

Fire Administration Authorization Act of 1992

Legal Opinion: GHM-0062

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Subject: Fire Administration Authorization Act of 1992

January 8, 1993

MEMORANDUM FOR: Philip J. Salamone, Deputy Assistant Secretary
for Multifamily Housing Programs, HM

FROM: John J. Daly, Associate General Counsel,
Office of Insured Housing and Finance, GH

SUBJECT: "Fire Administration Authorization Act of 1992"
(Pub. L. 102-522)

On October 26, 1992, the President signed the "Fire Administration Authorization Act of 1992." Section 106 of the Act adds a new section 31 to the "Federal Fire Prevention and Control Act of 1974," dealing with the installation of fire safety systems in federally-assisted housing including projects with mortgages insured under the National Housing Act (NHA). For your convenience I have attached a copy of the new Act to this memorandum. I recommend that you communicate with the Field Offices, providing them with general instructions that would facilitate compliance with those parts of the Act that are immediately effective, as well as to inform the Field of certain other requirements that will be effective in the near future, until an Interim Regulation can be published. The new Act provides fire protection standards for three different project classifications: (1) new construction of four or more stories, (2) rebuilt (as the term is defined therein) projects of four or more stories, and (3) all other projects.

The Act requires that any newly constructed multifamily project of four or more stories for which a binding commitment to insure is issued on or after October 26, 1992 must be constructed with an automatic sprinkler system and hard-wired smoke detectors. Since Congress made this requirement effective immediately, it is imperative that the Field Offices receive notification of the requirement from Headquarters prior to the publication of the Interim Regulation so that the requirement can be met immediately. The instructions to the Field Offices may be issued by a Housing Notice or a less formal means of communication with the Field, if that is your preference.

The statutory provisions regarding "rebuilt" projects do not become effective until October 1, 1994. Therefore, your instructions to the Field Offices do not need to address projects defined by the legislation as "rebuilt" since the statutory requirements for projects falling within this classification can be implemented by means of the Interim Regulation. Until October 1, 1994, all "rebuilt" projects will remain subject to

the fire safety standards incorporated into HUD's "Minimum Property Standards" set out in 24 C.F.R. Part 200, Subpart S. For purposes of the Fire Administration Authorization Act of 1992 the term:

. . . rebuilding means the repairing or reconstructing of portions of a multifamily property where the cost of the alterations is 70 percent or more of the replacement cost of the completed multifamily property, not including the value of the land on which the multifamily property is located.

The Act requires that, after the expiration of the 180-day period beginning on October 16, 1992, all "other" multifamily projects protect all of their units by installing either a hard-wired or battery-operated smoke detector. We currently are reviewing this requirement to ascertain the extent to which it may affect existing projects, including those which may already have installed smoke detectors pursuant to HUD regulations published at 57 FR 33846 (July 30, 1992). In connection with those "other" projects, we will advise you soon about the result of our review.

One additional point to be made is that Section 31(e) of the Act provides that:

Nothing in this section shall be construed to limit the power of any State or political subdivision thereof to implement or enforce any law, rule, regulation, or standard that establishes requirements concerning fire prevention and control. Nothing in this section shall be construed to reduce fire resistance requirements which otherwise would have been required.

Even though section 31(e) permits state or local governments to enact regulations that are more stringent than the Fire Administration Authorization Act of 1992, if you believe that a particular state or local fire safety regulation is so onerous that it jeopardizes the ability of a project to avoid default, you should consult with the Multifamily Mortgage Division. Attorneys in that division will advise you about whether HUD may have a legal basis to assert federal supremacy under the NHA, to preempt such local regulation. The Interim Regulation, which will implement all of the Fire Administration Authorization Act of 1992, should, in our view, preserve HUD's right under the NHA to preempt onerous local requirements that jeopardize the ability of a project to be current in mortgage payments. Once that regulation is published with a preemption provision, HUD will be in a stronger legal position to assert federal preemption in an appropriate case.

In conclusion, in response to the provisions in the Fire Administration Authorization Act of 1992, we recommend that you immediately issue instructions notifying the Field Offices that as of October 26, 1992 all newly constructed projects of four or more stories must have automatic sprinkler systems and hard-wired smoke detectors. Your communication with the Field does not need to include instructions for "rebuilt" projects because the statutory requirements for this type of project do not become effective until October 1, 1994 and can be implemented by means of the Interim Regulation that HUD is going to publish. We will advise you in a follow-up memorandum about which projects must have hard-wired or battery-operated smoke detectors "designed to respond to the presence of visible or invisible particles of combustion and installed in accordance with the National Fire Protection Association Standard 74 or any successor standard thereto."

Attachment