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: **OCTOBER 10, 2017**

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HUD PROGRAM ADMINISTRATOR FREELANCING HARSH REGULATION

The HUD manufactured housing program, under holdover Administrator, Pamela Danner, continues to freelance regulatory actions that defy key Executive Orders issued by President Donald J. Trump – providing yet a further basis for the Administrator's re-assignment and replacement.

Those Executive Orders, among other things: (1) impose a "regulatory freeze" as of January 20, 2017, requiring that any new "regulatory action" by a federal Executive Branch agency be approved by an agency head or designee appointed by President Trump; (2) require that any federal agency proposing a new regulation for notice and comment "identify at least two existing regulations to be repealed" (see, Executive Order 13771, issued January 30, 2017); and (3) establish "the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people," while establishing a process for agency review, modification, and/or repeal of existing regulations that "eliminate jobs or inhibit job creation, are outdated, unnecessary, or

ineffective, or impose costs that exceed benefits" (see, Executive Order 13777, issued February 24, 2017). Together, these orders, as determined by a recent study of federal rulemaking, have reduced "overall [federal] regulatory volume ... to historically low levels," consistent with the Trump Administration's pledge to "deconstruct" the federal regulatory state.

Each of these orders carries the full force and effect of federal law, and is binding on the HUD program and the HUD program Administrator. Nevertheless, the program and its holdover Administrator have continued to move forward at a rapid pace with new regulatory requirements for manufactured housing that flout the orders' specific requirements. Most recently, the federal program announced in the Fall 2017 HUD Semi-Annual Regulatory Agenda (SRA) that it will soon propose a rule to establish *new and amended* manufactured housing construction and safety standards to address, among other things, carbon monoxide detectors, stairway requirements, fire safety considerations for attached garages, draftstops, and requirements for venting systems.

There is no indication, however, that this impending rule – or the decision to go forward with its publication -- has ever been reviewed or approved by a Trump Administration appointee, has ever been subjected to a process within HUD to ensure compliance with Executive Order 13777, or that it will be paired with two or more HUD regulations designated for repeal as required by Executive Order 13771. To the contrary, the "rogue" and unlawful status of this regulatory action by an activist manufactured housing program administrator, is demonstrated by the fact that this impending proposed rule for manufactured housing was the one and only proposed rule for HUD – as an entire agency – listed in the Fall 2017 SRA

Thus, while rulemaking activity and the imposition of new regulatory burdens has been reduced substantially by the Trump Administration at all federal agencies – including HUD -- the federal manufactured housing program, under its holdover administrator, continues to openly defy President Trump's regulatory policies and orders designed to reduce the burden of federal regulation on American industry (particularly small businesses) and American consumers.

The solution to much if not all of this activity to circumvent Trump Administration policy lies in new leadership for the HUD program appointed by President Trump. MHARR, therefore, in face-to face meetings with Trump Administration officials at HUD and publicly, unlike any other national manufactured housing industry organization, has called for the re-assignment and replacement of the current holdover program Administrator with an administrator appointed by President Trump. Given the importance of proper leadership for the program that will respect the policies of the Trump Administration, MHARR will continue to aggressively assert this position, and will also file comments, as appropriate, to address the impending proposed rule as described in the Fall 2017 HUD SRA.

With the principal beneficiaries of all this program activity being HUD Code industry competitors, program contractors and the industry's largest corporate conglomerates, that activity raises a serious question as to who at HUD is allowing the holdover program administrator to remain in place, "under the radar," and continue to act and function within a de facto "no-man's land at the Department.

While MHARR has consistently, factually and accurately identified and exposed the relevant details of this matter, as well as legitimate bases for the re-assignment and replacement of the current program administrator, the collective failure of the industry to date to have a new program administrator appointed by the Trump Administration can only be attributed to the industry's usual go-along-to-get-along segment, which continues to hamper real (rather than illusory) progress in the nation's capital.

MHARR-OPPOSED ENERGY RULE IN LIMBO AT DOE

The disastrous "energy conservation" rule proposed by the U.S. Department of Energy (DOE) on June 17, 2016, which was vehemently opposed by MHARR during the sham "negotiated rulemaking" leading to its development (but supported during that process by the Manufactured Housing Institute) and in written comments filed on August 8, 2016 – remains in limbo at DOE following the publication of Trump Administration Executive Order (EO) 13777 (February 24, 2017) directing all federal agencies to establish a process for the review, modification, and/or repeal of existing regulations that "eliminate jobs or inhibit job creation, are outdated, unnecessary, or ineffective, or impose costs that exceed benefits."

In further comments submitted to DOE regarding the implementation of EO 13777, MHARR reiterated its strenuous opposition to the proposed energy rule and called for its "rejection or withdrawal and re-assessment" based on the regulatory policies enunciated in both EO 13777 and 13771. In addition to the reasons originally cited by MHARR as grounds for the rejection of the June 17, 2016 proposed rule – including, but not limited to, the sham, contrived and illegitimate "negotiated rulemaking" process itself and a fatally-flawed "cost-benefit" analysis – MHARR's EO 13777 comments point out that the proposed rule's already defective cost-benefit analysis is further undermined and, in fact, invalidated by the Trump Administration's repudiation and rejection of the Obama Administration's "Social Cost of Carbon" (SCC) construct, which was used to falsely inflate the alleged benefits of the proposed rule, as well as the Trump Administration's withdrawal from the 2016 "Paris Climate Accord," which the June 17, 2016 proposed rule was designed, in part, to implement.

With action on this proposed rule now apparently deferred pending DOE compliance with both EO 13777 and 13771, and the government-wide regulatory re-assessment and review mandated by the Trump Administration, MHARR will continue to carefully monitor this proceeding to determine DOE's future course of action. In part, this will be impacted (as with the parallel EO 13771/13777 regulatory review at HUD) by the ability of the Trump Administration to nominate and confirm its appointees for senior and intermediate-level management positions at DOE. This includes a replacement for the Obama-Administration-holdover Director of the DOE Office of Energy Efficiency and Renewable Energy (EERE), which is responsible for the DOE manufactured housing rule. MHARR will take further steps as necessary to oppose this egregious rule at DOE, within the Trump Administration, and via other means, as necessary.

MARYLAND BACKTRACKS ON FIRE SPRINKLERS

The Maryland Department of Housing and Community Development (DCHD), in response to an August 29, 2017 communication from MHARR disputing the legal bases for an August 11, 2017 DCHD memorandum concerning local fire sprinkler mandates, has now backtracked from the key (and incorrect) assertions set forth in that memorandum.

Among other things, the August 11, 2017 DCHD memorandum states: "When [the] HUD Code does not address the 'same element of performance,' states and local authorities are permitted to enforce their own code provisions on these elements. *** The issue of fire sprinkler systems is among the items which [the] HUD Code does not currently address. *** This allows states and local governments to require sprinkler systems that a manufactured home must have in order to be installed in the jurisdiction. *** Under the current Code of Maryland regulations ... [DCHD] does not require fire sprinklers in manufactured homes. However, [DCHD's] position does not preclude a local government from setting its requirement of fire sprinkler[s] in manufactured homes." (Emphasis added).

In its August 29, 2017 communication to DCHD, MHARR – in accordance with its consistent position on the preemption of fire sprinkler requirements for manufactured homes – stressed that amendments to the preemption language of federal manufactured housing law enacted by Congress as part of the Manufactured Housing Improvement Act of 2000 legislatively overrule pre-2000 HUD legal opinions holding that the HUD Code fire safety standards do not preempt state and/or local sprinkler mandates, and effectively restore HUD's original position, expressed by the Department shortly after the enactment of the Manufactured Housing Construction and Safety Standards Act of 1974, that such fire sprinkler mandates are, indeed, federally preempted.

In part, MHARR's communication states:

> "Congress, in the Manufactured Housing Improvement Act of 2000, substantially enhanced the scope and reach of federal preemption under section 604(d). In particular, Congress added a new sentence to section 604(d) stating that: "Federal preemption under this subsection shall be broadly and liberally construed to ensure that disparate state or local requirements or standards do not affect the uniformity and comprehensiveness of the standards promulgated under this section nor the federal superintendence of the manufactured housing industry as established by this title." (Emphasis added). Based on this statutory directive to HUD to interpret, construe and apply federal preemption under the 2000 law, "broadly and liberally," pre-2000 law OGC fire sprinkler preemption opinions, which were based on an extremely narrow construction of the key phrase "same aspect of performance" ... are outdated, inconsistent with currently applicable law, and irrelevant. MHARR asserts and maintains that those opinions – which you cite as the legal basis for your memorandum and its conclusions -- provide no basis whatsoever for the post-2000 law construction of section 604(d) in relation to the preemption of state or local fire sprinkler mandates or, for that matter, any other preemption matter.

In response, DCHD, in a September 22, 2017 letter to MHARR, retreated from its broad declaration purporting to affirm the right of Maryland localities to adopt fire sprinkler mandates for manufactured homes. Clarifying its position on this matter, DCHD stated that "The [August 11, 2017] memorandum, issued for the benefit of local jurisdictions and the industry, was solely intended to clarify that DCHD does not require fire sprinklers for manufactured homes. *** Ultimately, the issue of federal preemption of local requirements for sprinkler systems in manufactured homes is a federal question that is entirely within HUD's jurisdiction, not DCHD's." (Emphasis added).

MHARR views this correction as accurate and welcomes the willingness of DCHD to properly clarify its position. HUD, however, is another matter, particularly with the arrival of a new long-time sprinkler advocate at the Department. While MHARR has previously and consistently called for HUD to withdraw pre-2000 law "guidance" documents concerning the scope and reach of federal preemption – including pre-2000 law sprinkler preemption ruling letters based on a narrow construction of the scope of federal preemption, which has now been overruled by Congress through the 2000 reform law, the industry -- and especially retailers and communities – should brace for a new round of sprinkler battles ahead.

SECRETIVE "NEW" HOME DISCUSSION RAISES SERIOUS CONCERNS

MHARR has been receiving an increasing number of inquiries expressing concern over secretive discussions within the Manufactured Housing Institute (MHI) regarding "research" and other activity apparently designed to result in the development of a new "class" of manufactured homes, together with corresponding changes to existing federal manufactured housing law in order to facilitate the development, delivery and use of such homes. Intra-MHI discussions concerning this "new class" of homes occurred at MHI's recent meeting in Orlando, Florida according to participants.

Given the long-term de facto domination of MHI by Clayton Homes, Inc. (Clayton) and the parallel domination of the national manufactured housing market (including both home production and consumer financing) by that same entity and its finance affiliates (i.e., 21st Mortgage Corporation and Vanderbilt Mortgage Corporation) under the corporate umbrella of Warren Buffet's Berkshire Hathaway Corporation – and given the unique comprehensive federal regulation of the manufactured housing industry under federal law -- these activities are justifiably a source of serious concern for the broader industry and independent producers of manufactured housing, but, most importantly, for consumers.

As a comprehensively federally-regulated industry, under largely performance-based standards which must balance "reasonable" protection and affordability, the industry, since the advent of federal regulation in the mid-1970's, has produced thousands of different home models and types, within the relatively liberal size and construction/safety parameters of federal manufactured housing law and the HUD standards, not only for the general public, but for a variety of federal, state and local government needs. The performance-based character of these standards, together with their emphasis on affordability, have generally produced – or, more accurately, allowed for – more-or-less robust competition over most of the 40-year history of the federal

regulatory program. Thus, the federal standards have inherently and functionally resulted, over the long term, in a fiercely competitive manufactured housing market which has fulfilled the primary policy objective of federal manufactured housing law – i.e., to provide an intrinsically affordable source of housing and home-ownership for all Americans and particularly for lower and moderate-income families.

Further, existing law and regulations also provide for the approval of homes and home designs which either deviate in some respect from the federal standards or include features that require on-site completion. And while this system has been damaged and abused over the last four years by the current program Administrator and the program's entrenched, revenue-driven contractor, it still provides a mechanism -- within the established system that is and has been open to all manufacturers and all competitors within the industry – for the production and sale of "new" types of manufactured homes and "new" types of manufactured home designs. And, needless to say, the current system has been successfully utilized for government purchases of specially-designed homes for many years. Thus, if anything, the industry should focus – and concentrate its full efforts – on stopping and correcting abuses of the existing system by HUD regulators and contractors, instead of re-inventing the wheel for a "new class" of "manufactured homes."

Full, free and open competition requires that the ability to create "new" home designs and "new" home types (as broadly allowed by existing law) rest fully with the individual entrepreneurs who comprise the industry, not with secretive combinations of the largest industry manufacturers acting either alone or in conjunction with government regulators who are ethically forbidden from favoring, in any way in their official actions, any individual – or self-restricted group – of regulated parties.

Put differently, it is up to the free market and individual entrepreneurs and competitors within that free market to create "new" home designs and home "types," not regulators or special interests within the market acting in concert to the potential detriment of full and open competition as mandated by federal antitrust statutes.

Moreover, given the unique, successful and well-established federal manufactured housing law, which has been in place for nearly a half-century, and which industry competitors would like to have for their own homes, together with the inherent unpredictability of the legislative process, the proponents of this effort should be wary of the famous warning to "be careful what you wish for." Given the importance of a sound federal law to the success and future growth of the industry, and MHARR's de facto role as guardian of that law for the industry and consumers, MHARR will continue to carefully monitor this and other legislative matters that could have an adverse impact on the law and on the ability of all industry members to compete on a level playing field.

HUD INSTALLATION INCOMPETENCE RETURNS TO HAUNT MH & CONSUMERS

The HUD manufactured housing program – again in defiance of the regulatory policies of the Trump administration (see, article above) – has continued to expand the scope, reach, cost and unnecessary burdens imposed on both the industry and consumers by its activities concerning the installation of manufactured homes.

Apparently not content to merely dictate the specifics of installation within the 14 states that have chosen not to adopt or enforce state law installation standards and programs (i.e., "default" states), HUD – both directly through its installation contractor, SEBA Professional Services, L.L.C. (SEBA) -- has embarked on an expanding and intensifying campaign to impose specific installation mandates and related "interpretations" on states with HUD-accepted installation standards and programs (i.e., "compliant" states) and, more recently, on localities within default states (and compliant states that lack intra-state preemption). In part, this effort is embodied in HUD's effort to impose an alleged new "interpretation" of its frost-free foundation standards (in actuality a new standard in and of itself) on all 50 states (see, article below). Simultaneously, though, the HUD program, after claiming for the past decade that its installation standards for default states are not federally preemptive, thereby allowing localities to adopt and enforce so-called installation standards that result in the discriminatory exclusion and/or restriction of HUD Code manufactured homes, has suddenly decided that the Part 3285 federal manufactured home installation standards are, in fact, preemptive with respect to localities -- maybe.

The resulting mess of confusing, conflicting and contradictory mandates and directives, is exactly as predicted by MHARR when the federal installation standards were first "re-codified" outside of the preemptive Part 3280 construction and safety standards, and if not reconciled and rectified in a coherent manner, will become fodder for further HUD abuse of an already needlessly confused and chaotic regulatory landscape regarding the proper role and authority of government at the federal, state and local levels concerning the installation of manufactured homes.

In the preamble to its October 19, 2007 Final Rule adopting "Model Manufactured Home Installation Standards," HUD specifically disclaimed any preemptive authority or effect for those standards, stating: "Congress did not intend to extend preemption authority to these model installation standards." Similarly, in its discredited "Frequently Asked Questions" regarding "Recent Program Activity," HUD unequivocally states: "Does federal preemption apply to the Model Manufactured Home Installation Standards ... mandated by the 2000 Act? No." (Emphasis added).

HUD has thus consistently refused to preempt local "installation" standards – including mandates that effectively exclude or significantly restrict the placement of manufactured homes -- based on the allegedly non-preemptive status of the federal installation standards resulting from their "re-codification." For example, in a January 7, 2016 ruling by the current HUD program administrator, HUD refused to preempt a Green County, Wisconsin ordinance requiring that all manufactured homes be placed a "full basement or foundation," stating: "Green County's installation standards are not required to be identical with the HUD [installation] standards. Rather they must meet or exceed the HUD standards and can be more restrictive." (Emphasis added).

More recently, the HUD program served notice on the International Codes Council (ICC) regarding Appendix E to its International Residential Code (IRC) – addressing manufactured home installations – that has been adopted by localities in default states (and compliant states without intra-state preemption), indicating that the Department plans to take action on "differences" between Appendix E and the supposedly non-preemptive federal installation standards, which

allegedly "could result in the acceptance of new home installations that do not meet all [the] minimum requirements of HUD's installation standards."

Now, though, to muddy the waters even further, HUD's Office of General Counsel (OGC) has issued a preemption decision concerning the federal installation standards and localities in default states (posted on SEBA's internet website) which – albeit for incorrect reasons – could indicate a return to the original intent of the law and a broader preemption of local installation mandates that conflict, in any way with (i.e., are not identical to) the federal installation standards. In relevant part, that decision states unequivocally: "The [federal] installation regulations do not specifically contain language that addresses whether a local authority having jurisdiction (LAHJ) can issue permits or certificates of occupancy to an unlicensed installer. However, under federal law, [HUD] is given exclusive authority to regulate manufactured home construction and safety standards, *which include installation standards*, and in such areas, [HUD's] regulations are given supremacy over state *and local* laws and requirements through the Manufactured Home Construction and Safety Standards Act ... 42 U.S.C. 5403." (Emphasis added).

HUD, in short, has created a regulatory morass concerning installation and federal preemption – deriving from its initial "re-codification" of the federal installation standards -- that it has selectively manipulated in order to impose and/or permit the harshest possible restrictions and limitations on the placement of manufactured homes. This stands in direct conflict not only with the primary directive of the 2000 law – to increase the availability and affordability of manufactured homes for all Americans – but also with the over-riding regulatory objective of the Trump Administration, to "alleviate unnecessary regulatory burdens placed on the American people." As a result, HUD, as part of its review of current regulations pursuant to Executive Order 13777, should conduct a complete re-examination of its implementation of installation regulation under section 605 of the 2000 reform law and, in place of its current incoherent system, adopt an enforcement mechanism that is consistent with both the express requirements of the 2000 reform law and its fundamental purposes. And, to ensure that this necessary re-examination actually occurs, the Trump Administration must provide new leadership for the program, again in full compliance with the 2000 reform law.

MHARR COMMENTS URGE WITHDRAWAL OF BASELESS "FROST-FREE" IB

MHARR, in response to HUD's attempted takeover of manufactured home installation regulation in all 50 states, has filed comprehensive written comments opposing the Department's proposed "Interpretative Bulletin" (IB) I-1-17 ("Foundation Requirements in Freezing Temperature Areas under 24 C.F.R. 3285.312(b)"), which effectively seeks to re-write the existing regulation to make it a prescriptive "clone" of Structural Engineering Institute/American Society of Civil Engineers standard 32-01, based on the conclusions of one engineering consultant. In its comments, MHARR calls on HUD to withdraw the proposed IB, which violates multiple provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (as amended), as well as HUD's own regulations, and Executive Orders issued by the Trump Administration.

While a recent report by the American Action Forum (AAF) concludes that federal rulemaking and the imposition of new federal regulatory burdens on American businesses and consumers has fallen to record-low levels during the first six months of the administration of President Donald J. Trump, the HUD manufactured housing program, under its current Administrator, continues to churn out reams of new unnecessary and unnecessarily-costly de facto regulatory mandates, including the proposed "frost-free" IB.

As MHARR's comments demonstrate, though, the proposed IB is not, in fact, an "interpretation" of HUD's existing standards at all, but rather, a disingenuous manipulation of the IB process to substantively alter the existing regulations – and impose costly new requirements on consumers and thousands of smaller industry businesses -- based on the opinions and conclusions of one individual with past financial ties to the 40-year, revenue-driven manufactured housing program "monitoring" contractor and the NAHB (National Association of Home Builders) Research Center, a subsidiary of the largest national association representing manufactured housing industry competitors.

With no evidence whatsoever of systemic problems with "frost-free" manufactured housing foundations designed for – and used – in "freezing climates" under the existing HUD installation standards, which have been in effect for nearly a decade, and with no consideration of the significant cost impact of the substantive changes that it mandates (based on the fiction that it does not "change" the existing standards), the proposed IB is part of a broader pattern of action by the current program Administrator which has substantially intensified the scope, extent, compliance burdens and costs of needless federal regulation on consumers and the industry, to the ultimate benefit of program contractors and industry competitors.

The imposition of such unnecessary and baseless regulatory burdens on the industry and the largely lower and moderate-income American families who rely the most on manufactured housing and its inherent affordability, not only stands in direct conflict with the requirements and mandate of the Manufactured Housing Improvement Act of 2000, but is directly contrary to the regulatory reform policies of President Trump, which – as exemplified by Executive Order 13777 – seek to "alleviate unnecessary regulatory burdens placed on the American people."

Based on these violations of applicable law, HUD regulations and binding Trump Administration orders, MHARR's comments call on HUD to withdraw the proposed IB. As with other program activity, MHARR will continue to monitor this matter for further action, as warranted.

FHFA, FANNIE AND FREDDIE GIVE SHORT-SHRIFT TO CHATTEL FINANCING

A proposed Federal Housing Finance Agency (FHFA) "Draft Strategic Plan for Fiscal Years 2018-2022" barely mentions implementation of the "Duty to Serve Underserved Markets" (DTS) by the two Government Sponsored Enterprises (GSEs), even though, according to the implementation plans submitted by those organizations to FHFA earlier this year, key aspects of the GSEs' implementation of DTS (as deficient as they are, as stressed by MHARR in its written comments on those plans) are slated to occur over that period.

In its only reference to DTS, the draft Strategic Plan, published by FHFA on September 27, 2017, states: "FHFA will meet its statutory responsibilities to issue regulations as needed defining the regulated entities' Housing Goals and Duty to Serve obligations for the Enterprises and FHFA will annually monitor the Enterprises, Housing Goals and Duty to Serve performance." This bare-bones reference, however, provides no assurances or commitment whatsoever to ensuring that the GSEs will fully implement DTS – including market-significant securitization and secondary market support for the chattel loans that comprise the vast bulk of manufactured home consumer financing – during the time-frame of the draft Strategic Plan, which will conclude a full 14 years after Congress' adoption of DTS as part of the Housing and Economic Recovery Act of 2008 (HERA).

MHARR, accordingly, will submit comments to FHFA seeking a more specific commitment to the full and proper implementation of DTS with respect to manufactured housing and manufactured housing chattel loans in particular, as well as a detailed and updated time-line for that full and proper implementation to occur.

Comments on the FHFA draft 2018-2022 Strategic Plan must be submitted to the agency no later than October 27, 2017.

SENATE APPROPRIATORS CALL FOR INCREASED SAA FUNDING

The United States Senate Appropriations Subcommittee on Transportation, Housing and Urban Development and Related Agencies (THUD) has adopted a Committee Report on the proposed Fiscal Year (FY) 2018 HUD appropriations bill which incorporates language sought by MHARR to increase the funding provided by HUD to State Administrative Agencies (SAAs).

In part, that report, states: "The Committee recommendation provides: not less than $4,000,000 for payments to State Administrative Agency partners." (Emphasis added). If adopted by the full Senate and House, this provision would result in at least $400,000.00 in additional funding for the state SAAs, over and above the amount requested by the HUD manufactured housing program in its FY 2018 congressional budget justifications.

As an integral part of the unique federal-state partnership established by the National Manufactured Housing Construction and Safety Standards Act of 1974, SAAs are the first line of protection for consumers residing in manufactured homes subject to federal standards established by HUD. This includes not only new and recently-installed homes, but also existing homes constructed under federal standards dating back to 1976. As a result, SAAs are responsible for an ever-growing number of homes in each SAA state.

In recent years, however, SAAs (operating under an outdated 15 year-old funding rule) have been starved for funding by the HUD program, while budgeted payments to revenue-driven program contractors – compensated, among other things, to seek out and pursue complaints that would not otherwise exist -- have ballooned, despite significantly reduced production levels of new homes over the same period.

This fundamental distortion of the federal program – in direct conflict with the federal-state partnership mandated by Congress and the letter of the 2000 law – would have been made far worse by a modification of the SAA payment rule proffered by the current Administrator of the HUD program in July 2015, which would have severely reduced funding for many SAAs, leading some to either exit or consider exiting the HUD program.

Following strenuous objections by MHARR and many states, HUD developed an alternative funding proposal, consistent with the 2000 law, which was approved by the statutory Manufactured Housing Consensus Committee in 2016 and subsequently incorporated in a proposed rule published nearly one year ago, on December 16, 2016. With no action to date on that proposed funding rule – while HUD has moved forward rapidly on baseless regulatory mandates, such as its "frost-free" foundation IB – MHARR sought, and obtained, this assistance from Congress to ensure additional funding for SAAs which, unlike revenue-driven HUD contractors, are fully accountable to their respective governments and citizens.

MHARR DEMANDS HUD RE-ENGAGEMENT WITH MHCC

Despite an alleged commitment by the current HUD manufactured housing program Administrator to conduct at least two meetings of the statutory Manufactured Housing Consensus Committee (MHCC) each year (and false claims by the Administrator's supporters that this has in-fact occurred), there has not been – and apparently will not be – even a single meeting of the MHCC during 2017. Instead, the program has indicated to MHCC members that the next meeting of the Committee will not occur until at least April 2018. As a result, a full year-and-a-half will separate the Committee's last in-person general meeting on October 25-27, 2017 and its next in-person meeting, while new MHCC members, appointed in early 2016, will have to wait for more than a year to participate in their first full Committee meeting.

This failure to hold regular and timely MHCC meetings, given the broad scope of the Committee's role and authority under the Manufactured Housing Improvement Act of 2000 – while HUD simultaneously pursues new and modified regulatory mandates including, but not limited to: (1) its attempted takeover of installation regulation in all 50 states through, among other things, (a) its "frost-free" foundation IB; (b) its efforts to force the International Codes Council to enact changes to Appendix E of the International Residential Code; (c) its activity – through its installation contractor – to compel states with previously-approved standards and plans to adopt and implement significant changes to those regulations; and (d) its inconsistent and ever-changing (but consistently incorrect) positions on preemption of local installation requirements; (2) its continuing expansion of in-plant regulation; and (3) its distorted implementation of the "on-site construction" proposal recommended by the MHCC, demonstrates, yet again, the utter disregard of the program, under its current Administrator, for the MHCC, for the 2000 reform law and its requirements, and, ultimately, program stakeholders, including both the industry and consumers.

At a time when the current program Administrator has vigorously undertaken a rapid and unprecedented expansion of federal regulation in defiance of the Trump Administration's regulatory reform agenda, the MHCC – if anything – should be more involved in the operation of the program and the oversight of regulatory activity, not less.

This key failure represents yet another one of the many reasons underlying MHARR's call for, and public efforts to achieve, the reassignment and replacement of the current HUD manufactured housing program Administrator.

MHARR CALLS ON FEMA TO MAKE MAXIMUM USE OF HUD CODE HOMES

In a September 7, 2017 communication to HUD Secretary Dr. Benjamin Carson and FEMA Administrator William B. Long, MHARR called on both agencies to make maximum use of HUD Code manufactured homes as both emergency relief and long-term replacement housing for natural disaster victims, including those affected by Hurricanes Harvey and Irma.

In part, MHARR stated: "With the recovery from Hurricane Harvey still underway and with Hurricane Irma now threatening to make landfall along the East Coast of the United States, we are writing to urge you, once again, to make full and maximum use of federally-regulated manufactured homes as both emergency relief housing for hurricane (and, indeed, all natural disaster) victims, and permanent replacement housing for those who have lost their homes. HUD Code manufactured housing has repeatedly proven its value as safe, decent effective and highly-efficient emergency relief and replacement housing for disaster victims that can be rapidly deployed by [FEMA] and other relief agencies at a cost that does not impose undue burdens on American taxpayers."

As has been its consistent policy with respect to government purchases of manufactured homes for emergency purposes, MHARR – in addition to urging FEMA and other relief agencies to utilize HUD Code manufactured housing as a primary source of emergency housing – will act to ensure: (1) that all HUD Code manufacturers, including smaller businesses, have an equal opportunity to compete for such purchase contracts; and (2) that FEMA (or any other government agency) specifications for such emergency homes do not "migrate" into the compulsory HUD standards for the production of private-sector manufactured homes.

MHARR CALLS FOR CONGRESSIONAL ACTION ON HUD NOMINEES

MHARR recently joined with other Washington, D.C. housing and housing-related organizations in urging the U.S. Senate to confirm the nomination of Ms. Pamela Patenaude as HUD Deputy Secretary – a key role in the HUD management structure just below Secretary Dr. Benjamin Carson. Shortly thereafter, on September 14, 2017, Ms. Patenuade's nomination, which had been pending since April 2017, was approved by the Senate, and she took the oath of office on September 26, 2017. Ms. Patenaude has previous experience at HUD, having served during the administration of President George W. Bush as HUD Assistant Deputy Secretary for Field Policy and Assistant Secretary for Community, Planning and Development. Senate movement on this nomination is a welcome development, insofar as it represents a necessary step in the process to improve the federal program and advance manufactured housing within HUD.

In addition, MHARR has joined a similar effort by housing organizations to seek a confirmation vote for Mr. Paul Compton, nominated by President Trump to serve as HUD's General Counsel – a key position with respect to the interpretation and enforcement of HUD's manufactured housing standards and regulations. This long-standing nomination has not yet been scheduled for a Senate vote. As a result, MHARR will continue to track this matter and will take follow-up action as warranted.