Ohio Department of Job and Family Services

Office of Fiscal and Monitoring Services

To: All CDJFS, CSEA, and PCSA Directors

From: Michelle Horn, Deputy Director
Office of Fiscal and Monitoring Services
Monitoring Services Division

Date: September 25, 2009

Subject: County Monitoring Advisory Bulletin 2009-003: Sale and Lease Back of Federally Funded Buildings

It has been brought to our attention that a number of boards of county commissioners are considering the sale and lease back of buildings occupied by county family services agencies which have been funded in part by federal programs. The purpose of this Bulletin is to provide guidance as to the possible consequences of such transactions.

Background

County Monitoring Advisory Bulletin 2008-001: Claiming Costs of Building Space Under "Less-Than-Arm's-Length" Transactions provided guidance to county family services agencies in the determination of allowable costs to federal programs of building space used for these programs. It has become apparent that strict conformity to the requirements of 2 CFR 225 (OMB Circular A-87) is resulting in a potentially significant financial burden to some counties.

In some instances, boards of county commissioners are reportedly considering obtaining relief from this burden by means of a "sale and lease back" transaction, whereby the county would sell the building in question to a third party under an arrangement whereby the county family services agency would "lease back" the building. This would presumably allow retirement of the underlying debt on the building and allow the agency to claim current market rates for the office space in question. It is our understanding that such a transaction would not, in fact, allow for an increased claim to federal programs for the cost of the building space.

Limitation on Allowable Federal Claim

The treatment of costs under a "sale and lease back" transaction is specifically addressed in 2 CFR 225, Attachment B, Section 37 (B). This section states:

> Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property. This amount would include expenses such as depreciation or use allowance, maintenance, taxes, and insurance.

The effect of this provision is to limit the allowable claim to federal programs to that allowable to the county if it had continued to own the building. **Thus, there is a risk that the actual rental cost to the agency for the building space would increase, but the allowable claim to federal programs would effectively be "capped" at the amount allowable prior to the sale and lease back.**

For this reason, we recommend that agency management and boards of county commissioners consult with their county prosecuting attorney, as their statutory legal advisor, prior to implementing a sale and lease back arrangement with a county-owned building. BMCS staff are available to provide specific advice as requested.

Consulting Services Requests:

The BMCS has established a GroupWise e-mail account for questions related to technical issues. Questions may be submitted through the GroupWise system to BMCS_INQUIRIES or through the Internet to BMCS_INQUIRIES@jfs.ohio.gov.

The e-mail account will be checked frequently for new inquiries. Within the limits of our resources, we will respond to you as quickly as possible. Any inquiries which are appropriate to another ODJFS Office or Bureau will be forwarded to that department.