



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

April 12, 2018

### **S. 2325**

#### **Northern Mariana Islands U.S. Workforce Act**

*As reported by the Senate Committee on Energy and Natural Resources  
on March 20, 2018*

#### **SUMMARY**

S. 2325 would extend by 10 years, until 2029, the “transition period” during which certain U.S. immigration laws do not apply in the Commonwealth of the Northern Mariana Islands (CNMI). During that period, aliens (noncitizens) in the CNMI would be unable to apply for asylum under U.S. law, and newly hired temporary workers with H-2B status in the CNMI and Guam would not count against the annual nationwide cap on the number of aliens who can receive that status. In addition, employers in the commonwealth could hire workers in CW (Commonwealth-Only Transition Workers) status who otherwise would be ineligible to work in the CNMI.

CBO estimates that S. 2325 would affect the size of the foreign-born population and the fees paid by CNMI employers seeking to hire workers in CW status. On net, CBO estimates that enacting the bill would reduce direct spending, mainly for federal benefit programs, by \$3 million over the 2018-2028 period. Pay-as-you-go procedures apply because enacting S. 2325 would affect direct spending. Enacting the bill would not affect revenues.

CBO estimates that enacting S. 2325 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 2325 contains intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA). The bill would require the governor of the commonwealth to report certain workforce information and would impose duties on prospective and current employers of workers in CW status. CBO estimates that the costs of the mandates would fall well below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$80 million and \$160 million in fiscal year 2018, respectively, adjusted annually for inflation).

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary effect of S. 2325 is shown in the following table. The costs of the legislation fall within budget functions 550 (health) and 600 (income security).

	By Fiscal Year, in Millions of Dollars												2019-	2019-
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2023	2028	
<b>INCREASES OR DECREASES (-) IN DIRECT SPENDING</b>														
Estimated Budget Authority	0	*	*	*	*	*	*	*	-1	-1	-1	*	-3	
Estimated Outlays	0	*	*	*	*	*	*	*	-1	-1	-1	*	-3	

\* = between -\$500,000 and \$500,000.

### BASIS OF ESTIMATE

For this estimate, CBO assumes that S. 2325 will be enacted around the beginning of fiscal year 2019.

### People Affected by the Legislation

In 1976, the Congress approved the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. That agreement initially exempted the CNMI from most provisions of U.S. immigration law. Subsequent laws gradually extended U.S. immigration law to the CNMI; the final provisions are scheduled to take effect at the end of calendar year 2019 when the transition period expires. During the transition period, the Congress also has exempted certain nonimmigrant (temporary) workers hired in Guam from counting against applicable annual nationwide caps. S. 2325 would extend the transition period through the end of calendar year 2029. The extensions under S. 2325 would primarily affect three categories of aliens: asylees, H-2B temporary workers, and CW temporary workers.

**Asylees.** Aliens who are physically present in the United States can receive asylum if they demonstrate that they are unable or unwilling to return to their country of nationality because of persecution or a well-founded fear of persecution. During the transition period, aliens physically present in the CNMI cannot apply for asylum.<sup>1</sup> By extending the transition period for a decade, S. 2325 would prevent aliens in the CNMI from seeking asylum until calendar year 2030.

1. Aliens in the CNMI who demonstrate a credible fear of persecution can receive other forms of protection—such as withholding of removal or protection under the Convention Against Torture. See 8 CFR 1208.1(a)(2).

The number of aliens whose asylum applications would be prevented or delayed by the bill is difficult to determine. Likely applicants would come from two groups: people who live in the CNMI either without lawful status, or whose lawful status will expire at the end of the transition period (2019), and people, mostly from the Asia-Pacific region, who would travel to the CNMI specifically to seek asylum under U.S. immigration law once the transition period ends. Using information from immigration experts, CBO expects that S. 2325 would prevent about 100 people in 2020 and 50 people each year thereafter from receiving asylum. Aliens granted asylum are free to move anywhere in the United States. CBO expects that half of the aliens whose asylum applications would be prevented or delayed by S. 2325 would have lived in the CNMI; the other half would have moved to one of the 50 states or the District of Columbia (hereafter referred to as the states).

**H-2B Temporary Workers.** Employers that wish to hire temporary nonagricultural workers and that can demonstrate a shortage of U.S. workers who are able, willing, qualified, and available to do the work are eligible to hire alien workers through the H-2B program.<sup>2</sup> The Immigration and Nationality Act caps at 66,000 the number of workers who can receive H-2B status each year. That cap has been reached in each of the past four years (2015 through 2018), and the Congress authorized additional H-2B workers above the caps in fiscal years 2016, 2017, and 2018.

Under current law, until the end of 2019, H-2B workers newly hired in the CNMI and Guam will not count against the annual cap. The bill would extend that cap exemption through the end of 2029. Consequently, S. 2325 would allow employers in the states to hire more H-2B workers during the 2020s. Thus, CBO expects that the bill would affect the federal budget because H-2B workers in the states are eligible for certain federal benefits, as discussed below.<sup>3</sup>

CBO expects that the number of H-2B workers affected by S. 2325 would be driven primarily by the demand for labor for construction projects over the next decade related to the relocation of about 5,000 marines from Okinawa to Guam. Those projects, which include military installations, infrastructure upgrades, and ancillary businesses, are scheduled to occur over the next decade, with the demand for labor expected to peak in the early 2020s.

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2. 8 U.S.C. 1101(a)(15) defines many classes of nonimmigrant aliens who are permitted to reside in the U.S. temporarily and for specified purposes. The H-2B program is named after the subparagraph that defines that class of nonimmigrant workers: 8 U.S.C. 1101(a)(15)(H)(ii)(b).

3. High-skilled H-1B temporary workers hired in the CNMI and Guam also do not count against the annual nationwide cap, an exemption that would be extended by S. 2325. However, because relatively few H-1B workers are employed in the CNMI and Guam, and because H-1B workers employed in the states generate relatively little direct spending for federal benefits, this cost estimate does not discuss them separately.

The ability of employers in Guam to hire H-2B workers for those projects is uncertain. Since 2015, U.S. Citizenship and Immigration Services (USCIS), within the Department of Homeland Security (DHS), has denied virtually all petitions for H-2B workers in Guam, on the grounds that the petitioning employers failed to demonstrate that their need for such labor was temporary. Two significant actions have occurred in response:

- A group of Guam employers sued the federal government in the U.S. District Court for Guam. The court issued a preliminary injunction preventing USCIS from using the same reasoning to deny future H-2B petitions that it used to deny petitions in 2015 and 2016.<sup>4</sup> The parties have not yet responded to the ruling.
- The National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91) became law on December 12, 2017. Section 1049 of that law allows up to 4,000 H-2B workers to be admitted to Guam each year through the end of fiscal year 2022, “notwithstanding the requirement of such section that the service or labor be temporary,” provided that their work is “directly connected to, or associated with, the military realignment.” USCIS has interpreted that provision as likely to apply to H-2B workers working on infrastructure improvements, even if a contract is not directly with the U.S. military, but unlikely to apply to those working at “hotels, restaurants, ... and other service-type establishments located near a U.S. military base.”<sup>5</sup>

CBO analyzed information about employer demand for H-2B workers in the CNMI, Guam, and the states from a variety of sources—including the Departments of Defense, Homeland Security, and Labor, and the Guam Department of Labor. On that basis, CBO projects that under S. 2325, employers in the states would hire an average of 2,000 additional H-2B workers each year over the 2020-2028 period—peaking at nearly 4,000 additional workers in the early 2020s—because they would not be competing with employers in the CNMI and Guam for slots under the nationwide cap.

**CW Temporary Workers.** During the transition period, the Commonwealth-Only Transition Worker program allows employers in the CNMI to hire nonimmigrant workers who are ineligible for other employment-based nonimmigrant status. Under current law, USCIS has limited the number of workers who can receive CW status to 9,998 for fiscal year 2018, 4,999 for fiscal year 2019, and 2,499 for fiscal year 2020 (but ending December 31, 2019). S. 2325 would establish a gradually diminishing annual cap, beginning at 13,000 for fiscal year 2019, declining to 5,000 for fiscal year 2029, and dropping to 1,000 for fiscal year 2030 (until December 31, 2029).

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4. Order Re Motion to Dismiss; Objections to Report and Recommendation, *Guam Contrs. Ass'n v. Sessions*, No. 16-00075, 2018 U.S. Dist. LEXIS 12343 (D. Guam Jan. 24, 2018).

5. U.S. Citizenship and Immigration Services, “Implementing the National Defense Authorization Act for Fiscal Year 2018 (NDAA) and the Exemption to the Temporary Need Requirement for H-2B Workers on Guam,” Policy Memorandum 602-0156 (February 15, 2018), <https://go.usa.gov/xQYDf> (PDF, 105 KB).

## Effects on Direct Spending

Enacting the bill would change the number of foreign-born people in the United States, in turn affecting direct spending relative to current law for a variety of federal benefit programs for those people. Enacting S. 2325 also would affect the collection and spending of certain fees by DHS. On net, CBO estimates that enacting S. 2325 would decrease direct spending by \$3 million over the 2018-2028 period.

**Asylees.** Provided they meet the other eligibility conditions, asylees are generally eligible for certain federal benefit programs, including subsidies for health insurance purchased through the marketplaces established under the Affordable Care Act (ACA), Medicaid, the Supplemental Nutrition Assistance Program (SNAP), and Supplemental Security Income (SSI). However, Medicaid and SNAP benefits are provided to the CNMI as block grants in amounts that do not vary based on the number of recipients. Additionally, no health insurance marketplace exists in the CNMI. Therefore, a change in the number of asylees in the CNMI would affect direct spending only for SSI. In contrast, a change in the number of asylees in the states would affect direct spending for all four programs.

As discussed above, S. 2325 would prevent or delay aliens in the CNMI from receiving asylum. Those effects would begin in 2020 and compound over time. The decrease in the number of asylees in the CNMI and the states would in turn reduce the number of beneficiaries for several federal benefit programs. Based on an analysis of various administrative and survey data, CBO expects that S. 2325 would reduce the number of asylees receiving federal benefits as follows:

- For health programs, the number of beneficiaries would decline by about 15 in 2020 and total about 130 in 2028. Their average benefits would have been about \$4,000 in 2020 and about \$5,500 in 2028.
- For SNAP, the number of beneficiaries would decline by about 15 in 2020 and total about 130 in 2028. Their average benefits would have been about \$1,600 in 2020 and about \$1,900 in 2028.
- For SSI, the number of beneficiaries would decline by fewer than 5 in 2020 and total about 30 in 2028. Their average benefits would have been about \$7,900 in 2020 and about \$10,400 in 2028.

In total, CBO estimates that S. 2325 would reduce direct spending for asylees by \$6 million over the 2020-2028 period.

**H-2B Temporary Workers.** H-2B temporary workers in the states are eligible for emergency Medicaid and for subsidies for health insurance purchased through the

marketplaces established under the ACA, provided they meet the other eligibility criteria for those programs. (As discussed above, federal health care spending would not change because of additional aliens present in the CNMI or Guam.) On the basis of historical spending in those programs, CBO expects that the average annual per capita cost to the federal government for the health benefits for those workers would be \$160 over the 2020-2028 period. Accordingly, CBO estimates that under S. 2325, direct spending for health benefits would increase by \$3 million over the 2020-2028 period.

**CW Temporary Workers.** S. 2325 would impose a \$50 fraud prevention and detection fee on petitions for CW workers. Such fees are classified as offsetting receipts (that is, as reductions in direct spending). The bill also would allow DHS to spend those receipts without further appropriation action. CBO estimates that enacting S. 2325 would increase receipts and spending by about \$2 million each over the 2019-2028 period. Because of the lag between collecting and spending fees, CBO estimates that collections would exceed spending over that period by less than \$500,000.

## PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

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**CBO Estimate of Pay-As-You-Go Effects for S. 2325, the Northern Mariana Islands U.S. Workforce Act, as reported by the Senate Committee on Energy and Natural Resources on March 20, 2018**

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	By Fiscal Year, in Millions of Dollars											2018-	2018-
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2023	2028
<b>NET INCREASE OR DECREASE (-) IN THE DEFICIT</b>													
Statutory Pay-As-You-Go Impact	0	0	0	0	0	0	0	0	-1	-1	-1	*	-3

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## INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

## **MANDATES**

S. 2325 contains intergovernmental and private-sector mandates, as defined in UMRA. CBO estimates that their costs would fall well below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$80 million and \$160 million in fiscal year 2018, respectively, adjusted annually for inflation).

S. 2325 would impose an intergovernmental mandate by requiring the governor of the Commonwealth of the Northern Mariana Islands to submit an annual report identifying the ratio between U.S. and other workers in the commonwealth's workforce.

S. 2325 would impose several mandates that apply to public and private entities as prospective and current employers of nonimmigrant workers in the commonwealth. The bill would impose a fraud prevention and detection fee on each prospective employer seeking to hire CW workers. Additionally, the bill would require prospective employers seeking to hire nonimmigrant workers to apply to the Department of Labor for temporary labor certification for those employees. Finally, the bill would require employers of CW workers to provide semiannual verification of the employment and payment of those workers. Given the number of authorized workers (13,000 in fiscal year 2019 and declining thereafter), the amount of the additional fee (\$50 per employer), and the bill's various requirements for federal agencies to establish systems for reporting required information, the aggregate cost of complying with the mandates would not be significant, in CBO's estimation.

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