

## GUIDE FOR PUBLIC COMMENT ON HUD'S PROPOSED NO SMOKING RULE

### Overview of the Proposed Rule:

On November 12, 2015, the United States Department of Housing and Urban Development took an historic step towards protecting the public from involuntary exposure to secondhand smoke.<sup>1</sup> According to the US Surgeon General, most exposure to secondhand smoke occurs in the home, particularly for children.<sup>2</sup> HUD has responded by proposing a new rule that would require all federally funded public housing authorities to be smoke-free indoors.

The proposed rule is virtually identical to one already in place in many affordable and market-rate multiunit properties across the country.<sup>3</sup> It would prohibit smoking anywhere inside a building, including in individuals residences, decks and anywhere else indoors. Residents who smoke are not required to quit. They just need to go outside and away from the building to smoke. The rule will apply to everyone equally, including current residents and staff. No one would be allowed to smoke inside after the effective date.

The proposed rule is primarily intended to eliminate the problem of smoke drifting from a smoker's home in the other homes located in the building.<sup>4</sup> The problem of drifting secondhand smoke in multiunit dwellings is well documented.<sup>5</sup> The smoke moves under doors, through ventilation systems and wall fixtures, and other pathways, leading to the involuntarily exposure of others in the building.<sup>6</sup> The rule proposed by HUD would require all federally funded public housing authorities to implement this rule within 18 months after the public comment period ends and the rule is finalized. Other affordable housing is not covered by this rule.

### How to Use this Guide:

You have a legally protected right to comment on any proposed federal rule. Public comments must be reviewed and answers published. Only then can the agency finalize the rule and turn it into law. While the public may comment on any aspect of a proposed rule, responding to questions posed by the rule is most helpful. In this case, HUD has asked for public comment on nine questions.

This Guide is intended to help you respond to any number of these questions. In the following pages, each question is restated along with some background information you might find helpful in formulating your responses. Feel free to include this information in your comments. Also included are instructions to help focus your answers.

If you mention research whether published or unpublished, please include a citation with the name of the researcher, title of the article or report, and if published, where and when the research was published. Personal experiences are also helpful. An example might include a resident who suffered from secondhand smoke exposure or helping a building go smoke-free. Provide details about how you became involved, your role, when and where it occurred, the outcome, and why the experience is relevant. People's names should NOT be included to protect their privacy.

Instructions for submitting your comments are available in the Public Health and Tobacco Policy Center's [Guide to Locating and Commenting on Proposed Federal Regulations](#) and also at [www.regulations.gov](http://www.regulations.gov). Enter "HUD-2015-0101" as a search inquiry and follow the instructions. The deadline is January 19, 2016. It is recommended that you submit your comments at least a few days earlier. Remember to review your comments carefully before uploading them.

HUD QUESTION 1. What barriers could PHAs encounter in implementing smoke-free housing? What costs could PHAs incur? Are there any specific costs to enforcing such a policy?

There are only negligible barriers and costs to implementing a no-smoking rule, and the health and safety benefits are substantial and well documented. When implementing this rule, a PHA can expect to costs associated with staff time, such as the time of surveying residents and hosting informational meetings. Surveys and meetings are recommended for engaging residents and providing them with a way to give feedback. Another implementation cost includes making some small physical changes to the property. For example, signs stating "This is a Smoke-Free Property" or the like are needed to remind residents, their guests, staff and others about the smoke-free rule. PHAs will also benefit from cleaning up littered cigarette butts and remove ashtrays located near building doors; this may require staff time. Lastly, onsite cessation counseling and/or tobacco awareness trainings for residents and staff is recommended, but should not entail additional cost.

A common concern is that enforcement is an enormous barrier and/or costs associated with implementation. This concern is not justified. Survey after of survey of residents in public housing authorities and other affordable housing reveal a high level of support for smoke-free policies.<sup>7</sup> Most people, even those living in affordable housing, do not smoke, and therefore do not want to be exposed to smoke from a neighboring unit.<sup>8</sup> This level of support means that implementation is easy and compliance rates are high.<sup>9</sup> Most violations that do happen generally occur immediately after implementation.<sup>10</sup> They are typically remedied with written warnings.<sup>11</sup>

The cost savings outweigh the cost of implementing the rule. For example, the cost of rehabilitating a unit where someone smoked can be several thousands of dollars more compared to a non-smoking unit.<sup>12</sup> Additionally, the risk of fire from unattended or dropped cigarette embers is eliminated.<sup>13</sup> HUD cited estimates provided by the CDC and estimated annual cost savings of \$152.91 million.<sup>14</sup> This does not factor government-subsidized health care savings over time resulting from a smoking-free policy.

*[Tell your own experience about helping a landlord or property manager implement a no-smoking rule. What barriers and costs? The experience does not need to involve a public housing authority. It may involve a mixed-financed property or a market-rate landlord.]*

HUD QUESTION 2. Does this proposed rule adequately address the adverse effects of smoking and secondhand smoke on PHAs and PHA residents?

Although it represents a huge step forward for public health, the rule falls short in some areas. The proposed rule exempts mixed-financed properties, which are the fastest growing area of affordable housing in the United States.<sup>15</sup> These buildings are made possible through a combination of tax credits, vouchers and other federal, state and/or private funding.<sup>16</sup> Cities and states are promoting these properties through expedited approvals and exemptions from zoning restrictions.<sup>17</sup> Some have described mixed-financed projects as the future of affordable housing in the United States.<sup>18</sup>

HUD exempts such properties because it argues that “the public housing authority may not be the primary owner, and non-public housing units may be contained within the building.” However, HUD maintains substantial control over these properties. For example, developers of mixed-finance properties must adhere to HUD’s Minimum Property Standards Criteria, which guides development of the properties.<sup>19</sup> According to HUD, mixed-financed projects should “create dwellings which are attractive and marketable, improve or are harmonious with the surrounding neighborhood, meet the needs the long-term needs of the occupants, and are sustainable over the long run.”<sup>20</sup> HUD could add no-smoking rules to the list of requirements for new projects, or at minimum, favor proposed mixed-financed development projects that promise to open as non-smoking.

HUD’s proposed rule also would be improved by creating a no-smoking buffer area around entrance/exit walkways. Residents, staff and visitors should not be required to walk through a smoking area when leaving or returning to the building. The 25 foot buffer may also be insufficient. Smoke can drift back into open windows and doors from that distance, particularly when residents tend to congregate in one particular area. A resident with a unit near an area where others congregate to smoke could actually suffer from more exposure. The standard applied to schools in New York State, 100 feet, offers an appropriately enhanced level of protection that is achievable.<sup>21</sup>

*[Provide examples of mixed-financed affordable properties in your area that implemented a no-smoking rule. Where were the properties and when did they go non-smoking. Include a description of where residents could and could not smoke outside under the rule. Why did the property manager/landlord prohibiting smoking outside?]*

HUD QUESTION 3. Does this proposed rule create burdens, costs, or confer benefits specific to families, children, persons with disabilities, owners, or the elderly, particularly if any individual or family is evicted as a result of this policy?

The proposed rule benefits PHA residents and staff. Studies looking at properties that already implemented a no-smoking rule, like the one proposed by HUD, demonstrate numerous health benefits. Put simply, the air quality in the building improves because tobacco smoke, a “Class A Human Carcinogen,” is removed from the air.<sup>22</sup> Smoking in multiunit unit dwellings exposes smokers and non-smokers alike, regardless of whether a family or individual prohibits smoking inside a unit. For example, in a study published in 2009, researchers measured metabolized nicotine in residents of non-smoking homes

located in multiunit buildings.<sup>23</sup> They found that 89% of the residents in non-smoking homes were nevertheless exposed to secondhand smoking at rates up to the equivalent of .84 cigarettes a day. This means that residents who live in multiunit dwellings essentially cannot have a smoke-free home unless the entire building is non-smoking.

The U.S. Surgeon General warns that exposure to secondhand smoke causes long term and acute health problems in non-smokers.<sup>24</sup> Exposure leads to lung cancer, other cancers, increased risk of stroke and heart attack. Children experience respiratory problems and exposure is even a risk factor for SIDS. Some of the worst health problems caused by exposure occur among people with disabilities, such as Asthma. Secondhand smoke is a contributing factor to Asthma and a common cause of Asthma attacks.

The proposed rule confers a specific benefit to persons with mental and physical disabilities, especially when resulting in mobility challenges and are unable to move away from unwanted secondhand smoke drift within their own unit. Many who live in public housing are especially affected by exposure to secondhand smoke because of disabilities that render them particularly sensitive to smoke contaminants. As of 2012, 38 percent of households in public housing in the U.S. and 36 percent in New York included disabled persons.<sup>25</sup>

Likewise, this rule is especially beneficial to children. Home is the primary source of SHS exposure for children. Americans who live in multiunit housing can be exposed to unwanted SHS that seeps into their own smoke-free units from other units or common areas where smoking occurs. A 2010 study of multiunit housing residents in New York State found that 73 percent of tenants did not allow smoking in their units, but 46 percent experienced unwanted secondhand smoke infiltration from other units during the past year.<sup>26</sup> This problem is made worse by the fact that many in affordable housing cannot move to escape exposure. For them, living affordable housing means accepting exposure to secondhand smoke as daily fact of life.

*[Consider inserting a personal story about a resident in affordable housing who dealt with exposure. Provide details about the exposure, where the resident lived, and how it affected the resident. It is recommended that you not use the resident's name without permission. Stories about residents in public housing or other affordable properties are particularly relevant.]*

There are almost no burdens on the smokers. In fact, research suggests smokers actually benefit from smoke-free policies. Over 70% of smokers want to quit.<sup>27</sup> Although they are not required to quit when their building implements a no-smoking rule, many smokers use the policy change as an opportunity to try.<sup>28</sup> They are more likely to be successful, compared to those in a smoking building, because the no rule creates a supportive environment.<sup>29</sup> For those who continue to smoke, they tend to smoke less.<sup>30</sup> In addition, anecdotal evidence suggests that residents actually get more exercise and increased socialization because of no smoking rules. The simply reason for these outcomes is smokers need to go outside to smoke.

Regarding the potential burden on residents who wish to continue smoking, evictions because of no-smoking rules are rare. Residents who want to continue smoking

comply with the rule, in large part, because of the social pressure from the vast majority of friends and neighbors in the building who support the rule.<sup>31</sup> The violations that do occur generally occur immediately after the rule goes into effect, and then decrease quickly after a few months, as the new rule becomes the community norm.<sup>32</sup> Written warnings are very effective at stopping these transition-type violations.<sup>33</sup>

For the chronic offender, many public housing authority staff can resort to a variety of non-eviction approaches to achieve compliance. For example, housing authority staff can help the resident identify and remove triggers to smoke from the home. Residents who smoke can use nicotine replacement products, such as an FDA-approved inhaler, to help the resident go longer between cigarettes. HUD should consider some training and additional funding for resident service coordinators to help implement these non-eviction approaches.

*[Insert a personal story about an affordable housing owner or property manager working with residents to help them comply. It is important for HUD to hear about how the rule can be enforced without the need to rely solely on the threat of eviction. Such non-eviction enforcement approaches would ideally be replicated in other affordable properties.]*

HUD QUESTION 4. For those PHAs that have already implemented a smoke-free policy, what exceptions to the requirements have been granted based on tenants' requests?

There are two common exceptions requested when a property goes non-smoking. First, a resident may ask to be grandfathered in and allowed to continue smoking inside their units while others are prohibited from smoking inside. This request is almost universally denied because it both defeats the purpose of the smoke-free rule and renders the non-smoking rule virtually unenforceable. Smoke emanates from the grandfathered unit to cover up smoking in non-grandfathered units, making it more likely that that new residents will violate the rule, either while in their own units or during visits to the unit of the grandfathered smoker. Additionally, the cost of tracking differential application of the rule to various units is expensive.

Second, a resident may ask to be allowed to smoke immediately outside his or her unit due to mobility issues or because there are children in the unit. Property managers and landlords almost universally deny this request, too. The smoke drifts back into the unit, or worse, into neighboring units.

Exceptions to a non-smoking rule defeat the purpose and eliminate the benefits of going smoke-free and therefore, should not be considered.

*[Insert your own stories about a multiunit properties where the no-smoking rule was applied equally to everyone. If you are aware of examples of where some residents received a temporary or permanent exception to the rule, please explain why the exception was granted. Did that exception cause problems?]*

HUD QUESTION 5. For those PHAs that have already implemented a smoke-free policy, what experiences, lessons, or advice would you share based on your experiences with implementing and enforcing the policy?

Engaging residents is the most important step when implementing a no-smoking rule. In my experience, PHAs that have invested in resident engagement and education, including building awareness about the importance of the rule, experience an easy transition to smoke-free, demonstrated by higher initial compliance rates. According to HUD, “resident participation is vital in offering residents a way to build working relationships with the housing agency, and create a positive living environment in public housing.”<sup>34</sup> Some ideas for engaging residents around no smoking rules are as follows: 1) asking residents about the proposed rule through a survey; 2) engaging with the tenant council; 3) hosting meetings to provide residents with a forum to express their opinion about the rule; 4) hosting meetings to get residents’ input on the details for the rule (implementation date, designated smoking area, etc.); 5) work with tenant councils to prepare for implementation; and 6) recruit residents to serve as health champions who can spread information about the rule. None of these steps are required to implement a no-smoking rule, but help immensely with compliance. It also gives residents who might have difficulty complying reach out for help early in the process.

*[Describe how you worked with public housing authority residents either during the implementation process or as a way to educate the housing authority about going smoke-free. What information did you present and to whom did you present it? How did you or the property manager get residents to attend meetings?]*

HUD QUESTION 6. For those PHAs that have already implemented a smoke-free policy, what tobacco cessation services were offered to residents to assist with the change? Did you establish partnerships with external groups to provide or refer residents to these services?

New York residents fortunately have access to low costs cessation services and medicines. Medicaid eligible residents may obtain nicotine patches, gums or inhalers with very low co-pays.<sup>35</sup> Medicaid also covers Chantix and Zyban. Residents may also use the state’s quitline, 866-NY-QUITS, which provides free and confidential counseling services in numerous languages, along with a free nicotine replacement starter kit.<sup>36</sup> Resident can learn about these services by asking their health care provider or through informational meetings hosted by the PHA.

*[Describe your experiences of disseminating cessation information or running cessation programs for residents. What materials were distributed? Did you present? Did you distribute information before or after the rule went into effect?]*

HUD QUESTION 7. Are there specific areas of support that HUD could provide PHAs that would be particularly helpful in the implementation of the proposed rule?

HUD should provide resources and support for conducting staff trainings. In many cases, PHA staff receive only basic information about their no-smoking rule. Some staff may be resistant to the new rule for a variety of reasons<sup>37</sup> or may not know how to respond to questions from residents. All staff should receive basic training and/or materials about the health effects of tobacco, secondhand smoke exposure, tobacco addiction, cessation services, and details about the no-smoking rule. Just like residents, PHAs should be mindful

to engage staff in this process.

HUD should also provide information on and support for working with non-complying residents. Some residents are not ready to quit or may decide to continue smoking and resistant to restricting their smoking to permissible areas. Accordingly, in combination with traditional enforcement, public housing authority staff should consider creative ways to achieve compliance. Some ideas include handing out signs reminder signs residents can use in their units; recruiting family members or compliance partners; help connect resident with appropriate cessation service or nicotine replacement services; and identifying and removing triggers.

*[Describe your experience with residents continuing to smoke, but successfully complying with the new rule.]*

HUD should clarify that smoking is not a recommended treatment for any mental or physical health condition, and therefore, cannot form the basis of a “reasonable accommodation” to allow a resident to smoke. While federal law requires certain “reasonable accommodations” for persons with disabilities, nicotine addiction does not qualify as a disability, nor can smoking in a non-smoking building be considered a reasonable accommodation.

This is in contrast to alcohol addiction, which is considered a disability for which accommodation is warranted, and may therefore lead a tobacco-addicted resident to incorrectly believe he or she is permitted to continue smoking in prohibited areas. Similarly, a resident might argue that he or she needs to keep smoking because the resident’s addiction counselor encouraged the resident to not worry about his smoking while tackling a drug or alcohol addiction. (In fact, contemporary clinical guidance suggests it is critical for addicts to quit tobacco use simultaneous to abstaining from other substances.<sup>38</sup> Further, research has shown that smokers with a history of mood or anxiety disorders will benefit from quitting tobacco use.<sup>39</sup>)

Additionally, permitting smoking after the implementation date would constitute a fundamental change to the smoke-free policy, which by its very definition cannot be a reasonable accommodation. Lastly, the Americans with Disabilities Act states that smoking cannot form the basis of a reasonable accommodation in public places and other areas.<sup>40</sup> That same standard should be applied in the context of public housing authorities.

*[Describe efforts to incorporate tobacco cessation services into other programs, including mental health programs.]*

HUD QUESTION 8. Should the policy extend to electronic nicotine delivery systems, such as e-cigarettes?

Although the primary objective of the proposed rule is to eliminate tobacco smoke exposure in public housing, there are several important reasons why the new policy should extend to Electronic Nicotine Delivery Systems (“ENDS”) such as electronic cigarettes and related products that deliver nicotine through the air.

First, there is a growing body of scientific literature suggesting that the aerosol emissions resulting from use of ENDS could pose health risks.<sup>41</sup> Whether vaporized or aerosolized, the emissions from these products, which include nicotine, ultra-fine particles, and volatile organic compounds, become mixed with air and, as such, may circulate in a manner similar to tobacco smoke.<sup>42</sup> Secondly, the use of ENDS may create confusion in enforcement of the proposed rule. Often, the use of ENDS appears similar to that of combusted cigarettes and has the potential to complicate enforcement of a smoke-free policy.<sup>43</sup> It may also have the effect of normalizing smoking behaviors.<sup>44</sup>

Finally, through 2015, no ENDS manufacturer has sought approval from the U.S. Food and Drug Administration to market any such product as safe and effective for purposes of smoking cessation. ENDS are not approved as cessation devices and the long-term health risks posed by these products are not yet known.<sup>45</sup>

HUD QUESTION 9. Should the policy extend to waterpipe tobacco smoking? Does such smoking increase the risk of fire or property damage?

A failure to extend the proposed rule to include waterpipe tobacco smoking (“hookah”) would be incongruous with the rule’s stated purpose, “to improve indoor air quality in public housing, benefit the health of public housing residents and PHA staff, reduce the risk of catastrophic fires, and lower overall maintenance costs.”<sup>46</sup>

The exemption for hookah and other water pipes is unwarranted for three main reasons. First, numerous test by health officials in New York have revealed that the material used in hookah, which is commonly known as shisha, is simply shredded tobacco leaf in the vast majority of cases.<sup>47</sup> As such, hookah use involves the inhalation and exhalation of combusted tobacco, resulting in tobacco smoke exposure and the environmental contamination caused by such exposure. Second, this exemption is unwarranted because any type of combusted plant product will release particulate matter and combustion-related carcinogens into the air. The water does not clean or filter the smoke. Finally, hookah use is not a safe alternative to cigarette smoking because the water in the pipe does not remove the smoke’s toxic properties,<sup>48</sup> and therefore there is no public health rationale for exempting this lit tobacco product.

#### ADDITIONAL COMMENTS:

Exposure to secondhand smoke in affordable housing and the related adverse health outcome housing disproportionately impacts minority and vulnerable populations. A 2015 CDC report found that although secondhand smoke exposure dropped by half between 1999 and 2012, one in four non-smokers (58 million people) are still exposed to secondhand smoke.<sup>49</sup> Exposure remains especially high for certain groups, with 2 in 5 children ages 3 to 11 (about 15 million kids) exposed to secondhand smoke. Nearly 50 percent of black nonsmokers are exposed to SHS, including 7 in 10 black children. More than 1 in 3 nonsmokers who live in rental housing are exposed to SHS, and more than 2 in 5

nonsmokers who live below the poverty level are exposed to SHS. In 2014-2015, 52 percent of households in public housing in New York were black/African American, and 41 percent were Hispanic or Latino.<sup>50</sup>

<sup>1</sup> U.S. DEP'T OF HOUSING AND URBAN DEV'T, INSTITUTING SMOKE-FREE PUBLIC HOUSING, Docket No. FR 5597-P-02 (proposed Nov. 12, 2015) [hereinafter PROPOSED HUD RULE].

<sup>2</sup> U.S. DEP'T OF HEALTH AND HUMAN SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL, (2006), available at <http://www.surgeongeneral.gov/library/secondhandsmoke/report/fullreport.pdf> [hereinafter 2006 U.S. SURGEON GENERAL'S REPORT].

<sup>3</sup> See e.g. Stephen Smith, *Landlords Lead Push to Ban Smoking at Home*, Boston Globe (April 4, 2009).

<sup>4</sup> See Elizabeth T. Russo, et al., *Comparison of Indoor Air Quality in Smoke-Permitted and Smoke-Free Multiunit Housing: Findings from the Boston Housing Authority*, 10 NICOTINE & TOBACCO RESEARCH 1093 (2014), available at [http://ntr.oxfordjournals.org/content/early/2014/08/25/ntr.ntu146.abstract?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=comparison-of-indoor-air-quality-in-smoke-permitted-and-smoke-free-multiunit-housing-findings-from-the-boston-housing-authority](http://ntr.oxfordjournals.org/content/early/2014/08/25/ntr.ntu146.abstract?utm_source=rss&utm_medium=rss&utm_campaign=comparison-of-indoor-air-quality-in-smoke-permitted-and-smoke-free-multiunit-housing-findings-from-the-boston-housing-authority).

<sup>5</sup> See Karen M. Wilson, et al., *Tobacco-Smoke Exposure in Children Who Live in Multiunit Housing*, 127 PEDIATRICS 85 (Jan. 2011).

<sup>6</sup> See JD Spengler, *Building Operations and ETS Exposure*, 107(Supp. 2) ENVIRONMENTAL HEALTH PERSPECTIVES 313 (1999).

<sup>7</sup> MASS. TOBACCO CONTROL PROGRAM, HOW TO GO SMOKE-FREE: A TOOL KIT FOR MULTI-UNIT HOUSING, available at <http://makesmokinghistory.org/smoke-free-environments/smoke-free-housing/how-to-go-smoke-free-a-toolkit-for-multi-unit-housing/>.

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

<sup>12</sup> PROPOSED HUD RULE, *supra* note 1 (citing NATL. CTR. FOR HEALTHY HOUSING., *Reasons to Explore Smoke-Free Housing*, (Early Fall 2009), available at [http://www.nchh.org/portals/0/contents/nchh\\_green\\_factsheet\\_smokefree.pdf](http://www.nchh.org/portals/0/contents/nchh_green_factsheet_smokefree.pdf);

HALL JR, JR., NATL. FIRE PROTECTION ASSOC., FIRE ANALYSIS AND RESEARCH DIV., THE SMOKING-MATERIAL FIRE PROBLEM, (2010).

<sup>14</sup> PROPOSED HUD RULE, *supra* note 1 (citing Brian King et al., *National and State Cost Savings Associated With Prohibiting Smoking in Subsidized and Public Housing in the United States*, PREV. CHRON. DISEASE (October 2014), available at [http://www.cdc.gov/pcd/issues/2014/pdf/14\\_0222.pdf](http://www.cdc.gov/pcd/issues/2014/pdf/14_0222.pdf)).

<sup>15</sup> See U.S. DEP'T OF HOUSING AND URBAN DEV'T, MIXED-INCOME HOUSING AND THE HOME PROGRAM, (2003), available at [portal.hud.gov/hudportal/documents/huddoc?id=19790\\_200315.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=19790_200315.pdf).

<sup>16</sup> See Patrick Kirk, *Making Mixed-Housing Income Work*, Urban Magazine (June 19, 2012).

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

<sup>19</sup> See U.S. DEP'T OF HOUSING AND URBAN DEV'T, MPS SUPPLEMENTING MODEL BUILDING CODES, available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/ramh/mps/mhsmpp](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/ramh/mps/mhsmpp).

<sup>20</sup> U.S. DEP'T OF HOUSING AND URBAN DEV'T, HOPE VI GUIDANCE, MIXED-FINANCED PUBLIC HOUSING DEVELOPMENT (March 2001), available at [https://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_10114.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10114.pdf).

<sup>21</sup> See NY PUB. HEALTH LAW § 1399-O(3).

<sup>22</sup> 2006 U.S. SURGEON GENERAL'S REPORT, *supra* note 2.

<sup>23</sup> Tiffany Kraev, et al., *Indoor Concentrations of Nicotine in Low-Income, Multi-Unit Housing: Associations with Smoking Behaviors and Housing Characteristics*, 18 TOBACCO CONTROL 438 (Dec. 2009).

<sup>24</sup> 2006 U.S. SURGEON GENERAL'S REPORT, *supra* note 2.

<sup>25</sup> ARC-PARC, PERCENTAGE OF HOUSEHOLDS IN PUBLIC HOUSING WITH A RESIDENT WHO HAS A DISABILITY, (2012), available at [http://centerondisability.org/ada\\_parcc/utills/indicators.php?id=79&palette=3](http://centerondisability.org/ada_parcc/utills/indicators.php?id=79&palette=3).

<sup>26</sup> King, BA, et al., *Multiunit housing residents' experiences and attitudes toward smoke-free policies*, 12 NICOTINE & TOBACCO RESEARCH 598 (June 2010), available at <http://www.ncbi.nlm.nih.gov/ucsf.idm.oclc.org/pubmed/?term=Multiunit+housing+residents%E2%80%99+experiences+and+attitudes+toward+smoke-free+policies>.

<sup>27</sup> See CENTERS FOR DISEASE CONTROL AND PREVENTION, *Quitting Smoking Among Adults – United States, 2001-2010*, 60 MORBIDITY AND MORTALITY WEEKLY 1513 (Nov. 11, 2011).

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- <sup>28</sup> See Pizacani et al, *Implementation of a smoke-free policy in subsidized multiunit housing: effects on smoking cessation and secondhand smoke exposure*, 14 NICOTINE & TOBACCO RESEARCH 1027 (2012).
- <sup>29</sup> See *id.*
- <sup>30</sup> See *id.*
- <sup>31</sup> See D. Hennrikus, et al., *Preference and Practices among Renters Regarding Smoking Restrictions in Apartment Buildings*, 12 TOBACCO CONTROL 189 (2003).
- <sup>32</sup> See 2015 SURVEY BY HEALTH RESOURCES IN ACTION, Boston, MA (unpublished).
- <sup>33</sup> See *id.*
- <sup>34</sup> U.S. DEP'T OF HOUSING AND URBAN DEV'T, 2 THE RESIDENT NEWSLETTER, 2 (DECEMBER 2011), available at [http://portal.hud.gov/hudportal/documents/huddoc?id=resident\\_dec2011.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=resident_dec2011.pdf).
- <sup>35</sup> NEW YORK STATE SMOKERS' QUITLINE, <http://nysmokefree.com/>.
- <sup>36</sup> NEW YORK STATE SMOKERS' QUITLINE, ABOUT US, <http://nysmokefree.com/SpecialPages/AboutUs.aspx>.
- <sup>37</sup> Some staff members may smoke; feel that they do not have enough time; or believe there are more important issues to tackle.
- <sup>38</sup> U.S. DEP'T OF HOUSING AND URBAN DEV'T., QUESTIONS AND ANSWERS ON HUD'S SMOKE FREE PUBLIC HOUSING PROPOSED RULE, 3 (2015), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=finalsmokefreeqa.pdf>; see Prochaska et al., *Meta Analysis of Smoking Cessation Interventions with Individuals in Substance Abuse Treatment or Recovery*, 72 J. OF CONSULTING AND CLIN. PSYCH. 1144 (2004) (alcoholics provided tobacco cessation services during addiction treatment was associated with a 25% increased likelihood of long-term abstinence from alcohol and illicit drugs).
- <sup>39</sup> U.S. DEP'T OF HOUSING AND URBAN DEV'T., QUESTIONS AND ANSWERS ON HUD'S SMOKE FREE PUBLIC HOUSING PROPOSED RULE, 3 (2015), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=finalsmokefreeqa.pdf>.
- <sup>40</sup> 42 U.S.C. § 12201(b) ("Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I, in transportation covered by subchapter II or III, or in places of public accommodation covered by subchapter III.").
- <sup>41</sup> Fernández E, et al., *Particulate Matter from Electronic Cigarettes and Conventional Cigarettes: a Systematic Review and Observational Study*, 2 CURRENT ENVIRON. HEALTH REP. 423 (Dec. 2015).
- <sup>42</sup> Schripp T, et al., *Does E-Cigarette Consumption Cause Passive Vaping?*, 23 INDOOR AIR, 25 (2013).
- <sup>43</sup> Kristy Marynak, et al., *State Laws Prohibiting Sales To Minors And Indoor Use Of Electronic Nicotine Delivery Systems—United States, November 2013*, 63 MORBIDITY AND MORTALITY WEEKLY, 1145 (December 12, 2014).
- <sup>44</sup> *Id.*
- <sup>45</sup> See, e.g., Grana, R., et al., *E-Cigarettes: A Scientific Review*, 129 CIRCULATION 11972 (2014).
- <sup>46</sup> PROPOSED HUD RULE, *supra*, note 1.
- <sup>47</sup> NEW YORK CITY DEP'T OF HEALTH, *Undercover Health Department Investigation Found 13 Hookah Bars in Violation of The Smoke-Free Air Act*, Press Release #001-15 ( January 7, 2015), available at <http://www.nyc.gov/html/doh/html/pr2015/pr001-15.shtml>.
- <sup>48</sup> Knishknowy B, Amitai Y., *Water-pipe (Narghile) smoking: an emerging health risk behavior*, 116 PEDIATRICS e113 (2005).
- <sup>49</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, VITAL SIGNS – SECONDHAND SMOKE (February 2015), available at <http://www.cdc.gov/vitalsigns/tobacco/>.
- <sup>50</sup> U.S. DEP'T OF HOUSING AND URBAN DEV'T, MULTI-FAMILY TENANT CHARACTERISTICS SYSTEM (2015), available at [https://hudapps.hud.gov/public/picj2ee/Mtcsrcr?category=r\\_cr\\_familystatus&download=false&count=0](https://hudapps.hud.gov/public/picj2ee/Mtcsrcr?category=r_cr_familystatus&download=false&count=0).