

Questions and Answers on HUD’s Smoke Free Public Housing Proposed Rule

Q: Why is HUD publishing this proposed rule?

A: HUD has been advocating for smoke free housing since 2009 in all of its programs because the health benefits to residents is substantial. The cost and benefits to PHAs is also compelling – in terms of a reduction in maintenance and unit-turn costs – and a significant reduction in the risk of catastrophic and fatal fires. To date, over 600 PHAs have implemented smoke-free policies. To expand the benefits of smoke-free living to all public housing residents and Public Housing Agencies (PHA), HUD must first propose a rule to amend its regulations and solicit public comment.

Q: What are the estimated damage and maintenance cost savings for PHAs as a result of the proposed rule?

A: HUD’s Regulatory Impact Analysis for this proposed rule estimates that through a smoke-free policy, PHAs will save an average of between \$16 million to \$38 million per year in reduced maintenance. The reduced fire risk will be \$38 million. According to a 2014 CDC study published in Preventing Chronic Disease, “prohibiting smoking in all government subsidized housing in the United States, including public housing, would save an estimated \$497 million per year in health care and housing-related costs.”

Impact	Source	Amount (Discount Rates in Parentheses)
Cost (potentially recurring but concentrated during first few years of the rule’s implementation)	PHA Compliance	\$3.2 million
Cost (recurring)	Smoker Inconvenience	\$209 million
Cost (recurring)	Enforcement	not quantified
Benefit (recurring)	PHA Reduced Maintenance	\$16 to \$38 million
Benefit (recurring)	PHA Reduced Fire Risk	\$32 million
Benefit (annualized over 10 to 50 years)	Non-Smoker Health	Less than: \$148 to \$447 million (3%) \$70 to \$137 million (7%)
Benefit (recurring)	Non-Smoker Well-Being (PHA residents who do not live in units with smokers)	\$96 to \$275 million
Benefit (recurring)	Smoker Health	not quantified
Partially Quantified Net Benefits (recurring)	See above	Less than: -\$19 to \$302 million (3%) -\$97 to -\$8 million (7%)

Q: What is known about how tobacco smoke travels within buildings?

A: As the Surgeon General reported, there is no safe level of exposure to secondhand tobacco smoke. In addition, research has clearly demonstrated that in multi-unit buildings, tobacco smoke travels from smokers’ units into the units of non-smokers. Smoke can also travel between the units of smokers into common areas such as hallways and lobbies, which are often designated as non-smoking areas in buildings that permit smoking in individual apartments. Research has further demonstrated significantly lower concentrations of tobacco smoke contaminants in public housing buildings that are covered by

smoke-free policies, and the majority of smoking complaints come from neighbors who are exposed to second hand smoke that travels between units.

Q: When will PHAs need to be fully smoke free?

A: Today's rule is a proposed rule and it is open for public comment for 60 days. PHAs will not be required to be smoke free until, after consideration of public comment, a final rule is published and effective. HUD is proposing that all public housing be smoke free within 18 months after the effective date of the final rule. This allows time for PHAs to engage residents, develop policies, solicit public comment, get Board approval and amend resident's leases. In advance of that, we strongly encourage all PHAs to get started so there is time to complete all the steps. HUD has provided a great deal of material available on its website at www.hud.gov/healthyhomes, including a tool kits for both managers and residents. Also, the latest HUD guidance "Change is in the Air" (<http://portal.hud.gov/hudportal/documents/huddoc?id=smokefreeactionguide.pdf>) has a step-by-step action plan for PHAs to follow.

Q: What about agencies that already have smoke free policies, will they be grandfathered in?

A: Of the over 600 PHAs with smoke-free policies in place, many have "partial" smoke free policies that include only certain buildings or spaces. The rule does not propose to include a provision to grandfather in existing policies if they do not include all living units, indoor common areas in public housing and in PHA administrative office buildings (in brief, a smoke-free policy for all public housing indoor areas). The smoke-free policy must also extend to all outdoor areas up to 25 feet from the housing and administrative office buildings. As proposed, policies that do not meet these minimum requirements will need to be updated within the timeframe of the final rule.

Q: How many units would be impacted by this rule?

A: Public housing includes nearly 1.2 million units across the country. As of September 30, 2015, at least 228,000 units were already smoke-free, so this proposed rule impacts over 940,000 units.

Q: How many children live in public housing? How many elderly persons?

A: Public housing serves over 2 million residents. There are over 760,000 children under age 18 living in public housing (38%), and over 329,000 persons over age 62 (16%).

Q: How should PHAs enforce these regulations?

A: The smoke free requirement must be part of a PHA policy and within each resident's lease agreement. PHAs should include enforcement of the smoke-free policy as part of its regular lease enforcement policies. It may help residents with compliance if the smoke free policy includes a description of the expected oversight process, and whether monitoring will be done with unit inspections. Also, HUD recommends PHA outline how residents should report if they see or smell persons smoking in restricted areas. HUD is seeking comment on best practices for enforcement from PHAs that have already implemented a smoke free policy and will issue guidance after the proposed rule comment period is completed. In the meantime, PHAs should review the discussion of enforcement in the "Change is in the

Air” guidebook (hyperlink to <http://portal.hud.gov/hudportal/documents/huddoc?id=smokefreeactionguide.pdf>).

Q: Will this rule result in public housing residents getting displaced or evicted?

A: Enforcement of smoke free policies could result in evictions for tenants that do not adhere to the policy or continue to smoke in their unit. This is an area where HUD is soliciting comment from PHAs and residents. HUD’s 2014 guidance “Change is in the Air” (hyperlink <http://portal.hud.gov/hudportal/documents/huddoc?id=smokefreeactionguide.pdf>) includes suggestions for engaging residents early in the process and practicing a graduated enforcement approach before terminating leases. Graduated enforcement includes escalating warnings before a lease termination is initiated. Additionally, PHAs are encouraged to engage with local health departments and tobacco control organizations such as the American Lung Association to provide smoking cessation resources for residents who would like to quit.

Q: Smoking prevalence is high among people with mental illness. Could a smoking ban be harmful to this population?

A: Although the proposed rule would not require that residents quit smoking, it may lead them to quit or substantially cut back. Research has demonstrated that when smokers with a history of mood or anxiety disorders quit, there was a lower likelihood that the disorder would recur or persist. Research has also shown that when people who are addicted to alcohol or drugs were more successful in long term abstinence from alcohol or drugs if they were provided with smoking cessation during addictions treatment.

Q: What about residents that smoke and have difficulty getting outside, or have mobility impairments – can they be allowed to still smoke in their units?

A: As proposed in the rule, allowing a resident to smoke in their unit or building common area is not an accommodation that can be granted under these regulations once effective. PHAs may consider working one-on-one with these residents to consider other alternatives for compliance.

Q: Will PHAs also make programs available to residents who want to quit smoking?

A: PHAs are encouraged to partner with their local and state health departments and tobacco control organizations to help residents who want to quit. HUD will work with its federal partners to provide more information about these services as part of future technical assistance and guidance in advance of the final rule.

Q: Are housing authorities required to build shelters for smokers?

A: No, PHAs are not required to build shelters for their residents. Construction of smoking shelters and purchases of benches may be done using Capital Funds. Several PHAs have reported that they achieve better compliance with smoking bans in restricted areas when there is a designated location for smoking that includes seating.

Q: Does this rule include other types of smoking devices, like electronic cigarettes or hookah pipes?

A: No, this rule only proposes to cover lit tobacco products where the tobacco leaves are ignited, such as cigarettes, cigars and pipes. The exclusion on e-cigarettes (also known as electronic nicotine delivery systems or ENDS) in this rule should not be read as an endorsement of e-cigarettes as an acceptable health alternative to cigarettes. The aerosol from ENDS typically contains nicotine derived from tobacco plants, and may contain other hazardous and potentially hazardous constituents such as formaldehyde and lead. In light of growing health concerns regarding exposure to the aerosol of these products among non-users, especially children and pregnant women, HUD is seeking additional comments on the issue of ENDS, and may prohibit the use of these products in public housing in the final rule. HUD encourages PHAs that already have smoke-free policies to consider whether ENDS should be included in their smoke-free policies.

Q: What about the use of marijuana or medical marijuana in states that allow its use?

A: Nothing about this proposed rule is intended change any requirements regarding the use of marijuana in federally-subsidized housing. PHAs that need more information about the relevant laws can request a copy of the February 10, 2011 memo “Medical Marijuana Use In Public Housing and Housing Choice Voucher Programs” or download the memo from <http://portal.hud.gov/huddoc/med-marijuana.pdf>.

Q: Doesn’t this rule conflict with HUD’s goal to end homelessness?

A: The proposed smoke free public housing rule includes requirements for current residents of public housing. It does not prohibit smoking by public housing residents or prospective residents, and it should not discourage PHAs from offering homes to persons that smoke. The proposed regulations would simply restrict the activity of smoking within public housing property and within 25 feet of building entrances and windows. Residents that smoke and comply with the smoke-free policy can continue their residency in public housing. Where there are violations of the smoke free policy, HUD encourages PHAs to use a graduated enforcement approach, to include warnings before lease termination. HUD continues to expect PHAs to follow the administrative grievance procedures during enforcement of their smoke-free housing policies. HUD solicits comments on enforcement from housing authorities that are already smoke free and will develop guidance on graduated enforcement practices after reviewing comments on the proposed rule.

Q: What about scattered site or single family public housing? Attached balconies or porches?

A: Under the proposed rule, smoking would also be banned in single family detached public housing. The proposed rule also prohibits smoking on attached structures if they are part of the building or within 25 feet of the housing or building.

Q: What about project-based Section 8 or housing choice voucher units managed by a Public Housing Authority?

A: These units are not proposed to be covered by this proposed rule. HUD’s guidance to assist owners of these types of housing, “Change is in the Air” can be found at <http://portal.hud.gov/hudportal/documents/huddoc?id=smokefreeactionguide.pdf>.

Q: My PHA manages public housing units located in other multi-unit mixed-finance developments. Must the smoke free policy include these units too, if the rest of the building is not smoke-free?

A: The proposed rule excludes these public housing units because the PHA may not be the primary owner of the property and non-public housing units may be contained within the building. HUD strongly encourages PHAs managing these types of properties to include all of their rental housing in the smoke free policy.

Q: My jurisdiction already has a smoke-free requirement for housing that includes just a 20 foot buffer zone around the building. Do I need to change our PHA's policy?

A: Once the rule is final, the PHA policy must follow the federal requirements if they are more stringent. If it's the case that the local or state requirement is more stringent, the PHA should follow those rules.

Q: How can I submit comments on the proposed rule?

A: Comments may be submitted by mail or electronically until January 19, 2016. You may mail comments to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. You may submit comments electronically by uploading them through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. (Facsimile (fax) comments are not acceptable.)