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Implementation of the Northern Mariana Islands U.S. Workforce Act of 2018 Interim Final Rule



CNMI Engagement

07/29/2020



The CNMI IFR amends DHS regulations to implement provisions of the Northern Mariana Islands U.S. Workforce Act of 2018 (Workforce Act).

The IFR was published May 14, 2020, and went into effect June 18, 2020.

Topics of Discussion



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- ✓ Background and Basis for the IFR
- ✓ Summary of the IFR Provisions
 - ✓ Provisions Immediately Effective with the Workforce Act
 - ✓ Some of the Major Provisions Effective with the IFR
- ✓ Filing a CW-1 Petition
- ✓ Period of Stay
- ✓ Semiannual Reporting Requirement for CW-1 Employers
- ✓ Transit through Guam and Travel Outside the CNMI for CWs
- ✓ Tools and Resources

Basis for the IFR



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The Workforce Act required the Secretaries of Homeland Security and Labor to each promulgate an Interim Final Rule (IFR) implementing the related statutory changes.

The Department of Labor (DOL) IFR was published April 1, 2019, and went into effect April 4, 2019, and set up the process for obtaining a prevailing wage determination (PWD) and temporary labor certification (TLC).

Summary of IFR Provisions



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CW-1 Provisions effective immediately

- Extension of the transition period through Dec. 31, 2029
- CW-1 numerical limitations, or caps for subsequent fiscal years until the end of the transition period
- CNMI education fee of \$200 per beneficiary
- Fraud prevention and detection fee of \$50 per petition

CW-1 Caps through Dec. 31, 2029



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- (1) 13,000 for fiscal year 2019;
- (2) 12,500 for fiscal year 2020 (+3,000*);
- (3) 12,000 for fiscal year 2021 (+3,000*);
- (4) 11,500 for fiscal year 2022 (+3,000*);
- (5) 11,000 for fiscal year 2023;
- (6) 10,000 for fiscal year 2024;
- (7) 9,000 for fiscal year 2025;
- (8) 8,000 for fiscal year 2026;
- (9) 7,000 for fiscal year 2027;
- (10) 6,000 for fiscal year 2028;
- (11) 5,000 for fiscal year 2029; and
- (12) 1,000 for the first quarter of fiscal year 2030.

AILA Doc. No. 20102235. (Posted 10/22/20)

*Additional 3,000 visas pursuant to Disaster Recovery Workforce Act, Div. P, Title IX, Pub. L. 116-94.

Summary of IFR Provisions



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CW-1 Numerical Cap Reservation for Specific Occupations

The IFR makes the following numerical cap reservations:

- (i) 200 for occupational categories 29-0000 (Healthcare Practitioners and Technical Occupations) and 31-0000 (Healthcare Support Occupations); and
- (ii) 60 for occupational categories related to the operations of the CNMI public utilities services, including, but not limited to, 17-2081 (Water/Waste Water Engineers), 17-2071 (Electrical Engineers), 17-2141 (Mechanical Engineers), and Trades Technicians.

Summary of IFR Provisions



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CW-1 Numerical Cap Reservation for Specific Occupations

Numerical cap reservations are made available to eligible petitioners requesting such numbers (by filing the Form I-129CW) for a fiscal year (FY) in order of filing, until exhausted.

Unused reserved numbers will not be available to other petitioners.

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CW-1 Numerical Cap Reservation for Specific Occupations

DHS may adjust the reservation of numbers for specified occupational categories for a fiscal year or other period via Federal Register notice, as long as the adjustment is consistent with CW caps.

If the numerical limitation is not reached for a specified fiscal year, unused numbers do not carry over to the next fiscal year.

Summary of IFR Provisions



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CW-1 filings for FY 20 must be accompanied by an approved TLC

Petitions for CW-1 employment with start dates on or after Oct. 1, 2019, must include an approved temporary labor certification (TLC) from DOL. **USCIS will reject any Form I-129CW filed without an approved TLC.**

DOL's IFR, effective April 4, 2019, outlined how CW-1 employers obtain a prevailing wage and TLC.

Summary of IFR Provisions



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CW-1 filings for FY 20 must be accompanied by an approved TLC

Prior to filing a CW-1 petition with USCIS, an employer must :

- **Obtain a Prevailing Wage Determination (PWD)** - electronically request and receive a PWD by filing the Application for Prevailing Wage Determination (Form ETA-9141C) with DOL.
- **Obtain a TLC** - file the CW-1 Application for Temporary Employment Certification (Form ETA-9142C) with DOL.

File an application at <https://flag.dol.gov/>.

Summary of IFR Provisions



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CW-1 filings for FY 20 must be accompanied by an approved TLC

The application for TLC may not be filed with DOL earlier than:

- 120 days before the date of actual need for the beneficiary's services for an initial petition for CW-1 status.
- 180 days before the date of expiration of CW-1 status in the case of an extension petition.

USCIS will not approve more CW-1 workers than DOL has certified on the approved TLC.

Visit <https://www.foreignlaborcert.dhs.gov/cw-1.cfm>

Adm. Doc. No. 2010-2215, (Posted 10/22/20)

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Long-Term Workers

If a beneficiary was admitted to the CNMI, or otherwise granted status as a CW-1 nonimmigrant, during fiscal year 2015 (Oct. 1, 2014 – Sept. 30, 2015,) and during every subsequent fiscal year through fiscal year 2018, he or she may qualify as a CW-1 long-term worker.

If a petitioner is requesting consideration of beneficiaries as long-term workers, this must be indicated on Form I-129CW. The petitioner must provide evidence the beneficiaries are eligible to be classified as long-term workers. Evidence may be Form I-94 Arrival/Departure documents or USCIS approval notices.

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Long-Term Workers

If requesting long-term workers, a petitioner may only request other long-term workers on the same petition. A CW-1 petition filed for long-term workers may only be approved for beneficiaries that are eligible as CW-1 long-term workers.

CW-1 long-term workers are:

- exempt from the prohibition on Construction and Extraction Occupations (under DOL's SOC Group 47-0000);
- eligible for a validity period of up to 3 years until the end of the transition period, subject to the CW-1 cap; and
- not subject to the temporary departure requirement.

Summary of IFR Provisions*



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Temporary Departure Requirement

A beneficiary (other than a long-term worker) may not be granted CW-1 status beyond three consecutive petition validity periods unless the beneficiary has departed and remained outside of the United States for a continuous period of at least **30 days** after the expiration of the third consecutive petition validity period and before the filing of any new petition on behalf of the beneficiary.

AILA Doc. No. 20102235. (Posted 10/22/20)

*slide updated post-July 29, 2020 public engagement to reflect the Aug. 25, 2020 announced change in policy

Summary of IFR Provisions*



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Temporary Departure Requirement

On August 25, 2020, USCIS announced that it will only consider CW-1 petitions approved on or after June 18, 2020, when applying the requirement that certain CW-1 nonimmigrant workers depart the CNMI for a period of at least 30 continuous days.

For example, any alien approved on or after June 18, 2020, for a one-year CW-1 validity period beginning Oct. 1, 2020, will be eligible for two more consecutive petition validity periods after the first period of validity expires on Sept. 30, 2021.

AILA Doc. No. 20102235. (Posted 10/22/20)

*new slide added post-July 29, 2020 public engagement to reflect the Aug. 25, 2020 announced change in policy

Summary of IFR Provisions*



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Temporary Departure Requirement

If Initial Petition Validity is:	...and Second Petition Validity is:	...and Third Petition Validity is:	...Then:
Oct. 1, 2020-Sept. 30, 2021	Oct. 1, 2021-Sept. 30, 2022	Oct. 1, 2022-Sept. 30, 2023	The worker must depart for at least 30 days after Sept. 30, 2023 before new CW-1 petition is filed.
Oct. 1, 2020-Sept. 30, 2021	July 1, 2021-June 30, 2022 (Change of Employer with 1-year validity and 9-month extension of stay)	July 1, 2022-Dec. 31, 2022 (6-month validity)	The worker must depart for at least 30 days after Dec. 31, 2022 before new CW-1 petition is filed.
Oct. 1, 2020-Sept. 30, 2021	Oct. 1, 2021-Sept. 30, 2022	Jan. 1, 2023-Dec. 31, 2023	The third petition was non-consecutive, so the worker is eligible for two more consecutive petition validity periods before temporary departure is required.

AILA Doc. No. 20102235. (Posted 10/22/20)

*table updated post-July 29, 2020 public engagement to reflect the Aug. 25, 2020 announced change in policy

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Temporary Departure Requirement

In instances when multiple beneficiaries on the same petition have been granted CW-1 status for a different number of consecutive petition validity periods, each beneficiary will be considered individually, and the petition could be subject to a partial approval.

The temporary departure requirement will apply no matter how much time was granted to any of the three previously approved petitions.

Summary of IFR Provisions



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Bar on Certain Construction Worker Occupations

The IFR implements the Workforce Act amendment to the provision prohibiting CW-1 status for “construction and extraction occupations.”

Long-term workers are exempted from the bar on “construction and extraction occupations.”

Summary of IFR Provisions



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Bar on Certain Construction Worker Occupations

We are accepting CW-1 petitions under the CNMI Disaster Recovery Workforce Act.

Visit our website at <https://www.uscis.gov/news/alerts/uscis-accepting-petitions-under-the-cnmi-disaster-recovery-workforce-act> for additional information.

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Definition of Legitimate Business

Being engaged in a legitimate business requires a real, active, and operating commercial or entrepreneurial undertaking that:

- produces services or goods for profit, or is a governmental, charitable or other validly recognized nonprofit entity;
- meets applicable legal requirements for *doing business* in the CNMI;
- has substantially complied with wage and hour laws, occupational safety and health requirements, nondiscrimination, and all other Federal, CNMI, and local requirements relating to employment during the five-year period immediately preceding the date of filing the petition, and continues to be in substantial compliance with such requirements;

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Definition of Legitimate Business

- does not have, as an owner, investor, manager, operator, or person meaningfully involved with the undertaking, any individual who has been an owner, investor, manager, operator, or person otherwise meaningfully involved with an undertaking that has not complied with Federal, CNMI, and local requirements relating to employment at the time of the individual's involvement and within the five years immediately preceding the date of filing the petition; or that directly or indirectly engages in or knowingly benefits from any illegal activity at any time during which the individual was involved with the undertaking, or is an agent of such individual;

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Definition of Legitimate Business

- does not directly or indirectly engage in, or knowingly benefit from, prostitution, human trafficking, or any other activity that is illegal under Federal, CNMI, or local law;
- is a participant in good standing in the E-Verify program; and
- is not a successor in interest to an undertaking that has not complied with Federal, CNMI, and local requirements relating to employment during the five-year period immediately preceding the date of filing the petition or that directly or indirectly engages in or knowingly benefits from any illegal activity.

Summary of IFR Provisions



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Definition of Legitimate Business

A successor in interest is an employer that is controlling and carrying on the business of a previous employer.

Our updated regulations list the factors that may be considered in determining whether an employer is not a legitimate business because it is a successor in interest to an undertaking that has not complied with Federal, CNMI, and local requirements relating to employment during the five-year period immediately preceding the date of filing the petition or that engages in or knowingly benefits from any illegal activity.

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E-Verify Requirement

Per the “legitimate business” definition, only employers that are participants in good standing in the E-Verify program may file a Form I-129CW petition for a CW-1 worker.

[E-Verify](#) is a web-based system that allows enrolled employers to confirm the eligibility of their employees to work in the United States. E-Verify employers verify the identity and employment eligibility of newly hired employees by electronically matching information provided by employees on the Form I-9, Employment Eligibility Verification, against records available to the Social Security Administration (SSA) and DHS.

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E-Verify Requirement

A participant in good standing in the E-Verify program is an employer that:

- has enrolled in E-Verify with respect to all hiring sites in the United States as of the time of filing a petition;
- is in compliance with all requirements of the E-Verify program, including but not limited to verifying the employment eligibility of newly hired employees in the United States; and
- continues to be a participant in good standing in E-Verify at any time during which the employer employs any CW-1 nonimmigrant.

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E-Verify Requirement

Employers must provide their company name and E-Verify Company ID on Form I-129CW.

USCIS will use this information to validate the employers' current enrollment in E-Verify.

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Automatic Revocations

The approval of any Form I-129CW petition is immediately and automatically revoked under any of the following circumstances:

- if the petitioner ceases operations,
- files a written withdrawal of the petition, or
- DOL revokes the temporary labor certification upon which the petition is based.

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Revocations on Notice

USCIS may in its discretion send to the petitioner a notice of intent to revoke the petition in certain circumstances, including but not limited to:

- the petitioner failed to maintain the continuous employment of the CW-1 nonimmigrant, failed to pay the nonimmigrant, failed to timely file a semiannual report, committed any other violation of the terms and conditions of employment, or otherwise ceased to operate as a legitimate business; or
- the beneficiary did not apply for admission to the CNMI within 10 days after the beginning of the petition validity period if the petition has been approved for consular processing.

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Revocations on Notice

- the statement of facts contained in the petition or on the application for a temporary labor certification was not true and correct, inaccurate, fraudulent, or misrepresented a material fact;
- the employer failed to provide a former, current, or prospective CW-1 nonimmigrant, not later than 21 business days after a written request from such individual, with the original (or a certified copy of the original) of all petitions, notices, and other written communication related to the worker (other than sensitive financial or proprietary information of the employer which may be redacted) that has been exchanged between the employer and DOL, DHS, or any other Federal agency or department.

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Revocations

USCIS may revoke a petition at any time, even after the expiration of the petition.

A Form I-129CW petition that has been revoked on notice in whole or in part may be appealed. Automatic revocations may not be appealed.

USCIS will provide notice to DOL of CW-1 petition revocations.

For each beneficiary of a petition revoked in a FY, an equivalent number of CW-1 visas will be added to the numerical cap for the following FY.

AILA Doc. No. 20102235. (Posted 10/22/20)

Filing a CW-1 Petition



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The Workforce Act, as implemented by the IFR, sets forth a new CW-1 petition filing window.

- Employers requesting Extension of Stay for CW-1 employees can file petitions 180 days before the expiration of current CW-1 status.
- Employers filing for new CW-1 employment may file no more than 120 days prior to the need for CW-1 employment.

Filing a CW-1 Petition



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An employer uses Form I-129CW to petition for CW-1 workers.

- The base filing fee is currently \$460,
- \$200 CNMI education fee per beneficiary, per year,
- \$50 fraud prevention & detection fee per petition, and
- \$85 biometric service fee per beneficiary, when necessary.

To view fees, form, and instructions, visit <https://www.uscis.gov/i-129cw>. These fees may be affected by the Fee Rule.*

AILA Doc. No. 20102235. (Posted 10/22/20)

*See: <https://www.federalregister.gov/documents/2020/08/03/2020-16389/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>

Filing a CW-1 Petition



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- All CW-1 workers must be named in the petition.
- Employers may include multiple workers on the same petition, provided they are requesting the same action for each worker, and all the workers will be: working in the same occupational category; working under the same terms and conditions; employed for the same period of time; and employed in the same location(s).
- All CW-1 workers on the same petition must request the same consideration as long-term or non-long-term workers.
- Employers may file one petition to request all of the CW-1 workers authorized by a single TLC.

Period of Stay for CWs



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CW status is generally valid for up to 1 year, and may be extended for two consecutive petition validity periods (for a maximum total of 3 years). A CW-1 worker, and his or her dependent(s), are admitted for the period of CW-1 petition validity, plus up to 10 days before the validity period begins and 10 days after the validity period ends.

CW status for long-term workers is valid for up to 3 years. These long-term workers are exempt from the departure requirement.

Semiannual Reporting Requirement



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Beginning in FY 20, CW-1 employers must submit a semiannual report that provides evidence to verify the continuing employment and payment of CW workers under the terms and conditions set forth in the CW-1 petition.

To meet the semiannual reporting requirement, a CW-1 employer files the Form I-129CWR, Semiannual Report for CW-1 Employers.

Find the form and instructions at <https://www.uscis.gov/i-129cwr>

Semiannual Reporting Requirement



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All CW-1 petitioners, approved for a validity period of 6 months or more, must submit a semiannual report during the petition's validity period.

If your approved CW-1 petition has a validity period of:	Then you must file Form I-129CWR:
Less than six months	Never—Form I-129CWR is not required.
Six months or more, up to 12 months	Six months after the petition validity start date.
More than 12 months, up to 36 months	Every six months after the petition validity start date, up to and including the sixth month preceding the petition validity end date.

Semiannual Reporting Requirement



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Form I-129CWR must be filed no earlier than 30 days before and no later than 30 days after the 6-month anniversary of the petition validity start date.

For CW-1 petitions approved with start dates in FY 20 (Oct 1, 2019-Dec 18, 2019,) but with a 6-month anniversary prior to June 18, 2020, CW-1 employers had until Aug. 17, 2020 to file Form I-129CWR.

Transit Through Guam



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The IFR reduces prior regulatory travel restrictions and allows all CW-1 and CW-2 status holders to travel to and from a foreign place via a direct Guam transit, without being deemed to violate CW status.

However, any other travel to the U.S. requires advance permission. Unauthorized travel results in violation of status.

Self-Help Tools and Resources



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- The [USCIS webpage](#) offers the following:

- ✓ Check your [case status](#)
- ✓ [Change your address](#)
- ✓ Check [processing times](#)
- ✓ Download [forms](#)
- ✓ [CW-1: CNMI-Only Transitional Worker](#) webpage
- ✓ [CNMI Disaster Recovery Workforce Act Webpage](#)
- ✓ [Explore My Options](#)
- ✓ [Ask Emma](#)
- ✓ Create an account on [myUSCIS](#)

Or call the USCIS Contact Center at 800-375-5283.

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Self-Help Tools and Resources



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- **Dept. of Labor Webpages:**

- ✓ [DOL's Office of Foreign Labor Certification CW-1](#) webpage
- ✓ [DOL's Foreign Labor Application Gateway \(FLAG\)](#) webpage

The Wrong Help Can Hurt

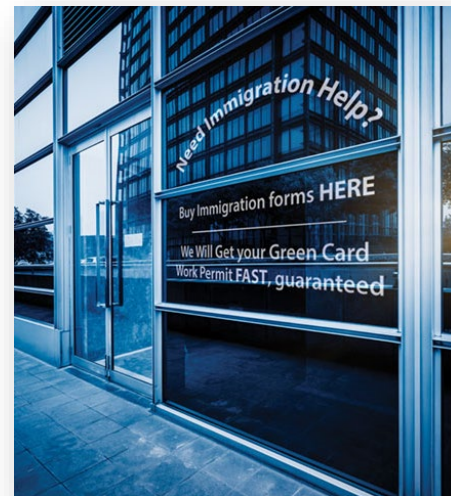


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- Visit the [USCIS Avoid Scams](#) webpage to learn more about:
 - ✓ [Form filing tips](#);
 - ✓ Common immigration scams;
 - ✓ How to [report immigration scams](#); and
 - ✓ How to find [legal services and help](#).

THE WRONG HELP
CAN HURT

BEWARE OF IMMIGRATION SCAMS





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Pre-submitted Questions & Answers