



# **Manufactured Housing Association for Regulatory Reform**

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**A STUDY, ANALYSIS AND EVALUATION OF  
THE PAST, PRESENT AND FUTURE STATUS  
AND COLLECTIVE REPRESENTATION OF THE  
POST-PRODUCTION SECTOR OF THE  
MANUFACTURED HOUSING INDUSTRY**

**AND**

**RECOMMENDATIONS FOR ITS IMPROVEMENT**

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## TABLE OF CONTENTS

- I. INTRODUCTION, OBJECTIVE AND SCOPE**
  
- II. HISTORY, ANALYSIS AND EVALUATION**
  - A. Definition of Post-Production Sector
  - B. History
  - C. Changes to Industry Regulatory Structure
  - D. Prevailing Status
  - E. Future Long-Range Prospects
  
- III. POSSIBLE SOLUTIONS**
  - A. Division within MHARR (Affiliate Status)
  - B. Existing Ad Hoc Organizations
  - C. An Incorporated Independent National Association
  
- IV. OBJECTIVES OF THE ASSOCIATION**
  
- V. SUGGESTED ASSOCIATION STRUCTURE AND FUNDING**
  - A. Name of the Association
  - B. Incorporation
  - C. Location
  - D. Membership
  - E. Board of Directors
  - F. Executive Committee
  - G. Chairman and Vice Chairman
  - H. Funding
  
- VI. CONCLUSION**

## **I. INTRODUCTION, OBJECTIVE AND SCOPE**

At the Spring 2017 Membership Meeting of the Board of Directors of the Manufactured Housing Association for Regulatory Reform (MHARR), the Association was instructed by its Board of Directors to conduct a study and analysis of – and recommendations for improvements to -- the collective national representation of the post-production sector (PPS) of the comprehensively federally-regulated manufactured housing industry. Such a document was deemed necessary due to increasing numbers of inquiries and requests to MHARR for assistance by post-production sector companies and individuals, that are increasingly being pressed and targeted by regulators at all levels of government, as well as industry competitors, particularly since the enactment of the Manufactured Housing Improvement Act of 2000 (2000 reform law). Thus, the objective of this document is to thoroughly analyze and evaluate the past, present and future status of the collective representation of the post-production sector, and to provide recommendations for the improvement of its collective national representation going forward. The scope of this document is strictly confined and limited to the post-production sector of the manufactured housing industry.

## **II. HISTORY, ANALYSIS AND EVALUATION**

### **A. Definition of “Post-Production”**

For purposes of this document, the manufactured housing industry PPS shall be defined as or shall include any and all individuals and/or entities that provide service(s) related to or for homes produced by federally-regulated manufactured housing producers, after the HUD certification label is affixed to the home and after construction of the home in the factory is completed, and the home is transported from the factory and/or completed on-site. These may include transporters, installers, retailers, communities, finance providers and insurers.

### **B. History**

Early in the history of the manufactured housing industry, the Mobile Home Manufacturers Association (MHMA) included all sectors of the then- “trailer,” recreational vehicle (RV), and “mobile home” industries. In the late 1960s, for reasons too numerous to enumerate (and beyond the scope of this document), both the trailer/RV industry and retailers and communities within the PPS of the then-mobile home industry, separated from MHMA and formed their own independent national associations, with the former named the Recreational Vehicle Institute (RVI) (later changed to Recreational Vehicle Industry Association (RVIA)) and the latter named the Mobile Home Dealers Association (later changed to the National Manufactured Housing Federation (NMHF)).

These changes resulted in the membership of MHMA being comprised of mobile home manufacturers, product suppliers, finance providers, insurance companies and transporters only. With the rapid advancement and evolution of the mobile home industry into the construction of permanent residential dwellings and the enactment of the National Manufactured Housing

Construction and Safety Standards Act in the early 1970s, MHMA changed its name to the Manufactured Housing Institute (MHI).

In the early 1990s, due to several prevailing circumstances and despite significant opposition by many manufacturers, retailers and communities, NMHF merged with MHI, thus ending any independent, collective national representation for any and all segments of the PPS.

Chief among the reasons for this merger were dwindling funding (intentional or otherwise) for NMHF but, more importantly, a move by large conglomerate manufacturing entities into a vertically integrated business model, including production, consumer financing, retail sales and/or community businesses, allowing those conglomerates to exercise dominance and de facto control over the vertical structure of the industry. While this experiment in vertical integration largely failed for most producers involved, the resulting NMHF-MHI merger remained intact, thereby benefitting the sole remaining (and largest) such vertically-integrated conglomerate – i.e., Clayton Homes, Inc.

Deprived of collective, independent national representation, the merger placed the PPS into a unique, albeit, vulnerable position, within a comprehensive regulatory structure centered primarily at the federal level. This unitary or “umbrella” structure, moreover, stands in sharp contrast with the structure of other industries that most closely resemble the manufactured housing industry, including the RV industry and the site-built housing industry, which both have benefitted substantially from independent collective representation for builders/manufacturers through one organization, and independent, collective representation of their respective post-production sectors through a separate organization – e.g., the RVIA and the Recreational Vehicle Dealers Association (RVDA) within the RV industry, and the National Association of Home Builders (NAHB) and National Association of Realtors (NAR) within the site-built housing industry.

Indeed, the HUD Code manufactured housing industry may be the only industry of its kind in the nation (particularly being subject to comprehensive federal regulation) without an independent national post-production association to serve as a vital link between producers, at one end of the industry spectrum, PPS companies that directly interface with homebuyers and residents, and manufactured housing consumers at the other end of that spectrum. In fact, the inclusion of a nationwide “dispute resolution” (DR) (and installation regulation) mandate in the 2000 reform law was mainly due to this deficiency, with unresolved consumer complaints – characterized as “ping-ponging” between producers and PPS members – cited as a basis for mandatory nationwide DR by consumer groups involved in the legislative process leading to the 2000 reform law.

As a result, and as is explained below, the glaring deficiencies flowing from the lack of a collective, independent national representation for the PPS of the HUD Code industry, have already been – and continue to be -- increasingly and alarmingly felt by the industry and manufactured housing consumers.

### **C. Changes to the Industry's Regulatory Structure**

The enactment of the 2000 reform law, made the PPS a direct and major stakeholder in the national superintendence of the manufactured housing industry by the U.S. Department of Housing and Urban Development (HUD). By correcting deficiencies in the original 1974 federal manufactured housing law which had plagued the industry since its inception (*i.e.*, nationwide installation regulation and dispute resolution), the 2000 reform law was designed and structured to make manufactured homes legitimate housing for all purposes, and fully equivalent in status and treatment with all other types of residential construction. The 2000 reform law thus instituted provisions directly impacting the PPS at the national level.

Forward-looking elements of the industry, in the early-2000s, recognized (and expressed the view) that the PPS, without an independent, national, collective association, was not ready or prepared for such a fundamental change, and, in fact, needed such a national representation, but those pleas, ultimately, fell on deaf ears. As a result – and as shown below – PPS regulatory problems and issues have multiplied (particularly within the past decade and much more so since 2014), increasingly subjecting the entire industry to such issues and/or their consequences, all of which have slowed the growth of the industry while preventing it from reaching its full potential.

Ultimately, then, the failure of the post-production sector to respond to significant changes in the law with an independent, national, collective representation of its own – to protect, defend and advance its own specific interests (as well as interests that it shares with other segments of the industry), has harmed the industry – unnecessarily blunting its growth, while simultaneously harming consumers in need of greater access to affordable, non-subsidized housing.

### **D. Prevailing Status**

As MHARR has already detailed in multiple published documents, the HUD manufactured housing program – particularly under the selected career administrator in place since 2014 – and its entrenched contractors, have targeted the PSS for expanded and more debilitating regulation on a wide range of matters, while adopting or maintaining positions contrary to the 2000 reform law that have had a sharply negative impact on both the PPS and the industry as a whole. These include, but are not limited to: (1) HUD's failure/refusal to federally preempt local "zoning" or placement restrictions that discriminatorily exclude HUD-regulated manufactured homes and the lower and moderate-income Americans who rely on the industry's homes as a source of affordable, non-subsidized housing and/or home ownership; (2) HUD's ongoing effort to dictate state-law installation standards and programs to already-approved "compliant" states on a one-size-fits-all basis from Washington, D.C.; (3) HUD's effort to substantively alter, via "interpretation," its standards for "frost-free" foundations and its parallel effort to force that interpretation on states with state-law installation standards and programs; (4) HUD's needlessly complex, costly and restrictive regulations for "on-site" construction; (5) HUD's failure to object to baseless and extraordinarily costly "energy" standards developed by the U.S. Department of Energy (DOE) for manufactured homes; and (6) HUD's baseless restrictions on attached garages and carports, just to name a few. Furthermore, and even more significant as it affects each of the foregoing issues (and many others), is the failure of the PPS to join with MHARR in publicly calling for – and

demanding – the removal and replacement of the current career HUD manufactured housing program administrator who is responsible for each of the foregoing regulatory abuses.

Even worse for consumers and the industry as a whole, has been the PPS’s failure to effectively respond to attacks against the industry and its consumers in the arena of consumer financing, including but not limited to: (1) its failure to effectively oppose and prevent the targeting of HUD Code manufactured homes by the “SAFE Act;” (2) its failure to effectively oppose and prevent the inclusion of HUD Code manufactured homes within the Dodd-Frank law; (3) its failure to effectively oppose and prevent the targeting of HUD Code manufactured homes by the Government National Mortgage Association (GNMA) via its “10-10” restrictions on the approval and certification of lenders for manufactured home consumer loans under the Federal Housing Administration’s (FHA) Title I program; and (4) its failure to provide support data for the proper implementation of the Duty to Serve (DTS) provision of the Housing and Economic Recovery Act of 2008 (HERA) – and particularly for the chattel loans that represent 80% of manufactured home consumer loans, but are virtually absent from the final DTS rule and proposed implementation plans. In each such instance, had there been an independent, national, collective representation for the post-production sector, actively (and effectively) monitoring, protecting and advancing the interests of the PPS in such matters, it is highly unlikely that such failures and their the major negative consequences for both the industry and consumers, would have occurred or would have continued for such an extended period as they have.

Moreover, while MHARR has taken a leading and aggressive role in fighting for the industry and consumers on all of the foregoing matters (and others) using its own resources, the glaring absence of both public and behind-the-scenes support for these positions from the PPS, based on the “go-along-to-get-along” mindset and operational philosophy of its current representation through MHI, has harmed such efforts on both a short and long-term basis.

#### **E. Future Long-Range Prospects**

If the current model for the representation of the PPS remains in place, the regulatory situation of the industry, as a whole, will continue to deteriorate over time, with the heaviest and most debilitating burdens falling on the industry’s smaller businesses, which – as shown by research conducted by the U.S. Small Business Administration (SBA) – are disproportionately affected and impacted by excessive government regulation. Moreover, given MHARR’s aggressive approach in confronting HUD and its entrenched contractors with respect to in-plant production regulations, both have begun an intensive effort to diversify into post-production regulation – to maintain and increase the power of HUD regulators and revenues for HUD contractors. As a result, the PPS needs to take more effective and concerted action to protect its interests and advance its views on regulatory matters.

This disproportionately-negative impact on the PPS and its smaller businesses, moreover, will only be exacerbated if the industry’s largest manufacturer is successful in its effort to develop, seek and obtain preferential regulatory and/or financing treatment for a “new class” of manufactured homes, based on proprietary data and potentially proprietary designs that could seek to relegate the status of homes of non-participants back to that of “trailers.” Market research and design development for such a new class of manufactured homes is apparently already underway on a secretive basis within MHI, while MHI manufacturers have – and are – deeply involved in

closed-door meetings with a Fannie Mae “contractor” (who coincidentally is a former MHI staffer) to develop an “MH Select II” preferential financing program for manufactured homes with features that “exceed” the requirements of the current HUD Code, including enhanced energy features.

Even in the absence of a “new class” of manufactured homes promoted by and authorized for the industry’s largest manufacturers on either an exclusive or semi-exclusive basis, smaller industry businesses, in particular, will continue to be harmed by excessive and/or unreasonable HUD regulation and restrictive consumer financing policies by Fannie Mae and Freddie Mac that are facilitated by the absence of an independent, collective national representation for the PPS. This potentially fatal gap in the representation, protection, defense and advancement of the industry as a whole, will allow both HUD (and other regulatory agencies) and the Government Sponsored Enterprises (GSEs) to needlessly and discriminatorily restrict the overall size and growth of the HUD Code manufactured housing market by unnecessarily increasing the cost of (and income necessary to purchase) a manufactured home, and by limiting the availability of competitive-rate financing for potential HUD Code home purchasers.

### **III. POSSIBLE SOLUTIONS**

From the foregoing, it should be apparent that the PPS is rapidly losing ground in relation to both regulatory burdens and continuing unnecessary and discriminatory restrictions on the availability of consumer financing for potential purchasers. In the absence of significant and fundamental change, future prospects for the industry’s PPS, and particularly the thousands of small and smaller businesses that have been at its core for decades are, at best, clouded, as a one-two blow of expanded and unnecessary regulation, combined with baseless restrictions on consumer financing – both of which benefit the industry’s largest businesses, which include captive finance companies that are not dependent on secondary market support or funding, feature higher-rate interest levels and, as noted above, are better positioned to tolerate excessive regulatory burdens – continues to unnecessarily blunt industry growth.

Based on this premise, internal fact-finding and analysis, and broader-industry input to MHARR regarding possible approaches to the establishment of an independent, collective, national representation for the PPS, the following potential alternatives are presented and evaluated.

#### **A. Division within MHARR (Affiliate Status)**

Multiple inquiries from the PPS have urged the creation of an “independent” PPS association either as part of – or in affiliation with -- MHARR, potentially with a status similar to the current “affiliate” membership provided to state associations under the existing MHARR bylaws. Such an approach, however, would be likely to replicate and continue the structural and policy failures that have characterized the representation of the PPS since the NMHF-MHI merger in 1992. Put differently, an “umbrella” type organizational structure, with representation of the PPS sector as an integral part of another organization charged with representing the production and other segments of the industry, has already been shown, after 25 years, to be inherently deficient and broadly ineffective, as noted above. Simply changing the “umbrella” organization – even to an organization already charged with aggressively representing smaller industry

businesses, such as MHARR – will not significantly alter the fundamental flaw underlying the concept. Given the unique position and interests of the PPS, its representation must be independent, collective and national in scope and approach.

MHARR would also note in regard to the foregoing, that ever since it was first drawn into activities regarding consumer financing, it has continuously reviewed matters affecting the PPS and has provided the PPS with accurate and factual information regarding such matters. Unfortunately, under the PPS' current representation model, this information has either been suppressed or has “fallen through the cracks,” with no real or effective follow-up.

### **B. Existing Ad-Hoc Organizations**

The COBA-7 (Community Owners 7-Part Business Alliance) organization founded and headed by George Allen has also been cited as a potential home for an independent, national collective organization to represent the PPS. The organization, activities and focus of COBA-7, however, appear – thus far – to be too limited, too parochial, too closely-linked with MHI, and lacking in institutional accountability mechanisms, to effectively function, on a national level, as a full-time, independent, dedicated advocate for the PPS in relation to the full range of legislative, regulatory, legal and policy matters and issues at the national level. To date, COBA-7's activities have been relatively narrow in scope, providing news reporting, opinion pieces, seminars, “networking meetings,” and educational activities for PPS interests (as well as personal participation by its principal at some government meetings and policy events) but not a full range of advocacy activities in Washington, D.C. that would be critical to the full and effective representation of the PPS. Further, with no apparent interest on the part of COBA-7 or its principal in extending the functions and role of COBA-7 to such necessary activities, COBA-7 does not appear to provide a viable foundation for the establishment and maintenance of the type of collective representation recommended by this study. That said, however, under the right circumstances, COBA-7 *could* become the initial nucleus for such a PPS association.

### **C. An Incorporated, Independent National Association**

Instead, it appears that the greatest potential benefits would accrue to the PPS and to the industry as a whole (as well as consumers of HUD Code manufactured housing) through the creation of a new, incorporated association to properly and effectively represent the interests and views of the PPS. That organization, as indicated by the manifest failure of the present model, should be independent of any other group, with legitimate “firewalls” in place to ensure its independence going forward. In addition, that new organization should be led by an individual with previous knowledge of the HUD Code industry (and preferably industry experience) in order to ensure proper and effective representation of subscribing members. Fidelity to the interests and views of just one group of members – i.e., PPS member companies – should ensure that the new association is aggressive in pursuing the views and interests of that industry segment, as contrasted with such views being subject to the interests of other non-PPS industry participants under the existing “umbrella” arrangement.



#### **IV. OBJECTIVES OF THE ASSOCIATION AND MEMBERSHIP**

The fundamental purpose and objective of the new association would be to effectively and independently represent, protect, defend and advance the interests of the PPS and its participants, on a national basis, and to serve as an effective link between producers and homebuyers, so as to increase the availability, utilization and market for HUD Code manufactured homes and services provided by members in relation to those homes. Broader “objectives” of the association could include the following:

- To serve as a strong link between HUD Code housing producers and homebuyers;
- To improve relations between government at every level and industry, particularly companies engaged in [PPS activities] by promoting an environment of less and more effective regulations;
- To conduct marketing, educational and advertising programs to enhance and expand the manufactured housing industry’s share of the national housing market;
- To promote and advance the mutual interests of its members engaged in the [PPS] of the manufactured housing industry;
- To stimulate the exchange of ideas between government and its members;
- To work in full cooperation with both national manufactured housing associations representing the views and interests of producers of manufactured housing – *i.e.* MHARR and MHI – to advance the overall interests of the industry in the nation’s capital; and
- Subject to the approval of the members, to carry out such other activities which may be necessary and proper for the accomplishment of the purposes set forth above, or which shall be recognized as proper and lawful objectives of trade associations.

The essential and primary function of the new association, would be carried out and effectuated in a manner decided by the association’s membership, in consultation with its Board of Directors and official leadership, would be to provide and ensure the full, aggressive and effective collective representation of the views, interests and concerns of its PPS members.

## V. SUGGESTED ASSOCIATION STRUCTURE AND FUNDING

While the structure and funding of the new association must ultimately be decided by its membership, it would be advisable for a small, representative group to draft a basic package of proposals for further consideration and completion, subject to an express proviso such as the following:

“Although it is required for purposes of corporate responsibility to list officers with the state and federal government, the policy of this Association is to have a democratic, open discussion of every topic suggested by the full members. Decisions will be reached only by consensus of a majority of the full members at any meeting. Meetings for that purpose will be open, with the intent to achieve equal status for every full member without reference to any official title or position.”

Based, however, on the multiple inquiries that MHARR has received from PPS and other industry members – and requests therefor – the below is a sample/model structure that could be used for an independent, national, incorporated collective PPS representative organization.

- A. **Name of the Association** – To be decided by the membership (TBD).
- B. **Incorporation** – Delaware or any other state (TBD).
- C. **Location** – Either Washington, D.C., or any other city/state (TBD).
- D. **Membership**
  - 1. **Primary Voting Members** – Transporters, installers, retailers, communities, finance providers and insurers.
  - 2. **Affiliate (non-voting) Members** – Manufacturers, product suppliers, state associations.
- E. **Board of Directors** - Comprised of seventeen (17) members as shown below (TBD):
  - 5 communities;
  - 4 retailers;
  - 4 finance companies;
  - 2 insurers;
  - 1 transporter; and
  - 1 installer
- F. **Executive Committee** – Comprised of seven (7) members as shown below (TBD):
  - 2 communities;
  - 2 retailers;
  - 1 finance company/insurer;

- 1 transporter; and
- 1 installer

**G. President/CEO** – Would be the association’s paid, full-time staff, to be selected by the association’s Board of Directors (and subordinate at all times to the association’s membership), whose qualifications shall include a knowledge and understanding of the industry, federal laws pertaining to the industry and PPS, as well as regulations and related legal issues affecting the industry and PPS.

**H. Funding** – Mandatory dues for Primary (voting) members based on “x”-dollars per gross annual business volume (TBD). Affiliate members (TBD).

## VI. CONCLUSION

MHARR has developed this study and its proposed solutions based on input from industry members and its own formation and experience over the course of nearly four decades. While the evidence is clear and convincing that the PPS is not currently represented in an effective manner, or one that necessarily reflects, protects and advances the interests of all its members – especially the smaller business that have traditionally comprised the core of the PPS – it is ultimately up to PPS members to determine what should be done to remedy this situation, and how that remedy should be effectuated. Recognizing this, the models and proposals contained herein are offered as suggestions only, but the underlying conclusion of this report – that the PPS is urgently in need of effective, independent, collective national representation through a new incorporated entity -- rests on undeniable evidence that should spur appropriate action to change the unacceptable status quo.

If the PPS establishes this badly-needed independent national association, MHARR will pledge its full assistance to the new organization for a finite period after its full incorporation in all regulatory, legislative and (possibly) legal matters.

*This study and analysis is available to industry members for their private use or for re-publication in full (i.e., without alteration or substantive modification) with the permission of – and proper attribution to – MHARR.*

*MHARR is a Washington, D.C.-based national trade association representing the views and interests of independent producers of federally-regulated manufactured housing.*