



## Creating Smoke-Free Affordable Housing

The Tobacco Control Legal Consortium has created the Tips & Tools series of legal technical assistance guides to serve as a starting point for organizations interested in implementing certain tobacco control measures. We encourage you to consult with local legal counsel before attempting to implement these measures.<sup>1</sup> For more details about these policy considerations, please contact the Consortium.

### Eliminating Exposure to Secondhand Smoke in Affordable Housing

There is growing awareness that people living in multi-unit housing complexes are unwillingly exposed to secondhand tobacco smoke that comes into their unit from a smoking neighbor's unit. Secondhand smoke can flow through open windows and under doors, seep in between shared walls, travel along openings for pipes and wiring, and blow through shared ventilation systems.<sup>2</sup> For example, a recent study of affordable housing in the Boston Area found that nearly half (49 percent) of nonsmoking residents reported smelling secondhand smoke in their units, and researchers collected evidence of nicotine in 89 percent of the nonsmoking units tested.<sup>3</sup> Such exposure levels represent a significant public health threat, as more than half (54 percent) of people living in public housing – one type of affordable housing – are either children or elderly populations that are especially vulnerable to the effects of secondhand smoke exposure.<sup>4</sup> Regrettably, for many affordable housing residents who experience drifting smoke, their only option is to stay where they are and endure the exposure, as they are on fixed or limited incomes and might not be able to afford to move to another apartment to escape from the infiltrating smoke.



In response to this problem, momentum is growing for the implementation of smoke-free policies in affordable multi-unit housing. Approximately 240 public housing authorities and commissions across the U.S. have already adopted smoke-free policies for low-income multi-unit housing.<sup>5</sup> Such policies are supported by the U.S. Department of Housing and Urban Development (HUD), the federal agency with primary funding responsibility for low-income housing. HUD has issued two memoranda encouraging public housing authorities and other federally subsidized housing providers to implement smoke-free policies for their units,<sup>6</sup> and its Healthy Homes Strategic Plan promotes measures to eliminate secondhand smoke in the home environment.<sup>7</sup> Likewise, the U.S. Surgeon General has prioritized smoke-free housing in a “Call to Action to Promote Healthy Homes.”<sup>8</sup> The Department of Agriculture, and its Rural

Development (RD) program, has issued a notice similar to that distributed by HUD, directed at the rural properties that RD supports.<sup>9</sup> Given the growing interest in smoke-free policies for affordable housing, this brief guide provides basic information for low-income housing providers to consider when implementing such policies.

## Policy Benefits

Smoke-free policies in affordable housing can have numerous benefits – both for the residents and the housing providers.<sup>10</sup>

- **Create Healthier Indoor Environments:** A substantial number of public housing residents suffer from chronic diseases such as asthma and cardiovascular disease, which can be exacerbated by exposure to secondhand smoke.<sup>11</sup> Eliminating smoking inside low-income multi-unit buildings is the only effective way to safeguard the health of these particularly vulnerable tenants from secondhand smoke. Such policies are necessary, as air purifiers and ventilation systems are unable to filter out the toxic components of tobacco smoke, and air quality experts acknowledge that the only way to truly reduce the health risks from secondhand smoke exposure is to create completely smoke-free indoor environments.<sup>12</sup>
- **Reduce Turnover Costs:** The cost of cleaning a unit after a smoking tenant moves out can be significant. For example, a study of New England housing authorities and subsidized housing facilities found that the turnover costs for units that had been lightly smoked in were more than three times those for a smoke-free unit (\$1,810 as compared to \$560). For a unit with a heavy smoker, those costs could balloon to more than six times as much (\$3,500).<sup>13</sup> Renovating a smoked-in unit can include repainting the walls, replacing carpeting, drapes, and appliances to eliminate smoking odors, and refurbishing floors and countertops that have cigarette burns. A smoke-free housing policy can help affordable housing providers save money by reducing the costs of restoring units, allowing them to use their limited financial resources to support other important mission-driven operations.
- **Prevent Smoking-Related Fires:** Smoking-related residential fires cause more deaths than any other type of fire, and one out of four fatal victims is not the smoker whose cigarette started the fire.<sup>14</sup> Older residents are at greater risk even though they are less likely to smoke: one-third of fatal fire victims are 65 or older, even though they make up only 12 percent of the population.<sup>15</sup> A smoke-free policy reduces the possibility of a smoking-caused fire and increases the safety of residents and their property.
- **Meet the Demand for Smoke-Free Living:** The desire to live in a smoke-free housing complex cuts across socio-economic classifications. Throughout the country, survey after survey finds a majority of renters favor living in smoke-free multi-unit housing.<sup>16</sup> It is also important to recognize that smoking rates are low among the groups disproportionately represented in affordable housing: more than 87 percent of seniors do not smoke; nearly 80 percent of African Americans are nonsmokers; over 86 percent of Hispanics do not smoke; and 70 percent of households living below the poverty threshold do not include anyone who smokes.<sup>17</sup> By implementing a smoke-free policy, affordable housing providers will be able to better meet the needs and preferences of their residents.

The total cost savings nationally that could result from implementing smoke-free policies could reach approximately \$500 million annually, including \$310 million in related health care expenses, \$133 million in renovation costs, and \$53 million in fire losses.<sup>18</sup>

### **Types of Affordable Housing**

The term “affordable housing” is generally understood to refer to housing that is subsidized by government funds to assist people with low incomes who might not otherwise be able to pay market rate rents. The income level needed to qualify for affordable or subsidized housing differs depending on the type of program. In addition, some programs are designed to serve specific populations – for example, people with disabilities or those who were formerly homeless. While there are many different government programs to create affordable housing, the three most common are:<sup>19</sup>

- **Public Housing:** Multi-unit housing that is owned and managed by a city or county agency generally referred to as a public housing authority. In addition to local funds, housing authorities also receive federal funds from HUD and thus must adhere to HUD standards and operating regulations.
- **Project-Based Section 8 Housing:** Multi-unit housing that is privately owned (often by a nonprofit organization) that receives federal HUD funds to subsidize a portion of the rent for qualified tenants living in the development. This subsidy is tied to the property and is used to defray rental expenses for those living on-site. This type of affordable housing also must adhere to HUD standards and operating regulations.
- **Tenant-Based Section 8 Housing:** Some low-income renters receive a voucher, funded by HUD, which is used to pay a portion of the rent at a market-rate multi-unit housing complex where vouchers are accepted. The voucher subsidy stays with the tenant and can be used to subsidize rent at different multi-unit housing locations that are privately owned (often by a for-profit company or landlord). The tenant can use the voucher subsidy at complexes as long as the housing provider has met HUD eligibility criteria.

### **Policy Elements**

All affordable housing providers can adopt smoke-free policies; however, different implementation procedures may need to be followed depending on the affordable housing program. For example, housing providers likely need to follow program-specific HUD rules on how and when notice is given to tenants and how and when leases or house rules are changed to incorporate the new policy.<sup>20</sup> Notwithstanding these technical distinctions, smoke-free housing policies will have several key elements in common, regardless of housing type. Below are basic considerations to keep in mind when implementing any smoke-free housing policy.

- **Explain the Reason for a Smoke-Free Policy:** Residents, guests, employees, and others associated with a multi-unit housing development need to understand the significant health and fire risks associated with smoking and exposure to secondhand smoke and how a smoke-free policy will create a more healthful and safe place for people to live.

- **Describe Where Smoking Is and Is Not Allowed:** The policy needs to clearly identify areas that are smoke-free and areas (if any) where smoking is allowed. A property owner can decide how much of the property will be protected by the smoke-free policy, but the “smoke-free” designation is usually reserved for properties in which 100 percent of the indoor common areas and residential units are smoke-free. Other areas that can be covered under the policy include:
  - Outdoor common areas, such as walkways, parking lots, and eating areas;
  - Balconies, patios, or decks of individual units; and
  - Near doorways, windows, and air vents.
  
- **Apply Policy To Everyone:** For a smoke-free policy to be effective, the smoking restrictions need to cover all residents, guests, and employees. A policy that is uniformly applied to everyone that lives, works, and visits the complex will facilitate successful implementation and compliance. It helps enforcement to require those who live and work in the complex to educate their guests about the smoke-free policy and ensure they know about the rules.
  
- **Decide How to Respond to Policy Violations:** While a smoke-free housing policy likely will have high levels of tenant compliance, the housing provider should have a plan in place outlining how infractions will be handled. Affordable housing managers may choose to use a protocol where verbal warnings are issued first and then are followed by written warnings and referrals to cessation and other counseling services. The ultimate enforcement effort would be to initiate termination or eviction proceedings for long-standing failures to comply with the smoke-free policy. Housing providers may wish to draw on the experience and approaches used to enforce other house rules and lease provisions, such as sanitary requirements, noise policies, or drug prohibitions.
  
- **Prepare Tenants and Staff for Implementation of the Policy:** An outreach program can be a useful way to inform tenants about the new policy. Elements could include fliers announcing the launch of the program, handouts with Frequently Asked Questions, announcements at tenant gatherings, and educational presentations at resident meetings. The approach used should be appropriate for the residents, in terms of language and format. In addition, on-site smoking cessation classes or referrals to cessation resources in the community should be offered. Staff need to learn about the policy and undergo training to understand how to implement and enforce it. Also, if not already required by a local smoke-free law, the housing provider should post “No Smoking” or “Smoke-Free” signs in areas where smoking is prohibited to act as on-going reminders about the policy.

## Challenges

Affordable housing providers and tenant advocates could have concerns about adopting a smoke-free multi-unit housing policy because of how it will impact tenants who smoke. Here are a few common questions that arise:

- Would a smoke-free policy illegally discriminate against tenants who smoke?**  
 No. It is important to remember that smokers do not have any special legal status; thus, a smoke-free housing policy would not unlawfully discriminate against them.<sup>21</sup> The Constitution guarantees protection from discrimination to very few categories of people, and this protection is based on characteristics someone is born with such as race, ethnicity, or gender. Because smoking is an activity or a habit and not a trait one is born with, people who smoke are not afforded any special constitutional protections.
- Would a smoke-free policy apply to current tenants who smoke?**  
 Yes, it could. No law or HUD policy requires “grandfathering” or exempting current tenants who smoke.<sup>22</sup> Instead, affordable housing providers may choose to have the policy apply to all residents – current tenants as well as future tenants. To do so, current tenants must be given proper notice. Some providers have opted for a “phase-in” period for current tenants, so they do not have to comply with the new smoke-free policy immediately. Instead, these tenants are given permission to continue smoking in their units for a set number of months (6-12) before they are required to follow the new policy.

While permanently excusing current smoking tenants from a new policy may seem appealing at first, housing providers have found this makes it difficult to enforce the policy. New residents find the lopsided application of the policy unfair, because some people can smoke in their units while others cannot; thus, they have little motivation to comply with the policy. Moreover, because smoking is still allowed inside, it is hard to trace where any smoke is coming from and determine who is actually violating the policy. Finally, such a policy fails to protect the neighbors of such tenants from unwanted drifting smoke.

- Would smokers be able to live in affordable housing?**  
 Yes. It is crucial to remember that a smoke-free housing policy is about *where* smoking is allowed – *not whether* one smokes. The purpose of a smoke-free housing policy is to clearly designate nonsmoking areas and protect residents from exposure to secondhand smoke. Therefore, affordable housing providers may still rent to people who smoke and residents of subsidized housing may continue to smoke, but only in those areas where smoking is allowed. A smoke-free housing policy is not designed to prohibit people who smoke from living in affordable multi-unit housing. In fact, HUD has made it clear that an affordable housing provider with a smoke-free policy may not exclude a person who smokes from occupying an available unit, nor may the provider ask whether a potential tenant smokes.<sup>23</sup>
- Are smoke-free policies difficult to enforce?**  
 A common concern among affordable housing providers is that smoke-free policies are especially difficult to enforce. The experience of the hundreds of housing authorities and Section 8 providers that have adopted smoke-free policies does not support this concern. While some enforcement issues may arise at the beginning of policy adoption, these are usually resolved quickly. One way to facilitate enforcement is to provide detail in the smoke-free lease addendum on how management will determine that a violation of the policy has occurred. For example, management could rely on multiple complaints from neighbors, smoking related refuse in the garbage, or burns on surfaces.

## Examples of Smoke-Free Affordable Housing Policies

Below are examples of smoke-free policies and supporting materials used by affordable housing providers across the country. If you consider adapting any language from these policies or lease addendums, take care to ensure that the provision is appropriate and legal given the particular affordable housing program and jurisdiction. Please note that the Tobacco Control Legal Consortium does not endorse or recommend any of the following policies. These examples are included simply to illustrate how different affordable housing providers have instituted their smoke-free policies.

Organization	Location	Size	Materials
Boulder Housing Partners <a href="http://www.boulderhousing.org/">http://www.boulderhousing.org/</a>	Boulder, CO	<ul style="list-style-type: none"> <li>• 1,000 rental units</li> <li>• 750 Section 8 rent assistance vouchers</li> </ul>	Smoke-free Policy: <a href="http://bit.ly/1umh68n">http://bit.ly/1umh68n</a>
Nampa Housing Authority <a href="http://nampahousing.com/">http://nampahousing.com/</a>	Nampa, ID	<ul style="list-style-type: none"> <li>• 142 units owned and operated by the Housing Authority</li> </ul>	Smoke-free Policy documents: <a href="http://bit.ly/1xXUueo">http://bit.ly/1xXUueo</a>
Boston Housing Authority <a href="http://www.bostonhousing.org/">http://www.bostonhousing.org/</a>	Boston, MA	<ul style="list-style-type: none"> <li>• 14,000 public housing units</li> <li>• 11,000 Section 8 rent assistance vouchers</li> </ul>	Non-Smoking Lease Addendum: <a href="http://bit.ly/1FPWryt">http://bit.ly/1FPWryt</a>
Laconia Housing Authority <a href="http://laconiahousing.org/">http://laconiahousing.org/</a>	Laconia, NH	<ul style="list-style-type: none"> <li>• 311 public housing units</li> <li>• 407 Section 8 rent assistance vouchers</li> </ul>	Smoke-Free Policy: <a href="http://laconiahousing.org/images/smokefreepolicy.pdf">http://laconiahousing.org/images/smokefreepolicy.pdf</a>
HomeForward (formerly Housing Authority of Portland) <a href="http://www.homeforward.org/">http://www.homeforward.org/</a>	Portland, OR	<ul style="list-style-type: none"> <li>• 6,000 apartments to rent</li> <li>• 2,500 public housing units</li> <li>• 8,400 Section 8 rent assistance vouchers</li> </ul>	Adopting a No-Smoking Policy: How the Housing Authority of Portland Did It: <a href="http://bit.ly/1BG2yId">http://bit.ly/1BG2yId</a>
Seattle Housing Authority <a href="http://www.seattlehousing.org/">http://www.seattlehousing.org/</a>	Seattle, WA	<ul style="list-style-type: none"> <li>• 5,400+ public housing units</li> <li>• 1,000 units for seniors or disabled tenants</li> <li>• 8,700 Section 8 rent assistance vouchers</li> </ul>	Smoke-free Policy: <a href="http://bit.ly/1yM54Mv">http://bit.ly/1yM54Mv</a>  News Release: <a href="http://bit.ly/1zwP0y6">http://bit.ly/1zwP0y6</a>  Senior Housing Survey Results: <a href="http://bit.ly/1JfKeok">http://bit.ly/1JfKeok</a>

		<ul style="list-style-type: none"> <li>• 2,300 rental units</li> <li>• 4,600 new units under development</li> </ul>	
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### Other Helpful Resources

The Consortium, and its parent organization, the [Public Health Law Center](#), have a [web page](#) containing several publications and resources on smoke-free housing in general and specific resources for smoke-free policies in affordable multi-unit housing. These include [Secondhand Smoke Seepage into Multi-Unit Affordable Housing](#), [Subsidized Housing and Smoke-free Policies](#), [Comparison of Smoke-Free Housing Policy Factors: Private Market Rate versus Publicly Subsidized Multi-Unit Housing](#), and [First Steps Towards Making Affordable Housing Smoke-Free](#).

Several other organizations have helpful websites and publications about smoke-free affordable housing, as well as useful general resources about smoke-free multi-unit housing. Some of these include:

- [Global Advisors Smokefree Policies - New Jersey \(NJGASP\)](#)  
A webpage with links to interesting and useful articles, studies, and support materials to help inform the implementation of smoke-free policies in affordable housing.
- [Americans for Nonsmokers' Rights](#)  
ANR has a listing of the communities in California that have adopted ordinances requiring smoke-free policies for multi-unit properties, and public housing authorities across the U.S. that have implemented smoke-free policies.
- [Live Smoke Free \(Minnesota\)](#)  
Live Smoke Free offers several publications and archived webinars, including [Steps to go Smoke Free](#), which describes the different ingredients and steps needed to initiate and implement smoke-free housing policies successfully.
- [American Lung Association](#)  
The American Lung Association has developed a comprehensive on-line curriculum to help health advocates understand more about implementing smoke-free multi-unit housing policies. To access the curriculum, e-mail [onlinelearning@lung.org](mailto:onlinelearning@lung.org) for a username and password.
- [U.S. Department of Housing and Urban Development](#)  
HUD has *An Action Guide for Establishing Smoke-Free Public Housing and Multifamily Properties* and other toolkits for smoke-free multifamily housing.

## Contact Us

Please feel free to contact the Tobacco Control Legal Consortium at [publichealthlaw@wmitchell.edu](mailto:publichealthlaw@wmitchell.edu) with any questions about the information included in this guide or to discuss local concerns you may have about implementing such a policy.

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## Notes

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<sup>1</sup> The information contained in this document is not intended to constitute or replace legal advice.

<sup>2</sup> Tiffany Kraev et al., *Indoor Concentrations of Nicotine in Low-Income, Multi-Unit Housing: Associations with Smoking Behaviours and Housing Characteristics*, 18 TOBACCO CONTROL 438, 443 (2009) available at <http://tobaccocontrol.bmj.com/content/18/6/438.full.pdf>.

<sup>3</sup> *Id.* at 442.

<sup>4</sup> U.S. DEP'T OF HOUSING & URBAN DEV., NON-SMOKING POLICIES IN PUBLIC HOUSING, NOTICE: PIH-2012-21 [hereinafter HUD NON-SMOKING POLICIES IN PUBLIC HOUSING NOTICE 2012], available at <http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-25.pdf>.

<sup>5</sup> Americans for Nonsmokers' Rights, *U.S. Laws and Policies Restricting or Prohibiting Smoking in Private Units of Multi-Unit Housing*, available at <http://www.no-smoke.org/pdf/smokefreemuh.pdf>.

<sup>6</sup> HUD NON-SMOKING POLICIES IN PUBLIC HOUSING NOTICE 2012, *supra* note 4; U.S. DEP'T OF HOUSING & URBAN DEV., OPTIONAL SMOKE-FREE HOUSING POLICY IMPLEMENTATION, NOTICE: H 2012-22 (2012) [hereinafter HUD OPTIONAL SMOKE-FREE HOUSING POLICY NOTICE 2012], available at <http://portal.hud.gov/hudportal/documents/huddoc?id=12-22hsgn.pdf>.

<sup>7</sup> U.S. DEP'T OF HOUSING & URBAN DEV., LEADING OUR NATION TO HEALTHIER HOMES: THE HEALTHY HOMES STRATEGIC PLAN (2009), available at [http://www.hud.gov/offices/lead/library/hhi/DraftHHStratPlan\\_9.10.08.pdf](http://www.hud.gov/offices/lead/library/hhi/DraftHHStratPlan_9.10.08.pdf).

<sup>8</sup> U.S. DEP'T OF HEALTH & HUMAN SERVICES, THE SURGEON GENERAL'S CALL TO ACTION TO PROMOTE HEALTHY HOMES (2009), available at <http://www.ncbi.nlm.nih.gov/books/NBK44192/>.

<sup>9</sup> Unnumbered Letter from Tammy Trevino, Administrator Housing and Community Facilities Program, to State Directors Rural Development, November 21, 2012, available at <http://bit.ly/11KFZm3>.

<sup>10</sup> More information on the benefits of smoke-free multi-unit housing policies can be found in Tobacco Control Legal Consortium, *Regulating Smoking in Multi-Unit Housing* (2011), available at [http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-guide-regulating-smoking-multiunits-2011\\_0.pdf](http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-guide-regulating-smoking-multiunits-2011_0.pdf).

<sup>11</sup> HUD NON-SMOKING POLICIES IN PUBLIC HOUSING NOTICE 2009, *supra* note 4.

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<sup>12</sup> Am. Soc’y of Heating Refrigerating & Air-Conditioning Eng’rs, *Environmental Tobacco Smoke 1* (2010), available at <http://bit.ly/11KH25s>.

<sup>13</sup> Nat’l Ctr. for Healthy Housing, *Reasons to Explore Smoke-Free Housing* (2009), available at <http://bit.ly/1CFI8QM>.

<sup>14</sup> John R. Hall, Jr. Nat’l Fire Prot. Ass’n, *The Smoking-Material Fire Problem i* (2013), available at <http://www.nfpa.org/research/reports-and-statistics/fire-causes/smoking-materials>.

<sup>15</sup> *Id.*

<sup>16</sup> A survey of tenants living in Northeastern Minnesota found that 77.5 percent would choose to live in a smoke-free apartment. Am. Lung Ass’n of Mn., *Market Research*, Lung.Org, available at <http://www.lung.org/associations/states/minnesota/indoor--outdoor-air/market-research.html>. In a Massachusetts survey 75 percent of renters would support or were neutral towards the immediate implementation of a smoke-free policy. THE PUBLIC HEALTH ADVOCACY INSTITUTE, MARKET DEMAND FOR SMOKE-FREE RULES IN MULTI-UNIT RESIDENTIAL PROPERTIES 5 (2009), available at <http://www.phaionline.org/wp-content/uploads/2009/04/phaihousingurvey.pdf>.

<sup>17</sup> CTRS. FOR DISEASE CONTROL & PREVENTION, VITAL AND HEALTH STATISTICS, SERIES 10, NUMBER 249: SUMMARY HEALTH STATISTICS FOR U.S. ADULTS: NATIONAL HEALTH INTERVIEW SURVEY 88 (2010), available at [www.cdc.gov/nchs/data/series/sr\\_10/sr10\\_249.pdf](http://www.cdc.gov/nchs/data/series/sr_10/sr10_249.pdf).

<sup>18</sup> Brian A. King et al., *National and State Cost Savings Associated With Prohibiting Smoking in Subsidized and Public Housing in the United States*, 11 PREVENTING CHRONIC DISEASE: PUBLIC HEALTH RESEARCH, PRACTICE, AND POLICY, E171, (2014), available at [http://www.cdc.gov/pcd/issues/2014/pdf/14\\_0222.pdf](http://www.cdc.gov/pcd/issues/2014/pdf/14_0222.pdf).

<sup>19</sup> More information about the types of affordable housing can be found in Public Health Law Center, *Subsidized Housing and Smoke-Free Policies* (2011), available at <http://www.publichealthlawcenter.org/sites/default/files/resources/ship-fs-subsidizedhousing-2011.pdf>.

<sup>20</sup> More information about the legal requirements for amending subsidized housing rental agreements and giving tenants adequate notice about a smoke-free policy can be found in Tobacco Control Legal Consortium, *Secondhand Smoke Seepage into Multi-Unit Affordable Housing* (2010), available at [http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-secondhand-2010\\_0.pdf](http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-secondhand-2010_0.pdf).

<sup>21</sup> Samantha K. Graff, Tobacco Control Legal Consortium, *There is No Constitutional Right to Smoke* 3-4 (2008), available at [http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-constitution-2008\\_0.pdf](http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-constitution-2008_0.pdf).

<sup>22</sup> HUD NON-SMOKING POLICIES IN PUBLIC HOUSING NOTICE 2012, *supra* note 4; HUD OPTIONAL SMOKE-FREE HOUSING POLICY NOTICE 2012, *supra* note 6.

<sup>23</sup> HUD OPTIONAL SMOKE-FREE HOUSING POLICY NOTICE 2012, *supra* note 6.