

Source- HUD Legal Counsel Letter of July 2003

- HUD Detroit Regional Office Legal Counsel letter of July 2003 states that apartment owners are free under federal law to make buildings totally smoke-free, so long as they "take caution to grandfather in those smoking residents currently residing at the complex."*. However, an October 2004 letter from the Seattle HUD office states "You asked if there is any policy or legal basis that would require grandfathering-in smoking residents and if it is permissible to require existing tenants to stop smoking in their units as long as they are given sufficient notice and the change occurs at the time of lease renewal. There is no written HUD policy requiring the grandfathering of any tenant."**

"Grand-fathering," means for a reasonable period, such as until lease renewal. "The Chief Counsel recently clarified that the term 'grandfather' as used in her letter does not mean a permanent exemption for existing smokers. She said that the landlord could either wait until the annual review or expiration of the smoker's lease, or, in the case of a long-term lease, until after the provision of legally adequate notice. She said that it was reasonable to require tenants with long-term leases to move or cease smoking, as long as the smoker received reasonably adequate advance notice and had the option of moving to an apartment in which smoking was permitted." ***

Source- *HUD Legal Counsel Letter of July 2003; ** Seattle HUD Office Letter of October 2004:
<http://www.tcsq.org/sfelp/HUD2004.pdf> *** MEMORANDUM To: Jim Bergman From: Susan Schoenmarklin, May 2005 In
 Re: Analysis of the authority of Housing Authority Directors and Section 8 multiunit housing owners to ban smoking in their residential units.

- To implement a smoke-free policy affordable housing agencies may:

~ Add smoke-free provisions to the "house rules" in public housing authority buildings.

As long as the no smoking policies meet the normal house rules criteria HUD approval is not required.

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- If affordable housing operators wish to **make no-smoking policies a condition of the lease, HUD approval is required** to the extent that the owner is bound to utilize HUD's model lease.

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IMPORTANT TO REMEMBER!

Since affordable housing residents have fewer housing options, affordable housing advocates are very sensitive (and rightly so) to the possibility of people losing their housing altogether – for any reason. Educating tenant advocates about ways to successfully implement smoke-free or smoking- restricted policies is a first step toward smoke-free affordable housing.

CCAP- California's Clean Air Project, a statewide project of ETR Associates

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