



Government  
of Canada

Gouvernement  
du Canada

Canada

# OVERHAULING THE TEMPORARY FOREIGN WORKER PROGRAM

## PUTTING CANADIANS FIRST

# Current Context

- ✿ Economic Action Plan 2012 announced TFWP review:
  - “... announces the Government’s intention to better align the Temporary Foreign Worker Program with labour market demands and to ensure that businesses look to the domestic labour force before accessing the Temporary Foreign Worker Program.”
- ✿ Following extensive consultations, the government announced the first series of reforms on April 29, 2013
- ✿ Further consultations with stakeholders continued, leading to today’s reform
- ✿ The objective of the reform is to ensure that the TFWP operates in Canada’s economic interest, and is only used as a last and limited resort for jobs for which qualified Canadians clearly are not available
- ✿ The reforms are designed to facilitate legitimate international labour mobility that is in Canada’s economic interests, and to prevent abuses and labour market distortions



## The Current TFWP

### LMO Exempt

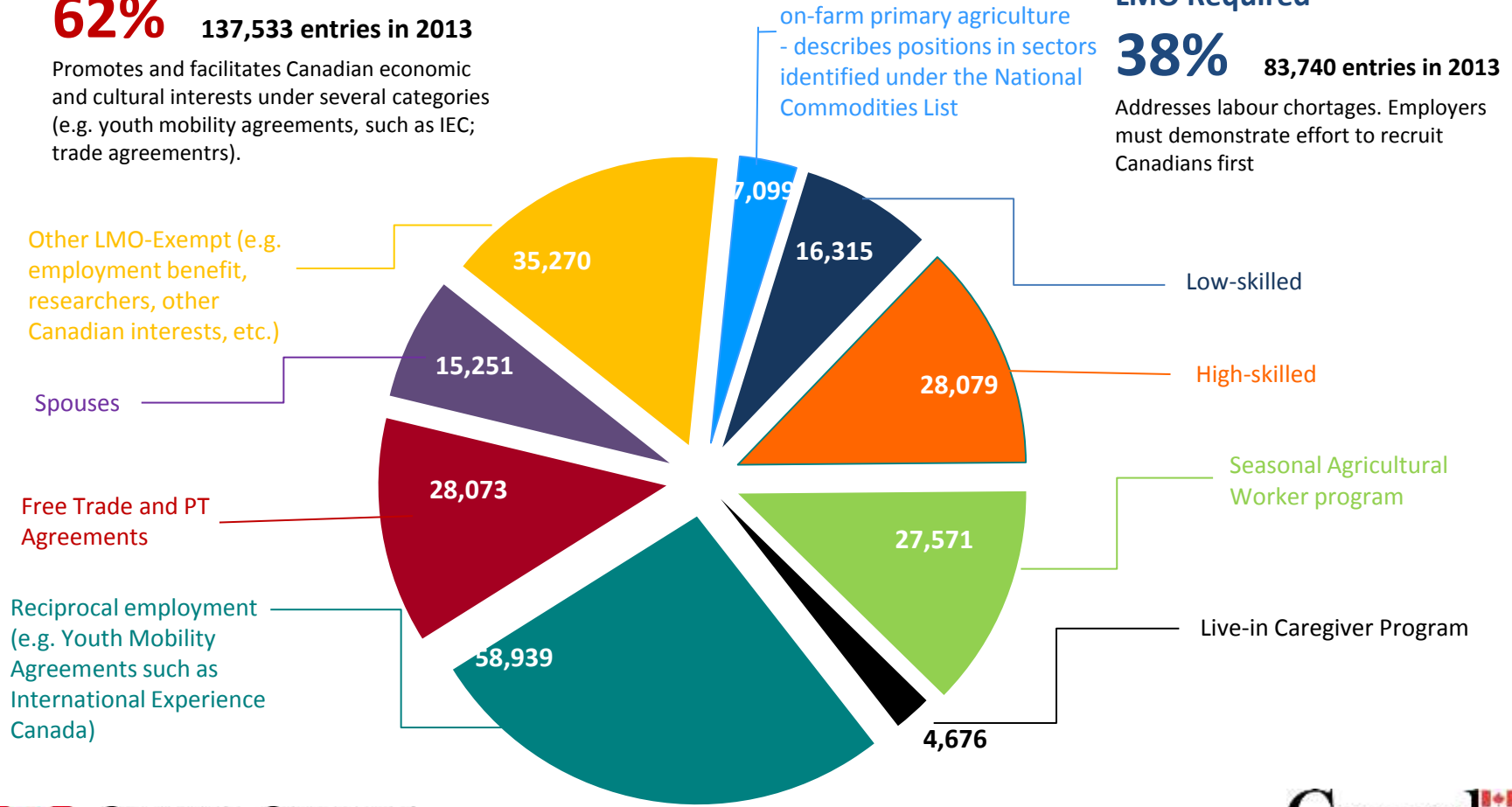
**62%** 137,533 entries in 2013

Promotes and facilitates Canadian economic and cultural interests under several categories (e.g. youth mobility agreements, such as IEC; trade agreements).

### LMO Required

**38%** 83,740 entries in 2013

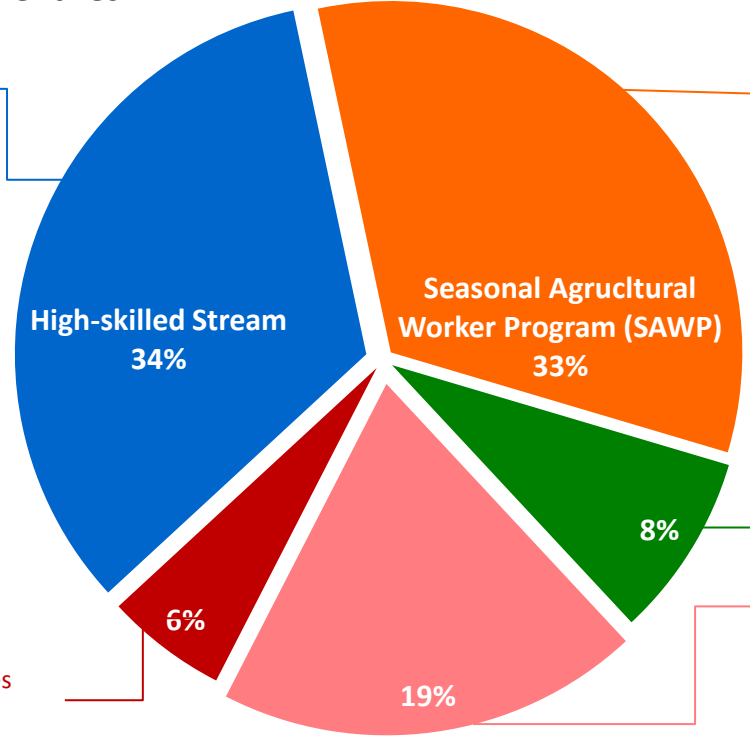
Addresses labour shortages. Employers must demonstrate effort to recruit Canadians first



## The LMO Streams

Consists of a high-skill stream (27,674 entries in 2013) and four low-skilled streams (55,561 entries in 2013)

High skill  
Management, professional, scientific, technical, trades  
27,672



Support to farmers during planting and harvesting  
27,566

On-farm primary agriculture - describes positions in sectors identified under the National Commodities List  
7,099

Live-in Caregiver program (LCP)  
Care for children, seniors, people with disabilities  
4,676

Low skill  
Occupations that usually require secondary school or on-the-job training  
16,315

## Entries of TFWs Authorized to Work in Canada, 2003-13

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>Temporary foreign worker entries with Labour Market Opinion (LMO)</b>	<b>49,194</b>	<b>52,370</b>	<b>57,188</b>	<b>65,487</b>	<b>84,128</b>	<b>97,231</b>	<b>80,464</b>	<b>71,139</b>	<b>70,391</b>	<b>80,964</b>	<b>83,740</b>
High Skill	23,019	23,751	25,809	28,331	33,013	35,182	29,101	25,338	24,501	28,297	27,672
Low Skill	2,470	2,946	3,994	6,853	15,614	26,013	19,237	14,347	15,319	20,715	23,831
Live-in Caregiver Program	5,007	6,624	7,103	9,050	12,930	11,848	8,740	7,521	5,878	6,242	4,671
Seasonal Agricultural Worker Program	18,698	19,049	20,282	21,253	22,571	24,188	23,386	23,933	24,693	25,710	27,566
<b>Temporary foreign worker entries without LMO</b>	<b>53,738</b>	<b>59,857</b>	<b>65,174</b>	<b>72,959</b>	<b>79,396</b>	<b>93,502</b>	<b>96,269</b>	<b>107,914</b>	<b>120,075</b>	<b>132,418</b>	<b>137,533</b>
International Arrangements (e.g. NAFTA)	15,751	17,178	14,080	15,935	17,202	19,367	19,367	18,137	578	21,726	21,644
Provincial agreements	0	0	0	0	0	0	359	1,571	2,519	4,353	6,429
Reciprocal employment	20,944	24,790	31,413	34,173	35,9624	44,623	48,944	54,275	59,208	63,586	58,939
Employment benefit	7,882	7,841	8,173	9,951	10,113	10,850	10,074	13,405	14,514	15,453	15,730
Spouse/common law partner	3,491	4,389	5,194	6,314	8,158	9,856	9,249	9,130	10,776	12,253	15,251
Research and studies related	3,373	3,460	3,650	4,017	5,171	6,221	6,626	7,022	9,712	11,294	15,791
Other Canadian interests	1,311	1,135	1,778	1,624	1,486	1,436	1,536	1,808	1,959	2,231	2,145
Other work permit holders without LMO	985	1,064	886	945	1,302	1,149	1,344	1,025	875	1,522	1,604
<b>Total temporary foreign worker entries in Canada</b>	<b>102,932</b>	<b>112,228</b>	<b>122,365</b>	<b>138,450</b>	<b>163,527</b>	<b>190,739</b>	<b>176,745</b>	<b>179,075</b>	<b>190,568</b>	<b>213,573</b>	<b>221,273</b>



# Current Context

- ❖ The flow and population of TFWs as a percentage of the workforce has not changed dramatically over time
- ❖ Most of the concern surrounds the general low-skilled pilot, which was created in 2002, and which represents only .12% of the overall Canadian workforce
- ❖ Statistics Canada has said that the impact of TFWs on unemployment is “negligible”
- ❖ The number of LMO-approved TFWs to enter Canada since 2006 has grown from 65,000 to 84,000, an increase of 29%



# Reorganization of the Temporary Foreign Worker Program

- ❖ To increase clarity, transparency, accountability, and accuracy the current TFWP will be separated into two distinct programs
- ❖ LMIA-exempt programs will now be known as the International Mobility Programs (led by CIC) and will include more data, e.g. foreign student work permits
- ❖ LMIA-required programs will retain the name Temporary Foreign Worker Program (led by ESDC)



# Current Context

- ✿ Reports of abuse and exploitation
- ✿ Some distortion of wages; wage stagnation in some regions and sectors
- ✿ Companies are hiring TFWs even though Canadians are applying for the same jobs
- ✿ Employers building business models based on presumption of hiring temporary foreign workers





# Growing Evidence of Labour Market Distortion

***"One doesn't want an over-reliance, certainly, on temporary foreign workers for lower-skilled jobs, which prevent the wage adjustment mechanism from making sure that Canadians are paid higher wages, but also so that firms improve their productivity as necessary. We don't want to mask it, and the intent of the government's review is to ensure that this is used for transition, for those higher-skilled gaps that exist and can hold our economy back."***

Mark Carney,  
(former) Governor, Bank of Canada  
April 23, 2013, speaking to the Finance Committee



## Three Pillars of Temporary Foreign Worker Program Reform

- ❖ Limiting access to Temporary Foreign Worker Program
- ❖ More and better labour market information
- ❖ Stronger enforcement and tougher penalties



# Limiting Access to the Temporary Foreign Worker Program

- ❖ Program will now be based on wages levels, not National Occupational Classifications (NOCs)
- ❖ New, more rigorous Labour Market Impact Assessments (LMIA)
- ❖ Capping the number of low-wage TFWs who can be hired
- ❖ Barring employers from applying for TFWs in lowest skill, lowest wage occupations in accommodation, food services and retail trade sectors in regions of high unemployment
- ❖ Reducing the duration of Labour Market Impact Assessments for low-paid positions
- ❖ Reducing the length of time low-paid TFWs can stay in Canada
- ❖ Transition plans for employers of high-wage TFWs



## Wage Levels Replace NOCs

- ✿ TFWP is being reorganized based on wage rather than National Occupational Classification (NOCs).
- ✿ Wage is a more objective and accurate reflection of value of skill level and local labour supply.
- ✿ Low-wage = prevailing wage for the position is below provincial / territorial median wage
- ✿ High-wage = prevailing wage for the position is at or above provincial / territorial median wage
- ✿ LMIA applications are triaged into the High-wage or Low-wage stream based on the higher of the wage advertised (consistent with the employer's current workforce for the position) or the prevailing wage of the occupation in that province/territory
- ✿ Live-in caregivers and on-farm primary agricultural streams continue and are not affected by this change.



# Provincial / Territorial Median Hourly Wages

<b>Table 1: Median Hourly Wages by Province/Territory</b>	
<b>Province</b>	<b>Wage (\$/hr)</b>
Newfoundland and Labrador	\$ 20.19
Prince Edward Island	\$ 17.26
Nova Scotia	\$ 18.00
New Brunswick	\$ 17.79
Quebec	\$ 20.00
Ontario	\$ 21.00
Manitoba	\$ 19.00
Saskatchewan	\$ 21.63
Alberta	\$ 24.23
British Columbia	\$ 21.79
Yukon	\$ 27.93
Northwest Territories	\$ 32.53
Nunavut	\$ 29.96

Source: Labour Force Survey, 2013



# More Rigorous Labour Market Impact Assessment (LMIA) Replaces LMO

- ❖ Employers applying for LMIA's must commit to no layoffs or work-hour reductions of Canadians.
- ❖ Employers must provide more information on number of Canadian applicants, Canadians interviewed, and why they were not hired.
- ❖ Better and more labour market information will be used to assess whether TFWs are justified.

# Applying a Cap on Usage of Low-Wage TFWs

- ❖ Number of lower wage TFWs to be capped at 10% of workforce per employer, per worksite (defined as total hours worked by all employees at any worksite) – starting at 30% immediately, reduced to 20% on July 1, 2015 and 10% on July 1, 2016.
- ❖ The cap will be phased in over the next three years to provide employers who use the program with time to transition.
- ❖ Employers that currently have a lower wage temporary foreign worker workforce above 10% cap will be limited to 30 percent or frozen at their current level, whichever is lower.
- ❖ The cap alone is estimated to reduce the number of lower wage TFWs by 50% when fully implemented (based on 2013 figures).
- ❖ Cap does not apply to employers with fewer than 10 employees.
- ❖ TFWs currently in Canada on work permits will be allowed to stay until their work permit expires.

## **No Access to Lowest-Wage, Lowest-Skilled Service Sector FWs in High Unemployment Areas**

- 🇨🇦 Employers will be barred from applying for TFWs in the lowest-skill, lowest-wage occupations in accommodation, food services and retail trade sectors in regions of high unemployment (at or above 6%).
- 🇨🇦 These jobs traditionally serve as entry-level jobs for under-represented groups such as youth, and should be preserved for unemployed Canadians in regions where there is no evidence of labour shortages.





# Reducing the Duration of Labour Market Impact Assessments

- ❖ Duration of LMIAs will be limited to a maximum of one year for all lower wage TFW positions, rather than previous two year period.
- ❖ Employers must re-apply every year for LMIA for lower wage positions, allowing for annual assessment of local labour market.

## Reducing Length of Time Low-Paid TFWs Can Work in Canada

- ❖ Reducing how long a lower wage temporary foreign worker can work in Canada - from a cumulative duration of 4 years.
- ❖ This underscores the temporary nature of the Temporary Foreign Worker Program.



## Transition Plans For Employers of Higher Wage TFWs

- ✳️ Employers applying for LMIsAs for high-paid jobs will need to submit a transition plan demonstrating how they will reduce reliance on TFWs over time.
- ✳️ Transition plans will require employers to detail efforts to train Canadians for available jobs (e.g. hiring apprentices).
- ✳️ Employers will be required to contact organizations serving groups underrepresented in the workforce (e.g. recent immigrants, Aboriginal Canadians, youth, Canadians with disabilities).



# More and Better Labour Market Information

- ❖ New Job Matching Service
- ❖ Two new Statistics Canada surveys
- ❖ Better use of existing government data
- ❖ Fulfills some of the major recommendations of report from Don Drummond-led LMI panel

# Stronger Enforcement and Tougher Penalties

- ❖ Increasing the number and scope of inspections
- ❖ Increasing detection and monitoring
- ❖ More criminal investigations
- ❖ Improved information sharing
- ❖ More severe consequences for employers who break the rules

## Exempted Streams

- ✿ **Primary Agriculture, including Seasonal Agricultural Worker Program (SAWP)**
  - There are proven acute labour shortages in this industry and jobs are by definition temporary, so this stream will be exempted from:
    - Cap on lower wage TFWs
    - \$1,000 fee per position
    - Limit of LMIA duration for lower wage TFWs to 1 year from 2 years
    - Reducing cumulative duration from 4 years for lower wage TFWs
  
- ✿ **Live-In Caregiver Program (LCP) will be exempted from:**
  - Cap on lower wage TFWs
  - Limit of LMIA duration for lower wage TFWs to 1 year from 2 years
  - Reducing Cumulative Duration from 4 years for lower wage TFWs
  
- ✿ All other measures including stronger enforcement and tougher penalties apply to SAWP and LCP



# Ending the Moratorium on Food Services Sector

- ❖ Moratorium lifted, effective June 20, 2014
- ❖ Employers who had LMOs approved prior to the moratorium may now fill positions that were suspended
- ❖ Employers who applied after the moratorium are having applications returned and being provided full refunds
- ❖ All employers applying for new LMIs are subject to the new program criteria

# Increased Fees

- ❖ Application fee for an LMIA will rise from \$275 to \$1,000 per worker requested.
- ❖ Will ensure that the full cost of the program will be borne by those who use it, and not by taxpayers.
- ❖ ESDC will be seeking the authority to impose an estimated \$100 privilege fee to offset the cost of additional Government of Canada investments in skills and job training.



# Timelines for Implementation

Activity	Implementation Date
\$1,000 application fee per worker for an LMIA	June 20, 2014
Introduction of Cap	June 20, 2014
Transition Plans requirement implemented	June 20, 2014
Limit Duration for low-wage TFWs	June 20, 2014
Ten day Processing Times for certain occupations	June 20, 2014
Launch enhanced Tip Website	June 20, 2014
New guidelines for intra-company transferees with specialized knowledge	June 20, 2014
Ten business day service standard for LMIA applications for in-demand/highly paid/short-duration entries	June 20, 2014
Information Sharing Agreements between CIC, CBSA, and ESDC to be completed	Summer/Autumn 2014
Monetary fine regime to come into force	Autumn 2014
Criminal Investigations	Autumn 2014



## Timelines for Implementation

Activity	Implementation Date
Negotiate and implement all other Information Sharing Agreements with provinces	March 2015
Implement expanded inspection regime	March 2015
Begin data collection for the Wage and Vacancy surveys	Spring 2015
Begin utilizing administrative data as part of the LMIA evaluation process	Summer 2015
Regulatory charge for employers hiring LMIA-exempt foreign workers	Summer 2015
Fee for open WP holders	Summer 2015
Strengthening compliance system for employers of LMIA-exempt foreign workers	Summer 2015
Measures Compelling Documents from third parties	Winter 2015



# Annex A: Use of Wages

## **Top 10% of Wages**

- Used to determine if an LMIA qualified for 10-business-day service standard
- Determination is based on comparing the regional prevailing wage for the requested occupation posted on National Job Bank to P/T Median Wage Rates, regardless of what the employer offers on LMIA

## **Provincial/Territorial (P/T) Median Wage Rates**

- Used to determine if an LMIA falls under Higher Wage or Lower Wage category
- Higher Wage: Prevailing wage of occupation at or above P/T median wage rate
- Lower Wage: Prevailing wage of occupation below P/T median wage rate

## **Regional Prevailing Wage (on National Job Bank)**

- Used during assessment as per Wage Directive
- Assessment of the prevailing wage factor is based on comparing what the employer offers to the median wage posted



## Annex B: The Cap Calculation

- ✿ When does the Cap apply?
  - If the employer is applying for TFWs in an occupation where the prevailing wage is below the P/T median wage, and the business has 10 or more employees (including all workers at all locations).
  - The cap applies to a workforce at a given worksite which includes all employees who work there.
  
- ✿ The cap will be phased in over 3 years. If the employers lower wage TFW workforce is
  - Lower than 10%: LMIA will be processed.
  - Between 10%-30%: Current proportion will serve as employer's cap, and will be filed in the FWS for future LMIA applications. LMIAs will only be processed for positions occupied by TFWs whose work permits are expiring within 90 days. Subsequent applications may also allow for additional TFWs if there has been an increase in Canadians employed.
  - Above 30%: Will not process LMIA requests for additional TFWs, nor for renewals, until the lower wage TFW workforce is brought down to 30% of work site's workforce.
  
- ✿ Employers will be asked to provide their workforce's proportion of lower wage TFWs at a worksite by determining the average weekly hour of their workforce across the total hours worked in a 4 week period between May 10 and June 20, 2014
  
- ✿ Cap calculation for each work site: Take into account the average weekly hours worked for:  
$$\frac{\text{all lower wage TFWs employed}}{\text{all workers employed}}$$



# Annex C: Transition Plan Example 1

## Initial Transition Plan

A geological consulting firm that employs 80 Canadians/permanent residents based in Toronto submits an LMIA application for 2 geologists (NOC 2113) for a 24-month period to conduct a survey of a potential mine site in the Ring of Fire in northern Ontario. Note the firm currently employs 35 geologists including 3 TFWs confirmed over the past two years. Therefore, the initial ratio of TFWs to Canadians/permanent residents in the same position would be: 15.6% (3 existing TFWs + 2 requested TFWs divided by 32 Canadian/permanent resident employees)

The firm's initial Transition Plan must include the following activities with specific timelines and outcomes for each activity:

- ✳ *Activity 1:* Advertise on an ongoing basis on National Job Bank
- ✳ *Activity 2:* Increase wages by 3% when advertising to replace the requested TFWs
- ✳ *Activity 3:* Launch an employee referral incentive program
- ✳ *Activity 4:* Post job advertisements at university employment centres (underrepresented groups' activity)

OR

- ✳ *Activity:* Sponsor requested TFWs for Federal Skilled Worker Program



# Annex C: Transition Plan Example 2 - Subsequent LMIA

- ✿ When the above geological firm submits a subsequent LMIA for the same position, the assessing officer will review:
  - All information and documentation the employer has submitted regarding the activities committed in the initial Transition Plan
  - Consider number of TFWs (including the ones being requested on the subsequent LMIA) to number of Canadians/permanent residents in the same geologist position and compare the new ratio with the initial ratio of 15.6%
  - The firm must fulfil both (completion of committed activities and reduction in ratio) in order to receive positive assessment of the Transition Plan
- ✿ If the Transition Plan assessment is positive, then the new Transition Plan for the subsequent LMIA can remain the same.
- ✿ If the Transition Plan assessment is negative, this may be used as justification for a negative LMIA. Note that Transition Plan assessment is always considered as part of the global assessment of all labour market factors under IRPR.



# Annex D: Transition Plans and Cap

Transition Plan	Cap
<ul style="list-style-type: none"> <li>Applies to higher wage occupations</li> </ul>	<ul style="list-style-type: none"> <li>Applies to lower wage occupations</li> </ul>
<ul style="list-style-type: none"> <li>Occupation specific</li> </ul>	<ul style="list-style-type: none"> <li>Not occupation specific</li> </ul>
<ul style="list-style-type: none"> <li>Work location specific</li> </ul>	<ul style="list-style-type: none"> <li>Work location specific</li> </ul>
<ul style="list-style-type: none"> <li>Ratio of TFWs to Canadian/permanent resident employees in the same occupation at the same work location</li> </ul>	<ul style="list-style-type: none"> <li>Percentage of lower wage TFWs in the entire workforce at a given work location</li> </ul>
<ul style="list-style-type: none"> <li>Two steps involved:               <ul style="list-style-type: none"> <li>Step 1: For employer with initial Transition Plan                   <ul style="list-style-type: none"> <li>Specified number of activities</li> <li>Detailed timelines/milestones and expected duration</li> <li>Reasonable expectation to reduce reliance on TFWs</li> </ul> </li> <li>Step 2: For returning employer with initial Transition Plan on file                   <ul style="list-style-type: none"> <li>All committed activities completed</li> <li>Reliance on TFWs reduced</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Two steps involved:               <ul style="list-style-type: none"> <li>Step 1: Determine if the Cap applies                   <ul style="list-style-type: none"> <li>Total number of employees nationally (all business locations under the same legal entity/CRA business number)                       <ul style="list-style-type: none"> <li>* 10 or more employees – Cap applies</li> <li>* less than 10 employees – Cap does not apply</li> </ul> </li> </ul> </li> <li>Step 2: Determine Cap threshold                   <ul style="list-style-type: none"> <li>Proportion of lower wage TFWs in entire workforce in a given work location (location indicated on LMIA)                       <ul style="list-style-type: none"> <li>* Over 30%, refuse to process</li> <li>* Below 30%, processing may continue</li> </ul> </li> </ul> </li> </ul> </li> </ul>