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MHARR CALLS FOR REPEAL OF HUD MANUFACTURED HOUSING "GUIDANCE" DOCUMENTS

Washington, D.C., April 25, 2018 – The Manufactured Housing Association for Regulatory Reform (MHARR), citing recent rulings by the U.S. Department of Justice (DOJ) stating that DOJ would no longer use its authority to enforce Executive Branch agency "guidance" documents in civil court enforcement actions relating to alleged violations of federal health, safety, civil rights and environmental laws, has called on HUD to formally repeal manufactured housing regulatory "guidance" documents which should have been published for notice and comment and subjected to Manufactured Housing Consensus Committee (MHCC) review pursuant to section 604(b)(6) of the Manufactured Housing Improvement Act of 2000, but were not. MHARR, in the same April 25, 2018 communication (copy attached), also calls on HUD to repeal a 2010 "Interpretive Rule" which erroneously construes section 604(b)(6) of the 2000 reform law to require notice and comment rulemaking and MHCC consensus review only for HUD regulatory actions that would otherwise constitute "rules" within the meaning of the federal Administrative Procedure Act (APA).

For decades, the HUD manufactured housing program used "guidance" and other psuedo-regulatory pronouncements to evade the rulemaking requirements of both the APA and the original Manufactured Housing Construction and Safety Standards Act of 1974. When Congress sought to put an end to this abusive practice by including section 604(b)(6) in the Manufactured Housing Improvement Act of 2000 – which, on its face, requires prior MHCC review and rulemaking for any new or modified "policies, practices or procedures" relating to "standards, regulations, inspections, monitoring or other enforcement activities" – HUD promptly ignored Congress' clear directive, ultimately issuing the 2010 Interpretative Rule, which effectively and unlawfully read section 604(b)(6) out of the law, by limiting its application to "rules" that already require rulemaking under the APA.

This action to negate the clear and unambiguous will of Congress (with the passive acceptance of some within the industry), effectively opened the floodgates to a train of ever-increasing abuses during the Obama Administration – and particularly under the tenure of former program Administrator Pamela Danner – which saw multiple new, costly and needlessly burdensome de facto regulatory mandates imposed by HUD via "field guidance" and so-called "Standard Operating Procedures," which were never brought to the MHCC for prior review, or published for notice and comment. These include, but are not limited to: HUD's massive

expansion and re-direction of in-plant regulation; "frost-free" foundation "guidance," which effectively modified an existing regulation; new and modified requirements for attached garages and other "add-ons;" baseless restrictions on multi-family manufactured housing; and memoranda relating to on-site completion, among other things. Such actions – and many other similar pseudo-regulatory mandates -- have significantly harmed both manufacturers (particularly smaller independent producers) as well as the industry's post-production sector, by needlessly increasing regulatory compliance costs and simultaneously undermining the industry's ability to compete with other segments of the housing market. Through these devices, and through the unchecked and unaccountable activities of its program "monitoring" contractor (set forth in a non-competitive contract which itself violates multiple aspects of federal law), HUD has developed – and enforces -- an entire secondary tier of unlawful mandates under the guise of "interpretations" and "guidance."

Recognizing the extremely damaging effects of such psuedo-regulation and reflecting the regulatory reform policies of the Trump Administration, the DOJ, in its rulings issued on November 16, 2017 and January 25, 2018, determined that it will no longer "use noncompliance with guidance documents as a basis for proving violations of applicable law" in civil lawsuits to enforce federal health and safety laws, such as the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000. To the extent that HUD's manufactured housing "guidance" documents conflict with this ruling and Trump Administration regulatory policy, MHARR's April 25, 2018 communication calls for their retraction and repeal as part of HUD's Executive Order (EO) 13771/13777 "top-to-bottom" regulatory review of the federal manufactured housing program. Similarly, insofar as the DOJ rulings show that HUD's 2010 Interpretive Rule is fundamentally erroneous and fatally flawed, MHARR's communication calls once again for the repeal of that rule.

In Washington, D.C., MHARR President and CEO, Mark Weiss, stated: "The Justice Department, which is charged with bringing civil actions to enforce federal health and safety laws, has now made it crystal clear that HUD may not use sub-regulatory 'guidance' documents that have not been considered by the MHCC and have not gone through rulemaking, in order to impose new or modified mandates on manufacturers of HUD Code homes, and new unnecessary costs on manufactured home purchasers. The tragedy is that Congress itself said exactly the same thing nearly two decades ago when it included section 604(b)(6) in the Manufactured Housing Improvement Act of 2000. The time has come for HUD to finally obey the law as written, and its ongoing EO 13771/13777 review of all existing and pending regulations and "regulatory actions" offers the perfect opportunity for HUD to formally renounce both the fatally-flawed 2010 "Interpretive Rule" and its pile of invalid pseudo-regulatory "guidance" documents – before the Justice Department, or a federal judge, does it for them."

The Manufactured Housing Association for Regulatory Reform is a Washington, D.C.-based national trade association representing the views and interests of independent producers of federally-regulated manufactured housing.