MHARR WASHINGTON UPDATE

The Manufactured Housing Association for Regulatory Reform is a Washington, DC based national trade association representing the views and interests of producers of manufactured housing

REPORT AND ANALYSIS

IN THIS REPORT: **APRIL 27, 2017**

EXCLUSIVE REPORT & ANALYSIS:

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MHARR AGGRESSIVELY RESISTS HUD PLAN TO FEDERALIZE INSTALLATION

MHARR has received numerous inquiries from industry members and other HUD program stakeholders regarding a rapidly-widening power grab by program administrator to effectively federalize installation regulation in all 50 states, forcing changes to or, in some cases, totally displacing (or seeking to displace) state law installation standards and programs that were previously approved by HUD. This effort began with HUD's attempt to force unilateral changes to state standards for so-called "frost-free" foundations – which MHARR objected-to immediately -- via an alleged "interpretation" (actually a substantive modification) of the federal standard for such foundations, which the program administrator ultimately stated would be binding in all 50 states. Meanwhile, against the backdrop of this "Trojan Horse" effort, the HUD program, on a parallel and concurrent track, through its installation contractor, has intensified already-aggressive demands on state-based programs to tow the HUD line on all aspects of standards and enforcement, leading a number of states to consider leaving the program (with the status of the Michigan program unclear at the writing of this article), or under threat from HUD.

HUD – and some uninformed elements within the industry – excuse this gross over-reach as a consequence of the structure and language of the Manufactured Housing Improvement Act of 2000, which reserves to the states the right to regulate installation through state-law programs which provide "protection" to home occupants that meet or exceed the baseline of protection established by the Part 3285 federal installation standards. But, as MHARR – a full participant in the development of the 2000 reform law -- has maintained consistently over the nearly two decades

that have since elapsed, this subjective baseline does not give HUD the right to either supplant state-law programs that have already been approved by the Department, or demand the modification of state law installation regulations based upon "interpretations" of the HUD standards or unilateral HUD modifications of those standards – by any means.

In other words, once a complying state adopts a compliant state program, any change to that program thereafter, over and above the federal standards, is up to that state, not HUD. What HUD is seeking through its new policy is effectively a "mulligan" – a "do-over" on installation that is not to be found in the 2000 reform law.

As MHARR has previously explained (see, e.g., the March 2016 edition of the "MHARR Viewpoint" published in the Journal of Manufactured Housing):

> "Recognizing ... that proper installation is crucial: (1) to the proper performance of a manufactured home; (2) to the value of that home to its owner and consumer finance providers; and (3) to public and government acceptance of manufactured homes as legitimate "housing," rather than "trailers," the industry and consumers went back to work for nearly 12 years, together with other stakeholders, to develop the installation provisions that were ultimately included in the 2000 reform law.
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> The result was a statutory structure, based on the 1994 recommendations of the National Commission on Manufactured Housing, which authorized any state that wished to do so (i.e., a "complying" state), to establish (or continue) a state-law installation program and state-law installation standards, so long as those requirements provided protection that met or exceeded baseline federal standards to be developed by the Manufactured Housing Consensus Committee (MHCC) and adopted by HUD. HUD, by contrast, was authorized to regulate installation in non-complying (i.e., "default") states that failed to adopt a state-law installation program within five years of enactment of the 2000 law.
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> This structure – which had been aggressively advanced by MHARR -- was consistent with the nearly-universal view of program stakeholders that varying soils and other installation-related conditions in different geographical areas made states the best and most appropriate party to regulate the siting of manufactured homes. The 2000 reform law, consequently, allows states to take the lead role in the regulation of installation, with HUD assuming that duty only in default states that fail to adopt and implement a conforming state-law program.
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> What the 2000 reform law specifically does not do, however -- again recognizing, as it does, the unique competence and ability of the states and state authorities to determine proper installation systems and techniques within their own borders – is authorize or direct HUD to substitute its judgment for that of state authorities regarding the specific details and elements of any given state installation standard. Put differently, the 2000 law allows HUD to determine whether a state-law installation program and state-law installation standards as an integrated "whole" provide consumers with a level of protection equal-to-or-greater-than the HUD standards, but does not provide back-door authority for HUD to micro-manage state-law programs and/or standards or over-ride state judgments regarding the need for -- or content of -- any specific installation requirement."

(Emphasis added).

Let there be no mistake. What the HUD program, under its current administrator, is engaged in now, is a de facto coup against the states to displace their rightful regulatory authority over installation as provided and guaranteed by the 2000 reform law, and is seeking to replace that authority with federal mandates. These changes not only undermine the federal-state partnership that lies at the heart of the HUD program, but for every state that is pressured or displaced, the power and authority of federal regulators and contractors expands far beyond what was ever intended by Congress and the law, with those states effectively becoming part of HUD's domain. Worse yet, this power grab by HUD and its contractors is effectively facilitated by a segment of the industry, which has failed to join MHARR in seeking fundamental changes to the program and its leadership in accordance with the regulatory policies of the Trump Administration.

MHARR, for its part, has – and will continue -- to aggressively oppose HUD efforts to displace state installation authority, while seeking the leadership changes that a rapidly-deteriorating HUD program desperately needs.

MHARR TO FHFA: STOP GSES' DISCRIMINATION AGAINST MH

At the invitation of the Federal Housing Finance Agency (FHFA), an MHARR delegation attended and participated in an April 26, 2017 meeting in Washington, D.C. with key FHFA officials responsible for the implementation of the Duty to Serve Underserved Markets (DTS) provision of the Housing and Economic Recovery Act of 2008 (HERA) and members of FHFA's Manufactured Housing Chattel Working Group. The meeting, to address and respond to FHFA questions regarding the elements, parameters and other practical aspects of manufactured home chattel lending and the broader manufactured housing consumer financing market, comes in advance of the submission of Proposed Underserved Markets Plans by the GSEs (Government Sponsored Enterprises – i.e., Fannie Mae and Freddie Mac), targeted for May 2017 according to the timeline currently posted by FHFA at its DTS website.

MHARR, as it has consistently since FHFA's publication of its first proposed DTS implementation rule in 2010, stressed to the FHFA attendees, the urgent need for a mandatory program of manufactured home chattel loan securitization and secondary market support by the GSEs under the mantle of DTS, involving a market-significant quantity of such loans within an expedited timeframe that would provide meaningful, immediate relief for historically underserved manufactured home purchasers – rather than a meaningless, restrictive "pilot program." Given the GSEs' continuing discriminatory posture against manufactured housing and manufactured housing consumers (involving both actions and inaction) such behavior must not be sanctioned by FHFA, by giving the GSEs what amounts to a free pass, under the guise of a "pilot program."

MHARR emphasized three related facts which demonstrate the need for mandatory chattel loan support under DTS: (1) The fact that HUD Code manufactured housing is the nation's most affordable type of housing and home ownership; (2) The fact that manufactured housing production, after reaching an historic high-point of nearly 400,000 homes in 1998, has fallen to

historic low levels since 2009, largely as a result of the unavailability of competitively-priced, high-volume consumer financing; and (3) The fact that according to HUD's 2015 Worst Case Housing Needs Report, nearly 8 million Americans pay more than half of their income toward rent, or live in "severely inadequate conditions," or both.

Together, these converging facts demonstrate an urgent need for affordable housing that could readily be met by manufactured housing (in both rural and non-rural settings) if competitive consumer chattel financing were available for HUD Code purchasers via non-discriminatory GSE securitization and secondary market support for such loans. Cognizant of these trends, Congress established DTS as a mandatory duty and remedy for consumers – clarified during the legislative process to encompass manufactured home chattel (representing 80% of the entire HUD Code market) as well as real estate loans – not as a discretionary function of the GSEs, to be determined by them.

In addition, MHARR told the group that the alleged need of FHFA and the GSEs to obtain additional data regarding the performance of manufactured housing loans has -- and continues -- to ring hollow. First, as FHFA and the GSEs have been advised numerous times, there simply is no public data resource which would provide that information, and the national manufactured housing lenders that have such data consider it – understandably – to be highly proprietary and confidential. Second, and more importantly, though, during the near-decade that has passed since the enactment of DTS, existing industry lenders have been able to sustain a profitable business model for manufactured home chattel loans without securitization and secondary market support at higher-cost interest rates for which fewer borrowers can qualify. Based on the consistent success of that model, it is – or should be – evident that a successful chattel securitization and secondary support system could be established that would result in lower interest rates, increased participation in the manufactured housing consumer lending market, more and broader competition in the manufactured home consumer lending market, and a correspondingly higher number of consumers who could – and would – be served.

While it appears from this effort to reach-out to the industry on the specifics of current-day manufactured home chattel lending – and given the aggressive push-back from MHARR and industry finance companies -- that FHFA regulators may be beginning to realize the importance of chattel lending to lower and moderate-income manufactured homebuyers, as well as the industry, and would like to do *something* to fulfill this crucial element of DTS, there remain significant roadblocks with the GSEs themselves, which have a long track record of discrimination against the industry and manufactured housing consumers and, by most indications, seek to continue that de facto discriminatory policy. That, ultimately, is why MHARR continues to seek mandatory chattel support under DTS and will not let this issue go unless a meaningful, compulsory mechanism is established for the support of those loans.

MHARR: TRUMP EXECUTIVE ORDER NULLIFIES BASIS FOR ENERGY RULE

In an April 26, 2017 communication to U.S. Department of Energy (DOE) Secretary, Rick Perry (copy attached), MHARR reiterated its March 10, 2017 call for the withdrawal of DOE's June 17, 2016 proposed manufactured housing energy rule, asserting, as yet another ground for the proposed rule's retraction, a March 28, 2017 Trump Administration Executive Order (EO) which nullifies a significant element of DOE's regulatory cost-benefit analysis, allegedly showing national and "global"-level benefits from the rule which exceed costs.

Specifically, DOE's statutorily-required cost-benefit analysis of the proposed manufactured housing energy rule relied, in substantial part, on a "Social Cost of Carbon" (SCC) mechanism developed by an Obama Administration "inter-agency working group," to provide alleged monetary values for reductions in emissions of greenhouse gasses – on a "global" basis -- claimed by DOE to be attributable to the proposed rule.

In its August 2016 written comments to DOE on the proposed rule, MHARR aggressively opposed the Department's use of the SCC monetary values as a de facto "thumb on the scale" to produce exaggerated, phantom alleged "benefits" which were then netted against alleged "costs" which substantially understated the true cost of the proposed rule for both homebuyers and industry members. MHARR stated, in part:

> "DOE admits that alleged SCC benefits are 'uncertain' and 'should be treated as revisable.' Thus DOE attributes 'benefits' to the proposed rule based on metrics acknowledged to be 'uncertain,' while it totally ignores predictable consumer, industry and national level costs of the proposed rule ... thus over-inflating the alleged benefits of the proposed rule with junk science while significantly understating its costs. Indeed, while DOE exhibits great concern over the global 'social costs' of carbon, it apparently could care less about the domestic social cost of millions of Americans who would be excluded from the benefits of homeownership under its rule, as it makes no effort whatsoever to quantify or consider those costs, which would be enormous. *** Given each of these fatal defects in the utilization of arbitrary and speculative SCC values – and the other fundamental analytical and data failures of the June 17, 2016 DOE cost-benefit analysis, that 'analysis' is factually worthless ...."

(Emphasis added).

MHARR's objections to DOE's use of the SCC monetary values were in addition to other points raised by MHARR, showing that DOE's alleged cost-benefit "analysis" was, in fact, fatally flawed. These additional fundamental defects included, but were not limited to: (1) its total failure to quantify or account for testing, enforcement and regulatory compliance costs; (2) its total failure to account for the individual, industry and national-level economic impact of the exclusion of millions of lower and moderate-income Americans from home ownership due to costs attributable to the rule; (3) its total failure to quantify or certify unique and disproportionate cost impacts of the proposed rule on smaller industry businesses; and (4) its total failure to quantify or account for the disruptive industry impact of successive standards changes under the proposed rule. These

defects, moreover, were in addition to the irretrievably-tainted process that led to the proposed rule.

Now, though, as was initially reported by MHARR in its April 19, 2017 Washington Update, Section 5 of Executive Order 13783, "Promoting Energy Independence and Economic Growth" (March 28, 2017), expressly provides that the November 2013 SCC "Technical Update" relied-upon by DOE in support of the June 17, 2016 proposed manufactured housing rule, is "withdrawn as no longer representative of [federal] government policy." (Emphasis added). In addition, EO 13783 expressly disbands the "inter-agency working group" that developed the SCC and its various updates and iterations.

Insofar as DOE expressly relied upon the now-invalidated SCC construct and related monetary values to conclude that national-level environmental and related economic benefits would accrue under the proposed rule leading, in substantial part, to its broader conclusion that alleged benefits of the proposed rule would exceed its alleged costs, its cost-benefit analysis is necessarily invalidated and nullified by the President's Executive Order.

For this reason, as well as the multitude of other reasons set forth in MHARR's comments – including DOE's fundamentally and irretrievably-tainted standards development process – DOE's proposed rule must be withdrawn in toto, as lacking any substantive basis, or demonstrable benefits exceeding its significant known and predictable costs. (It is unfortunate that a segment of the industry went along with the development of this proposed rule, effectively resurrecting it after it had been stopped by MHARR for years).

MHARR's, communication, therefore, calls – again – on Secretary Perry to retract the proposed manufactured housing energy rule.

TRUMP ADMINISTRATION IMPOSES TARIFF ON CANADIAN LUMBER

The price of Canadian lumber imported into the United States and widely used for residential construction – including the construction of HUD Code manufactured homes – will increase as a result of a tariff levied on those imports by the Trump Administration.

After threatening to impose trade duties on goods imported from China and Mexico during the presidential election campaign in 2016, the Administration announced its first new tariff on imported goods in a statement issued by Commerce Secretary Wilbur Ross on April 24, 2017. Under the announced plan, tariffs ranging from 3 to 24% (with an average of 19.9%) would be imposed on five specific Canadian lumber companies, identified as: West Fraser Mills, Tolko Marketing and Sales, J.D. Irving, Canfor Corporation and Resolute FP Canada.

The new tariffs were authorized by the Trump Administration based on claims by U.S. lumber companies that Canadian firms exporting lumber to the United States are provided with unfair subsidies by the Canadian government. According to press reports, total Canadian exports of softwood lumber to the United States were valued at $5.6 billion in 2016.

While the imposition of the Canadian lumber tariff caps a period of serious economic uncertainty for the residential construction industry, which has seen a more than 20% surge in wood prices since the November 2016 presidential election fueled by speculation that penalties would increase costs even more, increases in home prices driven by higher supply costs for basic raw materials, such as wood, as always, will have a magnified impact for the highly-price sensitive manufactured housing market.

MHARR will carefully monitor further developments affecting this matter. As a practical matter, though, it must be stressed that the entire subject of tariffs, free trade and fair trade has political-economic aspects and undercurrents which extend far beyond the realm of the manufactured housing industry.

Manufactured Housing Association for Regulatory Reform

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April 26, 2017

VIA FEDERAL EXPRESS

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

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

Dear Secretary Perry:

I am writing in reference to proposed "energy efficiency" standards for manufactured homes published by the U.S. Department of Energy (DOE) on June 17, 2016.[1] On behalf of its members – smaller and medium-sized independent producers of manufactured housing subject to comprehensive regulation by the U.S. Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5401, et seq. (as amended) – MHARR, on August 8, 2016, submitted written comments to DOE, strenuously objecting to this proposed rule,[2] as, among other things, a baseless, regressive tax on the mostly lower and moderate-income American families that rely on affordable manufactured housing, and a significant, unwarranted and discriminatory burden on the uniquely American manufactured housing industry, which provides inherently affordable, non-subsidized housing for millions of Americans and thousands of much-needed manufactured jobs across the nation's heartland. Subsequently, MHARR wrote to you on March 10, 2017,[3] calling for the withdrawal of this fatally-flawed proposed rule,[4] which stands in direct conflict with the core values enunciated in President Trump's regulatory Executive Orders (EO) 13771 ("Reducing Regulation and Controlling Regulatory Costs") (January 30, 2017) and 13777 ("Enforcing the Regulatory Reform

[1] See, 81 Federal Register, No. 117 at p. 39756, et seq.
[2] See, Attachment A, hereto.
[3] See, Attachment B, hereto.
[4] MHARR's written comments detail – with specific evidence – the irretrievably tainted, non-transparent and fatally defective DOE rulemaking process that led to this proposed rule. See, Attachment A, hereto at pp. 3-21.

Agenda") (February 24, 2017), and the broader regulatory reform policies of the Trump Administration.[5]

In its written comments opposing the DOE proposed rule, MHARR pointed-out multiple fatal deficiencies in the DOE cost-benefit analysis required by statute[6] (as well as Executive Order 12866 insofar as the proposed rule was deemed a "major rule" by the Office of Management and Budget (OMB)), including:

1. Its total failure to quantify or account for testing, enforcement and regulatory compliance costs;[7]

2. Its total failure to account for the individual, industry and national-level economic impact of the exclusion of millions of lower and moderate-income Americans from home ownership due to costs attributable to the rule;[8]

3. Its total failure to quantify or certify the impact of unique and disproportionate costs of the proposed rule on smaller industry businesses;[9]

4. Its total failure to quantify or account for the disruptive industry impact of successive standards changes under the proposed rule;[10] and

5. Its unlawful netting of partial domestic costs against monetized "global" environmental benefits pursuant to the Obama Administration "Social Cost of Carbon" (SCC) construct in violation of OMB Circular A-4, "Regulatory Analysis."[11]

MHARR specifically objected to DOE's use of the Obama Administration's SCC construct to derive alleged national-level "environmental benefits" flowing from the proposed rule as a result of supposedly "reduced emissions of air pollutants and greenhouse gasses associated with electricity production."[12] In part, MHARR stated:

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[5] MHARR has also called on Congress to reject this rule pursuant to the Congressional Review Act of 1996 in the event that it is not voluntarily withdrawn by DOE and is ultimately promulgated as a final rule. (See, Attachment C, hereto).

[6] Section 413 of the Energy Security and Independence Act of 2007 (EISA) authorizes the development of energy efficiency standards based "on the most recent version of the International Energy Conservation Code (including supplements), except in cases in which the Secretary finds that 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." (Emphasis added).

[7] See, Attachment A, hereto at pp. 26-28.

[8] Id. at pp. 28-30

[9] Id. at pp. 30, 33-35. See also, August 16, 2016 comments submitted on by the U.S. Small Business Administration (SBA) Office of Advocacy at p. 2: "DOE has not quantified nor described the economic impact of its proposed rule on small manufacturers."

[10] Id. at p. 31.

[11] Id. at pp. 32-33.

[12] See, 81 Federal Register, No. 117, supra at pp. 39790-39792.

> "DOE admits that alleged SCC benefits are 'uncertain' and 'should be treated as revisable.' Thus DOE attributes 'benefits' to the proposed rule based on metrics acknowledged to be 'uncertain,' while it totally ignores predictable consumer, industry and national level costs of the proposed rule, which it totally ignores, thus over-inflating the alleged benefits of the proposed rule with junk science while significantly understating its costs. Indeed, while DOE exhibits great concern over the global 'social costs' of carbon, it apparently could care less about the domestic social cost of millions of Americans who would be excluded from the benefits of homeownership under its rule, as it makes no effort whatsoever to quantify or consider those costs, which would be enormous. *** Given each of these fatal defects in the utilization of arbitrary and speculative SCC values – and the other fundamental analytical and data failures of the June 17, 2016 DOE cost-benefit analysis, that 'analysis' is factually worthless and insufficient to meet the substantive requirements of EISA section 413 and the [Administrative Procedure Act]."

(Footnotes omitted).[13]

Now, though, beyond these multiple fatal defects, Section 5 of Executive Order 13783, "Promoting Energy Independence and Economic Growth" (March 28, 2017),[14] expressly states that the November 2013 SCC Technical Update relied-upon by DOE in support of the June 17, 2016 proposed manufactured housing rule,[15] is "withdrawn as no longer representative of [federal] government policy." (Emphasis added). In addition EO 13783 expressly disbands the "inter-agency working group" that developed the SCC and its various updates and iterations.

Insofar as DOE concluded – incorrectly – based on the now-invalidated SCC construct, that national-level environmental and related economic benefits would accrue under the proposed rule leading, in substantial part, to its broader conclusion that alleged benefits of the proposed rule would exceed its alleged costs, its purported cost-benefit analysis (as affirmatively required by EISA) has been fundamentally undermined and invalidated. For this reason, as well as the other and additional reasons set forth in MHARR's comments, pertaining to the fatal deficiencies not only of DOE's alleged cost-benefit analysis, but other fundamental aspects of its standards-

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[13] See, Attachment B, hereto at pp. 32-33.

[14] See, Attachment D, hereto

[15] See, 81 Federal Register, No. 117, supra at p. 39791 at n. 14.

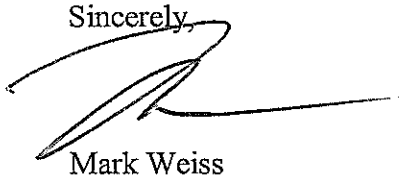
development process in this matter, its June 17, 2016 proposed rule herein should be withdrawn in toto, as lacking any substantive basis, or demonstrable benefits exceeding its significant known and predictable costs.

MHARR, therefore, calls upon you to retract this proposed rule and to refrain from any further rulemaking activity concerning this matter pending further guidance from either Congress or the President.

Furthermore, given the urgency of this matter, we will contact your office soon to arrange a meeting to address this baseless regulatory assault on affordable housing and working Americans.

Thank you.

Sincerely,



Mark Weiss
President and CEO

cc: Hon. Mick Mulvaney
Hon. Lisa Murkowski
Hon. Maria Cantwell
Hon. Greg Walden
Hon. Frank Pallone
HUD Code Industry Members