ONTARIO NON-PROFIT HOUSING ASSOCIATION

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ONPHA's analysis of regulatory amendments under the *Housing Services Act, 2011*: Service and exit agreements

As part of its Community Housing Renewal Strategy (released in 2019), Ontario introduced Bill 184, the *Protecting Tenants and Strengthening Community Housing Act, 2020*, which received royal assent in July 2020. Among other things, Bill 184 amended the *Housing Services Act, 2011* (HSA), which provides the legislative framework for community housing in Ontario. As enabling legislation, Bill 184 provided regulation-making authority to transform Ontario's community housing framework, with the goals of protecting and growing community housing supply, stabilizing the sector, and ensuring its long-term sustainability as housing providers reach the end of their mortgages and/or operating agreements.

Bill 184 proposed amendments to O. Reg. 367/11 under the HSA in four distinct areas:

1. **Service and exit agreements;**
2. Service level requirements;
3. Access; and
4. Local eligibility rules for income and asset limits for rent-geared-to-income (RGI) assistance.

The Province held initial consultations from February – April 2021 for regulatory development related to local eligibility rules for household income and asset limits for RGI assistance. Further consultation took place from December 2021 – February 2022 related to service and exit agreements, service level requirements, and access.

On March 30, 2022, Ontario released two new regulations under the HSA outlining changes in the above four areas (with accompanying Social Housing Notifications), forming the new community housing framework. This framework represents the culmination of a significant amount of collective work across the sector, which took place over several years:

- O. Reg. 241/22: Service and exit agreements (see accompanying Social Housing Notification)
- O. Reg. 242/22: Service levels, access, and income and asset limits (see accompanying Social Housing Notifications for service levels, access, and income and asset limits)

ONPHA made submissions to both the first and second rounds of consultations, reflecting feedback from members and sector partners gathered through member surveys, time-limited working groups with subject matter experts, direct communications with members and sector partners, and the findings from ONPHA's Solutions Lab on Community housing for the future: Taking collective action toward resiliency. ONPHA also maintains regular communication with the Ministry of Municipal Affairs and Housing (MMAH) to share ongoing feedback.

Overall, ONPHA is pleased with the new framework, which incorporates many of our recommendations and sets the stage to ensure the long-term sustainability of the community housing sector. With respect to service and exit agreements, the new system shifts away from the current outdated, prescribed benchmark approach that presents significant challenges for the sector. Instead, it introduces a simplified, customizable approach, while providing important guardrails to protect and grow capacity across the province.

Importantly, MMAH has recognized the need for ongoing sector engagement to support the implementation of the new regulatory framework, including the development of guidance materials to support negotiation and dispute resolution processes. In addition to supporting MMAH in developing these supports, ONPHA will also be offering new services to support the sector during this significant transition period. Reach out to us now if you're looking for support and we'll connect with you.

ONPHA is also looking forward to ongoing engagement with all community housing sector partners and stakeholders, including at the federal, provincial, and municipal levels, to ensure the long-term growth and sustainability of Ontario's community housing system.

Service and exit agreements

Under the new regulatory framework, community housing providers reaching the end of their mortgage and/or operating agreement can either:

- Enter into a new service agreement with their service manager or District Social Services Administration Board (DSSAB); and/or
- Exit the current HSA funding and regulatory system.

Both sets of agreements will be subject to negotiation between each housing provider and service manager/DSSAB. However, the new regulations outline key provisions and baseline rules required within each agreement, with the intention of providing greater flexibility, consistency, and accountability across the province, in addition to incentivizing housing providers to remain in the system once their current obligations expire and encouraging new providers to enter the system.

Service agreements

A service agreement is a contract negotiated between a housing provider and service manager, with provisions related to operations, administration, and funding. As outlined in O. Reg. 241/22 and the accompanying Social Housing Notification, at a minimum, service agreements must include:

- A minimum term length of 10 years (with provisions that the agreement continues in effect after the term ends until a new service or exit agreement is struck);
- The number of RGI units (and other assistance as applicable) in the housing project;
- Selection rules for RGI units aligned with existing selection and waiting list rules;
- Baseline provisions for service managers to continue funding RGI units and provide other assistance as needed (e.g., for maintenance and/or to decrease non-RGI rental rates);
- A joint financial plan, to be reviewed at least every five years;

- A process to manage non-compliance and dispute resolution;
- The housing provider's mandate to serve a specified population, where applicable; and
- Participation in regulated Housing Services Corporation (HSC) programs, with current exemptions continuing.

With respect to funding arrangements and planning, the new service agreement framework requires service managers to provide rental assistance to housing providers, i.e., by providing funding to bridge the gap between RGI rates and rental rates otherwise payable for each unit. Service agreements must also include provisions for service managers and housing providers to negotiate additional funding, where necessary, to maintain housing stock in a state of good repair and/or reduce non-RGI rental rates (e.g., through property tax exemptions).

In addition, service managers and housing providers must co-develop a financial plan, which includes projected capital expenditures and rental rates for non-RGI units, to be reviewed at least every five years. Importantly, housing providers will continue to have access to existing funding opportunities that support the delivery of community housing (e.g., the Canada-Ontario Community Housing Initiative (COCHI)) under new service agreements.

The new service agreement framework will come into force on **July 1, 2022**, at which point, the "de-listing" moratorium will be lifted. In preparation for the transition to this new framework, the "de-listing" moratorium was introduced in 2019 for a three-year period to pause the removal of housing projects from the HSA, listed in O. Reg. 368/11 ("de-listing" usually applied to projects at the end of operating agreements). Once a project is de-listed, it is no longer required to fulfil its original program obligations (i.e., providing RGI housing), but it may also no longer be entitled to legislative and regulatory exemptions (e.g., from rent guideline increases under the *Residential Tenancies Act*, payment of the Land Transfer Tax, etc.).

If a housing provider wishes to remove a housing project from the HSA framework after July 1, 2022, they will need to enter into an exit agreement with their service manager.

Exit agreements

Housing providers may choose to exit the HSA framework once their mortgage and/or operating agreement expires. Exit agreements will also be subject to negotiation with service managers, but must include:

- Ongoing accommodation of households living in the housing project;
- Ongoing delivery of RGI (or other assistance) to households receiving RGI assistance; and
- Either:
    - Ongoing operation of the project by the existing or another housing provider;
    - Redevelopment of the project by the existing or another housing provider; and/or
    - Reinvestment of the sale of the project into affordable housing.

ONPHA's analysis

ONPHA is pleased to see the intent of our recommendations related to service and exit agreements largely incorporated into the new regulatory framework. The regulations provide a simplified approach, including baseline funding for rental assistance, flexibility for additional funding as needed, dispute resolution and regular review processes, and protections for tenants and community housing assets. While the new framework may lead to some inconsistency across the province, overall, we believe that this approach will incentivize housing providers to remain in the HSA framework by enabling them to operate in a more business-like fashion, ultimately ensuring the long-term sustainability of the sector.

Rental assistance

While we would have liked to have seen a stronger baseline commitment for rental assistance (i.e., funded up to a minimum of 80% of local average market rents) and property tax coverage in the service agreement regulations, we strongly support the Province's recognition that RGI assistance (as an income support program) must remain the responsibility of government (through service managers), not housing providers. This sets a strong precedent to ensure that tenants are supported sustainably and housing providers are able to responsibly plan for the long-term. Moreover, it marks a shift away from the current HSA funding model (which relies on outdated, complex indexed benchmark calculations that do not reflect today's realities) to a simplified, customizable approach.

Despite this significant, welcome shift in approach, it is critical that forthcoming guidance materials ensure a level of consistency across the province with respect to determining rental assistance rates, based on reasonable, up-to-date, data-driven solutions. ONPHA looks forward to ongoing engagement with MMAH, including opportunities to help develop and inform guidance materials to support service agreement negotiations and dispute resolution processes. As noted above, ONPHA will also be launching robust service offerings to support members through the negotiation process, in alignment with the service agreement regulations coming into effect on July 1, 2022.

Additional financial assistance

ONPHA also supports the requirements for service managers and housing providers to negotiate additional levels of financial assistance to address long-standing maintenance and capital repair needs (as a result of chronic underfunding) and/or deepen affordability by providing additional types of housing assistance (beyond RGI), where necessary. In particular, we are pleased to see MMAH name property tax exemptions as a possible approach to support these initiatives in the Social Housing Notification (although property tax coverage is not named explicitly in regulation).

These requirements address ONPHA's recommendations to provide a flexible, responsive funding approach that acknowledges the diversity of housing providers across the sector operating in different contexts, under different programs, and with different depths of need, wherein some providers may require greater levels of support (e.g., smaller housing providers, acquisition-rehab projects, Indigenous housing providers, etc.), while others may require less.

As noted above, forthcoming guidance materials to support the negotiation process must ensure consistent, equitable outcomes for housing providers and their tenants across the province with respect to access to additional funding, as required.

Joint financial plan

ONPHA supports the requirement for service managers and housing providers to co-develop a financial plan, which must address how the housing provider's revenues will meet expenditures (including projected capital expenditures) and set rental rates for non-RGI (i.e., market) units. While we are pleased to see a solid business foundation on which negotiations must be built (including regular opportunities for review at least every five years, incorporating our recommendation for strong accountability mechanisms), we expect that these requirements may cause some challenges in the negotiation process, in particular around determining market rental rates.

Dispute resolution

To that end, ONPHA is glad to see provisions requiring service agreements to include a dispute resolution process. This is a critical piece in the new framework that will help to guard against potential power imbalances and regional disparities, while protecting housing providers, service managers, and the communities they serve. However, recognizing the inconsistent nature of relationships between service managers and housing providers across the province, it is critical that forthcoming guidance provides clear and specific mechanisms to dispute, arbitrate, mediate, or terminate service agreements, if necessary. This will provide more consistent outcomes across the sector and help mitigate inequitable outcomes, especially for housing providers with less capacity and/or resources.

Term length

ONPHA supports the 10-year minimum term length for service agreements, which will provide a level of predictability for all parties involved, including service managers, housing providers, and tenants. In particular, we are glad to see the provision that service agreements will remain in effect at the end of the term until a new service or exit agreement is struck. This is a critical component that will help ensure the ongoing sustainability of housing providers and the stability of their tenants.

While housing providers and service managers are looking for service agreements that take into consideration the 30–40-year lifespan of building and development life cycles, we have also heard concerns from members that they are hesitant to enter into longer term agreements (especially ahead of understanding the full details and level of funding available). A 10-year minimum term length presents a reasonable minimum standard, while also providing flexibility for longer term agreements, where desired.

Exit agreements

As noted above, overall ONPHA supports the service agreement regulations and expects that they will provide sufficient guard rails and flexibility to encourage housing providers to remain in the HSA framework once they reach the end of their mortgage and/or operating agreement. However, in the event that a housing provider chooses to exit the system, we are pleased to see requirements for ongoing protections for both tenants and community housing assets in the exit agreement regulations.

ONPHA supports the provisions that ensure households receiving RGI assistance will have access to ongoing supports, ensuring their long-term stability, in addition to all households having continued access to accommodation. We are also pleased to see that exit agreements will safeguard the decades of public investment into community housing by ensuring that community housing assets either remain under the operation of the existing or another housing provider, are redeveloped by the existing or another housing provider, and/or if sold, that the proceeds of the sale are reinvested into affordable housing. In particular, we strongly support the requirement to ensure housing dollars remain in the housing system. This will ensure that the public investment in community housing is protected for system renewal and growth over the long-term.

While we recognize the need for all sector partners to play a role in developing and providing affordable housing across Ontario (including the public, private, and non-profit sectors), ONPHA will continue to advocate for the need to prioritize and invest in community housing providers in the event of exit agreements.

Next steps

To transition to the new service agreement framework, ONPHA is keenly aware that housing providers will require significant, ongoing support to:

- Prepare for the end of mortgages and/or operating agreements;
- Determine the best approach for their long-term sustainability; and
- Ensure success in the future negotiation environment.

In addition to ongoing engagement with MMAH to develop sector guidance materials, ONPHA will be launching a robust support service to ensure members are prepared for the new service agreement framework when it comes into effect on July 1, 2022. Reach out now if you're looking for support and stay tuned to ONPHA's communication channels for more details to come.

ONPHA is also looking forward to ongoing engagement with all community housing sector partners and stakeholders, including at the federal, provincial, and municipal levels, to ensure a sustainable, efficient, and resilient community housing system in Ontario, including long-term renewal, growth, and innovation.

In the meantime, here are a few actions that housing providers can take to start preparing for the end of mortgages and/or agreements and planning for the new framework:

- Confirm which types of projects are in your portfolio;
- Confirm your mortgage and/or agreement end dates;
- Review your financial situation and do projections about the future;
- Understand the condition of your assets;
- Start a conversation with your service manager;
- Engage your board of directors on this issue; and
- Think about where you want to go as an organization (e.g., your vision, your mission, where you want to be in 10, 15, 20 years).

If you have any questions, please do not hesitate to reach out to us at member.support@onpha.org.