



Manufactured Housing Association for Regulatory Reform

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VIA FEDERAL EXPRESS

Hon. Ben Carson
Secretary
U.S. Department of Housing and Urban Development
451 7th Street, S.W.
Suite 10000
Washington, D.C. 20410

Re: Manufactured Housing Utilization and Regulation

Dear Secretary Carson:

As you know, the Manufactured Housing Association for Regulatory Reform (MHARR) is a Washington, D.C.-based national trade organization representing smaller and medium-sized independent producers of HUD-regulated manufactured housing from around the United States. MHARR's primary organizational focus, particularly since the enactment of the Manufactured Housing Improvement Act of 2000 (42 U.S.C. 5401, *et seq.*), has been on the reform of the HUD manufactured housing program, both substantively and procedurally, insofar as excessive, unreasonable and unnecessary regulation and related regulatory compliance costs disproportionately impact -- and harm (as documented by the U.S. Small Business Administration) -- smaller businesses and the consumers they serve.

In this regard, MHARR is keenly aware that both President Trump and you, as HUD Secretary, share a common commitment to reducing regulatory barriers -- at all levels of government -- that burden the availability of affordable housing and homeownership for Americans. This commitment is illustrated not only by the steps that you have taken to champion the availability and utilization of inherently affordable HUD-regulated manufactured housing, but also by your new role as Chairman of the White House Council on Eliminating Barriers to Affordable Housing, established by the President's June 25, 2019 Executive Order.

Further, we specifically recognize and appreciate the express support that you, personally, have repeatedly voiced for the role that HUD Code manufactured housing can and should play in meeting and resolving the nation's affordable housing crisis. Indeed, your support for the availability and utilization of manufactured housing on multiple occasions as HUD Secretary is virtually unprecedented and most welcome. We also appreciate the strong leadership you have

already shown in highlighting the overwhelmingly negative impact that unreasonably restrictive and discriminatory zoning barriers have had – and continue to have -- on the availability of affordable manufactured housing and homeownership in many areas of country.

That said, however, there is much more that remains to be done in order to expand the availability and utilization of federally-regulated manufactured housing. And given media reports that you may be planning to depart HUD at the end of President Trump's current term, the need for rapid and substantive progress in the near-term is even greater. Indeed, it is essential to the future viability, vitality and growth of the industry – and its ability to offer the American Dream of homeownership to *every* family, regardless of income level – that your words of support and encouragement for both producers and consumers alike of affordable, non-subsidized manufactured homes, be matched by *specific action* in four distinct areas.

First, as you know, today's manufactured homes are the *only* segment of the housing industry to be comprehensively regulated and governed by HUD, under federal authority. Given this fact, and in view of your new role as Chairman of the White House Council on Eliminating Regulatory Barriers to Affordable Housing, you are in a unique position to ensure that HUD Code manufactured housing, for the first time, is included, on a full and equal basis, in all federal and federally supported housing and housing assistance programs. Appropriate language, such as that set forth below, could be adopted administratively by HUD as policy (or legislatively, if deemed necessary) to accomplish this key aspect of equality and parity for HUD-regulated manufactured housing. Such a provision, for example should state:

“The Department of Housing Development shall provide for the inclusion of manufactured homes as defined by the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000 in all housing, housing assistance and community development programs and activities, including community development grants, administered by the Department and shall ensure that any jurisdiction participating in any such program or applying to participate in any such program does not exclude or unreasonably restrict the placement of such manufactured homes within that jurisdiction.”

Second, reform is urgently needed to substantially increase the availability of consumer financing for manufactured homes. This specifically includes entities within HUD, such as the Federal Housing Administration (FHA) and the Government National Mortgage Association (GNMA). As recently as the 1990s, the FHA Title I program for manufactured home personal property loans was a significant component of the financing market for manufactured housing. Since GNMA adopted excessive capitalization and reserve requirements for manufactured housing participants in the mid-2000s, however (*i.e.*, minimum \$10 million capitalization and \$10 million reserve), the Title I program has become nearly moribund, with virtually no activity. Altering this unduly restrictive policy and using the full weight of HUD's influence to ensure that the Federal Housing Finance Agency (FHFA) and GSEs -- more than a decade after the enactment of the statutory Duty to Serve Underserved Markets (DTS) mandate -- finally implement DTS in a market-significant manner with respect to the nearly 80% of the manufactured housing consumer

finance market served by personal property loans, would also go a long way toward increasing the availability, affordability and utilization of mainstream, HUD Code manufactured housing.

Third (and related to the first issue above), as requested by MHARR in an April 24, 2019 communication to you (copy attached), HUD should make full use of statutory authority it already has, to eliminate discriminatory local zoning mandates that either exclude or unreasonably restrict the placement of both individual manufactured homes and manufactured housing communities in jurisdictions around the country. As set forth in that communication, MHARR has suggested that HUD's Office of Policy Development and Research (PD&R) should begin this process by conducting a study of such discriminatory and exclusionary zoning mandates to fully assess both their prevalence and impact on the availability of affordable, mainstream manufactured housing. HUD should then utilize its authority under the enhanced federal preemption of the 2000 reform law (42 U.S.C. 5403(d)) to begin addressing those discriminatory mandates.

Fourth, as the President's June 25, 2019 Executive Order implicitly recognizes, mainstream, affordable HUD Code manufactured homes are perhaps the best means available to address and resolve the ongoing affordable housing crisis. And the industry's homes are – and have been for more than forty years – under the direct and comprehensive regulation of HUD itself. Consequently, adjustments to HUD's regulatory approach to manufactured housing would invariably have a direct and beneficial impact on the affordability, availability and utilization of manufactured housing. Thus, in addition to the steps (addressed above) that need to be taken outside of – and beyond HUD – there is much that can be done *within* HUD to make HUD Code manufactured housing a larger component of the nation's affordable housing supply (as the 2000 reform law was designed to do).

For instance, there are two specific and crucial aspects of the 2000 reform law that, after nearly 20 years, have still not been implemented – at all – by HUD. These are: (1) the law's mandate for the appointment of a non-career administrator for the HUD manufactured housing program (42 U.S.C. 5419(a)(1)(C)) in order to ensure full accountability within HUD for all program policies and actions, and to ensure the consideration – and inclusion – of HUD Code manufactured housing in all appropriate HUD programs and policy decisions; and (2) enforcement of – and strict adherence to – the law's directive for “separate and independent” contractors for all program functions (42 U.S.C. 5419(b)). Full compliance with this directive would mean ending the *de facto* monopoly that the incumbent contractor has had on the program monitoring contract for more than 40 years, which provides a built-in incentive for the contractor to seek more stringent, harsher and more costly burdens on regulated manufacturers, without providing any tangible benefit to consumers.

Similarly, despite the process at HUD undertaken pursuant to Executive Orders 13771 and 13777 to review and – as appropriate – eliminate unnecessary and unduly burdensome regulatory requirements, only minimal progress has been made to date within the manufactured housing program. Indeed, nearly two years after the start of this process, the only HUD manufactured housing program pseudo-regulatory documents that have been withdrawn are several editions of the manufactured housing program *newsletter*, and just *one* of dozens of unpublished, unilateral, so-called “guidance” documents issued by the former program Administrator (relating to “attached” carports). Other than these, not a single standard, enforcement regulation, interpretive

rule, “Interpretive Bulletin,” pseudo-interpretation, or other substantive or procedural policy within the federal manufactured housing program (highlighted by MHARR in its EO 13771/13777 comments) has been withdrawn or substantively modified since January 2017 and MHARR remains concerned that current program staff may simply be “waiting out” your tenure at HUD and the Trump Administration in order to return to a harsher, more costly and unnecessary regulatory regimen absent substantive, *institutional* changes.

There are other actions that can and should be taken to decrease the regulatory burdens on the manufactured housing industry and market which – especially since 2009 – have substantially decreased the availability of HUD Code manufactured homes and consumers’ ability to purchase and site mainstream, affordable HUD Code homes. Such actions, pursuant to President Trump’s June 25, 2019 Executive Order, EO’s 13771 and 13777, the 2000 reform law and DTS would go a long way toward restoring and expanding the manufactured housing market, and advancing manufactured housing as a viable and desirable housing and homeownership option for millions of Americans currently excluded from the housing market through no fault of their own. Put differently, the tools and authority needed to expand the affordability, availability and utilization of HUD Code manufactured housing already exist. New laws – including recent proposals to allegedly “modernize” manufactured housing -- are not needed and, in fact, could prove harmful in relegating existing, mainstream, affordable HUD Code manufactured homes to “second-class” status.

Accordingly, we urge you to include today’s manufactured housing – built in compliance with the 2000 reform law and HUD’s federal construction and safety standards – in all applicable HUD and federal government programs. In addition, we urge you to support the expansion of federal support for manufactured housing consumer loans and zoning/placement equity, and to complete the institutional reform of the manufactured housing program at HUD through full compliance with all aspects of the 2000 reform law. As always, MHARR stands ready to provide you with additional information, answer any questions that you might have, and otherwise assist you in any way that you wish.

Thank you again for your continued support of HUD Code manufactured housing.

Sincerely,



Mark Weiss
President and CEO

cc: Hon. Brian Montgomery
Hon. Seth Appleton
HUD Code Industry Members