

NATIONAL  
HEALTH CARE  
*for the*  
HOMELESS  
COUNCIL

Tuesday, January 19, 2016

Regulations Division  
Office of General Counsel  
451 7<sup>th</sup> Street SW, Room 10276  
Department of Housing and Urban Development  
Washington, DC 20410-0500

RE: Proposed Rule 2577-AC97: Instituting Smoke-Free Public Housing

Dear Secretary Castro:

Thank you for the opportunity to comment on HUD's proposed rule to prohibit smoking in all public housing units. The National Health Care for the Homeless Council (NHCHC) is a membership organization representing federally qualified health centers (FQHCs) and other organizations providing health services to homeless populations. In 2014, there were 268 Health Care for the Homeless (HCH) health center grantees serving over 850,000 patients in 2,000+ locations across the United States.

As providers who treat people who have numerous complex health problems, including high rates of asthma, cancer and cardio-vascular disease, **we strongly support the national push to reduce the harmful effects of tobacco smoke.** We understand the negative impact that second-hand smoke has on the health of others, particularly children, the elderly, and those with chronic medical conditions. We also understand that tobacco is a particularly difficult addiction to overcome, and we work with our patients to provide smoking cessation services. However, as health care providers who understand the relationship between homelessness and health, **we are extremely concerned that this rule will create additional homelessness.** In these comments, we seek to balance these two very strong viewpoints.

## Summary of Comments

We recommend that HUD:

1. Prohibit evictions or fines as a result of this policy.
2. Require extensive resident notification and discussion.
3. Require PHAs to ensure access to smoking cessation services.
4. Require PHAs to provide a covered, protected outdoor area for smoking.
5. Extend similar smoking bans to other types of publicly funded housing.

## Discussion

### 1. Prohibit evictions or fines as a result of this policy.

Our primary concern about this policy is the fate of those who are unable to quit smoking and are evicted for this lease violation. **Evictions create homelessness.** If evictions are allowed, this policy will directly conflict with the Administration's goal to end homelessness, HUD's embrace of the Housing First philosophy, and the widely held principles of harm reduction. Evictions also create great stress in the lives of low-income people and may even increase smoking and contribute to stress-related disorders such as high blood pressure, anxiety, depression and other issues.

*Feedback from a consumer evicted over smoking: "I spent four months not knowing where I was going to live. I was literally sick over it. It happened in January and it was really cold in Boston. I was throwing up all the time, I couldn't sleep, I was going crazy and crying all the time. I was seeing a psychiatrist and needed to go a lot more."*

For the very low-income people who reside in public housing, fines are likewise counterproductive. Economic sanctions only shift extremely limited resources away from food, childcare, transportation and other basic daily needs. Failure to pay fines may itself be cause for eviction. Viewing the high cost of cigarettes as a financial offset in this regard does not acknowledge the realities of addiction and chemical dependency. Smoking cessation is much more likely to occur through clinical intervention than from the threat of fines or eviction.

### 2. Require extensive resident notification and discussion.

The proposed rule says "HUD would recommend that all PHAs conduct meetings with residents to fully explain the smoke-free building requirements and to best determine which outside areas, if any, to designate as smoking areas and to accommodate the needs of all residents." We strongly believe that PHAs should be required to conduct multiple meetings with residents, and to be required to post signs throughout the building to notify residents of the upcoming changes. PHAs should be required to **involve residents in decisions that impact their lives**, to include where designated smoking areas (recommended below) should be located. Signage and resident meetings can also assist with communicating the availability of smoking cessation services, discussed below.

We agree that leases should "incorporate the prohibition on indoor smoking," but only if they also incorporate notice of the availability of designated outdoor smoking areas and of smoking cessation services, both discussed below. Leases should specifically state that smoking will not be cause for eviction or fines, as discussed above. Because leases are complex legal documents, the details of which may not be noticed in the process of signing, the policy regarding smoking should be provided to the tenant in a separate, clearly written document that is verbally reviewed and acknowledged in writing at the time the lease is signed.

### 3. Require PHAs to ensure access to smoking cessation services.

The proposed rule says that "PHAs are encouraged to work with their State HUD office, state and local tobacco prevention and cessation programs, state and community health organizations, and the Environmental Protection Agency's community-based asthma program network." We know from the literature and from our direct experience that **many low income people who smoke want to quit, but lack the support and/or services to do so.**<sup>1, 2</sup> Health centers can be strong partners for PHAs in this endeavor, as many provide smoking cessation support, counseling and services. HUD's final rule should require PHAs to connect residents with smoking cessation services. Ideally this could occur onsite at public housing in order to minimize barriers for residents, but it could also mean *actively* connecting residents to nearby health centers or other community providers who offer smoking cessation services. Note that this does not mean simply handing the client a list of area providers, but meaningfully assisting the resident in accessing services.

*Consumer feedback: “They need to put something in place that helps the person and gives them extra time—not like a week, but a decent amount of time so they can find another place or quit smoking.”*

*Consumer feedback: “When you are homeless, there is so much crazy going on—it would have been too much for me to have to give up smoking in order to get housed. I would still be on the street if I had to quit in order to qualify for housing.”*

One option HUD might consider is to set goals for the number of people living in public housing who are non-smokers, and gradually increase that target over time. This could directly link to the provision of smoking cessation services, and also allow an individual PHA to evaluate the success of this endeavor.

#### **4. Require PHAs to provide a covered, protected outdoor area for smoking.**

The proposed rule indicates that PHAs have the discretion to establish outdoor designated smoking locations beyond the required 25-foot perimeter, which “may” include partially enclosed structures, or alternatively to make their entire grounds smoke-free. We believe HUD should require PHAs to provide a designated, covered, and protected area for smoking outside. **A protected outdoor smoking area will reduce the likelihood of illicit indoor smoking**, while at least partially protecting smokers from harm caused by the outdoor elements, and protecting others from second-hand smoke.

Where feasible, accommodations should be made for those who smoke by designating a certain percentage of units that allow smoking (segregated from non-smoking units or with a separate ventilation system). This would mirror how hotels and other public accommodations make provisions for those who smoke rather than ban it.

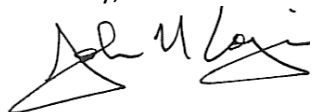
#### **5. Extend similar smoking bans to other types of publicly funded housing.**

The proposed rule applies only to very low-income people who have few, if any, alternative housing options other than public housing. **The proposed rule discriminates on the basis of income.** It specifically does not apply to mixed finance projects, which are subject to the same public health and cost concerns that HUD asserts as the rationale for its proposal. Higher income households, such as those in congregate settings subsidized through the mortgage interest deduction (nearly \$80 billion in FY16), are also not subject to the rule, yet still benefit directly from public tax dollars to subsidize the cost of housing. Meanwhile, the proposed rule threatens eviction and homelessness for extremely poor people who engage in a legal activity. This is patently unfair.

Thank you for the opportunity to comment on these proposed rules. You are in receipt of comments from our colleagues at the National Association of Community Health Centers (NACHC) and the National Housing Law Project/Housing Justice Network. **While some aspects of our comments differ, we are all strongly opposed to evictions due to smoking violations.**

Please contact us if you should wish to discuss any aspect of these comments further. I can be reached at [jlozier@nhchc.org](mailto:jlozier@nhchc.org) or at 615-226-2262.

Sincerely,



John N. Lozier, MSSW  
Executive Director

Notes:

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- <sup>1</sup> Baggett, T., Lebrun-Harris, L., Rigotti, N. (November 2013.) Homelessness, cigarette smoking, and desire to quit: results from a U.S. national study. *Addiction* 108 (11): 2009-2018. Available at: <http://onlinelibrary.wiley.com/doi/10.1111/add.12292/abstract>.
- <sup>2</sup> Shu, S., et al. (May 2000.) Smoking cessation with and without assistance: a population-based analysis. *American Journal of Preventive Medicine* 18 (4): 305-311. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/10788733>.