CLPHA
Strengthening Neighborhoods.
Improving Lives.

Council of Large Public Housing Authorities
455 Massachusetts Avenue, NW, Suite 425
Washington, DC 20001-2621
Executive Director: Sunia Zaterman
phone: 202.638.1300 | fax: 202.638.2364
web: www.clpha.org

January 19, 2016

Regulations Division
Office of General Counsel
US Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-7000

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

To Whom It May Concern:

CLPHA is a non-profit organization committed to the goals of preserving, improving, and expanding the availability of housing opportunities for low-income, elderly, and disabled individuals and families. CLPHA's members comprise more than 70 of the largest housing authorities, located in most major metropolitan areas in the United States. These agencies act as both housing providers and community developers while effectively serving over one million households, managing almost half of the nation's multi-billion dollar public housing stock, and administering over one-quarter of the Section 8 Housing Choice Voucher program.

CLPHA is pleased to submit comments on the Department's proposal to institute smoke-free public housing. In 2009, HUD began encouraging public housing authorities to voluntarily adopt non-smoking policies. Since then over 600 agencies, including many CLPHA members, have adopted non-smoking or smoke-free policies in some or all of their properties. We support the goals of the proposed rule and agree that reducing smoking would provide positive health and financial benefits to public housing residents, public housing authorities, and the public as a whole.

However, we have several concerns with the proposed rule. In particular, we question why public housing, the most chronically underfunded federal housing program, is being singled out for mandatory implementation without additional resources and supports. Implementing smoke-free housing will require resources and funding that will strain public housing authorities who already operating in a historically low funding environment. We are also concerned by HUD's lack of outreach during the development of this rule to public housing authorities who have already voluntarily implemented smoke-free housing. As experienced practitioners, these PHAs could have provided HUD with crucial input on the proposed rule that was based on their direct experiences. For example, outreach to housing authorities would have revealed that several proposed policies in

the rule create unnecessary burdens for PHAs, particularly around the implementation timeframe. Additionally, the rule, as it is currently written, mandates a one-size fits all approach. CLPHA members who have successfully implemented smoke-free housing have done so because they had the flexibility to administer and enforce these policies according to local needs and markets. After years of putting policy into practice, our members know that a one-size fits all approach is antithetical to creating successful, sustainable outcomes. ***Because of these concerns, CLPHA recommends that HUD make the proposed smoking ban voluntary.*** Should HUD decide to move forward with a mandatory smoking ban, we have several recommendations for improving the proposed rule. HUD's notice included questions for comment. Below please find our detailed comments in response to those questions, as well as our recommendations.

1. What are the barriers PHAs could encounter in implementing smoke-free housing? What costs could PHAs incur? Are there any specific costs to enforcing such a policy?

HUD is proposing an 18-month timeframe for PHAs to implement smoke-free housing. CLPHA considers 18-months an arbitrary time limit that is insufficient for PHAs to conduct resident engagement and education, revise annual plans, and complete lease addenda. CLPHA members who have already voluntarily implemented smoke-free policies indicate that 24-months was a *minimum* timeframe for successful implementation The first 12-months is typically dedicated to amending annual plans, training staff, and conducting thorough resident outreach. Extensive outreach is conducted including: resident surveys, site visits, public forums, town halls, creating and distributing marketing materials and organizing educational events. The following 12 months is focused on amending leases and finalizing compliance and enforcement procedures. HUD should be taking these experiences into account and allowing for sufficient local flexibility to ensure that resident needs are adequately addressed. Experienced practitioners call for a *minimum* 24-month implementation timeline recognizing the time and effort required for successfully implementing smoke-free policies. **CLPHA urges HUD to expand the implementation timeframe to a *minimum* of 24-months.**

One clear example of need for greater local flexibility in the rule is the 25-feet minimum distance requirements. The requirement is untenable given the variety of building configurations. Many CLPHA members are located in major metropolitan cities, with limited outdoor space and physical accessibility. Properties are often adjacent to other non-housing buildings and public sidewalks and streets. For these members, mandating that residents smoke at least 25-feet away from a building could mean that residents have to smoke in the middle of the street. Additionally, some CLPHA members rent office space in buildings with other tenants, thus have no control over other building tenants, nor have a say in building policies. CLPHA members also operate and manage many different types of housing – including large multifamily buildings and single family properties, all of which come with varying physical limits. Rather than mandating a one-size fits all

policy, **HUD should allow PHAs to determine their own minimum distances based on local conditions and availability of physical space.**

We also urge HUD to reconsider its approach regarding grandfathering PHAs who have already implemented smoke-free policies. HUD stated at the White House convening that the proposed rule would apply to all PHAs and that PHAs with existing smoke-free policies would not be grandfathered. This approach seems misguided and creates unnecessary barriers for PHAs who have already voluntarily introduced smoke-free housing. Housing authorities, including many CLPHA members, have already successfully implemented smoke-free housing across their portfolios using their own resources, time, and deliberation. Requiring these PHAs to adhere to HUD's proposed one-size fits all approach is inefficient, expensive, and duplicative. The ability to flexibly tailor and accommodate the unique local challenges and needs of their residents and buildings allowed successful housing authorities to implement the policy. **CLPHA urges HUD to grandfather PHAs with existing smoke-free policies.**

2. Does this proposed rule create burdens, costs, or confer benefits specific to families, children, persons with disabilities, owners, or the elderly, particularly if any individual or family is evicted as a result of this policy.

CLPHA members expressed concern that elderly or disabled residents could experience difficulty, especially related to limited mobility, and that residents may be evicted from housing if they are found noncompliant. To assist elderly/disabled residents with mobility issues, some CLPHA members relocated residents to units closer to entrances/exits and outdoor areas. **CLPHA urges HUD to take advantage of the considerable knowledge and experience that PHAs have around smoke free housing and publish examples of best practices in providing reasonable accommodation to disabled or elderly smokers.**

On the issue of enforcement, our members support a graduated penalty system that would provide PHAs and residents flexibility in becoming compliant. These penalties may include discussions with residents, increasing fines, and warning systems. CLPHA members have successfully used these enforcement strategies to prevent eviction and help residents in becoming smoke-free.

3. Are there specific areas of support that HUD could provide PHAs that would be particularly helpful in the implementation of the proposed rule?

While many CLPHA members with non-smoking or smoke-free housing were able to partner with local non-profits, city agencies, or national smoking cessation groups, that provided funding and education, marketing, or cessation services, this may not be feasible for all PHAs. HUD

recognizes the cost burden of implementing this policy. Given that financial burden, and the chronic underfunding of public housing, additional funding and resources are needed in order for PHAs to be successful. The proposed rule represents a significant effort to improve public health and **HUD should be encouraging other federal agencies, such as the Department of Health and Human Services, or the Centers for Disease Control, to provide program resources for PHAs.** These agencies, in partnership with HUD, can also explore and share how existing healthcare models might provide funding opportunities or resources for PHAs. For example, one CLPHA member used Affordable Care Act navigators to help residents with smoking cessation. HUD should also be mindful of the unique challenges and needs that public housing residents have when encouraging partnerships with external organizations. Any partner organization working with a PHA on smoking education and cessation should be capable and willing to tailor their services to public housing residents, including elderly, disabled, and dual-eligible populations with unique health needs and barriers.

In conclusion, CLPHA appreciates the opportunity to comment on the proposed rule. Smoke-free housing has the potential to improve resident health and financial wellbeing, reduce maintenance costs and improve safety for public housing authorities, and provide overall economic and health benefits to the general public. CLPHA supports these goals but is concerned that the proposed rule lacks critical input from experience housing authorities and does not take into account the necessary time and flexibility needed to implement successful smoke-free housing. The 600 PHAs that have voluntarily implemented smoke-free housing achieved success because of their ability to utilize local discretion in implementation, enforcement, and compliance. **Without these necessary changes, we believe that the smoking ban should be voluntary.** If HUD moves forward with mandatory implementation, we urge HUD to extend the 18-month timeframe to a *minimum of* 24-months and allow PHAs to determine their own minimum distances. We also urge HUD to provide best practices for making reasonable accommodations to residents with disabilities. Finally, we urge HUD to engage in partnerships with federal health agencies who could provide additional funding or resources, as well ensure that partner organizations are appropriately tailoring their education and smoking cessation services to public housing residents.

Thank you for the opportunity to submit these comments.

Sincerely,

Sunia Zaterman
Executive Director