

HUD Issues Final Rules Governing Dispute Resolution Program



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On May 14, 2007, HUD issued its final rule establishing a federal manufactured home dispute resolution program and guidelines for the creation of state-administered dispute resolution programs, as required by the Manufactured Housing Improvement Act (MHIA) of 2000. The new rules are intended to resolve disputes among

manufacturers, retailers and installers regarding responsibility for correcting or repairing defects in new homes that are reported during the one-year period following initial installation. MHI has been actively involved through every step of the rulemaking process by reviewing and commenting on proposed rules, developing summaries, and supplying draft comment letters for industry members to use in developing their own comments.

The final rule, which takes effect February 8, 2008, will be enforced by HUD in those states which do not enact their own program in compliance with the MHIA (“the default states”). HUD intends on using a mediation and arbitration process in those states, likely using third-party contractors. For those states that do enact their own dispute resolution program, in order to be approved by HUD, they will have to self-certify that their program meets four key criteria: 1) timely resolution of disputes among manufacturers, retailers and installers for correcting defects; 2) provisions for issuance of appropriate orders for correction of defects; 3) a coverage period for disputes involving defects that are reported within the first year after the first installation; and 4) adequate funding and personnel.

While MHI’s analysis of the final rule indicates that HUD addressed many important issues that were raised by MHI and the Manufactured Housing Consensus Committee (MHCC) during the public comment process, unfortunately some issues were not resolved that could have improved the final rule substantially and made for a more effective dispute resolution program. Those outstanding issues can be summarized as follows and reflects the MHI previously-endorsed policy:

• **The codification of the federal dispute resolution program at 24 CFR 3288 eliminates federal preemption.**

HUD provided no evidence or rationale as to why it chose to separate dispute resolution from the current enforcement regulations. MHI asserted that the federal program should become a subpart of 24 CFR 3282, along with other consumer protection regulations. MHI strongly believes that the federal program should be integrated into the existing enforcement regulations. As it stands, HUD’s federal preemption arm will not be able to deal effectively with localities attempting to circumvent the federal enforcement mechanism.

• **The criteria for determining state self-certification as fully or conditionally approved status is problematic.**

For a state’s dispute resolution program to be fully approved, it must meet the four criteria outlined above. If a state only meets three of the four requirements, then that particular state is considered “conditionally” approved. HUD’s final rule provides that a state can only receive conditional approval if its dispute resolution program meets the first three requirements discussed above. The provision requiring “ade-

quate funding and personnel” is totally subjective and only individual states, not HUD, can determine their program’s necessary resources.

• **In default states, HUD will review all non-binding arbitration decisions and issue an order accepting, modifying or rejecting the arbitrator’s recommendation.**

The requirement that HUD issue such an order effectively nullifies a neutral, third-party arbitration. All disputes that proceed to arbitration, in reality, would be decided by the department and not by a skilled and experienced mediator/arbitrator who conducted onsite inspections, gathered the underlying facts behind the dispute, and conferred with the parties involved. HUD is adding an unnecessary and time-consuming step in the dispute resolution process. MHI also questions whether HUD has the legal authority to bind the parties. The non-binding arbitrator’s decision should be final to the extent permitted under state law.

• **Even if all parties deny a dispute, the dispute resolution process may continue.**

This provision states that if even all parties (manufacturer, retailer and installer) involved deny that a dispute does exist, this does not stop the dispute resolution process from moving forward. Since the homeowner may have originated the dispute resolution process, any complaint will have to move through the process until resolved, unless the mediator/arbitrator determines that the evidence does not support the dispute or the complaint is of a frivolous nature. This could have ramifications for all parties involved, requiring unnecessary time and energy to supply the appropriate reference materials, attend onsite inspections, and participate in face-to-face or telephone hearings. If a dispute goes through and is approved by HUD’s final review, then HUD could broaden its actions to other enforcement actions other than dispute resolution, such as Subpart I (consumer complaint) investigations.

• **Label fees should not be permitted to fund the dispute resolution process in default states.**

The final rule’s preamble states that HUD agrees with a “fee for service” in default states and is seeking statutory authority to assess users of the program a fee for direct costs. MHI believes that it is fair and appropriate for HUD’s dispute resolution contractor to charge and collect fees from the parties using the mediation/arbitration services and it also is appropriate for the losing party to pay for the correction of the defect(s) as well as the costs of the process.

However, HUD also states that “general program expenses” would pay for administrative costs for the program without specifying what expenses HUD would incur for the general administration of the dispute resolution program, other than initial, one-time, start-up expenses and contract administration. Whether this may involve label fee increases for all manufactures remains to be seen. Manufacturers could be paying for the federal program in default states where they neither produce nor ship homes. Also, consumers might be paying for services in default states where the state in which they reside already has its own dispute resolution program. Non-default states should not have to bear the burden of paying for the dispute resolution programs in default states.

• **Consumer notification requirements are overly lengthy and potentially confusing.**

The final rule provides that consumers must be notified of the federal or state dispute resolution programs in the consumer's manual that accompany each new manufactured home. Homeowners will also be advised of the programs by the retailer when purchasing a new home, including a standard notice at the time of signing the contract. This is an improvement over the proposed rule's earlier requirement that a notice would be posted inside the home.

Unfortunately, the wording suggested for notification is lengthy and could lead a homeowner to think that this dispute resolution program is the only avenue for resolving consumer complaints. Manufacturer warranties and state-based consumer complaint programs are still available. All that was necessary was to inform the homeowner that a program exists whether: 1) through a state with a fully or conditionally approved dispute resolution program or 2) through the federal default state program.

States must now work with their appropriate government agencies to self-certify that their dispute resolution program complies with HUD's final requirements. Should a program be rejected through self-certification, or a state not wish to implement a dispute resolution program at this time, HUD will consider that state to be in "default," allowing HUD to step in and administer a program based on the final rule requirements.

States must submit a Dispute Resolution Certification form (included with the final rule) that demonstrates that their state program complies with the spirit and intent of HUD's final rule. If a state certifies for full-approval status, yet HUD determines that the program can only attain conditional approval or even rejects the program, HUD must

provide reasons for its actions. In such cases, states are allowed to re-submit the program for approval.

States that are in the process of developing a dispute resolution program should compare their current draft program with the final rule. MHI also is aware that some states have not developed any dispute resolution program because their state regulatory agency has specifically been waiting for HUD to release the final federal program. Again, MHI urges states in this situation to move expeditiously to avoid becoming a default state.

MHI also does not wish to see the federal dispute resolution program forced onto states that have existing dispute resolution programs. In many cases, states merely need to make certain that these protections are extended to specifically include their manufactured housing program. Other states need to focus on extending the dispute resolution program to include manufacturers, retailers and installers. MHI believes, however, that state compliance with dispute resolution provisions in the final rule should not be difficult to achieve and that most states already have most of the necessary components in place.



Gail Cardwell, is President and CEO of the Manufactured Housing Institute. MHI is the national trade association for the manufactured and modular housing industries, representing manufacturers, retailers, community owners, developers, financial services providers, and suppliers.