

By Mark Weiss

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“Why Manufactured Housing Must Remain Federally Regulated”

In the natural world, the telltale scent of decay inevitably attracts predators and opportunists. Apparently, it is no different with the decay of the HUD manufactured housing program over the past decade, and particularly over the past three years. With the program in a steep decline under its present Administrator, talk has once again emerged about “sunsetting” the program at HUD, along with its federally preemptive building code, “removing this expenditure from the federal budget,” and effectively returning the regulation of manufactured housing to the control of states and/or localities, as is the case with other types of housing.

Such talk, historically, has had sources and proponents both inside and outside of the industry. For the erstwhile “insiders,” this talk is – and remains – more a reflection of misunderstanding, lack of understanding, or lack of knowledge of a complex federal program and complex federal regulatory system, rather than a well thought-out, credible argument for change. Instead of taking-up the heavy lift of the round-the-clock vigilance required to press the federal program and its leadership to do the things required by law, and particularly the Manufactured Housing Improvement Act of 2000 – which can only be done at the federal level (see below) -- the “insiders” would rather take the easy way out, and simply end the federal program, without examining the full consequences of doing so, to both the industry and consumers of affordable housing. Instead – in a further reflection of their fundamental misunderstanding – they offer inaccurate irrelevancies, such as the claim that eliminating the federal program would somehow “remove” program “expenditure[s] from the federal budget,” thereby “freeing-up dollars and other resources, to concentrate on subsidized housing” and other “housing programs.” The fact, however, is that eliminating the federal manufactured housing program would have a miniscule – if any – impact on the \$40 billion HUD budget proposed for Fiscal Year 2018, as the program is – and has been, other than during a very short period when tax dollars were needed to start-up the installation and dispute resolution programs required by the 2000 reform law – self-funded via the certification label fee paid by manufacturers.

Among the “outsiders” which have sought the elimination of the federal program, are numerous groups and interests that – unlike the industry “insiders” – understand the federal program and the federal law upon which it is based all too well. Those industry adversaries, including housing industry competitors, code groups, some states and localities, and would-be “service” providers under a regime of state and local regulation (including current HUD contractors), among others, have always opposed federal regulation of manufactured housing and have sought to destroy it based on their own narrow self-interests. In particular, housing market competitors have a sharp understanding of all the actual – and potential – benefits that do and could accrue to the HUD Code industry as a result of federal regulation and particularly the full and

proper implementation of the 2000 reform law. Those competitors could only wish to have a regulatory law like the 2000 Act. To the extent that they cannot, though, they have consistently sought to undermine and destroy the federal program and subject manufactured housing to the same myriad of state and local regulation that, on average, represents nearly 25% of the cost of a new site-built home – adding regulatory compliance costs of nearly \$85,000 to each such new home – according to a 2016 National Association of Home Builders study.

No doubt, such industry competitors and adversaries would like nothing better than for the HUD Code industry to shoot itself in the foot by signing-up, voluntarily, for a shift to such debilitating regulation at the state and local level that would thoroughly undermine the competitive advantage that the industry and its consumers enjoy under current federal law. But why would the industry ever do that? If the HUD program is not living-up to its responsibilities and potential under the 2000 reform law, take the opportunities and prospects offered by the new regulatory policies of the Trump Administration and put the program back on track – with proper leadership – (see, the March 2017 inaugural edition of MHARR – Issues and Perspectives) but do not jettison the program for a “grass is greener” vision with absolutely no basis in fact.

Instead of groundless claims by the “ditch the federal program crowd” (one of whom is currently promoting a soon-to-be “explanation” in the pages of HUD’s periodic newsletter – little more than a propaganda organ financed by manufacturer label fees for self-promotion of the program and its regulators), let’s look at the facts, starting with a fundamental proposition. Manufactured housing, being inherently interstate in character – i.e., assembled in one place and regularly transported across state lines for delivery and installation -- is a textbook example of the type of interstate industry that can only be effectively and reasonably regulated on the federal level (in partnership with the states). And Congress, from the time that it first legislated the comprehensive federal regulation of the industry via the National Manufactured Housing Construction and Safety Standards Act of 1974, through today, has understood that uniform, performance-based federal standards, uniform federally-based enforcement and federal preemption are the bedrock cornerstones of the inherent affordability of manufactured housing and – if properly implemented – will continue to assure its affordability and its place as the nation’s most affordable type of non-subsidized housing and home ownership.

Reverting manufactured housing to regulation at the state and/or local level would subject manufactured homes to a dizzying array of varying standards and interpretations that alone would be toxic to the affordability that defines the market position of manufactured housing. The destructive market impact of such a change is illustrated by the historic production statistics for modular homes, versus HUD Code homes. While manufactured housing production suffered a significant contraction in the mid-2000s – from which it is now recovering – production of modular homes (also factory-built housing) has never come close to HUD Code levels. Add to that the prejudice against manufactured homes and manufactured homeowners that remains pervasive in many communities around the nation – as reflected by the treatment of the elements of the industry that local and state officials can and do control already – (as well as the lack of proper and available consumer financing on par with other types of housing) and it becomes evident that such a change would be disastrous for the industry and the millions of Americans who rely on its affordable, non-subsidized homes. Conversely, if such a reversion to state and/or local regulation were to occur, the resulting product, subject to a cost-hiking myriad of differing and potentially conflicting

standards, would not be the affordable, non-subsidized manufactured homes that today are the nation's most affordable housing.

Indeed, all one needs to know about what would happen to manufactured housing, its affordability and its consumers under a regime of state and locally-based regulation, is there to be seen now, in plain sight. Look at how local governments deal with manufactured home communities and the placement of manufactured homes generally. How many welcome HUD Code homes as attractive, affordable housing, versus how many reject the very notion of accepting manufactured homes and manufactured housing residents into their neighborhoods, towns, or counties? How many times does the industry need to read about new manufactured housing communities being rejected, or the expansion of an existing manufactured housing community being rejected by local officials? Or the placement of even a single manufactured home being rejected?

Nor is such discrimination, in truth, based on the quality of today's manufactured homes, which is outstanding by every objective measure, or the standards to which they are built. It is based, rather, on outdated prejudices and perceptions -- which become evident through a careful reading of media reports -- and flat-out bias against lower-cost housing and the lower and moderate-income Americans who reside in such homes. In too many places, officials want no part of lower-cost, affordable housing.

As a result, does anyone seriously doubt that such officials, given even greater power over the acceptance or rejection of manufactured housing, would do anything but abuse that power to place even greater roadblocks in the way of manufactured homes entering their jurisdictions? Put differently, does anyone seriously think that the same officials would use their clout, influence and votes in state legislatures and on state boards to ensure building codes, standards and enforcement mechanisms that would preserve the affordability and availability of manufactured homes built-in and shipped from out of state (competing with local builders of other types of homes), or that they would use that power to impose a myriad of costly mandates and restrictions on manufactured homes, based on biases that are vividly demonstrated every day?

The answer to each of these questions is obvious. A reversion to state and/or local regulation for manufactured housing would be ruinous for the industry and consumers, sacrificing affordability while empowering the industry's adversaries and detractors to inflict even more harm than they do now.

So what is the answer? The answer, quite simply, is to make the federal program follow the law and implement the 2000 reform law according to its terms and full purposes. And that begins with "draining the swamp" as President Trump has put it, at the HUD program, without pulling the plug on the program altogether. In practical terms, this means re-assigning the current career program administrator -- who was parachuted into the program in 2014, ahead of other possible candidates from within and outside the program -- and under whose watch the program has sharply deteriorated and suffered as was addressed in detail in the March 2017 edition of MHARR -- Issues and Perspectives. It also means elevating the program within HUD, in accordance with the 2000 reform law, and enacting the regulatory reform agenda of the Trump Administration in order to unleash the industry's full economic and market potential, and enable

it to produce and provide the hundreds-of-thousands of affordable non-subsidized homes that American families want and need today.

In short, the industry as a whole must protect the federal program, aggressively advance the full and proper implementation of the 2000 reform law and stop following – in some quarters – the failed approach of go-along-to-get-along, which in the Trump Era of administrative/regulatory deconstruction, is beginning to look and sound more like support for the unacceptable program status quo, which only benefits “the few” within the industry, at the cost of “the many.”

A handwritten signature in black ink, appearing to read 'Mark Weiss', with a stylized, cursive script.

Mark Weiss

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

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