

U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

Regional Administrators
Field Office Managers
CPD Regional Directors
CPD Division Directors
HOME Program Coordinators
HOME Participating Jurisdictions

Notice: CPD-94-05

Issued: January 31, 1994
Expires: January 31, 1995

Cross Reference:

Subject: Implementation of the Fire Administration Authorization Act of 1992 (Pub. L. 102-522)

1. BACKGROUND AND OVERVIEW

On October 26, 1992, the Fire Administration Authorization Act of 1992 (the Act") (P.L. 102-522) was enacted, which added a new section 31 to the Federal Fire Prevention and Control Act of 1974. Section 31 prohibits the use of housing assistance in connection with certain assisted and insured properties, unless various fire protection and safety standards are met.

DEFINITION: The Act defines "housing assistance" as Federal assistance "...used in connection with the provision of housing, and ... provided in the form of a grant, contract, loan, loan guarantee, cooperative agreement, interest subsidy, insurance or direct appropriation."

This definition encompasses the entire range of HUD's assisted housing and community development programs. Where eligible under these programs, the term "housing assistance," as used in the Act includes tenant-based rental assistance (TBRA), homebuyers assistance and assistance for project operating costs. This notice applies to housing assisted with programs administered by Community Planning and Development (CPD) ~which include the Community Development Block Grant (CDBG) Program, HOME, HOPE 3, Section 108 Loan Guarantees, the Rental Rehabilitation Program (FIRP), Housing Opportunities for Persons With AIDS (HOPWA), and the McKinney Act programs to assist homeless persons.

CGHP: Distribution: W-3-1, W-2, R-1, R-1-3 (Adm), R-6, R-9, Special (CPD Regional and Field Office Directors)

2. CONTENTS

This Notice:

- describes Field Office responsibilities for implementation of the Act;
- discusses and defines each category of affected property as set forth in the Act;
- relates the requirements imposed by the Act, and the date the requirements became effective for the category of property described;
- describes the action CPD grantees/participating jurisdictions/recipients must take relative to properties in that category; and
- notes that more stringent State and local requirements may apply.

3. FIELD OFFICE RESPONSIBILITIES

The Department has determined that the requirements of this Act are self-executing and, therefore, that no regulations are required to implement it. Field Offices should send copies of this Notice to all CPD grantees/PJs/recipients to facilitate immediate implementation of the requirements of the Act that are already effective. It may be some time before a conforming final rule is issued to consolidate all existing fire safety requirements with the requirements of the Act.

4. PROPERTIES COVERED BY THE ACT

The fire protection and safety standards that apply in any particular case depend upon a classification of the property, as set forth in the Act:

- o Newly constructed multifamily properties of four or more stories, for which, on or after October 26, 1992: (1) a binding commitment is made to provide housing assistance for the new construction; or (2) a binding commitment is made, before construction begins, to provide housing assistance for the newly constructed property.
- o Rebuilt multifamily properties of four or more stories that are rebuilt on or after October 1, 1994, and for which housing assistance is used for rebuilding or a binding commitment is made, before the rebuilding begins, to provide housing assistance for the rebuilt property; and

- 0 All other dwelling units receiving housing assistance on or after April 24, 1993.

A. Newly Constructed Multifamily Properties

Effective October 26, 1992, the Act prohibits the use of housing assistance in connection with any newly constructed multifamily property of four or more stories unless the property is equipped during construction with automatic sprinkler systems and hard-wired smoke detectors.

- hard-wired smoke detectors must be installed in accordance with the requirements specified in National Fire Protection Association Standard (NFPAS) 74.
- automatic sprinkler systems must be in compliance with NFPA standards 13, 13D, or 13R, as appropriate (or successor standards) and must include an alarm signaling system with appropriate warning signals installed in accordance with NFPA 72 (or successor standard) to the extent such an alarm system and warning signals are required by Federal, State or local laws and regulations. As of the date of issuance of this Notice, there are no known Federal laws or regulations that require installation of an alarm system and warning signals as part of an automatic sprinkler system with respect to projects covered under this Notice. With respect to State or local laws and regulations, the CPD grantees/PJs/recipients, before a binding commitment is issued, should contact the State or local fire safety officials with jurisdiction over the proposed property to determine whether such laws or regulations require installation of such a system.
- copies of the most current versions of the NFPA standards should be obtained from NFPA, Customer Service Department, Batterymarch Park, Quincy, Massachusetts 02269, telephone number (1-800-344-3555). For assistance in determining specific requirements mandated by these NFPA standards, individuals should contact State or local fire safety officials with jurisdiction over the proposed property and with experience in such requirements.

It Is Important to define terms:

"Multifamily property" is a residential building consisting of more than four residential units under one roof.

"Newly constructed multifamily property" is a multifamily property of four or more stories for which, on or after October 26, 1992: (1) a binding commitment is made to provide housing assistance for the new construction; or (2) a binding commitment is made, before construction begins, to provide housing assistance for the newly constructed property.

B. Rebuilt Multifamily Properties

Effective October 1, 1994, the Act prohibits the use of housing assistance in connection with any rebuilt multi-family property of four or more stories unless the property is brought into compliance during rebuilding with the Chapter on existing apartment buildings of NFPAS 101 (also known as the Life Safety Code).

As used in this section:

"Rebuilt multifamily property" is defined as a multifamily property of four or more stories that is rebuilt on or after October 1, 1994 and for which housing assistance is used for rebuilding the property, or a binding commitment is made, before the rebuilding begins, to provide housing assistance for the rebuilt property.

"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.

Since these provisions do not take effect until October 1, 1994, these requirements need not be implemented at this time. Until October 1, 1994, all rebuilt properties covered under this category that are subject to HUD's Minimum Property Standards (MPS) will remain subject to those requirements.

C. Other Dwelling Units

Effective April 24, 1993, the Act mandates that housing assistance cannot be "used in connection with" any other dwelling unit, unless the unit is protected by a hard-wired or battery-operated smoke detector installed in accordance with **NFPAS 74**.

Housing assistance is considered under the Act to be "used in connection with" a particular dwelling unit if the assistance is provided:

- for the particular unit, where housing assistance is distributed on a unit-by-unit basis, such as the HOME Program; or
- for the multifamily property in which the unit is located, where housing assistance is distributed on a structure-by-structure basis, as in the case of the CDBG and Rental Rehabilitation Programs.

Unlike the first two categories covered under the Act, the "any other dwelling units" category is not limited to multifamily residential properties, but also encompasses single-family residential units. The category serves as a "catchall," covering properties that are not explicitly included under either of the other categories.

This "catchall" category applies to housing assistance provided on or after April 24, 1993 with respect to the following types of properties:

- multifamily properties of four or more stories that are newly constructed, but for which no housing assistance is used to carry out the construction, and for which a binding commitment is made, after construction begins, to provide housing assistance for the property;
- multifamily properties of four or more stories that are rebuilt, but for which no housing assistance is used to carry out the rebuilding, and for which a binding commitment is made, after rebuilding begins, to provide housing assistance for the property;
- multifamily properties that are newly constructed or rebuilt, but that contain fewer than four stories;

- o all existing multifamily properties;'
- o all single-family residential properties; or
- o newly constructed multifamily properties of four or more stories for which a binding commitment was entered into prior to October 26, 1992 to either carry out the new construction or to assist the newly constructed property.

These requirements took effect on April 24, 1993, and should be implemented immediately.

Owners of units under this category who installed smoke detectors before April 24, 1993 in compliance with HUD's smoke detector requirements, including 57 FR 33846 (published July 30, 1992), will not be required subsequently to comply with any additional requirements of the Act.

S. MORE STRINGENT STATE AND LOCAL PROVISIONS MAY APPLY

Section 31 (e) of the Act provides that the Federal requirements mandated by the Act shall apply, unless the State or local jurisdiction in which the property is located has more stringent fire prevention and control standards. 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 ... [or] to reduce fire resistance requirements which otherwise would have been required.

As used in the notice, the term "existing multifamily properties" means properties that are not otherwise covered under this enumerated listing, and that are neither newly constructed multifamily properties nor rebuilt multifamily properties, as those terms are defined by sections A and B.

6. OTHER FEDERAL REQUIREMENTS

To comply with Section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act (ADA), fire protection of the above facilities must be consistent with 24 CFR 8.4(b)(1)(iii) and (iv) which prohibits discrimination in HUD-assisted properties; 24 CFR 8.32, Uniform Federal Accessibility Standards (UFAS) and UFAS 4.28, Alarms.

- to comply with these requirements, during the installation of hard-wired smoke detectors (for both new construction and rehabilitation) appropriate wiring must be installed which makes it possible to install visual and/or sensory alarm systems if the need arises.
- Where there are alarms already existing in common areas, visual and sensory alarms should be provided as well. As a reasonable accommodation to persons with disabilities, visual and/or sensory alarms may need to be added to other areas, including dwelling units.