

Highlights of HUD's Proposed Smoke-Free Housing Rule

HUD has now published the proposed “Smoke-Free Housing” rule and you can access it here: <http://www.gpo.gov/fdsys/pkg/FR-2015-11-17/html/2015-29346.htm>.

Here are some highlights:

- The Proposed Rule discusses the health hazards of smoking, including the effect of second-hand smoke on nonsmokers. The Proposed Rule also discusses the financial savings of a nationwide smoke-free housing policy, noting that researchers from the CDC estimated that a nationwide smoke-free public housing policy would result in an estimated annual cost savings of \$152.91 million, including \$42.99 million in reduced renovation costs and \$15.92 million in averted fire losses.
- The Proposed Rule states that over 500 PHAs voluntarily have implemented smoke-free policies in at least one of their buildings.
- The Proposed Rule would apply to all public housing, scattered sites, and single family properties. The requirement would *not* extend to public housing units that are part of a mixed-finance project because the PHA may not be the primary owner, and non-public housing units may be contained within the building.
- HUD took pains to clarify that this Proposed Rule does not prohibit individual PHA residents from smoking, and that PHAs should continue leasing to persons who smoke, and allow them to smoke in unrestricted areas.
- HUD anticipates that residents with disabilities may request reasonable accommodations under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. HUD noted that a request for a reasonable accommodation from an eligible participant must be considered, and granted in appropriate circumstances. As to what would be appropriate circumstances, HUD FHEO is developing guidance on accommodating persons with a disability related to smoke-free policies.
- The Proposed Rule would require that no later than 18 months from the effective date of the final rule, each PHA must implement a policy prohibiting lit tobacco products in all public housing indoor areas, including indoor areas of public housing, including but not limited to living units, indoor common areas, electrical closets, storage units, and PHA administrative office buildings.
- The Proposed Rule also applies to all outdoor areas within 25 feet of the housing and administrative office buildings.

- The restriction would cover all types of lit tobacco products, including but not limited to cigarettes, cigars, and pipes. While the prohibition does not specifically cover waterpipe tobacco smoking (referred to as hookahs), such smoking involves lit charcoal and results in heating tobacco to temperatures high enough to produce secondhand smoke that contains harmful toxins. HUD is seeking comment on whether to include a prohibition on waterpipe tobacco in the final rule.
- The Proposed Rule does not prohibit electronic nicotine delivery systems (ENDS), such as electronic cigarettes (“e-cigarettes”). However, HUD stated that the absence of this prohibition should not be read as an endorsement of e-cigarettes, and HUD is seeking additional comments on the issue of ENDS, and may prohibit the use of ENDS in the final rule.
- PHAs may, but would not be required to, further restrict smoking to outdoor dedicated smoking areas outside the restricted areas, create additional restricted areas in which smoking is prohibited (e.g., near a playground), or, alternatively, make their entire grounds smoke-free.
- PHAs must document their smoke-free policies in their PHA plans, subject to the resident and public comment process.
- The policy must also be a part of the dwelling lease, or an addendum thereto. HUD states that because some tenants may not be recertified before the policy takes effect, PHAs may require that all remaining leases be amended, or may establish their own schedule for lease amendments, provided that all leases are amended by the effective date of the policy.
- PHAs must afford a grievance process with respect to your enforcement of smoke-free housing policies.
- The prohibition on lit tobacco would also be included in a tenant's lease, which may be done either through an amendment process or as tenants renew their leases annually.
- HUD acknowledges that there will be significant costs to PHAs associated with implementing smoke-free policies, including training, administrative, legal, and enforcement costs. There is no dedicated funding for this initiative.
- HUD has a number of free webinars and training sessions on its webpage (<http://portal.hud.gov/hudportal/HUD?src=/smokefreetoolkits1>). HUD encourages PHAs to work with their State HUD office, State and local tobacco prevention and cessation programs, state and community health organizations, and the Environmental Protection Agency's community-based asthma program network (www.asthmacommunitynetwork.org). CDC provides funding and technical

assistance to State tobacco prevention and control programs and prevention and smoking cessation programs in every state and the District of Columbia (http://www.cdc.gov/tobacco/stateandcommunity/tobacco_control_programs/ntcp/index.htm). Contact information for local organizations will be provided through HUD's Web site on a page dedicated to smoke-free resources that is under development.

HUD is soliciting comments on the Proposed Rule and has included a specific series of questions for feedback. Comments are due January 19, 2016.

HDLI will address the legal and operational implications of this rule, as well as best practices and proven successes, at our Spring CLE Conference April 28-29, 2016. Please make plans to attend.