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December 15, 2016

The Honorable Richard Shelby  
Chairman  
The Honorable Sherrod Brown  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Jeb Hensarling  
Chairman  
The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
House of Representatives

Subject: *Department of Housing and Urban Development: Instituting Smoke-Free Public Housing*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Housing and Urban Development (HUD) entitled “Instituting Smoke-Free Public Housing” (RIN: 2577-AC97). We received the rule on December 5, 2016. It was published in the *Federal Register* as a final rule on December 5, 2016, with an effective date of February 3, 2017. 81 Fed. Reg. 87,430.

The final rule requires each public housing agency (PHA) administering public housing to implement a smoke-free policy. According to HUD, no later than 18 months from the effective date of the rule, each PHA must implement a “smoke-free” policy banning the use of prohibited tobacco products in all public housing living units, indoor common areas in public housing, and in PHA administrative office buildings. The smoke-free policy must also extend to all outdoor areas up to 25 feet from the public housing and administrative office buildings. HUD intends for this rule to improve indoor air quality in the housing; benefit the health of public housing residents, visitors, and PHA staff; reduce the risk of catastrophic fires; and lower overall maintenance costs

Enclosed is our assessment of HUD’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that HUD complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Ariel Pereira  
Associate General Counsel for  
Legislation and Regulations  
Department of Housing and Urban Development

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
ENTITLED  
“INSTITUTING SMOKE-FREE PUBLIC HOUSING”  
(RIN: 2577-AC97)

(i) Cost-benefit analysis

The Department of Housing and Urban Development (HUD) discussed the costs and benefits of this final rule. According to HUD, the costs to public housing agencies (PHAs) of implementing smoke-free policies may include training, administrative, legal, and enforcement costs. In HUD’s view, the costs of implementing a smoke-free policy are minimized by the existence of current HUD guidance on many of the topics covered by the mandatory smoke-free policy required by this rule. HUD observed that hundreds of PHAs have already voluntarily implemented smoke-free policies. Furthermore, HUD noted that infrastructure already exists for enforcement of lease violations, and violation of the smoke-free policy would constitute a lease violation, and that time spent by PHA staff on implementing and enforcing the smoke-free policy will be partially offset by the time that staff no longer have to spend mediating disputes among residents over secondhand smoke (SHS) infiltration within living units. Given the existing guidance, HUD expects initial learning costs associated with implementation of a smoke-free policy may not be significant. For the hundreds of PHAs that are already implementing voluntary smoke-free policies, HUD expects there will be minimal costs of updating smoke-free policies, and these minimal costs will generally apply only if their existing policies are not consistent with the minimum requirements for smoke-free policies proposed by this rule.

However, HUD also recognized that implementing the requirements successfully may require additional enforcement legal costs for cases where repeated violations lead to evictions. HUD expects total recurring costs to PHAs of implementation and enforcement to be \$7.7 million, although they may be higher in the first few years of implementation, given the necessity of establishing designated smoking areas (a total of \$30.2 million in the first year).

HUD also expects the benefits of smoke-free policies may be considerable. HUD estimates over 700,000 units will be affected by this rule (including over 500,000 units inhabited by elderly households or households with a non-elderly person with disabilities), and their non-smoking residents would have the potential to experience health benefits from a reduction of exposure to SHS. Additional benefits HUD identified are a reduction of damage caused by smoking and a reduction in injuries, deaths, and property damage from fires caused by prohibited tobacco products. HUD calculated the standard net benefits of this rule to be \$207 million.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

HUD certified that this final rule will not have a significant impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

HUD determined that this final rule will not impose any federal mandates on any state, local, or tribal governments or the private sector under the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On November 17, 2015, HUD published a proposed rule. 80 Fed. Reg. 71,762. HUD responded to comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

HUD determined that this final rule contains information collection requirements under the Act and submitted them to the Office of Management and Budget (OMB) for review under OMB Control Number 2577-0226.

Statutory authorization for the rule

HUD promulgated this final rule under the authority of sections 1437a, 1437d, 1437g, 1547, and 3535(d) of title 42, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

OMB determined that this final rule is economically significant under the Order.

Executive Order No. 13,132 (Federalism)

HUD determined that this final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law under the Order.