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# Shedding light on the TFW Program



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The Centre for Human Capital Policy focuses on the economic importance of a skilled and productive workforce to Canada's current and future prosperity and supports policies that will enable western Canadians to reach their full potential.

# Recent public debate about the Temporary Foreign Worker Program has been highly emotional, fueled by reports of incidents in which some employers misused the program and Canadian workers were displaced by foreigners.

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The federal government responded to these reports by overhauling the program in June 2014. There is concern that new restrictions on the program introduced in the overhaul may create unnecessary burdens on the economy.

This paper, the first in a series, lays out the history of Canada's approach to foreign workers and provides insights into how different approaches have supported various policy goals.

Foreign workers do more than help employers meet their labour needs. Businesses need reliable labour supply to create the quality goods and services that both keep Canada competitive in a global economy and provide a high standard of living. Foreign worker programs are also an extension of social and economic policies and reflect the nation's value system.

Until the June overhaul, most of the changes made to the Temporary Foreign Worker Program (TFWP) made the program more flexible and facilitated the entry of foreign workers, to the point that these workers became a structural support to the economy. The overhaul reverses this trend and curtails any tacit permission to use Temporary Foreign Workers (TFWs) to fill permanent jobs.

In analyzing the issue, it became clear that developing and implementing a foreign worker program is a complex undertaking. In Canada:

- Foreign workers can be high- or low-skilled and can enter through a number of streams with different qualifying criteria.
- Employers are limited in how many low-wage TFWs they can bring in.
- Foreign workers entering the country are now split into two distinct groups: one that temporarily fills specific jobs and one that helps to meet Canada's broader goals. The latter, much larger, program does not require rigorous screening to ensure that there are no Canadian candidates available for the job.

While the foreign worker program has become more nuanced, there is inadequate room to manoeuvre in response to regional economic diversity and labour markets across Canada.

It is not yet known whether the June 2014 changes to the TFWP will lead to a better long-term program that balances Canadian economic and social goals. By explaining the program from its inception, this paper provides groundwork for future thinking about a TFWP that simultaneously meets employers' need for labour while protecting the Canadian workforce and building the nation.



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# List of Terms

A-LMO – Accelerated Labour Market Opinion

CEC – Canadian Experience Class

CIC – Citizenship and Immigration Canada

E-LMO – Expedited Labour Market Opinion Pilot Project

ESDC – Employment and Social Development Canada (formerly HRSDC)

FDP – Foreign Domestic Program (now the LCP)

FSTP – Federal Skilled Trades Program

FSWP – Federal Skilled Worker Program

FTE – Full-Time Employee

GATS – General Agreement on Trade in Services

HRSDC – Human Resources and Skills Development Canada (now ESDC)

IMP – International Mobility Program

IRPA – *Immigration and Refugee Protection Act*

LCP – Live-in Caregiver Program (formerly the FDP)

LMIA – Labour Market Impact Assessment (formerly the LMO)

LMO – Labour Market Opinion (now the LMIA)

NAFTA – North American Free Trade Agreement

NOC – National Occupation Classification

PBO – Parliamentary Budget Office

PNP – Provincial Nominee Program

SAWP – Seasonal Agricultural Worker Program

TFW – Temporary Foreign Worker

TFWP – Temporary Foreign Worker Program

# Purpose of Foreign Worker Programs

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## Primary purpose of foreign worker programs

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Canada has historically used immigration to build the nation and to attract the needed workforce. However, permanent immigration is a lengthy process that may not result in employers quickly filling available jobs. Foreign workers are one way to ease labour shortages. Canada's Temporary Foreign Worker Program (TFWP) has allowed employers to access workers from abroad to meet labour needs when Canadians are not available. Reports have highlighted that, although Canada is not facing a widespread and national shortage of labour, there is evidence of shortages in specific regions and sectors of the economy. This is particularly true in parts of Canada where there is rapid economic growth, lower rates of unemployment, a smaller workforce and lower rates of permanent immigration.

In December 2013, 386,406 foreign workers were employed in Canada, representing about two per cent of Canada's national workforce of 19 million.

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## Secondary functions of foreign worker programs

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In addition to filling labour shortages, foreign worker programs serve other functions. The availability of foreign workers can accelerate economic growth by giving employers the flexibility to respond in "real time" to labour shortages. From an employer's perspective, foreign workers coming to Canada to work temporarily should already have the skills needed to perform jobs (hence the reason they are selected) and therefore require less intensive training. By recruiting labour from around the world, companies have been able to expand operations more rapidly, resulting in the creation of additional jobs for Canadians.

Foreign workers can fill jobs that too few Canadians want, such as hotel room attendants and fast-food restaurant workers. Many people entering Canada through the family reunification stream used to work in low-skilled jobs. With the government increasing the number of economic immigrants and reducing the size of the family reunification stream, fewer low-skilled people are entering the country to fill lower-skilled jobs. Also, when families are entering Canada, they are settling and looking for employment in urban centres. This could be another reason why low-skilled TFWs, particularly in rural areas, have been increasingly in demand.

Foreign workers can integrate fairly well into Canadian society because they enter immediately into employment. Once foreign workers have had some time in the Canadian workforce, they may be able to use this experience as a stepping stone and transition to permanent residency. This is an attractive feature of Canada's foreign worker program and may be a reason why foreign workers choose Canada over other countries.

# History of Canada's Temporary Foreign Worker Program

The mandate of the TFWP has changed over time and the program has experienced significant shifts in its role within the economy. It has gone through four phases, which are outlined below and summarized at the end of this paper.

## High-skilled phase: 1973-2002

When the program was introduced in 1973, its goal was to reduce the number of temporary foreign workers, while at the same time attracting skilled workers. Before 1973, people did not need permission to work in Canada and could apply for permanent residency from within the country. The high numbers of people applying for permanent residency status resulted in backlogs in the processing of applications. At the same time, the baby boom generation was entering the workforce during a period of high unemployment. To support the Canadian workforce, the pace of immigration was moderated through the TFWP and the provision whereby people could apply for permanent residency from within Canada was eliminated.<sup>1</sup>

Although the early program focused primarily on attracting high-skilled workers, the government permitted the entry of foreign workers in two low-skilled streams: the Seasonal Agricultural Worker Program (SAWP) and the Foreign Domestic Program (FDP). The SAWP began in 1966 with Jamaican nationals coming to Canada to meet seasonal demands in agriculture. The SAWP expanded to include foreign workers from other Commonwealth countries, as well as Mexico. The FDP was established in 1982 as a second low-skilled stream. The FDP became the Live-in Caregiver Program (LCP) in 1992 and enabled foreign nationals to provide in-home care for children, seniors and persons with disabilities.<sup>2</sup>

## Low- and high-skilled phase: 2002-2013

In 2002, the *Immigration and Refugee Protection Act* (IRPA) replaced the *Immigration Act*. This legislation was designed to attract the “best and brightest” economic immigrants to Canada. At the same time, the Canadian labour market also required more low-skilled workers.<sup>3</sup> In response to the disconnect between labour market needs and the goals of the IRPA, as well as pressure from employers to fill lower skilled jobs with foreign workers, the government introduced the Low-Skilled Pilot Project.<sup>4</sup> This project was initially limited to truly temporary jobs, such as work on major infrastructure projects, but it was extended to include difficult-to-fill permanent jobs, particularly in the hospitality industry. Some TFWs could transition to permanent residency through Provincial Nominee Programs (PNP) or federally mandated immigration programs, including the Canadian Experience Class (CEC). As a result, the TFWP has shifted from its original mandate and is partially being used to increase immigration.

### Impact of foreign workers on low-skilled work

The presence of low-skilled foreign workers has altered low-skilled work in Canada. Previously, low-skilled work was characterized by part-time jobs without benefits. Under labour market application guidelines, TFWs are only allowed to enter the country with full-time work and limited benefits. As TFWs were being employed full time, some Canadians in low-skilled jobs were also offered full-time work with benefits.

<sup>1</sup> Vineberg, Robert. “*The Temporary Foreign Worker Program: A Short History and Some Future Proposals for its Future.*” May 2013.

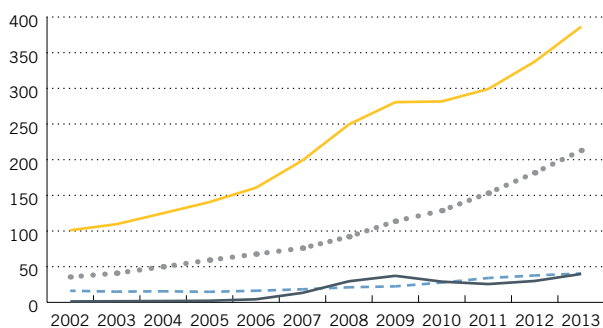
<sup>2</sup> Ibid.

<sup>3</sup> National Citizenship and Immigration, Law Section, Canadian Bar Association. “*Low Skilled Worker Pilot Project.*” May 2006, 1-2.

<sup>4</sup> Ibid, 2.

With the Low-Skilled Pilot Project, both high-skilled and low-skilled workers could enter the country. Before 2002, the stock of temporary workers in the country ranged between 80,000 and 100,000 in most years. In 2002, it rose to 101,086 foreign workers and by 2013 reached 386,406 workers, nearly four times the pre-2002 average. The increase in the number of foreign workers is only partially attributed to the Low-Skill Pilot Project. As shown in Figure 1, the Low-Skill Pilot Project grew from 1,304 foreign workers in 2002 to a high of 39,813 in 2013. During the same time period, foreign workers present under International Arrangements grew from 16,215 to 40,487 and the number of workers through Canadian Interests stream rose from 35,627 to 212,937. International Arrangements include bilateral and multilateral agreements, such as the General Agreement on Trade in Services (GATS) and the North American Free Trade Agreement (NAFTA), and the Canadian Interests classification includes individuals and spouses coming in under youth exchange programs, international intra-company transfers, and for research and study related purposes.

**FIGURE 1:GROWTH IN FOREIGN WORKERS PRESENT IN CANADA, 2002-2013** (000s people)



Source: Overhauling the Temporary Foreign Worker Program

— Total Foreign Workers  
 ..... Canadian Interests  
 - - - International Arrangements  
 — Low-Skill Pilot Project

## Publicly controversial phase: 2013-2014

Although all four phases of the program have experienced some controversy, the debate spiked in 2013 and 2014. A series of reports emerged that: 1) Canada was not experiencing widespread labour shortages, and 2) the program was allowing foreign workers to displace Canadian workers.

The federal government initially claimed the TFWP was necessary to address the problem of widespread labour shortages and skills gaps in the Canadian economy. This was cast into doubt when a series of reports, including one by the Parliamentary Budget Office (PBO), discredited the government's claim of widespread labour shortages and skills mismatches, and instead identified that sectors and regions of the economy were experiencing labour tightness.<sup>5</sup> If Canada was not experiencing widespread labour shortages, as thought, then the high number of foreign workers might not be justified.

Media outlets provided a series of anecdotes that suggested the TFWP was misused. There have been reports of individual TFWs being treated unfairly by employers, immigration consultants and recruiters. Some recruiters were charging TFWs fees to help them find jobs in Canada. The media reported cases where TFWs, after having gone into debt to pay a recruiter, came to Canada to discover that the job did not exist or that the role was very different from what was agreed upon in the work contract.<sup>6</sup>

<sup>5</sup> Office of the Parliamentary Budget Officer. "Labour Market Assessment 2014." Ottawa, Canada, March 25, 2014.

<sup>6</sup> Browne, Rachel. Recruiters charging foreign workers in Ontario illegal fees as high as \$12,000 for jobs that might not exist, report finds. Financial Post. April 10, 2014.



Some employers were reported to pay TFWs lower wages, not compensate for overtime, withhold wages, provide sub-standard working conditions, or renege on their responsibility to pay return airfare. Before the June 2014 overhaul was announced, and shortly before his accidental death, a foreign worker under SAWP recorded a video that described “long hours, unpaid overtime and limited freedom.”<sup>7</sup> Workers under the TFWP are indentured to a single employer and sometimes put up with poor working conditions to avoid losing their job. Although, they have rights which would protect them, foreign workers may not be aware of these rights, in which case, they are more vulnerable.

Intense media coverage fed the belief that the TFWP was taking away jobs from Canadians. In winter 2012, the media reported that HD Mining listed the ability to speak Mandarin as a job requirement, thereby excluding the vast majority of Canadian miners. Although the decision to hire TFWs in this case was upheld in Federal Court, language requirements are now being more tightly enforced. Today, English and French are generally the only languages to be used as a job requirement when hiring through the TFWP.<sup>8</sup> In spring 2013, the RBC Royal Bank was reported to have laid off Canadian information technology workers. According to media stories, the employer required the laid-off Canadians to train their replacements coming in through the TFWP. Labour market applications now include standardized questions to ensure the program is not used to facilitate the outsourcing of Canadian jobs. Most recently, in April 2014, three McDonald's franchises in Victoria, B.C., were reported to have favoured foreign labour over Canadian workers.<sup>9</sup> Similarly, two long-time servers in a Saskatchewan restaurant were discharged and reportedly replaced by TFWs. The government took action, announcing a moratorium on all new and pending TFW applications in the food service sector.<sup>10</sup> This ban was lifted with the announcement of the June 2014 overhaul.

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## Dual system phase: June 2014

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In June 2014, the TFWP was overhauled. The revised program is to be used: 1) “as a last and limited resort to allow employers to bring in foreign workers to Canada on a temporary basis to fill jobs for which qualified Canadians are not available,” and 2) where the hiring of a TFW will not have a negative impact on the Canadian labour market.<sup>11</sup> Although the program remains organized around employer demand to fill specific jobs, the government has put in place new rules and restrictions on how and when the program is used.

With the overhaul, employers applying through the TFWP have to complete a more rigorous labour market test and are either limited in the number of TFWs they can hire or have to outline their efforts to transition to a Canadian workforce. Foreign workers are banned in low-wage occupations in specified sectors in regions with high unemployment. The application fee for employers was also increased from \$275 to \$1,000 and the duration of low-wage work permits has been reduced from two years to one.

The government has created the new International Mobility Program (IMP) as part of the TFWP overhaul. The primary objective of this program is to “advance Canada’s broad economic and cultural national interest”, while the TFWP is tied to filling specific jobs.<sup>12</sup> The IMP is facilitated through bilateral and multilateral agreements, including GATS and NAFTA. In contrast, the TFWP is based on employer demand. The TFWP will now be mostly used to bring in low-skilled workers, often from developing countries. The IMP targets mostly high-skill and high-wage workers, generally from developed countries and is also the vehicle for the youth exchange programs.

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<sup>7</sup> Noël, Brigitte and Emilie Dubreuil. *Temporary foreign worker dies in freak accident, leaves chilling testimony*. CBC News. September 9, 2014.

<sup>8</sup> Tomlinson, Kathy. *RBC replaces Canadian staff with foreign workers*. CBC News. April 6, 2013.

<sup>9</sup> Tomlinson, Kathy. *McDonald's accused of favouring foreign workers*. CBC News. April 14, 2014.

<sup>10</sup> Employment and Social Development Canada. *Food Services Moratorium*. June 20, 2014. [http://www.esdc.gc.ca/eng/jobs/foreign\\_workers/lmo\\_ref/index.shtml](http://www.esdc.gc.ca/eng/jobs/foreign_workers/lmo_ref/index.shtml).

<sup>11</sup> Government of Canada. “*Overhauling the Temporary Foreign Worker Program*.” 2014, 9.

<sup>12</sup> *Ibid*, 1.

## Administration of the TFWP

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A TFW comes into Canada for a limited period of time at the request of an employer, following a positive Labour Market Impact Assessment (LMIA). Both Employment and Social Development Canada (ESDC) (formerly Human Resources and Skills Development Canada (HRSDC)) and Citizenship and Immigration Canada (CIC) are involved in the TFWP. ESDC issues LMIA's and CIC issues work permits. The LMIA process tests the impact of hiring a TFW on the labour market and Canadian workers, partly through information supplied by the employer and through labour market information. The work permit application process determines the applicant's admissibility and sets out conditions for the TFW, including type of work, where they can work and how long they may work in Canada. Depending on the origin of the TFW, they may also require a visa to enter the country.

## Administration of the IMP

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A foreign worker can come into Canada, without a LMIA, as a temporary resident through the IMP. Foreign workers coming through the IMP are often issued open work permits that are not tied to a specific employer in Canada. CIC is the lead agency and is responsible for issuing these permits.

IMP entrants can also work in Canada at the request of an employer. In this case, employers are required to submit job offers and other relevant information to CIC. Prior to the overhaul, these labour market test-exempt foreign workers did not need to show job offers to CIC.

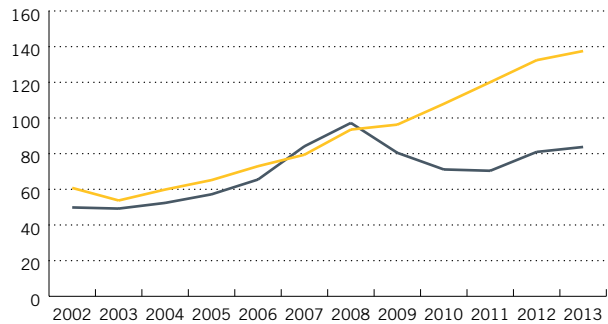
# Impact of the new International Mobility Program

Before the June 2014 overhaul, workers who came into Canada with, and others who came without, a government-approved labour market test were all considered to be part of the TFWP. Following the overhaul, the TFWP includes workers who are brought to Canada following a government-approved labour market test, called the Labour Market Impact Assessment (LMIA) (formerly the Labour Market Opinion (LMO)). The majority of foreign workers who do not require a LMIA will now enter through a parallel stream, the IMP. These workers are not considered TFWs; rather, they are temporary residents.

Historical data for the old TFWP has been reorganized to reflect the two current foreign worker programs, the IMP and the revised TFWP. The IMP now includes International Arrangements and Canadian Interests streams. In 2013, International Arrangements which include bilateral and multilateral agreements would have accounted for 20 per cent of IMP entrants. Canadian Interests which included reciprocal employment – of which 39 per cent are youth, intra-company transfers, the entry of spouses and common-law partners, and research and study – would have accounted for the rest of IMP entrants.

The reorganized data for the IMP and new TFWP show that over the last decade, there would have been far more IMP entrants than TFWP entrants. As shown in Figure 2, if the two foreign worker programs had been in place in 2002, there would have been 60,782 IMP entrants and 49,831 TFWP entrants. In 2013, IMP entrants would have grown to 137,533 while TFWP entrants would have grown to 83,740. This means that in 2013, 62 per cent of foreign workers entering Canada, including those on youth exchange programs, would have been exempt from the labour market test. In 2013, 38 per cent of jobs that went to foreign workers would have been tested for their impact on the Canadian workforce.

**FIGURE 2: REORGANIZED DATA: ENTRIES OF FOREIGN WORKERS, 2002-2013** (000s people)



Source: Overhauling the Temporary Foreign Worker Program

— IMP Total  
— TFWP Total

By creating the IMP, the TFWP shrank instantly. This has created difficulties in making year-over-year comparisons as a limited amount of reorganized data are publicly available. Assuming that foreign labour trends continue in Canada, the majority of foreign workers will come through the IMP. For the time being, public attention on the overall numbers of foreign workers has been diverted, with most of the media analysis focusing on the new, more strictly controlled and smaller TFWP. When analyzing Canada's foreign worker program, it would now be inaccurate to look only at the TFWP.

If the IMP and the new TFWP had been in place in 2013, 38 per cent of jobs that went to foreign workers would have been tested for their impact on the Canadian workforce.

# Overhauled TFWP

The overhauled TFWP includes changes in the labour market test, the introduction of wages as a classification system, limits and restrictions on the number of TFWs who can be hired, emphasis on transition to a Canadian workforce, reduction in the duration of work permits, and increase in application fees. The remainder of this paper will focus on the technical details of the overhauled TFWP as well as provide an analysis of the most recent changes.

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## Labour Market Impact Assessment

All employers hiring through the TFWP must undergo a labour market test. This test is to assess the risk of bringing a particular foreign worker into the Canadian workforce, and ensure the employer has first tried to recruit Canadian workers. After an employer has submitted a labour market application, ESDC will respond. A positive labour market test authorizes an employer to make a foreign worker a job offer, and allows the worker to apply for a work permit.

The previous labour market test called the Labour Market Opinion (LMO) has been replaced by the more rigorous and comprehensive Labour Market Impact Assessment (LMIA). Under the LMIA, employers are required to advertise jobs for a prescribed length of time and answer such questions as the number of Canadians who applied for the job, the number who were interviewed and an explanation of why those Canadians were not hired. The government will also be able to cross-reference LMIA applications with new and better sources of labour market information. The minister of ESDC has allocated \$6 million per year for an Annual National Wage Survey and \$8 million per year for a Quarterly Job Vacancy Survey, both to be launched in the spring of 2015. When ESDC has concerns that a TFW may have a negative effect on the Canadian labour market, it has the option to issue a negative LMIA.<sup>13</sup>

Employers must complete either the LMIA for higher-skilled workers or the one for lower-skilled workers according to the National Occupation Classification (NOC), Canada's reference guide for classifying occupations. Occupations falling under NOC O, A, or B are high-skilled and occupations falling under NOC C or D are low-skilled.

Employers hiring TFWs in NOC O, A, or B occupations are required to complete a LMIA application for higher-skilled occupations.

Employers hiring TFWs in NOC C and D occupations are required to complete a LMIA application for lower-skilled occupations.

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## Fast-tracked labour market applications

In addition to the standard LMO employers were required to undergo before the overhaul, the federal government had implemented and subsequently cancelled a series of fast-tracked labour market tests. These tests facilitated the hiring of labour in certain regions and sectors of the economy and are briefly highlighted below.

'Regional lists of occupations under pressure' were developed to assist employers fill job vacancies by reducing the amount of time it would take to hire TFWs. The regional occupation lists had less stringent rules, including allowing shorter advertising requirements compared to the normal LMO process. This program came into effect in 2006 in Ontario, Alberta and British Columbia, and was expanded to Quebec, Manitoba, Prince Edward Island and Nova Scotia in 2007. These regional lists ended in 2009 when the government introduced consistent national advertising standards.<sup>14</sup>

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<sup>13</sup> *Immigration and Refugee Protection Regulations*, SOR/2002-227, ss. 203 (1) (b).

<sup>14</sup> Government of Canada Response to the Report of the Standing Committee on Citizenship and Immigration. "Temporary Foreign Workers and Non-Status Workers." 40th Parliament, 2nd Session. May 2009.

To deal with backlogs in LMOs and complaints from some employers that the application process was taking too long, the government launched the Expedited Labour Market Opinion Pilot Project (E-LMO) in 2007.<sup>15</sup> The E-LMO was introduced in Alberta and British Columbia to help with both low- and high-skilled labour shortages. At first 12, and later 33, occupations were eligible for the E-LMO. Eligible employers who met the requirements could receive a LMO in three to five working days. At the time, a labour market assessment, outside the E-LMO, could take up to five months.<sup>16</sup> This pilot project was terminated in 2010.

The Accelerated Labour Market Opinion (A-LMO) was introduced in 2012 and was another fast-tracked stream to bring in TFWs. The A-LMO provided employers a positive or negative LMO within 10 business days for high-skilled jobs, including skilled trades. As part of the program, some employers were subject to post-LMO reviews to ensure compliance and reasonable efforts to recruit Canadians.<sup>17</sup> The program was suspended in 2013.

The A-LMO was not reinstated with the overhaul, but the government created an accelerated LMIA process for certain occupations, including for the highest demand occupations (skilled trades), highest paid occupations (top 10 per cent) and short duration work periods (120 days or less).<sup>18</sup> LMIAs for these categories will be provided within 10 business days.

As an added complication, British Columbia, Alberta, Ontario, Nova Scotia and Yukon have agreements with the federal government to determine occupations that warrant LMIA exemptions based on regional economic priorities. The government has indicated it will also make reforms to these existing provincial/territorial foreign worker annexes.

## Increasing LMIA fee

Between 1973 and 2013, the labour market application was processed at no cost to employers. In 2013, a labour market application fee of \$275 was instituted and, in the overhaul, it was increased to \$1,000. The government has said that the overhauled TFWP is more costly to deliver and that the cost of the program should be covered by employers who use the program, not taxpayers. According to the government, this increase in fee reflects the true cost of the program.

### Impact of the increased LMIA fee

The \$1,000 LMIA fee costs the same whether a LMIA for a foreign worker is approved or declined. The government has said that the fee covers the cost of the application as well as monitoring and compliance. It is unclear why an employer who receives a negative LMIA would pay the same fee as an employer who receives a positive LMIA, when the former employer is unable to bring in the TFW and therefore does not require any monitoring and compliance.

On the other hand, a higher fee may mean that only employers truly in need of foreign workers will apply. This may reduce the number of incomplete applications and improve the quality of applications received by government.

<sup>15</sup> Government of Canada Response to the Report of the Standing Committee on Citizenship and Immigration. "Chapter Three: Administration." 40th Parliament, 2nd Session. May 2009.

<sup>16</sup> Government of Canada. *Temporary Foreign Worker Program Improved for Employers in B.C. and Alberta (Archived)*. September 24, 2007. <http://news.gc.ca/web/article-en.do?nid=350829>.

<sup>17</sup> Government of Canada. *Government of Canada Announces a more Efficient and Responsive Temporary Foreign Worker Program (Archived)*. April 25, 2012. <http://news.gc.ca/web/article-en.do?nid=670919>.

<sup>18</sup> Employment and Social Development Canada. *List of Skilled Trades Eligible for Ten-day Speed of Service*. [http://www.esdc.gc.ca/eng/jobs/foreign\\_workers/reform/tables.shtml#h2.2](http://www.esdc.gc.ca/eng/jobs/foreign_workers/reform/tables.shtml#h2.2).

### Impact of a more rigorous LMIA and \$1,000 fee on short-term jobs

Under the new rules, the LMIA process is more rigorous and a \$1,000 fee is imposed. For occupations of 120 days duration or less, LMIAs will be issued within 10 business days. However, employers hiring for short-term jobs are required to go through the same administrative process and pay the same fees as employers hiring for the maximum length of time TFW work permit.

Also, some employers may need foreign workers for seasonal work. This is commonplace in the ski and tourism industry, for example, where foreign workers are hired seasonally. Although there is a well-established foreign worker stream for agricultural workers, there is no parallel stream for other seasonal industries.

In the end, some employers are finding the LMIA process is too onerous and expensive for short-term, truly temporary jobs. Some have made the decision not to apply.

### Wage and National Occupation Classification

The TFWP was administered according to the government occupation classification system, NOC, before the overhaul. Jobs in NOC O, A, and B are considered high-skilled work and require tertiary education or a minimum of two years of training. Jobs classified as NOC C and D are considered low-skilled work and require a high school diploma or a maximum of two years of job-specific training.

Although skill level is an important determinant of wage, skill may not be the only factor influencing wages. For example, a worker could be employed in a low-skilled occupation and receive a relatively high wage because the occupation is in high demand. Conversely, a high-skilled worker could receive relatively low wages if placed in a low demand occupation. According to the Government of Canada, “wage is a more objective and accurate reflection of skill level and labour need in a given area.”<sup>19</sup>

In addition to the NOC system, the federal government has added a new level of administration that is based on provincial/territorial median wage. When the overhaul was presented in June 2014:

- high-wage jobs were positions where the prevailing wage fell at or above the median hourly wage, and,
- low-wage jobs were positions where the prevailing wage fell below the median wage.<sup>20</sup>

The prevailing wage rate is the average hourly wage for an occupation in a specified region within the province or territory.<sup>21</sup>

<sup>19</sup> Government of Canada. “Overhauling the Temporary Foreign Worker Program.” 2014, 7.

<sup>20</sup> Government of Canada. “Overhauling the Temporary Foreign Worker Program.” WP-191-06-14E. 2014, 8.

<sup>21</sup> Government of Alberta. *What is the prevailing wage rate in Alberta?* March 19, 2013.

Subtle changes have been made to both the *Overhauling the Temporary Foreign Worker Program* document and the LMIA applications, since their initial release in June 2014. In September 2014, the government changed the criteria for deciding if a job is high- or low-wage from prevailing wage to the wage being offered to the TFW. Subtle changes were made in a September 2014 revision to the overhaul:

- high-wage jobs are positions paying at or above the provincial/territorial median wage, and,
- low-wage jobs are positions paying below the provincial/territorial median wage.<sup>22</sup>

This change from prevailing wage to wage offered to the TFW (Table 1) was not formally communicated to employers or the public. The change was reflected on ESDC’s website and in modified LMIA applications. When filling out a LMIA application, employers must ensure they are completing the most recent form provided by ESDC.

**TABLE 1: SUBTLE CHANGES TO THE OVERHAULED TFWP IN DETERMINING HIGH- AND LOW-WAGE**

	<b>HIGH-WAGE</b>	<b>LOW-WAGE</b>
<b>June – September 2014</b>	Prevailing wage is at or above the provincial/territorial median hourly wage.	Prevailing wage is below the provincial/territorial median hourly wage.
<b>September 2014 – current</b>	Wage being offered to the TFW is at or above the provincial/territorial median hourly wage.	Wage being offered to the TFW is at or above the provincial/territorial median hourly wage.

<sup>22</sup> Government of Canada. “Overhauling the Temporary Foreign Worker Program.” 2014, 8.

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## Low-wage TFWs: Caps

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Following the overhaul, there is a limit on the number of low-wage TFWs an employer can hire. The government has introduced a worksite cap that limits the number of TFWs to a maximum of 10 per cent of the total hours worked by all employees. This limit applies only to businesses with 10 or more employees and employers have until July 1, 2016, to transition to this rule.

There is now a limit to the number of low-wage TFWs an employer can hire. The government has introduced a cap where, by 2016, each worksite cannot have more than 10 per cent of its workforce as TFWs, based on total hours worked by all employees.

### Limiting the number of TFWs based on total hours worked versus headcount

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The number of TFWs an employer can bring onto a worksite is based on the total hours worked by all employees rather than by a headcount of workers. Hours worked is a more accurate reflection of the number of Full-Time Employees (FTEs) while a headcount of workers would be skewed in workplaces with large numbers of part-time employees.

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## High-wage TFWs: Transition plans

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If the wage being offered to a TFW is at or above the provincial/territorial median wage, then an employer is required to complete a transition plan. Exemptions have been granted for the SAWP, LCP, Federal Skilled Worker Program (FSWP), Federal Skilled Trades Program (FSTP) and employers hiring workers for specialized occupations under Quebec's facilitated process. Also, employers hiring TFWs for a limited duration (less than 120 days or for a maximum two-year, project-based position) can apply for an exemption by completing the "Rationale for Exemption" section of the LMIA.<sup>23</sup>

In the transition plan, employers must identify the steps they are taking to reduce their reliance on TFWs, including recruitment, retaining or retraining Canadians, and engaging an underemployed population. Alternatively, an employer can complete an activity that would facilitate the permanent residency of the TFW, such as providing language training or making a permanent job offer. This second option may appeal more to employers hiring high-skilled workers as high-skilled TFWs have more options available to transition to permanent residency.

Employers will have to outline timelines for the activities identified in their transition plan. The transition plan will be kept on file so that the projected results can be compared against employer activities when they apply for a similar LMIA, or are audited. Oversight and enforcement will be needed to ensure employers carry out their transition plans.

Following the overhaul, employers hiring high-wage TFWs will be required to complete a transition plan that demonstrates their efforts to reduce their dependence on foreign workers.

### Risk of subjective assessment of transition plans

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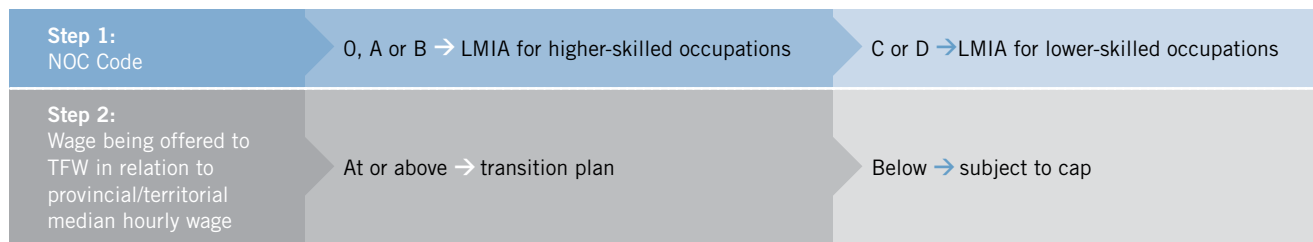
Transition plans completed by employers hiring high-wage TFWs include questions that require evaluation by Service Canada employees. Safeguards will need to be in place to reduce the risk of subjectivity and ensure employers' transition plans are consistently assessed.

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<sup>23</sup> Employment and Social Development Canada. *Schedule C Employer Transition Plan*. ESDC EMP5594 (2014-09-003).



## APPLICATION PROCESS FOR EMPLOYERS HIRING TFW



### Refusing applications for TFWs in areas of high unemployment

Before it was overhauled, the TFWP was not linked directly to unemployment statistics. Following the overhaul, ESDC will not process some LMIA applications in areas with an unemployment rate of six per cent or higher. This applies to specific low-skilled occupations in the accommodation, food services and retail trade sectors.

#### Risks in linking the TFWP to unemployment statistics

Restricting LMIA applications for low-wage jobs in certain sectors in regions with an unemployment rate of six per cent or higher assumes that unemployed Canadians are willing to work in low-wage jobs, which is not always the case. Although an unemployed individual may be qualified to work in many jobs, he or she may be unwilling to do so. Further, this change also assumes that unemployed Canadians have little or no education or training, and that high-skilled or high-wage earners are not unemployed. Although unemployment is skewed towards low-skilled workers, high-skilled workers are not immune. In addition to unemployment, underemployment is also an issue in the Canadian economy. High-skilled workers may appear to have lower rates of unemployment simply because they are underemployed.

Within a single region, there could be differing rates of employment across groups. For example, although the unemployment rate in Fort McMurray, Alta., is low, there is a high unemployment rate among Aboriginal populations in the area. Unemployment on reserves is not included in regional economic statistics.<sup>24</sup>

Furthermore, one of the challenges of tying unemployment and economic regions to the TFWP is the proximity of economic regions. In Ontario, for example, Toronto and Hamilton are in close proximity and yet the former city has higher than six per cent unemployment<sup>25</sup> and the latter city has an unemployment rate of lower than six per cent.<sup>26</sup> This means that TFWs in the accommodation, food services and retail trade sectors could be hired in Hamilton but not Toronto.

<sup>24</sup> D'Aliesio, Renata and Joe Friesen. *Temporary foreign workers hired in area with high aboriginal unemployment*. The Globe and Mail, October 14, 2014.

<sup>25</sup> Employment and Social Development Canada. *EI Economic Region of Toronto*. 2014. [http://srv129.services.gc.ca/ei\\_regions/eng/toronto.aspx?rates=1](http://srv129.services.gc.ca/ei_regions/eng/toronto.aspx?rates=1).

<sup>26</sup> Employment and Social Development Canada. *EI Economic Region of Hamilton*. 2014. [http://srv129.services.gc.ca/ei\\_regions/eng/hamilton.aspx?rates=1](http://srv129.services.gc.ca/ei_regions/eng/hamilton.aspx?rates=1).

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## Reducing the duration of work permits for low-wage TFWs

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When the program was initiated in 1973, the government gave TFWs work permits of up to one year. The CIC increased the duration of work permits in 2007 to help employers recoup the costs associated with bringing in a TFW. Following the overhaul, low-wage TFWs will once again be issued a maximum one-year work permit. The government has indicated that this return to a one-year work permit is to enable flexibility and responsiveness to labour markets.

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## Reducing the cumulative length of time a low-wage TFW can work in Canada

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Beginning in 2011, an individual foreign worker, with the appropriate work permits, could work in Canada for a cumulative time of up to four years. That person then had to remain outside of the country for at least another four years before they could be eligible to work in Canada again.<sup>27</sup> By limiting the duration of work permits and instructing foreign workers to leave the country, Canada is attempting to avoid uncontrolled settlement of people within its borders. There is no way of confirming that the first workers allowed to stay for four years will actually leave the country.

In the overhaul, the government indicated the total length of time a TFW can work in Canada in a low-wage stream will be reduced.<sup>28</sup> This shift is expected to be clarified in a regulatory proposal that CIC will bring forward in the next two years.<sup>29</sup>

By limiting the duration of work permits and instructing foreign workers to leave the country, Canada is attempting to avoid uncontrolled settlement of people within its borders. However, there is no way of confirming that the first workers allowed to stay for four years (who have now or soon will reach the four year limit) will actually leave the country.

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## Integrity of government data

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The changes highlighted in the section above are deemed necessary by government to prevent misuse of the program. Since the June 2014 overhaul, however, questions have been raised about the integrity of the data used to justify the changes. According to government statistics, 12,162 employers used the TFWP in 2013. The data indicate that more than half of these employers had a foreign workforce of more than 10 per cent.<sup>30</sup> Recent information obtained by the media revealed errors in the government's data. Some companies thought to have a significant portion of their workforce comprised of TFWs have publicly responded that the government data is inaccurate.<sup>31</sup>

These data have been used by government to project that, by capping the number of TFWs in low-wage positions, the number of these workers in the country will be cut in half.<sup>32</sup> This may need to be revisited since inaccuracies in the data may have skewed projections.

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<sup>27</sup> Government of Canada. *Operational Bulletin 523: Temporary Foreign Worker Program – Four-Year Maximum (Cumulative Duration)*. May 22, 2013. <http://www.cic.gc.ca/english/resources/manuals/bulletins/2013/ob523.asp>.

<sup>28</sup> Government of Canada. *Reducing the Length of Time a Temporary Foreign Worker can Work in Canada*. September 30, 2014. <http://www.cic.gc.ca/english/department/acts-regulations/forward-regulatory-plan/reducing-time.asp>.

<sup>29</sup> Government of Canada. *Forward Regulatory Plan: 2014-2016*. September 30, 2014. <http://www.cic.gc.ca/english/department/acts-regulations/forward-regulatory-plan/index.asp>.

<sup>30</sup> Government of Canada. "Overhauling the Temporary Foreign Worker Program." 2014, 9.

<sup>31</sup> Friesen, Joe. *Retract miscount of temporary foreign workers, employers tell Harper government*. The Globe and Mail, October 1, 2014.

Friesen, Joe and Renata D'Aliesio. *Temporary foreign worker data 'don't correspond' with reality*. The Globe and Mail. September 26, 2014.

<sup>32</sup> Government of Canada. "Overhauling the Temporary Foreign Worker Program." 2014, 10.

## CASE STUDY

### Putting together NOC, wages, cap, transition plans, and sectors

An analysis of an Electronic Service Technician illustrates regional differences in how the revised TFWP affects employers and employees. This position is classified as NOC B and is therefore high-skilled. In Alberta in 2013, the “overall average hourly wage” for an Electronic Service Technician was \$23.61,<sup>33</sup> while the provincial median hourly wage was \$24.23.<sup>34</sup> The Electronic Service Technician is below the provincial median wage and is therefore considered low-wage even though the worker is high-skilled under the NOC system.

**...In 2013, an Electronic Service Technician in Alberta was high-skilled and low-wage.**

For the Electronic Service Technician, “overall average hourly wages” vary within the same province. Comparing two areas within Alberta, the “overall average hourly wage” for an Electronic Service Technician in the Wood Buffalo-Cold Lake region is \$32.94, while in the Athabasca-Grande Prairie region, it is \$23.80.<sup>35</sup> In the former area, the Electronic Service Technician is classified as high-wage while, in the latter area, the worker is low-wage. Employers applying to bring in an Electronic Service Technician in the Wood Buffalo-Cold Lake area will have to complete a transition plan, while employers in the Athabasca-Grande Prairie area with 10 or more employees will be subject to a cap of 10 per cent over time. Employers hiring TFWs for the same position but within different areas of the province are subject to different rules.

**...The same Electronic Service Technician would be high-wage in one area of Alberta and low-wage in another area of the province. Consequently, employers in different areas of the same province would either have to complete a transition plan or be subject to limits on the number of TFWs they can hire on their worksite.**

There are also sharp discrepancies for wages between sectors. For example, within Alberta, Electronic Service Technicians in the construction industry receive an annual average salary of \$56,573, while Electronic Service Technicians in the retail trade industry receive an annual average salary of \$44,887.<sup>36</sup> When these annual salaries are calculated on an average work week, the Electronic Service Technician in the construction industry falls above the Alberta median hourly wage while the Electronic Service Technician in retail trade falls below the median hourly wage. This means that different industries, within a single province, hiring for the same occupation, will have to follow different rules and either transition over time to a Canadian workforce or be constrained in the number of TFWs who can be hired. More employers in lower-paying industries and the non-profit sector will have a cap on the number of low-wage TFWs they can hire than in other higher-paying sectors, for the same occupation.

**...The Electronic Service Technician could have been high- or low-wage, depending on what sector he or she worked in. Lower-paying industries and the not-for-profit sector may be more prone to have to follow the rules for caps because their employees may be paid lower wages.**

<sup>33</sup> Government of Alberta. *Alberta Learning and Information Services: Occupations and Educational Programs*. <http://occinfo.alis.alberta.ca/occinfopreview/info/browse-wages/wage-profile.html?id=2242> (accessed November 21, 2014).

<sup>34</sup> Government of Canada. “*Overhauling the Temporary Foreign Worker Program*.” 2014, 7.

<sup>35</sup> Government of Alberta. *Alberta Learning and Information Services: Occupations and Educational Programs*. <http://occinfo.alis.alberta.ca/occinfopreview/info/browse-wages/wage-profile.html?id=2242> (accessed November 21, 2014).

<sup>36</sup> Ibid.

# Conclusions and next steps

The government has limited the duration of foreign workers' stays, but the presence of foreign workers in Canada is by no means temporary. Foreign worker programs reflect choices about how to grow the economy.

In its more than 40 years of existence, the TFWP has departed from its 1973 goal of reducing the number of temporary foreign workers while attracting high-skilled workers. Today, the program is intended to be "a last and limited resort to allow employers to bring in foreign workers to Canada on a temporary basis to fill jobs for which qualified Canadians are not available."<sup>37</sup> The government's 2014 overhaul moves the TFWP towards a stricter and more controlled process with a highly detailed labour market assessment. It also limits employers' use of TFWs in low-wage jobs, enforces greater oversight over the transition to Canadian workers by employers, ties the foreign worker program to unemployment rates, increases fees and reduces the length of time a low-wage foreign worker can be employed. According to the government, these actions, complemented by the collection of new labour market information, will ensure the program is used to strengthen the economy while protecting the Canadian labour market.

With the overhaul, most of the people who had previously been considered TFWs have been reclassified as temporary residents under the new IMP, and are now outside the scope of the overhauled TFWP. This could affect the public's perception of the size of the foreign worker program, because while the number of TFWs entering the country is likely to decrease as a result of the overhaul, many foreign workers will enter Canada through the IMP. If the two programs had existed previously, 38 per cent of jobs that went to foreign workers would have been tested for their impact on the Canadian workforce in 2013.

To assess the TFWP and the IMP, the collection and public dissemination of accurate and complete data is required, and this information will need to be analyzed

within the context of labour markets. For instance, it would be interesting to understand of the 12,162 employers who hired TFWs in 2013, how many of these employers had a workforce of more than 10 per cent TFWs in low-wage positions. Where are foreign workers employed (by province/territory and economic region)? How large are the firms that use TFWs, and in which industries are they? This type of information is a starting point from which to understand the two foreign worker programs in Canada and objectively assess how the Canadian economy is affected by changes to the TFWP and the creation of the IMP. With a deeper understanding of the temporary foreign worker programs, policy can intentionally be set to achieve certain economic and social objectives.

Any temporary foreign worker program leads to broader questions:

- Why are there not enough qualified Canadians to fill the jobs, especially given unemployment, and what can be done to bridge this gap?
- Why do unemployed Canadians show a reluctance to move within Canada for jobs, even if they are low-skilled? How can we address this?
- How can government stimulate economic participation outside of foreign worker programs? This may include wider and long-term solutions such as ensuring the successful integration of permanent immigrants and education, training, apprenticeships and retraining to ensure that young people, aboriginal populations and people with disabilities transition more smoothly into the Canadian workforce.

Some of these granular and meta-level questions will be addressed by future Canada West Foundation papers. We hope others groups will participate in this discussion; the answers to all these questions are important.

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<sup>37</sup> Government of Canada. "Overhauling the Temporary Foreign Worker Program." 2014, 9.

# Key phases of the TFWP

	<b>SITUATION</b>	<b>OBJECTIVES</b>	<b>ACTIONS</b>	<b>OUTCOME</b>
<b>High-skilled phase (1973-2002)</b>	High number of people applying for permanent residency and the baby boom generation entering the workforce.	Reduce the overall number of foreign workers entering the country, while attracting skilled workers.	Introduced the TFWP and two low-skilled streams: the Seasonal Agricultural Worker Program and the Foreign Domestic Program (now called the Live-in Caregiver Program).	Moderate the pace of immigration.
<b>Low- and high-skilled phase (2002-2013)</b>	The IRPA was introduced in 2002 and was designed to attract the “best and brightest” economic immigrants to Canada. However, at the same time, the Canadian labour market also required more low-skilled workers.	Allow employers to meet their labour needs, with foreign workers when no Canadians were willing and able to fill jobs.	Introduction of the Low-Skilled Pilot Project.	The stock of foreign workers in the country more than tripled during this period. However, this growth is only partially attributed to the Low-Skilled Pilot Project. A significant portion of foreign workers entered through the International Agreements and Canadian Interest streams.
<b>Publicly controversial phase (2013-2014)</b>	A series of reports emerged that: 1) Canada was not experiencing widespread labour shortages, and 2) the program was allowing foreign workers to displace Canadian workers.	To ensure the program is used as intended, to fill acute skills shortages on a temporary basis, reforms were made to the program.	The government enforced stricter language requirements and labour market tests to ensure that Canadians were first in line for available jobs. The government also announced a moratorium on all new and pending TFW applications in the food service sector.	The TFWP received unprecedented media coverage and the government responded with the overhaul.
<b>Dual system phase (June 2014)</b>	Intense public controversy over the TFWP contributed to a government overhaul of the program.	The program is to be used: 1) as a last and limited resort to allow employers to bring in foreign workers to Canada on a temporary basis to fill jobs for which qualified Canadians are not available, and 2) where the hiring of a TFW will not have a negative impact on the Canadian labour market.	Foreign workers can now enter the country through one of two programs: the TFWP or the IMP. The TFWP has stricter rules, including, for the first time, limiting the number of low-wage foreign workers.	Complexities are emerging in the design of the overhaul including: the impact of a higher application fee, process through which transition plans are assessed, and linking the program to unemployment rates.

# Notes

# Notes

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