

SUPPORTING STATEMENT FOR
Petition for CNMI-Only Nonimmigrant Transition Worker and Semiannual Report for
CW-1 Employers
OMB Control No.: 1615-0111
COLLECTION INSTRUMENT(S): Form I-129CW; Form I-129CWR

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 Consolidated Natural Resources Act (CNRA) of 2008, Pub. L. 110–229, 122 Stat. 754, 853–854 established the initial transition period before the Immigration and Nationality Act (INA) becomes fully applicable to the CNMI. The Northern Mariana Islands U.S. Workforce Act of 2018 (Workforce Act) extended this transition period for an additional ten years (from 2019 to 2029). Pub. L. 115-218, 132 Stat. 1547.

A CNMI-only transitional worker is an alien worker who is ineligible for another nonimmigrant classification under the INA and performs services or labor for an eligible employer in the CNMI. See 48 USC 1806(d); 8 CFR 214.2(w). Form I-129CW, Petition for CNMI-Only Nonimmigrant Transition Worker, is necessary for an employer to petition for an alien worker to enter the CNMI temporarily to perform services or labor as a CW-1 nonimmigrant. Form I-129CW is also necessary for an employer to petition for an extension of stay or change of status for an alien worker as a CW-1 nonimmigrant. The Form I-129CW is being revised to conform to the changes implemented by the Workforce Act and the Implementation of the Northern Mariana Islands U.S. Workforce Act of 2018 interim final rule (IFR).

In addition, the Workforce Act requires the Department of Homeland Security (DHS) to establish a system whereby each employer of a CW-1 worker is required to submit a semiannual report that provides evidence to verify the continuing employment and payment of such worker under the terms and conditions set forth in the CW-1 petition that the employer filed on behalf of such workers. Pub. L. 115-218, sec. 3(a)(3)(C). This reporting requirement will be collected via the Form I-129CWR, Semiannual Report for CW-1 Employers. See *new* 8 CFR 214.2(w)(26).

The beneficiary of a CW-1 petition must submit biometric information as requested by U.S. Citizenship and Immigration Services (USCIS). DHS may collect and store the biometric information submitted by an individual to conduct background and security checks, adjudicate immigration and naturalization benefits, verify identity, and other functions related to administering and enforcing the immigration and nationality laws. See INA 103, 8 U.S.C. 1103; 8 CFR 103.16, *new* 214.2(w)(16).

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.

Eligibility: USCIS uses the data collected on Form I-129CW to determine eligibility for the requested immigration benefits. An employer uses Form I-129CW to petition USCIS for an alien to temporarily enter as a nonimmigrant into the CNMI to perform services or labor as a CW-1 worker. An employer also uses Form I-129CW to request an extension of stay or change of status on behalf of the alien worker. The Form I-129CW serves the purpose of standardizing requests for these benefits, and ensuring that the basic information required to determine eligibility is provided by the petitioners.

Compliance: In connection with the IFR, USCIS is creating a new Form I-129CWR, Semiannual Report for CW-1 Employers. This form will be used by employers to comply with the reporting requirements imposed by the Workforce Act and implemented by the IFR. The Form I-129CWR serves the purpose of capturing data to provide USCIS with the information necessary to help verify the continuing employment and payment of the CW-1 worker, and will contain an attestation confirming those elements. DHS may provide such semiannual reports to other federal partners, including the US. Department of Labor (DOL) for investigative or other use as DOL may deem appropriate. Congress expressly provided for these semiannual reports to be shared with DOL. 48 USC 1086(d)(3)(D)(ii).

Grants of status: In most cases, an individual in the United States without a nonimmigrant status needs to leave the country and return with a valid visa (if needed) in order to obtain a nonimmigrant status. However, USCIS established criteria allowing certain individuals in the CNMI to initially obtain a nonimmigrant status without having to depart and return. If lawfully present in the CNMI under Federal immigration law (including parole), the beneficiary is eligible for an initial grant of status. See 8 CFR 214.2(w)(1)(vi). If the beneficiary is present in the CNMI, the CW-1 petition serves as the application for a grant of status as a CW-1 nonimmigrant. See 8 CFR 214.2(w)(15)(ii). A “grant of status” allows beneficiaries lawfully present in the CNMI to change status directly from the status previously issued under CNMI immigration law (under the CNMI nonresident worker permit program) or DHS-issued parole to the CW-1 classification.

USCIS collects biometrics from an alien present in the CNMI at the time that the initial Form I-129CW is submitted on his or her behalf. The information is used to verify the alien’s identity, background information, and ultimately make a determination of admissibility prior to adjudicating the Form I-129CW petition. Biometrics 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 extensions of status of persons who had already had their biometrics taken rather than for initial grants of status

in the CNMI. The authority to collect biometrics is retained and will be used in those initial grant of status 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.**

Form I-129CW and Form I-129CWR provide the most efficient means for collecting and processing the required data. The I-129CW form and instructions are available via the USCIS Forms website at <http://www.uscis.gov/i-129cw>. The I-129CWR will be available via the USCIS Forms website at <http://www.uscis.gov/i-129cwr>. The forms and the instructions can be downloaded, completed, and saved electronically, but filing requires the forms be printed, signed and submitted to USCIS by mail.

- 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 duplicate collection. Similar information is not available for this purpose.

- 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.**

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." The CW-1 program is designed to minimize the cost impact to small businesses petitioning for workers under this program by allowing employers to petition for more than one employee on each Form I-129CW.

As stated above, each employer of a CW-1 worker is required to submit a semiannual report, via the Form I-129CWR, to verify the continuing employment and payment of such workers under the terms and conditions set forth in the CW-1 petition that the employer filed on the workers behalf. Pub. L. 115-218, sec. 3(a)(3)(C). Under the IFR, there is no fee for this form, but CW-1 employers will be required to retain certain documents and records throughout the validity period of their approved Form I-129CW petition and for an additional three years beyond the end of the validity period of that petition to demonstrate compliance with the CW-1 program. These documents and records must be made available to USCIS or DOL upon request throughout the required document retention period. The burden on small businesses incurred by this retention requirement is considered minimal, because the documents required to be retained will have been generated as evidence to be submitted with the Form I-129CW petition, and

therefore already in the employer's possession, or documents that are expected to be generated in the normal course of any business's operations.

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 requested on Form I-129CW 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 or determine an employer's eligibility for an extension of stay or change of status. Without Form I-129CWR, USCIS will not be able to verify a CW-1 employer's ongoing compliance with all the requirements of the CW-1 program.

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.**

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 May 14, 2020, USCIS published an Interim Final Rule (IFR) at 85 FR 29264.

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

USCIS does not provide any payment for 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 of information is covered under the following Privacy Impact Assessment:

- DHS/USCIS/PIA-016 USCIS Benefits Processing of Applicants other than Petitions for Naturalization, Refugee Status, and Asylum (CLAIMS 3)
- DHS/USCIS/PIA-061 Benefit Request Intake Process

The collection of information is covered under the following System of Records Notices:

- DHS/USCIS-001 Alien File, Index, and National File Tracking System of Records, September 18, 2017, 82 FR 43556;
- DHS/USCIS-007 Benefits Information System SORN, October 19, 2016 81 FR 72069; and
- DHS/USCIS-018 Immigration Biometric and Background Check System of Records, July 31, 2018, 83 FR 36950.

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 persons 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.

| | | A | B | C (=AxB) | D | E (=CxD) | F | (=ExF) |
|---------------------------------|---|-------------------|--------------------------------|----------------|-------------------------------------|--------------------------------|------------------------|------------------------------|
| Type of Respondent | Form Name / Form Number | #. of Respondents | #. of Responses per Respondent | # of Responses | 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 | 5,975 | 1 | 5,975 | 4 | 23,900 | \$36.30 | \$867,570 |

| | | | | | | | | |
|---------------------------------|---|-------|---|---------------|-----|---------------|---------|--------------------|
| Businesses or Others for Profit | Semiannual Report for CW-1 Workers, Form I-129CWR | 5,975 | 1 | 5,975 | 2.5 | 14,938 | \$36.30 | \$542,231 |
| Total | | | | 11,950 | | 38,838 | | \$1,409,801 |

* The above Average Hourly Wage Rate is based on USCIS's estimate of the average hourly wage rate for a Human Resources specialist in Guam as a reasonable proxy for the CNMI (\$24.86) multiplied by the benefits-to-wage rate multiplier of 1.46, which equals \$36.30. See Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment Statistics, May 2018 National Occupational Employment and Wage Estimates Guam, SOC 13-1071 – Human Resources Specialist.
https://www.bls.gov/oes/2017/may/oes_gu.htm.

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 are no start-up, maintenance, and operating costs associated with this collection of information. For informational purposes, there is a fee charge of \$460; a supplemental CNMI educational funding fee of \$200 per beneficiary, per year; and a fraud prevention and detection fee of \$50 per petition associated with the filing of this information collection.

The Form I-129CW information collection may impose some out-of-pocket costs on respondents in addition to the time burden for preparing the form. This estimate includes costs such as obtaining documents required as evidence, attorney representation, and postage. USCIS estimates that the cost for these activities could vary widely, from as little as \$20 to as much as \$1,000. The average cost for these activities is \$515. The total cost to respondents generates as follows: 5,975 respondents multiplied by \$515.00 equals \$3,077,125.00.

The new Form I-129CWR information collection may also impose some out-of-pocket costs on respondents in addition to the time burden for preparing the form. However, USCIS estimates that these costs will be much lower than those incurred for filing Form I-129CW, averaging about \$122.50. The total cost to respondents generates as follows: 5,975 respondents multiplied by \$122.50 equals \$731,937.50.

The total estimated cost to respondents for this collection of information is \$3,077,125.00 plus \$731,937.50, which equals **\$3,809,062.50**. The total estimated per respondent cost is **\$637.50**.

- 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.**

USCIS establishes its fees using an activity-based costing model to assign costs to an adjudication based on its relative adjudication burden and use of USCIS resources. Fees are established at an amount that is necessary to recover these assigned costs, plus an amount to recover unassigned overhead (which includes the clerical, officer, and managerial time with benefits and printing costs) and immigration benefits provided for free. As a consequence of USCIS immigration fees being based on resource expenditures related to the benefit in question, USCIS uses the fee associated with an information collection as a reasonable measure of the collection's costs to USCIS. USCIS has established the fee for Form I-129CW at \$460. An additional \$50 fraud prevention and detection fee is required for each petition. USCIS estimates a unit cost of \$6.61 for processing of the new Form I-129CWR. The cost to the government is calculated by adding the \$460 filing fee to the \$50 fraud prevention and detection fee, which equals \$510, and multiplying that total by the estimated number of responses (5,975) for a total of \$3,047,250. The unit cost of \$6.61 is also multiplied by the estimated number of responses, for a total of \$41,847.91. The total estimated cost to the

government is \$3,086,745.00.

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

USCIS is adding new data elements to Form I-129CW to capture additional information required by statute and regulation, including the Employment Training Administration (ETA) case number for the Temporary Labor Certification (TLC), the employer’s E-Verify ID, the Standard Occupation Classification (SOC) code, the governor’s cap reservation, and information on whether beneficiary is a long term worker. The Instructions for Form I-129CW have been revised to reflect new requirements under the Interim Final Rule.

USCIS is creating a new Form I-129CWR, Semiannual Report for CW-1 Employers, in connection with the Implementation of the Northern Mariana Islands U.S. Workforce Act of 2018 IFR. This new form will be added as an instrument under OMB control number 1615-0111, which already includes the Form I-129CW instrument.

| Data collection Activity/Instrument | Program Change (hours currently on OMB Inventory) | Program Change (New) | Difference | Adjustment (hours currently on OMB Inventory) | Adjustment (New) | Difference |
|--|--|-----------------------------|-------------------|--|-------------------------|-------------------|
| Form I-129CW | 13,122 | 23,900 | 10,778 | | | |
| Form I-129CWR | 0 | 14,938 | 14,938 | | | |
| Total(s) | 13,122 | 38,838 | 25,716 | | | |

USCIS is reporting an increase in the estimated annual hour burden to respondents for this collection of information. The hour burden increased as a result of the new estimated number of respondents, which increased from 3,749 to 5,975. The hour burden also increased due to an increase in the estimated time burden per response for Form I-129CW from 3.5 hours to 4 hours due to the addition of new questions and instructions to cover the requirements of the IFR. The creation of a new Form I-129CWR as a result of the IFR, which has a 2.5 hour time burden, also increased the overall estimated annual hour burden for this collection of information.

| Data Collection Activity/Instrument | Program change (cost currently on OMB inventory) | Program Change (new) | Difference | Adjustment (cost currently on OMB inventory) | Adjustment (new) | Difference |
|--|---|-----------------------------|-------------------|---|-------------------------|-------------------|
|--|---|-----------------------------|-------------------|---|-------------------------|-------------------|

| | | | | | | |
|-----------------|------------|---------------------|---------------------|---------------------|--------------------|--------------------|
| Form I-129CW | | | | \$459,253.00 | \$3,077,125 | \$2,617,872 |
| Form I-129CWR | \$0 | \$731,937.50 | \$731,937.50 | | | |
| Total(s) | \$0 | \$731,937.50 | \$731,937.50 | \$459,253.00 | \$3,077,125 | \$2,617,872 |

The estimated annual cost burden to respondents increased as a result of the new Form I-129CWR, Semiannual Report for CW-1 Employers. Employers will have additional out of pocket costs, as explained in Question 13, as a result of this new information collection instrument. The estimated cost to respondents for Form I-129CW increased as a result of an adjustment in USCIS’s estimated cost per response.

- 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.**

This information collection will not be published for statistical purposes.

- 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.

- 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.

B. Collections of Information Employing Statistical Methods.

There is no statistical methodology involved with this collection.