MHARR WASHINGTON UPDATE

The Manufactured Housing Association for Regulatory Reform is a Washington, DC based national trade association representing the views and interests of producers of manufactured housing

REPORT AND ANALYSIS

IN THIS REPORT: **APRIL 19, 2013**

- **LATEST ASSAULT ON HUD PROGRAM**
- **EXPANSION OF CHATTEL FINANCING A KEY GOAL**
- **HUD RELEASES 2014 PROGRAM BUDGET**
- **HUD CONTINUES TO UNDERMINE MHCC**
- **MHCC SUBCOMMITTEE TO MEET – FULL COMMITTEE IN LIMBO**
- **RV INDUSTRY PUSHES HUD CODE EXEMPTION -- AGAIN**
- **CONGRESS FAULTS FHA**

HUD PROGRAM FACES SERIOUS THREAT

There is mounting evidence of a serious new assault on the federal manufactured housing program by the same convergence of industry competitors, special interests and certain regulators that has previously sought its elimination. This time, the effort is focused on exploiting a congressionally-mandated Government Accountability Office (GAO) investigation of HUD's continuing non-compliance with the Manufactured Housing Improvement Act of 2000, to advocate for the elimination of the federal program. To make matters worse, though, some in the industry have already begun to downplay this effort -- a risky approach that consumers and the industry can ill-afford given the history of the federal program in Washington, D.C.

The investigation mandated by Congress, because of HUD's failure to fully and properly implement the 2000 reform law, sought a GAO examination of certain very specific matters. Suddenly, though, the focus of the GAO investigation appears to be shifting to an examination of the need for the federal program itself, as demonstrated by GAO's "information" sources and specific inquiries to both national industry representatives and selected individual industry members.

For example, GAO has shown unusual interest in a stale, outdated, 15-year old "study" by the National Association of Homebuilders' NAHB Research Center (conducted on behalf of HUD's Office of Policy Research and Development) comparing factory and site-built housing – and their regulation – which, at the time, caused a firestorm of protest ultimately leading HUD Code manufacturers to file suit against HUD over its practice of contracting research to affiliates of industry competitors. Meanwhile, in meetings in Washington, D.C. and around the country,

GAO investigators are questioning the three fundamental pillars of the unique federal law which together yield the huge cost savings that the industry passes to homebuyers – i.e., uniform, performance-based federal standards, federal preemption and uniform federal enforcement.

An investigation originally focused on the implementation of 2000 reform law, however, does not suddenly "morph" into an investigation of the need for the federal program without the intervention of someone (or more than one "someone"), especially when these same claims – last advanced by industry detractors during the 12-year legislative process leading to the enactment of the 2000 reform law – were resoundingly rejected by every authoritative body that considered them, including the statutorily-created National Commission on Manufactured Housing (representing all program stakeholders) and Congress itself.

Since there is no readily apparent reason for this type of shift in the focus of GAO's investigation to matters that have already been vetted and discredited, unless and until evidence shows otherwise, it must be taken as a legitimate threat to the federal program and the benefits it provides to American consumers. MHARR, therefore, has provided GAO with a comprehensive analysis of the fundamental need for the federal program, as well as a refutation of the baseless, previously-rejected arguments of industry detractors designed to chip-away at the key pillars of this unique federal manufactured housing program and law. And while MHARR will continue to take the lead in vigorously opposing any potential move to eliminate the federal program, manufactured housing industry members and consumers should not only take this entire matter seriously, but also act to maintain (and improve, through full implementation of the 2000 reform law) the federal manufactured housing program.

EXPANDED CHATTEL FINANCING A PRIORITY FOR INDUSTRY - CONSUMERS

In the face of sluggish economic growth, stagnant wages and consistently high unemployment, chattel (i.e., personal property) financing for the industry's most affordable homes (including homes in manufactured housing land-lease communities) is more important than ever for American consumers of affordable housing and the industry itself. With readily-available chattel financing, manufactured housing could provide the American Dream of home ownership to millions of Americans – and especially moderate and lower-income families -- who are now excluded from the market. Yet, the availability of chattel financing is being thwarted in the nation's capital by discriminatory policies advanced by regulators and the GSEs.

Specifically, federal regulators and agencies refuse to provide any type of securitization support for manufactured home chattel loans based on their supposedly higher "risk." These policies, however, skillfully fanned by industry competitors, are based on nothing more than 'perceptions" -- as the agencies themselves acknowledge they do not have and have been unable to obtain (from the one or two dominant industry lenders) any factual data regarding the performance of current, post-2000 reform law manufactured homes. The reality, of course, is that the collapse of the GSEs (and impending insolvency of FHA) had nothing whatsoever to do with manufactured home loans which, for years, have comprised a miniscule portion of the GSEs' (and FHA's) total business. By contrast -- as noted at a March 2013 hearing of the House Capital Markets and Government Sponsored Enterprises Subcommittee -- federal government

agencies guaranteed, originated or underwrote an enormous 60% of all subprime or "non-traditional" mortgages developed and used for site-built housing, totaling $4.6 trillion in June 2008. It was the overextension of this "exotic" mortgage market that led to the "housing bubble" and its ensuing collapse in 2008 leading to a worldwide economic downturn.

The GSEs, however, and their regulator, the Federal Housing Finance Agency (FHFA), have refused to implement the "duty to serve" manufactured housing consumers (DTS) established by Congress as part of the Housing and Economic Recovery Act of 2008. FHFA, moreover, despite being told by Congress in that law that it "may" consider chattel loans for inclusion in DTS – and at the urging of the GSEs and industry competitors -- totally excluded chattel loans from the proposed DTS implementation rule that it published in 2010 based, for the most part, on alleged "risks." Consequently, consumers continue to face the same baseless discrimination despite Congress' effort to correct this through DTS.

Given the critical importance of chattel financing for the industry and its homebuyers, the revitalization and expansion of chattel lending is one of the three key industry issues that is the subject of a joint effort by MHARR and MHI (the other two being the appointment of a non-career program administrator and administrative reform of the Manufactured Housing Consensus Committee – both key provisions of the 2000 reform law that have not been fully and properly implemented by HUD). Fortunately, the solution to this continuing discrimination – via corrective legislation – is relatively straightforward and is currently being reviewed and finalized within the associations' cooperative process. It is essential, however, given the likely opposition of the usual naysayers to any such expansion of manufactured home financing, that the entire industry and consumers fully support this effort.

HUD UNVEILS 2014 PROGRAM BUDGET

On April 11, 2013, HUD released its proposed Fiscal Year (FY) 2014 budget, including the projected budget for the federal manufactured housing program. Under the proposal, the program seeks new FY 2014 funding authority of $7.53 million, comprised of a $1 million direct appropriation and $6.53 million of "offsetting fee collections." Total proposed program spending is projected at $10 million, with the difference between that figure and the $7.53 million requested for FY 2014 being covered by "prior year collections."

Although the overall FY 2014 request and requested direct appropriation are much lower than levels seen only a few years ago – i.e., before MHARR, in 2011, began to focus on the federal program's runaway expenditures – both the requested FY 2014 funding and total expenditures are higher than the amounts authorized by Congress in FY 2013. However, Congress has typically reduced the amounts requested by HUD in reaching a final budget or continuing resolutions in the absence of a final enacted budget.

Within the total spending proposed by the FY 2014 budget, there are several notable changes in the allocation of program funds. Specifically, the FY 2014 budget would reduce funding for the program monitoring contract from $6 million to $4 million. The difference (i.e., $2 million) would be allocated to a $1.5 million contract for installation inspection and

enforcement and a $500,000 contract for "dispute resolution enforcement." The 2000 law, though, requires the HUD Secretary to "ensure that separate and independent contractors are retained to carry out monitoring and inspection work and any other work ...." Consequently, MHARR will closely monitor activity relating to ensure that HUD fully complies with the 2000 reform law. In addition, the FY 2014 budget reduces the amount of the Administering Organization contract for the MHCC from $300,000 to $100,000, while providing a whopping $600,000 (not $60,000 as reported in some industry publications) for "contract meeting planner services" to "coordinate meetings with the 16 primary agencies (sic) and 37 State Administrative Agencies" – thereby once again reducing the role and functionality of the MHCC, which has already missed its expected Spring 2013 meeting.

Lastly, the FY 2014 budget proposal includes a projected label fee increase – expected to be in place mid-way through FY 2014 -- to $100 per label, although HUD cautions that "this amount may be revised after taking into account carryover balances and the exact timing of implementation." Insofar as the 2000 reform law provides that "any fee collected" by the program "may only be modified (1) as specifically approved in advance in an annual appropriations Act; and (2) pursuant to rulemaking," MHARR will address this issue, based on input from industry members, if needed, at the appropriate time. In the event that a label fee increase is advanced, however, MHARR, as it has done in its engagement with Congress, will stress the need for additional funding of State Administrative Agencies (SAAs) as the first line of consumer protection for a growing number of new and occupied manufactured homes. Even absent a label fee change, however, SAA funding should be increased by further reductions to the monitoring contract, instead of the proposed reduction in the amount of the contract for the MHCC's Administering Organization.

HUD REGULATORS CONTINUE MHCC DOWNGRADE

The already diminished role, authority and functionality of the Manufactured Housing Consensus Committee (MHCC) as an independent check and balance on the power of HUD regulators has taken another step backward with recent HUD actions that threaten to further erode its stature, fundamental balance – as carefully crafted by Congress in the 2000 reform law – and credibility.

The latest round of HUD appointments to the MHCC in February 2013 not only defy the law and Congress, but the bylaws adopted by the MHCC itself. Through those appointments, HUD: (1) reduced the voting representation of manufacturers, even though more than 90% of the federal standards and related regulations target manufacturers; (2) selectively ignored the two-term limit voted by the MHCC itself in order to reappoint a leading proponent of expanded and more costly regulation – especially concerning energy matters -- to a third consecutive term; (3) replaced a first term member who, at the last MHCC meeting, openly criticized HUD for ignoring MHCC recommendations; and (4) continued its refusal to ensure a proper balance of representation on the MHCC through the appointment of collective, non-lobbyist industry representatives, which prevents the MHCC from benefitting from the collective knowledge, know-how, expertise and institutional memory that the industry has painstakingly assembled in Washington, D.C. over the course of four decades.

Once again, these actions demonstrate the need for the type of accountability that can only be provided by an appointed, non-career administrator – as required by the 2000 reform law. This is why the appointment of such an administrator is one of the three key industry goals – together with the appointment of collective industry representatives to the MHCC and an expansion of the availability of chattel loans -- that are being jointly pursued by MHARR and MHI. Given the importance of this joint effort, both the industry and consumers should work to ensure that such efforts are advanced as effectively and expeditiously as possible.

MHCC MEETING IN LIMBO WHILE ISSUES PILE UP

While the MHCC's Structure and Design Subcommittee is now scheduled to meet on April 23, 2013 for three hours to address a broad agenda, including pending proposals relating to: (1) alternative foundation system testing; (2) formaldehyde vapor - product testing apparatuses; and (3) updates to the reference standard for windows and sliding glass doors, the expected Spring 2013 in-person meeting of the full MHCC has not yet been scheduled or announced in the Federal Register, meaning that the full MHCC will likely have only one in-person meeting in 2013, despite HUD's commitment – at the October 2012 MHCC meeting – to two annual MHCC in-person meetings going forward.

Consequently, notwithstanding HUD's publication of the April 23, 2013 Subcommittee meeting information in the Federal Register – a first for the program following repeated MHARR protests against public MHCC subcommittee meetings held without public notice – the full MHCC continues to languish. Meanwhile, a significant number of new, important and time-sensitive issues, including but not limited to, structural design values for Southern Pine lumber; Alternate Construction (AC) approvals and inspections for certain roof designs; and GAO recommendations concerning air intake and HVAC exhaust outlets, among others, are still waiting for MHCC (and MHCC subcommittee) consideration, debate and final action, creating uncertainty, confusion and needless costs for both the industry and consumers.

MHARR, as always, will participate in the April 23, 2013 Subcommittee meeting, while continuing its engagement with Congress and the Administration to press and advance the full functionality of the MHCC, together with its full statutory, role, authority and independence.

RVs AGAIN SEEKING UNNECESSARY HUD CODE EXEMPTION

For at least the third time in recent years, it appears that the recreational vehicle (RV) industry is once again seeking a broader, more detailed exemption from the HUD Code than the one currently contained in HUD's Procedural and Enforcement Regulations. In two prior appearances before the MHCC's Regulatory Enforcement Subcommittee, however, similar proposals have effectively been rebuffed with no recommendation for any significant change to the existing regulations. The reason is simple. HUD, as a consistent practice, has refrained from any regulation of RVs (or park models) of less than 400 square feet. And, to HUD's credit, it has done well in maintaining a proper line of separation between manufactured homes -- which are

"dwellings" -- and RVs (or park models), which are not. Thus, there is no demonstrated need for a change to the current regulations or the law. Tampering with that line of separation, moreover, and the delicate balance that HUD has maintained since the inception of federal regulation in 1976, could -- and no doubt would -- lead to unintended consequences.

Currently, by statute, a "manufactured home" is defined as "a structure ... which ... when erected on site, is three hundred twenty or more square feet ... and designed to be used as a dwelling" (emphasis added). Since RVs, of any kind, are not designed to be used as a "dwelling" -- as the RV industry itself acknowledges -- there should be no need to exempt those non-dwellings from a law that expressly applies to "dwellings."

Nevertheless, the RV industry, several years ago, inserted an exclusion for "self-propelled" recreational vehicles in the law and ever since has been trying to amend the "recreational vehicle" definition contained in the HUD Procedural and Enforcement Regulations (PER) (24 C.F.R. 3282.8(g)), which defines an RV as "a vehicle ... 400 square feet or less ... designed primarily not for use as a permanent dwelling" (emphasis added). In its place, the RV industry is seeking a definition of an RV that, among other things, would delete the 400 square foot figure. Any such tampering with this language, though, could actually blur the distinction between manufactured homes and RVs, and open the floodgates for other types of structures to seek similar (and similarly unnecessary) exemptions from standards that have never been enforced against them.

Effectively, all of this is a "solution in search of a problem." A regulation and practice that have maintained a recognized line of separation between manufactured home "dwellings" and other types of vehicles or structures should be left alone, instead of courting unforeseeable and unintended consequences.

FHA NOT FULFILLING ITS MISSION

A series of congressional hearings has shown, according to the Chairmen of the House Financial Services Committee (FSC) and the Insurance, Housing and Community Opportunity Subcommittee, that the Federal Housing Administration (FHA) is not only insolvent to the point of needing a taxpayer-funded bailout, but has failed in its fundamental mission of promoting home ownership for lower and moderate-income Americans.

Testimony at those hearings indicates that FHA's MMI Fund, or Mutual Mortgage Insurance Fund -- which insures FHA's single-family mortgages -- has an economic value of negative $16.3 billion, based on an independent actuarial report released in November 2012, leading the Chairman of the Insurance, Housing and Community Opportunity Subcommittee to state that "FHA, as it operates today, is an impediment to a sustainable housing finance system and must be reformed," and that Congress, among other things, will need to "clearly define FHA's mission to ensure that the Agency is narrowly focused on serving first-time homebuyers and creditworthy low-to-moderate-income borrowers." In a similar statement, the FSC Chairman observed that "FHA's historical mission" had been abandoned by "attempting to be all things to all borrowers."

Both these statements and the testimony at these hearings are significant because they are entirely consistent with and support MHARR's engagement with Congress, FHA, FHFA, GNMA and the GSEs pointing out that the insolvency of the GSEs and impending insolvency of FHA are the product of risky policies within the site-built real estate market – and especially "exotic" mortgage products and related policies -- having absolutely no connection to their fundamental statutory mission or manufactured housing which constitutes less than one percent of the FHA and GSE loan portfolios.

Instead of insuring high-dollar "exotic" loans for homeowners who could not afford them, both FHA and the GSEs, as MHARR has consistently maintained, should be insuring and securitizing manufactured home loans – and especially chattel loans – that are genuinely affordable for Americans at virtually any income level.

MHARR is a Washington D.C.-based national trade association representing the views and interests of independent producers of federally-regulated manufactured housing.