



Region X

## U.S. Department of Housing and Urban Development

Office of the Regional Director

October 13, 2004

Kylie Meiner, MPH  
Tobacco Prevention Program Coordinator  
Multnomah County Health Department  
426 SW Stark Street, 9<sup>th</sup> Floor  
Portland, OR 97204

Dear Ms. Kylie:

This is in response to your September 24, 2004, letter concerning the issue of nonsmoking policies for HUD-assisted housing units. In your letter, you referenced a July 18, 2003, letter regarding no smoking policies at HUD-assisted developments issued from the Detroit Office of Counsel. Specifically, you wanted a clear statement from our office on several questions.

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. As stated in the July 18, 2003, letter from the Detroit Office of Counsel, HUD approval is required, depending on the program, if the owner wants to make changes to the model lease they are required to utilize. HUD Directive 4350.3, Chapter 6-4 D, states that changes to the model lease for subsidized programs may be only for documented state or local laws or a management practice generally used by management entities of assisted projects. Eviction of tenants in housing projects that receive HUD assistance would have to comply with program requirements and state and local laws.

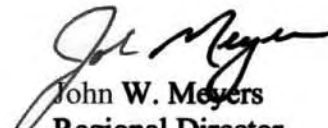
Finally, you have asked whether a disabled tenant may request a nonsmoking building policy as a reasonable accommodation. The Fair Housing Act defines handicap discrimination to include a "refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. Section 3604(f)(3)(B). A housing provider need not provide an accommodation that would create an undue financial or administrative burden or entail a fundamental alteration of its housing program. The third-party interests of other tenants are relevant to this inquiry.

As reasonable accommodation requests are fact-specific and must be evaluated on a case-by-case basis, it is not possible to provide a blanket response to your question. The fact finder would consider whether the requested accommodation was necessary to the disabled person's use and enjoyment of the property and whether the request is reasonable. If the housing provider

proposes an alternative, less onerous, accommodation, it would be evaluated to determine whether it meets the disabled tenant's needs.

I hope this information is helpful. If you have any questions or need further guidance, please contact Mona Fandel, Deputy Regional Counsel, at (206) 220-5445.

Sincerely,

  
John W. Meyers  
Regional Director