Manufactured Housing Association for Regulatory Reform

1331 Pennsylvania Avenue, NW • Suite 512 • Washington, DC 20004 • 202-783-4087 • Fax 202-783-4075 • mharrdg@aol.com

November 18, 2016

VIA FEDERAL EXPRESS

Hon. Ernest Moniz
Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Re: Energy Standards and Regulations for Manufactured Housing

Dear Secretary Moniz:

We are writing on behalf of our members – small businesses located throughout the United States which produce affordable manufactured homes regulated by the U.S. Department of Housing and Urban Development (HUD) – to call on you to defer, for the remainder of the Obama Administration, the adoption of any final rule to implement energy standards for manufactured homes pursuant to the proposed rule published by the U.S. Department of Energy (DOE) on June 17, 2016 (see, 81 Federal Register, No. 117 at pp. 39756, et seq.). It is our understanding that following publication of the proposed rule and the close of the public comment period in August 2016, a final rule is currently under review by the Office of Management and Budget (OMB) pursuant to Executive Order 12866.

As you know, president-elect Trump has stated that he will "eliminate" wasteful and unnecessary federal regulations "which kil[l] jobs, and which d[o] not improve public safety." Similarly, as you are aware, Congress, in a letter dated November 15, 2016, called on the Secretaries, Administrators and Directors of all federal agencies to defer "finalizing pending rules or regulations in the Administration's last days," noting that rushed regulations could entail "unintended consequences" that could "harm consumers and businesses." The congressional communication noted that "such forbearance is necessary to afford the recently elected administration and Congress the opportunity to review and give direction concerning pending rulemakings," and stated that if Congress' request were "ignored," it would "scrutiniz[e] [such] actions – and, if appropriate, overturn them – pursuant to the Congressional Review Act."

The pending DOE energy rule for manufactured housing is a prime example of the type of unnecessary and destructive regulation that the president-elect has pledged to eliminate. As is exhaustively detailed in MHARR's August 8, 2016 written comments on the proposed DOE manufactured housing energy rule, that rule, as proposed – deemed a "significant" rule by OMB, with a potentially major impact on both consumers and the industry – is premised on a factually worthless, incomplete and affirmatively misleading "cost-benefit analysis," a sham standards-development process, non-transparent information inputs on key issues, and violations of the EISA section 413 "consultation" mandate (by both DOE and HUD). As a result, any final rule implementing (or derived from) the June 17, 2016 DOE proposed rule

would: (1) violate the National Manufactured Housing Construction and Safety Standards Act of 1974 Act as amended by the Manufactured Housing Improvement Act of 2000 (2000 Act); (2) violate the "arbitrary, capricious [or] abuse of discretion" standard of the Administrative Procedure Act ("APA") (5 U.S.C. 706(2)(A)); (3) violate the Negotiated Rulemaking Act (5 U.S.C. 561, et seq.); (4) violate the Energy Independence and Security Act of 2007 itself; and (5) violate other applicable requirements of law.

If finalized now, that rule, which fails to propose an enforcement or compliance mechanism, or, more importantly, consider either the purchase-price or life-cycle impact of the significant costs associated with such enforcement, would needlessly undermine the availability of affordable manufactured housing contrary to existing law, exclude millions of lower and moderate-income Americans from homeownership altogether, and stifle free-market competition within the manufactured housing industry by disproportionately harming smaller industry businesses.

Indeed, the June 17, 2016 DOE proposed rule has been castigated as fundamentally incomplete, ill-conceived and a needlessly costly and damaging attack on consumers – who can already access any energy conservation measures that they wish on an optional basis – by the Manufactured Housing Consensus Committee (MHCC), a federal consensus committee of manufactured housing stakeholders established by Congress, the U.S. Small Business Administration Office of Advocacy and the George Washington University Regulatory Studies Center, among others.

Because of the inevitably destructive effects of this rule – if finalized – on both the manufactured housing industry (especially its smaller businesses) and consumers, we call on you to honor Congress' request and refrain from further action on this rulemaking until it can be fully reviewed and considered by the incoming Administration. Such a deferral would avoid a rush-to-judgment that would irremediably undermine and damage the nation's most affordable source of home ownership and place the American Dream of home ownership beyond the reach of millions of lower and moderate-income Americans. Such a deferral would also be consistent with guidance issued at the start of the Obama Administration, calling on agency heads to refrain from finalizing new rules, noting that it was "important that [the President's] appointees and designees have the opportunity to review and approve any new or pending regulations." Such review is particularly crucial in this case, where a tainted and fundamentally scandalous rulemaking process has resulted in proposal that is not only baseless and harmful, but affirmatively in violation of applicable law.

Sincerely,

Mark Weiss
President and CEO

cc: Hon. Mike Pence, Vice President-Elect and Transition Chairman
Hon. Shaun Donovan, Director, Office of Management and Budget
Hon. Lisa Murkowski, Chair, Senate Energy Committee
Hon. Maria Cantwell, Ranking Member, Senate Energy Committee
Hon. Hon. Fred Upton, Chair, House Energy and Commerce Committee
Hon. Frank Pallone, Ranking Member, House Energy and Commerce Committee

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November 18, 2016

VIA FEDERAL EXPRESS

Hon. Julian Castro
Secretary
U.S. Department of Housing and Urban Development
Suite 10000
451 Seventh Street, S.W.
Washington, D.C. 20410

Re: Manufactured Housing Installation Regulation

Dear Secretary Castro:

We are writing on behalf of our members – small businesses located throughout the United States which produce affordable manufactured homes regulated by the U.S. Department of Housing and Urban Development (HUD) – to call on you to defer any further action, for the duration of the Obama Administration, on any and all activities that would alter the relationship between HUD and the states regarding state-law manufactured housing installation standards and programs previously approved by the Department. Specifically, we ask that you direct the HUD manufactured housing program to withdraw – and take no further action with regard to – a proposed "Interpretative Bulletin" entitled "An Assessment of Design and Installation Practices for Manufactured Homes in Climates with Seasonally Frozen Ground" ("Frost-Free IB") pending further consideration and appropriate review by the incoming Trump Administration. This so-called "Interpretative Bulletin" – which, as noted, should be retracted -- was submitted to the Manufactured Housing Consensus Committee (MHCC) for 120-day review pursuant to section 604(b)(2) of the Manufactured Housing Improvement Act of 2000 (42 U.S.C. 5403(b)(2)) at its just-concluded October 25-27, 2016 meeting. A conference call meeting of the MHCC's Regulatory Subcommittee is currently scheduled for November 28, 2016 to consider that alleged IB, but should be cancelled in accordance with the IB's withdrawal.

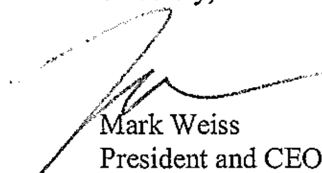
As you know, president-elect Trump has stated that he will "eliminate" wasteful and unnecessary federal regulations "which kil[l] jobs, and which d[o] not improve public safety." Similarly, as you are aware, Congress, in a letter dated November 15, 2016, called on the Secretaries, Administrators and Directors of all federal agencies to defer "finalizing pending rules or regulations in the Administration's last days," noting that rushed regulations could entail "unintended consequences" that could "harm consumers and businesses." The congressional communication further noted that "such forbearance is necessary to afford the recently elected administration and Congress the opportunity to review and give direction concerning pending rulemakings," and stated that if Congress' request were "ignored," it would "scrutiniz[e] [such] actions – and, if appropriate, overturn them – pursuant to the Congressional Review Act."

The proposed Frost-Free IB is a prime example of the type of unnecessary, costly and destructive regulation that the president-elect has pledged to eliminate. MHARR's strenuous and fundamental objections to this proposed action – which would violate substantive and procedural elements of the 2000 reform law -- are set forth in detail in an October 20, 2016 MHARR communication to the manufactured housing program Administrator.

As that communication indicates, the Frost-Free IB is unacceptable as an unnecessary, unnecessarily costly and unjustifiable disruption and imposition upon the state-law, HUD-approved installation programs that have been established by 37 states. The IB amounts to a HUD attack on the primacy of state-based installation regulation that – if implemented -- would undermine the federal-state partnership mandated by Congress, while imposing high-cost, prescriptive, one-size-fits all installation mandates with no showing of need, necessity or cost-effectiveness, in violation of the 2000 reform law. While the federal installation standards are model standards that provide a baseline for state standards to provide "protection that equals or exceeds" the model federal provisions, the 2000 reform law provides no mechanism or basis for the imposition of unilateral HUD interpretations of the model federal standards on state officials enforcing state standards under color and authority of state law.

Insofar as this illegitimate power grab by the HUD program and its contractors would completely overturn the federal-state installation enforcement system painstakingly crafted by Congress based on input from all affected program stakeholders and would directly endanger the federal-state partnership underlying the program as a whole, this proposed IB should be withdrawn – in toto – prior to any pending proceedings and recanted by HUD as a needless and baseless encroachment on legitimate state authority. This action, moreover, would also be consistent with guidance issued at the start of the Obama Administration, calling on agency heads to refrain from finalizing new rules, noting that it was "important that [the President's] appointees and designees have the opportunity to review and approve any new or pending regulations."

Sincerely,



Mark Weiss
President and CEO

cc: Hon. Mike Pence, Vice President-Elect and Transition Chairman
Hon. Shaun Donovan, Director, Office of Management and Budget
Hon. Jeb Hensarling, Chairman, House Financial Services Committee
Hon. Maxine Waters, Ranking Member, House Financial Services Committee
Hon. Richard Shelby, Chairman, Senate Banking Committee
Hon. Sherrod Brown, Ranking Member, Senate Banking Committee

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November 18, 2016

VIA FEDERAL EXPRESS

Hon. Melvin Watt
Director
Federal Housing Finance Agency
400 7th Street, S.W.
Washington, D.C. 20219

Re: Pending Duty to Serve Regulation

Dear Director Watt:

We are writing on behalf of our members – small businesses located throughout the United States which produce affordable manufactured homes regulated by the U.S. Department of Housing and Urban Development (HUD) – to call on you to defer, for the remaining duration of the Obama Administration, the promulgation of any final rule to implement the "Duty to Serve Underserved Markets" (DTS) provision of the Housing and Economic Recovery Act of 2008 (HERA), as that rule relates to manufactured housing, unless the rule specifically provides for the full and immediate securitization by the Government Sponsored Enterprises (GSEs) of manufactured housing personal property (chattel) loans on a going basis.

As you are aware, president-elect Trump has called for a temporary moratorium on pending federal regulations. Similarly, as you are also aware, Congress, in a letter dated November 15, 2016, called on the Secretaries, Administrators and Directors of all federal agencies to defer "finalizing pending rules or regulations in the Administration's last days," noting that rushed regulations could entail "unintended consequences" that could "harm consumers and businesses." The congressional communication further notes that "such forbearance is necessary to afford the recently elected administration and Congress the opportunity to review and give direction concerning pending rulemakings," and stated that if Congress' request were "ignored," it would "scrutiniz[e] [such] actions – and, if appropriate, overturn them – pursuant to the Congressional Review Act."

In a 2010 proposed rule – and again in a December 18, 2015 proposed rule – the Federal Housing Finance Agency (FHFA), as regulator and conservator of the GSEs, has proffered regulations for the implementation of DTS that would totally exclude support for manufactured

housing chattel loans from DTS, even though HERA and DTS specifically identify HUD-regulated manufactured homes as an "underserved market," and specifically authorize FHFA to include chattel loans, which comprise approximately 80% of the manufactured housing market, as part of the DTS mandate.

As MHARR made clear in its March 15, 2016 written comments on the 2015 FHFA proposed rule, the exclusion of manufactured home chattel loans from DTS would leave the vast majority of actual and potential purchasers of manufactured homes – the nation's most affordable housing – subject to ongoing discrimination by the GSEs, effectively excluding millions of mostly lower and moderate-income consumers from the American Dream of home ownership, while needlessly subjecting millions more to higher-cost loans with interest rates unnecessarily inflated by the lack of GSE securitization or secondary market support for such loans.

Because the 2015 proposed DTS rule – if finalized without the full inclusion of manufactured housing chattel loans – would be utterly insufficient to realize the central objective of DTS as specified by Congress, and would leave intact baseless GSE discrimination against manufactured homebuyers with extremely harmful repercussions for American consumers of affordable housing, we call on you to honor Congress' request and refrain from further action on this rulemaking until it can be fully reviewed and considered by the incoming Administration.

Such a deferral would avoid a rush-to-judgment that would undermine and damage the nation's most affordable source of home ownership and place the American Dream of home ownership beyond the reach of millions of lower and moderate-income Americans. Such a deferral would also be consistent with guidance issued at the start of the Obama Administration, calling on agency heads to refrain from finalizing new rules, noting that it was "important that [the President's] appointees and designees have the opportunity to review and approve any new or pending regulations." Such review is particularly crucial in this case, to ensure that an appropriate and statutorily-compliant DTS program is ultimately adopted.

Sincerely,

Mark Weiss
President and CEO

cc: Hon. Mike Pence, Vice President-Elect and Transition Chairman
Hon. Shaun Donovan, Director, Office of Management and Budget
Hon. Jeb Hensarling, Chairman, House Financial Services Committee
Hon. Maxine Waters, Ranking Member, House Financial Services Committee
Hon. Richard Shelby, Chairman, Senate Banking Committee
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