The George W. Bush Institute-SMU Economic Growth Initiative
at
The George W. Bush Institute

HOW THE UNITED STATES–MEXICO–CANADA AGREEMENT CAN ADDRESS U.S. LABOR MARKET MISMATCHES

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December 2022

George W. Bush
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George W. Bush Institute-SMU Economic Growth Initiative

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Executive Summary

The United States labor market is in the midst of a series of dramatic shifts. Fewer people are working. The labor market participation rate has fallen to 62.2% from 67.3% in January 2000. Millions of workers have been retiring or otherwise leaving the labor market while, in many professions, the younger generation has not been filling in behind them. The number of job vacancies has been above 10 million for the past 15 months, according to government data through September 2022. In the years before the COVID pandemic, the Bureau of Labor Statistics reported that the number of job openings averaged about 7 million at any given time.

As employers fail to find the workers they need, projects are delayed, and the United States does not advance to the extent that it should economically or technologically. Immigrant and nonimmigrant workers are a key driver of American economic vitality. Quantitative data shows conclusively that immigration creates U.S. jobs and wealth. Nonimmigrant programs, such as the TN visa also known as the United States–Mexico–Canada Agreement (USMCA) visa, can play an important role in getting willing workers into open jobs, particularly where there are shortages.

The USMCA visa is an effective temporary foreign worker program, but it is underutilized, poorly understood, and in need of updates. This paper makes the case for enhancing the temporary entry mechanism in USMCA. It opens by explaining some of the dynamics in the U.S. labor market. This includes challenges facing smaller communities as well as in advanced technical fields that are strategic to America. It then pivots to explain the origins, evolution, rationale, and concerns about the USMCA Chapter on "Temporary Entry for Business Persons." The chapter sets forth the parameters for temporary, nonimmigrant entry among the three countries. It also includes a list of specific professions and eligibility requirements for nationals of one USMCA country to work temporarily in another USMCA country. The full list is reproduced at the end of this paper.

During the renegotiation of the North American Free Trade Agreement, the Temporary Entry Chapter and list was unchanged. This means that the USMCA professionals list is almost 30 years old. While most professions on the USMCA Temporary Entry list remain vitally important to the operations of business across North America, it could use some supplemental additions. But, how to do this when the parties passed on a chance to expand the list during the renegotiation?

From a policy perspective, trade agreements are meant to be living vehicles that address the economic challenges of their times and provide a firm basis for national prosperity. This paper proposes a specific pathway for adding to the USMCA professionals list on a temporary or provisional basis. Professional associations and other relevant bodies in each country would be invited annually to nominate professions for provisional inclusion on a supplemental USMCA list for their own country. The suitability of a proposed profession for inclusion on this list would be assessed primarily through the use of national-level job vacancy and unemployment statistics. Other factors could be considered, including the views of the other two countries. Given that labor market conditions differ across North America and among its constituent states and provinces, the inclusion of a profession on a provisional basis would be customized to where the need exists. Accepted professions would be included on the provisional list for a period of five years—the historic length of one business cycle in the United States. They could be renewed if the need remains.

Introduction: A Changing Labor Market

The United States is in the middle of rapidly realigning its workforce. Some of these changes stem directly from the profound impacts of the COVID pandemic on the labor market. Other factors are structural, as populations age and technology shifts how we work and what we do. The workforce that is emerging looks nothing like it did in decades past. It is evident that pandemic restrictions accelerated many trends that were already afoot before March 2020.

In terms of direct effects, more than 1 million Americans have died of COVID-19—many of whom were in the workforce (CDC, n.d.). In addition, Katie Bach of the Brookings Institution estimates that between 2 million and 4 million workers between the ages of 18 and 64 are being kept out of the labor market due to "long COVID," when the effects of the virus last for months. She concludes that long COVID "potentially account[s] for 15% of labor shortage[s]" in the United States (Bach, 2022).

As COVID shut down large parts of the U.S. economy, millions more workers moved to working remotely on a full-time basis. *The Survey of Working Arrangements and Attitudes*, which is managed by economists at Stanford, Chicago, and IInstituto Tecnológico Autónomo de México, found that the share of full-time workdays completed from home grew to 61.5% in May 2020 from 4.7% in January 2020. By November 2022, this had fallen to 29.4%, which is still more than six times pre-COVID levels (Barrero et.al., 2022).

As the months out of the office passed, many workers mastered the art of working remotely and decided that they did not wish to commute on a daily basis. Companies and organizations across the country have been debating how and where employees work, be it in-person, remote, or hybrid. Many workers are actively making decisions about the suitability of potential employment opportunities based on how much "flexibility" they offer (Barrero et al., 2021).

For employers seeking to grow their companies, upheavals in the labor market represent a significant challenge. Labor shortages are pervading many parts of the economy. According to the Bureau of Labor Statistics, there were more than 10.7 million job openings in September 2022, up from 7 million in pre-pandemic times (BLS, n.d.). In certain sectors, such as hospitality, there is some evidence that raising wages can help close the gap (Black, 2021). Yet, in many sectors, particularly those requiring higher levels of education and/or training, there are simply not enough qualified candidates. This mismatch between jobs and skills seems likely to persist into the foreseeable future.

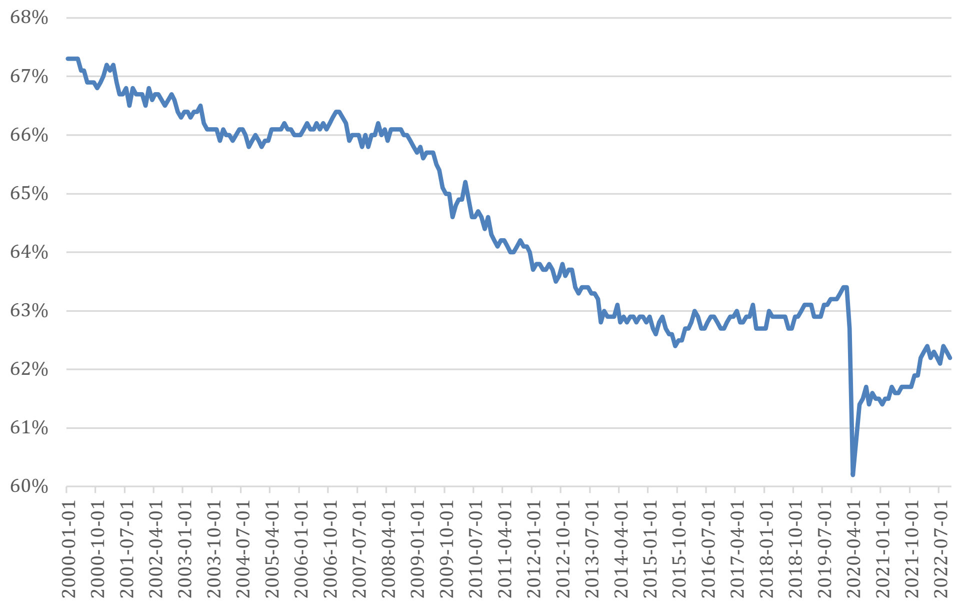
There are many structural factors behind this. First, the U.S. labor force participation rate is declining. As shown in Figure 1 below, the share of Americans actively participating in the civilian labor force has fallen to 62.2% in October 2022 from 67.3% in January 2000. The large baby boom generation's departure from the workforce seems to be the largest driver of this decline. Generation X, which succeeds it, is not nearly as large. The millennial generation and Generation Z are larger, but many in these cohorts are out of the labor force as they pursue extended education and training opportunities. What this means in practice is that many skilled, certified professionals are simply no longer available to employers. There is no ready-made path to correct for this demographic dip.

Second, the U.S. education and training system is not turning out the workers needed for today's jobs. K–12 education in 2022 remains substantially similar to the immediate post–World War II period.

President George W. Bush's No Child Left Behind legislation was the last serious bipartisan effort to improve U.S. math, reading, and science performance. While state and local governments should implement research-based practices and promising innovations designed to drive improvements in student attainment, these efforts are inherently long-term in nature. They won't close the gaps in the skilled worker pipeline in the next five to seven years. There have been some innovations in skills development at universities and community colleges, but these have not been scaled to address the far-reaching shifts in the labor market.

Figure 1

Where Have All the Workers Gone? Civilian Labor Force Participation Rate, Seasonally Adjusted: January 2000–October 2022



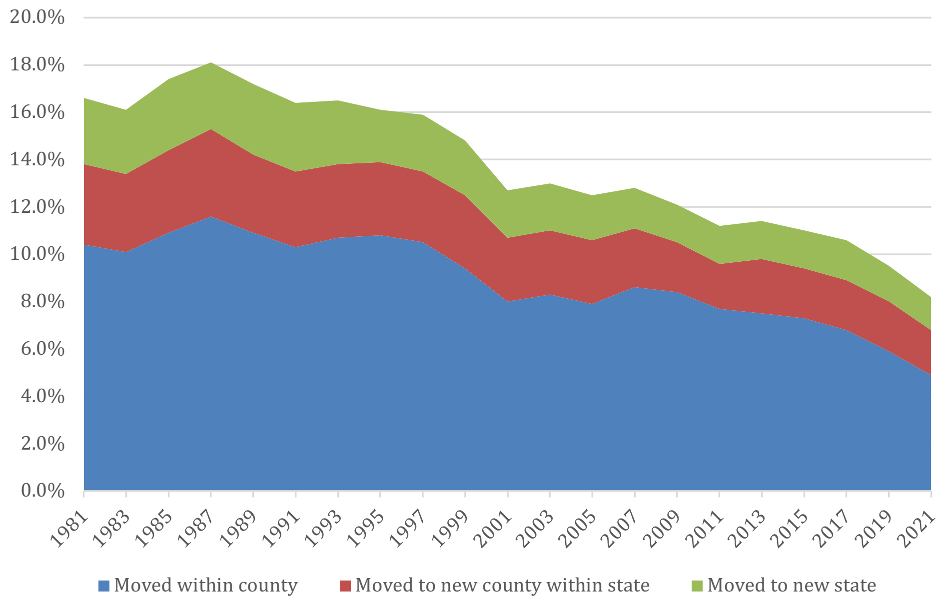
Source: *Civilian Labor Force Participation Rate (Series LNS11300000),* Bureau of Labor Statistics.

Third, the pace of technological change is accelerating exponentially. For years, U.S. companies have struggled to access the tech talent that they need. The classic image of the tech sector in Silicon Valley struggling to find talent remains accurate. Nevertheless, tech is less of a stand-alone sector in 2022 than an enabler of the economy as a whole. Every company, by and large, is now a technology-driven enterprise. The growth in robotics, artificial intelligence, and related applications is driving ever-increasing demand for technology specialists. There is a shortage globally—not just in the United States—of engineers, technicians, and others able to build, manage, and repair these technologies. The United States is in a battle to ensure that these specialists build their future in America rather than in Europe, Singapore, or myriad other places.

Fourth, workers increasingly will not move to get new jobs. According to the U.S. Census Bureau, the number of Americans who moved across state lines in 2021 is half the 1985 level. A wide variety of factors, including dual-career households, familial ties, and the high cost of moving, have made American workers less mobile than at any other time in U.S. history. Labor market mismatches in the United States caused solely by high housing prices cost the U.S. economy more than $1 trillion in lost output and income per year, research by economists Chang-Tai Hsieh and Enrico Moretti (2019) shows. This is because talented people are deterred from locating in high-cost communities where their skills would be most highly valued. One truism in the economics literature is that mobility in the labor market is a good thing, yet it is happening less than it once did.

Figure 2

Declining Mobility: The Percentage of Americans That Move on an Annual Basis – 1981-2021



Source: Table A-1. Annual Geographic Mobility Rates, By Type of Movement: 1948-2021, U.S. Census Bureau.

Mobility and the U.S. Economy

The ability of companies to access appropriately trained workers is fundamental to U.S. competitiveness and the country's continued attractiveness as a location for business investment. America needs to provide companies operating in the United States with greater flexibility to bring in specific workers from abroad to fill jobs for which no Americans are available. When a dearth of skilled labor becomes a significant constraint upon firms' expansion plans, targeted immigration can fill these gaps, according to a study by the Brookings Institution (Holzer, 2015). This, in turn, ultimately boosts wages for both skilled and unskilled workers. The use of temporary workers should have the same effect.

Misdirected concerns about wages have too often been deployed as a reason to reject both immigration and nonimmigrant entry into the United States. The United States enormously benefits from being a welcoming country. Why? Fundamentally, immigration is an entrepreneurial act. So is a willingness to come and work in the United States for a few years under a myriad of nonimmigrant programs. Immigrants bring energy and vitality to America. This is particularly helpful as the country's population gets progressively older. According to the U.S. Census Bureau, the median age in the United States was 38.8 in 2021, up from 35.4 in 2000.

"Energy" and "vitality" sound like abstract notions, but they are the foundation of a robust economic strategy. About 18% of U.S. business owners are immigrants, though immigrants account for just 13.5% of the U.S. population. Moreover, in 2018, immigrants accounted for nearly 30% of all new entrepreneurs (Bush, 2021). Why is that? Because immigrants typically don't come to America with ready-made social networks that will deliver them easy access to middle-class jobs in established institutions. Rather, they must create their own path. In doing so, they deliver benefits to American society. Fifty-seven percent of immigrant-owned small businesses have at least one paid employee in addition to the owner, according to a Fiscal Policy Institute survey in 2012. In looking at larger companies, a staggering 45% of all Fortune 500 companies today were founded by an immigrant or first-generation American. These companies currently employ 13.5 million people (New American Economy, 2019).

An efficient rules-based immigration system is fundamental to American prosperity. So too is an efficient system for providing temporary nonimmigrant entry. Temporary entry allows companies to fill gaps that would otherwise remain open. At the macro level, researchers have identified some interesting positive economic dynamics resulting from the targeted temporary entry. For example, economist Dr. Madeline Zavodny at the University of North Florida looked at the employment impact on native-born Americans from both skilled temporary workers holding H-1B visas and lower-skilled ones holding nonagricultural H-2B visas. She found that, far from taking away jobs, adding 100 H-1B workers would result in 183 additional jobs for native-born Americans. Adding 100 H-2B visa holders would result in 464 additional jobs for native-born Americans (Zavodny, 2011).

Why do temporary workers create U.S. jobs? Recall that these workers are filling positions for which no Americans are readily available. Many skilled workers are not easily substitutable. If employers cannot find a critical mass of employees with the requisite skills, they will either not invest in a particular economic activity or they will invest outside the United States. This means that those Americans who do have the requisite skills and who would otherwise work alongside the temporary workers lose out. In addition, the economic activity and resulting indirect jobs won't materialize.

The United States ran a high-stakes economic experiment about the cost and value of temporary workers in 2020. That June, during the COVID-19 pandemic, the Trump Administration blocked the processing of most temporary work permits. This affected H-1B, H-2B, L-1 (intracompany transfer), J-1 (seasonal work, au pairs, etc.), and student visas. Between June and December 2020, the number of visas issued in the seven most popular categories dropped 89% from the same period in 2019, according to State Department data (Caldwell, 2021). Did the absence of temporary workers lead to a boom in U.S. hiring as Americans stepped in to fill the vacated jobs? No.

The Wall Street Journal reported about the results of this "experiment":

> *Even with skyrocketing U.S. unemployment, businesses that relied on foreign workers and were able to remain open during the pandemic struggled to fill jobs, employers said. Unemployed American workers weren't interested in jobs typically held by foreign hires at the lower and seasonal end of the job market, and the visa ban didn't help those unqualified for specialized jobs at the higher end….*
>
> *The sudden absence of that pipeline revealed how [temporary] workers have become embedded in certain parts of the U.S. economy and may provide useful lessons. Since June, enterprises that managed to keep going through the pandemic—from web developers to resorts—say they haven't been able to find the workers they need. Many scaled back production, cut hours or sent jobs overseas. (Caldwell, 2021)*

Dr. Britta Glennon (2020) of the Wharton School at the University of Pennsylvania has quantified the extent to which companies facing H-1B caps create jobs overseas. In a high-profile National Bureau of Economic Research Working Paper, she found that restrictions on H-1B visas dramatically increase employment by foreign affiliates, especially in Canada, India, and China. She specifically found that for every 10 unfilled H-1B positions, the equivalent of three jobs were created overseas. In short, the work will get done. If the best and brightest cannot get to America, their employers won't lay them off but place them in a location where they are able to work.

For America to retain its technological edge globally and drive economic prosperity at home, it needs both immigrants and temporary workers. The shutting of the door that occurred in 2020 should never be repeated. The experiences of the past few years—be they the rise of populism; the COVID-19 pandemic; the Great Resignation, which saw 47 million Americans voluntarily quit their jobs in 2021; or other upheavals in the labor market—should push us to assess how we can solve big problems by getting the best out of our policy instruments.

The USMCA—the successor to the North American Free Trade Agreement (NAFTA)—includes a Temporary Entry mechanism in Chapter 16. Appendix 2 contains a specific list of professions, giving businesses predictability around which types of workers are eligible. While it has been used on a relatively limited basis, broader awareness among businesses coupled with some discrete amendments could make it a powerful tool for addressing jobs-skills mismatches.

There was limited political bandwidth to modernize the Temporary Entry chapter in the political environment around the NAFTA renegotiation from 2017 to 2018. There were so many issues at play in the high-stakes renegotiation process that the governments chose to simply roll over the original Temporary Entry Provisions into the new agreement. Yet trade agreements are meant to be living instruments that can evolve with the times. In 2003, for example, the governments agreed to expand the interpretative coverage of some sectors in the Professionals List. Given the significant shifts in the labor market, now is the time for the governments to consider modernizing and expanding Chapter 16 to meet the challenges of 21st century North America.

Part One: USMCA Chapter 16 and the U.S. Labor Market

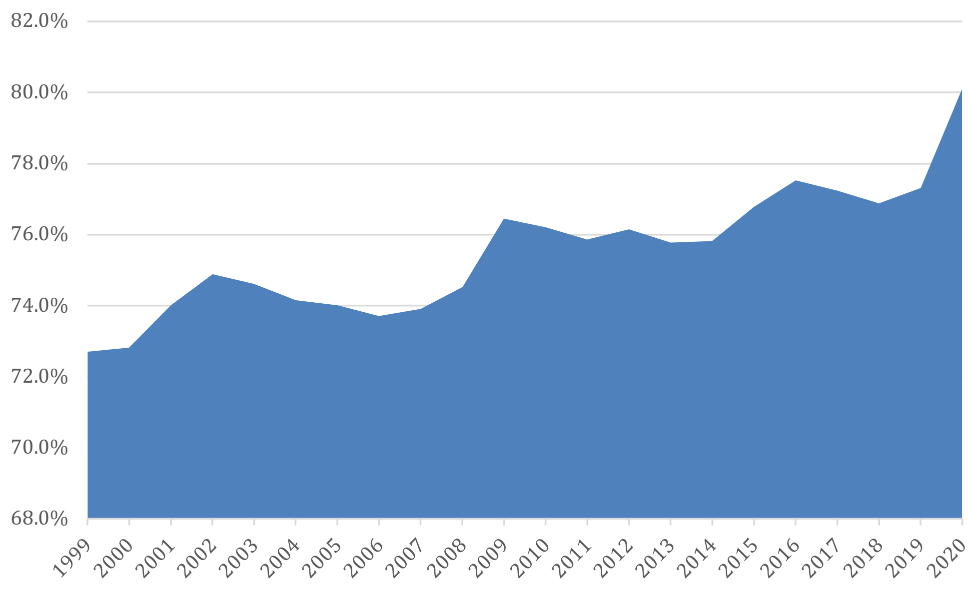
USMCA Chapter 16—Origins and Content

The United States, like other developed countries, has been steadily becoming more of a service-based economy for decades. In 1948, even with the legacy of the significant manufacturing buildup during World War II, the services share of U.S. GDP was already at 58.8%. By 1972, it had grown to 64.2%, and, by 1985, it had reached 67.6% (Ott, 1987). The 1980s was a decade of significant ferment on the trade front. A severe global recession and a debt crisis in Mexico encouraged policymakers to imagine an interconnected global economy underpinned by free trade. These efforts led to the negotiation of the U.S.–Canada Free Trade Agreement (1989), the North American Free Trade Agreement (1994), and the Uruguay Round agreements/creation of the World Trade Organization (1995). Traditional trade agreements focused on the movement of goods and their treatment at national borders. Central to these newer agreements were mechanisms to liberalize trade in services. The growing importance of services in the U.S. economy and of services exports catalyzed these efforts.

In the quarter century since the Uruguay Round and the original NAFTA, finance has globalized, the internet economy has been born, and everything from design to accounting can be done by global teams. The United States has been at the heart of much of the innovation in these fields. Statistically, innovation is often measured through the lens of value-addition. The relative importance of innovation in the services sector has surged, making its contribution to the U.S. economy ever larger.

Figure 3

America—A Services Economy
Services Value-Added as a Percentage of U.S. GDP—1999–2020



Source: *Services, Value-Added (% of GDP)—United States*, National Accounts Data, World Bank.

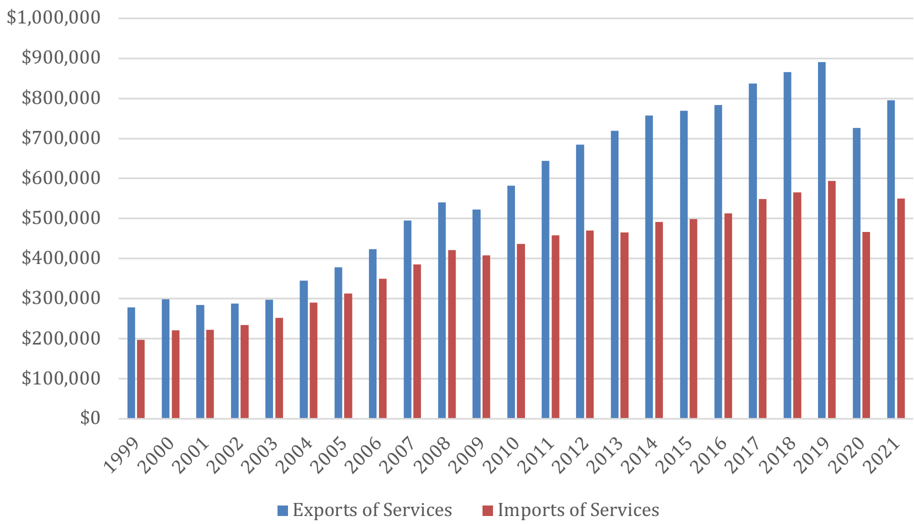
The basic structure for all services agreements is organized around what is known in trade speak their four "modes of delivery." In other words, how is the seller conveying the service to the buyer. These include the following:

- Mode 1: Cross-border supply: e.g., a U.S. accounting firm provides professional advice to a Mexican firm.
- Mode 2: Consumption abroad: e.g., a U.S. tourist vacations in Canada.
- Mode 3: Commercial presence: e.g., a U.S. insurance firm establishes an office in Mexico to offer products in the local market.
- Mode 4: Presence of natural persons: e.g., a U.S. firm brings a Canadian scientist to its research facility for six months.

USMCA sets forth its obligations on trade services in many chapters. Chapter 15 on "Cross-Border Trade in Services" can be thought of as the overarching services chapter. It establishes the basic principles of nondiscrimination (national treatment and most-favored-nation treatment) and market access while prohibiting quantitative restrictions (such as caps on the number of foreign services providers) and localization requirements. The national treatment and most-favored-nation provisions, which commit the parties to accord treatment to others no less favorable than they accord their own service providers, contain new safeguards (relative to NAFTA) against unduly expansive interpretations. The USMCA Services Chapter retains the "negative list" approach to market access, meaning that every service sector across the economy is liberalized unless explicitly excluded. These exclusions are set forth in the "Non-Conforming Measures" Annexes in Part B of the agreement. Mode 3 obligations are detailed in Chapter 14—the USMCA Investment Chapter. There are also separate chapters on "Telecommunications" and "Financial Services."

Figure 4

A Massive Trade Surplus: U.S. Trade in Services—1999–2020
(In millions of USD)



Source: *Table 2.1. U.S. Trade in Services, by Type of Service*, Bureau of Economic Analysis.

It is the Mode 4 obligations around "Temporary Entry"—set forth in Chapter 16—about which this study is principally concerned. When USMCA was negotiated to replace/update NAFTA, the Temporary Entry Chapter was left substantially unchanged.

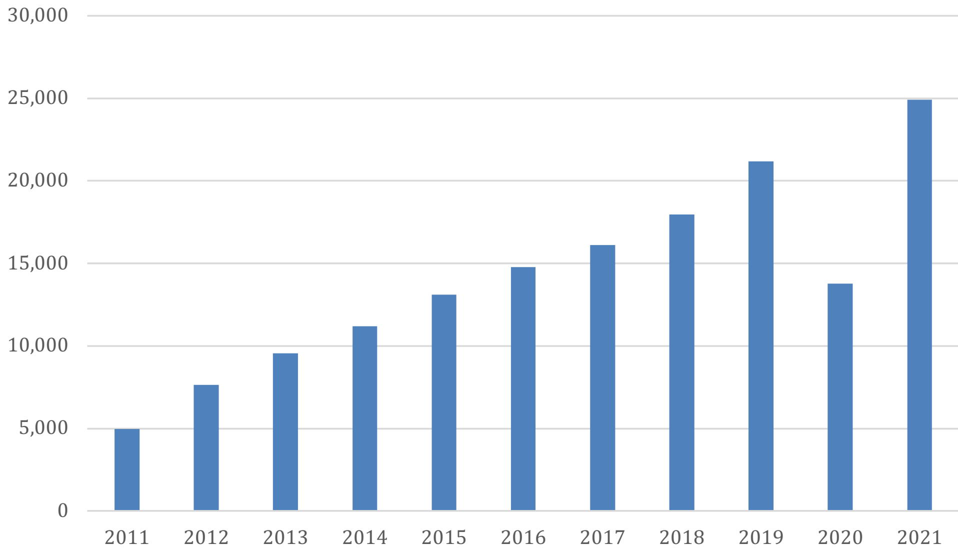
To facilitate trade in services and even trade in goods within the USMCA region, people need to cross borders. They are not crossing as immigrants. They are crossing to provide specialized expertise and then return home. Chapter 16 covers four categories of people eligible for temporary entry:

- Business Visitors: People seeking to engage in specific business activities, including research and design, production, marketing, sales, distribution, after-sales service, commercial transactions, public relations, tourism, tour bus operation, and translation.
- Traders and Investors: Those seeking to carry on substantial trade in goods or services. Or those establishing, developing, administering, or providing advice or key technical services to the operation of an investment involving a substantial amount of capital.
- Intra-Company Transferees: People employed by an enterprise who seek to render services to that enterprise or a subsidiary or affiliate in ways involving managerial or executive skills or specialized knowledge.
- Professionals: People who work in professions listed in Appendix 2 of USMCA. This list is identical to the original "Professionals List" included in NAFTA and includes the corresponding educational and licensing requirements that eligible people must meet.

Article 1604 also makes clear that "professionals," like other categories of people eligible for temporary entry, must follow established codes of conduct in their field.

Figure 5

USMCA "TN Visas" Issued by the United States: 2011–2021



Source: *Table XV(B). Nonimmigrant Visas Issued by Category,* U.S. Department of State.

The United States maintains a specific admissibility category (known as the "TN visa") for these professions. These TN-eligible professions are divided into four categories: general (ranging from architects to economists to lawyers), medical/allied professional, scientist, and teacher. Notably, there are no skilled trades included on the list.

USMCA doesn't specifically limit the duration of visas which professionals may obtain. In practice, however, TN visas may cover an initial period of up to three years. The employer may apply for an extension. Chapter 16 included a prohibition on placing a numerical restriction on the number of visas issued. In looking at the TN visa data, issuances by the United States were relatively low during the first decade of the 21st century. Applications grew significantly from 2010 through the onset of the COVID-19 pandemic in March 2020. Whether this was the shifting nature of the economy, greater awareness by companies, or some other factor is difficult to unpack.

Going into the USMCA negotiation, supporters of Chapter 16 hoped to make some upgrades to the Professionals List but found that maintenance of the status quo was the best-case scenario. While Chapter 16 did facilitate greater mobility of professionals in North America to the substantial benefit of many companies, the inclusion over time of temporary entry in trade agreements became politically complicated.

When NAFTA came into effect in 1994, it swiftly became the model for all U.S. (as well as Mexican and Canadian) free trade agreements. When the United States included temporary entry provisions in the Chile and Singapore Free Trade Agreements, ratified in 2003, some members of Congress expressed concern. When the U.S.–Australia Free Trade Agreement came up for a vote in 2004, Congress effectively mandated that it be the last U.S. free trade agreement to include temporary entry provisions.

The consequence of this congressional directive for the management of the NAFTA temporary entry provisions was significant. Congress didn't order the Office of the U.S. Trade Representative to avoid managing or refining existing temporary entry provisions, but the NAFTA "Temporary Entry Working Group," charged with managing Chapter 16, didn't meet after 2004. Some of the same dynamics permeated the USMCA negotiations.

The economy has changed significantly since the NAFTA Professionals List was drawn up in the early 1990s. The digital revolution has spread across the economy. The growth in advanced manufacturing has changed the skills needed to make things. Supply chains have spread across the continent and beyond. Now, COVID-19 has opened the way to reintegrate North American production, which is returning from Asia, where it had moved in recent years. North American economies now face significant labor market mismatches. Greater use of temporary entry provisions would help to address these challenges.

The time has come to pursue a serious modernization of the temporary entry provisions. This would include both refining and expanding some of the categories and expanding potential uses relative to labor market conditions. Nobody wins when jobs and skills remain mismatched in perpetuity.

How the USMCA TN Visa Works

The TN visa is a temporary worker visa that doesn't have an annual cap. These features make it a flexible tool for filling labor shortages in the short and medium terms. Firms seeking to bring in USMCA professionals must individually file and justify their consistency with the requirements in Chapter 16. Consequently, firms tend to apply it on an as-needed basis, and the visa is limited in terms of which industries it can bolster with workers. TN visa holders work in the national economy and are subject to the same prevailing laws on wage rates, benefit structures, and working conditions as U.S. employees.

The United States, Canada, and Mexico are intimately interconnected in a system of coproduction, so the USMCA Temporary Entry system arguably delivers an outsize benefit for America. According to a 2010 study published by the National Bureau of Economic Research, 40% of the value of Mexico's exports to the United States and 25% of Canada's southbound exports are comprised of U.S. content. By contrast, the share of U.S. content in U.S. imports is 4% for China and 1.5% for India (Koopman et al., 2010). Given relative wage parity, few American firms outsource to Canada. In the case of Mexico, its growth in North American–oriented manufacturing has tended to stimulate rather than suppress the vitality of U.S. intermediate input and service suppliers.

Labor Shortages—Quantitative Evidence

There is substantial qualitative and quantitative evidence that labor market mismatches exist across the economy. Ask many employers in most any sector and they will lament the challenges of finding workers. Labor shortages are also very much in evidence in statistical indices. According to the Job Openings and Labor Turnover (JOLTS) data set of the Bureau of Labor Statistics (n.d.), presented in Figure 6 below, pre-pandemic employment vacancies were consistently between 6.8 million and 7.2 million positions. When the COVID shutdowns rolled across the American economic landscape, job openings bottomed out at 4.7 million in April 2020 before steadily rising. Vacancies peaked in March

2022 at 11.9 million. While it has fallen to some extent, the number of job openings has been over 10 million since July 2021.

Table 1 below provides a view of the percentage of unfilled jobs per sector between September 2018 and September 2022. As the Bureau of Labor Statistics notes, this rate specifically calculates "the number of job openings on the last business day of the month as a percent of total employment plus job openings." The 2022 rates remain well above the pre-pandemic levels. It is unclear when supply and demand will return to something approximating balance.

Figure 6

Total Job Openings in the United States: January 2018–September 2022
(In thousands)

Source: *Job Openings and Labor Turnover Survey, (Series ID: JTS000000000000000JOL),* Bureau of Labor Statistics.

The Skills Challenge in Smaller Communities

Smaller communities in the United States perennially face challenges in recruiting and retaining talent. While the realignment toward remote working may drive population growth, particularly in parts of the Mountain West and Southwest, these workers are ultimately not dependent on the local economy for their livelihood. Over the past decade, companies have increasingly been relocating operations and even headquarters from smaller communities to larger cities. Among the notable examples, Caterpillar left Peoria, Illinois, for Chicago. GE Transportation moved from Erie, Pennsylvania, to Pittsburgh. Companies also aren't investing heavily in new facilities in smaller centers.

The move to larger centers comes from a desire to take advantage of scale. A city like Chicago has ample transportation links, a broad and diverse talent base, and substantial amenities. The hard truth is that many workers, particularly the young and tech-minded, prefer living in larger metro areas. The question for policy is how to address the talent shortfalls that many smaller communities face. One way to do this would be to make it easier for trained professionals to move on a temporary basis across the borders of North America in response to shortages in various occupations. An additional tweak which could help significantly is giving preference to smaller communities trying to recruit North American workers.

Table 1

Private Sector Job Opening Rates: September 2018–September 2022
(In percentage terms)

	Sept. 2018	Sept. 2019	Sept. 2020	Sept. 2021	Sept.* 2022
Total private	5.1	4.7	4.7	7.2	6.9
Mining and logging	4.3	4.5	2.9	4.8	4.3
Construction	3.9	4.2	3.1	4.5	5.2
Manufacturing	3.6	3.3	4.0	7.0	5.9
Durable goods	3.6	3.2	3.5	6.8	5.6
Nondurable goods	3.5	3.5	4.8	7.5	6.4
Trade, transportation, and utilities	5.3	4.4	4.1	6.5	5.2
Wholesale trade	3.7	3.2	2.9	5.1	3.9
Retail trade	5.8	4.5	4.3	6.4	4.8
Transportation, warehousing, utilities	5.5	5.3	4.6	8.0	7.3
Information	3.7	5.6	4.0	5.6	6.3
Financial activities	3.9	3.8	3.5	4.7	5.3
Finance and insurance	4.0	4.0	3.5	4.7	4.1
Real estate and rental and leasing	3.7	3.3	3.3	4.8	8.5
Professional and business services	6.0	5.6	5.8	7.9	7.9
Education and health services	5.1	4.8	5.1	7.7	8.6
Educational services	2.0	3.3	3.1	4.5	5.1
Health care and social assistance	5.7	5.0	5.5	8.2	9.2
Leisure and hospitality	6.2	5.6	5.9	9.5	9.3
Arts, entertainment, and recreation	4.0	5.7	4.7	8.4	8.4
Accommodation and food services	6.5	5.6	6.1	9.7	9.5
Other services	4.0	4.0	4.8	7.6	4.5

*Preliminary data

Source: *Table A. Job openings, hires, and total separations by industry, seasonally adjusted*, Bureau of Labor Statistics.

Strategic Sectors

Labor market mismatches invariably develop as the economy changes. However, not all these mismatches are equally significant to the country. Certain professions that impact national security, public health, or similarly essential tasks simply cannot remain unfilled for any extended period without doing real damage. Policymakers should consider how to use USMCA Chapter 16 to meet these challenges.

Take the case of cybersecurity. Given the epidemic of ransomware attacks—including on a major pipeline and dozens of hospitals, schools, and governments—few would dispute the importance to America of effective cyber protection. Moreover, the war in Ukraine and increased tensions with China highlight the risks of cyber warfare and the importance of being prepared. Yet, for all the urgency, there are simply not enough cybersecurity professionals to keep up with demand. According to CyberSeek, a consortium funded by the National Institute of Standards and Technology, the United States had 714,548 cybersecurity job openings in October 2022. There are 1,091,575 professionals employed in cybersecurity, meaning that there is a 40% job vacancy rate in the field (CyberSeek, n.d.). Given that virtually every institution now runs on internet-enabled platforms, the cyber labor shortage is certain to worsen.

From a U.S. perspective, it would make sense to allow North American–wide mobility for appropriately certified cybersecurity professionals. As foreign nationals, these professionals likely wouldn't work for federal or state governments. Yet, given that the private sector operates an estimated 90% of the Nation's critical infrastructure, they would make a huge contribution to securing America by bringing their talents to companies across the country.

Part Two: A Pathway to Modernizing the USMCA Temporary Entry Mechanisms

A Mechanism for Provisional Modernization

One of the frequent lines of debate in economics is whether a phenomenon under examination is cyclical or structural. In other words, will it pass relatively quickly or will it be more permanent. Given the significant labor market shifts prompted—and accelerated—by COVID-19, the dislocation that employers are facing seems more structural and long-lasting. As demonstrated in Figure 1 above, U.S. labor market participation is down 5 percentage points over the past 20 years. Americans are moving less, meaning that the ability of employers to entice workers to relocate for a job is diminishing. Working remotely is a more common phenomenon than it was pre-pandemic, but it is as yet unclear how this will impact labor mobility over the medium term. One can fairly say that some jobs are more easily done remotely than others.

Given the shifts at play, it would be highly useful for the U.S. economy and others in North America to have access to a flexible temporary entry mechanism. With the depth of economic interconnections between America and its closest neighbors, there is a strong case to be made that the United States benefits much more extensively from temporary entry arrangements across North America than from schemes with more distant lands.

The Temporary Entry Working Group established by USMCA's Article 16.6 commits the parties to meet at least once a year. The agreement also provides a vehicle for change, with Article 16.6 (d) empowering the group to consider modifications and additions. This would enable modernization without overhauling the basic operational structure of the temporary entry mechanisms. U.S. support and leadership would be fundamental to creating the necessary environment for modernization of the Temporary Entry regime to happen.

So, what would such a mechanism look like?

The United States should propose that the three countries agree to reciprocally expand the USMCA Professionals List on a rolling temporary basis in a way that would be grounded in assessments of existing labor market mismatches. Given that labor market conditions are different in each of the three countries, the United States, Canada, and Mexico would maintain their own supplemental USMCA Professional Lists reflective of the labor market conditions in their own countries. These three provisional lists would stand beside and be in addition to the permanent Professionals List that is included in Appendix 2 of Chapter 16. The professions on each country's provisional list would be open to citizens of the other two USMCA countries as long as they meet the minimum education and accreditation requirements set by the country.

The United States (and the other USMCA countries) might agree to consider adding professions to the provisional USMCA lists on an annual basis in a manner reflective of labor market conditions in their jurisdiction.

The proposed process would work as follows:

Step One: Proposed Additions

It would begin in the early months of each year with a request for companies, trade associations, labor unions, and others to propose professional categories to be included on the list. These calls for submissions would be issued through the *Federal Register* and its equivalents in Canada and Mexico. The process could be run by the lead agencies in each country responsible for administering USMCA—the Office of the U.S. Trade Representative, Mexico's Secretaria de Economia, and Global Affairs Canada. Given the strong variability of labor-market conditions within countries, stakeholders could either request a national designation or coverage for a specific region within a USMCA country.

Step Two: Assessment of Labor Market Conditions

Once the agencies receive proposals, the Trade Ministries, the Labor Departments, and their relevant statistical agencies would analyze the labor market conditions for the proposed professions. In the United States, the Bureau of Labor Statistics would lead the statistical analysis. More granular quantitative and qualitative data from local sources would be included in the analysis in the case of a request for a subnational designation.

The three governments would have to agree to criteria/quantitative metrics that would be used to determine whether to include the profession on the list. They could also agree on a preset list of economic regions if stakeholders want to limit the inclusion of foreign professionals to a particular series of states or provinces.

We recommend that for professions to be included on the provisional list, there must be a demonstrable labor shortage. Taking the case of the United States, the following metrics would be applied in making this assessment:

1. **Demonstrable labor market shortage:** Using the BLS Standard Occupational Classification (SOC) to delineate job categories, a profession must have (a) a job vacancy rate at least 10% above the

national rate; or (b) an unemployment rate at least 10% below the national rate. For a proposal limited to a particular region of the country, the job vacancy or unemployment rates must meet the 10% above/below criteria in that particular region.

The BLS, United States Trade Representative, and others could determine the private data sources they may wish to use to bolster their analysis of employment conditions. Those proposing a profession would be free to offer additional metrics or data sources in their *Federal Register* submission that supports the case for inclusion. Other parts of the U.S. government could similarly provide supplemental information to the analysis of a proposed profession.

2. **Anchoring smaller community economies:** One of the challenges facing smaller communities across the country is that major employers are having difficulty recruiting key staff. As noted above, over the past two decades, smaller metropolitan areas have seen the outmigration of headquarters and key production sites to larger centers. These communities would benefit from a preference that would give them easier access to high-skilled labor. A special category could be created for professions in metropolitan statistical areas of fewer than 500,000 people. Those wishing to bring professionals into these communities would require an unemployment threshold of at least 5% below the national rate for the specific profession.
3. **Strategic professions:** There are a handful of professions that can be thought of as strategic for America, such as cybersecurity. A third way for the United States to include a profession of the provisional USMCA list would be to declare it “strategic.” The National Economic Council (NEC) would be required to make this designation in coordination with USTR and BLS. The NEC would be asked to declare by, say, July 1 of each year what, if any, professions it was adding.

When each country has its draft list of professions to be added provisionally to their national supplemental USMCA professional list, they would share it with the other two countries for comment.

Step Three: Publication of List

The USMCA governments would finalize and make public their respective draft provisional lists for the next year by September 30 via the *Federal Register* or its equivalent in Canada and Mexico. Each country’s government would have 60 days to review and ask questions about the content of the lists.

Step Four: Entry into Force

On January 1 of the following year, the professions on the provisional lists would become eligible to receive TN visas in the United States and their equivalents in Canada and Mexico. The operational mechanics of the TN program would remain unchanged.

What Is Provisional?

The key rationale for adding professions to the USMCA list is to respond to evolving labor market shortages. Given the complexities and cost of moving workers across borders, the length of time such workers may remain in the country should not be too short. By the same measure, one must be aware that this is not the venue for facilitating the permanent entry of workers. The best path forward would be to add professions to the provisional list for a period of, say, five years, consistent with the length of a U.S. business cycle. According to the National Bureau of Economic Research, the average length of a full U.S. business cycle since 1854 has been 4.7 years (NBER, 2021). Individual workers entering the United States on a TN visa would still, as is the present custom, be issued initial visas of up to three years renewable.

One year before the end of the five-year period, each government would conduct a labor market assessment for each profession on the list. If the profession no longer meets the threshold that justified its initial inclusion (10%, 5%, or strategic designation), it would be slated for removal from the list. If the shortage persists, the profession could be renewed on the provisional list for another five years. Agencies, legislatures, and stakeholders would be free to comment on the continuation or removal of a profession from the list. Nevertheless, the primary determinant of the fate of a given profession would be the prevailing labor market situation.

Conclusion

When the USMCA Temporary Entry Chapter was first developed as the NAFTA Temporary Entry Chapter some 30 years ago, the U.S. economy and those of its North American neighbors were radically different. For example, this was before the internet revolution and all the changes and new job categories that brought. That is why the only tech-related designation is "computer systems analyst." The many different tech-related jobs in the market today should not go unfilled simply because they did not yet exist when the original NAFTA agreement was signed.

The point of USMCA is to make the U.S. economy more competitive, innovative, and prosperous and to grow the living standards of Americans. It does not serve anyone's interests to have large numbers of job vacancies left unfilled for extended periods of time. If done properly, an enhanced USMCA temporary entry regime can help America to swiftly respond to economic shifts, bolster the economy of its smaller communities, improve national security and, of course, to expand cross-border trade in goods and services. A strengthened Chapter 16 would give us the tools to make the necessary changes. The time has come to build the support to use them.

Appendix One—The USMCA Professionals List

PROFESSION	MINIMUM EDUCATION REQUIREMENTS AND ALTERNATIVE CREDENTIALS
General	
Accountant	Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A. or C.M.A.
Architect	Baccalaureate or Licenciatura Degree; or state/provincial license
Computer Systems Analyst	Baccalaureate or Licenciatura Degree; or Postsecondary Diploma or Postsecondary Certificate, and three years experience
Disaster Relief Insurance Claims Adjuster (claims Adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster)	Baccalaureate or Licenciatura Degree, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims.
Economist	Baccalaureate or Licenciatura Degree
Engineer	Baccalaureate or Licenciatura Degree; or state/provincial license
Forester	Baccalaureate or Licenciatura Degree; or state/provincial license
Graphic Designer	Baccalaureate or Licenciatura Degree; or Postsecondary Diploma or Postsecondary Certificate, and three years experience
Hotel Manager	Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Postsecondary Diploma or Postsecondary Certificate in hotel/restaurant management, and three years experience in hotel/restaurant management
Industrial Designer	Baccalaureate or Licenciatura Degree; or Postsecondary Diploma or Postsecondary Certificate, and three years experience
Interior Designer	Baccalaureate or Licenciatura Degree; or Postsecondary Diploma or Postsecondary Certificate, and three years experience
Land Surveyor	Baccalaureate or Licenciatura Degree; or state/provincial/federal license
Landscape Architect	Baccalaureate or Licenciatura Degree
Lawyer (including Notary in the Province of Quebec)	LL.B., J.D., LL.L., B.C.L. or Licenciatura Degree (five years); or membership in a state/provincial bar
Librarian	M.L.S. or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite)
Management Consultant	Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of specialty related to the consulting agreement
Mathematician (including Statistician)*	Baccalaureate or Licenciatura Degree
Range Manager/Range Conservationalist	Baccalaureate or Licenciatura Degree
Research Assistant (working in a post-secondary educational institution)	Baccalaureate or Licenciatura Degree

Scientific Technician/Technologist**	Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics; and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research
Social Worker	Baccalaureate or Licenciatura Degree
Sylviculturist (including Forestry Specialist)	Baccalaureate or Licenciatura Degree
Technical Publications Writer	Baccalaureate or Licenciatura Degree; or Postsecondary Diploma or Postsecondary Certificate, and three years experience
Urban Planner (including Geographer)	Baccalaureate or Licenciatura Degree
Vocational Counsellor	Baccalaureate or Licenciatura Degree

Medical/Allied Professional

Dentist	D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental; or state/provincial license
Dietitian	Baccalaureate or Licenciatura Degree; or state/provincial license
Medical Laboratory Technologist (Canada)/Medical Technologist (Mexico and the United States)***	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Nutritionist	Baccalaureate or Licenciatura Degree
Occupational Therapist	Baccalaureate or Licenciatura Degree; or state/provincial license
Pharmacist	Baccalaureate or Licenciatura Degree; or state/provincial license
Physician (teaching or research only)	M.D. or Doctor en Medicina; or state/provincial license
Physiotherapist/Physical Therapist	Baccalaureate or Licenciatura Degree; or state/provincial license
Psychologist	State/provincial license; or Licenciatura Degree
Recreational Therapist	Baccalaureate or Licenciatura Degree
Registered Nurse	State/provincial license; or Licenciatura Degree
Veterinarian	D.V.M., D.M.V. or Doctor en Veterinaria; or state/provincial license

Scientist

Agriculturist (including Agronomist)	Baccalaureate or Licenciatura Degree
Animal Breeder	Baccalaureate or Licenciatura Degree
Animal Scientist	Baccalaureate or Licenciatura Degree
Apiculturist	Baccalaureate or Licenciatura Degree
Astronomer	Baccalaureate or Licenciatura Degree
Biochemist	Baccalaureate or Licenciatura Degree
Biologist	Baccalaureate or Licenciatura Degree
Chemist	Baccalaureate or Licenciatura Degree
Dairy Scientist	Baccalaureate or Licenciatura Degree
Entomologist	Baccalaureate or Licenciatura Degree
Epidemiologist	Baccalaureate or Licenciatura Degree

Geneticist	Baccalaureate or Licenciatura Degree
Geologist	Baccalaureate or Licenciatura Degree
Geochemist	Baccalaureate or Licenciatura Degree
Geophysicist (including Oceanographer in Mexico and the United States)	Baccalaureate or Licenciatura Degree
Horticulturist	Baccalaureate or Licenciatura Degree
Meteorologist	Baccalaureate or Licenciatura Degree
Pharmacologist	Baccalaureate or Licenciatura Degree
Physicist (including Oceanographer in Canada)	Baccalaureate or Licenciatura Degree
Plant Breeder	Baccalaureate or Licenciatura Degree
Poultry Scientist	Baccalaureate or Licenciatura Degree
Soil Scientist	Baccalaureate or Licenciatura Degree
Zoologist	Baccalaureate or Licenciatura Degree

Teacher

College	Baccalaureate or Licenciatura Degree
Seminary	Baccalaureate or Licenciatura Degree
University	Baccalaureate or Licenciatura Degree

Notes

*In accordance with the NAFTA 1994 Commission decision of October 7, 2003, the term "Mathematician" includes the profession of Actuary.

** A business person in this category must be seeking temporary entry to work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics.

*** A business person in this category must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic, or bacteriological tests and analyses for diagnosis, treatment or prevention of disease.

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