

# Northern Mariana Islands Labor Stabilization Act

## Section-by-Section Analysis

### **Section 1. Short Title**

*Proposed Amendment:*

Designates the Act as the “Northern Mariana Islands Labor Stabilization Act.”

### **Section 2. Modifications to Labor Stabilization Program Transition**

#### **Section 2(a). Extension of Transition Period**

*Current Law:*

The Commonwealth Only Transitional Worker program is scheduled to terminate on December 31, 2029. On this date, the CNMI’s access to the Commonwealth Only Transitional Worker Program expires, along with its exemption to the numerical limits on H-visas, and the CNMI’s asylum bar.

*Proposed Amendment:*

Extends the program through December 31, 2039.

#### **Section 2(a)(2)(A). Petition Approval Process**

*Current Law:*

Decisions regarding the need for foreign labor in the Commonwealth are made through federal processes administered outside the Commonwealth, whereas in Guam comparable determinations are made locally by the Governor.

*Proposed Amendment:*

Requires petitions filed for employment beginning in the first fiscal year after enactment to be approved by the Governor, in a manner substantially similar to the Governor of Guam’s approval role under federal H-2B regulations.

The process that exists for the Governor of Guam is provided under 8 C.F.R. 214.2(h)(6)(iii), which states:

***“(iii) Procedures.***

“(A) Prior to filing a petition with the director to classify an alien as an H-2B worker, the petitioner shall apply for a temporary labor certification with the Secretary of Labor for all areas of the United States, except the Territory of Guam. In the Territory of Guam, the petitioning employer shall apply for a temporary labor certification with the Governor of Guam. The labor certification shall be advice to the director on whether or not United States workers capable of performing the temporary services or labor are available and

whether or not the alien's employment will adversely affect the wages and working conditions of similarly employed United States workers.

“(B) An H-2B petitioner shall be a United States employer, a United States agent, or a foreign employer filing through a United States agent. For purposes of [paragraph \(h\)](#) of this section, a foreign employer is any employer who is not amenable to service of process in the United States. A foreign employer may not directly petition for an H-2B nonimmigrant but must use the services of a United States agent to file a petition for an H-2B nonimmigrant. A United States agent petitioning on behalf of a foreign employer must be authorized to file the petition, and to accept service of process in the United States in proceedings under section 274A of the Act, on behalf of the employer. The petitioning employer shall consider available United States workers for the temporary services or labor, and shall offer terms and conditions of employment which are consistent with the nature of the occupation, activity, and industry in the United States.

“(C) The petitioner may not file an H-2B petition unless the United States petitioner has applied for a labor certification with the Secretary of Labor or the Governor of Guam within the time limits prescribed or accepted by each, and has obtained a favorable labor certification determination as required by [paragraph \(h\)\(6\)\(iv\)](#) or [\(h\)\(6\)\(v\)](#) of this section.

“(D) The Governor of Guam shall separately establish procedures for administering the temporary labor program under his or her jurisdiction. The Secretary of Labor shall separately establish for the temporary labor program under his or her jurisdiction, by regulation at 20 CFR 655, procedures for administering that temporary labor program under his or her jurisdiction, and shall determine the prevailing wage applicable to an application for temporary labor certification for that temporary labor program in accordance with the Secretary of Labor's regulation at 20 CFR 655.10.

“(E) After obtaining a favorable determination from the Secretary of Labor or the Governor of Guam, as appropriate, the petitioner shall file a petition on the form prescribed by USCIS, accompanied by the labor certification determination and supporting documents, with the director having jurisdiction in the area of intended employment.”

### **Section 2(a)(2)(B). Prevailing Wage Determination**

#### *Current Law:*

Prevailing wages are determined annually using national sampling methodology. Should an occupation not meet the statistical threshold during the study, the wage for that occupation reverts to those wages of those similarly employed in Guam, under an “Alternative Method for Determining the Prevailing Wage”. The methodology for approved CNMI wages are defined by 20 C.F.R. § 655.10, and require that a wage determined by the survey includes wage data from at least 30 workers and three employers.

*Proposed Amendment:*

Changes prevailing wage updates from annual to biennial, and modifies the alternative wage methodology by setting the required wage at 75 percent of the otherwise applicable prevailing wage or the federal minimum wage, whichever is greater to ensure the wage data more accurately represents the CNMI's economic conditions.

**Section 2(a)(2)(B). Numerical Cap Adjustments**

General Cap

*Current Law:*

The total number of Commonwealth Only Transitional Worker permits is subject to statutory numerical limitations that decrease annually toward the expiration of the program in 2029 and the zeroing out of permits in the first quarter of 2030. The number of available permits cannot exceed the numerical cap for the given fiscal year. This schedule of reduction is as follows:

- 13,000 for fiscal year 2019;
- 12,500 for fiscal year 2020
- 12,000 for fiscal year 2021
- 11,500 for fiscal year 2022
- 11,000 for fiscal year 2023
- 10,000 for fiscal year 2024
- 9,000 for fiscal year 2025
- 8,000 for fiscal year 2026
- 7,000 for fiscal year 2027
- 6,000 for fiscal year 2028
- 5,000 for fiscal year 2029
- 1,000 for the first quarter of fiscal year 2030

*Proposed Amendment:*

Sets a general annual cap that is not to exceed 15,000 permits, replacing the statutory declining schedule.

Separate Allocation for Construction and Extraction Occupations

*Current Law:*

No occupation-specific allocation outside the general cap exists.

*Proposed Amendment:*

Requires the Secretary of Homeland Security to increase the annual cap by 3,000 permits for workers in Construction and Extraction Occupations (SOC 47-0000). These permits may be issued only to nationals of countries designated as H-2B eligible during calendar years 2024 or 2025.

### **Section 2(a)(2)(C). Processing Timeframes**

#### *Current Law:*

Beneficiaries of CW petitions must apply for admission into the Commonwealth within 10 days after the period of petition validity begins. If the beneficiary does not apply for admission within this timeline, the Secretary of Homeland Security may revoke the permit.

#### *Proposed Amendment:*

Extends the applicable timeframe to 90 days.

### **Section 2(a)(2)(D). Removal of Prohibition on Construction and Extraction Occupations**

#### *Current Law:*

No CW permit may be issued for workers in Construction and Extraction Occupations (defined by Standard Occupational Classification Group 47-0000), unless that worker is a “Long-term Worker”.

#### *Proposed Amendment:*

Strikes the prohibition on Construction and Extraction Occupations.

### **Section 2(a)(2)(D). Removal of Obsolete Provision**

#### *Current Law:*

Subparagraph (E) of section 6(d)(3) contains requirements tied to the increase of the numerical cap on CW petitions for Construction and Extraction Occupations to respond to presidentially declared natural disasters or emergency in fiscal years 2020, 2021, and 2022.

#### *Proposed Amendment:*

Strikes subparagraph (E).

### **Section 2(a)(3). Permit Validity; Long-Term Workers**

#### Long-term Workers

#### *Current Law:*

Long-term transitional workers have experienced complications with eligibility for Long-term Worker Status due to overlapping permit validity dates, despite being legally present in the Commonwealth.

#### *Proposed Amendment:*

Allows workers admitted in FY2015 and in two of FY2016–FY2019 to be admitted for renewable 3-year periods during the labor stabilization program period. Each year of validity counts toward the applicable numerical cap.

## Eliminating the “Touch Back” Provision

### *Current Law:*

The requirement to remain outside of the United States following the expiration of the second renewal period has created exceptional strain on workers and businesses in the Commonwealth.

### *Proposed Amendment:*

Rewrites the section to eliminate the requirement to remain outside of the United States following the expiration of the second renewal period (“touch back”).

## **Section 2(a)(4). Labor Stabilization Period Assessment and Extension**

### Labor Needs Assessment

#### *Current Law:*

No formal post-2029 labor needs determination process exists.

#### *Proposed Amendment:*

Requires the Secretary of Labor, in consultation with DHS, DOD, DOI, and the Governor, to:

- Assess the Commonwealth’s labor needs for the ensuing 10-year period, and
- Determine whether an extension of up to 10 additional years is necessary.
- The assessment must be completed by July 1, 2039.

### Extension Authority

#### *Current Law:*

Extensions require legislative action.

#### *Proposed Amendment:*

Authorizes the Secretary of Labor to extend the labor stabilization period by up to 10 years upon an affirmative determination, published in the Federal Register.

### Factors Considered

#### *Current Law:*

No statutory list of factors governs extension decisions.

#### *Proposed Amendment:*

Allows consideration of labor market data, unemployment rates, workforce training efforts, job acceptance by U.S. workers, wage impacts, and industry reliance on foreign labor.

## **Section 2(a)(5). Fees**

### *Current Law:*

No direct funding mechanism to support immigration enforcement in the CNMI.

*Proposed Amendment:*

Imposes a \$150 fee per petition, with all proceeds made available to DHS for immigration enforcement purposes, notwithstanding Covenant §703(b).

**Section 2(b). Qualified Alien Status**

*Current Law:*

Commonwealth Only Transitional Workers are not expressly listed as “qualified aliens” for certain disaster related federal benefits.

*Proposed Amendment:*

Adds Commonwealth Only Transitional Workers to the definition of qualified alien for purposes of receiving disaster assistance eligibility.

**Section 2(c). Immigration and Naturalization Fees**

*Current Law:*

Covenant §703(b) was amended by U.S. Public Law 110-229 to remove “immigration and naturalization fees.” Current law does not include provisions to transfer the fees collected for immigration and naturalization applications in the CNMI to the CNMI Treasury.

*Proposed Amendment:*

Adds immigration and naturalization fees back into the list of covered fees to assist in supporting the additional requirements on the CNMI Governor to operate similar certification requirements as exist on Guam.

**Section 2(d). Expedited Removal Physical Presence Standard**

*Current Law:*

Foreign nationals must generally demonstrate 2 years of continuous physical presence in the United States to avoid expedited removal.

*Proposed Amendment:*

Creates a CNMI-specific standard requiring 5 years of continuous physical presence in the Commonwealth providing additional tools to DHS to conduct removal actions of foreign nationals, particularly those who have been convicted of criminal activity in the CNMI.

**Section 2(e). Terminology Changes**

*Current Law:*

Statute refers to a “transition period” and “Commonwealth Only Transitional Workers.”

*Proposed Amendment:*

Replaces terminology throughout the Covenant with:

“Labor stabilization program period”, and

“Commonwealth Only Worker.”

### **Section 3. Rulemaking**

*Proposed Amendment:*

Requires DHS and DOL to issue interim final rules within 180 days of enactment.

Agencies must consider written recommendations from the Governor submitted within 60 days.

### **Section 4. Unlawful Presence**

*Current Law:*

Unlawful presence bars apply uniformly under INA §212(a)(9)(B). Under current law, an individual who accrues more than 180 days but less than 1 year of unlawful presence are inadmissible to the United States for 3 years from the date of departure. If an individual accrues more than 1 year of unlawful presence, they are inadmissible for 10 years from the date of departure.

*Proposed Amendment:*

Creates a narrow exception for certain Commonwealth Only Transitional Workers to come back into lawful status in the CNMI under the following conditions:

- Were admitted prior to FY2020,
- Accrued less than 5 years of unlawful presence, and
- Have continuously resided in the CNMI beginning in fiscal year 2019 through the date of enactment.

### **Section 5. Effective Date; Applicability**

*Proposed Amendment:*

The Act takes effect on the first day of the first fiscal year after enactment and applies to petitions filed on or after that date.