

Legal Opinion: GCH-0037

Index: 2.375

Subject: Section 18 (1937 Act) Applicability to Mutual Help

January 21, 1992

MEMORANDUM FOR: Dom Nessi, Director, Office of Indian Housing, PI

FROM: Robert S. Kenison, Associate General Counsel  
Office of Assisted Housing and Community Development, GC

SUBJECT: Applicability of Section 18 to Damaged or Destroyed  
Units -- Mutual Help Rental and Homeownership Programs

This memorandum is in response to your request for an opinion concerning whether section 18 of the U.S. Housing Act of 1937 (42 U.S.C. 1437p ) applies to Mutual Help units which are damaged or destroyed. Our opinion is that section 18 does not apply in the case of rental or homeownership units which are involuntarily damaged or destroyed by external forces (i.e., by fire or other casualty) and, hence, there is no legal requirement to provide replacement housing for such units.

Furthermore, section 18 does not apply to the voluntary demolition of homeownership units, although it does apply to the voluntary demolition of rental units.

Section 214 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983) amended the U.S. Housing Act of 1937 ("the Act") by adding a new section 18 which: (1) established the procedures to be followed by a PHA when it decides to demolish or dispose of a project (or portion of a project); and (2) repealed sections 6(f) and 14(f) of the Act, which formerly governed the demolition and disposition of public housing projects. The regulations implementing section 18 are codified at 24 CFR Part 970 (in the case of public housing authorities), and 24 CFR Part 905, Subpart M (in the case of IHAs).

It is our opinion that section 18 of the Act was intended to apply only in those cases where a PHA voluntarily decides to demolish or dispose of a rental project (or portion of a project). It does not apply to involuntary demolitions of rental or homeownership projects caused by external forces (i.e., by fire or other casualty). Consistent with this reading, section 210 of the Low Rent ACC and 24 CFR § 905.452(b)(2) ("Repair or

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rebuilding") establish the procedures to be followed when a unit is destroyed or damaged by external forces. This procedure, properly, does not conform to the statutory requirements of section 18.

Similarly, neither section 210(E) of the Mutual Self Help (Old Mutual Help) Consolidated ACC; section 210(E) of the Low Rent ACC; nor section 9.2(a) and (c) of the New Mutual Help ACC impose section 18 requirements with respect to the demolition of a damaged or destroyed unit. Program differences appear only with respect to the procedure to be followed in determining whether or not to repair or rebuild the project.

However, as stated above, a PHA's decision to demolish voluntarily a rental project because of its determination that the physical structure has become obsolete or is otherwise unusable for housing purposes does trigger section 18 requirements. These requirements include, among other things, the need for tenant consultation and replacement housing.

You should note, however, that OGC has determined that the demolition requirements of section 18 are inapplicable to certain homeownership projects which are covered by section 21(d) of the Act (which includes the Mutual Help Homeownership program). Accordingly, PIH needs to eliminate the language contained in section 14.3 of the New Mutual Help ACC, and other analogous provisions in the New and Old Mutual Help ACCs which establish section 6(f) or section 18 requirements with respect to the voluntary demolition of homeownership units.

PIH may nevertheless want to retain the authority, by way of a contractual provision inserted in the ACC, to approve a PHA's decision to voluntarily demolish its homeownership units.

If you have any questions or concerns, please contact Sharmeen Dosky of my staff at 708-8938.