



Manufactured Housing Association for Regulatory Reform

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August 3, 2021

VIA FEDERAL EXPRESS AND ELECTRONIC TRANSMISSION

Mr. Roak Parker
NEPA Document Manager
U.S. Department of Energy
Golden Field Office
15013 Denver West Parkway
Golden, Colorado 80401

Re: Notice of Intent to Prepare Environmental Impact Statement
- Energy Conservation Standards for Manufactured Housing

Dear Mr. Parker:

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 organization 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 (1974 Act) as amended by the Manufactured Housing Improvement Act of 2000 (2000 Reform Law).¹ MHARR was founded in 1985. Its members include independent manufactured housing producers from all regions of the United States.²

I. INTRODUCTION

The U.S. Department of Energy (DOE) has publicly stated its intention to propose federal “energy conservation” standards for manufactured homes³ based on the 2021 International Energy Conservation Code (IECC), pursuant to section 413 of the Energy Independence and Security Act

¹ See, 42 U.S.C. 5401, *et seq.*

² MHARR’s member manufacturers include “small businesses” as defined by the U.S. Small Business Administration (SBA) and “small entities” for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

³ A “manufactured home” is defined by federal law as “a structure, transportable in one or more sections, which ... when erected on site, is three hundred twenty or more square feet ... which is built on a permanent chassis and designed to used as a dwelling with or without a permanent foundation when connected to the required utilities....” See, 42 U.S.C. 5402(6).

of 2007 (EISA)⁴ “on or before August 16, 2021.”⁵ In connection therewith, DOE, on July 7, 2021, published a Notice of Intent to Prepare an Environmental Impact Statement (EIS) pertaining to those standards, pursuant to the National Environmental Policy Act of 1969 (NEPA) (2021 Notice).⁶ That Notice invites interested parties to submit written comments and otherwise “participate in the scoping process to help define the important resources and issues to be analyzed in depth, and to eliminate other issues from detailed study in the EIS.”⁷ The new EIS under development will apparently supersede a Draft Environmental Assessment (EA) published by DOE on June 17, 2016 in connection with an earlier proposed rule for manufactured housing “energy conservation” standards.⁸ DOE states in its July 7, 2021 Notice, however, that “information in the draft EA and comments received on the draft EA will be incorporated into the EIS, as appropriate.”⁹ In accordance with the 2021 Notice of Intent, MHARR submits the following comments.

II. COMMENTS

DOE, in its July 7, 2021 Notice, indicates that it will propose “energy efficiency standards for manufactured housing that relate to the building thermal envelope; air sealing; installation of insulation; duct sealing; heating ventilation and air conditioning (HVAC); service hot water systems; mechanical ventilation fan efficiency; and heating and cooling equipment sizing” based on corresponding provisions of the 2021 IECC.¹⁰ All of these new and additional standards¹¹ will inevitably have a significant negative impact on the purchase price and availability of HUD-regulated manufactured housing, as well as substantial negative downstream impacts on Americans in need of affordable housing, lower and moderate-income homebuyers and minority

⁴ See, 42 U.S.C. 17071. That section provides in relevant part: “[T]he Secretary shall by regulation establish standards for energy efficiency in manufactured housing. *** The energy conservation standards established under this section shall be based on the most recent version of the International Energy Conservation Code (including supplements), except in cases in which the Secretary finds that the code is not cost-effective, or a more stringent standard would be more cost-effective, based on the impact of the code on the purchase price of manufactured housing and on total life-cycle construction and operating costs.” (Emphasis added).

⁵ See, 86 Federal Register, No. 127 (July 7, 2021), “Notice of Intent to Prepare an Environmental Impact Statement for Energy Conservation Standards for Manufactured Housing” at pp. 35773-35775.

⁶ See, 42 U.S.C. 4331, et seq.

⁷ See, 86 Federal Register, supra at p. 35775, col. 2.

⁸ Id. at p. 35774, col. 2, “DOE/EA-2021 has been cancelled.”

⁹ Id. To the extent, therefore, that comments submitted with regard to EA-2021 may be considered in relation to the pending EIS, MHARR’s EA-2021 comments, dated August 15, 2016, are attached hereto as Attachment 1 and are incorporated herein by reference as if stated in full in this document. Also incorporated by reference herein are MHARR’s written comments pertaining to the June 17, 2016 DOE proposed manufactured housing energy standards rule, and particularly its description of the sham “negotiated rulemaking” process which led to those proposed standards. See, MHARR comments (August 8, 2016), “Energy Efficiency Standards for Manufactured Housing,” Docket No. EERE-2009-BT-BC-0021 – RIN 1904-AC11 (MHARR 2016 DOE Comments)

¹⁰ See, 86 Federal Register, supra at P. 35774, col. 2.

¹¹ The 2016 Draft EA, for example, based on the 2015 IECC and the recommendations of the 2014-2015 DOE “negotiated rulemaking” Manufactured Housing Working Group, determined that 19 provisions included in the 2016 DOE proposed rule on energy standards for manufactured homes, had no existing “corresponding requirements” in the HUD manufactured housing standards codified at 24 C.F.R. 3280. See, U.S. Department of Energy, “Draft Environmental Assessment for Notice of Proposed Rulemaking, 10 C.F.R. Part 460, ‘Energy Conservation Standards for Manufactured Housing,’” (June 2016), Table 2: Crosswalk of Proposed Action and Existing Baseline,” at p. 10.

homebuyers, as well as other matters identified as key priorities by President Biden, including, but not limited to, homelessness, racial equity and economic justice, among other related matters. Each of these immediate and downstream impacts, under relevant federal law and directly applicable Administration policy, must be addressed and resolved prior to the adoption of any final standards in this matter.

A. APPLICABLE LEGAL AND FACTUAL PREDICATES

The following legal and factual information is directly relevant to a NEPA analysis of any proposed energy standard(s) for HUD Code manufactured housing. Most significantly, mainstream, HUD-regulated manufactured housing is the only type of housing that is specifically recognized as “affordable housing” by federal law. The National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, expressly states that “manufactured homes provide a significant resource for affordable homeownership and rental housing accessible to all Americans.”¹²(Emphasis added). These statutes further provide that federal manufactured housing regulation and federal superintendence of the manufactured housing industry,¹³ must: “protect the quality, durability, safety, and affordability of manufactured homes;” “facilitate the availability of affordable manufactured homes and ... increase homeownership for all Americans;” and “ensure that the public interest in, and need for, affordable manufactured housing is duly considered in all determinations relating to ... federal standards and their enforcement.”¹⁴(Emphasis added). Consistent with these directives, and in order to preserve and maintain the continuing affordability of manufactured housing, federal law specifically requires that manufactured housing standards be based on a balance between safety and purchase price affordability, stating that the development of manufactured housing standards must “consider the probable effect of such standard on cost of the manufactured home to the public.”¹⁵

This statutory focus on purchase price affordability is crucial, both to American consumers of affordable housing and to the viability and future growth of the manufactured housing industry. Federal research has confirmed that manufactured housing, which serves primarily lower and moderate-income consumers – is the “largest source of unsubsidized affordable housing” in the United States.¹⁶ HUD studies, moreover, have concluded that federally-regulated manufactured housing as currently constructed, under existing federal standards¹⁷-- including existing HUD

¹² See, 42 U.S.C. 5401(a)(2).

¹³ See, 42 U.S.C. 5403(d), referring to “federal superintendence of the manufactured home industry.” See also, 24 C.F.R. 3282.11(d),

¹⁴ See, 42 U.S.C. 5401(b)(1), (2), (8).

¹⁵ See, 42 U.S.C. 5403(e)(4). Consistent with this provision, EISA section 413 also requires DOE to consider the purchase price impact of any manufactured housing energy standards. See, text at note 4, supra.

¹⁶ See, Consumer Financial Protection Bureau, “Manufactured Housing Finance: New Insights from the Home Mortgage Disclosure Act Data,” (May 2021) (CFPB Report) at pp. 8-9.

¹⁷ See, 24 C.F.R. Part 3280. Current HUD standards already include energy or “Thermal Protection” standards which address “requirements for condensation control, air infiltration, thermal insulation and certification[s] for heating and comfort cooling.” See, 24 C.F.R. 3280.501.

manufactured housing energy standards -- is a “good value” for “low-income households.”¹⁸The most recent U.S. Census Bureau data, thus shows that in 2020, the average cost per square foot for a federally-regulated manufactured home was \$59.14, while the average cost per square foot for a site-built home (excluding land) was more than 100% higher, at \$122.12.¹⁹The 2020 average structural sales price of a manufactured home,²⁰ accordingly, was \$87,000, while the average structural sales price of a site-built home (exclusive of land) was 254% higher, at \$308,597.²¹ Overall, federal data shows that there are 6.7 million occupied manufactured homes in the United States, accounting for approximately 6% of the domestic housing stock.²² Currently, some 17.5 million Americans live in federally-regulated manufactured homes.²³

As a result of pre-existing HUD Code energy standards, and as is demonstrated by U.S. Census Bureau data, HUD Code manufactured homes are already energy efficient, without regressive, high-cost DOE energy mandates. Specifically, data from the 2019 American Housing Survey shows that the median monthly cost for fuel oil was \$83.00 for manufactured homes, as compared with \$125.00 for site-built detached homes. The median monthly cost for natural gas was \$40.00 for manufactured homes, as compared with \$58.00 for site-built detached housing, and the median monthly cost for electricity was \$122.00 for manufactured homes as compared with \$124.00 for site-built detached homes.²⁴The median monthly fuel cost for HUD-regulated manufactured homes across all types and all ages, therefore, is already up to 51% less than the monthly median fuel cost for single-family detached site-built homes.²⁵Federal data thus demonstrates that HUD-regulated manufactured homes are already more energy efficient than much more costly site-built homes.²⁶ Furthermore, manufactured housing producers already provide a wide range of enhanced energy packages (including EnergyStar packages), tailored to the specific needs and wants of customers, on an optional basis. As a result, manufactured housing purchasers currently have the freedom to choose the specific types of energy features they wish to purchase (and have the financial ability to purchase), while those who wish to spend their resources on other types of features – or not at all – are free to do so. Under regressive DOE energy standards,

¹⁸ 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,” at p.1

¹⁹ See, U.S. Census Bureau, “Cost and Size Comparisons: New Manufactured Homes and New Single-Family Site-Built Homes (2014-2020),” (2020 Census Bureau Report) attached hereto as Attachment 2.

²⁰ Id. The Census Bureau calculation uses an average size of 1,471 square feet for all manufactured homes. The underlying data shows an “average” size of 1,085 square feet for single-section manufactured homes (2020) and an “average” size of 1,760 square feet for double-section manufactured homes. The corresponding “average” (2020) size of a site-built homes is listed as 2,527.

²¹ Id.

²² See, CFPB Report, supra at p. 7.

²³ Id. at p. 8.

²⁴ See, U.S. Census Bureau, 2019 American Housing Survey, “Monthly Fuel Costs by Structure Type,” attached hereto as Attachment 3.

²⁵ The 2019 American Housing Survey data shows that the monthly cost for electricity is 1.63% less in HUD Code homes than in site-built homes, monthly gas costs are 45% lower in manufactured homes, and monthly fuel oil costs are 50.6% lower in manufactured homes.

²⁶ Indeed, application of the 2021 IECC to manufactured homes would be prejudicial to lower and moderate-income homebuyers as well as the industry, insofar as no state has yet adopted the 2021 IECC for site-built residential structures.

by contrast, consumers not excluded from the market altogether would be forced to spend significant additional sums on energy features that they might not otherwise want or purchase.

Furthermore, from a demographic perspective, federal data shows that within the single largest segment of Americans seeking access to affordable manufactured homes – *i.e.*, the 78% of all manufactured homes financed through home-only personal property, or “chattel” loans²⁷ – “Hispanic white, Black and African American, and American Indian and Alaska Native borrowers” make up a larger share than “among site-built loan borrowers.”²⁸ The same data also shows that “Black and African American borrowers ... are overrepresented in chattel lending compared to site-built [loans].”²⁹ Significantly, these groups that are “overrepresented” within the largest single segment of the manufactured housing market, are the same communities addressed by President Biden in his January 26, 2021 Executive Memorandum on “Redressing Our Nation’s and the Federal Government’s History of Discriminatory Housing Practices and Policies.”³⁰ That Memorandum states, in relevant part: “racially discriminatory housing policies [have] ... inhibited equal opportunity and the chance to build wealth for Black, Latino, Asian American and Pacific Islander, and Native American families, and other underserved communities.”³¹ Accordingly, the memorandum declares: “It is the policy of my Administration that the Federal Government shall work with communities to end housing discrimination, to provide redress to those who have experienced housing discrimination, to eliminate racial bias and other forms of discrimination in all stages of home-buying and renting, to lift barriers that restrict housing and neighborhood choice, to promote diverse and inclusive communities, to ensure sufficient physically accessible housing, and to secure equal access to housing opportunity for all.”³² (Emphasis added).

The above-stated facts, statutory provisions and related Administration pronouncements, have three major interrelated consequences for the EIS in this matter and for any rulemaking under EISA section 413.

- First, the cost-benefit language of EISA section 413, requiring DOE manufactured housing standards to be based on the most recent version of the IECC, “except in cases where the Secretary finds that the code (sic) is not cost-effective” (emphasis added), must be construed and applied consistently with the purposes, objectives, and mandates of preexisting law – in this case, the 1974 Act as amended by the 2000 reform law. Therefore, the “cost-effective” proviso of EISA section 413 must be construed and applied – consistent with those pre-existing manufactured housing statutes -- to ensure that non-life-safety energy standards do not result in manufactured home purchase price increases that would significantly impair their affordability, availability, or

²⁷ The 2020 Census Bureau Report shows that in 2020, 78% of new manufactured homes placed for residential use, were titled as personal property. The number of personal property placements, moreover, in relation to the entire market for new manufactured homes, was as high as 80% in 2015.

²⁸ See, CFPB Report, supra at p. 31.

²⁹ Id.

³⁰ See, 86 Federal Register, No. 18 (January 29, 2021), “Memorandum on Redressing Our Nation’s and the Federal Government’s History of Discriminatory Housing Practices and Policies,” at p. 7487

³¹ Id.

³² Id. at p. 7488.

accessibility to all Americans, or otherwise decrease or negatively affect homeownership.

- Second, the purchase-price cost-benefit analysis affirmatively required by EISA section 413, is an integral, substantive element of that law. Consequently, a valid, credible and legitimate cost-benefit analysis is a necessary and essential prerequisite to the proposal and adoption of any standard under EISA section 413.
- Third – and consistent with all of the foregoing – regulation-driven, price-based exclusions from the manufactured housing market must not disproportionately impact and harm racial and other minority groups addressed by President Biden’s January 26, 2021 Executive Memorandum.

As is demonstrated below, however, neither the 2021 IECC nor any version of the IECC can meet these criteria. Nor can any version of the IECC be modified or altered by DOE to comply with all such elements of applicable and governing law. As a result, neither the 2021 IECC, nor any version of the IECC should be used as the basis for any manufactured housing energy standard(s).

B. THE IECC IS NOT AN APPROPRIATE CODE FOR FEDERALLY-REGULATED MANUFACTURED HOUSING

Most fundamentally, as stated above, the International Energy Conservation Code (and particularly its 2021 iteration) is not an appropriate code for manufactured housing and should not be used as the basis or starting point for any manufactured housing energy standard(s). While existing HUD manufactured housing energy standards³³ are subject to the strict cost-benefit criteria contained in the 1974 Act and 2000 Reform Law, which ensure that they provide reasonable energy efficiency balanced with purchase price affordability, and are established and modified (when needed) through a balanced consensus process,³⁴ where all stakeholders are represented and permitted to vote at all levels of standard-development and adoption, the IECC, by contrast, is subject to no similar statutory affordability and balancing mandates, and, through its 2021 version, has been approved under a “government consensus” process that was limited to state and local building code officials with no specific experience concerning manufactured housing construction or regulation.³⁵ In addition, the IECC process has – and will – include significant input from energy special interests either seeking to legislate additional demands for their goods and services or

³³ See, 24 C.F.R. 3280.501-511.

³⁴ See, 42 U.S.C. 5403(a)(3)(E).

³⁵ See, e.g., National Association of Home Builders, January 25, 2021, NAHB Now, “2021 International Energy Conservation Code Published After Multiple Appeals,” stating, in part: “In the end, several problematic code changes that had been twice disapproved (first by the code development committee and then at public comment hearings) got into the 2021 IECC as a result of a controversial online ballot heavily influenced by block voting from non-code enforcement government officials that was linked to a single voting guide. Many of these proposals are not cost effective for home owners and will negatively impact housing affordability with little energy savings benefit. It will take several decades to achieve a simple payback on the initial investment under some of the new measures.” (Emphasis added).

pursuing an extreme ideological agenda that fundamentally conflicts with housing affordability and availability. As a result, IECC requirements – even if modified – would result in unsustainable price increases for manufactured homes which would:

- (1) undermine their fundamental affordability, particularly for lower and moderate-income purchasers, in violation of law;
- (2) exclude millions of Americans from the manufactured housing market and from homeownership altogether;
- (3) cause a further contraction of the manufactured housing market, which would reduce competition and result in even higher prices; and
- (4) disproportionately impact and harm racial and ethnic minorities who are overrepresented within the chattel financing market for the industry’s (currently) most affordable homes, contrary to President Biden’s express directive.

As currently constituted, the HUD manufactured housing construction and safety standards effectively maintain the purchase price affordability of manufactured homes at operating expense levels³⁶ and monthly energy operating cost levels³⁷ that are well below the comparable purchase price and operating cost of site-built homes. Accordingly, existing HUD Code standards are consistent with the affordability and balancing requirements of federal law, which ensure that manufactured homes are not only energy-efficient but are also available at a range of purchase prices that are affordable for lower and moderate-income Americans. The IECC, by contrast, is subject to no similar statutory affordability or balancing mandates. As a result, it is a high-cost code, as was demonstrated initially by MHARR in 2016 with respect to the 2015 IECC and by Home Innovation Research Labs (HIRL) – the research arm of the National Association of Home Builders (NAHB)³⁸ – with respect to the 2021 IECC. And, as a practical matter, energy efficiency measures are of zero value to those who can no longer afford to purchase a home to begin with, because of the high initial-purchase-price impacts of those measures.

The 2015 IECC, which was the basis for DOE manufactured housing energy standards initially proposed in 2016³⁹-- as calculated by MHARR – would have resulted in retail level purchase price increases of \$4,601.00 for a single-section manufactured home, and \$5,825.00 for a double-section manufactured home.⁴⁰ These amounts included industry-standard builder and

³⁶ The 2019 U.S. Census Bureau American Housing Survey documented a monthly median housing operating cost of \$610.00 for manufactured homes, and \$1,106.00 for single-family, detached site-built homes, a savings of nearly 58% based on current HUD manufactured housing standards.

³⁷ See, note 24, supra.

³⁸ See, Home Innovation Research Labs, “2021 IECC Residential Cost Effectiveness Analysis” (June 2021) (HIRL Report).

³⁹ See, 81 Federal Register, No. 117 (June 17, 2016), “Energy Conservation Standards for Manufactured Housing,” at p. 39756, et seq.

⁴⁰ See, MHARR 2016 DOE Comments, at p. 15, note 42.

retailer profit margins,⁴¹ but did not include regulatory testing, compliance or enforcement costs, which were not estimated or considered by DOE in the June 2016 rulemaking proceeding. Consistent with MHARR's findings, a June 2021 HIRL report found that the 2021 IECC would result in a national incremental construction cost increase of \$6,548 to \$9,301 for a specified reference home of 2,500 square feet, depending on the compliance mechanism selected.⁴² The same analysis shows a national simple construction cost payback period ranging from 32 to 67 years, again based on the compliance mechanism. Prorating these amounts to the smaller size of an "average" single-section and double-section manufactured home, as determined by the U.S. Census Bureau, and including industry-standard profit margins identical to those used in MHARR's 2016 calculation, the 2021 IECC would yield a minimum incremental retail-level price increase of \$7,958.00 for an "average" single section manufactured home and a minimum incremental retail-level price increase of \$12,908.00 for an "average" double-section manufactured home.⁴³ And again, it must be stressed that as large as these amounts are, they are only partial, in that: (1) they do not include regulatory testing, compliance or enforcement costs; and (2) do not include costs attributable to future changes to the IECC and the costs of compliance with such future modifications.

Price increases of this magnitude within the highly cost-sensitive manufactured housing market would be devastating to lower and moderate-income consumers who rely on the purchase price affordability of manufactured housing and would also be in direct violation of federal law. First, price increases of this magnitude would exclude millions of Americans from the manufactured housing market and from homeownership altogether. An NAHB analysis presented to the DOE Manufactured Housing Working Group in 2014, demonstrated that for every \$1,000.00 increase in the purchase price of a single-section manufactured home, 347,901 households are excluded from the market. Similarly, for a double-section home, a \$1,000.00 purchase price increase excludes 315,385 households from the market.⁴⁴ Extrapolating these amounts to the purchase price increases under the 2021 IECC calculated above, a minimum of 2,748,417 households would be excluded from the single-section manufactured housing market (and homeownership altogether) and a minimum of 4,068,466 households would be excluded from the double-section manufactured housing market.⁴⁵ In total, therefore, a minimum of 6,816,883 households that could afford to purchase a manufactured home now, would be totally excluded from the market under the 2021 IECC. At a 2020 annual production level of 94,390 total homes, this degree of consumer exclusion represents a loss of more than 72 years of manufactured home production. Furthermore, for those excluded from the market altogether due to 2021 IECC-driven

⁴¹ Industry-standard builder and retailer profit margins were calculated as multiples of 2.0 and 1.4 by MHARR, based on input from smaller, independent producers.

⁴² See, HIRL Report at p. 14.

⁴³ I.e., for a single-section home: \$6,548.00/2,500 square feet = \$2.619 per square foot x 1,085 square feet (for an "average" single-section manufactured home) = \$2,842.00 x 2 (builder profit) = \$5,684.00 x 1.4 (retailer profit) = \$7,958.00 retail level price increase. For a double section home: \$6,548.00/2500 square feet = \$2.619 per square foot x 1,760 square feet (for an "average" double-section manufactured home) = \$4,610.00 x 2 (builder profit) = \$9,220.00 x 1.4 (retailer profit) = \$12,908.00 retail level price increase.

⁴⁴ See, MHARR 2016 DOE Comments at p. 25.

⁴⁵ For single section manufactured homes: \$7,958.00 (minimum retail price increase) x 347,901 (excluded from the market per \$1,000.00 price increase) = 2,748,417 excluded. For double section manufactured homes: \$12,908 (minimum retail price increase) x 315,385 (excluded from the market per \$1,000.00 price increase) = 4,068,466 excluded.

price increases, by definition, there would be no “life-cycle” savings whatsoever, and no payback period of any kind.

Second, and in addition to this excessive and disproportionate level of total market exclusion, cost increases of this magnitude would substantially reduce the number of lower and moderate-income purchasers who could qualify to finance a manufactured home purchase. Already, at current retail price levels, the vast majority of applications for manufactured home consumer purchase loans are denied. According to a May 2021 report by the U.S. Consumer Financial Protection Bureau (CFPB), only “a minority (27 percent) of consumers who applied for a loan to buy a manufactured home succeeded in obtaining financing.”⁴⁶ Of those who did not obtain financing, the majority were denied.... An estimated 42 percent of all manufactured home purchase applications were denied, including 50 percent of chattel [loan] applications.... In comparison, only 7 percent of site-built [loan] applications were denied.”⁴⁷(Emphasis added). By increasing purchase price levels and corresponding cost burdens for consumers remaining in the market, the number of potential manufactured housing purchasers who could qualify for consumer financing would be substantially reduced and the affordability of manufactured housing in relation to site-built and other types of housing would disappear, again in violation of existing law.

Furthermore, as the May 2021 CFPR Report emphasizes, the higher level of rejection rates within the chattel or personal property manufactured housing purchase loan sector – which will be significantly exacerbated by ANSI 2021-based DOE energy standards – will disproportionately impact and harm “Hispanic white, Black and African American and American Indian and Alaska Native borrowers” who make up larger shares of [manufactured home] chattel borrowers than among ... site-built loan borrowers.”⁴⁸“This will especially be the case for “Black and African American borrowers,” who are “overrepresented in [manufactured home] chattel lending compared to site-built.”⁴⁹

In summary, then, on cost grounds alone (including disparate negative impacts on racial and other minority communities), the IECC is not an appropriate or legitimate code for affordable manufactured homes. Furthermore, the IECC has been developed – including in its 2021 iteration – pursuant to a voting system that gives final authority over its provisions to state and local building code officials who are not responsible for the development of manufactured housing standards and have not been responsible for such standards since the enactment of the first federal manufactured housing standards law, nearly 50 years ago. Accordingly, the IECC is fundamentally and organically not an appropriate code for manufactured housing and cannot be transformed into one or shoehorned by DOE through changes and modifications around its periphery. Rather, the only appropriate code for manufactured housing is the HUD Code, subject to all applicable law governing its substance and development procedures.

⁴⁶ This contrasts with a success rate of “74 percent of [loan] applications for site-built homes.” See, CFPB Report, supra at p. 4.

⁴⁷ See, CFPB Report, supra at p. 15.

⁴⁸ Id. at p. 31.

⁴⁹ Id.

C. FURTHER ISSUES THAT MUST BE EVALUATED REGARDING ANY PROPOSED MANUFACTURED HOUSING ENERGY RULE

Beyond and in addition to the fact that the IECC – and particularly the 2021 IECC – is not an appropriate, valid, or legitimate basis for manufactured home energy standards, the foregoing analysis, statutory mandates, policy directives and relevant facts establish the minimum parameters that must be analyzed pursuant to NEPA in relation to the development of any such standard(s). These include, but are not necessarily limited to the following:

- Consideration and evaluation of the full cost of any proposed DOE regulation, including testing and regulatory compliance costs,⁵⁰ as well as the cost of regular modifications based on continuing cyclical changes to the IECC;
- Consideration and evaluation of all domestic costs in relation to alleged domestic benefits;⁵¹
- The impact of any proposed rule on the retail-level purchase price of manufactured housing;
- The impact of any proposed rule on the availability of manufactured homes to all Americans, with a particular focus on minorities, underserved communities and lower-income families and individuals;
- The impact of the proposed rule on homelessness (including large-scale market exclusion);⁵²
- The impact of the proposed rule on manufactured home consumer financing and the availability of financing for lower and moderate-income purchasers;
- The impact of the proposed rule on racial equity;
- The impact of the proposed rule on economic justice within the housing market;
- The impact of the proposed rule on competition within the manufactured housing market and whether any proposed rule would tend to promote a loss of competition, leading to higher purchase prices and a decline in the availability of affordable manufactured homes;
- The specific impact of the proposed rule on smaller manufacturers and smaller industry businesses;
- The impact of the proposed rule on the health of manufactured housing residents (i.e., indoor air quality);

⁵⁰ A key failure of the 2016 DOE manufactured housing energy standards rulemaking, as emphasized by MHARR at the time, was DOE’s total failure to scope and calculate – as foreseeable costs of the proposed rule – costs related to testing, enforcement and regulatory compliance. See, MHARR 2016 DOE Comments at pp. 27-28.

⁵¹ A further material failure of the 2016 DOE manufactured housing energy standards rulemaking was its netting of alleged “global” benefits of the proposed rule, with partial domestic costs. In order to ensure a valid and legitimate “apples-to-apples” cost-benefit analysis, any new EIS (and rulemaking) must net the full domestic cost of any proposed rule (insofar as manufactured housing is a domestic-only industry) against the alleged domestic benefits of the proposed rule. Any other comparison and netting would be fundamentally invalid.

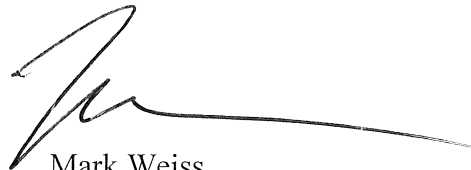
⁵² Another key failure of the 2016 DOE manufactured housing energy standards rulemaking, as similarly emphasized by MHARR at the time, was DOE’s total failure to consider the full extent and costs of the exclusion of significant numbers of purchasers and potential purchasers from the manufactured housing market due to regulatory-driven purchase price increases, consistently escalating costs due to the EISA directive to track changes to the IECC, and the cumulative adverse societal impacts flowing from such levels of market exclusion. See, MHARR 2016 DOE Comments at pp. 28-30.

- The impact of the proposed rule on the availability of affordable housing;
- Conflicts between the proposed rule and other aspects of federal law relating to manufactured housing;
- Regulatory compliance mechanisms and related costs of testing, regulatory compliance and enforcement.

III. CONCLUSION

For all of the foregoing reasons, MHARR maintains that the IECC – and particularly the 2021 IECC -- is not a legitimate or valid basis for any manufactured housing energy standard(s), and that no version of the IECC should be adopted or form the basis for any such DOE standard(s). Instead, considering the full cost of the adoption of any IECC-based standard – including market exclusion, societal costs and racially-disparate impacts – DOE should forgo any IECC-based standard or other costly new mandate and instead base any new or updated manufactured housing energy standard on the existing HUD Code, using the full procedures established by the Manufactured Housing Improvement Act of 2000.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Weiss', with a long horizontal flourish extending to the right.

Mark Weiss
President and CEO

cc: Hon. Joseph R. Biden
Hon. Jennifer Granholm
Hon. Marcia Fudge
Office of Management and Budget