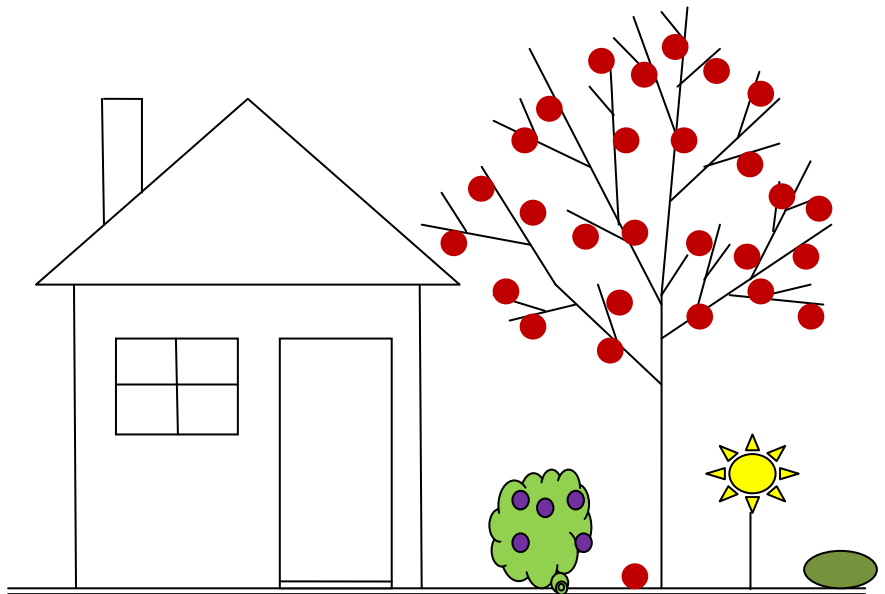


**RESEARCH
PAPER**



**National Housing Standard for
Primary Agriculture Review
(Temporary Foreign Worker Program)**

**National Home
Inspector Certification
Council**

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Publication Note

The information contained in this document was last updated in December of 2018

Portions of the original document have been redacted that contain data that was collected by ESDC and passed on for inclusion in this report. That information was removed since it may be deemed “confidential” and not originally collected under the terms of contract.

Contractual Limitations

Specific limitations were specified in the original bid documents that restricted a more in-depth study of the onsite housing conditions for Foreign Agricultural Worker Housing. As such feedback from inspectors and feedback from agricultural stakeholders became crucial source of information for inclusion in this report.

Equally so, changes in the report development process and communications with respect to replacement of the original ESDC Project Manager created an environment of dealing with and adapting to a new set of changes and requirements that impacted the original findings and assessment of the report.

1. ACKNOWLEDGEMENTS

The NHICC (National Home Inspector Certification Council) Project Team would like to acknowledge the contributions of those who provided information for this research study. This study represents the best efforts of many dedicated professionals. It is based on information, survey feedback, and a wide variety of viewpoints at various levels of participation. This study and associated recommendations are the result of months of work. We acknowledge that this study represents one large step forward in an evolving process regarding the potential development of a National Housing Standard for employer-provided housing for foreign agricultural workers. This study provides a significant foundation for future consultations with all stakeholders.

We respectfully submit this information with the hopes that it will help provide a strategic path for a unified plan to achieve that goal.

Individuals and organizations that provided information to inform this study include and are not limited to:

Alden Gibson - Inspection by Gibson, Past President American Society of Home Inspectors
Brett Schuyler - Schuyler Farms, Ltd.
Brian Callaghan - Retired Certified Building Code Official, Municipal Building Inspector, Alert Home Inspections
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Kenton Possberg - Parkland Ventures
Ken Ruest – Retired Senior Researcher Sustainable Housing, Canada Mortgage & Housing Corporation, Independent Consultant
Kevin LaRouche – Holmes Inspections, home inspector
Mike Tyler – Windsor-Essex County Health Unit

The NHICC project team primarily was comprised of:

Wayne Fulton – Surveys & Guideline Coordinator, Technical Review & Writer
Claude Lawrenson – Project Manager
Bill Mullen – Assistant Project Manager/Data Coordinator
George Webb – Editorial Project Review, Technical Assistance

The findings and recommendations in this study, and any errors, are those of the NHICC, and do not necessarily reflect the views of the funders of this study. Similarly, the findings presented also are not necessarily representative of the entire sector.

2. DEFINITIONS

Adequate housing – Canada Mortgage and Housing Corporation CMHC defines adequate housing as housing that does not recording any major repairs, according to the residents.

Affordable housing – CMHC defines affordable housing as housing costing less than 30% of before-tax household income, including the cost of rent and any payments for electricity, fuel, water and other municipal services.

Agricultural stream – The Agricultural Stream of the Temporary Foreign Worker Program allows employers to hire foreign agricultural workers for primary agriculture work in specific commodity sectors when Canadians and permanent residents are not available.

Building audit – Refers to an assessment of the condition of the components or systems in one or more buildings. In this document the term “audit” refers to a building condition assessment.

Building condition assessment - Provides comprehensive building deficiency information and forecasts possible future maintenance or repair requirements for a single or multiple properties that can identify specific needs and conditions of the buildings.

DACUM (Developing a Curriculum) - DACUM is typically associated with curriculum development and program revision. The DACUM process also has other major applications such as a foundation for performance testing or job assessments.

Foreign agricultural worker - Refers to an agricultural worker that is employed in a country of which the person is not a citizen.

Housing - In a general sense can refer to a covering or protection from the elements. Typically housing by dictionary definition refers to any shelter, lodging or dwelling place. For the purpose of this study, the term “accommodations” is occasionally used interchangeably.

Housing inspection (TFW Program Primary Agriculture Stream) – an assessment of the condition of structures in which an employer intends to house foreign agricultural workers. Housing inspections are required when an employer applies for a **Labour Market Impact Assessment** and can also be conducted at other points in time, including during the employment of a foreign agricultural worker.

Housing below standards - Housing below standards refers to housing that falls short of at least one of the adequacy, affordability and suitability housing standards.

Inspection (TFW Program) – Refers to a review to verify employer compliance with TFW Program conditions and requirements as outlined in the *Immigration and Refugee Protection Regulations* and

documents such as the Labour Market Impact Assessment (LMIA) application, the LMIA decision letter and annexes. Note this differs from a **Housing inspection**.

Labour Market Impact Assessment (LMIA) – An LMIA assesses whether the hiring of a temporary foreign worker will have a positive or negative impact on the Canadian labour market and, in cases where an LMIA is required, determines whether an employer is permitted to hire a temporary foreign worker.

Licensing - Licensing is a mandatory process by which a government agency grants permission (sometimes time-limited) to an individual or company to engage in an occupation or activity after verifying that predetermined and standardized criteria have been met.

Occupancy – The act of using a room, building, or area of land, usually for a fixed period of time. Occupancy by building code definition refers to the use or intended use of a building or part of a building for the shelter or support of persons, animals or property.

Persons per room – Provides an indicator of crowding in a private dwelling, calculated by dividing the number of persons in the household by the number of rooms in the dwelling.

Seasonal Agricultural Worker Program (SAWP) – The Seasonal Agricultural Worker Program (SAWP) allows employers to hire temporary foreign workers for primary agriculture work in specific commodity sectors when Canadians and permanent residents are not available. The SAWP applies only to foreign workers who are citizens from Anguilla, Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, Mexico, Montserrat, St. Kitts-Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.

Temporary housing – Refers to any tent, trailer, or other structure intended for human shelter, which may be designed to be transportable and which may not be permanently attached to the ground, or to any other structure. (Example: ATCO™ and similar sleeper/wash car type housing)

Acronyms

BCAC	British Columbia Agricultural Council
CMHC	Canada Mortgage and Housing Corporation
ESDC	Employment and Social Development Canada
F.A.R.M.S.	Foreign Agricultural Resource Management Services
FERME	<i>Fondation des Entreprises en Recrutement de Main-d'œuvre agricole Étrangère</i>
LMIA	Labour Market Impact Assessment
SAWP	Seasonal Agricultural Worker Program
TFW	Temporary Foreign Worker

3. EXECUTIVE SUMMARY

a. Purpose and Scope

Purpose: As part of the Primary Agriculture Review, ESDC hired the NHICC as an independent third party contractor to undertake a study to support the potential development of a national standard for housing provided to foreign agricultural workers by employers. The objectives of this study were to:

1. assess current housing standards for foreign agricultural workers across Canada, including housing inspection standards; and,
2. develop recommendations for a potential national standard for housing provided to foreign agricultural workers under the TFW Program.

Scope: This study is focused on housing for foreign agricultural workers. Not all TFWs are agricultural workers. Primary agriculture represents more than 60% of the positions approved under the TFW Program.

This study involved investigating and analyzing the roles and responsibilities of various levels of government related to housing for foreign agricultural workers, as well as feedback provided from various stakeholders. Explicitly, there are many different inspection regimes for the inspecting foreign agricultural worker housing.

The results of this study will serve as the foundation to frame and inform discussion questions and topics for stakeholder consultations on potential administrative changes to the primary agriculture stream of the TFW Program.

A number of different approaches were utilized to establish a baseline of what currently exists that included, topical research, surveys from various stakeholders, interviews and an in-depth assessment of the onsite inspection process. This study provides insight into the proclaimed myth of whether workers are kept in sub-standard housing or not. Another outcome in this study proposes the creation of a work template for the development of program guidelines to standardize employer-provided housing.

Additionally, this study provides a general overview of the findings and recommendations regarding the potential creation of a National Housing Standard for the Primary Agriculture Stream of the Temporary Foreign Worker (TFW) Program along with supporting references.

The appendix at the end of this study provides more detail and data collected along with recommendation and guidelines.

b. Findings

1. Housing standards for foreign agricultural workers across Canada.
 - a. Currently there is no mandatory national standard for inspecting housing for foreign agricultural workers. The TFW Program requires employers to provide proof that the housing has been inspected by the appropriate provincial/territorial/municipal body or by an authorized private inspector with appropriate certifications.

- b. Survey responses from provincial and territorial governments indicate that inspections of housing for foreign agricultural workers are usually performed at the provincial or regional level, such as by regional health boards. Typically the requirements and enforcement of most building codes are the responsibility of municipal housing and building departments.
 - c. Generally enforcement of maintenance and property standards is consequently often within municipal jurisdiction. Provinces and territories can also be involved when a property is part of a workplace or employment relationship and where the federal TFW Program enforces conditions on employers of foreign workers, including conditions related to worker housing. *“Municipalities have discretion with respect to the form and content of these by-laws, therefore, minimum standards and enforcement regimes vary significantly.”* For both existing housing and new construction, these present complex jurisdictional roles and responsibilities can make it unclear what housing standard applies, and whether the condition of the housing meets the applicable provincial/territorial or federal standard. (Honourable Paul R. Belanger, 2013)
 - d. Based on some feedback in the stakeholder’s survey it indicates a national standard would help eliminate or at least reduce large variations in interpretations of the rules. A comment provided in the stakeholder survey indicates that the standard should be the same as for Canadian citizens, as well as a comment with regards to all employers should be working under the same set of rules. While another comment states that this might reduce/eliminate large variations in interpretations of rules.
 - e. Although there appears to be some degree of uniformity, there are differences between various authorities, such as health, fire safety, and coordination, thus emphasizing a potential risk for discrepancies to occur. Current standards such as employment and health that impact foreign agricultural workers are often blamed on the lack of uniformity across provinces and territories. As one example a comment in the stakeholder feedback indicates that provincial health inspectors can only inspect for health and sanitation.
 - f. Feedback from ██████████ indicated that there are no housing standards that are specific to employer-provided housing for TFW’s. It also states that inspections of housing units are spread across different authorities. Whereas the ██████████ provincial/territorial survey feedback indicates that it does not specifically regulate housing for farm workers.
 - g. *“Employers must provide proof that the on farm or off-site housing has been inspected by the appropriate provincial/territorial/municipal body or by an authorized private inspector with appropriate certification from the relevant level of government.”* (Canadian Horticultural Council, 2016)
 - h. Where housing regulations exist that impacts foreign agricultural housing, it appears to encompass a complex myriad of various acts or requirements set by an individual province or territory as indicated in the provincial/territorial feedback from ██████████. Currently there is a wide variation in what is deemed an acceptable housing standard for foreign agricultural workers.
2. Feedback on housing conditions.
- a. Based on the stakeholder feedback from the surveys it appears at face value that the housing facilities are good and the majority of housing is located at the agricultural work

- place. However, there are other indicators based on the survey results that some issues such as fire safety, health safety and if proper separations exist between dual-purpose buildings. A high percentage indicated that such a condition exist based on the survey feedback. So this situation may be questionable and in need of attention in some areas.
- b. Although there are examples of employers claiming improvements in agricultural worker housing, there still exist housing and living conditions that requires improvement and further detailed review. One such case includes a TVO (Television Ontario) documentary entitled *"Migrant Dreams"*. (McLaughlin, Janet, 2016)
 - c. Based on stakeholder feedback received in Appendix A, the responses provide some signs that housing problem conditions exist in the case of the responses to questions #15, #16, #20 and #21. This requires attention for recommended improvement on these areas of housing.
 - d. Concerns were raised by employers regarding workers not keeping the housing clean and sanitary, along with the claims for cost of repairs related to damages caused by workers. Aligned with this comments also noted concerns regarding costs that existing housing might need expensive upgrades to meet new standards.
 - e. From the inspector's judgement, it is impossible to predict if and when housing conditions deteriorate based only on an initial inspection review conducted prior to worker occupancy. Additionally, older homes primarily as a result of age have a tendency to exhibit more deficiencies due to factors such as use/misuse and deterioration of materials.
3. Requirements for housing inspections for the purpose of the TFW Program.
 - a. The TFW Program requires employers to provide proof that the housing has been inspected by the appropriate provincial/territorial/municipal body or by an authorized private inspector with appropriate certifications.
 - b. The TFW Program does not currently have housing inspection guidelines. The program requires that housing inspections be conducted according to the standards and requirements in the applicable province/territory/municipality. Thus vast differences exist.
 - c. In general when it comes to new construction, housing inspections are typically performed by the local municipal building inspector. Where existing housing is the case, it is common practice to have a home inspected prior to finalizing the sale of the property by a private home inspector to advise a client of the building condition. Where changes in the use, or where renovations, additions or where such changes in the structure take place, this is most often the inspection responsibility of the municipal building inspector.
 - d. *"As of January 1, 2018, housing inspection reports submitted to the department must be less than eight months old and must indicate the maximum number of people that the housing can accommodate. Employers must also now provide proof that all issues listed in the housing inspection report have been fully addressed before they will be allowed to hire foreign workers.* (Employment and Social Development Canada, 2018)
 - e. *The Government of Canada has already taken a number of steps to improve the conditions for foreign agricultural workers including conducting more on-site inspections to verify first-hand that the working and housing conditions of temporary foreign workers meet program requirements."* (Employment and Social Development Canada, 2018)

- f. In cases where the province or territory does not have a standard housing inspection form, the TFW Program's Schedule F Housing Inspection Report must be used to report the results of the housing inspection.
 - g. One case of housing inspection conditions that can impact housing includes feedback from Saskatchewan that indicates public health inspectors cannot inspect for items that are outside of their scope of practice.
 - h. Minor gaps exist in the current housing inspection forms, and furthermore forms vary widely across provinces and territories. In comparison with Schedule F and the BC Inspection Form and Report of Housing, they are reasonably aligned in the various condition assessments; however both also have significant differences that can have an impact on worker health and safety with respect to items such as electrical safety. Likewise, in reviewing the Alberta Health Services Housing Inspection Report Form, it offers a checklist styled format that provides a good checklist, but is lacking in definition of detail such as the occupancy standards listed in both Schedule F and the BC Inspection Form. The Saskatchewan Health Authority Housing Inspection Report does not appear to provide a more detailed report of conditions in comparison to Schedule F.
 - i. Gaps exist in the housing inspection process, and the inspection process varies widely across provinces and territories. Based on the comparison of gaps indicated in finding #3 above, there is a lack of consistency of the actual building conditions being assessed. These inconsistencies could potentially cause some significant issues such as electrical safety or fire hazards to be overlooked. Additionally, where different types of inspectors are conducting the inspection there appears to be no predefined cohesive standard of practice that predicates exactly what the benchmark expectation should be for a pass or fail. The other consideration is what limitations exist at the time of the inspection that could potentially impact the reporting process, such as the impact of weather conditions or inaccessible rooms or spaces.
 - j. The current provincial/territorial inspection guidelines that do exist need to be revised to reflect a more consistent itemized list of what and how the inspection process is actually conducted.
4. Requirements for and/or certification of authorized housing inspectors across Canada.
- a. There is no mandatory national standard for housing for foreign agricultural workers as a benchmark for evaluation of qualified inspectors. Thus gray areas exist that can be open to interpretation or personal judgement. Typically home inspectors are evaluated and certified particularly where licensing exist based on an assessment of specific work-skill requirements that are based on a recognized national occupational standard. With this in mind, the TFW Program requires employers to provide proof that the housing has been inspected by the appropriate provincial/territorial/municipal body or by an authorized (qualified) private inspector with appropriate certifications. Based on survey feedback responses over half of the inspectors indicate they did not take any special training for this type of inspection.
 - b. While there are several reference documents available including inspection forms and accompanying guidelines utilized to aid in the onsite housing inspection review process, there appears to be little evidence of training that specifies how housing inspectors must

accurately complete the inspection form. Based on survey feedback there's an indication that approximately 20% or more that indicate that they do not use a specific inspection form for this type of inspection.

- c. Across the provinces and territories, there is no consistent skill set defining who is best qualified to conduct the onsite housing inspections. Currently health officers, municipal building inspectors, private home inspectors as well as fire prevention officers are all involved in conducting these inspections. This is not to discount the valuable role each and every one of these professions provides.

Note: That the scope of work did not require the NHICC project team to physically and/or randomly review several worker housing units. This limited the verification of what actual conditions may exist or possibly be experienced by foreign agricultural workers.

c. Recommendations

1. Regarding - housing standards for agricultural workers across Canada under the TFWP.
 - a. Worker housing should be free from unnecessary and avoidable hazards – thus minimizing risk to the workers as well as the employers.
 - b. Inconsistencies appear to exist in the inspection requirements, such as the extent of inspection items to be assessed. The survey indicates that approximately 13% of inspectors specified that inconsistencies exist in requirements for delivering inspections.
 - c. Likewise it would seem appropriate that all inspectors are performing to one common standard, based on the fact that different guidelines and reporting systems are currently in use.
 - d. One common housing standard provides a common performance level to ensure that learning outcomes from an education and training perspective for performing this type of housing inspections.
2. Regarding - review of housing conditions for foreign agricultural workers.
 - a. It is important that the employer or representative be present to receive the results and recommendations of the housing inspector in person.
 - b. Consideration of a trusted-employer system that exemplifies employers demonstrating best practices.
 - c. Further investigation is recommended to ensure that the amount of time to conduct an inspection is conducive in providing a complete review of all conditions required to be assessed.
3. Requirements for inspections of agricultural worker housing for the purposes of the TFWP.
 - a. In order to reduce any potential risk consideration should be given to a number of changes that are required to improve the process for foreign agricultural worker housing inspections.
 - b. The findings in the surveys provide evidence that indicates that there's room for improvements, and that provincial and territorial differences do exist.
4. Requirements for and/or certification of authorized housing inspectors for the purposes of the TFWP.

- a. There are notable differences in the background (education) and occupational training (skills) of inspectors. As such, a review of those best qualified to perform a specific type of inspection needs consideration.
- b. Appropriate training and certification of approved inspectors should be conducted. In the inspector survey question #5 the responses indicate that approximately 56% of inspectors did not take any specific training for this type of inspection.

This study recommends the pathway forward required to create a national standard and minimum guideline for inspecting foreign agricultural worker housing based on the analysis conducted. As such a proposed guideline model for a National Housing Standard is provided in this study for consideration as a starting point. It is not intended to be a final version, but what the NHICC project team considers the relevant key components to jump start that discussion. With this in mind it is our hope that future more extensive consultations will be the logical next step with all stakeholders at all levels including federal, provincial/territorial and municipal government; as well as with inspectors, employers, employer associations, labour, agricultural producers and industry partners.

If there is agreement among the stakeholders, and financial support to move this initiative forward in the direction proposed, the process of building support must begin with recognizing the value and importance in establishing a cohesive National Housing Standard. The new standard needs to be effective, create consistency and eliminate the problematic claims, such as media reports related to overcrowding and lack of separation and exposure to potentially unhealthy living conditions.

As one notable example in the employer stakeholder survey, question #21, the feedback received indicates that approximately 40% of worker housing is part of a dual-purpose building such as storage facility or machine shed. The presence of potentially toxic fumes and or chemicals can be detrimental to the workers' health. This raises a viable concern of whether such a lack of separation represents a safe and healthy living environment. Without the advancement of more specific housing standards, that clearly recognizes and addresses this type of living condition that may exist and the belief that the current state of conditions is simply acceptable, such ongoing examples of living conditions will continue to remain.

Accordingly, it is important to remember that foreign workers have the same rights as Canadians.

4. PROJECT OVERVIEW

As part of the Primary Agriculture Review, Employment and Social Development Canada hired the NHICC as an independent third party contractor to undertake an analysis to support the potential development of a National Housing Standard for employer-provided housing for foreign agricultural workers. This study ran concurrently to a labour market analysis of the Primary Agriculture Stream of the TFW Program and cross-Canada consultations with stakeholders, both of which are providing input on allowable wage deductions for housing provided to foreign agricultural workers by employers.

The Project key objectives include:

1. **Conducting a diagnostic of federal, provincial and territorial roles and responsibilities related to housing for agricultural workers, and**

2. Proposing guidelines to standardize employer-provided housing for foreign agricultural workers and inspections of that housing.

a. Purpose

The purpose of this study is to conduct research to assess the current state of housing standards for foreign agricultural workers across Canada, including requirements for inspections of that housing, and to develop recommendations for a potential national standard for housing provided to foreign agricultural workers under the TFW Program. This study is intended to facilitate more in-depth stakeholder consultations towards the potential development and implementation of changes to TFW Program housing requirements for the primary agriculture stream.

This study focused on the following research questions:

- What are the provincial/territorial standards for accommodations provided to foreign farm workers by employers?
- What elements of housing standards are considered provincial/territorial jurisdiction versus federal jurisdiction?
- How do provinces/territories inspect accommodations provided to foreign workers by employers?
- What are the main considerations when developing a common standard for accommodations provided to foreign workers?
- What criteria should be used to assess the suitability of accommodations for TFW's working on-farm?
- What are the best practices and challenges when standardizing housing standards?

b. Methodology

The NHICC project team utilized a number of methods and analytical approaches. The first challenge was determining how to gather information about agricultural worker housing conditions.

The Project Team began with a comprehensive review of subject matter research to familiarize the team with the scope of the task at hand. The research included background information such as the Policy for Primary Agriculture Housing, foreign agricultural worker housing, housing conditions for foreign agricultural workers, agriculture news pieces, inspection guidelines for seasonal housing, a variety of academic papers on migrant worker housing obtained through a variety of sources including the Internet, web-based news pieces, and preliminary discussions with several farm owners, inspectors and other stakeholders including a Catholic Migrant Workers' Ministry. It should be noted that many of the news articles were somewhat dated; however a few are within the last year.

The literature and research publications reviewed were carefully selected in order to formulate research questions for a survey designed to gather information from agricultural employer representatives, agricultural councils, foreign worker representatives, housing inspection professionals, etc. In total there were three surveys conducted by the NHICC. Initially two surveys were created to focus on different areas of foreign agricultural worker housing. The first two surveys targeted an approach intended to

separate feedback between employers and the inspectors. A third separate survey was conducted targeting provincial and territorial consultation; the objective of those surveys was to better understand current federal and provincial/territorial roles and responsibilities. Formal public consultations were not conducted, as it is intended that the results of this study would provide a base of information to facilitate more in-depth stakeholder consultations and discussions on housing for foreign agricultural workers in the future.

Three surveys were circulated to approximately 500 individuals and organizations, distributed across Canada. The majority of surveys were distributed electronically through online marketing with Constant Contact®, which provides built-in analytics tracking survey responses. The project team developed a list of respondents based on researching and building a list of potential contacts from a variety of sources, such as stakeholder that included agricultural councils, individual employers and association listings, and one for inspectors such as home inspectors, health inspectors and building inspectors, as well as contacts through research based from websites, etc. The survey techniques produced a respectable response rate of 47%, with 191 responses from employer/stakeholders and 44 representing inspectors. The highest participation rate received was 92 responses from the province of Quebec.

The initial data collected by the NHICC through interviews for provincial/territorial was based on random selection of upper level contacts to gather information on the TFW Program. This feedback is located in Appendix C. Additional detailed data was collected from a survey that focused on an update on information from provincial/territorial input on a series of questions noted in the table format of Appendix D. ESDC provided this information for consideration in this study.

Based on the input and feedback, provided from the surveys, this data was collected into the baseline model of information to conduct one part of the gap analysis. This included phone communications and emails as a follow up on the feedback from the surveys, and clarifications of information received. A second round of the initial stakeholder survey was conducted as a follow up, based on the initial low percentage of approximately 15% on the first round of responses compared to the final responses rate of 47%.

Through constant communications and weekly teleconference sessions our project data team stayed on top to manage feedback to help identify best practices as well as identify any significant gaps. The data collection and collation was primarily completed by the project team to minimize the potential for any personal information matters, thus addressing privacy issues possibly being unintentionally released.

The data was collated into a spreadsheet to identify commonalities as well as any gaps in a number of topics from information provided by the respondents, such as the gap noted in the question related to who is the primary inspector of agricultural worker housing, where the response indicated 77 by municipal, 62 by provincial, 2 federal, 23 private and 10 unknown. This data sample offers a wide ranging variable of who performs the housing inspection, and representation from what level of jurisdiction. It also indicates an area of potential concern regarding the 10 where the inspector is identified as “unknown”. This data proved useful in conducting phone based stakeholder consultations with 17 individuals including the general feedback from 5 employers, 3 association representatives, 6 provincial level representatives, as well as 3 inspectors about temporary foreign worker housing.

Typically these consultations were aimed at clarifying who we are, and gathering further information regarding some questions on the feedback responses. Feedback from the NHICC provincial level consultations are summarized in Appendix C. For example, in the case of several stakeholders stated that the “unknown” responses often related to the employer not having direct contact with the inspector or how often their housing was inspected

Upon receiving the initial feedback responses to the surveys a follow-up **Focus Group** session was conducted on April 7, 2018 to review the survey data with selected home inspectors and agriculture employer representatives. The session was designed to solicit feedback in a small group setting to examine and gather information about perspectives and the group’s opinions concerning their experience on the subject of housing for foreign agricultural workers. One particular discussion was in regards to an employer’s recent personal experience in building a bunk house to accommodate 40 workers.

During the focus group session support documents were distributed to gather additional comments and feedback on the development of the proposed National Housing Standard. This included a detailed review and analysis of the guidelines for conducting BC inspections along with the BCAC’s BC Inspection Form and Report of Housing and the sample guidelines for Ontario along with Schedule F.

A modified **Developing a Curriculum (DACUM)** session was held on April 21, 2018 to specifically focus on the assessment requirements related to foreign agricultural worker housing inspections. This group was comprised of primarily home inspectors along with a public member. In this type of process it is typical to have representation from members that are considered as subject matter experts that are skilled in housing inspections. The primary objective of the discussions targeted current review of the inspection process and review of what skills are required to successfully complete one. This included an assessment of who typically performs the onsite inspections and consideration where gaps may exist, such as required duties and tasks commonly performed. This focused primarily on the knowledge and skills, hence qualifications required to actually perform a more detailed assessment of acceptable safe and habitable housing for foreign agricultural workers. This session helped in formulating recommendations on determining what qualifications that inspectors need.

As indicated, a review of the primary data from the surveys was discussed at the Focus Group and the DACUM sessions. Using input from the Focus Group and modified DACUM session, the NHICC project team endeavoured to identify the gaps that exist, in a number of parts of the housing inspection and review process and potentially how development of a National Housing Standard could possibly be established to help provide cohesive inspection standards

The recommendations provided in this study are based on evidence collected through the surveys of stakeholders, home inspectors and provinces/territories, interviews, the Focus Group, and the modified DACUM process as well as the research and analytical review conducted by the NHICC project team.

c. Limitations:

There was no intent to limit the number of stakeholders or inspectors contacted in this study. However, the NHICC project team felt that a reasonable number of approximately 500 contacts would provide a

sensible and adequate supply of responses in the original contract duration period. Limitations must be noted that also could have an impact on the findings and recommendations outlined in this study. These include:

- The project team did not visit or view any housing provided to foreign agricultural workers, since it was beyond the scope of contract work.
- Foreign agricultural workers did not provide any commentaries or feedback in this study. The prime focus of this study was to provide information to facilitate broader public consultation on housing for foreign agricultural workers.
- Housing fees charged to foreign agricultural workers have not been reviewed as part of this study. Wage deductions for housing are being considered separately through the Labour Market Study and consultations to support the primary agriculture review.

This study does not address the economic and social impacts that are beyond the scope of our contractual engagement.

5. BACKGROUND

The mandate to provide adequate housing for foreign agricultural workers requires a significant investment for the employers. The housing and the condition it's in is the primary focus of this study. Housing conditions for foreign agricultural workers are primarily regulated by a set of guidelines and not by legislation. Guidelines provide some means of assessing the general minimal requirements for the housing. A primary area studied focuses on the omissions (gaps) and where improvements can be made to reduce any vagueness in the inspection and onsite review guidelines. It also beckons a response to whether a unified National Housing Standard is required.

In a news release dated January 11, 2018 it states – *“The Government of Canada takes seriously its responsibility to ensure the rights and freedoms of temporary foreign workers are protected, including their right to safe and adequate housing. That is why today; the Government of Canada announced new measures to strengthen housing requirements for temporary foreign workers under the Primary Agriculture Stream, including the Seasonal Agricultural Worker Program.”* (Employment and Social Development Canada, 2018)

“As of January 1, 2018, housing inspection reports submitted to the department must be less than eight months old and must indicate the maximum number of people that the housing can accommodate. Employers must also now provide proof that all issues listed in the housing inspection report have been fully addressed before they will be allowed to hire foreign workers.”

It also indicates – *“The Government of Canada has already taken a number of steps to improve the conditions for foreign agricultural workers including conducting more on-site inspections to verify first-hand that the working and housing conditions of temporary foreign workers meet program requirements. The Government has also launched the Primary Agriculture Review which includes a National Housing Study with the goal of establishing a cohesive Temporary Foreign Worker Program housing standard across Canada.”* (Employment and Social Development Canada, 2018)

a. Jurisdiction and Current Regulatory Framework

The purpose of this section is to provide a brief background on federal, provincial and municipal government authorities related to foreign agricultural worker housing.

Federal, provincial, and municipal levels of government have a number of standards and policies in place relevant to foreign agricultural worker housing, including labour and employment standards, property standards, zoning bylaws and temporary foreign worker program conditions.

As an example in Ontario, buildings are governed by many legislative acts, codes, standards, regulations and bylaws. The complexity of documents can be at times overwhelming and can cause confusion regarding which requirements must be satisfied in order to maintain compliance. Code compliance with due consideration to agricultural worker housing is paramount to ensure safety of the occupants.

Federal

Some Acts at the federal government level apply to construction, such as First Nations land, thus prevailing provincial and municipal levels. Typically the ***National Housing Act*** pertains to dwellings financed under it. *“An Act to promote the construction of new houses, the repair and modernization of existing houses, and the improvement of housing and living conditions.”* (National Housing Act, 2016).

On many First Nations communities the ***National Building Code of Canada*** currently serves as the minimum accepted building standard. Similarly the National Building Code is commonly used as the building code where provincial/territorial building codes have not been enacted by legislation.

The federal government also sets the conditions for employers who participate in the TFW Program, including housing requirements for foreign agricultural workers. This also includes the ability to inspect and enforce TFW Program conditions.

Note: Based on Service Canada’s form ESDC-EMP5510 (Agricultural Stream – Employment Contract) it specifies that *“6.1. The housing must be suitable for the temporary foreign worker and annually inspected by a provincial, municipal or private inspector in accordance with the provisions of the policy for **National Minimum Standards for Agricultural Accommodations.**”* It should be noted that this employment contract applies only to workers in the agricultural stream that represents approximately 24% of foreign workers. (Service Canada, 2017)

Under the terms and conditions of form ESDC-EMP5510 it notes that the Government of Canada is not a party to the employment contract. Furthermore, it indicates that ESDC/Service Canada has no authority to intervene in the employer-worker relationship or to enforce the terms and conditions. However, in our research we could not find any current standard as specified above as a reference to agricultural housing. Again, this is not intended to imply that ESDC or Service Canada does not have the authority to enforce housing. The authority is set out in the ***Immigration and Refugee Protection Act***. This authority can be used, for example, to verify that employers are providing workers with suitable accommodations, that the housing is in the condition shown on the housing inspection form, and that occupancy limits are not exceeded.

Provincial

Under Canadian law, the regulation of building construction is the responsibility of provincial governments, which, in turn, usually delegate this power to municipalities. Section 92 of the **Constitution Act** outlines the jurisdictional boundaries of provincial governments. Section 92 (13) establishes the exclusive powers of provincial legislatures. This grants the provinces and territories property and civil rights powers. As such, housing often falls under the mandate of a provincial building code. Some provinces further delegate this responsibility to the municipalities. The municipal institutions are empowered under Section 92 (8) of the **Constitution Act**. Likewise the provinces are empowered to regulate with respect to agriculture and immigration under Section 95.

“In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the Parliament of Canada may from Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any Law of the Legislature of a Province relative to Agriculture or to Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.” (Government of Canada, 2019)

With regard to housing, some provinces and territories have adopted the National Building Code. Others have created their own, but largely based on the baseline requirements of the **National Building Code of Canada**, and modified to reflect the provincial construction standards. These provincial/territorial building codes are generally enforced at the municipal level.

Building codes regulate the actual design, use, construction and renovation of buildings to a building standard. To enact building, fire and health regulations, the provinces, territories, and municipalities pass legislation that reference the relevant National Research Council Canada publications or provincial code. The National Research Council is Canada’s primary research organization that diffuses technology and the dissemination of scientific and technical information such as building codes. When it comes to building construction, housing inspectors often reference building codes and related building standards, since typically design and construction is mainly regulated by building codes, thus providing a rigorous source of reference.

Provinces and territories are also responsible to regulate labour and employment standards, which include employer-provided housing for foreign agricultural workers. For example, British Columbia’s **Public Health Act - Industrial Camps Regulation** establishes the requirements impacting places where people are employed and accommodated onsite – such as camps supporting forestry saw mills, mining, canneries, and oil and gas activities.

Municipal

At a more local level, municipalities often subscribe to a provincial or national building code, and have further regulations that control other related building and construction activities and the land it’s built on and related undertakings such as zoning, and maintenance or property standards. Additionally, at the municipal level building codes are often referenced in other standards such as local plumbing, heating or electrical requirements, especially if the housing is connected to a private building service system.

New housing is subject to inspections by municipal building officials, whereas existing housing often may not have been inspected since the day it was originally built. If renovations or alterations are made the property owner must obtain a building permit. Once all inspections are complete there is most often no further reviews conducted on an existing house. The exceptions are if an inspection is performed during a purchase or sale of a house, or when inspected as required to conform to the TFW Program requirements.

The following provides a case in point to consider when a change of use of a housing unit occurs. In the Municipality of Leamington Ontario, that indicates approximately 3,500 foreign workers, in that area. There has been much pressure for additional housing to meet the demand of growth in the agricultural sector. *“A Change of Use permit under the Ontario Building Code is required to be issued by the Chief Building Official when a dwelling unit is being converted to a boarding house. Unfortunately despite the responsibility of the employer of foreign workers to ensure that worker housing complies with the Building Code Act, there is no requirement by SAWP or TFW for any inspection of the proposed housing other than by the WECHU.”* (Windsor Essex County Health Unit) (Jones Consulting Group, 2018)Page 14

Although this reference might give the impression that such housing must be inspected only by the local building inspection process, it also must satisfy inspection under the TFW Program for foreign agricultural workers. This scenario provides an example of where gaps in inspections could exist, and possibly where one could mistakenly been circumvented. This case provides an example where the authorities having jurisdiction can overlap. However, it also indicates the need for coordinated efforts that extends beyond the responsibility of one single inspection. So as a home inspector is it possible that an inspection could take place, and furthermore that particularly with new construction and/or renovations that cause change of use, that building code infractions could exist, that can potentially place the inspector and the associated inspection process at risk?

When considering the concept of jurisdiction, the enforcement entities all have different scopes of power regarding inspection. So it is in the best interest to be aware that not all housing inspections are simply a matter of performing the inspection without an understanding of forgoing other potential outstanding issues, including the potential that some housing problems extend beyond the scope of a typical house inspection when it comes to foreign agricultural worker housing. The importance in establishing clearer understanding of responsibilities, limitations and better communication between various inspection entities must be considered.

Codes have no force in law until they are adopted by a government authority having jurisdiction.

To help provide a graphic of the complexity in the regulatory framework, the NHICC project team developed the following diagram presented on page 22 that depicts the regulatory structure for building construction in Canada.

The graphic depicted provides general information about “building codes”. Building codes provide the legally accepted minimum building standards that apply to all building construction in Canada. It also applies to the alteration, change of use and demolition of existing buildings. It is not intended to cover all parts such as employment, or settings such as industrial camps.

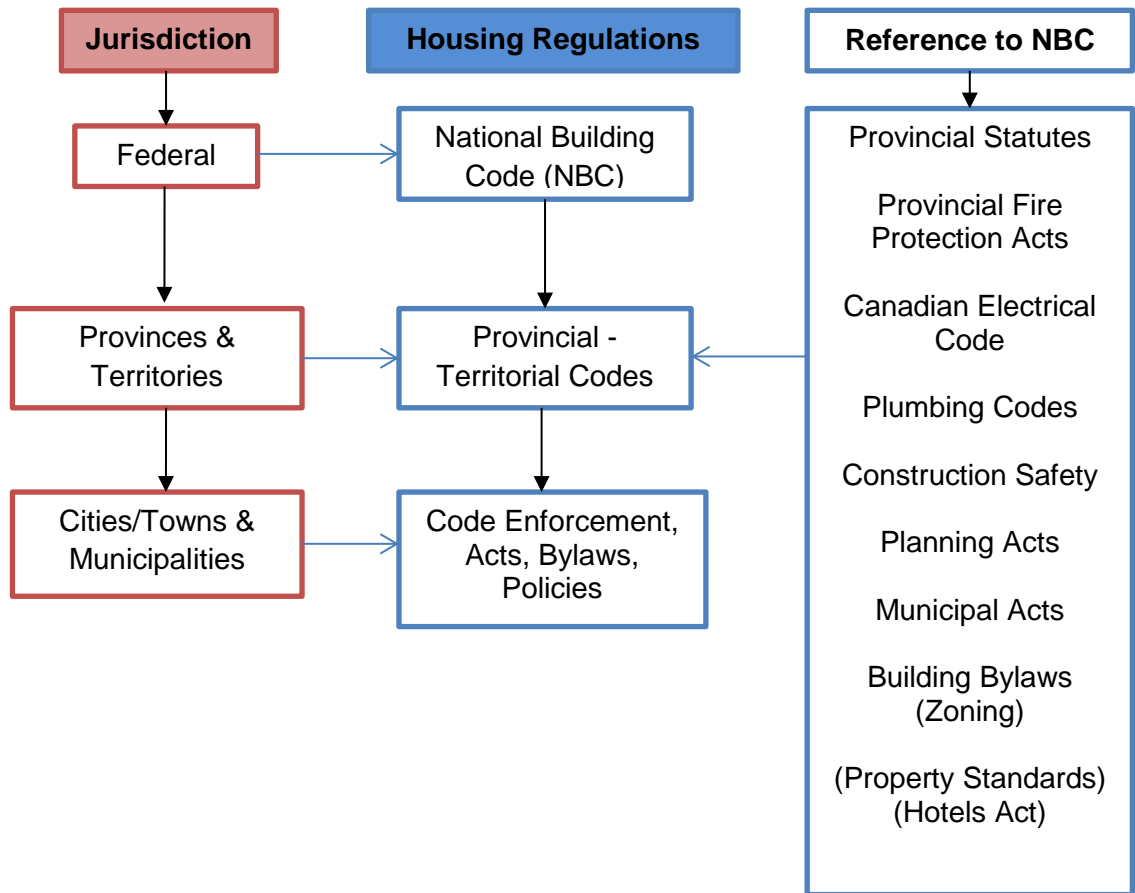
The Canadian Standards Association (CSA) publishes other model codes that address system services such as electrical and gas.

The National Building Code is the primary reference source, to which the other provincial codes mirror. The building codes are derived from numerous construction standards that also reference provincial statutes and acts such as “building code acts”. Building code acts provides legal obligations when it comes to enforcement. The issue becomes a question of does the inspection requirements for TFW housing actually meet a reasonable and acceptable level for performance and occupant safety with the inspection process that currently exist?

As we identified in this study there are some significant items missing from the inspection forms. These missing pieces provide what we call “gaps” and questionable areas in the actual inspection and assessment of conditions encountered in the worker housing.

Ultimately these gaps can allow for critical building conditions to be overlooked or simply not identified during the inspection process. These gaps can potentially cause harm or injury to the workers and possibly others.

Regulatory Framework for TFW Housing Inspection Standard



Under Canadian law Canada's constitution delegates the provinces and territories jurisdiction over building construction. Legislative powers were apportioned to the various levels of government, which conferred construction legislation to the provinces. In turn most provinces delegated this responsibility to the municipalities.

In Canadian constitutional law, the doctrine of paramountcy establishes that where there is a conflict between valid provincial and federal laws, the provincial law will be inoperative to the extent that it conflicts with the federal law. (Duhaime, Lloyd)