U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

August 5, 2004

Robert E. Solomon, PE
Project Manager
National Fire Protection Association
1 Batterymarch Park
Quincy, MA 02269-7422

Re: Update on the Proposed Rule for the Dispute Resolution Program

Dear Mr. Solomon:

Please accept this letter on behalf of the Department as an update for the Manufactured Housing Consensus Committee (MHCC) on the proposed rule for the establishment of the Dispute Resolution Program required by section 623 of the National Manufactured Housing Construction and Safety Standards Act, as amended, (42 U.S.C. § 5422).

The Department is very appreciative of the Committee's work in developing the proposals that have been important in the development of the program. As with the Installation Program and the other matters which will be considered by the Committee at its meeting next week, the program office looks forward to receiving the Committee's further views regarding the dispute resolution program as the Department continues to develop the proposed rule.

A Brief Overview of the Major Recommendations of the Office of Manufactured Housing Programs

The MHCC, and several responders to the Department's Advanced Notice of Proposed Rulemaking, recommended a combination of mediation and arbitration for the federal program. Accordingly, the proposed program would incorporate mandatory mediation and non-binding arbitration. A primary goal of the mediation process would be to have the parties reach a mutually agreeable solution to the dispute in 90% of all cases. The mediator would not have decision-making authority, but rather would facilitate a solution-seeking discussion. If the parties are unable to reach a mutually agreeable solution, they may participate in arbitration. The arbitrator would make a determination, which the Secretary may implement as an enforceable order.

08/05/2004 16:51 HUD-MANUF.HOUSING → 916179847110 NO.287 D03

Although the Act does not expressly reference consumers as parties to the dispute resolution process, most responders favored the participation of consumers, and virtually all responders recommended that consumers be allowed to initiate and otherwise participate in the process. As a result, the proposed program would recognize consumers, along with manufacturers, retailers and installers, as proper parties to the dispute resolution process.

Consumers would learn about the Dispute Resolution Program from the consumer notification section that manufacturers would be required to include in the consumer manual. The appropriate jurisdiction for either the Federal Dispute Resolution Program or a state program would be based on the state where the manufactured home is sited. States with programs meeting the requirements of the Act could self-certify to have their program included.

The Department interprets the Act as permitting its use of a contractor to carry out the implementation of the program, and the Department anticipates using a contractor to provide screeners, mediators, and arbitrators for the functions discussed below. The Department would expect to seek out a single firm capable of performing these services.

Outline of the Program as Proposed

The proposed dispute resolution program would have four stages: intake and screening, mediation, non-binding arbitration, and Departmental review. A contractor would perform the intake and screening of requests for dispute resolution. Requests for dispute resolution could come from consumers, retailers, manufacturers or installers. The contractor's service would be partially funded by a reasonable filing fee, the remainder would likely require a label fee increase.

The request would be initiated by submitting a form requesting dispute resolution along with the required filing fee, or by calling a toll-free number. It is anticipated that the request form would include the name, address and contact information of the homeowner, manufacturer, retailer, and installer; the date of purchase or installation date; and a description of the alleged defect.

Once the request for dispute resolution has been received, a trained screener would review the information provided. If a defect, serious defect, or imminent safety hazard is properly alleged, the screener would forward the request for mediation. If the screener determines there is documentation of a credible imminent safety hazard, a redacted version of the request would also be sent to the Department. If the screener determines that the request is lacking required information, the contractor would contact the requester to obtain the information and the request form may be returned to allow the requesting party to supplement the submission.

The next stage in the process would be mandatory mediation. The program contractor would select the mediator. The mediator would mediate the dispute and attempt to facilitate a settlement. If the case involves a defect, the parties would be given 30 days to reach a settlement.

08/05/2004 16:51 HUD-MANUF.HOUSING → 916179847110 NO.287 D04

For cases involving serious defects or imminent safety hazards, the parties would have 20 days to reach an agreement. Copies of all settlement agreements would be forwarded to the parties and to the Department by the mediator. All other documents and communications used in the mediation would be confidential in accordance with the Administrative Dispute Resolution Act of 1996.

The third stage of the process would be non-binding arbitration. If the parties fail to reach a settlement during mediation, any party to the mediation may opt for non-binding arbitration. The party requesting non-binding arbitration would be required to pay an arbitration fee. The contractor would appoint an arbitrator and the parties may request an in-person hearing. Otherwise, the arbitrator may decide the case based only on a review of the record or schedule a hearing by telephone.

If a party to the mediation chooses not to participate in the arbitration, the process would continue without input from that party. The arbitrator would have the authority to issue orders to compel the completion of the record, conduct on-site inspections, dismiss frivolous allegations, and set hearing dates and deadlines. The arbitrator would be required to complete all arbitrations within 21 days of receipt of the request. After conducting a hearing, the arbitrator would provide the Department with a written recommendation.

The final stage of the process would be Departmental review. After the arbitrator makes a determination, it would be forwarded to the Department as a non-binding recommendation. The Secretary or his designee would review the decision and the record and may then accept, modify, or reject the recommended decision. If a recommended decision is rejected, the Secretary or his designee would have to provide written reasons for the non-concurrence. In any order for correction, the Secretary would require that all imminent safety hazards and serious defects be corrected in an expeditious manner. Other defects would be corrected within an appropriate time as determined by the Secretary. The decision of the Secretary would become a final enforceable order. At that time, arbitration costs would be assessed to the losing party. When the consumer is the losing party, the cost would be treated as an administrative expense to the program. If a responsible party fails to comply with an order of the Department, the Department may pursue enforcement of the order in Federal court.

The Department expects that this model would allow for the resolution of disputes concerning defects, serious defects and imminent safety hazards in cost-effective, fast, and fair manner for those states that do not have dispute resolution programs. The program staff and I look forward to receiving the Committee's input and comments at the August meeting.

Sincerely,

William W. Matchneer III
FOR Administrator
Office of Manufactured Housing Programs

08/05/2004 16:51 HUD-MANUF.HOUSING → 916179847110 NO.287 D05