Manufactured Housing Association for Regulatory Reform

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July 24, 2013

VIA ELECTRONIC FILING AND U.S. MAIL

Ms. Brenda Edwards
U.S. Department of Energy
Building Technologies Office
Mailstop EE-2J
1000 Independence Avenue, S.W.
Washington, D.C. 20585-0121

Re: Energy Efficiency Standards for Manufactured Housing
Docket No. EERE-2009-BT-BC-0021; RIN 1904-AC11

Dear Ms. Edwards:

The following comments are submitted on behalf of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a national trade association representing the views and interests of producers of manufactured housing regulated by the U.S. Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401, et seq., as amended (Act).

I. INTRODUCTION AND PROCEDURAL HISTORY

On June 25, 2013, the Department of Energy (DOE) published a Request for Information (RFI) in the Federal Register (78 Federal Register, No. 122 at pp. 37995-37997) seeking additional information and comments from interested parties in connection with its development of energy efficiency standards for manufactured homes pursuant to the Energy Security and Independence Act of 2007 (EISA). EISA section 413 requires DOE to institute such standards "not later than four years after the date of enactment" of that Title (i.e., not later than December 19, 2011), pursuant to: (1) public notice and comment; and (2) "consultation with the Secretary of Housing and Urban Development, who may seek further counsel from the Manufactured Housing Consensus Committee" (MHCC) established by the Manufactured Housing Improvement Act of 2000 (2000 Law). Mandatory consultation with HUD is predicated on pre-

existing comprehensive HUD regulation of the construction and safety of manufactured homes pursuant to the Act, as amended, including energy-related thermal insulation, condensation control and air infiltration standards that have been in effect (and updated as appropriate) since 1975, as well as established HUD mechanisms for standards compliance and enforcement. The statutory consultation mandate also represents de facto recognition by Congress of the integral role of both HUD and the MHCC in protecting the unique balance of protection and affordability expressly prescribed for federal manufactured housing standards by both the original 1974 Act and the 2000 Law as a matter of national housing policy, and their unique expertise in technical matters relating to the construction and safety of manufactured homes.

Pursuant to the EISA section 413 directive, DOE, on February 10, 2010, published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register (see, 75 Federal Register, No. 34 at pp. 7556-7557) seeking information and comments on thirteen general issues pertaining to the development of EISA-compliant standards. MHARR submitted written ANPR comments to DOE on March 10, 2010, as well as a companion letter to then-DOE Secretary Steven Chu on July 16, 2010. Both of those documents -- included in the ANPR docket as confirmed by DOE correspondence dated August 6, 2010 -- are incorporated herein in their entirety by reference.

In its ANPR comments and letter to Secretary Chu, MHARR urged DOE, in light of the decline of the manufactured housing market to historically low production levels after the enactment of EISA in 2007, to "delay the development, implementation and enforcement of any new manufactured home energy conservation standards that are not identical to the existing HUD Code energy standards until such time as industry production levels and the availability of affordable, non-subsidized manufactured housing for lower and moderate-income consumers return to pre-2007 levels." In support of this request, MHARR cited – in addition to data detailing the unprecedented post-EISA decline of the industry – three issues that could further undermine the affordability and availability of manufactured homes, with little or no corresponding benefit for consumers, as a consequence of untimely or misdirected action by DOE. In relevant part, MHARR stated:

(1) "...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 upset that balance with ... negative consequences."

(2) "With ... manufactured housing consumers unable to obtain or qualify for financing now, matters would be much worse if the purchase price of manufactured homes were unnecessarily increased ... due to DOE energy regulations."

(3) "...the federal government should not impose costly new energy mandates combined with a totally new DOE enforcement system that would parallel the existing HUD system." "...HUD ... is best suited to fully assess and ensure the affordability aspects of energy regulation within the context of the HUD

Code and maintain the delicate balance between regulation and affordability that is embedded in relevant federal law."

Subsequent to the ANPR – and without resolving the foregoing substantive issues identified by MHARR -- DOE developed a draft proposed rule for EISA-compliant manufactured housing energy standards. That draft rule, in turn, was selectively disclosed by either DOE or HUD to one or more parties (including a representative of the largest industry interests) as indicated by published May 29, 2012 correspondence to DOE from one such party, which refers to specific requirements and provisions of a "draft proposed DOE rule" and "draft DOE standards" that were not included in the 2010 ANPR, have not been published as a proposed rule, and have not otherwise been made public or provided to other interested parties. Thus, the May 29, 2012 correspondence states, in part, that "the draft DOE standards requires (sic) homes to be tested in the factory" and that "separate testing is required for to measure duct leakage, whole house (building shell) tightness and air infiltration rates for each window." No such details were included in the 2010 ANPR or otherwise published or disclosed to the public. Similarly, the May 29, 2012 correspondence refers to a DOE estimate of a "total cost burden to the industry [of] $4.5 million over four years." Again, no such information was provided in the 2010 ANPR or otherwise published or disclosed to the public. Indeed, the 2010 ANPR specifically acknowledges that it contains no such regulatory impact analysis (RIA), stating: "DOE intends to develop a regulatory impact analysis ... as this rulemaking process proceeds."

In July 20, 2012 correspondence to DOE (attaching a copy of the above-described May 29, 2012 communication), MHARR requested a DOE/HUD investigation of the process leading to the selective disclosure of the draft proposed DOE energy rule, including, (1) how the draft rule was selectively released to a party in interest; (2) who was responsible for that disclosure; and (3) what other parties in interest, if any, were provided inside information concerning this significant rulemaking. Other than a perfunctory DOE verbal denial of an unauthorized disclosure, MHARR is not aware of any investigation of this matter by either DOE or HUD.

Now, after the preparation and selective disclosure of a "draft proposed rule," complete with a regulatory (cost) impact analysis, DOE, through its June 25, 2013 "Request for Information," is seeking information concerning the three issues initially raised by MHARR in 2010, i.e., (1) the inter-relationship between more stringent air infiltration or air exchange rate standards and indoor air quality (AQL) within manufactured homes; (2) the impact of more stringent and costly energy mandates on the availability and cost of already-scarce financing for manufactured home purchasers; and (3) the ultimate nature of the enforcement mechanism for any such standards given the already-existing HUD Code enforcement system.

While MHARR commends EPA for finally seeking information and data concerning these crucial issues for both the industry and consumers, its request for such information after the preparation of a draft proposed rule turns the regulatory process on its head and raises serious issues regarding the legitimacy and integrity of this entire proceeding, as explained in greater detail below. Accordingly, DOE, instead of providing interested parties with a mere 30 days to supply any such available information -- i.e., from the June 25, 2013 RFI publication date to the July 25, 2013 response deadline -- should allow a reasonable time to gather and/or develop and

assess such information, and begin anew its entire process for the development of this rule from the start, based, this time, on a proper review and consideration of all the relevant information.

II. COMMENTS

1. The Development of a Draft Proposed Rule Prior to DOE Consideration and Evaluation of a Complete Factual Record Taints This – and any Future -- Proceeding

DOE, in its June 25, 2013 RFI, states, in part, "DOE now believes it is important to allow interested parties an additional opportunity to provide information they feel will assist DOE in developing the proposed standards. This initial request for input will be followed by a notice of proposed rulemaking, based on the information received as a result of this notice and other data and information gathered by DOE" (see, 78 Federal Register, No. 122 at p. 37996, col. 3, emphasis added). The difficulty for DOE and all parties in interest is that the "proposed standards," as amply demonstrated by the above-described May 29, 2012 communication, have already been developed by DOE without the information being sought now by the agency after-the-fact. This raises three distinct issues that undermine the legitimacy of the pending proceedings, show them to be fundamentally unfair to interested parties as they have evolved, and could constitute the basis for a challenge to the validity of any resulting final rule.

First, the development of a proposed rule prior to the receipt of relevant information and the development of a complete factual record turns the administrative process on its head. Courts have consistently stated that "it is not consonant with the purpose of a rulemaking proceeding to promulgate rules on the basis of inadequate data." See e.g., Portland Cement Association v. Ruckelshaus, 486 F.2d 375, 393 (D.C. Cir. 1973). The DOE June 25, 2013 request for additional data, per se demonstrates that the draft proposed rule previously disclosed to at least one interested party, was not based on "adequate data."

Second, section 553 of the Administrative Procedure Act (APA), governing agency rulemaking, requires that "interested persons" be provided an opportunity by the agency to "participate in the rulemaking through submission of written data, views, or arguments." Courts applying this mandate have made it clear that the opportunity for interested persons to participate must come at a time when their comments could have a meaningful impact in the formulation of the agency action in question. The "opportunity for comment must be a meaningful opportunity," see, e.g., Rural Cellular Association v. Federal Communications Commission, 588 F.3d 1095, 1101 (D.C. Cir. 2009), not after-the-fact, when de facto agency decisions have already been made. See also, C. Coglianese, et al., "Transparency and Public Participation in the Rulemaking Process," University of Pennsylvania School of Law (July 2008) at p. 6 ("[B]y the time that the notice of proposed rulemaking (NPRM) is published and the comment period begins, the agency is highly unlikely to alter its policy significantly. Many internal deliberations and policy discussions occur before an agency issues its NPRM, during a part of the process that is least open and transparent. *** If public participation does not affect an agency's actual decision making process because it occurs after rules are already formulated, it is hard to see how it can significantly enhance either the quality or legitimacy of rulemaking.") (Emphasis added; footnotes omitted).

In this case, DOE has already developed a draft proposed rule, meaning that both the Request for Information and any information received pursuant to the RFI are an afterthought to the agency's rule development process and that any information so obtained will not and cannot come at a "meaningful" stage in the proceedings where it will be properly considered by the agency. The development of a proposed rule first – and solicitation of relevant facts and data afterward -- necessarily deprives interested parties of the opportunity to participate in a meaningful manner and at a meaningful time, and would likely result in the agency either ignoring information inconsistent with its own preconceptions as reflected in the draft proposed rule, or "cherry-picking" any new data to support its preconceived conclusions. See, Solite Corp. v. EPA, 952 F.2d 473, 500 (D.C. Cir. 1991) ("There is no APA precedent allowing an agency to cherry-pick a study on which it has chosen to rely in part.")

Third, interested parties responding to the Request for Information, including MHARR and others, do not know what information, if any, has already been provided to DOE by those to whom the draft proposed rule has already been selectively leaked. Those stakeholders, by virtue of their access to the specific provisions of the draft proposed rule and related agency explanation of the policy decisions manifested by those provisions, have had an opportunity superior to that of other parties relying solely on the more general information provided in the RFI, to provide DOE with information and responses. Consequently, other interested parties responding to the RFI are necessarily prejudiced in that they: (1) do not know what off-the-record information concerning the draft proposed rule has already been provided to DOE; (2) do not know the source of that information; (3) do not know what – if any – impact that such off-record information may have already had – or will have on DOE and/or the draft proposed rule; and (4) have had no opportunity to assess the validity or potential impact of that information on the information they themselves may choose to provide DOE – if any.

Put differently, the potential receipt and/or consideration of undisclosed information by DOE prior to the formulation of the RFI and with unknown potential impact on the draft proposed rule – together with the other two issues explained above -- casts doubt on the legitimacy of this entire process. C.F., United States v. Nova Scotia Food Products Corp., 568 F.2d 240 (2d Cir. 1977) ("If the failure to notify interested persons of the scientific research upon which the agency was relying prevented the presentation of relevant comment, the agency may be held not to have considered all 'the relevant factors.'") Accordingly, the draft proposed rule already prepared by DOE should be abandoned and this entire process re-started (consistent with the concerns previously expressed by MHARR) based on full information, a transparent record and proper review and synthesis of that information by DOE in full accordance with the APA.

2. Applicable Law Requires DOE to Affirmatively Develop Information Concerning Potential Negative Consequences and Consumer Cost Impacts of any Proposed Rule

EISA directs DOE to establish manufactured housing energy standards (with an unclear relationship to the pre-existing manufactured housing energy standards established by HUD pursuant to the 1974 Act) "based on the most recent version of the International Energy Conservation Code ... except in cases in which the Secretary finds that the code is not cost-effective ... based on the impact of the code on the purchase price of manufactured housing and

on total life-cycle construction and operating costs." This standard is similar, but not identical to the 1974 Act, as amended, which directs HUD and the MHCC, in the development or amendment of the Federal Manufactured Housing Construction and Safety Standards (FMHCSS), to balance considerations of protection with the "probable effect of such standard on the cost of the manufactured home to the public," (42 U.S.C. 5403(e)(4)) based on the statutorily-recognized status of manufactured housing as "a significant resource for affordable homeownership." (42 U.S.C. 5401(a)(2)).

Despite EISA's recognition of "life-cycle construction and operating costs," the reality, as recognized by Congress in both the 1974 Act and the 2000 Law -- and as expressed consistently by MHARR -- is that many of the predominately lower and moderate-income consumers served by manufactured housing are already marginally-qualified for the extremely limited purchase financing available for manufactured homes to begin with. Indeed, a 2012 study of manufactured housing residents by the Foremost Insurance Company, shows that 55% of manufactured homeowner respondents had an annual household income below $30,000 – an increase of 16% over the 39% of households below $30,000 as disclosed by the last such study in 2008 – thus manifesting a trend toward even lower-income purchasers.

For such consumers, who either are -- or could be -- priced out of the housing market altogether by higher, more costly energy standards, there is no "life-cycle," no "long-term" ownership period to recoup higher "up-front" regulatory costs, and no offsetting savings. Consequently, even though EISA refers to "total life-cycle costs," DOE must consider and evaluate: (1) the immediate, "up-front" cost of any proposed standard; (2) the impact of such additional costs on the ability of consumers to afford new manufactured homes based on the income demographics of manufactured home purchasers; (3) the numbers of potential purchasers who would or could be excluded from the housing market by such additional acquisition costs; and (4) the economic impact on consumers, the industry and the public of the exclusion of such consumers from the housing market. Moreover, in the event that such specific data is not available from pre-existing sources, that information must be developed (and publicly disclosed) by DOE in order to comply with EISA (and the 1974 Act, as amended).

Responding to the substance of the RFI, MHARR is not aware of studies or research that analyze, in toto, the specific relationships and potential impacts -- or quantify the precise consumer cost implications -- of the three matters particularly identified by the RFI (although there is public domain literature that MHARR has not evaluated for accuracy or legitimacy concerning discrete aspects of the first RFI issue pertaining indoor air quality).

Regarding RFI issue 1, indoor air quality and specifically "the relationship between potential reductions in levels of natural air infiltration and both indoor air quality and occupant health," the Centers for Disease Control and Prevention (CDC) in a 2011 report entitled "Safety and Health in Manufactured Structures," concluded that "no comprehensive data are available on the quality of air in manufactured structures." Id. at p. 25. CDC did note, however, that "the tight building envelopes and relatively low air exchange rates in some manufactured structures combined with formaldehyde off-gassing can cause indoor levels to rise. This effect has been recognized for decades." Id. at p. 26 (citations omitted). From this, it can reasonably be inferred that even tighter building envelopes and further reductions in levels of natural air infiltration

pursuant to new DOE energy standards could cause even higher concentrations of such compounds. Increasing air exchange rates, however, via mechanical ventilation or other methods, increases the risk of moisture infiltration into the home – particularly in humid climates -- that can lead to mold growth and associated impacts on indoor air quality. In this regard, the CDC report states: "Moisture can also enter buildings through operation of mechanical ventilation systems during humid weather conditions. *** Without proper dehumidification, ventilation requirements (24 CFR 3280.103) intended to improve indoor air quality and remove moisture during cool dry periods can have the opposite effect during warm humid weather, with a resulting increase in humidity in the home and increased likelihood of mold growth." Id. at p. 18 (citations omitted).

Other studies addressing manufactured home ventilation and air infiltration either do not address indoor air quality, see, e.g., "A Modeling Study of Ventilation in Manufactured Houses," February 2000, National Institute of Standards and Technology (NIST) ("While there are a number of indoor air quality issues of interest in manufactured housing such as moisture and formaldehyde levels, contaminant analysis is beyond the scope of this project"), or simply recommend further study, see, e.g., "Whole House Ventilation Strategies," January 2003, U.S. Department of Housing and Urban Development.

Accordingly, information and analyses concerning these relationships will need to be developed by DOE as an essential aspect of – and precursor to – any rulemaking. The best and most efficient resource available to DOE to develop and assess such necessary information – with consensus-based legitimacy – is the MHCC. Therefore, DOE, as part of its mandatory consultation with HUD, should refer both this issue and the interrelationship of the DOE and HUD standards to the MHCC for review, development of pertinent information, analysis and appropriate recommendations.

Regarding RFI issue 2, the availability of manufactured home financing, the extremely limited availability of manufactured home consumer financing – and particularly manufactured home personal property financing – has previously been addressed in detail by MHARR in communications and public record filings with multiple federal agencies. The failure of the existing Government Sponsored Enterprises (GSEs) to provide private market support for manufactured housing loans – and the resultant debilitating unavailability of private market financing for both consumers and the industry – is addressed in a June 1, 2012 MHARR letter to the Federal Housing Finance Agency (FHFA), attached hereto as Attachment 1 and incorporated herein by reference. (See also, MHARR July 12, 2012 comments in FHFA rulemaking docket RIN 2590–AA49, "2012-2014 Enterprise Affordable Housing Goals.") Similarly, the failure of the Federal Housing Administration (FHA) to provide public financing support (insurance) for manufactured home loans – and the resulting debilitating unavailability of publicly-supported manufactured home loans – is addressed in a December 16, 2011 MHARR letter to the Government National Mortgage Association, attached hereto as Attachment 2 and incorporated herein by reference.

The specific impact of additional and more costly manufactured home energy standards within this already highly circumscribed market is not difficult to anticipate, although it is not the subject of any particular study of which MHARR is aware. In a market where the household

income of 55% of purchasers, as noted above, is less than $30,000 and where 41% of all manufactured homes were purchased for less than $20,000 (see, 2012 Foremost Insurance Company study at p.2), virtually any increase in acquisition cost will exclude significant numbers of purchasers from the market. For this reason, combined with: (1) the potential adverse impacts of tightened thermal characteristics on indoor air and moisture control; (2) existing HUD energy/thermal/ventilation regulation; and (3) existing multi-level energy efficiency option packages offered by manufacturers which provide consumers with maximum freedom of choice to tailor the energy profile of their home to climate conditions where they live and their financial resources -- DOE should refrain from adopting any new standards that would increase the purchase cost of manufactured homes and exclude new purchasers from the market without significant corresponding consumer benefits – which to date have not been identified or quantified.

Regarding RFI issue 3, "suggested characteristics in developing a model system of enforcement for DOE's energy efficiency standards," MHARR would simply reiterate that there should be a single, unitary enforcement system for any such standards, incorporated within the existing HUD enforcement structure. As noted by MHARR in its July 16, 2010 letter to former Secretary Chu, "HUD ... is fully conversant with the intricacies of [the] comprehensive regulation [of manufactured housing] and is best able, working in conjunction with DOE, to fully evaluate and address the interaction and potential conflicts between energy standards and other aspects of the HUD Code. HUD moreover, is best suited to fully assess and ensure the affordability aspects of energy regulation within the context of the HUD Code and maintain the delicate balance between regulation and affordability that is embedded in relevant federal law." DOE, consequently, should not only consult with HUD regarding the development and enforcement of any such standards, as mandated by EISA, but should also provide for the enforcement of any such standards within the existing HUD structure in order to preserve consistency between such standards and the existing HUD Code standards and maintain the affordability of manufactured homes to the maximum degree possible.

1. CONCLUSION

For all the foregoing reasons, DOE should:

(A) Discard its selectively disclosed "draft proposed rule;"

(B) Allow sufficient time for the development, analysis and evaluation of information concerning potential adverse impacts and the cost implications of any new energy conservation standards;

(C) In addition to mandatory "consultation" with HUD, include the Manufactured Housing Consensus Committee in the development and analysis of any such information and the development of any proposed rule as contemplated by Congress;

(D) Given the selective leak of a draft proposed rule to one or more interested parties, provide a complete list of any and all parties who received that document (and any related materials) from either DOE or HUD; and

(E) Defer any final rule pending a recovery of the manufactured housing market to production levels exceeding 100,000 homes.

Sincerely,

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cc: Hon. Carol Galante, HUD Assistant Secretary/FHA Commissioner
Mr. Danny Ghorbani, MHARR
MHARR Manufacturers

ATTACHMENT #1

Manufactured Housing Association for Regulatory Reform

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June 1, 2012

VIA FEDERAL EXPRESS

Ms. Maria Fernandez
Associate Director
Office of Housing and Regulatory Policy
Federal Housing Finance Agency
400 Seventh Street, S.W.
Washington, D.C. 20024

Re: Personal Property Financing for Manufactured Homes

Dear Ms. Fernandez:

We would like to thank you for the opportunity to meet with you and your colleague, Michael Price, on May 24, 2012 to address personal property (chattel) financing for federally-regulated manufactured homes and the failure of the Government Sponsored Enterprises (GSEs) to provide any support for such consumer lending.

MHARR sought this meeting because the dormancy of the June 7, 2010 Federal Housing Finance Agency (FHFA) proposed rule on the Duty to Serve Underserved Markets (DTS) mandate and the proposed exclusion of manufactured home chattel lending from that rule, have left the critical issue of the availability of chattel lending unresolved at the federal level to the detriment of the industry – and especially its smaller businesses – as well as millions of consumers of affordable housing. With large numbers of potential homebuyers currently excluded from the manufactured housing market as a result of the unavailability of GSE support for chattel lending, this is a key issue and the development of a coherent, profitable, fact-based program of GSE participation in the manufactured home chattel lending market would be a welcome and much needed shot-in-the-arm for the myriad of smaller manufacturers, retailers and communities that comprise the bulk of the manufactured housing industry.

For the reasons explained by MHARR at the meeting and as addressed in greater detail below, MHARR believes that FHFA should authorize a program of GSE support for the purchase and/or securitization of manufactured home chattel loans because: (1) GSE chattel financing support is consistent with and helps carry out the GSE's statutory mission and charter mandate of providing liquidity to housing markets; (2) GSE chattel support financing is consistent with and helps carry out the Duty to Serve section from HERA that requires FHFA to consider chattel financing; (3) GSE Chattel financing is consistent with FHFA's mission (and the

objective stated in its draft Strategic Plan) of conserving GSE assets as this line of business can be carried out profitably, and such activity would constitute a very small percentage of overall GSE business; (4) GSE chattel financing support is consistent with the principle in the draft FHFA Strategic Plan that an important consideration in whether GSEs should purchase a particular type of loan is whether the private sector can adequately carry out this function - since it is obvious that the private sector is not currently adequately doing so; and (5) GSE chattel financing does not violate the "new Activity" prohibition.

As we emphasized at the meeting, chattel financing has historically accounted for nearly two-thirds of all new manufactured home sales. In 2008, the U.S. Census Bureau calculated that 63% of all new manufactured homes placed for residential use were titled as personal property. The availability of chattel financing, therefore, remains vital to the economic health and viability of the manufactured housing industry. More importantly, though, the availability of chattel financing is crucial to the very low, low and moderate-income homebuyers the GSEs were established to serve, because chattel financing provides the lowest-cost means of access to the industry's most affordable homes, allowing consumers to purchase a single-section manufactured home for an average price of $39,310 as compared with an average cost of $272,000 for a site-built home, based on 2010 U.S. Census Bureau data.

Manufactured home loans, however, comprise less than 1% of the total business of the GSEs, despite the fact that: (1) manufactured housing, since 1989, has accounted for 21% of all new single-family homes sold; and (2) manufactured housing generally -- and chattel financed manufactured homes in particular -- provide affordable homeownership for consumers with economic demographics that fall squarely within the core mission of the GSEs (i.e., 73% of all manufactured home households earned less than $50,000 in 2009, with a median household income of $29,900, while 45% of all manufactured home borrowers earned 80% or less of Area Median Income). And while the GSEs have purchased manufactured home loans in the past, they currently provide no ongoing support for manufactured home chattel loans, even though such support, given the inherent affordability of manufactured housing, would create no new or additional burdens for taxpayers in a difficult economy. This effectively ensures that chattel financing remains virtually unavailable for large numbers of homebuyers who would otherwise purchase the industry's most affordable homes.

MHARR thus stressed that profitable models for manufactured home chattel lending, utilized by some organizations for decades, do exist within the industry and that with proper pricing and underwriting, the securitization and/or purchase of manufactured home chattel loans could be a profitable business for the GSEs that would simultaneously help fulfill their statutory mission. We similarly noted, based on the direct experience of MHARR member manufacturers, that the securitization and/or purchase of manufactured home chattel loans in Canada has been a profitable business for that nation's analog to the GSEs.

Based on our discussion, however, we understand it to be FHFA's position that the securitization and/or purchase of manufactured housing chattel loans is a "business decision" for the GSEs that, under the terms of the ongoing FHFA conservatorship, is "up to them" in the first instance. As a result, it was suggested that MHARR approach the GSEs directly regarding chattel financing. There was also an allusion to the "loss rate and loss severity" of such loans as

well as the contention that the securitization and/or purchase of manufactured home loans would be a "new" activity for the GSEs that would be inconsistent with the conservatorship's goals of "conserving" the GSEs' assets and "minimizing costs to the taxpayer."

We do not believe, however, that these points are supported by the relevant facts. First, as FHFA is well aware, the industry has attempted to work with the GSEs for over a decade in an effort to expand and strengthen their participation in the manufactured housing market, to no avail. While the GSEs, in fairness to them, have engaged in extensive talks with industry representatives and industry members, they seem to consistently gravitate toward the interests of the industry's largest corporate conglomerates and have not offered any workable approaches to chattel financing. Worse yet, they appear to have no understanding or appreciation of the fundamental differences that exist between today's modern (i.e., post-Manufactured Housing Improvement Act of 2000) manufactured housing and the "trailers" of yesteryear. It will be essential for this to change under any future GSE reform law or transition to a successor entity (or entities).

Second, the GSEs cannot make a "business decision" in favor of chattel financing if FHFA treats support for such lending as a prohibited "new activity." Consequently, "in the first instance" FHFA needs to acknowledge that its position on chattel support as a "new activity" or "new product" within the meaning of the Prior Approval for Enterprise Products rule published by FHFA on July 2, 2009 (Prior Approval Rule), or the subsequent "new product" policy enunciated by Director DeMarco by letter on February 2, 2010, is erroneous. In this regard, the Prior Approval Rule defines a "new activity" as "any business line [or] business practice ... which was -- (a) not initially engaged in prior to July 30, 2008." Both GSEs, however, have participated in the manufactured home mortgage market prior to July 30, 2008 (indeed, the GSEs purchased 15% of all manufactured home loans in 2004) and, as acknowledged by FHFA in the preamble to its proposed DTS rule, also "bulk purchased" manufactured home chattel loans prior to July 30, 2008 (see, 75 Federal Register No. 108 June 7, 2010 at p. 32103). Moreover, as MHARR has previously noted, notwithstanding the FHFA conservatorship, which began on September 6, 2008, less than two months after the enactment of HERA and DTS, Congress has never waived, modified, amended or repealed DTS or its specific incorporation of manufactured home chattel financing within DTS.

Third, we are dismayed that in the face of a financing crisis within the manufactured housing market with industry production and sales more than 90% below peak levels in 1998, FHFA would cite "loss rate and loss severity," when it has not conducted a single independent study of those issues and has acknowledged, along with the GSEs and the Federal Housing Administration (FHA) the lack of specific performance data for manufactured home chattel loans, particularly since the implementation of new programs under the Manufactured Housing Improvement Act of 2000 (2000 law) that ensure proper installation and consumer protection in all 50 states.

Fourth, the totality of any risk presented by GSE support for the manufactured home chattel lending market – even though substantial evidence indicates that such support could be provided profitably with appropriate pricing and underwriting -- would be miniscule and would pale in comparison to ongoing losses in the site-built housing market. The performance of all

manufactured housing loans – at less than one percent of the GSEs' total portfolios – was not responsible for their failure in 2008, was not a significant factor in their failure and, because of the relatively small size of the manufactured housing market as compared with other segments of the housing industry, would not impair the successful rehabilitation of the GSEs or the successful transfer of their functions to a successor entity or entities, even if the GSEs purchased or securitized every manufactured home loan for the indefinite future. By contrast, a de facto position on the part of FHFA, that GSE support for manufactured home chattel lending is not a valid government undertaking, could establish an extremely damaging precedent that could negatively impact future legislation to resolve the status of the GSEs.

It is incomprehensible that FHFA would refuse to authorize GSE support for manufactured home chattel lending that, with proper pricing and underwriting, could be profitable for the GSEs while providing essential financing for consumers served by the manufactured housing industry's most affordable homes – consumers that might otherwise be unable to afford any home and thus become dependent on costly, taxpayer-financed subsidized housing. With an average price ratio of 7:1, the GSEs could help put seven Americans into manufactured homes for each single individual financed for a site-built home with a lower loss severity risk per home. Given the size of the manufactured housing market in relation to other types of housing at present, such a program would have a de minimis impact on the assets of the GSEs or their reliance on general revenues, but would have an enormous impact on the availability of affordable home ownership for millions of Americans, exactly as envisioned by Congress in creating the GSEs and establishing their core mission.

By copy of this letter, we are advising the senior-most leadership of FHFA of our discussion and the positions that were expressed. If the official position of FHFA differs in any respect from the points set forth above, we ask that you please advise us immediately, as MHARR plans to further pursue this entire matter with the Administration and Congress in the near future.

Thank you again.

Sincerely,

Danny D. Ghorbani
President

cc: Mr. Edward DeMarco
Ms. Margaret E. Burns
Mr. Michael Price

ATTACHMENT #2

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