



Manufactured Housing Association for Regulatory Reform

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April 26, 2022

VIA ELECTRONIC SUBMISSION

Manufactured Housing Task Force
White House Council on Environmental Quality
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Manufactured Housing Task Force – Further Listening Session Comments

Dear Sir or Madam:

The following second 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 subject to federal regulation 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) (42 U.S.C. 5401, et seq.), and the U.S. Department of Energy (DOE) pursuant to section 413 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17071). MHARR was founded in 1985. Its members include producers of manufactured housing located in all regions of the United States.

MHARR, as a national representative of federally-regulated manufactured housing producers, has been invited to participate in listening sessions being conducted by the federal Manufactured Housing Task Force (Task Force) established by the White House Council on Environmental Quality (CEQ). As enunciated in that invitation, the Task Force is slated to address, with stakeholders and relevant federal agencies, four issue areas affecting the manufactured housing market and the availability and utilization of manufactured housing as a source of inherently-affordable housing and homeownership for lower and moderate-income Americans. These include:

1. The state of manufactured housing finance options and opportunities to enhance the lending market;
2. Homebuyer counseling, consumer awareness and protections;
3. The role of state and local governments to enhance the availability of manufactured housing as an affordable housing option; and

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4. The potential role for Community Development Finance Institutions, credit unions, and other mission-driven lenders to participate in the [manufactured housing] market.

The first three Task Force listening sessions have already been conducted. MHARR is deeply concerned, based on those sessions that the Task Force, instead of being focused on the accomplishment of President Biden’s policies and objectives with respect to the availability of affordable housing for lower and moderate-income Americans, and an equitable housing market for all Americans, will instead be used in a misguided and ultimately futile effort to mitigate the extreme cost impacts and related market exclusion that would result from pending federal manufactured housing “energy conservation” standards. Such standards, as detailed below, are entirely unnecessary and would inevitably harm lower and moderate-income Americans who rely on the current availability of HUD Code manufactured homes, irrespective of any policy “Band-Aids” that might be offered by the Task Force. Rather than acting as a fig-leaf for baseless, destructive and unnecessary federal energy standards, the Task Force should instead focus on the real issues that have – and continue to – constrain the availability of inherently affordable manufactured housing.

Given such a proper focus, and given the status of manufactured housing as the only segment of the housing industry to be regulated comprehensively at the federal level, the CEQ Task Force is uniquely positioned and has the unparalleled opportunity to both address and – more importantly – affirmatively rectify and remedy the matters assigned to it, involving baseless and discriminatory impediments, restrictions and limitations that have constrained and suppressed the manufactured housing market while, at the same time, needlessly excluding millions of Americans from the manifold benefits of homeownership. The one and only meaningful measure of success for the Task Force, accordingly, will not be in merely providing a forum for the discussion, debate and consideration of these issues, but in providing and ensuring concrete, productive solutions that will unleash the full economic vibrancy and potential of the industry to help solve the nation’s affordable housing crisis. Put differently, it is time for concrete action at the federal level to help manufactured housing help America, by reaching its full and unbounded potential as an affordable housing resource for millions of new homeowners.

MHARR has written extensively about the regulatory and policy-based impediments that have needlessly restricted the growth and evolution of the mainstream manufactured housing market, while the nation’s housing deficit, reported by Freddie Mac at the end of 2020 to be approximately 3.8 million homes -- with an even more severe shortfall in the availability of affordable “starter homes” -- has only intensified.¹ While these obstacles are not the *only* impediments faced by the industry and by consumers of affordable manufactured housing, they are both economically significant and endemic as demonstrated by the findings of a May 2021 study by the Consumer Financial Protection Bureau (CFPB).² These key obstacles – all affecting and impacting the industry’s post-production sector – are:

¹ See, Freddie Mac, “Perspectives Research: The Significant Shortage of Starter Homes,” S. Khater (April 15, 2021).

² See, Consumer Financial Protection Bureau, “Manufactured Housing Finance: New Insights from the Home Mortgage Disclosure Act Data,” (May 2021) (CFPB Report).

1. The total absence of federal support for the manufactured home personal property (chattel) lending market, notwithstanding the “Duty to Serve” (DTS) directive of the Housing and Economic Recovery Act of 2008 (HERA), resulting in higher-than-market-competitive interest rates on the consumer loans which support nearly 80% of the manufactured housing market;
2. Discriminatory and exclusionary zoning which prevents the placement of affordable manufactured homes in many jurisdictions and communities, including areas where affordable housing is most critically needed; and
3. Impending federal energy standards, which are unnecessary and unnecessarily costly, and will needlessly exclude millions more Americans from the manufactured housing market.

MHARR, in its initial April 18, 2022, Task Force comments, has already addressed manufactured home personal property consumer lending. In these comments, MHARR will concentrate on the two other crucial issues that must be a focus for the Task Force and must be resolved for manufactured housing to reach its full and unbridled potential as a source of affordable housing and homeownership, particularly for lower and moderate-income Americans. While these additional issues – discriminatory and exclusionary zoning and pending excessive federal energy standards – are addressed briefly herein, much more extensive comments and related documentation have already been provided by MHARR to HUD and Congress with respect to discriminatory and exclusionary zoning; and to DOE with respect to baseless, costly and damaging “energy conservation” standards. MHARR stands ready to provide those additional materials to the Task Force upon request and to provide such other and further documents and information as may be helpful to the Task Force and its important mission.

1. Discriminatory and Exclusionary Zoning

Beyond the failure of the Federal Housing Finance Agency (FHFA) and the Government Sponsored Enterprises (GSEs) to implement the statutory Duty to Serve mandate with respect to the personal property financing which serves the vast bulk of the mainstream manufactured housing market, as detailed in MHARR’s initial Task Force comments, discriminatory and exclusionary zoning mandates enforced by state and local governments have also acted to restrict the availability of affordable manufactured housing and the growth of the manufactured housing market. These mandates, which can exclude manufactured housing entirely or restrict manufactured housing to less desirable areas – typically based on negative perceptions regarding the “mobile homes” of yesteryear, rather than today’s modern, affordable manufactured housing - - are especially prevalent in cities and other more densely-populated areas, where the need for affordable housing and homeownership is most pressing, and where the racially discriminatory impacts and consequences of housing and homeownership inequity are the most profound.

As a result of MHARR’s efforts, Congress was aware of the targeted exclusion of affordable HUD Code homes and manufactured homeowners when, in 2000, it substantially amended the federal law authorizing HUD’s regulation of the manufactured housing industry. While that original law, adopted in 1974, had always included a federal preemption provision, that provision, specifically referencing federal construction and safety standards, had been interpreted by HUD as not pertaining to the exclusion of HUD-regulated homes pursuant to state or local

zoning authority. Subsequent to the advent of federal superintendence of the industry,³ however, the discriminatory exclusion or restriction of manufactured housing had expanded significantly. Consequently, when the Act was amended by Congress in 2000, MHARR sought and obtained an expansion and clarification of the federal law’s preemption provision.⁴

In relevant part, the bipartisan amendments adopted by Congress in 2000 and signed into law by President Clinton, significantly expanded the scope and reach of federal preemption with respect to today’s modern, affordable manufactured housing and HUD’s regulation of the industry. In 2012 testimony before Congress, MHARR summarized these changes as follows:

The 2000 law expanded preemption three ways. It told HUD to apply preemption “broadly and liberally;” it extended preemption to state or local “requirements” that are not necessarily [construction or safety] standards; and it expanded the basis for preemption to include interference with the comprehensive federal “superintendence” of the industry. As a result, the touchstone of federal preemption is no longer limited to the extremely narrow, “same aspect of performance” test that HUD routinely used as an excuse not to enforce preemption under the 1974 law.

The most significant of these amendments for zoning and placement exclusion at the state and local level, is the extension of federal preemption, under the Act, to all types of state and local “requirements” affecting manufactured housing and HUD’s superintendence of the industry, including its obligation under the 1974 Act, as amended, to “facilitate the availability of affordable manufactured homes and to increase homeownership for all Americans.”⁵ That the addition of the term “requirements” to the Act’s preemption authority was meant to expand its reach to exclusionary state and local zoning and placement “requirements” prohibiting or restricting the use and availability of HUD-regulated manufactured housing, was made absolutely clear by prominent congressional proponents of the 2000 law, including Rep. Barney Frank (D-MA), Rep. Maxine Waters (D-CA) and Rep. Bennie Thompson (D-MS), in a contemporaneous letter to HUD Secretary Mel Martinez.⁶ In relevant part, that letter states:

... [T]he 2000 Act expressly provides, for the first time, for “federal preemption,” and states that this should 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 the “availability of affordable manufactured homes,” the 2000 Act changes have transformed the Act from solely being a consumer protection law to also being an affordable housing law. More specifically, these combined changes have given HUD the legal authority to preempt local requirements or restrictions which discriminate against the siting of manufactured

³ See, e.g., 24 C.F.R. 3282.11(d) referring to “federal superintendence of the manufactured home industry as established by the [1974] Act.”

⁴ See, 42 U.S.C. 5403(d).

⁵ See, 42 U.S.C. 5401(a)(2).

⁶ See, Attachment hereto.

homes (compared to other single-family housing) simply because they are HUD Code homes. We ask that HUD use this authority ... to address this issue....

(Emphasis added).

Given this expression of Congress' bipartisan intent regarding the 2000 preemption amendments, there can and should be no doubt regarding HUD's statutory authority to preempt and override the abuse of state and/or local zoning authority to exclude today's modern, affordable, HUD-regulated manufactured homes and the lower and moderate-income Americans who rely on manufactured homes for affordable access to homeownership. Moreover, given the preponderance of racial minorities (and the elderly) among chattel-financed manufactured homebuyers – representing the vast bulk of new manufactured home purchases – as determined by CFPB, the invalidation of those exclusionary mandates would foster and promote racial equity in accordance with the preeminent policy priorities of President Biden and HUD's equity objectives as expressed by Secretary Fudge at the April 14, 2022 White House Convening on Racial Equity.

By contrast, if HUD does not eliminate such state and local barriers to the placement of affordable manufactured homes, there is no level of federal spending or policy intervention that will have any meaningful affect or impact in increasing the availability of affordable manufactured homes. Indeed, as MHARR will detail in a soon-to-be-released White Paper, even current and existing federal affordable housing programs, which nominally include manufactured housing, have – and will continue – to fail to achieve economically-significant results “on the ground” because of ingrained official and institutional resistance to manufactured housing in many communities. Accordingly, the elimination of existing zoning and placement barriers is, in practical terms, a necessary predicate for the success of any supportive federal programs for manufactured homebuyers. The Task Force, therefore, should recommend that HUD finally – after 22 years – use the clear federal authority provided to it by Congress in the 2000 reform law, through enhanced federal preemption, to end the existing baseless and endemic discrimination against manufactured homes and the Americans who rely on them for access to affordable homeownership.

2. Excessive Pending Federal Energy Standards

MHARR, in multiple comments submitted to DOE, has expressed its opposition to pending proposed energy conservation standards for manufactured homes. Those comments, detailing the bases for MHARR's strong opposition to those standards, are available through DOE and will not be repeated here for the present time. Suffice it to state, however, that those standards, as proposed, are unnecessary, unnecessarily costly and will inevitably exclude millions of lower and moderate-income Americans from the manufactured housing market and from homeownership altogether – directly contrary to the letter and intent of federal housing law as expressed in both the 1974 Act and the 2000 reform law -- for absolutely no valid or legitimate reason.

As MHARR has demonstrated in its administrative comments on the proposed DOE standards, today's modern, affordable HUD-regulated manufactured homes are already energy efficient. Data compiled by the U.S. Census Bureau in the most recent American Housing Survey, shows that monthly average energy costs for manufactured homes are already lower than

comparable costs for single-family site-built homes for all tracked fuel types (i.e., electricity, piped gas and fuel oil). Manufactured homeowners and residents, accordingly, already use less and pay less for energy than their counterparts in site-built housing. Manufactured home purchasers, moreover, already have full access to Energy Star homes and a complete range of other energy-related features as options at the time of their purchase. A federal energy mandate, accordingly, is not only unnecessary, but would interfere with consumer choice and free market decisions regarding home features.

Such an unnecessary mandate moreover, would significantly increase the purchase price of manufactured housing, thereby excluding potentially millions of lower and moderate-income Americans from the manufactured housing market and from homeownership altogether. As MHARR's comments in the DOE rulemaking docket demonstrate, energy mandates as proposed by DOE would increase the purchase price of new manufactured homes by a minimum of \$6,279.00 for single-section manufactured homes and \$9,366.00 for a double-section manufactured home.⁷ Based on market exclusion metrics presented to the DOE Manufactured Housing Working Group by the National Association of Home Builders, this would result in the exclusion of more than 5 million households – representing more than 50 years of industry production at 2021 levels -- from the manufactured housing market given the relative price inelasticity of the manufactured housing market and its prevalence of lower-income purchasers. Further, as noted above, this mass exclusion of lower-income purchasers would disproportionately impact the racial minorities and elderly who predominate among chattel borrowers purchasing the industry's currently most affordable homes.⁸ Needless and needlessly costly DOE energy standards, accordingly, will not only exacerbate homelessness within the United States, contrary to Biden Administration policy, but will also target and cause the most profound harm to lower and moderate-income Americans, and racial minorities and the elderly within this group, who currently rely the most on manufactured housing's inherent affordability.

Nor can the devastating effects of such extreme levels of market exclusion be offset or even significantly ameliorated by subsidies, grants, or tax mechanisms, as has been suggested by some commenters in the DOE manufactured housing energy standards rulemaking docket. First, even if such measures were available and universally accessible to all manufactured homebuyers, high-cost energy standards would still fundamentally conflict with – and unlawfully undermine – existing federal manufactured housing law, which affirmatively mandates the availability of organically and inherently affordable manufactured housing and requires all manufactured housing construction and safety standards to be cost-effective with respect to the purchase price of the home. Second, even if palliative measures were established, expanded, or increased – an unlikely scenario in itself -- they would undoubtedly still leave many likely or potential manufactured homebuyers unserved, as is the case currently with DTS. And third, even if such measures were established, expanded, or increased, they would likely have little impact due to ongoing local

⁷ These amounts are necessarily lower than the final purchase price impact of the DOE energy standards as finally adopted, because they do not include and do not reflect costs pertaining to enforcement, testing and regulatory compliance. Such costs have never been estimated or assessed by DOE in connection with the current proposed standard, as DOE has not, to date, proposed a system or mechanism for the enforcement of any final standard. Quite obviously, however, any such standard will necessarily have and impose on manufacturers – and ultimately consumers – certain regulatory compliance costs.

⁸ See, MHARR Comments, “Energy Conservation Standards for Manufactured Housing,” October 25, 2021 at p. 10.

resistance to the placement of manufactured homes as noted previously. Consequently, adoption of the currently-proposed DOE energy standards for manufactured homes, would result in a “triple-whammy” for lower and moderate-income consumers of manufactured housing, that could not be adequately remedied by federal largesse.

Based on these predictable, profoundly damaging impacts on those Americans most in need of homeownership and sound federal stewardship of the manufactured housing industry, MHARR urges and respectfully asks President Biden to exercise much-needed leadership in this arena, and direct DOE to withdraw the currently-pending manufactured housing energy conservation standards proposed rule. The proposed standards have been developed through an unlawful process and organically violate the 2000 reform law. Instead of imposing such unlawful and ultimately destructive standards, DOE should instead work with HUD and the statutory Manufactured Housing Consensus Committee (MHCC) through the statutorily-prescribed MHCC process, to develop consensus-based, cost-effective updates to the current HUD manufactured housing energy standards, if needed, to achieve results consistent with the unique construction and affordability of federally-regulated manufactured housing, and with the genuine needs and wants of the Americans who rely on manufactured housing for access to truly affordable housing and homeownership.

While MHARR thanks CEQ, the White House and President Biden for convening the Manufactured Housing Task Force and its listening sessions, that effort would ultimately be wasted unless the three major impediments to the greater availability and utilization of inherently affordable manufactured homes – (1) the absence of federal support for manufactured home personal property lending; (2) discriminatory and exclusionary zoning; and (3) destructive impending federal “energy” regulation -- are decisively and effectively resolved. MHARR, as always, stands willing to work with all relevant federal entities to address these matters.

Sincerely,



Mark Weiss
President and CEO

cc: Hon. Joseph R. Biden
Hon. Marcia Fudge
Hon. Jennifer Granholm
Hon. Sandra Thompson
Federal Manufactured Housing Task Force Members
HUD Code Manufactured Housing Industry Members

Attachment

Congress of the United States

Washington, DC 20515

November 13, 2003

Honorable Mel Martinez
Secretary
Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Dear Secretary Martinez:

We are writing to express our deep disappointment in HUD's July 17 rejection of the Manufactured Housing Consensus Committee recommendation, which addresses the problem of discrimination in the siting of manufactured homes. We ask HUD to use its expanded authority under the "Manufactured Housing Improvement Act of 2000" to address this growing problem, which is undermining homeownership opportunities for low-income and minority Americans.

The Millennial Housing Commission concluded that "During the 1990s, manufactured housing placements accounted for one quarter of all housing starts and, from 1997 to 1999, 72 percent of new units affordable to low income homebuyers." Unfortunately, discrimination against the siting of manufactured homes continues to undermine its full potential to meet the needs of low-income homebuyers. A September 2002 Ford Foundation study on manufactured housing notes that "zoning and code rules continue to be a major barrier," and that "the vast majority of local governments continue to discriminate against manufactured housing, thereby limiting its potential to meet the need for affordable housing."

You have made homeownership a top Administration priority, emphasizing opportunities for low-income Americans. You have also made reducing local barriers to affordable homeownership a top priority, announcing on June 10th a Department-wide effort to break down such barriers, in order to create "an environment to increase minority homeownership."

The very first recommendation of the the Manufactured Housing Consensus Committee addressed the problem of discrimination against the siting of manufactured homes, through a prohibition against localities enforcing discriminatory covenants made by private landowners. We believe HUD's summary rejection of this proposal is inconsistent with HUD's stated priority of removing barriers to affordable low-income homeownership opportunities.

We understand that HUD may have concerns about its legal authority to implement this particular proposal. But, we believe HUD should have taken this opportunity to use its expanded legal preemption authority under the 2000 Act to develop a Policy Statement or regulation to make it clear that localities may not engage in discriminatory practices that unfairly inhibit or prohibit development and placement of manufactured housing. We understand that some in the industry have asked HUD to take such action and we urge HUD to be responsive to this request.

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We are also troubled by the legal analysis HUD used in its July 17th rejection of the Consensus Committee recommendation. HUD's analysis relies on rulings in court cases that predated the 2000 Act amendments, which render such rulings obsolete. Moreover, HUD's legal analysis states that the 2000 Act amendments "did not modify the basic substance of the statutory preemption provision." Such a statement ignores the plain language of the 2000 Act changes.

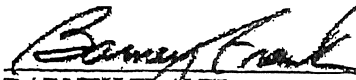
Prior to the 2000 Act changes, the statute merely prohibited states and localities from establishing any standard regarding construction or safety "applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard." The 2000 Act broadened this provision to add that: "*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 title." [italics added].

The 2000 Act amendments also expanded the findings and purposes of the Act. Prior to 2000, the statutory findings declared it necessary to establish construction and safety standards merely "to reduce injuries, deaths, insurance costs and property damage," and "to improve the quality and durability of manufactured homes." The 2000 Act amendments introduce the new findings that "manufactured housing plays a vital role in meeting the housing needs of the nation," and that "manufactured homes provide a significant resource for affordable homeownership." New purposes were also introduced by the 2000 Act, which include protecting the "affordability of manufactured homes," and "facilitating the availability of affordable manufactured homes and to increase homeownership for all Americans."

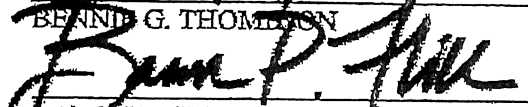
Thus, the 2000 Act expressly provides, for the first time, for "Federal preemption," and states that this should be "broadly and liberally construed" to ensure that local "requirements" do not affect "Federal superintendence of the manufactured housing industry." Combined with the expansion of the findings and purposes of the Act to include for the first time the "availability of affordable manufactured homes," the 2000 Act changes have transformed the Act from solely being a consumer protection law to also being an affordable housing law.

More specifically, these combined changes 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. We ask that HUD use this authority to develop a Policy Statement or regulation to address this issue, and we offer to work with you to ensure that it comports with Congressional intent.

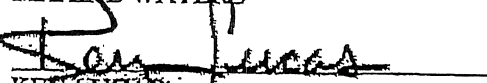
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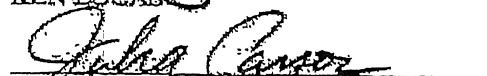

BARNEY FRANK


BERNARD G. THOMPSON


BARON P. HILL


MAXINE WATERS


KEN LUCAS


JULIA CARSON