DEPARTMENT OF LABOR

Office of the Assistant Secretary for Labor

Secretary of Labor extends the transition period of the Commonwealth of the Northern Mariana Islands – Only Transitional Worker Program

AGENCY: Office of the Assistant Secretary for Labor, Department of Labor.

ACTION: Notice of an extension of the transition period.

SUMMARY: The Consolidated Natural Resources Act of 2008 (CNRA) extended U.S. immigration laws to the Commonwealth of the Northern Mariana Islands (CNMI), and authorized the Department of Homeland Security (DHS) to create the CNMI-Only Transitional Worker (CW-1) program to ensure adequate employment in the CNMI until the program is phased out on December 31, 2014. The CNRA also requires the Secretary of Labor, in consultation with the Secretary of Homeland Security, the Secretary of Defense, the Secretary of the Interior, and the Governor of the CNMI, to determine by July 4, 2014, whether an extension of up to five years of the CW-1 program is necessary to ensure an adequate number of workers will be available for legitimate businesses in the CNMI. Based on the factors set out in the CNRA, the Secretary of Labor has made the determination to extend the CW-1 program for five years.

DATES: This Notice is effective [**insert publication date**].

FOR FURTHER INFORMATION CONTACT: For further information, contact James Moore, Deputy Assistant Secretary for Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–2312, Washington, DC 20210; Telephone (202) 693–5959.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Consolidated Natural Resources Act of 2008 (CNRA), Pub. L. 110-229, 122 Stat. 754 (May 8, 2008), extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI). 48 U.S.C. 1806(a)(1). To minimize the potential adverse economic effects of phasing out the CNMI-Only Transitional Worker (CW-1 for principal workers and CW-2 for spouses and minor children) program, the CNRA provides for a five-year transition period ending on December 31, 2014. 48 U.S.C. 1806(a)(2). However, the CNRA authorizes the Secretary of Labor to extend the transitional worker program for up to five years based on the labor needs of the CNMI to ensure that an adequate number of workers are available for legitimate businesses. 48 U.S.C. 1806(d)(5). Nonimmigrant worker visa programs under the Immigration and Nationality Act are not adequate substitutes for the CW-1 program because the jobs that CNMI businesses fill with CW-1 workers are not temporary or seasonal in nature and thus cannot be filled by H-2B temporary non-agricultural workers; are not in a specialty occupation suitable for H-1B temporary workers; and do not otherwise fit under one of the other nonimmigrant programs (such as the H-2A program for temporary agricultural workers, the O program for individuals of

extraordinary ability, the P program for artists and athletes, or the R program for religious workers, etc.).

The CNRA requires the Secretary of Labor, in consultation with the Secretary of Homeland Security, the Secretary of Defense, the Secretary of the Interior, and the Governor of the CNMI, to ascertain the current and anticipated labor needs of the CNMI before making a determination. 48 U.S.C. 1806(d)(5)(A). The Secretary of Labor's decision to extend the CNMI-Only Transition Worker program must be made 180 days prior to the expiration of the transition period, id., which is by July 4, 2014.

The CNRA stipulates that in making the determination of whether foreign workers are necessary to ensure an adequate number of workers in the CNMI, the Secretary of Labor may consider several factors. 48 U.S.C. 1806(d)(5)(C). The Secretary may consider: 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 jobs, and whether the industry requires alien workers to fill those jobs. Id.

Regarding the first factor, the Department of Labor (the Department) reviewed and considered workforce studies that examined the economic impact of alien workers on the CNMI economy and labor market.[1] A review of the workforce studies found that the majority of the CNMI's current labor supply is provided by foreign workers. The studies unanimously concluded that restrictions on the foreign labor supply will exacerbate the CNMI's current economic problems and restrain economic growth.

The Department conducted a labor force analysis to determine the unemployment rates of the populations identified in factors two through four. According to the 2010 Island Areas Census, which contains the most recent labor market data, the CNMI population was 53,883, with 24,168 U.S. citizens and 29,715 non- citizens. The total number of U.S. citizens age 16 and over was 13,016. The Department's calculation, using the 2010 Island Areas Census, found that 24 percent of U.S. workers[2] residing in the CNMI were unemployed. Regarding factors three and four, due to the lack of data, the Department was not able to measure the unemployment rate of workers who have been lawfully admitted for permanent residence or the number of unemployed foreign workers in the CNMI. Based on the CNMI Department of Finance tax data for 2002-

[1] These studies include U.S. Department of the Interior, "Economic Impact of Federal Laws on the Commonwealth of the Northern Mariana Islands," 2008; U.S. Department of the Interior, "Report on the Alien Worker Population in the Commonwealth of the Northern Mariana Islands," 2010; U.S. Government Accountability Office, "Commonwealth of the Northern Mariana Islands: Managing Potential Economic Impact of Applying US Immigration Law Requires Coordinated Federal Decisions and Additional Data," GAO-08-791, Aug. 2008; and U.S. Department of Homeland Security, " Regulatory Assessment for the Final Rule, Commonwealth of the Northern Mariana Islands Transitional Worker Classification," 2011.

[2] In this document, the term "U.S. workers" includes lawful permanent residents and the term "foreign workers" does not.

2012 and the 2010 Island Areas Census, the Department concluded that there are an insufficient number of U.S. workers in the CNMI to fill all of the jobs held by foreign workers. The total number of unemployed U.S. workers in the CNMI in 2010 amounted to only about 20 percent of the 14,958 foreign workers. Even if all the U.S. workers in the labor force were employed, more than 11,000 jobs would still need to be filled by foreign workers .

In regard to the fifth factor, we consulted with CNMI government officials and other stakeholders, to obtain information related to training, education, and other assistance provided to U.S. citizens and lawful permanent residents. The Government of the CNMI shared with the Department the good-faith efforts it has made and its continuing efforts to locate, educate, and train U.S. citizens and lawful permanent residents to assume jobs in the CNMI. They reported that they continue to provide education and training to unemployed or underemployed U.S. workers to help them become sufficiently qualified to replace foreign workers. They developed high school career technical education (CTE) curriculum that is responsive to the needs of employers in the CNMI.

Concerning the sixth factor, officials from the CNMI government reported that some U.S. citizens and lawful permanent residents are not willing to accept certain jobs, including low-wage jobs or jobs with few or no benefits. Our analysis of the CNMI Department of Finance tax data for 2002-2012 found that foreign workers generally earn significantly less than U.S. workers. In 2011, the average annual wage for U.S. workers was $15,737 compared to $10,280 for foreign workers. On average, foreign workers are paid $5,457 (or 35 percent) less than U.S. workers.

In regard to the seventh factor, the Department was unable to assess the extent to which the admission of foreign workers affects the compensation, benefits, and living standards of existing workers in industries authorized to employ foreign workers due to limitations in current data. To address the seventh factor, the Department conducted an analysis similar to the approach used by GAO in its 2008 report to measure the potential economic impact of applying U.S. immigration law in the CNMI.

To address the eighth factor, we consulted with CNMI government officials and other stakeholders to determine if there is a need for foreign workers to fill specific industry jobs. CNMI government officials reported that legitimate businesses in the CNMI have difficulty finding qualified applicants for skilled jobs who are U.S. citizens and lawful permanent residents.

Finally, the Department engaged in the interagency and intergovernmental consultation process, as contemplated by the statute. 48 U.S.C. 1806(d)(5)(A). As part of this process, the Department conducted a series of meetings with DHS, the Department of Defense, the Department of the Interior, and CNMI elected officials, including the Governor, during which the participants examined the statutory criteria to assess whether the Department should extend the transition period. None of the participants in those consultations registered objections to the grant of an extension for up to five years to ensure that an adequate number of workers are available for legitimate businesses in the CNMI.

After reviewing existing studies, consulting with DHS, the Department of Defense, the Department of the Interior, and CNMI elected officials, including the Governor, and conducting a quantitative analysis of relevant data, the Secretary of Labor has concluded that there is an insufficient number of U.S. workers to meet CNMI businesses' current needs, and has further determined that a five year extension of the CW-1 program is warranted. A five-year extension will allow CNMI businesses to continue to hire CW-1 workers to meet their current and future needs for foreign workers.

Because the CNRA allows the Secretary of Labor to provide for an additional extension period of up to five years, the Department will continue to monitor and assess the current and anticipated labor needs of the CNMI to ensure that there are an adequate number of workers for CNMI's legitimate businesses. 48 U.S.C. 1806(d)(5)(C). In particular, we will continue to assess any good faith efforts to locate, educate, train, or otherwise prepare U.S. citizens, lawful permanent residents and unemployed foreign workers already in the CNMI to assume jobs in legitimate businesses. 48 U.S.C. 1806(d)(5)(C)(v). In order for us to properly assess the CNMI's workforce in the future, we request that the CNMI government provide updates to the Department on a yearly basis about its good faith efforts to locate, educate, train, or otherwise prepare U.S. citizens, lawful permanent residents, and unemployed alien workers already in the CNMI.

Section 701 of the CNRA states it is the intent of the Congress to minimize potential adverse economic and fiscal effects of phasing-out CNMI's nonresident contract worker program and to

maximize the CNMI's potential for future economic and business growth by, among other things, assuring that foreign workers are protected from the potential for abuse and exploitation. Pub. L. 110-229, Sec. 701(a)(1)(E), 48 U.S.C. 1806 note. The Department emphasizes the importance of Congress's intent in this regard, and further notes that this notice should not be construed to alter or amend the continuing obligations of CNMI employers to adhere to and comply with applicable civil rights, labor and workplace safety laws. Employers in CNMI remain subject to the array of federal laws that, among others, ensure and protect the rights of workers to a workplace based on fair treatment, and free of unlawful discrimination and hazards to safety and health. Those and other workplace rights will continue to be applied forcefully by the Department and other federal agencies with jurisdiction to administer and enforce federal worker protection laws.

Signed: at Washington, DC this 27 of May, 2014.

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Thomas E. Perez

Secretary of Labor

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