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Representatives

COMMONWEALTH OF THE
NORTHERN MARIANA
ISLANDS

Status of Transition
to Federal
Immigration Law

Statement of David Gootnick, Director
International Affairs and Trade

U.S. Government Accountability Office

GAO 90

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ACCOUNTABILITY * INTEGRITY * RELIABILITY

Chairman Fleming, Ranking Member Sablan, and Members of the Subcommittee:

Thank you for the opportunity to discuss our work on the status of efforts, in response to the Consolidated Natural Resources Act of 2008 (CNRA), to establish federal immigration control and implement programs for foreign workers, visitors, and investors in the Commonwealth of the Northern Mariana Islands (CNMI).¹

Under the terms of its 1976 covenant with the United States,² the CNMI government administered its own immigration systems from 1978 to 2009, using its authority to admit substantial numbers of foreign workers³ through a permit program for non-U.S. citizens entering the commonwealth. In 2005, these workers represented a majority of the CNMI labor force and outnumbered U.S. citizens in most industries, including tourism and garment manufacturing. The CNMI also admitted visitors through its own entry permit and entry permit waiver programs and provided various types of admission to foreign investors.

CNRA required that GAO report on the implementation of federal immigration law in the CNMI 2 years after the date of enactment, which was May 8, 2008. In August 2008, we reported that decisions by the Secretary of Homeland Security, in conjunction with other departments, in implementing CNRA's provisions regarding foreign workers, visitors, and investors would largely determine its impact on the CNMI's economy.⁴ In

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

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

³In this statement, unless otherwise indicated, "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 statement, foreign workers may include aliens who are immediate relatives of U.S. citizens or U.S. permanent residents.

⁴GAO, *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).

May 2010, we reported, and testified before this subcommittee, that several Department of Homeland Security (DHS) components—U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS)⁵—had established border control operations in the CNMI in 2009 but had not concluded negotiations with the CNMI government to resolve certain challenges involving access to CNMI airport space, detention facilities, and databases.⁶ We also noted that DHS had not yet finalized regulations needed to fully implement CNRA provisions affecting foreign workers, visitors, and investors.

My statement today will briefly describe CBP, ICE, and USCIS immigration and border control operations in the CNMI, including progress in negotiating solutions to the challenges we identified in May 2010. In addition, I will describe the status of regulations implementing CNRA-required programs for foreign workers, visitors, and investors. Finally, I will discuss some pending issues, several of which may lead to future challenges related to U.S. immigration control in the CNMI.

This statement is based on our prior reports,⁷ updated with information provided by DHS and the Department of the Interior (DOI) and obtained in interviews with DHS officials in California, the CNMI, Hawaii, and Washington, D.C. In general, to establish the reliability of the data that DHS uses to document arrivals, aliens, and benefits in the CNMI, we systematically obtained information about the ways that DHS components

⁵CBP is the lead federal agency charged with keeping terrorists, criminals, and inadmissible aliens out of the country while facilitating the flow of legitimate travel and commerce at the nation's borders. ICE is responsible for enforcing immigration laws within the United States, including, but not limited to, identifying, apprehending, detaining, and removing aliens who commit crimes and aliens who are unlawfully present in the United States. USCIS processes applications for immigration benefits—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.

⁶GAO, *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 GAO, *Commonwealth of the Northern Mariana Islands: DHS Needs to Conclude Negotiations and Finalize Regulations to Implement Federal Immigration Law*, [GAO-10-671T](#) (Washington, D.C.: May 18, 2010). In our May 2010 report, we recommended that DHS and its components establish strategic approaches and time frames for concluding its negotiations; DHS agreed with our recommendation. For a list of related products, see [GAO-10-553](#), page 82.

⁷[GAO-08-791](#) and [GAO-10-553](#).

collect and tabulate data. When possible, we checked for consistency across data sources. Although the available data had some limitations, we determined that the data were adequate and sufficiently reliable for the purposes of our review. We also interviewed private sector representatives in the CNMI regarding implementation. The information contained in this testimony was reviewed for technical accuracy by DHS officials. We conducted our work for this statement from May 2011 to July 2011 in accordance with generally accepted government auditing standards.⁸

Background

The CNMI's economy is in a prolonged recession due to the departure of its garment industry and decline in its tourism industry. Until recently, 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. The tourism industry has declined as visitor arrivals to the CNMI decreased by 49 percent, from a peak of about 727,000 in 1997 to roughly 368,000 in 2010. As the economy contracted, the CNMI's real gross domestic product dropped at an estimated average annual rate of 4.2 percent from 2002 to 2007.⁹ In addition, revenues available for appropriation by the CNMI government have fallen by 45 percent, from \$240 million in fiscal year 2005 to an estimated \$132 million for fiscal year 2011. Moreover, since 2007, labor costs have increased following the application of the federal minimum wage in the CNMI.¹⁰

Certain provisions in CNRA were intended to minimize the potential adverse economic and fiscal effects associated with phasing out a CNMI government permit program for foreign workers and to maximize the CNMI's potential for economic and business growth. These provisions were to apply during a 5-year transition period that began on November 28, 2009, and ends in 2014. In particular:

⁸Additional information on our scope and methodology is available in prior reports.

⁹U.S. Department of Commerce's Bureau of Economic Analysis, "The Bureau of Economic Analysis (BEA) releases estimates of the major components of gross domestic product of the Commonwealth of the Northern Mariana Islands," news release, June 6, 2010.

¹⁰GAO, *American Samoa and Commonwealth of the Northern Mariana Islands: Employment, Earnings, and Status of Key Industries Since Minimum Wage Increases Began*, [GAO-11-427](#) (Washington, D.C.: June 23, 2011).

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- *CNMI government-issued permits.* Under CNRA, foreigners who lack U.S. immigration status but were admitted under the CNMI's immigration laws prior to November 2009, may continue to live and work in the commonwealth for 2 years after that date or until their CNMI government-issued permits expire, whichever is earlier. The CNMI issued temporary permits authorizing the holders to remain in the commonwealth after November 28, 2009, for a maximum of 2 years consistent with the terms of the permit. These "umbrella" permits also include provisions for extending, transferring, and seeking employment. CNRA's authorization for individuals with these permits to remain in the CNMI without U.S. immigration status will expire on November 27, 2011.
 - *CNMI-only transitional work permits.* CNRA authorizes a federal CNMI-only transitional work permit program and authorizes the Secretary of Homeland Security to determine the number, terms, and conditions of these permits, which must be reduced to zero by the end of the transition period and any extensions of the CNMI-only work permit program by the Secretary of Labor.¹¹
 - *CNMI nonimmigrant investor status.* CNRA provides for current CNMI foreign investors who meet certain requirements to convert their status from CNMI investor to federal nonimmigrant treaty investor during the transition period. The Secretary of Homeland Security is to determine whom this "grandfathered" status applies to and how long it is valid.

In addition, CNRA amended existing U.S. immigration law to establish a joint visa waiver program for the CNMI and Guam that replaced an existing visa waiver program for Guam visitors.

¹¹CNRA authorizes the Secretary of Labor to extend the CNMI-only transitional work permit program indefinitely for up to 5 years at a time. The Secretary may issue the extension as early as desired within the transition period and up to 180 days before the end of the transition period or any extensions of the CNMI-only transitional work permit program. The legislation instructs the Secretary to base this decision on the labor needs of legitimate businesses in the CNMI. To determine these needs, the Secretary may consider (1) workforce studies on the need for foreign workers, (2) the unemployment rate of U.S. citizen workers in the CNMI, and (3) the number of unemployed foreign workers in the CNMI, as well as other information related to foreign worker trends. In addition, the Secretary of Labor is to consult with the secretaries of the departments of Homeland Security, the Interior, and Defense and the Governor of the CNMI in making this determination.

DHS Has Continued Immigration and Border Control Operations and Concluded Some Negotiations with the CNMI Government

U.S. Customs and Border Protection. As of April 30, 2011, CBP officers at the Saipan and Rota airports had admitted 514,828 arriving travelers—an average of about 30,300 per month—granting 68,764 (13 percent) requests for parole since beginning operations in November 2009.¹² The Marianas Visitors Authority reported that 77 percent of arriving travelers in fiscal year 2010 came from Japan or South Korea. According to CBP data, of the arriving travelers who were granted parole, 56,376 (82 percent) were from China, 6,751 (10 percent) were from Russia, and the remaining travelers were from other countries. (See table 1.)

Table 1: Traveler Arrivals at Saipan and Rota Airports, November 28, 2009–April 30, 2011

Admitted (total)	514,828
Granted parole ^a	68,746
From China and granted parole	56,376
From Russia and granted parole	6,751

Source: GAO analysis of Customs and Border Protection data.

^aArriving travelers were granted the following types of parole: advance (3,162), district authorized (464), humanitarian (3,067), public interest (62,070), and overseas authorized (1). A majority of the other travelers granted parole were Filipino (1,781) or Korean (2,231).

In October 2010, CBP concluded negotiations with the CNMI government and both parties signed a long-term lease agreement that includes permission to renovate airport operating space in Saipan and Rota. In February 2011, CBP began to renovate approximately 14,000 square feet of inspection space at the Saipan International Airport.¹³ DHS expects to

¹²A grant of parole is official permission for an otherwise inadmissible alien to be physically present in the United States temporarily. Parole is determined on a case-by-case basis, and all applicants for admission are subject to inspection and removal if determined to be inadmissible for reasons other than lack of a visa. On October 21, 2009, the Secretary of Homeland Security announced to Congress and the Governors of the CNMI and Guam that she will exercise her discretionary authority to parole into the CNMI visitors for business or pleasure who are nationals of the Russian Federation and the People's Republic of China.

¹³CBP originally occupied approximately 9,390 square feet of airport space at the Saipan International Airport and sought access to approximately 7,200 additional square feet to bring the facility up to DHS standards. The CNMI agreed to provide CBP 5,001 more square feet in the inspection areas for, among other things, renovation of administration offices, access to public restrooms, and construction of three holding cells and two interview rooms.

complete the renovations in both Saipan and Rota by September 2011, at a total cost of \$14.2 million.

U.S. Immigration and Customs Enforcement. As of May 31, 2011, ICE officials detailed to Saipan had identified 1,654 individuals in potential violation of U.S. immigration laws, initiating removal proceedings for 236 of these cases. Decisions had been rendered for 133 of the removal cases, 48 of which resulted in removal.¹⁴

In April 2011, ICE concluded negotiations with the CNMI government for access to detention space in the CNMI correctional facility.¹⁵ Under a 2007 agreement between the U.S. Marshals Service and the CNMI Department of Corrections, the CNMI adult correctional facility in Saipan provided the U.S. government 25 detention beds at a daily rate of \$77 per bed. Under the 2011 agreement between ICE and the CNMI government, the CNMI will provide up to 350 detention beds at a daily rate of \$89 per bed, including related detention services.¹⁶ ICE began detaining aliens at the Saipan detention facility on June 6, 2011, and expects to use approximately 20 beds until the end of fiscal year 2011.

Although negotiations with the CNMI government have not resulted in DHS components' gaining direct access to CNMI immigration and border

¹⁴With the implementation of federal immigration, CNMI courts no longer have the authority to issue deportation orders. ICE's Chief Counsel has an office on the island of Saipan, but the office has no permanent attorney or staff. Instead, attorneys represent DHS in removal hearings from ICE's Honolulu office, either through video teleconferencing or temporary assignments to Saipan.

¹⁵ICE uses detention space to hold certain aliens while processing them for removal or until their scheduled hearing dates. ICE acquires detention space by negotiating intergovernmental service agreements with state and local detention facilities, using federal facilities, and contracting with private service contracting facilities.

¹⁶ICE's agreement with the CNMI government includes, in addition to bed space, services that the CNMI detention center will provide when receiving and discharging ICE administrative detainees as well as basic needs, financial liability, transportation, and medical services for detainees and office space for ICE officials at the Saipan detention facility. The agreement was effective April 20, 2011, and will remain in effect for 5 years, with the option to extend.

control databases, the CNMI government has increased its responsiveness to requests for information, according to ICE officials.¹⁷

U.S. Citizenship and Immigration Services. Since March 2009, USCIS has operated an Application Support Center in Saipan, where two full-time staff provide information, interview residents currently eligible to apply for lawful permanent resident status or citizenship, and process requests requiring biometric services such as fingerprints or photographs. As of June 1, 2011, USCIS had processed 1,033 CNMI applications for permanent residency and 96 CNMI applications for naturalization or citizenship, according to data provided by USCIS officials. In addition, USCIS had received 6,966 requests for advance parole, granting 97 percent of them, and had granted parole-in-place status to 2,625 individuals.¹⁸ Also, from October 2010 to June 2011, USCIS granted nonimmigrant H-visas and other categories of worker status classification for 67 individuals.

¹⁷In May 2010, we reported that DHS was negotiating with the CNMI government for direct access to several databases that the CNMI has used to record the permit status of certain aliens and to track the arrivals and departures of travelers. See [GAO-10-553](#). For more information about these databases—the Labor Information Data System and the Border Management System—see GAO, *Commonwealth of the Northern Mariana Islands: Immigration and Border Control Databases*, [GAO-10-345R](#) (Washington, D.C.: Feb. 16, 2010).

¹⁸Advance parole allows aliens in the United States who would otherwise be inadmissible to travel abroad and return. Parole-in-place protects eligible foreign nationals who do not qualify for any other status from being removed or deported from the CNMI. On April 21, 2010, USCIS announced that it will grant parole-in-place to eligible foreign nationals without umbrella permits whose CNMI work permits or CNMI investor permits expire before the CNMI-only transitional worker program and CNMI investor status are available.

DHS Has Not
Finalized
Regulations
Affecting Foreign
Workers but Has
Implemented Program
DHS Has Not Yet Issued
Final Rule for CNMI-
Only Visitor and
Investor Permit
Program

As of July 12, 2011, DHS had not issued a final rule for the CNMI-only work permit program and the permits were not available.¹⁹ DHS previously issued an interim final rule in October 2009 that was to take effect on November 28, 2009;²⁰ however, prior to the transition date, the federal District Court for the District of Columbia granted the CNMI government's request for an order barring implementation of the interim final rule.²¹ DHS reopened the comment period from December 2009 to January 2010 and, after considering comments that it received, submitted draft final regulations for the program to the Office of Management Budget in June 2011.

According to CNMI government officials and private sector representatives, the delayed issuance of DHS's final rule has had a negative impact on the CNMI economy.

- In a May 2010 letter to the Secretary of the Interior, the Governor of the CNMI stated that the lack of final regulations had dramatically slowed foreign investment, travel from other countries, and private sector growth.
- The CNMI Attorney General and the Governor's Special Legal Counsel noted that the lack of a CNMI-only federal worker permit program has contributed to uncertainty among CNMI employers and workers with respect to the status of foreign workers with or without a

¹⁹Employers of foreign workers residing in the CNMI can also apply for other federal immigration categories such as H-2B temporary or seasonal work status, if eligible.

²⁰Commonwealth of the Northern Mariana Islands Transitional Worker Classification, 74 Fed. Reg. 55094 (Oct. 27, 2009). An interim final rule allows an agency to implement federal regulations but retain the flexibility to amend them as necessary in the future. When issuing the interim final rule, DHS announced that it would accept comments in developing the final rule but was not following notice-and-comment rulemaking procedures, asserting that it had good cause not to do so.

²¹Commonwealth of the Northern Mariana Islands v. United States, No. 08-1572 686 F. Supp. 2d 7 (D.D.C. Nov 25, 2009). See [GAO-10-553](#) for more details.

CNMI umbrella permit and that many CNMI foreign investors have left the community.

- According to Saipan Chamber of Commerce officials, without the final regulations, workers are unable to plan their lives and companies cannot estimate their investments and budgets.
- The former manager of a health clinic for women, infants, and children stated that a large number of unemployed contract workers have remained in the CNMI hoping for some beneficial result of implementation of federal immigration.

DHS officials acknowledged that significant consequences will occur if the CNMI-only foreign worker regulations are not implemented by November 27, 2011, when CNRA's authorization for individuals holding the CNMI-issued umbrella permits to remain in the commonwealth will expire.

DHS Implemented Guam-CNMI Visa Waiver Program and Is Still Considering Inclusion of China and Russia

In January 2009, DHS issued an interim final rule for the Guam-CNMI Visa Waiver Program, which has operated since November 2009. The rule allows visitors for business or pleasure from 12 countries or geographic areas²² to apply to enter the CNMI and Guam for stays of up to 45 days without a nonimmigrant visa.

Prior to the issuance of the interim final rule, representatives of the CNMI and Guam governments asked that China and Russia be included in the Guam-CNMI Visa Waiver Program, because visitors from those countries provide significant economic benefits.²³ However, DHS decided not to include China and Russia in the interim final rule, citing political, security, and law enforcement concerns, including high nonimmigrant visa refusal

²²The interim final rule for the Guam-CNMI Visa Waiver Program lists Australia, Brunei, Hong Kong, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Taiwan, and the United Kingdom as participants in the program. Japan and Korea are the two largest tourism markets for the CNMI and Guam. In March 2011, DHS added individuals from Hong Kong who hold a British National Overseas passport to those eligible for admission under the program.

²³CNRA states that regulations for the Guam-CNMI Visa Waiver Program shall provide for a listing of any country from which the Commonwealth has received a significant economic benefit from the number of visitors for pleasure within the 1-year period preceding the date of enactment, unless the Secretary of Homeland Security determines that such country's inclusion on such list would represent a threat to the welfare, safety, or security of the United States or its territories. See 8 U.S.C. § 1182(1)(3)(A).

DHS Finalized Rule
Providing CNMI Investor
Status to Long-Term
Foreign Investors

rates. DHS is still considering whether or not to include these two countries in the Guam-CNMI Visa Waiver Program. Meanwhile, CBP continues to parole Chinese and Russian nationals into the CNMI on a case-by-case basis. According to CNMI officials, the exclusion of Chinese and Russian nationals from the Guam-CNMI Visa Waiver Program has increased economic uncertainty in the CNMI, affecting investments in support of the Chinese and Russian tourism markets.

In December 2010, DHS issued a final rule that allows a large proportion of investors holding CNMI long-term foreign investor permits to obtain U.S. CNMI-only nonimmigrant treaty investor status during the transition period. Eligibility criteria for this status—known as E-2 CNMI investor status²⁴—during the transition period include, among others, having been physically present in the CNMI for at least half the time since obtaining CNMI investor status and providing evidence of maintaining financial investments in the CNMI. In response to public comments received on the proposed rule, the final rule reduces the minimum investment required to obtain this status from \$150,000 to \$50,000 for investors holding CNMI long-term business investor permits.²⁵

As of June 2011, USCIS had approved 22 applications for E-2 CNMI investor status, far fewer than the 512 applications it had anticipated.²⁶ However, DHS officials predicted a surge in applications for E-2 CNMI investor status prior to the expiration of CNMI government-issued foreign investor permits on November 27, 2011.

²⁴E-2 Nonimmigrant Status for Aliens in the Commonwealth of the Northern Mariana Islands with Long-Term Investor Status. 74 Fed. Reg. 79,264 (Dec. 20, 2010).

²⁵CNRA establishes that current CNMI foreign investors who meet certain requirements can convert from CNMI long-term investor status to U.S. CNMI-only nonimmigrant treaty investor status during the transition period.

²⁶According to a senior USCIS official, many Japanese and Korean investors apply for regular E-2 status at their local U.S. embassy rather than through USCIS.

Several Pending
Issues Could Lead
to Future
Challenges
Content and
Implementation of
Regulations for CNMI-
Only Work Permit
Program Will Determine
Impact on CNMI Economy

The content and implementation of DHS's final rule for the CNMI-only work permit program will largely determine its potential impact on CNMI's economy. The rule will establish, as required by CNRA, a system for allocating and determining the number, terms, and conditions of permits to be issued to prospective employers. In particular, CNRA requires that the number of permits issued annually during the transition period be reduced to zero by the end of 2014 or any extensions of the permit program. Because foreign workers comprise a large proportion of the CNMI labor market—59 percent in 2009, according to the CNMI Department of Labor—any substantial and rapid reduction in the numbers of CNMI-only permits for foreign workers would have a negative effect on the size of the CNMI labor force and therefore on the CNMI economy. In addition, the interaction of DHS and U.S. Department of Labor decisions about, respectively, the number of permits to allocate annually and whether and when to extend the permit program past 2014 will significantly affect employers' access to foreign workers.²⁷

Limited Time Is
Available for
Submitting and
Processing CNMI-Only
Work Permit
Applications

The time available for submission and processing of applications for CNMI-only work permits will depend on the timing of DHS's issuance of its final rule implementing the program and on the content of that rule.²⁸ A senior DHS official estimates that approximately 15,000 workers and their dependents will be covered by the program. According to a USCIS official, once DHS issues the final rule, CNMI employers will submit paperwork petitioning for workers to receive the permits; workers will submit biometrics, including fingerprints; and USCIS will process the

²⁷See [GAO-08-791](#) for our analysis of the potential impacts of DHS and U.S. Department of Labor decisions in implementing the CNMI-only work permit program. On March 25, 2011, DHS, and the departments of the Interior, Justice, Labor, and State finalized a memorandum of agreement that set forth the parameters of the working relationships and responsibilities for implementation of CNRA in the CNMI.

²⁸In its enjoined interim final rule, DHS proposed a new CNMI-only transitional worker classification, CW-1 status, which it deemed to be synonymous with the term "permit" referenced in CNRA.

Social Security
Coverage for Certain
Foreign Workers Is
Unknown

submitted paperwork and biometrics.²⁹ CNRA's authorization for individuals with CNMI-issued permits to remain in the CNMI without U.S. immigration status will expire on November 27, 2011.

In 2009, USCIS anticipated needing nine staff for its California Service Center to process the influx of CNMI applications and petitions.³⁰ Currently, four USCIS staff were assigned to this task and five more are trained to work on CNMI-related cases. Depending on the number of petitions received and the time required to process them, USCIS anticipates training an additional 10 to 14 officers after the rule is implemented, according to USCIS officials. USCIS officials said that it could take up to 90 days for employers to prepare the petitions, for workers to submit the biometrics, and for USCIS to conduct the relevant background and security checks required of all applicants for U.S. immigration benefits.³¹

With the elimination of CNMI immigration categories and the transition to federal immigration law, the future status of certain Filipino and Korean workers and their employers with regard to the Social Security payroll tax is unknown. According to the Social Security Administration (SSA), Filipino and Korean workers who were admitted to the commonwealth under CNMI immigration law are not currently covered by Social Security. Specifically, a 1997 SSA document states that, because the U.S.-CNMI covenant provides for federal laws on Social Security taxes to apply to the

²⁹DHS did not provide the content of the draft final rule for our review. However, generally for other nonimmigrant employment based petitions, USCIS and the Department of Labor require that employers submit an attestation regarding wage and labor condition, along with all other required paperwork, to USCIS and pay a fee. Similarly, employees must complete all required paperwork for relatives and dependents; submit the paperwork and biometrics, such as fingerprints and photos, to USCIS; and pay any necessary processing fee.

³⁰According to USCIS officials, all applications and petitions from the CNMI that do not require face-to-face interviews are processed at USCIS's California Service Center.

³¹For example, according to USCIS California Service Center staff, in processing applications for immigration benefits USCIS staff must consider all evidence submitted to adjudicate the petition or application, such as by confirming status; conducting background checks (i.e., checking applicants' names and fingerprints against a Federal Bureau of Investigations system and Interagency Border and Inspection systems); and considering other relevant factors. On December 14, 2010, USCIS issued guidance on how certain aliens can be granted nonimmigrant status in the CNMI under federal immigration law (USCIS-PM-602-0012).

CNMI as they apply to Guam,³² the Internal Revenue Service (IRS) determined that the employment of Filipino and Korean contract workers admitted to the commonwealth under Section 706(K) of the CNMI immigration law was not covered by the U.S. Social Security Act.³³ Our review of SSA data for 2009 found that the data excluded Filipino and Korean workers, and SSA officials told us that Social Security payroll taxes are not withheld from these workers' earnings.³⁴ Data for 2009 from the CNMI Division of Revenue and Tax show that workers from Korea and the Philippines totaled 12,406 and represented 75 percent of foreign workers, or 44 percent of all workers, in the CNMI.³⁵

Given the transition to federal immigration law—in particular, given the availability of H-2 work visas in the CNMI—it is uncertain whether Filipino and Korean workers who obtain CNMI-only work permits will be covered

³²Covenant § 606(b).

³³Social Security Administration, "Social Security Taxes: Filipino and Korean Contract Workers" (Saipan: January 16, 1997). The Social Security Act states that the definition of "employment" does not include work performed on Guam by Filipino workers who are admitted to Guam on nonimmigrant H-2 visas (see 26 U.S.C. § 3121(b)(18)). Article 25 of a treaty between the United States and Korea contains a similar provision for Korean workers admitted on H-2 visas to Guam (United States-Republic of Korea Income Tax Convention, effective Jan. 1, 1980). However, article 29 of the U.S.-Korea treaty does not allow either country to extend any provision of the treaty to one of its territories absent a written agreement that would require implementation through diplomatic channels. We were unable to verify that the IRS had made this determination with regard to Korean workers.

³⁴See GAO, *American Samoa and Commonwealth of the Northern Mariana Islands: Employment, Earnings, and Status of Key Industries since Minimum Wage Increases Began*, [GAO-11-427](#) (Washington, D.C.: June 23, 2011), page 28.

³⁵This information is drawn from W-2 forms prepared by employers and submitted to the Division of Tax and Revenue. The division does not verify workers' reported citizenship. In calculating the share of CNMI foreign workers who are citizens of Korea or the Philippines, we did not count citizens of the freely associated states (Micronesia, the Marshall Islands, and Palau) as foreign workers.

Long-Term Resident
Status for Certain CNMI
Foreign Workers May Be
Considered

by Social Security.³⁶ If these workers are deemed to be covered, they and their employers will be subject to Social Security payroll taxes. The IRS and SSA will need to consider CNRA's impact on Filipino and Korean workers with regard to Social Security coverage.

Legislation introduced in Congress proposes CNMI resident status for certain long-term residents. Also, DOI has recommended that Congress consider allowing certain foreign workers in the CNMI to apply for long-term resident status.

- A bill introduced in the House of Representatives provides for CNMI-only resident status for certain long-term residents of the CNMI.³⁷ To be eligible to qualify for this status, an individual must be either (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.
- In April 2010, DOI recommended that Congress consider permitting guest workers who have lawfully resided in the CNMI for a minimum

³⁶As we reported in May 2008, foreign workers in the CNMI can obtain H nonimmigrant worker status upon petition by their employer. H-2A visas are available for foreign workers providing temporary or seasonal agricultural labor both during and after the initial transition period. However, as of December 31, 2007, only 555 foreign workers were engaged in private farming, about 3 percent of total foreign workers with 706K CNMI nonresident worker entry permits. H-2A employers must comply with the federal labor certification process, which determines whether the employment is agricultural in nature, whether it is open to U.S. workers and if qualified U.S. workers are available, whether employment of a qualified alien would have an adverse impact, and whether employment conditions (e.g., housing) meet applicable requirements (8 C.F.R. § 214.2(h)(5)(ii)). The H-2B category applies to residents of foreign countries who are coming to the United States temporarily to perform nonagricultural temporary labor or service if unemployed persons capable of performing such labor or service are unable to be found in the United States (8 U.S.C. § 1101(a)(15)(H)(ii)(B)). See [GAO-08-791](#), appendix V.

³⁷H.R. 1466, 112th Cong., (Apr. 8, 2011).

of 5 years—which DOI estimated at 15,816 individuals³⁸—to apply for long-term resident status³⁹ under the Immigration and Nationality Act. DOI 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 INA 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, DOI noted that under U.S. immigration law, special status is provided to individuals who are citizens of the freely associated states. Following this model, DOI suggested that foreign workers could be granted a nonimmigrant status, like that negotiated for citizens of the freely associated states, and allowed to live and work either in the United States and its territories or in the CNMI only.

In conclusion, Mr. Chairman: I testified in May 2010 that DHS components had made some progress in establishing federal border control in the CNMI but that their inability to conclude negotiations with the CNMI government had resulted in continuing operational challenges. I also reported that programs for workers and investors were not yet available to eligible individuals and that DHS had not determined whether or not to include Chinese and Russian nationals in the Guam-CNMI Visa Waiver Program. In the past year, DHS has resolved many of those operational challenges and has finalized investor regulations. However, it has yet to finalize rules for the CNMI-only transitional work permit

³⁸DOI 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). DOI evaluated its data as consistent with CNMI data for 2008 that showed 22,000 to 24,000 foreign worker permit holders as well as 19,404 umbrella permits issued by the CNMI Department of Labor. The government of the CNMI has challenged the validity of DOI's data collection and analysis; however, DOI has stood by its report. Litigation regarding DOI's data collection effort is currently ongoing.

³⁹CNRA 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).

program, and limited time remains for the submission and processing of approximately 15,000 workers' and their dependents' applications for these permits. These issues, as well as the unknown future status of Filipino and Korean workers' coverage by U.S. Social Security, could impact the CNMI's economy as the November 27 deadline approaches.

Chairman Fleming, Ranking Member Sablan, and Members of the Subcommittee, this completes my prepared statement. I would be happy to respond to any questions you may have at this time.

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Highlights of [GAO-11-805T](#), a testimony before the Fisheries, Wildlife, Oceans, and Insular Affairs Subcommittee, Committee on Natural Resources, House of Representatives

Why GAO Did This Study

In May 2008, the United States enacted the Consolidated Natural Resources Act (CNRA), amending the United States' covenant with the Commonwealth of the Northern Mariana Islands (CNMI) to establish federal control of CNMI immigration in 2009, with several CNMI-specific provisions affecting foreign workers and investors during a 5-year transition period that began on November 28, 2009, and ends in 2014. One of these provisions authorizes a transitional CNMI-only work permit program that may be extended for up to 5 years at a time past 2014. In addition, CNRA amends existing U.S. immigration law to establish a joint visa waiver program for the CNMI and Guam. CNRA requires that GAO report on implementation of federal immigration law in the CNMI 2 years after enactment.

In May 2010, GAO reported that the Department of Homeland Security (DHS) had established border control operations in the CNMI in 2009 but had not concluded negotiations with the CNMI government to resolve certain challenges involving access to CNMI airport space, detention facilities, and databases. GAO also noted that DHS had not yet finalized regulations needed to fully implement CNRA provisions affecting foreign workers, visitors, and investors.

This statement updates GAO's May 2010 findings regarding the transition to federal immigration law and discusses several pending issues. GAO based its statement on prior reports, information provided by DHS and the Department of the Interior (DOI), and interviews with CNMI private sector officials.

View [GAO-11-805T](#) or key components. For more information, contact David Gootnick at (202) 512-3149 or gootnickd@gao.gov.

July 14, 2011

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Status of Transition to Federal Immigration Law

What GAO Found

DHS component units Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS) have continued immigration and border control operations in the CNMI. As of April 2011, CBP had processed approximately 515,000 arriving travelers in Saipan and Rota. As of May 2011, ICE had identified approximately 1,700 individuals in potential violation of U.S. immigration laws, processing about 240 for removal. As of June 2011, USCIS had processed approximately 1,000 CNMI applications for permanent residency and 100 CNMI applications for naturalization or citizenship. CBP has concluded negotiations with the CNMI for operational space at the Saipan and Rota airports, and ICE completed negotiations for access to the Saipan detention facility in April 2011.

DHS has not finalized regulations for a federal CNMI-only transitional permit program for foreign workers, required by CNRA, but has completed regulations implementing other required programs for visitors and investors. In June 2011, DHS submitted a draft final rule for the CNMI-only permit program to the Office of Management and Budget (OMB); currently, the permits remain unavailable. In 2009, DHS issued an interim final rule for a Guam-CNMI visa waiver program and the program became operational. However, DHS is still considering whether to include China and Russia in the program, according to CBP officials. In 2010, DHS issued a final rule allowing a large proportion of investors holding CNMI long-term foreign investor permits to obtain U.S. CNMI-only nonimmigrant treaty investor status during the 5-year transition period that began in 2009. DHS has approved about 20 applications for this status.

Several pending issues could affect the CNMI's labor market and economy. First, the content and implementation of DHS's final rule for the federal CNMI-only work permit program will affect CNRA's potential impact on the CNMI economy. CNRA requires DHS to determine the number, terms, and conditions of the permits, reducing them to zero by the end of the transition period in November 2014 or any extension of the program past that date. Because of foreign workers' prominence in key CNMI industries, any substantial, rapid decline in the permits would negatively affect the CNMI economy. Second, CNMI government-issued permits to remain in the commonwealth will expire on November 27, 2011. Thus, limited time is available for employers to submit petitions for workers to receive the federal work permits, for workers and dependents to submit biometrics such as fingerprints, and for USCIS to process these submissions. Third, with the transition to federal immigration law, it is uncertain whether Filipino and Korean workers previously admitted under a specific CNMI immigration category—about 75 percent of foreign workers in the CNMI in 2009—who obtain CNMI-only work permits will be covered by Social Security. In addition to these issues, legislation introduced in Congress proposes CNMI resident status for certain long-term residents, and DOI has recommended that Congress consider allowing certain foreign workers in the CNMI to apply for long-term resident status.