



The Northern Mariana Islands U.S. Workforce Act of 2018 Engagement Questions and Answers

On July 29, 2020, U.S. Citizenship and Immigration Services (USCIS) held a stakeholder engagement to provide information on the [interim final rule](#) (IFR) implementing the [Northern Mariana Islands U.S. Workforce Act of 2018](#). Below are the questions from that engagement.

Q1. If the applicant has gaps in his CW approval status, is the applicant automatically ineligible for the three-year renewal?

A1. This question appears to be asking about the three-year petition validity period offered for long-term workers. A CW-1 long-term worker is defined as “an alien who was admitted to the CNMI, or otherwise granted status, as a CW-1 nonimmigrant during fiscal year 2015, and during each of fiscal years 2016 through 2018.” A petitioner requesting long-term CW-1 workers must provide evidence showing that each worker was admitted as a CW-1 during FY 2015 (Oct. 1, 2014 - Sept. 30, 2015), and during every subsequent fiscal year through FY 2018. Such evidence may be in the form of Form I-94 Arrival/Departure documents or USCIS approval notices. A gap in status during this period does not make the worker ineligible for treatment as a long-term worker, as long as the worker was granted CW-1 status at some point during each of the relevant fiscal years, and the worker remains otherwise eligible for CW-1 status and admissible to the United States. Similarly, a gap in status after this period (for instance, during FY 2019) does not make a worker who qualifies as a long-term worker ineligible for such treatment.

Q2. Does the applicant have to be with the same employer continuously to be eligible for the 3-year renewal? We have one employee that joined the company 2018, but has had a continuous CW-1 Status since 2015

A2. No, qualifying petitions for the long-term worker definition do not have to all be with the same employer.

Q3. Do we need to submit the semi-annual report for this year or wait till FY2020-21, to submit it?

A3. If you are an employer whose petition has been approved for an employment start date on or after Oct. 1, 2019, you must file Form I-129CWR for each approved Form I-129CW petition with a validity period of six months or more. If you do not file Form I-129CWR in a timely manner, USCIS may revoke your approved petition and/or deny any subsequent petitions. USCIS offered a one-time additional period for those petitioners whose six-month anniversary of their petition validity period occurred before the effective date of the IFR. For CW-1 petitions approved with start dates from Oct. 1, 2019, through Dec. 18, 2019 (six months prior to the effective date of the interim final rule), CW-1 employers had until Aug. 17, 2020, to file Form I-129CWR. Any CW-1 employer with a later start date in FY 2020 and beyond will be expected to file Form I-129CWR in accordance with the filing window set forth in the interim final rule. Additional information is located on the USCIS.gov website at: <https://www.uscis.gov/i-129cwr>.

Q4. What documents does USCIS need duplicate copies of to send to the State Department when the worker needs to get a CW-1 visa abroad?

A4. The instructions to Form I-129CW state that petitioners should submit a duplicate copy of Form I-129CW and all supporting documentation. Failure to do so may result in delays in processing the petition or in visa processing abroad.

Q5. When does the temporary departure requirement take effect? Is there a specific date or year?

A5. 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.

Q6. If a CW-1 worker has a dependent CW-2 spouse and daughter, do they need to go home as well?

A6. When the authorized period of stay of a CW-1 worker expires – such as a worker subject to the 30-day departure requirement before a new petition can be filed – the derivative CW-2 status of family members also expires and both should leave the CNMI. However, in other circumstances when a CW-1 worker temporarily departs the CNMI during the validity period of the petition, this does not affect the CW-2 status of family members, as long as the family relationship continues to exist and the CW-1 worker remains eligible for admission.

Q7. If a CW-1 worker has a minor U.S. citizen child is there a humanitarian parole that they can apply for so they do not need to go home with their child during this pandemic?

A7. As CW-1 workers have been admitted to the United States, they are not eligible for parole. On a case by case basis, the USCIS Guam Field Office may consider a request for deferred action based on compelling facts and circumstances. We emphasize though that deferred action is extraordinary relief only for extreme situations, such as a severe medical situation, rather than relief generally available to aliens whose CW-1 status has expired and may face travel difficulties due to the pandemic. Any deferred action request will be considered on its own merits in the totality of the circumstances.

Q8. If a CW-1 worker who is subject to the temporary departure requirement travels home to visit for more than 30 days and gets a visa to return, will that reset the three-year requirement from the date of return? If not, this presents a major problem for some small businesses. If no U.S. citizen or green card holder accepts the job when announced, and if the CW workers all leave on Sept. 30, some businesses will be acutely undermanned or closed until USCIS approves an application for consular processing. Especially this year because forced closures earlier have already had a major impact on small businesses here. Can we file for them as a new hire before they go home? Requesting a start date of Nov. 1?

A8. If a worker is subject to the departure requirement, the employer cannot file a new CW-1 petition for them until the worker has left for at least 30 days after the expiration of the current petition, regardless of what start date is requested for the new petition. If a worker departs the CNMI in compliance with the departure requirement, then this “resets” the three consecutive petition validity periods, meaning that the CW-1 worker may be eligible for two more extension petitions before being subject to the temporary departure requirement again. As noted above, 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.

Q9. Does the employee have to maintain CW-1 status from 2014-2018 to qualify for a 3-year period and be exempted from temporary departure? What if the employee got “CW-2 status “in one of those years?

A9. A CW-1 long-term worker is defined as “an alien who was admitted to the CNMI, or otherwise granted status, as a CW-1 nonimmigrant during fiscal year 2015, and during each of fiscal years 2016

through 2018.” A petitioner requesting long-term CW-1 workers must provide evidence showing that each worker was admitted as a CW-1 worker during FY 2015 (Oct. 1, 2014 - Sept. 30, 2015), and during every subsequent fiscal year through FY 2018. Such evidence may be in the form of Form I-94 Arrival/Departure documents or USCIS approval notices. A grant of CW-2 status does not count for purposes of establishing eligibility for long-term worker consideration.

Q10. With regards to the ongoing COVID-19 pandemic, will the 30-day touchback period still be mandatory?

A10. As stated above, 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. USCIS made this change in response to stakeholder feedback and disruptions caused by the coronavirus (COVID-19) pandemic.

Q11. When employees return to their Point-of-Origin for the 30-day touchback period, will they be responsible for any quarantine fees mandated by their government?

A11. USCIS has no position on who is responsible for paying fees imposed by a foreign government on a foreign national. Further, USCIS has no position on whether employees must return to their point-of-origin. The temporary departure requirement only requires that the alien remain “outside of the United States.”

Q12. I have a question regarding the Temporary Departure Requirement of the CW-1. I want to clarify when will the start of the counts of petitions? Is it FY 2018? Or, FY 2020 since the IFR has just taken effect this June 18, 2020?

A12. 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.

Q13. How about those who arrived in CNMI in 2016, but the CW-1 petition was approved in December 2015. Can they be considered under Long Term Worker?

A13. A CW-1 long-term worker is defined as an alien who was admitted to the CNMI, or otherwise granted status, as a CW-1 nonimmigrant during FY 2015 (Oct. 1, 2014 - Sept. 30, 2015), and during each of FYs 2016 through 2018. If you were initially approved as a CW-1 nonimmigrant worker in December 2015 (FY 2016) and not admitted in CW-1 status until 2016, then you do not meet the definition of a CW-1 long-term worker.

Q14. Are employers responsible for the worker's subsistence allowance during the 30-day temporary departure requirement for each CW-1 worker(s) since the worker(s) will be petitioned with the same employer?

A14. As this question is about U.S. Department of Labor (DOL) regulations, we are not able to respond to it in this forum. Please consult DOL regulations.

Q15. Some discussion before the bill was passed by Congress and signed into law was that the "touchback" might possibly be required within 6 months prior of the visa expiration. This would make it easier for companies to plan and continue operations to serve the government and customers with touchbacks spread over 6 months. Is this a possibility in the future?

A15. A worker subject to the departure requirement must depart for at least 30 days after the expiration of the petition validity period, before a new petition can be filed. 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.

USCIS will consider comments on this subject when finalizing the IFR.

Q16. The snippet below on the Ten-Day Admission Requirement is nearly impossible for worker(s) who are from the Philippines and the majority of the labor pool is from that foreign country. The upcoming available appointments in the U.S. Embassy in Manila is set for next year, January 2021. If the worker(s)' intended employment start date begins on Nov. 1, 2020 and the next available appointment in the U.S. Embassy in Manila is on January 2021, the worker(s) will not satisfy this requirement. Will the U.S. Embassy in Manila prioritize the worker(s) who must comply with the new IFR regulations or will the workers have to wait for the next available interview appointment? This can take about four to six months, maybe even a year before the workers will be granted an approval to exit the Philippines and re-enter the CNMI to continue their employment. Is there any other guidance that you can provide the employers and the employees for the 10-day admission requirements?

A16. Failure of a CW-1 worker to apply for admission within 10 days after the start of the petition validity period is a reason for which USCIS may, but is not required to, revoke the approved petition. If USCIS seeks to revoke a petition for this reason, it would give notice of its intent to do so to the employer. The employer has 30 days to submit evidence in response to the notice. USCIS will consider all relevant evidence and explanations presented in determining whether there is good cause to revoke the petition. If a worker has a valid CW-1 visa based on an approved petition, the worker can be admitted to the CNMI at any time during the petition validity period, even if that is more than 10 days after the start date. USCIS cannot answer questions about the U.S. Department of State and the operations of U.S. Embassies in this forum.

Q17. Is E-Verify required to be filed now or on October 1, 2020, the start date of the next petition?

A17. The E-Verify requirement became immediately effective on June 18, 2020, and applies to all Form I-129CW petitions filed on or after June 18, 2020. The employer must be a participant in good standing in E-Verify at the time it files a petition and must continue to be a participant in good standing at all times during which the CW-1 worker is employed.

Q18. What are the fees associated with applying for the 3-year CW-1 petition?

A18. A list of all associated filing fees can be found on the USCIS.gov website at: <https://www.uscis.gov/i-129cw>. As of the date of this outreach, and subject to future change, the Form I-129CW filing fees are as follows:

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

The CNMI Education filing fee applies to each beneficiary for each year or fraction of year. Consider the following:

- Petitioners requesting CW-1 workers for up to one year must pay a CNMI education fee of \$200 per worker.
- Petitioners requesting CW-1 workers for more than one year [limited to long-term workers], but up to two years, must pay a CNMI education fee of \$400 per worker.
- Petitioners requesting CW-1 workers for more than two years [again limited to long-term workers], but up to three years, must pay a CNMI education fee of \$600 per worker.

Please note that some of these fees may change with the implementation of USCIS' [Fee Rule](#).

Q19. "Long-term worker means an alien who was admitted to the CNMI as a CW-1 nonimmigrant during fiscal year 2015, and who was granted CW-1 nonimmigrant status during each of FYs 2016 through 2018, as defined by DHS." Does this mean that any worker who meets this definition and all other qualifications in the petition will be approved?

A19. Approval of a petition is discretionary. That said, as long as the employer's petition meets all eligibility requirements, and the CW-1 cap has not been reached, the petition for a qualified long-term worker generally would be approved for an authorized validity period of up to three years. The CW-1 worker must also be admissible to the United States in order to receive a grant of CW-1 status in the CNMI, or be admitted to the CNMI if coming from abroad, and must have maintained status if requesting an extension of stay.

Q20. If a current CW-1 visa holder is required to leave for 30 days but there are no flights available to the home country due to the COVID 19 flight schedules how will this affect the touchback provision? For example, United Airlines currently shows flight schedules for the week of Sept. 20 to Sept. 26 each day from Saipan to Manila. If those flights are cancelled and a CW-1 visa holder cannot depart, will they be viewed as not complying?

A20. 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. USCIS made this change in response to stakeholder feedback and disruptions caused by the coronavirus (COVID-19) pandemic.

Generally, though, if a worker is subject to the departure requirement, the employer cannot file a new CW-1 petition for them until the worker has left for at least 30 days after the expiration of the third petition validity period. A petition that is filed before the worker has fulfilled this requirement will be denied. If the worker remains after the expiration of his period of authorized stay, he or she will accrue unlawful presence. More than 180 days unlawful presence during a single stay could render the alien inadmissible to the United States in the future.

Q21. If they are forgiven due to the airline schedule cancellation will we be able to consider their touchback as still starting as the first day after their visa expiration? Or will the company and the employee be penalized for the days they could not return to their homeland even though the pandemic has caused the flight delays?

A21. Any required temporary departure will not be considered as having begun until the worker actually departs the United States. If a worker remains in the CNMI after the expiration of his or her authorized period of stay (10 days after the petition validity end date), then the worker will accrue unlawful presence.

Q22. We have employees that would be "long term" except they were denied a visa for three to four months when the CNMI reached the cap limit in FY 2017. They had visas for FY 2017 and most of these employees were affected for only 3 or 4 months by the cap. Can we still consider them "long term"?

A22. We cannot comment on individual cases, but generally, a CW-1 long-term worker is defined as "an alien who was admitted to the CNMI, or otherwise granted status, as a CW-1 nonimmigrant during fiscal year 2015, and during each of fiscal years 2016 through 2018." A petitioner requesting long-term CW-1 workers must provide evidence showing that each worker was admitted or otherwise granted status as a CW-1 during FY 2015 (Oct. 1, 2014 - Sept. 30, 2015), and during every subsequent fiscal year through FY 2018. Such evidence may be in the form of Form I-94 Arrival/Departure documents or USCIS approval notices. A gap in status during this period does not necessarily make a worker ineligible for treatment as a long-term worker, as long as the worker was admitted or granted CW-1 status at some

point during each of the relevant fiscal years, and the worker remains otherwise eligible for CW-1 status and admissible to the United States.

Q23. Is there a time frame for USCIS in processing the petitions after they are received at the processing center under this IFR?

A23. The CNMI IFR did not impose a processing time for Form I-129CW petitions. The USCIS website provides estimated current processing times for USCIS forms. At present, the estimated processing time for a Form I-129CW is three and a half to five months. <https://egov.uscis.gov/processing-times/>

Q24. If an approved I-129CW has several beneficiaries, does Form I-129CWR require attaching an attestation per beneficiary?

A24. The Form I-129CWR filing instructions state that one Form I-129CWR per approved Form I-129CW should be submitted. The instructions clarify that if the approved Form I-129CW petition included more than one worker, use the **Additional Worker Attachment for Form I-129CWR** to provide the information for each additional worker. Complete a separate attachment for each additional worker who was approved on Form I-129CW. All workers included on the approved Form I-129CW must be listed on the Form I-129CWR, even if the worker no longer works for you.

Q25. Provided that the approved I-797A validity is 10/01/2019-9/30/2020, what should we enter on Page 1, Part 2, Items 1a to 1b (Reporting Period)?

A25. If you were granted a petition validity period of 10/01/2019 – 9/30/2020, then your reporting period for Form I-129CWR would be the 6 months after the petition validity start date, that is, from 10/01/2019 to 03/31/2020. This report should have been filed by August 17, 2020.

Q26. What if the approved TLC work hours and wages per week are different from the approved I-29CW, which hours and wages should be reported to I-129CWR?

A26. Form I-129CWR, Semiannual Report for CW-1 Employers, is used by an employer of an approved Form I-129CW to verify the continued employment and payment of each worker under the terms and conditions of the approved petition. Petitioners should provide accurate, current information about the employment – including the actual hours worked and wages paid to their employees, even if it differs from the information provided on Form I-129CW.

Q27. Between 10/01/2019-3/31/2020, which week must we report on Page 2, Part 3, Item 7b, actual wage per week?

A27. Per the Form I-129CWR filing instructions, answer all questions fully and accurately. Note that the wage frequency reported on Form I-129CWR must match the frequency reported on the approved petition (i.e., whether the wage is offered per week or per year). If the wage offered on your petition is a weekly wage, it would generally be appropriate to provide an average of the actual wages paid per week during the reporting period in response to this Item on Form I-129CWR.

Q28. Page 2, Part 3, Item 7a thru 7b, there was a NOTE “The wage frequency reported on this form must match the frequency reported on the approved petition”. Do we need to enter the same amount reported on 7a to 7b even if the “ACTUAL” wages are higher or lower than 7.a? Would the actuals include overtime?

A28. Per the Form I-129CWR filing instructions, answer all questions fully and accurately. Any *actual* wages paid or *actual* hours worked during the reporting period should generally include overtime.

Q29. Between 10/01/2019-3/31/2020, which week must we report on Page 2, Part 3, Item 8b Actual hours worked per week?

A29. Per the Form I-129CWR filing instructions, answer all questions fully and accurately. In response to this particular item, it would generally be appropriate to provide an average of the actual hours worked per week during the reporting period for the Form I-129CWR.

Q30. Page 10 of the Form I-129CW instructions provides the following about completing items 1a-1c: “If you are an individual employer or sole proprietor (someone who owns a business, but the business is not organized as a separate legal entity) filing this petition, complete Item Number 1.a.-1.c. Legal Name of Individual Petitioner or Sole Proprietor. If you are a company or an organization filing this petition, also complete Item Number 3.a. Name of Employer/Organization.” As per the instructions, we had filled out Form I-129CW Page 1, Item 1a-1c and ALSO Item 3a. The I-797C Receipt Notice was issued under the name of the company’s signatory which was on Item 1a-1c instead of the company’s name. Will this be an issue?

Q30. If you are a company or organization and not an individual employer or sole proprietor (which is someone who owns a business, but that business is not organized as a separate legal entity), then you would only need to complete Item Number 3.a. CW-1 petitioners may contact CNMI.CSC@uscis.dhs.gov for questions related to their CW-1 petitions.

Q31. On Page 1, Part 1, Item 4b, does the Employer provide the street address, or can Employers provide a mailing address such as the P.O. Box information?

Q31. As per the [Form I-129CW instructions](#), the employer must provide the physical address of the petitioner’s primary office in the CNMI. A P.O. Box may be provided if there is no physical address.

Q32. On Page 1, Part 1, Item 4g, if the employer had provided a “Street Number and Name” on Page 1, Part 1, Item 4b, does the employer need to provide a brief description to the worksite location and provide a map with the petition?

Q32. If the petitioner is only providing a P.O. Box in Item Numbers 4.a. - 4.f. and does not have a physical address, then they must provide a description of the location. See [Form I-129CW Instructions](#).

Q33. On Page 4, Part 3, Items 22a-22c, if the CW-1 worker has multiple approved non-immigrant permits before FY2015, does the employer begin with their very first initial grant of CW-1 status in the CNMI to present? This will mean that each worker may have three sheets for this section alone.

Q33. As per the form, the petitioner must provide the worker’s prior periods of stay in CW-1 classification in the United States for the last 3 years.

Q34. On Page 2, Part 1, Items 7b-7c, do we need to input the company’s signatory’s ITIN & SSN information if the petitioner is a company?

Q34. If you are a company or organization and not an individual employer or sole proprietor, then you do not need to provide the ITIN or SSN of the company’s signatory.