Manufactured Housing Association for Regulatory Reform

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VIA FEDERAL EXPRESS

Hon. Carol Galante
Assistant Secretary for Housing-Federal Housing Commissioner
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

Re: Revitalization of the Federal Manufactured Housing Program

Dear Secretary Galante:

In our last written communication with you on July 19, 2012, we addressed key reform provisions of the Manufactured Housing Improvement Act of 2000 that HUD, at that time, still had not fully and properly implemented, as well as various aspects of the federal manufactured housing program that had significantly deteriorated. Nearly two years later, the federal program has failed to maintain even that tenuous status quo, and is instead continuing to regress and deteriorate even further, to the detriment of American families in need of affordable housing as well as the industry itself.

At a time when the industry is fighting to maintain its status as the nation's leading source of affordable housing by expanding access to public and private consumer financing for the mostly moderate and lower-income homebuyers that it serves – and President Obama's housing and home finance policies seek to help – a properly functioning federal manufactured housing program, in full compliance with the 2000 reform law, is essential. Indeed, with the elimination of (perceived or actual) "predatory" lending under the Dodd-Frank financial reform law and the industry's willingness to accept risk sharing model for legislative home financing reform (as addressed by MHARR's October 28, 2013 written testimony before the Senate Banking, Housing and Urban Affairs Committee), manufactured homebuyers, going forward, should be entitled to exactly the same access to both public and private consumer financing as purchasers of other types of homes. But all this is predicated and dependent on the full and proper implementation of the 2000 reform law and its over-arching goal – as intended and mandated by Congress -- of completing the transition of manufactured homes from the "trailers" of yesteryear to legitimate "housing" for all purposes.

Set out below, therefore, are specific areas in which HUD has either failed to fully and properly implement the 2000 law altogether or, having complied initially, has since regressed.

1. Failure to Embrace Manufactured Homes as a Major Source of Affordable Housing

President Obama has consistently championed housing policies designed to reward hard work and make housing and home ownership affordable and readily available for all credit-worthy Americans and particularly first-time purchasers. MHARR wholeheartedly supports these policies. Yet, while home ownership in the United States has fallen to a 20-year low, HUD, with the single most practical, cost-effective affordable housing and home ownership solution under its direct authority, has failed to recognize, embrace or utilize manufactured housing as a significant housing resource, contrary to Administration policy and the 2000 reform law, which directs HUD to "facilitat[e] the acceptance of the quality, durability, safety, and affordability of manufactured housing within the Department."

Even though a 2004 HUD-funded study ("Is Manufactured Housing a Good Alternative for Low Income Families?") determined that manufactured homes are the most affordable non-subsidized housing in the United States, the federal program has been organizationally severed from all other HUD affordable housing programs and placed under the "Office of Risk Management," creating the false, discriminatory and damaging perception that manufactured homes are somehow "riskier" than other types of housing. Worse yet, as part of the Office of Risk Management, manufactured housing is effectively excluded from mainstream HUD policymaking and initiatives designed to support, promote and expand affordable housing, as illustrated by HUD's Fiscal Year 2010-2015 Strategic Plan, which fails to even mention manufactured housing as an affordable housing resource under any of its 22 agency goals and sub-goals, including goals to "create financially sustainable homeownership opportunities" and "end homelessness and substantially reduce the number of families and individuals with severe housing needs," among others. Indeed, in its 82 pages, the Strategic Plan refers to manufactured housing only once, under a sub-goal to "protect and educate consumers when they buy, refinance, or rent a home."

At one time, the federal manufactured housing program accounted for approximately one-quarter of all single-family homes sold in the United States. The 2000 law was designed to increase this even further, into hundreds of thousands of homes (or more) annually, to satisfy a growing population and increasing demand for affordable housing. The failure to achieve this goal after more than a decade – with the overall housing market having returned to sustained growth – shows that fundamental changes in HUD's approach to manufactured housing are essential, beginning with the organizational relocation of the federal program to the Office of Single-Family Housing and the inclusion of manufactured housing in all relevant HUD affordable housing programs and initiatives.

2. Failure to Appoint a Non-Career Program Administrator

The 2000 reform law directs HUD to "provid[e] ... funding for a non-career administrator within the Department to administer the manufactured housing program." Congress included this directive in the 2000 law based on a program history which showed that a non-career administrator, with direct policy accountability to the administration and Congress, was essential to ensure: (1) the full and proper implementation of all the program reforms of the 2000 law; and (2) the full integration of manufactured housing into all relevant HUD housing programs. Despite this mandate, the program has not had a non-career administrator since 2004 and, since 2011, has not had any permanently-designated administrator at all, while HUD has ignored continuous industry appeals for an appointed non-career administrator in accordance with the law. And now, Congress has addressed this matter again -- through the Consolidated Appropriations Act of 2014 (H.R. 3547) -- directing HUD for a second time to appoint a full-time manufactured housing program administrator (see, Division L, Title II, "Housing"), with a $50,000 per day penalty for non-compliance.

With this latest congressional action, HUD now has the opportunity – and obligation – to fully comply with the original directive of the 2000 reform law and appoint a non-career manufactured housing program administrator for the first time in ten years. Without such an appointee, the program has not – and will not -- transition into the full-fledged "housing" program envisioned by Congress in the 2000 law, remaining focused instead on ever more onerous and costly regulation, with no proven benefits for consumers, while negatively affecting sales, financing, zoning, placement and a host of other matters to the ultimate detriment of American homebuyers. MHARR, therefore, calls on HUD, once again, to comply with the law and appoint a non-career manufactured housing program administrator as soon as possible.

3. Subpart I Amendments

On October 1, 2013, HUD published major amendments to Subpart I (Consumer Complaint Handling and Remedial Actions) of its manufactured housing Procedural and Enforcement Regulations. While we thank you (and Mr. Czauski) personally for completing the final adoption of these amendments, and although the changes are positive in multiple respects, the final rule imposes a major new regulatory burden that was never published for comment by affected parties, violates the requirements of the 2000 law and will unnecessarily increase the cost of manufactured housing for already hard-pressed consumers.

Specifically, section 3282.366(b) of the final rule requires third-party Primary Inspection Agencies (PIAs) to "review at least monthly the manufacturer's service and inspection records." No such requirement is currently contained in section 3282.366, or elsewhere in Subpart I . Nor was this provision published for comment as part of the proposed Subpart I amendment rule issued by HUD on February 15, 2011. While the proposed rule did contain a similar provision at section 3282.362(c)(1), that proposed section merely called for "periodic" PIA review of such manufacturer records. When the final rule was published, however, the proposed 3282.362(c)(1) revision was deleted and replaced with the new section 3282.366(b), which is materially different in that it specifies a minimum time period (monthly) for such reviews.

As stated by MHARR in its written comments on the proposed Subpart I rule, there is no evidence that either the proposed provision (3282.362(c)(1)) or the unilaterally modified final rule provision (3282.366(b)) was ever evaluated for its probable impact "on the cost of the manufactured home to the public," as required by the 2000 law. And that impact could be substantial. While HUD, in the preamble to the final rule, seemingly acknowledged this concern, noting: "commenters stated that the new requirement ... would significantly add to the PIA's responsibilities' [and] increase costs" while doing "nothing to ensure that consumers are protected," and "agreed" with such comments, stating that it would relocate this provision to section 3282.366 and limit PIA review to "service and inspection records," it nevertheless increased the frequency of such reviews from "periodic" to "at least monthly," contrary to applicable law.

Having never afforded regulated parties – or anyone else – an opportunity to comment on this provision of the final rule as actually adopted, contrary to both the Administrative Procedure Act and the 2000 law, having never considered the cost implications of the modified final rule in violation of the 2000 reform law, and having substantively and significantly altered a consensus MHCC-recommended regulation at the final stage of rulemaking, HUD should withdraw this provision – either entirely or pending proper MHCC consideration and opportunity for public comment. Moreover, because of the scope of the changes made by the October 1, 2013 amendments, the inherent complexity of Subpart I, and the imperative that all industry members, inspectors and monitoring personnel be held to the same enforcement criteria, with an even playing field for all regulated parties, we believe that HUD should conduct a detailed orientation program concerning the new Subpart I as an open forum for all interested

stakeholders. Such an initiative -- as an authoritative presentation by HUD -- would help avoid any misunderstandings, enforcement or compliance inconsistencies, or subjective interpretations that could taint the new rules from the outset, if such training were offered by any other party. And, indeed, MHARR has been contacted by industry members already regarding an intra-industry conference call regarding the new amendments that potentially offered inaccurate information to participants. Thus, with the amended Subpart I provisions slated to take effect on March 31, 2014, HUD should act to convene such a forum as early as possible.

4. Unilateral HUD Changes to MHCC Proposals at the Final Rule Stage

HUD's revision of the Subpart I final rule is just one extremely serious example of a HUD practice – i.e., unilateral HUD changes to MHCC-recommended standards and regulations at the final rule stage – to which MHARR has previously objected. The 2000 law is very clear that all new standards or standards amendments (absent an "emergency" declared in writing by the Secretary) must be developed and recommended through the MHCC consensus process based on the criteria and considerations set forth in the law, including both proper justification and consideration of the cost impact on manufactured homebuyers. By altering MHCC recommendations as part of a final rule, with no further MHCC considerations or input, HUD regulators unilaterally change the factors and considerations between interest groups (and members) underlying an MHCC consensus, undermining the consensus process and potentially leading to final standards that would not have achieved an MHCC consensus as modified. Even worse, unilateral HUD changes undermine the highly-transparent MHCC process, empowering un-named special interests to enter and influence the regulatory process after the conclusion of MHCC debate and development of an MHCC consensus. This alters the careful balance of stakeholder interests represented by the MHCC contrary to the letter of the 2000 law and the express intent of Congress.

For example, in its December 9, 2013 final rule adopting the "second set" of standards amendments recommended by the MHCC, HUD, based on requests by other unidentified "commenters," unilaterally adopted the American Society of Sanitary Engineering 1016 standard (2005) for individual thermostatic pressure balancing and combination control for bathing facilities, and has now construed that standard in a manner that could add hundreds of dollars to the cost of a home and/or make certain types of bathing installations sought by consumers unobtainable because of the unavailability of compliant components. In this and every other instance, to be fully compliant with the 2000 law, such changes by HUD should go back to the MHCC for a further evaluation of their impact on the original MHCC consensus proposals and determination whether a consensus would still exist in light of those changes.

5. Restoring the Manufactured Housing Consensus Committee

The Manufactured Housing Consensus Committee (MHCC) was designed by Congress as the centerpiece reform of the 2000 law. Despite having been properly organized and established by HUD in 2002, the MHCC has regressed and, today, is totally inoperative. As you may know, the MHCC did not meet at all in 2013, was inoperative for a substantial part of 2012, and has no meetings currently scheduled for 2014. Indeed, the Secretary, more than a year ago, appointed new MHCC members who have never been to a meeting, while a significant number of important standards revisions and other regulatory issues urgently need to be addressed (e.g., standards revisions for Southern Yellow Pine lumber, energy conservation standards, formaldehyde standards revisions and ventilation-related recommendations suggested by the Government Accountability office in an October 24, 2012 report, to name just a few). And with no Administering Organization (AO) currently in place – with the original AO contract having expired during 2013 and the selection of a new AO having been tainted by a

mismanaged solicitation process – there is no prospect for a resumption of regular MHCC activity in the immediate future.

Your direct involvement is essential to end this dysfunctional status quo – as well as previous unwarranted HUD restrictions on the role, authority, independence and functionality of the MHCC (see, MHARR's February 1, 2012 written testimony before the House of Representatives Subcommittee on Insurance, Housing and Community Opportunity) -- and restore the Committee to the full status prescribed by Congress in the 2000 law. To start, the 2000 law is very clear that the MHCC AO must be a "recognized, voluntary, private sector, consensus standards body with specific experience in developing model residential building codes and standards involving all disciplines regarding construction and safety that administers the consensus standards through a development process." And, indeed, one such organization did submit a proposal for the AO contract. HUD, therefore, should act immediately to select a fully-qualified AO as required by the 2000 reform law and restore the MHCC to full functionality.

Just as importantly, HUD must restore proper balance to the MHCC – which today has four consumer representatives from the same collective national organization, but no collective national industry representatives -- by reinstating collective industry MHCC voting representation (through designated non-lobbyist employees) as specifically authorized by the Office of Management and Budget in its Final Guidance on Appointment of Lobbyists to Federal Boards and Commissions. The indefensible HUD ban on collective, national industry representation on the MHCC has had severely negative impacts on both the industry and the MHCC itself. For the industry, the HUD ban has deprived it of the benefits of the decades of collective knowledge, know-how, expertise and institutional memory that it has assembled in Washington, D.C. and needs in order to effectively assert the industry's collective views and positions on standards and regulatory issues, while ensuring that the MHCC functions in full compliance with law. Furthermore, the absence of collective, national industry representatives has drastically skewed the orientation of the MHCC, undermining the crucial and painstakingly-crafted balance established by Congress in the 2000 reform law. We believe, however, that with your leadership and foresight, these matters can easily be resolved.

6. Failure to Implement Enhanced Federal Preemption

Federal preemption, together with uniform, performance-based federal standards and uniform enforcement, is a crucial element of the federal program. In the 2000 reform law, Congress significantly enhanced the scope of preemption and directed HUD to construe that preemption "broadly and liberally." Notwithstanding this change, HUD has taken no action to apply the enhanced preemption of the 2000 law for the benefit of manufactured homeowners. HUD, for example, has yet to retract outdated and highly restrictive "internal guidance" regarding federal preemption, issued before the 2000 reform law. More importantly, presented with a clear opportunity to assert the primacy of the federal standards and protect current and future homebuyers from extremely costly and unnecessary mandates, HUD has yet to take action to formally preempt state and local sprinkler requirements based on the existing HUD "fire safety" standards, which already provide the reasonable fire safety required by federal law.

As HUD correctly noted in rejecting the inclusion of a federal sprinkler standard in its December 9, 2013 final rule implementing standards recommended by the MHCC: "Recent fire data analysis prepared by the National Fire Protection Association (NFPA) indicated that HUD standard units have a similar fire safety record to that of one- and two-family dwelling units. *** Further, there is [a] considerable cost impact to install a sprinkler system in a manufactured home for what would appear to be marginal benefits." While MHARR commends HUD and thanks you (and Acting Deputy Program Administrator, Mr. Henry Czauski) personally for recognizing these vital points, the Department should take the next logical step to fully preempt state and/or local sprinkler mandates based on the federal

manufactured home fire safety standards (and the enhanced preemption of the 2000 law) and, at the same time, reject a pending proposal for a "conditional" federal sprinkler standard, again as explained in detail in MHARR's July 19, 2012 letter to you.

7. Ensuring Reasonable Energy Criteria

MHARR is extremely concerned that a recent HUD decision could indicate that it plans to abandon its crucial role in ensuring that new energy conservation standards for manufactured homes meet the mandate of the 2000 law for a reasonable balance between consumer protection and affordability.

The Energy Independence and Security Act of 2007 (EISA) directs the Department of Energy (DOE) to adopt energy conservation standards for HUD Code manufactured homes, following public notice and comment, and "consultation with the Secretary of Housing and Urban Development, who may seek further counsel from the Manufactured Housing Consensus Committee." The relevant section of EISA (413) further provides that such standards be "based on the most recent version of the International Energy Conservation Code [IECC] ... except in cases in which the Secretary finds that the code is not cost effective." (Emphasis added). HUD, however, in the November 21, 2013 publication of its Semiannual Regulatory Agenda (SRA), simply deferred to DOE cost assessments in connection with a comparable mandate under EISA section 481, which requires adoption of "the most recent revisions to the 2006 International Energy Conservation Code ... subject to a determination that the revised codes do not negatively affect the availability or affordability of new construction of single and multi-family housing covered by the Act...." In finding no such "adverse consequences," HUD failed to obtain or review any independent evidence, or perform any independent analysis whatsoever. Instead, the notice indicates that HUD plans to rely upon a "computer model" developed by DOE.

Any such deference to DOE on the cost implications of the IECC for manufactured housing under EISA section 413 would be unacceptable. Congress, through section 413, envisioned an active role by HUD – in conjunction with the expert analysis and input of the MHCC – to maintain and preserve the affordability of manufactured housing under any such proposed DOE standards, particularly when DOE has already engaged in regulatory misconduct by selectively leaking a "draft" of the proposed rule. Moreover, as MHARR has consistently maintained since the enactment of EISA, new standards for manufactured homes are unnecessary and an undue imposition on homebuyers in any event. Current HUD standards already ensure that manufactured homes are energy efficient, and upgraded energy packages are always available on an optional basis to homebuyers who wish to purchase them as a matter of consumer choice. By contrast, costly new one-size-fits-all rules will undermine homeownership. Very simply, there are no "life-cycle" cost savings from enhanced energy standards for lower and moderate-income homebuyers who are priced out of the housing market completely due to the acquisition-cost impact of any such standards. Such a result would be unacceptable to the industry and should be unacceptable to HUD.

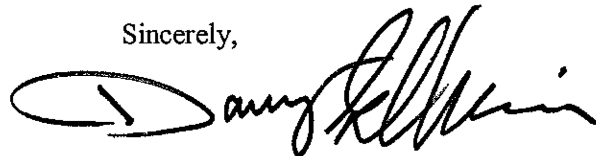
8. Prospective Label Fee Increase

In its 2014 manufactured housing program Congressional Budget Justification, HUD indicates that it will seek a label fee increase from the current $39.00 per floor to $100.00 per floor. MHARR, as noted in previous congressional testimony, has stated that it would not object to such an increase, provided that any such increase is specifically justified by HUD and approved in advance by Congress as required by the 2000 law, is properly allocated to provide funding for an appointed non-career administrator, as provided by the 2000 law, is offset by reductions in contractor functions and payments proportionate to current industry production and is properly utilized to increase payments to State

Administrative Agencies (SAAs). Unlike the program monitoring contractor, SAAs constitute the first line of protection for a growing number of consumers residing in an ever-expanding number of both new and existing manufactured homes. And, with a number of states facing critical difficulties providing funding for SAA operations, it is essential that HUD funding for these state partners be enhanced soon.

Secretary Galante, affordable manufactured housing should be a priority for HUD and a central component of its mission, not an afterthought. Your leadership on the matters addressed above -- and in implementing all aspects of the 2000 reform law -- is urgently needed to make HUD Code housing part of President Obama's housing policies directed at helping working families and middle-class Americans. MHARR looks forward to your personal involvement in all of these matters and will contact your office to schedule a follow-up meeting soon.

Sincerely,



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