Manufactured Housing Association for Regulatory Reform

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TESTIMONY OF THE

MANUFACTURED HOUSING ASSOCIATION FOR REGULATORY REFORM

ON THE IMPLEMENTATION OF THE MANUFACTURED HOUSING IMPROVEMENT ACT OF 2000

BEFORE THE

SUBCOMMITTEE ON INSURANCE, HOUSING AND COMMUNITY OPPORTUNITY

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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I. INTRODUCTION

The following testimony is submitted on behalf of the members 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, as amended by the Manufactured Housing Improvement Act of 2000 (2000 law). MHARR was founded in 1985 and primarily represents medium and smaller-sized independent producers of manufactured housing from all regions of the United States.

MHARR commends the Subcommittee on Insurance, Housing and Community Opportunity, Chairperson Judy Biggert and Ranking Member Luis Gutierrez for convening this oversight hearing to specifically examine the implementation of the Manufactured Housing Improvement Act of 2000 and for providing MHARR the opportunity to detail the failure of the HUD Office of Manufactured Housing Programs (HUD program) to fully and properly implement key reform provisions of that law, as well as the impact of that failure on the manufactured housing industry and American consumers of affordable housing. MHARR also commends and appreciates the request made by Chairperson Biggert and Financial Services Committee Chairman Spencer Bachus to the Government Accountability Office (GAO) -- in conjunction with this hearing and the November 29, 2011 Danville, Virginia field hearing on "The State of Manufactured Housing" -- for a probe of specific aspects of the HUD manufactured housing program, including its implementation of the 2000 law and its excessive budget, appropriations requests and misspending.

Today's manufactured homes are a much superior product than the "mobile homes" of years past due to the maturation of the industry, innovative manufacturing techniques that take full advantage of the efficiencies inherent in indoor production and assembly, and updates to the federal law that governs the industry – contained in the Manufactured Housing Improvement Act of 2000 – that ensure the proper installation of all manufactured homes and the prompt resolution of consumer issues in addition to the regulation of manufactured housing construction and safety as established by the original 1974 manufactured housing law.

Manufactured housing is an outstanding value for consumers. Factory construction allows builders to produce manufactured homes for 10-35% less than the cost of comparable site-built construction. These savings, in turn, are passed on to homebuyers, as the average price (without land) for a manufactured home is $63,000, as contrasted with an average of $273,000 for a site-built home. Modern manufactured homes thus provide millions of Americans with the most affordable housing and home ownership option available without costly government subsidies. Literally, manufactured housing stands alone in its ability to help lower and moderate-income Americans achieve the American Dream of home ownership.

The manufactured housing industry is also uniquely American. Comprised of thousands of mostly smaller businesses, it has historically been not only the nation's leading source of inherently affordable home ownership, but an important source of manufacturing jobs and job opportunities in related industries across the heartland of America, including retail centers, communities, component fabricators and suppliers, transporters, insurers and finance companies, among many others. Today, though, millions of Americans who wish to own and live in their

own home and are attracted to manufactured housing because of its affordability and quality are unable to purchase a manufactured home because of discrimination rooted in federal policies and particularly HUD's failure – as the industry's federal regulator – to fully and properly implement crucial reforms contained in the 2000 law.

The numbers are startling. Over the past decade, manufactured home production has declined by more than 86% (from 373,143 homes in 1998 to 50,046 in 2010 and 50,000 +/- in 2011). Over the same period, nearly 75% of the industry's production facilities have closed (from 430 to fewer than 110), as have more than 7,500 retail centers. This represents a devastating loss of affordable housing opportunities for lower and moderate-income American families, while tens, if not hundreds of thousands of jobs throughout the manufactured housing industry have simply disappeared.

As these statistics demonstrate, the industry's downturn began long before the financial crisis and decline of the broader housing market starting in 2008, and has been much more severe. This indicates that while the manufactured housing market is not immune from trends within the broader economy and the broader housing market, its unprecedented decline – both in productions levels and duration – is a consequence of other factors unique to manufactured housing, specifically, continuing and worsening financing and regulatory discrimination against manufactured housing and manufactured home-buyers that flows directly from policy decisions by HUD concerning the implementation of the Manufactured Housing Improvement Act of 2000.

That watershed law, enacted by Congress with unanimous bi-partisan support, was designed to modernize and reform the HUD manufactured housing program and complete the transition of manufactured housing from the "trailers" of yesteryear to legitimate "housing" at parity with all other types of homes. HUD, though, instead of implementing this legislation fully and in accordance with its express terms and purposes has, over multiple administrations, made a mockery of its most important reforms, ignoring some and distorting others through unilateral "interpretations," as is explained in detail below. By failing to fully and properly implement the 2000 law and by failing to achieve or even pursue its fundamental purpose of ensuring the status of manufactured homes as legitimate housing for all purposes, HUD has placed the manufactured housing industry and manufactured homebuyers in a no-win position.

First, it has enabled and facilitated discrimination against manufactured housing and manufactured homebuyers in public and private financing by the Government National Mortgage Association (GNMA) and the Government Sponsored Enterprises (GSEs), which effectively view manufactured homes as "trailers" and have thus imposed punitive terms and restrictions on manufactured home financing. These restrictions have decimated the availability of manufactured home purchase financing – especially the industry's most affordable homes financed through personal property (i.e., chattel) loans -- have frozen millions of lower and moderate-income Americans out of the manufactured housing market altogether and have undermined competition within the manufactured housing finance market.

Second, the affordability of manufactured housing is being needlessly undermined by unnecessary and unnecessarily costly expansions of federal regulation wholly outside of the consensus process and other reforms established by the 2000 law. These policies, moreover, by disproportionately increasing regulatory burdens, compliance costs and financing difficulties for

the industry's smaller independent businesses, are destroying competition and underwriting the domination of the manufactured housing market by one or two large conglomerates to the ultimate detriment of consumers and the industry as a whole.

It must be stressed, however, that the 2000 law, itself, is not at fault. Indeed, Congress deserves to be commended for crafting such a forward-looking, comprehensive housing law. That law, based on 12 years of study, fact-finding and debate, including the analysis and recommendations of the National Commission on Manufactured Housing -- created by Congress and representing all stakeholders in the federal manufactured housing program -- is clear and unequivocal in expressing Congress' intent and in mandating specific reforms to the HUD manufactured housing program. Rather, it is HUD's improper and distorted implementation of the law that is responsible for the extended and continuing decline of the industry – and corresponding hardships for manufactured housing consumers -- since its adoption.

As a result, the solution for the industry and consumers of affordable housing does not lie in the enactment of more laws or amendments to the existing law. Rather it lies in effective oversight by Congress designed to: (1) re-state and reaffirm that, in the view of Congress, HUD has failed to fully and properly implement the 2000 law; and (2) compel HUD to re-evaluate its interpretation and implementation of the 2000 law to date and revise its positions and policies to comply with the express terms of the law and its full intent.

The following sections, accordingly: (1) document key 2000 law reforms that HUD has failed to fully and properly implement; (2) detail the negative impacts of that failure on both the industry and manufactured homebuyers; and (3) explain and refute the rationalizations and excuses that HUD has offered for its distortion of these reforms and the 2000 law.

II. HISTORY OF THE FEDERAL MANUFACTURED HOUSING PROGRAM AND FEDERAL REGULATION

Manufactured housing is affordable housing, historically used primarily by lower and moderate-income families. In order to maintain that affordability without the need for costly government subsidies, manufactured housing construction and safety must be regulated at the federal level. Federal regulation allows the full cost efficiencies and savings of factory-based construction to be passed to homebuyers by ensuring: (1) federal preemption of state and local standards, regulations and requirements, which facilitates interstate commerce and allows manufactured homes to be sited anywhere in the United States; (2) uniform, performance-based standards which facilitate technological innovation to achieve cost savings; and (3) uniform federal enforcement based on a balance between affordability and full protection of homeowners.

These unique concepts to ensure affordable homeownership, especially for lower and moderate-income families, were enshrined by Congress in the National Manufactured Housing Construction and Safety Standards Act of 1974. This law established the basic framework for the current HUD manufactured housing program and most aspects of the federal standards and enforcement system. At the time the 1974 law was adopted, however, manufactured homes were still transitioning from the vehicle-like "trailers" of the Post-War Era to legitimate, full-fledged housing. As a result, Congress based the 1974 law on the existing federal safety law for

automobiles, the National Traffic and Motor Vehicle Safety Act of 1966 (NTMVSA), complete with vehicle-like recall provisions.

As manufactured housing progressed and evolved into full-fledged housing, however, both Congress and the stakeholders in the federal program recognized the need to reform and modernize the original law to acknowledge and protect manufactured homes as legitimate, affordable "housing" at parity, for all purposes, with other types of housing. At the same time, a string of HUD regulatory abuses involving the adoption and enforcement of de facto standards, regulations and regulatory practices through "interpretations" adopted without notice and comment rulemaking, which denied the due process rights of manufacturers and simultaneously imposed needless and unjustified costs on both producers and consumers, highlighted the need for an open, transparent and accountable process for the development of standards, enforcement regulations, enforcement practices and related activities, as well as other fundamental program reforms.

Thus, in December 2000, after 12 years of congressional hearings, studies and analysis – and based upon the recommendations of the National Commission on Manufactured Housing (See, Final Report and Minority Report of the National Commission on Manufactured Housing, August 1, 1994, Attachments A and B) – Congress, on a fully bi-partisan basis, enacted the Manufactured Housing Improvement Act of 2000. This landmark legislation adopted key reforms to the original 1974 law which, if fully and properly implemented by HUD, would help transform manufactured housing from the "trailers" of yesteryear to modern, legitimate housing at parity with other types of homes. These seminal reforms include, but are not limited to:

1. Specific congressional recognition of manufactured housing as "affordable" housing and mandatory consideration of affordability in all decisions relating to the standards and their enforcement (section 602);

2. Creation of an independent, statutory consensus committee comprised of representatives of all program stakeholders with defined authority and procedures to consider, evaluate and recommend new or revised standards, enforcement regulations, interpretations and enforcement and monitoring practices and policies (section 604);

3. Presumptive Manufactured Housing Consensus Committee (MHCC) prior review of all program policies and practices of general applicability and impact (section 604(b)(6));

4. Mandatory appointment of a non-career manufactured housing program administrator as a statutory "responsibility" of the Secretary (Section 620);

5. Significantly enhanced preemption, to be broadly and liberally construed, applicable to all state or local standards or requirements (section 604(d));

6. Establishment of preemptive minimum federal installation standards as part of the Federal Manufactured Housing Construction and Safety Standards and a federal enforcement program for states without state law installation programs (section 605);

7. Establishment of a federal dispute resolution program for states without a state law alternate dispute resolution program meeting specified criteria (section 623);

8. Mandatory congressional appropriations approval of any change to the user fee paid by manufacturers to fund the program (section 620);

9. A prohibition on the use of any such revenues for any purpose not "specifically authorized" by the law as amended (section 620); and

10. Provisions requiring separate and independent contractors for all contract-based program functions including in-plant monitoring and inspections (section 620).

HUD, however, as detailed herein, has failed to fully and properly implement these reforms, effectively leaving manufactured homes as second-class "trailers" for purposes of federal regulation, financing, zoning, placement, insurance and other purposes, subject to overt and specific forms of discrimination that have undermined the availability of affordable manufactured homes and the ability of lower and moderate-income consumers to purchase and own a home that they can truly afford.

III. SPECIFIC 2000 LAW REFORMS THAT HAVE NOT BEEN FULLY AND PROPERLY IMPLEMENTED BY HUD

1. HUD Has Not Appointed a Non-Career Program Administrator

Section 620(a)(1)(C) of the 2000 law directs HUD to "provid[e] ... funding for a non-career administrator within the Department to administer the manufactured housing program." Congress directed the appointment of a non-career program Administrator not only to increase the accountability and transparency of the federal program, but also to act as a full-time advocate for manufactured housing, to "facilitat[e] the acceptance of the quality, durability, safety and affordability of manufactured housing within the Department." Since 2004, however, the manufactured housing program has not had a non-career administrator, while HUD has consistently refused pleas by the industry to comply with this critical reform.

Without an appointed administrator, the HUD program today remains what it has always been since the inception of federal regulation in 1976, a "trailer" program, focused on "improving" presumptively deficient manufactured housing (even though the industry today is producing its best, highest quality homes), instead of increasing the availability and utilization of manufactured housing as a superior source of affordable, non-subsidized home ownership, as directed by Congress in the 2000 law. This program "culture" views ever more onerous, burdensome and costly regulation, with no proven benefits for consumers, as the ultimate objective of the program. (See, e.g., Attachment C, January 11, 2010 correspondence from HUD General Counsel Helen R. Kanovsky to Rep. Travis W. Childers (D-MS): "...updates to the relevant standards and regulations and [HUD efforts] to improve quality control practices will ... attrac[t] lenders back to manufactured housing." See also, Attachment D, June 22, 2010 correspondence from HUD Assistant Secretary David H. Stevens to Rep. Bennie Thompson (D-MS): "You can, therefore, expect to see the Department ... concentrating on maintaining

preemption by updating the elements of performance addressed by the [HUD] construction and safety standards.")

This negative program culture harms the public image of manufactured housing, negatively affecting sales, appreciation, financing, zoning, placement and a host of other matters to the detriment of both the industry and consumers. Moreover, at present, with career-level program management, the manufactured housing program is -- and remains -- cut-off from mainstream policy-making within HUD. This isolates manufactured housing from initiatives that could benefit the industry and consumers, allows continuing discrimination against manufactured housing and its consumers within HUD and elsewhere within the government, and leaves manufactured housing in perpetual "second-class" status at HUD.

HUD has maintained since 2004 that the 2000 reform law "contains no express or implied requirement for the Secretary to appoint a non-career administrator." (See, e.g., Attachment C; Attachment D at p.2). However, this represents a fundamental misreading of the 2000 law.

Section 620(a) of the Act, as amended by the 2000 law, states that the Secretary of HUD "may -- (1) establish and collect from manufactured home manufacturers a reasonable fee ... to offset the expenses incurred by the Secretary in connection with carrying out the responsibilities of the Secretary under this title, including ... (A) conducting inspections and monitoring ... [and] (C) providing the funding for a non-career administrator within the Department to administer the manufactured housing program." (Emphasis added).

By the plain wording of this section, it is the establishment of the program user fee that is subject to the qualifier "may" and is, therefore, permissive. Once that fee is established, however -- as it has been for decades by regulation -- it is to be used to offset expenses incurred in carrying out the Secretary's "responsibilities" as delineated in section 620(a)(1)(A-G). As a matter of black-letter statutory construction, giving each word of the 2000 law its plain, ordinary and common meaning, a congressionally prescribed "responsibility" of a federal official is mandatory, not permissive or discretionary. If HUD's construction of section 620(a)(1) were correct, its "responsibility" to "conduc[t] inspections and monitoring" of manufactured homes, their production and their compliance with the federal standards under section 620(a)(1)(A) would be just as discretionary as its "responsibility" under section 620(a)(1)(C), but HUD has never made any such claim or assertion over the entire 36-year history of the program -- nor would it. Thus, construing section 620(a)(1) consistently, as a whole, the Secretary's responsibility to appoint a non-career administrator for the program is every bit as mandatory as the responsibility to conduct inspections and monitoring in order to enforce the federal standards and Congress should reiterate the mandatory nature of this key program reform.

Congress, accordingly, should instruct HUD to appoint a non-career manufactured housing program administrator with no further delay.

2. Collective Industry Representation on the MHCC Must be Restored

The Manufactured Housing Consensus Committee, as recommended by the National Commission on Manufactured Housing (National Commission) (see, Attachment A at pp. 37-43), was provided by Congress with express statutory authority to review and comment on virtually all HUD actions affecting the federal standards and their enforcement, and to initiate proposed standards, regulations and interpretations, is the centerpiece reform of the 2000 law. Because of its crucial role within the HUD regulatory structure – providing an open, transparent forum for the vetting of proposed actions impacting the construction, safety and affordability of manufactured housing and the development of recommendations to HUD representing a consensus of program stakeholders – it is essential that the MHCC allow for the voting participation and the full, fair and free expression of the views, concerns and interests of all program stakeholders. (As noted by the National Commission, "The consensus collaborative process ... is a critical component of the Commission's mechanism for change. A balance of all interests on the consensus committee guarantees the integrity of the standards." See, Attachment A at p. 41). This is particularly important for HUD Code manufacturers, which are the primary focus of – and bear the highest direct costs under -- both the federal standards and HUD's Procedural and Enforcement Regulations (24 C.F.R. 3282).

Consequently, when the MHCC was organized in 2002, HUD correctly and properly appointed, among seven total "producer" representatives, the leaders of the industry's two national trade organizations (MHARR and the Manufactured Housing Institute – MHI) in order to ensure that the Committee, on each matter coming before it, would have the benefit of the industry's collective perspective and viewpoint. HUD, though, since 2009, has barred collective industry representatives from voting membership on the MHCC based on the stated "preference" of the Administration, later detailed in a June 18, 2010 Presidential Memorandum, that registered federal lobbyists not be appointed to federal agency committees and boards. Under an extension of this policy, HUD has also refused, over the same period, to appoint otherwise qualified, non-lobbyist officials of the two collective national industry organizations to the MHCC, including an MHARR officer who has previously submitted applications.

This action has severely impacted the representation of the industry on the MHCC, depriving it of the benefits of the collective knowledge, know-how, expertise and institutional memory that it has assembled in Washington, D.C. to advance the industry's collective views and positions on standards and regulatory issues, while ensuring that the MHCC functions in full compliance with law. Although HUD has appointed representatives of individual industry businesses to the MHCC, those businesses are regulated by HUD and face potential regulatory backlash and retribution. In addition, individual company representatives are inevitably affected by company-specific concerns, as contrasted with collective industry representatives, who have a duty to act in accordance with broader industry interests.

Thus, industry businesses and most particularly smaller businesses which, for years, have entrusted such functions to collective representatives, have a right – equal to any other MHCC interest group – to be represented on a collective basis. And, in fact, no similar limitation has been placed on any other MHCC interest group. For example, the Executive Director and three other members of the Board of Directors of the same national organization of manufactured homeowners currently serve as MHCC members. Such appointments, combined with the

complete de facto ban on collective industry representation, have drastically skewed the orientation of the MHCC, undermining its carefully crafted balance as required by the 2000 law.

For these reasons alone, collective national industry representation should be restored to the MHCC, given the MHCC's unique statutory mandate, authority and purpose. More importantly, though, recently published "guidance" from the Office of Management and Budget (OMB) implementing the Administration's "preference" regarding lobbyists, shows that HUD's much broader exclusion of non-lobbyist employees and officials from the MHCC is inconsistent with Administration policy and is unsupportable. Specifically, in its "Final Guidance on Appointment of Lobbyists to Federal Boards and Commissions," (see, Attachment E, 76 Federal Register, No. 193, October 5, 2011 at pp. 61756-7), OMB states: "Q2: Does the policy restrict the appointment of individuals who are themselves not federally registered lobbyists but are employed by organizations that engage in lobbying activities? A2: No, the policy established by [Presidential] Memorandum applies only to federally registered lobbyists and does not apply to non-lobbyists employed by organizations that lobby." (Emphasis added).

Therefore, even if HUD's premise that the Administration policy applies to the MHCC is correct – which MHARR disputes and does not accept – the policy does not extend to non-lobbyist employees of MHARR and MHI.

Congress, accordingly, should direct HUD to immediately appoint non-lobbyist representatives of the industry's national trade organizations to the MHCC as voting members in order to restore the effective representation of industry producers most directly and dramatically impacted by the standards and enforcement regulations, and to restore the balance of the MHCC required by the 2000 law.

3. HUD Has Undermined the Role and Authority of the MHCC

A key mission of the MHCC, as stated in the 2000 law, is to provide HUD with "periodic" recommendations to "adopt, revise and interpret" both the federal construction and safety standards and the HUD program's "procedural and enforcement regulations, including ... the permissible scope of and conduct of monitoring...." (See, section 604(a)(3)(A)(i-ii). See also, section 603(20) defining the "monitoring" function).

While the MHCC has, in fact, provided HUD with such recommendations, those consensus recommendations, particularly regarding the HUD regulations and enforcement matters, have routinely been rejected by HUD. HUD, moreover, in more recent years, has refused to even bring regulatory and enforcement matters to the MHCC for consensus review and comment, leaving the MHCC's Regulatory Enforcement Subcommittee with literally no action items despite major changes to the in-plant inspection system as detailed below. It is evident that, at least in part, this action to undermine a core MHCC function is driven by HUD's unwillingness to provide the specific justification and cost-benefit analysis that is required for the MHCC process by the 2000 law. (See, section 604(e) – "The consensus committee, in recommending standards, regulations and interpretations ... shall (4) consider the probable effect of such standard on the cost of the manufactured home to the public; and (5) consider the extent to which any such standard will contribute to carrying out the purposes of this title....").
Furthermore, even MHCC recommendations to update the construction and safety standards

have languished at HUD without action for years – in some cases so long that incorporated reference standards became outdated, forcing further study to update the pending MHCC recommendation. Thus, HUD resistance to the full and proper implementation of the 2000 law has stymied the work of the MHCC in attempting to keep the standards updated and enforcement practices consistent with the purposes of the law and the public interest.

The MHCC was established by Congress in the 2000 law as a replacement for the National Manufactured Housing Advisory Council (Advisory Council), which was simultaneously abolished. Congress terminated and replaced the Advisory Council for two fundamental reasons corresponding with the primary purposes of the 2000 law – to achieve parity between manufactured housing and other types of homes and to reform the HUD program by remedying past abuses involving the development, interpretation and enforcement of the standards.

First, the Advisory Council, as a conventional federal advisory committee, did not function as a "consensus committee." Consensus committees and consensus processes, however, are used to develop, update and construe all other residential building codes in the United States. Thus, the National Commission, noting that "the creation and revision of the [HUD standards] within HUD and without the benefit of an open forum of interests and ideas, is viewed with skepticism," recommended the creation of an independent consensus committee with specific statutory authority representing all program stakeholders that would "not be subject to the provisions of the Federal Advisory Committees Act." (See, Attachment A, p. 40, paragraph 3 and p. 42, recommendation 2.4) (Emphasis added). Congress accepted and expanded this recommendation in establishing of the MHCC and the MHCC consensus process.

Second, Congress abolished the Advisory Council and replaced it with the MHCC because the scope of the Advisory Committee's review authority -- limited solely to HUD-proposed standards – was inadequate to address major cost and cost-efficiency concerns related to interpretations of the standards and enforcement practices, and because the Advisory Council, due to inadequate statutory authority and independence (being, among other things, chaired by a program regulator), was easily and consistently bypassed, manipulated and/or ignored by HUD, which was not required to consider or act on its recommendations, making it ineffectual. (See, Attachment F, November 12, 1987 correspondence excerpts from former Rep. John Linder (R-GA) to HUD Secretary Samuel R. Pierce).

By contrast, the MHCC was designed by Congress to have presumptive authority to review and comment on virtually all HUD proposals and actions affecting the federal standards and enforcement regulations, and their interpretation, and to develop its own standards and enforcement proposals -- a view shared by the entire manufactured housing industry (see, Attachment G, June 1, 2004, Coalition to Advance Manufactured Housing, "Analysis of HUD's Interpretation of the Role and Authority of the Manufactured Housing Consensus Committee" generally and at pp.7-8) and, more importantly, the MHCC itself. (See, Attachment H, February 17, 2004 MHCC letter to HUD Secretary Alphonso Jackson, paragraph 2). (See also, Attachment I, August 11, 2004 MHCC Resolution). The 2000 law thus includes specific statutory mandates as to what types of matters that must be brought before the MHCC (i.e., proposed new or revised standards or enforcement regulations, interpretations, and changes to enforcement-related policies and practices) and when those matters must be brought to the MHCC (i.e., in advance, or be deemed "void" under section 604(b)(6)). It also establishes

specific substantive (i.e., section 604(e)) and procedural requirements (i.e., section 604(a)) for MHCC consideration of those matters, as well as actions the Secretary must take with regard to MHCC recommendations (i.e., sections 604(a)(5) and 604(b)(3)-(4)), which can only become operative with the approval of the Secretary.

HUD, however, since 2004, has maintained that the MHCC is a routine federal advisory committee and has attempted to severely limit its substantive role through baseless, highly restrictive interpretations of the law. HUD has also imposed extreme restrictions on MHCC procedures, based on the Federal Advisory Committees Act (FACA). As is explained in greater detail in section 4, below, however, even if HUD is correct in maintaining that the MHCC is a FACA committee, FACA, by its express terms, can be – and in this case is – superseded by the more specific provisions of the 2000 law.

In a May 7, 2004 opinion letter to the MHCC (responding to Attachment I), HUD interpreted the 2000 law to limit the review and comment authority of the MHCC solely to the federal standards and only those enforcement regulations that "seek to assure compliance with the construction and safety standards." (See, Attachment J at p. 2, paragraph 3). Thus, in one stroke, HUD, by unilateral interpretation of the 2000 law, emasculated the statutory authority of the MHCC to consider and address crucial program matters such as regulations related to the program user fee, payments to the states, program budgeting, use of contractors and use of separate and independent contractors, among others, together with a host of other decisions, policies and practices affecting the cost and availability of manufactured housing, but not constituting a formal standard, regulation or Interpretive Bulletin.

Subsequently, on February 5, 2010, HUD issued a formal "interpretive rule," without opportunity for public comment, which effectively strips the MHCC of nearly all its authority under section 604(b)(6) of the 2000 law to review and comment on a wide range of HUD actions involving enforcement policies and practices that do not fall under the formal Administrative Procedure Act (APA) definition of a "rule." (See, Attachment K, 75 Federal Register No. 24, February 5, 2010, "Federal Manufactured Home Construction and Safety Standards and Other Orders: HUD Statements That Are Subject to Consensus Committee Processes").

Through these two related actions, HUD regulators have effectively excluded from MHCC consensus review and comment the vast majority of program decisions concerning enforcement, inspections and monitoring which substantially impact the cost and affordability of manufactured housing for consumers – contrary to the intent of the 2000 law. Not surprisingly, then, for at least the past three years, HUD has failed to bring any change in the regulations or enforcement practices to the MHCC under section 604(b) of the 2000 law, even though such changes, including a fundamental change in the focus and character of in-plant regulation (see, section II-4, below) have been implemented.

HUD claims, in support of these actions, that "as a private advisory body not composed of federal employees, the MHCC does not have HUD's responsibilities for public safety and consumer protection." Thus, according to HUD, "the Department must ... remain free of the MHCC process to make program decisions that would not be considered rules under the Administrative Procedure Act." While HUD is correct that the MHCC does not have HUD's statutory "responsibilities" (such as the "responsibility" under section 620(a)(1)(C) to appoint a non-career program administrator), this issue was addressed fully during the legislative process

leading to the 2000 law, and is precisely why the MHCC issues recommendations that do not gain the force of law unless they are approved by the Secretary and promulgated through notice and comment rulemaking.

Since the power of the MHCC is statutorily limited to recommendations only, the law is very broad in identifying the types of HUD actions that must be brought to the MHCC for review and comment. In addition to standards, enforcement regulations and interpretations of both, as addressed by sections 604(a) and 604(b) respectively, the "catchall" section of the Act, 604(b)(6), was designed to ensure that virtually all quasi-legislative actions of the Department -- as contrasted with quasi-judicial enforcement activities -- whether characterized as a "rule" or not, to establish or change existing standards, regulations and inspection, monitoring and enforcement policies or practices, would be subject to review, consideration and comment, prior to implementation, by the MHCC. (See, Attachment G at p. 6). This section, which deems any such action "void" without prior MHCC review, was included in the law as a remedy for past abuses where major changes to enforcement procedures and the construction of the standards were developed behind closed doors and implemented without rulemaking or other safeguards.

The law, accordingly, addresses HUD's point by limiting the power of the MHCC to recommendations, not by severely limiting the actions subject to MHCC review as HUD claims. To construe section 604(b)(6) to apply only to formal rules makes no sense, because such rules are, by definition, subject to rulemaking and public comment anyway. Instead, section 604(b)(6) was intended to ensure an opportunity for MHCC consensus comment and recommendations on a wide range of program actions that would not otherwise be subject to public review or comment.

HUD, therefore, has misconstrued the law and should be compelled by Congress to withdraw its February 5, 2010 "Interpretive Rule" and bring all quasi-legislative matters involving its regulation of manufactured housing to the MHCC for prior review and comment in accordance with the express terms of section 604(b) and the full purposes and intent of the 2000 law.

4. HUD Has Undermined the Independence of the MHCC

In addition to emasculating the substantive role of the MHCC through unsupported unilateral interpretations of the 2000 law, HUD has also sought to undermine the independence of the MHCC, characterizing it as a run-of-the-mill federal advisory committee and subjecting it to an extremely narrow interpretation and application of the Federal Advisory Committees Act, in an effort to transform the MHCC into a meaningless rubber stamp, akin to the defunct Advisory Council. (It is for this precise reason that the National Commission recommended that the consensus committee "not be subject to the provisions of the Federal Advisory Committees Act," see, Attachment A at p. 42). The Department therefore, relying on its construction of FACA, has acted to: (1) take complete control of the issues that may be considered by the MHCC, by setting the contents its meeting agendas; (2) has drastically limited public participation in MHCC meetings; (3) has taken control of the prioritization of the proposals considered by the MHCC; (4) has assumed veto power over the composition of MHCC subcommittees; (5) has taken control over the assignment of proposals to subcommittees; (6) has assumed the power to appoint the MHCC Chairman and subcommittee chairmen; and (7) has

characterized the mission of the MHCC as commenting on standards and regulations proposed by HUD.

Nothing in FACA, however, requires or even supports such a HUD takeover of the MHCC. (1) FACA provides no authority for HUD to dictate the content and substance of MHCC meeting agendas. While FACA authorizes the Designated Federal Officer (DFO) for any committee to "approve" meeting agendas, the bylaws of other FACA advisory committees routinely allow for the content of such committees to be set by the committee chairman, and expressly allow for committee members and even members of the public to place issues on the agenda. (2) FACA provides no authority to restrict public participation in MHCC meetings to an extremely limited period of time. To the contrary, section 604(a)(3)((A)(iii) of the 2000 law requires the MHCC to "carry out its business in a manner that guarantees a fair opportunity ... for public participation." (3) Nothing in FACA authorizes HUD to control which issues are prioritized for review. (4) Nothing in FACA addresses agency veto power over subcommittee composition. (5) Nothing in FACA authorizes the agency to control subcommittee assignments or (6) chairmanships. And (7), the 2000 law itself clearly provides that the function of the MHCC is not just to consider and comment on HUD proposed standards and regulations, but to consider and comment on HUD interpretations (604(b)), to develop and submit its own recommended standards (604(a)), regulations (604(b)) and interpretations (604(b)), as well as to consider and comment on the entire range of HUD actions covered by section 604(b)(6).

FACA, moreover, states that its "provisions ... apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise." Thus, as a FACA expert brought before the MHCC by HUD confirmed, specific provisions of the 2000 reform law regarding the authority and procedures of the MHCC supersede more general or inconsistent provisions of FACA. Therefore, the specific procedural provisions and substantive powers conferred upon the MHCC by Congress in sections 604(a) and 604(b) take precedence over any more general provisions of FACA.

Very clearly, if Congress wanted a mere "advisory" committee for the HUD program, with sharply limited independence and authority as maintained by HUD, it simply could have retained the former National Manufactured Housing Advisory Council established by the original 1974 law. That body was purely advisory and its scope was limited to standards proposals submitted by HUD. Congress, however, did not want such a limited committee that would simply act as a rubber stamp for HUD regulators. Instead, it designed the MHCC to be an independent check and balance, with its own statutory authority, procedures, administration and funding, to ensure that prior abuses of the regulatory process by the HUD program do not recur.

Accordingly, Congress should compel HUD to revoke the limitations that it has imposed on the independence of the MHCC and return the Committee to its original status as provided by the 2000 law and its original organization and procedures.

5. HUD Has Not Implemented Enhanced Federal Preemption

Federal preemption, in order to prevent states and localities from imposing a multitude of divergent mandates on manufactured housing which would undermine its fundamental affordability is a crucial element of the federal program. From the very inception of federal

regulation in 1976, however, HUD has taken a narrow and extremely constrained approach to federal preemption. That approach was confirmed by a February 9, 1995 internal legal opinion adopting the narrowest possible construction of the "same aspect of performance" test which, under the original 1974 law, was the touchstone of federal preemption (see, Attachment L, February 9, 1995 Memorandum from HUD General Counsel Nelson A. Diaz to Federal Housing Commissioner Nicholas P. Retsinas), and was extended even further in a December 19, 1995 ruling by the HUD Federal Housing Commissioner, stating that narrow preemption within the manufactured housing program "reflects ... the favored trend in this country and in Congress – a deference of power by the federal government when it is unclear that the power in question is vested in the federal government." (See, Attachment M, December 19, 1995 letter from Federal Housing Commissioner Nicholas P. Retsinas to Danny D. Ghorbani).

In the 2000 law, however, Congress legislatively overruled this extremely narrow interpretation and application of federal preemption by significantly enhancing the scope of preemption and directing HUD, among other things, to construe federal preemption "broadly and liberally." (See, section 604(d)).

HUD claims, as asserted in a June 22, 2010 letter to Congress from former HUD Assistant Secretary David H. Stevens (see, Attachment D), that it now takes a "broad and liberal" view of preemption in accordance with the 2000 law. This assertion, however, has not been matched by action to implement enhanced preemption. Moreover, as the June 22, 2010 HUD letter demonstrates, the Department continues to misapprehend the scope of enhanced preemption.

HUD states in its June 22, 2010 letter (Attachment D) that "for preemption to work ... the Act requires that HUD's construction and safety standards address the same elements of performance as the International Residential Code (IRC) and other state and local codes." This formulation of preemption, however, is simply wrong. First, the law does not -- and never has -- referred to the IRC, or conditioned preemption on addressing the "same elements of performance" of the IRC. This claim has no statutory basis whatsoever. Second, the law does not -- and never has -- referred to the same "element" of performance. Under the original 1974 law, the touchstone of federal preemption was whether a federal standard covered the same "aspect" of manufactured home performance as a state or local standard. But even this was drastically changed by the 2000 law.

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 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. HUD, however, has given no indication that it is prepared to implement preemption as expanded by the 2000 law, or, indeed, that it even understands the nature and impact of that expansion. Thus it is not surprising that the Department, 12 years later, has not retracted outdated and highly restrictive internal guidance regarding federal preemption, issued before the 2000 reform law (see, Attachment N, HUD "Notice of Staff Guidance," 62 Federal Register 15, January 23, 1997, 3456-3458), that has led to confusion and unnecessary disputes and has yet to take action to formally preempt extremely costly and unnecessary state and local sprinkler requirements based

on the existing HUD "fire safety" standards which provide reasonable fire safety for manufactured home residents as required by federal law.

Congress, therefore, should compel HUD to retract its outdated 1997 Notice of Staff Guidance, expressly reject a narrow application of the "same aspect of performance" test and fully implement and enforce enhanced preemption as established by the 2000 law.

6. HUD's Regulatory Expansion Violates Sections of the Law

While the original 1974 federal manufactured housing law included specific procedural and substantive requirements for the development and adoption of federal manufactured housing construction and safety standards, it contained no parallel requirements for the development of enforcement-related regulations. Congress changed this in the 2000 law, establishing specific procedural and substantive requirements not only for enforcement regulations, but also for enforcement practices and policies and interpretations of the enforcement regulations. These requirements are set forth in section 604(b) of the 2000 law and particularly section 604(b)(6), which states that any changes adopted by HUD in violation of these requirements are "void."

HUD has maintained, as "a fundamental tenet of administrative law that the agency that promulgates a rule may interpret that rule as necessary for enforcement purposes." It then claims that nothing in the 2000 law "suggests that HUD must suspend enforcement of its standards or regulations" while the MHCC considers proposed interpretations. Effectively, then HUD argues that it can enforce a new interpretation of the standards prior to any review or comment on that new interpretation by the MHCC.

Whether and to what extent this is a "fundamental tenet" of administrative law is irrelevant, because while under section 604(b)(2) of the 2000 law, "the Secretary may issue interpretative bulletins to clarify the meaning of any standard ... or procedural and enforcement regulation," the Secretary under section 604(b)(3) of the law, "before issuing" any such interpretation, must "provide the consensus committee with a period of 120 days to submit written comments." Obviously, if the MHCC must be provided with an opportunity to review or comment on an interpretation "before" it is "issued," no such interpretation may be enforced by HUD prior to such review.

HUD further states that "If the MHCC disagrees with an enforcement decision made by HUD, then the MHCC may propose its own interpretation ... for the Secretary's consideration." As HUD is aware, however, any such action by the MHCC would be difficult or impossible, now that HUD program regulators have assumed control over the subjects that can come before -- or be considered by -- the MHCC. (See, section II-4, above).

Moreover, as noted above, section 604(b)(6), by its express terms, provides that any change by HUD to policies, practices, or procedures relating to the standards, inspections, monitoring, or other enforcement activities, must be brought to the MHCC, or are otherwise deemed "void" by the law. Clearly, if HUD began to enforce such a change that had not been brought to the MHCC beforehand, the change underlying that enforcement would be void, as would be the enforcement action itself.

To more clearly illustrate the deficiencies of HUD's position, the following is an example of a major change to the enforcement process that has not been brought to the MHCC as it should have under section 604(b), and has caused significant hardship for the industry.

In recent years, both HUD and its monitoring contractor have been pressuring manufacturers to implement costly changes to their in-plant inspection procedures based on "enhanced" checklists that go beyond the requirements of the current standards and a "Standard Operating Procedure" developed behind closed doors by program regulators. None of these de facto standards have gone to the MHCC, even though they make major changes to HUD policy and practice regarding inspections and monitoring. None have had a cost-benefit analysis, and none have been shown to produce any benefits for consumers to offset their increased cost. Moreover, related proposed changes to the regulations to support this activity did gain consensus approval by the MHCC specifically because HUD failed to provide cost data or justification for the changes to the MHCC, as required by the 2000 law, and have not been published as a proposed rule.

This expansion of in-plant regulation, designed by HUD to change the entire focus of the in-plant inspection system from inspection of the home itself for compliance with the federal standards to prescriptive criteria and inspection of the manufacturer's "quality assurance system" (see, Attachment O, May 10, 2010 HUD "Field Guidance – Certification Reports and Updating Certification Records" at paragraph 2), with its multiple "enhanced checklists," "standard operating procedures" and statements of "field guidance," characterized initially by HUD as "voluntary" and "cooperative" and then "not voluntary" (see, Attachment P, March 3, 2010, HUD "Field Guidance – Compliance with 24 C.F.R 3282.203(c) and (d) Not Voluntary") is precisely the type of fundamental change in regulatory practices and policies that should have been brought to the MHCC for prior review and comment under section 604(b) and specifically section 604(b)(6).

Whether or not these changes to in-plant enforcement policies and practices constitute a formal "rule" as defined by the APA is – and should be – irrelevant. The fact is that they constitute a disruptive change in enforcement policies and procedures that results in increased costs for both producers and homebuyers. As a result, under the express terms of section 604(b)(6), as written by Congress, they should have been brought to the consensus committee for prior review and consensus recommendations. HUD's failure to do so illustrates a key aspect of HUD's failure to fully and properly implement the 2000 law and especially the corrosive effect of its February 5, 2010 Interpretive Rule effectively reading section 604(b)(6) out of the law.

7. HUD Has Used the Same Monitoring Contractor for 35 Years Without Full Competition

The HUD manufactured housing program has had the same monitoring contractor (i.e., the same continuing entity, with the same personnel, albeit under different names – initially the "National Conference of States on Building Codes and Standards" and now the "Institute for Building Technology and Safety") since the inception of federal regulation in 1976. Although the monitoring function contract is subject, officially, to competitive bidding, the contract is a de facto sole source procurement. Because the federal program is unique within the residential construction industry and no other entity has ever served as the monitoring contractor, no other

organization has directly comparable experience. Thus, solicitations for the contract have been based on award factors that track the experience and performance of the existing contractor, effectively preventing any other bidder from competing for the contract. Moreover, the one time that another organization did submit a bid, its lower-priced offer was subject to a second round of analysis that ultimately deemed the incumbent contractor's proposal best for HUD, based on its years of direct program experience.

Without new ideas and thinking the program, effectively, remains frozen in the 1970's and has not evolved along with the industry. This is one of the primary reasons that the federal program, government at all levels and other organizations and entities continue to view and treat manufactured homes as "trailers," causing untold difficulties for the industry and consumers, including financing, zoning, placement and other issues. The 2000 law, moreover, was designed to assure a balance between reasonable consumer protection and affordability. But the HUD program and the entrenched incumbent contractor have a history of continually ratcheting-up regulation, with more detailed, intricate and costly procedures, inspections, record-keeping, reports and red-tape, despite the fact that consumer complaints regarding manufactured homes, as shown by HUD's own data, are minimal. This is a result, in part, of an enforcement and contracting structure that provides an incentive for the monitoring contractor to find fault with manufactured homes.

For the manufactured housing industry to recover and advance from the decline of the past 13 years, this cycle must be broken and the federal program must be brought into full compliance with the objectives and purposes of the 2000 law. It is thus essential that the program ensure that there is full and open competition for the monitoring contract when the next solicitation occurs later this year, with new award criteria that do not penalize or ward off new bidders without direct program experience and a structure that does not provide a financial incentive for excessive or punitive regulation.

8. HUD Has Wrongly Re-Codified New 2000 Law Programs

HUD, citing the legislative history of the 2000 reform law, claims that the law "specifically guarantees that the federal installation standards will not preempt state installation standards." The Department thus contends that its codification of the federal installation standards -- authorized and required by the 2000 law -- outside of the preemptive Part 3280 construction and safety standards, is correct and consistent with the law. This is an accurate statement as far as it goes, but again, it represents a serious misreading of the clear language of the law.

The 2000 reform law is based largely on the 1994 recommendations of the congressionally-chartered National Commission on Manufactured Housing. The National Commission, in its report to Congress, specifically recommended that a new statutory consensus committee "develop and maintain minimum installation standards as part of the national manufactured home construction and safety standards" -- i.e., the preemptive Part 3280 standards. The National Commission similarly recommended that "any state [be permitted] to establish and enforce installation standards that equal or exceed the minimum national standards." (See, Attachment A at p.15). Consequently, the National Commission recommended

that the installation standards be part of the preemptive Part 3280 standards and understood that those installation standards would thus be preemptive, subject to an express reservation to the states to adopt equal or higher standards approved by HUD.

And that, in fact, is how the 2000 law is structured. Section 605 requires the development and enforcement of minimum federal installation standards subject to an express reservation to each "state," in section 604, to develop and enforce equal or higher installation standards pursuant to approval by HUD. It is important however, to compare the preemption language of the 2000 law to this reservation, which directly follows it. Under the 2000 law, federal standards preempt non-identical "state or local" standards or requirements. The reservation that follows it, however, is limited to the "states."

Viewed in the context of the National Commission's recommendations, these sections are logical, consistent and clear. A reservation of power to the states is consistent with the federal standards, in fact, being preemptive. Preemptive federal installation standards would preempt non-identical state and local installation standards. Congress, therefore, consistent with the recommendations of the National Commission, exempted HUD-approved state installation standards and programs from that preemption. Such an exemption or reservation would be unnecessary and superfluous if Congress did not intend (like the National Commission) for the federal standards to be preemptive in the first place. And, indeed, nothing in the statements from the legislative history are inconsistent with the states being exempted from the preemptive effect of the federal installation standards. Significantly, though, there is no reservation or exemption from preemption for local jurisdictions. Thus the most logical and consistent reading of the 2000 Act is that the federal installation standards are to be preemptive of: (1) state standards that have not been approved by HUD; (2) local installation standards in non-approved default states; and (3) local standards in approved non-default states, where such local standards differ from the HUD-approved state standards.

HUD's position by contrast, will leave the industry and its consumers subject to a patchwork of differing local standards that at best will unnecessarily increase the cost of manufactured housing and, at worst, could be used to discriminate against -- or even exclude -- manufactured housing from communities around the country, contrary to the law.

The re-codification of dispute resolution similarly leaves that entire subject area outside of the review and update authority of the MHCC, which is statutorily defined as addressing matters relating to the Part 3280 manufactured housing construction and safety standards and the Part 3282 Procedural and Enforcement Regulations. HUD has maintained that it resolved this issue by including a provision in the final dispute resolution rule that provides for continuing consultation with the MHCC on this issue. A regulatory provision, however, may be easily revoked or amended and is no substitute for the statutory authority that the MHCC would have over this critical subject if it had been properly codified as part of the Procedural and Enforcement Regulations. This is particularly true given HUD's recent efforts to limit the role, authority, independence and functionality of the MHCC, as detailed above.

9. Misdirected HUD Program Budgets Need to Be Scrutinized and Subject to Accountability

The financial aspects of the HUD manufactured housing program, including budgets, revenues, expenditures and appropriations, particularly since 2009, have spiraled out of control, leading to mismanagement of the federal program and the misallocation of its resources in ways that have diverted it from its main objective and mission under the 2000 law – protecting homebuyers while maintaining the affordability of manufactured homes as "housing."

Of the seven specific program "responsibilities" to be funded by the Secretary under the 2000 law (see, section 620(a)(1)(A-G)), HUD has used misdirected program budgets to primarily focus on just two – (1) expanding "inspections and monitoring" by creating new, unnecessary, unnecessarily complex and unnecessarily costly "make-work" inspection requirements that have been used to sustain and increase payments to the entrenched program monitoring contractor , even as industry production has significantly declined; and (2) substantially increasing program staff, despite the pronounced industry downturn of the past decade-plus. At the same time, HUD has refused to fund and appointed non-career program administrator, as required by section 620 (a)(1)(C) of the 2000 law, and is denying its state partners – the State Administrative Agencies (SAAs) – badly needed revenue, even though those agencies, unlike the monitoring contractor, are the first line of protection of a steadily growing number of consumers living in both new and existing homes.

HUD regulators have been able to advance this highly skewed agenda because of an artificially inflated program budget that has grown even as industry production has declined, without effective oversight by Congress until the Fiscal Year (FY) 2012 appropriations cycle. Designed to be self-funding, the HUD program has sought large infusions of general revenue funds since 2009 (i.e., $5.4 million in 2009, $9.0 Million in 2010, $7.0 million in 2011 and $7.0 million in 2012) and, for FY 2012, has announced a label fee increase from $39.00 to $60.00 per home section. Although sought by HUD, ostensibly, to fund contracts to implement the new installation and dispute resolution programs mandated by the 2000 law, these funds, instead, have been diverted to a needless regulatory expansion that unnecessarily increases costs for manufacturers and consumers, while the installation and dispute resolution programs remain only partially implemented, and funding for the SAAs has been slashed from $6.6 million in 2005 to $3.7 million in 2012. (See, Attachment Q, "Testimony of the Manufactured Housing Association for Regulatory Reform Regarding the 2012 Budget Request and Justifications of the U.S. Department of Housing and Urban Development for the Federal Manufactured Housing Program," April 2011).

While Congress, as part of the FY 2012 HUD appropriations bill, did begin to reduce overall funding for the HUD program -- to $6.5 million -- while limiting the program's direct appropriation to $2.5 million, based on long-delayed oversight which exposed HUD's inability to justify the much larger amounts sought in its FY 2012 budget request (see, Attachment R, Conference Report to H.R. 2112, "Agriculture, Rural Development, Food and Drug Administration and Related Agencies Programs for the Fiscal Year Ending September 30, 2012 and for Other Purposes"), Congress still needs to closely examine HUD's continuing misallocation of program user fees and appropriated funds for purposes other than those specified in the 2000 law, to the detriment of the industry and consumers.

Accordingly, as part of this oversight process and as part of the FY 2013 (and subsequent) appropriations process, Congress should condition program funding on the full and proper implementation of all the key reforms of the 2000 law as set forth herein and should eliminate continuing program funding for any and all activities that are not specifically authorized by the Act as amended. Moreover, MHARR would not object to a user (label) fee increase from the current amount to $60.00 per transportable home section if, but only if, any such increase is specifically justified by HUD and approved in advance by Congress as required by the 2000 law (see, section 620(e)), is properly allocated so that the program is provided a non-career administrator, as provided by the 2000 law, contractor revenues and functions are reduced in proportion to industry production and state SAAs are provided sufficient revenue to perform their key program functions.

10. HUD's Failure to Fully and Properly Implement the 2000 Law Has Negatively Impacted Consumer Financing

While HUD has claimed that the long-term scarcity of manufactured home financing is attributable to the performance of manufactured homes, asserting, among other things, that improvements to producers' "quality control" would "attract lenders back to manufactured housing (see, Attachment C, supra), the reality is that HUD itself, by failing to fully and properly implement the 2000 law and failing to ensure the status of manufactured homes as legitimate housing for all purposes, has placed the industry and its consumers in a no-win position, where modern manufactured homes, despite state-of-the-art construction and high quality are perceived, treated and penalized as "trailers" for purposes of financing and a host of other matters.

Thus, the Government National Mortgage Association (GNMA) – a government corporation established within HUD – in June 2010 and November 2010 announced requirements for the securitization of Federal Housing Administration (FHA) Title I program personal property (chattel) manufactured housing loans that significantly exceed those for originators of all other types of FHA-insured loans. Specifically, FHA Title I manufactured housing lenders must have minimum net worth of at least $10 million -- as compared with $2.5 million for site-built lenders – plus 10% of the dollar amount of all outstanding manufactured housing Mortgage Backed Securities (MBS). (See, Attachment S, GNMA November 1, 2010 Memorandum APM10-18, "New Ginnie Mae Title I Manufactured Home Loan Program...."). Because this "10-10" rule requires disproportionately large assets for manufactured housing lenders, it has had the unintended consequence of limiting the Title 1 program, which has historically provided financing for the industry's most affordable homes, to one or two large finance companies. This, in turn, has kept FHA Title I originations artificially low, has placed smaller, independent producers of manufactured housing at an extreme competitive disadvantage and, most importantly, has led to the unnecessary and unjustified exclusion of large numbers of consumers from the manufactured housing market and, in many if not most cases, from the American dream of home ownership.

Similarly, given HUD's failure to fully and properly implement the 2000 law in accordance with its fundamental transformative purposes, the GSEs – Fannie Mae and Freddie Mac – continue to discriminate against manufactured homes and manufactured homebuyers. Despite being instructed by Congress, in the 2008 HERA law, to "develop loan products and

flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low-, low- and moderate-income families," a final rule to implement this duty to serve has never been issued by the GSEs' federal regulator, the Federal Housing Finance Agency (FHFA) and an initial proposed rule, published in 2010 (see, 75 Federal Register No. 108, June 7, 2010 at pp. 32099-32117, "Enterprise Duty to Serve Underserved Markets"), would have excluded manufactured housing personal property (chattel) loans from the "duty to serve" altogether. Thus, at present, manufactured housing accounts for less than 1% of the GSEs total business, even though manufactured housing, since 1989, has accounted for 21% of all new homes sold.

The scarcity of manufactured home financing, therefore, is not a product of insufficient HUD regulation. It is a product of a HUD regulatory program that continues to treat manufactured homes as "trailers" and continues to relegate manufactured housing to second-class status, even though Congress has instructed HUD to treat manufactured homes as "housing." For an industry subject to comprehensive federal regulation, such as manufactured housing, this second-class treatment fuels and rationalizes discrimination which impacts everything else, including financing. Thus, HUD's failure to fully and properly implement the 2000 law, together with its outdated approach to manufactured housing, has had a devastating impact on both the industry and consumers of affordable housing. Yet, the program, instead of changing course has, as detailed above, accelerated its efforts to neutralize the reforms of the 2000 law and Congress' objectives for the program, the industry and consumers.

Consequently, in order to create an environment where manufactured home purchase financing can be restored and extended to consumers – and particularly lower and moderate-income families – who seek a home that they can truly afford without government subsidies, it is essential that HUD be compelled by Congress to fully and properly implement the 2000 law.

IV. CONCLUSION

Based on all of the foregoing information, Congress should act to compel HUD to fully comply with all of the reform provisions of the 2000 law in accordance with their express terms and the purposes and intent of the law as a whole.