



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

March 8, 2005

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

Re: Update on Proposed Rule for the Dispute Resolution Program

Dear Mr. Solomon:

Please accept this letter as a further update to the Manufactured Housing Consensus Committee on the progress of the proposed rule for the establishment of a Dispute Resolution Program as required by 42 U.S.C. § 5422. This letter is an updated version of my letter on the same subject of August 5, 2004 and reflects the development of the rule since that time. Again, on behalf of Secretary Jackson, Commissioner Weicher, DAS Cunningham and the Department, I would like to thank the MHCC for its work in developing the proposals that helped form much of the proposed rule, and for its additional comments at the August 2004 meeting, which have been carefully considered.

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

The MHCC, and several responders to the Department's Advanced Notice of Proposed Rulemaking (ANPRM), recommended a combination of mediation and arbitration for the Federal program. Accordingly, the Office of Manufactured Housing's proposed program would incorporate mandatory mediation and nonbinding arbitration, as well as an opt-out provision that would allow commercial entities an opportunity to resolve disputes outside of the Federal program. The mediator would not have decision-making authority, that being left to an arbitrator and ultimately to the Secretary.

Although the Act does not expressly include homeowners as parties to the dispute resolution process, most responders favored the participation of homeowners, and virtually all responders recommended that homeowners be allowed to initiate and otherwise participate in the process. As a result, the program office's proposal would recognize homeowners, along with manufacturers, retailers and installers, as proper parties to the dispute resolution process. The Act specifically permits the use of a contractor to carry out the implementation of the program, and the program office anticipates using a contractor to provide screeners, mediators, and arbitrators. The program office anticipates using a single firm capable of performing these services on a basis of either fixed, per case mediation fees, or fixed hourly rates with a maximum time limit for resolution.

Outline of Office of Manufactured Housing Programs' Proposal

The proposed Dispute Resolution Program would consist of six parts, in addition to the opt-out option. The six components are: initial notification of a problem, initiation of dispute resolution, intake and screening, mediation, nonbinding arbitration, and Secretarial review. In response to MHCC comments endorsing an alternate simplified process, the program office's proposal would also include an opt-out option. This option would be limited to cases in which commercial entities, excluding the homeowner, are the only parties involved in a dispute concerning who is responsible for correcting a defect. In such a case, the parties could elect to opt-out of the Federal Dispute Resolution Program and engage in a process of their own design. The opt-out option would require that a written request be submitted to the dispute resolution provider and would not be available if the Federal dispute resolution process has been initiated. Parties who elect to opt-out would agree to hire a neutral expert who would evaluate the dispute and assign responsibility for correction and repair. The parties would be required to allow the homeowner to be present at any meetings and to be informed of the outcome. If a timely resolution is not reached, a participant or the homeowner, could invoke the Federal Dispute Resolution Program and proceed to mediation.

As provided by the Act, the proposed rule would require that defects be reported within 1-year of the date of the home installation in order to be eligible for the Dispute Resolution Program. The proposal would use the term defect as defined in the Act, which includes serious defects and imminent safety hazards. After the initial reporting of an alleged defect, parties could initiate the dispute resolution process by calling a toll-free number or by submitting a request for dispute resolution to the dispute resolution provider who would perform the intake and screening of requests for dispute resolution. The dispute resolution provider's service would be partially funded by a mandatory filing fee.

The request 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. The date and time when the form is received would be recorded by the intake center. In the case of a call, the date and time of the call would be recorded and the intake person would offer to record the required information or send a request form. The caller would also be advised of the required filing fee.

When the filing fee has been received by the intake center, a trained screener would review the information provided with the request. If a defect is properly alleged, the screener would forward the request to a mediator. If the screener determines there is credible documentation of a defect presenting an unreasonable risk of injury or death, the request would be sent to the Department for monitoring. If the request is lacking required information, the screening neutral would contact the requester in order to supplement the initial request.

Mandatory Mediation, Non-Binding Arbitration and Secretarial Review

The next stage in the process would be mandatory mediation. The dispute resolution provider would select someone other than the screener used during the intake process as the mediator. The mediator would mediate the dispute and attempt to facilitate a settlement. If the case

involves a defect that does not present an unreasonable risk of injury or death, the parties would be given 30 days to reach a settlement. For cases involving defects presenting an unreasonable risk of injury or death, the parties would have 10 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 that could be invoked is non-binding arbitration. If the parties fail to reach a settlement during mediation, any party to the mediation could, within 15 days request non-binding arbitration. The party requesting non-binding arbitration would be required to pay a set arbitration fee. The contractor would appoint an arbitrator and the parties could request an in-person hearing. Otherwise, the arbitrator could 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 onsite inspections, dismiss frivolous allegations, and set hearing dates and deadlines. The arbitrator would be required to complete the arbitration within 21 days of receipt of the request. After conducting either a hearing or a review of the record, the arbitrator would provide the Department with a written, non-binding recommendation.

The final stage of the proposed process would be Secretarial review. After the arbitrator makes a recommendation, it would be forwarded to the Secretary. The Secretary or his designee would review the decision and the record and could then accept, modify, or reject the recommended decision. In his order for correction, the Secretary would require that all defects presenting an unreasonable risk of injury or death be corrected in an expeditious manner. Defects that do not present an unreasonable risk of injury or death would be corrected within an appropriate time. 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 Dispute Resolution Program. If culpability rests with more than one party, the fee plus costs could be apportioned accordingly. If a responsible party fails to comply with an order of the Secretary, the Secretary could pursue enforcement of the order in Federal court.

State Dispute Resolution Programs

The responses to the ANPRM showed the diversity and innovation of state dispute resolution programs. Among HUD's goals in the implementation of the Federal Dispute Resolution Program is to encourage the growth and continued innovation of state programs. In light of this goal, the program office's proposal would establish a self-certification process. Each state wishing to implement its own dispute resolution program would certify compliance with the minimum requirements described below by submitting a completed Dispute Resolution Certification Form to HUD for review and approval. The Certification Form would require identification of the state agency that administers the dispute resolution program, the director of that agency, and the person who directly supervises the administration of the program. A brief, written description of the state's dispute resolution program would be required, including information on how disputes among retailers, manufacturers, installers, and consumers are resolved, and how the program provides for

the timely resolution of disputes and the issuance of appropriate orders.

Any state that certifies that its program meets the following four minimum requirements would be approved and permitted to implement its own program. The program would: (1) provide for the timely resolution of disputes among consumers, manufacturers, retailers, and installers of manufactured homes; (2) provide for the issuance of appropriate orders for correction and repairs of defects in the homes; (3) have a coverage period for disputes that are reported within at least 1 year from the date beginning on the date of installation; and (4) have provisions for consumers to report defects for resolution and to participate in the dispute resolution process. The proposal would allow for conditional approval of a state that meets three out of the four minimum requirements for a period of not more than two years.

In reviewing a state's certification, the Department could contact the state to request additional clarification or information as necessary. If a state has a dispute resolution program as part of its state plan, it would be reviewed as part of the state plan. Approved states would be required to recertify every three years or when there is a significant change to the program, whichever is the earlier. The program office's approach would give states more flexibility to design dispute resolution programs or modify existing ones according to their individual preferences and circumstances.

Homeowner Notification

One final component of the Federal Dispute Resolution Program would be the notification of homeowners about of the program. The program office's proposal considers notifying the homeowner by requiring the presentation of a one page informational document about the program to be included with the closing materials received by the homeowner at the time of closing. The proposal would also notify the public about the program through the Consumer Manual. This would include contact numbers for homeowners to determine whether they have a state program or should use the federal dispute resolution program.

The Office of Manufactured Housing Programs expects that this model would allow for the resolution of manufactured housing disputes in a cost-effective, fast, and fair manner for those states that do not have dispute resolution programs.

Sincerely,



William W. Matchneer III
Administrator
Office of Manufactured Housing Programs