



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Special Attention of:

Multifamily Hub Directors
Multifamily Program Center Directors
Rural Housing Services (RHS) Directors
Supervisory Housing Project Managers
Housing Project Managers
Contract Administrators
Multifamily Owners and Management Agents

NOTICE: H 2010-21

Issued: September 15, 2010

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Cross References:

Subject: Optional Smoke-Free Housing Policy Implementation

I. Purpose

The purpose of this Notice is to encourage owners and management agents (O/As) participating in one of the Multifamily Housing rental assistance programs listed in Section III of this Notice to implement smoke-free housing policies in some or all of the properties they own or manage. This Notice provides instructions to O/As on the requirements for implementing smoke-free housing policies and only applies to O/As who choose to establish such policies.

II. Background

It has been proven that exposure to smoke, whether direct or secondhand, causes adverse health outcomes such as asthma and other respiratory illnesses, cardiovascular disease, and cancer. In 2006, the U.S. Department of Health and Human Services published *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. This document expounds on health effects due to involuntary exposure to tobacco smoke. The report defines secondhand smoke, in the past referred to as environmental tobacco smoke (ETS), as smoke composed of sidestream smoke (the smoke released from the burning end of a cigarette) and exhaled mainstream smoke (the smoke exhaled by the smoker). The report lists several major conclusions, all based on scientific data, including the following: 1) The scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke; and 2) Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of nonsmokers to secondhand smoke.

F. Section 236

G. Rental Assistance Payment (RAP)

H. Section 221(d)(3) Below Market Interest Rate (BMIR)

IV. Update to House Rules/Policies and Procedures

O/As choosing to implement a smoke-free housing policy must update their House Rules and Policies and Procedures, as applicable, to incorporate the smoke-free housing requirements. O/As are encouraged to establish smoke-free policies that pertain specifically to their building and grounds including any common areas, entry ways, openings to the building (e.g. windows), and/or playground areas.

In carrying out any smoke-free housing policy, O/As must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105, including, but not limited to, the Fair Housing Act; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title II of the American Disabilities Act; Section 109 of the Housing and Community Development Act of 1974.

V. Requirements for Implementing Smoke-free Housing Policies

O/As who choose to establish smoke-free housing policies may establish policies that allow smoking in individual units but prohibits smoking in all common areas or policies to create a totally smoke-free property.

A. The O/A's policies must:

1. Be in accordance with state and local laws.
2. Address smoking in a tenant's unit, common areas, playground areas, areas near any exterior window or door, and areas outside a tenant's unit.
3. Designate specific smoking areas and identify these areas with clear signage unless the O/A establishes a totally smoke-free policy.

B. The O/A must not have policies that:

1. Deny occupancy to any individual who smokes or to any individual who does not smoke who is otherwise eligible for admission.
2. Allow the O/A to ask at the time of application or move-in whether the applicant or any members of the applicant's household smoke. However, if the O/A has established a smoke-free building as of a certain date, the O/A must inform applicants after that date that the building is a totally smoke-free building. The O/A must not maintain smoking or nonsmoking specific waiting lists for the property.

VII. Penalties for Violating the House Rules

Repeated violations of the non-smoking policy may be considered material noncompliance with lease requirements and may result in termination of tenancy. When pursuing eviction due to material noncompliance with lease requirements, existing HUD procedures found in HUD Handbook 4350.3, REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, Chapter 8 must be followed.

VIII. Further Information

If you have any questions regarding the requirements in this Notice as they pertain to the Office of Housing's programs, please contact your local HUD Field Office.

/s/

David H. Stevens
Assistant Secretary for Housing -
Federal Housing Commissioner

3. Allow the O/A to ask at the time of recertification, whether the tenant or any members of the tenant's household smoke.
4. Require existing tenants, as of the date of the implementation of the smoke-free housing policies, to move out of the property or to transfer from their unit to another unit.

C. Grandfathering

O/As are not required to grandfather current tenants living at their property, however, they do have the option to do so. Such policies must be clearly defined (e.g. whether current tenants are allowed to smoke in their units).

D. Non-smoking wings, buildings, floors, or units

O/As are not restricted from establishing smoke-free wings, buildings, floors, and/or units at their property. When a unit becomes available, regardless of where this unit is located, it must be offered to the first eligible household on the waiting list. Waiting lists must be maintained according to existing procedures found in HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, Chapter 4 and the removal of names from the waiting list according to HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, paragraph 4-20.

O/As who have already established smoke-free policies may continue to enforce their current policies so long as the policies do not violate state or local laws or any of the above guidance.

VI. Implementation

O/As must implement any new smoking-related House Rules in accordance with HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, paragraphs 6-9 and 6-12.

- A. **New admissions.** O/As are required by existing HUD policies to provide the House Rules to all new tenants.
- B. **Existing tenants.** O/As must notify existing tenants, who have completed their initial lease term, of the modifications to the House Rules 30 days prior to implementation. Notification is accomplished by forwarding a copy of the revised House Rules to existing tenants. For those tenants who have not yet completed their initial lease term, the owner must provide the tenant with 60 days notice, prior to the end of their lease term, of the change in the House Rules.

Below are relevant statistics and conclusions from *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*.

- According to a 2005 estimate by the California Environmental Protection Agency, Office of Environmental Health Hazard Assessment, approximately 50,000 excess deaths result annually in the United States from exposure to secondhand smoke.
- Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome, acute respiratory infections, ear problems, and more severe asthma.
- Secondhand smoke has been designated as a known human carcinogen (cancer-causing agent) by the U.S. Environmental Protection Agency, National Toxicology Program and the International Agency for Research on Cancer.
- Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer.
- Nonsmokers who are exposed to secondhand smoke at home or at work increase their risk of developing heart disease by 25-30 percent.
- Nonsmokers who are exposed to secondhand smoke at home or at work increase their risk of developing lung cancer by 20-30 percent.
- The National Toxicology Program estimates that at least 250 chemicals in secondhand smoke are known to be toxic or carcinogenic (cancer causing).

In addition to the negative health effects of secondhand smoke, smoking is a proven hazard to physical structures. The United States Fire Administration (USFA) indicates smoking as the number one cause of home fire deaths in the United States. Furthermore, about 1,000 people are killed every year in their homes by fires caused by cigarettes and other smoking materials. The USFA states 25 percent of people killed in smoking-related fires are not the actual smokers; of this percentage, 34 percent of the victims were children of the smokers, and 25 percent were neighbors or friends of the smokers.

III. Applicability

This Notice applies to:

- A. Project-based Section 8
 - 1. New Construction
 - 2. State Agency Financed
 - 3. Substantial Rehabilitation
 - 4. Section 202/8
 - 5. Rural Housing Services Section 515/8
 - 6. Loan Management Set-Aside (LMSA)
 - 7. Property Disposition Set-Aside (PDSA)
- B. Rent Supplement
- C. Section 202/162 Project Assistance Contract (PAC)
- D. Section 202 Project Rental Assistance Contract (PRAC)
- E. Section 811 PRAC