

ANNUAL REPORT OF THE SECRETARY OF LABOR

Calendar Year 2010

This is the Secretary of Labor's annual report to the Legislature pursuant to Public Law 15-108 covering calendar year 2010. The report has three parts: the Department's initiatives during calendar year 2010; the organization and activities of the Department's principal units during 2010; and 2010 statistics required under P.L. 15-108.

Introduction

The Department is a revenue-generating agency. Our revenue for calendar year 2010 was approximately \$915,000 in fees and fines, all of which goes directly to the Commonwealth Treasury. Our budget for FY 2010 was \$1,601,437. Some of the reduction in annual revenue is due to the two-year permits issued in 2009 for the period remaining until November 2011 when federal permits are required. Another factor in this reduction is the general uncertainty engendered by the failure of USCIS to issue its worker regulations.

Management objective: The Labor Department's objective is to achieve high-quality employment for citizens of the CNMI in productive businesses that drive sustainable economic growth and opportunities. The Department seeks to make faster and more efficient match-ups of people's skills with the job opportunities that are available. At the same time, the Department seeks to provide fair employment opportunities for global skills and talent that support the CNMI's economy in ways that recognize and balance the Commonwealth's objectives with respect to full employment for its citizens. Citizen and permanent resident employment and foreign national worker employment are all necessary components of the Commonwealth's economic success in the future.

Commonwealth funding: The budget has limited the Labor Department's full-time personnel to 46 as of December 2010 (from 85 as of December 2006) and has cut the funding for other expenses. The Department's workload has increased substantially on the U.S. citizen job placement side as the economy has sunk into a depression and more U.S. citizens who are out of work seek assistance in finding jobs. The Department's workload on the enforcement side with respect to U.S. citizen employment has increased for the same reasons. The Department's workload on the foreign worker permit side has decreased as uncertainty about federal regulations and the activity of some federal officials has encouraged some employers not to comply with Commonwealth law. The Department's workload on the foreign worker enforcement side has decreased under the new law, sponsored by the Department, that allows foreign workers to file complaints in court in the first instance.

Federal funding: The Department currently has only one small federal grant from the U.S. Department of Labor. Implementation of that grant has been delayed and no expenditures had been made as of the end of the calendar year because the new grant relationship with the U.S. Department of Labor required straightening out where the federal funds were deposited. The Department has under preparation a number of federal grant applications which we expect to submit within the next two months. PL 110-

229 envisions technical assistance “ including assistance in recruiting, training, and hiring of workers, to assist employers in the Commonwealth in securing employees first from among United States citizens and nationals resident in the Commonwealth.” See Section 702(e)(1)(B). This is a completely unfunded mandate, and the Department of the Interior has very limited technical assistance funding available and, so far as is known, has not yet completed the interagency agreement called for under P.L. 110-229 with respect to funding technical assistance.

OPA Audits: The Labor Department has no outstanding OPA audit items.

PART I: LABOR DEPARTMENT INITIATIVES DURING 2010

The Labor Department faced challenging times during 2010. The Department’s principal initiatives during the year are described below.

Reorganization to deal with scarce personnel resources and decreased funding

With a reduced level of funding and without the ability to replace employees leaving for retirement or other employment, the Department could not accomplish all of the work that it undertook in prior years. For that reason, we reorganized in very substantial ways during the year. Our objective was to focus resources on job placement for U.S. citizens and enforcement of the U.S. citizen job preference. We have augmented the enforcement staff, pared down the guest worker and administrative staff, and consolidated jobs.

We have also discontinued tasks that we can no longer afford to do. For example, during 2010 the Department undertook the first-ever Jobs Inventory Survey to determine how many jobs the Commonwealth’s economy is supporting and whether those jobs are filled by citizens or aliens. Going forward, the work on inventorying jobs will be shifted to the Commerce Department as they have primary responsibility for data collection in the Commonwealth. For another example, much of the work on hearings for alien workers has been shifted to the courts. The Department proposed a legislative change, granted by the Legislature, to allow aliens to file their cases with the Small Claims Court. This decreases the investigations of alien worker claims and allows the Department to use its investigative resources on U.S. citizen employment matters. In addition, all work on labor appeals has been shifted to the Attorney General’s office. The Department no longer has staff counsel. There are currently 94 labor appeals pending in the Superior Court, some of which are more than five years old. About 360 aliens are able to maintain status to remain in the Commonwealth because their labor appeals pending in Superior Court remain unresolved. Two cases account for a large portion of this group. Most of these aliens are unemployed.

Supporting initiatives to assist in economic recovery

The Department has participated in and supported efforts by the Executive Branch, the Legislature, and the private sector to rebuild the Commonwealth’s economy.

Incentives to hire U.S. citizens

A key objective relates to incentives to hire U.S. citizens. The Department is working on this problem in two ways: first, the collection of the necessary data with respect to employment of U.S. citizens, legal permanent residents, and aliens in the Commonwealth; and second, using these data to prepare grant applications for salary supplements for employers who hire U.S. citizens, on-the-job training grants for citizens transitioning from government jobs to the private sector, subsistence employment for long-term unemployed citizens, and similar projects.

The job inventory survey: The job inventory survey was undertaken because the U.S. Departments of Labor and Commerce do not provide the Commonwealth government with employment statistics that are routinely delivered to every state and most counties in the U.S. Although the Labor Department has information about foreign worker employment, it does not have statistics on employment of U.S. citizens, permanent residents, or immediate relatives of U.S. citizens. A very simple form was devised to collect this information through the website. It asked each employer to identify each employee, as of the inventory date, by name, job title, federal job O-NET code, federal job class (full time or part time), and federal citizenship status (U.S. citizen, permanent resident, national, or alien). This form also included a question about whether the employer expected to employ more, fewer, or the same number of aliens in the coming year. The form was posted on the Department's website and could be filled out and submitted online. In addition, the Labor Department telephoned and sent employees to interview non-responding employers in order to collect the necessary information. Under the Department's plan for this survey, all of the specific information is held as confidential (and employees have executed confidentiality oaths) and only statistical summaries are released. The summaries from this Survey, which was closed for statistical purposes at year-end, will be released and posted on the Department's website in February.

In 2011 and future years, the Department of Commerce will handle this survey as they are the CNMI government's designated agency for gathering data on the Commonwealth's economy.

Training for U.S. citizens to qualify for available skilled jobs now held by aliens

Another key objective is training for U.S. citizens. The Department is working on this problem by providing a first-ever forecast showing what jobs will become available in the Commonwealth during each of the next 12 months.

The job availability forecast: Beginning in September 2010, the Department produced a 12-month rolling forecast of job availability. This forecast shows every job category (by federal O-NET classification) in which foreign workers hold jobs and the month in which the current one-year or two-year contract will expire, making the job available for U.S. citizens to apply. The current forecast is posted on the Department's website. The summary statistics for the December 12-month forecast (through November 2011) is as follows:

Total	Category	SVP Range	Job Zone	Education
1,618	A	(Below 4.0)	Little or No Preparation Needed	Some of these occupations may require a high school diploma or GED certificate.
1,051	B	(4.0 to < 6.0)	Some Preparation Needed	These occupations usually require a high school diploma.
1,989	C	(6.0 to < 7.0)	Medium Preparation Needed	Most occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree.
933	D1	(7.0 to < 8.0)	Considerable Preparation Needed	Most of these occupations require a four-year bachelor's degree, but some do not.
72	D2	(8.0 and above)	Extensive Preparation Needed	Most of these occupations require graduate school. For example, they may require a master's degree, and some require a Ph.D., M.D., or J.D. (law degree).

The "A" category jobs can usefully be divided into A-1 (starter jobs for citizens) and A-2 (maintenance jobs for aliens). The A-1 jobs are those such as cashier, hosts and hostesses in coffee shops, waiters and waitresses in restaurants, landscaping, life guards, postal service mail workers, sales workers, service station attendants, and stock clerks. The Department plans to work with high school guidance counselors on how to get graduating seniors into these jobs so that they can gain experience. The A-2 jobs are those such as cleaning laborers (maids, janitors, housekeeping staff), construction laborers, food workers (preparation, cooks, dishwashers etc.), farm workers (laborers, graders and sorters, crop washers, etc.), attendants (amusement, recreation, locker room etc.), and general maintenance jobs. These are jobs for which the economy likely will have a continuing need for alien workers.

The D-1 jobs are those for which education is generally available in the Commonwealth. The D-2 jobs are those for which training is generally available only on the mainland. These job listings give high school students who plan to go to college an idea of the areas within the Commonwealth economy for which certain kinds of higher education is valuable.

Most B and C jobs are those for which U.S. citizens can readily compete. There are some specialty niche jobs for which alien labor will continue to be needed, and overall the Commonwealth will need support from alien labor for the foreseeable future as there are not enough citizens to fill all of the jobs and job specialties. The Department has an analysis of all government jobs, comparing those to the job availability forecast. Overall, at least two-thirds of the government jobs have skill and education requirements that overlap with B and C category jobs. This means that as the government downsizes, we can move our government workers into equivalent jobs in the private sector. This is a function (placement of downsized government workers) that the Labor Department has not undertaken in the past, and we will require some additional funding to get this done.

This forecast is available on the Department's website so that the organizations in the Commonwealth that provide job training can see where the skilled jobs are in the Commonwealth's economy. This forecast is also used by the Department in its counseling of U.S. citizen job-seekers.

The job validation project: The Department has undertaken a systematic effort to investigate the job qualifications and classification of jobs held by aliens. One of the things that has become clear over the past few years is that some employers routinely inflate job duties and deflate job salaries when they advertise openings that they expect to fill with an alien. This is done in order to discourage U.S. citizens from applying for the job because, once a U.S. citizen applies, the Department's enforcement section begins to work on the matter.

For example, the job availability forecast shows 318 accountant jobs, now held by aliens, that will become available in the next 12 months. The U.S. Department of Labor definition of the accounting job provides: "A considerable amount of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training." Employees who do not meet these standards are not accountants.

The federal definition of what an accountant does includes these tasks: "Prepare, examine, or analyze accounting records, financial statements, or other financial reports to assess accuracy, completeness, and conformance to reporting and procedural standards; report to management regarding the finances of establishment; establish tables of accounts and assign entries to proper accounts; develop, implement, modify, and document recordkeeping and accounting systems, making use of current computer technology; compute taxes owed and prepare tax returns, ensuring compliance with payment, reporting or other tax requirements; advise clients in areas such as compensation, employee health care benefits, the design of accounting or data processing systems, or long-range tax or estate plans; develop, maintain, and analyze budgets, preparing periodic reports that compare budgeted costs to actual costs; provide internal and external auditing services; analyze business operations, trends, costs, revenues, financial commitments, and obligations, to project future revenues and expenses or to provide advice." Employees who do not perform these functions are not properly classified as "accountants."

When a job is classified as "accountant," some otherwise-qualified U.S. citizens will not apply because their qualifications do not match the advertised position. However, if the same job is classified as administrative assistant, assistant manager, bookkeeper, clerk, or other similar titles, U.S. citizens will be much more likely to apply. The correct classification of jobs is very important to the placement of U.S. citizens.

Establishing the capability to provide prevailing wage surveys

Businesses that seek to hire aliens for specialty jobs through the federal visa process require a prevailing wage survey to support the salary level proposed for the new alien hire. In the past, such surveys could not be conducted in the Commonwealth because federal authorities failed to provide the necessary data that is provided to all states and Commonwealth businesses had to rely on stateside wage rates which made federal visas impractical for many businesses.

For the past two years, the CNMI Labor Department has been working to put in place the capability to do prevailing wage surveys in the Commonwealth that will meet federal standards. We have consulted with the U.S. Department of Labor so that federal requirements could be met. As of December 31, 2010, the CNMI Labor Department has completed the necessary work, and we are ready to move forward on this project. The next step is to arrange for U.S. Department of Labor funding. The Department is preparing an application for that funding. As soon as funding is in place, we can start accepting requests for surveys from businesses that need them. They will be done by temporary staff trained and supervised by CNMI Department of Labor staff.

This has been a very long process and has been especially challenging under conditions of decreasing budget allocations. First, we had to change our system of employer classification from the prior Commonwealth system to the federal NAICS system, and we had to get every employer into the right NAICS category. That has been done. Second, we had to change the classification of every job from the prior Commonwealth system to the federal O-NET system. This meant that every job in the Commonwealth had to be reclassified. This has now been largely completed. Prevailing wage surveys are done using NAICS and O-NET classifications. Third, once we had the classifications completed, we had to finish overview surveys of Commonwealth employers to determine where jobs in the various O-NET categories are now located. The Labor Department finished its Job Availability Forecast work in the fall which had as one of its objectives providing necessary information for prevailing wage surveys. The Department completed the pilot project of its first-ever Job Inventory Survey as of December 31, 2010 which also had as one of its objectives providing the basis for prevailing wage surveys.

Addressing complaints with respect to the Department of Labor

One complaint from the business sector with respect to the Department's operation is that the Department presents U.S. citizen candidates for job openings who are unskilled or who turn out to have excessive absenteeism or lateness to work. The Department has addressed these complaints in three ways: first, we are pursuing increased training for our job placement counselors so that they can more accurately assess claimed skills and attributes presented by job candidates; second, we have revamped all job notices by requiring federal O-NET classifications which standardize job duties and skills; and third, we are improving counseling materials about the basic responsibilities of attendance and timely reporting for work.

We believe that many of the instances of U.S. citizen workers showing up late for work or excessive absenteeism are from years past. In our experience, the current economic circumstances in the Commonwealth have helped reshape the attitudes of those who may have thought they were "entitled" to jobs. However, that is not to say that more can be done in this area, and the Department takes very seriously its responsibilities to present only qualified and willing U.S. citizen candidates.

Another suggestion from the community is that we establish additional coordination between the Department of Labor and the Department of Finance so that employers who do not comply with Commonwealth labor laws and regulations would be ineligible for renewal of business licenses until

their operations are brought into compliance. The Department will work with the business license staff on this area during 2011 to arrive at a computerized and online procedure that works for both agencies.

Accommodation of federalization

Federalization of functions with respect to the entry and deportation of aliens has required the Department to shift into a role like that performed by every state labor department. The way the federal government has gone about its new responsibilities in the Commonwealth has created additional work for the Department. There is a substantial danger that federalization, if not implemented properly, will greatly *decrease* the job opportunities for U.S. citizens in the near term. Our Department is working hard to avoid that very serious problem.

Harmonizing federal and Commonwealth law

In November 2009, when P.L. 110-229 federalizing immigration functions in the CNMI came into effect, the Commonwealth faced the task of harmonizing its laws with the new federal law. The functions with respect to entry and deportation of aliens had been taken over by the federal government, and all of the provisions in the Commonwealth Cod with respect to those functions had to be removed. The Department prepared draft legislation that became P.L. 17-1 which removed all of the preempted provisions from the Commonwealth Code and amended some provisions to work more effectively under the federal entry and deportation regime. P.L. 17-1 was enacted by the new Legislature and the Department put new regulations in place within two weeks.

Public Law 110-229 does not preempt the Commonwealth's labor laws and nothing in the court decision upholding this law suggests otherwise. In the United States federal system, there are areas in which the states share responsibilities with the federal government. Labor (including the terms and conditions under which workers are employed) is such an area. The federal government can regulate labor through its control of interstate commerce and immigration. But the States remain free to regulate labor under the power to control *intrastate* commerce and the general police power. The Commonwealth has all of the powers of a state in this area, as well as the powers of local self-government under the Covenant. Employers and workers in the Commonwealth must comply with both federal and CNMI law. P.L. 17-1 amended P.L. 15-108 to permit the exercise of the authority of the Commonwealth to regulate labor conditions and practices within the Commonwealth to the full extent that this area could be regulated by a state and can be regulated under the Covenant.

Standardizing Commonwealth labor statistics on federal standards

During 2009, the Department shifted to NAICS and O-NET from the old reporting systems in order to conform Labor Department data gathering to the same system used by other CNMI government departments (in the case of NAICS) and by United States government agencies (in the case of both NAICS and O-NET). NAICS¹ is a classification system for employers that identifies the industry to which

¹ The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS was developed under the auspices of the Office of Management and Budget

they belong. In the past, employers were identified using portions of the standard industrial classification system that had been the standard in the United States 30 years ago. O-NET is a system for classifying jobs. It specifies the duties for each job, thus ensuring uniformity in how employment is reported. In the past, jobs were classified using the Dictionary of Occupational Titles or informal job titles created by employers. O-NET² is an online resource which is available to the public at no cost. Employers can use it to obtain job descriptions for job vacancy announcements and job seekers can use it to compare their qualifications to a standard set of qualifications for job category. The database also provides a set of valuable assessment instruments for workers looking to find or change jobs. The shift to the O-NET system is incorporated into the Department's interactive website that assists U.S. citizens to find jobs. By standardizing job descriptions, the problem of unnecessary specialized qualifications is avoided.

The shift to NAICS and O-NET enabled the Department to take on very important data projects during 2010 that will help policy-makers in the Commonwealth and will also support federal grant applications.

Commenting on serious problems with proposed federal regulations and providing recommendations

In late November 2009, USCIS issued what they called "final" regulations with respect to the transitional worker program under P.L. 110-229. These regulations had not been available for public comment and the Commonwealth sued to enjoin implementation for that reason. A federal judge granted the Commonwealth's injunction request, and USCIS then issued the regulations for comment. In January 2010, the Labor Department prepared a 47-page set of comments on the deficiencies in the proposed regulations (which were the same as the "final" regulations issued previously in November 2009). At year-end 2010, USCIS still had not issued its final worker regulations. For that reason, the Department maintained its umbrella permit system. As acknowledged by USCIS, it was fortunate that the Department had issued umbrella permits to qualified aliens prior to November 28, 2009. Otherwise, during 2010, there would have been no documentation available for aliens who sought to work in the CNMI.

In April 2010, the Department of the Interior issued its recommendations on improved status for aliens in the Commonwealth. A week after the issuance of this report, the Department prepared an extensive analysis that was one of the bases for the Governor's letter to the U.S. Secretary of Labor pointing out the serious flaws in the Interior Department's report and requesting that it be withdrawn. Part of the CNMI Labor Department's analysis showed the likelihood of fraud with respect to the federal ombudsman's registration of aliens in December 2009 in order to support the Department of the Interior's recommendations. The Commonwealth requested the underlying alien registration forms in order to follow up on the possibility of substantial fraud. When the Commonwealth pursued this

(OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system. Its manual and website include definitions for each industry, background information, tables showing changes between 2002 and 2007, and a comprehensive index.

² The Occupational Information Network is a program of the US Department of Labor that is the nation's primary source of occupational information. The O-NET database contains information on hundreds of standardized and occupation-specific descriptors.

request, the U.S. Department of Justice informed the Commonwealth that the federal ombudsman had destroyed all of these crucial documents and that only summaries remained. For this reason, the suspected frauds with respect to the reported data cannot easily be verified. However, the documents remaining indicate that this registration was seriously flawed in other respects (e.g. registrations were accepted by telephone; registrations were accepted from aliens who were not in the Commonwealth; lists of aliens were presented for registration with no verification). The registration by the ombudsman cannot be verified and should not be used for any purpose.

Coordination with federal offices

Federalization has created an extraordinary amount of extra work for the Department. The federal agencies fail to coordinate with one another; elements of DHS fail to coordinate with one another; the agencies know relatively little about the CNMI and have difficulty in adjusting their large-scale mainland operations to the very small scale of the Commonwealth; access to federal agency officials who can make decisions is very difficult and expensive from the Commonwealth; and federal responsiveness to Commonwealth concerns often lags. For its part, the CNMI Labor Department has worked to assist and cooperate with federal agencies during 2010. We look forward to less burden and more efficient cooperative efforts in 2011.

U.S. Labor Department: During 2010, the Department conducted three major meetings with U.S. Labor staff in Washington, D.C. over policy issues such as prevailing wage determinations, unemployment insurance, extension of the transition period, designation of the CNMI Labor Department as a state workforce agency, collection of data for the CNMI, assistance on projects to further employment of U.S. citizens, and other matters.

U.S. Department of Homeland Security: During 2010, the Department conducted four major meetings with DHS staff in Washington on issues such as delivery of information on illegal aliens to ICE, hiring of U.S. citizens by CBP, failure to deport illegal aliens, extending the ban on asylum in the CNMI, possible amendments to P.L. 110-229, and similar matters. The Department also had four separate meetings with USCIS and Office of the Secretary staff in Washington on issues with respect to alien workers. In addition, the Department's Federal Relations Officer met in the CNMI with ICE and USCIS staff on coordination matters. The Deputy Secretary sent three certified lists of overstayers to ICE.

U.S. Government Accountability Office: The GAO made data requests of the Department in connection with their reports during 2010. All of GAO's requests were either met or the Department's inability to produce the requested data (which should have been collected by federal agencies as it is for all states) was explained. The Department also contributed analyses of the defects in draft GAO reports. For example, one draft report stated that the Department did not respond to requests from ICE in a timely manner. The Department challenged GAO to examine the ICE logs and, when they did, they found that the Department responded very promptly to all requests, including requests that came in late in the evening.

Equal Employment Opportunity Commission: During 2010, the EEOC stopped supplying the Department with information on its pending cases involving foreign workers in the Commonwealth. We understand this was done at the urging of the federal ombudsman. A few of these cases are more than three years old, and the Attorney General's office continues to urge the EEOC to complete these cases. Because the Department has no information on pending cases, it does not update umbrella permits that were issued because these cases are pending.

Federal ombudsman: The federal ombudsman, Pam Brown, does not work cooperatively with the Department.

Registration of aliens

Federal law (Section 262 of the INA) requires registration and fingerprinting of aliens in the United States. Registration (although not fingerprinting) has long been required under Commonwealth law as a mirror of the federal requirement. However, USCIS informed the Department that it would not register aliens in the Commonwealth, apparently for lack of personnel and funding. For that reason, the Department conducted its normal annual alien registration. This was concluded successfully at the end of December 2010.

Expansion of the website

The Department has expanded its website and internet capability to increase efficiency and decrease costs. The Department can no longer afford most person-to-person transactions. In 2011, most transactions with the Department will be available to be completed online. The payment module is expected to be installed and tested in the first quarter. All of the Department's announcements and notices as well as its laws and regulations are published online. During the first quarter, we are conducting a thorough review of all the Department's operations to determine which interactions with the public and other agencies can be put online.

Completion of adjudication of prior-year bond claims

During 2010, the Department completed the bond claims process. As of the end of the year, all such claims had been determined – either as collectible (with awards against solvent bonding companies) or as uncollectible (with orders or referral to the Attorney General for further action).³ There are 117 claims remaining for determination with the Attorney General. These are claims as to which there is no bonding company (the work was illegal) or the bonding company is no longer doing business in the Commonwealth. All of the foreign workers who have these claims are entitled, under Commonwealth law, to remain in the Commonwealth until the claims are resolved. Most of these claimants are unemployed at present. The lawyers in the Attorney General's office need to determine whether there

³ One lawyer brought an action in court on behalf of 126 aliens, many of whom had no legal status to remain in the Commonwealth but for their pending legal claims. This action seeks to require the Department to process bond claims, which the Department has already done for all aliens except those covered by this court action. This action has been pending for two years.

are any defendants against whom the claims can be brought or whether there is no viable way to pursue the claims and therefore they are no longer a basis for the claimants to remain in the Commonwealth.

In the process of dealing with these unpaid wage claims, the Department examined statistics going back to 1997 and discovered that the Commonwealth has a far lower rate of claims with respect to unpaid wages (lower than 0.1%) per man-year worked than any other jurisdiction (including the United States, Australia, New Zealand, and Germany) that keeps such statistics. Thus, although legitimate complaints have been made, overall the Commonwealth's system is fair, incorporates appropriate dispute resolution methods, and exceeds international standards for guest worker programs.

PART II: ACTIVITIES OF THE DEPARTMENT'S PRINCIPAL UNITS

The Department currently has five sections.

- ✓ The Job Placement Section operates the citizen hiring program. Citizens register on the Department's website and are assisted with in-person counseling about available jobs and interviewing. The counselors also follow up with employers after citizens have interviewed to ensure that the selection process has been fair.
- ✓ The Enforcement Section conducts inspections and investigations to ensure compliance with Commonwealth laws with respect to citizen hiring and compliance with workplace health and safety requirements. The Enforcement Section also ensures that all jobs for which aliens may be hired are posted on the website and that the job and compensation descriptions are accurate so that citizens are not discouraged from applying through the use of inflated requirements or unrealistically low salary levels. The Enforcement Section handled 491 agency cases during 2010 and had 22 agency cases pending completion of investigations at year-end. Most of these cases had to do with violations of the terms of umbrella permits. We plan a concentrated effort on umbrella permit violations in mid-year 2011, prior to the November 2011 deadline for all aliens to have federal permits. This will allow the federal authorities to know which aliens have violated the terms of their permits and Commonwealth law. Some of the 2010 violations will be handled in that project. There are no agency cases pending from prior years in Saipan or Tinian. We are working with the Resident Director to complete three older agency cases in Rota.
- ✓ The Guest Worker Section, which has been much reduced in size, deals with the permits held by aliens. During 2010, the section processed 6,948 applications for updating, replacement, and renewal of permits and issued 4,277 deficiencies and denials. Some of the deficiencies and denials pertained to applications submitted in the 4th quarter of calendar year 2009. This section also processed 973 transfers by aliens from one job to another. In addition, this section conducted the annual registration of all aliens in the Commonwealth including students, retirees, investors, and workers.

- ✓ The Administrative Hearing Office operates the dispute resolution system for both the citizen hiring program and the guest worker program. The Office handled 77 labor cases in 2010, of which only five remained in adjudication at year-end. All labor cases go through a mandatory mediation process in which the hearing officers settled 49 (or 70%) of the cases. In addition, the Office handled 342 denial cases, 300 agency cases, and 146 foreign worker transfer requests. During 2010, the division assessed fines of \$9,015 in labor, denial, and agency cases. At year-end, 15 denial cases were pending, all of which are scheduled for hearing during February 2011. These cases were held up due to a lack of funds to publish the necessary notices. In addition, 10 agency cases were pending, all of which are expected to be completed during the first quarter 2011. No other matters were pending. The Hearing Office also maintains the Barred List of employers not permitted to employ foreign workers. One of the hearing officers acts as the Department's Federal Relations Officer and handles coordination with the federal agencies with programs in the labor area.
- ✓ The Secretary's Office includes the Information and Data Services unit which provides automation services and data on employment, operates the Department's website, and maintains the Department's computer equipment; and an Administrative Services unit which provides Department-wide payroll, procurement, budget, and other administrative services. The Secretary's Office handles department-wide staff management, coordination with other CNMI government agencies, public relations, and community outreach. The Secretary issued 58 orders on labor appeals during 2010, and the appeal calendar is current as of the end of the year. During the year, the Deputy Secretary issued three updates to the overstayer lists to U.S. Immigration and Customs Enforcement. The year-end update will be issued during the first quarter 2011.

PART III: INFORMATION REQUIRED UNDER P.L. 15-108

The data required under P.L. 15-108 are as follows:

1. Data with respect to foreign workers

Section 4970(a)(1) of P.L. 15-108 requires the Secretary to report including data regarding the number of foreign national workers employed in the Commonwealth during the year, the citizenship of the workers, and the job classifications filled by foreign workers. In addition, Section 4969 of P.L. 15-108 requires statistical data in certain categories by industry.⁴

⁴ The text of Section 4969 is set out with the tables.

Application type by Citizenship for 240K Issued Permits

Application Type	Total	Bgd.	Chn.	Jpn.	Kor.	Tha.	Phl.	Oth.
	5,724	92	610	131	242	39	4,423	187
Amendment	768	6	62	34	34	1	616	15
Duplicate	65	0	17	3	8	0	32	5
Extension	364	6	25	8	10	3	293	19
New	67	0	9	0	28	1	26	3
Renewal	3,535	62	364	76	112	21	2,780	120
Transfer	905	17	132	9	50	9	665	23
Other	20	1	1	1	0	4	11	2

Application type by Citizenship all Issued Permits

Application Type	Total	Bgd	Chn	Jpn	Kor	Tha	Phl	Oth
	6,948	128	759	180	533	76	5,053	219
Amendment	807	7	63	34	34	1	651	17
Duplicate	93	1	25	5	14	1	41	6
Extension	364	6	25	8	10	3	293	19
New	329	7	50	7	124	5	129	7
Renewal	4418	89	463	116	301	53	3252	144
Transfer	917	17	132	9	50	9	676	24
Other	20	1	1	1	0	4	11	2

Industry by Application Type for 240K Issued Permits

	Total
Industry (NIACS)	5,724
Accommodation and Food Services	1425
Admin. Support, Waste Mgmt and Remediation Serv.	275
Agriculture, Forestry, Fishing and Hunting	17
Arts, Entertainment, and Recreation	32
Construction	370
Educational Services	52
Finance and Insurance	31
Health Care and Social Assistance	27
Information	11
Manufacturing	51
Mining, Quarrying, and Oil and Gas Extraction	17
Other Services (except Public Administration)	1748
Private F/F (Farmers/fisherman)	139
Private HH (maids/caretakers)	851
Professional, Scientific, and Technical Services	65
Real Estate and Rental and Leasing	113
Retail Trade	355
Transportation and Warehousing	56

Utilities	1
Wholesale Trade	88

Please note that the total in these tables does not include aliens who work for the CNMI government. Please note also that Labor counts only its administrative operations.⁵ The number of permits issued is greater than the number of workers present in the Commonwealth at any given point in a typical year because some permit actions are contract amendments or extensions and two or more actions may affect a single worker, some permit holders elect to leave the Commonwealth during the year for personal or employment reasons, some employers implement reductions in force and cancel their “issued” permits for some of their workers; some employers close their businesses entirely and their “issued” permits are cancelled by the Department; and other similar reasons.

These tables do not show umbrella permit numbers. Umbrella permits cover, in addition to the totals shown above, unemployed spouses, children, and parents of workers and other persons who are not in the category of workers, investors, retirees, or students.

2. Data regarding U.S. citizens and U.S. permanent residents

Section 4970(a)(1) of P.L. 15-108 requires the Secretary to report data regarding the number of citizens and permanent residents employed in the Commonwealth during the year, and the job classifications filled by these employees. In addition, Section 4529 of P.L. 15-108 requires statistical data in certain categories by industry.

During 2010, the only sources for this information were the U.S. Census Bureau, which recently completed the Decennial Census, and the CNMI Department of Finance, which has tax return information on employed persons. The U.S. Census Bureau has not yet released its information on the Commonwealth and is not expected to do so until some time in late 2011, and the CNMI Department of Commerce will not have the tax return information for 2010 until the end of the first quarter of 2011.

During 2010, the Department undertook a pilot program to address these data deficiencies. The first-ever Jobs Inventory Survey was implemented and information was collected from a majority of Commonwealth business employers. The Department could not complete the survey of every employer within the time and budget allocated to this project. However, the Survey has proved an essential means of data gathering and will be undertaken in 2011 by the CNMI Department of Commerce.

3. Data on exemptions granted with respect to the workforce participation requirements covering U.S. citizens and U.S. permanent residents:

⁵ The taking of the census with respect to all categories of persons present in the Commonwealth, including foreign workers, is the responsibility of the U.S. Census Bureau.

Section 4970(a)(2) of P.L. 15-108 requires “pursuant to Section 4526(c), the Secretary shall report any exemptions granted within thirty (30) days after the close of each calendar quarter.”

Section 4526 formerly provided four exemptions to the requirements of Chapter 2, which covers the employment preference for citizens and permanent residents. These are: (1) employers of fewer than five employees; (2) particular construction projects; (3) employers who hire more than 30% U.S. citizens in certain preference jobs; and (4) the garment industry exemption. This section was amended by P.L. 17-1 to delete Section 4526(c) and Section 4970(a)(2) should have been amended at the same time, but was not. This drafting error will be corrected when the Legislature next addresses labor matters..

4. Data with respect to approved security contracts

Section 4970(a)(4) of P.L. 15-108 requires that: “Pursuant to Section 4924, the Secretary shall submit a yearly report on the status of approved security contracts not later than thirty (30) days after the close of the fiscal year. The report shall contain the number of approved security contracts accepted in the fiscal year, the dollar limits of each approved security contract arrangement accepted, and a list of any signatories to approved security contracts in default.”

This report was not prepared during 2010 due to the anticipated changes when permitting of alien labor in the Commonwealth was shifted to federal control as it was uncertain what the federal requirements for bonding would be. As of the date of this report, no federal regulations on work permits for alien labor had been published.

4. Worker deaths and injuries

Section 4970(a)(3) of P.L. 15-108 requires: “ Pursuant to Section 4527, the Secretary shall investigate and report in writing to the Attorney General any death of a citizen or permanent resident employee as a result of employment, or any injury of a citizen or permanent resident employee as a result of employment which causes substantial physical or mental impairment.” Section 4970(a)(5) sets out a parallel requirement: “Pursuant to Section 4940, the Secretary shall investigate and report in writing to the Attorney General any death of a foreign national worker as a result of employment, or any injury to a foreign national worker as a result of employment which causes substantial physical or mental impairment.”

The available data are as follows:

Industry	Permanent Resident		Foreign Worker	
	Injuries	Fatalities	Injuries	Fatalities
Construction	5	0	52	0
Hotel/Resorts	36	0	66	0
Security Services	1	0	1	0

Government	19	0	0	0
All other	51	0	77	1
Total	112	0	196	1

These data on injuries and deaths were provided to the Department of Labor by the Workmen's Compensation Commission.⁶

Conclusion

The Labor Department performed well during 2010. Despite cutbacks in funding and personnel, the Department took on new initiatives with respect to the job availability forecast and the job inventory survey. We have largely met our performance benchmarks and close out the year with no significant backlogs at year-end. The Department's new automation system, funded in late 2007 and early 2008 with a special grant from the Governor, has made processing much faster and allowed the Department to undertake and enforce the enormous umbrella permit program successfully. We expect that the challenges ahead in 2011 lie primarily in securing employment for our unemployed U.S. citizens, U.S. permanent residents, and CNMI permanent residents. We are working on a number of grant proposals in these regards and look forward to working with the Legislature to accomplish our goals.

Respectfully submitted,

Dated: January 31, 2011

/s/ _____
 Jacinta M. Kaipat
 Acting Secretary of Labor

⁶ Letter dated January 19, 2011 from Frank D. Cabrera, Director.