



JOHN W. SUTHERS
Attorney General

CYNTHIA H. COFFMAN
Chief Deputy Attorney General

DANIEL D. DOMENICO
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 7th Floor
Denver, Colorado 80203
Phone (303) 866-4500

FORMAL)	
OPINION)	No. 12-03
)	
OF)	AG Alpha No. LO HO AGBDN
)	
JOHN W. SUTHERS)	May 16, 2012
Attorney General)	

Bruce Eisenhower, Deputy Executive Director of the Colorado Department of Local Affairs, requested an opinion from this office concerning the impact of House Bill 11-1230 ("H.B. 11-1230") on the Division of Supportive Housing and Homeless Programs ("SHHP") within the Colorado Department of Human Services. After the request for an opinion was received by this office, John W. Hickenlooper, Governor of the State of Colorado, issued Executive Order D 2011-008 ("Executive Order") on June 24, 2011, concerning the transfer of SHHP to the Department of Local Affairs required by H.B. 11-1230. Accordingly, this opinion addresses the combined impact of H.B. 11-1230, which took effect on July 1, 2011, and the Executive Order on SHHP.

QUESTIONS PRESENTED AND CONCLUSIONS

Question 1: Does H.B. 11-1230 transfer all authority, functions, responsibilities and contractual obligations of SHHP to the Colorado Division of Housing?

Answer 1: No; H.B. 11-1230 transferred SHHP, in its entirety, to the Division of Housing within the Department of Local Affairs, with SHHP retaining any authority, functions, responsibilities, and contractual obligations as they existed prior to July 1, 2011, including but not limited to independent and exclusive authority to enter into and execute contracts with any other party.

Question 2: Does the transfer of SHHP require contract assignments?

Answer 2: No; H.B. 11-1230 transferred SHHP, in its entirety, to the Division of Housing within the Department of Local Affairs, with SHHP retaining

any contracts in existence prior to July 1, 2011. SHHP also retained the independent and exclusive authority to enter into and execute any future contracts.

Question 3: Are the existing Annual Contribution Contracts transferred to the Division of Housing?

Answer 3: No; H.B. 11-1230 transferred SHHP, in its entirety, to the Division of Housing within the Department of Local Affairs, with SHHP retaining any Annual Contribution Contracts in existence prior to July 1, 2011. SHHP also retained the independent and exclusive authority to enter into and execute any future Annual Contribution Contracts.

Question 4: Does SHHP have the legal authority to administer the Section 8 Housing Choice Voucher Program?

Answer 4: Yes.

Question 5: Must SHHP be renamed?

Answer 5: No.

Question 6: Are SHHP's contractual responsibilities under its Shelter Plus Care grants also transferred? If they are transferred, which agency is responsible?

Answer 6: No; H.B. 11-1230 transferred SHHP, in its entirety, to the Division of Housing within the Department of Local Affairs, with SHHP retaining any contractual responsibilities under its Shelter Plus Care grants in existence prior to July 1, 2011. After the transfer, SHHP remains responsible for fulfilling any contractual responsibilities under its Shelter Plus Care grants, including but not limited to independent and exclusive signatory authority for the Shelter Plus Care grants.

Question 7: Which entity will have the authority to administer SHHP grants?

Answer 7: H.B. 11-1230 transferred SHHP, in its entirety, to the Division of Housing within the Department of Local Affairs, with SHHP retaining authority to administer any SHHP grants in existence prior to July 1, 2011.

Question 8: Must existing SHHP grants be assigned?

Answer 8: No; H.B. 11-1230 transferred SHHP, in its entirety, to the Division of Housing within the Department of Local Affairs, with SHHP retaining any SHHP grants in existence prior to July 1, 2011.

BACKGROUND

Section 8 Housing Choice Voucher Program

The United States Department of Housing and Urban Development (“HUD”) oversees the award of rental subsidies through the Housing Choice Voucher Program to assist eligible families in affording decent, safe and sanitary housing.¹ The Housing Choice Voucher Program is generally administered by state or local government entities referred to as public housing agencies, which receive federal housing assistance funds pursuant to Annual Contributions Contracts with HUD and distribute the funds in the form of rental subsidy vouchers to families that apply and are selected for admission to the program.² A public housing agency must have authority to administer the Housing Choice Voucher Program, an established jurisdiction for its authority, and must comply with HUD regulations and requirements for the program.³ Changes to a public housing agency’s organizational structure may affect its status as a public housing agency, its authority to administer the Housing Choice Voucher Program, and its jurisdiction.⁴

Prior to July 1, 2011, the Housing Choice Voucher Program in Colorado was administered by two public housing agencies that were housed within different state departments – SHHP within the Department of Human Services and the Division of Housing within the Department of Local Affairs. Each public housing agency received federal housing assistance funds pursuant to an Annual Contribution Contract with HUD and, in turn, distributed the funds to local housing agencies and other eligible nonprofit entities across the state according to local preferences established by each agency.⁵ The local housing agencies and other eligible nonprofit entities then issued rental subsidy vouchers to families that applied and were selected for admission to the Housing Choice Voucher Program. Since the effective date of H.B. 11-1230, the Housing Choice Voucher Program in Colorado is still administered by the same two public housing agencies that are now housed within one state department.

A. The Division of Supportive Housing and Homeless Programs

In 1977, legislation was enacted that created the Colorado Department of Institutions as a public housing agency to “improve, develop and carry forward programs of therapy, counseling, and aftercare to the end that persons dependent upon tax-supported programs may be afforded opportunities and encouragement to overcome the disability causing their partial or total dependence on the state.”⁶ In

¹ 24 C.F.R. § 982.1(a).

² 24 C.F.R. § 982, *et seq.*

³ 24 C.F.R. §§ 982.51 and 982.52.

⁴ 24 C.F.R. § 982.52.

⁵ § 24-32-722(1)(a), C.R.S.; 24 C.F.R. § 982.207.

⁶ § 27-1-103(1)(a), C.R.S. (1977).

that same year, HUD accepted the Department of Institutions' application for housing assistance funds for persons with disabilities and recognized the department as a public housing agency for purposes of administering the Housing Choice Voucher Program. In 1994, legislation was passed to merge several state departments, including the Department of Institutions, into the newly created Department of Human Services.⁷ After the merger, the new public housing agency within the Department of Human Services was named the Division of Supportive Housing and Homeless Programs, or SHHP. The stated purpose of SHHP was, and is, to provide supportive housing for people with disabilities and other special needs. SHHP has jurisdiction to serve all sixty-four counties in the state of Colorado.

Currently, SHHP has authority to administer approximately 3,204 rental subsidy vouchers as part of the Housing Choice Voucher Program. One hundred vouchers are designated for non-elderly disabled families served by local housing agencies with demonstrated experience and resources for supportive services. Another fifty vouchers are designated as Mainstream Program vouchers that enable families having a member with disabilities to lease affordable private housing of their choice. The remaining vouchers are administered in accordance with the local preferences adopted by SHHP in its public housing agency administrative plan. SHHP selects families in accordance with the following local preferences: (1) chronically homeless; and (2) disabled. HUD's definition of "chronically homeless" requires that an individual be disabled. Therefore, SHHP provides priority consideration for acceptance to the Housing Choice Voucher Program to disabled families in the order of chronically homeless first, then disabled families.

In addition to administering over 3,000 Housing Choice Vouchers, SHHP has authority to administer approximately 310 Veterans Affairs Supportive Housing Program vouchers. The Veterans Affairs Supportive Housing Program combines rental assistance for homeless veterans with case management and clinical services provided by the United States Department of Veterans Affairs. SHHP also has authority to administer five Shelter Plus Care grants from HUD, which provide financial housing assistance to homeless persons with targeted disabilities.

B. The Colorado Division of Housing

The Colorado Housing Act of 1970 created the Division of Housing within the Department of Local Affairs and, in 1980, the Division of Housing requested that HUD recognize it as a public housing agency for purposes of administering the Housing Choice Voucher Program.⁸ In 1981, HUD recognized the Division of Housing as a qualified public housing agency for purposes of administering the Housing Choice Voucher Program. However, in addition to functioning as one of Colorado's two public housing agencies, the Division of Housing also has the

⁷ § 26-1-201, C.R.S. (1994).

⁸ § 24-32-701, *et seq.*, C.R.S. (1970).

following statutory powers, duties, and functions: (1) to provide research, advisory, and liaison services and rehabilitation, construction, acquisition, and weatherization grants to encourage public and private entities engaged in the planning, construction, and acquisition of adequate housing, or in the rehabilitation or weatherization of existing housing; (2) to conduct continuing research into new approaches to housing throughout the state; (3) to investigate living, dwelling, and housing conditions throughout the state and the means and methods of correcting unsafe, unsanitary, or substandard conditions; (4) to enter buildings or property to conduct investigations, surveys, or soundings; (5) to make findings and recommendations available to responsible agencies, boards, commissions, or other governmental agencies regarding any building or property where conditions are unsafe, unsanitary, or substandard; (6) to enforce any state statutes, rules, and regulations governing standards for camper trailers and camper coaches; (7) to provide training and technical assistance to local governments with building codes in the development of energy efficient construction and renovation performance standards; (8) to provide information through graphic illustrations and charts about certain energy conserving performance standards needed by a person who applies or obtains a homeowner's permit to build home; (9) to provide technical assistance to building officials regarding the use of such graphic illustrations and charts; (10) to compile and report property foreclosure information throughout the state; (11) to make a description of the foreclosure deferment program available to foreclosure counselors; and (12) to establish uniform standards for the foreclosure deferment program.⁹

With respect to its public housing powers, duties, and functions, the Division of Housing has jurisdiction to serve the entire state of Colorado as a public housing agency and currently administers approximately 2,543 rental subsidy vouchers as part of the Housing Choice Voucher Program.¹⁰ Fifty vouchers are designated as Mainstream Program vouchers, and one hundred vouchers are designated as Family Unification Program vouchers. The Family Unification Program vouchers are distributed to families for whom the lack of adequate housing is a primary factor in the separation, or threat of imminent separation, of children from their families. The Division of Housing's remaining vouchers are administered in accordance with numerous local preferences adopted in its public housing agency administrative plan. Some of the local preferences include: families that include victims of homelessness, domestic violence, or natural disaster; families currently enrolled in education, training, or upward mobility programs; families currently working; and families that include a person with a disability. The Division of Housing also has authority to administer approximately fifty Veterans Affairs Supportive Housing Program vouchers.

⁹ § 24-32-705, C.R.S.

¹⁰ Op. Att'y Gen., AG Alpha No. LO HO AGACY, at 4 (1980).

DISCUSSION

Provisions of H.B. 11-1230 Applicable to Each Question Presented

H.B. 11-1230 recognized that both the Department of Local Affairs and the Department of Human Services administered public housing agencies to distribute federal housing moneys for the benefit of persons in low and moderate income households and persons with disabilities to assist such persons in obtaining housing.¹¹ Prior to July 1, 2011, the Division of Housing was housed within the Department of Local Affairs, and SHHP was housed within the Department of Human Services. The express purpose of H.B. 11-1230 was to consolidate the administration of any financial housing assistance programs exclusively within the Department of Local Affairs while maintaining two separate public housing agencies.¹² Consolidation was required to promote economic efficiencies, allow for statewide strategic planning and administration of financial housing assistance programs, and maximize the amount of federal housing assistance funding made available to local housing authorities and other local eligible nonprofit agencies.¹³ H.B. 11-1230 also intended for the maximum amount of federal financial housing assistance and administration funding provided to Colorado to be directed to local public housing authorities and other local eligible nonprofit agencies for distribution to persons in low and moderate income households and persons with disabilities.¹⁴ Accordingly, no provision of H.B. 11-1230 was intended to limit Colorado's ability to receive the maximum amount of federal financial housing assistance funding for such persons.¹⁵

To achieve consolidation, H.B. 11-1230 transferred all authority over state financial housing assistance programs from the Department of Human Services to the Department of Local Affairs and, specifically, required any such program to be housed in and administered by the Division of Housing within the Department of Local Affairs.¹⁶ H.B. 11-1230 further provided that the Division of Housing will be the only state agency that administers any state plans for financial housing assistance to persons in low and moderate income households.¹⁷ H.B. 11-1230 also required that the consolidation of any such programs within the Division of Housing be organized in such a manner that two public housing agencies are maintained within the Division of Housing: one to assist persons with disabilities; and the other to assist households with low and moderate incomes.¹⁸ H.B. 11-1230 expressly prohibited any reduction in the number of Housing Choice Vouchers that

¹¹ § 24-32-722(1)(a), C.R.S.

¹² § 24-32-722(2)(b), C.R.S.

¹³ § 24-32-722(1)(b), C.R.S.

¹⁴ § 24-32-722(2)(a), C.R.S.

¹⁵ § 24-32-722(2)(c), C.R.S.

¹⁶ §§ 24-32-722(2)(b) and 24-32-705(1)(t), C.R.S.

¹⁷ §§ 24-32-722(1)(t) and 24-32-722(3)(a)(I), C.R.S.

¹⁸ § 24-32-722(3)(b), C.R.S.

Colorado makes available to persons with disabilities after July 1, 2011, except as may otherwise be required by federal law and subject to the availability of federal funding.¹⁹

Finally, H.B. 11-1230 required that the consolidation of any state program that provides financial housing assistance to people in low and moderate income households and disabled persons within the Division of Housing take place in accordance with the provisions of Section 24-32-705(1)(t).²⁰ That section, in turn, provides that that the Division of Housing will serve as the sole state agency for the purpose of administering any state plans for financial housing assistance to persons in low and moderate income households.²¹ Section 24-32-705(1)(t) further provides that the required consolidation includes the Office of Homeless Youth Services, a program that was administered by SHHP within the Department of Human Services prior to July 1, 2011.²² H.B. 11-1230 provided that after consolidation the Office of Homeless Youth Services shall perform its powers, duties, and functions under the Division of Housing and the Executive Director of the Department of Local Affairs as if the same were transferred to the Department of Local Affairs by a type 2 transfer under the Administrative Organization Act of 1968 (“Act”).²³ A type 2 transfer is the transfer of all or part of an existing department, institution, or other agency to a principal department established by the Act.²⁴ When a type 2 transfer occurs, the transferred entity’s statutory authority, powers, duties, and functions, records, personal, property, and unexpended balances of appropriations, allocations or other funds, including the functions of budgeting, purchasing, and planning, are transferred to the principal department.²⁵

Provisions of Executive Order D 2011-008 Applicable to Each Question Presented

The Executive Order recognized the existence of two distinct public housing agencies in Colorado, the Division of Housing within the Department of Local Affairs and SHHP within the Department of Human Services.²⁶ The Executive Order also recognized that the transfer of SHHP to the Division of Housing required by H.B. 11-1230 would result in administrative efficiencies, cost-savings, and increased services to participants in Housing Choice Voucher Programs.²⁷

¹⁹ § 24-32-722(3)(c), C.R.S.

²⁰ § 24-32-722(3)(a)(1), C.R.S.

²¹ § 24-32-705(1)(t), C.R.S.

²² § 24-32-705(1)(t), C.R.S.

²³ § 24-1-101, *et seq.*, C.R.S. (The stated intent of the Act is “to provide for an orderly transfer of powers, duties, and functions of various state agencies to such principal departments with a minimum of disruption of governmental services and functions and with minimum expense.”).

²⁴ § 24-1-105(2), C.R.S.

²⁵ § 24-1-105(2), C.R.S.

²⁶ Exec. Order D 2011-008, at 1.

²⁷ *Id.*

Therefore, the Executive Order directed a consortium to be formed between the Division of Housing and SHHP within the Department of Local Affairs to preserve and maintain each public housing agency's distinct public housing purposes and sources of funding as they existed prior to the transfer, and to achieve the administrative efficiencies, cost-savings, and increased services to participants intended by H.B. 11-1230.²⁸ The Executive Order further directed the Executive Directors of the Department of Human Services and the Department of Local Affairs to treat the transfer of SHHP in a manner similar to a type 2 transfer, whereby all of SHHP and its powers, duties, and functions were transferred from the former department to the latter department.²⁹ The consortium will be led by the Division of Housing, and will consist of SHHP to serve the special needs of persons with disabilities statewide and the Division of Housing to serve households with low and moderate incomes statewide.³⁰ The Division of Housing and SHHP will enter into a consortium agreement designating the former to receive any HUD program payments on behalf of both public housing agencies, to administer HUD requirements for administration of the funds, and to apply the funds according to the terms of the consortium agreement, HUD regulations, and HUD requirements.³¹ Under the terms of any consortium agreement, the Division of Housing and SHHP must retain the ability to apply for additional HUD funding for their respective populations, and retain the ability to adopt and apply separate preferences for their respective Housing Choice Voucher Programs.³² Finally, the Executive Order directed that any consortium agreement must conform with its stated purpose, which was to preserve and maintain the Division of Housing and SHHP's distinct public housing purposes and sources of funding as they existed prior to the transfer.³³

Question 1: Does H.B. 11-1230 transfer all authority, functions, responsibilities and contractual obligations of SHHP to the Division of Housing?

Transferring SHHP to the Division of Housing within the Department of Local Affairs did not divest SHHP of any existing authority, functions, responsibilities, and contractual obligations. After the transfer, SHHP retained any authority, functions, responsibilities, and contractual obligations as they existed prior to July 1, 2011, including but not limited to independent and exclusive authority to enter into and execute contracts with any other party.

The consolidation requirement of H.B. 11-1230 was for administrative purposes only. Since the transfer occurred, the Department of Local Affairs has taken steps to ensure that SHHP and the Division of Housing are managed

²⁸ *Id.*, at 1-2.

²⁹ *Id.*, at 2.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*, at 1-2.

independently by establishing separate boards of directors, appointing separate program directors, and maintaining separate administrative plans and local preferences.³⁴ The existing Colorado State Housing Board manages the Division of Housing's public housing authority functions, and a separate board of directors will be seated to manage SHHP.³⁵ Either the Executive Director of the Department of Local Affairs or his designee will serve as the executive director of SHHP, while Patrick Coyle, Director of the Division of Housing will serve as the executive director of the Division's public housing authority functions.³⁶ These steps will ensure that the Division of Housing and SHHP have separate and independent contracting authority, administrative plans, policies and procedures, and local preferences.³⁷ While the executive level management will remain separate and independent, personnel that perform the ministerial tasks necessary to operate each public housing authority will be shared by the Division of Housing and SHHP, with the Division of Housing as the lead agency responsible for managing such personnel pursuant to a consortium agreement approved by HUD.³⁸ Other administrative costs associated with the operation of each public housing authority will be shared by the Division of Housing and SHHP, with the Division of Housing as the lead agency responsible for managing such costs pursuant to a consortium agreement approved by HUD.³⁹ Examples of such administrative costs include overhead associated with shared office space, fixtures, and supplies. For the reasons discussed below, the steps taken by the Department of Local Affairs since July 1, 2011 are wholly consistent with the requirements of H.B. 11-1230 and the Executive Order.

The plain language of H.B. 11-1230 required that, after the consolidation of any state financial housing assistance programs occurred within the Division of Housing, two distinct public housing agencies must still be maintained within the Division of Housing. As discussed in the background section above, the Housing Choice Voucher Program in Colorado continues to be administered by two public housing agencies as of the date of this opinion – SHHP and the Division of Housing. Nothing in the plain language of H.B. 11-1230 dissolved either of the two existing public housing agencies, or merged the two existing agencies into a single agency. To the contrary, H.B. 11-1230 directed the required consolidation to be organized so that one public housing agency is maintained within the Division of Housing to serve persons with disabilities (SHHP), and a second public housing agency is maintained within the Division of Housing to serve households with low and moderate incomes (the Division of Housing). Therefore, no change to either the Division of Housing or SHHP's existing purposes or functions was required to be in

³⁴ Letter dated September 26, 2011 from Reeves Brown, Executive Director of the Department of Local Affairs, to Attorney General John Suthers.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ §§ 24-32-722(5) and (6), C.R.S.; § 24-32-705(1)(t), C.R.S.; Exec. Order D 2011-008, at 1-2.

³⁹ § 24-32-722(1)(b), C.R.S.; § 24-32-705(1)(t), C.R.S.; Exec. Order D 2011-008, at 1-2.

compliance with the consolidation provisions of H.B. 11-1230, or to comply with the express requirement that two public housing agencies be “maintained” within the Division of Housing. Furthermore, to infer an intent to merge SHHP and the Division of Housing into a single public housing agency would contravene express provisions of H.B. 11-1230 because merger would likely decrease the amount of federal funding available to low and moderate income households and persons with disabilities, as well as decrease the number of Housing Choice Vouchers that Colorado makes available to persons with disabilities after July 1, 2011.

Although the text of H.B. 11-1230 did not refer to SHHP by name, the bill discussed the transfer of the Office of Homeless Youth Services, which is the state financial housing assistance program that serves homeless youth, from the Department of Human Services to the Division of Housing within the Department of Local Affairs. H.B. 11-1230 required the transfer to be treated as a type 2 transfer pursuant to Section 24-1-105(2), C.R.S., and stated that after consolidation the “*office shall perform its powers, duties, and functions under the Division and the Executive Director as if the same were transferred to the Department [of Local Affairs] by a type 2 transfer...*”⁴⁰ Even though H.B. 11-1230 consolidated administration of the Office of Homeless Youth Services within the Division of Housing, the bill provided that the office, and not the division, will continue to perform its pre-transfer powers, duties, and functions.⁴¹ That H.B. 11-1230 treated the transfer of one state plan for financial housing assistance to the Division of Housing as a type 2 transfer strongly supports the conclusion that the transfer of SHHP and any other state plan for financial housing assistance will be treated the same way. Nothing in the text of H.B. 11-1230 prohibited the transfer of SHHP to the Division of Housing within the Department of Local Affairs from also being treated like a type 2 transfer.

The Executive Order also supports the conclusion that the transfer of SHHP to the Division of Housing required by H.B. 11-1230 should be treated as a type 2 transfer because it instructed the Executive Directors of the Department of Human Services and the Department of Local Affairs to treat the transfer of SHHP in a manner similar to a type 2 transfer.⁴² The Executive Order also directed the formation of a consortium between the Division of Housing and SHHP that preserves and maintains their distinct public housing purposes and sources of funding as they existed prior to the transfer.⁴³ HUD regulations specifically authorize the formation of consortia between public housing agencies as long as all

⁴⁰ § 24-32-705(1)(t), C.R.S. (emphasis added).

⁴¹ Incidentally, the Office of Homeless Youth Services was previously transferred from the Colorado Department of Public Health and the Environment to the Department of Human Services as a result of House Bill 04-1107. That bill stated: “The Department of Human Services shall include the...Office of Homeless Youth Services, created by Article 5.9 of title 26, C.R.S. *Said office and its powers, duties, and functions* are transferred by a type 2 transfer to the Department of Human Services.” § 24-1-120(5)(i), C.R.S. (2004) (emphasis added).

⁴² Exec. Order D 2011-008, at 2.

⁴³ *Id.*

Housing Choice Voucher Program regulations and requirements are satisfied.⁴⁴ Accordingly, the combined impact of H.B. 11-1230 and the Executive Order was to transfer SHHP, in its entirety, to the Division of Housing within the Department of Local Affairs, with SHHP retaining any authority, functions, responsibilities, and contractual obligations existing prior to July 1, 2011 after the transfer, including but not limited to authority to enter into and execute contracts with any other party.

Question 2: Does the transfer of SHHP require contract assignments?

Nothing in the plain language of H.B. 11-1230 required any state financial housing assistance program that was transferred to the Division of Housing within the Department of Local Affairs to assign any existing contracts to the Division of Housing. SHHP continues to exist as it did before the transfer (albeit within a different state department), and any contract between SHHP and any other entity existing prior to July 1, 2011 remains in SHHP's name and continues to be part of its duties and property. After the transfer, SHHP also retained independent and exclusive authority to enter into and execute any future contracts. Furthermore, for the reasons stated in the discussion of Question 1 above, the transfer of SHHP does not require contract assignments.

Question 3: Are the existing Annual Contribution Contracts transferred to the Division of Housing?

For the reasons stated in the discussion of Question 1 above, any Annual Contribution Contract between SHHP and HUD in existence prior to July 1, 2011 remains in SHHP's name and continues to be part of its duties and property after the transfer. SHHP also retained the independent and exclusive authority to enter into and execute any future Annual Contribution Contracts.

H.B. 11-1230 did not expressly authorize the Division of Housing to assume any Annual Contribution Contract between SHHP and HUD existing as of the date of transfer. The Division of Housing was only authorized to "serve as the sole state agency for the purpose of administering" SHHP. Thus, while the executive level management will remain separate and independent, personnel that perform the ministerial tasks necessary to operate each public housing authority will be shared by the Division of Housing and SHHP, with the Division of Housing as the lead agency responsible for managing such personnel pursuant to a consortium agreement approved by HUD.⁴⁵ Other administrative costs associated with the operation of each public housing authority will be shared by the Division of Housing and SHHP, with the Division of Housing as the lead agency responsible for

⁴⁴ 24 C.F.R. § 943, *et seq.*

⁴⁵ §§ 24-32-722(5) and (6), C.R.S.; § 24-32-705(1)(t), C.R.S.; Exec. Order D 2011-008, at 1-2.

managing such costs pursuant to a consortium agreement approved by HUD.⁴⁶ Examples of such administrative costs include overhead associated with shared office space, fixtures, and supplies. The Division of Housing's administration of SHHP will occur in accordance with the terms of the consortium agreement between the two public housing agencies. Pursuant to the Executive Order, the consortium agreement will designate the Division of Housing as the lead agency, and will authorize the Division of Housing to receive HUD program payments on behalf of both agencies, to administer HUD requirements for administration of the funds, and to apply the funds in accordance with the consortium agreement, HUD regulations, and HUD requirements.⁴⁷ The Executive Order expressly required that the consortium agreement preserve and maintain the Division of Housing and SHHP's distinct public housing purposes and sources of funding as they existed prior to the transfer.⁴⁸ Furthermore, any consortium agreement also must allow each public housing agency to retain the ability to apply for additional funding opportunities for their respective populations from HUD, and to adopt and apply separate preferences for their respective Housing Choice Voucher Programs.⁴⁹

Question 4: Does SHHP have the legal authority to administer the Section 8 Housing Choice Voucher Program?

For the reasons stated in the discussion of Question 1 above, SHHP retains its legal authority to administer the Housing Choice Voucher Program after the transfer. H.B. 11-1230 merely recognized that state employees from the Department of Local Affairs and the Department of Human Services were carrying out highly similar, if not the exact same, ministerial tasks in operating the Division of Housing and SHHP's separate Housing Choice Voucher Programs. To achieve greater administrative efficiency, reduce costs, and maximize the amount of federal funding distributed to persons in low to moderate income households and persons with disabilities, H.B. 11-1230 simply consolidated the management of any personnel performing ministerial tasks and administrative costs for any state plans for financial housing assistance within a division of one state department. While the executive level management will remain separate and independent, personnel that perform the ministerial tasks necessary to operate each public housing authority will be shared by the Division of Housing and SHHP, with the Division of Housing as the lead agency responsible for managing such personnel pursuant to a consortium agreement approved by HUD.⁵⁰ Other administrative costs associated with the operation of each public housing authority will be shared by the Division of Housing and SHHP, with the Division of Housing as the lead agency responsible for managing such costs pursuant to a consortium agreement approved by HUD.⁵¹

⁴⁶ § 24-32-722(1)(b), C.R.S.; § 24-32-705(1)(t), C.R.S.; Exec. Order D 2011-008, at 1-2.

⁴⁷ Exec. Order D 2011-008, at 2.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ §§ 24-32-722(5) and (6), C.R.S.; § 24-32-705(1)(t), C.R.S.; Exec. Order D 2011-008, at 1-2.

⁵¹ § 24-32-722(1)(b), C.R.S.; § 24-32-705(1)(t), C.R.S.; Exec. Order D 2011-008, at 1-2.

Examples of such administrative costs include overhead associated with shared office space, fixtures, and supplies. Furthermore, nothing in the plain language of H.B. 11-1230 divested SHHP of its pre-transfer legal authority to administer the executive level management of its Housing Choice Voucher Program. To the contrary, H.B. 11-1230 expressly required the maintenance of a separate public housing agency within the Division of Housing to assist persons with disabilities and the Executive Order expressly designated SHHP as that agency. Additionally, the Executive Order required that all of SHHP and its statutory authority, powers, duties, and functions be transferred from the Department of Human Services to the Department of Local Affairs, which necessarily included SHHP's pre-transfer legal authority to administer the executive level management of its Housing Choice Voucher Program.

Question 5: Must SHHP be renamed?

For the reasons stated in the discussion of Question 1 above, SHHP does not need to be renamed.

Question 6: Are SHHP's contractual responsibilities under its Shelter Plus Care grants also transferred? If they are transferred, which agency is responsible?

For the reasons stated in the discussion of Questions 1 and 3 above, SHHP was transferred in its entirety, to the Division of Housing within the Department of Local Affairs, with SHHP retaining any contractual responsibilities under its Shelter Plus Care grants in existence prior to July 1, 2011. After the transfer, SHHP remains responsible for fulfilling any contractual responsibilities under its Shelter Plus Care grants, including but not limited to independent and exclusive signatory authority for the Shelter Plus Care grants.

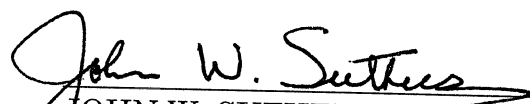
Question 7: Which entity will have the authority to administer SHHP grants?

For the reasons stated in the discussion of Questions 1 and 4 above, all of SHHP and its authority to administer existing SHHP grants were transferred to the Division of Housing within the Department of Local Affairs, with SHHP retaining any authority to administer SHHP grants existing prior to July 1, 2011 after the transfer.

Question 8: Must existing SHHP grants be assigned?

For the reasons stated in the discussion of Questions 1 and 2 above, existing SHHP grants do not need to be assigned. Any grant received by SHHP prior to July 1, 2011 remains in SHHP's name and continues to be part of its duties and property after the transfer.

Issued this 16th day of May, 2012.


JOHN W. SUTHERS
Colorado Attorney General