



April 3, 2013

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Dear Messrs Massé and West,

Subject: Consultations on the Temporary Foreign Worker Program

The Canadian Chamber of Commerce is pleased to provide comments on the Temporary Foreign Worker Program (TFWP), as the government considers potential changes to improve the program. We were pleased to participate on the conference call on March 20, 2013. These written comments provide additional points and details on our views to improve the program.

First, it is worth noting that employers turn to the TFWP as a last resort, once they have exhausted their search for workers in the domestic labour force to fill available positions. Throughout the Canadian Chamber's skills consultations last year, employers spoke about the costs and challenges of recruiting workers from abroad. Many spoke of their preference to hire on a permanent rather than a temporary basis. Nonetheless, they were unanimous in viewing the TFWP as a necessity to cope with the shortfall in skilled labour and the skills mismatches that are evident throughout the domestic labour market.

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Second, within the TFWP, the need for efficiency in processing and timeliness is critical. The introduction of an Accelerated Labour Market Opinion process (A-LMO) for high-skilled occupations was very welcome. In these comments, the Canadian Chamber includes proposals to extend an accelerated application approach elsewhere within the TFWP system to ensure efficiencies for applicants and cost-savings for government. We recognize and recommend that employers meet the appropriate compliance requirements and/or pay reasonable fees to be eligible for expedited processing.

In the following sections, we have answered the questions provided in the background paper to the consultations.

Growth of the Temporary Foreign Worker Program, particularly in lower-skilled sectors

- 1. What is the right balance between protecting the Canadian labour market and ensuring TFWs can be hired where and when they are needed?**

Recruitment efforts of employers

- 2. How can the Temporary Foreign Worker Program ensure that genuine efforts are being made to consider Canadians and permanent residents for jobs prior to hiring TFWs?**
- 3. What are some of the options to ensure that the unemployed or under-represented Canadians are provided with opportunities for jobs or training prior to hiring TFWs?**

Employers prefer to hire locally from the domestic workforce whenever possible. They turn to temporary foreign workers as a last option to fill their vacancies. It is costly for employers to recruit temporary foreign workers. Most employers prefer to hire domestic workers to ensure a stable domestic workforce. The current system gives Canadians an opportunity to find jobs which must be advertised by employers before they can seek temporary foreign

workers. Especially for low-skilled positions, employers believe the current requirements are stringent to ensure that every effort is made to hire Canadians, including the introduction of Job Alerts to employment insurance claimants.

In the case of unemployed workers, there may be a skills mismatch between the skills of the workers and the skills required for the vacant positions. Training and retraining to match the skills required takes time. Workers may also have to consider relocating to where jobs are available for their skills.

The labour market adjusts slowly relative to the opportunities for business to expand. For that reason, the TFWP is extremely important to ensuring business can hire the workers needed to expand with market opportunities. Without the TFWP, many resource-based projects could not proceed and Canada would lose out in terms of jobs, growth and prosperity.

There may be difficult adjustments between, for example, high-wage jobs lost in the manufacturing sector and the vacancies for lower-wage, lower-skilled positions in the food service sector. Simply put, some employers find that some workers seem disinterested in taking lower-wage, lower-skilled positions in the service sector.

The labour market needs to adjust to meet the growth sectors in high-growth regions of the country. Employers are facing the demographic reality of retirements and a lack of both population growth and labour force growth within Canada. Within the next two decades, any net new growth in Canada's labour force may be largely the result of immigration, although school leavers will still be the main supply.¹ Meantime, there is scope to tap into those people in the under-represented categories within the labour market, including Aboriginal peoples, older workers, youth and persons with disabilities. The government has paid attention to these categories of workers with funding and initiatives in Budget 2012 and Budget 2013. The Canadian Chamber supports the introduction of these measures.

¹ Human Resources and Skills Development Canada. *Looking Ahead: A 10-Year Outlook for the Canadian Labour Market (2008-2017)*. Gatineau, QC. November 2008.

Canadian Chamber members are already involved and committed to ensuring more Canadians have more training and upskilling opportunities to meet the demand for skilled labour in many sectors. Many of the larger employers with shortages of skilled labour are engaged with post-secondary institutions to grow a local or regional workforce for the future.

In addition, we note that legislation to enact measures in the 2012 federal budget resulted in several changes to Canada's Employment Insurance program. Those changes will increase the motivation of unemployed Canadians to return to work or find work in another field.

Efficient processing and insufficient worker protections

4. How can the overall process of hiring a TFW be made more efficient while ensuring that effective labour market protections and worker protections are maintained?

The Canadian Chamber is concerned about the lengthy processing times and delays that can arise for employers seeking LMOs for TFWs, especially since the A-LMO process does not apply for lower-skilled workers in NOCs C and D.

With regard to efficiency, we have three specific recommendations:

- i. Introduce an accelerated application process for LMOs for those organizations willing to pay a cost-recovery fee (see details in the reply to Question 6, below)
 - ii. Introduce an accelerated application process for LMO-exempt Intra-Company Transfers to streamline approvals for highly compliant entities.
 - iii. Create a web portal for employers to reduce costs by moving more applications to electronic rather than paper processing (see details below).
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Proposal for an Accelerated Process for LMO-exempt Intra-company Transferees

With exemptions to the LMO process, the government recognizes the value of TFWs in several categories including intra-company transferees. Even still, the applications are subject to processing and timing delays that hurt companies' ability to have the right staff in place in time for projects in Canada, when they require intra-company transfers for the expertise to lead projects. In short, the current policies and practices under the TFW program are not aligned to leverage globally integrated value chains and realize market opportunities in Canada.

In addition to an accelerated application process for eligible companies, CIC should consider revising the rules governing the prevailing wage to better align standards with domestic labour market conditions; consider using additional information sources to determine appropriate salary levels such as industry surveys from employers and industry organizations; define specialized knowledge and therefore the primary eligibility test for the intra-company transfer of specialized knowledge workers relative to the host entity and the global specialization of skills with globally integrated supply chains; and implement a process to inform employers of changes to prevailing wages to reduce the numbers of rejections and resubmissions of applications.

Proposal for CIC Web Portal for Employers

CIC's commitment to improving client service has been evident in a number of initiatives rolled out in the last year. Of particular note is the move towards electronic online applications by individual applicants and their representatives. In the case of authorized representatives, CIC has created a dedicated web portal to allow for the management of multiple client applications. The transition away from paper-based applications to electronic applications benefits the applicants, their authorized representatives and CIC. But the transition could go further by extending access to the application process through an online portal dedicated to employers. An employers' portal would



likely generate significant savings for CIC by allowing more applications to be filed electronically.

HRSDC already has an LMO web portal for employers. But employers who assist their employees with the work permit process have no option but to use paper-based applications, particularly in the case of employers moving large numbers of employees in and out of Canada every year (e.g. for theatrical productions). The employers already collect the information from the employee for immigration purposes. Being able to apply and manage large numbers online would be beneficial to the employers, CIC and the employee, especially where a transfer into Canada involves a group of foreign workers.

To administer access to such a web portal for employers, CIC may wish to consider establishing certain minimum criteria, such as the number of foreign worker applications filed by an employer on average in a year. To make a web portal attractive to employers, CIC could consider modifying its online platform to allow employers to upload information without having to manually re-enter applicant information into CIC's online system.

Worker protections

The Canadian Chamber supports mandatory worker protections and improvements to monitoring employer compliance. Every employer should be subject to the same compliance and audit regime, based on their province or territory of operation. With an increased emphasis on employer audits, worker protections should be enforced more widely now. In addition, it may be useful to establish clear Canadian guidelines compared to provincial guidelines as the regulations differ in each province.

Limited options for lower-skilled temporary foreign workers to transition to permanent residence

5. Should there be additional pathways to permanent residence for lower-skilled workers, and if so, on which criteria should their selection be based? Should these pathways be created by decreasing immigration in other categories (if so, which ones) or by increasing overall immigration levels?



The Canadian Chamber recommends that the federal government work with the provincial and territorial governments to develop permanent solutions to address temporary labour shortages by expanding pathways to permanent residency. Specifically, the federal government should expand the Canadian Experience Class to give low- and semi-skilled temporary foreign workers (i.e. at NOC skills levels C and C) the right to apply for permanent residency after three years of work experience with his/her employer, based on employer recommendations, satisfactory background check, appropriate prior experience in country of origin and minimum language proficiency requirements.

In addition, a requirement to be employed by the same employer will encourage retention and it will reward loyalty. Reviews of the salary and employment situation will have to be implemented to ensure human rights and employment rights are enforced.

No processing costs to employers from accessing the Temporary Foreign Worker Program

6. How should the costs of delivering the Temporary Foreign Worker Program be shared between government, workers, and employers?

Lengthy processing times at Service Canada for the TFWP are a concern to the Canadian Chamber. Our members support the introduction of an accelerated application option for LMOs (i.e. an A-LMO for all applicants including in the low-skilled categories) for organizations willing to pay affordable cost-recovery fees to reduce the application turnaround time.

The introduction of a fee should be linked to guaranteed service levels for two reasons:

- the fee would cover the cost to improve service levels which would ensure the LMOs are issued on a timely basis relative to employers' hiring needs;
 - the fee should prevent any speculative LMO applications by employers.
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In this way, a service-based fee would ensure the system works for real job openings, rather than (on speculation) for projected future staffing needs.

An accelerated LMO process combined with a reasonable fee (charged per LMO application, not per worker) will address two issues in combination. Bearing in mind that the cost for SMEs to bring in workers under the program is already onerous, the fee must be reasonable.

Other topics

Calculation of Prevailing Wage Rates: Prevailing wage rates established by Service Canada are creating challenges for some businesses since the calculation is not industry specific and often fails to recognize local employment demographics.

Additionally, Service Canada may change the posted wage rate in the course of a day. Employers who used a wage rate on their initial LMO application may find their application denied because the wage rate had become outdated, without their knowledge of the change. In these cases, they must re-apply which causes costly delays.

National Occupation Classification (NOC) Codes: NOC codes are generic and do not adequately address the nature and location of the business. Many employers feel it is unrealistic to expect small rural business owners to compete with the multi-nationals under the current NOC code system. Employers in smaller centers are disadvantaged because NOC codes do not adequately recognize and differentiate between skill level needs and regional demographics. The government should review NOC Code processes in all provinces, and establish flexible, responsive practices that incorporate rural, urban and regional labour market needs.

In 2012, the Canadian Chamber passed a policy resolution to address issues in foreign worker programs. The key recommendations in the resolution are already referenced in the comments above. In addition, there are several other



recommendations to the federal government that pertain to the TFWP, as follows:

- a) Implement a process by which employers are notified of any changes to processes or information utilized in the calculation and submission of their initial LMO application, permitting employers the opportunity to update applications and avoid costly delays, particularly in the case of prevailing wage rates.
- b) Implement a timely, responsive appeal process for employers and temporary foreign workers who are denied applications, with a report to be provided to both levels of government as a means of improving operating efficiency and effectiveness, while remaining responsive to industry specific labour shortages.
- c) Allow an open work permit to be the official entry document into the country rather than the current additional visa requirement for certain temporary foreign workers, similar to the process in the United States.
- d) Improve processing efficiencies by recommending that Service Canada create a temporary foreign worker (TFW) industry specific labour pool where semi-skilled or skilled TFWs who have been terminated without cause, can register with an open work permit, from where other qualified industry specific employers from across Canada have the opportunity to recruit from this "pool."
- e) Amend the advertising criteria for LMOs to allow companies from the same sector to jointly advertise rather than as individual organizations.

The Canadian Chamber is pleased to provide these comments on the TFW program. Should you have any questions or requests, please contact me or Sarah Anson-Cartwright, Director, Skills Policy, at 613 238 4000 (ext 236) or sanson-cartwright@chamber.ca

Yours truly,



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