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, 2017**

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HUD PROGRAM IGNORING TRUMP ADMINISTRATION DIRECTIVES

In a re-play of its well-documented institutional resistance to the full and proper implementation of the program reforms mandated by Congress in the Manufactured Housing Improvement Act of 2000, mounting evidence indicates that the HUD manufactured housing program – with its management team of Obama Administration holdovers – is openly defying the regulatory reform agenda of the new Trump Administration.

As is reflected in the following articles, recent actions by the manufactured housing program and its current administrator clearly demonstrate that the program is continuing its efforts to advance a further needless, unnecessary and unwarranted expansion of regulation and enforcement measures that should have been either held in abeyance or withdrawn under Trump Administration Executive Orders (EOs) and related guidance issued since January 20, 2017.

Those first of these orders – collectively designed to fulfill the President's campaign pledge to eliminate wasteful, needless, and/or unduly burdensome federal regulation that has damaged the economy and job creation – was issued on January 20, 2017. It directed all federal agencies to refrain from publishing, implementing, or advancing new proposed "regulations" until those "regulations" were reviewed by a Trump Administration "agency head" or designee. This

restriction was designed to be sweeping in its scope, defining a "regulation" to include not only formal published regulations, but also "guidance document[s]" and "any agency statement ... that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue." As a result, the regulatory "freeze" implemented on the first day of the Trump Administration applies to all of the various types of quasi-regulatory activities and devices that HUD has used – and continues to use – in its effort to circumvent the requirements of the 2000 law pertaining to the review of new policies and procedures by the Manufactured Housing Consensus Committee (MHCC) and the publication of those changes in the Federal Register

Subsequent Trump Administration Executive Orders -- issued on January 30, 2017 ("Reducing Regulation and Controlling Regulatory Costs") and February 24, 2017 ("Enforcing the Regulatory Reform Agenda") -- respectively require virtually all federal agencies, including HUD: (1) to "identify at least two existing regulations to be repealed" for each new regulation the agency "publicly proposes for notice and comment or otherwise promulgates" during Fiscal Year 2017, so as to ensure a "total cost of all new regulations ... to be finalized this year" that is "no greater than zero;" and (2) to designate a "Regulatory Reform Officer" and appoint a "Regulatory Reform Task Force" to identify – and make recommendations to the agency head – "identifying regulations that eliminate jobs or inhibit job creation; are outdated, unnecessary or ineffective; impose costs that exceed benefits; [or] interfere with regulatory reform initiatives and policies...." A further memorandum, issued by the Office of Management and Budget (OMB) on April 12, 2017, directs federal agencies to "explore opportunities to redesign processes to serve customers more effectively and/or ... eliminate unnecessary steps that do not add value." (Emphasis added).

In spite of this clear agenda – and these specific mandates – to promote government-wide regulatory reform, the HUD manufactured housing program continues to operate as if nothing has changed, pursuing, promoting and seeking the implementation of needless new regulatory requirements that will unnecessarily increase the cost of manufactured housing, thus harming American consumers of affordable housing, while imposing disproportionate regulatory compliance costs and burdens on the industry's smaller businesses. In each such instance, as shown below, this demonstrates the urgent and critical need for new program leadership that will function and operate in a manner that is consistent with the fundamental regulatory policies of the Trump Administration, rather than "deep state" Obama holdovers who seek to undermine those policies wherever possible.

HUD-SAA-PIA MEETING ILLUSTRATES DIRE NEED FOR PROGRAM SHAKE-UP

If there were any doubt that the HUD manufactured housing program is in need of a fundamental shake-up to bring it into line with the regulatory agenda and policies of the Trump Administration, that doubt was – or should have been – dispelled by the statements and positions of the HUD program leadership (and program contractors) at the April 11-12, 2017 HUD-SAA-PIA Western and Midwestern Regional Meeting held in Phoenix, Arizona. On a range of issues, including Subpart I enforcement and HUD's impending power-grab to seize de facto control over installation standards in all 50 states, the program and its leadership made it clear that the order of the day – from their perspective -- would be more expansive and exacting regulation, notwithstanding specific evidence of high-quality construction by the industry, timely resolution

of the vast majority of consumer issues, and continuing minimal levels of referrals to both the federal dispute resolution system and representative state systems (so much so, in fact, that HUD continues to effectively seek complaints to feed into the federal system).

Unwilling to recognize that the industry is producing its best homes ever, with unparalleled consumer satisfaction levels, at an affordable price, the program, under its current administrator, continues to reject any change that would lessen unnecessary regulatory burdens that needlessly inflate costs for consumers and disproportionately harm smaller industry businesses while benefitting the industry's largest conglomerates in an economic climate that has seen significant consolidation, leading to reduced competition and even more upward pressure on prices. This is especially the case with Subpart I -- a costly, outdated "recall" mechanism derived from federal automobile statutes that is a relic of the industry's "trailer" origins and is totally unsuited to, and inappropriate for -- today's manufactured homes, which the 2000 reform law makes clear are to be treated as "homes" for all purposes.

Both the attitude and policies underlying this never-ending regulatory ramp-up, which has reached unprecedented levels under the current program management, are totally inconsistent with the regulatory reform agenda and policies of the Trump Administration. Indeed, the discussion of just one subject at the meeting -- Subpart I – proved the existence "of unnecessary steps that do not add value" that should be "eliminate[d]" under the Administration's April 12, 2017 OMB memorandum, but are being maintained, protected and expanded by both the current administrator and the entrenched program monitoring contractor.

This flagrant disconnect – on multiple levels -- demonstrates the urgent need for a major manufactured housing program shake-up beginning with its leadership, as MHARR has maintained since the results of the November 8, 2016 election were known. Other industry organizations which fail to recognize – or simply do not care about this disconnect – are doing the industry a disservice through their silence. A HUD program that – due to its holdover leadership – is a "square peg" trying to fit into the "round hole" of Trump Administration policy, can and will, if not rectified, leave the industry and its consumers sitting on the sidelines of upcoming regulatory reform, subject to the suffocating regulatory policies of the last administration, while other industries and other consumers benefit from the Trump Administration "deconstruction" of the regulatory state.

Given that manufactured housing must continue to be federally-regulated (as contrasted with a myriad of conflicting state and/or local regulatory systems) in order to remain affordable without government subsidies, MHARR's continuing effort to educate key members of the new Administration to expose a HUD program "culture" and program direction that is in direct conflict with President Trump's regulatory reform agenda, is both necessary and indispensable. This broad-based effort will continue to expand as sub-cabinet members of the Administration are named, confirmed, and take office.

PROGRAM LEADERSHIP BYPASSES TRUMP REGULATORY REFORMS - 2000 LAW

MHARR has strenuously objected to action by the HUD manufactured housing program to impose new policies and practices regarding the monitoring of Primary Inspection Agencies (PIAs) contrary to both Trump Administration Executive Orders (EO) and a key provision of the Manufactured Housing Improvement Act of 2000.

In a communication sent to the program administrator on March 23, 2017, MHARR referenced inquiries that it had received regarding a March 21, 2017 conference call between HUD, its monitoring contractor – the Institute for Building Technology and Safety (IBTS) -- and both state and private PIAs. In part, that conference call addressed new and/or revised monitoring practices and procedures developed by IBTS under HUD authority. In a memorandum to program PIAs regarding the conference call, HUD stated: "HUD wants each agency to clearly understand the monitoring criteria that IBTS has developed as HUD's contractor for evaluating PIA performance and will be used as part of the future performance review process. *** Also included are procedures checklists that IBTS has developed to ensure PIA procedures address the PIA responsibilities identified in the regulations. These ... are being shared in an effort to assist your agency in ... aligning your agency's performance with requirements and HUD's expectations." (Emphasis added).

From HUD's own language, it is clear that: (1) these "procedures checklists" and related materials are new and/or revised criteria; (2) that HUD plans to implement these criteria in the "monitoring" of PIAs; and (3) that these criteria constitute new and/or revised "procedures" for monitoring. Equally as clear, though, is that the program – and its current administrator – are engaged, in this matter, in an end-run, around both the regulatory orders and policies of the Trump administration and section 604(b)(6) of the 2000 reform law.

First, the regulatory "freeze" memorandum implemented by the Trump Administration on January 20, 2017, prohibits any federal agency from proceeding with any new "regulation" that has not first been reviewed and approved by a Trump Administration appointee. The memorandum, however, defines "regulation" very broadly, to include "any agency statement of general applicability and future effect that sets forth a policy on a statutory, regulatory or technical issue, or an interpretation of a statutory or regulatory issue." (Emphasis added). Insofar as the IBTS "procedural checklists" represent an interpretation of – or gloss on – the underlying regulations, they fall squarely within the scope of the January 20, 2017 memorandum, and, as a result, should not have been advanced without the approval of either Secretary Carson or an approved designee. There is no evidence, however, of any such approval having been obtained.

Second, and just as importantly, the language of the regulatory "freeze" memorandum is functionally identical to section 604(b)(6) of the 2000 reform law, which provides that "any statement of policies, practices, or procedures relating to ... regulations, inspection, monitoring, or other enforcement activities that constitutes a statement of general or particular applicability to implement, interpret, or prescribe law or policy by the Secretary is subject" to all of the procedural requirements of section 604(a) of the 2000 reform law – including Manufactured Housing Consensus Committee (MHCC) review and publication. (Emphasis added). Any such action taken without compliance with those procedures is preemptively deemed "void" by section 604(b)(6) –

and clearly those procedures have not been used in this case.

This is yet another manifestation of a contractor that has either gone "rogue" – imposing aggressive new de facto mandates, contrary to the letter and intent of the 2000 reform law -- due to the absence of the effective and accountable oversight that Congress sought to provide through an appointed, non-career program administrator, or is acting contrary to the 2000 reform law with the approval and consent of the administrator. In either case, MHARR has been ahead of the curve in pursuing changes in both the leadership of the program and the fundamental nature and terms of the program monitoring contract in order to ensure full and fair competition for that contract and to eliminate needless "make-work" activity and improper delegations of inherently governmental functions.

As a result, MHARR has called on Secretary Carson to halt these actions for review and follow-up in accordance with Trump Administration regulatory policy, as set forth in applicable Executive Orders, and the 2000 reform law.

FEDERAL INSTALLATION POWER-GRAB CONTINUES

In a clear indication that the current HUD program leadership plans to continue its installation "power grab" – seeking to impose strict compliance with federal installation standards and enforcement procedures on complying states, i.e., states with state-law installation programs – the program administrator has doubled-down on her assertion, first enunciated at the October 2016 Manufactured Housing Consensus Committee (MHCC) meeting, that HUD (and, by extension, HUD's installation contractor) has the power to demand changes to such state law programs both outright and via changes to the federal installation standards and program.

It is crucial for all affected program stakeholders – including consumers, states, retailers, communities, manufacturers, installers, state associations and others – to understand what this action, if it were to go forward to final implementation, would mean. This action, in itself, would not automatically divest state authority over manufactured home installations and would not necessarily, in the short term, end state installation programs. HUD's action, however, would establish a destructive precedent that would allow HUD – contrary to the 2000 reform law – to dictate the specific content and specific requirements of state-law installation standards and programs, thereby over-riding state law and decisions made by state authorities acting under state law, by the simple expedient of directing such changes outright, unilaterally changing federal standards or program regulations, or unilaterally changing its "interpretation" of those regulations.

HUD would thus have the power to unilaterally impose new and additional mandates on states that ultimately could either bankrupt state programs or force state programs out of the installation regulation structure through financial and budget pressures that state governments would simply be unwilling to accept – thereby transforming those states into HUD-controlled and HUD-administered installation states. (Indeed, a major state program – in Michigan – has recently announced its exit from the HUD program.) And for every state that drops a state-law installation program, more power, authority, and revenue would be diverted to unaccountable program contractors – as has been the ambition of those contractors for decades, and which HUD and its

contractors have consistently sought to impose in the realm of production regulation.

This HUD attack on the primacy of state-based installation regulation – if allowed to go forward – would undermine the federal-state partnership mandated by Congress, while imposing high-cost, prescriptive, one-size-fits all installation mandates with no showing of need, necessity or cost-effectiveness, in violation of the 2000 reform law.

While this unacceptable power grab by HUD would have some direct impacts on manufacturers, its most devastating effects would be felt by consumers, by the industry's post-production sector and particularly by the 37 (soon to be 36) states which have devoted substantial resources to developing, implementing and maintaining HUD-approved state-law installation standards and programs. All of those stakeholders, therefore -- and the groups that represent them, including the state associations which represent the industry in the installation-compliant states – should aggressively resist this baseless, unwarranted and unlawful action by the HUD program and its revenue-driven contractors, and put an end to this effort to fundamentally distort and undermine the installation-regulation system established by Congress that, in a short period, has produced very positive results for consumers.

STRICT OVERSIGHT OF HUD PROGRAM BUDGET MUST CONTINUE

With the HUD program continuing to seek ever-higher funding levels from Congress in order to fund an unnecessary expansion of in-plant regulation via contractor make-work activity -- despite objective evidence showing minimal levels of consumer complaints and dispute resolution referrals -- MHARR is urging Congress to continue exercising strict oversight of the HUD program budget, in order to curb needless and costly contractor-driven paperwork and red tape, to prevent the intrusions by program contractors on the duties and prerogatives of the states, and to ensure that program activities are consistent with both current production levels and minimal levels of consumer complaints.

Based on these criteria – and on President Trump's March 16, 2017 Fiscal Year (FY) 2018 Budget Blueprint, mandating a 13.2% ($6.2 billion) decrease in HUD's overall budget from FY 2017 spending levels -- MHARR has called on Congress to reduce HUD program funding from the $11.5 million sought in FY 2017 to $8.5 million for the next budget cycle, principally through suggested reductions in payments to program contractors based on current production, complaint and dispute resolution referral numbers.

While MHARR will continue its engagement with Congress on this and other program-related issues, other segments of the industry, including particularly the post-production sector -- which stands to be significantly harmed by the program's latest dictates regarding installation – should and, indeed, must join with other smaller industry businesses to seek Congressional oversight and program funding levels that will preserve full consumer protection while curbing the needless growth and expansion of unnecessary regulation that provides few or no benefits for homebuyers, while undermining the fundamental affordability of manufactured housing.

Again, with the election of President Trump, and his stated commitment to cut the size and

power of federal bureaucracies, there has never been – and might never be again – a better opportunity for the industry and consumers to seek program funding levels that are consistent with the quality of today's manufactured homes, and not driven by the needs and wants of entrenched contractors and regulators.

DOE MANUFACTURED HOUSING ENERGY RULE HIT AGAIN

The proposed energy "conservation" rule for manufactured homes, published by the U.S. Department of Energy (DOE) in June 2016 has taken another hit, which further undermines and invalidates its already discredited "cost-benefit" analysis, allegedly showing net benefits under the proposed rule.

Following comments submitted by MHARR questioning multiple aspects of the statutorily-required cost-benefit analysis (as well as the entirety of the fundamentally-tainted DOE standard-development process), and comments by the George Washington University Regulatory Studies Center showing that the proposed rule – contrary to DOE's analysis -- would actually result in net costs for many manufactured home buyers, the Trump Administration, in an Executive Order (EO) issued on March 28, 2017, has withdrawn and thereby eliminated from consideration, a key component of the cost-benefit analysis for the DOE proposed manufactured housing rule.

In assessing and determining the alleged "Nationwide Environment Benefits" of its proposed rule, DOE "considered the estimated monetary benefits likely to result from reduced [carbon and nitrogen] emissions that would be expected under the proposed rule." In calculating the monetary value of those alleged "global benefits," DOE used the "Social Cost of Carbon" (SCC) methodology (specifically a November 2013 SCC "Technical Update") that had been developed by a federal inter-agency working group during the Obama Administration. That methodology, in the case of manufactured housing energy regulation, as with so many other "environmental" rulemakings, acted like a "thumb on the scale" to produce phantom alleged benefits on an entirely speculative basis.

While the March 28, 2017 Trump Administration Executive Order, entitled "Promoting Energy Independence and Economic Growth," pertains primarily to rules and policies promulgated by the Obama Administration relating to energy production, Section 5 of the EO disbands the SCC inter-agency working group and expressly states that the November 2013 SCC Technical Update relied upon by DOE in support of its proposed rule (among other iterations of the SCC), "shall be withdrawn as no longer representative of governmental policy." (Emphasis added).

Insofar, then, as a significant part of the alleged basis for the DOE manufactured housing proposed rule has been invalidated and withdrawn, there is even more reason for DOE to withdraw its irretrievably-tainted proposed rule as consistently sought by MHARR. Indeed, given the fact that obvious flaws and fallacies inherent in the SCC methodology and its use by DOE in connection with the manufactured housing rule were among the many reasons why MHARR, from day-one, has intensely opposed this fatally-deficient proposal, one can only wonder what thought process was involved in the support that this proposal received from within the industry during its development by a DOE "negotiated rulemaking" working group.

MHARR RESPONDS TO FHFA-DTS REQUEST FOR INPUT

MHARR, consistent with its long-standing position regarding the implementation of the "Duty to Serve Underserved Markets" (DTS) provision of the Housing and Economic Recovery Act of 2008 (HERA), has again called on the Federal Housing Finance Agency (FHFA) to establish a program of securitization and secondary market support for manufactured housing chattel loans that is: (1) mandatory; (2) significant in scope; and (3) "timely" in providing immediate relief for manufactured homebuyers that Congress has determined have not been properly or adequately served by the two Government Sponsored Enterprises (GSEs) – Fannie Mae and Freddie Mac.

In comments submitted to FHFA on March 21, 2017, in response to a "Request for Input" (RFI) published by the agency in January 2017 in conjunction with its December 29, 2016 final DTS implementation rule, MHARR stated that it "rejects the concept of a limited, discretionary manufactured home chattel 'pilot program'" as authorized by the DTS final rule that would inevitably be too small, too limited, too restrictive, and too late to serve a meaningful segment of the consumers that DTS was designed to serve and benefit, and would similarly be too small, too limited, too restrictive and too late to properly measure or gauge success in a market comprised of millions of Americans."

Instead, as it did at FHFA Duty to Serve "listening sessions" in Chicago and Washington, D.C., MHARR called on FHFA to adopt "a revised and reformed DTS implementation rule" – of sufficient size and scope to address the estimated 250,000 vacant spaces in manufactured housing communities across the nation -- that would "specifically authorize and mandate a series of Enterprise-securitized chattel loans in volume, staggered over multi-year periods, so that [those loans] could be analyzed and evaluated every three years for any adjustment as warranted for the next series."

As MHARR has steadfastly maintained since the publication of the first proposed DTS implementation rule in 2010, mandatory GSE securitization and secondary market support for the chattel loans that constitute an 80% - and growing - share of the manufactured housing market, is essential to achieving the consumer financing remedy that Congress sought to establish via DTS. It is also essential to restoring and maintaining a fully-competitive manufactured housing consumer financing market, in contrast to the limited number of current lenders that unnecessarily subjects lower and moderate-income manufactured housing purchasers to higher-rate loans due, in part, to the discriminatory unavailability of GSE securitization and secondary market support for such loans.

Unlike other stakeholders, MHARR has never accepted the argument advanced by the GSEs and FHFA that reams of data are necessary to implement a "duty" imposed by Congress, knowing full-well that such data is held nearly-exclusively by a handful of lenders that (understandably) will not share it in order to benefit and empower competitors. The relevant policy decisions regarding DTS – involving a mandatory duty that embraces chattel and all other types of manufactured housing loans – have already been made by Congress and may not be second-guessed, evaded, or distorted by either the parties upon which that duty has been imposed, or their regulator. Moreover, as MHARR has already pointed out at the FHFA "listening sessions," if existing manufactured housing chattel lenders (with higher-rate loans for less qualified borrowers)

can maintain a profitable business model without chattel securitization, there is every reason to conclude that a safe, sound and profitable operating model (with lower rates for a broader range of buyers) could be sustained and expanded with the non-discriminatory securitization and secondary market support that could, should and must be provided by the GSEs, as directed by Congress through DTS.