

Temporary Foreign Worker Program

Primary Agriculture Review

'What We Heard' Report



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Temporary Foreign Worker Program – Primary Agriculture Review What We Heard

Background

The Temporary Foreign Worker (TFW) Program assists Canadian employers with filling their labour requirements when qualified Canadians and permanent residents are not available and ensures that temporary foreign workers are protected while in Canada. The Program is employer demand-driven and is an option for employers to address immediate skills and labour needs on a temporary basis.

In 1966, the Seasonal Agricultural Worker Program (SAWP) was established to help meet the seasonal labour needs of Canadian agricultural producers. Over time, the SAWP expanded to include workers from Mexico and eleven Caribbean countries, and the Agricultural Stream was created to include workers from all countries.

In 2013, “primary agriculture” was defined in the *Immigration and Refugee Protection Regulations* as work on/in a farm, nursery or greenhouse that involves the operation of agricultural machinery or the production or harvesting of plants or animals/animal products.

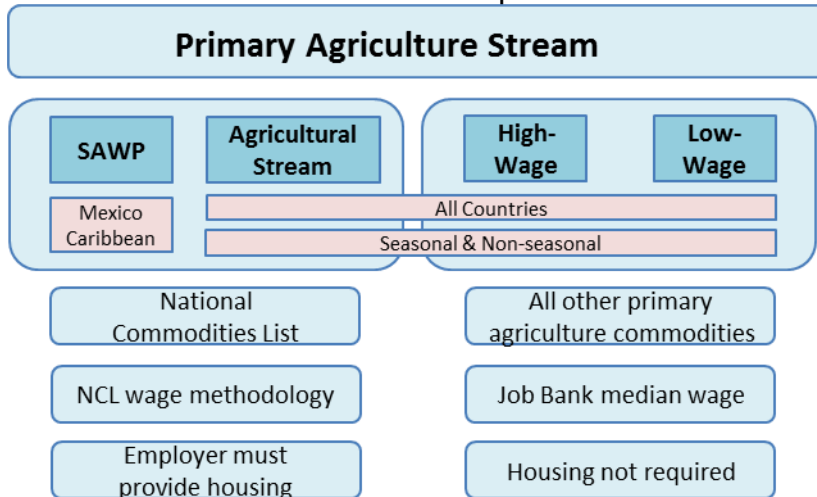
Currently employers can hire a temporary foreign worker for primary agriculture work under four options in the Primary Agriculture Stream:

- The Seasonal Agricultural Worker Program;
- The Agricultural Stream;
- The Low-Wage Stream; and,
- The High-Wage Stream.

To access the SAWP or the Agricultural Stream, the agricultural production must be on the [National Commodities List](#) (NCL).



The current structure and basic requirements of the Primary Agriculture Stream:



Why Review the Primary Agriculture Stream?

In 2016, the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) reviewed the TFW Program, and, among other things, recommended:

- Further study on the impacts of expanding the regulatory definition of “primary agriculture”;
- Restructuring the Program into more specific program streams that reflect labour market needs; and,
- Making the processing of Labour Market Impact Assessment (LMIA) applications more efficient.

In April 2017, the Primary Agriculture Review was announced as part of the Path Forward Plan for the TFW Program. The objective of the Review is to develop recommendations to modernize the Primary Agriculture Stream to ensure the Program continues to meet the needs of the evolving agriculture sector in Canada.

The HUMA Report also made recommendations to enhance the protection of foreign workers and strengthen compliance activities. The Primary Agriculture Review is complemented by several TFW Program initiatives to enhance worker protections:

- The TFW Program is strengthening employer inspections, increasing on-site inspections, introducing unannounced inspections, and focusing compliance efforts where workers are at the highest risk;



- The Program is working with migrant worker support organizations to inform workers of their rights, and with employers to clarify their responsibilities;
- In October 2018, a Migrant Worker Support Network pilot was launched in British Columbia to provide better information to workers and employers to support workers dealing with potential mistreatment or abuse; and,
- In Spring and Summer 2018, cross-Canada stakeholder consultations on worker protections took place to better understand workers' needs and concerns.

The Primary Agriculture Review

Employment and Social Development Canada (ESDC) collaborated with Agriculture and Agri-Food Canada (AAFC) on the Review, which included:

- **Comprehensive stakeholder consultations** that sought input from stakeholders, including employers and workers, on how to modernize the Primary Agriculture Stream;
- A **primary agriculture labour market study** that examined the current wage methodology, aligning employment practices with the Canadian labour market, and determining market rates for employer-provided housing; and,
- A **housing study** that examined federal and provincial/territorial roles and responsibilities for worker housing and explored the potential to develop a national approach for housing provided by employers to foreign agricultural workers.

In addition, the Primary Agriculture Review is taking into consideration:

- The TFW Program's 2018 stakeholder consultations on worker protections;
- Current efforts to improve LMIA processing and service delivery;
- Labour market information and statistics for the primary agriculture sector; and,
- Submissions resulting from an open call for research, data, publications, and reports relevant to the primary agriculture labour market and foreign agricultural workers.



Who Was Consulted?

Agricultural employers, temporary foreign workers, food processing firms, industry associations, labour and worker representatives, provincial government officials, academics and government representatives of SAWP-participating countries were consulted. Over 490 stakeholders participated in:

- Thirteen in-person consultations;
- 34 telephone interviews;
- Four teleconferences;
- Over 55 written submissions; and,
- Over 100 responses to an online survey.

As part of the Government's commitment to protecting the rights of vulnerable workers, the Primary Agriculture Review directly engaged over 75 foreign agriculture workers. These conversations were facilitated by worker representative groups and the United Food and Commercial Workers labour union. Three in-person consultations with workers were held in Abbotsford, BC; Leamington, ON; and St-Remi, QC; and a teleconference session allowed workers who could not attend an in-person session to participate.

What We Heard

Stakeholder Consultations

During the consultation process, participants shared their vision for the Primary Agriculture Stream centred on four themes: Program Eligibility and Structure, Wages and Deductions, Housing, and the LMIA Process.

Key issues and suggestions from stakeholders include:

Program Eligibility and Structure

- Broaden the regulatory definition of "primary agriculture" to take into account the full value chain (e.g., food processing, value-added activities) and modern farming practices (e.g., co-ops that store produce for transportation to market).
- Expand the NCL so that all primary agriculture producers can access the SAWP and Agricultural Stream.



- Simplify the Primary Agriculture Stream and standardize requirements, to the extent possible, so that all employers and workers are treated the same.
- Consider creating a program for primary agriculture entirely separate from the TFW Program, if that would result in streamlining requirements and the LMIA process.

Wages and Deductions

- The process by which ESDC determines wages for temporary foreign workers employed in producing NCL commodities is not seen as transparent, and workers and labour groups worry that it could be suppressing wages.
- Employers desire greater flexibility to provide bonuses, raises, and promotions to temporary foreign agricultural workers.
- Employers would like to ensure that allowable deductions from wages paid to TFW's reflect their costs, for example to provide housing to SAWP and Agricultural Stream workers.

Housing

- Housing standards and working conditions vary across the country, among primary agriculture streams and from employer to employer. There is concern that inadequate housing could pose a risk to workers.
- Standardizing housing requirements across the country would be challenging given different existing provincial/territorial standards, and many employers worry that their costs could increase to meet a potential new national standard.

LMIA Process

- Employers would like a faster, clearer LMIA application process with streamlined requirements, facilitated by technology such as an online portal. A “recognized employer model” was proposed as a way to reduce administrative requirements and LMIA processing times for returning employers who have a strong record of compliance.
- Employers desire improved communication and client service, including the opportunity to correct minor errors or omissions in LMIA applications without triggering the need to re-submit.



- Employers would like advertising requirements to be better aligned with the requirements of the job (start date, advertising duration, etc.).
- Employers do not support the implementation of an LMIA fee for agriculture employers, even if this would support improved service levels.

Other Suggestions

- Stakeholders generally support the SAWP, as it allows temporary foreign workers to earn money to make a real difference in the well-being of their families and communities in their home countries. In particular, the model of foreign consular assistance for workers travelling to and while in Canada is appreciated.
- Many stakeholders desire improved communication between the Government of Canada, employers and workers regarding employment conditions, housing standards, wage deductions, and inspections.
- The TFW Program should better support temporary foreign agricultural workers by supporting pathways to permanent residence, reducing language barriers, educating workers on their rights, and providing safe mechanisms to raise and address concerns.
- Agriculture industry representatives identified the ongoing and persistent labour shortage as a barrier to the growth and competitiveness of the Canadian agricultural sector.
- The TFW Program should support better education and training for domestic and migrant workers on the agricultural industry, and on their rights and protections.
- When conducting inspections to verify employer compliance with Program conditions, inspectors should adopt an “innocent until proven guilty” approach.

The key issues and priorities highlighted by temporary foreign agricultural workers were:

- Inadequate housing/accommodation arrangements in some cases;
- Concerns with working conditions, compensation, and enforcement of labour laws;
- Inconsistent working conditions and treatment of SAWP vs. non-SAWP workers;



- Concerns that despite making contributions, they may not be eligible for social programs such as Employment Insurance (EI) and the Canada Pension Plan;
- Need for additional support services and protections, such as information on their rights and support to exercise them, and on how to access resources (e.g., health care, training);
- Harassment, abuse, punishment/retribution for speaking out, and barriers to exercising rights; and,
- Incomplete and sometimes inaccurate information about Program conditions, employer responsibilities, rights as an employee, and entitlements as a TFW.

Some workers also argued strongly in favour of greater labour mobility through open work permits and increased opportunities for permanent residency. These suggestions are outside the scope of the Primary Agriculture Review, but are reported here to ensure workers' views are faithfully represented.

Labour Market Study

The labour market study was conducted by an independent contractor on behalf of the Government of Canada. The study identified a growing labour gap due to an unwillingness of Canadian workers to work in the agricultural sector, suggesting that Canadian agriculture businesses will continue to seek temporary foreign workers to help meet their labour needs.

The study made several recommendations for the Primary Agriculture Stream:

- Support the agricultural labour market by:
 - Supporting the recruitment and retention of Canadians and permanent residents, including underrepresented groups;
 - Supporting wage progression to help attract workers with more experience and skills;
 - Considering targets on the number of SAWP workers to ensure employers are not overusing TFWs; and,
 - Exploring more accessible permanent residency for TFWs.
- Make it easier for employers to access the Primary Agriculture Stream by:



- Simplifying the program structure to two streams: SAWP and an Agricultural Stream that includes the rest of primary agriculture;
- Expanding the regulatory definition of “primary agriculture” to better reflect the agriculture value chain;
- Refocus the NCL on seasonal commodities and allow employers to choose to use a different stream of the TFW Program if they wish; and,
- Streamline the LMIA process.
- Better protect and support workers by:
 - Developing a registry of TFWs in collaboration with provinces and territories to aid in assisting workers;
 - Expanding inspection authorities;
 - Revise the wage methodology towards a market-based wage;
 - Establishing a single, transparent wage deduction as a percentage of wages;
 - Considering allowing SAWP workers to opt out of EI and Canada Pension Plan contributions; and,
 - Ensuring direct billing to insurance providers until provincial/territorial health coverage begins.

Housing Study

Provinces and territories have jurisdiction over employment and labour issues (including worker housing), building codes, and landlord/tenant matters. The TFW Program requires employers to follow provincial/territorial housing and inspection requirements.

The housing study was conducted by an independent contractor on behalf of the Government of Canada. The housing study confirmed that standards for housing and housing inspections vary across the country, but did not assess whether these differences pose risks to workers.



Key recommendations include:

- A **minimum housing standard** would provide greater consistency in housing requirements, housing inspections, and ultimately in housing conditions for workers.
- A **standard housing inspection report form** with a clear “pass/fail” indication would help ensure that standards are applied consistently across Canada.
- **Standardized training and certification of inspectors**, along with guidelines for inspectors, would help ensure consistency in inspections across Canada.

The study noted that developing a minimum housing standard would be technically complex (e.g., requiring detailed knowledge of construction), and that support for its implementation would need to be developed among provinces and territories due to their jurisdictional responsibilities.

Key Issues Identified

Considering all of the information received during the Primary Agriculture Review, including the stakeholder consultations, labour market study, housing study, and other sources, the following key issues have been identified:

- *Industry stakeholders assert that the **regulatory definition of “primary agriculture”** prevents some employers in the agricultural value chain (e.g., agricultural work outside the farm; food processing) from accessing the Primary Agriculture Stream and benefitting from related provisions (e.g., LMIA fee exemption).*
- *Employers find the current Primary Agriculture Stream **complicated and confusing**, and the varying requirements of each stream and commodity result in different treatment for workers and employers in the same type of work.*
- *The **NCL** prevents some employers from accessing the SAWP and Agricultural Stream because their commodity is excluded from the list.*
- *The **lack of a market-based wage methodology** for the SAWP and Agricultural Stream creates concern that the methodology is not transparent and potentially suppresses wages.*
- *A **“recognized employer” model** in which administrative requirements and LMIA processing times could be reduced for low-risk employers would be welcome.*



- *Current **advertising requirements** do not take into account that few Canadians respond to advertisements for agriculture jobs, and may not provide useful information in assessing the labour market impact of hiring foreign workers.*
- *Considerable **variation in standards for housing** provided by employers to foreign agricultural workers across the country may pose a risk to worker health, safety or comfort.*
- *Regulation of housing standards and inspections is **primarily a provincial/territorial responsibility and approaches vary** across jurisdictions.*
- *Workers expressed interest in enhanced **labour mobility** (e.g., open work permits) and access to **permanent residency**.*

Conclusion

ESDC and AAFC would like to sincerely thank everyone who contributed to the Primary Agriculture Review.

The information collected through the Review will be a key input as the government considers how to modernize the Primary Agriculture Stream. The TFW Program is committed to continue to engage with stakeholders on primary agriculture, including any future amendments to policy and program delivery.