Policy Guidelines in Plain Language
for
Section 95 Co-operatives
(Pre-1986)

These reader-friendly modules have been prepared in simplified non-technical language for the convenience of a general readership. They are available on the Agency's website for housing co-operatives that want to understand how the federally funded co-op programs work.

It is important to note that these modules do not replace CMHC's guidelines and policies. In the event of any conflict or lack of clarity, CMHC's guidelines and policies will prevail. Furthermore, any and all references to the Agency should be interpreted to mean "the Agency, on CMHC's behalf."

Table of Contents

Objectives

To ensure that co-ops follow the terms of the Section 95 Agreement and the National Housing Act (NHA).

To ensure that co-ops meet the social goals of the program by

- taking care of the finances
- managing and governing the co-op well
- making sure the property is looked after and repairs are done.

Section 95 Agreement: Overview

1.1 Section 95 Agreement

The operating agreement between the co-op and CMHC sets out how the co-op must operate to get financial assistance under the *National Housing Act* (NHA).

1.2 Maximum 35 years

The operating agreement is in effect from the interest adjustment date (IAD) (the first day of the first month of the original first mortgage) up to a maximum of 35 years or the useful life of the buildings.

1.3 Changing incorporating documents

The co-op is not to change the incorporation document that CMHC has reviewed and accepted. The co-op agrees not to change its non-profit status, as defined in NHA section 27(2), unless it has CMHC's written approval.

Management

2.1 Management in keeping with operating agreement

The co-op is to keep to the terms and conditions of the operating agreement in its operations.

2.2 Management

The co-op is to manage itself effectively. It will maintain and repair the buildings to a professional management standard that, in the Agency's opinion, will reduce operating risk to acceptable levels.

The co-op can hire suitably qualified staff to manage the co-op. It can also contract with a management company, but if it does, it must tell the Agency before it signs a contract.

2.3 Poor management

If the Agency believes that the co-op is not meeting the standards in 2.2, it can require the co-op to make changes to its management, even if the co-op is not behind with its mortgage payments.

If the Agency believes the co-op is in financial trouble, it can require the co-op to hire a professional manager. A professional manager means a firm or individual with the skills to assess co-op difficulties and put in place ways to solve the problems and keep them from returning.

If the co-op breaches the mortgage agreement and will not agree to a management change that the Agency thinks is necessary, the Agency will advise CMHC that professional management must be hired.

2.4 Giving control of management back to the co-op

If the Agency has required the co-op to hire professional management, it will give the co-op back the right to choose its management as soon as the co-op and the Agency agree that the co-op is ready.

If there are outside directors on the board, the Agency will agree with the board on a plan to replace them with resident directors over time.

2.5 Governance

The co-op will ensure good governance of the association and its affairs by having a trained, committed board of directors.

Any board member or manager with a conflict of interest must tell the board that there is a conflict. That person may not take part in discussions or in making decisions about the matter that causes the conflict.

A conflict of interest can happen when a director, officer, employee or committee member is involved in co-op decisions that could give that person, or their relative or business associate, some benefit the rest of the co-op wouldn't have.

2.6 Weak governance

If the Agency believes that the co-op is not meeting the governance standards set out in 2.5, the co-op may be asked to

- get training for board members
- require directors to resign if they are in breach of their duty

- hold elections for new directors to fill vacancies on the board
- appoint temporary directors from outside of the co-op

Income-Tested Assistance

3.1 Income-Tested Assistance (ITA) available

Income-Tested Assistance is the difference between the Maximum Federal Assistance and the Predetermined Assistance. Once the step-out is complete, the Federal Assistance is all Income-tested Assistance. See section 14.1 for an explanation of step-out.

The actual Federal Assistance is either

- the Maximum Federal Assistance, or
- the Predetermined Assistance plus the assistance needed to bridge the gap between the total actual occupancy charges based on the Graduated Occupancy Charge (GOC) scale and the total of the regular occupancy charges for the units occupied by income-tested occupants

Income-tested Assistance may only be used to provide a housing charge subsidy for income-tested occupants.

3.2 Mix of incomes

The co-op should allocate units so that there is a blending of incomes to ensure compliance with the operating agreement, as long as enough Income-Tested Assistance is available.

3.3 Subsidized units pay according to federal scale

Income-tested occupants will pay a housing charge that is at least the charge set out in the Graduated Occupancy Charge scale, a schedule to the operating agreement (GOC Scale). The maximum charge allowed will be the regular occupancy charge.

3.4 No income limits

The co-op will not set income limits, either for new or existing occupants.

3.5 15% of units income-tested

At least 15% of the units must be income-tested, if there is enough money in the co-op's subsidy pool for this.

If a co-op consistently fails to house 15% of the households on a geared-to-income basis, the co-op will be considered to be in breach of the operating agreement.

The Agency may recommend that CMHC

- terminate the Federal Assistance, or
- reduce the Federal Assistance to recover the subsidy pool, or

the Agency may require the co-op to get its approval before allocating a unit to a non-income-tested household.

Occupancy Agreements

Occupancy agreements may also be referred to as "leases", although the more common and appropriate term for housing co-ops is occupancy agreements.

4.1 No agreement on housing charges of more than 12 months

All occupancy agreements between the co-op and a household must give the co-op the right to change the housing charge annually.

4.2 Eligibility in accordance with operating agreement

The co-op decides whether applicants are eligible to occupy units. To do this, it uses the operating agreement and the co-op's own by-laws, rules or policies.

4.3 Co-op to enforce terms of occupancy agreement

The co-op is responsible for enforcing the terms of the occupancy agreement or lease.

4.4 Only persons named in the occupancy agreement to occupy a unit

Only the people named in the agreement or lease will occupy the unit.

Subleasing is to be considered an exceptional tenancy arrangement. Co-ops may include language in the occupancy agreement that prohibits subleasing.

4.5 Co-op to follow provincial legislation

The co-op must follow the provincial laws and regulations that govern how co-ops lease housing units. This applies to both members and non-members.

4.6 Parties to the occupancy agreement

The occupancy agreement or lease must be signed by at least one adult in the household.

If there are adult occupants who aren't married or in a common-law relationship, each of those adults must sign the occupancy agreement.

4.7 Income declaration

The co-op must verify the incomes of income-tested occupants at least once a year. The co-op will verify the incomes of non-income-tested occupants who are applying to pay a reduced occupancy charge, based on the Graduated Occupancy Charge (GOC) scale.

4.8 Membership majority

A majority of the units must be occupied by members of the co-op. If not, the co-op is in breach of the operating agreement. The co-op must provide an acceptable action plan to correct the breach over a reasonable period of time in order to qualify for continued Section 95 assistance.

This requirement applies regardless of the form of management at the co-op. It applies even if a co-op is in receivership, with a receiver manager in place.

Discrimination

5.1 General statement on discrimination

The co-op must respect the terms of the operating agreement and follow any other applicable Canadian laws against discrimination.

5.2 Restrictions on occupancy

Any restrictions on occupancy put in place by the co-op must have prior written approval by the Agency.

5.3 Discrimination on age/seniors - only housing

If the co-op's operating agreement reserves accommodation for senior citizens, this does not count as discrimination as defined in the operating agreement.

Housing Charges

6.1 Maximum housing charge

In year one, the maximum housing charge will be the low end of market rent as set by CMHC.

6.2 Maximum housing charge is regular occupancy charge

In subsequent years, the maximum housing charge will be the regular occupancy charge, as described in the operating agreement.

6.3 Housing charge increase for income-tested occupants

The housing charge for income-tested occupants does not need to be increased more than once a year. However, co-ops may increase housing charges more often than annually if the occupants' income increases.

6.4 Minimum and maximum income-tested occupancy charges

The co-op may apply a scale for income-tested occupants that is higher than the graduated occupancy charge (GOC) scale, provided the occupancy charges don't exceed the maximum occupancy charge. The GOC scale is a minimum.

6.5 Reduction in income-tested occupancy charge with income decreases

If an occupant's income falls, the co-op may reduce that household's occupancy charges right away, if it has income-tested assistance available.

6.6 Restrictions on reducing occupancy charges

The co-op cannot use municipal and provincial grants, RRAP forgiveness or surplus Section 95 assistance to allow occupants to pay an occupancy charge that is lower than the GOC scale occupancy charge.

6.7 Housing charges for occupants receiving social assistance

Occupants on social assistance must pay the greater of

- the maximum shelter component of their benefit payment up to the regular occupancy charge, or
- an occupancy charge based on the GOC scale

Non-Shelter Component

7.1 Rental of non-shelter or commercial space

The co-op must rent commercial or other non-residential space at the greater of economic or market rent. If the co-op cannot determine the market rate, it can charge the economic or break-even rent.

7.2 Non-shelter space rented on break-even basis

The co-op must at least break even in renting or leasing non-shelter space. The co-op can't use income from residential space to pay the costs on the non-residential space.

If there is surplus revenue from the non-shelter space, the co-op must either use the surplus to cover the operating costs of the shelter space, including the replacement-reserve contribution or allocate the surplus to the subsidy surplus fund.

Property Taxes

8.1 Approved lender or conventional loans

The lender is responsible for making sure the co-op pays its property taxes.

8.2 CMHC direct loans

CMHC no longer pays property taxes on behalf of co-ops that have CMHC direct loans.

Insurance

9.1 Approved-lender loans

The co-op must carry insurance as set out in its mortgage documents.

9.2 CMHC direct loans

The co-op is required to carry insurance coverage as set out in the CMHC loan-commitment letter.

9.3 Allowable insurer

Co-ops may insure with any federally or provincially registered Canadian insurance company.

9.4 Protection of CMHC interest

The co-op is required to obtain insurance that fully protects CMHC's interests including but not limited to the following:

- fire insurance to cover the cost of replacing the building(s)
- insurance for such risks as wind storms, hail, lightning and floods
- insurance with a "loss-payable" clause stating that the holder of the first mortgage is entitled to the first claims to be paid out.

Replacement Reserve

10.1 Replacement reserve – purpose of fund

The co-op must maintain a replacement reserve fund. It uses this fund to replace or make all major repairs to capital items. These are the capital items that can be replaced from the reserve fund:

a) Major building components

- Roofs, including coating, flashing, eavestroughs and downspouts
- Exterior wall finishes with a lower life expectancy than the rest of the building, including exterior painting and stucco
- Exterior doors and windows
- Exterior caulking that is hard to reach and hard to replace
- Aboveground waterproofing, including vapour barriers

b) Major building services

- Heating systems, including boilers (hot water or steam), forced air furnaces, radiant-heat components, solid-fuel-burning systems, chimneys and related components
- Domestic hot-water tanks, booster pumps, circulating pumps and sump pumps found in multiple-unit buildings
- Septic tanks and tile beds
- Air-handling systems

c) Basic facilities

- Kitchen facilities, such as stoves and refrigerators, sink and faucet installations, counter tops and cabinets
- Bathroom facilities, such as toilets, sinks, vanities, tubs and fixtures

d) Safety features

- Fire-alarm systems, such as hardwired smoke alarms, and smoke and heat detectors linked to a central alarm
- Required fire-fighting or prevention equipment
- Emergency lighting
- Intercom systems in multiple-unit buildings
- Other safety items

e) Other major facilities, equipment and features

- Parking lots, enclosed garages and driveway and walkway surfaces, including multiple-unit garage surfaces and concrete slabs
- Garbage-disposal systems in multiple-unit buildings, such as compactors and disposers
- Interior floor coverings, including those in common areas and suites
- Exterior fences
- Laundry equipment
- Water softeners, where required by the hardness of water

f) Regulated changes

- Changes required by the law within a set period

Extensions to the standard list

Extensions to the standard list are items which were designed, manufactured and installed to function and perform for the life of the buildings, but have failed due to deficiency or environmental factors. Here are some examples:

- Foundations or significant sections of foundations
- Other structural components, such as walls, floors and roof framings
- Brickwork and pre-cast concrete panels
- Emergency generators
- Retaining walls
- Plumbing systems
- Electrical installations, including transformers and emergency generators
- Balconies

10.2 <u>Annual contribution to replacement reserve</u>

The Agency, in consultation with the co-op, will decide how much money a co-op can set aside in its replacement reserve each year. If there is an approved capital replacement plan, the Agency will use the amount established in the plan. The co-op and the Agency may agree that a contribution other than that established in the capital replacement plan should be made.

10.3 Approval for expenditures from replacement reserve

The co-op can spend money from its replacement reserve in these circumstances:

1. The co-op has an approved capital-replacement plan

If a co-op has a comprehensive plan, it does not need Agency approval to spend from the replacement reserve as long as

- the plan has a complete schedule for replacing capital items, along with estimates of how much each item will cost
- the plan has been approved by CMHC or the Agency
- the co-op updates the plan every three years, and
- the co-op is setting aside the annual amount required by the capital-replacement plan.

At the end of three years when the co-op updates its capital-replacement plan, it does not necessarily need to do new technical studies. It may instead update the schedule of replacements and the cash-flow forecast. When a capital-replacement plan is updated, it must be approved by the Agency as new information may affect the replacement-reserve annual contribution. The annual contribution will have a direct impact on the budget and occupancy charges.

2. The co-op does not have an approved capital replacement plan

If the co-op does not have a long-term capital-replacement plan that the Agency has approved, the co-op needs the Agency's approval before it spends from its replacement reserve except as permitted in the operating agreement.

Co-ops operating under the Urban Native Program must always get approval before using the replacement reserve fund, unless they have an approved capital-replacement plan in place.

10.4 Emergency expenditures

Emergency replacements are repairs to capital items that, if delayed, would create a health or safety hazard. Examples include the replacement of a heating system in the winter, or a structural failure that endangers the physical safety of members.

The co-op is expected to complete these repairs immediately and inform the Agency right away.

10.5 Investing the replacement reserve

The co-op can only invest replacement-reserve money in investments insured by the Canada Deposit Insurance Corporation, by a credit-union deposit-insurance corporation or as otherwise approved by CMHC.

The replacement-reserve fund and investment earnings of the fund must be shown separately in the co-op's books of account and on its financial statements.

10.6 Replacement-reserve expenditures and audited financial statements

When a co-op sends its audited financial statements to the Agency, it has to report any charges to the replacement reserve in the last year. The auditor must include the detailed report with the audited financial statement, showing the work done during the year and the total cost. Replacement reserve expenditures should be shown separately or included in the notes.

10.7 Replacement reserve after the loan is paid in full or after a premature payout

Once the mortgage is paid in full and the operating agreement ends, the replacement-reserve fund remains with the co-op to be used at its discretion. However, if CMHC approves an early payout, the Agency decides what happens to the reserve fund, based on CMHC policy.

Lending Funds and Encumbering Properties

11.1 Co-ops encumbered without CMHC permission

A co-op can't charge, mortgage or otherwise encumber any part of its property unless it has prior written approval from its lender and CMHC.

11.2 Lending or giving away co-op funds

With the exception of reasonable nominal gifts and donations, a co-op can't lend or give away any co-op funds or guarantee or underwrite the repayment of any obligation by a third party without the prior written approval of the Agency.

11.3 Co-op control of shares and loans

The co-op has sole control over members' shares and loans and any other non-housing contributions including any investment income earned from them. The co-op will manage these funds according to any applicable legislation or laws.

Federal Assistance

12.1 <u>Assistance applies only to shelter component</u>

Section 95 Federal Assistance applies only to the shelter component of the co-op.

12.2 <u>Assistance paid over the amortization period to a maximum of 35 years</u>

The assistance is paid over the actual amortization period of the loan(s) up to a maximum of thirty-five (35) years.

12.3 <u>Assistance if no loan</u>

If there is no loan, the assistance is based on a 35-year period or on the useful life of the buildings if less than 35 years.

12.4 <u>Assistance provided while the co-op abides by the terms of its operating agreement</u>

The assistance is provided as long as the co-op manages and operates itself within the terms and conditions of the operating agreement.

Maximum Assistance

13.1 <u>Agreement to adjust maximum federal assistance</u>

In June of 2005, CMHC announced a change to the calculation of subsidy at the time of mortgage renewal for all mortgage renewals occurring after January 1, 2005. From that date, the change in the subsidy amount will equal, dollar for dollar, the change in the mortgage payment as a result of interest-rate changes on renewal. A co-op's board must sign an addendum to each co-op's operating agreement (called an "Agreement to Adjust Maximum Federal Assistance") to bring this about. Once signed, the co-op will receive the adjustment-to-subsidy assistance for all future renewals. Once the addendum has been signed, a co-op will not be able to change its mind.

If a co-op board decides that it does not wish to sign the addendum initially, it can still receive the subsidy adjustment later on by signing the addendum at a future renewal.

13.2 <u>Calculation of maximum federal assistance</u>

The Maximum Federal Assistance is the difference between

- the mortgage payment on the approved capital costs amortized over 35 years or over the life of the buildings, whichever is less, at the CMHC-approved interest rate, and
- the amount needed to amortize the approved capital costs amortized over 35 years at an interest rate of 2%.

13.3 Only capital costs or shelter are considered when calculated

Only the capital costs of the shelter component of the co-op, up to the maximum unit price, are used to calculate the Maximum Federal Assistance.

13.4 Grants not to affect maximum assistance

The amount of Section 95 assistance available is not affected by grants, RRAP forgiveness, or any other form of contributed equity used to cover capital costs.

13.5 Maximum Federal Assistance applied in two forms

Federal Assistance is applied in two forms:

- Predetermined Assistance is used to bridge the gap between the full mortgage payment and the reduced principal and interest payment, if any;

- Income-Tested Assistance (ITA) is used to bridge the gap between the regular occupancy charge and the amount being paid by income-tested occupants.

Reduced Principal and Interest Payment Step-Out

14.1 Calculation of Reduced Principal and Interest payment and step-out

The Reduced Principal and Interest payment is calculated as follows:

For the first three years of operation, the full amount of principal and interest required to amortize the loan, less the difference between

- the total approved economic occupancy charge as established for the first year of operating, and
- the total approved low-end of market rent, as established for the first year of operation.

Starting in year four, Reduced Principal and Interest is an amount equal to the payment established above, plus 5% for the fourth year and plus 5% each year after that, compounded until the payment equals the full amount of the principal and interest required to amortize the loan.

If the Agency decides that a co-op is at risk, it may reverse or freeze the decreases in Predetermined Assistance. This will have the effect of increasing the operating revenue and decreasing the available Income-tested Assistance. The Agency will decide, with CMHC's approval, when the step-out is to begin again and by how much.

Frequency and Timing of Assistance Payments

15.1 Calculated from Interest-adjustment Date

Federal Assistance is calculated from the Interest Adjustment Date (IAD).

15.2 Payment coincides with payment schedule

Federal Assistance payments are made on the same day that the co-op pays its mortgage.

15.3 Requirement to receive documents as a condition of assistance

Federal Assistance payments can be suspended if the co-op doesn't file audited financial statements, an Annual Information Return, and refund overpayment of assistance for the previous year, with the Agency. It has to file these within four months of its fiscal year end.

Adjustment of Annual Assistance and Subsidy Surplus Fund

16.1 Subsidy-surplus fund

If the co-op doesn't use all of the federal assistance, it may keep a subsidy-surplus fund of up to $500 per unit, plus the investment earnings on the fund. Once the subsidy surplus is fully funded, the co-op must return any unused Federal Assistance to CMHC.

The subsidy-surplus fund will *not* be allowed

- if at least 15% of the co-ops units aren't occupied by income-tested members, because, even though there is Income-Tested Assistance available, the co-op is not allocating vacant units to income-tested applicants
- if the co-op gets provincial or municipal shelter assistance (except in the form of capital grants towards capitals costs), and the donor agrees that the co-op can set up a subsidy-surplus fund
- if it gets the maximum federal assistance from the province or municipality and further assistance is provided by the province and CMHC under Section 82 of the NHA.

After the Agency has reviewed the audited financial statements and Annual Information Return, the co-op will be required to refund unused income-tested assistance to CMHC. If the subsidy-surplus fund is fully funded or if the subsidy-surplus fund is not allowed, the overpayment of assistance is to be refunded at the time the audited financial statements and Annual Information Return are filed with the Agency.

Future assistance can be suspended if the co-op has not refunded unused Income-Tested Assistance.

If the co-op owes unused Income-Tested Assistance to CMHC but can't repay it, the Agency will review the co-op's financial position.

16.2 Subsidy-surplus fund in separate account

The co-op must

- keep the subsidy surplus fund and earned interest in a separate bank account, or
- invest the money in ways that are insured by the Canada Deposit Insurance Corporation or by a credit-union deposit-insurance corporation, or as otherwise approved by CMHC.

The co-op must have a separate account for the subsidy-surplus fund and its earned interest in its books and show these amounts separately in the audited financial statements.

Investment earnings of the subsidy-surplus fund must be added to the fund.

16.3 Adjusting for under-used assistance

If the subsidy assistance used for the fiscal year is less than the amount received, the amount of subsidy assistance that is paid to the co-op for the following year can be adjusted.

16.4 Disposition of subsidy-surplus fund if mortgage paid out

If the co-op pays off the loan or mortgage before the end of the amortization period, CMHC will determine what happens to the subsidy surplus fund.

Urban Native Non-Profit Housing Program – Additional Assistance

17.1 Policies specific to Urban Native co-ops

Qualifying units in Urban Native non-profit co-ops may be eligible for more federal assistance than Section 95 provides. This extra assistance is in addition to the interest-rate reduction, but *only* for Urban Native housing. The additional federal assistance is for Income-Tested Assistance.

17.2 Qualifying Units as Urban Native Housing

A housing unit qualifies when it is leased to someone of native ancestry and when the rent charged is not more than 25% of the occupant's income.

"Native Ancestry" is defined in the *Indian Act*. The term includes status and non-status Indians and Métis, as well as the Inuit.

A housing unit qualifies when its only occupant is someone of native ancestry or when at least half the occupants are of native ancestry.

17.3 Urban Native Additional Assistance

In each year, for each month during which a housing unit in the co-op is a qualifying unit, the actual additional contribution for that unit will be the amount, if any, by which

The average economic rent per unit per month for the co-op, as approved by CMHC, without any allocation to a subsidy-surplus fund is greater than
- the gross revenue of that unit for the month
- the average actual federal assistance per unit per month for the co-op, and
- the average amount per unit per month of any other shelter assistance received, except to the extent used with CMHC's approval for additional low-income occupants.

17.4 Urban Native additional assistance – annual operating budget

The Urban Native additional assistance available is based on the co-op's approved annual operating budget. The co-op gets the money monthly.

17.5 Payments

A co-op can get a lump-sum payment for a specific period of time. However, the lump-sum payment gets deducted from the total estimated annual additional assistance which the co-op would get over a 12-month period (or another set period during which the recipient gets assistance cheques).

17.6 Financial reviews

The co-op should complete financial reviews at least quarterly to reconcile its actual needs with the additional assistance it gets. Financial reviews must be carried out on a semi-annual basis.

17.7 Change in Urban Native Additional Assistance

CMHC may change the amount of Urban Native Additional Assistance a co-op gets, based on financial reviews and reconciliations.

17.8 Reduction in Urban Native Additional Assistance

If the co-op leases fewer units to people of native ancestry than required, CMHC may reduce the number of units that qualify for Urban Native Additional Assistance.

17.9 Ending Urban Native Additional Assistance

If CMHC believes it is unlikely that people of native ancestry will make up the majority of residents in a co-op, it can permanently terminate or suspend the Urban Native Additional Assistance.

17.10 Subsidy surplus

A co-op cannot keep subsidy-surplus funds for units receiving Urban Native Additional Assistance.

17.11 General operation

The co-op is expected to operate successfully with the assistance provided.

Suspension or Termination of Assistance

18.1 CMHC reserves the right to suspend

The Agency will follow up when a co-op breaches its operating agreement or is in default of its loan. If the co-op doesn't resolve the breach, the Agency can tell the co-op that the subsidy will be suspended.

18.2 Conditions under which assistance may continue

A co-op can still receive Section 95 assistance after a breach of the Section 95 agreement, if the Agency believes this is in CMHC's best interest. The Agency will not recommend to CMHC that subsidy be suspended if

- action is underway to resolve the breach
- due to uncontrollable operating difficulties, the co-op cannot solve the problem without intervention.

The continuation of assistance is only temporary. It may be extended if extending the assistance would solve the problem or keep it from getting worse.

18.3 Co-op misses a mortgage payment

If the co-op misses a mortgage payment, CMHC may stop subsidy payments (see above) or send the subsidy payments directly to the lender.

18.4 Repaying the subsidy-surplus fund if assistance is suspended for a breach

If, in the opinion of the Agency, the co-op isn't taking satisfactory steps to resolve the breach, even after assistance has been suspended, the Agency can recommend to CMHC that it should require the repayment of all funds in the subsidy-surplus fund.

18.5 CMHC's approval to stop payments

The Agency will obtain CMHC's agreement before stopping assistance payments or asking for repayment of all subsidy-surplus funds.

Implementation of Remedies other than Subsidy Suspension

19.1 Remedies other than subsidy suspension

If the co-op breaches the operating agreement, the Agency may use remedies other than subsidy suspension, as allowed in the operating agreement.

Reinstatement of Assistance

19.2 Conditions for reinstatement

Assistance will only be reinstated when the breach of the agreement has been corrected or a plan of action to correct the breach is in place.

When the breach is a failure to make a required first mortgage payment, workout loan payment or Direct Lending second mortgage payment, the mortgage arrears must have been paid in full or a plan is in place to pay the arrears, which may include the direct payment of the assistance to the Lender. The Lender must be in agreement with the arrears-payment plan.

Other Assistance

19.3 Co-op allowed to seek other assistance

The co-op may seek additional shelter assistance to house more income-tested occupants.

19.4 Co-op to advise Agency of such assistance

The co-op has to inform the Agency immediately if it obtains any extra assistance.

19.5 Additional Financial Contribution

If the co-op's mortgage or loan came up for renewal after August 1, 1993, and before January 1, 2005, and if the co-op was in financial trouble because of the reduction in federal assistance, the co-op may have been granted an Additional Financial Contribution (AFC). Although the AFC mechanism was discontinued in mid-2005, CMHC will respect the terms and conditions of signed AFC agreements until the time of the next mortgage renewal or until expiry of the AFC agreement.

Increase in Amortization Period at Mortgage Roll-Over

20.1 Increase in amortization period at mortgage roll-over

Where a co-op has an amortization period of less than 35 years, it may ask CMHC to extend the amortization to the full 35 years. In order to receive approval for the extension, the co-op must show that

- the extension is necessary for the co-op to keep its operations healthy, and
- the co-op will be able to operate for the remaining amortization period.

The extension will only be granted if

- the useful life of the building can support an extension
- all early prepayment costs are paid by the borrower when the extension is between renewal periods
- the lease term for leasehold land is at least five years longer than the extended amortization.

A co-op can have an extension of the amortization period from 35 to 40 years, if needed to keep the co-op's operations healthy. (This is an exception to CMHC policy.) CMHC will decide whether to do this, based on the recommendation of the Agency.

CMHC will not extend NHA Section 95 federal assistance past 35 years, which is the maximum subsidy period that the program allows.

At renewal, the co-op must try to reduce amortization periods so they are in line with the remaining federal assistance period. This may not be possible where the extension has been granted toward the end of the original amortization period.

Co-ops can't refinance their mortgages through Direct Lending after the federal assistance period ends. The last five-year term must be funded through an approved lender and not CMHC direct lending. Refinancing through another lender could result in higher interest costs, which put the co-op's survival at risk.

Loan payments can be extended where that the lender approves.

20.2 Authority to approve any increase in the amortization period

CMHC must ask CMHC to approve any increase in the amortization period.

Physical Inspections

21.1 Review period for inspections

The Agency will inspect each co-op every two years. This will be limited to a visual inspection of the exterior, common areas of the property and vacant units, if any, unless the results of the inspection indicate that an inspection of occupied units is also needed.

21.2 Property inspection

The inspection will look at the property's marketability and overall upkeep, including standards of maintenance and repair.

21.3 Full inspection

The Agency will carry out a full physical inspection if a property inspection or the annual compliance analysis shows that one is needed. The Agency may also decide to carry out an inspection if the co-op breaches its operating agreement.

The Agency can have the co-op carry out a building-condition assessment at the co-op's expense.

Based on the results of the building condition assessment, the Agency can have the co-op complete certain repairs or carry out general maintenance.

On-Site Review

22.1 Triggers for on-site reviews

If the Agency's risk assessment of the co-op or other indicators has raised compliance concerns, the Agency will initiate an on-site review.

22.2 On-site review

The Agency may
- review the books and records
- meet with the co-op's board, manager or committees
- inspect the property or the units
- carry out other examinations and analysis, as necessary

Following the on-site review, the Agency will complete an on-site-review report. A copy will be sent to the co-op's board of directors with the Agency's recommendations for improvements. The Agency will follow up, if necessary, to make sure the co-op is complying with the operating agreement and dealing with any problems identified in the on-site review report.

Reporting

23.1 Audited financial statements

Within four months of the end of the co-op's fiscal year, the co-op has to send its audited financial statements, along with an Annual Information Return (AIR) to the Agency.

Audited financial statements include the

- auditor's report
- statement of financial position or balance sheet
- statement of revenue and expenses for shelter and non-shelter components as applicable
- statement of funded reserves
- statement of cash flow
- statement of changes in fund balance(s)
- notes to the financial statements, and
- Auditor's Confirmation.

23.2 Duties of auditor

The auditor will complete and send in the Annual Information Return (AIR) to the Agency.

The auditor will verify

- the statement of financial position or balance sheet
- the statement of revenue and expenses
- the statement of cash flow
- the statement of changes in the fund balance
- the statement of funded reserves, and
- the application of the rent-geared-to-income scale or rent determination process.

The auditor will provide a report saying whether

- the audit has been conducted according to generally accepted auditing standards
- the financial statements fairly present the co-op's financial position
- the statements have been prepared according to Canadian generally accepted accounting principles (GAAP), apart from exceptions to GAAP required by CMHC.

23.3 Housing charges and income verification

In the audit report, the auditor will say whether the income-tested occupants' incomes have been verified and housing charges calculated based on operating agreement requirements. The auditor may test on a sample basis.

23.4 Auditor's note on the replacement-reserve and subsidy-surplus funds

The notes must say whether or not the co-op has properly funded the replacement-reserve fund and the subsidy-surplus fund. The notes must also say that the co-op has added investment earnings from each fund to that fund.

23.5 Agency may require further action from auditor

If the auditor has not completed all the duties required in the operating agreement, the Agency may require the co-op to direct that the work be done.

23.6 Separate reporting for multiple phases

If the co-op was developed in several phases, it has to keep separate records for each phase. It has to prepare separate revenue and expense statements for each phase.

23.7 Protocol for consolidated financial statements

A co-op can provide consolidated financial statements for multiple phases. When it does, the audit must have separate statements of revenue and expenditures for each phase.

23.8 Financial statements show income-tested and non-income-tested occupancy charges

The financial statements must separate the revenue from income-tested and non-income tested occupancy charges.

23.9 What the Annual Information Return will confirm

The Annual Information Return has replaced the Annual Project Data Report.

The Annual Information Return must confirm the co-op verified the incomes of all income-tested occupants.

The Annual Information Return must also state that the co-op has a housing charge-to-income ratio allowed by the operating agreement.

The co-op must send the Agency an Annual Information Return that says that its members or shareholders occupy the majority of the units.

23.10 Method of filing the Annual Information Return

The auditor will file the Annual Information Return electronically.

Annual Co-op Budget

24.1 Annual budget

The co-op does not have to get the Agency's approval for its annual operating budget, but it can ask the Agency to review the budget.

Urban Native housing co-ops have to get operating budget approval at least four months before their fiscal year starts. Otherwise, the subsidy for that fiscal year will be 10% less than it was the year before.

Eligible Operating Expenses

25.1 Eligible expenses limited to residential components

The following expenses are considered reasonable eligible expenses that co-ops will encounter in their day-to-day operations:

- Interest, amortization and depreciation
- Property taxes
- Insurance
- Maintenance and repairs (including janitorial services)
- Utilities
- Security
- Ground rent or lease payments
- Marketing and advertising
- Professional fees
- Administration*
- Governance
- GST/HST
- Bad debts
- Allocation to replacement reserve

When the Agency reviews the amount of expenses, it considers industry standards and best practices.

* CMHC has historically used a 6% guideline to assess the reasonableness of administration costs. In effect, CMHC's guideline states that a co-op's administration costs should generally not exceed 6% of the total operating expenses including principal and interest payments. However, CMHC has recognized that many factors can affect the cost of administration for

any given co-op and has considered these factors in applying the guideline. Until the Agency accumulates its own data regarding operating expenses for annual comparison, it will look to CMHC's administration cost guideline for comparative purposes.

The recommended limit for administration costs for Urban Native co-ops is 10% of total operating costs including principal and interest.

Ineligible expenses

25.2 Ineligible expenses

The following expenses are considered examples of ineligible expenses

- costs for running non-shelter parts of the co-op (such as daycare), including the portion of common operating expenses (such as property taxes) associated with the non-shelter parts
- costs for a benefit that isn't shelter related, such as vocational training resources (Reasonable social expenses that encourage member involvement in the co-op are eligible.)
- costs that belong to another phase of the co-op developed under a different program.
- general co-op-wide expenses (such as administration costs) that should be divided among all phases
- gifts and donations, except for nominal ones
- costs of housing-related services (such as cable television) for income-tested households over and above what is in the operating agreement's definition of fully serviced accommodation.

Ineligible expenses can only be recovered through

- surcharges added to the occupancy charges
- revenue from non-subsidized sources, such as earnings from the investment of member loans, deposits and shares or funds raised through social events
- non-shelter revenue, such as laundry and parking revenue

Retention of Documents

25.3 Retention of documents

The co-op has to keep all documents, vouchers, records and accounts relating to the day-to-day management of the business for at least seven years.

Annual Information Return

26.1 Annual Information Return (AIR)

After the Agency has gathered and reviewed the data from the AIR, it will report to the co-op on its findings and analysis.

Annual Report to the Co-op

26.2 Annual report to the Co-op

The annual key-indicators report will show how well the co-op has been performing. The report looks at income from housing charges and other sources, vacancy losses, turnover, households in arrears, bad debts, spending on upkeep and so on.

The report will also provide comparative information setting the co-op's performance against the average performance of a similar co-op and various other groupings.

26.3 Operating Agreement

The annual report will identify compliance issues that require follow-up by the co-operative due to a breach of the operating agreement.

Net Operating Revenue

27.1 Net operating revenue policy

Net Operating Revenue means the amount by which a co-op's operating revenues are greater than the sum of its operating expenses and its Agency-approved contribution to the replacement reserve.

Any net operating revenue will remain with the co-op under the following terms:

- Any net operating revenue in a given year will be used first to make up for any operating deficits that have built up from earlier years.

Any net operating revenue will then be added to

- the subsidy-surplus fund if the fund holds not more than $500 per unit, not counting any earnings from investing the fund at the request of the co-op
- any special reserves that the Agency has approved
- the replacement-reserve fund, as long as the transfer of net revenue does not make the balance of the reserve greater than the co-op's long-term needs, based on its

approved capital-replacement plan. If the Agency decides that the replacement-reserve-fund balance is greater than the co-op's long-term needs, it will tell the co-op to lower the amount it puts into the reserve in the future. The Agency could also tell the co-op to add future investment earnings on the replacement reserve to its operating revenues for a period of time. This would have the effect of reducing housing charge increases in the future.

If the co-op operates at a loss after an operating subsidy has been added to a special reserve or to the replacement-reserve fund, the co-op may reduce the amount of the loss by drawing on those reserves up to the amount of the net operating revenue that has been added to them.

Over time, the co-op would have to recover from a loss greater than such contributions through higher housing charges than it would otherwise need to meet operating costs.

If a co-op has added net operating revenue to its subsidy fund in an earlier year, it can use these funds to make up for a shortage of Income-Tested Assistance (ITA). The co-op does this by making a transfer from the subsidy-surplus fund directly to the operating-fund balance, and not to operating revenue, up to the amount of the deficit caused by the ITA shortage. This procedure applies only to funds previously added to the subsidy-surplus fund from net operating revenue.

27.2 Reviewing subsidy needs

If, after allocating the operating surplus, the co-op still reports an excess of operating revenues, the Agency will evaluate the co-op's subsidy needs.

Sale

28.1 Sale of Property

No co-op can sell all or part of its assets without the permission of CMHC, as long as the operating agreement is in force. CMHC will only consider the sale of a co-op building in exceptional circumstances.

Here are some examples of exceptional circumstances:
a co-op

- merging or combining with another co-op or non-profit
- transferring some units to another co-op or non-profit
- transferring co-op property to another non-profit housing provider, after the co-op has said it cannot carry out the governance duties proper to a housing co-op

The sale would take place only if it was in the best interests of the co-op and in keeping with program purposes. The co-op would be sold for $1 and the buyer would take on the outstanding mortgage balance. The buyer would assume the obligations of the co-op, operate it within the program and follow the operating agreement with CMHC.

In certain circumstances, a co-op might need to sell a portion of its property to ensure its overall survival. Any such sale must be at market value, and the details of the sale approved in advance by CMHC, on the Agency's recommendation.