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Follow-up Audit on the Temporary Foreign Worker Program

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1. BACKGROUND

1.1 Context

The Office of the Auditor General (OAG) conducted an audit on the Temporary Foreign Worker Program (TFWP) at Employment and Social Development Canada (ESDC) in 2017 and made some observations regarding the management of the program.

The OAG found that:

1. The Department implemented some measures to limit employer access to the program.
2. The Department did not do enough to ensure that employers hired temporary foreign workers only as a last resort.
3. The Department did not use all existing labour market information to determine whether Canadians could fill available positions.
4. The Department made limited use of its expanded powers to identify employers that did not comply with program requirements.
5. The Department did not measure the results of the program and its impact on the labour market.

While the OAG audit concluded that ESDC implemented measures that helped reduce the number of temporary foreign workers (TFWs), the auditors determined that the Department did not do enough to ensure that employers hired TFWs only as a last resort. The Department was found to rely largely on the information provided by employers to determine whether the need for TFWs was justified. ESDC developed a Management Action Plan (MAP) to address the ten OAG recommendations issued to the Department.

A commitment was made by the Department to the Public Accounts Committee to conduct an assessment of the implementation of the MAPs. A progress assessment on the implementation of the MAP responding to the OAG audit of the TFWP was undertaken by Internal Audit Services (IAS) to review progress by the Integrity Services Branch (ISB), the Program Operations Branch (POB), Skills and Employment Branch (SEB) and ESDC regions.



1.2 Audit Objectives

The objectives of the follow-up audit were to:

- Assess whether the actions included in the MAP related to the 2017 OAG Audit on the TFWP have been fully implemented; and
- Assess whether these actions mitigate the risks identified by OAG in its 2017 Audit on the TFWP.

1.3 Scope

The scope of this follow-up audit focused on the implementation progress and the effectiveness of the activities identified in the approved MAPs in addressing the 2017 OAG recommendations. The scope of the audit included the four quarters of 2018-19 and the first quarter of 2019-20.

The audit team conducted fieldwork and audit activities at National Headquarters within ISB, POB, SEB and at the regional offices.

A random sample of 175 Labour Market Impact Assessment (LMIA) applications and 56 inspections were selected from the following seven TFWP application types: High Wage, Low Wage, Primary Agriculture, Global Talent, Permanent Resident, Caregiver and Seasonal Agricultural Worker Program.

1.4 Methodology

This follow-up audit was conducted using a number of methodologies and techniques which have included (but are not limited to):

- Reviewing the implementation of the MAPs and supporting documentation;
- Documentation review and process observation analysis.
- Interviews were completed with Management and Staff in the National Headquarters within ISB, POB, SEB and in the regional offices.
- File reviews of 175 LMIA applications and 56 inspections were completed from the following seven TFWP application types: High Wage, Low Wage, Primary Agriculture, Global Talent, Permanent Resident, Caregiver and Seasonal Agricultural Worker Program.

2. MANAGEMENT ACTION PLAN ASSESSMENT

OAG recommendation 5.41: ESDC should review current policies, guidance, and processes to identify opportunities to strengthen the assessment of employers' recruitment efforts. The Department should ensure that TFWP officers can more fully verify the accuracy of employers' statements and that employers use the program only as a last resort. **Partially Implemented**

| Actions | Status | Internal Audit's Observations |
|--|---|--|
| <ol style="list-style-type: none"> 1. Review of current recruitment policies 2. Revise recruitment policies 3. Train POs in the regions 4. Develop and communicate directives on recruitment and advertising requirements 5. Develop and communicate Questions and Answers on changes to recruitment requirements | <ol style="list-style-type: none"> 1. Completed 2. Completed 3. Completed 4. All completed except for the Directive on working conditions 5. Completed | <ul style="list-style-type: none"> Recruitment policy revisions that became effective in August 2017 added requirements that employers must use three recruitment methods to advertise their jobs, one of which must be the National Job Bank. The Directive on Working Conditions is scheduled to be completed in 2020-21. The follow-up audit found that Program Officers (POs) use the National Job Bank and the Job Match service¹ to confirm that a job advertisement was posted for the required time, to verify the number of applications received. POs rely on the information submitted by the employer on the application. Apart from asking the employer, PROTECTED. |

OAG recommendation 5.44: ESDC should establish a quality assurance framework for the Temporary Foreign Worker Program. The framework should ensure that program officers' decisions relating to the application process are consistent with program requirements and that employers hire temporary foreign workers only as a last resort. **Implemented**

| Actions | Status | Internal Audit's Observations |
|--|--|---|
| <ol style="list-style-type: none"> 1. Launch quality assurance pilot 2. Evaluate quality assurance pilot results 3. Launch National Quality Monitoring Program (NQMP) | <ol style="list-style-type: none"> 1. Completed 2. Completed 3. Completed | <ul style="list-style-type: none"> The NQMP reviews the completeness and compliance of the LMIA assessments with the guidelines and the directives and the alignment of the assessments with the employer-provided information. The follow-up audit found that the NQMP review process required many calibration sessions across the regions and the National Headquarters to ensure national consistency in the review of LMIA assessments. The follow-up audit found that the fact that many calibration sessions took place is an indication that the application of guidelines and directives can be subjective due to their lack of clarity and that monitoring can vary between individuals and regions. The NQMP reviewed 1.8% of the LMIA applications processed during 2018-19. Considering LMIA applications processed are not subjected to supervisory review, in our |

¹ The Emploi-Québec website is used for the Québec region which has a different process in place.

opinion, the number of files reviewed is not sufficient to provide adequate feedback **PROTECTED**.

- Due to the increased number of applications received and the implementation issues related to the new LMIA processing system, a decision was made in November 2018 to streamline the program in order to focus on certain factors and to reduce the time required to complete a monitoring review. The follow-up audit found that the streamlining removed important elements to be monitored such as filling a labour shortage **PROTECTED** that should be included in the NQMP.

OAG recommendation 5.58: ESDC should ensure that TFWP officers have access to relevant Employment Insurance data and sufficient Record of Employment data for use in their assessments of employer applications for temporary foreign workers. **Partially Implemented**

| Actions | Status | Internal Audit's Observations |
|--|---|---|
| <ol style="list-style-type: none"> 1. Review and update current recruitment policies 2. Operationalize the updated policies 3. Develop policies to support the use of the new Recent Labour Market Assessment (RLMA) Tool, including Employment Information (EI) data 4. Implement the RLMA Tool | <ol style="list-style-type: none"> 1. Completed 2. Completed 3. Policy being drafted 4. Validation and deployment stage | <ul style="list-style-type: none"> • In March 2017, the Department updated the recruitment policies to allow POs to access RoEs issued by employers more than 90 days prior to the assessment date. • The Department also developed the RLMA tool which is an online platform tool that includes labour market information and EI data that POs and employers will have access to. There is a strategy to deploy the tool through a pilot in March 2020. Following the completion of the pilot, the Department is planning to implement the tool nationally. • As the RLMA tool has not been deployed yet, POs do not currently have access to a consistent source of all labour market information. As a result, the follow-up audit found that the LMIA assessments tested PROTECTED. • The follow-up audit found that POs do not have access to PROTECTED. |

OAG recommendation 5.62: ESDC should ensure that the additional labour market information on job vacancies and wages is available and used by the TFWP. The Department should also develop clear and detailed guidance for program officers on how to use the information in their assessments of employer applications for temporary foreign workers. **Partially Implemented**

| Actions | Status | Internal Audit's Observations |
|---|---|---|
| <ol style="list-style-type: none"> 1. Integrate Job Vacancy data into existing Labour Market Information (LMI) tools (Employment Outlooks posted on Job Bank) used by the TFWP 2. Integrate Wage Survey data into existing LMI tools (Prevailing Wages posted on Job Bank) used by the TFWP 3. Implement a new RLMA tool (that will integrate EI and other LMI data) to assist POs in assessing the existence of a labour shortage | <ol style="list-style-type: none"> 1. Completed 2. Completed 3. Validation and testing of RLMA tool is in final stages | <ul style="list-style-type: none"> • The Department provided POs with access to Job Vacancy data in the quarterly report on Labour Market Conditions in Canada (LMCC) and to wage survey data available within Job Bank. This data will be integrated in the RLMA tool which has not been deployed yet. • The follow-up audit found evidence that all of the LMIA assessments tested used prevailing wage data in their reviews. • There was no formal requirement in place to assess labour shortages using labour market information and to include such information in the assessment of applications during the audit period. However, it was noted that two regions are using provincial and federal data for the assessment of the |

| | | |
|---|---|---|
| 4. Implement updated guidance in support of the RLMA tool for POs | 4. The Operational guidance is pending the pilot of the RLMA tool | LMIA's. As a result, the follow-up audit did not find a national consistent use of labour market information to assess labour shortages. <ul style="list-style-type: none"> The operational guidance is pending the pilot of the RLMA tool. |
|---|---|---|

OAG recommendation 5.71: ESDC should develop and implement a comprehensive risk-based framework to identify enforcement activities for all categories of temporary foreign workers. The framework should include investigating specific sectors where higher levels of risk may exist.

Implemented

| Action | Status | Internal Audit's Observation |
|---|--------------|--|
| 1. Implement a comprehensive risk-based model for inspection activities | 1. Completed | <ul style="list-style-type: none"> The Department developed and implemented a comprehensive risk-based model for all streams of the TFWP in April 2017 for its compliance activities². Compared to the previous random selection tool, the model helps better identify high risk areas and focuses inspection efforts to increase the likelihood of detecting non-compliance. The Department also continues to use tips and allegations collected through the tip line, its online portal or through other means to identify high risk areas. |

OAG recommendation 5.75: ESDC should ensure that its investigators have access to and use Record of Employment and Employment Insurance information that could be pertinent to their investigations.

Partially Implemented

| Actions | Status | Internal Audit's Observations |
|---|--|---|
| 1. Expand availability of ROE data 2. Expand use of EI data and employer data (other than ROE) | 1. Completed 2. EI data is being integrated in the predictive model | <ul style="list-style-type: none"> PROTECTED. The audit team was informed by Management that inspectors use RoE information if it is relevant to their inspections when access is available. However, the follow-up audit found that none of the inspections tested in the audit sample used RoE information. The Department indicated that the use of RoE information for inspections will be improved. In addition to ROE data, the follow-up audit found that the program policy allows access to the PROTECTED. |

OAG recommendation 5.76: ESDC should work with provinces and territories to develop and finalize information-sharing agreements (ISA) and use the information obtained to inform its enforcement activities.

Implemented

| Actions | Status | Internal Audit's Observations |
|---|------------------------------|---|
| 1. Develop engagement plan 2. Compile provinces and territories stakeholder feedback | 1. Completed 2. Completed | <ul style="list-style-type: none"> Since the Department finalized its engagement plan in April 2017 to negotiate ISAs with all provinces and territories, updated ISAs were signed with Ontario, Alberta and Saskatchewan. |

² The Department does not have a mandate for enforcement activities related to the TFWP; the mandate is for compliance activities only. The OAG recommendation should have stated compliance activities instead of enforcement activities.

- The follow-up audit found that the Department made progress on ISAs with some provinces that were willing and had resources to negotiate. The Department has put an engagement plan in place for the other provinces and territories that had competing priorities, lacked interest or resources to engage in negotiations.
- However, the follow-up audit noted that the Department lacks useful data, without ISAs for all provinces and territories in place, **PROTECTED** that could help with compliance activities and the administration of the TFWP.

OAG recommendation 5.83: ESDC should use its expanded powers to increase the scope of its inspections by ensuring that all the relevant conditions are covered. It should also conduct more on-site inspections and explore the option of conducting some without notice, to further enhance its ability to detect non-compliance. **Implemented**

| Actions | Status | Internal Audit's Observations |
|---|--|---|
| <ol style="list-style-type: none"> 1. Update appropriate procedures to clarify when an onsite inspection is required 2. Complete the risks and benefits assessment and, if appropriate, revise inspector guidelines and protocols and launch the implementation of new unannounced onsite inspections | <ol style="list-style-type: none"> 1. Completed 2. Completed | <ul style="list-style-type: none"> • The Department informed employers of its expanded powers and implemented unannounced onsite inspections with updated guidance and training for inspectors. • The follow-up audit found that 41% of the inspections tested within the audit sample resulted in a non-compliant decision with a warning, temporary banning or monetary penalty. • Following the 2017 OAG audit, the Department expanded the scope of its inspections. The follow-up audit however found that the sample of inspections tested did not cover all program requirements. PROTECTED. |

OAG recommendation 5.87: ESDC should explore options to streamline and speed up its process of approving findings that identify employers as non-compliant. **Implemented**

| Action | Status | Internal Audit's Observations |
|---|--|---|
| <ol style="list-style-type: none"> 1. Implement new national process | <ol style="list-style-type: none"> 1. Completed | <ul style="list-style-type: none"> • The new national process was implemented in August 2017 and consisted of changes to the departmental Delegation of Authorities for the TFWP including the transfer of the approval of non-compliance findings from the Minister to the Assistant Deputy Minister of Integrity Services Branch. • The follow-up audit found that the changes made to the Delegations of Authority did not achieve the intended result for more timely inspection decisions as: <ul style="list-style-type: none"> ○ 98% of the inspections tested in the audit sample exceeded the timeframe target outlined in the Integrity Operations Manual; which is currently under |

review to better reflect the current inspection process and timelines.

- The paper-based inspections tested took an average of 674 days and the on-site visit inspections tested took an average of 376 days to complete.
- The Department indicated that a comprehensive review exercise is underway to reduce the duration of inspections and to better reflect the inspection timeframes.

OAG recommendation 5.99: ESDC should finalize and implement its performance measurement strategy. It should conduct analyses to determine the TFWP's impact on the labour market. **Implemented**

| Actions | Status | Internal Audit's Observations |
|--|--------------|---|
| 1. Develop Performance Information Profile (PIP) | 1. Completed | <ul style="list-style-type: none"> • The Department commenced a program evaluation in November 2017 as well as data collection and analysis against the indicators in the summer of 2019. |
| 2. Commence program evaluation | 2. Completed | <ul style="list-style-type: none"> • As part of the performance measurement strategy, the Department developed a PIP that includes 23 performance indicators that the follow-up audit found are primarily operational in nature. |
| 3. Collect performance data and analyze results | 3. Completed | <ul style="list-style-type: none"> • The Department has engaged data experts to review labour market information in an effort to develop its knowledge of the TFWP's unintended consequences and better align the performance indicators with program objectives of facilitating economic growth by providing employers with TFWs on a temporary basis when Canadians or Permanent Residents are not available and ensuring that TFWs are protected. |

3. CONCLUSION

The audit concluded that the actions included in the Department's MAP related to the 2017 OAG Audit on the TFWP have been implemented for six of the ten recommendations. Actions for the remaining four recommendations have been partially implemented as access to labour market information, assessment tools and the TFWP program evaluation are not complete.

Notwithstanding the MAP implementation progress, risks remain related to the operating effectiveness of many actions to implement an evidence-based assessment of employer-provided information and consideration of labour market information in LMIA decisions.

4. STATEMENT OF ASSURANCE

In our professional judgement, sufficient and appropriate audit procedures were performed, and evidence gathered to support the accuracy of the conclusions reached and contained in this report. The conclusions were based on observations and analyses at the time of our audit. The conclusions are applicable only for the Follow-up Audit on the TFWP. The evidence was gathered in accordance with the Treasury Board *Policy on Internal Audit* and the *International Standards for the Professional Practice of Internal Auditing*.

APPENDIX A: GLOSSARY

| | |
|------|--|
| EI | Employment Insurance |
| ESDC | Employment and Social Development Canada |
| IAS | Internal Audit Services |
| ISA | Information Sharing Agreement |
| ISB | Integrity Services Branch |
| LMCC | Labour Market Conditions in Canada |
| LMI | Labour Market Information |
| LMIA | Labour Market Impact Assessment |
| MAP | Management Action Plan |
| NQMP | National Quality Monitoring Program |
| OAG | Office of the Auditor General |
| PIP | Performance Information Profile |
| PO | Program Officer |
| POB | Program Operations Branch |
| RLMA | Recent Labour Market Assessment |
| RoE | Record of Employment |
| SEB | Skills and Employment Branch |
| TFW | Temporary Foreign Worker |
| TFWP | Temporary Foreign Worker Program |