

Service Agreement Regulations: Questions and Answers

Ministry of Municipal Affairs and Housing
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Purpose

The following document is intended to respond to questions received from the community housing sector regarding the service agreement regulations under the Housing Services Act, 2011 (HSA).

This document is not intended as legal advice and is intended to be read with the HSA and its regulations. In the event of a conflict between this document and the legislation, the legislation will prevail. Housing providers and service managers are encouraged to consult with their own legal counsel for assistance in interpreting and applying the legislation.

Questions and Answers

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1. Are all providers required to sign service agreements and/or exit agreements?

Under the new framework a housing provider that operates a housing project which is subject to Part VII of the Housing Services Act, 2011 (HSA) must sign either a service agreement or exit agreement when its original obligations end. Those projects remain subject to existing Part VII rules until they enter into a service agreement, or an exit agreement with their service manager. All service and exit agreements must be mutually agreed upon and signed by both the service manager and housing provider.

- A Part VII housing project is a project that is listed in O.Reg. 368/11 as being subject to either Program 6(a) or 6(b), as set out in Schedule 1 of O.Reg. 367/11.

A housing project that is not subject to Part VII, or operates under other parts of the HSA, is not required to sign either a service or exit agreement under the new regulatory framework.

However, housing providers that are not subject to Part VII should assess the benefits of continuing to provide housing units under a service agreement, including continued eligibility for provincial funding programs, such as the Canada-Ontario Community Housing Initiative (COCHI).

Service managers and housing providers are encouraged to work together to explore potential options to ensure that community housing continues to serve households in their communities.

2. What options do federal projects have?

The new regulatory framework is flexible and non-Part VII housing projects can voluntarily enter into service agreements when their original obligations have ended. Housing providers with non-Part VII projects are encouraged to reach out to their service managers early to discuss and explore options for service agreements that may be mutually beneficial for the continued provision of their housing units.

A legacy housing project that is not subject to Part VII, or operates under other parts of the HSA, is not required to sign either a service or exit agreement under the new regulatory framework. This includes housing projects that are operated under agreements with the Federal government, such as federal co-operatives.

There may be cases where housing providers operate a building where there are two phases of a project under separate sets of rules. In this case, the housing provider and service manager may want to consider consolidating accountabilities under a single service agreement.

3. What happens for providers who have mortgages ending this year – what options do they have?

Housing providers that have a housing project subject to Part VII of the HSA will continue to be subject to existing Part VII rules (including associated funding rules) until they enter into a service agreement or an exit agreement with their service manager. All service and exit agreements must be mutually agreed upon and signed by both the service manager and housing provider.

The level and time of Council approval will vary by region. In the absence of a service agreement model approved by Council when obligations end, there are multiple avenues that service managers and housing providers can explore as interim measures to help ensure the financial stability of housing providers while formal agreements are being negotiated.

In some situations, interim agreements may help provide some certainty to parties during the interim period if early service agreements take longer than expected to finalize.

The regulations do not preclude service managers and housing providers from entering into interim agreements but there is no requirement to do so. For example, a service manager and housing provider may enter into a new rent supplement agreement while a new service agreement is being negotiated.

For Part VII housing projects, if an interim agreement does not meet all the regulatory requirements to constitute a service agreement, the service manager and housing provider must still comply with the existing HSA requirements applicable to Part VII housing projects in addition to the interim agreement.

Formalized interim agreements may also require some amount of negotiating. This could be as simple as the service manager continuing to fund the rent supplements while the service agreement is in negotiations. There are some cases where a service manager has the delegated authority to provide supplementary or additional funding in the interim without the need for a formal interim agreement.

Service managers and housing providers are encouraged to work together to begin early discussions to explore options on service agreements prior to the maturation of mortgages or end of agreements.

4. Do housing providers and service managers have flexibility when negotiating service agreements?

Yes. Housing providers and service managers are encouraged to begin discussions early and work together on the development of service agreements in advance of the expiry of their mortgages or agreements. This will ensure successful agreements are achieved and sufficient time is allocated to secure approvals (e.g., service manager council and housing provider board approvals).

5. Can providers with multiple housing properties negotiate their full portfolios (multiple projects within a service area) as part of their agreements, or will individual agreements for each project at end of mortgage or end of operating agreement be needed?

The regulations do not prevent the negotiation of full portfolios provided that service agreement provisions are satisfied.

Early conversations will help ensure a seamless transition into the new framework, particularly in cases of multiple projects or portfolios. Housing providers are encouraged to reach out to their service manager well before the expiry of any mortgage or operating agreement.

Service agreements under the new Part VII.1 must have a term of at least 10 years; however the agreements can be later amended or replaced by mutual agreement to develop a portfolio-based approach (para 1, 2 and 3 of s 105.1 (2), O. Reg. 367/11) in the case that the housing projects have differing expiry or end dates. There is nothing in the regulation that would prevent housing projects entering the new framework under one agreement, provided that the term for each project is at least 10 years.

6. What are the requirements for the financial plans?

The regulations require that service agreements must include a financial plan.

The regulations require that these financial plans must:

- Be jointly developed by the housing provider and the service manager (para. 13.i of s. 105.1 (2));
- Address how the revenues will meet expenditures for the project, including projected capital expenditures (para. 13.ii of s. 105.1 (2));
- Address how any other rent for units – other than the RGI units - in the housing project will be set (para. 13.iii of s. 105.1 (2));
- Cover a period of at least five years from the effective date of the service agreement (para. 13.iv of s. 105.1 (2)); and,
- The financial plans must be reviewed at least every five years (para. 14 of s. 105.1 (2)).

7. Why are financial plans required in service agreements?

Financial plans are an essential component of service agreements to help forecast and plan for operating expenses and revenues, and for meeting the projected capital expenditures. A service manager and housing provider's financial plan will act as a bridge to connect many of the regulatory requirements together and guide a discussion that is focussed on ensuring financial sustainability for both housing providers and service managers.

The development of a financial plan provides an opportunity for housing providers and service managers to work together and plan for the long-term financial sustainability of a project and examine how a project's revenues will meet its expenses. Financial plan development will allow parties to openly discuss operating expenses and revenues, including:

- Property tax expenses;
- Capital repair needs;
- How operating costs and revenues are managed over the term of the plan;
- How market rents should be set to ensure sustainable long-term operations; and,
- Subsidized unit target plans (or subsidized unit numbers).

Housing providers and service managers should use available tools, resources, and data supports to aid the discussion and development of financial plans such as building condition audits (BCAs) and other technical reports for capital repair needs, audited financial statements, current year budget, subsidy calculation estimates, and other long term financial planning tools.

8. What are the service agreement requirements for subsidies for RGI units?

For the purposes of RGI units and market rent units, the regulations require that:

- Service managers provide a subsidy that bridges the gap between RGI rent and market rent (para. 11 of s. 105.1 (2)); and
- Funding to bridge the gap between RGI rent and market rent would apply to all existing RGI households, at minimum (para. 7 and 8 of s. 105.1(2)).

Any rent increases for existing market rent tenants must also comply with any other applicable legislation (e.g., Residential Tenancies Act, 2006).

9. What are the requirements for target plans (for RGI assistance or other forms of assistance)?

The regulations require that service agreements must include the number of units (or a target/range) in the housing project where households will receive RGI assistance (para. 4 of s 105.1 (2), O. Reg. 367/11) but it does not prescribe what those targets are.

In addition to any RGI units, the service agreement would also need to include the number of units (or a target/range) for any units funded through eligible alternate forms of assistance, where applicable (para 4 of s 105.1 (2), O. Reg. 367/11).

Households that were in receipt of RGI assistance in the housing project prior to the service agreement coming into effect must continue to receive RGI assistance under the new service agreement (para 7 and 8 of s 105.1 (2), O. Reg. 367/11). This would mean that at a minimum, these households would need to be included as part of the RGI targets or target range.

Service managers and housing providers are encouraged to work together to negotiate targets that meet their shared goals and the housing needs in their service area.

10. Do the regulations set out any requirements for how to determine market rent?

No. The regulations do not provide requirements or parameters for determining market rent or rent for units in a building.

As noted in Question 7, on financial plans, service managers and housing providers are encouraged to work together to set the rents in a building as part of the broader discussion on project financial sustainability when jointly establishing a financial plan (para. 13 of s 105.1 (2), O. Reg. 367/11).

Relevant information to support discussions on setting market rent may include:

- Historical unit prices in the building;
- Current and potential unit mix (e.g., what is the current mix of subsidized and non-subsidized units);
- Average and/or median rent prices in the area;
- Age and quality of the rental building;
- Capital repairs plans and/or asset management plans;
- Utilities (e.g., if the housing provider pays for hydro, unit rents may be higher than when a tenant pays for hydro);
- Operating expenses; and,
- Vacancy rate for comparable rental units in the service manager area.

11. Do the regulations require service managers to cover property taxes?

No. The regulations do not set out requirements for service managers to cover property tax expenses. Any offsets to property tax expenses are made at the discretion of the municipality in question (subject to the municipality's compliance with other applicable legislation).

As noted in Question 7, service managers and housing providers are encouraged to work together to discuss operating expenses, such as property taxes, as part of a broader discussion on financial sustainability when jointly establishing a financial plan (para. 13 of s 105.1 (2), O. Reg. 367/11).

12. Do the regulations prescribe a process to follow for dispute resolution that is to be included in service agreements?

The regulations require that a service agreement must include a dispute resolution process that both parties will follow in the event of any alleged non-compliance (para. 15 of s. 105.1(2)).

There are no specific provisions in the regulation about the type of dispute resolution process that must be included in a service agreement. Service managers and housing providers should seek to incorporate a process for dispute resolution that will help avoid unnecessary litigation and minimize tenant impacts in cases of disagreements.

In establishing dispute resolution processes in service agreements, housing providers and service managers are encouraged to leverage existing dispute resolution mechanisms that include options for parties to use alternative dispute resolution, such as negotiation, facilitation, mediation, and arbitration.