



NEW YORK STATE
DIVISION
OF HOUSING &
COMMUNITY RENEWAL

HOUSING
TRUST FUND CORPORATION

STATE OF
NEW YORK MORTGAGE
AGENCY

NEW YORK STATE HOUSING
FINANCE AGENCY

NEW YORK STATE
AFFORDABLE HOUSING
CORPORATION

STATE OF
NEW YORK MUNICIPAL
BOND BANK AGENCY

TOBACCO SETTLEMENT
FINANCING CORPORATION

ANDREW M. CUOMO
GOVERNOR

DARRYL C. TOWNS
COMMISSIONER/CEO

HOUSING MANAGEMENT BUREAU MEMORANDUM # 2011-E-01

To: All Housing Authorities – Chairpersons and Executive Directors
All Housing Companies – Owners, Managing Agents and Site Managers
All HCR Housing Providers
Other Interested Organizations and Parties

From: Mike Skrebutenas, Deputy Commissioner
Office of Housing Preservation

Date: May 3, 2011

Subject: Solicitation for Comments on Possible Regulations Regarding
Smoking in HCR Assisted Developments

New York State Homes and Community Renewal (“HCR”) is soliciting comments on whether it should pursue the promulgation of regulations on the implementation of no smoking or limited smoking policies in its assisted housing portfolio. HCR has received requests from various housing providers and from residents to implement such policies where there is presently no such rules at their development. These requests follow actions by the United States Department of Housing and Urban Development (“HUD”) through various official HUD notices which have encouraged the implementation of such policies in public housing and much of its assisted housing portfolio.

On July 17, 2009, HUD’s Offices of Public and Indian Housing and Healthy Homes and Lead Hazard Control issued Notice PIH-2009-21 (HA), entitled “Non-Smoking Policies in Public Housing”. The Notice encourages Public Housing Authorities (PHAs) to implement non-smoking policies in some or all of their public housing units. Suggested alternatives for such policies include establishing totally smoke-free buildings, allowing current residents who smoke to continue to do so, but only in designated areas and only until lease renewal or a date established by the PHA, and prohibiting smoking for new residents. It also recommended that, because tobacco smoking is an addictive behavior, PHAs that implement non-smoking policies should provide residents with information on local smoking cessation resources and programs, and be persistent in their efforts to support smoking cessation programs for residents, adapting their efforts as needed to local conditions.

On September 15, 2010, the HUD Assistant Secretary for Housing issued Notice H 2010-21 to similarly encourage such smoke free policies in its multifamily housing rental assistance

programs.¹ Such policies could include a total smoke free policy, or be limited to individual units, or all or specific common areas. An owner could not, however, deny admission to an eligible applicant based on whether a member of the family smokes. Nor could an owner maintain separate waiting lists or require tenants to transfer units in setting up no smoking areas. Such policies could, at the owner's discretion, require "grandfathering" in of existing tenants. Whatever policy is adopted by the housing provider is required to be implemented through clearly defined house rules established and distributed in accordance with the HUD handbook. Repeated violations of such house rules might be considered material non-compliance with the leasehold requirements and result in termination of tenancy.

Pursuant to the State Administrative Procedure Act², HCR is seeking input from assisted housing providers, residents, and other interested parties as to whether HCR should adopt regulations, consistent with the HUD Notices, which would create an HCR framework to give housing providers formalized discretion in creating such non-smoking or limited smoking policies or "house rules."³

The option to create such house rules could then also be potentially available, pursuant to such regulations, in HCR's non-federally assisted portfolio as well as those federally assisted developments in HCR's portfolio such as Tax Credit Projects which do not necessarily fall within HUD's jurisdiction or the ambit of these HUD Notices.

HCR is seeking input from housing providers and residents as to whether such HCR regulations would be appropriate; if so what substance of such regulations should be; what should be the nature of HCR oversight in the implementation or adoption of "house rules" or policies; whether the HCR regulations should be uniform throughout its assisted housing portfolio; or any other comments directed toward the possible adoption of such regulations, and the impact of such regulations on assuring viable, safe, affordable housing for residents as well as any impact on housing providers, residents, small businesses, rural areas, jobs or employment opportunities.

Please distribute this memorandum to the residents or post it in a central location to further elicit their input.

Comments related to this policy should be addressed by email to HCRSmokingReg@nyshcr.org or by regular mail to the HCR Housing Management Bureau, Attention: Comments on Smoking Policy, 25 Beaver Street, New York, NY 10004 within 30 days of the date of this Memorandum.



Michael Skrebutenas

¹ Includes Project based Section 8, Rent Supplement, Section 202, Section 811, Section 236, Rental Assistance Payments and Section 221 (d)(3) housing.

² See State Administrative Procedure Act §202-b (6), §202-bb (7), §201-a.

³ This review is not applicable to HCR's non-assisted portfolio of Rent Stabilized, ETPA and Rent Controlled housing.