

Rural Development



United States Department of Agriculture

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TO: All RHS MFH National Office Directors
Rural Development

ATTN: Multifamily Housing Regional Directors
Rural Development

FROM: Chad Parker /s/ *Chad Parker*
Acting Administrator
Rural Housing Service

SUBJECT: Multifamily Housing – Optional Smoke-Free Housing Policy

PURPOSE

This Unnumbered Letter (UL) is reissued to provide continued guidance for Multifamily Housing (MFH) Staff on borrowers who may choose to implement optional smoke-free housing policies. This guidance is similar to previous guidance provided by the U.S. Department of Housing and Urban Development, and replaces the Unnumbered Letter last issued on November 21, 2012.

BACKGROUND

According to the CDC, cigarette smoking remains the leading cause of preventable disease, disability, and death in the United States. Exposure to smoke, whether direct or secondhand, causes adverse health outcomes such as asthma and other respiratory illnesses, cardiovascular disease, and cancer. In addition to the negative health effects of secondhand smoke, smoking can be a hazard to physical structures. The United States Fire Administration estimates that during 2017-2019, approximately 6,300 residential fires per year were started by smoking materials, causing over \$270 million in property damage annually as well as nearly 200 deaths. These numbers have decreased since previous years, in part due to increased restrictions on smoking in residential properties.

EXPIRATION DATE:
October 31, 2022

FILING INSTRUCTIONS:
Housing Programs

IMPLEMENTATION

MFH borrowers who choose to implement a smoke-free housing policy must update their Management Plans and Occupancy Rules, as applicable, to incorporate the smoke-free housing requirements. MFH borrowers are encouraged to establish smoke-free policies that pertain specifically to their building and grounds including any common areas, entry ways, openings to the building (e.g. windows), and/or playground areas.

In carrying out any smoke-free housing policy, MFH borrowers must comply with all applicable fair housing and civil rights requirements in 7 CFR 3560.2, including, but not limited to, the Fair Housing Act; Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

MFH borrowers who choose to establish smoke-free housing policies may establish policies that allow smoking in individual units but prohibit smoking in all common areas or policies to create a totally smoke-free property. In implementing a smoke-free policy, MFH borrowers should follow the following guidelines:

A. An eligible smoke-free housing policy must:

- Be in accordance with State and local laws.
- Address smoking in a tenant's unit, common areas, playground areas, areas near any exterior window or door, and areas outside a tenant's unit.
- Designate specific smoking areas and identify these areas with clear signage unless the MFH borrower establishes a totally smoke-free policy.
- Inform applicants at the time of application that the building is smoke-free

B. Smoke-free housing policies must not:

- Require/request that applicants or tenants disclose whether they or any member of their household smoke, either at application or recertification
- Establish separate waiting lists for smoking versus non-smoking applicants
- Require existing tenants who are smokers to move out of the property or to transfer from their unit to another unit, unless at tenant request. Such tenants could remain in their units but would be required to adhere to the smoke-free policies.

C. Grandfathering:

- MFH borrowers have the option to create an exception for current tenants, or “grandfather” allowing them to stay under the previous policy. Such exceptions must be clearly defined in the Occupancy Rules and enforced uniformly.

D. Non-smoking wings, buildings, floors, or units:

- MFH borrowers may establish smoke-free wings, buildings, floors, and/or units at their property. When a unit becomes available, regardless of location and smoking status, it must be offered to the first eligible household on the waiting list. The applicant should be notified of the unit's smoking policy so the applicant can make the choice to accept the unit or wait for another. Waiting lists must be maintained according to existing procedures found in 7 CFR 3560.154 (f).

MFH borrowers must implement any new smoking-related Occupancy Rules in accordance with 7 CFR §3560.157.

- A. New admissions. MFH borrowers are required by to attach the Occupancy Rules to leases.
- B. Existing tenants. MFH borrowers must notify existing tenants of the modifications to the Occupancy Rules at least 30 days in advance of implementation.

If a non-smoking policy is stated in the tenant's lease, repeated violations of the non-smoking policy may be considered material noncompliance and may result in termination of tenancy. When pursuing eviction due to material noncompliance with lease requirements, existing Agency procedures are found in 7 CFR §3560.159.

If you have any questions regarding this UL, please contact Kevin Perry, Finance and Loan Analyst, at (603) 2236053, or via e-mail at kevin.perry@usda.gov.