

## IP 13 / OP 27 Start Up Business Class

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### 1. What this chapter is about

Economic Action Plan 2012 highlighted Canada's commitment to supporting entrepreneurs, innovators and world class research. It also announced the government's intention to build a fast and flexible economic immigration system whose primary focus is on meeting the new and emerging needs of the Canadian economy. As part of initiatives to support Economic Action Plan 2012, Citizenship and Immigration Canada (CIC) is creating a new Start Up Business Class pilot program to attract innovative entrepreneurs.

This chapter focuses specifically on procedures used at the Centralized Intake Office (CIO), the Case Processing Pilot office – Ottawa (CPP-O) and missions abroad to process these Start Up Business Class applications.

The chapter reviews:

- the **Ministerial Instruction (MI)** definitions;
- selection criteria; and
- operational issues.

### 2. Program objectives

#### Pilot Objectives:

- The Start Up Business Class pilot program will:
  - test the *potential for increased economic benefit* to Canada by linking foreign entrepreneurs with Canadian private sector partners (venture capital funds and angel investor groups) that have experience and expertise dealing with start-up businesses;
  - enable immigrant entrepreneurs to create jobs in Canada and build innovative companies that can compete on a global scale; and
  - provide **private-sector firms** with access to a broader range of entrepreneurs, including the best and the brightest minds from around the world.

The principles of the Start Up Business Class within the Business Immigration Program are meant to complement and not overlap the existing Business Immigration Program and are in keeping with the overall objectives of the *Immigration and Refugee Protection Act* (IRPA, or “the Act”).

### 3. Legislation: The Act and Regulations and Ministerial Instructions

#### Sections of the Act applying to business foreign nationals

| Provision                       | Act and Regulations                       |
|---------------------------------|---|
| Attainment of immigration goals | <a href="#">A3(1)</a>                     |
| Application, form and content   | <a href="#">A11</a> , <a href="#">R10</a> |
| Place of application for visa   | <a href="#">R11</a>                       |
| Return of an application        | <a href="#">R12</a> , MI 8(1)             |

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|------------------------------------|--|
| Production of supporting documents | <a href="#">R13</a>  |
| Visa issuance by officer           | <a href="#">R70(1)</a>   |
| Economic class                     | <a href="#">A12(2)</a>   |
| Inadmissibility                    | <a href="#">A33</a> to <a href="#">A43</a>   |
| Start Up Business Class membership | MI 2(2)  |
| <b>Other Provisions</b>            |  |
| Fees                               | Right of Permanent Residence Fee (RPRF) ( <a href="#">R303</a> ), Processing fee MI 13 |

### 3.1 Forms

| Form title                                    | Form number                           | Completed by   |
|---|---------------------------------------|--|
| Application for Permanent Residence in Canada | <a href="#">IMM 0008E<br/>GENERIC</a> | Principal applicant  |
| Schedule A – Background / Declaration         | <a href="#">IMM 5669</a>              | Principal applicant, spouse or common-law partner, and each dependent child over the age of 18 |
| Supplementary Information – Your travels      | <a href="#">IMM 5562</a>              | Principal applicant  |
| Additional Family Information                 | <a href="#">IMM 5406</a>              | Principal applicant, spouse or common-law partner, and each dependent child over the age of 18 |
| Business Immigration Program – Business Class | <a href="#">Schedule 13</a>           | Principal applicant  |

### 4. Instruments and delegations

Refer to the appropriate annexes in *Designation of Officers and Delegation of Authority* ([IL 3](#)), listing the delegations.

### 5. Departmental policy

#### 5.1 Requirements for membership in the class

In order to be eligible for membership in the Start Up Business Class a person must have a Commitment Certificate issued by a designated entity.

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The Start Up Business Class is prescribed as a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada as innovative business persons. It is intended to facilitate processing of permanent resident applications for:

- no more than 2750 applications per year;
- no more than five persons per business proposal;
- persons who intend to reside in a province or territory other than Quebec;
- persons who have the support of a Canadian business entity, in the form of a Commitment Certificate;
- persons who meet or exceed the minimum language proficiency threshold set by the Minister for proficiency in English or French for each of the four language skill areas;
- persons who have completed at least one year of post secondary education; and
- persons who have sufficient funds to economically establish themselves in Canada.

Once an applicant provides proof of having a commitment from a designated entity other factors will be reviewed and assessed against the MIs for selection and admissibility.

### 5.2 Fees

Applicants are required to pay two fees:

- the cost recovery fee;
- the Right of Permanent Residence Fee (RPRF).

#### 5.2.1 Cost recovery fee

The MI prescribes fees payable for processing an application for permanent residence. The MI specifies who must pay the cost recovery fees and what the fees are.

The cost recovery fee must be paid only for persons who intend to immigrate to Canada. This includes the principal applicant and any accompanying family members.

The cost recovery fee is payable at the time the application is made. An applicant may withdraw an application and receive a refund of the cost recovery fee any time before processing of the application begins. Once processing has begun, the cost recovery fee is not refundable.

***Note:** Processing starts with the initial evaluation of the application at CIO-Sydney. Only those applications that are deemed to be complete (have all required supporting documents and meet the requirements of [R10](#)) will be forwarded to an officer for review. Once an officer determines that a valid Commitment Certificate has been received and has indicated “met” in the Global Case Management System (GCMS), the application is considered to be in process. In order to receive a refund of the cost recovery fee, an applicant must request a withdrawal before this evaluation has started. If an applicant requests a change in category at any time, a new application and new fee must be submitted. An applicant may have more than one application in process, but only one application can be finalized with visa issuance. Any additional applications must be finalized as withdrawn or refused.*

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**Note:** If the applicant is defined as “[Essential](#)” to the start-up business then all applications currently in process related to the same business proposal must be reviewed before a refund is issued.

### 5.2.2 Essential applicants and the refund process

If the “Essential” applicant wishes to withdraw their application and is requesting a refund, the following steps must be taken:

1. Determine if other applicants are linked to the same business proposal.
  - If yes – send the file to an officer for review
  - If no – follow standard refund procedures, assuming no processing has begun.
2. Advise the client that his refund will be issued, assuming no processing has begun.
3. Advise others in the group that a person deemed to be essential to the business proposal has withdrawn their application and that no further processing can continue on their applications.
4. All other applications in the same business proposal will be refused. Refunds are only issued to refused applicants if no processing has begun.

An officer will review the other applications in the same business proposal and render a decision in GCMS, based on the withdrawal of the application for the essential person. All applicants will be advised of the final decision.

Example 1: Timothy is an essential person for his business proposal. There are two other people in the same business proposal, currently in process. Timothy’s application is still at the CIO and an officer has not determined that he has “met” the requirements of the class. The CIO receives a letter from Timothy stating that he wants to withdraw his application. The application is withdrawn in GCMS and a refund is issued to Timothy. The applications for the other two people in the business proposal must be refused in GCMS. No refund is to be issued to the other two people in the business proposal, as their applications are already in process.

Example 2: Mona is not listed as an essential person to the business proposal. There are two other people in the business proposal. One of those other persons is listed as essential to the business. Mona’s application has not been reviewed yet by an officer. The CIO receives a letter from Mona stating that Mona wishes to withdraw her application. Mona’s application is withdrawn in GCMS and she receives a refund. The processing of the other two applications continues.

### 5.2.3 Right of Permanent Residence Fee (RPRF)

[R303](#) specifies that RPRF fees are payable for the principal applicant and their spouse or common-law partner.

Payment of the RPRF is required before issuance of permanent residence documents.

Applicants may make their RPRF payment at any time during the immigration process.

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### **RPRF refunds**

Successful applicants who decide not to use their permanent residence documents, such as their Confirmation of Permanent Residence (COPR) document and visa, must return them to the issuing visa office in order to obtain an RPRF refund.

Unsuccessful applicants who have paid the RPRF should be informed, as part of the refusal letter that they are entitled to a refund and should be given an approximate time frame for its receipt.

The office that finalizes the case is responsible for processing any RPRF refund.

### **5.3 Procedural fairness**

See [OP 1, Section 8](#), for details on procedural fairness.

## **6. Definitions**

### **6.1 Start-up business**

A start-up business must be a new business intended to be operated in Canada and must meet the criteria to be a qualifying business. Section 2(2)(a) of the MIs requires that the new start-up business must have received a commitment from:

- i) a designated angel investor group confirming that it is investing at least \$75,000 in a qualifying business or two or more designated angel investor groups confirming that they are together investing a total of at least \$75,000 in such a business; or
- ii) a designated venture capital fund confirming that it is investing at least \$200,000 in a qualifying business or two or more designated venture capital funds confirming that they are together investing a total of at least \$200,000 in such a business.

Example: Donald has a commitment from a designated angel investor which represents an investment of \$98,000. Donald's investor tells him that once he is granted Canadian permanent residence and has arrived in Canada, the investor will register and incorporate the business. This start-up business would be acceptable under the program, if all other criteria are met.

### **6.2 Commitment**

A "commitment" is an agreement between the applicant and the investing entity to establish and incorporate a qualifying business in Canada. The investing entity must be one which appears in the list of designated private sector businesses referred to in Section 4 of the MIs. Proof and details of this agreement will be submitted in the form of the term sheet and summarized for CIC processing in the Commitment Certificate.

The investing entity may not identify more than 5 persons in a commitment.

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### ***6.3 Investing Entity***

An investing entity is an organization that has been designated by the Minister of CIC to participate in the Start Up Business Pilot.

### ***6.4 Commitment Certificate***

A Commitment Certificate is a document which records important information regarding the agreement between the applicant and the investing entity and will be sent directly from the designated entity to CIC. The purpose of the Commitment Certificate is to summarize pertinent details of the commitment between the investing entity and the applicant for the purposes of the application for permanent residence. It is designed to facilitate identification of specific requirements to qualify as member of the Start Up Business Class.

### ***6.5 Letter of Support***

A Letter of Support is provided to the applicant by the designated entity confirming their agreement. The applicant must include this letter with their application.

### ***6.6 Term sheet***

A term sheet is a document detailing the agreement between the entrepreneur and the designated entity. It sets forth the basic terms and conditions under which an investment will be made.

### ***6.7 Industry associations***

Industry associations (IAs) are non-profit organisations that have authority to represent members of their particular business sectors or industries. For the purposes of the Start Up Business Class pilot program, CIC has entered into agreements with the following IAs: the National Angel Capital Organization (NACO) and Canada's Venture Capital and Private Equity Association (CVCA). These IAs will identify and recommend to CIC which of their members should be designated as eligible to participate in the Start-Up Visa program; conduct peer reviews to ascertain due diligence efforts of investing entities, and various other tasks related to reporting on results of the program.

### ***6.8 Essential person***

An essential person is a foreign national who is considered, by the investing entity, to be essential to the business being established under the program. A section in the Commitment Certificate will identify which applicants in a group are deemed to be "essential". If the application for an essential person is refused for any reason all other applications related to that commitment must also be refused.

### **6.9 Investing**

Investing is buying shares or other forms of equity in a qualifying business.

### **6.10 Language skill area**

Pursuant to [R73\(1\)](#), “language skill area” means speaking, oral comprehension and listening, reading, or writing.

### **6.11 Qualified participant**

**A qualified participant is:**

- an applicant who intends to operate a business in Canada and who has entered into an agreement with a designated entity in support of a qualifying business;
- a foreign national who has been issued a permanent residence document such as a COPR or visa as a member of the Start Up Business Class because they intend to operate a qualifying business in Canada;
- a designated angel investor group; or
- a designated venture capital fund.

### **6.12 Qualifying business**

A qualifying business is a business that meets the requirements under MI 7(1):

A corporation that is incorporated in and carrying on business in Canada is a qualifying business if, at the time the commitment is made:

(a) the applicant holds 10% or more of the voting rights attached to all shares of the corporation outstanding at that time; and

(b) no persons or entities, other than qualified participants, hold 50% or more of the total amount of the voting rights attached to all shares of the corporation outstanding at that time.

MI 7(1) states that in order to qualify for the Start-Up Visa program a business should be incorporated and carrying on business in Canada at the time that the commitment is made. However, in many cases the investing entity may not want to go through the process of incorporating the company if the persons identified in the business proposal are not authorized to come to Canada. Therefore, MI 7(2) allows for consideration of a qualifying business whose incorporation is conditional upon the attainment of permanent residence by the applicant(s).



### **6.13 Peer Review**

A peer review is an independent assessment of a commitment by a panel of experts convened by the industry association that represents the lead investing entity on the Commitment Certificate. For example, if the Commitment Certificate was issued by a designated angel investor group then NACO would be responsible for organizing a peer review panel to evaluate the commitment.

A peer review may be initiated if the officer is of the opinion that such an assessment would assist in making a decision. It may also be made on a random basis. The peer review panel will only verify if the investing entity has conducted the proper checks and investigations according to industry standards, and will not give a judgment on the wisdom or feasibility of the proposal. The officer should not make use of the peer review panel to question whether or not a proposal is likely to succeed, or whether or not investment was wise, but these may be flags to lead the officer to question whether or not due diligence was exercised on the business proposal. In such cases a peer review would be warranted.

### **6.14 Syndication**

Syndication describes a situation where there is more than one designated investing entity involved in the same commitment. When there are multiple designated entities acting in syndication, only one Commitment Certificate will be issued containing all the details and requirements of all participating designated entities. There will be a lead designated entity that shall be responsible for compiling and submitting the certificate. There is no limit to the number of designated entities that can support a commitment.

### **6.15 Substituted Evaluation**

Substituted evaluation is an evaluation made by the officer (CIO, CPP-O or Visa Officer) which determines the likelihood of the applicant's ability to become economically established in Canada, whether or not an applicant meets the requirements of the MI.

Substituted evaluation requires the written concurrence of a second officer.

## **7. Procedures**

Processing applications for permanent residence in the Business Class involves a series of procedural steps, including an assessment against eligibility criteria (pass/fail test).

### **7.1 Receiving the application at CIO-Sydney**

#### **7.1.1 Completeness check**

All applications for permanent residence under the Start Up Business Class are sent to the Centralized Intake Office in Sydney, N.S. (CIO-Sydney). Applications received at CIO-Sydney will

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first be reviewed for completeness pursuant to [R10](#) and the kit requirements in place at that time, including the following required forms, fees, information and documents:

- a signed and completed [IMM 0008](#), containing the name, date of birth, nationality, current marital status, and current immigration status of the principal applicant and all family members (whether accompanying or not);
- the original results of the principal applicant’s English or French language test from a designated testing agency;
- a properly completed [Schedule 13](#) for the principal applicant, his or her spouse or common-law partner and all dependent children aged 18 and older listed on the IMM 0008;
- a properly completed [Schedule 8](#) for the principal applicant;
- evidence of payment of the applicable fees (credit card or certified instrument). Payment in local funds may be allowed for certain countries;
- a signed declaration to the effect that the information provided is complete and accurate;
- proof of post secondary education; and
- proof of funds.

For more information on what constitutes a complete application, see [OP 1](#).

### **Note:**

*1. Assessment of the Commitment Certificate, language, funds and post secondary education will not be done at the completeness check stage. At this stage, the CIO is only verifying that these elements are included in the application.*

*2. Missing admissibility documents, i.e., police certificates, should not hold up the final determination of eligibility for processing. Applicants have been strongly encouraged to send police certificates. If applicants cannot obtain them, they may still submit the application to the CIO without them. The CIO will not reject these applications provided it is complete in all other respects. However, if the application is placed into processing, the applicant must be ready to submit the police certificates to the visa office when requested.*

| If it is determined that...  | Then the CIO will...   |
|--|--|
| The application <b>meets</b> the requirements of section <a href="#">R10</a> , as outlined above         | <ul style="list-style-type: none"> <li>• <b>Date-stamp</b> the application with the application-received date</li> <li>• Proceed to put the application into process</li> </ul>  |
| The application <b>does not meet</b> the requirements of section <a href="#">R10</a> , as outlined above | <ul style="list-style-type: none"> <li>• <b>Return</b> the application to the applicant</li> <li>• <b>Neither create a file, nor keep a record</b> until a complete application, as outlined above, has been made</li> </ul> |

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### **7.1.2 Putting an application into process**

After a positive completeness check at the CIO, the office staff will:

- date stamp the application;
- create a file in GCMS;
- enter **XXX** in the Category field;
- cost recover the processing fee and enter this in GCMS;
- write the GCMS file number on the paper file;

### **7.2 Assessing Eligibility applications against the Ministerial Instructions**

An officer at the CIO will assess the applicant's submission as-is and make a final determination of eligibility under the MI in place at the time the application was received. To be eligible for processing, the applicant must submit a Letter of Support along with their application, and CIC must be able to confirm that the corresponding Commitment Certificate has been electronically submitted and is still valid. If the application is eligible for processing, the applicant will be informed. Once processing has begun the cost recovery fee is no longer refundable.

If the applicant's submission is determined to be ineligible for processing, the applicant will be informed and the application will be refused. The application will not be returned to the applicant. Processing fees will be refunded.

#### **Evidence to consider when making the determination of MI eligibility**

In order to be included as a member of the Start Up Business Class an applicant must demonstrate that they:

- have a Commitment Certificate from a designated entity that contains all required information to confirm the eligibility of the business relationship;
- have language ability at Benchmark Level 5 in either of Canada's official language;
- have completed at least one year of post-secondary education; and
- meet settlement requirements.

#### **7.2.1 Commitment**

Officers must be satisfied that the applicant has a commitment, signed by someone who has the authority to do so, which binds the designated entity to the applicant. The agreement details are outlined in a business document called a term sheet. The term sheet is sent to CIC along with the electronic Commitment Certificate. The term sheet is signed by the investing designated entity. The Commitment Certificate is not signed.

Officers must see the following items on file:

- a) The Letter of Support will be given directly to the applicant by the designated entity. The applicant will then submit that letter along with their application.

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b) The electronic Commitment Certificate will come directly to CIC from the designated entity. CIC will access the electronic version via Entrust.

### Receiving the Commitment Certificate

Applicants must submit a Letter of Support with their application. An electronic Commitment Certificate is submitted by the designated entity making the investment. The following must be indicated:

| <b>Letter of Support</b>      |  |
|-------------------------------|--|
| <b>Section</b>                | <b>What to look for:</b>   |
| General                       | <ul style="list-style-type: none"> <li>• submitted by the applicant with the application</li> <li>• contains specific information related to the applicant</li> <li>• contains bio-data information of any persons related to the business agreement</li> <li>• no more than five total persons may be included in any one business investment</li> <li>• identifies any essential applicants</li> </ul>   |
| <b>Commitment Certificate</b> |  |
| General                       | <ul style="list-style-type: none"> <li>• sent directly from the investing entity to CIC</li> <li>• term sheet should also be included with the electronic version</li> </ul>   |
| Client Information            | <p>Name of the applicant</p> <ul style="list-style-type: none"> <li>• The officer may want to verify with the entity if the name indicated is significantly different from the one indicated on the passport or the IMM 0008.</li> <li>• The name on the Commitment Certificate should be indicated as a name. Flag in GCMS if it differs from the other names on file.</li> </ul>   |
| Related Applicants            | <p>Essential Applicants</p> <ul style="list-style-type: none"> <li>• Any essential applicants must be indicated on both the Letter of Support and the Commitment Certificate. In all cases, these should be consistent.</li> <li>• If the application for an essential person is refused for any reason all other applications related to that commitment must also be refused. COPR documents may only be issued once all essential persons identified in the Commitment Certificate have been approved for permanent residence.</li> </ul> <p>Examples:</p> <ul style="list-style-type: none"> <li>• Example 1: Naya is a person identified as essential to the business by the investing entity. There are two other persons</li> </ul> |

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|                             |  |
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|                             | <p>identified on the Commitment Certificate, but they are not identified as essential. The other two persons are ready for issuance of COPR documents. Naya has been found to be inadmissible to Canada. Naya’s application must be refused. The two other persons identified on the commitment must also be refused because they are related to Naya’s application.</p> <ul style="list-style-type: none"> <li>• Example 2: Naya is a person identified as essential to the business by the investing entity. There are two other persons identified on the commitment, but they are not identified as essential. Naya and one other person are ready for issuance of COPR documents. The third person on the commitment is found to be inadmissible. The person found to be inadmissible must be refused. Naya and the other approved person may be issued COPRs because Naya, as the only essential person on the commitment, is not inadmissible.</li> </ul>   |
| <p>Business Information</p> | <p>Describe the nature of the business operations to be conducted by the applicant</p> <ul style="list-style-type: none"> <li>• Officers should expect to see a short description of the type of business which will be operated by the applicant. For example “software engineering, promotion and distribution”.</li> </ul>  |
|                             | <p>Describe the amount of the investment; and how much is being invested? Who is investing? In the case of syndication, who is the lead investor?</p> <ul style="list-style-type: none"> <li>• Officers should expect to see such details in the Commitment Certificate but should not expect to see proof of the investment in the form of bank transfers, etc., as the terms in the commitment are considered to be satisfactory evidence for the purposes of this pilot.</li> <li>• If any designated venture capital funds are named on the commitment, one of them must be the lead investor and the minimum amount of combined, total funds submitted by all designated entities must be at least \$200,000.</li> <li>• If there are only angel investor groups on the commitment, they will choose one to act as the lead entity and the minimum total combined funds from all designated entities must be at least \$75,000.</li> <li>• It is possible for both venture capital funds and angel investor groups to support a single commitment but in that case, section 2(3)(a) of the MIs require that only a designated venture capital fund can serve as the lead entity, and the minimum total combined funds from all entities must be at least \$200,000.</li> </ul> <p>Examples:</p> <p>Example 1: Maria has two designated angel investor groups for her business idea. Investor A has agreed to invest \$35,000 while Investor B</p> |

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|                           | <p>has agreed to invest \$35,000. In this case Maria does not meet the definition of a member of the Start Up Business Class because she has not received an investment of at least \$75,000 from designated angel investor groups under MI 2(2)(a)(i).</p> <p>Example 2: Maria has two investors for her business idea. Investor X is a designated venture capital fund that has agreed to invest \$125,000, while Investor Y is a designated angel investor group that has agreed to invest \$100,000. In this case, the investments meet the requirements of the MI because the total combined funds meet the requirement of at least \$200,000 for investments with venture capital funds.</p>   |
| <p>Business Structure</p> | <p>Describe the applicant's role in the business</p> <ul style="list-style-type: none"> <li>• Officers should expect to see the applicant's title; and</li> <li>• What the applicant does in this company.</li> </ul> <p>Example:</p> <ul style="list-style-type: none"> <li>• The applicant's title may be indicated as "CEO". The officer should expect to see a few lines outlining what the investing entity expects the applicant to do as a CEO.</li> </ul>  |
|                           | <p>Describe the legal and financial structure of the business, including details related to incorporation or plans to incorporate.</p> <ul style="list-style-type: none"> <li>• Who owns shares in this company?</li> <li>• How many shares belong to the applicant?</li> <li>• How many shares belong to someone else?</li> <li>• Who are the other persons who own shares in the company?</li> <li>• The requirement for percentage of ownership and voting rights is described in the MI. Officers should review the MI for changes to the voting shares and percentage of ownership.             <ol style="list-style-type: none"> <li>1) The purpose of this review is to determine if the business is viable or is being established exclusively for the sake of immigration.</li> <li>2) If the investing entity has a disproportionately low percentage of shares or has little to no role in the legal control of the business, it would be a flag for a peer review. Similarly, the converse would apply if the applicant has little to no control or equity in the business.</li> <li>3) Other flags would be raised if most of the legal officers are all related to each other, notwithstanding their lack of experience or education: a genuine investing entity would likely not be allowing nepotism to govern a company in which it is sincerely investing its own funds.</li> </ol> </li> </ul> |
|                           | <p>Specify any terms and conditions applicable to the investment or the commitment.</p> <ul style="list-style-type: none"> <li>• Officers should expect to see all conditions.</li> <li>• Reviewing these conditions will be important to assess the genuineness of the venture, as the investing entities would be</li> </ul>   |

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|---|--|
|   | <p>focused on protecting their investment and requiring regular progress reports, budget reviews or audits, controls over transfer of shares or voting rights, indemnification and insurance, confidentiality and non-disclosure, expenses, composition of the board (separate from the articles of incorporation), matters requiring majority board approval, rights of preferred shareholders, and so on.</p>  |
| Identify the name and function of any other person who holds or is expected to hold an interest in the business | <ul style="list-style-type: none"><li>• Who else is involved in this company?</li><li>• How many shares and voting rights does that other person hold?</li><li>• Officers must be satisfied that only qualified participants own 50% or more of the voting rights (as per section 7(1)(b) of the MIs).</li></ul> <p>Examples:</p> <ul style="list-style-type: none"><li>• Example 1: the applicant may be the child of a wealthy overseas industrialist who has bought a significant number of shares and is investing large sums into the applicant's intended business venture. This could raise concerns that the parent will be the de facto controlling interest while the applicant will simply be acting on the latter's instructions.</li><li>• Example 2: Similarly, foreign ownership and investment by governments or non-profit organisations in the applicant's intended business should raise concerns about the genuineness of the venture, and should be investigated further.</li></ul> |

### 7.2.2 Settlement funds

Officers must be satisfied that the applicant has sufficient funds available for settlement in Canada pursuant to the MI.

#### **Settlement funds**

The applicant must clearly demonstrate that they have sufficient and available funds to meet the requirements. These funds must meet the requirements at the time the application is made, as well as when the application is finalized.

The funds must be:

- available and transferable;
- unencumbered by debts or other obligations.

Officers must be satisfied that the applicant has at their disposal, with sufficient liquidity, and with the ability to transfer those assets, the necessary threshold of funds to support their establishment in Canada on arrival.

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The amount of funds is assessed according to the applicant's family size using 50% of Statistics Canada's most current low income cut-off (LICO) for urban areas with populations of 500,000 or more.

*Note: In terms of funds required, the number of the applicant's family members includes both accompanying and non-accompanying dependants.*

Although the amount may change yearly, at time of publication the required funds are equal to or greater than the amount listed below for each family size:

| Number of family members | Funds required |
|--------------------------|----------------|
| 1                        | \$11,115       |
| 2                        | \$13,837       |
| 3                        | \$17,011       |
| 4                        | \$20,654       |
| 5                        | \$23,425       |
| 6                        | \$26,419       |
| 7 or more                | \$29,414       |

Examples of proof of funds include, but are not limited to:

Bank statements, personal net worth statement, securities in bearer form (stocks, bonds, debentures, treasury bills, etc), negotiable instruments in bearer form (bank drafts, travellers cheques, etc).

### 7.2.3 Education

For definition of terms, see [OP 6, Section 6.3](#).

Officers should expect to see proof of education in the form of transcripts and a letter of good standing, or certificate or diploma or degree. Officer should review the documentation provided by the applicant and determine if:

- at least one year of post secondary study has been completed. The requirement is met based on the standards that exist in the country of study. For example, a technical credit may be the equivalent to a high school diploma in Canada but in the country of study it is considered to be post-secondary.



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- the applicant was in good standing while they were in attendance at the post secondary educational institution. Applicants are considered to be in good standing based on criteria established by the educational institution. For example, the institution could have a policy which states that a person is not in good standing if they have an unpaid debt such as tuition fees or if they have not returned books to the library.

It is not necessary for the applicant to obtain any diploma, degree or trade or apprenticeship credential as a result of having completed at least one year of post-secondary study.

Distance learning post-secondary institutions are eligible for consideration to meet the requirements.

Example 1. Michael has submitted proof that he was enrolled in an online training course to become a computer technical support assistant. After 18 months he quit the course because he could not pay the fees. He was also frustrated because the online course was not user-friendly. Although his transcript shows his grades and that he took courses from January 2008 until June 2009, the transcript also shows that he was on academic probation from October 2008. In this instance Michael has post-secondary education of at least one year; however, he was not in good standing during that one year period. The officer will determine that the applicant does not meet the requirement.

Example 2. Joanne provides evidence that she has a bachelor's degree. The officer will determine that the applicant meets the requirement, as the likelihood of receiving a degree or diploma from the educational institution, if the student is not in good standing, is low.

Example 3. Karine provides evidence that she attended a vocational institution for 3 years and was in good standing in the first 2 years of the program. In the third year she did not complete the course of study. The officer will determine that the applicant meets the requirement.

**Note:** Incidence of fraud may be seen in this area. Verification checks should be conducted with issuing institutions, as necessary, to ensure that program integrity standards are respected.

**Note:** In some cases the transcript may indicate whether the student was in good standing or not during the period of attendance at the educational institution. In these cases the officer should not expect to see a separate letter from the institution.

### 7.2.4 Knowledge of official languages

Pursuant to the MI the applicant must have a proficiency of at least Benchmark Level 5 in either official language for all four language skill areas, as set out in the *Canadian Language Benchmarks* (CLB), as demonstrated by the results of an assessment conducted by an organization or institution designated by the Minister for the purpose of language proficiency under subsection [74\(3\)](#) of the Regulations.

### **Conclusive evidence**

The results of an evaluation of an applicant's language proficiency by a designated organization or institution are conclusive evidence of the applicant's proficiency in the official languages of Canada. Officers may not consider other evidence of language ability.

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**Example:** An officer reviews the application and notices that the applicant has shown language ability at Benchmark Level 5. However, the written submission is poorly written and has spelling and grammatical errors. Based on this information the officer decides to call the applicant to test their language ability. Over the phone the officer concludes that the applicant could not have met the Benchmark Level 5 because the applicant barely understood what was being asked and gave poorly worded answers. The officer may not assess the language proficiency based on the telephone conversation or the written submission.

### Evidence of language proficiency

#### Language test results

Pursuant to the MI, officers will determine that the applicant meets the language requirement based on the results of a language test from a designated organization.

*Note: Test results for applicants who are hearing-impaired are treated in the same manner as those of applicants who are not. The points for language are awarded based on the ability to communicate in English or French, and not the means of communication.*

*Note: Language test results must not be older than **two years** old at the time of application.*

#### Designated testing organizations

At the time of printing, designated testing organizations included:

##### English language testing organizations

- Paragon Testing Enterprises Inc., University of British Columbia administers the Canadian English Language Proficiency Index Program (CELPIP)
- Cambridge (ESOL), IDP Australia, and the British Council administer the International English Language Testing System (IELTS).

*Note: IELTS offers “General Training” and “Academic” options. Only the “General Training” tests are accepted for CIC purposes.*

*Note: CELPIP has two tests: “CELPIP-General (CELPIP-G)” and “CELPIP-Academic (CELPIP-A)”. Only the CELPIP-G is accepted for CIC purposes.*

#### Testing results tables

Use the following tables to determine if the applicant meets the language ability requirement.

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**International English Language Testing System (IELTS):**

| CLB Level          | Language factor Met/ Not Met | Test results for each ability |           |                            |                            |
|--------------------|------------------------------|-------------------------------|-----------|----------------------------|----------------------------|
|                    |                              | Speaking                      | Listening | Reading (General Training) | Writing (General Training) |
| <b>9 and above</b> | Met                          | 7-9                           | 7-9       | 8-9                        | 7-9                        |
| <b>8</b>           | Met                          | 6.5                           | 6.5       | 7.5                        | 6.5                        |
| <b>7</b>           | Met                          | 6                             | 6         | 6                          | 6                          |
| <b>6</b>           | Met                          | 5.5                           | 5.5       | 5.5                        | 5.0                        |
| <b>5</b>           | <b>Met</b>                   | 5                             | 5         | 5                          | 4                          |
| <b>4</b>           | <b>Not Met</b>               | 4                             | 4         | 4.5                        | 3.5                        |

**Canadian English Language Proficiency Index Program (CELPIP):**

| CLB Level          | Language factor Met/Not Met | Test results for each ability |           |         |         |
|--------------------|-----------------------------|-------------------------------|-----------|---------|---------|
|                    |                             | Speaking                      | Listening | Reading | Writing |
| <b>9 and above</b> | Met                         | 5                             | 5         | 5       | 5       |
|                    |                             | 6                             | 6         | 6       | 6       |
| <b>8</b>           | Met                         | 4H                            | 4H        | 4H      | 4H      |
| <b>7</b>           | Met                         | 4L                            | 4L        | 4L      | 4L      |
| <b>6</b>           | Met                         | 3H                            | 3H        | 3H      | 3H      |
|                    |                             | 3L                            | 3L        | 3L      | 3L      |
| <b>5</b>           | <b>Met</b>                  |                               |           |         |         |
| <b>4</b>           | Not Met                     | 2H                            | 2H        | 2H      | 2H      |

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### Test d'évaluation de français (TEF)

Use the following table to determine how many points you will be awarded for your test scores with the **Test d'évaluation de français (TEF)**:

| CLB Level          | Language factor<br>Met/Not Met | Test results for each ability  |                                    |                                   |                                |
|--------------------|--------------------------------|--------------------------------|------------------------------------|-----------------------------------|--------------------------------|
|                    |                                | Speaking<br>(expression orale) | Listening<br>(compréhension orale) | Reading<br>(compréhension écrite) | Writing<br>(expression écrite) |
| <b>9 and above</b> | Met                            | 372 +                          | 298 +                              | 248 +                             | 372 +                          |
| <b>8</b>           | Met                            | 349 - 371                      | 280 - 297                          | 233 - 247                         | 349 - 371                      |
| <b>7</b>           | Met                            | 309                            | 248                                | 206                               | 309                            |
| <b>6</b>           | <b>Met</b>                     | 271                            | 217                                | 181                               | 271                            |
| <b>5</b>           | Met                            | 225                            | 180                                | 150                               | 225                            |
| <b>4</b>           | Not Met                        | 181                            | 145                                | 121                               | 181                            |

### 7.3 Meeting the Ministerial Instructions criteria

| If                              | Then  |
|---------------------------------|---|
| The MI eligibility has been met | <ul style="list-style-type: none"> <li>• Officer will Indicate “Met” in GCMS.</li> <li>• CIO will send an acknowledgment of receipt letter or email to the applicant. The email or letter will indicate: that their file has been received, assessed as meeting the MI, transferred to CPP-O and placed into processing.</li> <li>• Transfer the electronic file in GCMS by making CPP-O the primary office for processing.</li> <li>• The CIO will proceed with sending the physical file to the CPP-O. A final selection decision and an admissibility determination will be made by the officer at CPP-O.</li> </ul> |

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|   |   |
|---|---|
| <p>The applicant has not met the MI eligibility factor.</p> | <ul style="list-style-type: none"><li>• CIO will make a final negative determination of eligibility for processing.</li><li>• Processing will cease.</li><li>• Record reasons in GCMS.</li><li>• Send a letter to inform the applicant.</li><li>• The application is not returned to the applicant.</li><li>• Indicate “Not Met” in GCMS.</li><li>• No refund will be issued.</li></ul> |
|---|---|

### Acknowledging receipt by CPP-O

When an application is received at CPP-O, the receiving clerk will send an acknowledgment of receipt letter to the applicant to:

- inform them that their file has been placed into processing;
- set out basic instructions for contact with their office;
- give them a brief outline as to future processing steps; and
- inform them that they can follow the progress of their file via CIC’s e-Client Application Status web page.

*Note: CPP-O should maintain the application received date from the applicant’s initial submission to the CIO and process to conclusion. The application received date at CPP-O or a visa office is also the lock-in date.*

*Note: The officer will proceed to make a final decision on an assessment of selection factors and admissibility ([A34](#) to [A42](#)). This decision is separate from the CIO’s eligibility determination.*

### 7.4 Applications sent to an overseas office

Applications that have been received at CPP-O may be transferred to the visa office for further processing at any time in the process.

### 7.5 Concerns

#### 7.5.1 Pre-application counselling

It is not intended that officers will have contact with applicants or play the role of counsellor to prospective applicants prior to receiving the applications.

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### 7.5.2 Integrity concerns on language proficiency

The interview is **not** intended to be a means of evaluating language proficiency. Officers **cannot** change language eligibility from met to not met or make new language assessments themselves based on what they have discovered at the interview. However, if an applicant is interviewed for any other reason and significant discrepancies become evident between claimed and actual language proficiency, there may be an integrity issue. The following options are available to officers:

| If ...  | Then the officer will ...  |
|---|--|
| <ul style="list-style-type: none"><li>designated results have been submitted</li></ul>  | <ul style="list-style-type: none"><li>the officer will verify test scores and integrity of testing procedures for the case in question with the local testing agency.</li></ul>  |
| <ul style="list-style-type: none"><li>the officer is satisfied that there is no fraud or malfeasance in the testing procedures for the case in question</li></ul>   | <ul style="list-style-type: none"><li>accept the test score;</li></ul>   |
| <ul style="list-style-type: none"><li>the officer is not satisfied, but there is insufficient evidence to establish fraud or malfeasance in the testing procedures for the case in question and to substantiate a refusal for misrepresentation</li></ul> | <ul style="list-style-type: none"><li>inform the applicant of their concerns and, in coordination with the testing agency, provide an opportunity to take a second test at testing agency's expense and with visa office supervision.</li></ul>  |
| <ul style="list-style-type: none"><li>the officer is satisfied that there is sufficient evidence to establish fraud or malfeasance in the testing procedures for the case in question</li></ul>   | <ul style="list-style-type: none"><li>refuse the application for misrepresentation, given the discrepancy between the test scores and the actual language abilities, if the applicant refuses the third-party language testing option.</li></ul> |

### 7.5.3 Substituted evaluation

The MI make possible the substitution of an officer's evaluation for the requirements set forth in respect of an application for permanent residence in the Start Up Business Class.

If the requirements set forth in the MI, whether or not they are met, are not sufficient indicators of whether the foreign national will become economically established in Canada, an officer may substitute their evaluation for the requirements.

Substituted evaluation requires the concurrence of a second officer.

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Substituted evaluation is to be considered on a case-by-case basis. The scope of what an officer may consider as relevant cannot be limited by a prescribed list of factors in support of exercising their authority for substituted evaluation.

The frequency with which substituted evaluation authority is exercised, whether negative or positive, will depend on the merits of each individual case. The fact that an applicant “almost met” the requirements set forth for the Start Up Business Class is not, in itself, sufficient grounds to recommend the use of positive substituted evaluation.

For the sake of clarity, officers should employ the terms used in the legislation, such as “substituted evaluation” or “ability to become economically established in Canada.”

Substituted evaluation is not to be confused with **humanitarian and compassionate authority**, which enables the Minister or his/her delegates to grant permanent residence or an exemption from any applicable criteria or obligation of the Act if justified by humanitarian and compassionate considerations relating to the foreign national.

Federal Court case law indicates that if an applicant or their representative requests orally or in writing that the officer consider exercising their substituted evaluation powers in the applicant’s favour, officers must examine the circumstances. There is no requirement that an interview be conducted in cases when the applicant did not make a compelling case for substituted evaluation. If the officer does not consider substituted evaluation appropriate under the circumstances, they should clearly indicate this in the file notes and in the formal refusal letter, along with a brief summary of their reasons for refusing to consider positive substituted evaluation.

| <b>If an officer decides to use substituted evaluation when...</b>  | <b>Then the officer will...</b>   |
|---|---|
| the applicant <b>did meet</b> all the requirements to become a member of the Start Up Business Class (i.e., negative substituted evaluation)                    | <ul style="list-style-type: none"><li>• communicate their concerns to the applicant in writing and provide sufficient opportunity for the applicant to respond to those concerns, through correspondence/documentation</li><li>• obtain written concurrence from a designated officer; and</li><li>• provide reasons for the use of negative substituted evaluation in the formal refusal letter sent to the applicant.</li></ul> |
| the applicant <b>did not meet</b> any one or more of the requirements to become a member of the Start Up Business Class (i.e., positive substituted evaluation) | <ul style="list-style-type: none"><li>• obtain written concurrence from a designated officer; and</li><li>• add a note in GCMS providing reasons for the use of positive substituted evaluation.</li></ul>  |

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### Substituted Evaluation at the CIO

If an applicant has requested substituted evaluation, a CIO officer may consider such a request. If it is determined after an examination of the entire file by the officer that the use of substituted evaluation is not warranted, the application will be refused.

If the officer determines that the use of substituted evaluation is warranted, the CIO will transfer the entire application to the processing office for a final selection decision and admissibility processing.

**Note:** Substituted evaluation cannot be used to overcome the absence of a commitment from a designated entity (MI 12(2))

#### 7.5.4 Use of interviews

In accordance with principles of procedural fairness, any concerns that an officer may have regarding the accuracy or authenticity of information or documentation should be communicated to the applicant, whether these concerns are raised as the result of site visits, telephone checks, or through other means. Concerns can be communicated to the applicant in writing or at an interview.

Officers may choose to conduct interviews with applicants to:

- ensure that information or documentation submitted as part of the application is truthful and complete;
- detect and deter fraudulent information and documents;
- clarify specific information or details; or
- initiate a quality control exercise.

Offices other than the one responsible for application processing may be called upon to conduct interviews should the need arise. For example, applicants may be convoked for an interview at a non-processing office to accurately assess the applicant's eligibility or admissibility, including the need to interview family members as part of the application process.

#### 7.5.5 Detecting and deterring fraud

Interviews, site visits, and telephone checks have proven to be the most effective ways to detect and combat fraud. The information gained through interviews where fraud is detected will help officers to identify current trends and patterns, and refine their approach to fraud deterrence on an ongoing basis.

Offices will be expected to undertake both targeted and random verifications to detect and deter fraud. The volume and percentage of cases subject to verification should be high enough to act as a meaningful disincentive to those who would engage in fraudulent practices.

Pursuant to [A40](#), material misrepresentation is grounds for inadmissibility in its own right with a prescribed two-year period of inadmissibility for those who are, directly or indirectly, involved in such fraudulent practices.



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### 7.5.6 Integrity of documents received

Officers must carefully consider the integrity of all supporting documentation received by the applicant. It is expected that officers will investigate any suspicious documents or inconsistencies related to the submission. The use of third-party verifications should be leveraged where required.

### 7.5.7 Integrity of Commitment Certificate

Officers should expect that the information on the Letter of Support submitted by the applicant reflects the information submitted directly to CIC on the Commitment Certificate from the designated entity. It is expected that discrepancies identified by an officer will be followed up on and clarification will be sought either by requesting clarification from the applicant, the designated entity or by initiating a peer review before making a final decision on the application.

### 7.5.8 Peer review

A very important aspect of the Start Up Business Class pilot program is building in safeguards to protect the program against fraud. The peer review process is designed to ensure that the deals made between private sector partners and foreign entrepreneurs are legitimate. Peer review panels are part of the anti-fraud safeguards of the Start Up Business Class.

Officers must provide the panel with the Commitment Certificate, the term sheet and peer review form. The designated entity that made the commitment will provide the peer review panel with a copy of their due diligence package. The review panel will not second guess the business decision, but will review the documents provided by the officer and the investing entity to ensure that proper due diligence was performed by the designated entity. The review process takes place in two situations: random sampling and where the visa officer identifies red flags.

**Example:** Paul is a rice farmer with limited education. The Commitment Certificate on his file indicates that he will farm rice in Alberta. Paul has also indicated in his application that he intends to grow a new type of rice which has been engineered to grow in conditions similar to those which exist in Alberta. BioInno (a designated angel investor group) has agreed to fund Paul's project and has issued a Commitment Certificate. The officer is concerned that this could be a fraudulent case, and sends a peer review request to NACO. The peer review panel finds that Paul has registered a patent for the new rice seed in his home country and has successfully grown the rice in experimental trials. The panel is satisfied that there is sufficient evidence to show that BioInno has taken reasonable measures towards obtaining its objectives in the commitment. After reviewing other factors, the panel concludes that due diligence was done by the investing entity. The officer reviews the peer review results and continues with the file assessment.

Officers must complete a peer review request form and send it via secure email (Entrust) to the industry association named in the application.

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### Peer review results

Peer review findings will be returned to CIC using the same secured electronic format. The panel will review the file and will provide their advice to the officer. Officers must still assess the information and render a decision based on their own findings. Authority to make a final decision on the case rests with the officer.

#### Due diligence

This will include an assessment by the designated entity of some or all of the following:

- 1) Business plan: Was the business plan assessed? What is the business model? What is the value proposition? What are the sources (projected) of revenues?
- 2) Corporate documents: Were the corporate documents (including lists of shareholders and shareholder agreements) assessed?
- 3) Customers and suppliers: Were potential customers assessed? Was an overall sales, marketing and distribution strategy reviewed and assessed?
- 4) Material contracts: Were all material sales, distribution or marketing contracts to which the company is party or intends to be after financing assessed? Were any employment agreements with executive officers provided and assessed? Were all loan agreements with officers, directors or holders of more than 5% of the shares assessed?
- 5) Intellectual property: Were copies of all patents and applications pending assessed.
- 6) Financial information: Was due diligence completed on audited financial statements and notes; quarterly financial statements; capital budget for current and next fiscal year?
- 7) Corporate financing: Were all agreements relative to obligations from borrowed money assessed. Were copies of all binding agreements assessed?
- 8) Employees and benefit plans: Were all material employment and consulting agreements assessed. Were all stock options, bonus, retirement, profit-sharing, incentives and pension plan details assessed.

Other: Any other due diligence completed, or any explanation for why the above was not completed.

### **7.6 Making the admissibility decision**

Once the officer has rendered a positive decision on selection, the principal applicant and their family members, whether accompanying or not, must pass medical examinations, criminal and security checks.

For detailed information about determining admissibility, refer to [ENF 2 / OP 18 – Evaluating Inadmissibility](#) and [OP 1, Section 8](#) – Procedural fairness

If an essential person is found to be inadmissible and the application is refused following procedural fairness, all applications linked to the same business proposal must also be refused.

If the applicant meets selection criteria and is not otherwise inadmissible, the visa office will approve the application and proceed to issue the visa.

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### 7.7 Approving the application

If officers approve an applicant who is living outside of Canada, they should send the COPR and permanent resident visa (if applicable) to that address.

Officers should not issue a permanent resident visa to applicants whose passport was issued by the United States of America or a country identified in IRPA [190\(1\)\(a\)](#) or (b) or [190\(2\)\(b\)](#), (c), (d), (e) or (f), or [190\(2.1\)](#). Officers may still request to see the original passport if needed. Please see [OB 348](#) for more information.

All approved applicants should be directed to present their COPR and permanent resident visa (if applicable) to an officer at a Canadian port of entry [[R71.1\(1\)](#)].

Pursuant to [R71.1\(2\)](#), if officers approve an application from a temporary resident in Canada who is a member of a class referred to in [R70\(2\)\(a\)](#) or (b), they will:

- send their CORP and permanent resident visa (if applicable) to their address in Canada;
- inform the applicant that in order to become a permanent resident they have the option of presenting the COPR and permanent resident visa (if applicable) to an officer at a Canadian port of entry or contacting the Call Centre to request an appointment at a local CIC office, with their family members if applicable.

### 7.8 Refusing the application

All refused Start Up Business Class applicants, including those refused for non-compliance with processing requirements, must be sent or otherwise provided a formal refusal letter. The letter must:

- inform the applicant of the categories or circumstances under which the application was considered;
- fully inform the applicant why the application has been refused.

#### Refusal letter

The refusal letter must clearly state all the reasons for refusal in detail. Where information is later presented that should have been disclosed at interview and might have at that time led to a positive decision, the officer should invite the applicant (in the absence of special circumstances) to submit a new application and pay a new cost recovery fee.

*Note: The refusal letter should not indicate that the applicant has been made a member of an inadmissible class as a result of their failure to qualify in this class.*