January 7, 2013

The Honorable Shaun Donovan
Secretary
Department of Housing and Urban Development
451 Seventh Street SW
Washington, DC 20410

Dear Secretary Donovan:

As health organizations dedicated to reducing the death and disease caused by tobacco use and exposure to secondhand smoke, we appreciate this opportunity to comment on the implementation of smokefree policies in multi-unit housing. These comments are submitted in response to the request for information (RFI) published in the *Federal Register* on October 4, 2012 (Docket No. FR-5597-N-01).

Collaboration with HUD on Smokefree Housing

Our organizations commend the Department of Housing and Urban Development (HUD) for its recent actions to protect the health of residents of federally assisted housing by encouraging broader adoption of smokefree policies in multi-family housing. In 2009, HUD first encouraged public housing agencies (PHAs) to adopt smokefree policies, and in 2010, HUD extended this recommendation to owners and management agents of federally assisted housing. Earlier this year, HUD partnered with the American Academy of Pediatrics, the American Lung Association, and the Department of Health and Human Services to publish smokefree housing toolkits, publications intended to assist both residents and managers of federally assisted multi-family housing to implement smokefree policies. Our organizations appreciate the willingness of the department to work with us on this issue and want to thank, in

particular, the HUD Office of Healthy Homes and Lead Hazard Control for their leadership and effort on this issue.

The RFI states that as of January 2011, 225 PHAs have implemented smokefree policies in some or all units. This is an important early measure of success. However, there is a long way to go before all children, pregnant women, adults, and seniors who live in multi-family housing will be protected from the dangers of tobacco smoke in their own homes. We look forward to continuing to collaborate with HUD to make further progress on this issue. As we will outline in these comments, we strongly believe that the only way to protect all residents of federally assisted multi-family housing is to adopt a nationwide smokefree policy covering all multi-family housing under HUD's control.

Secondhand Smoke Exposure Poses Serious Health Threats to Children and Adults

Secondhand smoke (SHS) contains many poisons and cancer-causing chemicals, including nicotine, carbon monoxide, ammonia, formaldehyde, hydrogen cyanide, nitrogen oxides, phenol, sulfur dioxide, and others.[1] Twenty years ago, in 1992, the US Environmental Protection Agency classified SHS as a Class A known human carcinogen.[2] As such, SHS poses health concerns for all individuals, particularly children and pregnant women.

The reports of direct health effects of SHS exposure are numerous and growing in number. The most recent comprehensive report of these effects is the 2006 US Surgeon General's report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*.[3] The report details how even small amounts of exposure can have serious health effects, resulting in the conclusion that there is no safe level of exposure to secondhand smoke. SHS can cause or exacerbate a wide range of adverse health effects, including lung cancer, heart disease, respiratory infections, sudden infant death syndrome (SIDS) and asthma.

The evidence supporting the association of SHS exposure of children with respiratory illnesses is strong. Increased rates of lower respiratory illness, middle-ear infections, tonsillectomy and adenoidectomy, cough, asthma and asthma exacerbations, hospitalizations, and sudden infant death syndrome have been reported.[4] The scope of these illnesses is huge: it has been estimated that SHS exposure causes asthma symptoms in 200,000 to one million children and contributes to as many as 8,000 to 26,000 new cases of asthma per year.[5] SHS exposure exacerbates many chronic diseases. Children with sickle cell disease who are exposed to SHS have a higher risk of crises that require hospitalization than do unexposed children.[6]

Another effect of SHS exposure is increased school absenteeism. Analysis of data from the Third National Health and Nutrition Examination Survey (NHANES) showed that SHS-exposed children were twice as likely to miss 6 or more school days per year than were unexposed children.[7] A study of California schoolchildren showed that SHS-exposed children had a similar increased risk of absence from school, with risk increasing as the number of household smokers increased.[8] Even very low levels of SHS exposure, such as that seen in a child with a parent who smokes only outside,[9] have been associated with decreases in reading and math scores.[10]

One of the significant consequences of prenatal tobacco exposure is sensitization of the fetal brain to nicotine, which results in increased likelihood of addiction when the brain is exposed to nicotine at a later age. Studies of rodents[11] and primates[12] that were exposed prenatally to tobacco have demonstrated subtle brain changes that persist into adolescence and are associated with tobacco use and nicotine addiction.[13] Population-based human studies have demonstrated associations between prenatal tobacco exposure and early tobacco experimentation[14] as well as increased likelihood of tobacco use as an adolescent and adult.[15]

Children and the elderly represent a disproportionate share of fire victims, and smoking materials are the most common ignition source of fatal residential fires.[16] It has been estimated that smoking causes approximately 30 percent of US fire deaths overall, with at least 100,000 fires each year caused by children playing with ignition materials such as matches and lighters. The rate of fire deaths has decreased as smoking has decreased.[17]

Residents of Multi-Family Housing are Involuntarily Exposed to Secondhand Smoke

Secondhand tobacco smoke is clearly a significant public health hazard, and maintaining a smokefree home is a wise decision to decrease a family's exposure to SHS. Unfortunately, this alone is not sufficient to prevent all exposure to SHS. Tobacco smoke does not stay confined within a single unit in multi-family apartment buildings. Ventilation systems can distribute SHS throughout a building.[18] SHS can seep through walls and cracks.

The data now clearly demonstrate that the residents of smokefree units in multi-family buildings without smokefree air policies are not safe from tobacco smoke exposure. A Boston-based study published in 2009 measured levels of nicotine, an indicator of secondhand smoke exposure, in 49 low-income units in multi-unit buildings. Overall, 94 percent of units had detectable nicotine levels, including 89 percent of units where no one smoked in the home.[19]

A 2011 nationally representative study, conducted through the Social Climate Survey, found that among individuals who lived in multi-family housing where no one smokes inside the home, 31 percent smelled smoke in their building. Of these respondents that reported smelling smoke in their building, approximately half (49 percent) reported smelling smoke in their own units, 38 percent reported smelling smoke in their unit at least once per week, and 12 percent reported smelling smoke in their unit at least once per day.[20] This nationally representative study confirms the results of several state- and community-level studies measuring prevalence of smoke incursions into smokefree units.[21]

An alarming study published in 2011 confirmed that children who live in multi-family housing have significantly higher exposure to secondhand smoke than those who live in detached housing. The study included 5,002 children ages 6 to 18, and excluded any child who lived with someone who smokes in the home. Using data from the National Health and Nutrition Examination Survey, the authors of the study were able to show that when compared to children living in detached housing, levels of cotinine, a chemical marker of nicotine in the blood, among children living in multi-family housing were significantly higher.[22]

Prevention of Secondhand Smoke Exposure Requires Smokefree Policies

The above evidence clearly demonstrates that residents of multi-family housing are exposed to secondhand smoke even if they live in a unit where no one smokes. Therefore, the only way to fully protect children and adults who live in multi-family housing from secondhand exposure is to implement building-wide smokefree air policies.

Partial smokefree policies, those that prohibit smoking in common areas like hallways, will not protect all residents from SHS. The 2011 Social Climate Survey showed that multi-unit residents in buildings with the strongest smokefree air policies were the least likely to report smelling smoke. The data also showed that policies that only prohibited smoking in common spaces—and not individual units—did little to prevent residents from smelling smoke.[23]

Experts in building ventilation agree that keeping a smokefree unit is insufficient in removing health risks. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) explained in a policy statement that the only means of effectively eliminating the health risks associated with indoor exposure is to make them smokefree.[24]

HUD Should Adopt a National Smokefree Policy

As a crucial part of a larger national effort to eliminate involuntary exposure to tobacco smoke in all multi-family housing—whether publicly assisted or not—we urge HUD to initiate rulemaking to implement smokefree policies in all HUD-assisted multi-family housing. A national smokefree air policy is the only way to ensure that all children and adults who are living in assisted housing, no matter where in the country, are protected from the dangers of SHS.

All people, regardless of income, should be able to enjoy healthy housing, free of secondhand smoke and other dangerous conditions. However, the existing lack of smokefree air policies disproportionately impacts lower-income families who cannot move due to economic, health or other reasons. Higher-income individuals are better able to relocate their families to remove them from an unhealthy environment. Public housing residents are more likely to be members of vulnerable populations: 38 percent are children, 31 percent are seniors, 30 percent are disabled, and 89 percent are classified by HUD as “very low income.”[25] Data also suggest that those in government assisted housing are more likely to be exposed to SHS than those in other multi-family housing. The 2011 Social Climate Survey showed that multi-family housing residents were more likely to smell smoke in their building if they received government subsidies for their housing.[26] Clearly, the status quo discriminates against vulnerable populations.

Not only are smokefree air policies beneficial for residents and managers, multi-unit housing residents consistently report that they desire smokefree air policies. There is data showing that a majority of residents want smokefree air policies implemented where they live.[27]

While our organizations believe the health and other benefits of making all HUD-assisted multi-family housing smokefree are overwhelming, it is likely HUD will receive some comments against smokefree

housing. Below are some concerns that HUD may receive and our responses to them. One argument that may be raised is that a smokefree policy infringes on a legal activity or a person's right to smoke. While smoking may be a legal activity, there is no right to smoke. Many jurisdictions in the United States have placed restrictions on where smoking is permitted to protect the health of nonsmokers, and these restrictions have been almost universally upheld in court cases.

U.S. law supports many restrictions on the conduct of individuals that affects their neighbors, including prohibitions on nuisances such as excessive noise levels. Smokefree air policies in multi-family buildings do not prohibit residents from smoking altogether; they only prohibit residents from smoking in locations that can cause harm to their neighbors. People who smoke could still be allowed to smoke in outdoor locations away from the building that would not pose harm to others. Building-wide smokefree air policies, therefore, do not infringe on any protected liberties or freedoms afforded to a person who smokes. Rather, such policies protect the right of all the children and nonsmokers who to reside in shared indoor environments.[28]

Smokefree air policies also have collateral benefits for building managers as nonsmoking units are significantly less expensive to turn over than smoking units when a tenant moves out. Turnover costs are two to seven times higher in homes when smoking is allowed.[29] Because the risk of fire is reduced when smokefree air policies are implemented, some insurance companies offer discounts on property casualty insurance.[30] Reductions in SHS will also lead to lower costs to society, both from decreased health care costs and improved productivity. Smokefree policies may also encourage existing smokers to quit.

As with any worthwhile public health innovation, there will undoubtedly be implementation challenges. However, as HUD points out, hundreds of PHAs have already implemented smokefree air policies and found that these challenges are anything but insurmountable. We urge HUD to closely analyze the comments received in this docket in order to fully understand how these obstacles have been successfully addressed and overcome in many communities around the nation. We believe that many commonly cited objections to smokefree air policies—such as a concern that they will increase undesirable loitering outside buildings—have not shown themselves to be significant issues when a policy is actually implemented.

Enforcement has been raised as a particular challenge, with some arguing that smokefree air policies will result in increased evictions. However, smokefree air policy violations should be treated like any other housing policy violation—including restrictions on noise levels—and as such should be addressed, enforced and respected in the same manner and consistency as any other housing provision. Eviction is often a means of last resort for any lease violation and experience has shown that the ultimate consequence of eviction is rarely used.

Some have also argued that smokefree policies discriminate against disabled individuals who may be less able to smoke outside. However, smoking is not a basic human need and therefore does not require reasonable accommodation under the Americans with Disabilities Act. In fact, it is smoking inside buildings that discriminates against the greater majority of nonsmoking disabled individuals because they cannot escape tobacco smoke infiltrating their own apartments. Nicotine addiction can be

addressed using available, safe, FDA-approved nicotine replacement options. These forms of nicotine are available as gum, patch, lozenge, nasal spray, and inhaler. With assistance, every smoker can quit and research has shown that at least 70 percent of smokers say they want to quit.[31] Overall, the rights of the disabled population, including disabled children and those with respiratory disabilities, are best protected by smokefree building policies that ensure a safe environment for all residents.[32]

Thank you for your attention to this critical public health issue. We look forward to continuing to work with HUD to promote healthy living environments, free of exposure to secondhand smoke, for all children and adults. If you have any questions, please contact James Baumberger at the American Academy of Pediatrics (202.347.8600) or Erika Sward at the American Lung Association (202.785.3355).

Sincerely,

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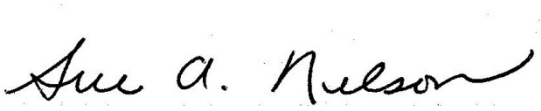

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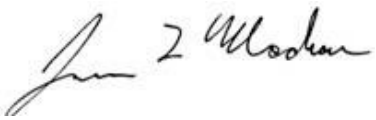

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