Manufactured Housing Association for Regulatory Reform

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September 10, 2012

VIA FEDERAL EXPRESS

Hon. Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Room 2157
Rayburn House Office Building
Independence Avenue and South Capitol Street, S.W.
Washington, D.C. 20515

Re: Manufactured Housing Regulation – Impact on Small Businesses

Dear Chairman Issa:

Thank you for your letter of June 20, 2012, inviting the Manufactured Housing Association for Regulatory Reform (MHARR) to provide information to the Committee on Oversight and Government Reform regarding regulatory activity that negatively impacts job growth within the manufactured housing industry. MHARR is a Washington, D.C.-based national trade association representing the views and interests of producers of federally-regulated manufactured housing. MHARR was founded in 1985. Its members are primarily small and medium-sized businesses located throughout the United States.

The manufactured housing industry is comprehensively 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. Manufactured housing is unique in that it is the only segment of the housing industry subject to federal regulation and related enforcement governing construction of the home, installation, notification and correction of certain defects, and overall consumer satisfaction. Manufacturers are the primary focus of this regulatory system and, as a result, they bear the most significant cost and compliance burdens under the HUD regulatory structure. Moreover, insofar as regulatory burdens disproportionately impact smaller business (see e.g., U.S. Small Business Administration, Office of Advocacy, "The Impact of Regulatory Costs on Small Firms," September 2010) those burdens fall most heavily on the primarily smaller, independent manufacturers represented by MHARR.

Today's manufactured housing industry is a microcosm of the American small business economy. Comprised mostly of small, independent businesses, including manufacturers, retailers, land-lease communities, installers, transporters, finance providers, insurers and others, manufactured housing is a uniquely American industry, which provides quality home ownership at a price that nearly every American can afford. The manufactured housing industry provides jobs and home ownership opportunities that are especially important in rural America. Offering inherently affordable housing, it seeks no grants, no subsidies or special favors from government. All it asks from Washington is: (1) equal, non-discriminatory treatment for its homes and consumers; (2) full parity with other types of housing and (3) fair, reasonable and cost-effective regulation that does not impose unnecessary cost burdens on its mostly lower and moderate-income consumers.

Given the value of manufactured housing as a private-sector source of affordable home ownership and as an engine of job creation, manufactured housing has historically enjoyed strong bipartisan support on Capitol Hill. This, in turn, has led to the adoption, on a virtually unanimous basis, of three major laws since 2000 designed to advance the availability of affordable, non-subsidized manufactured housing – (1) the Manufactured Housing Improvement Act of 2000 (2000 reform law); (2) the "duty to serve underserved markets" (DTS) provision of the Housing and Economic Reform Act of 2008 (HERA); and (3) increased limits under HERA for loan insurance provided by the Federal Housing Administration (FHA) for manufactured home personal property (Title I) and real estate (Title II) loans.

Unfortunately, none of these good laws have been fully and properly implemented by federal agency regulators who, by inaction, evasion or tortured "interpretations" of these laws, as detailed below, have effectively exercised a "pocket veto" of express congressional directives. As a result, manufactured housing continues to be viewed and treated by the federal regulatory bureaucracy as an inferior product rather than a quality, affordable, private-sector solution to the nation's affordable housing needs that – if fully embraced as part of the nation's various housing programs -- would eliminate billions of dollars in deficit spending on housing subsidies. Moreover, because of this pervasive regulatory bias, which relegates manufactured homes to the status of "trailers" rather than legitimate housing, manufactured home production, over the past decade-plus, has fallen by more than 86% (from 373,143 homes in 1998 to 51,606 in 2011). Over the same period, more than 70% of the industry's production facilities have closed (from 430 to 122), as have more than 7,500 retail centers, with a corresponding loss of over 200,000 American jobs and a devastating impact on job creation within the industry and allied businesses including product and component suppliers, transporters, installers, community owners and developers, insurers, financing providers and many more.

Consequently, it is the failure of the regulatory establishment to comply with and abide by the policy decisions rightfully and properly made by Congress that is largely responsible for the depressed state of the domestic manufactured housing industry, corresponding hardships for lower and moderate-income consumers of affordable housing, the large-scale loss of jobs within the industry and related businesses, and the absence of new job creation as the industry -- and particularly its smaller businesses -- continue to struggle just to survive.

The details relevant to the emasculation of these laws are set forth below and in the exhibits attached hereto.

1. The Manufactured Housing Improvement Act of 2000

The 2000 reform law was designed by Congress to achieve two principal goals: (1) to complete the transition of manufactured housing from the "trailers" of yesteryear to legitimate "housing" at parity with other types of residential construction; and (2) to remedy weaknesses in the HUD program that led to violations of the due process rights of regulated parties. To accomplish this goal, the 2000 law made substantial changes to the original Manufactured Housing Construction and Safety Standards Act of 1974, which was patterned on federal vehicle safety laws.

While a complete recitation and explanation of all the various statutory changes enacted by the 2000 law is beyond the scope of this letter, the key program reforms mandated by that law (as more fully detailed by the MHARR Fact Sheets attached to our original February 4, 2012 letter to Chairman Issa) include:

- a mandate for the appointment of a non-career manufactured housing program administrator to, among other things, "facilitate[e] the acceptance of the quality, durability, safety, and affordability of manufactured housing within HUD;"
- establishment of a consensus committee to act as an open, transparent, accountable forum for the development and/or modification of all standards, enforcement regulations and interpretations;
- an effective presumption in favor of consensus committee review of all program quasi-legislative actions, whether deemed a "rule" or not; and
- enhanced federal preemption.

HUD program regulators, however, through administrative actions and rulings, have effectively negated each of these reforms. Thus,

- HUD has refused to appoint a non-career program administrator, claiming that the 2000 law is "discretionary" when, in fact, the mandate for a non-career administrator is included among the non-discretionary "responsibilities" of the Secretary under the Act, including the duty to conduct "inspections" (see, section 620(a)(1)(A);
- HUD has emasculated the role, independence and functionality of the consensus committee. At present, the Manufactured Housing Consensus Committee (MHCC) is not even operational due to HUD's failure to pay and process invoices from the MHCC Administering Organization (AO) dating back to 2009. Prior to that, a May 7, 2004 HUD opinion letter HUD drastically limited the substantive role of the MHCC and HUD, since that time, has taken over complete control of the organization and proceedings of the Committee, undermining its independence;

- HUD continues to implement de facto standards and regulations, such as a recent expansion of in-plant regulation with no consumer safety justification, no consideration of cost, no effort to evaluate cost, no MHCC review and approval, and no rulemaking;
- HUD has ignored the vast majority of the MHCC's recommendations to update the standards and regulations, contrary to the 2000 law, having failed to act on approximately 135 of 185 MHCC recommendations;
- HUD has read the catchall section requiring MHCC review of virtually all regulatory actions and interpretations – section 604(b)(6) – out of the law through a specious February 5, 2010 "Interpretative Rule," issued without opportunity for public comment, declaring that only actions that would constitute "rules" under the Administrative Procedure Act (APA) are subject to MHCC review. If that were Congress' intent, however, section 604(b)(6) would be superfluous, as the MHCC could consider and comment on any APA rule through the rulemaking process, like any other interested party; and
- HUD has not asserted enhanced federal preemption of discriminatory state and/or local actions, nor has it reevaluated or withdrawn past policy rulings construing the scope of preemption extremely narrowly notwithstanding Congress' 2000 law directive to "broadly and liberally" construe federal preemption.

Additional detail regarding HUD's failure to fully and properly implement the key reforms of the 2000 law is set forth in MHARR written testimony presented at a February 1, 2012 oversight hearing of the House Subcommittee on Insurance, Housing and Community Development on HUD's implementation of the 2000 law. In summary, though, HUD's institutional defiance of the reforms mandated by Congress through the 2000 law ensure continuing and worsening discrimination against manufactured housing in areas as diverse as public and private financing (see below), zoning, placement and community acceptance, that have decimated the industry over the past decade. At the same time, with a quality, affordable, non-subsidized, private-sector housing resource under its own jurisdiction, HUD continues to view and treat manufactured homes as being inherently deficient, while it totally ignores manufactured housing as an asset in meeting any significant goal or sub-goal identified in its 2010-2015 Strategic Plan and continues to dole out billions of dollars in "affordable housing" grants and subsidies.

Congress needs to make it perfectly clear to HUD that the 2000 reform law means what it says and take action to hold HUD regulators and senior-level management accountable for any failure to fully and properly implement its program reforms.

2. The "Duty to Serve" Mandate

Congress created the Government Sponsored Enterprises (GSEs) to provide liquidity and stability for the American housing market and to support affordable housing and home ownership for low and moderate-income families. Yet, the GSEs, over the past decade, have failed to provide any meaningful support for federally-regulated manufactured housing, the nation's leading source of affordable, non-subsidized home ownership. outdated, decades-old data without having conducting its own independent empirical analyses of the loan performance of modern, post-Manufactured Housing Improvement Act of 2000 (2000 reform law) manufactured homes.

Recognizing that the GSEs were failing to fulfill their mission with respect to manufactured housing, Congress, as part of the Housing and Economic Recovery Act of 2008 (HERA), established a GSE "duty to serve underserved markets" (DTS) focused primarily on manufactured housing.

The "Duty to Serve," among other things, directs the GSEs 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." The DTS mandate thus constitutes both a finding by Congress that the GSEs have not properly served the manufactured housing market and a remedy that directs the GSEs to materially increase participation in the manufactured housing market for the ultimate benefit of very low, low and moderate-income consumers, subject to evaluation and enforcement by the GSEs' federal regulator, the Federal Housing Finance Agency (FHFA). In adopting this mandate, moreover, Congress went out of its way to stress that manufactured home chattel loans – which currently comprise 76 percent of all manufactured home loans -- could be considered as part of DTS (see, 12 U.S.C. 4565(d)(3) directing FHFA to "consider loans secured by both real and personal property" for DTS credit). Yet FHFA, in a June 7, 2010 proposed rule to implement DTS, concluded that chattel loans should not be considered at all and, more than two years later, has yet to issue any final DTS rule. And now, FHFA has taken action to exclude manufactured home chattel loans – providing lower and moderate-income American families access to the most affordable housing available today -- from the GSEs' Affordable Housing Goals

Consequently, notwithstanding direct congressional intervention and an express legislative mandate to develop a secondary market and flexible underwriting guidelines for both manufactured home real estate and personal property loans, there has been no improvement whatsoever in the GSEs participation in the manufactured housing market since the enactment of HERA in 2008. And while the will of Congress is being actively thwarted, the housing needs of lower and moderate-income American families – during the worst economy and housing market since the Great Depression -- are being disserved by an institutional GSE culture that refuses to acknowledge the evolution of manufactured homes from the "trailers" of yesteryear to modern legitimate "housing" and misguided FHFA policy decisions that have not only undermined DTS, but promote ongoing discrimination against manufactured housing and manufactured homebuyers by excluding manufactured home chattel loans from AHG credit altogether and by shrinking the goals applicable to the minimal number of manufactured home real estate mortgages eligible for AHG credit under the proposed rule.

Additional detail concerning DTS and the exclusion of manufactured home chattel loans from the AHG goals is set forth in July 1, 2010 MHARR comments on FHFA's proposed DTS rule and July 12, 2012 MHARR comments on FHFA's proposed 2012-2014 Affordable Housing Goals, both of which are available at the FHFA internet website.

Again, Congress should make it clear to FHFA and the GSEs that DTS means what it says, that the de facto veto of DTS by FHFA inaction and emasculation must end, and that the GSEs and FHFA have a joint statutory duty to begin properly serving manufactured housing consumers – including those using chattel financing – immediately.

3. Baseless Restrictions on the Origination of FHA Title I Manufactured Housing Loans

As part of HERA, congress substantially increased the loan insurance limits for both the Title I (chattel loan) and Title II (land-home mortgage) programs administered by the Federal Housing Administration (FHA), in order to expand and ensure the availability of such financing for the entire spectrum of modern manufactured housing. Yet, because of highly restrictive and unwarranted net worth requirements for Title I loan originators imposed by the Government National Mortgage Association (GNMA) – a HUD entity – as a precondition for the securitization of such loans, the pool of FHA Title I loan originators remains inadequate to meet the needs of American consumers of affordable housing and FHA Title I loan originations remain at minimal levels, contrary to the design and intent of Congress.

Specifically, HUD data shows that from 1980 to 1993, FHA averaged approximately 20,000 Title I manufactured housing loan endorsements per year, with a peak volume of approximately 55,000 loans (representing a dollar volume in excess of $900,000,000) in 1983. Since 1996, however, FHA Title I manufactured housing loan endorsements have plummeted to approximately 1,000 per year, a trend that has continued despite the significant improvements to the Title I program legislated by Congress as part of HERA.

The reason for such minimal FHA participation in the manufactured home chattel lending market – notwithstanding major increases in FHA participation in every other residential lending market -- is a unilateral GNMA requirement for the volume securitization of such loans which mandates that originators have a net worth of at least $10 million and maintain a cash reserve of at least 10 percent of all outstanding manufactured home mortgage-backed securities (10-10 rule). Because these amounts are so high (especially as compared to the securitization requirements for site-built home loans, which require a net worth of only $2.5 million), the 10-10 rule effectively limits FHA Title I loan originations to one or two large finance companies. This has eliminated genuine competition and consumer choice from the FHA Title I financing market which, in turn, has kept FHA Title I originations artificially low, has placed smaller, independent producers of manufactured housing, as well as independent retailers and finance companies, 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. All this is happening, moreover, at a time when FHA Title I financing – which helps consumers buy the industry's most affordable homes – is critically important, given the extreme downturn in the housing market, a glut of foreclosed site-built homes and many consumers who cannot qualify for other financing.

GNMA officials have acknowledged, however, that the 10-10 criteria and particularly the 10% reserve requirement are based primarily on old FHA Title I loan performance data from the 1980s and 1990s and not on current or even recent data on the loan performance of modern, post-

2000 law, manufactured homes. Given the fact that today's manufactured homes and manufactured home loans perform as well as -- or better than – parallel site-built loans (see e.g., data compiled by the American Bankers Association Consumer Loan Delinquency Report, which shows that loan delinquencies for manufactured homes dropped to 3.76% from 4.08% during the fourth quarter of 2011, while the national mortgage delinquency rate rose to 6.01% at the end of the fourth quarter of 2011), qualifications for GNMA securitization of FHA Title I manufactured home loans should actually be more flexible than the present $2.5 million net worth requirement for site-built housing loan issuers, although the industry would welcome parity with the site-built market in accordance with federal housing policy as repeatedly expressed by Congress. Additional detail concerning this major issue is contained in a December 16, 2011 MHARR letter to GNMA President Theodore Tozer (copy attached).

As a result, Congress should make it clear to GNMA and HUD that such discrimination against manufactured homes and manufactured home purchasers is unacceptable and must not continue.

4. Impending "Energy Conservation" Standards

The Department of Energy (DOE), is currently developing "energy conservation" standards for manufactured homes pursuant to section 413 of the Energy Independence and Security Act of 2007 (EISA). There has been no showing of a need for any such standards, however, and DOE, in any event, should not proceed with any standards that are not identical to the existing HUD energy conservation standards until the production and availability of HUD Code manufactured housing recovers to levels at least comparable to those that existed prior to the enactment of EISA in 2007.

When Congress adopted EISA in 2007, it did not foresee the collapse of the HUD Code manufactured housing market that has occurred since that time and that continues today. Prior to EISA, in 2006, the HUD Code manufactured housing industry produced 117,373 homes. This figure represented a significant decline from 2001 production of 193,120 homes and an even greater decrease from 1998 production levels that approached 400,000 units, but was consistent with previous cyclical industry declines. Since 2007, however, manufactured housing production and sales have fallen dramatically for the reasons explained above.

In light of this unprecedented decline and the extreme hardship that it entails for both the industry and consumers, the federal government should not -- at this time -- impose costly new energy conservation mandates combined with a totally new DOE enforcement system that would parallel the existing HUD enforcement system. Such mandates would inevitably result in substantial increases in the purchase cost of manufactured housing for hard-pressed consumers who cannot obtain purchase financing now. This will exclude even more Americans from the dream of home ownership, in an economy where private mortgage insurance is currently not available for manufactured home transactions and the absence of securitization and/or purchase support for manufactured housing loans by the GSEs, FHA and GNMA has eliminated most sources of manufactured home financing.

Moreover, manufactured homes are already subject to HUD energy conservation standards that result in a relatively tight thermal envelope, consistent with overall affordability, and are carefully balanced against concerns related to air exchange and condensation within the home living space. Any change to the standards could potentially upset that balance, with unforeseen and unintended negative consequences given the unique environment and construction of manufactured homes.

Accordingly, Congress should conduct oversight regarding this impending rule and re-evaluate the need for – and wisdom of – such standards in light of the additional needless burdens that costly new standards would impose on the industry and the mostly lower and moderate-income consumers who rely on affordable, non-subsidized manufactured housing. As MHARR has often noted in connection with such proposals, for consumers excluded from the housing market by high up-front costs associated with "energy conservation" measures, there is no "life-cycle" period over which those costs can be recouped.

MHARR wishes to thank Chairman Issa and the Committee on Oversight and Government Reform for undertaking a study of the impact of excessive, baseless and unwarranted regulation on America's small businesses – such as those represented by MHARR -- and stands ready to assist the Committee with other and further relevant information going forward. MHARR would also be pleased to respond to any questions or inquiries that the Committee may have regarding the issues addressed above or any other regulatory issue impacting the manufactured housing industry.

Sincerely,

Danny D. Ghorbani
President

cc: Hon. Jim Jordan
Hon. Elijah Cummings
Hon. Dennis Kucinich

Attachment

Manufactured Housing Association for Regulatory Reform

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December 16, 2011

VIA FEDERAL EXPRESS

Mr. Theodore W. Tozer
President
Government National Mortgage Association
Potomac Center South
550 12th Street, S.W.
Washington, D.C. 20024

Re: Manufactured Housing Finance Issues

Dear Mr. Tozer:

I am writing as a follow-up to our meeting on December 14, 2011. First, on behalf of the independent producers of federally-regulated manufactured housing represented by the Manufactured Housing Association for Regulatory Reform (MHARR), we want to take this opportunity to thank you and your colleagues for a very informative and productive meeting. As a result of our discussion, we now have a better understanding of the rationale and process that led to the Government National Mortgage Association's (GNMA) $10 million net worth and 10% reserve requirements (hereafter "10-10 rule") for the securitization of Federal Housing Administration (FHA) Title I manufactured housing loans. At the same time, we trust that the information provided by our members offers you a fresh perspective on the dilemma that this rule has created for the industry – particularly its smaller businesses – and American consumers of affordable housing.

We are encouraged that we now have a better understanding of a number of important issues relevant to the 10-10 rule. Specifically, we understand that the 10-10 rule (actually a policy rather than a "regulation" subject to the Administrative Procedure Act) was developed largely on the basis of older FHA manufactured home loan performance data from the 1980s and 1990s and that the $10 million net worth requirement, in particular, is a subjective, "policy" figure that was not intended to be exclusionary but, instead, to reflect GNMA's legitimate concern that FHA Title I loan originators be established enterprises that are committed to serving the manufactured housing industry and its consumers. We further understand that GNMA is willing to be flexible with the net worth requirement, in particular, and would be willing to take a second look at lower levels that would satisfy GNMA's policy concerns while enabling other and additional lenders to obtain GNMA securitization for FHA Title I loans. In this regard, GNMA indicated that it would welcome information that would allow it to change the net worth requirement for Title I manufactured housing loans to make it similar to current parallel requirements for site-built home loan issuers so as to permit and encourage more lenders to enter and participate in the Title I market.

Regarding these points, we stressed that because current-day manufactured home loans perform as well as or better than sit-built loans, qualifications for the securitization of manufactured home loans should actually be more flexible that those for site-built housing loans, but that the industry is willing to accept and seeks parity with the site-built market. We also emphasized the difficulty of obtaining more recent and more relevant loan performance data precisely because that data is within the possession of the current originator(s) which benefit from the 10-10 rule and, therefore, have no incentive – and are under no mandate -- to disclose that information (as GNMA itself learned when it invited but never received such information last year – although such numbers would be questionable in any event because of the distortion of the market due to a lack of competition). Nevertheless, and given the fact that MHARR's membership does not include finance companies, MHARR will use its best efforts to encourage such finance companies to provide GNMA with the type of information that would support and warrant a "second look" at the 10-10 rule and a modification of that rule that would allow more originators and genuine competition within the FHA Title I market.

That said, we promised that we would provide you with a written summary of the points and issues that we raised at the meeting. This necessarily begins with the fact, as I emphasized in my initial letter to you on November 4, 2011, that production and sales of manufactured homes subject to regulation by the U.S. Department of Housing and Urban Development (HUD), have declined by more than 80% since 1998 -- from nearly 400,000 homes that year, to barely 50,000 in 2010, with total production projected to remain nearly flat in 2011.

While this decline has been affected by multiple factors, one of its primary causes has been a steep drop in the availability of consumer financing for manufactured home purchases, and especially FHA Title I financing. HUD data shows that from 1980 to 1993, FHA averaged approximately 20,000 Title I manufactured housing loan endorsements per year, with a peak volume of approximately 55,000 loans (representing a dollar volume in excess of $900,000,000) in 1983. Since 1996, however, FHA Title I manufactured housing loan endorsements have plummeted to approximately 1,000 per year, a trend that has continued despite significant improvements to the Title I program – designed to increase its scope and utilization -- legislated by Congress in the Housing and Economic Recovery Act of 2008 (HERA).

A reversal in this historically low level of FHA Title I loan endorsements would help spur an industry recovery, produce and save thousands of jobs, and help meet the housing needs of the lower and moderate-income consumers served by the manufactured housing industry. As was emphasized at our meeting, however, all of the available evidence from the field indicates that the GNMA 10-10 rule, by effectively limiting FHA Title I originations to one or two finance companies affiliated with the industry's largest producer(s), has had the unintended consequence of eliminating competition from the FHA Title I financing market. This, in turn, has kept FHA Title I originations artificially low, has placed smaller, independent producers of manufacturedhousing 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.

Thus, we asked you and your GNMA colleagues to consider the following matters:

- What is the analytic basis for the 10-10 rule? What data on manufactured housing loan default rates was used, what assumptions were used about the adequacy of net worth levels with regard to participating lenders, and how do these levels relate to net worth requirements for Title II loans, and are such higher requirements commensurate with the higher risk relative to Title I.

- In establishing the 10-10 rule, did GNMA consider the financial risks to FHA of having only one or two lenders able to meet the $10 million net worth requirement? Such concentrated risk exposes the program to heightened risk if just one such lender encounters financial problems.

- Did GNMA considered the market impact of having only one or two lenders able to qualify under the new requirements that are also subsidiaries or affiliates of major manufacturers? This unintended consequence would – and has -- undermined the purpose of the program, which was to provide financing to a broad range of manufactured home purchasers.

- Would GNMA consider other approaches, such as basing requirements on the volume of loans originated rather than a very high minimum net worth bar of $10 million, or charging a slightly higher fee for all loans, combined with a lower net worth requirement?

We look forward to working with you and your colleagues in a collaborative effort to address these issues and ensure that the FHA Title I program offers genuine choice and free market competition to as many homebuyers as possible, consistent with GNMA's obligations and responsibilities to the public.

Sincerely,

Danny D. Ghorbani
President

cc: MHARR Members