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: **FEBRUARY 24, 2015**

- **MHARR PROTESTS MHCC APPOINTMENTS TO HUD SECRETARY**
- **MHARR QUESTIONS NEW HUD PROGRAM BUDGET**
- **DOE RAISING COST OF ENERGY RULE EVEN FURTHER**
- **MHCC ADDRESSES MULTI-FAMILY HUD CODE HOMES**
- **CONGRESSIONAL HEARING ON FHA IGNORES MH**
- **HUD "CRITICAL HOUSING NEEDS" ANALYSIS IGNORES MH**
- **CENSUS DATA SHOWS RISE IN COMMUNITY PLACEMENTS**

MHARR PROTESTS MHCC APPOINTMENTS TO HUD SECRETARY

MHARR, in a February 13, 2015 communication to HUD Secretary Julian Castro (see, copy attached), has strongly objected to the continued exclusion of collective industry representation on the Manufactured Housing Consensus Committee (MHCC), as well as continued HUD manipulation of appointments and membership terms, and has called on the Secretary to take "prompt action to rectify" such deficiencies and put the MHCC back on the right track.

The establishment of the MHCC – as a replacement for the old rubber-stamp National Manufactured Housing Advisory Council – was, and still remains, the centerpiece reform of the landmark Manufactured Housing Improvement Act of 2000. Mandated by Congress to function as an independent bulwark against the regulatory abuses that had characterized the federal manufactured housing program in the 1980s and 1990s, with specific powers and authority defined by law, the MHCC, for years following its inception in 2002, functioned as intended, developing major proposals for the two new programs created by the 2000 reform law – i.e., dispute resolution/consumer protection and installation standards and regulations. All stakeholders, during this period, worked together to ensure both the functionality and independence of the MHCC, and to safeguard its its statutory powers against erosion or manipulation at the hands of HUD.

Later, in 2009 and especially 2010, after the MHCC rejected a HUD proposal for expanded in-plant regulation, the Department undertook a full-scale effort to bypass the MHCC with substantive proposals and actions, and to restrict, via "interpretation," the statutory role of

the MHCC within the federal program. Thus, the Department: (1) began its unilateral implementation of an entire new paradigm for expanded in-plant enforcement – initially deemed "cooperative" but susequently ruled "not optional" -- without MHCC consideration or consensus; (2) issued an "interpretive rule," which effectively read section 604(b)(6) – and its requirement of MHCC consideration for any "change" in enforcement or monitoring practices or procedures – out of the law; and (3) issued a further "interpretive rule" that severly limited the role of the MHCC to matters that would require notice and comment rulemaking in any event – contrary to the express language of the 2000 reform law. After that, there followed extended periods during which the MHCC either had no Administering Organization (AO) (as required by law), or simply did not meet at all.

With MHARR objecting to all of these violations of the 2000 reform law, HUD has now appointed a new MHCC-AO and has resumed regular MHCC activity, but, as indicated by its 2015 MHCC member appointments, has apparently settled on yet another approach to undermine the functionality, role and independence of the MHCC – by denying collective national industry representation and manipulating member terms and appointments to advance a pro-regulation/pro-HUD orientation.

As is set forth in detail in MHARR's communication to Secretary Castro, "jerry-mandered" terms and appointments to the MHCC threaten to return it to the rubber-stamp status of the former Manufactured Housing Advisory Council. All of these actions run directly contrary to the letter and intent of the 2000 reform law and must be addressed and rectified by HUD leadership if the MHCC is to maintain any semblance of legitimacy going forward.

MHARR QUESTIONS ASPECTS OF HUD PROGRAM'S 2016 BUDGET

The newly-released Fiscal Year (FY) 2016 proposed budget for the federal manufactured housing program seeks a 10% increase in program funding – up $1 million over the $10 million requested in FY 2015 – as well as authority to increase the amount of the HUD certification label fee via published notice, rather than full notice and comment rulemaking as required by current law. These and several other aspects of the proposed program budget have prompted MHARR to actively seek a proper resolution for this -- and future budgets.

Under the HUD spending plan, direct payments to the program monitoring contractor would increase to a yearly total of $5 million (up from $4.8 million in FY 2015), while the monitoring contractor, under its default-state dispute resolution subcontract with HUD (via Savan, Inc.), would also receive part of the $500,000.00 allocated to that function in FY 2016. By contrast, as recently as 2007 -- when the industry last produced nearly 100,000 homes -- the monitoring contractor received $3.15 million in total yearly direct payments. Thus, despite a 32.8% decline in annual industry production between 2007 to 2014 (from 95,752 total homes to 64,331), total direct HUD payments to the monitoring contractor increased 52% -- while *per capita* direct HUD payments to the monitoring contractor (i.e., payments *per home*) increased by 127% -- during a period with a cumulative inflation rate of only 14.2%. By contrast, and quite tellingly, HUD payments to the states -- its program partners with responsibility for consumer protection involving an ever-increasing number of new and existing homes -- have decreased by nearly 11% since 2007.

This disproportionate increase in direct and indirect payments to the entrenched monitoring contractor is a function of four factors – (1) the absence of any meaningful competition for the program monitring contract over the course of nearly 40 years, resulting in a de facto sole-source procurement without the protections against undue influence, conflicts of interest and price gouging mandated by federal law and regulations; (2) make-work activity for the monitoring contractor created and implemented by HUD as part of its unilateral expansion of in-plant regulation beginning in 2010 and its unilateral 2014 revisions to Subpart I "document review" requirements; (3) the award of a major dispute resolution subcontract to the monitoring contractor in violation of the "separate and independent" contractor mandate of the Manufactured Housing Improvement Act of 2000; and (4) the 156% certification label fee increase engineered by HUD in 2014, which allowed the program to end its dependence on appropriated taxpayer funds, but is now being used by program leadership to drastically expand unnecessary make-work functions, paperwork, red-tape and intrusive regulation.

And, given the combination of historically dubious and non-transparent program contracting practices, HUD's use of the 2014 label fee increase to support expanded in-plant regulation, ratchet-up program spending even further, and -- under the new program Administrator -- promote the penetration of the monitoring contractor into nearly every phase of the regulatory process, there can be no doubt that HUD, if granted "notice-only" fee-increase authority by Congress, would be back in short order seeking even higher label fee payments to support more make-work activity for the monitoring contractor. MHARR has thus aggressively – and consisitently – opposed any such grant of "notice-only" authority, as demonstrated by its efforts in 2014, which led Congress to reject "notice-only" fee increases and warn the Department in its official Report that program expenditures should "reflect and correspond with" declines in industry production levels which have "specifically reduced the number of inspections and inspection hours required for new units."

Congress should now back-up that warning, as there continues to be no legitimate basis for rapidly-expanding program contract expenditures or for any further fee increases.

DOE ADDING EVEN MORE COSTS TO TAINTED PENDING ENERGY RULE

As the U.S. Department of Energy (DOE) prepares to move forward with a proposed rule for manufactured housing energy standards based on the October 24, 2014 recommendations of a "negotiated rulemaking" Working Group – in a proceeding that has been thoroughly tainted by selective leaks, procedural manipulation and other similar tactics -- it is now considering additional mandates that would increase the already excessive costs of the Working Group proposal to manufactured housing consumers -- costs which led MHARR, as a Working Group member, to cast the sole "no" vote against its adoption.

As calculated by the Working Group itself, the recommendations contained in its October 24, 2014 "Term Sheet" (adopted with support from part of the industry and its largest manufacturers) would increase the retail cost of manufactured homes by at least $2,000 to $3,000. This amount, however, as MHARR has consistently emphasized, significantly under-

represents the true magnitude of the retail-level price increases that potential manufactured homebuyers would face under a final DOE rule.

Thus, the Working Group cost estimate did not include testing or regulatory compliance expenses – including potential Subpart I compliance costs over the life of the home – because the DOE delegation to the Working Group was limited to standards-only and did not address enforcement proposals or costs. Further, the Working Group cost estimate does not reflect the full spectrum of supply and materials costs to the entire industry, including smaller and medium-sized manufacturers. Given this differential alone, the retail-level cost of the Working Group's standards recommendations – without any further consideration of testing or regulatory compliance costs -- could be closer to $4,000 to $6,000 per home, particularly in Northern areas.

These estimates, moreover, do not fully address solar heat gain coefficients (SHGC) under the 2015 International Energy Conservation Code (IECC) for manufactured home windows in two climate zones, covering a substantial portion of the country, which the DOE Working Group – with MHARR again objecting -- chose to leave to DOE for analysis and determination. (Current HUD Code standards, by contrast, contain no requirements prescribing a particular SHGC level.)

Now, DOE has issued a "Request for Information" (RFI) in the Federal Register on February 11, 2015, seeking public input on a model-based SHGC analysis and DOE-recommended SHGC level that would add a projected $1,389.00 to the retail cost of a single-section manufactured home (before applicable taxes), while yielding alleged cost "savings" ranging from $197.00 to 1,265.00 (depending on location) over the course of ten years of projected home ownership. While the RFI invites public comment on "whether to include [such] an SHGC requirement ... in [the] development of the proposed rule" – and MHARR will submit comments opposing any such mandate, as well as any rule based on the Working Group recommendations – the history of this rulemaking at DOE (including a previous RFI seeking information after the development and selective leak of a "draft" proposed rule) suggests that requests for public input are little more than window-dressing for decisions that have already been made.

Consequently, while the segment of the industry that has supported these standards seeks to change the subject from the standards themselves – and their already high cost -- to enforcement issues and specifically whether enforcement should be overseen by DOE or HUD, the substance of the standards continues to evolve at DOE, and their likely cost-impact on the price-sensitive manufactured housing market and consumers of affortdable housing continues to increase significantly. Claims by industry supporters that drastically higher purchase prices resulting from such energy standards will be offset by savings "over the long run" – in addition to mimicing the arguments of anti-industry special interest advocates – (a) ignore the total exclusion of significant numbers of potential purchasers from the manufactured housing market that would result from those standards; and (b) ignore the reality that many purchasers will not remain in their homes long enough to ever realize any energy savings. Similarly, comparisons of the HUD Code and its energy standards to site-built housing codes are irrelevant and misleading insofar as the HUD Code – unlike site-built codes -- is specifically designed to reflect the unique attributes of manufactured housing and maintain its unique purchase-price affordability.

MHARR has consistently and factually opposed this tainted, fundamentally flawed rulemaking at DOE. While its efforts have been successful in applying the brakes to this proceeding; with: (1) the Office of Management and Budget (OMB) rejecting DOE's initial, selectively-leaked draft proposed rule; (2) OMB instructing DOE to "start over" on its energy rule, as demanded by MHARR in 2013; and (3) new delays in the implementation of a final rule until 2018 according to industry supporters, the industry needs to fully understand the far-reaching implications of this misdirected, misplaced and thoroughly tainted proposed regulation, and take action to prevent the adoption of any such standards by DOE.

MHCC BEGINS PROCESS TO ADDRESS MULTI-FAMILY HUD CODE HOUSING

Following-up on decisions made by the Manufactured Housing Consensus Committee (MHCC) at its December 2-4, 2014 meeting in Washington, D.C., the MHCC's General Subcommittee met for nearly three hours by telephone conference call on February 11, 2015 to address "Multi-Family Aspects of Manufactured Housing."

This issue came before the MHCC as a result of an October 3, 2014 memorandum by the new federal program Administrator (based on design analyses by the program monitoring contractor) threatening manufacturers with fines and civil penalties for selling any HUD-labeled home "for purposes other than single-family use." Based on this threat of enforcement action and its potentially serious impact on significant emerging manufactured housing growth markets, MHARR, in a November 12, 2014 communication, urged the Administrator to rescind the October 3, 2014 memorandum and address the relevant aspects of this issue "through the Manufactured Housing Consensus Committee (MHCC) process...."

At the December 2014 meeting of the MHCC, MHARR urged members to reject HUD enforcement of the "one-family" proviso and recommend the deletion of the standards-based "one-family" restriction based on an analysis which showed: (1) nothing in the governing federal manufactured housing law limits manufactured homes to design or use by "one family;" (2) that the HUD Code standard limiting manufactured home designs and/or use to "one family," therefore, exceeds statutory authority and is unenforceable; (3) that any such limitation contradicts the fundamental purposes of federal manufactured housing law, as amended by the 2000 reform law to promote the use, availability and technological advancement of manufactured homes; (4) that HUD should not be involved in defining who, or what, is a "family" or "one-family;" and (5) that HUD does not and cannot regulate the "use" of manufactured homes post-installation (so long as the home is not taken out of compliance with the standards).

Following an extensive discussion, the full MHCC voted to refer this entire matter to its General Subcommittee, leading to the February 11, 2015 conference call meeting.

At that meeting, Subcommittee members acknowledged the need for the HUD Code to address "multi-unit" manufactured home designs – and avoid regulatory language limiting manufactured home designs for use by "one-family." Beyond that, however, the Subcommittee encountered difficulty regarding potential definitions and preemption scenarios impacting the

authority of states and localities. As a result, the Subcommittee created two "task forces" to develop recommendations regarding (a) relevant definitions (including but not limited to "multiple dwelling units"); and (b) substantive fire separation proposals for multiple-unit homes. Recommendations from these groups will be returned to the Subcommittee by late-March 2015, and the Subcommittee plans to meet again on this matter between April 20 and the end of May, 2015, so as to have recommendations available for the next meeting of the full MHCC, expected during the Summer of 2015.

Given the importance of this matter to the technological and market advancement of manufactured housing, MHARR will continue to closely monitor and participate in all relevant MHCC activities, and urge modifications to the standards that eliminate baseless restrictions on the design and use of manufactured housing.

CONGRESSIONAL FHA HEARING FAILS TO ADDRESS HUD CODE HOUSING

In its July 2014 report on the federal manufactured housing program and its compliance with the Manufactured Housing Improvement Act of 2000, the Government Accountability Office (GAO) specifically faulted HUD and the Federal Housing Administration (FHA) for failing to develop – or even research – changes in the FHA Title I and Title II manufactured housing programs that could help increase the availability of affordable financing for manufactured home purchases and the availability of manufactured homes themselves for more Americans. In part, GAO said:

> "Recognizing the impact that a lack of low-cost financing could have on the affordability of manufactured homes, Congress directed HUD in the 2000 Act to review the FHA programs for manufactured home loans. The Act required that HUD develop any changes in, among other things, loan terms, amortization periods, regulations and procedures that might promote the affordability of manufactured homes. However, HUD has not yet examined or researched the effectiveness of these loan programs ... and, according to one HUD official, it was not among the highest priorities."

(Emphasis added).

Yet, at a February 11, 2015 House Financial Services Committee oversight hearing on the financial condition of FHA, with HUD Secretary Julian Castro as its only witness – while the Chairman and Committee members criticized HUD for reverting to the use of risky schemes to "get [buyers] into a house that they can't afford" -- no questions were raised or comments offered with respect to the GAO report and FHA's failure, despite the directives of the 2000 reform law, to provide greater support for HUD Code manufactured housing. Thus, while the Committee faulted FHA for engaging in tactics similar to those of "subprime" lenders prior to 2008, it failed to explore the impact of – and necessity for -- expanded FHA financing for HUD Code manufactured homes that would be affordable for virtually every American family.

Given the fact that the availability and terms of purchase-money financing for consumers – and specifically FHA financing -- is a post-production issue, it can be addressed (and must be addressed) more effectively by that sector of the industry. Even so, it came as a surprise to many observers at the Committee hearing that members posed no questions about the failure of HUD, FHA and the Government Sponsored Enterprises as well, to "facilitate the availability of affordable manufactured homes ... for all Americans," as required by the 2000 reform law.

HUD "CRITICAL HOUSING NEEDS" ANALYSIS IGNORES HUD CODE HOUSING

A new HUD report to Congress, published on February 3, 2014, shows a persistently high number of lower-income American families paying "more than half their monthly income for rent," or living "in severely substandard housing, or both." Yet the same report, summarized in a HUD News Release, reflects the ongoing failure of HUD -- and government at all levels -- to incorporate manufactured housing as a vital component of the programs and policies designed to address that need.

The report, entitled "Worst Case Housing Needs – 2015 Report to Congress," focuses specifically on the "critical housing problems" faced by very low-income renters who do not receive government assistance. Within those parameters, the report found that in 2013 nearly 8 million lower income households either "paid more than half their monthly incomes for rent, lived in severely substandard housing, or both" – nearly 50% more than the number of households experiencing critical housing needs in 2003.

The blind spot in the report, however – like a similar report published in 2011 – and in HUD policy and decision-making at the highest level, is the failure to acknowledge or address the role that affordable, non-subsidized manufactured housing could -- and should -- play in meeting these "critical needs." Put simply, there is no legitimate reason for lower income American families – or any family at <u>any</u> income level – to be living in "substandard" rental housing, or paying more than half their income toward rent, when high-quality, modern HUD Code manufactured homes can provide those families with the multiple benefits of homeownership at an affordable price without the need for costly taxpayer-funded subsidies. This is especially true when the cost of HUD Code manufactured housing, as shown by a 2004 HUD study ("Is Manufactured Housing a Good Alternative for Low-Income Families – Evidence from the American Housing Survey), is "<u>much lower</u> than other alternatives, including renting," even for "recent movers." (Emphasis added).

Yet, as MHARR has pointed out to Congress and in other interaction with government decision-makers, notwithstanding these "critical needs" and the directive of the Manufactured Housing Improvement Act of 2000 that the HUD program "facilitate the acceptance of the quality, durability, safety and affordability of manufactured housing within the Department," manufactured housing remains either absent from – or subject to baseless discrimination within -- the nation's housing opportunity and home financing programs. Thus, affordable manufactured housing that HUD <u>itself</u> regulates on a comprehensive basis remains almost completely absent from the Department's strategic vision to prevent homelessness and expand access to affordable homeownership in a fiscally responsible manner.

Even worse, the HUD manufactured housing program is today characterized by an intensifying regulatory overreach that is adding new unnecessary regulatory compliance costs to each home and making it even more difficult for lower and moderate-income families to purchase a manufactured home. And, it is this key aspect of the program, under its current leadership, that will be a top priority for MHARR going forward.

DATA SHOWS GROWING TREND TOWARD COMMUNITY PLACEMENTS

In conjunction with official HUD program statistics released February 3, 2015, indicating that 64,331 new manufactured homes were produced by U.S. manufacturers during 2014 (see, MHARR News Release, "Strong December Caps 2014 Production Increase," February 3, 2015), recent manufactured housing placement data from the United States Census Bureau shows a distinct trend toward HUD Code placements in manufactured housing communities.

Data compiled as part of the Census Bureau's annual Manufactured Housing Survey, shows that while the level of manufactured home placements in communities remained relatively constant from 2008 to 2010 – ranging from approximately 22 to 25% -- community placements grew significantly during 2012 and 2013, to approximately 30% of all new manufactured homes. Unfortunately, the Census Bureau reports that it stopped collecting and publishing manufactured home placement data in August 2014. Nevertheless, extrapolating the 2013 annual data to the 64,331 homes produced in 2014, would mean that even if no further expansion of community placements occurred, close to 20,000 new HUD Code homes were placed in the nation's manufactured housing communities last year, providing a significant affordable housing resource for all Americans.

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