Technical Corrections Act of 1993

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Subject: Technical Corrections Act of 1993

January 10, 1994

MEMORANDUM FOR: James F. Lischer, Assistant General Counsel,
Legislation Division, GLL

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

FROM: David R. Cooper, Assistant General Counsel,
Multifamily Mortgage Division, GHM

SUBJECT: S. 1769 - "Technical Corrections Act of 1993"

You have requested our review of a proposed "enrolled bill letter" to be signed by the Secretary and delivered to the Director of Management and Budget. The letter states that the Department does not object to any of the four provisions set out in S. 1769 the "Technical Corrections Act of 1993." As part of your clearance process, you have requested this Division and the Office of Housing to review and approve the letter. We do not have any comments or objections relative to the draft of the "enrolled bill letter."

The Office of Housing, in turn, has requested that as part of our review of the proposed letter we answer the following two questions and direct our conclusions to you:

1. Will New York City have to comply with the sprinkler requirement until regulations are finalized as to what is an "equivalent level of safety?"

2. If such a level cannot be found will the sprinkler requirement continue to apply?

Congress amended the "Federal Fire Prevention and Control Act of 1974" (the "1974 Act, as amended") with the passage of the "Fire Administration Authorization Act of 1992" ("1992 Fire Act"), which was enacted into law on October 26, 1992. Section 31(c)(2)(i), as added to the 1974 Act by the Amendment, sets out the following requirement for all newly constructed federally assisted multifamily properties of four or more stories:

Housing assistance may not be used in connection with any newly constructed multifamily property, unless after the new construction the multifamily property is protected by an automatic sprinkler system and hard-wired smoke detectors.

The "1992 Fire Act" in adding Section 31(b) to the 1974 Act,

provides that no federal money can be used for the construction or purchase of a federal employee office building of six or more stories unless "the building is protected by an automatic sprinkler system or equivalent level of safety." The statutory exception from automatic sprinkler systems for federal employee office buildings is in those situations when it can be shown that the building has a fire prevention system that provides an "equivalent level of safety." The "Technical Corrections Act of 1993" has extended to multifamily rental properties the

"equivalent level of safety" exception from the automatic sprinkler requirement.

Section 31(a)(3) of the "1974 Act, as amended" provides a preliminary definition of "equivalent level of safety and reads as follows:

The term `equivalent level of safety' means an alternative design or system (which may include automatic sprinkler systems), based upon fire protection engineering analysis, which achieves a level of safety equal to or greater than that provided by automatic sprinkler systems.

We point out that Congress did not consider the preliminary definition of "equivalent level of safety" provided in section 31(a)(3) to be the final definition. Section 31(d) of the "1974 Act, as amended" states:

REGULATIONS.--The Administrator of General Services, in cooperation with the United States Fire Administration, the National Institute of Standards and Technology, and the Department of Defense, within 2 years after the date of enactment of this section, shall promulgate regulations to further define the term `equivalent level of safety,' and shall, to the extent practicable, base those regulations on nationally recognized codes.

In the "1974 Act, as amended" the term "equivalent level of safety" was only used in conjunction with section 31(b) which covered federal employee office buildings. The term was not originally used within section 31(c), which was the subsection covering rental housing.

We believe that section 31(a)(3) of the "1974 Act, as amended," is not self-explanatory and, consequently, can only be read in combination with section 31(d), which provides the mechanism that will define the term "equivalent level of safety" that is used in section 31(a)(3). Section 31(a)(3) merely makes reference to an alternative system that "based upon fire

protection engineering analysis" is equivalent to automatic sprinklers without stating any qualification standards or guidelines for the individual or organization rendering this engineering report. We also point out that Section 106(b) of the Fire Administration Authorization Act of 1992 states that: "Subsection (b) of section 31 of the Federal Fire Prevention and

Control Act of 1974, added by subsection (a) of this Section [section 106], shall take effect two years after the date of enactment of this Act." Congress has delayed the implementation of subsection (b) covering federal office buildings until after the date set in section 31(d) for GSA to publish a regulation defining exactly what constitutes an "equivalent level of safety" and presumably setting out the qualifications for those who are qualified to render a fire protection engineering analysis.

It is our opinion that New York City will have to comply with the automatic sprinkler system requirement for federally assisted housing as set out in section 31(c) of the "1992 Fire Act" until such time as the General Services Administration issues regulations fully defining the term "equivalent level of safety."

If you have any questions concerning this matter, please contact Edward M. Ferguson at 708-4107.