



January 19, 2016

Secretary Julián Castro  
C/O Regulations Division, Office of General Counsel  
U.S. Department of Housing and Urban Development  
451 7th Street SW, Room 10276  
Washington, DC 20410-0500

Re: Instituting Smoke-Free Public Housing  
Docket No. FR 5597-P-02

Dear Secretary Castro:

The Public Health Advocacy Institute, Inc. (“PHAI”) supports the proposed rule to prohibit smoking in public housing authorities, but urges the Department of Housing and Urban Development to apply this important health and safety rule across all of the affordable housing it funds, not just public housing authorities. The risk of stroke, heart attack, and other health problems caused by involuntary exposure to secondhand smoke are not isolated to the 1.1 million households located in public housing authorities. The more than 3.4 million households in other HUD-funded properties are equally at risk and deserving of the proposed protection. PHAI also recommends the use of a comprehensive definition of “smoking” to capture e-cigarettes, hookah, marijuana, and other like products.

The Public Housing Advocacy Institute, Inc. (PHAI) is a 501(c)(3) non-profit organization formed in 1979 and housed at Northeastern University School of Law. PHAI advocates for and defends legal policies that protect and improve the public’s health, with a longstanding focus on reducing the impact of tobacco products and exposure to secondhand smoke. PHAI has contracts with New York, Massachusetts, Rhode Island, and Boston to provide technical assistance for the implementation of smoke-free rules in all multi-unit dwellings. PHAI has presented on the issue of smoke-free housing at meetings and conferences of Mass. Housing, the Massachusetts Chapter National Association of Housing and Redevelopment Officials, the New England Affordable Housing Management Association, and the Annual Massachusetts Housing Court Conference.

## **I. The Health Impact of Secondhand Smoke Exposure in Affordable Housing**

The 7,300 lung cancer deaths among nonsmokers caused by exposure to secondhand smoke each year is just the tip of the iceberg.<sup>1</sup> Exposure also increases the risk of stroke by up to 30% in adults<sup>2</sup> and causes 34,000 heart disease deaths every year.<sup>3</sup> Children who are exposed are more likely to experience bronchitis, pneumonia, more frequent and severe asthma attacks, and other respiratory ailments and diminished lung functioning.<sup>4</sup> Exposure causes SIDS among infants.<sup>5</sup>

Exposure to secondhand smoke disproportionately burdens residents living in affordable housing. For example, 2.7% to 2.8% of Massachusetts residents with a college education or with annual household incomes of \$75,000 or more are exposed to secondhand smoke in the home.<sup>6</sup> Such exposure rates jump to around 16.8% to 17% for Massachusetts residents who self-report having poor mental health or with annual household incomes of \$25,000 or less.<sup>7</sup> These statistics show that families who are trying to maintain a tobacco-free home in affordable housing often cannot do so solely because they happen to live in affordable housing. Comparing this outcome to that of families residing in market-rate households who can afford to move away from the smoke or pay for legal representation to stop the exposure reveals stark inequality.

## **II. Expand the Reach of the Proposed Smoke-Free Rule to Include All HUD-funded Affordable Housing, Not Just Public Housing Authorities**

Although HUD's proposed rule helps to address exposure rates in affordable housing, more can and should be done. All HUD-funded affordable housing should be made smoke-free. Public housing authorities represent less than one-third of the affordable housing funded by HUD, or approximately 1.1 million households.<sup>8</sup> HUD helps house an additional approximately 3.4 million households that would NOT be covered by the proposed rule.<sup>9</sup> HUD's Tenant-Based Rental Assistance helps pay the housing costs of 2.2 million households, and its Project Based-Rental Assistance helps pay for 1.2 million households, according to the 2014 estimates.<sup>10</sup> Many more families rely on HUD's Home Investment Partnership Program, which develops affordable housing through partnerships with local and state governments, nonprofits, and private industry.<sup>11</sup> The risk of exposure would remain for all of these households under HUD's proposed rule.

HUD bases the limited reach of its proposed rule on the fact that HUD is not the "primary owner" of many mixed-financed affordable properties. HUD's partnerships with private businesses and non-profits is clearly a primary direction for affordable housing in the future.<sup>12</sup> With its new partners, HUD revitalizes depressed neighborhoods, brings affordable housing to new communities, and otherwise integrates affordable housing throughout our country's housing stock. But, the health and fitness of these new types of affordable housing matters, too. In fact, these properties are not excluded from HUD oversight just because

private entities are involved. HUD has standards for the development of affordable housing it helps fund through public-private partnerships, and HUD maintains the right to inspect the units and can hold landlords responsible when the health and safety of residents is at risk.<sup>13</sup>

PHAI recommends that a smoke-free living environment be part of HUD's public private partnerships for affordable housing. Consider the following:

- HUD maintains significant control over the development and operation of many mix-financed properties, in part, through the Housing Assistance Payment Contracts.<sup>14</sup> HUD has a legal right to change these contracts during the renewal process.<sup>15</sup> Going smoke-free could simply become part of the eligibility requirements, for example, under the all HAP contract renewals going forward. Just like it currently prohibits marijuana use in all the housing it finances,<sup>16</sup> HUD could require a smoke-free environment, too.
- There is widespread support for smoke-free policies among owners and property management companies of mix-financed, affordable properties. In Massachusetts, some of the leading management companies of mixed financed affordable properties have made many, and in some cases all, of their properties smoke-free. Examples include Beacon Communities, Peabody Properties, and Corcoran Management. Here is a link to a video produced by Beacon Communities to help prepare residents and staff for its smoke-free transition last year: <https://www.youtube.com/watch?v=e4CvpTVhAX4>.
- Surveys show that residents who are eligible for affordable housing prefer a smoke-free building, despite the high smoking rates in affordable housing.<sup>17</sup>
- Smoke-free rules reduce maintenance costs, which would benefit the private owners and funders of affordable housing.<sup>18</sup>
- The health and safety risk to residents exposed to drifting secondhand smoke is the same regardless of whether the resident lives in public housing or another type of affordable housing.
- Requiring smoke-free buildings for the use of tenant-based assistance would cause approximately 700,000 landlords to go smoke-free.<sup>19</sup> This change would benefit all residents living at these properties, not just the voucher holders.

### **III. Use a Comprehensive Definition for Smoking for the Proposed Smoke-Free Rule.**

HUD should use a comprehensive definition for smoking in its proposed Smoke-Free Rule. The current definition only includes products that are "lit" and that contain "tobacco." While it would cover what is traditionally thought of as "smoking," this definition is limited. HUD should consider using the following definition:

The term “smoking” shall include the combustion, vaporization or aerosolizing of any cigarette, cigar, pipe, or other product containing any amount of tobacco or like substance, including marijuana, or any derivative thereof. The use of Electronic Nicotine Delivery Systems (otherwise referred to as electronic cigarettes or electronic hookah) shall be deemed smoking. Use of FDA-approved cessation products shall not be deemed smoking.

A more comprehensive definition, such as the one suggested above, would address a wide variety of smoking, and smoking-like, products that pollute indoor air. For example, HUD’s proposed definition of smoking would not prohibit synthetic marijuana, which is legal in most jurisdictions and is typically available in local convenience stores.<sup>20</sup> The comprehensive definition suggested here would address synthetic marijuana, as well as the following products, for the following reasons.

**A. Include Hookah Use in the Proposed Smoke-Free Rule.**

HUD should not exempt hookah from its proposed Smoke-Free Rule for two primary reasons. First, the smoke-generated from hookah is actually more dangerous than the smoke generated by cigarettes. Research published this month in the peer-reviewed journal *Public Health Reports* debunked the notion that hookah use is somehow safer than other tobacco use, and concluded that it appears to be more dangerous.<sup>21</sup> The study found that “compared with a single cigarette, one hookah session delivers approximately 125 times the smoke, 25 times the tar, 2.5 times the nicotine and 10 times the carbon monoxide.”<sup>22</sup> The research was a meta-analysis of 17 peer-reviewed research studies examining hookah smoke. The study also noted the increased prevalence in hookah use, suggesting that residents who are prevented from smoking cigarettes may just switch to hookah use.

Another reason hookah use should be included in the proposed Smoke-Free Rule is because exempting hookah would make the proposed rule largely unenforceable. The smoke generated from hookah would mask the smoke generated from cigarettes and other tobacco products. In fact, a resident who wants to smoke cigarettes or cigars in violation of the rule would simply need to buy a cheap, small hookah device for his or her household, and claim that smoke drifting into his neighbors’ homes is hookah smoke, not cigarette smoke. It is also important to note that most shisha used in hookah contains tobacco.

The exemption for hookah has no public health rationale. In Massachusetts, for example, none of the approximately 80 housing authorities and numerous other affordable properties that went smoke-free exempt hookah.

**B. Include Marijuana Use in the Proposed Smoke-Free Rule.**

HUD should include marijuana in its proposed Smoke-Free Rule. Marijuana combustion generates smoke with many of the same toxins as tobacco smoke,<sup>23</sup> including fine particles that cause cardiovascular morbidity and mortality.<sup>24</sup> Some of the chemicals in marijuana smoke (polycyclic aromatic hydrocarbons, carbon monoxide, cyanide, benzene) cause cancer.<sup>25</sup> Secondhand marijuana smoke impairs blood vessel function, similar to tobacco, in ways that could increase the risk of atherosclerosis, heart attack, and stroke.<sup>26</sup>

Although marijuana use is already prohibited in federally funded-properties under the Federal Control Substance Act, its use occurs in affordable housing. This situation may worsen as more states pass medical marijuana or recreational use laws, causing confusion among residents in affordable housing.

**C. Include E-Cigarette Use in the Proposed Smoke-Free Rule.**

HUD should include Electronic Nicotine Delivery Systems (“ENDS”) in its proposed Smoke-Free Rule. 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 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>27</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>28</sup> Some recent research has focused on the flavorings used in ENDS. Research published last month revealed that many ENDS brands contain diacetyl, which is a known respiratory hazard.<sup>29</sup> Problems with inhaled diacetyl first occurred in popcorn factories over 10 years ago, when the diacetyl in popcorn butter flavoring was released into the air.<sup>30</sup> In some cases, the exposure caused severe bronchiolitis obliterans, which resulted in “an irreversible loss of pulmonary function that can become so severe that the only treatment option may be a lung transplant.”<sup>31</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>32</sup> It may also have the effect of normalizing smoking behaviors.<sup>33</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>34</sup>

#### IV. Conclusion

PHAI applauds HUD's proposed Smoke-Free Rule and appreciates the opportunity to submit its comments. In conclusion, PHAI recommends expanding the reach of its proposed Smoke-Free Rule to include all affordable housing that HUD helps fund. PHAI also recommends that HUD use a comprehensive definition of the term "smoking" in its proposed rule to include hookah, ENDS, marijuana, and other like products that pollute indoor air.

Respectfully,

Public Health Advocacy Institute, Inc.

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<sup>1</sup> See U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, SMOKING AND TOBACCO USE, HEALTH EFFECTS OF SECONDHAND SMOKE (2016), [http://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/health\\_effects/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/index.htm) [hereinafter "CDC 2015"].

<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), [http://www.ncbi.nlm.nih.gov/books/NBK44324/pdf/Bookshelf\\_NBK44324.pdf](http://www.ncbi.nlm.nih.gov/books/NBK44324/pdf/Bookshelf_NBK44324.pdf) [hereinafter "US Surgeon General 2006"].

<sup>3</sup> See CDC 2015, *supra* note 1.

<sup>4</sup> See *id.*

<sup>5</sup> See US Surgeon General 2006, *supra* note 2.

<sup>6</sup> See Mass. Dept. of Pub. Health, Tobacco Cessation and Prevention Prog., *Secondhand Smoke Exposure at Home* (Dec. 1, 2015), <http://www.mass.gov/eohhs/docs/dph/tobacco-control/secondhand-smoke-at-home.pdf>.

<sup>7</sup> See *id.*

<sup>8</sup> See U.S. DEP'T OF HOUSING AND URBAN DEV., FISCAL YEAR 2016 CONGRESSIONAL JUSTIFICATIONS (2015) <http://portal.hud.gov/hudportal/documents/huddoc?id=FY16-CJE-EntireFile.pdf> [hereinafter "HUD FY2016 Budget"]

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

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

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

<sup>12</sup> See Julián Castro, U.S. Dep't of Housing and Urban Dev., *Julián Castro: Our National Affordable Housing Crisis* (April 7, 2015), <http://www.cnn.com/2015/04/07/opinions/castro-affordable-housing-crisis> (last visited January 19, 2016).

<sup>13</sup> See U.S. Dep't of Housing and Urban Development, *MPS Supplementing Model Building Codes*, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/ramh/mps/mhsmppsp](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/ramh/mps/mhsmppsp); see also U.S. Dep't of Housing and Urban Dev., *Hope VI Guidance, Mixed-Financed Public Housing Development* (March 2001), [https://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_10114.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10114.pdf).

<sup>14</sup> See U.S. DEP'T OF HOUSING AND URBAN DEV., SECTION 8 RENEWAL GUIDE (Aug. 7, 2015) [http://portal.hud.gov/hudportal/documents/huddoc?id=Section8\\_Renewal\\_Guide.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=Section8_Renewal_Guide.pdf).

<sup>15</sup> See *id.*

<sup>16</sup> See Helen Kanovsky, Office of Gen. Counsel, U.S. Dep't of Housing and Urban Dev., *Memo re: Medical Use of Marijuana and Reasonable Accommodation in Federal Public and Assisted Housing* (Jan. 20, 2011), [http://www.nhlp.org/files/3.%20KanovskyMedicalMarijunanaReasAccomm\(012011\).pdf](http://www.nhlp.org/files/3.%20KanovskyMedicalMarijunanaReasAccomm(012011).pdf).

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- <sup>17</sup> See, e.g., PUBLIC HEALTH ADVOCACY INSTITUTE, INC., MARKET DEMAND FOR SMOKE-FREE RULES IN MULTI-UNIT RESIDENTIAL PROPERTIES & LANDLORDS' EXPERIENCES WITH SMOKE-FREE RULES (April 2009), <http://www.phaionline.org/wp-content/uploads/2009/04/phaihousingurvey.pdf>.
- <sup>18</sup> See *id.*
- <sup>19</sup> See HUD FY2016 Budget, *supra* note 8.
- <sup>20</sup> See Hansi Lo Wang, National Public Radio, *Surge in Use of 'Synthetic Marijuana' Still One Step Ahead of the Law*, (Nov. 11, 2015), <http://www.npr.org/sections/health-shots/2015/11/11/455616893/surge-in-use-of-synthetic-marijuana-still-one-step-ahead-of-the-law> (last visited January 19, 2016).
- <sup>21</sup> See Brian Primack et al., *Systematic Review and Meta-Analysis of Inhaled Toxicants from Waterpipe and Cigarette Smoking*, 131 PUB. HEALTH REP. 76 (Jan./Feb. 2016), <http://www.primack.net/professional/articles/r075phr2015.pdf>.
- <sup>22</sup> *Id.*
- <sup>23</sup> See David Moir et al., *A Comparison of Mainstream and Sidestream Marijuana and Tobacco Cigarette Smoke Produced under Two Machine Smoking Conditions*, 21(2) CHEM. RES. TOXICOL. 494 (2008).
- <sup>24</sup> See Robert D. Brook R et al., *Particulate Matter Air Pollution and Cardiovascular Disease: An Update to the Scientific Statement from the American Heart Association*, 121 CIRCULATION 2331 (2010).
- <sup>25</sup> See OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT, REPRODUCTIVE AND CANCER HAZARD ASSESSMENT BRANCH, CAL. ENVTL. PROT. AGENCY, EVIDENCE ON THE CARCINOGENICITY OF MARIJUANA SMOKE (Aug. 2009), [http://oehha.ca.gov/prop65/hazard\\_ident/pdf\\_zip/FinalMjsmokeHID.pdf](http://oehha.ca.gov/prop65/hazard_ident/pdf_zip/FinalMjsmokeHID.pdf); cf. Safe Drinking Water and Enforcement Act of 1986, CAL. HEALTH & SAFETY CODE § 25249.8(b) (Deering 2016); Scientific Advisory Board: Carcinogen Identification Committee and Developmental and Reproductive Toxicant (DART) Identification Committee, CAL. CODE REGS. tit. 27, §§ 25302-25306 (2015).
- <sup>26</sup> See Xiaoyin Wang et al., *Brief Exposure to Marijuana Secondhand Smoke Impairs Vascular Endothelial Function*, 130 CIRCULATION A19538 (2014).
- <sup>27</sup> See Esteve Fernández et al., *Particulate Matter from Electronic Cigarettes and Conventional Cigarettes: a Systematic Review and Observational Study*, 2(4) CURRENT ENVIRON. HEALTH REP. 423 (Dec. 2015).
- <sup>28</sup> See Tobias Schripp et al., *Does E-Cigarette Consumption Cause Passive Vaping?*, 23(1) INDOOR AIR 25 (2013).
- <sup>29</sup> See Joseph G. Allen, et al., *Flavoring Chemicals in E-Cigarettes: Diacetyl, 2,3-Pentanedione, and Acetoin in a Sample of 51 Products, Including Fruit-, Candy-, and Cocktail-Flavored E-Cigarettes*, ENVTL. HEALTH PERSP. (Dec. 8, 2015) (in press), <http://ehp.niehs.nih.gov/wp-content/uploads/advpub/2015/12/ehp.1510185.acco.pdf>.
- <sup>30</sup> See *id.*
- <sup>31</sup> See *id.*
- <sup>32</sup> Kristy Marynak et al., *State Laws Prohibiting Sales To Minors And Indoor Use Of Electronic Nicotine Delivery Systems—United States, November 2014*, 63(49) MORBIDITY AND MORTALITY WEEKLY REP. 1145 (Dec. 12, 2014), <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6349a1.htm>.
- <sup>33</sup> See *id.*
- <sup>34</sup> See, e.g., Rachel Grana et al., *E-Cigarettes: A Scientific Review*, 129 CIRCULATION 1972 (2014), <http://circ.ahajournals.org/content/129/19/1972.full.pdf>.