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Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500.

Re: Instituting Smoke- Free Public Housing
Docket Number: HUD-2015-0101-0001

The School of Public Health at Georgia State University (GSU) is pleased to submit this comment to assist the U.S. Department of Housing and Urban Development Food (HUD) in their proposed rule instituting smoke-free public housing. GSU strongly supports the institution of smoke-free public housing by the agency and we offer several recommendations in response to the agency invitations for comment related to whether the agency should extend this policy to water pipe, hookah, and electronic cigarettes. If adopted, we believe these recommendations would help to ensure the proposed rule furthers the agency goal of promoting the health and safety of public housing residents and HUD agency staff.

According to the Centers for Disease Control, cigarette smoking is the leading cause of preventable death in the United States killing more than 480,000 Americans each year.¹ Exposure to second hand smoke, also known as side stream smoke, is estimated to cause an approximately 7,330 deaths from lung cancer and 33,950 deaths from heart disease each year.²

Families with low socioeconomic status are more likely to be exposed to secondhand smoke at home.³ In 2012, more than 1 in 3 nonsmokers who lived in multiunit rental housing was exposed to secondhand smoke.⁴ For those below the Federal poverty level secondhand smoke exposure increased to more than 2 out of every 5 (43.2%). Residents of public housing

¹ U.S. Department of Health and Human Services. How Tobacco Smoke Causes Disease: What It Means to You. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010

² U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. 2014

³ Tobacco Atlas Fifth Edition

⁴ Centers for Disease Control and Prevention. Vital Signs: Disparities in Nonsmokers' Exposure to Secondhand Smoke—United States, 1999–2012. Morbidity and Mortality Weekly Report 2015;64(4):103–8

programs in particular represent a population that is vulnerable to second hand smoke exposure. Youth and the elderly comprise more than half of all residents. For youth, exposure to secondhand smoke increases the likelihood of developing bronchitis, pneumonia, asthma, poorer lung function and other breathing problems, as well as ear infections.⁵ For the elderly, exposure to second hand smoke is associated with many serious medical conditions including cancer, heart disease, and stroke.⁶ Aside from these specifically identified vulnerable groups, residents of public housing programs suffer from high rates of chronic diseases such as asthma which are further exacerbated by exposure to secondhand smoke. The Surgeon General has concluded that there is no risk-free level of exposure to second hand smoke.⁷ Only by fully eliminating smoking in indoor spaces are nonsmokers fully protected as multiunit housing developments suffer from high rates of smoke seepage. Furthermore there is the issue of “thirdhand” smoke or residual nicotine and other chemicals left on a variety of indoor surfaces by tobacco smoke. This residue builds up on surfaces over time leading to serious health risks.⁸ Moreover, the residue resists normal cleaning. Thirdhand smoke cannot be eliminated by traditional air cleaning methods such as air conditioners, windows, or confining smoking to only certain areas.

Overall, the policy proposed by the agency will provide substantial benefits to residents, staff, and the agency itself. However, the failure to include coverage for hookah and electronic cigarettes limits the potential benefits of the rule.

Hookah and Water Pipes should be included to the definition of lit tobacco products

Thus far, the agency has declined to extend the prohibition on lit tobacco products to include hookah or water pipes. Water pipes or hookah are used to smoke specially made tobacco, known as sisha. A coal is placed above the tobacco and when air is sucked through the hookah, the coals are heated, lighting the tobacco and bringing smoke down into the base of the device. In the base, the smoke travels through water and air, and is inhaled by the user.

Traditionally, the use of hookah has been relatively limited. In recent years however, hookah use has grown in popularity, particularly among youth and young adult populations.⁹ GSU recommends that water pipe and hookahs should be included to the definition of lit tobacco

⁵ U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. 2006

⁶ U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. 2014

⁷ U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. 2006

⁸ Sleiman, Mohamad, et al. "Formation of carcinogens indoors by surface-mediated reactions of nicotine with nitrous acid, leading to potential thirdhand smoke hazards." Proceedings of the National Academy of Sciences 107.15 (2010): 6576-6581.

⁹ U.S. Department of Health and Human Services. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Office on Smoking and Health, 2012

products ensuring that the proposed policy is consistent and provides comprehensive protection to public housing residents and HUD agency staff.

Hookah smoking produces many of the same health risks associated with the use of other combustible tobacco products including a variety of cancers, lung and circulatory ailments.¹⁰ Moreover, hookah use produces significant harmful emissions. Secondhand or “sidestream” smoke contains hundreds of chemicals known to be toxic or carcinogenic, including formaldehyde, benzene, vinyl chloride, arsenic ammonia and hydrogen cyanide.¹¹ In addition to the combustion of tobacco found in similar tobacco products, hookah use also produces harmful emissions from the burning of the coal.¹² Unlike a traditional cigarette smoking session which lasts around five minutes, a typical water pipe tobacco session may last 45 minutes or more.¹³ Due to this longer period of use, hookah use may actually increase exposure to the carcinogens in tobacco. Some estimates place this exposure as equal to consuming 100 cigarettes.¹⁴ Similar to other combustible tobacco products, the emissions from hookah and other water pipes has been shown to seep between rooms, even in separately ventilated systems.¹⁵

Including hookah and water pipe smoking devices serves another important agency goal, supporting enforcement of the proposed smoke-free policy. Failing to include hookah use from the smoke free policy is inconsistent with already enacted smoke free policies and by exempting a product that produces smoke, the agency will likely add to the burden of enforcing their proposed smoke-free policy.

Furthermore, exemption of hookah and water pipe devices may have harm perception consequences as well. In exempting these devices, the agency will only add to the substantial existing consumer confusion regarding the risks presented by hookah use. Already research has

¹⁰ Akl EA, Gaddam S, Gunukula SK, Honeine R, Jaoude PA, Irani J. The Effects of Waterpipe Tobacco Smoking on Health Outcomes: A Systematic Review. *International Journal of Epidemiology* 2010;39:834–57; Cobb CO, Ward KD, Maziak W, Shihadeh AL, Eissenberg T. Waterpipe Tobacco Smoking: An Emerging Health Crisis in the United States. *American Journal of Health Behavior* 2010;34(3):275–85

¹¹ U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. 2006.

¹² Knishkowsky, B. & Amitai, Y., Water-Pipe (Narghile) Smoking: An Emerging Health Risk Behavior, *Pediatrics*, 116:113–19 (2005).

¹³ Martinasek, M. P., Gibson-Young, L. M., Davis, J. N., & McDermott, R. J. (2015). Waterpipe tobacco smoking impact on public health: implications for policy. *Risk Management and Healthcare Policy*, 8, 121–129. <http://doi.org/10.2147/RMHP.S68267>

¹⁴ World Health Org., WHO Study Group on Tobacco Product Regulation, *Advisory Note: Waterpipe Tobacco Smoking: Health Effects, Research Needs and Recommended Actions by Regulators* (2005)

¹⁵ Cobb CO, Vansickel AR, Blank MD, Jentink K, Travers MJ, Eissenberg T. Indoor air quality in Virginia waterpipe cafes. *Tob Control*. 2013 Sep;22(5):338-43. doi: 10.1136/tobaccocontrol-2011-050350. Epub 2012 Mar 24. PubMed PMID: 22447194; Kumar, Sumit R et al. “A Review of Air Quality, Biological Indicators and Health Effects of Second-Hand Waterpipe Smoke Exposure.” *Tobacco Control* 24.Suppl 1 (2015): i54–i59. PMC. Web. 19 Jan. 2016.

demonstrated that many hookah smokers believe hookah use to be less harmful than smoking cigarettes, such a belief is particularly common among adolescents and young adults.¹⁶ Including all emission producing tobacco products under the policy provides a clear, understandable rule that is supported by scientific research.

The definition of lit tobacco products should be amended to include electronic cigarettes.

Under the current proposal, lit tobacco products are defined as those that involve the ignition and burning of tobacco leaves, such cigarettes, cigars, and pipes.¹⁷ As such, under this current definition, electronic cigarettes would not be considered lit tobacco products due to the absence of tobacco leaf combustion. We disagree with this decision and recommend the agency change the definition of tobacco products to include prohibiting all emission producing tobacco products, a policy provides a clear, understandable rule.

The extent of the risks posed by second hand exposure to electronic cigarette emissions remains unclear. However, studies have shown emissions from electronic cigarettes can contain potential toxic compounds such as nicotine, carbonyls, metals, and organic volatile compounds, besides particulate matter.¹⁸ These potential risks have caused a growing number of state and local governments to prohibit their use in various public places and places of employment – often under existing or new smoke-free laws.¹⁹ Recently, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) amended their standards for multi-unit housing ventilation, adding electronic cigarettes to the definition of environmental tobacco smoke or ETS.²⁰ This addendum clarifies that acceptable indoor air quality is incompatible with the presence of ETS, including e-cigarette emissions. Although the magnitude of risks posed by electronic cigarettes remains the subject of debate, the primary goal of a clean air policy is to minimize the use of products that pose potential health risks to the user or to bystanders. Including electronic cigarettes in the smoke-free policy accomplishes that goal.

Similar to hookah, the failure to include the electronic cigarettes from the smoke free policy will only add to the already considerable consumer confusion of the risks presented by

¹⁶ American Lung Association. An Emerging Deadly Trend: Waterpipe Tobacco Use. Washington: American Lung Association, 2007; See also American Lung Association. Hookah Smoking: A Growing Threat to Public Health Issue Brief. Smokefree Communities Project, 2011; Aljarrah, K.; Ababneh, Z.Q.; Al-Delaimy, W.K., Perceptions of hookah smoking harmfulness: predictors and characteristics among current hookah users, Tobacco Induced Diseases 5(1):16 (2009).

¹⁷ 965.653(c) Lit tobacco products.

¹⁸ Fernández E, Ballbè M, Sureda X, Fu M, Saltó E, Martínez-Sánchez JM. Particulate Matter from Electronic Cigarettes and Conventional Cigarettes: a Systematic Review and Observational Study. Curr Environ Health Rep. 2015 Dec;2(4):423-9. doi: 10.1007/s40572-015-0072-x. PubMed PMID: 26452675.

¹⁹ States and Municipalities with Laws Regulating Use of Electronic Cigarettes <http://www.no-smoke.org/pdf/ecigslaws.pdf>

²⁰ Francis J. Offerman, The Hazards of E-Cigarettes, ASHRAE JOURNAL (2014), <http://www.gocolumbiamo.com/Health/Documents/Offermann-Thehazardsofe-cigarettes.pdf>

electronic cigarettes.²¹ There may be a place for preferential treatment of electronic cigarettes in other areas of tobacco control such as taxation but not in housing policies.²²

Extending Policy to Include Hookah and ENDS would not raise legal issues

Since the agency first announced this policy, several groups have argued the proposed policy is discriminatory. These arguments are not supported by case law and extending the policy to include ENDS and hookah products would not raise additional legal questions. Federal and state court opinions have consistently held that smoking is not a fundamental privacy right so units of government may regulate this activity.²³ Nor does the law consider smokers a specially protected category of people.²⁴ Although the case law on electronic cigarettes is limited, there is little to suggest that courts would treat such challenges differently. Finally, although nicotine addiction or dependence is recognized as a medical condition, an addiction to nicotine has not been recognized as a disability under any of the federal or state disability statutes. Although the law has determined that a “reasonable accommodation” is not required for situations of nicotine addiction, we believe this new policy provides an opportunity to increase smoking cessation rates and we recommend HUD explore the possibility of working with HHS to offer information regarding cessation or cessation services themselves.

Conclusion

In closing, we appreciate opportunity to comment on this proposed rule and urge the HUD to consider our recommendations to ensure the proposed rule furthers the agency goal of promoting the health and safety of the public housing residents and HUD agency staff.

Respectfully,

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²¹ Berg CJ, Barr DB, Stratton E, Escoffery C, Kegler M. Attitudes toward E-Cigarettes, Reasons for Initiating E-Cigarette Use, and Changes in Smoking Behavior after Initiation: A Pilot Longitudinal Study of Regular Cigarette Smokers. *Open J Prev Med*. 2014 Oct;4(10):789-800. PubMed PMID: 25621193; PubMed Central PMCID: PMC4304080; Berg CJ, Haardoerfer R, Escoffery C, Zheng P, Kegler M. Cigarette users' interest in using or switching to electronic nicotine delivery systems for smokeless tobacco for harm reduction, cessation, or novelty: a cross-sectional survey of US adults. *Nicotine Tob Res*. 2015 Feb;17(2):245-55. doi: 10.1093/ntr/ntu103. Epub 2014 Jun 20. PubMed PMID: 24951496; PubMed Central PMCID: PMC4311172.; Nonnemaker J, Kim AE, Lee YO, MacMonegle A. Quantifying how smokers value attributes of electronic cigarettes. *Tob Control*. 2015 Nov 6. pii: tobaccocontrol-2015-052511. doi: 10.1136/tobaccocontrol-2015-052511. [Epub ahead of print] PubMed PMID: 26546152.

²² Huang et al. The impact of price and tobacco control policies on the demand for electronic nicotine delivery systems *Tob Control* 2014;0:1–7. doi:10.1136/tobaccocontrol-2013-051515 See also: Seidenberg et al. Differences in the design and sale of e-cigarettes by cigarette manufacturers and non-cigarette manufacturers in the USA *Tob Control*. 2015 Nov 6. pii: tobaccocontrol-2015-052375. doi: 10.1136/tobaccocontrol-2015-052375. [Epub ahead of print]

²³ *Grusendorf v. City of Oklahoma City*, 816 F.2d 539 (10th Cir. 1987); *City of North Miami v. Kurtz*, 653 So.2d 1025 (Fla. 1995); *In re Julie Anne*, 780 N.E.2d 635, 659 (Ohio Com. Pl. 2002)

²⁴ *NYC C.L.A.S.H., Inc. v. New York*, 315 F. Supp. 2d 461 (S.D.N.Y. 2004); *Rossie v. State Dep't of Revenue*, 133 Wis. 2d 341 (1986).

