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Evaluation of the Wage Earner Protection Program

Final Report
March 2014

Evaluation of the Wage Earner Protection Program

Final Report

***Evaluation Directorate
Strategic Policy and Research Branch
Employment and Social Development Canada***

March 2014

SP-000-03-14E
(Également disponible en français)

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PDF

Cat. No.: Em20-9/2014E-PDF

ISBN: 978-1-100-23745-9

ESDC

Cat. No.: SP-000-03-14E

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List of Acronyms

| | |
|---------------------|--|
| <i>EI</i> | Employment Insurance |
| <i>ESDC</i> | Employment and Social Development Canada |
| <i>TIF</i> | Trustee/Receiver Information Form |
| <i>WEPPA</i> | Wage Earner Protection Program Act |
| <i>WEPP</i> | Wage Earner Protection Program |

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Executive Summary

This report presents the findings of an evaluation undertaken to assess the relevance and performance of the Wage Earner Protection Program (WEPP) delivered by the Labour Program of Employment and Social Development Canada (ESDC). The evaluation covered program delivery during the period between July 8, 2008 and March 31, 2011.

The Wage Earner Protection Program

In WEPP came into effect on July 7, 2008, along with changes to the *Bankruptcy and Insolvency Act* (BIA), to protect the financial security of workers who lose their job and are owed wages and/ or vacation pay when their employer goes bankrupt or becomes subject to a receivership under the BIA.

The changes made to the BIA gave a priority status to payment of wages owed to each employee in bankruptcy and receivership proceedings, up to a maximum amount of \$2,000. Despite this priority, many workers remained at financial risk because they had to wait for lengthy bankruptcy proceedings to conclude before receiving payment, there was no guarantee that there would be sufficient funds left in the bankrupt estate to pay their wages, and many were owed more than the \$2000 maximum priority amount.

The WEPP addressed gaps in the protection of bankrupt employers by ensuring that workers were paid for priority amounts owed, expediting payment to the workers, and increasing the amount of unpaid wages workers could recover up to the WEPP maximum payment, which is indexed yearly for inflation, and equal to four times the maximum weekly EI insurable earnings (currently \$3,646.16 for 2013).

The WEPP functions by advancing payment of amounts owed to each worker, and then assumes the place, and the risk, of the worker in the lengthy bankruptcy proceedings. Where possible, the WEPP recovers the amounts advanced to workers from the employer's bankrupt estate.

Budget 2009 expanded the definition of eligible wages under the program to include termination and severance pay owed to eligible employees, up to a cap of four weeks maximum insurable earnings under the Employment Insurance Act. Budget 2011 announced more protection for workers by extending the WEPP to also cover employees who lose their jobs when their employer's attempt at restructuring takes longer than six months, is subsequently unsuccessful and ends in bankruptcy or receivership. These changes fell largely outside of the reference period for this evaluation and therefore were not reflected in the evaluation findings.

In addition to the Labour Program of ESDC, various stakeholders assist in administering, managing and delivering the program, including ESDC's Service Canada, trustees and receivers, the Canadian Association of Insolvency and Restructuring Professionals, Canada Revenue Agency, and Industry Canada and the Office of the Superintendent of Bankruptcy.

Evaluation Scope and Methodology

The evaluation covered the period from program inception in 2008 to March 31, 2011. Multiple lines of evidence were employed, including the following methods:

- Document Review
- Key Informant Interviews
- Administrative Data Analysis
- Administrative Data Analysis of Secondary Data (a Client Satisfaction Survey from 2010)
- Trustee and Receiver Consultations
- Surveys

Strengths and Limitations of the Methodology

The primary strength of the evaluation methodology was the use of multiple lines of inquiry to provide greater confidence in the main findings. In addition, the ability of the evaluation to draw on a wide range of data provided a rich source of information for profiling the program and the participants without sampling biases that are often associated with surveys.

The primary limitations were low survey response rates and limited data available to assess the incremental impacts of the program.¹ Additionally, the program was a relatively new program during the reference period for the evaluation and several significant changes were introduced during or after the evaluation timeframe that might have altered some of the findings had these changes been in place throughout the reference period.

¹ Incremental impacts are those outcomes of the program that are attributable to the program itself and not to other factors.

Findings of the Evaluation

Relevance of the Program

Overall, the evaluation found that there is an ongoing need for the type of benefits offered under WEPP and that the program aligned with federal government priorities and the strategic objectives of the Labour Program.

Despite the complexity of the program delivery model, there was no evidence of duplication among the activities of partners in the program delivery.

Program Performance

The evaluation examined performance of the program related in particular to the following aspects of the program: awareness and reach, program delivery, communication and access to information, program outcomes, unintended impacts of the program and program costs, efficiency and coordination.

Program Awareness and Reach

The evaluation found that the awareness of the program and the take-up among eligible individuals were relatively high. Since trustees and receivers have a legislated responsibility to inform potential applicants about WEPP, there is nearly complete coverage of the targeted population.

Opinions were divided on the adequacy and accessibility of the information available to potential program participants. Some key informants believed that program information was readily accessible and adequate both on the internet and in print. Others did not feel that there was adequate or accessible information, indicating that the reliance on trustees and receivers was misplaced. Information on the program was identified as an issue by many of the trustees and receivers, who indicated that potential participants often did not understand the forms or what to expect in terms of refunds.

The applicants, however, did not share these concerns, as a large majority found it easy or very easy to obtain the information they needed from Service Canada and almost all of the participants indicated that the quality of the information was good or very good.

WEPP reaches almost all of the intended population and has high participation rates. The estimated take-up rate among eligible workers was 88%. However, key informants indicated that because the WEPPA was not intended to cover all types of insolvencies, the program did not reach employees who lose their job in situations where an official bankruptcy or receivership was not declared and where delayed bankruptcies exceeded the six month WEPP timeframe. It is noted that these are not intended beneficiaries of the program given the program mandate.

Program Delivery

Annual numbers of applicants for WEPP have been relatively high, reaching over 18,000 in 2009-2010. Nine out of ten WEPP applicants received a payment, despite a relatively high proportion (over one quarter) that were initially refused. Only one in ten of the applications had *rejected as* the final claim status.

The majority of the trustees and receivers provided information for the Service Canada database within two months (on average 1.4 months) after bankruptcy or receivership of the company. Only 9% of the applications took longer than three months to create a record, meaning that a large majority of the records had been entered within the deadlines established by WEPP (45 days from the date of the bankruptcy or the date the receiver was appointed).

The approval processing time had improved over time and was close to meeting the targets established by program management. The majority of applications reached an initial decision within one month of being received and the average time was 1.2 months. Only 6% of the applications took longer than three months. The average date of payment was within 1.8 months of the application date. The length of time to issue payment had decreased since 2009-2010 and the overall approval and payment times were reduced from 2.3 months in 2008-2009 to 1.5 months by 2010-2011.

Appeal processes could add considerable time to resolve a case, with cases in review and appeals taking on average three months. However, appeals were very uncommon, accounting for only 0.2% of all cases.

Communication and Access to Information

While some trustees and receivers indicated that they need access to better information to provide to former employees and for their own needs, the level of satisfaction with the quality of information tended to be good. Problems with a lack of knowledge or training of Service Canada staff were noted by some trustees and receivers, along with problems with response times and with being bounced from one contact to another or to multiple case officers. The quality of the information provided to them by Service Canada was generally rated moderate by most trustees and receivers. Some frustrations with the WEPP processes were identified by trustees and receivers during the consultations.

General opinion of the trustees and receivers was that the Trustee/Receiver Information Form process could be improved. The majority of trustees and receivers indicated that this was a challenging process and that it was not an efficient process. In general, it was estimated that the form took nearly 40 minutes to complete, but that there were substantial problems with the clarity, length and submission time.

In situations where there are insufficient resources in the bankrupt estate to cover the trustee's fees to administer the bankruptcy and perform their WEPP-related work, the WEPP regulations allow for the payment of trustee and receiver fees. At the time of the evaluation, very few trustees and receivers had filed fees for payment to WEPP. Approximately one

in five of the trustees and receivers interviewed indicated that there were problems with the fee structures or the process for claiming fees as part of WEPP, which meant that some trustees or receivers may have been reluctant to take on low or no asset bankruptcies. This may explain the fact that few trustees and receivers had filed to have their fees paid through WEPP. However, it is also possible that the low application rate is an indicator that trustees' fees were paid from the proceeds of the bankrupt estate as intended by the program design.

Moreover, when the program came into effect in 2008, there was no process in place for trustees and receivers to receive payment for fees incurred under WEPP. The WEPP Trustee/Receiver Payment Process was launched on December 15, 2010. As a result, some of the problems identified at the time of the key informant interviews were addressed at that point. Additionally, it should be noted that WEPP is intended to be a payer of last resort and that trustee fees are to be paid only in circumstances where there are insufficient resources and where WEPP-related work is significant enough to warrant seeking payment from the program.

According to the 2010 Client Satisfaction Survey, while most applicants were satisfied with the overall WEPP process, WEPP received lower satisfaction ratings in comparison with other ESDC programs, the Employment Insurance, Guaranteed Income Supplement, Old Age Security, Apprenticeship Completion and Incentive Grant, Social Insurance Number and 1-800-O-Canada programs. The highest rated aspects of the service provided by Service Canada to WEPP clients related to the quality of the staff.

Program Outcomes

Over the period from 2008-2009 to 2010-2011 the WEPP compensated former employees of bankrupt employers for approximately 64 cents on the dollar of the amounts owed to them by their former employer. Where possible, WEPP recovered the amounts advanced to workers from the employer's bankrupt estate. In the absence of the WEPP most employees would recover none or very little of the money owed. As reported through the applicant and non-applicant surveys, the majority of the applicants and non-applicants did not attempt to recover money owed from their former employer, and few (5%) were successful in recovering money using other methods.

There was no evidence that WEPP had any impact on the employment outcomes of the WEPP participants. Nor was there any direct evidence that WEPP had a negative impact on EI benefits such as lower benefits or having to pay back part of their EI benefits as a result of their participation in WEPP. In regard to the application process, successful WEPP applicants were generally satisfied with the process, while those who were unsuccessful were much less likely to express satisfaction with the process.

Unintended Impacts

An unintended impact of the program that was identified by some key informants was that costs incurred by trustees and receivers and the processes involved in administering WEPP might make some trustees and receivers reluctant to take on bankruptcies and receiverships where WEPP claims are involved, particularly in the case of no or low asset estates. As indicated above, the WEPP Trustee/Receiver Payment Process was not launched until December 15, 2010. As a result, some of the problems identified at the time of the key informant interviews have been addressed.

Program Costs, Efficiency and Coordination

In the recent two fiscal years covered in this evaluation (2009-10 through 2010-11), operating costs have accounted for 10% of total program expenditures. Over this period, it took one dollar of program administration cost for every nine dollars of WEPP payments.

Overall, during this same period (2009-11), 11% of the \$72.2 million WEPP payments were recovered from the bankruptcy estates. The recovery of overpayments from WEPP recipients was over 60% but only a very small amount was owed (less than \$300K) from overpayments. It should be noted that the primary focus of WEPP is to ensure that employees receive the wages owed to them by bankrupt employers; recovery is a secondary intent of the program.

Recommendations

The following recommendations are based on evaluation findings:

1. Discussions should be initiated by the Workplace Directorate with trustees and receivers to investigate options for streamlining the administration of the WEPP, including the Trustee/Receiver Information Form.
2. Discussions should be initiated by the Workplace Directorate with trustees and receivers to explore their needs for WEPP information to assist the trustees and receivers to provide program information to potential WEPP applicants about their responsibilities and rights as well as to ensure they have better access to information for their own needs to administer the WEPP.
3. A discussion between the WEPP and Service Canada should be undertaken to explore the possibility of including an examination of overpayments due to WEPP payments as a component of the examination of EI overpayments in response to the report from the Office of the Auditor General.
4. In an effort to improve accessibility to the program and avoid cases where trustees might be reluctant to take on a bankruptcy because the process is perceived to be too onerous, trustees and receivers should be consulted by the Workplace Directorate to

determine whether, in the cases where the estate has insufficient assets for payment of fees, changes to processes for payment of their fees by WEPP are warranted and can be developed and implemented.

5. Program management should continue to closely monitor the time required to approve applications and examine options for reducing the processing time for applications that are under review or in appeal.

Management Response

Introduction

The Wage Earner Protection Program (WEPP) was introduced in 2008 as part of a broader insolvency reform package that included measures to protect workers. The WEPP improves the lives of workers in Canada by protecting their wages when their employer declares bankruptcy or has become subject to receivership.

The WEPP, delivered by the Labour Program of Employment and Social Development (ESD), welcomes the contribution of the summative evaluation and its value to program policy development. The evaluation findings and recommendations will also feed into a legislative review of the Wage Earner Protection Program Act (WEPPA) and its administration and operation that was initiated in June 2013.

The evaluation covered program delivery during the period between July 8, 2008 and March 31, 2011. During the approximately two and one-half year period that has elapsed since the time of the evaluation, the WEPP program has matured and changed. Not only have the program administration and processes been refined since the time of the study, but the program was expanded for a second time through Budget 2011. It is therefore important to note that some of the findings and recommendations contained in this report may not always reflect the program as it stands today.

This management response addresses the evaluation recommendations, provides information on improvements made since the time of the evaluation, and outlines plans for further action.

The Labour Program notes that the evaluation provides evidence that the WEPP was meeting the majority of its goals despite implementing two major program expansions during the evaluation period. The key findings of the evaluation demonstrate that:

There is an ongoing need for the type of benefits offered under WEPP, and that the program is aligned with the federal government responsibilities and Labour Program objectives;

Awareness of the program and take-up among eligible individuals is high, with nearly complete coverage of the targeted population;

Nine out of ten applicants received a WEPP payment during the evaluation period, and trustees and receivers provide the prescribed information to the Minister and to the individual within the legislated deadlines; and,

WEPP provides a fair solution to meeting the needs of workers who are owed wages by an employer who has filed for bankruptcy or is subject to a receivership.

Recommendations

1. Discussions should be initiated with trustees and receivers to investigate options for streamlining the administration of the WEPP, including the Trustee/Receiver Information Form.

Agreed: The Labour Program recognizes the value of streamlining administrative processes. Through the Joint Liaison Committee, established to engage stakeholders in the WEPP administration and operation, trustees and receivers are regularly consulted in identifying and implementing options to improve the administration and operation of the WEPP. Since the time of the evaluation, a number of initiatives have been undertaken to streamline processes, including:

Improving the process of submitting information on the Trustee/Receiver Information form electronically to provide the ability to submit trustee and estate information only once and then add specific information for each worker; and

Reaching out to stakeholders through workshops to identify efficiencies that could be gained in the WEPP debt recovery process. Ongoing initiatives stemming from the workshop include improving communications products for trustees and receivers and investigating options to streamline accounting and billing practices.

Actions planned: By winter 2014, the Labour Program will engage trustees and receivers, through the Joint Liaison Committee, to investigate further options for streamlining the administration of the WEPP. Trustees and receivers will also be engaged in the examination of options to improve administrative and operational practices as part of the legislated review of the WEPP.

2. Discussions should be initiated with trustees and receivers to explore their needs for WEPP information to assist the trustees and receivers to provide program information to potential WEPP applicants about their responsibilities and rights as well as to ensure they have better access to information for their own needs to administer the WEPP.

Agreed: The Labour Program acknowledges the importance of providing adequate information to potential recipients. Service Canada and the Labour Program have been working together to identify the information needs of both applicants and trustees/receivers based on stakeholder feedback. In response to the findings, work is underway to develop templates and tools for trustees to use to inform applicants of their responsibilities and rights, and improve and streamline WEPP messaging contained on the Service Canada website.

Actions planned: By winter 2014, the Labour Program, in partnership with Service Canada, will initiate discussions with trustees/receivers to further explore the needs of both WEPP applicants and the trustee community for WEPP documentation and to assist trustees in providing program information to potential WEPP applicants.

3. A discussion between the WEPP and Service Canada should be undertaken to explore the possibility of including an examination of overpayments due to WEPP payments as a component of the examination of EI overpayments in response to the report from the Office of the Auditor General.

Agreed: The Labour Program acknowledges the importance of examining Employment Insurance overpayments and their effect on WEPP recipients in receipt of EI benefits. In consultation with departmental stakeholders, the Labour Program has examined the causes, impacts and potential measures to address situations where individuals are put in an EI overpayment situation upon receipt of a WEPP payment for wages owed to them by their former employer. A cost-effective administrative approach to the coordination of benefits was not identified.

In the fall of 2013, departmental officials considered how to examine EI overpayments due to WEPP payments as a part of the departmental response to the Spring 2013 Report of the Auditor General of Canada. It was concluded that the departmental exercise was not an appropriate venue for examining the WEPP-EI interaction because it is a targeted issue where the potential number and monetary size of overpayments represents a very small percentage of overall overpayment activity.

Actions planned: As part of the legislated review of the WEPP, the Labour Program will undertake further research to assess the scope and monetary impact of the WEPP-EI interaction and determine the most appropriate response to the issue by late 2014.

4. In an effort to improve accessibility to the program trustees and receivers should be consulted to determine whether, in the cases where the estate has insufficient assets for payment of fees, changes to processes for payment of their fees by WEPP are warranted and can be developed and implemented.

Agreed: The Labour Program has had ongoing discussions with trustees and receivers regarding the issue of fee payments in low asset bankruptcies through the Joint Liaison Committee. The Labour Program acknowledges that uptake of the WEPP fee payment provisions has been low and recognizes the importance of improving accessibility to the program.

Actions planned: By spring 2014, the Labour Program will initiate consultations with trustees/ receivers on the issue of low asset bankruptcies. The Labour Program will assess current practices and if warranted adjust the process and facilitate access to the program.

5. Program management should continue to closely monitor the time required to approve applications and examine options for reducing the processing time for applications that are under review or in appeal.

Agreed: The Labour Program concurs with the recommendation that processing time-lines be monitored on an ongoing basis with the goal of expediting initial application approvals and the timeline for reaching decisions on review and appeal files.

The Labour Program, in partnership with Service Canada, has monitored application processing timelines since the program was initiated in 2008. Through this oversight, the need for additional funding was identified to support timely application processing. Economic Action Plan 2012 committed \$1.4million annually to ensure applicants receive benefits when they need them, and as a result application processing timelines have improved to the point where 95 to 98 percent of applications are processed within the existing service standard of 42 days.

The Labour Program transferred processing of review applications to Service Canada in October 2012 to leverage expertise and efficiencies in the existing Service Canada processing systems.

Actions planned: The Labour Program will continue to monitor the time required to approve applications through the established monitoring systems.

1. Introduction

This report presents the findings of the evaluation of the Wage Earner Protection Program (WEPP) delivered by ESDC/Labour covering the period between July 8, 2008 and March 31, 2011. The report includes four sections. Section 1.0 presents the program background and the evaluation context. Section 2.0 discusses the main findings related to program relevance and Section 3.0 the findings related to program performance. Section 4.0 presents a list of recommendations.

1.1 WEPP Background

The broad policy and program parameters, as well as the legislative framework for the WEPP, were originally authorized by Cabinet in April 2005 as part of a comprehensive package of proposed reforms to Canada's insolvency system, which included amendments to the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangements Act*. Specifically, the amendments to the *Bankruptcy and Insolvency Act* elevated the priority status of unpaid wages and vacation pay from "preferred creditor" to "limited super-priority" status. The claims, up to \$2,000, for unpaid wages and vacation pay increased their priority level above secured creditors on the current assets of the bankrupt or insolvent employer's estate, that is, cash on hand, inventory and accounts receivable.

Despite this priority, many workers remained at financial risk because they had to wait for lengthy bankruptcy proceedings to conclude before receiving payment, there was no guarantee that there would be sufficient funds left in the bankrupt estate to pay their wages, and many were owed more than the \$2000 maximum priority amount.

On June 3, 2005, the government introduced Bill C-55 – to establish the *Wage Earner Protection Program Act* (WEPPA), to amend the *Bankruptcy and Insolvency Act*, the *Companies' Creditors Arrangements Act* and to make consequent amendments to other Acts. The Bill received Royal Assent on November 25, 2005 and became Chapter 47 of the Statutes of Canada 2005. WEPPA and the Wage Earner Protection Program (WEPP) Regulations came into effect on July 7, 2008. The WEPP addressed gaps in the protection of bankrupt employers by ensuring that workers were paid for priority amounts owed, expediting payment to the workers, and increasing the amount of unpaid wages workers could recover up the WEPP maximum payment, which is indexed yearly for inflation (currently \$3,646.16 for 2013).

The WEPP functions by advancing payment of amounts owed to each worker, and then assumes the place, and the risk, of the worker in the lengthy bankruptcy proceedings. Where possible, the WEPP recovers the amounts advanced to workers from the employer's bankrupt estate.

In 2009, further amendments to the WEPP extended the scope of "eligible wages" to include termination and severance pay for employees terminated in the period commencing six months prior to the date of bankruptcy or receivership. Moreover, the amendment:

1. Ensured consistency of the usage of the term "eligible wages" throughout the WEPPA and the *WEPP Regulations*;
2. Clarified the reasons for the end of the employment, including eliminating the seven-day gap currently in the termination of employment provision;
3. Clarified the eligibility criteria;
4. Granted 10 more days (increased from 35 to 45 days) to trustees and receivers to provide the prescribed information to the Minister and to the individual (potential WEPP applicants); and
5. Granted trustees and receivers a possible extension to provide the prescribed information when circumstances beyond their control necessitate a longer period.²

In 2011, the Budget Implementation Act further expanded the WEPP to include failed restructuring attempts made pursuant to the *Bankruptcy and Insolvency Act*, and the *Companies' Creditors Arrangements Act*, as of December 2012. These changes fell largely outside of the reference period for this evaluation and therefore were not reflected in the evaluation findings.

Partners and Stakeholders

While the Minister of Labour is responsible for the WEPP, various partners and stakeholders assist in administering, managing and delivering the WEPP³ :

- The Labour Program provides ongoing policy interpretation and development, administrative guidance. It also develops, monitors and implements regulatory and legislative changes, administers and delivers the review and appeals processes,⁴ and leads on communications activities;
- Service Canada oversees overall program delivery, processing of applications, determinations of eligibility and issuing of payments, as well as providing in-person, telephone and web service to the public;
- Trustees and Receivers provide information to Service Canada that is required to determine applicant eligibility;

² http://www.servicecanada.gc.ca/eng/sc/wepp/changes_wepp.shtml

³ Wage Earner Protection Program - An Integrated Results-Based Management and Accountability Framework and Risk-Based Audit Framework.

⁴ As of November, 2012 (after the reference period for this evaluation), Service Canada assumed HRS responsibility for administering and delivering the reviews processes.

- The Labour Program works closely with the Canadian Association of Insolvency and Restructuring Professionals which represents most bankruptcy and insolvency practitioners in Canada to develop communication strategies, identify and resolve stakeholder concerns and review possible WEPP regulatory amendments;
- Canada Revenue Agency is mandated by the *WEPP Act* to recover overpayments to applicants. Canada Revenue Agency has a limited role with respect to the recovery by the Government of Canada of the WEPP subrogated debt⁵ under the *Bankruptcy and Insolvency Act* that results from amounts paid by the WEPP to applicants.
- Industry Canada and the Office of the Superintendent of Bankruptcy provide advice and guidance with respect to the WEPP as the program is closely tied to bankruptcy legislation.

The Joint Liaison Committee, a forum for discussion and resolution of operational and policy issues relating to the administration of the WEPP, consists of representatives from the above noted stakeholders and program partners.

The activities and expected outputs and outcomes from the WEPP are provided through the WEPP logic model in Appendix A.

The WEPP Process

In order to assess eligibility, Service Canada requires information from various sources. Trustees and receivers are required to submit information regarding eligible wages within 45 days of the bankruptcy or receivership and the proof of claim (acquired from the applicant). Applicants must also submit a WEPP application form within 56 days of the bankruptcy or receivership.

Service Canada then determines eligibility to receive a WEPP payment by assessing if the applicant's employment relationship ended for a reason prescribed by the WEPP Regulations; the former employer is bankrupt or subject to a receivership; and the individual is owed "eligible wages" by the former employer.

The trustees or receivers play a major role in the administration of the WEPP.⁶ Their duties include providing both the Minister and the former employees with information. According to the legislation, trustees and receivers shall:

- Identify each employee who is owed eligible wages;
- Determine the amount of eligible wages owed to each employee;
- Inform the former employees of the existence of the WEPP and of the conditions under which payments may be made under the *WEPPA*; and
- Inform the Minister when the trustee is discharged or the receiver completes their duties.

⁵ When a payment is made to a WEPP recipient for money owed to them by their former employer, the right to recover the money owed is transferred to the Government of Canada.

⁶ Shea, E. Patrick. (2009). Consolidated Wage Earner Protection Program Act and Wage Earner Protection Program Regulations. Toronto: Gowling Lafleur Henderson LLP.

The persons eligible are those who terminated their employment period a maximum of six months prior to the date of bankruptcy or receivership of the bankrupt company.

Within 45 days of the date of the bankruptcy or the date the trustee or receiver was appointed, the trustee or receiver is required to provide former employees with the following information:

- The date of bankruptcy or receivership;
- A statement informing the individual of the requirement to submit a proof of claim;
- A copy of the information and documents that the trustee or receiver provided to the Minister; and
- A WEPP application form.

All of the relevant information for each employee is submitted to Service Canada who confirms the applicant's eligibility and amounts owed.

Having received information from the applicant and trustee or receiver, Service Canada renders an initial decision. If, as a result, a WEPP payment is made to an applicant, the applicant agrees to allow the Government of Canada to take his or her priority as a creditor in bankruptcy or receivership. The Government of Canada, having stepped into the place of the applicant as a creditor of the former employer, may pursue the recovery of the amount of the WEPP payment (up to \$2000 on a super-priority basis and the remainder of the payment on a regular priority basis).

If Service Canada does not approve an application and an applicant disagrees with the decision, he or she has the right to request a formal review by the Minister. The grounds for a review include eligibility or ineligibility, including the amount paid. The request of a formal review must be made in writing within 30 days after the day on which the applicant is informed of the eligibility decision by Service Canada. The applicant may provide new information that could impact the decision and a trustee or receiver may be contacted for original documentation, information or clarification. An applicant who is not satisfied with the outcome of the review may appeal the decision, but only on a question of law or jurisdiction. Unlike the review, no new facts or evidence can be added to the file. The applicant has 60 days from the date on which he or she is notified of the review decision to file an appeal.

The maximum amount payable to each eligible WEPP applicant consists of four times the maximum weekly insurable earnings under the Employment Insurance Act.

The *WEPP Regulations* enable the payment of trustees and receivers fees and expenses if the final statement of receipts and disbursements for the bankruptcy or receivership shows a deficit. According to *WEPP Regulations*, the amount payable for trustees and receivers fees is not to exceed \$600 for the first wage claim and \$35 for each subsequent claim processed.

1.2 Evaluation Scope, Issues and Questions

WEPP is relatively early in its lifecycle and has undergone several changes in Program criteria and resourcing, since its inception. The scope of the evaluation only covers the period from program inception (i.e. 2008) to March 31, 2011. Consequently, impacts of changes to the program following the 2010-2011 fiscal year were not evaluated.

The core issues and questions for the evaluation are described in detail in Table 1.1.

| Table 1.1 WEPP Evaluation Core Issues and Questions | |
|--|--|
| Relevance | |
| Core Issue 1: Continued Need for the Program | |
| 1) Is there a demonstrated need for the program? | |
| Core Issue 2: Alignment with Government Priorities | |
| 2) To what extent are the program objectives of the WEPP aligned with the federal government priorities and departmental strategic outcomes? | |
| Core Issue 3: Alignment with Federal Roles and Responsibilities | |
| 3) To what extent is the delivery of the WEPP aligned with federal government's roles and responsibilities? | |
| Performance | |
| Core Issue 4: Achievement of Expected Outcomes | |
| 4) What is the level of awareness of WEPP? To what extent do stakeholders have an adequate understanding of program obligations and rights? | |
| 5. To what extent is WEPP reaching its intended population? What are the overall participation rates of WEPP? | |
| 6a) To what extent has the WEPP provided timely notices of decision to applicants? Has the WEPP provided timely and accurate payments to applicants? | |
| 6b) To what extent has the WEPP design and implementation facilitated timely and accurate payments to trustees? | |
| 7) To what extent has the WEPP provided timely and fair resolution of reviews and appeals? | |

| Table 1.1 WEPP Evaluation Core Issues and Questions |
|---|
| 8) To what extent has the WEPP made timely recovery of overpayments and timely receipt of dividend payments ⁷ ? |
| 9a) To what extent has the WEPP increased financial protection of workers owed wages due to bankruptcy? |
| 9b) To what extent has the program facilitated fair and equitable solutions for workers owed wages due to bankruptcy? |
| 10) To what extent is the program responsive to the needs of workers with respect to WEPP payouts in insolvent workplaces? |
| 11) Have there been any unintended impacts as a result of WEPP? |
| Core Issue 5: Demonstration of Efficiency and Economy |
| 12) How do total benefits for clients compare to total program delivery costs, super-priority recoveries, and unpaid wages? Does the program provide value for money? How cost-effective is WEPP to government? |
| 13) To what extent can the program sustain itself at the current level of program investment? |
| Core Issue 6: Design and Delivery |
| 14) Is shared program delivery model (Labour Program, Service Canada and Canada Revenue Agency) efficient? Is there any duplication of activities among the partners? Are there activities that are not being done by the partners that should be done? |
| 15) Are there alternative design or delivery models that might be achieving better outcomes? |

1.3 Evaluation Methodology

WEPP is relatively early in its lifecycle and has undergone several changes in Program The evaluation methodology employed multiple lines of evidence that included both qualitative and quantitative methods. A brief description of these methods is provided below.

Document Review: A document review was conducted to obtain information to address questions related to the need and relevance of the program, implementation of WEPP and the legislative basis of the WEPP. Documents reviewed included the WEPP Act, Regulations, description of program activities and outputs, and documents related to costs and services of trustees and receivers.

Key Informant Interviews: A total of 45 key informant interviews were conducted with representatives from three groups:

⁷ The focus of the evaluation for this question was on the recovery of the amounts owing from the insolvent estates and recovery of overpayments from the individuals.

- **Program Delivery** – 27 key informants who were directly involved in the delivery of the WEPP were interviewed. This group included managers and personnel in the Labour Program and Service Canada.
- **Program Support** – 10 key informant interviews were conducted with representatives who were involved in the delivery of the WEPP of selected aspects of the program. This group included employees of the Canada Revenue Agency, the Bankruptcy Policy Unit at Industry Canada, and the Office of the Superintendent of Bankruptcy.
- **Stakeholders/Partners** – the 8 key informants interviewed in this group included representatives of the Canadian Association of Insolvency and Restructuring Professionals, representatives of the legal profession, unions, and provincial/territorial governments.

For ease of reporting interview results, the quantifiers used were as follows: few indicates at least two respondents but less than 25% of the respondents, some indicates at least 25% but less than 50% of the respondents; majority/most indicates at least 50% but less than 75%, large majority indicates 75% but less than 90% and all/almost all indicates 90% or more of the respondents.

Administrative Data Analysis: Analyses of multiple ESDC databases was undertaken to provide information on program performance, profile the applicants and non-applicants, and to assess program outcomes to the extent possible. The databases analyzed included:

- **Interactive Fact Finding Service:** A database used to record information from the Trustee / Receiver Information Forms for each employee owed money from their employer. Records are kept until the WEPP application for a particular employee is received.
- **Common System for Grants and Contributions:** Database that maintains information on all WEPP applicants.
- **The Record of Employment and the Status Vector files:** Database that provides information on the characteristics of the WEPP applicants including their recent employment history and their EI experience following their job loss.
- **Departmental Accounts Receivable System:** Database that maintains data on the recovery of WEPP overpayments to recipients and the recovery of WEPP payments from the bankruptcy estates of the insolvent corporations.

Administrative Data Analysis of Secondary Data – Client Satisfaction Survey: In 2010, Service Canada conducted a satisfaction survey of clients who requested support or information for various ESDC programs including WEPP. The survey included clients 18 years of age and older who had a “significant interaction” with Service Canada and whose application dates, approval dates, rejection dates, review or appeal were between April 1, 2010 and July 31, 2010. In total, 338 clients responded that they had received WEPP related services.

The survey covered the type and number of services received and the communication method used (mail or fax, telephone, in-person, website), satisfaction with the overall services received, and various aspects such as timeliness, knowledge of staff, etc. Respondent were also questioned about problems encountered and, if any, whether they were resolved in a satisfactory manner.

Trustee and Receiver Consultations: Four two-hour consultation sessions with trustees and receivers were held in Montreal (one French, one English), Toronto, and Vancouver. These locations were selected to represent regions with the largest volumes of WEPP activity and to allow access to a broader range of trustees and receivers with WEPP experience. The selection was also based on the size of firm – large, medium, and small – to ensure a diverse range of experience. The trustees and receivers were recruited from the three cities in which the consultations took place as well as smaller towns outside of the main cities to further enhance the representativeness of the consultation sample.

Surveys: Telephone interviews and online surveys were conducted with the following populations:

- A telephone survey of WEPP applicants (n=502) was conducted and allowed applicants to report on their experiences with the program, such as the timeliness of its process, its responsiveness, and their perceptions of the program's impacts. This survey included both successful applicants (400) and non-successful applicants (102).
- A telephone survey of eligible WEPP non-applicants (n=200) was undertaken to gain insights into why workers who may be eligible for WEPP did not apply to the WEPP, and their perceptions of the benefits of the program and their experiences in recovering money owed on their own or through other avenues.
- A survey of trustees and receivers was conducted (n=121) and provided insight into several issues, such as program reach, perceived benefits of the WEPP, efficiency and effectiveness of the WEPP process, and interactions with departments such as Service Canada. This survey was a hybrid using both an internet based questionnaire and a telephone survey.

The details for each of these surveys are provided in Table 1.2.

| Table 1.2 Survey Target Groups, Data Sources, Completions and Response Rates | | | |
|---|---|--------------------|----------------------|
| Target Group | Data Source | Completions | Response Rate |
| Trustees and Receivers | Canadian Association of Insolvency and Restructuring Professionals. | 121 | 44% |
| Non-Applicants | Interactive Fact Finding Service | 200 | 20% |
| Successful Applicants | Common System for Grants and Contributions | 400 | 26% |
| Unsuccessful Applicants | Common System for Grants and Contributions | 102 | 21% |

1.4 Methodological Strengths, Limitations and Challenges

The evaluation research design had several strengths, including the use of multiple lines of evidence to provide greater confidence in the main findings. Another key strength of the evaluation was the ability to draw on a wide range of administrative data, including detailed information from the application process, the review and approval process, WEPP payment, the recovery of WEPP payments from the assets of the insolvent companies, and details on the employment background and Employment Insurance (EI) history of WEPP participants. This administrative data yielded a very rich source of information for profiling the program and the program participants without potential sampling biases that could arise from other sources of information, such as surveys, since the administrative data were available for all participants.

The evaluation covered the period from program inception July 8, 2008 to March 31, 2011. Consequently, the program was a relatively new program during the reference period for the evaluation and several significant changes were introduced during or after the evaluation timeframe that might have altered some of the findings had these changes been in place throughout the reference period.

Low survey response rates, which are frequent research challenges for evaluations, raise issues about the representativeness of the survey respondents. This is especially the case for the applicants in this evaluation, whose response rates, while typical for these populations, ranged between 21 and 26 percent. Fortunately, 82 percent of the survey respondents provided their permission to link their survey data to the WEPP administrative data, thereby allowing for comparisons between profiles of the WEPP population and the survey respondents. These two profiles matched very closely, indicating that there was no significant observable systematic bias due to survey non-response.

A significant challenge was the limited data available to assess the incremental impacts of the WEPP on the Program participants. Originally, the evaluation was designed to measure the impacts on employment, earnings and EI by comparing survey data for recipients and non-recipients and data extracted from the Common System for Grants and Contributions. However, these data did not provide detailed enough information on the earnings and other income data to allow the creation of comparison groups and a rigorous assessment of the incremental impacts of WEPP on earnings, EI and employment. The feasibility of including T1 Income Tax data from Canada Revenue Agency was examined as an additional source of information but the data could not be obtained prior to completion of the evaluation due to the length of time that would have been needed to complete all privacy review processes and processing of data for the analysis. Consequently, there were limited data for the assessment of incremental impacts of the program.⁸

⁸ Incremental impacts are those outcomes of the program that are attributable to the program itself and not to other factors. Through comparison of participants' outcomes with those of a comparison group, an analysis of incremental impacts would allow an evaluation to answer questions concerning what participants' outcomes would probably have looked like in the absence of the program.

2. *Relevance Findings*

2.1 Continued Need for Program

There is an ongoing need for the type of benefits offered under WEPP.

Based on the program take-up, the distribution of applicants, amounts owed and payments, there is demonstrated and continued need for the WEPP. As shown in Table 2.1, more than 36,400 employees⁹ of the 1,843 insolvent companies filed for benefits under the WEPP for over a quarter of a billion dollars in unpaid wages, vacation, termination, severance and related pay. These applicants represented over 80% of the WEPP eligible workers for insolvencies with a trustee and receiver who had filed a Trustee/Receiver Information Form (TIF).

A large majority of the key informant respondents also believed that there is a demonstrated need the most common arguments provided being the increasing numbers of bankruptcies. According to them, the current challenging economic climate for companies would maintain the relatively high levels of employees' owed money from insolvent companies.

All key informants stated that there were no other national programs that help the workers of insolvent companies to recover their monies. Moreover, there have been very few similar programs offered provincially. Eighteen out of 45 interviewees noted one such program, the Special Compensation Fund, which is currently being run in Québec for construction workers. No other current provincial programs were identified. Five key informants stated that there had been another similar program in Ontario, but it ended approximately 10 years ago.

There is a general consensus through the key informant interviews, the applicant survey, and the trustee and receiver survey that there was little chance that unpaid workers could get money back from their employers in the absence of WEPP. A large majority of the applicant respondents (77%) also agreed that they had no chance of getting back any of the money owed to them by their former employer.

⁹ The bankruptcy file was created by aggregating information contained in the CSGC database for applicants across bankruptcy identification numbers. Due to missing data in the aggregation process the count of the applicants and WEPP payments are lower than in subsequent tables using the CSGC applicant database.

Table 2.1 Number of Insolvent Companies, Workers Applying for the WEPP, Amounts Owed and WEPP Payments

| Number of Workers Who Applied to WEPP | Number of Insolvent Companies | Total Workers Who Applied to the WEPP | Total Amounts Owed | Average Amounts Owed Per Worker | Total WEPP Payments | Average WEPP Payments |
|---------------------------------------|-------------------------------|---------------------------------------|----------------------|---------------------------------|---------------------|-----------------------|
| 1 | 282 | 282 | \$763,190 | \$2,706 | \$419,272 | \$1,487 |
| 2 -5 | 534 | 1,731 | \$5,859,453 | \$3,385 | \$2,621,485 | \$1,514 |
| 6-10 | 343 | 2,597 | \$10,294,498 | \$3,964 | \$4,516,378 | \$1,739 |
| 11-25 | 359 | 5,833 | \$28,730,125 | \$4,925 | \$11,273,036 | \$1,933 |
| 26-50 | 180 | 6,586 | \$42,810,288 | \$6,500 | \$13,351,824 | \$2,027 |
| 51-100 | 88 | 6,362 | \$51,709,227 | \$8,128 | \$14,217,322 | \$2,235 |
| Over 100 | 57 | 13,035 | \$114,938,690 | \$8,818 | \$27,691,829 | \$2,124 |
| Total | 1,843 | 36,426 | \$255,105,472 | \$7,003 | \$74,091,146 | \$2,034 |

Source: Common System for Grants and Contributions data, Bankruptcy File.

2.2 Alignment with Government Priorities and Federal Roles and Responsibilities

The program is aligned with federal government responsibility for bankruptcy regulations. The strategic objective of the Labour Program is workplace fairness and one key principle of fairness is paying employees money that is owed to them.

The 2007 Speech from the Throne and the Budget 2009 Economic Action Plan both refer to the WEPP, demonstrating the program's alignment with federal priorities. The WEPP was one of the five core priorities contained in the Prime Minister's response to the 2007 Speech from the Throne: providing better protection for wage earners should their employer declare

bankruptcy or become subject to a receivership. Recently, government confirmed that the WEPP was aligned with government priorities by extending the program in Budget 2011 to also cover employees who lose their jobs when their employer's attempt at restructuring takes longer than six months and is subsequently unsuccessful and ends in bankruptcy or receivership.

The document review and key informant interviews also supported the finding that the WEPP was consistent with the federal roles and responsibilities with respect to bankruptcies and the protection of workers under federal legislation. The WEPP complements the changes introduced to the *Bankruptcy and Insolvency Act* (BIA) when the program was established to provide timely financial support to workers who lose their job and are owed wages and vacation pay when their employer declares bankruptcy or becomes subject to a receivership under the BIA. It has enabled employees to be compensated for wages even if there were no assets to pay the employees. In addition, the inclusion of severance and termination under the WEPP expanded the scope of the money that could be recovered on behalf of the employees.

The key informant interviews, the applicant survey, and the trustee and receiver survey established a general consensus that the federal government should help workers recover monies owed to them by bankrupt employers. For example, almost all applicant respondents (96%) agreed that the federal government should help workers get the money owed to them from bankrupt employers. As indicated earlier, a large majority of the applicant respondents (77%) also agreed that they had no chance of getting back any of the money owed to them by their former employer.

In the absence of the WEPP most employees would recover none or very little of the money owed. As reported through the applicant and non-applicant surveys, the majority of the applicants and non-applicants did not attempt to recover money owed from their former employer, and few (5%) were successful in recovering money using other methods.

A large majority of the key informants interviewed and the majority of the trustees and receivers surveyed (60%) believed that the WEPP is aligned with federal roles and responsibilities. One of the reasons stated by the key informants was that bankruptcy law is a federal statute and a program to assist those affected by bankruptcy is consistent with the federal responsibility for bankruptcy regulations.

WEPP is also aligned with the strategic objective of the Labour Program of Employment and Social Development Canada (ESDC): "... providing safe, fair and productive workplaces and cooperative workplace relations." The primary contribution of the WEPP is to help Canadian workers and employers maintain workplace fairness and one key principle of fairness is paying people money that is owed to them.

Despite the complexity of the Program delivery model, there was no evidence of duplication among the activities of the partners.

Based on a review of the documentation and interviews with program delivery and program support stakeholders, the roles and responsibilities of the Labour Program, Service Canada, and the Canada Revenue Agency are well documented. There was no evidence in the document review to indicate any duplication among the activities of these partners in the delivery of WEPP. Despite this, some key informants indicated that there were aspects of the day-to-day delivery of the program that may need further clarification. While most interviewees stated that the roles and responsibilities of stakeholders were understood and clearly articulated at high generalized levels, they felt that the reality of the day-to-day operational responsibilities were not clear and there were considerable communication issues. Interviewees commented that the speed in which the program was implemented provided little time for mapping out in detail exact roles and responsibilities.

3. *Performance Findings*

3.1 Program Awareness and Reach

Given that the trustees and receivers have a legislated responsibility to inform potential applicants, the level of reach of the program is extensive.

Based on the document review and key informant interviews, the Labour Program has established proactive communication and interaction with trustees and receivers through the Canadian Association of Insolvency and Restructuring Professionals to share documents and inform them of their obligations under the WEPP. Since trustees and receivers have a legislated responsibility to inform potential applicants about the WEPP and to document the eligible population with Service Canada, compliance with the legislation ensures nearly complete coverage¹⁰ of the intended population for the WEPP. The trustee and receiver consultations and surveys established that they were aware of and complied with their legislated requirements. Almost all trustee and receiver survey respondents (97%) proactively provided information to former employees who may have been eligible for the WEPP.

Opinions were divided on the adequacy and accessibility of the information available to potential participants.

The initial contact of WEPP with the applicants was through the letters and cheques sent regarding their application, their rights and obligations. A WEPP brochure was also available online or could be requested to be sent by mail.

Among key informants, including program delivery representatives, opinion was divided as to whether the information provided by the program was adequate and accessible. For those interviewees who felt that the program was well designed to provide access to information for workers, the most commonly cited reason was that in a formal bankruptcy, the trustee or receiver is required under the *WEPP Act* to inform the employees of the WEPP. Interviewees said that they believed trustees were familiar with the legislation and were best placed to inform workers. They also felt that information on the program was readily accessible and adequate both on the internet and in print. The survey of trustees and receivers established that they systematically contacted former workers who were owed money to inform them about the WEPP as required by the legislation. As stated previously, 97% of the trustee and receiver survey respondents indicated that they proactively provided information to employees who may have been eligible for the WEPP.

¹⁰ Employees excluded would include employees that trustees and receivers were not able to contact and employees of bankrupt employers who did not retain a trustee and receiver until after the eligibility period.

In contrast, interviewees who did not feel that there was adequate or accessible information noted that heavy reliance on trustees to undertake the dissemination of information to workers was a flaw in the WEPP model. In particular, during the consultations trustees and receivers overwhelmingly agreed that potential applicants did not have an adequate understanding of the program and of their obligations and rights. Trustees and receivers reported that it was difficult for wage earners to understand the forms and what to expect in terms of refunds. Trustees and receivers felt that this was mainly due to a paucity of information. Comments on the information available included a need for information kits which the trustees and receivers could provide to the applicants in multiple languages other than English and French. Some information for other programs is provided by Service Canada in other languages but it is uncertain whether the need for this is warranted given the small number of WEPP applicants.

These concerns about information on WEPP were not shared by the applicants surveyed. A large majority of the successful applicants (81%) found it easy or very easy to get the information they needed from Service Canada and almost all of the successful applicants also reported that the quality of the information received was good or very good (92%). Since there were only a few unsuccessful applicants who reported receiving information about the WEPP from Service Canada, the results for the follow-up questions were not considered reliable. Even among successful applicants the number of respondents who reported receiving information about the WEPP from Service Canada was limited as only 10% reported receiving information about the WEPP from that source.

The WEPP reaches almost all of the eligible population and has high participation rates.

A take-up rate for former employees of firms that were insolvent and where the trustees/receivers filed a TIF can be estimated from the administrative data on applicants and non-applicants. In the applicant database there were 38,856 eligible applicants.¹¹ The non-applicant database contained 9,090 workers who had lost their employment but had not filed an application.¹² Since a large percentage of non-applicants did eventually receive money and stated they were not owed money by their former employer, a more reliable figure of 5,336 non-applicants was used to produce a total potential applicant pool of 44,192 (38,856 + 5,336) and a take-up rate of 87.9% (38,856 / 44,192).

This finding applies only to the intended population for the WEPP as defined by the *WEPPA* and the related *Regulations*, which includes job loss due to the bankruptcy or receivership of an employer. However, representatives of all three interviewee groups (program delivery, program support, and stakeholders/partners) believed that some workers who lose their

¹¹ There were 39,139 applicants in the initial database, but 283 were removed because they were rejected for being in one of the following categories: officers or directors in the business; managers with financial responsibility; and those who held a controlling interest or were in a similar conflict of interest situation.

¹² The initial number in the database was 9,360 before removing individuals who were ineligible (individuals who were officers or directors in the business, held a controlling interest, or managers with financial responsibility).

job as a result of other types of business closures could benefit from a program such as the WEPP. Interviewees identified the following key situations in which populations that could benefit from the program might not be reached:

- situations where an official bankruptcy was not declared; and
- delayed bankruptcies where an employer ceases operations but does not declare bankruptcy or enter into receivership until more than six months later. This results in workers not being eligible for the WEPP given the six-month WEPP eligibility timeframe.

It should be noted that these two situations are related to eligibility criteria for the WEPP. As stipulated in the eligibility requirements, the intended target group for the WEPP was all employees who worked for a company that went into bankruptcy or receivership and were owed wages, severance pay, and vacation pay. Given these eligibility requirements, the intended beneficiaries exclude employees of insolvent companies that did not go through a bankruptcy or receivership process. With regard to the first example provided, key informants indicated that, in some situations, a business may simply shut down rather than declaring bankruptcy. Workers are then unable to claim under the WEPP. While program representatives were interested in obtaining an estimate of the number of employees affected by these situations, there was no information available for this evaluation on this broader population of workers.

With regard to the second example identified, there is a perception among some program delivery and stakeholder interviewees that some trustees may be advising small businesses to wait six months before declaring bankruptcy. Since the WEPP no longer applies at this point, employees are not eligible to claim the WEPP and companies will then not have the federal government as one of its creditors.

3.2 Program Delivery

Over the three fiscal years 2008-2009 to 2010-2011, there had been a total of 39,139 applicants, including those who were ineligible. Following the year the program was implemented, annual numbers of applicants have been relatively high, reaching 18,102 in 2009-2010 and falling slightly to 15,197 in the following year (2010-2011).

Nine out of ten applicants received a WEPP payment.

A large majority of the applications were approved for payment (89%). As shown in Table 3.1, while a large percentage of applications were initially rejected (27% of all applications) the majority were subsequently approved. The percentage of initial rejections had been relatively consistent across the fiscal years in which the applications were made, ranging from 29% in 2008-2009 to 26% in 2010-2011. The majority of the initial rejections were due to absence of a Trustee/Receiver Information Form (38%) or a proof of claim (32%).

The majority of applications initially coded as rejected in the administrative database were moved to reconsideration or review status and subsequently approved. Only 11% of all applications had *rejected* as the final status.

Table 3.1 Outcomes of Applications¹³

| Application Outcome | Fiscal Year Application was Received 2008-2009 | Fiscal Year Application was Received 2009-2010 | Fiscal Year Application was Received 2010-2011 | Total |
|---|---|---|---|--------|
| Rejected Initially/ Later Approved | 8.4% | 19.4% | 15.2% | 16.1% |
| Rejected Initially/No Change in Status | 20.1% | 8.5% | 10.7% | 11.1% |
| Total Initially Rejected | 28.5% | 27.9% | 25.9% | 27.2% |
| Total Initially Approved | 71.5% | 72.1% | 74.1% | 72.8% |
| Total Approved Including Cases Initially Rejected | 79.9% | 91.6% | 89.3% | 88.9% |
| Number of Applicants | 5,837 | 18,079 | 14,349 | 38,265 |
| Source: Common System for Grants and Contributions. | | | | |

The majority of the trustees and receivers provided information within two months.

On average, the length of time from the date of bankruptcy or receivership for a trustee/ receiver to create a record in the Service Canada database was 1.4 months. Half (49%) of the records were created within one month or less, and by two months, 79% of applications had a record created. Only 9% of applications took longer than three months from the date of the bankruptcy/receivership to create a record. The WEPP regulations require that trustees and receivers provide information to the Minister within 45 days of the bankruptcy or receivership.¹⁴ Based on this analysis, a majority of the records would have been entered within the deadlines established by the WEPP.

¹³ This table excludes cases where no decision had been made yet and some cases that were in a status other than paid such as *overpayment*. The total number of applications is therefore lower than previously reported numbers.

¹⁴ Amendments to WEPP in 2009 granted 10 more days (increased from 35 to 45 days) to trustees and receivers to provide the prescribed information to the Minister and to the individuals (potential WEPP applicants).

The approval processing time had improved over time and was close to meeting the target established by program management.

The majority of applications reached an initial approval or rejection decision within one month of being received. On average, the length of time from receiving an application to reaching an initial decision (approved or rejected) was only 1.2 months. Fifty-nine percent of the applications had an initial decision within one month or less, and by two months, 86% had an initial approval or rejection decision. Only 6% of the applications took longer than 3 months from receiving the application to reaching a decision.

Table 3.2 shows the length of time from the date the application was received to the date of payment, which was on average 1.8 months. While the average time to reach an initial decision had remained about the same in the previous two years, the length of time to issue the payment had decreased. On average, from the date of receipt, applications submitted in 2009-2010 were approved in 1.0 months and payment was issued in 1.9 months. In 2010-2011, the average time for approval was 1.1 months and only 1.5 months from the receipt of application to issuing the payment.

| Table 3.2 Length of Time from Application Received Date To Payment | | | | |
|---|--|--|--|----------------------|
| Number of Months from Application to Payment | Application Fiscal Year 2008-2009 | Application Fiscal Year 2009-2010 | Application Fiscal Year 2010-2011 | Total |
| 1 month or less | 16.9% | 45.7% | 57.1% | 46.0% |
| 1.1 to 2 months | 26.9% | 35.2% | 27.4% | 31.1% |
| 2.1 to 3 months | 35.1% | 9.5% | 4.2% | 11.1% |
| 3.1 to 6 months | 18.6% | 5.9% | 4.6% | 7.2% |
| More than 6 months | 2.5% | 3.7% | 6.6% | 4.6% |
| Total | 100.0% | 100.0% | 100.0% | 100.0% |
| Mean | 2.3 | 1.9 | 1.5 | 1.8 |
| Number of Applicants | 4,655 | 16,377 | 12,542 | 33,574 ¹⁵ |
| Source: Common System for Grants and Contributions. | | | | |

The decrease in the length of time to issue a payment was also reflected in the increase in the percentage of applications meeting the 42-day target for length of time from application to receipt of payment (Table 3.3). In the first application fiscal year, only 24% of processing

¹⁵ This number includes only those cases where a payment was made to an applicant.

times met the 42-day target, but by the 2009-2010 application fiscal year, this number had increased to 59%. By the 2010-2011 fiscal year, 75% of all applications approved for payment had a payment date within 42 days of receipt of the application, which was close to the 80% target established by program management.

| Table 3.3 Percent of Applications Meeting 42 Days Target for Length of Time from Application Received to Payment date | | | | |
|--|--|--|--|--------------|
| 42 Day Payment Target | Application Fiscal Year 2008-2009 | Application Fiscal Year 2009-2010 | Application Fiscal Year 2010-2011 | Total |
| Did not meet target | 76.5% | 41.2% | 24.6% | 39.9% |
| Met target | 23.5% | 58.8% | 75.4% | 60.1% |
| Total | 100.0% | 100.0% | 100.0% | 100.0% |
| Number of Applicants | 4,655 | 16,377 | 12,542 | 33,574 |
| Source: Common System for Grants and Contributions. | | | | |

Moving into a review or appeal process could add a significant amount of time to resolve a case. While the reconsideration process was relatively short (less than 2 weeks), the cases in review (3% of all cases) took on average three months and appeals took about the same length of time but were relatively uncommon representing only 0.2% of all cases. Very few approved applications went into an overpayment status (0.7%).

3.3 Communication and access to information

While some trustees and receivers need access to better information to provide to employees and for their own needs, the level of satisfaction with the quality of the information tended to be good.

Some trustees and receivers reported difficulties with the access to information from Service Canada and reported moderate levels of satisfaction with the quality of the information. Almost half the survey respondents (49%) found obtaining the necessary information about WEPP from Service Canada difficult, compared to 26% who stated it was easy to obtain the necessary information. When asked why, respondents cited problems with a lack of knowledge or training of the staff, problems with response times and problems being bounced from one contact to another or to multiple case officers.

In terms of the quality of the information received, approximately 49% of trustees and receivers ranked the quality of information they received from Service Canada as moderate. A small percentage (22%) provided a poor rating while a similar percentage (27%) rated the quality of the information as good.¹⁶

The consultations with trustees and receivers revealed a number of challenges in their role to deliver the WEPP. The comments provided in the consultations included:

- The requirement to inform employees about the WEPP has been a source of frustration for some trustees;
- There is a need for information sheets for employees in multiple languages beyond English and French;
- There are areas of uncertainty and lack of uniformity in the process followed by trustees including processing Trustee/Receiver Information Forms; and
- There have been difficulties entering Trustee/Receiver Information Forms online.

The Trustee/Receiver Information Form process can be improved.

For the majority of the trustees and receivers, the process of entering information for the Trustee/Receiver Information Form has been a challenging process. Just over half of the survey respondents (51%) somewhat or strongly disagreed that the Trustee/Receiver Information Form is easy to complete. Just over half (53%) of those who disagreed stated that the process needs to be streamlined (e.g. too many steps and cannot be done all at once with a single template). Approximately one third (35%) of those who disagreed said that they could not save information or that they have to redo their work to make changes. Just under a third (29%) stated that the forms are unclear.¹⁷

An even larger majority of the trustee/receiver survey respondents (63%) somewhat or strongly disagreed that the Trustee/Receiver Information Form submission process is efficient. The majority (68%) of those who disagreed stated that the forms are too lengthy or unclear and that it takes too long to submit everything. Respondents also said that the program or structure was complicated (21%), and that the form cannot be amended or accessed after submission (11%).

Survey respondents estimated that, based on their experiences with the Trustee/Receiver Information Form submission process over the past two years, on average it took them 38 minutes to prepare and submit a Trustee/Receiver Information Form.

¹⁶ Moderate was the midpoint on the scale, poor grouped the very poor and poor ratings and good group the good and very good scale ratings.

¹⁷ Percentages do not add to 100% as multiple answers were possible.

Very few trustees and receivers have filed fees for payments to WEPP.

The WEPP Regulations enable the payment of trustee and receiver fees and expenses if the final statement of receipts and disbursements for the bankruptcy or receivership shows a deficit and the trustee or receiver fees cannot be fully paid from the proceeds of the estate, as is the normal practice in bankruptcy. Additionally, there must be no other sources available for payment, and the trustee must demonstrate that at least 10% of the total fees charged for the administration of the bankruptcy or receivership are related to the performance of duties under section 21 of the WEPP Act. According to the WEPP Regulations, the amount payable for performing WEPP duties is not to exceed \$600 for the first wage claim and \$35 for each subsequent claim processed. At the time of the evaluation, very little had been paid out to trustees and receivers for their fees under the WEPP. For example, in 2011-2012, there were 12 trustee and receiver payments for a total amount of \$12,065.¹⁸ The survey of trustees and receivers provided very little information on the respondents' experiences to answer this question since only five of the 121 survey respondents had applied to be compensated for their administrative duties related to the WEPP.

When the respondents were asked at the end of the survey of trustees/receivers if they had any additional comments, 20% of the comments provided identified problems with the fee structures or the process for claiming fees. Almost all of these comments indicated that the formula and process was too complicated or the fees were insufficient. According to some of the key informants, the consequence of these problems with the trustee and receiver payment process is that trustees are reluctant to take on the cases of no or low asset bankruptcies. Since these cases are more likely to be situations where fees would have to be paid by the program rather than through estate assets or other sources, this may explain partially why very few trustees and receivers have filed fees for payments to WEPP and why little was paid out to trustees and receivers for handling WEPP administrative duties. Alternately, the low number of applications could be because trustees and receivers are able to recuperate the fees for performing their WEPP duties from the proceeds of the bankrupt estate, as is normal practice for obtaining payment of all of their other fees.

Moreover, when the program came into effect in 2008, there was no process in place for trustees and receivers to receive payment for fees incurred under WEPP. The WEPP Trustee/Receiver Payment Process was launched on December 15, 2010. As a result, some of the problems identified at the time of the key informant interviews were addressed at that point. Additionally, it should be noted that WEPP is a payer of last resort and that trustee fees are to be paid only in circumstances where there are insufficient resources and where WEPP-related work is significant enough to warrant seeking payment from the program.

¹⁸ The program has indicated that since the launch of the trustee payment process on December 15, 2010 until March 31, 2012, \$26,485 had been paid to 19 applicants.

While most applicants were satisfied with the overall process, the WEPP received lower satisfaction ratings in comparison with other ESDC programs.

The results of the 2010 Client Satisfaction Survey provided very detailed information on the satisfaction ratings for WEPP applicants¹⁹ relative to the experience of other Service Canada clients.²⁰ As shown in Table 3.5 below, WEPP satisfaction ratings were lowest of all programs and services included in the 2010 Client Satisfaction Survey. In terms of their overall satisfaction with the service provided, approximately 68% of the WEPP applicants were satisfied with the quality of service received from Service Canada, while 14% were dissatisfied. It should be noted that, in this survey, respondents included applicants for service who had been unsuccessful as well as those who had been successful in their application for WEPP funding. No weighting was applied to the survey results, possibly resulting in greater dissatisfaction since unsuccessful applicants are more likely to be dissatisfied with a program (see discussion below of the survey of successful and unsuccessful applicants conducted as part of the data collection for this evaluation).

| Table 3.4 Overall Satisfaction with Quality of Service Received From Service Canada | | | |
|---|-------------|-----------|-----------------------|
| | WEPP | EI | Other Programs |
| How satisfied were you with the overall quality of service you received from Service Canada related to ... during the last six months? +++ | | | |
| Dissatisfied/Very Dissatisfied | 13.7% | 9.1% | 5.7% |
| Neither Dissatisfied or Satisfied | 17.3% | 13.6% | 10.8% |
| Satisfied /Very Satisfied | 67.9% | 77.2% | 82.3% |
| Don't Recall/No Response | 1.1% | 0.1% | 1.2% |
| Total | 100.0% | 100.0% | 100.0% |
| Mean*** | 3.8 | 4.1 | 4.3 |
| Number of Respondents | 338 | 493 | 2,756 |
| + Chi-Square significant p<.05, ++ p< .01, +++ p<.001. * F-test significant p<.05, ** p< .01, *** p<.001. | | | |

¹⁹ Sample was based on all “clients” with a significant interaction with Service Canada between April 1, 2010 and July 31, 2010. Although the term “clients” was used in the survey reporting, this included both successful and unsuccessful applicants for service.

²⁰ The other programs and services included in the 2010 Client Satisfaction Survey were Canada Pension Plan, Guaranteed Income Supplement, Old Age Security, Employment Insurance, Apprenticeship Completion Grant, Apprenticeship Incentive Grant, Social Insurance Number and 1-800 O-Canada.

The highest rated aspects of the service provided by Service Canada to WEPP applicants related to the quality of the staff. In fact, the ratings for these aspects for the service received were as high, or higher, than the ratings provided by the EI clients. However, as shown in Table 3.5, when compared to EI client ratings WEPP applicants provided significantly lower ratings for knowing what they could do if they had a problem. The rating for the timeliness of the services provided for the WEPP was the lowest of all the service dimensions measured. One in four (26%) of the WEPP applicants were dissatisfied with the timeliness of the service, versus less than one in five (19%) who were dissatisfied with the timeliness of the EI service.

| Table 3.5 Overall Satisfaction with Quality of Service Received From Service Canada | | |
|--|-------------|-----------|
| | WEPP | EI |
| It was clear what you could do if you had a problem or question | | |
| Dissatisfied/Very Dissatisfied | 13.6% | 9.0% |
| Neither Dissatisfied or Satisfied | 18.4% | 17.1% |
| Satisfied /Very Satisfied | 65.6% | 72.1% |
| Don't Recall/No Response | 2.4% | 1.8% |
| Total | 100.0% | 100.0% |
| Mean* | 4.0 | 4.2 |
| Number of Respondents | 338 | 493 |
| You were satisfied with the amount of time it took to get the service. + | | |
| Dissatisfied/Very Dissatisfied | 26.1% | 18.7% |
| Neither Dissatisfied or Satisfied | 12.5% | 14.8% |
| Satisfied /Very Satisfied | 59.6% | 65.4% |
| Don't Recall/No Response | 1.8% | 1.1% |
| Total | 100.0% | 100.0% |
| Mean* | 3.6 | 3.8 |
| Number of Respondents | 338 | 493 |
| + Chi-Square significant p<.05, ++ p< .01, +++ p<.001. * F-test significant p<.05, ** p< .01, *** p<.001. | | |

The survey of successful and unsuccessful applicants provided additional insight into the satisfaction of the WEPP applicants with the application process. While, overall, most of the applicant survey respondents (71%) were satisfied with the WEPP application process, this number was determined largely by the successful applicants, 79% of whom were

satisfied. The satisfaction ratings were lower for the unsuccessful applicants, among whom only 39% were satisfied with the application process. Most of the unsuccessful applicants (73%) believed that the decision to reject their application was unfair.

3.4 Program Outcomes

Over the period from 2008-2009 to 2010-2011, the WEPP provided recovery of approximately 64 cents on the dollar for the amounts owed to employees by their former employer.

As demonstrated in Table 3.6, compared to the first year of implementation, the eligible amounts owing to WEPP recipients have increased more than three-fold in the recent two fiscal years due in large part to the inclusion of severance and termination pay as eligible amounts under the WEPP in 2009-2010. The average total amount owed to employees by former employers ranged from \$2,490 in 2008-2009 to \$8,753 in 2009-2010 and dropped to \$6,750 in the following year.

Compared to the increase in the amounts owed after the 2009-2010 fiscal year, payments have not increased to the same degree since there is a cap on the maximum amount payable under the WEPP. The average WEPP payment increased from \$1,340 in 2008-2009 to \$2,323 in 2009-2010 and recorded a similar amount (\$2,363) in the following year. Consequently, in the first year of operations, the WEPP paid approximately 80 cents on the dollar of the amounts owed to employees by former employers, compared to just under 64 cents on the dollar in the 2010-2011 application fiscal year.

As indicated earlier, in the absence of the WEPP most employees would recover none or very little of the money owed. As reported through the applicant and non-applicant surveys, the majority of the applicants and non-applicants did not attempt to recover money owed from their former employer, and few (5%) were successful in recovering money using other methods.

| Table 3.6 Amount Owed, WEPP Payments and Percent of Amount Owed Paid | | | | |
|--|--|--|--|--------------|
| Owed/Payment Categories | Application Fiscal Year 2008-2009 | Application Fiscal Year 2009-2010 | Application Fiscal Year 2010-2011 | Total |
| Mean Wages Owed | \$921 | \$638 | \$692 | \$698 |
| Mean Vacation Owed | \$808 | \$548 | \$530 | \$577 |
| Mean Termination Pay Owed | \$342 | \$3,407 | \$3,008 | \$2,830 |
| Source: Common System for Grants and Contributions data. Amounts owed are the amounts owed by the employee's former employer reported by the trustees and receivers. | | | | |

Table 3.6 Amount Owed, WEPP Payments and Percent of Amount Owed Paid

| | | | | |
|---------------------------------------|---------|---------|---------|---------|
| Mean Severance Pay Owed | \$318 | \$4,109 | \$2,460 | \$2,963 |
| Mean Other Amounts Owed | \$101 | \$52 | \$60 | \$62 |
| Total Mean Amount Owed | \$2,490 | \$8,753 | \$6,750 | \$7,130 |
| Mean WEPP payment | \$1,340 | \$2,323 | \$2,363 | \$2,201 |
| Mean % of Amount Owed Paid Under WEPP | 81.7% | 56.7% | 63.8% | 62.9% |
| Number of Applicants | 4,632 | 16,151 | 12,433 | 33,216 |

Source: Common System for Grants and Contributions data. Amounts owed are the amounts owed by the employee's former employer reported by the trustees and receivers.

WEPP provided a fair solution to meeting the needs of workers owed money by bankrupt companies, although there were some divergent opinions on the extent of the financial protection provided by WEPP.

Evidence from key informant interviews, consultations with trustees/receivers was consistent with the finding from the trustee and receiver survey and the applicant surveys that the WEPP provided a fair solution to meeting the needs of workers owed money by bankrupt companies. The majority of the trustees and receivers surveyed (54%) somewhat or strongly agreed that WEPP provides a fair solution for employees owed money from bankrupt companies. The majority of the applicant survey respondents (67%) also agreed that the WEPP provides a fair solution to employees owed money from bankrupt companies. Fewer unsuccessful applicants shared this view of WEPP, with 34% agreeing that WEPP provided a fair solution compared to 44% who disagreed.

The majority also agreed that the WEPP had improved the financial protection of workers owed wages due to bankruptcy. A large majority of interviewees believes that WEPP had increased financial protection for workers in situations of bankruptcy. There were some mixed views on the protection provided in the surveys. While a large percentage (41) of the successful applicant respondents agreed that WEPP helped their financial situation, a similar percentage of the successful applicants (37%) did not agree. The respondents to the trustee and receiver survey were also divided on whether WEPP provides considerable financial relief for the employees who are owed money. Approximately 41% of trustees agreed that WEPP provides considerable relief over financial concerns for employees' owed money, while 33% of trustees disagreed with that statement. For those who disagreed, the main reasons that respondents gave for this belief included: it is unfair that workers whose jobs are terminated after insolvency (i.e. during receivership) are ineligible (33%); the payment amount is too low or unfair (22%); employees would have received that amount under the BIA anyway (22%); and the amounts are taken back through EI or income tax (22%).

There was no evidence that the WEPP had any impact on the employment outcomes of the WEPP participants.

There was no statistically significant difference in the employment outcomes of the successful WEPP applicants and the unsuccessful WEPP applicants. Based on the survey of applicants, 60% of the successful applicants were employed full-time or self-employed compared to 66% of the unsuccessful applicants.

There was no direct evidence that the WEPP had a negative impact on EI benefits such as lower benefits or having to pay back part of their EI benefits.

Key informant interviews with stakeholders and consultations with trustees and receivers indicated that one factor that would potentially limit the impact of the WEPP payments was reduction in EI payments based on the money received under the WEPP. However, there was no direct evidence from the EI data that the WEPP had a negative impact on EI benefits. On average, WEPP applicants who received payment were entitled to receive more EI, and they in fact did receive more EI benefits than applicants who were rejected. Table 3.7 shows EI outcomes for a first EI claim after job loss for EI recipients who received different amounts of WEPP payments. For EI recipients, there was a positive relationship between the mean amount of WEPP payments received and the mean amount of EI benefits actually paid. This is because recipients with the higher earnings and longer work histories would not only qualify for higher EI benefit payments but would also be typically owed more wages by their former employer and would be eligible for higher WEPP payments. Applicants who received \$1K or less in WEPP payments received an average of \$7.8K in EI benefits, while applicants who received more than \$3K in WEPP payments received an average of \$13.3K in EI benefits during the claim.

Table 3.7 EI Outcomes for First EI Claim After Job Loss For Selected Levels of Payment for Successful Applicants who Applied Prior to 2010 (EI Recipients Only)

| Amount of WEPP Payment | Mean Weeks Eligible to Receive EI | Mean Number of Weeks EI Paid | Mean Amount of EI Eligible to Receive | Mean Total Amount of EI Paid | Number of Applicants |
|-------------------------------|--|-------------------------------------|--|-------------------------------------|-----------------------------|
| \$1 to \$1,000 | 40.6 | 27.2 | \$12,749 | \$7,779 | 2,152 |
| \$1,001 to \$2,000 | 46.4 | 29.8 | \$17,067 | \$10,162 | 1,767 |
| \$2,001 to \$3,000 | 47.7 | 31.0 | \$18,406 | \$11,017 | 1,119 |

Source: Common System for Grants and Contributions data and Status Vector. Includes only applicants who could be linked to an Record of Employment and had an EI claim.

Table 3.7 EI Outcomes for First EI Claim After Job Loss For Selected Levels of Payment for Successful Applicants who Applied Prior to 2010 (EI Recipients Only)

| | | | | | |
|---|------|------|----------|----------|-------|
| More than \$3,000 | 54.1 | 35.4 | \$21,825 | \$13,254 | 4,444 |
| Source: Common System for Grants and Contributions data and Status Vector. Includes only applicants who could be linked to an Record of Employment and had an EI claim. | | | | | |

Although there was no evidence of an impact on EI based on the analysis of the Record of Employment and EI data, there was evidence that some WEPP recipients were at risk of EI overpayments. An analysis of the EI data indicated that one in four WEPP recipients (24%) could be classified as being at risk of an EI overpayment because of a potential overlap in the time they would have been expected to utilize their termination and severance in lieu of EI benefits and the actual receipt of EI benefits. This means that in situations where EI benefit payments occur before WEPP payments are settled, an EI overpayment of EI benefits may occur.²¹

These findings from the analysis of EI data are generally consistent with the information provided in the survey of applicants. The survey of applicants found that one-third of the WEPP recipients (34%) who received EI benefits reported that they had to repay a portion of the EI benefits they had received. The requirement to repay occurs when the monies received from WEPP are in payment for vacation, termination and/or severance pay owed by the former employer. Because EI deems these amounts as ‘earnings’ the applicants were required to repay a portion of the EI benefits received. Overall, and recognizing that each particular situation is different, it should be noted that even where an EI claimant is required to repay an EI overpayment, the WEPP recipients are able to retain a considerable portion of their WEPP payment and are able to have their EI claim extended, if needed.

Key informants stated that a lack of integrated reporting between the WEPP and EI systems may contribute to EI overpayments for the participants. It should be noted that an analysis of the options for allowing the efficient exchange of information between the WEPP and EI systems had been reviewed by WEPP and EI Program representatives. However at the time of the evaluation no changes had been implemented to allow the exchange of information between the two programs. It has been indicated that discussions of this issue have now been renewed in the context of the Office of the Auditor General’s report on EI overpayment recovery.

²¹ *Employment Insurance Act* - 46(1) Subsection 46(1) of the *Employment Insurance Act* and its effects on a Trustee acting pursuant to the *Bankruptcy and Insolvency Act*

3.5 Unintended Impacts

Costs incurred by trustees and receivers to administer the WEPP might make some trustees and receivers be reluctant to take on bankruptcies and receiverships that involve WEPP claims.

An unintended impact of the program that was identified was that costs incurred by trustees and receivers and the processes involved in administering WEPP might make some trustees reluctant to take on bankruptcies where WEPP claims are involved, particularly in the case of no or low asset estates. In such circumstances, trustee fees cannot be fully recuperated from the estate as payer of first resort. Documents reviewed, consultations with trustees/receivers and the survey of trustees/receivers indicate that trustees were generally apprehensive about taking on WEPP claims: they found the work both challenging and time consuming and the fee payment provisions under the WEPP to be inadequate.

As indicated earlier, the WEPP Trustee/Receiver Payment Process was not launched until December 15, 2010. As a result, some of the problems identified at the time of the key informant interviews have subsequently been addressed.

3.6 Program Costs, Efficiency and Coordination

In the recent two fiscal years covered in this evaluation, operating costs have accounted for 10% of total program expenditures.

Table 3.8 shows the salary and operations and maintenance expenditures related to the WEPP for the Labour Program and Service Canada. Although there are some WEPP related Canada Revenue Agency expenditures, these expenditures were not included in the program costs, since these costs relate specifically to the recovery of WEPP payments from the estates and overpayments to WEPP recipients and not to the program delivery *per se*.

Total program operating expenditures over the three fiscal years were just under \$12.4 million while total WEPP payments to successful applicants were approximately \$72.8 million for an overall total Program expenditure of \$85.1 million. Expressing the operating expenditures as a percent of total program expenditures yielded a 14.5% figure over the three years; however, the start-up costs in the first year inflated this figure somewhat. In the most recent two fiscal years, this percentage has been 10%. In other words, for every dollar spent on the WEPP, 10 cents was for program administration. Estimating the ratio of total WEPP payments to the total operations and maintenance expenditures yielded a figure of under \$6 overall and just under \$9 for the two recent fiscal years, meaning that in recent years it took one dollar of program administration cost for every 9 dollars of WEPP payments.

Table 3.8 Program Expenditures for Implementation and Delivery and Total WEPP Payments

| Program Expenditures | Fiscal Year 2008-2009 | Fiscal Year 2009-2010 | Fiscal Year 2010-2011 | Total |
|--|--------------------------|--------------------------|--------------------------|--------|
| Labour Program (000's of dollars) | 1,252 | 1,684 | 1,683 | 4,619 |
| Service Canada (000's of dollars) | 3,585 | 2,486 | 2,155 | 8,226 |
| Total Program Operating Expenditures (000's of dollars) | 4,837 | 4,170 | 3,838 | 12,845 |
| Total WEPP Payments (000's of dollars) | 3,616 | 35,848 | 33,296 | 72,760 |
| Total WEPP Expenditures (000's of dollars) | 8,453 | 40,018 | 37,134 | 85,605 |
| Percent of Total Expenditures spent on Operating Expenditures | 57.2% | 10.4% | 10.3% | 15.0% |
| Ratio of Total WEPP Payments to Total Operating Expenditures | 0.75 | 8.60 | 8.68 | 5.66 |
| Source: Program spreadsheets, excludes Canada Revenue Agency expenditures. | | | | |

Overall, 11% of WEPP payments were recovered from the bankruptcy estates.

The Canada Revenue Agency is mandated by the WEPP Act to recover overpayments made to applicants. Canada Revenue Agency also has a limited role with respect to the recovery by the Government of Canada of the WEPP subrogated debt under the Bankruptcy and Insolvency Act that result from amounts paid by the WEPP to applicants. The insolvency reform package also included amendments to the Bankruptcy and Insolvency Act that elevated the priority status of unpaid wages and vacation pay from the “preferred creditor” to “limited super-priority” status. This means that some of the recoveries of the subrogated debt by Canada Revenue Agency for unpaid wages and vacation pay, up to \$2,000, will have priority above secured creditors on the current assets of the bankrupt or insolvent employer’s estate, that is, cash on hand, inventory and accounts receivable. As shown in Table 3.9, based on data from the Departmental Accounts Receivable System (DARS) from 2008 to 2011, the recoveries on super-priority accounts were 27% of the WEPP payments and less than 3% on normal priority accounts. Over both accounts, 11% of the \$72.2

million in WEPP payments were recovered from the bankruptcy estates. While the time periods for the data extraction differ, information from Canada Revenue Agency showed approximately the same recovery percentages for these two accounts.

Full recovery of these payments was not anticipated for this program, however, in part because there was a cap on how much could be recovered (a maximum of \$2,000 for super-priority accounts). A target of 50% recovery for the super-priority accounts was initially established by the program. As shown in the table, the recovered amounts account for just under 55% of this target. No targets were set for the normal priority accounts as it was anticipated that very small amounts would be able to be recovered for these payments.

| Table 3.9 Recoveries for Super-Priority and Normal Priority WEPP Payments | | | | | |
|--|-------------------------------|-----------------------------------|--|---------------------------------|--|
| Priority | Total Amount Recovered | Total Paid Account Amounts | Percent Recovered of Total Paid Account | Expected Recovery Target | Percent Recovered of Targeted Amounts |
| Super-Priority | \$6,789,873 | \$24,867,245 | 27.3% | \$12,433,623 | 54.6% |
| Normal Priority | \$1,220,897 | \$47,793,560 | 2.6% | No target | N/A |
| Total | \$8,010,770 | \$72,660,805 | 11.0% | No target | N/A |
| Source: DARS data | | | | | |

The DARS also showed that the recovery of overpayments from WEPP recipients was over 60% or 60 cents on each dollar overpaid. However, the amounts owing and recovered are very small (less than \$300K) in comparison to the WEPP payment account recoveries from the assets of insolvent employers.

It should be noted that the primary focus of WEPP is to ensure that employees receive the wages owed to them by bankrupt employers; recovery is a secondary intent of the program.

4. Recommendations

Recommendations based on the evaluation findings are provided below.

1. Discussions should be initiated by the Workplace Directorate with trustees and receivers to investigate options for streamlining the administration of the WEPP, including the Trustee/Receiver Information Form.
2. Discussions should be initiated by the Workplace Directorate with trustees and receivers to explore their needs for WEPP information to assist the trustees and receivers to provide program information to potential WEPP applicants about their responsibilities and rights as well as to ensure they have better access to information for their own needs to administer the WEPP.
3. A discussion between the WEPP and Service Canada should be undertaken to explore the possibility of including an examination of overpayments due to WEPP payments as a component of the examination of EI overpayments in response to the report from the Office of the Auditor General.
4. In an effort to improve accessibility to the program and avoid cases where trustees might be reluctant to take on a bankruptcy because the process is perceived to be too onerous, trustees and receivers should be consulted by the Workplace Directorate to determine whether, in the cases where the estate has insufficient assets for payment of fees, changes to processes for payment of their fees by WEPP are warranted and can be developed and implemented.
5. Program management should continue to closely monitor the time required to approve applications and examine options for reducing the processing time for applications that are under review or in appeal.

Appendix A – The WEPP Logic Model

