

RECOMMENDED CHANGES TO SHRA AND RELATED REGULATIONS

Recommendation 1 (ref O.Reg 298/01 s.10(1)(a) as amended by O.Reg 85/02; and O.Reg 298/01 s.12(1)(h))

Reporting changes in household income or composition

Regulation 298/01 has been amended to allow the service manager to have a local rule allowing a household longer than 10 business days to report a change in income or household composition. If the service manager does not issue a rule, the MMAH default of 10 business days remains in place. If residents miss the deadline, they lose their eligibility for Rent-Geared-to-Income (RGI).

Even if the household had a legitimate reason for missing the deadline, or if there is a desirable alternative to loss of RGI, no flexibility is allowed. The only recourse the household has is to appeal the decision to withdraw RGI. This adds administrative cost to the system and increases the stress on all participants in the process. Acknowledging the personal challenges faced by many RGI households, they should not automatically be severely punished for failing to submit information on time. The previous system before devolution allowed the housing provider to backdate rent increases rather than declaring the tenant ineligible. This was a better approach.

It is recommended that the Regulations allow service managers/housing providers to make a retroactive adjustment, where justified, rather than being bound to declare an RGI recipient ineligible for RGI and requiring the recipient to ask for a review; and further, that the service manager be allowed to set limits on what changes must be reported promptly and what can wait until annual reviews.

Recommendation 2 (ref O.Reg. 298/01 s.11(1))

Updating applicants' information

The regulations say that the access system must update the information on all applicants on the centralized waiting list every 12 months. The intent of this apparently is to prevent applicants "falling through the cracks", and to allow service managers to have an accurate estimate of housing need in the service area.

Updating applications every 12 months may be a waste of time for all concerned, unless the service manager has other use for the information, given the length of

waiting lists and the impossibility of quickly housing those near the bottom of waiting lists.

It is recommended that the Regulations give service managers flexibility on whether centralized waiting list systems must review the information of all applicants annually, or just review the applicants nearer the top of the list.

Recommendation 3 (ref O.Reg 298/01 s.12(4))

Market-rent residents who come to need RGI

Occasionally, a household that has been paying market rent loses income and comes to need RGI. According to the regulations, the household is not automatically eligible for RGI unless it had been receiving RGI within the previous 12 months. If the household had always been at market, or if it had not been in need of RGI for a year, then the household has to go to the bottom of the list.

This rule will lead to unfair treatment of long-time residents. For instance, if a household member dies and the surviving household members can no longer afford the rent, the household goes to the bottom of the list for RGI assistance. MMAH has made one change to the regulation already, namely that if a housing provider is below its target for RGI units, and if there has been no turnover in the portfolio within the last 12 months, then the housing provider can offer RGI to the household. Obviously, few, if any, housing providers have no turnover in 12 months, so this is not of much assistance.

It is recommended that the Regulations acknowledge as the effective date of application the date on which a social housing resident was originally housed and further that the service manager be permitted to set a local policy for allowing RGI subsidy to be given to market rent residents in need without recourse to the centralized waiting list referral process where the housing provider is below its RGI target and there are currently no vacancies. It should be noted that the recommended use of the “date housed” is the latest date put forward by participants in this exercise; many have called for use of the date of original application, consistent with a common practice prior to the enactment of the SHRA.

Recommendation 4 (ref O.Reg. 298/0 s.25(7))

Review of special priority status on coordinated waiting lists

The regulations say that once an applicant household has been given special priority status as a victim of abuse, that status cannot be reviewed.

It takes longer than MMAH appears to believe for an applicant to be housed – even one with special priority. There are changes which could occur (e.g. death, incarceration or relocation of abuser) which would mean the applicant no longer has the need for priority. Retaining the priority in such instances would bring the system into disrepute and could deprive someone at risk in legitimate need of housing.

It is recommended that service managers be given flexibility to undertake review of special priority status at six-to-twelve month intervals, subject to consultation with appropriate stakeholders on objective conditions for such review and to re-confirm or revoke special priority status after that review.

Recommendation 5 (ref O.Reg 209/01 s.57(4), 58(3) and 58(4))

Timelines for internal reviews

The Regulations specify that a household which appeals a decision by a provider must do so within 10 business days, and that the appeal must be heard within 10 business days (five if the issue includes discussion of special priority status). The Regulations appear to encourage the speedy resolution of a dispute by forcing both parties to work quickly to meet deadlines.

In many cases the timelines are not sufficient. It may be necessary, for instance, to arrange for assistance from an interpreter or legal aid lawyer.

It is recommended that the Regulations allow service managers to develop review processes that grant additional time where this would lead to a better resolution of the dispute, and further be allowed to make decisions such as rent increases retroactive where any delay in the review process would result in a delay in the date an action would have otherwise taken place.

Recommendation 6 (ref O.Reg. 339/01 S.18))

Grounds for refusing an applicant for housing

The Regulations allow a housing provider to refuse to give housing to an applicant for a very small number of reasons.

- If selection of the household would be contrary to its mandate;
- If the housing provider believes the applicant won't pay the rent;
- If the housing in question is shared accommodation and the provider believes the applicant is not suitable for this kind of housing;
- If the housing provider has reasonable grounds to believe that the unit is not suitable for the household due to the physical characteristics of the unit in relation to the number, gender and ages of the members of the household;
- In the case of special needs housing, the level of service required by the household is significantly greater or significantly less than the level of service provided to a household in the unit;
- In the case of a co-operative, the household cannot or will not accept responsibilities as a member.

The Regulations do not allow a housing provider to refuse an applicant with a history of violent or abusive behaviour. Although a person's past history should not be grounds for forever barring the person from social housing, the housing provider should have some ability to take into account the existing tenants' right to be protected from behaviour that would significantly reduce quality of life.

It is recommended that the Regulations expand the permitted grounds for refusing an applicant to include "previous eviction for cause", including where the applicant had left their unit under final notice of eviction for cause.

Recommendation 7 (ref O.Reg. 339/01 s.21(1) 5 ii))

Signatures of 16- and 17-year olds on RGI leases

The Regulations say any member of an RGI household who is at least 16 years old must sign the lease. In the past, the minimum age for signing was 18 years. The Province appears to be saying that since 16-year-olds can live independently and can sign contracts for "necessities" (e.g. housing), it does not want to discriminate between 16-year-olds who are independent and those who are still living with and dependent on their parents or guardians.

There are practical differences between households led by an independent 16-or 17-year old and those with dependents of the same age, as well as legal complications should the household break up. Forcing housing providers to treat them all the same ignores these issues. Signing the income declarations, also as required, would appear to achieve similar goals without creating the same problems.

It is recommended that the Regulations not require 16-and 17-year olds to sign leases.

Recommendation 8 (ref O.Reg. 339/01 s.24(3)3)

Indexing capital reserve contributions

The Regulation governing the new funding model says the housing provider must make an annual contribution to its capital reserve, and that the amount of the required contribution will change annually by an index the Province will publish. There is no commitment from MMAH as to what that index will be.

This creates uncertainty for both housing providers and service managers. If the index the Province uses is higher than either the market rent index or the operating cost index, then housing providers will have to devote an unacceptably high proportion of their operating budget to funding their reserves. In turn, the financial pressure will encourage them to ask for relief from service managers. Conversely, non-indexed reserves will accelerate the depletion of reserves and cause providers to approach service managers prematurely to seek capital assistance.

It is recommended that the Regulations index the contributions to capital reserves to either the market rent index or the operating cost index.

Recommendation 9 (ref SHRA s. 92(2), s. 102(2))

Date when Providers are no longer bound by the SHRA

According to the SHRA, a housing provider is no longer bound by Part VI of the Act (which contains the enforcement provisions) on a future date, specified by the Minister, when the service manager is no longer required to provide subsidy.

MMAH has not yet published the dates when housing providers' mortgages are paid off, and these are the dates providers will no longer receive subsidy under

the Act. Until these dates are published, all parties face unnecessary uncertainty.

It is recommended that a Regulation be issued as soon as possible setting out dates for individual projects when service managers are no longer obliged to provide subsidy and housing providers are no longer subject to Part VI of the SHRA.

Recommendation 10 (ref SHRA s.64.2, s.72(1), O.Reg. 89/02 s.1)

Filling special-needs units

According to the Act, the individual housing provider is responsible for filling special-needs units that do not have support service funding attached. This is a change from the previous system, where local access systems had this responsibility.

Many housing providers may not have good contacts with people requiring modified units, or with agencies that assist them. This means people looking for modified units will find it harder to find appropriate housing since there may not be a central source of information about modified units.

It is recommended that the Province make a distinction between modified units which are supported and those which are not and at a minimum permit applicants needing a modified unit, but not needing supports, to apply to the Centralized Waiting List and/or individual Housing Providers.

Recommendation 11 (ref O.Reg 298/01 s.25(3))

Verification of Victim of Violence

The Regulation allows for a defined set of professionals (listed in s.25(5)) to provide verbal confirmation of abuse. A verbal statement leaves nothing that can be audited as a matter of program compliance, nor does it impart any serious sense of accountability for people attesting to the need for special priority status on an applicant's behalf.

It is recommended that the Regulation require signed statements from any professional who confirms an abuse situation.

Recommendation 12 (ref O.Reg 298/01 s.36(1))

Provision of waiting list to housing providers

The access system is required to give each housing provider their respective waiting list on a monthly basis. The full waiting list includes applicants who may not be offered housing for years. Reproducing every housing provider's complete waiting list every month could represent unnecessary time and/or expense. Provision of only the top priority applicants may be sufficient. With an automated, electronically communicated system, direct referrals of just one or two applicants may work.

It is recommended that the Regulation allow service managers to reduce the service level anticipated in the provision of waiting list data with the mutual consent of the access centre and housing providers, to improve efficiency and ensure housing providers have the information they need to minimize vacancy loss.

Recommendation 13 (ref O.Reg 298/01 s.50)

Working deduction for child income

If interpreted word for word, a working deduction of \$150 is given to a child's income even if the child is the only individual with employment income. The language is very confusing, to the extent that the MMAH RGI Guide excludes a child's employment income in some situations and a direct "Q and A" from the MMAH indicated a \$75 deduction if the child were the only wage earner or one of two wage earners.

It is recommended that the Regulation clearly indicate how to calculate rent attributable to children with employment income, including situations where that is the only employment income in the household, and distinguishing as appropriate between student and non-student situations.

Recommendation 14 (ref O.Reg 339/01 s.16(1)3 and s.16(2)3)

Vacancies in Modified Units

The regulation requires housing providers to hold a modified unit vacant until an applicant needing the modifications is available. If a suitable applicant is not available, vacancy losses could accumulate rapidly, affecting the housing provider's financial position to the extent that relief will be sought from the service manager. Waiting lists for individual modified units could be non-existent, now or

in future, depending on alternatives in the area, design issues and so forth. To hold a unit vacant indefinitely is simply wasteful.

It is recommended that the Regulation allow the Service Manager to set time limits on a case-by-case basis for holding modified units vacant.

Recommendation 15

Deviations from Generally Accepted Accounting Principles (GAAP)

Provincially funded social housing programs have historically operated with significant deviations from GAAP in accordance with Ministry requirements. Unfortunately, the SHRA and accompanying Regulations are silent on this issue. Without specific authorization to continue to operate with the deviations, auditors will be required to default to GAAP.

The problem is that GAAP reporting will produce financial statements that do not clearly reflect a non-profit's surplus/deficit position in terms of the funding model. Significant modifications would be required to the AIR in order to reconcile the GAAP financial statements to the funding model format. Converting to GAAP will increase audit fees for providers and put cost pressure on Service Managers as a result, particularly in the first year. These increased costs are not reflected in the benchmarks.

It is recommended that the Regulations reinstate the exceptions to GAAP.

Recommendation 16

Extension of Social Housing Exemption from TPA Provisions to New Non-Profit Housing

Social housing funded under pre-1995 housing programs enjoys exemptions from significant provisions of the Tenant Protection Act. These provisions include exemptions from rent controls, rent increase notification requirements for RGI tenants, requirement to permit subletting, etc.

The SHRA did not automatically extend these provisions to subsequent programs such as SCPI, RRAP, municipal initiatives, the MOH/LTC Mental Health Homelessness programs or the federal/provincial/municipal affordable housing program, which will complicate portfolio administration, hinder revenue generation, and be of concern to lenders in new ventures.

It is recommended that the Regulation provide TPA exemptions for all non-profit housing developed under SCPI, RRAP, MOH/LTC Homelessness initiatives, municipal housing development initiatives, and the federal/provincial/municipal affordable rental housing programs as currently applied to social housing programs prescribed by the SHRA.

It is further recommended that MMAH set up a protocol of review and consultation with the municipal and non-profit housing sectors when future funding initiatives are created which fund non-profit housing, in order to ensure that Regulations adding these programs are approved in a timely manner.

Recommendation 17

Moving Over-Housed Tenants (ref O.Reg 298/10, s. 37 (8))

The Regulations do not distinguish between a household on the centralized waiting list because it is over housed and an external applicant. Both types of households have the same right to specify the providers to which they will move. Currently an over-housed household could select only their current project on the centralized waiting list, effectively frustrating the legislative intent to accelerate transfer to an appropriate unit. Although the service manager should not insist that an over-housed household take any unit of appropriate size anywhere in the service area, the Regulations should allow reasonable flexibility to ensure that over-housed households are placed on appropriate waiting lists.

It is recommended that the Regulation allow the service manager to place the over-housed household on the waiting lists for a reasonable number of projects that are a reasonable distance from where it lives. Only if there are no reasonable alternatives to its current unit within a reasonable distance should the household be able to refuse to be placed on a minimum number of waiting lists.