

SUPPORTING STATEMENT FOR
Petition for CNMI-Only Nonimmigrant Transition Worker
OMB Control No.: 1615-0111
COLLECTION INSTRUMENT(S): Form I-129CW

A. Justification

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.*

The Department of Homeland Security amended its regulations to create the new Commonwealth of the Northern Mariana Islands (CNMI)-Only nonimmigrant transition worker (CW-1) classification in accordance with the Consolidated Natural Resources Act of 2008 (CNRA of 2008), Public Law 110-229, dated May 8, 2008. The CNRA of 2008 establishes a transition period before the Immigration and Nationality Act (Act) is fully applicable to the CNMI. A CNMI-only transitional worker is an alien worker who is ineligible for another classification under the Act and performs services or labor for an employer in the CNMI. The CW-1 classification will be in effect for the duration of the transition period. This form is necessary for an employer to petition for an alien worker to enter the CNMI temporarily to perform services or labor as a CNMI-Only nonimmigrant transition worker. This form is also necessary for an employer to petition for an extension of stay or change of status for an alien worker as CW-1 nonimmigrant.

Any individual may be required to submit biometric information if the regulations or form instructions require such information or if requested in accordance with 8 CFR 103.2(b)(9). DHS may collect and store for present or future use, by electronic or other means, the biometric information submitted by an individual. DHS may use this biometric information to conduct background and security checks, adjudicate immigration and naturalization benefits, and perform other functions related to administering and enforcing the immigration and nationality laws. See 8 U.S.C. 1103; 8 CFR 103.16. The specific regulations for the CW program require submitting biometric information as requested by USCIS. 8 CFR 214.2(w)(15). If the alien is present in the CNMI when filing for initial grant of CW-1 status, USCIS does use this authority to collect biometrics from the individual.

Authority: See 8 CFR 214.2(w) (5), (15) and the final rule titled “Commonwealth of the Northern Mariana Islands Transitional Worker Classification” (RIN 1615-AB76), published in the Federal Register on September 7, 2011 at 76 FR 55502.

2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received*

from the current collection.

USCIS uses the data collected on this form to determine eligibility for the requested immigration benefits. An employer uses this form to petition USCIS for an alien to temporarily enter as a nonimmigrant into the CNMI to perform services or labor as a CNMI-Only Transitional Worker (CW-1). An employer also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for these benefits, and ensuring that the basic information required to determine eligibility, is provided by the petitioners.

USCIS collects biometrics from aliens present in the CNMI at the time of requesting initial grant of CW-1 status. The information is used to verify the alien's identity, background information and ultimately adjudicate their request for CW-1 status.

The CW-1 classification is unique in that Form I-129CW is a petition for the CW-1 classification as well as a "grant of status." A "grant of status" allows beneficiaries lawfully present in the CNMI to change status directly from their CNMI classification or DHS-issued parole to the CW-1 classification. See 8 CFR 214.2(w)(1)(v). When a beneficiary is granted CW-1 status, the adjudicating officer is granting admission and status to the beneficiary without requiring the beneficiary to depart the CNMI, obtain a visa abroad, and seek admission with CBP. Because we are granting the CW-1 status to the beneficiary, we use biometrics to make a determination of admissibility prior to adjudicating the Form I-129CW petition. The checks are used to confirm identity and ensure that CW-1 status is not granted to anyone who is inadmissible. As the CW program progresses, the need to take biometrics in most cases has diminished, as the Form I-129CW is increasingly used for extension of status of persons who had already had their biometrics taken at the initial grant stage rather than for initial grants of status in the CNMI, but the authority will continue to be used in those initial grant cases that do arise.

3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.*

The use of this form provides the most efficient means for collecting and processing the required data. Form I-129CW provides the most efficient means for collecting and processing the required data. This form and its instructions reside on the USCIS Web site at <http://www.uscis.gov/i-129cw>. The form and the instructions can be downloaded, completed and saved electronically. USCIS has the automated capability in place to accept and store certain forms for adjudication electronically; however, the I-129CW form has not been designated for e-filing. The I-129CW is not a priority for electronic designation because, based on statute, the CW-1 classification is a temporary program.

The use of this form affects only a finite population, for a limited period of time. While the electronic submission would reduce burden on respondents, the fact that this program is set to expire in less than two years greatly outweighs the benefits of automation as the resources for such automation may be realigned to a longer term initiative.

It is important to note that USCIS does not have control over the end of the transition period, and cannot yet anticipate whether the transition period will be extended. Therefore, USCIS is not requesting a shorter approval period for the form because, to the extent that the Secretary of Labor extends the program, USCIS must be prepared to use this form beyond the transition period.

4. *Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*

A review of the Forms Inventory Report revealed no duplication of effort, and there is no other similar information currently available that can be used for this purpose.

USCIS has investigated its internal processes, files and data as well as those of other Federal agencies that may service the same population. USCIS was not able to find any other means by which the information necessary for this process could be obtained except for the use of the form submitted for approval. USCIS will continue to examine ways in which information may be obtained from other sources and any identified duplications can be minimized or removed.

The biometrics collection associated with this form is necessary because the alien present in the CNMI might not have previously supplied biometric information to the Federal government and is requesting an initial grant of immigration status. As a result, the Federal government has not conducted the necessary background checks required for most immigration benefits under the immigration laws of the United States. The biometrics requirement ensures that CW-1 status is not granted to anyone who is inadmissible.

5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.*

USCIS determined that a substantial number of small businesses were likely to be affected by the final rule, “Commonwealth of the Northern Mariana Islands Transitional Worker Classification,” 1615-AB76. That rule’s economic analysis stated that over 80 percent of businesses in the CNMI have annual revenues and employees below the threshold considered small according to the Small Business Administration’s “Table of Small Business Size Standards Matched to North American Industry Classification System Codes”. That rule, however, represented a cost savings from the current CNMI foreign worker program, thus the rule did not impose a significant impact on these small

businesses. The final rule's analysis anticipated a cost savings because employers may name more than one employee on a petition; conversely, separate petitions and fees were required for each employee under the CNMI system. Thus, assuming future growth in the number of foreign workers during the transition period up to the cap on grants of CW status would only increase the cost savings, or benefits, attributable to the use of this classification versus fees under the CNMI immigration system.

The rule also established that USCIS will reduce the number of available CW statuses to zero at the conclusion of the transition period and that may have a significant impact. Moreover, that requirement is established by legislation and USCIS cannot adjust the requirements of this information collection based on entity size in any manner that would affect or mitigate the impact of that provision.

6. *Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

If the information is not collected, USCIS will not be able to determine the employers' eligibility to petition for an alien worker to temporarily enter as a nonimmigrant into the CNMI to perform services or labor as a CNMI-Only Transitional Worker (CW-1). USCIS will also not be able to determine an employer's eligibility to request an extension of stay or change of status.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*
 - *Requiring respondents to report information to the agency more often than quarterly;*
 - *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
 - *requiring respondents to submit more than an original and two copies of any document;*
 - *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;*
 - *In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
 - *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*

- *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
- *requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

There are no special circumstances applicable to this information collection. This information collection is conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. *If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On August 6, 2012, USCIS published a 60-day information collection notice in the Federal Register at 77 FR 46446. USCIS received a comment in connection with that publication:

One commenter requested that DHS temporarily suspend use of the I-129 CW. The commenter expressed concern regarding an employer's ability to petition for foreign workers, in light of the high unemployment rate, and its adverse effect on hiring and displacement of U.S. workers. The commenter stated that the actions of the Department of Health and Human Services, the Department of Labor, and the Department of State all contribute to a negative effect on the welfare of U.S. workers.

Congress mandated that DHS implement a transitional worker program to be consistent with federal immigration laws, including all fees, petition and application procedures.

Employers who seek to employ a CW-1 nonimmigrant worker must file an I-129 CW petition with USCIS requesting such status. USCIS cannot eliminate this form as it requests the information needed to determine that a particular employer and its current and prospective employees are eligible as an employer and for CW-1 status, respectively.

This information collection notice requests comments on whether the proposed collection of information is necessary for the proper performance of the functions of the agency; on the accuracy of the agency's estimate of the burden of the proposed collection of information; on enhancing the quality, utility, and clarity of the information to be collected; and on minimizing the burden of the collection of information on the public. USCIS cannot address comments that are beyond the scope of this information collection notice, including those that comment on the function of other governmental agencies. Since this commenter does not request any changes to the I-129CW, USCIS will not be making any changes to that form as a result of this comment.

On October 18, 2012, USCIS published a 30-day information collection notice in the Federal Register at 77 FR 64120. USCIS received a comment in response to that publication.

The commenter requested that DHS suspend temporary employment-based immigration in order to preserve jobs for U.S. citizen workers. The commenter expressed concern regarding the hiring of foreign workers, in light of the high unemployment rate. Specifically, the commenter states that the availability of cheap foreign labor has a direct effect on the displacement of U.S. citizen workers.

One purpose of the CNMI-only transitional worker program is to phase-in U.S. immigration law to the CNMI while minimizing to the greatest extent practicable the potential adverse economic and fiscal effects of phasing-out the CNMI's nonresident contract worker program. The program is intended to maximize the CNMI's potential for future economic and business growth, and to assure worker protections from the potential for abuse and exploitation. See sec. 701 of the CNRA, 48 U.S.C.A. 1806 note.

In Section 702(a), Congress mandated that DHS implement a transitional worker program to be consistent with federal immigration laws, including all fees, petition and application procedures. The program is based on a system intended to promote the maximum use of U.S. Citizens, lawful permanent residents, and lawfully admissible freely-associated states citizen labor. *Id.* As required, the system provides for a reduction in the allocation of transitional worker permits on an annual basis to zero during a period not to extend beyond December 31, 2014, unless extended by the Secretary of Labor. *Id.*

In furtherance of Section 702 (a), DHS requires employers to consider U.S. Citizens for positions being filled by a CNMI-Only transitional worker (CW-1). Employers who seek to employ a CW-1 must file an I-129 CW petition with USCIS. The petitioning process

contains an attestation requirement with respect to terms and conditions of employment. More specifically, the attestation requires the employer to consider qualified U.S. Citizens who are available for the position being filled by the CW-1 worker, as well as comply with all Federal and Commonwealth requirements relating to employment, including but not limited to nondiscrimination, occupational safety, and minimum wage requirements.

This information collection requests comments on whether the proposed collection of information is necessary for the proper performance of the functions of the agency; on the accuracy of the agency's estimate of the burden of the proposed collection of information; on enhancing the quality, utility, and clarity of the information to be collected; and on minimizing the burden of the collection of information on the public. These comments are beyond the scope of this information collection. Since this commenter does not request any changes to the I-129CW, USCIS will not be making any changes as a result of this comment.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

USCIS does not provide payments or gifts to respondents in exchange for a benefit sought.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

There is no assurance of confidentiality. This collection is covered under the following privacy impact assessments: DHS/USCIS/PIA-016 USCIS Benefits Processing of Applicants other than Petitions for Naturalization, Refugee Status, and Asylum (CLAIMS 3) and DHS-USCIS-007 - Benefits Information System September 29, 2008 (73 FR 56596). The collection is also covered under the DHS/USCIS-001 - Alien File, Index, and National File Tracking System of Records June 13, 2011, (76 FR 34233).

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to person's from whom the information is requested, and any steps to be taken to obtain their consent.*

There are no questions of a sensitive nature.

12. *Provide estimates of the hour burden of the collection of information. The statement should:*

- *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.*
- *If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.*
- *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.*

Type of Respondent	Form Name / Form Number	No. of Respondents	No. of Responses per Respondent	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate*	Total Annual Respondent Cost
Businesses or Others for profit	Petition for CNMI-Only Nonimmigrant Transition Worker, Form I-129CW	6,000	1.34	3 hours	24,120	\$30.44	\$244,738
Individuals or Households	Biometrics	12,000	1	1.17 hours	14,040	\$30.44	\$427,378
Total		18,000			38,160		\$672,116

*The above Average Hourly Wage Rate is calculated from the [May 2011 Bureau of Labor Statistics](#) average wage for “All Occupations” of \$21.74 times the wage rate benefit multiplier of 1.4 equaling \$30.44.

NOTES ON BURDEN:

1. Translations. Respondents might incur burden for translations of documents in foreign languages. USCIS is currently evaluating the estimated burden associated with this activity. USCIS will seek comments on how long this requires and provide estimates in its next submission to OMB based on the results of public comments it receives and information that can be found from other resources.

2. Preparers. Some respondents may hire third parties for form completion so there may be a burden for a preparer to assist in the form completion process. USCIS will request public comment on burden required for preparers on the preparation and submission of this form. USCIS will include the results of the public comments and its own analysis in the next submission following this request.

3. Records. Some respondents may be burdened by having to provide certain records. USCIS is currently evaluating the estimated burden associated with obtaining records. USCIS will seek public comments related to obtaining records in connection with this information collection and provide estimates in its next submission to OMB based on the results of public comments it receives and information that can be found from other resources on these costs.

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as

appropriate.

- *Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government or (4) as part of customary and usual business or private practices.*

There is no cost burden to respondents for actually responding to this information collection- start-up, maintenance, and operating costs associated with completing the paperwork. For informational purposes only, there is a fee charge of \$325, an \$85 biometrics fee per beneficiary, and a supplemental CNMI education funding fee of \$150 per beneficiary, for this information collection.

This information collection may impose some out-of-pocket costs on respondents in addition to the time burden for the form's preparation:

1. *Translations.* Respondents might incur expenses for translations of foreign documents or documents prepared or issued in foreign languages. USCIS is currently evaluating the estimated cost associated with this activity. USCIS will seek public comments on and provide estimates in its next submission to OMB based on the results of public comments it receives and information that can be found from other resources on these costs.
 2. *Preparers.* Some respondents may hire third parties to assist in the request process. USCIS will request public comment on the number respondents associated with this type of collection who may hire preparers and the costs required to hire paid preparers for the preparation and submission of this form. USCIS will include the results of the public comments and its own analysis in the next submission following this request.
 3. *Records.* Some respondents may incur expenses while gathering records. USCIS is currently evaluating the estimated cost associated with obtaining such records. USCIS will seek public comments on this activity and it will provide estimates in its next submission to OMB based on the results of public comments it receives and information that can be found from other resources on these costs.
14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.*

Annualized Cost Analysis:

Printing Cost	\$400
Collecting and Processing	\$4,839,000
Total Cost to Program	\$4,839,400

Government Cost

The estimated cost of the program to the Government is calculated by multiplying the estimated number of respondents 6,000 x 1.34 number of responses x the suggested total fee charge of \$475 (\$325 fee (the fee includes the suggested average hourly rate for clerical, officer, and managerial time with benefits), and a supplemental CNMI education funding fee of \$150), plus the estimated number of respondents that provide biometrics, 12,000 x \$85 biometrics fee, plus a percent of the estimated overhead cost for printing, stocking, distributing and processing of this form, estimated at \$400.

15. *Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.*

There has been an increase of the burden previously estimated and reported by USCIS. The estimated number of respondents has increased from 1,579 to 6,000. Moreover, USCIS discloses its estimated number of respondents for biometric services and indicates that it estimates 1.17 hours per biometric collection in connection with this form, resulting in 14,040 burden hours. The burden hours associated with form I-129CW have increased by 33,423 burden hours, as USCIS previously reported 4,737 burden hours while it is now reporting 38,160 hours. No changes have been made to the information collected through this form, except an update to the privacy information section of the instructions. USCIS, however, has updated the contact information on the PRA language of the instructions to the form, as well as the Privacy information section.

16. *For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

USCIS does not intend to employ the use of statistics or the publication thereof for this collection of information

17. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

USCIS will display the expiration date for OMB approval of this information collection in accordance with OMB regulations.

18. *Explain each exception to the certification statement identified in Item 19,*

"Certification for Paperwork Reduction Act Submission," of OMB 83-I.

USCIS does not request an exception to the certification of this information collection.