

## **HUD's Smoke-Free Final Rule**

### *Commonly Asked Questions*

#### **What must be incorporated into the lease addendum?**

The lease addendum must incorporate the requirement that residents in public housing, members of a resident's household, resident's guests, or other persons under the resident's control must not engage in any smoking of prohibited tobacco products in restricted areas, or in other outdoor areas that the PHA has designated as smoke free. The lease addendum may, but is not required to, include the actions that constitute a policy violation and the enforcement process. The PHA has the discretion to include this information or not.

#### **Where must my policy prohibit smoking?**

PHAs may determine the entire grounds of the public housing property to be smoke free, allow smoking anywhere that is 25-feet from public housing units or administrative buildings (restricted areas), or create designated smoking areas for residents.

#### **Does the policy have to create a designated smoking area for residents?**

PHAs are not required to create designated smoking areas for residents. If a PHA opts to create a designated smoking area, they must be outside of restricted areas, and may include partially enclosed structures. Check local laws that may restrict the design and location of such structures. Designated smoking areas must be accessible for persons with disabilities. This may include a flat or paved pathway, ramp, and adequate lighting. PHAs that opt to provide designated smoking areas should include funding for the designated smoking area in future capital needs planning.

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## How should the PHA enforce the smoke-free policy?

HUD recommends a graduated enforcement framework that allows PHAs to provide residents in violation of the smoke-free rule with escalating warnings that are documented in the resident file. PHAs are not allowed to evict residents for a single incidence of smoking in violation of their smoke-free policy. PHAs can work with their Resident Councils and social services to quantify the number of documented, verified violations that warrant enforcement action.

## What does graduated enforcement look like?

Graduated enforcement may include the provision of information and resources on smoking cessation to the resident, verbal warnings, written warnings, referral to social services or other support agencies, and eventually lease termination. PHAs should document each violation of noncompliance in the resident's file. PHAs may offer repeat violators other assistance under the PHA's control, such as a Housing Choice voucher, and allow the resident to move to another property that does not currently have a smoke-free policy.

## How does the PHA monitor and enforce the smoke-free rule?

It is up to the PHA to determine how and when a resident is in violation of the smoke-free policy. Typically this will be done through inspections and evidence of smoking (smoke coming from a unit, ashtrays with used cigarettes in the unit, neighbor complaints of resident smoking, etc.). HUD recommends intensified compliance monitoring for residents that receive complaints about smoking or are found to have smoked in their unit. This includes increased inspection frequency upon issuance of a written warning from the property manager and/or a documented complaint. 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.

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## Is the PHA allowed to evict a resident for violating the smoke-free rule?

PHAs may terminate the lease of a resident that is in violation of the smoke-free policy and thus the lease agreement after unsuccessfully pursuing resident compliance with a policy over a reasonable period of time. PHAs are not allowed to terminate the tenancy at the first violation of the smoke-free policy. Like other lease violations, eviction is subject to grievance procedures. PHAs may offer repeat violators other assistance under the PHA's control, such as a Housing Choice voucher, and allow the resident to move to another property that does not currently have a smoke-free policy.

## What if my property does not have 25 feet from the units and administrative buildings to the property edge?

HUD's smoke-free final rule requires that PHA's prohibit smoking within at least 25 feet of all public housing units and administrative office buildings. If a PHA property has less than 25 feet of property from public housing units and administrative buildings to the edge of their property (including publically owned sidewalks), the PHA should make the entire grounds smoke free. A PHA is not required to and legally cannot prohibit smoking in areas outside of their property. HUD will provide waivers to PHAs regarding the 25 foot rule, however, a PHA is required good cause to get approval for the waiver. HUD encourages PHAs to work with neighboring property owners and local municipalities to identify public areas where residents may smoke safely if the property does not have sufficient space to allow smoking on the premises.

For additional smoke-free housing support, resources, and tools visit Clean Air for All at [www.smokefreepublichousingproject.org](http://www.smokefreepublichousingproject.org) or contact us at [info@smokefreepublichousingproject.org](mailto:info@smokefreepublichousingproject.org) or 651-646-3005 ext. 301.