Chamber of Commerce, and CNMI worker advocates. DOL expects that these interviews will help it identify efforts by CNMI businesses and the CNMI Department of Labor to prepare U.S. residents to assume jobs typically held by foreign workers in the CNMI; provide evidence that may indicate whether U.S. citizens or lawful permanent residents are willing to accept jobs offered; and determine whether there is a need for foreign workers to fill specific industry jobs.
- DOL plans to estimate changes in employment and in the GDP in each CNMI industry sector that might result from a reduction in the number of foreign workers.

DOL officials noted that the department's plans to obtain these data and conduct various analyses are subject to budget and staffing constraints, and the complete and timely response to its various data requests. DOL officials also said that they will solicit feedback in the near future from DHS, DOI, DOD, and the Governor of the CNMI on DOL's data collection strategy and the additional analyses DOL plans to conduct using these data.

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## CNMI Economy Remains Dependent on Foreign Workers, and Uncertainty over Pending Federal Decisions May Be Limiting CNMI Investment

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### Foreign Workers Comprised about Half of CNMI Workforce in 2012

The CNMI economy remains dependent on foreign workers, given the high percentage of foreign workers in the CNMI's workforce. We estimate, based on available data for foreign and U.S. workers, that a little more than 13,200 foreign workers remained in the CNMI in 2012, comprising approximately 54 percent of the CNMI workforce.<sup>31</sup> Based on DHS data for 2012, the number of foreign workers includes

- 11,750 foreign workers (about 89 percent of all foreign workers) with a valid or pending petition for a CW-1 work permit;<sup>32</sup>
- 1,369 foreign workers (about 10 percent of all foreign workers) with a valid or pending employment authorization document that allows certain aliens admitted to the United States temporarily and who are

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<sup>31</sup>Although data on U.S. workers in the CNMI are not available for 2012, we estimate that foreign workers in 2012 constituted about 54 percent of the CNMI workforce, assuming that the number of U.S. workers in the CNMI has remained constant at the 2010 level of about 11,000 workers according to the most recent tax data available from the CNMI Department of Finance. USCIS data show that since 2010 765 aliens residing in the CNMI had been granted U.S. permanent residency (687) or U.S. citizenship (78), as of April 30, 2012 and March 9, 2012, respectively. We were unable to determine whether any of the foreign workers included in our estimate had requested and been granted permanent residency or U.S. citizenship.

<sup>32</sup>The estimated number of foreign workers with a valid or pending CW-1 permit petition include those whose petitions were initially rejected because they lacked a signature or the correct fee; in such cases, petitions can be resubmitted with the correct permit fee and/or signature.

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eligible for employment authorization to work in the CNMI;<sup>33</sup> and

- 134 foreign workers (about 1 percent of all foreign workers) with valid nonimmigrant worker or investor status.<sup>34</sup>

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## CNMI Businesses Report Challenges in Replacing Foreign Workers

Officials and members of the Saipan Chamber of Commerce (Chamber) stated that businesses face difficulties in finding U.S. workers to replace foreign workers.<sup>35</sup> According to Chamber officials, the number of U.S. workers available to replace foreign workers in the CNMI is limited. Officials said that U.S. citizens graduating from high school are more likely to leave the CNMI to obtain a university degree and not return because of the limited availability of jobs, the high cost of living in the CNMI, and the higher earning potential elsewhere. See text box for examples of comments from CNMI businesses.

### Comments from CNMI Businesses on Challenges of Finding Replacements for Foreign Workers

"There [are] simply not enough employable U.S. eligible worker[s] in the CNMI. . . . We have lost two [foreign] workers who have resigned and decided to return to the Philippines [to seek work there]. It [has] been very difficult to replace them."

"If a local person wants a degree in computer science, [the person] would have to travel to the United States and spend at least 4 years in college. After receiving a degree, these local people do not want to return to the CNMI. . . . Their salaries [in the CNMI] would be less than half of [what they would earn on the U.S. mainland]. . . . If we are forced to send all of our highly trained personnel back to the Philippines, then I will be forced to close our doors and go out of business."

"There simply will not be enough able-bodied individuals entering the workforce to replace the departing [foreign] workers."

"We have already tried working with employees who are U.S. citizens. This has not been particularly successful in our profession, because typically the individuals available are of a lower professional standard, or entry level. . . . U.S.-based professionals in our field are not willing to move to the CNMI."

Source: Statements from Saipan Chamber of Commerce members.

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<sup>33</sup>Some of the aliens eligible to be approved for a DHS Employment Authorization Document (Form 1-766) include those who have filed an application for permanent residency and otherwise inadmissible aliens who have been "paroled," that is, given official permission to be physically present in the United States temporarily.

<sup>34</sup>These include H1B, H2B, L1A, R1, E2, and E2C. E2 and E2C investors were included because they are authorized to work in the CNMI.

<sup>35</sup>The Saipan Chamber of Commerce is a nonprofit association of businesses and professional individuals in the CNMI. Its mission is to work to improve business opportunities and to build a better economic and civic community in Saipan.

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## Uncertainty about Future Access to Foreign Workers May Be Limiting Business Investment

CNMI businesses' uncertainty about future access to foreign workers, due to the limited availability of information regarding future work permit allocations and any extension of the transition period, may be creating disincentives for investment.<sup>36</sup> Economics literature on the effects of uncertainty suggests that government policies and regulations can become a source of uncertainty.<sup>37</sup> When facing uncertainty, businesses tend to delay investments that cannot be easily recovered, such as investments in expanding a hotel or building a new golf course; by delaying investments, businesses keep their options open until more information becomes available. For example, if a hotel in the CNMI were trying to decide whether to expand its operation by adding new rooms, it currently would face significant uncertainty regarding its future cost structure and its access to foreign workers. In 2009, labor costs accounted for approximately one-third of a hotel's operating cost, according to a survey of CNMI businesses that we conducted.<sup>38</sup> Without access to foreign workers, a hotel might have to increase its wage rate significantly to attract enough U.S. workers with the specific skills, such as the ability to speak a foreign language. Facing such uncertainty regarding future payroll costs, the hotel might decide not to invest until it has more information about its continued access to foreign labor.

Consistent with the economics literature, Chamber officials and some Chamber members identified uncertainty regarding pending federal actions that may affect employers' access to foreign labor as a factor that has limited investment in the CNMI. Specifically, members said that uncertainty has caused them to limit their plans for future investments. The text box below shows examples of comments from CNMI businesses that are members of the Chamber.

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<sup>36</sup>After reviewing a draft of this report, DHS noted that disincentives for investment may also be created if DHS and DOL provide greater certainty about CNMI businesses' access to foreign workers and the information provided negatively affects those businesses.

<sup>37</sup>Avinash K. Dixit and Robert S. Pindyck, *Investment under Uncertainty* (Princeton: Princeton University Press, 1994).

<sup>38</sup>See [GAO-11-427](#).

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**Comments from CNMI Businesses on Impact of Uncertain Access to Foreign Labor on Investment Plans**

"The uncertainty over the access to foreign skilled labor is preventing investment in the CNMI. . . . While we aim to maintain a presence in the CNMI and continue to look for investment opportunities, it gets harder and harder. In today's global economy . . . we are looking elsewhere for further and future investment."

"By not indicating that a permanent fix or an extension is in the plan, [federal agencies have] simply made CNMI more unattractive for investors."

"It is probable we will increase [the number of employees we have in the Philippines] as a precaution to the difficulty in obtaining enough qualified people after 2014."

"The uncertainty with labor force puts my company middle and long-term plans on hold. . . . Our company will not purchase any expensive machinery, construct any new facility, open new work positions, which will mean less business for company's partners and other local businesses."

Source: Statements from Saipan Chamber of Commerce members.

Chamber officials also cited limited access to adequate health care in the CNMI, the high cost of living, and the high cost of shipping goods to and from the CNMI as factors that may have affected businesses' investment decisions in the CNMI.

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## Federal Agencies Have Provided Funds for CNMI Worker Training, and Some Information Is Available on DOL and DOI Efforts

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DOL, DOI, and DHS Have Funded CNMI Worker Training Programs with Varying Reporting Requirements

DOL, DOI, and DHS have made available a combined total of about \$6.5 million for worker training in the CNMI in fiscal years 2010 through 2012 (see table 2).

**Table 2: DOL, DOI, and DHS Funds Made Available for CNMI Worker Training, Fiscal Years 2010-2012**

Agency	Fiscal year			Total
	2010	2011	2012	
DOL	\$1,395,033	\$1,371,935	\$1,220,053	<b>\$3,987,021</b>
DOI	0	\$700,000	0	<b>\$700,000</b>
DHS	0	0	\$1,812,600	<b>\$1,812,600</b>
<b>Total</b>	<b>\$1,395,033</b>	<b>\$2,071,935</b>	<b>\$3,032,653</b>	<b>\$6,499,621</b>

Source: DOL, DOI, and DHS data.

DOL provided funding through annual grants throughout this period; DOI, through a one-time grant in fiscal year 2011; and DHS, through a cash transfer in fiscal year 2012.<sup>39</sup> Each agency's funding has different reporting requirements.

- **DOL.** Since 1999, DOL has provided grants to the CNMI for worker programs administered under the Workforce Investment Act of 1998 (WIA).<sup>40</sup> Between fiscal year 2010 and fiscal year 2012, DOL made available almost \$4 million in WIA grants to the CNMI State Workforce Investment Agency, which is responsible for administering WIA

<sup>39</sup>DOI- and DOL-awarded grants are subject to an annual financial audit. Under the Single Audit Act, certain entities, including the CNMI, expending \$500,000 or more in federal awards, including grants and other assistance under more than one federal program in a fiscal year, are required to obtain an annual "Single Audit," which includes an audit of the entity's financial statements, a schedule of the expenditure of federal awards, and a review of related internal controls. The funds transferred to the CNMI from DHS have not yet been included in an audit. The CNMI Public Auditor said that it believed the funds will be treated as revenue and not federal awards for the purpose of the audit and one of the private companies that conduct these audits said that if these funds were selected for testing, that they would be tested for compliance.

<sup>40</sup>WIA created a comprehensive workforce investment system that brought together multiple federally funded employment and training programs into a single system, called the one-stop system. One-stop centers serve two customers—job seekers and employers. Pub. L. No. 105-220, 112 Stat. 936 (*codified at* 29 U.S.C. § 2801 et seq.) According to DOL official, funds are made available for WIA Adult, Dislocated Workers, and Youth programs annually for three years; however, DOL officials said DOL requires 70 percent of the funds to be obligated within the year that the funds are made available. For more information on the WIA, see GAO, *Workforce Investment Act: Innovative Collaborations between Workforce Boards and Employers Helped Meet Local Needs*, [GAO-12-97](#), (Washington, D.C.: Jan. 19, 2012).

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programs in the CNMI.<sup>41</sup> WIA programs include programs for adults, dislocated workers, and youths that provide a broad range of services including job search assistance, assessment, and training for eligible individuals. Under the terms and conditions of the WIA grants, DOL requires quarterly performance and financial reports from the CNMI agency.

- **DOI.** In fiscal year 2011, DOI awarded a one-time \$1 million technical assistance grant to the CNMI Department of Commerce, of which \$700,000 was designated to support the development or expansion of on-the-job training programs for U.S. workers. The training is intended to enable participants to meet job requirements and be employable on completing the training.<sup>42</sup> DOI provided this grant in response to CNRA requirements that it provide technical assistance, such as assisting CNMI employers in recruiting, training, and hiring workers from among U.S. citizens and national residents of the CNMI and, if an adequate number of such workers are not available, from among legal permanent residents. Under the grant's terms and conditions, DOI requires the CNMI Department of Commerce to submit semiannual narrative and financial reports on the status of the grant project until the grant's expiration in 2013.
- **DHS.** In fiscal year 2012, DHS transferred to the CNMI Treasury about \$1.8 million in funds it had collected for CNMI vocational curricula and program development, as required by CNRA. DHS

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<sup>41</sup>DOL also made available annual grants totaling approximately \$1.1 million for the three-year period between July 2010 and June 2013 to fund a Senior Community Service Employment Program (SCSEP) in the CNMI. The SCSEP is a community service and work based training program that provides subsidized, part-time, community services work based training to unemployed persons age 55 or older who are low-income and have poor employment prospects. The goal of the program is to provide community services and part time paid work based training to participants in order to place them into unsubsidized jobs. According to DOL, between July 2011 and June 2012, there were 32 participants of the SCSEP CNMI program. DOL reported that none of those participants left the program because they were placed into an unsubsidized job.

<sup>42</sup>The DOI awarded the remaining \$300,000 to hire an economic advisor in the CNMI. In 2010, we found that the DOI had opportunities to better oversee grants and reduce the potential for mismanagement and recommended that the DOI evaluate its existing authorities that could be used to ensure more efficient use of funds by insular areas, establish its staffing needs for grant project monitoring, and clarify its grant management policy on the movement of funds between projects. See GAO, *U.S. Insular Areas: Opportunities Exist to Improve Interior's Grant Oversight and Reduce the Potential for Mismanagement*, [GAO-10-347](#) (Washington, D.C.: Mar. 16, 2010).



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collects these funds annually from the \$150 vocational educational funding fee assessed for each foreign worker on a CW-1 petition.<sup>43</sup> According to a senior DHS official, DHS will continue to collect and transfer these funds to the CNMI Treasury until the end of the transition period. The senior official said that because DHS transfers these funds directly to the CNMI Treasury, the funds are not subject to DHS grant terms or conditions, such as performance or financial reporting requirements. The official also noted that CNRA does not direct DHS to impose any such requirements on the funds.

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### DOL and DOI Grant Managers Collect Information on Job Training Efforts

DOL and DOI collect information from the CNMI government regarding job training activities and results funded by, respectively, the DOL WIA grants and the DOI technical assistance grant. We also obtained information from CNMI legislative staff regarding the CNMI governor's plans to use the funds collected from the DHS work permit program. In two instances, the same organizations are designated to receive vocational educational funding from two or more of the agencies.

- **DOL.** The CNMI State Workforce Investment Agency, the recipient of the WIA grants, submits investment performance reports to DOL on a quarterly basis, as required by the grants' terms and conditions. The agency submitted its most recent performance report, with information on training program participants, characteristics, demographics, and services, in May 2012. According to the DOL grant manager, the services most often provided in the CNMI through WIA's Adult Worker Program, Dislocated Worker Program, and Youth program are on-the-job training and work experience. Providers of training include the Northern Marianas College, the Northern Marianas Trades Institute, CNMI government agencies, and private businesses. Between June 2011 and June 2012, the CNMI State Workforce Investment Agency reported to the DOL grant manager that it had provided training services to 247 individuals in the Adult Program, 17 individuals in the Dislocated Worker Program, and 719 individuals in the Youth Program. According to the DOL grant manager, most of the youths received training services through summer youth programs. The CNMI State Workforce Investment Agency further reported that 50

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<sup>43</sup>As of July 1, 2012, DHS had transferred to the CNMI Treasury \$1,812,600 of the \$1,827,000 DHS had collected from vocational educational funding fees. According to a senior DHS official, DHS has temporarily withheld some of the collected funds until checks for the \$150 per worker fee are verified and approved for payment.

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participants of the Adult Program, 6 participants of the Dislocated Worker Program, and 38 participants of the Youth Program in fiscal year 2011 have obtained employment. DOL said that because of budget restrictions, the DOL grant manager has not performed an on-site monitoring review of the WIA grants to the CNMI since 2006. According to DOL officials, information on the performance of this grant is available to Congress on request.

- **DOI.** The CNMI Department of Commerce, the recipient of the \$700,000 DOI technical assistance grant for on-the job training programs, submits a narrative on the status of the grant project to DOI on a semiannual basis, as required by the grant's terms and conditions. The CNMI Department of Commerce submitted its last narrative report to the DOI grant manager in July 2012. The CNMI Department of Commerce reported to the DOI grant manager that as of June 2012 it had trained 227 U.S. workers with grant funds and that 51 U.S. workers were hired or employed. The June report also documents that the CNMI Department of Commerce had awarded \$586,000 of the \$700,000 grant to a variety of CNMI business and industry groups and institutions to support their on-the-job training programs.<sup>44</sup> According to the CNMI Department of Commerce, recipients of funds from the DOI grant include the CNMI Aquaculture Producers Association, Marianas Resource Conservation and Development Council, Northern Mariana Trades Institute, Society for Human Resources Management, Saipan Sabalu Farmers Market Incorporated, and The Bridge Project. DOI representatives completed at least two site visits to each of the CNMI grant recipients during the last 6-month reporting period. According to a DOI official, information on the performance of this grant is available to Congress on request.
- **DHS.** Because DHS's transfers to the CNMI government of vocational educational funds collected through the CW-1 work permit fee are not subject to reporting requirements, the CNMI government has not submitted any performance or financial reporting on its use of these funds. However, according to CNMI legislative staff, the CNMI governor has communicated plans to the CNMI legislature for the use of \$1.5 million of the \$1.8 million in DHS-transferred vocational educational funding in fiscal year 2013. According to the plans, the

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<sup>44</sup>The June report also documents that the CNMI Department of Commerce has allocated the remaining \$114,000 of the \$700,000 grant to a Tourism Hospitality Enhancement Program (\$50,000) and administrative costs (\$64,000).

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funds will be used to defray qualified expenses at the Public School System (\$500,000), Northern Marianas College (\$500,000), and Northern Marianas Trades Institute (\$500,000).<sup>45</sup>

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## Conclusions

Since the United States applied federal immigration law to the CNMI in 2009, the CNMI economy has remained dependent on foreign workers despite their declining numbers. Part of CNRA's stated intent is to minimize, to the greatest extent practicable, harm to the CNMI's economy by providing a mechanism for the continued use of foreign workers as needed and providing opportunities to individuals authorized to work in the United States. In keeping with CNRA's stated intent, CNRA gives DHS and DOL flexibility to preserve CNMI businesses' access to foreign workers through DHS's annual permit allocation and DOL's ability to extend the transition period.

DHS published its methodology for its allocations of transitional worker permits for fiscal years 2011 and 2012, stating that the allocations were responsive both to CNRA's mandate and to potential demand for the permits. However, to date, DHS has not made public the methodology it will be using for the fiscal year 2013 allocation or whether it will provide its methodology when publishing future permit allocations beyond fiscal year 2013. Making this information available could help allay CNMI businesses' uncertainty regarding the unknown impact of DHS's pending decision on their future access to foreign workers and help mitigate the effect of such uncertainty on CNMI businesses' investment plans.

Despite the limited availability of economic data for the CNMI, DHS has identified one data source to help it implement CNRA requirements, including its annual allocation of the transitional worker permits. Meanwhile, DOL has outlined multiple sources of data that it plans to collect and analyses that it plans to complete to ascertain CNMI labor needs and determine whether to extend the transition period. Using the data DOL collects and the analyses it performs could enable DHS to more accurately assess the CNMI workforce needs when determining its next permit allocation and the potential economic impact.

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<sup>45</sup>According to CNMI legislative staff, the breakdown of the funding is reported in H.B. 17-313, HD10—the fiscal year 2013 appropriations bill that has passed the CNMI House of Representatives on July 18, 2012.

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Recognizing the need to locate, educate, and train workers to replace departing foreign workers, CNRA requires DOI to provide technical assistance to assist employers in the CNMI in securing employees from among U.S. citizens and national residents. CNRA also requires DHS to collect fees from its permit program for worker training and to transfer those funds to the CNMI Treasury. Currently, information on the use and performance of the DOI grant and DOL grants that fund, among other things, worker training in the CNMI, is available to Congress on request. DHS does not collect information on the use and performance of its cash transfers to the CNMI, because these funds are not subject to reporting requirements.

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## Recommendations for Executive Action

We recommend that the Secretary of Homeland Security take the following two actions:

1. to help ensure that CNMI's businesses are better able to plan for future permit allocations, provide, when publishing DHS's annual permit allocation, the methodology it used and the factors it considered to determine the number of permits allocated; and
2. to help ensure that DHS has the information it needs to assess the needs of the CNMI workforce as it decides on future permit allocations, use Department of Labor analyses of economic data on the labor needs of the CNMI as a factor in deciding on future permit allocations.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Departments of State, Homeland Security, the Interior, Labor, and the government of the CNMI for their review and comment. We received written comments from DHS and the government of the CNMI, which are reprinted in app. VI and VII, respectively. We also received technical comments from the Departments of the Interior and Labor, which we incorporated, as appropriate. The Department of State had no comments.

Following are summaries of the written comments from DHS and the CNMI government.

- DHS concurred with our recommendation that it provide, when publishing its annual permit allocation, the methodology it used and the factors it considered to determine the number of permits allocated. DHS agreed that it is appropriate when publishing its annual transitional worker permit allocation to provide at least a brief explanation of how the number was derived. For its fiscal

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year 2013 allocation, DHS said that it plans to publish a notice that will describe the methodology it used to determine the allocation. DHS did not concur with our recommendation that it use DOL analyses of economic data on the labor needs of the CNMI as a factor in deciding on future permit allocations, DHS agreed in general that relevant sources of information should be used and that the items described by DOL may be useful in future transitional worker permit allocation decisions. However, DHS will await further information as to what DOL has to provide. Once the DOL analysis is available, DHS will review it to determine its appropriateness and whether it should be factored into decision making for future permit allocations. We maintain that the data and analyses DOL plans to collect and complete will help DHS to more accurately assess the workforce needs of the CNMI when determining future permit allocations.

- The CNMI government agreed with both of our recommendations to DHS. The CNMI government also expressed concern with uncertainties related to CNMI labor resources and capacity. For example, the CNMI government said that the CNMI does not have the capacity to effectively track unemployment rates, available and vacant positions, as well as skill sets, which the government said is necessary to forecast the CNMI's labor pool. The CNMI government also said that it is in full support of the continued use of foreign labor in the CNMI economy. The government said that it believes in the overall intention of the CNRA to reduce foreign workers through the transitional worker permit program and to prioritize U.S. qualified workers in order to stabilize the CNMI economy. The CNMI government said that it supports any reduction of transitional worker permits for fiscal year 2013 to at least 50 percent of the original estimate.

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We are sending copies of this report to interested congressional committees. We also will provide copies of this report to the U.S. Secretaries of Homeland Security, Labor, the Interior, and State and to the Governor of the CNMI. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

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If you or your staff have questions about this report, please contact me at (202) 512-3149 or [gootnickd@gao.gov](mailto: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 VIII.

A handwritten signature in black ink, appearing to read "David Gootnick". The signature is stylized with a large, looping initial "D" and a cursive "Gootnick".

David Gootnick, Director  
International Affairs and Trade

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# Appendix I: Objectives, Scope, and Methodology

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The objectives of this review were to (1) assess the status of federal implementation of the Commonwealth of the Northern Mariana Islands (CNMI) transitional work permit program for foreign workers, (2) examine the economic implications for the CNMI of pending federal actions related to this permit program, and (3) provide the status of federal efforts to support worker training in the CNMI.

To assess the status of federal implementation of the CW-1 transitional work permit program, we reviewed the Department of Homeland Security's (DHS) final and interim rules containing regulations implementing the CW-1 work permit program and determined what changes to the interim rule were made in the final rule. We also independently reviewed the 146 public comments DHS received on its interim rule and determined whether DHS captured the comments' major areas of concern in its discussion of the public comments in the final rule. In addition, we obtained data from DHS's U.S. Citizenship and Immigration Services (USCIS) on the number of petitions and applications submitted for foreign worker beneficiaries of the CW-1 work permit and their dependents. We interviewed officials from DHS components, including USCIS, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and USCIS Office of Performance and Quality. We also interviewed officials from the Departments of Labor, State, and the Interior and officials from the Saipan Chamber of Commerce. In addition, we obtained information from the CNMI government.

To examine the economic implications of pending federal actions on the CNMI economy, we obtained and analyzed tax data from the CNMI Department of Commerce that was originally generated by the CNMI Department of Finance. These data came from W-2 forms prepared annually by employers in the CNMI and submitted to the CNMI Department of Finance's Division of Revenue and Taxation to support wages paid and taxes withheld. Because employers completed the W-2 form, we were unable to determine how foreign workers who had been granted permanent residency in the CNMI were categorized in the data (i.e., whether as U.S. or non-U.S. workers). Further, to determine the number of foreign workers in the CNMI in 2012, we obtained USCIS data on the number of foreign workers with an approved and/or pending worker status including CW-1, H1B, H2B, L1A, P1B, and R1 and investor status (which also authorizes the investor to work) including E2 and E2C as of June 2012. We also obtained USCIS data on the number of foreign workers with an approved and/or pending Employment Authorization Document (EAD) as of April 2012. To determine whether a worker or

investor status was still valid, we took the maximum validity period for each status and examined the number of statuses granted during that time. For example, if a status was valid for up to 3-years, we calculated the number of DHS approved statuses within a 3-year interval. Similarly, if a status was valid for 1-year, we calculated the number of DHS approved statuses within a 1-year interval. Further, to determine whether an approved EAD was still valid, we examined the number of EADs approved in a 1-year interval. According to USCIS, in most cases EADs are valid for 1 year. We also obtained USCIS data on the number of aliens residing in the CNMI who had been granted U.S. permanent residency or U.S. citizenship. In addition, we conducted interviews with officials from the Saipan Chamber of Commerce (Chamber) and provided the Chamber with a list of questions on how pending federal actions have impacted CNMI businesses. Officials responded to the questions and also distributed them to their members, seven of whom submitted responses. We also obtained data on the CNMI's gross domestic product (GDP) from the U.S. Bureau of Economic Analysis. We reviewed economics literature on the effects of uncertainty about future economic conditions on business investments, and data from the 2011-2012 HVS Hotel Development Cost Survey and a 2010 GAO survey of CNMI businesses.<sup>1</sup>

To provide the status of federal efforts to support worker training in the CNMI, we obtained information on the Department of Labor's (DOL) Workforce Investment Act (WIA) grant, such as the grant's terms and conditions, performance and financial reports, and notice of obligations; the Department of Interior (DOI) technical assistance grant that provides funding for worker training programs, such as grant terms and conditions, the most recent performance report submitted for the grant, and federal award amounts; and DHS information on the amount of funds DHS had collected from its transitional work permit program transferred to the CNMI Treasury to support CNMI vocational curricula and program development. Further, we conducted interviews with DOL officials from the Employment and Training Administration, including the grant manager responsible for monitoring WIA programs in the CNMI; DOI officials from the Office of Insular Affairs; and DHS officials from the USCIS Accounting and Reporting Bureau and USCIS Office of Chief Counsel. In addition, we obtained information on whether DHS funds would be subject to the

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<sup>1</sup>See GAO, *America Samoa and Commonwealth of the Northern Mariana Islands: Employment Earnings, and Status of Key Industries Since Minimum Wage Began*, [GAO-11-427](#) (Washington, D.C.: June 23, 2011).



Single Audit Act from the CNMI's Office of the Public Auditor and one of the private companies generally responsible for completing the CNMI audits required under the act.

In general, to establish the reliability of USCIS data that it uses to document immigration benefits in the CNMI, CNMI Department of Finance data that it uses to document the number of U.S. and foreign workers in the CNMI, and DHS budget data, we systematically obtained information about the way in which data were collected and tabulated. When possible, we checked for consistency across data sources. Although the CNMI Department of Finance data provided by the CNMI Department of Commerce had a limitation, we determined that the available data were adequate and sufficiently reliable for the purposes of our review.

We conducted this performance audit from January 2012 to September 2012 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 we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: Statement of Congressional Intent in Establishing Federal Immigration Law in the CNMI

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CNRA includes the following statement of congressional intent in establishing federal immigration law in the CNMI, which we present here verbatim:<sup>1</sup>

- a. Immigration and Growth.—In recognition of the need to ensure uniform adherence to long-standing fundamental immigration policies of the United States, it is the intention of the Congress in enacting this subtitle—
  - 1. to ensure that effective border control procedures are implemented and observed, and that national security and homeland security issues are properly addressed, by extending the immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(17)), to apply to the Commonwealth of the Northern Mariana Islands (referred to in this subtitle as the “Commonwealth”), with special provisions to allow for—
    - A. the orderly phasing-out of the nonresident contract worker program of the Commonwealth; and
    - B. the orderly phasing-in of Federal responsibilities over immigration in the Commonwealth; and
  - 2. to minimize, to the greatest extent practicable, potential adverse economic and fiscal effects of phasing-out the Commonwealth's nonresident contract worker program and to maximize the Commonwealth's potential for future economic and business growth by—
    - A. encouraging diversification and growth of the economy of the Commonwealth in accordance with fundamental values underlying Federal immigration policy;
    - B. recognizing local self-government, as provided for in the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America through consultation with the Governor of the Commonwealth;

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<sup>1</sup>Consolidated Natural Resources Act of 2008, Pub. L. No. 110-229, § 701, 122 Stat. 853-854 (May 8, 2008), *codified at* 48 U.S.C. § 1806 note.

- C. assisting the Commonwealth in achieving a progressively higher standard of living for citizens of the Commonwealth through the provision of technical and other assistance;
  - D. providing opportunities for individuals authorized to work in the United States, including citizens of the freely associated states; and
  - E. providing a mechanism for the continued use of alien workers, to the extent those workers continue to be necessary to supplement the Commonwealth's resident workforce, and to protect those workers from the potential for abuse and exploitation.
- b. **Avoiding Adverse Effects.**—In recognition of the Commonwealth's unique economic circumstances, history, and geographical location, it is the intent of the Congress that the Commonwealth be given as much flexibility as possible in maintaining existing businesses and other revenue sources, and developing new economic opportunities, consistent with the mandates of this subtitle. This subtitle, and the amendments made by this subtitle, should be implemented wherever possible to expand tourism and economic development in the Commonwealth, including aiding prospective tourists in gaining access to the Commonwealth's memorials, beaches, parks, dive sites, and other points of interest.

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# Appendix III: Factors That CNRA States DOL May Consider When Determining Whether to Extend Transition Period

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CNRA states that DOL is to base its determination of whether to extend the transition period on the labor needs of legitimate businesses in the CNMI.<sup>1</sup> CNRA states that in determining these needs, DOL may consider, among other relevant factors, the following, which we present here verbatim:

1. government, industry, or independent workforce studies reporting on the need, or lack thereof, for alien workers in the Commonwealth's businesses;
2. the unemployment rate of U.S. citizen workers residing in the Commonwealth;
3. the unemployment rate of aliens in the Commonwealth who have been lawfully admitted for permanent residence;
4. the number of unemployed alien workers in the Commonwealth;
5. any good faith efforts to locate, educate, train, or otherwise prepare U.S. citizen residents, lawful permanent residents, and unemployed alien workers already within the Commonwealth, to assume those jobs;
6. any available evidence tending to show that U.S. citizen residents, lawful permanent residents, and unemployed alien workers already in the Commonwealth are not willing to accept jobs of the type offered;
7. the extent to which admittance of alien workers will affect the compensation, benefits, and living standards of existing workers within those industries and other industries authorized to employ alien workers; and
8. the prior use, if any, of alien workers to fill those industry jobs, and whether the industry requires alien workers to fill those jobs.

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<sup>1</sup>48 U.S.C. § 1806(d)(5)(c).

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# Appendix IV: Consideration of Long-term Status for Foreign Workers

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In April 2010, the DOI recommended that Congress consider permitting foreign workers who have lawfully resided in the CNMI for a minimum of 5 years—which the DOI estimated at 15,816 individuals<sup>1</sup>—to apply for long-term resident status<sup>2</sup> under the Immigration and Nationality Act. The DOI estimated that 15,816 foreign workers would be affected and recommended that Congress consider allowing these workers to apply for one of the following: (1) U.S. citizenship; (2) permanent resident status leading to U.S. citizenship (per the normal provisions of the Immigration and Nationality Act relating to naturalization), with the 5-year minimum residence spent anywhere in the United States or its territories; or (3) permanent resident status leading to U.S. citizenship, with the 5-year minimum residence spent in the CNMI. Additionally, the DOI noted that under U.S. immigration law, special status is provided to individuals who are citizens of the freely associated states (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau). Following this model, the DOI suggested that foreign workers could be granted a nonimmigrant status similar to that negotiated for citizens of the Freely Associated States. The foreign workers would be allowed to live and work either in the United States and its territories or in the CNMI only.

In April 2011, legislation introduced in Congress proposed CNMI resident status for certain long-term residents.<sup>3</sup> To qualify for this status, an individual must be (1) born in the CNMI between January 1, 1974, and January 9, 1978; (2) classified by the CNMI government as a permanent resident; (3) a spouse or child of an individual covered by (1) or (2); or (4) an immediate relative of a U.S. citizen on May 8, 2008. The legislation is currently pending in the U.S. House of Representatives.

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<sup>1</sup>DOI conducted a voluntary registration of aliens residing in the CNMI in 2009. DOI reported that as of January 2010, there were 20,859 aliens in the commonwealth, of whom 16,304 were workers and 15,816 had resided lawfully in the CNMI for at least 5 years. DOI concluded that two groups were underrepresented in the registration: citizens from the freely associated states and illegal aliens. See Secretary of the Interior, *Report on the Alien Worker Population in the Commonwealth of the Northern Mariana Islands* (Washington, D.C.: Department of the Interior, 2010).

<sup>2</sup>CNRA required the Secretary of the Interior to report to Congress on any recommendations he may deem appropriate related to whether or not the Congress should consider permitting lawfully admitted guest workers lawfully residing in the Commonwealth on such enactment date to apply for long-term status under the immigration and nationality laws of the United States. See 48 U.S.C. § 1806(h)(5).

<sup>3</sup>H.R. 1466, 112th Cong. (Apr. 8, 2011).

# Appendix V: Department of Homeland Security’s Actions to Issue the Final Rule and Respond to Public Comments on Its Interim Rule

The timeline in table 3 summarizes the actions DHS took to implement the final rule on the transitional work permit program for the CNMI.

**Table 3: Timeline of DHS Actions to Issue the Final Rule on the Transitional Work Permit Program for CNMI**

Key dates	Actions taken
Oct. 27, 2009	DHS issues an interim rule to implement the CNMI transitional work permit program and announces it will go into effect in its current form on November 27, 2009. DHS states that it qualifies for an exemption from a requirement that federal agencies publish a notice of proposed rulemaking in the <i>Federal Register</i> to give the public 30 days to comment on the rule; however, DHS states that it will accept and will consider public comments through November 27, 2009, before issuing its final rule. <sup>a</sup>
Nov. 2, 2009	CNMI files a motion for a preliminary injunction to prevent the operation of the DHS interim rule, stating that DHS violated procedural requirements requiring notice and the opportunity for public comment before regulations can go into effect.
Nov. 25, 2009	U.S. District Court for the District of Columbia issues an order prohibiting implementation of the interim rule, stating that DHS must consider public comments before issuing a final rule. <sup>b</sup>
Dec. 9, 2010-Jan. 8, 2010	DHS reopens the public comment period on its interim rule from December 9, 2010 until January 8, 2010.
Sep. 7, 2011	DHS issues final rule, which is effective October 7, 2011.

Source: Federal Register.

<sup>a</sup>See Administrative Procedure Act, Pub. L. No. 79-404, as amended, *codified at* 5 U.S.C. § 553. Federal courts have determined that notice-and-comment provisions of the act are designed (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review. After giving interested persons an opportunity to comment on the proposed rule, and after considering the public comments, the agency may then publish the final rule. Under the Administrative Procedure Act, an agency is authorized to forgo notice and comment when an agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” In these situations, the agency may issue an interim rule without providing an opportunity for notice and comment.

<sup>b</sup>CNMI v. United States, 670 F. Supp. 2d 65 (D.D.C. Nov. 25, 2009).

DHS received 146 public comments on its interim rule to establish the transitional work permit program for foreign workers in the CNMI, including comments from the CNMI government, the Saipan Chamber of Commerce, CNMI businesses, and U.S. and foreign workers. The comments expressed concern on a variety of issues, such as the ability of permit holders to conduct foreign travel, the fees associated with the permit, the permit’s validity period, whether foreign workers already living and working in the CNMI should be given first preference for the permits, and whether certain occupational categories, such as domestic workers, should be excluded from the final rule.

In its final rule, DHS said that it considered all of the 146 public comments it received on its interim rule and made some changes to the final rule based on those comments.<sup>1</sup> See examples below:

- **Travel.** DHS modified the final rule to allow nationals of the Philippines, who made up a majority of the foreign workforce in the CNMI in 2010 according to CNMI Department of Finance data, to travel from the CNMI to the Philippines via a direct Guam transit without violating their CW-1 or CW-2 permit status.
- **Fees associated with the CW-1 permit.** DHS modified the final rule to make the petitioner of the CW-1 worker responsible for submitting the \$85 biometric fee per worker seeking a work permit in the CNMI instead of requiring the worker to submit the biometric fee. However, according to DHS, either the worker or the employer may pay the fee. DHS also authorized need-based fee waivers for spouses and children applying for derivative CW-2 permits.
- **CW-1 permit's validity period.** DHS clarified the CW-1 permit's validity period but did not extend it. DHS also provided that, in the case of termination of employment, the worker would have 30 days in which to find a new petitioning employer and would not be considered to have violated the CW-1 permit if the new employer files a petition for the worker within that time. Further, in the case of a change of employment, DHS authorized the worker to begin the new employment upon filing of the new petition.
- **Permit preferences.** DHS made no changes to the final rule to give first preference for worker permits to foreign workers already living and working in the CNMI. However, DHS did make a significant change to its work authorization regulations to authorize the continued employment of beneficiaries of CW-1 petitions filed on or before November 27, 2011, for lawfully present workers and pending adjudication of the petitions. According to DHS, this provision allowed large numbers of workers whose work authorization under their former CNMI government-authorized "umbrella permits" expired on that date

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<sup>1</sup>DHS described the comments in its final rule and explained why it chose to modify or not to modify the final rule in response to those comments. We conducted our own review of the public comments and found that DHS's description of the comments was consistent with our review.

to continue their employment while USCIS worked through the petitions filed for them.

- **Exclusions of occupational categories.** DHS did not exclude any occupational categories from the final rule, such as dancing, domestic workers, or hospitality service workers. DHS said it had considered excluding these categories in the interim rule because of human trafficking concerns. DHS also strengthened the attestations required of petitioning employers regarding compliance with applicable laws, and emphasized the limits on the ability of individual households to petition for domestic workers stemming from the rule's requirements that established that legitimate businesses file petitions.

DHS made other minor changes to the final rule to clarify certain references or remove references that were no longer relevant.<sup>2</sup>

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<sup>2</sup>For more information on the public comments DHS received on its interim rule, and the DHS action taken in response to those comments, see U.S. Citizenship and Immigration Services, DHS, Final Rule. *Commonwealth of the Northern Mariana Islands Transitional Worker Classification*, 76 Fed. Reg. 55502 (Sep. 7, 2011).



# Appendix VI: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, D.C. 20528



**Homeland  
Security**

September 13, 2012

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

Re: Draft Report GAO-12-975, "COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS: Additional Actions Needed on Permit Program for Foreign Workers"

Dear Mr. Gootnick:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO's) work in planning and conducting its review and issuing this report.

The *Consolidated Natural Resources Act of 2008* (CNRA) provided for the replacement of the immigration laws of the Commonwealth of the Northern Mariana Islands (CNMI) with the *Immigration and Nationality Act* (INA) and other U.S. immigration laws. The CNRA provided for a nonimmigrant worker program unique to the CNMI and not applicable to the rest of the United States. This program was established with an initial cap on the number of workers and for an initial period of 5 years with extensions by the U.S. Department of Labor (DOL). This program is unique in a number of ways, including:

- The extension of the INA to a U.S. territory not previously covered is unique in immigration law history since 1952;
- The CNRA gives the implementing agency, DHS, the authority to set the numerical cap for transitional workers, but requires DHS to reduce the cap on the number of workers to zero at the end of the program period, or any extension thereof;
- The nonimmigrant program is specifically limited to the CNMI;
- Eligibility for the transitional worker status depends, in part, on ineligibility for standard INA categories; and
- DHS is required to collect a fee annually, which is then passed directly to the government of the CNMI.

The draft report contained two recommendations directed at DHS, one with which the Department concurs and the other with which the Department non-concurs. Specifically, GAO recommended that the Secretary of Homeland Security:

**Recommendation 1:** To help ensure that CNMI's businesses are better able to plan for future permit allocations, provide, when publishing DHS's annual permit allocation, the methodology it used and the factors it considered to determine the number of permits allocated.

**Response:** Concur. DHS agrees that it is appropriate when publishing the annual transitional worker classification (CW) numerical limitation, to provide at least a brief explanation of how the number was derived. However, because the number is set on an annual basis, there is no guarantee it would "help ensure that CNMI's businesses are better able to plan for future permit allocations." The rationale for setting it at a certain level in a given year may not apply to future years.

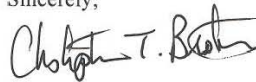
USCIS will be publishing a notice that will describe the methodology used for this year's determination. However, the Federal Register Notice is currently in the DHS clearance process, and, in order to protect the authority of the Secretary of Homeland Security over her regulatory publications, USCIS was not able to substantively engage with GAO regarding our methodology used when requested throughout the fieldwork phase of its review.

**Recommendation 2:** To help ensure that DHS has the information it needs to assess the needs of the CNMI workforce as it decides on future permit allocations, use Department of Labor analyses of economic data on the labor needs of the CNMI as a factor in deciding on future permit allocations.

**Response:** Non-concur. DHS agrees in general that relevant sources of information should be used and that the items described by DOL may be useful in future CW numerical limitation decisions. DOL has stated that their plans for analyses of economic data are subject to "budget and staffing constraints" and DHS will await further information as to what DOL has to provide. Once the DOL analysis is available, DHS will review it to determine its appropriateness and whether it should be factored in the decision making regarding future permit allocations.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,

  
for

Jim H. Crumpacker  
Director  
Departmental GAO-OIG Liaison Office

# Appendix VII: Comments from the Government of the Commonwealth of the Northern Mariana Islands



*Department of Commerce*  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
Caller Box 10007 CK, Saipan, MP 96950  
Tel. (670) 664-3000 • Fax: (670) 664-3067  
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September 14, 2012

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

**Subject: Response to DRAFT GAO-12-975 "[CNMI] – Additional Actions Needed on Permit Program for Foreign Workers"**

Dear Mr. Gootnick:

The CNMI Department of Commerce is pleased with the opportunity to comment on the draft GAO report # GAO-12-975 on the [CNMI] Additional Actions Needed on Permit Program for Foreign Workers. Please find our responses as attached.

If we can be of further assistance in the issuance of the final report, please let us know.

Thank you,

A blue ink signature of Sixto K. Igisomar, written in a cursive style.

SIXTO K. IGISOMAR  
Secretary  
For the Department of Commerce

cc: Governor, CNMI

The DRAFT GAO-12-975 “[CNMI] – Additional Actions Needed on Permit Program for Foreign Workers” intends to provide an overview on effects of the 2009 U.S. immigration law extended to the CNMI under the CNRA of 2008.

On the onset, we agree on the report’s recommendations that the Secretary of Homeland Security (1) disclose, on publication of its allocations, the methodology used and (2) use DOL analyses in determining future permit allocations. However, of equal importance, is the concern we have on uncertainties with respect to our labor resources and capacity. Although we applaud efforts from the federal agencies involved in extending federal resources to CNMI to provide assistance during this transitional period, we believe there should be a little more push in prioritizing an effective and transparent transitional plan with coordinated use of resources. One example is the lack of capacity to effectively track unemployment rates, available and vacant positions, as well as skill sets necessary to forecast our labor pool. As we understand, after the five years transitional period, the availability of transitional CW-1 permits that is currently favorable to the CNMI will cease to exist, or will be reduced to zero. Although we do not have the exact numbers, but relying on estimates, we do know that the CNMI cannot function with CW-1 permits being removed in their entirety, unless there is a process or mechanism in place that will allow total elimination by attrition and directly proportionate to the availability of qualified U.S. workers to replace such CW-1 skill-sets. With the anticipated Economic Model by Labor, as mentioned by this draft report, we hope this will assist in suppressing any drastic economic impact.

The administration is in full support of the continued use of foreign labor in the economy, with the CW-1 permit as a mechanism for the use of foreign labor. We believe in the overall intention of the CNRA in reducing foreign workers and prioritizing U.S. qualified workers, in its effort to stabilize our economy to self-sustainability. As such, we highly recommend that we proactively achieve this equilibrium and not delay it with an unnecessary blanket extension for those foreign laborers who do not have the CW-1 permit. This should similarly be applicable to all parolees. Meaning, if the majority of the current foreign laborers are not issued valid working permits due to various reasons, then the administration supports the notion that those without working permits must exit the CNMI by 2014. Based on number of applications/petitions received by USCIS, as well as comparison with the Census 2010 data, and from our recent Prevailing Wage and Workers Assessment Study, we do support any reduction of available permits for fiscal year 2013 to at least 50% of the original estimate.

The cost of doing business in the CNMI is affected by many uncertainties such as minimum wage, energy cost, healthcare, and the volatility of the tourism industry. Uncertainty surrounding our labor pool is no different, and much of the concerns from our community and businesses deserve a firm response, commitment, and transparency of our efforts to provide a stable and reliable transition.

Finally, although we applaud the efforts of this GAO report # 12-975, we highly recommend that the report provide a more comprehensive survey or assessment on what the current businesses needs are. We recommend that the report provide further recommendations to Congress on what

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**Appendix VII: Comments from the Government  
of the Commonwealth of the Northern Mariana  
Islands**

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capacity and resource are necessary to identify the needs of the businesses and any new investors not just prevent an impact to the CNMI economy during the transition, but for expansion beyond the transitional period.

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# Appendix VIII: GAO Contact and Staff Acknowledgments

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## GAO Contact

David Gootnick, (202) 512-3149 or [gootnickd@gao.gov](mailto:gootnickd@gao.gov)

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## Staff Acknowledgments

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