

April 24, 2019

VIA FEDERAL EXPRESS

Hon. Ben Carson  
Secretary  
U.S. Department of Housing and Urban Development  
Suite 10000  
451 7<sup>th</sup> Street, S.W.  
Washington, D.C. 20410

Re: Discriminatory and Exclusionary Zoning of HUD-Regulated Manufactured Homes

Dear Secretary Carson:

As you know, the Manufactured Housing Association for Regulatory Reform (MHARR) represents the nation's smaller, independent producers of federally-regulated manufactured housing in Washington, D.C.

One of the principal challenges faced by the manufactured housing industry and particularly its smaller businesses in providing inherently affordable, non-subsidized housing and homeownership for lower and moderate-income Americans, is the discriminatory exclusion of HUD Code manufactured housing from large areas of the United States under the guise of local zoning regulation. Such exclusionary and, in fact, discriminatory zoning mandates, affect not only single-home manufactured housing placements, but also the development and/or expansion of manufactured housing communities which provide much-needed land-lease (i.e., rental) space for manufactured homes.

In a 2018 speech to the Policy Advisory Board of the Harvard University Joint Center for Housing Studies, you specifically identified and recognized the harmful impact of exclusionary zoning on the availability of affordable housing and homeownership for all Americans, stating that HUD would act "to identify and incentivize the tearing-down of local regulations that serve as impediments to the developing [of] 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 Out-of-date building codes, time consuming approval processes, restrictive or exclusionary zoning ordinances, unnecessary fees or taxes, and excessive land development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).

And, indeed, in the case of HUD-regulated manufactured housing, the law provides HUD with powerful tools and authority to override local zoning actions that discriminatorily exclude or severely limit the placement and utilization of HUD Code homes. Specifically, in the Manufactured Housing Improvement Act of 2000, Congress gave HUD the express authority to

federally preempt state and local “requirements” *of any kind* that impair “federal superintendence of the manufactured housing industry” and the accomplishment of the Act’s congressionally-mandated federal purposes, including “facilitat[ing] the availability of affordable manufactured homes.” Indeed, in a November 13, 2003 letter to then-HUD Secretary Mel Martinez (copy attached), key congressional proponents of the 2000 reform law stated that enhancements to the scope of federal preemption set forth in that law “have given HUD the legal authority to preempt local requirements or restrictions which discriminate against the siting of manufactured homes (compared to other single family housing) simply because they are HUD-code homes.”

Despite this enhanced preemption authority, however, HUD has failed to take action to stop the baseless – and expanding – exclusion of safe, decent and affordable HUD-regulated manufactured homes from numerous jurisdictions around the United States. Consequently, while your above-quoted comments regarding the toxic impact of exclusionary local zoning mandates on the availability of affordable housing and homeownership opportunities were – and are – exactly on target, and while HUD has specific legal authority to correct this matter with respect to federally-regulated manufactured housing, nothing has been done to date in this area. And, with reports circulating of your possible departure from HUD at the conclusion of President Trump’s first term, smaller manufactured housing industry businesses are becoming increasingly concerned.

In an effort, therefore, to assist HUD in this matter and jump-start a process leading to the enforcement of Congress’ enhanced preemption regime to remove such baseless, discriminatory barriers to the availability and utilization of inherently affordable HUD Code manufactured housing, MHARR met with officials of HUD’s Office of Policy Development and Research (PD&R) on April 4, 2019 and requested that HUD, as a first step, utilize its resources to research, study and analyze such discriminatory and exclusionary zoning and its local and national impact(s) on the availability of affordable housing and homeownership in light of relevant national housing policies. Such research and analysis could then serve as a roadmap for further HUD action going forward. Accordingly, we ask that you authorize and advance such a study within the Department.

Quite simply, in order for manufactured housing to reach its full potential as an inherently affordable, non-subsidized housing resource for millions of lower and moderate-income Americans, it cannot, should not, and must not be unfairly and illegitimately excluded from significant areas of the country. In order to stop and reverse this phenomenon, leadership from HUD and by you, personally, as HUD Secretary, is essential and, indeed, indispensable.

The MHARR Board of Directors, in order to cooperate and ensure proper assistance to you in this matter, directed the Association, at its recent Membership Meeting, to pursue appropriate legal action, as necessary, to address one or more particularly egregious instances of the discriminatory exclusion of HUD Code manufactured homes via local ordinance. Given the destructive impact of such discriminatory and exclusionary local mandates on the availability of affordable, non-subsidized housing and homeownership, in direct conflict with Trump Administration policies designed to increase homeownership among Americans at every rung of the economic ladder, we ask that HUD join with MHARR in this effort to end such baseless discrimination and the virtual exclusion of safe, decent and affordable HUD-regulated

manufactured homes from entire areas of the United States, including many of its most heavily-populated local jurisdictions.

MHARR thanks you in advance for your assistance in this matter and will contact your office soon to schedule a meeting to address this and related issues affecting federally-regulated manufactured housing.

Sincerely,

Mark Weiss  
President and CEO

cc: Hon. Mike Crapo  
Hon. Maxine Waters  
Hon. Mick Mulvaney  
HUD Code Industry Manufacturers, Retailers and Communities