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**Temporary Foreign Worker Program—
Employment and Social Development Canada**



Office of the
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Bureau du
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du Canada

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Introduction

Background

Temporary Foreign Worker Program

5.1 Canada faces significant labour market challenges. One challenge is regional disparities between available workers and job openings, while another is a lack of skilled labour in some occupations. Therefore, even though there are more than one million unemployed Canadians, some employers cannot fill vacant positions for some occupations.

5.2 The recruitment of foreign workers is one option available to employers with unfilled positions. The Temporary Foreign Worker Program enables employers to temporarily hire foreign workers to fill skills and labour shortages when qualified Canadians and permanent residents are not available.

5.3 The program is governed by the *Immigration and Refugee Protection Act* and the *Immigration and Refugee Protection Regulations*. Employment and Social Development Canada has key responsibilities for the program. Employers must apply to the Department and receive its approval before they can hire foreign workers. The Department assesses whether foreign workers will have a positive or neutral impact on the relevant labour market. If the impact is neither positive nor neutral, the Department turns down requests for these workers. The Department is also responsible for ensuring that employers that hire temporary foreign workers comply with program requirements, as well as for measuring and reporting on program results.

5.4 Programs allowing temporary foreign workers to enter Canada have evolved since the 1960s. The Seasonal Agricultural Worker Program was established in 1966 to focus on that one sector of the economy. The Temporary Foreign Worker Program focused on high-skilled workers from its beginning in 1973 until 2002, when the federal government introduced changes to the program to include low-skilled workers. The number of temporary foreign workers who entered Canada peaked in 2012 at just over 199,000 and declined each year after that to just over 90,000 in 2015.

5.5 In June 2014, the federal government announced reforms to the program that it determined were needed because employers were no longer using the program as a last resort to fill jobs when qualified Canadians were not available. The government also stated that reforms were needed to end the growing employer practice of building business models on the program and to protect temporary foreign workers from abuse.

5.6 The 2014 reforms include

- limiting employer access to temporary foreign workers, to ensure that Canadians are considered first;
- making use of more and better labour market information to inform departmental decisions; and
- enabling stronger enforcement and tougher penalties for employers that do not comply with program requirements.

5.7 The program was also examined in 2016, when the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities adopted a motion to study the program and identify ways to improve it. The Committee held five meetings on the subject and issued a report with recommendations in September 2016. The Department was in the process of developing a response at the end of our audit.

Focus of the audit

5.8 This audit focused on whether Employment and Social Development Canada managed the Temporary Foreign Worker Program to allow employers to hire foreign workers on a temporary basis to fill labour shortages when qualified Canadians were not available. The audit also focused on whether the Department ensured that employers complied with program requirements.

5.9 This audit is important because the program is meant to be used by employers to hire temporary foreign workers only as a last resort. In the past, some employers used the program to hire temporary foreign workers who did not fit this circumstance.

5.10 We did not examine the roles and responsibilities of Immigration, Refugees and Citizenship Canada and of the Canada Border Services Agency in the management of the program.

5.11 More details about the audit objective, scope, approach, and criteria are in **About the Audit** at the end of this report (see pages 21–24).

Findings, Recommendations, and Responses

Management of the Temporary Foreign Worker Program

Overall message



5.12 Overall, we found that Employment and Social Development Canada implemented measures that helped reduce the number of temporary foreign workers. However, the Department did not do enough to ensure that employers hired temporary foreign workers only as a last resort. The Department relied largely on the information provided by employers to determine whether the need for temporary foreign workers was justified, and it did not consider sufficient labour market information to determine whether jobs could be filled by Canadians. We found cases in certain sectors—primarily caregivers, and fish and seafood processing plants—in which the Department should have better questioned whether temporary foreign workers were filling real labour shortages. In particular, there were indications that unemployed Canadians who last worked in a fish and seafood processing plant may have been available for work.

5.13 We also found that the Department did not adequately identify and deal with employers that were not following program requirements. It conducted few on-site inspections and face-to-face interviews with employers or temporary foreign workers.

5.14 Finally, we found that the Department did not measure the results or impact of the program and did not know what impact the program had on the labour market.

5.15 These findings matter because the program was designed to help employers fill job vacancies that they cannot otherwise fill, and Canadians expect the Department to manage the program in a way that makes sure the program is used to respond only to real Canadian labour market shortages.

The Department implemented some measures to limit employer access to the program

What we found

5.16 We found that the number of temporary foreign workers approved by Employment and Social Development Canada decreased from about 163,000 in 2013 to just over 90,000 in 2015, partly because of the changes the Department made in 2014 to limit employer access to the program.

5.17 Our analysis supporting this finding presents what we examined and discusses the following topic:

- Reform measures to limit access to the program

Why this finding matters

5.18 This finding matters because the number of temporary foreign workers kept increasing over the years, as some employers were building their business models on the program. It is important for employers to make more efforts to hire and train Canadian workers and to use the program only as intended—as a last resort.

Recommendations

5.19 We made no recommendations in this area of examination.

Analysis to support this finding

5.20 **What we examined.** We examined whether the Department implemented measures to limit the use of the program, as the Department had announced in June 2014.

5.21 **Reform measures to limit access to the program.** We found that the Department implemented measures to restrict access to the program. These measures helped to reduce the number of temporary foreign workers—from about 163,000 in 2013 to just over 90,000 in 2015—particularly in the high-wage, low-wage, and caregiver sectors (Exhibit 5.1).

Exhibit 5.1 The number of temporary foreign worker positions approved by Employment and Social Development Canada started decreasing in 2013

Sector	2009	2010	2011	2012	2013	2014	2015
High wage	34,749	36,057	42,741	63,108	46,396	23,813	21,960
Low wage	42,018	50,375	56,262	79,705	58,026	20,257	10,980
Caregiver	20,122	19,720	15,466	16,131	13,247	12,695	3,968
Primary agriculture*	37,203	35,860	37,952	40,274	45,366	47,477	53,303
Total	134,092	142,012	152,421	199,218	163,035	104,242	90,211
* The number of temporary foreign workers continued to increase in the primary agriculture sector; this sector was exempt from many of the 2014 reform measures. Source: Unaudited data from Employment and Social Development Canada's Foreign Worker System							

5.22 One measure reduced the length of time that temporary foreign workers in low-wage occupations could remain in Canada, from two years to one year. This measure was aimed to ensure that foreign workers were truly temporary and to encourage employers to make greater efforts to hire and train Canadian workers before seeking temporary foreign workers.

5.23 Another measure capped the number of low-wage temporary foreign workers that an employer could hire in proportion to the size of its workforce. Since there had been no limit on the number of temporary foreign workers that an employer could hire, certain sectors and regions came to rely heavily on low-wage temporary foreign workers, including

accommodation and food services in the Western provinces; caregivers in Ontario, Alberta, and British Columbia; and fish and seafood processing plants in the Atlantic provinces.

5.24 The plan was for the number of temporary foreign workers to be no more than 30 percent of an employer's workforce in June 2014, to be reduced to 20 percent in July 2015, then to 10 percent in July 2016. However, the Department did not fully implement this measure, because employers of fish and seafood processing plants in the Atlantic provinces stated that the cap had a negative impact on the sector. The Department therefore froze the cap at 20 percent in June 2016 and provided a one-time cap exemption in 2016 to allow seasonal industries to bring in as many temporary foreign workers as were needed for up to 180 days.

5.25 Under a third measure, the Department considered applications only from employers requesting to hire temporary foreign workers to fill low-skill positions in the accommodation, food, and retail sectors in regions where the unemployment rate was lower than six percent.

5.26 The Department also asked most employers of high-wage temporary foreign workers to submit transition plans to ensure that these employers were taking steps to reduce their reliance on these workers over time.

5.27 These measures appear to have helped reduce the number of temporary foreign workers in Canada. However, the Department acknowledged that the decrease could not be attributed to the 2014 reforms alone; the economic downturn was also a contributing factor.

The Department did not do enough to ensure that employers hired temporary foreign workers only as a last resort

What we found

5.28 We found that in some cases, Employment and Social Development Canada approved applications for temporary foreign workers even when employers had not demonstrated reasonable efforts to train existing employees or hire unemployed Canadians, including those from under-represented groups.

5.29 Our analysis supporting this finding presents what we examined and discusses the following topics:

- Assessment of employer recruitment efforts
- Quality assurance framework

Why this finding matters

5.30 This finding matters because employers are supposed to use the program only when qualified Canadians are not available for work, and because the Department is responsible for making sure that the program does not have a negative effect on job opportunities for Canadians.

Recommendations

5.31 Our recommendations in this area of examination appear at paragraphs 5.41 and 5.44.

Analysis to support this finding

5.32 **What we examined.** We examined whether the Department adequately assessed the impact on the labour market of employing temporary foreign workers when it reviewed applications from employers. We examined a total of 136 application files from three random samples to review the Department's assessment of employers' recruitment efforts. Of the applications we reviewed, 88 percent were approved, which was consistent with the overall program approval rate of 85 percent in 2015. We also examined whether the Department had a quality assurance framework in place to ensure that program officers assessed applications according to program requirements.

5.33 **Assessment of employer recruitment efforts.** Program officers assessing applications required information from employers on their recruitment efforts, to determine whether the employers had made reasonable efforts to hire or train Canadians, including those from under-represented groups. Employers had to provide proof of their recruitment efforts, such as job advertisements, the number of job applicants, the number of job applicants interviewed, and the reasons why Canadian job applicants were not hired.

5.34 We found that program officers generally accepted statements from employers about the results of their efforts to hire or train Canadians. In cases where, in our opinion, the information provided by employers warranted further questioning, we found that program officers did not sufficiently question employers in 40 percent of the cases. The information provided by these employers suggested to us that they had not made reasonable efforts to hire or train Canadians.

5.35 For example, we found a case in which the Department approved an application under the program to hire a caregiver for the applicant's elderly parent, despite the fact that the applicant had not tried to recruit Canadians, as required. The reason given in the application for not recruiting a Canadian was that the employer was looking for "someone who is trustworthy and with the ability to work without supervision." Another reason why we would have expected the program officer to question the application was that the parent who needed care was living in another country at the time of the application, and the applicant noted that the parent would return to Canada if the request for a temporary foreign worker was approved. We found that these statements were accepted without challenge by the program officer.

5.36 We also found examples in which program officers approved applications to hire temporary foreign workers for supervisory positions, even though there was little evidence in the files that employers had

considered training or promoting their many Canadian employees. In one case, an employer of a fish and seafood processing plant told the Department that its intended goal was to move some temporary foreign workers up into supervisory positions.

5.37 In addition, some employers of fish and seafood processing plants told the Department that temporary foreign workers were required because some Canadians had quit their positions because of the conditions or difficulty of the work. In our opinion, this type of situation appeared to be a retention problem and not a labour shortage problem.

5.38 Departmental policy required that, for low-wage positions, employers should demonstrate that they had tried to recruit from under-represented groups. In the files we reviewed where this requirement applied, 65 percent of employers did not make adequate efforts to appeal to under-represented groups. Nevertheless, the Department approved most of these applications. For example, program officers approved applications for temporary foreign workers in some fish and seafood processing plants located near First Nations communities, even when efforts to recruit from those communities were not found on file.

5.39 According to an internal policy, program officers could request that employers conduct additional advertising if they had determined that it would likely yield qualified Canadians who were available to work in the occupation and region. We found little evidence that program officers had made this type of request to employers.

5.40 While we found that program officers generally followed internal guidance in assessing applications, in many cases program officers noted that it was difficult for them to verify the accuracy of what employers told them about their recruitment efforts and whether their efforts were reasonable.

5.41 **Recommendation.** Employment and Social Development Canada should review current policies, guidance, and processes to identify opportunities to strengthen the assessment of employers' recruitment efforts. The Department should ensure that Temporary Foreign Worker Program officers can more fully verify the accuracy of employers' statements and that employers use the program only as a last resort.

***The Department's response.** Agreed. Employment and Social Development Canada recognizes the importance of ensuring that Canadians and permanent residents have first access to available jobs.*

The Department currently conducts an assessment of an employer's efforts to hire Canadians as part of the employer's application for a Labour Market Impact Assessment. The Department is committed to reviewing its policies and providing officers with appropriate guidance to strengthen the verification of employer recruitment efforts. In addition, as announced by the Government of Canada in December 2016, increased requirements

for employers to reach out to under-represented groups (Indigenous people, youth, newcomers, and individuals with disabilities) will be implemented in summer 2017.

5.42 Quality assurance framework. A quality assurance framework, including the regular review of program officers' decisions by supervisors, can help to ensure the consistency and appropriateness of these decisions.

5.43 We found that, while the Department offered training to program officers and reviewed some of their decisions, there was no national quality assurance framework to assess the quality and consistency of the program officers' decision making.

5.44 Recommendation. Employment and Social Development Canada should establish a quality assurance framework for the Temporary Foreign Worker Program. The framework should ensure that program officers' decisions relating to the application process are consistent with program requirements and that employers hire temporary foreign workers only as a last resort.

***The Department's response.** Agreed. As part of ongoing efforts to improve its operations, Employment and Social Development Canada launched a quality assurance pilot program in April 2017 to achieve national consistency in processing labour market impact assessments. In addition to monitoring the processing of these assessments, the quality assurance program will help inform future policy decisions as well as the development of clear guidance to support the assessment process. An evaluation of the pilot will be undertaken in summer 2017, with the goal of full implementation by late fall 2017.*

The Department did not use all existing labour market information to determine whether Canadians could fill available positions

What we found

5.45 We found that, when considering applications from employers requesting to hire temporary foreign workers, program officers at Employment and Social Development Canada had access to some—but not all—of the labour market information they needed to assess the applications. For example, program officers did not use Employment Insurance (EI) data and had access to only some Record of Employment (ROE) information. This information could have helped them assess whether there were real labour shortages and whether there were Canadians available to fill the positions identified by employers in their applications. For example, the Department approved applications from employers of fish and seafood processing plants even when it was aware that unemployed Canadians who last worked in a fish and seafood processing plant may have been available for work.

5.46 Our analysis supporting this finding presents what we examined and discusses the following topics:

- Use of departmental labour market information
- Use of new labour market information from Statistics Canada

Why this finding matters

5.47 This finding matters because program officers need access to detailed information about labour markets to assess whether there are real labour shortages. Without sufficient labour market information, there is a risk that program officers will not be able to ensure that temporary foreign workers are not hired for jobs that Canadians could have filled.

Recommendations

5.48 Our recommendations in this area of examination appear at paragraphs 5.58 and 5.62.

Analysis to support this finding

5.49 **What we examined.** We examined whether the Department, before approving applications for temporary foreign workers, used all existing labour market information to determine whether there were labour shortages. We reviewed the Department's assessments of 136 application files from three random samples.

5.50 **Use of departmental labour market information.** Labour market information can help program officers determine whether Canadians are available to fill jobs. The following information is available at the Department:

- **Job Bank**—This data is compiled by Employment and Social Development Canada. The data provides national, provincial, and regional information on wage rates, educational requirements, employment outlooks, and working conditions for occupations. It allows officers to check the wages offered by employers.
- **Record of Employment**—This document is issued by employers to employees and shows when employees were laid off and for what reason. Program officers can use ROE data to find out whether employers applying to hire temporary foreign workers have recently laid off Canadians. The data allows officers to ensure that Canadian workers are not replaced by temporary foreign workers.
- **Employment Insurance**—EI claimants' information is important to determining whether Canadian workers are in fact available. It can also help program officers determine whether employers are requesting temporary foreign workers in regions where there are unemployed Canadians with the appropriate skills to fill vacant positions.

5.51 Employers were required to make efforts to recruit Canadians before applying to the program, including advertising available positions to Canadians for a month, at or above the median wage for the position. Employers also had to provide their reasons for laying off any employees in the year prior to their program application. Program officers looked at the information that employers provided about their recruiting efforts and layoffs when assessing the impact of approving the hiring of a temporary foreign worker.

5.52 We found that program officers used Job Bank data to determine the employment outlook by occupation and the median wage for the position requested by the employer in the economic region where the temporary foreign worker would be employed.

5.53 The *Department of Employment and Social Development Act* allows the sharing of information between programs within the Department. In 2013, officials responsible for EI and ROE data and officials responsible for the Temporary Foreign Worker Program signed an agreement to provide aggregate EI claimant and ROE data to the program, to ensure that employers were not displacing Canadians with foreign workers. Aggregate EI data was to be used to assess the availability of Canadians and to ensure that temporary foreign workers were not approved if there were significant numbers of EI claimants in the occupation and region in which employers wanted to hire them. ROE data was to be provided to indicate whether employers were laying off Canadians and attempting to hire temporary foreign workers for the same job in the same location.

5.54 However, we found that the Department did not provide EI data to program officers for use in their assessments of employer applications.

5.55 We also found that the program made limited use of ROE data. Since employers have to state in their applications whether they had laid off employees in the past year, program officers should be able to check ROE data going back at least a year. However, we found that a program policy directive allowed program officers to access this data for a period of only 90 days prior to the date of the employer's application. As a result, program officers could not verify whether employers were being honest about layoffs over the one-year period. For seasonal industries in particular, 90 days was not enough time to fully understand fluctuations in employment. The 90-day limit was set by the Department to limit access to personal information.

5.56 We reviewed a sample that included 34 applications from employers of fish and seafood processing plants. We found that in some of these plants, the percentage gap between Canadians and temporary foreign workers was higher at the start of the season than at the end. This declining gap in the percentage suggested to us that Canadians were laid off while temporary foreign workers were employed, so we reviewed applications from three plants where there was evidence that Canadians

had been laid off. We examined almost 500 ROEs issued by these plants over a three-year period and found that just over 80 percent of the Canadians they laid off had claimed EI at the same time as the plants were employing temporary foreign workers. This demonstrates that it is important for program officers to be able to use complete departmental labour market information when they assess an employer's application to the program.

5.57 We also noted that some employers of fish and seafood processing plants stated in their communications with program officers that they offered layoffs to Canadian employees. One employer stated that offering layoffs was necessary because employees would have otherwise left to work for competitors that provided layoffs when requested. Another employer stated that it gave Canadians with the most seniority the first option to leave if work slowed down, and that this option provided an opportunity to train temporary foreign workers on various duties.

5.58 **Recommendation.** Employment and Social Development Canada should ensure that Temporary Foreign Worker Program officers have access to relevant Employment Insurance data and sufficient Record of Employment data for use in their assessments of employer applications for temporary foreign workers.

***The Department's response.** Agreed. Employment and Social Development Canada currently has access to several sources of labour market information to inform the assessment of labour market shortages, including Record of Employment data, Employment Insurance data, and a range of labour market information posted on Job Bank. The Department is committed to expanding and improving the quality of its labour market information. For example, the Department has already removed the restriction that limited officers' access to Record of Employment data issued by employers only up to 90 days prior to the receipt date of the temporary foreign worker application. While the Department acknowledges that Employment Insurance data is an important source of information, it is only one element of labour market information that an officer should consider.*

The Department also notes that unemployment in any given area does not necessarily mean that there are Canadians or permanent residents available to fill job vacancies. People may face barriers to joining the labour market due to a number of issues that may include access to transportation, child care needs, adequate skills training, and other impediments to labour market participation. The Department has a number of grant and contribution programs aimed at reducing these barriers, including Indigenous programming.

5.59 **Use of new labour market information from Statistics Canada.** In 2014, the Department and Statistics Canada started developing a survey to collect information on job vacancies and wages. The Department expected the survey to provide it with information that it

could use to assess labour markets when considering applications to the program. The annual cost for the survey is \$14 million.

5.60 The survey component on job vacancies collects information on occupations in demand, job openings, the duration of job vacancies, and educational requirements for occupations. The Department can use this information to identify emerging skills shortages. The second component of the survey will provide wage data broken down by province and by economic region. The Department needs this information to assess whether the wages an employer advertised were consistent with the prevailing wage for that occupation and would be attractive to Canadians. The results of this survey component are expected to be available for the first time in 2017.

5.61 The Department began receiving some of this new information from Statistics Canada in 2015. Department officials told us that they integrated some of this job vacancy information into the employment outlook analysis that it provided to its program officers. However, the Department also told us that it will need at least two years of results to understand cycles and trends before it can determine the most appropriate means of using the data to enhance its understanding of local labour market demand and to assist in its assessment of employer applications.

5.62 **Recommendation.** Employment and Social Development Canada should ensure that the additional labour market information on job vacancies and wages is available and used by the Temporary Foreign Worker Program. The Department should also develop clear and detailed guidance for program officers on how to use the information in their assessments of employer applications for temporary foreign workers.

***The Department's response.** Agreed. Employment and Social Development Canada is committed to further expanding access to labour market information in its assessment of employer applications. It is worth noting that previous reforms to the Temporary Foreign Worker Program in 2014 have decreased the number of approved low-wage temporary foreign worker positions by 79 percent between 2013 and 2015.*

The Department has worked with Statistics Canada and will begin receiving an annual wage survey in spring 2018. Further, annual job vacancy data is already received and has been integrated into the existing labour market information tools available during the assessment process. This data will become more useful over time and will allow for better trend identification and analysis.

In addition, the Department is developing a systematic approach to better integrate labour market information for use in Labour Market Impact Assessment processing, which will result in the availability of an additional labour market information tool by fall 2018.

The Department made limited use of its expanded powers to identify employers that did not comply with program requirements

What we found

5.63 We found that Employment and Social Development Canada increased its enforcement activities since announcing program reforms. However, it did not use the information it had to focus its activities on employers of the most vulnerable temporary foreign workers or employers that were most at risk of not complying with the program. We also found that the Department did very few on-site inspections of employers. Furthermore, we found that when an enforcement activity resulted in a recommendation to take action against an employer, the recommendation could take months to go through all the levels of approval.

5.64 Our analysis supporting this finding presents what we examined and discusses the following topics:

- Selection of employers for compliance inspections
- Use of information for enforcement
- Conduct of inspections
- Consequences for non-compliance

Why this finding matters

5.65 This finding matters because the Department needs to use all relevant existing information to help it identify and investigate signs that employers are not complying with program rules. The Department needs to ensure compliance so that Canadians can have confidence that the program is being used as it should be.

Recommendations

5.66 Our recommendations in this area of examination appear at paragraphs 5.71, 5.75, 5.76, 5.83, and 5.87.

Analysis to support this finding

5.67 **What we examined.** We examined the Department's enforcement activities to ensure employer compliance with the program. Specifically, we looked at how the Department selected employers for inspections, including the information it used to make its selections. We also examined how the Department conducted its enforcement activities and examined whether it acted when it found employers that were non-compliant.

5.68 **Selection of employers for compliance inspections.** The Department had the authority to conduct inspections of employers that employed temporary foreign workers under the program. The Department could randomly choose employers for inspection, or it could inspect an employer because it had a reason to suspect non-compliance—either by

the employer or in the employer's sector—or because an employer was found to be non-compliant in the past.

5.69 We found that the Department randomly selected employers for inspection most of the time. Over a period of two and a half years ending in June 2016, 95 percent of the Department's almost 4,900 inspections were random. However, we found that, despite having information that certain sectors had a higher risk for non-compliance than others, the Department did not base its selection of employers for inspection on whether they were part of a high-risk sector. For example, even though the Department identified vulnerable workers as those working in the low-wage, caregiver, and agriculture sectors, it did not carry out any inspections of caregiver employers and began inspections of agriculture employers only in July 2015.

5.70 It is our view that a risk-based approach would be more effective in identifying non-compliant employers. Such an approach would also let the Department make the best use of its limited enforcement resources. Department officials told us that they were working to develop a risk-based model.

5.71 **Recommendation.** Employment and Social Development Canada should develop and implement a comprehensive risk-based framework to identify enforcement activities for all categories of temporary foreign workers. The framework should include investigating specific sectors where higher levels of risk may exist.

***The Department's response.** Agreed. Employment and Social Development Canada recognizes the importance of program enforcement. The Department implemented a comprehensive risk-based model in April 2017 for inspection activities that will be used to select employers and sectors for inspection where the greatest risks of non-compliance exist.*

5.72 **Use of information for enforcement.** As mentioned in paragraph 5.53, the *Department of Employment and Social Development Act* allows the Department to share information between its programs. The Department collects Employment Insurance and Record of Employment data that could help its investigations of employers under the Temporary Foreign Worker Program. However, we found that investigators did not have access to the EI data and full access to the ROE data that they needed to support their enforcement activities.

5.73 Furthermore, the Department had committed to working with the provinces and territories to establish agreements by December 2014 that would allow it to get information from the provinces and territories that it could use to identify high-risk employers—for example, employers that had violated provincial or territorial labour laws, or health and safety standards.

5.74 We found that the Department had an up-to-date agreement with only one province and was working to update three other agreements.

This means that the Department still did not have access to most of the provincial and territorial information that, in 2014, it had determined would help it enforce the program.

5.75 Recommendation. Employment and Social Development Canada should ensure that its investigators have access to and use Record of Employment and Employment Insurance information that could be pertinent to their investigations.

***The Department's response.** Agreed. Employment and Social Development Canada considers providing inspectors with access to all pertinent data a priority.*

The Department continues to expand and improve its processes, including extending the period over which Record of Employment records can be reviewed. The Department will establish a protocol and procedures by April 2018 to provide inspectors with access to further pertinent Employment Insurance and Record of Employment data for their inspections while respecting the privacy and security of personal information.

5.76 Recommendation. Employment and Social Development Canada should work with provinces and territories to develop and finalize information-sharing agreements and use the information obtained to inform its enforcement activities.

***The Department's response.** Agreed. Agreements with provincial and territorial partners are pivotal to the overall administration of the Temporary Foreign Worker Program and the protection of vulnerable temporary foreign workers. Therefore, the Department will continue to engage these partners in information-sharing discussions with the intent to finalize information-sharing agreements as soon as possible.*

To this end, the Department finalized an engagement plan in April 2017 that prioritizes negotiation of information-sharing agreements with the provinces and territories identified as having the highest volume of temporary foreign workers. Engagement with these key partners will be undertaken by late fall 2017.

5.77 Conduct of inspections. In 2014, the Department committed to investigating a quarter of employers that use the program each year. The Department publicly reported that it met its target for the 2015–16 fiscal year.

5.78 While we found that the number of enforcement activities had increased since the Department announced program reforms, most activities consisted of reviewing documents that employers were asked to provide to investigators by mail and did not include on-site inspections or interviews with temporary foreign workers. The Department told us that it had started 173 on-site inspections, of which 160 were at varying stages of completion, and only 13 had been completed.

5.79 We reviewed the 13 completed inspection reports and found that temporary foreign workers had not been interviewed during any of these inspections. An interview was a step that the 2014 reforms allowed the Department to take if the temporary foreign worker agreed to it. Department officials told us that few interviews with temporary foreign workers were conducted. Interviews would give the Department the workers' perspectives and help it verify the employers' statements. Department officials explained that the lack of interviews was due to several factors, including whether there was a requirement for an interview, whether the worker was still in the country, or whether the worker agreed to be interviewed. In our opinion, the low number of on-site inspections and the lack of interviews with temporary foreign workers limited the Department's ability to verify that employers complied with program requirements, such as ensuring that workers did the jobs that had been approved and that workers were not mistreated.

5.80 We also found that the Department's approach to on-site inspections was flawed because the Department always told employers about them well in advance. In our opinion, on-site inspections are important—considering that the Department found, through its enforcement activities, many non-compliant employers against which it took corrective measures, such as compensating temporary foreign workers for outstanding wages.

5.81 Prior to the 2014 reforms, unless the Department had received an allegation of specific non-compliance, it had the authority to inspect only 3 program requirements: wages paid, working conditions, and job duties. The 2014 reforms expanded the Department's powers to inspect up to 21 program requirements and to act if employers were not meeting them. Some requirements applied in all cases, such as the power to inspect whether employers provided an abuse-free workplace, while others applied only to certain categories of temporary foreign workers.

5.82 However, we found that, in general, the Department inspected employers for compliance with only 7 requirements—the 3 original requirements plus 4 others that were mainly administrative, such as whether employers provided all the required information and kept supporting documents. As well, Department officials told us that they had not started inspecting the commitments made by high-wage employers in their transition plans.

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

***The Department's response.** Agreed. Employment and Social Development Canada is committed to the protection of foreign workers*

who come to Canada under the Temporary Foreign Worker Program. The Department has significantly increased the scope of its inspections. Previously, it inspected whether employers provided the appropriate wages, occupation, and working conditions to foreign workers. Now, it also assesses whether an employer has provided an abuse-free workplace; remained compliant with federal, provincial, or territorial laws; cooperated during an inspection; and retained documentation that demonstrates compliance. Furthermore, officers will expand the scope of an inspection under way should they uncover evidence of potential non-compliance.

The Department has also increased the number of on-site inspections that it conducts at employers' premises to enhance the protection of vulnerable temporary foreign workers. Finally, the Department will undertake an assessment of the risks and benefits by April 2018 of conducting unannounced on-site inspections.

5.84 Consequences for non-compliance. As a deterrent to wrongdoing, the 2014 reforms allowed the Department to ban employers that broke program rules and to make their names public. We found that the Department had posted to a government website the name of one employer found to be non-compliant.

5.85 After 1 December 2015, the Department could also impose monetary penalties on employers that had violated certain program conditions. We found that the Department did not impose any monetary penalties, because only a short time had passed since it had received the authority to impose penalties.

5.86 A finding of non-compliance requires multiple approvals within the Department, with the Minister giving final approval. We found that, at the time of our audit, there were 40 files with a recommended finding of non-compliance against an employer awaiting approval at various levels throughout the Department. Some of the files had been approved in regional offices in January 2016 and still had not received all the other levels of approval by August 2016. Department officials told us that the approval process was time-consuming, onerous, and administratively inefficient.

5.87 Recommendation. Employment and Social Development Canada should explore options to streamline and speed up its process of approving findings that identify employers as non-compliant.

The Department's response. Agreed. Employment and Social Development Canada understands the importance of finalizing findings of non-compliance in a timely manner. The Department has already undertaken a number of initiatives to improve and streamline the approval process of non-compliant cases, including the evaluation of integrity business processes and practices under the Temporary Foreign Worker Program. An analysis of the current process was completed, and a proposed streamlined process is being developed for implementation in

June 2017. This process is expected to result in reduced overall inspection approval time and to deliver better service and fairness for temporary foreign workers and employers.

The Department did not measure the results of the program and its impact on the labour market

What we found

5.88 We found that Employment and Social Development Canada did not have a performance measurement strategy for the program and that the Department did not use information to measure the results of the program. For example, the Department did not use information about temporary foreign workers who lost their jobs to reassess its original decisions to approve the jobs under the program. It also did not know whether the program had unintended consequences.

5.89 Our analysis supporting this finding presents what we examined and discusses the following topics:

- Performance measurement strategy
- Analysis of information

Why this finding matters

5.90 This finding matters because the program was intended to help employers fill positions that they could not otherwise fill, while not hurting the ability of Canadians to find jobs. So, it is important for the Department to know whether the program is succeeding.

Recommendation

5.91 Our recommendation in this area of examination appears at paragraph 5.99.

Analysis to support this finding

5.92 **What we examined.** We examined whether the Department had a performance measurement strategy, measured the results of the program, and used the performance information to manage the program.

5.93 **Performance measurement strategy.** We found that the Department did not have a performance measurement strategy for the program, so it could not measure or adequately report on the results of the program.

5.94 **Analysis of information.** We found that the Department did not collect sufficient data or conduct significant analyses to assess the impact the program was having on the labour market.

5.95 For example, the Department could have used information about temporary foreign workers who lost their temporary jobs and collected Employment Insurance. The Department could have looked at this

information to see whether there were any indications at the time it approved the hiring that the jobs would not last or that the workers were not needed in the first place. This source of information could be important, because the Department found that almost 2,000 temporary foreign workers had claimed EI in the 2013–14 fiscal year, most of whom were laid off because of a shortage of work. The average length of these EI claims was 18 weeks; 219 of the EI claimants had worked in fish and seafood processing plants, while 536 had worked in caregiver positions.

5.96 We also found that the Department had completed limited analysis on labour shortages in the food service sector. An analysis completed prior to the reforms showed that the wages for coffee shop baristas had stagnated and even declined in certain areas where temporary foreign workers were employed. As mentioned in paragraph 5.25, the Department considered applications only from employers requesting to hire temporary foreign workers to fill low-skill positions in the accommodation, food, and retail sectors in regions where the unemployment rate was lower than six percent. However, the Department did not analyze whether this measure had led to better wages for Canadians in these occupations.

5.97 The government had identified a risk that the purpose of applications from employers to hire caregivers might be to reunite families rather than to fill labour shortages. However, a 2015 internal departmental report noted that bringing family members to Canada as caregivers was not an abuse of the program, because no policy or regulation addressed the issue. We found that the Department did not conduct analyses of the labour market to determine whether there was a real labour shortage of caregivers.

5.98 Finally, we found that the Department did not know whether the program was having unintended consequences, such as suppressing wages, allowing businesses to rely on foreign workers instead of hiring Canadians, or discouraging capital investment and innovation.

5.99 **Recommendation.** Employment and Social Development Canada should finalize and implement its performance measurement strategy. It should conduct analyses to determine the Temporary Foreign Worker Program's impact on the labour market.

The Department's response. Agreed. Employment and Social Development Canada completed development of its performance measurement strategy in January 2017. The strategy outlines performance metrics, targets, and deadlines, enabling an assessment of the program's impact on the Canadian labour market. Data collection has begun for some measures, and additional sources of information are under development. This information will be used to support continuous program review and improvement.

While the Department carefully tracks employers' use of the Temporary Foreign Worker Program, analysis of the economic impacts, given the program's complexity, is best done through a rigorous program evaluation.

Accordingly, the Department's Evaluation Plan calls for the program to be evaluated in 2018, once adequate information is available on the impact of the 2014 reforms. The evaluation will examine the anticipated benefits of the program on different sectors of the labour market.

Conclusion

5.100 We concluded that Employment and Social Development Canada's management of the Temporary Foreign Worker Program was not complete. The Department put measures in place that helped to reduce the number of temporary foreign workers that it approved. But its review of employers' applications to the program and its inspections to make sure employers that hired temporary foreign workers complied with program requirements were not sufficient.

About the Audit

This independent assurance report was prepared by the Office of the Auditor General of Canada on the Temporary Foreign Worker Program. Our responsibility was to provide objective information, advice, and assurance to assist Parliament in its scrutiny of the government's management of resources and programs, and to conclude on whether the program complies in all significant respects with the applicable criteria.

All work in this audit was performed to a reasonable level of assurance in accordance with the Canadian Standard for Assurance Engagements (CSAE) 3001—Direct Engagements set out by the Chartered Professional Accountants of Canada (CPA Canada) in the CPA Canada Handbook—Assurance.

The Office applies Canadian Standard on Quality Control 1 and, accordingly, maintains a comprehensive system of quality control, including documented policies and procedures regarding compliance with ethical requirements, professional standards, and applicable legal and regulatory requirements.

In conducting the audit work, we have complied with the independence and other ethical requirements of the Rules of Professional Conduct of Chartered Professional Accountants of Ontario and the Code of Values, Ethics and Professional Conduct of the Office of the Auditor General of Canada. Both the Rules of Professional Conduct and the Code are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.

In accordance with our regular audit process, we obtained the following from management:

- confirmation of management's responsibility for the subject under audit;
- acknowledgement of the suitability of the criteria used in the audit;
- confirmation that all known information that has been requested, or that could affect the findings or audit conclusion, has been provided; and
- confirmation that the findings in this report are factually based.

Audit objective

The objective of this audit was to determine whether Employment and Social Development Canada managed the Temporary Foreign Worker Program to allow employers to hire foreign workers on a temporary basis to fill labour shortages when qualified Canadians were not available and whether the Department ensured that employers complied with program requirements.

Scope and approach

The audit scope included the Temporary Foreign Worker Program as delivered by Employment and Social Development Canada.

At the Department, we examined the legislation, policies, and procedures in place to manage the program. We interviewed officials at Department headquarters and at regional service centres in Vancouver, British Columbia; Toronto, Ontario; and Saint John, New Brunswick. The Department provided data from the Foreign Worker System, the Record of Employment data system,

Employment Insurance Claimants and Benefits System, and the National Investigations Information System. We used these systems to examine requests for labour market impact assessments from 20 June 2014 to 30 June 2016 and enforcement activities from 1 January 2014 to 30 June 2016. We reviewed commitments made when the program was reformed in June 2014, including data that the Department contracted for and obtained from Statistics Canada.

We conducted work in regional service centres in Vancouver, Toronto, and Saint John, and conducted a file review of 136 Labour Market Impact Assessment applications through random samples of general files, caregiver files, and fish and seafood processing plant files. We also conducted a file review of 51 enforcement activity files through random samples of inspections and employer compliance reviews.

We did not audit Immigration, Refugees and Citizenship Canada or the Canada Border Services Agency, both of which have specific responsibilities for the program.

Criteria

Criteria	Sources
To determine whether Employment and Social Development Canada managed the Temporary Foreign Worker Program to allow employers to hire foreign workers on a temporary basis to fill labour shortages when qualified Canadians were not available and whether the Department ensured that employers complied with program requirements, we used the following criteria:	
Employment and Social Development Canada adequately assesses the impact of hiring a temporary foreign worker.	<ul style="list-style-type: none"> • <i>Department of Employment and Social Development Act</i> • <i>Immigration and Refugee Protection Regulations</i> • Budget 2012 • Management response to the Evaluation of the Labour Market Opinion Streams of the Temporary Foreign Worker Program, Human Resources and Skills Development Canada, 2012 • Overhauling the Temporary Foreign Worker Program, Employment and Social Development Canada, June 2014 • Policy Directive on Assessing Labour Shortage—Record of Employment, Employment and Social Development Canada • Temporary Foreign Worker Program Manual, Employment and Social Development Canada • <i>Employment Insurance Act</i> • <i>Employment Insurance Regulations</i>

Criteria	Sources
<p>To determine whether Employment and Social Development Canada managed the Temporary Foreign Worker Program to allow employers to hire foreign workers on a temporary basis to fill labour shortages when qualified Canadians were not available and whether the Department ensured that employers complied with program requirements, we used the following criteria: (continued)</p>	
<p>Employment and Social Development Canada uses sufficient labour market information to determine whether there is a labour shortage.</p>	<ul style="list-style-type: none"> • <i>Department of Employment and Social Development Act</i> • <i>Immigration and Refugee Protection Regulations</i> • Budget 2012 • Management response to the Evaluation of the Labour Market Opinion Streams for the Temporary Foreign Worker Program, Human Resources and Skills Development Canada, 2012 • Overhauling the Temporary Foreign Worker Program, Employment and Social Development Canada, June 2014 • Policy Directive on Assessing Labour Shortage—Record of Employment, Employment and Social Development Canada • Temporary Foreign Worker Program Manual, Employment and Social Development Canada • <i>Employment Insurance Act</i> • <i>Employment Insurance Regulations</i>
<p>Employment and Social Development Canada ensures that employers comply with the requirements of the Temporary Foreign Worker Program.</p>	<ul style="list-style-type: none"> • <i>Department of Employment and Social Development Act</i> • <i>Immigration and Refugee Protection Act</i> • <i>Immigration and Refugee Protection Regulations</i> • Budget 2012 • Management response to the Evaluation of the Labour Market Opinion Streams for the Temporary Foreign Worker Program, Human Resources and Skills Development Canada, 2012 • Overhauling the Temporary Foreign Worker Program, Employment and Social Development Canada, June 2014 • Integrity Operations Manual, Service Canada

Period covered by the audit

The audit covered the period between 1 January 2013 and 31 August 2016. This is the period to which the audit conclusion applies. However, to gain a more complete understanding of the subject matter of the audit, we also examined certain matters that preceded the starting date of the audit.

Date of the report

We obtained sufficient and appropriate audit evidence on which to base our conclusion on 27 February 2017, in Ottawa, Ontario.

Audit team

Principal: Glenn Wheeler
Director: Nadine Cormier

Sébastien Bureau
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List of Recommendations

The following table lists the recommendations and responses found in this report. The paragraph number preceding the recommendation indicates the location of the recommendation in the report, and the numbers in parentheses indicate the location of the related discussion.

Recommendation	Response
Management of the Temporary Foreign Worker Program	
5.41 Employment and Social Development Canada should review current policies, guidance, and processes to identify opportunities to strengthen the assessment of employers' recruitment efforts. The Department should ensure that Temporary Foreign Worker Program officers can more fully verify the accuracy of employers' statements and that employers use the program only as a last resort. (5.33–5.40)	The Department's response. Agreed. Employment and Social Development Canada recognizes the importance of ensuring that Canadians and permanent residents have first access to available jobs. The Department currently conducts an assessment of an employer's efforts to hire Canadians as part of the employer's application for a Labour Market Impact Assessment. The Department is committed to reviewing its policies and providing officers with appropriate guidance to strengthen the verification of employer recruitment efforts. In addition, as announced by the Government of Canada in December 2016, increased requirements for employers to reach out to under-represented groups (Indigenous people, youth, newcomers, and individuals with disabilities) will be implemented in summer 2017.
5.44 Employment and Social Development Canada should establish a quality assurance framework for the Temporary Foreign Worker Program. The framework should ensure that program officers' decisions relating to the application process are consistent with program requirements and that employers hire temporary foreign workers only as a last resort. (5.42–5.43)	The Department's response. Agreed. As part of ongoing efforts to improve its operations, Employment and Social Development Canada launched a quality assurance pilot program in April 2017 to achieve national consistency in processing labour market impact assessments. In addition to monitoring the processing of these assessments, the quality assurance program will help inform future policy decisions as well as the development of clear guidance to support the assessment process. An evaluation of the pilot will be undertaken in summer 2017, with the goal of full implementation by late fall 2017.

Recommendation	Response
<p>5.58 Employment and Social Development Canada should ensure that Temporary Foreign Worker Program officers have access to relevant Employment Insurance data and sufficient Record of Employment data for use in their assessments of employer applications for temporary foreign workers. (5.50–5.57)</p>	<p>The Department's response. Agreed. Employment and Social Development Canada currently has access to several sources of labour market information to inform the assessment of labour market shortages, including Record of Employment data, Employment Insurance data, and a range of labour market information posted on Job Bank. The Department is committed to expanding and improving the quality of its labour market information. For example, the Department has already removed the restriction that limited officers' access to Record of Employment data issued by employers only up to 90 days prior to the receipt date of the temporary foreign worker application. While the Department acknowledges that Employment Insurance data is an important source of information, it is only one element of labour market information that an officer should consider.</p> <p>The Department also notes that unemployment in any given area does not necessarily mean that there are Canadians or permanent residents available to fill job vacancies. People may face barriers to joining the labour market due to a number of issues that may include access to transportation, child care needs, adequate skills training, and other impediments to labour market participation. The Department has a number of grant and contribution programs aimed at reducing these barriers, including Indigenous programming.</p>
<p>5.62 Employment and Social Development Canada should ensure that the additional labour market information on job vacancies and wages is available and used by the Temporary Foreign Worker Program. The Department should also develop clear and detailed guidance for program officers on how to use the information in their assessments of employer applications for temporary foreign workers. (5.59–5.61)</p>	<p>The Department's response. Agreed. Employment and Social Development Canada is committed to further expanding access to labour market information in its assessment of employer applications. It is worth noting that previous reforms to the Temporary Foreign Worker Program in 2014 have decreased the number of approved low-wage temporary foreign worker positions by 79 percent between 2013 and 2015.</p> <p>The Department has worked with Statistics Canada and will begin receiving an annual wage survey in spring 2018. Further, annual job vacancy data is already received and has been integrated into the existing labour market information tools available during the assessment process. This data will become more useful over time and will allow for better trend identification and analysis.</p> <p>In addition, the Department is developing a systematic approach to better integrate labour market information for use in Labour Market Impact Assessment processing, which will result in the availability of an additional labour market information tool by fall 2018.</p>
<p>5.71 Employment and Social Development Canada should develop and implement a comprehensive risk-based framework to identify enforcement activities for all categories of temporary foreign workers. The framework should include investigating specific sectors where higher levels of risk may exist. (5.68–5.70)</p>	<p>The Department's response. Agreed. Employment and Social Development Canada recognizes the importance of program enforcement. The Department implemented a comprehensive risk-based model in April 2017 for inspection activities that will be used to select employers and sectors for inspection where the greatest risks of non-compliance exist.</p>

Recommendation	Response
<p>5.75 Employment and Social Development Canada should ensure that its investigators have access to and use Record of Employment and Employment Insurance information that could be pertinent to their investigations. (5.72–5.74)</p>	<p>The Department’s response. Agreed. Employment and Social Development Canada considers providing inspectors with access to all pertinent data a priority.</p> <p>The Department continues to expand and improve its processes, including extending the period over which Record of Employment records can be reviewed. The Department will establish a protocol and procedures by April 2018 to provide inspectors with access to further pertinent Employment Insurance and Record of Employment data for their inspections while respecting the privacy and security of personal information.</p>
<p>5.76 Employment and Social Development Canada should work with provinces and territories to develop and finalize information-sharing agreements and use the information obtained to inform its enforcement activities. (5.73–5.74)</p>	<p>The Department’s response. Agreed. Agreements with provincial and territorial partners are pivotal to the overall administration of the Temporary Foreign Worker Program and the protection of vulnerable temporary foreign workers. Therefore, the Department will continue to engage these partners in information-sharing discussions with the intent to finalize information-sharing agreements as soon as possible.</p> <p>To this end, the Department finalized an engagement plan in April 2017 that prioritizes negotiation of information-sharing agreements with the provinces and territories identified as having the highest volume of temporary foreign workers. Engagement with these key partners will be undertaken by late fall 2017.</p>
<p>5.83 Employment and Social Development Canada should use its expanded powers to increase the scope of its inspections by ensuring that all the relevant conditions are covered. It should also conduct more on-site inspections and explore the option of conducting some without notice, to further enhance its ability to detect non-compliance. (5.77–5.82)</p>	<p>The Department’s response. Agreed. Employment and Social Development Canada is committed to the protection of foreign workers who come to Canada under the Temporary Foreign Worker Program. The Department has significantly increased the scope of its inspections. Previously, it inspected whether employers provided the appropriate wages, occupation, and working conditions to foreign workers. Now, it also assesses whether an employer has provided an abuse-free workplace; remained compliant with federal, provincial, or territorial laws; cooperated during an inspection; and retained documentation that demonstrates compliance. Furthermore, officers will expand the scope of an inspection under way should they uncover evidence of potential non-compliance.</p> <p>The Department has also increased the number of on-site inspections that it conducts at employers’ premises to enhance the protection of vulnerable temporary foreign workers. Finally, the Department will undertake an assessment of the risks and benefits by April 2018 of conducting unannounced on-site inspections.</p>

Recommendation	Response
<p>5.87 Employment and Social Development Canada should explore options to streamline and speed up its process of approving findings that identify employers as non-compliant. (5.84–5.86)</p>	<p>The Department's response. Agreed. Employment and Social Development Canada understands the importance of finalizing findings of non-compliance in a timely manner. The Department has already undertaken a number of initiatives to improve and streamline the approval process of non-compliant cases, including the evaluation of integrity business processes and practices under the Temporary Foreign Worker Program. An analysis of the current process was completed, and a proposed streamlined process is being developed for implementation in June 2017. This process is expected to result in reduced overall inspection approval time and to deliver better service and fairness for temporary foreign workers and employers.</p>
<p>5.99 Employment and Social Development Canada should finalize and implement its performance measurement strategy. It should conduct analyses to determine the Temporary Foreign Worker Program's impact on the labour market. (5.93–5.98)</p>	<p>The Department's response. Agreed. Employment and Social Development Canada completed development of its performance measurement strategy in January 2017. The strategy outlines performance metrics, targets, and deadlines, enabling an assessment of the program's impact on the Canadian labour market. Data collection has begun for some measures, and additional sources of information are under development. This information will be used to support continuous program review and improvement.</p> <p>While the Department carefully tracks employers' use of the Temporary Foreign Worker Program, analysis of the economic impacts, given the program's complexity, is best done through a rigorous program evaluation. Accordingly, the Department's Evaluation Plan calls for the program to be evaluated in 2018, once adequate information is available on the impact of the 2014 reforms. The evaluation will examine the anticipated benefits of the program on different sectors of the labour market.</p>