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

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MISMANAGEMENT OF HUD PROGRAM REACHES NEW LEVEL – WARRANTS INDUSTRY ACTION

As is further explained, detailed and illustrated in the articles that follow, the mismanagement of the HUD manufactured housing program – to the detriment of the HUD Code industry and American consumers of affordable housing – under its current selected career Administrator, Ms. Pamela Danner, has reached a new, unprecedented level, reviving, and in numerous respects expanding and deepening, abuses that the Manufactured Housing Improvement Act of 2000 was designed to correct and end permanently. Under the current Administrator, the HUD program, rather than advancing and facilitating the acceptance and utilization of affordable HUD Code manufactured housing -- as provided by the 2000 reform law and critically needed in the wake of the industry's 2008 production collapse and subsequent slow recovery -- has instead regressed to pre-2000 patterns of behavior, including excessive, unnecessary, unnecessarily costly and unaccountable regulation, developed, implemented-by and benefitting revenue-driven contractors, regulations and related practices that will undermine the industry's ability to compete in new emerging markets, to the direct benefit of industry competitors -- most importantly site-

builders, realtors and the rental housing industry, actions that undermine the due process rights of industry members and other program stakeholders, and actions that smack of favoritism toward the industry's largest businesses and their interests with correspondingly negative impacts for smaller, independent industry members.

Among other things, the program Administrator, selected and installed in office early in 2014 in violation of the 2000 reform law provision for an appointed non-career program administrator, which was designed by Congress to provide both accountability and independence from entrenched regulators and contractors, has:

1. Allowed career HUD regulators and revenue-driven contractors unprecedented latitude in establishing and implementing regulations, program policies and regulatory interpretations that have needlessly increased regulatory compliance costs to the detriment of homebuyers and the industry – particularly its smaller businesses;

2. Expanded or sanctioned the expansion of unnecessary and unnecessarily costly paperwork, red-tape and record-keeping mandates with no corresponding benefit(s) to consumers;

3. Regularly evaded Manufactured Housing Consensus Committee (MHCC) consensus review and input in connection with new or modified program policies and/or practices in violation of section 604(b)(6) of the 2000 reform law;

4. Excluded any representation of the industry's smaller independent businesses (representing a substantial part of industry production) from the MHCC, undermining the core "consensus" function of the MHCC in violation of the 2000 reform law.

5. Enacted a 156% certification label fee increase – with no legitimate demonstrated basis for an increase of that magnitude -- now being used for expanded contractor activity and needless over-regulation to the detriment of the industry and consumers in direct violation of congressional directives;

6. Unilaterally prescribed – after-the-fact -- Alternate Construction (AC) treatment for attached garages and retroactive Subpart I investigations for attached garages, in violation of section 604(b)(6) of the 2000 reform law (requiring MHCC review and rulemaking for changes in policies or practices affecting the standards and/or enforcement).

7. Sought to radically cut funding for State Administrative Agencies (SAAs) contrary to the 2000 reform law, endangering the federal-state partnership underlying the HUD program;

8. Established precedent for a revolving door between contractor personnel and HUD program employment;

9. Has refused to preempt exclusionary "local" installation standards in compliant states,

continuing HUD's misconstruction of the 2000 reform law regarding "re-codification" and opening the floodgates to thousands of costly, inconsistent and exclusionary local standards;

10. Improperly used –and is still using – HUD's model federal installation standards and program as a backdoor device to micro-manage and second-guess state-law installation programs and force HUD policies and interpretations on state officials acting under state law;

11. Empowered non-accountable contractors to review and demand modifications to approved state-law installation plans;

12. Adopted significant and costly new mandates in final HUD rules that were not included in corresponding proposed rules, evading proper notice and opportunity for comment by program stakeholders and/or the public in violation of both the 2000 reform law and the federal Administrative Procedure Act (APA);

13. Failed to advance and facilitate the acceptance of manufactured housing within HUD in violation of the 2000 reform law (as shown, among other things, by the total exclusion of HUD-regulated manufactured housing from HUD's two most-recent Strategic Plans);

14. Failed to advance and facilitate the availability of manufactured housing for all Americans in violation of the 2000 reform law by failing to enforce enhanced federal preemption under the 2000 reform law and by failing to properly modify outdated HUD preemption policy regarding the discriminatory exclusion of manufactured homes;

15. Sought to evade responsibility for a federal dispute resolution (DR) subcontract awarded to HUD's entrenched monitoring contractor in violation of section 620(b) of the 2000 reform law, leading Congress to intervene to ultimately secure termination of the contract;

16. Has continued to resist full implementation and enforcement of the contracting provisions of the 2000 reform law.

17. Has denied and has sought to evade responsibility for enforcing the separate and independent contractors provision and other relevant elements of the 2000 reform law in relation to the establishment of an unlawful parallel inspection system under a September 2015 FEMA contract with HUD's "monitoring" contractor for "inspections" of HUD Code homes purchased by FEMA;

18. Has failed to demand full and proper Department of Energy (DOE) consultation with HUD, as required by the Energy Security and Independence Act of 2007 (EISA), prior to the publication of a proposed DOE energy rule for manufactured homes;

19. Has failed to uphold and advance the requirements of EISA regarding manufactured

housing, including proper consultation with the MHCC, as provided by EISA, at a meaningful time -- prior to publication of a DOE proposed energy rule for manufactured homes – and MHCC consideration and evaluation of complete and accurate information regarding the consumer cost impacts of such a rule; and

20. Has exhibited a pattern of favoritism toward the interests of the industry's largest businesses at the expense of smaller, independent industry businesses.

And these abuses represent only a portion of the various ways that the HUD program – which had achieved some level of consistency, objectivity and basic compliance with fundamental aspects of the 2000 reform law before the current Administrator's arrival -- has deteriorated since the change in administrators in early 2014.

This rapid and unnecessary deterioration of a crucial federal affordable housing program serving millions of Americans demonstrates why Congress, together with the program stakeholders that participated in the development of the 2000 reform law, provided for an appointed non-career program Administrator -- instead of a selected career Administrator who would become a functional part of the unaccountable program (and contractor) bureaucracy -- and how the industry and consumers are now paying the price for not insisting on full compliance with the law when this matter arose in 2014.

Fortunately, with a presidential election impending and the certainty of a new administration arriving in Washington, D.C. in 2017, the industry will have the opportunity to redeem itself and correct its dire error of 2014 by demanding full compliance with the 2000 reform law through the appointment of a non-career program Administrator. In the meantime, all program stakeholders should fight aggressively to minimize any further damage to the federal program, the federal-state partnership at the core of the program, the industry and consumers for the remainder of this year.

For its part, MHARR is currently evaluating a range of possible approaches to seek a resolution of the damage that HUD continues to impose on the industry and consumers.

MHCC MEETING EXPOSES HUD PROGRAM MISMANAGEMENT AND DECLINE

- **INTRODUCTION AND MEETING OVERVIEW:**

The Manufactured Housing Consensus Committee (MHCC) held its latest meeting in Louisville, Kentucky on January 19-21, 2016, in conjunction with the Louisville Manufactured Housing Show. The meeting – in accordance with the consistent trajectory that has emerged since 2014 – offered multiple illustrations of the severe and rapid deterioration of the HUD manufactured housing program under its current selected, career Administrator, beginning with the composition and legitimacy of the Committee, and including continuing attempts by the program to bypass, circumvent and evade the due process guarantees and participation requirements of applicable law with respect to significant new regulatory mandates, as well as intensifying contractor-driven efforts to impose costly and unnecessary paperwork, recordkeeping,

red tape and other pseudo-regulatory requirements, this time in connection with the on-site completion of manufactured home construction. In each respect, this deterioration of the HUD program flows directly from the program's failure to fully and properly implement all the program reforms of the 2000 reform law, including its mandate for an appointed, non-career program administrator.

In addition to the extremely serious substantive issues addressed in detail below, the MHCC, for the first time since its inception in 2002, now lacks even one representative of the industry's smaller, independent manufacturers, based on January 2016 appointments overseen by the program Administrator. Those appointments solidified the grasp of the industry's largest businesses on the MHCC's "producer" group, effectively disenfranchising independent businesses representing a substantial proportion of total industry production from full participation in the crucial work of the MHCC. Given that one of the primary purposes of the MHCC was to achieve broad stakeholder consensus on as many issues as possible, thereby minimizing disputes and potential litigation, the de facto exclusion of smaller, independent industry businesses from voting membership on the MHCC – representing a substantial portion of total industry production – directly undermines that objective and guarantees: (1) that any supposed "consensus" reached by the MHCC going forward will lack legitimacy and credibility; and (2) that disputes with the program will proliferate, contrary to the letter and intent of the 2000 reform law. This purposeful exclusion, in violation of key purposes and objectives of the 2000 reform law is unconscionable, disingenuous and unacceptable, and smacks of brazen favoritism toward the industry's larger business and discrimination against its smaller, independent businesses.

In a lone positive development, HUD announced, at the meeting, the appointment of Ms. Debra Blake, currently Interim Director of the Arizona State Administrative Agency (SAA), as Vice-Chairman of the MHCC. Ms. Blake, who is just entering her second term on the MHCC, replaces previous MHCC Vice Chairman David Tompos, whose MHCC term ended in December 2015.

- **HUD UNVEILS DISASTROUS ON-SITE RULE – A BONANZA FOR SITE-BUILDERS, REALTORS AND THE RENTAL HOUSING INDUSTRY**

The most alarming illustration of the deterioration of the federal program under its current management -- at the Louisville meeting -- involved a presentation, by program regulators, of HUD's new "on-site construction" program.

A new program to allow for the on-site completion of manufactured homes under procedures that would be faster, more flexible and more economical than the cumbersome Alternate Construction (AC) process already in use – and establish a more direct link between manufactured homes and all other types of homes -- was debated extensively by the MHCC, leading to a final on-site recommendation in 2009 and a HUD-proposed on-site rule published in June 2010. The final HUD on-site rule, however, as detailed at the MHCC meeting – and currently due to go into effect on March 7, 2016 – represents a distorted caricature of the pointless paperwork and unnecessary red-tape that characterize the current program, combining all the burdens of the current AC system with new and even more extensive bureaucratic requirements. As such, it would directly undermine new and emerging markets for manufactured housing and efforts to establish a

more equal footing between HUD Code homes and other segments of the housing market, while providing a windfall victory for the industry's competitors, including site-builders, realtors and the rental housing industry.

To start, the new on-site system would be over-reaching in scope, applying to routine finishing items that do not currently fall under the AC system. It would then subject each of those matters to a dizzying array of regulatory requirements including, but not limited to: (1) a written "request package" from the manufacturer to the DAPIA; (2) new on-site completion designs; (3) a quality assurance manual for on-site completion; (4) a "consumer information notice;" (5) an IPIA agreement to conduct on-site inspections; (6) DAPIA approval of the foregoing; (7) a quality control "checklist;" (8) an on-site inspection checklist; (9) a modified data plate; and (10) a report of monthly on-site production (with a copy to SAAs where homes are located). And, all of these steps – and others -- occur before the site inspection part of the process, and all of its related requirements.

In addition, the on-site system -- which would displace current AC approvals for on-site construction that results in a fully standards-compliant home -- would require 100% inspection of all on-site completions by the manufacturer's IPIA, with corresponding activity by HUD's revenue-driven "monitoring" contractor. MHARR, however, has consistently objected to 100% on-site inspections as entailing needless costs and delays for homebuyers. In its regulatory comments on the 2010 proposed rule, MHARR called – and still calls -- for a more flexible on-site inspection system, that would allow manufacturers to elect between: (1) 100% on-site IPIA inspections instead of in-plant inspections of site-completed homes; or (2) "on-site IPIA inspections of a reasonable percentage of homes completed on-site, subject to an increased frequency of on-site inspections (potentially up to one hundred percent) in the event that systemic non-compliances or defects were shown."

HUD regulators, moreover, under questioning by MHCC members, could not even quantify the cost of these new on-site mandates, or affirm that it ever considered its cost impact, as is specifically required by the 2000 reform law and other federal mandates.

Worse yet, the final on-site rule includes new requirements for "attic" design loads that were not published for notice and comment as part of the June 2010 proposed rule, contrary to both the 2000 reform law and the federal Administrative Procedure Act, thus denying regulated parties and other stakeholders the opportunity to provide relevant input concerning that provision at a meaningful point in the administrative process. Moreover, the fundamentally-flawed "attic" mandate never defines what does – or does not – constitute an "attic," leaving manufacturers facing a significant and costly new design and construction mandate without clear regulatory parameters for its application barely a month before its planned implementation.

Based on all these – and other – concerns, the "new" HUD on-site rule, drew an overwhelmingly negative response from the MHCC, which voted unanimously to urge HUD: (1) to extend the current "phase in" period for the new rule – currently slated for six months (i.e., September 7, 2016) – to a full year; (2) to defer enforcement of the new rule during that period; and (3) to simultaneously refer this entire matter to its Regulatory Enforcement Subcommittee to identify and flesh-out specific problems with the new rule and evaluate its cost impacts for further

recommendations to HUD.

On February 2, 2016, MHARR sent a communication to HUD in support of these MHCC resolutions and calling on the Department to defer enforcement of the September 8, 2015 rule pending further consultation with – and recommendations from – the MHCC and is evaluating a range of possible approaches to seek the resolution of this matter.

- **HUD/DOE REFUSE CONSULTATION WITH MHCC ON ENERGY RULE**

With a U.S. Department of Energy (DOE) manufactured housing energy standards rule reportedly under pre-publication review by the Office of Management and Budget (OMB), HUD and DOE have failed, yet again, to provide the MHCC with either the text of the proposed rule or, more importantly, the DOE regulatory cost analysis of that rule for its consensus input under applicable law.

As MHARR reported after the August 2015 MHCC meeting, section 413 of the Energy Independence and Security Act of 2007 (EISA), requires DOE, in formulating energy standards for manufactured homes, to "consult with the Secretary of Housing and Urban Development, who may seek further counsel from the MHCC." HUD, moreover, during the DOE "working group" process that led to the development of specific proposals for DOE, consistently indicated that any DOE proposal would be brought to the MHCC at a meaningful time -- which, to be meaningful and not just a rubber stamp -- would necessarily have to be prior to the publication of a proposed rule by DOE.

Yet DOE, at the August 2015 MHCC meeting, failed to provide the MHCC with its proposed regulatory text, which had been prepared and provided to HUD previously, and HUD failed to provide the MHCC with either that regulatory text or the Department's comments on that text, which had already been submitted to DOE. Nor did DOE provide a regulatory cost impact analysis to either HUD or the MHCC. As a result, there was no substantive MHCC discussion or analysis of either the rule itself or the cost of the DOE rule to consumers.

And now, with the publication of a proposed DOE rule impending, and the MHCC unlikely to meet again until September 2016 – after the likely publication of a proposed DOE rule – no new or additional information was brought to the MHCC and, again, there was no substantive discussion of either the specific terms or cost of the proposed DOE energy standards. When questioned by MHARR's representative at the meeting, HUD program Administrator Pamela Danner stated that she was "not sure" whether HUD had received a regulatory cost-benefit analysis from DOE – which would necessarily have been developed prior to OMB pre-publication review.

This failure and refusal by both DOE and HUD to provide relevant information concerning the DOE proposed rule to the MHCC in advance of publication of that rule for comment by the general public, violates the specific promise of the program Administrator to consult with the MHCC on the DOE rule at a meaningful point in its development and the intent of EISA section 413 to include the MHCC in the development of any such rule. With substantive MHCC review and input on the DOE rule deferred – if it occurs at all – until after publication of the proposed

rule, the position of the MHCC will be no better or different than that of any member of the public, submitting comments (if any) after DOE has already committed to specific regulatory scheme and specific standards. In short, then, HUD has given a "pass" to DOE to proceed with a proposed rule based on DOE's fundamentally-tainted, illegitimate and scandalous "working group" process, again to the benefit of site-builders, realtors and the rental housing industry, which will not be directly regulated under EISA.

As it has continuously emphasized, MHARR is -- and remains -- committed to opposing any rule that emerges from the tainted, illegitimate and, indeed, scandalous DOE standards development process, and subsequent procedures that have improperly bypassed the MHCC, in any available forum including, potentially, a court challenge.

- **HUD DODGES DEBATE OVER INSTALLATION MICRO-MANAGEMENT**

A HUD presentation to the MHCC on aspects of its installation program for non-compliant "default" states sidestepped two critical emerging issues in Washington, D.C. -- i.e., (1) efforts by the HUD program to micro-manage installation standards (and programs) in states with approved state-law installation programs; and (2) a HUD ruling (growing out of the Department's decade-old "re-codification" of installation) that would potentially unleash thousands of costly, unnecessary, discriminatory and exclusionary local "installation" mandates.

Together with dispute resolution, the installation provisions of the 2000 reform law were designed to close a significant gap in the original National Manufactured Housing Construction and Safety Standards Act of 1974 which HUD ruled, at an early date, did not authorize federal regulation of manufactured home installation. Recognizing, however, that proper installation is crucial to the proper performance of a manufactured home and to public and government acceptance of manufactured homes as legitimate "housing," the industry, consumers and other stakeholders worked for nearly 12 years to develop the installation provisions ultimately included in the 2000 reform law.

Those provisions allow any state that wishes to do so (i.e., a "complying" state), to establish (or continue) a state-law installation program and state-law installation standards, so long as those requirements provide protection that meet or exceed baseline federal standards developed by the Manufactured Housing Consensus Committee (MHCC) and adopted by HUD. For its part, HUD was authorized to regulate installation only in non-complying (i.e., "default") states that failed to adopt a state-law installation program. This structure – aggressively advanced by MHARR -- is consistent with the nearly-universal view of program stakeholders, at the time, that varying soils and other conditions made states the ideal party to regulate the siting of manufactured homes.

What the 2000 reform law does not do, however, is authorize HUD to substitute its judgment for that of state authorities regarding the specific details of any given state installation standard. Put differently, the 2000 law allows HUD to determine whether a state-law installation program and state-law installation standards as a "whole" provide consumers with protection equal-to-or-greater-than the HUD standards, but does not provide back-door authority for HUD to micro-manage state-law programs and/or standards or over-ride state judgments regarding the need

for -- or content of -- any specific installation requirement.

Refusing to accept this fundamental aspect of the 2000 reform law, however, HUD, from the start, sought to undermine the law's clear preference for state regulation of installation, by separating installation from the Part 3280 Federal Manufactured Housing Construction and Safety Standards, thus giving rise to the "re-codification" of installation. While MHARR and the MHCC vigorously opposed this re-codification, HUD ultimately got its way through the tacit acceptance of others in the industry. This led MHARR to warn, as early as 2004, that HUD appeared intent on controlling installation and dictating installation criteria everywhere, including complying states with approved state-law programs, stating: "[F]rom both its approach to the substance of the model federal standard, and from the information that MHARR has been able to obtain, it appears that HUD has not abandoned its ambition to totally federalize installation regulation, under its control." And now, it appears this prediction is coming true as HUD seeks to use the State Plan approval and re-certification process to over-ride and replace specific state-adopted installation standards in complying states.

Worse yet, a recent ruling by the HUD program Administrator (which never should have been issued), would erode state installation authority – again in a complying state -- while potentially subjecting industry businesses and consumers to thousands of varying and costly local installation standards. In that January 2016 decision, the Administrator ruled that the federal installation standards do not preempt a local "installation" mandate requiring HUD Code homes to be installed over a full basement or "foundation." This decision, significantly, arises directly from HUD's "re-codification" of installation outside of the fully-preemptive Part 3280 Federal Manufactured Home Construction and Safety Standards.

Intervening in a matter that should have been resolved within the affected state based on state law, HUD has instead opened the floodgates for potentially thousands of inconsistent, costly, unnecessary and, in at least some cases, exclusionary local mandates, based its ongoing fundamental misreading and misinterpretation of the 2000 reform law (i.e., re-codification). Again, this was predicted by MHARR, which observed in 2008: "By legally separating the construction of the home ... and the placement of that home ... and by controlling each part separately ... HUD's interpretation of the 2000 Act prevents HUD Code homes from ever being viewed as "houses".... *** The full impact of this interpretation will begin to be felt when thousands of localities in default states ... realize that the federal installation standards – because they are not "construction" standards as interpreted by HUD – are not preemptive. This will open the door to the [erosion], in large segments of the country, of all three elements of the federal law that make HUD Code housing both affordable and marketable – a performance-based code, uniform standards and uniform enforcement. And once localities in default states begin to take advantage of this freedom, it will not be long before the same freedom is demanded – and exercised – by localities in compliant states. This process will emerge slowly, but it will emerge, because there will be nothing to stop it unless the law (or HUD's interpretation...) is changed."

MHARR, in March 2016, will release a detailed analysis of this complex matter, exposing the relevant facts of this convoluted HUD approach to installation under the 2000 reform law, which seems designed to create chaos and confusion for all states and all stakeholders.

- **MHCC REJECTS EXPANDED HALLWAY WIDTH PROPOSAL**

The MHCC, after extensive debate, voted to reject a proposal to require 30-inch minimum hallway widths for single-section manufactured homes (up from the current 28-inch minimum width) and a 36-inch minimum hallway width for double-section homes. Presented as an "egress" matter, as contrasted with earlier proposals based on accessibility and "visitability" considerations, this particular proposal was combined with a further initiative to alter current requirements for egress doors.

While not opposing its egress door component, MHARR, unlike MHI, objected to this proposal as a whole – as it has similar proposals in the past – on cost and marketability grounds. Specifically, MHARR maintained that mandatory widened hallways would not only result in significant re-design costs, but would eliminate many smaller single-section designs that are the industry's most affordable homes – thereby totally excluding large numbers of lower and moderate-income Americans from the housing market altogether. Moreover, MHARR stressed that larger-width hallways are already available in HUD Code homes to those who want or need them, as an optional feature.

- **OTHER PENDING AND RECOMMENDED ACTIONS**

In addition to the foregoing matters, the MHCC took the following actions:

- It overwhelmingly voted to recommend that HUD adopt its "Option B" for State Administrative Agency (SAA) funding. "Option B," favored by MHARR and the vast majority of SAAs, would maintain minimum SAA funding at (or above) 2000 levels as required by the 2000 reform law. The question is why HUD having drastically increased funding of program contractors has not done this already.

- It voted to recommend to HUD that the ASHRAE indoor air quality standard, previously recommended as a "voluntary" standard, be updated from its 2010 version to its 2013 version. MHARR is on record as objecting to the adoption of any "voluntary" standard as conflicting with authorizing federal law.

- It voted to table multiple energy-related proposals pending publication of the expected DOE manufactured housing energy standards rule.

The MHCC was also advised by HUD that a proposed rule to revise the definitions and scope section of the HUD standards regarding recreational vehicles and park models is due for imminent publication (see, article below). MHARR will carefully review this proposed rule – now having been issued on February 9, 2016 – and will submit appropriate comments.

Lastly, HUD indicated that it would seek to schedule the next MHCC meeting for September 2016.

QUESTIONS SURROUNDING DUTY TO SERVE CONTINUE TO INTENSIFY

Serious questions remain -- and have deepened – concerning closed-door meetings between MHI (and other groups) and officials of the Federal Housing Finance Agency (FHFA), as well as the potential impact of such meetings on the FHFA "Duty to Serve" (DTS) rule issued on December 18, 2015, which continues the exclusion of manufactured home chattel (personal property) loans from DTS credit.

Since these questions were first posed by MHARR, other industry members and independent trade journals have echoed MHARR's call for full disclosure and transparency concerning these meetings (with the public release by FHFA of all materials, documents, records and/or transcripts relating to these meetings) and any impact that those meetings may have had on the content of the then-pending DTS proposed rule, published on December 18, 2016.

MHI, however, rather than seeking to clear the record regarding these activities, has instead sought to divert attention from such closed meetings by targeting MHARR with false and misleading claims that the Association, by questioning MHI's activities, has somehow "attacked the (sic) FHFA with unfounded allegations."

While MHARR, to be clear, has not leveled any "allegations" or "accusations" against either FHFA or FHFA Director Melvin Watt (whose appointment MHARR fully supported, unlike current top-level MHI officials), private MHI meetings with FHFA officials, which may have impacted the substance of the December 18, 2016 FHFA proposed rule, are eerily similar to known MHI private contacts with U.S. Department of Energy (DOE) officials, which led directly to a choreographed 2014 "request" by MHI and other groups for a "negotiated rulemaking" with DOE concerning energy standards for manufactured homes and the appointment of a sham DOE manufactured housing standards "working group" comprised of MHI and other groups to which DOE had already selectively leaked its draft of a proposed rule. Indeed, it was not until after the DOE "working group" had already been appointed that DOE's Office of General Counsel, under questioning by MHARR, was forced to admit that the proposed rule had been "impermissibly distributed" to MHI and other interested parties that later were appointed as voting members of the DOE working group.

Given this known track record on another significant regulatory matter, MHARR is fully justified in seeking answers about closed meetings with FHFA and their potential impact(s). And, in fact, MHI should join MHARR in its call for FHFA to publicly release any and all materials, documents and/or transcripts of such meetings. At present, MHARR is evaluating different options to compel the disclosure of relevant documents regarding such meetings which may have impacted FHFA's decision on the non-inclusion of chattel loans in its proposed DTS rule.

CONGRESS PRESSES FEMA ON YET ANOTHER SUSPECT IBTS CONTRACT

Following a November 17, 2015 MHARR communication to Federal Emergency Management Agency (FEMA) Director Craig Fugate and HUD Secretary Julian Castro seeking the termination of a September 2015 FEMA contract with the entrenched HUD program "monitoring" contractor – the Institute for Building Technology and Safety (IBTS) -- which

establishes an "illegitimate, extra-legal 'parallel' inspection system for HUD Code homes that is designed and structured to evade, circumvent and functionally negate restrictions on the HUD program 'monitoring' function – and related due process protections for regulated parties – established by Congress in the Manufactured Housing Improvement Act of 2000," Congress has demanded that FEMA produce "all records relating to the solicitation and award of the FEMA ... contract" to HUD's monitoring contractor. In making this demand, Congress' letter specifically references its "concerns as to whether IBTS is violating the Manufactured Housing Improvement Act of 2000 by participating in other contracts that may conflict with its duties as "'monitor.'"

This is yet another instance – like the IBTS dispute resolution subcontract in 2015 -- where the program Administrator has failed and refused to properly enforce the contracting restrictions of the 2000 reform law, effectively washing her hands of any responsibility for enforcing a law she is charged with upholding, leading to congressional intervention.

While FEMA has yet to respond to Congress regarding this inquiry, it has responded, by letter, to MHARR's original communication. That response, from FEMA's Chief Procurement Officer, fails to address the substance of MHARR's objections to the FEMA-IBTS contract – which requires the HUD "monitoring" and de facto enforcement contractor to "inspect" FEMA-purchased, HUD-labelled manufactured homes for, among other things, compliance with the HUD Part 3280 Federal Manufactured Housing Construction and Safety Standards, in a manner that directly conflicts with its limited and defined role as "monitor" within the HUD program.

Ironically, however, FEMA's response effectively (albeit unwittingly) concedes MHARR's main point. In attempting to justify and rationalize the FEMA-IBTS contract, the agency states in its January 12, 2016 response letter:

> "FEMA's IBTS contract does not 'establish and (sic) unlawful parallel inspection system.' FEMA does not have an agreement of any type ... with HUD to provide supplemental inspection services.... *** If, during an IBTS inspection the inspector encounters any manufacturing issue specifically related to FEMA's contractual agreement or the HUD standards, the inspector is to report the issue to the plant manager ... or FEMA. *** At no time does IBTS report anything to HUD."

(Emphasis added). The problem is, that in the real world of HUD regulation, and given the free hand that the current program Administrator has given to the program "monitoring" contractor, IBTS, for all intents and purposes, is HUD, and any HUD standards issue – or evidence indicating the possible existence of a non-compliance with the HUD standards (or worse) will automatically be funneled into the HUD enforcement system via Subpart I, which is overseen by IBTS, creating an obvious and illegitimate conflict of interest. It was this very same concern – of using a separate contract as a means to funnel federal manufactured housing dispute resolution program information and complaints into the contractor-driven Subpart I system -- that led MHARR to successfully oppose, and obtain the termination of, a dispute resolution system subcontract awarded to IBTS in late 2014. Again, though, the program Administrator – at best -- was missing in action when it came to this violation of the contracting requirements of the 2000 reform law and continues to evade responsibility for the violations and conflicts inherent in the FEMA-IBTS contract.

Given these issues, MHARR will continue to aggressively pursue this matter with FEMA, HUD and Congress.

HUD PUBLISHES PROPOSED RV EXEMPTION REVISION

As expected, HUD has published a proposed rule in the Federal Register (on February 9, 2016) that would amend its current regulatory exemption for recreational vehicles (RV), including so-called "park model" RVs.

The proposed rule is based on a concept and language submitted to the MHCC by MHARR for consideration at its December 2014 meeting. That concept, originated by MHARR after years of controversy over square footage and measurement points, was designed to create, for the first time, a clear regulatory firewall and separation between manufactured homes and RVs by distinguishing between HUD-regulated manufactured homes and RVs based on design, construction and, most importantly use, instead of the arbitrary sizes and measurements currently contained in the HUD regulations.

This regulatory proposal, moreover, was driven by MHARR's commitment to ensure an appropriate resolution of the RV exemption issue via a regulatory approach, rather than further amendments to federal statutory law. Indeed, ever since the RV industry – in the wake of its 1998 amendment to the National Manufactured Housing Construction and Safety Standards Act of 1974, exempting "self-propelled" RVs -- began voicing "concerns" over "uncertainty" in differentiating between manufactured homes and other RVs for regulatory and other purposes, MHARR has taken the consistent position that any solution to this issue must be achieved through regulatory amendments rather than further changes to the federal manufactured housing statute. And now, once again, MHARR's position has been proven correct, as all stakeholders have come to realize that the proper solution to this matter is through the regulatory process and not further unnecessary alterations to the industry's generic law.

Comments on the HUD proposed rule are due on or before April 11, 2016. MHARR, as usual, will submit comments well in advance of this deadline.

DOE SHOULD HEED SUPREME COURT WARNING

In a ruling handed-down on February 9, 2016, the U.S. Supreme Court halted the enforcement of a U.S. Environmental Protection Agency (EPA) rule that would have imposed draconian new regulatory mandates on carbon emissions from coal-fired power plants as part of the Obama Administration's "climate change" agenda. The procedural ruling stayed the enforcement of the EPA rule pending judicial resolution of legal challenges filed by both private and state plaintiffs. The ruling is extraordinary in that it marks the first time that the Supreme Court has granted a request to halt implementation of a regulation before review by a federal appeals court. It also indicates, according to legal experts interviewed for media reports, that the EPA rule is "pretty likely to be invalidated" ultimately.

While this ruling does not directly involve the impending U.S. Department of Energy

(DOE) rule for manufactured housing energy standards, it should be noted that the EPA "Clean Power Plan," deferred by this court decision, and DOE-developed and imposed "energy efficiency standards," such as those expected to be proposed soon for manufactured housing, are both part of the same Obama Administration "Climate Action Plan," according to a March 2015 White House "Fact Sheet."

It would benefit DOE to take careful stock of this decision – and the negative outcome that it could well indicate – as DOE considers the publication of a proposed energy standards rule for manufactured housing. As MHARR has warned DOE (and HUD), any DOE rule based on the illegitimate, scandalous and fundamentally-tainted DOE "working group" process which concluded in 2014, involving the selective DOE leak of a proposed rule, blatant favoritism among affected stakeholders and other flagrant procedural and substantive abuses, will be targeted by MHARR for aggressive opposition at every available level, including possible legal action. DOE, accordingly, would be well advised to go "back to the drawing-board" – as it was directed to do once already on this rule by the Office of Management and Budget (OMB) -- rather than proceeding with an inherently flawed and illegitimate proposal.

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