

Minister of Employment,
Workforce Development
and Labour



Ministre de l'Emploi,
du Développement de la main-d'œuvre
et du Travail

Ottawa, Canada K1A 0J9

The Honourable Kevin Sorenson, M.P.
Chair, Standing Committee on Public Accounts
House of Commons
Ottawa, Ontario
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Dear Mr. Sorenson:

Pursuant to Standing Order 109 of the House of Commons, I am pleased to respond on behalf of the Government of Canada to the recommendations made by the Standing Committee of Public Accounts in its report entitled *Report 5, Temporary Foreign Worker Program, of the Spring 2017 Reports of the Auditor General of Canada*, tabled in the House of Commons on December 13th, 2017.

The Government of Canada thanks the members of the Standing Committee for their report and providing recommendations to report on progress that has been made to date and next steps to improve the management and delivery of the Temporary Foreign Worker Program, in particular in the review of employers' applications for Labour Market Impact Assessments, and inspections to make sure employers that hired temporary foreign workers comply with the program requirements, and that foreign workers' rights are protected.

The Government is committed to continuing to make progress on the Auditor General's 2017 recommendations. The enclosed response addresses recommendations one through eleven, reporting on the progress the Department has made in implementing the recommendations of the Auditor General, from ensuring that Canadian citizens and permanent residents are always first in line for available jobs, to inspections and employer compliance after TFWs are working in Canada, as well as a suite of recent measures to enhance worker protections. It also outlines the steps taken to strengthen the way it measures the performance of the Program and the Department's commitment to continue to examine the Program's impacts on wages and the labour market.

In the presentation to the Standing Committee on October 31, 2017, the Department committed to launching a follow-up internal audit in October 2019 to confirm the Department's progress in addressing the recommendations within the timeframes detailed in ESDC's Management Action Plan to the 2017 Report of the Auditor General of Canada. The Department also commits to reporting on Recommendation twelve pertaining to the Program's effects on wages and the labour market within 120 days of completing the 2018 Program evaluation, as stipulated in the Standing Committee's report. The evaluation will be commencing this year, and is likely to conclude in 2020. These reports will provide opportunities to update the Committee on progress made since the tabling of this Response. In addition, any public announcements of new program initiatives will, where relevant, reference how they address the Auditor General's and the Public Accounts Committee's recommendations.

Canada 

The Temporary Foreign Worker Program plays an important role in supporting a strong Canadian economy by helping employers fill genuine labour requirements while ensuring that Canadian citizens and permanent residents have the first opportunity to apply for available jobs and that the rights of foreign workers are protected.

Yours sincerely,

The Honourable Patricia A. Hajdu, P.C., M.P.
Minister of Employment, Workforce Development and Labour

Introduction

The Temporary Foreign Worker (TFW) Program

The TFW Program is designed to facilitate economic growth by responding to labour market needs, while ensuring Canadian citizens and permanent residents are considered first for the available jobs. It is established through the *Immigration and Refugee Protection Act* and Regulations and is administered by Employment and Social Development Canada (ESDC), Immigration, Refugees and Citizenship Canada (IRCC) and the Canada Border Services Agency (CBSA). Specifically, ESDC reviews and approves employers' applications for Labour Market Impact Assessments (LMIA) and ensures employer compliance; IRCC issues work permits to TFWs; and CBSA provides the permits to TFWs when they present themselves at a Canadian border and carries out major investigations of non-compliance.

The 2017 Auditor General of Canada's Report of the Temporary Foreign Worker Program

Report 5, Temporary Foreign Worker Program – Employment and Social Development, of the 2017 Spring Reports of the Auditor General of Canada, examined the management of the TFW Program between June 2014 and June 2016. The Auditor General found that overall, the Department had implemented measures that helped reduce the number of TFWs that it approved. However it concluded that both the review of employers' applications to the Program and inspections to make sure that employers complied with program requirements were insufficient. The Auditor General's report made ten recommendations to improve the management of the Program.

The Department's Management Response to the 2017 Report of the Auditor General of Canada on the TFW Program agreed with the audit's findings, and described measures that it was taking in response to the recommendations.

Responding to the Standing Committee on Public Accounts

Following the tabling of the Spring 2017 Reports from the Auditor General of Canada, the Public Accounts Committee ('the Committee') began a study of *Report 5, Temporary Foreign Worker Program*. Building on the findings of the Auditor General, it outlined twelve recommendations to report on progress made on: 1) hiring TFWs as a last resort; 2) leveraging existing labour market information and ensuring consistency in decision-making, 3) using expanded inspection powers, and 4) measuring results of the TFW Program and its effects on the labour market.

The Government of Canada is pleased to respond to the Committee's thirty-fifth report entitled *Report 5, Temporary Foreign Worker Program, of the 2017 Spring Reports of the Auditor General of Canada*, which was presented to the House of Commons on December 13, 2017.

Given the close interrelation between some of the Committee's recommendations, the responses are grouped thematically, outlining progress made in response to the Auditor General's and the Committee's recommendations. These themes include ensuring that Canadian citizens and permanent residents are considered for available jobs before hiring a TFW (recommendations one to five); strengthening inspection activities once TFWs are working in Canada (recommendations six through ten); as well as enhancing worker protections. The Response also

describes the progress made to improve the way the Department measures the performance of the Program and the plan to begin its evaluation this year (2018) and once completed, report on the Program's impacts on wages and the labour market (recommendations eleven and twelve).

A. ENSURING THAT CANADIAN CITIZENS AND PERMANENT RESIDENTS HAVE THE FIRST OPPORTUNITY TO APPLY FOR AVAILABLE JOBS (recommendations one and two)

The TFW Program's design includes a number of features to ensure that employers consider Canadians first and that the Program is only used when Canadian citizens and permanent residents are not available to work, including :

- A requirement that employers demonstrate that they have advertised to Canadians and permanent residents through a minimum of three distinct recruitment efforts for at least four weeks, before applying to ESDC for an LMIA.
- A limit on the proportion of low-wage TFWs that an employer can have at a given worksite (a 20% cap for employers who used the Program prior to 2014, and a 10% cap for those who began using it after the Program's 2014 reforms);
- A Refusal to Process policy for applications in certain lower-skilled/low-wage occupations in the Accommodation and Food Services and Retail Trade sectors in regions where unemployment is six percent (6%) or higher; and
- A requirement that employers of high-wage TFWs develop a Transition Plan outlining activities they will undertake to transition to a domestic workforce, for example hiring or training Canadians or permanent residents, or supporting TFWs to become permanent residents.

In addition, the Department has recently implemented further steps to ensure that Canadian citizens and permanent residents have the first opportunity to apply for available jobs.

1. Recruitment from underrepresented groups in the Canadian Labour Market

In response to the Auditor General's recommendations, an enhanced policy on recruitment efforts was put in place in August 2017 to further ensure Canadian citizens and permanent residents are considered first for available jobs. Employers seeking to hire TFWs in low-wage occupations (with some exceptions) must now demonstrate that they have made efforts to recruit from two or more underrepresented groups that face barriers to employment (i.e., Indigenous people, vulnerable youth, persons with disabilities, and newcomers) before they can apply to the Program's Low-Wage Stream. Previously, employers were required to recruit from a single underrepresented group. ESDC has improved operational guidance to support officers in the consistent implementation of the revised recruitment policy, including step by step procedures on what the officer should assess based on the information provided by the employer.

The Department has also provided national and regional resources on Canada's Job Bank website to support employer recruitment from underrepresented groups. Employers are encouraged to recruit workers from local or provincial/territorial employment centres, and service centres targeting the four groups. They are also encouraged to offer bursaries to attract youth, pursue specific recruitment strategies (e.g. job boards targeting these groups), or undertake ongoing advertising and interviews in order to maintain a pre-screened applicant pool.

If employers fail to satisfy the recruitment requirements, their LMIA is likely to be negative. A number of factors are considered during the assessment process, including labour market information for the region and occupation, transfer of skills and knowledge, job creation, prevailing wage, labour disputes, and whether an employer has made reasonable efforts to fulfill previous commitments to transition to a domestic workforce.

2. Recruitment Using Job Bank and the Job Match Alert Service

As of August 2017, employers (with some exceptions) seeking access to the High-Wage and Low-Wage Streams of the TFW Program are required to advertise on Canada's Job Bank and subscribe to the Job Match alert service for at least four consecutive weeks (30 days) as part of their advertising requirements. Job Match allows employers to see the profiles of registered Canadian job seekers who correspond to the skills requirements outlined in their job posting.

As of December 2017, EI applicants who provide an email address in the Appliweb system are automatically sent an email to subscribe to Job Alerts. Over 47,000 Job Alerts enrollments were made in the first month AppliWeb was put in place.

All of the employer efforts are verified by Service Canada during the LMIA process. Officers have been provided with access and training on the Job Match tool, including accessing employer reports, which enable them to verify the recruitment actions taken by the employer to invite Canadians to apply to their job opportunities. Officers are authorized to challenge employer statements and request additional documentation to verify the veracity or accuracy of information provided to the Department. If an officer determines that there is inaccurate information in the employer statement, they will contact the employer asking for clarification. If the employer's response is acceptable, the officer will proceed with the remainder of their assessment. If the employer's response is unsatisfactory, it may result in a negative decision.

3. Testing New Approaches through the Canada-Alberta Labour Market Pilot Project

In April 2017, in response to the downturn in the Alberta economy, ESDC and the Government of Alberta launched a two-year pilot project that built on the existing Refusal to Process policy, to support employers in hiring unemployed Albertans in occupations where adequate local labour exists. A key feature of the Alberta pilot is a refusal to process LMIA's for certain high-wage occupations that show a sufficient supply of workers in the province. The list of high-wage occupations is developed jointly by Alberta Labour and ESDC based on several labour market indicators, including EI claimants, unemployment, and job vacancies information.

As part of the Alberta Pilot Project, any employer who is affected by the Refusal to Process directive in high-wage positions is referred by Service Canada to Alberta Labour for support and guidance to help them find local workers, including unemployed Albertans and workers from underrepresented groups.

4. Assessing Labour Market Benefits through the Global Talent Stream

The Global Talent Stream was launched in June 2017 as part of Canada's Global Skills Strategy. It provides firms with access to highly specialized global talent that allows them to continue to grow and thrive to the benefit of the Canadian labour market. Employers looking to hire skilled workers through the Global Talent Stream for the first time are required to develop a Labour Market Benefits Plan (LMBP) that outlines the employer's commitments to achieve measurable

benefits for the broader Canadian labour market. Depending on whether the employer is in Category A (referred by a designated partner) or Category B (seeking unique and specialized skills), their LMBP will include: job creation or increasing investments in skills and training, and could also include activities to transfer knowledge to Canadians and permanent residents; enhance company performance; create best company practices or policies, or increase workforce diversity. Progress reviews are conducted every six months to assess how well employers are meeting the commitments in the Plan.

B. ENSURING INFORMED AND CONSISTENT DECISION-MAKING (recommendations three to five)

The TFW Program uses labour market information to guide program decisions in the following ways:

- As mentioned above, officers review the unemployment rate for the region, and may refuse to process an LMIA if the employer is seeking to hire a TFW in certain lower-skilled/low-wage occupations in a region with over six percent unemployment; and
- Officers review past Record of Employment (RoE) data to ensure that employers are not laying off Canadian workers and replacing them with foreign workers.

In response to the Auditor General's Spring 2017 audit report, additional progress has been made to improve the use of labour market information.

1. Testing the Use of New Labour Market Indicators through the Alberta Pilot

As described above, ESDC and the Government of Alberta developed a list of high-wage occupations based on a number of indicators, including the number of EI claimants in the province over a given period. This list is subject to the 'Refusal to Process' policy. The list is updated bi-annually and also considers other labour market indicators incorporating information from the Labour Force Survey (e.g. unemployment rate, ratio of EI beneficiaries to employment).

Finally, with respect to the Refusal to Process policy in certain low-wage occupations for the Alberta pilot project, the rate of unemployment is calculated based on a 12-month moving average that is monitored and updated quarterly, instead of annually. This allows the TFW Program to be more responsive to supply and demand fluctuations in the province.

2. Extending Access to past Records of Employment (ROE) Data

In April 2017, the Department increased its access to information about employer layoffs and provided officers with instructions on how to verify past RoE data for all employers for a minimum of 12 months rather than 90 days to ensure that employers are not laying off Canadian workers and replacing them with foreign workers. In addition, subject to data availability, officers can use their discretionary authority to go as far back as they deem necessary to check past RoE issuance and to validate the assessment of this element. To support officers and ensure a systematic and consistent approach to assessments there continues to be direct system integration between the Foreign Worker System and the RoE System.

3. Developing a New LMI Tool

Work is also underway to create a tool for Program officers to ensure a more consistent and

comprehensive use of labour market information for assessing LMIA's. Indicators being explored for the tool include data on shortages and surpluses by occupation and region to assess local labour markets; EI data; and job vacancy and wage survey data. The information will also be combined to provide an overall assessment of the labour market conditions of any occupation across economic regions of interest to a TFW Program officer. The tool is expected to be available for use by Fall 2018. All TFW Program officers will attend training sessions on how to use the new LMI tool and a user guide will be developed to support ongoing TFW Program operations.

4. Initiating New Quality Assurance Measures

The Department launched a TFW Program quality assurance (QA) pilot program in the spring of 2017 to achieve national consistency in the processing of LMIA's. Based on the outcomes of the pilot, the Department developed the National Quality Monitoring (QM) Program.

The National Quality Monitoring Program is expected to achieve the following objectives that will be tracked and measured:

- National consistency in the assessment of LMIA's;
- Strengthening of best practices in the processing of LMIA's;
- Identifying policy gaps and clarifying operational guidance;
- Identifying training needs and the development of the TFW Program training curriculum; and
- Providing performance information to support coaching and timely feedback.

An assessment of progress against the objectives will be done on a quarterly basis in order to determine whether any adjustments need to be made to the QM Framework. Data gathered will also ensure timely revisions are made to functional direction regarding training and performance management.

C. STRENGTHENING THE TFW PROGRAM COMPLIANCE REGIME (recommendations six to ten)

ESDC recognizes the importance of ensuring program integrity and further to the Auditor General's recommendations, it continues to strengthen its compliance regime to help protect TFWs from abuse and exploitation, as well as taking action with respect to employer compliance with program rules.

1. Leveraging Departmental information for efficient compliance activities Implementing a Risk-based Model for Compliance Activities

To better target resources and efforts for inspections, the Department implemented a risk-based model as part of the Path Forward in April 2017 to identify high risk employers. As of December 31st, 2017 roughly 1,600 employers were selected for inspection using this new risk-based model. The Department will do an analysis of the preliminary results in July 2018 to assess the effectiveness of the approach.

Using EI and RoE data to Support Compliance Activities

ESDC considers it a priority to improve information sharing between departmental programs so integrity officers have access to relevant EI and employer data that could be pertinent to their

inspections. As of April 2017, the Department increased its access to information about employer layoffs, and integrity officers have been provided with instruction on how to verify past RoE data. Integrity officers can now utilize this additional information to verify potential issues of employer compliance with program conditions.

Work on the access to and expanded use of EI data beyond RoE data is also proceeding, and access to relevant EI data has been established for integrity officers. Guidance and tools are being developed in order to provide integrity officers with detailed instructions on how this data could be used including any limitations in the context of a TFW Program inspection. The Department is on track to have this implemented by March 31st, 2018.

Information-Sharing Agreements (ISAs)

ESDC works closely with IRCC, the CBSA and the provinces and territories to better monitor, track and share information that has an impact on the integrity of the TFW Program, especially issues of fraud and non-compliance with program requirements. ESDC has improved mechanisms to assess applications for an LMIA and the genuineness of the employer, and to review employer compliance once an assessment has been issued. As information on provincial and territorial employment standards and health/safety investigations is pivotal to the overall administration of the TFW Program, the Department developed an engagement plan for the negotiation of bilateral ISAs, starting with the provinces and territories identified as having the highest volume of TFWs. Updated agreements with Ontario and Alberta are already in place and the Department is revising existing agreements with British Columbia, Saskatchewan and Manitoba, as it continues to develop the mechanisms to safely exchange relevant data between Federal and Provincial/Territorial governments.

2. Ensuring full use of inspection authorities, and improving decision-making efficiency

In cases where the Department has received tips and/or allegations with respect to employer non-compliance, this information is carefully reviewed, and all relevant conditions, such as efforts made to provide a workplace free of abuse are identified by national headquarters and then transmitted to the regions for an inspection to be completed.

The Department has significantly increased the number of on-site inspections for fiscal year 2017-18. As of December 31, 2017, there were over 1340 on-site inspections in various stages of completion, over seven times the number of on-site inspections for the same period in 2016-17. The on-site inspections are focused primarily but not exclusively in sectors where TFWs are believed to be the most vulnerable in order to enhance the detection of situations where workers' rights are not being respected.

The Department realigned resources and accelerated its efforts in order to complete the analysis of the risks and benefits of conducting unannounced inspections well in advance of its original response to the Auditor General. Over the past several months the Department has undertaken a best practices review and developed and tested operational models to conduct unannounced on-site inspections. The Department is currently assessing the path forward.

The Department has also undertaken efforts to streamline decision-making and improve timeliness for integrity activity decisions. After a review of integrity business processes and practices, a revised process was mapped out for the approval of non-compliant decisions. The

Departmental Delegation of Authorities for the TFW Program was amended in August 2017. These changes include:

- Integrity officers in the regions being able to recommend the suspension of approved LMIA's when there is reason to suspect non-compliance, and to lift those suspensions, as well as issue corrections or cancellations of Notices of Preliminary Findings;
- Decisions on TFW Program non-compliance being made by the Assistant Deputy Minister of Integrity Services Branch, National Headquarters.

Between August 2017, when the changes were implemented and December 31, 2017, the number of employers found non-compliant rose from one to 27. As per regulatory requirements, the employers' names have been posted on a publicly available web page managed by IRCC. It is worth noting that the number has risen since August 2017 not because there is a growing number of non-compliant employers but as a result of the streamlined processes and improved timelines for integrity activities noted above.

3. Implementing Other Measures to Improve Worker Protections

In addition to the measures described above, the Department has taken steps to further enhance the protections available to TFWs including:

- providing a grant of more than \$93,000 to the Migrant Workers' Dignity Association (MWDA) in BC to help migrant workers become better informed about their rights. The grant will be used to develop workshops and materials aimed at informing migrant workers on topics such as their right to housing, health care insurance, accessing special benefits, etc.;
- providing key information directly to TFWs about their rights in Canada when they apply for their social insurance number;
- developing a webpage that will facilitate access to information on TFW rights and protections;
- establishing an ongoing consultation mechanism to ensure improved communication with employers, unions, community partner organizations representing TFWs, provinces and territories and consulate liaison officers on issues related to worker protections; and
- implementing a more robust housing assessment regime for employers wishing to hire TFWs in Primary Agriculture as of Jan 1, 2018.

D. IMPROVING THE WAY THE DEPARTMENT MEASURES PERFORMANCE OF THE TFW PROGRAM AND ITS POTENTIAL EFFECTS ON WAGES AND THE LABOUR MARKET (recommendations 11 and 12)

1. Strengthening the Performance Measurement Strategy

The TFW Program has established a strong performance measurement strategy in its Performance Information Profile (PIP), which was launched in August 2017 to align with the recommendations of the Auditor General and with the Path Forward Plan. Employer compliance with the requirements of the Program is closely monitored, measured by the number of employers to undergo a compliance review or inspection. The Program also collects and reports on administrative data that show the use of the Program over time (eight years) through the Treasury Board Open Data portal. These statistics include annual and quarterly data on the

number of TFW positions on positive LMIA by province/territory, occupation, industry sector and skill level.

2. Assessing the Impact on Wages and the Labour Market

ESDC is committed to continuing to examine the labour market impacts of the Program and will draw on internal and external expertise to address data gaps and explore approaches to better understand the impacts on wages. Accordingly, the Department has initiated a program evaluation to be launched in mid-2018 covering the period from 2011 to 2017. Results of the evaluation are expected in early 2020 and will support in assessing impacts of the Program on wages and the labour market. As requested by the Public Accounts Committee, ESDC will report on the Program's potential effects on wages and labour markets in Canada 120 days after the completion of the evaluation.

ESDC is committed to continuing to make progress on the Committee's recommendations. In doing so, the Program will continue to play an important role in supporting an innovative and inclusive Canadian economy by helping employers fill genuine labour needs when Canadians and permanent residents are not available, and by ensuring that the rights of foreign workers are protected.