

# Smoke Free Public Housing

Final Rule and PIH 2017-03

HUD Guidance on Instituting and Enforcing Smoke-Free Public Housing  
Policies

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# Guidance on Smoke Free PH- PIH 2017-03

- The Rule is intended to improve indoor air quality, benefit the health of public housing residents and PHA staff, reduce the risk of fires, and lower overall maintenance costs.
- The Rule becomes effective 60 days after publication in the Federal Register

# Implementation of the Rule

- Once effective, PHAs will have 18 months to implement their smoke-free policies.
  - Published Nov 28, 2016
  - Effective Jan 28, 2017
  - Imp[lementation June 28, 2018
- PHAs must design and implement a policy barring the use of **prohibited tobacco products** in all public housing living units, **interior common areas** and outdoor areas within 25 feet from public housing and administrative office buildings (collectively, “restricted areas”).

- The Rule does not prohibit smoking by residents; rather, it requires that residents who smoke do so at least 25 feet away from the buildings.

# Prohibited Products

- **Prohibited tobacco products** are defined as items that involve the ignition and burning of tobacco leaves, such as: cigarettes, cigars, pipes and water pipes (also known as hookahs)

# Interior Common Areas

- **Interior common areas** include but are not limited to: hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures

# Timing on Implementation

- PHAs should begin the process of implementing smoke-free policies as soon as possible.
- PHAs are strongly encouraged to work with resident councils, provide residents with information on cessation assistance, post notices, and distribute information to residents about the smoke-free policy.



# Possible Waivers

- Waiver requests of Rule requirements will be considered with appropriate justification, pursuant to 24 CFR 5.110.

# Implementation

- Amend the PHA Plan
- Amend Lease
- Amend ACOP
- PHA Flexibility
- Signage
- Funding
- Electronic Nicotine Delivery Systems
- Designated Smoking Areas

# Amendment to PHA Plan

- Obtain board approval when creating their individual smoke-free policies and document their smoke-free policies in their PHA plans.
- Determine whether an adoption of their smoke-free policies constitutes a significant amendment or modification to the PHA Plan.
- If it is determined to be a significant amendment, the PHA must conduct public meetings according to standard amendment procedures.

# Lease Amendments

- Amend individual resident leases; all residents must sign the lease amendment as a condition of their continuing occupancy;
- Incorporate the requirement that residents in public housing, members of a resident's household, resident's guest, or other person under the resident's control must not engage in any smoking of specified prohibited tobacco products in restricted areas, or in other outdoor areas that the PHA has designated as smoke-free, and

# Lease Amendments- continued

- Notify a resident of a written revision to an existing lease at least 60 days before the lease revision is to take place, and give residents a reasonable amount of time for the resident to accept the revision.

# Lease Conditions

- Additionally, PHAs may provide a specific date that the policy will take effect.
- Lease amendments may be processed anytime during the 18-month required timeframe.
- Lease amendments should note the availability and location of any designated smoking areas (DSAs).

# Flexible Start Period

- PHAs will have flexibility as to how the lease amendment process occurs during the 18-month implementation period after the Rule's effective date.

# PHA Flexibility

- The Smoke-Free Rule allows PHAs the flexibility to implement their smoke-free policies.
- PHAs are encouraged to utilize their flexibility as appropriate.
- However, they should be aware that adoption of stricter smoke-free policies may expose them to legal risk under State or local law.



# Examples of Flexibility

- Prohibition on Electronic Nicotine Delivery Systems (ENDS)
- Limitation on smoking to Designated Smoking Areas (DSAs) only
- Requirement of a smoke-free perimeter greater than 25 feet
- Requirement for an entire campus to be smoke-free

# Signage

- PHAs are strongly encouraged to post signs that reference the new smoke-free policy.
- These signs must be accessible to all residents and visitors (including persons with disabilities), and must be posted in multiple languages consistent with the Department's current guidance on Limited English Proficiency.
- PHAs are also encouraged to use various communication methods (e.g., letters, flyers, seminars, etc.) to share this information.

# Funding for Implementation

- Costs of implementing smoke-free policies may be covered through operating reserves and eligible capital fund activities.
- All PHAs may request insurance premium allowances from their insurance providers after implementing smoke-free policies due to decreased fire risk.
- Budget flexibility is also permitted to the extent provided under arrangements such as the Moving to Work program.

# Electronic Nicotine Delivery Systems (ENDS)

- The use of ENDS in public housing is not prohibited.
- However, research on ENDS is emerging and evidence has revealed that the aerosol exhaled by ENDS users contain nicotine and potentially harmful ingredients but generally at much lower levels than tobacco smoke.
- PHAs have the flexibility to prohibit ENDS in their individual smoke-free policies as they deem appropriate.

# ENDS- continued

- For example, PHAs may prohibit ENDS in all developments and common areas or PHAs may allow the use of ENDS, within the unit, but prohibit ENDS in common areas or campus-wide.
- Residents should always be considered prior to adopting stricter smoke-free policies than the standards in the Rule.
- PHAs that choose to prohibit ENDS must amend all individual resident leases to include this provision.

# Designated Smoking Areas (DSAs)

- PHAs may provide DSAs to accommodate smoking residents.
- All DSAs must be outside of restricted areas, and may include partially enclosed structures.
- DSAs should include suitable wellness and safety features, such as appropriate seating and shade and must be accessible for persons with disabilities, in accordance with section 504 of the Rehabilitation Act.

# 504 and Fair Housing Provisions

- The DSA may include a flat or paved pathway, ramp, and adequate lighting.
- DSAs are not required under the Rule, however if provided, PHAs are encouraged to include DSA funding in future capital needs planning.
- PHAs without sufficient space may work with their local municipalities to identify nearby public areas where residents may smoke safely.
- If available, PHAs may provide smoking residents the option to move to an alternate site with greater access to outdoor smoking.

# Enforcement and Monitoring Tools

- Lease and appropriate PHA Plan amendment(s) are the primary policy enforcement mechanisms.
- PHAs must enforce smoke-free policies when a resident is violating the policy.
- When enforcing the lease, PHAs must provide due process and allow residents to exercise right to an informal settlement process and a formal hearing.
- PHAs may not evict for a single incident of smoking, in violation of a smoke-free policy.



# Graduated Enforcement Approach and Monitoring Tools

- PHAs are encouraged to adopt a graduated enforcement framework that includes escalating warnings with documentation to the tenant file.
- Under this approach PHAs would take specific, progressive monitoring and enforcement actions, while educating tenants and providing smoking cessation resources or referrals, prior to pursuing tenant eviction for smoke-free policy violations.

# Graduated Enforcement

- May include:
  - Lease amendment by the PHA that identifies the actions that constitute a policy “violation”
  - Agreement between the PHA and Resident Council that quantifies the number of documented, verified violations that warrant enforcement action
  - Pursuit by PHA of one or more monitoring and enforcement actions in combination or in sequence that allows the tenant time to address violation

# Graduated Enforcement

- Documentation of noncompliance if there are repeated violations, persistent non-responsiveness, or non-compliance with disciplinary actions.
- The PHA Plan should note how many non-compliances with the Smoke Free policy would constitute a violation of the lease.

# Eviction is Last Resort

- Eviction proceedings initiated by the PHA, though tenancy termination and eviction should only be pursued as a last resort.

# PHA Range of Techniques

- Intensified Compliance Monitoring
- Lease Terminations/Transfers
- Evictions

# Intensified Compliance Monitoring

- *Increased Inspection Frequency.*
  - Upon issuance of a written warning from the property manager and/or a documented complaint, the PHA may increase the frequency of unit inspections for a suspected policy violator

# Intensified Compliance Monitoring- continued

- *Violator Rehabilitation.*
  - To the extent a violation has been confirmed, the PHA may provide information and resources on smoking cessation. PHAs may consider a policy that automatically clears or resets the record of a resident if they do not have any new policy violations for a specified period of time.

# Lease Terminations/Transfers

- *Termination of Tenancy.*
  - The PHA may terminate the tenancy at any time—including violations of the Lease Addenda and failure otherwise to fulfill household obligations if resident behaviors disturb other residents' peaceful enjoyment of their accommodations and are not conducive to maintaining the property in a decent, safe and sanitary condition.



# Lease Terminations/Transfers- continued

- *“Other good cause” Termination.*
  - Repeated violations of the Smoke Free Rule could rise to the level of other good cause for termination of tenancy.
  - For instance, the PHA might determine that it is in the best interest of all the parties to offer a resident other assistance under the PHA’s control (e.g., section 8) and allow the resident to move from the property.

# Eviction

- *Eviction.*
  - The PHA may pursue resident eviction after unsuccessfully pursuing resident compliance with the policy over a reasonable period of time, and subject to grievance procedures.

# Reasonable Accommodation Requests

- Addiction to nicotine or smoking is not a disability.
- A PHA must still provide reasonable accommodations to persons with disabilities who smoke that are in compliance with the requirements of the PHA's smoke-free policies.
- Under section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act, PHAs are prohibited from discriminating, excluding from participation in a program, or denying the benefits of a program on the basis of disability and must make reasonable accommodations in their rules, policies, practices, and services.

# Reasonable Accommodation Requests

- A reasonable accommodation is a change, adaptation or modification to a policy, rule, program, service, practice, or workplace which will allow a qualified person with a disability to participate fully in a program, take advantage of a service, or perform a job.
- In order to show that a requested accommodation may be necessary, there must be an identifiable relationship, between the requested accommodation and the individual's disability.
- This relationship must be determined on a case-by-case basis by the PHA.

# Reasonable Accommodation- continued

- When a reasonable accommodation is requested, the PHA must make the accommodation unless the PHA can demonstrate that doing so would result in a fundamental alteration in the nature of its program or an undue financial and administrative burden.

# Reasonable Accommodation- continued

- For example, an individual with a mobility disability may request a reasonable accommodation in order to move to a floor which provides close proximity to the door.
- This would allow the resident easier access to a smoking area as required by the rule.
- Such a request would need to be evaluated on a case-by-case basis in order to make a determination.
- However, a PHA may not permit continued smoking in restricted areas.

# Reasonable Accommodation Website Info

- General guidance on the reasonable accommodation process can be found at <http://go.usa.gov/cJBBC>.
- DOJ/HUD Joint Statement can be found at [http://www.hud.gov/offices/fheo/disabilities/reasonable\\_modifications\\_mar08.pdf](http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf)

# Examples of Smoke Free Meshed with Reasonable Accommodations-Disabilities

- PHAs have allowed residents to move to the first floor or closer to an exit door, and provided designated smoking areas with an accessible walkway, cover, lighting, and seating.
- The Smoke-Free Rule does not require that reasonable accommodation language be contained in the lease amendment, but HUD encourages PHAs to include this information.



# Understanding of Requirements

- Smokers with certain health conditions (e.g., cognitive impairment) may require special attention to ensure they understand the policy and available cessation resources, as well as reasonable accommodation request procedures; however, these residents must comply with the policy.

# Building Relationships

- PHAs are strongly encouraged to engage residents early in the development of smoke-free policies.
- Best practices have indicated that resident engagement in policy development, implementation, and enforcement are less likely to result in evictions.

# Resources

- Change is in the Air

<http://portal.hud.gov/hudportal/documents/huddoc?id=smokefreeactionguide.pdf>

- Toolkits for Owners/Management Agents and Residents can be found at

<http://portal.hud.gov/hudportal/HUD?src=/smokefree/toolkits1>



# Smoking Cessation

- PHAs are encouraged to partner with outside organizations for cessation support.
- Medicaid recipients may be eligible to receive financial assistance for cessation services and prescription cessation medications depending on the state Medicaid program.
- Cessation resources are currently available at [http://www.cdc.gov/tobacco/quit\\_smoking/index.htm](http://www.cdc.gov/tobacco/quit_smoking/index.htm).

# PHA and Resident Training

- Training resources on Smoke-Free Rule strategies and effective enforcement of smoke-free policies are available in the form of video- and print-based materials, as well as in-person training for select PHAs.
- PHAs are responsible for providing resident training.

# Thank You

- Questions