To: Jorgelle Lawson, Director, Community Planning and Development, Columbus
From: Ray Keyser, Chief Counsel, Cleveland
Re: Lake County—HOME tenant-based rental assistance
Date: May 16, 2017

This memorandum responds to your May 11, 2017 legal review request concerning Lake County’s HOME Program. Lake County uses part of its HOME funding to provide tenant-based rental assistance. A participating tenant disclosed during a routine unit inspection that she is renting from her mother. Lake County, citing 24 C.F.R. § 982.306, has asked whether this tenancy is eligible for continued assistance. In my view, the assisted tenancy may continue per the following legal analysis.

Section 982.306 is a Housing Choice Voucher (“HCV”) Program regulation. While both the HCV and HOME Programs involve tenant-based rental assistance, they are subject to separate and distinct program regulations. The HOME Program regulations are codified at 24 C.F.R. Part 92. The HCV Program regulations are set forth in 24 C.F.R. Part 982. Concededly, the HOME regulations do incorporate certain HCV requirements by reference. For instance, § 92.209(i) subjects units leased with HOME rental assistance to the housing quality standards established by § 982.401 for the HCV Program. I have found no regulation in 24 C.F.R. Part 92, however, that similarly incorporates § 982.306. While Lake County is correct that § 982.306 generally prohibits an HCV tenant from leasing a unit owned by a family member, I find no authority for applying this regulation to the HOME Program.

Lake County also questions whether the subject tenancy might run afoul of the HOME Program’s conflict of interest rule at § 92.356. The conflicts addressed by § 92.356 fall within three general categories: (i) procurements by State recipients, subrecipients, and participating jurisdictions (§ 92.356(a)); (ii) awards and administrative decisions by parties with program authority (§§ 92.356(b)-356(e)); and (iii) leasing and occupancy activities by assisted developers and owners (§ 92.356(f)). In my view, the subject tenancy rests safely outside each of these contexts.

First, the subject tenancy does not constitute a procurement for purposes of § 92.356(a). There is no indication that Lake County, in its capacity as a participating jurisdiction, solicited the mother’s participation as landlord. Consistent with the nature of tenant-based rental assistance, it may be presumed the assisted family selected the unit. As Lake County merely approved the tenancy, this case does not involve a procurement transaction as contemplated by § 982.356(a).

The subject tenancy similarly falls outside the scope of § 982.356(b)-356(e). These provisions pertain to certain entities—“participating jurisdictions,” “State recipients,” and “subrecipients”—as defined in § 92.2 to have responsibility for administering HOME funds. There is no indication that either the tenant or the landlord in this case qualifies as “an employee, agent, consultant, officer, or elected official or appointed official” of Lake County or any other administrative entity covered by § 92.2(c). Accordingly, the tenant and her mother are not subject to the restrictions established by § 92.2(b) on financial interests and arrangements between those with program authority and their family members.
Finally, I also find § 92.356(f) to be inapplicable. This rule would prohibit the “owner, developer, or sponsor of a project assisted with HOME funds” from leasing to a family member “a HOME-assisted affordable housing unit in a project during the required period of affordability specified in § 92.252(e) or 92.254(a)(4)).” As I read Sections 92.252(e) and 92.254(e), these regulations impose affordability periods only on housing units constructed, rehabilitated, or otherwise developed with HOME funds as contemplated by § 92.205. Per §§ 92.209(f) and 209(h)(3), private landlords benefitting only from tenant-based rental assistance contracts, as opposed to development or capital funds, may establish “reasonable” rents reflecting “local market conditions.” Accordingly, the tenant’s unit in this case is not subject to an affordability period and, consequently, § 92.356(f) presents no obstacle to her assisted tenancy.

In conclusion, it is my judgment that the subject lease between the HOME assisted tenant and her mother is permitted under § 92.356. The HCV regulation at § 982.306 does not apply. The terms of this lease, as with all leases subject to the HOME Program’s strictures, must fully comport with the requirements of 24 C.F.R. Part 92. These requirements would include, for instance, those applicable to rent reasonableness (§92.209(f)), tenant protections (§ 92.253), and the unit’s physical condition (§ 92.209(i)). In contrast to the HCV Program, however, I find no general prohibition on leases between families receiving tenant-based rental assistance through the HOME Program and their immediate family members.

If you have any additional questions on this matter, please contact me at (216) 357-7681.

Cc: Chron; Hendershot; Thomas