

By Mark Weiss

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“ANOTHER MISSED POST-PRODUCTION OPPORTUNITY?”

HUD Secretary, Dr. Ben Carson, as the saying goes, “gets it.” First, and most fundamentally, he understands – and has very plainly stated -- that to successfully address and ultimately solve the nation’s affordable housing crisis, which has some 21 million American families spending more than one-third of their household income on housing expenses and 11 million of those spending more than *half* of their income on housing, it is “vitally important ... to develop more affordable housing.” Beyond that, he understands (unlike some of his predecessors at HUD) that “the first and most important source” of that much-needed affordable housing, “will always be private enterprise, whether operating independently, or in cooperation with HUD [or] other government initiatives.” And, perhaps most significant of all, he appears to understand what *must* be done – at HUD – to spur the growth and availability of affordable housing and home ownership from within the private sector and, more specifically, from within the manufactured housing industry that HUD not only comprehensively regulates through its Title VI manufactured housing program, but is also authorized to help finance through programs administered by its Federal Housing Administration (FHA). The question, though, is whether the industry’s post-production sector (*i.e.*, retailers, communities, developers, finance companies, and insurers, among others) “gets it,” and will act to create the type of independent collective representation that will be needed to seize these unparalleled policy opportunities.

In a speech earlier this year to the Policy Advisory Board of the Harvard University Joint Center for Housing Studies, and in a follow-up HUD publication entitled “Regulatory Barriers and Affordable Housing,” Secretary Carson clearly pinpointed the keys to unleashing the enormous potential of the manufactured housing industry to help expand homeownership and fulfill HUD’s essential mission of “ensur[ing] safe, affordable housing for [all] Americans.”

First, Secretary Carson observed that the availability of affordable housing for Americans cannot be achieved “by hindering those who are most responsible for creating it.” He thus emphasized the importance of the current – and ongoing -- regulatory review of the HUD manufactured housing program being conducted under Trump Administration Executive Orders 13771 (“Reducing Regulation and Controlling Regulatory Costs”) and 13777 (“Enforcing the Regulatory Reform Agenda”). MHARR, for its part, has strongly supported and encouraged this long-overdue review of HUD regulations and other pseudo-regulatory actions taken in violation of applicable law, and has submitted extensive comments detailing various aspects of the HUD manufactured home regulatory structure that must be changed, not only to achieve the regulatory reform agenda of President Trump, but also to achieve the overriding objective of the

Manufactured Housing Improvement Act of 2000 – i.e., “to facilitate the availability of affordable manufactured homes and to increase homeownership for all Americans.”

Significantly, though – and as important as that regulatory review and reform process *is* – Secretary Carson did not stop there.

Instead, he went on to address two other key issues (repeatedly stressed and explained in detail by MHARR to HUD officials and other government decision-makers for years) that have played a crucial role in suppressing the availability of the inherently affordable homeownership sought and needed by moderate and lower-income Americans and provided by America’s manufactured housing industry. Both of these matters, as emphasized by Secretary Carson -- and as previously emphasized by MHARR -- need to be confronted *and resolved* in order to revitalize and expand the availability of affordable HUD Code manufactured homes in market-significant numbers for the millions of American families in urgent need of affordable housing, and also to comply with the law and policy choices already made by Congress in the 2000 reform law.

These issues – and the corresponding actions needed by HUD to address and resolve them, as stressed and emphasized by Secretary Carson -- are: (1) action to eliminate the discriminatory exclusion of manufactured homes and manufactured home communities by local governments; and (2) the need to significantly expand the availability of consumer financing for HUD-regulated manufactured homes through both FHA and the HUD-affiliated Government National Mortgage Association (GNMA) (in addition to the establishment of comprehensive and market-significant HUD Code consumer finance programs by Fannie Mae and Freddie Mac, which currently do not exist).

Regarding the discriminatory exclusion of manufactured homes from many areas and communities around the nation, Dr. Carson stated in his Harvard speech: “We are also [acting] to identify and incentivize the tearing-down of local regulations that serve as impediments to the developing affordable housing stock. Out-of-date building codes, time consuming approval processes, restrictive or exclusionary zoning ordinances, unnecessary fees or taxes, and excessive land development standards can all contribute to higher housing costs and production delays.” (Emphasis added). Moreover, the direct and significant correlation between the discriminatory exclusion of manufactured homes, inflated housing prices and the economically and socially-detrimental unavailability of affordable housing is explained and addressed in HUD’s “Regulatory Barriers and Affordable Housing” publication, which states, in part: “Evidence supports the contention that zoning and land use regulations increase housing prices. *** Zoning that excludes manufactured housing ... contributes to affordability challenges, because manufactured housing potentially offers a more affordable alternative to traditionally-built housing without compromising building safety and quality.”

It is thus evident that both Secretary Carson -- and the Trump Administration political leadership at HUD generally -- recognize that the discriminatory exclusion of manufactured homes from large swaths of the country by local governments is not only bad for the industry, but bad for Americans, bad for the American economy, bad for the availability of affordable housing and, ultimately, bad for the nation as a whole. The next question, then, is whether, having recognized the unequivocally-detrimental impact of this sort of discriminatory exclusion, Secretary Carson,

President Trump, the political leadership at HUD and within the Administration more broadly, is willing to take the next logical step to *end* that discrimination – via a tool provided in the 2000 reform law, that is specifically designed for that very purpose.

Specifically, as MHARR has written (see, the December 2015 and January 2016 editions of *MHARR Viewpoint*, “Combating Discriminatory Exclusion” – Parts One and Two) – and as key congressional proponents of the 2000 reform law noted shortly after the law’s enactment – the enhanced federal preemption of the 2000 reform law provides, and was *intended* by Congress, to provide HUD with all the authority it needs to preempt, invalidate and supersede local zoning and land use ordinances that discriminate against HUD Code manufactured housing. Thus, in a November 13, 2003 communication to HUD, those Congressional proponents of the 2000 law stated:

“The 2000 Act expressly provides, for the first time, for preemption [to] be ‘broadly and liberally construed’ to ensure that local ‘requirements’ do not affect ‘federal superintendence of the manufactured housing industry.’ Combined with the expansion of the findings and purposes of the Act to include for the first time {facilitating the ‘availability of affordable manufactured homes’ ... these ... changes give HUD the legal authority to preempt local requirements or restrictions which discriminate against the siting of manufactured homes ... simply because they are HUD Code homes.”

(Emphasis added).

Given that HUD – through its most senior official -- has now fully and expressly acknowledged and recognized the extremely debilitating impact of local enactments that discriminatorily exclude HUD-regulated manufactured homes from entire communities, with cumulative impacts that needlessly and unlawfully deprive millions of Americans of affordable housing and homeownership opportunities, HUD should – and indeed, *must*, make use of the remedy specifically and purposefully provided to it by the 2000 reform law, and adopt a policy that preempts local laws which discriminatorily exclude manufactured homes.

Beyond this, in the finance arena, the affordable homeownership provided by manufactured homes is an empty promise for millions of otherwise qualified Americans, without available consumer financing, as Secretary Carson recognized in his Harvard speech, stating: “[O]ne of the best things we can do to help creditworthy borrowers obtain mortgage credit is to provide certainty to the market *** [B]ecause of our fundamental housing mission, FHA mortgage insurance program and Ginnie Mae mortgage-backed security guarantees are large and vital components of the housing finance system, HUD will be an active participant in this critical dialogue.”

Based, in part, on this recognition by the Secretary and the Trump Administration, MHARR, in its recent meeting with Federal Housing Commissioner, Brian Montgomery, called for a revitalization of the FHA Title I manufactured housing program, which *used* to be an important source of the chattel financing which supports 80%, or more, of the manufactured housing market, but has fallen to negligible numbers over the past decade due, in large measure, to the GNMA 10-10 rule, which severely and needlessly restricts lender participation in that

program (to currently just two lenders which are both subsidiaries of Clayton Homes, Inc. and Berkshire Hathaway, Inc.). In part, MHARR called for a fundamental re-examination of the 10-10 rule and its alleged bases and justifications, to provide an alternative source of market-significant securitization support for manufactured home chattel loans in view of the failure of Fannie Mae, Freddie Mac and the Federal Housing Finance Agency (FHFA) to implement the “Duty to Serve Underserved Markets” (DTS) mandate in a way that would provide such support to this vital component of the manufactured housing consumer finance market. And with both a new FHA Commissioner *and* a new GNMA President appointed by President Trump now in place in their respective positions, there is no time like the present to push *hard* for changes to revitalize the Title I program in particular.

History shows, however, that neither HUD nor any other component of government will simply “give” the industry what it wants – and what would ultimately be beneficial for millions of mostly moderate and lower-income Americans. Instead, the industry needs to *fight* aggressively for the government policies and actions that are essential to its growth and expansion, and to the fulfillment of the fundamental objective of established law – to “facilitate the availability of affordable manufactured housing” for *all* Americans. And, while the public record, as demonstrated above, strongly suggests that *aggressive* industry advocacy, *right now*, could have a significant impact in changing a decade of failed and damaging policies, a fundamental and, indeed, *necessary* component of that advocacy – a collective national voice and representation for the industry’s post-production sector – where these specific problems exist and cause the most damage, is currently absent.

As MHARR has emphasized before, conducting meetings, conferences, seminars and other similar gabfests will not change government policies in Washington, D.C. – especially ones that have been in place for years or even decades (like the under-utilization of federal preemption authority to clear away discriminatory exclusion enactments). What is needed is strong, focused, aggressive, collective and most-importantly, independent advocacy on behalf of the thousands of smaller businesses that constitute the core of the industry’s post-production sector, whose interests today are, more often than not, sacrificed to the industry’s largest corporate conglomerates.

The opportunity for real change and for real growth in both the near and long-term, clearly exists. The question is whether that opportunity will be seized and maximized where it counts the most.

Mark Weiss

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

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