

# Subcommittee on Indian, Insular and Alaska Native Affairs

Don Young, Chairman

Hearing Memorandum

September 9, 2016

To: All, Subcommittee on Indian, Insular and Alaska Native Affairs Committee Members

From: Majority Committee Staff (x6-7925)  
Subcommittee on Indian, Insular and Alaska Native Affairs

Hearing: Oversight hearing on *“Reviewing the economic impacts from the implementation of the Commonwealth-only worker program in the Northern Mariana Islands under Public Law 110-229.”*

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The Subcommittee will hold an oversight hearing on **Tuesday, September 13, 2016 at 11:00 a.m. in room 1334 Longworth** titled: *“Reviewing the economic impacts from the implementation of the Commonwealth-only worker program in the Northern Mariana Islands under Public Law 110-229.”* The purpose of this hearing is to discuss the Commonwealth-only worker (CW) program and the effects the implementation is having on the current economic state of the Commonwealth.

## **Policy Overview**

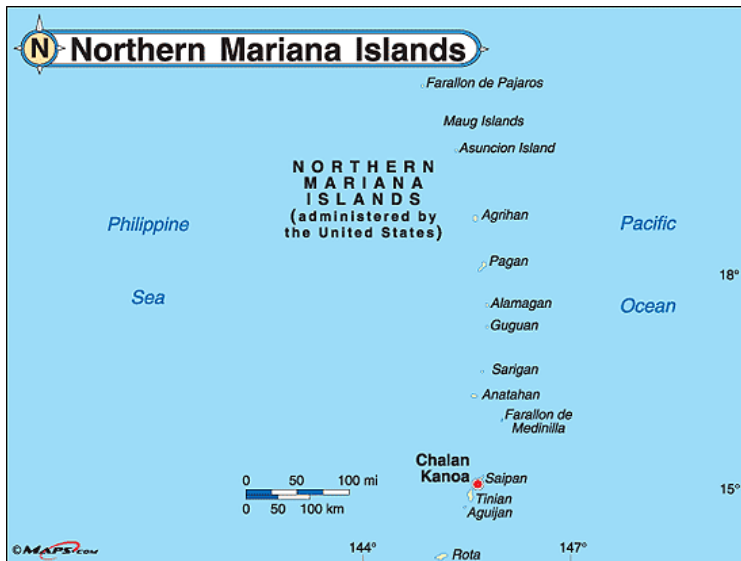
- Public Law 110-229, the Consolidated Natural Resources Act (CNRA), applied the Immigration and Nationality Act to the Commonwealth of the Northern Mariana Islands, beginning in 2009.
- Phasing out the dependence on foreign workers through the establishment of the Commonwealth’s nonresident contract worker program while minimizing the potential adverse economic and fiscal impacts caused by the application of Federal immigration law has become challenging.
- The scheduled phase-out of the CW program from the initial cap of 22,417 issued visas when the CNRA was implemented in 2011, to the current cap of 12,998 issued visas is an area of concern for the Governor, local legislature, and business community that are trying to foster the recent uptick in economic investment in the CNMI. A rigid phase out of the CW program could leave the CNMI without the workforce necessary to propel its fragile economy forward in the coming years.

## **Invited Witnesses**

*The Honorable Ralph Deleon Guerrero Torres*  
Governor  
Commonwealth of the Northern Mariana Islands

Mr. Alex Sablan  
Vice President, Corporate Business Development  
Tan Holdings  
Saipan, CNMI

## Background



The Commonwealth of the Northern Mariana Islands (CNMI) faces challenges in developing their economy, typical of small island nations within the Pacific region, where it is located. Being a U.S. territory brings with it a myriad of Federal laws that, while designed to help bolster the land over which the American flag flies, has unintended consequences for the far corners of this country, mainly the geographically isolated Pacific territories. The CNRA was implemented in order to apply Federal immigration laws to the

CNMI with the goals of ensuring more effective border security, while also transitioning the Commonwealth immigration policies to meet Federal regulations.



Prior to the implementation of Federal control over the Commonwealth's immigration laws, the local immigration practice led to an influx of tens of thousands of foreign workers that began to work and reside in the territory indefinitely. This immigration surge was primarily the result of foreign owned garment companies setting up shop in the CNMI during the mid-1980's and thereafter.<sup>1</sup>

The local immigration laws allowed foreign held textile companies to bypass mainland U.S. quota restrictions imposed on textile products manufactured in foreign countries. The overall result of this exploited loophole created a strong dependence on foreign nonresident workers that outnumbered the local American workforce, as well as the greater local population, in the

<sup>1</sup> Dela Cruz, Jose S. "The CW Program in Brief." *SaipanTribune.com*. Saipan Tribune, 30 June 2016. Web. 09 Sept. 2016. <<http://www.saipantribune.com/index.php/cw-program-brief/>>.

Commonwealth's economy. Aiming to end the not so subtle practice of less than favorable work conditions found within the garment factories operating in the CNMI, Congress enacted the CNRA in 2009 with the goal of reigning in the lax immigration policies and transitioning the CNMI out of the heavy dependence on nonresident workers.

To help mitigate the potential adverse effects of Federal immigration implementation on the local economy, the CNRA includes four transitional policies: the E2C nonimmigrant investor visa; an exemption from the national H-visa caps for workers; a bar on asylum in the Commonwealth; and the Commonwealth-only worker (CW) program. Title VII of the CNRA removed CNMI control over all immigration matters, including those related to nonresident workers and thus only Congress can amend the CW program as established by the CNRA. The CW worker phase out is to be accomplished by a reduction in the initial cap of 22,417 on CW-1 visas beginning in 2011 to 0 by the year 2019, as mandated by the law.

The phase out increments are set and issued annually by the U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security (DHS). For FY16, the cap for the CW program was reached by USCIS for the first time since the program was implemented<sup>2</sup>, leaving the Commonwealth without the desired room to allow for the immigration of foreign workers and potentially depressing economic activity. There are a number of new resort sites in various stages of development, with the CNMI Government projecting a need for an additional 7,380 workers to fill the construction and operational needs of these facilities. The Governor encouraged companies within the CNMI to apply for H-2B nonagricultural temporary worker visas to fill any gaps left by the cap on the CW-1 visas. The CNMI is exempt from the H-1B and H-2B visa caps until phase out of the CW program in 2019.

In response to statutory requirements, and possibly taking into consideration the fact that the CW-1 cap was reached for FY16, USCIS issued a quota of 12,998 CW-1 visas for FY17, a reduction of just one visa from the previous year.<sup>3</sup> The agency recognized the existing labor market needs for nonresident workers as well as the current potential for economic growth, while also fulfilling their statutory requirement of reducing the cap annually until completion of the phase out in 2019. However, future cap reductions will continue at an unknown pace until a completion of the phase out in 2019 and unless statutory modifications to the program are made unintended economic consequences could have adverse effects on the critical tourism market.

On July 14, 2016, Representative Kilili Sablan, the lone Delegate in Congress from the CNMI, introduced H.R. 5888, To amend section 6 of the Joint Resolution entitled "A Joint Resolution to approve the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and for other purposes." The bill has been referred solely to the Committee on Natural Resources but has not received any further legislative action.

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<sup>2</sup> Villanueva-Dizon, Frauline S. "FY '16 Cap for CW Program Reached."SaipanTribune.com. Saipan Tribune, 22 May 2016. Web. 09 Sept. 2016. <<http://www.saipantribune.com/index.php/fy-16-cap-cw-program-reached/>>.

<sup>3</sup> Press Release. "FY2017 Cap Set for CNMI-Only Transitional Workers."USCIS.gov. U.S. Citizenship and Immigration Services, Department of Homeland Security, 2 Sept. 2016. Web. 09 Sept. 2016. <<https://www.uscis.gov/news/news-releases/fiscal-year-2017-cap-set-cnmi-only-transitional-workers>>.

This bill contains proposed legislative fixes to a number of the issues regarding the CW program and has been endorsed by Governor Torres, as well as the local business community. The Committee held an oversight hearing reviewing the implantation of the CNRA during the 111<sup>th</sup> Congress where both the former Governors of the CNMI and Guam testified along with representatives from the Government Accountability Office, U.S. Department of the Interior, Department of Homeland Security and members of the local business community within the territories. Both Representative Sablan and Governor Torres have expressed to Members of the Committee on Natural Resources, the Office of Insular Affairs and USCIS, their desire to extend the deadline of the CW phase out from 2019 to the year 2029, as well as increasing the CW cap from its current mark of 12,998 to 18,000.<sup>4</sup>

On September 1, 2016 Assistant Secretary for Insular Affairs Esther Kia'aina approved a grant of \$200,000 for the Commonwealth to "create a team of labor certification technicians and a statistician at the Department of Labor to help collect, compile, and analyze crucial data on the CNMI-Only Transitional Worker (CW) Program, which is set to expire on December 31, 2019."<sup>5</sup> The funding will be provided through the Office of Insular Affairs Technical Assistance Program with the goal of helping CNMI obtain valuable information on job categories currently held by CW workers. This grant is the result of Section 902 Consolutions between the White House and the CNMI Government with further talks scheduled to be held between Assistant Secretary Kia'aina and Governor Torres in Saipan on October 1, 2016.

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<sup>4</sup> Chan, Dennis B. "Kilili, Torres Want 10-year Extension of CW Program."SaipanTribune.com. Saipan Tribune, 02 June 2016. Web. 09 Sept. 2016. <<http://www.saipantribune.com/index.php/kilili-torres-want-10-year-extension-cw-program/>>.

<sup>5</sup>Joshua, Tanya Harris. "Department of the Interior Provides Funds to Strengthen Capacity for the Commonwealth of the Northern Mariana Islands-Only Transitional Worker Program." U.S. Department of the Interior. Office of Insular Affairs, 01 Sept. 2016. Web. 09 Sept. 2016. <<https://www.doi.gov/oia/department-interior-provides-funds-strengthen-capacity-commonwealth-northern-mariana-islands>>.