ONTARIO'S NEW COMMUNITY HOUSING REGULATORY FRAMEWORK

FREQUENTLY ASKED QUESTIONS 2.0

ONTARIO NON-PROFIT HOUSING ASSOCIATION

www.onpha.on.ca

ABOUT THIS DOCUMENT

The purpose of this document is to provide ONPHA membership with information, insight, and tools to support their journey through the regulatory, policy and sector transformation ahead. This document has been developed through a partnership between ONPHA, StrategyCorp and Robins Appleby LLP to provide members with a more detailed understanding of what the path forward could look like for Housing Providers approaching their End-of-Mortgage or End-of-Agreement ("**EOM/EOA**").

As changes are announced and introduced, ONPHA has been working to understand and interpret the impacts on the community housing sector now and in the future. ONPHA is here to support all members and sector partners to understand and navigate this new reality by providing information and case-by-case advice/consulting.

The role of ONPHA is to ensure that its membership and other system stakeholders have a clear understanding of the changes to housing regulation, based on insights gathered from government decision makers, by providing support and advice to those who want to navigate this change. This document is a living document that will evolve in response to feedback, and/or if more information and change is introduced that must be accounted for. It is also part of a broader suite of EOM/EOA and regulatory change considerations, advice and publications ONPHA will provide to its members.

This is the first of a series of documents to be shared with ONPHA members, which are being released with intentional steps to optimize preparedness for members.

WHO SHOULD USE THIS DOCUMENT?

This FAQ is designed to help ONPHA members who are thinking about what steps to take to move forward.

The regulatory changes ahead are complex, and are expected to result in fundamental changes in how services are funded and ultimately delivered across the province. As a result, ONPHA strongly recommends a deep partnership with Board of Directors and Senior Management Teams on this journey, and for neither group to operate in a silo. The expertise of each group will play an important part in negotiating effective and informed legal agreements with funding partners that will have implications for ten (10) years or more.

ABOUT THE TRANSFORMATION UNDERWAY

In April 2019, Ontario released the Community Housing Renewal Strategy outlining the government's plan to work with partners to stabilize and grow the community housing sector.

In 2020, enabling legislative amendments were made to the *Housing Services Act, 2011* ("**HSA**"). These changes were intended to:

- Create a streamlined framework for Service Managers and Housing Providers to continue delivering community housing;
- Modernize accountability approaches by broadening the types of housing assistance that can be counted towards required service levels; and
- Require Service Managers to have an access system for forms of housing assistance in their service areas.

The Ministry of Municipal Affairs and Housing (the "**Ministry**") has implemented changes to *O. Reg. 367/11* intended to address key roadblocks and opportunities within the system. The Ministry has stated that the changes are intended to "work together to create the foundation for mutually beneficial service relationships between Service Managers and Housing Providers, modernize accountability approaches to put people first, and update rules for Service Managers to improve access to housing assistance for people most in need".

For most Housing Providers in Ontario, the transformation is most impactful at the EOM/EOA period. Over 600 existing mortgages and agreements are expected to expire over the next few years in Ontario, which will trigger a newly-developed process between Service Managers and Housing Providers to negotiate a Service Agreement as the mechanism to remain within the HSA (including its funding regime). The remainder of this guide is designed to provide ONPHA members with information, insights and tools that can be used to navigate the transformation, as well as individual negotiations for new Service Agreements

The remainder of this document provides answers to Frequently Asked Questions (FAQ) related to the transformation and its key details. This FAQ is the second version ONPHA is publishing – the original draft was published in summer 2022.

QUESTIONS? COMMENTS?

If you have any questions or comments about the information in this guide, please contact policy@onpha.org

FREQUENTLY ASKED QUESTIONS, ANSWERED:

1. Who is affected by the new regulations?

Broadly, the regulatory changes will have impacts on a number of key players within the system. In the immediate term, the regulatory changes will impact Housing Providers[1] and Service Managers[2] most significantly. Below is a brief description of how different system actors are affected by the regulatory changes:

Housing Providers reaching their EOM/EOA timelines will face either signing a Service Agreement with their Service Manager and still be partly governed by the HSA, or choose to exit the HSA system through an Exit Agreement with the Service Manager.

Service Managers will either enter into Service Agreements or Exit Agreements with the Housing Providers in their area. When entering into Service Agreements, Service Managers will be responsible for the funding of rent-geared-to-income ("RGI") subsidies. The new regulations state that a Service Agreement "must include a requirement for the Service Manager to provide funding to the Housing Provider, in respect of any units in the project where the household pays geared-to-income rent...".When entering into Service Agreements, Service Managers will be responsible for the funding of rent-geared-to-income subsidies. The regulations now state that a Service Agreement "must include a requirement for the service manager to provide funding to the housing provider, in respect of any units in the project where the household pays geared-to-income rent...")

More information about considerations around system exit and about the new Service Agreements and Exit Agreements is provided later in this document. We have also included a table with detailed legislative requirements as an appendix to this document.

2. What could the sector look like because of these changes to the community housing system? What are the incentives for Housing Providers to stay in the community housing system?

[1] Housing Providers are defined under the HSA as a person who operates a "housing project". The HSA defines the following categories of housing projects:

- Public Housing
- Rent Supplement (includes: Regular, Accelerated Rental CMHC/OMC, Community Integrated, Assisted Rentals, Limited Dividend, Private Assisted Rental, Ontario Rental Construction Plan, Canada Rental Supply Plan, Renterprise, Low Rise Rehabilitation, Ontario Rental Construction Loan, Assisted Rental Housing, Ontario Accelerated Family Rental Housing)
- Limited Dividend
- Non-Profit Low Rental
- Non-Profit 2% Write-Down
- Non-Profit Full Assistance
- Urban Native Fully Targeted
- Urban Native 2% Write-Down

[2] Service Managers are municipal entities responsible for carrying out the funding responsibilities of the *HSA*, including Consolidated Municipal Service Managers (CMSMs) and District Social Services Administration Boards (DSSABs).

In 2020, ONPHA launched a Solutions Lab to develop a collective, cross-sector vision for the future of the community housing sector in the face of impending change. The culminating report summarizes this collective vision, identifying several key themes to conceptualize the community housing sector for the future (see Figure 1).

Figure 1

Going forward, our members (and all sector players) will be required to take a concerted effort to think about their future within the system in the face of new agreements, new requirements & planning, and new potential sector partners. ONPHA will continue to advise and work with our members to support them to understand and navigate this change to optimize their sustainability and success in the future.

More information about general benefits and risks of the transformation is included later on in this document.

4. What is expected to be covered by Service Agreements?

The new regulations include a list of what must be included in Service Agreements. Based on the regulations, Service Agreements will include, at a minimum the following information:

- **Service Levels & Target Plans:** including the RGI vs. other housing subsidy mix and the level of subsidy associated with those service levels.

- **Financial Planning:** Housing Providers and Service Managers will be required to work together to co-develop a financial plan that also articulates other financial assistance to be made available to Housing Providers.

- **Term of Agreement:** the regulatory changes will require a minimum 10-year agreement and Service Agreements will continue in effect after the end of the term until a new Service Agreement is struck or the Service Manager and Housing Provider enter into an Exit Agreement.

Full details of legislative requirements of the Exit Agreement and Service Agreement are provided as an appendix to this document.

5. What flexibility is available to Housing Providers and Service Managers in terms of negotiation?

Negotiations will take place on a provider-by-provider basis with their relevant Service Manager. The Service Manager and Housing Provider will establish funding levels based on (1) the rental assistance required to administer service; and (2) the co-designed financial plan between the Service Manager and Housing Provider.

6. Will Service Managers continue to fund the same number of RGI units within the system?

The service levels for the number of RGI units are set by the Ministry for each Service Manager through *O. Reg. 367/11*, Schedule 4. Under Section 78 of the HSA, Service Managers are required to provide subsidy to Part VII Housing Providers for RGI units.

Under the Exit Agreement, there is no requirement for the Service Manager to provide continuing funding for RGI units, but Housing Providers can negotiate with their Service Managers to provide such funding as part of the Exit Agreement or as part of a Rent Supplement Agreement.

Under the Service Agreement, Service Managers must provide funding for RGI units.

7. Will consent still be required to mortgage a housing project under Section 162(2) of the HSA?

The consent requirements under Section 162 only apply to Part VII housing projects and designated housing projects who have a pre-reform operating agreement. Therefore, Section 162 does not apply to Housing Providers who enter into an Exit Agreement or Service Agreement as they become Part VII.1 housing projects.

8. Will Housing Providers need to continue to offer the same number of RGI subsidies in their projects?

Under the Exit Agreement, the Housing Provider must continue to provide RGI subsidies or provide an alternate form of assistance to existing RGI households. Once those households move out or lose their subsidy, there is no further requirement to provide RGI subsidies.

Under the Service Agreement, the Housing Provider must meet the service levels negotiated with their Service Managers.

9. What types of assistance can count towards the service levels in a Service Agreement?

The Service Agreement must specify the number of units in the housing project, or a target or range of the number of units in the housing project in respect of which households shall receive:

- RGI assistance; and
- an alternate form of financial assistance provided by the Service Manager to a household if the financial assistance is:
    - the form of a monthly benefit described in section 1 of Schedule 4.1 of O. Reg. 367/11;
    - the financial assistance is described in section 1 of Schedule 4.2 of O. Reg. 367/11; or
    - the financial assistance is described in section 1 of Schedule 4.3 of O. Reg. 367/11

10. Can properties be sold under the new framework, for example as part of a broader asset management strategy in place by Housing Providers?

Yes, housing projects can be sold, but there are certain requirements under the new framework.

If the Housing Provider has exited the HSA via an Exit Agreement, the Housing Provider must reinvest the proceeds of sale of the housing project into affordable housing. There must also be a plan for the continued delivery of RGI assistance to existing RGI households.

In a Service Agreement, the negotiated terms of the agreement must be followed. If the Service Agreement is to be terminated, the Housing Provider and the Service Manager must agree to an Exit Agreement. After which, any sale of the property would have to follow the requirements of the Exit Agreement provisions stated above.

10. What are the rules to remove households from the waitlist under the new system?

The rules to remove households from the waiting list will remain the samedelivery of RGI assistance to existing RGI households.

- If a household accepts a portable housing benefit offer that follows existing RGI waiting list, priority and selection rules (as per Schedule 4.1), they must be removed from the housing waitlist.
- If a household accepts assistance covered under schedules 4.2 and 4.3 (including portable housing benefit that do not comply with RGI rules) cannot be removed from the waitlist.

11. If a Housing Provider wants to exit the system at EOM/EOA, what are options for Housing Providers and the requirements for each option

Housing Providers may choose to exit the HSA and its operating environment once their mortgage or operating agreement ends. Housing Providers generally have four overarching options when they reach the EOM/EOA timeline and wish to exit the system: (1) sell properties; (2) transfer properties to other Housing Providers; (3) continue operation; and (4) redevelopment. In order to exit the system, the Housing Provider first needs to enter into an Exit Agreement with the Service Manager.

The details of Exit Agreements will be negotiated with the Service Manager but the regulations contain minimum requirements for Exit Agreements. In general, the Exit Agreement must include:

- A plan for ongoing accommodation of households living in the project including continued delivery of assistance to households receiving RGI assistance;
- A plan for at least one of the following 1) ongoing operation of the project by the existing or another Housing Provider; 2) redevelopment of the project by the existing or another Housing Provider; or 3) reinvestment of the sale of the project into affordable housing

We have also included a table with detailed legislative requirements as an appendix to this document.

12. If a Housing Provider is selling a property, who should it consider selling it to?

There are no restrictions on who to sell to, as long as the requirements of the Exit Agreement that are stated previously are met.

Wherever possible, ONPHA recommends first attempting to sell within the community housing sector to preserve our sector's scale and capacity to meet needs.

13. If Housing Providers plan to exit the system, what options are there to operate outside the structures and regulations of the HSA?

ONPHA is in the process of gathering more legal and policy insight into this question, and will provide more information about this in follow-up documents within the Transformation Guide. Generally speaking, the Housing Provider must meet their other legal requirements, such as the requirements under other funding agreements (e.g. COCHI, SHIP, etc.) and requirements under relevant legislation (e.g. *Human Rights Code, Residential Tenancies Act, Ontario Not-for-Profit Act,* etc.).

14. In cases where requirements for disposition of assets under the HSA are lower than those under ONCA, are Housing Providers considered public benefit corporations?

Disposing of assets would not impact whether an organization is considered a public benefit corporation under the *Ontario Not-for-Profit Corporations Act* ("**ONCA**"). The trigger for becoming a public benefit corporation under ONCA is receipt of donations or gifts valued over a certain amount. A "public benefit corporation" means a charitable corporation or a non-charitable corporation that receives more than $10,000 annually in donations/gifts from persons who are not members, directors, officers or employees of the organization or in the form of financial assistance or grants from government.

15. Are there any clarifications on a dispute resolution process associated with the legislation?

The new HSA regulations do not stipulate specific requirements for a dispute resolution process in Service Agreements other than the fact there needs to be a process. We can expect this to be negotiated between Housing Providers and Service Managers.

16. Are ‘triggering events’ a part of the new regulations?

Enforcement mechanisms under Section 83 of the HSA only apply to Part VII housing projects. Under the Exit Agreement or the Service Agreement, the Housing Provider will no longer be operating a Part VII housing project. Therefore, the events in section 83 of the HSA that trigger a Service Manager’s enforcement rights would no longer apply to such projects

17. After its EOM/EOA, will Housing Providers be able to leverage a property to develop a separate building?

The regulations do not restrict a Housing Provider from being able to mortgage their property to develop a separate building. Also, the regulations allow for the sale of properties if the proceeds of the sale are used for affordable housing and the existing RGI tenants are provided for.

18. In the new framework, are Housing Providers required to apply to the Service Manager for permission to borrow money? Are other requirements (like only investing with an approved firm) still apply?

There is no requirement to apply to the Service Manager to borrow money under the new framework, but such requirements may be negotiated through the Exit Agreement or Service Agreement.

Unless amended, the changes to the regulations do not change the existing rules related to investments.

19. If a housing project exits the HSA, will the Service Manager continue to provide RGI assistance to existing RGI households?

Currently there is no requirement for Service Managers to provide funding for ‘in-situ’ RGI tenants who stay in a unit post-exit. There is a legislative requirement for Housing Providers who choose to exit to maintain the RGI subsidy for the lifetime of the tenancy in place at time of exit, but any subsidy support would have to be a negotiated condition of the Exit Agreements between each Housing Provider and Service Manager. A potential option Housing Providers can explore is to negotiate a Rent Supplement Agreement with the Service Manager to maintain subsidy for RGI units without the broader Service Agreement requirements being included.

STAY *tuned!*

In early 2023, ONPHA will release additional information about the other steps in the five-step transformation process. This includes:

- **Summary of Options for Providers**
- **Service Agreement & Exit Agreement Templates/Recommended Terms of Reference**
- **Access to other organizations who can help ONPHA members navigate the change**

QUESTIONS? COMMENTS?

If you have any questions or comments about the information in this guide, please contact policy@onpha.org

NEED MORE SUPPORT?

ONPHA is now in the process of developing a all-encompassing solution for our members embarking on these changes. This will include an information hub with resources and toolkits to access, webinars and information sessions, and access to a selected roster of firms subject-matter and technical expertise you may need to navigate this journey leveraging the ONPHA Enterprise program.

If you have immediate needs related to EOM/EOA, or require more detailed information to help with an upcoming negotiation, please contact policy@onpha.org to receive resources and other useful information.

DISCLAIMER

This material is for general information purposes only. It is not intended to provide legal advice or opinions of any kind and may not be used for professional or commercial purposes. No one should act, or refrain from acting, based solely upon this material, without first seeking appropriate legal or other professional advice. This material is provided for your convenience only and your use of this material is at your own risk. While ONPHA has made reasonable efforts to ensure that this material is accurate, it does not warrant or guarantee the accuracy, currency or completeness of the material. In no event shall ONPHA, its partners, agents or employees be liable for any loss, cost or damages whatsoever whether direct, indirect, incidental, or otherwise arising out of any use or misuse of, or any defects, inaccuracies, errors or omissions in this material without regard to the form of action.

ONTARIO NON-PROFIT HOUSING ASSOCIATION

(416) 927-9144 | Toll-free: 1-800-297-6660 | policy@onpha.org | www.onpha.on.ca

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SERVICE AGREEMENT

This chart summarizes the principal legislated terms of a Service Agreement between a housing provider and its service manager, which will allow a designated housing project to become a Part VII.1 housing project under the *Housing Services Act* (the "**HSA**").

SECTION OF O. REG. 367/11	TERM	LEGISLATIVE REQUIREMENTS
105.2	JOINT NOTICE TO MINISTER	The housing provider and service manager must jointly give the Minister notice of their intention that the housing project be a Part VII.1 housing project.
105.1(2)(3)	TERM	The agreement must have a term of at least 10 years.
105.1(2)(10)	MANDATE	The agreement must specify the mandate of the housing provider.
105.1(2)(4), 105.1(2)(5), 105.1(2)(7) AND 105.1(2)(8)	SERVICE LEVELS	The agreement must specify the number, target or range of the number of households in the housing project that will receive RGI assistance and/or an alternate form of assistance. If one or more households in the housing project are presently receiving RGI assistance, the agreement must provide that such households will continue to receive RGI assistance. With respect to RGI units, the agreement must provide that the housing provider will comply with the waitlist selection system, eligibility criteria and RGI calculations under the HSA.

SECTION OF O. REG. 367/11	TERM	LEGISLATIVE REQUIREMENTS
105.1(2)(11) AND 105.1(2)(12)	**SERVICE MANAGER FUNDING**	The agreement must include a requirement for the service manager to provide funding to the housing provider, in respect of any RGI units in the housing project, equal to the difference between the RGI payable by the household and the market rent. The agreement must include provision for such additional funding or other financial assistance as the service manager and housing provider agree on in order to: • reduce or defray the rent of market rent households; and • enable the housing provider to maintain the housing project in a satisfactory state of repair and fit for occupancy.
105.1(2)(13) AND 105.1(2)(14)	**FINANCIAL PLAN**	The agreement must include a financial plan for the housing project that will be reviewed at least every five years and that addresses how the housing provider's revenues will meet expenditures for the housing project, including projected capital expenditures.
147.1	**PROVISIONS OF HSA THAT CONTINUE TO APPLY**	If a household in the housing project is presently in receipt of RGI assistance, the provisions of the HSA with respect to the items below will continue to apply: • determining the household's continued eligibility for RGI assistance and the amount of the household's RGI; and • giving notice, reviewing and determining the effective date of the above-noted decisions.
105.1 AND 105.5	**TERMINATION**	The housing provider and the service manager may not terminate the agreement, even at the end of the term, except as part of replacing the agreement or through an exit agreement.

EXIT AGREEMENT

This chart summarizes the principal legislated terms of an Exit Agreement between a housing provider and its service manager, which will allow a designated housing project to become a Part VII.1 housing project under the *Housing Services Act* (the "**HSA**").

SECTION OF O. REG. 367/11	TERM	LEGISLATIVE REQUIREMENTS
86.2(1)(1) AND 86.2(1)(2)	**JOINT NOTICE TO MINISTER**	The housing provider and service manager must jointly give the Minister notice of their intention that the housing project cease to be a designated housing project.
86.1(3)(3) AND 86.1(3)(4)	**EXISTING TENANCIES**	The agreement must include a plan for the accommodation of households who occupy units in the housing project, including a plan for the continued delivery of either RGI assistance or an alternate form of assistance to each household who is presently in receipt of RGI assistance.
86.1(3)(3) AND 86.1(3)(4)	**PLAN FOR HOUSING PROJECT**	The agreement must include a plan for at least one of the following: • The continued operation of the housing project by the housing provider or another housing provider; • The redevelopment of the housing project by the housing provider or another housing provider; or • The reinvestment of the proceeds of sale of the housing project into affordable housing.
147.1	**PROVISIONS OF HSA THAT CONTINUE TO APPLY**	If a household in the housing project is presently in receipt of RGI assistance, the provisions of the HSA with respect to the items below will continue to apply: • determining the household's continued eligibility for RGI assistance and the amount of the household's RGI; and • giving notice, reviewing and determining the effective date of the above-noted decisions.