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This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

ontario regulation

to be made under the

Ontario Immigration Act, 2015:
a consultation draft

APPROVALS UNDER THE Ontario Immigrant Nominee Program and AdmInistrAtive penalties

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Definitions

Definitions

**1.**In this Regulation,

“approved employment position” means an employment position that the director has approved; (“poste d’emploi agréé”)

“Canadian English Language Benchmarks” means the document entitled “Canadian Language Benchmarks: English as a Second Language for Adults”, as amended from time to time and available on the website of the Centre for Canadian Language Benchmarks; (“Niveaux de compétence linguistique canadiens en anglais”)

“Canadian experience class” means the class described in section 87.1 of the Immigration and Refugee Protection Regulations made under the Immigration and Refugee Protection Act (Canada); (“catégorie de l’expérience canadienne”)

“Canadian French Language Benchmarks” means the document entitled “Niveaux de compétence linguistique canadiens: français langue seconde pour adultes”, as amended from time to time and available on the website of the Centre for Canadian Language Benchmarks; (“Niveaux de compétence linguistique canadiens en français”)

“eligible Canadian institution” means a Canadian university or college listed as such on the Ministry’s website, as the list is amended from time to time; (“établissement canadien admissible”)

“eligible educational credential assessment institution” means an institution that produces an educational credential assessment and that is listed as such on the website of Immigration, Refugees and Citizenship Canada, as the list is amended from time to time; (“établissement admissible d’évaluation des diplômes d’études”)

“eligible Ontario institution” means an Ontario university listed as such on the Ministry’s website, as the list is amended from time to time; (“établissement ontarien admissible”)

“Express Entry System” means the system of that name administered by the Government of Canada; (“système Entrée express”)

“family member” has the same meaning as in subsection 1 (3) of the Immigration and Refugee Protection Regulations made under the Immigration and Refugee Protection Act (Canada); (“membre de la famille”)

“federal skilled worker class” means the class described in section 75 of the Immigration and Refugee Protection Regulations made under the Immigration and Refugee Protection Act (Canada); (“catégorie des travailleurs qualifiés (fédéral)”)

“full-time” means, in respect of an employment position, a position that requires no fewer than 1,560 hours of paid work in a 12-month period and no fewer than 30 hours of paid work per week in a 12-month period; (“temps plein”)

“Government of Canada Job Bank” means the job bank of that name on the website maintained by the Government of Canada, as the job bank is amended from time to time; (“Guichet-Emplois du gouvernement du Canada”)

“Greater Toronto Area” means the geographic area composed of the City of Toronto and the regional municipalities of Durham, Halton, Peel and York; (“Grand Toronto”)

“income cut-off” means the low income cut-offs as established by Statistics Canada and published on its website, as the cut-offs are amended from time to time; (“seuil de revenu”)

“National Occupational Classification” means the National Occupational Classification available on the website of the Government of Canada, as the Classification is amended from time to time. (“Classification nationale des professions”)

Types of Approval

Types of approval

 **2.**(1)  The following types of approval are prescribed under subsection 12 (2) of the Act for the purposes of the Ontario Immigrant Nominee Program:

 1. An approved employment position.

 2. A certificate of nomination.

 (2)  If a foreign national applies for approval under the Ontario Immigrant Nominee Program, the economic connection with Ontario that subsection 12 (3) of the Act requires the person to have in order for the director to grant the application is the compliance by the person with the criteria that this Regulation prescribes for the purposes of subsection 16 (2) of the Act with respect to the application.

Approval of An Employment Position

Approval of an employment position

 **3.**(1)  Only an employer may apply for an approval of an employment position.

 (2)  For the purposes of subsection 16 (2) of the Act, the following criteria are prescribed:

 1. The applicant’s business must have existed and been active for at least three years before the date of the application.

 2. The applicant’s business must be connected to Ontario and the anticipated employment activities related to the position must occur in Ontario.

 3. The applicant’s business must have, in its most recently completed fiscal year before the date of the application,

 i. a gross annual revenue of at least $1,000,000 and at least five full-time employees for the duration of that year who are permanent residents or Canadian citizens, if the business is located in the Greater Toronto Area, or

 ii. a gross annual revenue of at least $500,000 and at least three full-time employees for the duration of that year who are permanent residents or Canadian citizens, if the business is located outside the Greater Toronto Area.

 4. The position must be full-time.

 5. The position must have,

 i. an indeterminate duration, or

 ii. a duration of not less than one year, if fixed-term employment is standard practice in the industry to which the position relates and the applicant reasonably expects that the position will have a duration of more than one year.

 6. The position must be rationally connected to the applicant’s business.

 7. The position must be listed in the National Occupational Classification under Skill Type 0 Management Occupations or Skill Level A or B.

 8. The granting of the approval must not be likely to affect the settlement of any labour dispute or the employment of a person involved in a labour dispute.

 9. Subject to any collective agreement that applies, the position must meet the wage level that applies for the occupation and region to which the position relates, as shown by the Government of Canada Job Bank.

 10. The wage level for the position must be at least equal to the wage level that the applicant currently pays for the position.

 11. The position must meet,

 i. the median wage level that applies for the occupation and region to which the position relates, as shown by the Government of Canada Job Bank, if the position will be filled by an applicant of the foreign worker category, or

 ii. the low wage level that applies for the occupation and region to which the position relates, as shown by the Government of Canada Job Bank, if the position will be filled by an applicant of the international student category.

 12. There must be no outstanding orders made against the applicant under the Employment Standards Act, 2000 or the Occupational Health and Safety Act.

 13. The applicant must have made reasonable but unsuccessful efforts to fill the position with a Canadian citizen or permanent resident.

Certificates of Nomination

Categories of applicants

 **4.**The following categories of applicants for a certificate of nomination are established:

 1. The foreign worker with a job offer category.

 2. The international student with a job offer category.

 3. The Master’s graduate category.

 4. The Ph.D. graduate category.

 5. The Human Capital Priorities category.

 6. The French-Speaking Skilled Worker category.

Eligibility requirements, all categories

 **5.**(1)  Only a foreign national can apply for a certificate of nomination.

 (2)  An applicant for a certificate of nomination must state in the application an intention to reside in Ontario.

 (3)  A person who applies for a certificate of nomination from inside Canada must be a temporary resident of Canada under section 22 of the Immigration and Refugee Protection Act (Canada).

Foreign worker with a job offer

 **6.**(1)  For the purposes of subsection 16 (2) of the Act, the following criteria are prescribed for an applicant in the foreign worker with a job offer category:

 1. The applicant must have obtained a job offer for an approved employment position.

 2. The applicant must make the application within 60 days of the date on which the position mentioned in paragraph 1 was approved.

 3. The applicant must have either,

 i. work experience, in at least two of the last five years before making the application, that is relevant to the approved employment position, or

 ii. a licence or other authorization to engage in the activity that the approved employment position requires if the law of Ontario requires that licence or other authorization for engaging in the activity.

 (2)  In assessing whether work experience is relevant to an approved employment position for the purpose of subparagraph 3 i of subsection (1), the director shall consider whether the experience is relevant to Skill Type 0 Management Occupations or Skill Level A or B set out in the National Occupational Classification as of the day before the day the application was made.

International student with a job offer

 **7.**For the purposes of subsection 16 (2) of the Act, the following criteria are prescribed for an applicant in the international student with a job offer category:

 1. The applicant must have obtained a job offer for an approved employment position.

 2. The applicant must make the application within 60 days of the date on which the position mentioned in paragraph 1 was approved.

 3. The applicant must have obtained a licence or other authorization to engage in the activity that the approved employment position requires if the law of Ontario requires that licence or other authorization for engaging in the activity.

 4. The applicant must have, no more than two years before making the application,

 i. completed the requirements necessary to obtain,

 A. a degree or diploma from an eligible Canadian institution that takes at least two years to complete if pursued on a full-time basis, or

 B. a degree, diploma or certificate from an eligible Canadian institution that takes at least one year to complete if pursued on a full-time basis and that requires the completion of a degree as a prerequisite, and

 ii. completed more than half of the requirements described in subparagraph i while pursuing those requirements on a full-time basis and while lawfully both residing and studying in Canada.

Master’s graduate

 **8.**(1)  For the purposes of subsection 16 (2) of the Act, the following criteria are prescribed for an applicant in the master’s graduate category:

 1. The applicant must have, less than two years before making the application, completed the requirements necessary to obtain a master’s degree from an eligible Ontario institution that takes at least one year to complete if pursued on a full-time basis.

 2. The applicant must have completed more than half of the requirements described in paragraph 1 while lawfully both residing and studying in Ontario.

 3. The applicant must not be currently enrolled in studies on a full-time basis.

 4. The applicant must have lawfully resided in Canada for the last two years before making the application and have lawfully resided in Ontario for at least one of those two years.

 5. The applicant must have demonstrated, within the year before making the application, English language proficiency or French language proficiency, where the proficiency is at the level of Canadian Language Benchmark 7, as set out in the Canadian English Language Benchmarks or the Canadian French Language Benchmarks respectively, in all four proficiencies based on a test administered by an institution described in subsection (2).

 6. The applicant must have financial resources, unencumbered by debts or other obligations, that meet the minimal level of income cut-off for the applicant and any of the applicant’s family members at the time the application is made.

 (2)  For the purposes of paragraph 5 of subsection (1), the institution must appear on the list of institutions approved to conduct language testing for the purposes of this section, available on the Ministry’s website and as amended from time to time.

Ph.D. graduate

 **9.**For the purposes of subsection 16 (2) of the Act, the following criteria are prescribed for an applicant in the Ph.D. graduate category:

 1. The applicant must have, less than two years before making the application, completed the requirements necessary to obtain a Ph.D. degree from an eligible Ontario institution while pursuing the requirements on a full-time basis.

 2. The applicant must have completed at least two years of the requirements described in paragraph 1 while lawfully both residing and studying in Ontario.

 3. The applicant must have lawfully resided in Canada for the last two years before making the application and have lawfully resided in Ontario for at least one of those two years.

Human Capital Priorities

 **10.**(1)  For the purposes of subsection 16 (2) of the Act, the following criteria are prescribed for an applicant in the Human Capital Priorities category:

 1. The applicant must meet the criteria to be eligible to receive, under the Express Entry System as a member of the federal skilled worker class or the Canadian experience class, an invitation to apply to become a permanent resident.

 2. The applicant must have obtained a score under the Comprehensive Ranking System under the Express Entry System that, at the time of making the application, is at least of the number set out in Ontario Regulation (General) made under the Act.

 3. The applicant must have, within the following time, accumulated over a continuous period at least one year of work experience in a full-time employment position, or the equivalent in a part-time employment position, in the occupation that the applicant identifies in the application as the applicant’s primary occupation, other than a restricted occupation, if the occupation is listed in the National Occupational Classification under Skill Type 0 Management Occupations or Skill Level A or B:

 i. five years before the date of applying for a permanent resident visa, if the applicant is a member of the federal skilled worker class, or

 ii. three years before the date of applying for a permanent resident visa, if the applicant is a member of the Canadian experience class.

 4. The applicant must have demonstrated, within two years of making the application, English or French language proficiency, where the proficiency is at the level of Canadian Language Benchmark 7, as set out in the Canadian English Language Benchmarks or the Canadian French Language Benchmarks respectively, in all four proficiencies based on a test administered by an institution described in subsection (2).

 5. The applicant must have obtained a post-secondary degree from a Canadian institution authorized to issue such a degree or an educational credential assessment report produced by an eligible educational credential assessment institution indicating that the applicant has authentic foreign educational credentials that are equivalent to completed Canadian educational credentials.

 6. The applicant must have financial resources, unencumbered by debts or other obligations, that meet the minimal level of income cut-off for the applicant and any of the applicant’s family members at the time the application is made.

 (2)  For the purposes of paragraph 4 of subsection (1), the institution must be listed on the website of Immigration, Refugees and Citizenship Canada, as the list is amended from time to time, as an institution approved to conduct language testing.

French-Speaking Skilled Worker

 **11.**(1)  For the purposes of subsection 16 (2) of the Act, the following criteria are prescribed for an applicant in the French-Speaking Skilled Worker category:

 1. The applicant must meet the criteria to be eligible to receive, under the Express Entry System as a member of the federal skilled worker class or the Canadian experience class, an invitation to apply to become a permanent resident.

 2. The applicant must have, within the following time, accumulated over a continuous period at least one year of work experience in a full-time employment position, or the equivalent in a part-time employment position, in the occupation that the applicant identifies in the application as the applicant’s primary occupation, other than a restricted occupation, if the occupation is listed in the National Occupational Classification under Skill Type 0 Management Occupations or Skill Level A or B:

 i. five years before the date of applying for a permanent resident visa, if the applicant is a member of the federal skilled worker class, or

 ii. three years before the date of applying for a permanent resident visa, if the applicant is a member of the Canadian experience class.

 3. The applicant must have demonstrated, within two years of making the application,

 i. French language proficiency at the level of Canadian Language Benchmark 7, as set out in the Canadian French Language Benchmarks, in all four proficiencies based on a test administered by an institution described in subsection (2), and

 ii. English language proficiency at the level of Canadian Language Benchmark 6, as set out in the Canadian English Language Benchmarks, in all four proficiencies based on a test administered by an institution described in subsection (2).

 4. The applicant must have obtained a post-secondary degree from a Canadian institution authorized to issue such a degree or an educational credential assessment report produced by an eligible educational credential assessment institution indicating that the applicant has authentic foreign educational credentials that are equivalent to completed Canadian educational credentials.

 5. The applicant must have financial resources, unencumbered by debts or other obligations, that meet the minimal level of income cut-off for the applicant and any of the applicant’s family members at the time the application is made.

 (2)  For the purposes of paragraph 3 of subsection (1), the institution must be listed on the website of Immigration, Refugees and Citizenship Canada, as the list is amended from time to time, as an institution approved to conduct language testing.

Procedure for Applications, Cancellations and Internal Reviews

Applications

 **12.**(1)  In an application, the applicant shall provide information that is accurate, correct and that is not misleading or does not reasonably lead to an error in the administration of the Act.

 (2)  A representative who assists or advises an applicant in making an application shall ensure that the information provided in the application is accurate and correct, is not misleading and does not reasonably lead to an error in the administration of the Act.

 (3)  Upon receiving an application for an approval, the director shall determine whether the application is complete.

 (4)  If the director determines that an application for an approval is incomplete, the director shall return the application, including the application fee, if any, to the applicant, and shall give written notice to the applicant of the reasons for determining the application is incomplete.

 (5)  If the director determines that an application for an approval is complete, the director shall acknowledge the completeness of the application in writing.

 (6)  After making the determination under subsection (4), the director shall decide whether or not to grant the application.

 (7)  Once the director determines that an application for an approval is complete, the application fee is non-refundable even if the director refuses to grant the application.

 (8)  If the director intends to refuse to grant the application, the director shall give written notice to the applicant of the intent to do so and shall include in the notice,

 (a) the reasons for the intended refusal; and

 (b) a statement that the applicant is entitled to respond in writing within 60 days of receiving the notice.

 (9)  The director shall consider the response, if any, that the applicant provides within the time period specified in clause (8) (b) and shall decide whether to grant the application or to refuse to grant the application.

 (10)  A notice required by subsection 16 (5) of the Act with respect to an application shall include information about whether the applicant may request an internal review under the Act.

Transition

 **13.**If an applicant applies for an approval immediately before the day this Regulation comes into force, the process that the director is required to follow to deal with the application and the rights of the applicant under the application are those that governed the application immediately before that day.

Cancellation of approval

 **14.**(1)  Before the director cancels an approval under section 18 of the Act, the director shall give written notice to the holder of the approval of the intention to cancel the approval, including,

 (a) the reasons for the intended cancellation; and

 (b) a request for the applicant to respond in writing within 60 days of receiving the notice.

 (2)  Before giving notice of the cancellation of an approval under subsection 18 (2) of the Act, the director shall consider the response, if any, that the holder of the approval provides within the time period specified in clause (1) (b).

 (3)  If, after considering a response from the holder of the approval, the director decides not to cancel the approval, the director shall give written notice of the decision to the holder of the approval.

 (4)  A notice given under subsection 18 (2) of the Act shall include information about whether the applicant may request an internal review under the Act.

Deemed receipt

 **15.**A person to whom the director sends a notice under section 12 or 14 is deemed to have received the notice on the date that the director sends the notice.

Internal reviews

 **16.**(1)  A requester of an internal review under section 34 of the Act of a decision or an order,

 (a) shall identify in the request an error in the decision or order that, if not made, would have resulted in the decision or order being decided differently; and

 (b) shall not include in the request any evidence that was not adduced before the decision or order was made unless the evidence was not reasonably available at that time.

 (2)  The individual conducting an internal review under subsection (1) shall consider only,

 (a) any error that clause (1) (a) requires the requester to identify; and

 (b) the evidence that the requester is entitled to include in the request.

Arrangements or agreements with respect to personal information

 **17.**The Law Society of Upper Canada and the Immigration Consultants of Canada Regulatory Council are prescribed for the purposes of paragraph 5 of subsection 21 (3) of the Act.

Administrative Penalties

Contravention of prescribed provisions

 **18.**The following provisions are the prescribed provisions for the purposes of subsection 26 (1) of the Act:

 1. Subsection 13 (5) of the Act.

 2. Subsection 14 (1) of the Act.

 3. Section 15 of the Act.

 4. Subsection 17 (2) of the Act.

 5. Subsection 23 (5) of the Act.

 6. Subsection 24 (10) of the Act.

 7. Subsection 12 (1) of this Regulation.

 8. Subsection 12 (2) of this Regulation.

Delegation of Regulation-Making Authority

Delegation to the Minister

 **19.**The authority to make a regulation under subclause 37 (1) (e) (ii) of the Act setting the number of the score under the Comprehensive Ranking System under the Express Entry System for the purposes of paragraph 2 of subsection 10 (1) is delegated to the Minister.

Commencement

Commencement

 20.  [Commencement].