

January 19, 2021

VIA FEDERAL EXPRESS AND ELECTRONIC SUBMISSION

HUD Desk Officer
Office of Management and Budget
New Executive Office Building
Washington, D.C. 20503

Re: OMB Control Number 2528-NEW;
Strategies for Removing Regulatory Impediments to the
Financing and Siting of Factory-Built Housing in American Communities

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.

On December 18, 2020, HUD published a notice in the Federal Register¹ (Notice) seeking public comment on its request to the Office of Management and Budget (OMB) to approve a HUD information collection activity regarding “strategies for removing ... regulatory impediments to the siting of factory-built housing in American communities.”²The Notice describes this information collection activity and related HUD study as being designed to “assess the cost-effectiveness of *factory-built housing* as a potential affordable housing option in urban and suburban communities.” (Emphasis added). HUD’s Notice further states that HUD “seeks to better understand the regulatory barriers preventing or limiting the use of *factory-built housing*. This study is framed by the general research question: What are the main drivers or barriers to the financing, siting, and development of *factory-built housing* systems in various communities.”³(Emphasis added).

¹ See, 85 Federal Register No. 244 (December 21, 2020) at p. 82500.

² Id. at p. 82501, col. 2.

³ Id.

MHARR originally requested such a study, *specifically* addressing state and local regulatory barriers to the placement and siting of mainstream, affordable *manufactured housing regulated by HUD* pursuant to federal law, in an April 4, 2019 meeting with officials of HUD’s Office of Policy Development and Research (PD&R) and in a subsequent April 24, 2019 letter to HUD Secretary Ben Carson. That communication explained the study requested by MHARR as follows: “In an effort ... to assist HUD ... [to] jump-start a process leading to the enforcement of Congress’ [2000 reform law] enhanced preemption regime,⁴ to remove ... 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 ... 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.”

While the information collection activity and research question set forth by HUD in its Notice⁵ appears to be *generally* consistent with MHARR’s request, insofar as federally regulated manufactured homes, as defined by federal law,⁶ are “factory-built homes,” MHARR is nevertheless concerned that an information collection activity and corresponding research directed

⁴ The 2000 reform law expanded and extended the scope of federal preemption to expressly include and apply to *all* state and local “requirements” that discriminate against manufactured housing and not just state and local building standards as had previously been addressed by the preemption section of the original 1974 Act. The federal preemption section as amended by the 2000 reform law, 42 U.S.C. 5403(d), thus states: “(d) Supremacy of Federal standards: Whenever a Federal manufactured home construction and safety standard established under this chapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding the construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard. Federal preemption under this subsection shall be broadly and liberally construed to ensure that disparate State or local *requirements or standards* do not affect the uniformity and comprehensiveness of the standards promulgated under this section nor the Federal superintendence of the manufactured housing industry as established by this chapter.”(Emphasis added). In a November 13, 2003 letter to HUD, leading members of Congress (including the current Chairperson of the House Committee on Financial Services, with jurisdiction over HUD) left no doubt that this change was intended to give HUD the authority to preempt state and local requirements that exclude federally regulated manufactured homes simply because they are manufactured homes. That communication states, in relevant part: “[the] combined changes [of the 2000 reform 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.”

⁵ A similar information collection notice was published in the Federal Register on February 14, 2020. See, 85 Federal Register, No. 31 (February 14, 2020) (“Strategies for Removing the Regulatory Impediments to the Financing and Siting of Factory-Built Housing in American Communities”) at p. 8604.

⁶ The National Manufactured Housing Construction and Safety Standards Act of 1974 defines a “manufactured home” as: “a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter; and except that such term shall not include any self-propelled recreational vehicle....” 42 U.S.C. 5402(6).

at a much broader class of “factory-built homes” -- which potentially includes a myriad of factory-built structures subject to regulation under state and local building codes (and *not* subject to federal/HUD jurisdiction) but are not “manufactured homes” built in accordance with the *federal* HUD Code -- could result in research that is skewed, distorted, misdirected or irrelevant. Thus, while all manufactured homes are “factory-built homes,” not all “factory-built homes” are manufactured homes. This distinction, however, is critical, as it is federally regulated, inherently affordable HUD Code manufactured housing, serving primarily lower and moderate-income American families, that has been the long-term focus of discriminatory and exclusionary zoning and placement mandates around the United States, and not other forms or types of “factory-built homes.” Consequently, it is affordable, mainstream, HUD Code manufactured housing that *should* be the sole and exclusive focus of any such information collection activity and/or research authorized by OMB.

Put differently, any OMB approval in this matter should expressly provide that the specific focus of any such information collection and research activity by HUD is to be HUD Code *manufactured homes* as defined by federal law, and that such research is not to be diluted or sidetracked into irrelevance – or overwhelmed or undermined – by being misdirected to other types and forms of factory-built housing that are not federally-regulated, are not subject to HUD jurisdiction, are not inherently affordable for lower and moderate-income Americans, or which simply *do not face* the same type of pervasive discriminatory and exclusionary zoning and placement edicts that so negatively impact federally regulated manufactured housing. In short, the proposed information collection activity and research must be directed at the known problem that currently exists – *i.e.*, zoning and placement discrimination against mainstream federally regulated manufactured homes – rather than a fishing expedition targeting other types of factory-built housing that are not federally regulated and not affirmatively required by federal statute to provide affordable homeownership to the maximum degree possible.⁷

Accordingly, and for all of the foregoing reasons, MHARR asks that OMB approve this requested information collection and research activity, but with the specific condition and requirement that it be expressly targeted at and focused upon regulatory barriers preventing or limiting the use of *federally regulated manufactured housing* as specifically defined by federal law.

Sincerely,

Mark Weiss
President & CEO

cc: Hon. Dana Wade
Hon. Russell Vought

⁷ See, 42 U.S.C. 5401(b).