



New England

U.S. Department of Housing and Urban Development

Office of Public Housing
Boston Hub
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street
Boston, Massachusetts 02222-1092

Mr. Joseph Hart
Executive Director
Groveland Housing Authority
11 River Pines Road
Groveland, MA 01834

MAY 25 2018

Dear Mr. Hart:

This follows up the Groveland Housing Authority (GHA) Board of Commissioners meeting that staff from this office and the Department of Housing and Community Development (DHCD) attended on March 22, 2018. The purpose of our attendance at the board meeting was to discuss the Corrective Action Plan (CAP) with the GHA as well as the responsiveness to requests for information made by this office.

As mentioned at the meeting the termination date of the CAP is scheduled for June 30, 2018. The monthly reports submitted since the date of the board meeting have allowed our office to close one item in the CAP. There are 7 items that remain open and are in need of immediate attention. Attached is the latest update which reflects the open items. We look forward to seeing your May and June monthly reports by May 31 and June 30, 2018 respectively.

We would also like to remind the GHA of its failure to respond to the enclosed letter dated February 22, 2018. A response was requested no later than March 4, 2018. Repeated reminders have been made regarding this matter.

Additionally, we would like to note that the GHA is currently nine (9) months into the twenty-four (24) month obligation window for their 2017 Capital Fund Grant and has not yet submitted a completed Environmental Review to this office. On Friday May 18th the GHA did forward a copy of an Environmental Review Record, however, it has not yet gone through the required Public Notice process at this time. The GHA cannot undertake any Choice Limiting Action (i.e. obligation or expenditure of these funds) until the Environmental Review process is complete and must obligate 90% of these funds by the end of the 24 month window. The Actual Modernization Cost Certificates and final budgets for the 2014, 2015 and 2016 Capital Funds Grants must also be sent to Ryan Cusick in our office as soon as practical.

If there are questions or technical assistance regarding the above matters you may contact Ellen Bradley at Ellen.m.bradley@hud.gov and (617) 994-8416 or Ryan Cusick at ryan.c.cusick@hud.gov and (617) 994-8421.

Very sincerely yours,

Robert P. Cwieka
Deputy Director

Enc.

cc: Board of Commissioners

ACTION PLAN
GROVELAND HOUSING AUTHORITY AND THE U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
JANUARY 2018

Item #	Results and Determinations from Assessment	Desired Outcome	Target Accomplish Date	Actual Accomplish Date	Remedies	Comments / Accomplishments
AREA: Physical Condition						
#1	The Groveland Housing Authority is to create a plan which will ensure significant improvement in REAC inspection scores moving forward	GHHA shall provide the Boston Field Office with evidence (completed work order or work order log) that all deficiencies noted in the 5/27/16 inspection have been corrected. For any deficiencies not yet corrected, provide a narrative of why not and when it will be corrected.	6/30/2017	2/22/2017	6/30/17: All maintenance items have been addressed that can be corrected by staff. An architect is doing design work for gutters and downspouts. Grounds issues are being addressed with additional staff from HHA. Please see work orders in Exhibit 1. 7/31/17: Gutter and downspout work is in a design phase. The work is not an emergency so it will go through the regular procurement process. Site work items were overgrown/penetrating vegetation, garbage and debris and graffiti. Overgrown vegetation has been cut back, garbage and debris have been disposed of and the graffiti location remains a mystery as previously stated. Site items are routine maintenance that do not require excessive documentation. 8/31/17: We will investigate this item further. 9/30/17: Architect said they he needed to revise scope from selective repair to place for gutter project. Graffiti has been located at back of maintenance shed and we will plan to remove it. Graffiti has been located and will be removed by the time of our next filing. 10/31/17: There is no progress to report for this item at this time. 11/30/17: There is no progress to report on this item at this time. 12/31/17: The board approved the architect's recommendation 6/30/17: We are waiting on design work to be finished for the gutter improvement project. Once the estimated cost is known, we can begin planning for other projects. 7/31/17: We are still waiting on design for gutters and downspouts. Paving is also an issue which needs quantification. 8/31/17: This item is still in process. A plan has been submitted in EPIC. 9/30/17: This item	April 2018 (HUD): This item remains open. The GHHA must provide evidence to this office that the gutter/downspout work is under contract. In addition, as has been requested in the past the GHHA must provide a narrative to the Field Office as an attachment to the CAP that describes all actions taken in response to the site work items raised in the REAC inspection that are not represented by work orders.
#2		GHHA shall undertake a Capital Planning review which results in the creation of a 5 Year Capital Action Plan (HUD-50075.2) to address current physical needs of the property.	With 2017 CFP Funding (estimated date: 6/30/2017)	Summer 2017		January 2018 (HUD): This item is considered closed by the HUD Office. Item #4 will continue to track the requirement for procurement of a PNA.

Item #	Results and Determinations from Assessment	Desired Outcome	Target Accomplish Date	Actual Accomplish Date	Remedies	Comments / Accomplishments
#3		GHA shall investigate the use of an outside party (independent contractor, other PHA staff, etc.) to perform unit inspections in lieu of the regular maintenance staff to ensure all units receive a thorough and unbiased inspection	12/31/2017	4/1/2017	6/30/17: GHA is using an independent contractor for inspections. The Inspector will stagger inspections each spring, before REAC inspection. He will reinspect any units that fail their annual inspection. 7/31/17: Reports are attached as Exhibit 10.	All River Pines units have been inspected by the independent contractor in 2017. July 2017 (HUD): This item will remain open until this office receives copies of the reports that were generated by the independent contract after the inspections were completed. August 2017 (HUD): This item is considered closed by the HUD Office.
#4		GHA shall undertake or procure a full Physical Needs Assessment. Utilizing that assessment, GHA shall create a long term maintenance plan that will ensure the physical condition of the property into the future.	9/30/2017	Fall 2017	6/30/17: We are planning on soliciting bids from OnSite InSite and EBI Consulting of Burlington to conduct a long range capital need assessment. 7/31/17: This item is still outstanding. 8/31/17: This item is still outstanding. 9/30/17: We intend to put the capital needs assessment out to bid during the month of October. 10/31/17: There is no progress to report for this item at this time. 11/30/17: There is no progress to report on this item at this time. 12/31/17: There is no progress to report on this item at this time. 1/31/18: There is no progress to report on this item at this time. 2/28/18: There is no progress to report on this item at this time. 3/31/18: on March 22nd, Robert Cwieka attended the GHA Board Meeting and recommended that Ryan Cusick be consulted for help with putting together a scope of services for this item.	May 2018 (HUD): This item remains open.

Item #	Results and Determinations from Assessment	Desired Outcome	Target Accomplish Date	Actual Accomplish Date	Remedies	Comments / Accomplishments
#5		Currently, the GHA performs unit inspections all at one time, usually during November. It is recommended that that GHA change the timing of the inspections to better align with the expected timing of REAC inspections in efforts to maximize the score achieved.	12/30/2017	4/1/2017	6/30/17: GHA is using an independent contractor for inspections. The Inspector will stagger inspections each spring, before REAC inspection. He will reinspect any units that fail their annual inspection. 7/31/17: Please refer to Question 3.	All River Pines units have been inspected by the independent contractor in 2017. July 2017 (HUD): This item will remain open until this office receives copies of the reports that were generated by the independent contractor after the inspections were completed. August 2017 (HUD): This item is considered closed by the HUD Office.
#6		The composition of GHA's buildings and units require revisions in PIC. When provided with the list documenting the necessary changes the GHA must work with staff in this office to ensure that both dwelling and nondwelling buildings are properly identified in PIC.	6/30/2017	5/31/2017	6/30/17: Corrected all unit entrances and building numbers in PIC. Updated units accordingly in our PHA software, so both systems are in alignment.	All changes were accepted by PIC. July 2017 (HUD): This item is considered closed by the HUD Office.
AREA: Management						
#7	The Groveland Housing Authority is to implement a plan to improve its PHAS Management score and ensure long-term sustainability at an acceptable level of performance.	The GHA must submit a copy of an executed Management Agreement between the HHA and the GHA. Such agreement must define responsibilities associated with the federal program, the compensation provided for management of the federal property as well as a workplan that includes the federal property. It is requested that the agreement provide for a formal evaluation of the management agent's performance by the board.	6/30/2017	6/30/2016	6/30/17: Please see Exhibit 2 for the current management agreement. Aggregate costs are prorated at 95% for the federal program. Presently, there is no provision for evaluation but this could be added to the next contract. Also, dates may be adjusted to coincide with the fiscal year. The contract uses the DHCD template. DHCD never returned an approved copy of the contract. 7/31/17: A new agreement will be presented at the 9/21/17 board meeting. 8/31/17: A new agreement has been drafted and will be presented at the 9/21/17 board meeting. 9/30/17: The boards have signed off on the agreement. The language of the work plan covers the responsibility for the federal	May 2018 (HUD): This item will remain open until this office sees a proposed Management Agreement that addresses all items specified in the desired outcome. Although the Management Agreement has been submitted it appears that the Agreement and Workplan have not been approved by DHCD. Please follow up with DHCD and advise this office of results and next steps.

Item #	Results and Determinations from Assessment	Desired Outcome	Target Accomplish Date	Actual Accomplish Date	Remedies	Comments / Accomplishments
#8		The GHA should submit a Personnel Policy adopted by the Board of Commissioners. The Policy should provide for annual performance evaluations for staff. It is requested that the submission also be accompanied by position descriptions for all staff that have assigned responsibilities for management of the federal program. Notation in the CAP should indicate that all materials have been shared with applicable staff.	7/31/2017	6/30/2017	6/30/17: Personnel policy is submitted as Exhibit 3. Section 6B contains language about performance evaluations. Job descriptions are attached as Exhibit 4. 7/31/17: This item will be resolved after the 9/21/17 board meeting at which an addition to the personnel policy will be considered. The addition is submitted as Exhibit 11. 8/31/2017: This item will be resolved after the 9/21/17 board meeting at which an addition to the personnel policy will be considered. 9/30/17: The board adopted a progressive discipline policy	May 2018 (HUD): This item remains open. Please advise as to delay with completion of steps associated with this item. The GHA should advise as to status of amended Personnel Policy, its distribution to staff and the timeline for completing performance evaluations for 2017/2018.
#9		The GHA must develop a series of performance reports regarding the federal program that are shared with board members at each monthly board meeting. It is recommended that such reports possibly include year to date financial statements with comparisons of budgeted and actual revenue and expenses.	6/30/2017	Fall 2017	6/30/17: This issue will be discussed with the fee accountant. Board members are provided with financial statements by the fee accountant now but it is not customary to compare budgeted versus actual spending monthly. 7/31/17: Board members are provided with expenditure reports, receivables reports, work order reports and vacancy reports at every meeting. Any budget variances would be due to unforeseen circumstances. 8/31/17: We will contact the fee accountant about budget vs. actuals reporting. We believe this is contained in a quarterly report from the accountant. 8/30/17: We will obtain a list of deliverables from the fee accountant and try to develop a summary report to make available to board members. 10/31/17: There is no progress to report for this item at this time. 11/30/17: There is no progress to report on this item at this time. 12/31/17: The board was provided with a year 6/30/17 12-month statement at the 10/19/17 meeting. This is attached as Exhibit 21. Going forward, we will have our accountant provide the board with monthly statements. 1/31/18: Vacancy, AP, AR and work order reports have always been provided to the board.	February 2018 (HUD): This item is closed based upon the GHA's statement that it will provide monthly financial reports to the board along with reports on vacancies and work orders.

Item #	Results and Determinations from Assessment	Desired Outcome	Target Accomplish Date	Actual Accomplish Date	Remedies	Comments / Accomplishments
#10		The GHA should submit a summary of training completed by GHA staff and board members. Summary should include the names of those that have completed HUD's "Leading the Way" as well as any training required by the Department of Housing and Community Development.	8/31/2017	6/30/2017	6/30/17: Maggie Cleary has completed HUD's Lead the Way training. Commissioner Osborne has begun the Lead the Way training. The DHCD training has not happened due to difficulties with DHCD's software. 7/31/17: We will revisit this issue with the board at the next meeting on 9/21/17. 8/31/17: We will revisit this issue with the board at the next meeting on 9/21/17. They have been made aware that they must complete the training. 9/30/17: Two board members were not in attendance at this meeting so this item	February 2018 (HUD): This item was projected for completion August 31, 2017. The item will remain open until the GHA submits the list of GHA board members that have completed the required DHCD training as well as a list of the GHA employees and board members that have completed the Leading the Way training.
#11		The GHA must submit its PHA Plan certifications with evidence of advertisement and public hearing with information about its Resident Advisory Board. The certification was due to HUD 75 days prior to the beginning of the fiscal year. Submission is to be preceded by a public hearing. It is recommended that the public process for the GHA 2017 Capital Fund Program (CFP) budget be accomplished with the same hearing.	6/30/2017	Summer 2017	6/30/17: In process. A plan hearing is scheduled for 8/2/2017. This was advertised in the local newspaper as well as GHA Community billboard. Notifications were sent to residents. Copy of the notice is attached as Exhibit 5. 7/31/17: This item should be resolved by the next CAP filing. 8/31/17: Please see PHA Annual Plan and other documents attached as Exhibits 12 through 15. Public hearing was held on 8/2/17. 9/30/17: GHA is not clear on what needs to be submitted for documentation and requests advice. 6/30/17: The next meeting of the board is September 21, 2017. In the interim, we will review the plan and work on updates. 7/31/17: The status of this item remains unchanged. 8/31/17: New policies and updates to the ACOP will be presented at 9/21/17 board meeting. 9/30/17: The board adopted the Reasonable	January 2018 (HUD): This item is closed. With next Plan submission the GHA is expected to submit additional information about RAB outreach and resident consultation.
#12		The GHA must revise its Admissions and Continued Occupancy Policy for the federal public housing program to ensure that it reflects proper and current regulations and discretionary policies of the GHA.	8/31/2017	Fall 2017	6/30/17: Most residents are exempt due to age or disability. We are aware that some documentation may be needed for resident files. We will review our resident list. 7/31/17: We have reviewed the resident list and should have the required paperwork completed by the time of the next CAP filing. 8/31/17: Exempt individuals are properly reflected in PIC. Community Service Policy will be presented at the 9/21/17 board meeting for approval. 9/30/17: The board adopted the Community	February 2018 (HUD): The HUD office has requested a copy of the revised ACOP and board vote. This item will remain open until such time as that is submitted.
#13		The GHA must submit a Community Service Policy and board vote approving such to the HUD Office. The GHA must ensure that it is obtaining proper certifications and documentation to support residents that may be exempt from CSSR requirements. All exempt individuals must also be reflected appropriately in PIC.	7/31/2017	Fall 2017	6/30/17: Most residents are exempt due to age or disability. We are aware that some documentation may be needed for resident files. We will review our resident list. 7/31/17: We have reviewed the resident list and should have the required paperwork completed by the time of the next CAP filing. 8/31/17: Exempt individuals are properly reflected in PIC. Community Service Policy will be presented at the 9/21/17 board meeting for approval. 9/30/17: The board adopted the Community	January 2018 (HUD): This item is closed. This office will provide some comments and suggested revisions under separate cover.

Item #	Results and Determinations from Assessment	Desired Outcome	Target Accomplish Date	Actual Accomplish Date	Remedies	Comments / Accomplishments
#14		Correct the GHA website and PIC to reflect the current staff and board of commissioner members at your agency. Please also ensure that all meetings minutes are posted as they occur and continue to provide additional information about the agency to the general public.	5/31/2017	5/12/2017	6/30/17: Updated the GHA website. All board members listed are now correct, as well as office hours and board meeting schedule.	Will continue to make updates to the website as necessary. <i>July 2017 (HUD): This item is considered closed. We expect continued updates to the data made available for public consumption.</i>
#15		It is recommended that GHA implement a written internal control procedure that defines the separation of duties and assists in safeguarding your agency against fraud. The fee accountant may have samples that could be appropriate for the agency. Please submit the policy and board vote to this office.	8/31/2017		6/30/17: We are still working on this item. It is difficult because there is only one part-time administrative employee. 7/31/17: The fee accountant made some recommendations and a policy is in development. 8/31/17: Internal Control Procedure will be presented for approval at the 9/21/17 board meeting. 9/30/17: This policy is still in development. It should be attached as Exhibit 6. 6/30/17: Flat rent schedule updated and voted on by board 5/17/2017. It is attached as Exhibit 6.	May 2018 (HUD): This item remains open. HUD staff have provided sample written internal control policies for your review and consideration
#16		Provide the flat rent schedule and board vote for such to the HUD office.	6/30/2017	6/30/2017	6/30/17: Flat rent schedule updated and voted on by board 5/17/2017. It is attached as Exhibit 6.	<i>July 2017 (HUD): This item is considered closed.</i>
#17		Provide copies of the General Depository Agreement for your agency that stipulates where federal funds are deposited.	5/31/2017	12/22/2016	6/30/17: This 51989 was submitted by Executive Director to Kara Norman on 12/22/16. It is attached as Exhibit 7.	<i>July 2017 (HUD): This item is considered closed.</i>

Item #	Results and Determinations from Assessment	Desired Outcome	Target Accomplish Date	Actual Accomplish Date	Remedies	Comments / Accomplishments
#18		Submit the Reasonable Accommodation Policy and the Grievance Policy with board votes approving such to the HUD office.	7/31/2017	6/30/2017	6/30/17: The reasonable accommodation policy will be voted at the next board meeting. It is attached as Exhibit 8. The grievance policy is attached as Exhibit 9. It was voted by the board on 9/10/08. I am not certain as to the whereabouts of the board votes from that meeting. 7/31/17: Item to be taken up at 9/21/17 board meeting. 8/31/17: This item will be presented to the board for approval at the 8/21/17 meeting. 9/30/17: Certified minutes of the board vote are attached as Exhibit 18. 10/31/17: There is no progress to report for this item at this time. 11/30/17: There is no progress to report on this item at this time. We believe we are waiting for HUD to update their comments as these items were submitted with the September 30th filing. 12/31/17: The board vote is attached as Exhibit 18.	January 2018 (HUD): This item is closed.

Item #	Results and Determinations from Assessment	Desired Outcome	Target Accomplish Date	Actual Accomplish Date	Remedies	Comments / Accomplishments
#19		The GH A should provide its residents with information about the ability to form a resident council. They may contact other PHAs for contact information about active resident organizations and the GH A can contact the HUD Office for regulations and pertinent notices to assist in this regard.	9/30/2017	Fall 2017	6/30/17: The GH A will prepare materials to make the residents aware of this opportunity once the vacation season is over. 7/31/17: This item is still outstanding. 8/31/17: The residents have formed their own informal resident council and have been having regular meetings. 9/30/17: We will provide residents with this information before our next CAP filing. 10/31/17: There	February 2018 (HUD): This item remains open since the GH A has provide no information about information and discussions with residents in this regard.



New England

U.S. Department of Housing and Urban Development

Office of Public Housing
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Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street
Boston, Massachusetts 02222-1092

Mr. Joseph Hart
Executive Director
Groveland Housing Authority
10 River Pines Road
Groveland, MA 01834

FEB 22 2018

Dear Mr. Hart:

This office is aware that the Groveland Housing Authority (GHA) implemented policies designating the River Pines federal public housing development a smoke free environment in April of 2014. In doing so, the GHA mandated that residents execute a smoke free housing addendum in order to ensure that all residents at that time and those that would move into the development after that date would be aware of such policy.

This office has been informed and your office has also been advised that there are residents that are in violation of that policy. The lease addendum (attached for your information) specifies that smoking is not permitted in the units, in common areas, in hallways or anywhere on the grounds

The contact made to this office indicates that the resident who has made contact is allergic to smoke and there may be residents who have disconnected smoke detectors in their units. This complainant also alleges that they have attempted to seal areas where smoke may be entering their unit.

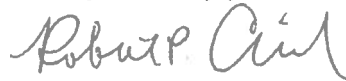
We have been provided with a copy of a flyer dated January 28, 2018 from the GHA that reminded residents of non-smoking policies and that enforcement actions will be taken in instances of noncompliance. The intention of the policy is to create a healthy environment for all residents and to comply with regulatory requirements. These health and safety concerns that have been reported and this correspondence is an official request for your review of the matters reported. We ask that you respond in writing to this letter within 10 days advising that you have contacted the resident that has reported the violations and the actions being taken to address the alleged violations.

We are also attaching a copy of Public and Indian Housing Notice PIH 2017-03 which provides guidance on Instituting and Enforcing Smoke-Free Public Housing Policies for your review and information.

Further, the GHA flyer of January 28, 2018 reminded residents of your existing Common Area Use policy that prohibits storage of materials in the hallways. The flyer also informs that steps were being taken to enforce non-compliance. We remind the GHA again that consistent application of all policies is essential to obtain the desired result.

We ask that the GHA respond in writing within 10 days of the date of this letter regarding the issues mentioned above. If you have any questions regarding this matter, please feel free to contact Ellen Bradley at (617)994-8416.

Very sincerely yours,

A handwritten signature in dark ink, appearing to read "Robert P. Cwieka". The signature is fluid and cursive, with the first name "Robert" and last name "Cwieka" clearly distinguishable.

Robert P. Cwieka
Deputy Director

Enc.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

SPECIAL ATTENTION OF:

Notice PIH-2017-03

Regional Directors; State and Area
Coordinators; Public Housing Hub Directors;
Program Center Coordinators; Troubled
Agency Recovery Center Directors; Special
Applications Center Director; Administrators;
Resident Management Corporations; Public
Housing Agencies; Healthy Homes
Representatives

Issued: February 15, 2017

This Notice remains in effect until
amended, superseded or rescinded

Cross Reference:

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

A. Purpose

This Notice provides guidance for “Instituting Smoke-Free Public Housing” (FR-5597-F-03) (the “Smoke-Free Rule” or “Rule”). 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. Once effective, PHAs will have 18 months to implement their smoke-free policies. 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 tobacco products** are defined as items that involve the ignition and burning of tobacco leaves, such as: cigarettes, cigars, pipes and water pipes¹ (also known as hookahs)
- **Interior common areas** include but are not limited to: hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures

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

¹ Water pipes (hookahs) are smoking devices that use coal or charcoal to heat tobacco, and then draw the smoke through water and a hose to the user. Both the heating source and burning of tobacco are sources of contaminant emissions.

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

B. Applicability

The Smoke-Free Rule applies to all public housing units other than dwelling units in mixed-finance buildings. Under this Rule, “public housing” means low-income housing, such as, community facilities, public housing offices, day care centers, and laundry rooms assisted under the U.S. Housing Act of 1937 (the 1937 Act), other than assistance under section 8 of the 1937 Act.

C. Implementation

1. Amendments to PHA Plans

PHAs are required to:

- obtain board approval when creating their individual smoke-free policies and document their smoke-free policies in their PHA plans, and
- 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.

2. Lease Amendments

PHAs are required to:

- 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
- 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

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).

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

3. 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. The following list, while not exhaustive, contains some examples of PHA flexibilities:

- 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

4. 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, issued in accordance with Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency, signed August 11, 2000, and published in the Federal Register on August 16, 2000, at 65 FR 50121) (24 CFR 5.2005(a)(3)). PHAs are also encouraged to use various communication methods (e.g., letters, flyers, seminars, etc.) to share this information.

5. Funding

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.

6. 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. 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 as mentioned in section C.2. of this notice.

7. 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 of 1973 (and HUD's implementing regulations at 24 CFR part 8), Title II of the Americans with Disabilities Act, and the Fair Housing Act. This 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.

D. 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, pursuant 24 CFR § 966 Subpart B. PHAs may not evict for a single incident of smoking, in violation of a smoke-free policy.

1. 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. A graduated enforcement framework may include the following:

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

PHAs have the discretion to employ a range of techniques and tools to monitor and enforce compliance with their smoke-free policies. The following monitoring and enforcement tools appear below in the order of increasing severity.

a. 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.

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.

b. 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.

"Other good cause" Termination. Repeated violations of the Smoke Free Rule could rise to the level of other good cause for termination of tenancy pursuant to 24 CFR § 966.4(l)(2)(iii). 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.

c. 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.

2. 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 HUD's implementing regulations at 24 CFR part 8), Title II of the Americans with Disabilities Act, 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. 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.

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. 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.

General guidance on the reasonable accommodation process can be found at <http://go.usa.gov/cJBBC>. The Department also issued reasonable accommodation guidance entitled, "Joint Statement of the Department of Housing and Urban Development and the Department of Justice on Reasonable Accommodations under the Fair Housing Act," which can be found at http://www.hud.gov/offices/theo/disabilities/reasonable_modifications_mar08.pdf. The Department's guidance, "Change is in the Air," (see Resources below), provides examples of how PHAs have approached and managed smoke-free policies for residents with disabilities. For instance, 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. Public housing residents who suspect they are victims of housing discrimination can call (800) 669-9777. 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.

E. Community Building

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. The Resources section (below) provides best practices and examples on resident engagement.

F. Resources

1. Best Practices

- Change is in the Air can be found at <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=/smokefreetoolkits>

2. 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. Residents and PHAs may also contact national quit lines (1-800-QUIT-NOW) and community health centers to ask what services are available through them.

3. 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.

G. Further Information

PHAs that have questions regarding smoke-free public housing can email those questions to SmokeFreePublicHousing@hud.gov. PHAs are also reminded that, with good cause, they may request waivers. For further information about this Notice, please contact Leroy Ferguson, Housing Program Specialist, Office of Public Housing Programs, Management and Occupancy Division, 202-402-2411.

_____/s/_____
Jemine A. Bryon
General Deputy Assistant Secretary
for Public and Indian Housing