



Manufactured Housing Association for Regulatory Reform

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March 16, 2020

VIA FEDERAL EXPRESS AND ELECTRONIC SUBMISSION

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
Room 10276
451 Seventh Street, S.W.
Washington, D.C. 20410-0001

Re: Notice of Proposed Rulemaking – Affirmatively Furthering
Fair Housing; Docket No. FR-6123-P-02; RIN 2577-AA97

Dear Sir or Madam:

The following comments are submitted on behalf of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a Washington, D.C.-based national trade association representing the views and interests of producers of manufactured housing regulated by the U.S. Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401, et seq.) (1974 Act) as amended by the Manufactured Housing Improvement Act of 2000 (2000 reform law). MHARR was founded in 1985. Its members include independent manufactured housing producers from all regions of the United States.¹

COMMENTS

On January 14, 2020, HUD published a Notice of Proposed Rulemaking (NPR) in the Federal Register,² seeking public comments regarding amendments to HUD's Affirmatively Furthering Fair Housing (AFFH) regulations, initially adopted through a final rule published by the Department on July 16, 2015.³ As was stated in an Advance Notice of Proposed Rulemaking

¹ MHARR's member manufacturers are all "small businesses" as defined by the U.S. Small Business Administration (SBA) and are "small entities" for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

² See, 85 Federal Register, No. 9, January 14, 2020, at p. 2041, et seq.

³ See, 80 Federal Register, No. 136, July 16, 2015, at p. 42357, et seq.

(ANPR) in this docket, issued on August 16, 2018,⁴ the stated purpose of the 2015 AFFH final rule was “to provide HUD program participants⁵ with a revised planning approach to assist ... in meeting their legal obligation to affirmatively further the purposes and policies of the Fair Housing Act.”⁶ Since publication of the 2015 final rule, however, HUD has “concluded that the current regulations are ineffective in addressing the lack of adequate housing supply, which has [had] particularly adverse impact[s] on protected classes under the Fair Housing Act.”⁷ As a result, the Department, as stated in the 2018 ANPR, “determined that a new approach toward AFFH is required”⁸ and sought public input, through the ANPR docket, regarding amendments to the 2015 AFFH regulations that would “encourage actions that increase housing choice, including ... greater housing supply.”⁹

MHARR, representing smaller, independent producers of HUD-regulated manufactured housing, responded to the 2018 ANPR with specific comments relating to the need to eliminate discriminatory state and local zoning and placement mandates that effectively exclude or unreasonably restrict the placement and utilization of HUD-regulated manufactured housing in violation of applicable law.¹⁰ Such discriminatory mandates, as emphasized by MHARR, needlessly limit (or totally exclude) the supply of safe, decent and inherently affordable HUD-regulated manufactured housing from communities throughout the United States and simultaneously deprive millions of American families either access to any type of affordable homeownership whatsoever, or the simple ability to locate a HUD Code manufactured home and live in any community (or any area of any community) that they wish, thereby undermining legitimate housing choice. As MHARR noted in response to the HUD ANPR, such discrimination is unconscionable, wholly unjustified and without basis, and should be eliminated by HUD using both the AFFH framework contemplated by the proposed rule and the statutory tools that it already possesses.¹¹

And while the proposed rule published in this matter by HUD would enact a number of significant changes to the 2015 AFFH rule, it still does not – in its current form -- address and specifically remedy the blatant discrimination that exists in too many communities across the nation against manufactured housing, the nation’s most affordable type of homeownership (as

⁴ See, 83 Federal Register, No. 159, August 16, 2018 at p. 40713, et seq.

⁵ I.e., local governments, public housing agencies, states and “Insular Areas.” See, 83 Federal Register, No. 159, supra, at p. 40714, col. 1.

⁶ Id. at p. 40713, col.3.

⁷ Id.

⁸ Id. at p. 40713, col. 1.

⁹ Id. at p. 40714, col. 3.

¹⁰ See, MHARR October 11, 2018 Comments – Advance Notice of Proposed Rulemaking; Affirmatively Furthering Fair Housing: Streamlining and Enhancements; Docket No. FR-6123-A-01; RIN 2529-AA97, attached hereto as Attachment 1.

¹¹ In addition to the comments and analysis set forth in Attachment 1, hereto, this matter is addressed in detail in comments recently submitted by MHARR to the White House Council on Eliminating Regulatory Barriers to Affordable Housing. See, MHARR, January 9, 2020, “White House Council on Eliminating Regulatory Barriers to Affordable Housing – Request for Information,” Attachment 2, hereto, at pp. 3-5, 8-3. Those comments stress that under the enhanced preemption provision of the Manufactured Housing Improvement Act of 2000, HUD has full statutory authority to federally preempt state or local mandates which interfere with the purposes of that law and federal superintendence of the manufactured housing industry.

determined by a HUD-sponsored study),¹² while excluding, from the same communities, millions of American families that rely on inherently affordable HUD Code manufactured housing.¹³ Such baseless discrimination not only harms lower and moderate-income American families of all races and backgrounds, but needlessly increases the overall cost of all types of homeownership within communities, and damages employment and the economy (both locally and nationally) by maintaining artificial, non-market-based limits on the utilization and production of HUD Code manufactured homes which, according to U.S. Census Bureau data, has fallen far below its historic 100,000-plus homes per year benchmark over the past decade in particular.

Accordingly, and for the reasons more fully set forth in Attachments 1 and 2 hereto, MHARR calls on HUD: (1) to incorporate provisions in any final rule in this matter, to require recipient jurisdictions¹⁴ to provide equal, non-discriminatory access for HUD-regulated manufactured homes to all areas that are otherwise zoned for detached, single-family housing and to eliminate zoning and placement restrictions which discriminate against HUD Code manufactured homes and their residents; and (2) to take any and all other necessary action pursuant to statutory powers which it already possesses,¹⁵ to eliminate and invalidate discriminatory and exclusionary state and local mandates against the siting and placement of HUD Code manufactured homes.

Sincerely,



Mark Weiss
President and CEO

¹² See, U.S. Department of Housing and Urban Development, “Is Manufactured Housing a Good Alternative for Low-Income Families? Evidence from the American Housing Survey” (December 2004) at p. 6.

¹³ Significantly and commendably, HUD’s NOPR specifically recognizes and acknowledges the direct correlation between the availability of affordable housing, housing choice, and eliminating unlawful housing discrimination. In relevant part, the NOPR states: “Affordable housing can advance the goal of providing members of protected classes with access to neighborhoods of their choice. *** Having a supply of affordable housing that is sufficient to meet the needs of a jurisdiction’s population is crucial to enabling families to live throughout the jurisdiction and promoting fair housing for all protected classes.” 85 Federal Register, No. 9, supra at p. 2048, col. 1. This statement illustrates the both the need and legal/policy rationale for the elimination of discriminatory and exclusionary manufactured housing zoning mandates pursuant to AFFH and the Fair Housing Act (in addition to other authorities as addressed herein and in Attachments 1 and 2 hereto).

¹⁴ I.e., “Recipients of HUD funding [that] are required to affirmatively further the Fair Housing Act’s goal of promoting fair housing and equal opportunity.” See, 85 Federal Register, supra at p. 2041, col. 1.

¹⁵ Section 602(b)(2) of the Manufactured Housing Improvement Act of 2000 requires HUD to “facilitate the availability of affordable manufactured homes” and “increase homeownership for all Americans.” (42 U.S.C. 5401(b)(2)). In accordance with this fundamental objective, section 604(d) of the same law authorizes HUD to federally preempt any “State or local requirements or standards” that “affect the uniformity and comprehensiveness of the standards promulgated” under that law, or “the federal superintendence of the manufactured housing industry” as established by that law. (Emphasis added). The state or local “requirements” subject to this expansive federal preemption provision include – and should include – discriminatory zoning and placement restrictions which needlessly exclude safe, decent and affordable HUD Code manufactured homes from many communities.

cc: Hon. Ben Carson
Hon. Mike Crapo
Hon. Maxine Waters
Hon. Seth Appleton
HUD Code Manufactured Housing Industry Members