



March 13, 2020

U.S. Department of Housing and Urban Development  
Office of the General Counsel, Rules Docket Clerk  
Room 10276  
451 7<sup>th</sup> Street SW  
Washington, DC 20410-0001

**Re: Affirmatively Furthering Fair Housing, Docket No. FR 6123-P-02 (RIN 2577-AA97)**

Dear Secretary Carson:

The Manufactured Housing Institute (MHI) is pleased to provide comments in response to the U.S. Department of Housing and Urban Development's (HUD) proposed rule to amend the Department's Affirmatively Furthering Fair Housing (AFFH) regulations. This proposed rule would revise the AFFH definition, develop metrics to allow comparisons of jurisdictions, and require jurisdictions to certify concrete steps they will take over the next five years to meet AFFH requirements.

MHI is the only national trade association that represents every segment of the factory-built housing industry. Our Members include manufactured home builders, suppliers, retail sellers, lenders, installers, community owners, and community operators, as well as 49 affiliated state organizations.

MHI appreciates HUD's actions to reform the AFFH process and requirements, in order to more fully carry out the statute's intent and to promote housing choices. MHI particularly appreciates the Department's recognition in the proposed rule that expanding the supply of affordable housing is a critical component of furthering fair housing.

Our comment letter offers two recommendations about how these efforts can be further strengthened to address our Members' experience in which some local land use planning policies exclude or inhibit manufactured housing. Such actions limit affordable housing choices and as a result restrict – as opposed to further – fair housing. Examples of these actions are enclosed at the end of this letter (Appendix I).

In order to ensure that our nation's fair housing policies maximally further manufactured homeownership opportunities, MHI offers two key recommendations to HUD:

- (1) Modify the proposed rule to add factors or questions into the certification process that address land use planning and other actions that restrict manufactured homes.
- (2) Utilize statutory preemption authority to strengthen HUD's 1997 Statement of Policy on manufactured home construction standards and local zoning policies.

**Manufactured Housing is a Critical Component of Fair Housing**

Manufactured housing is the largest form of unsubsidized affordable housing in the U.S. and the only type of housing built to a federal construction and safety standard. It is also the only type of housing

that Congress recognizes as having a vital role in meeting America's housing needs as a significant source for affordable homeownership accessible to all Americans.<sup>1</sup> Today, 22 million people live in manufactured housing and the industry employs tens of thousands of Americans nationwide.

In 2019, our industry produced nearly 95,000 homes, accounting for approximately 10 percent of new single-family home starts. These homes are produced by 32 U.S. corporations in 129 plants located across the country. MHI's members are responsible for close to 85 percent of the manufactured homes produced each year.

Manufactured housing is one solution that is helping solve the shortage of affordable housing in this country and making the dream of homeownership an affordable and attainable reality for millions. The affordability of manufactured homes enables individuals to obtain housing that is often much less expensive than renting or purchasing a site-built home with the average cost of a new manufactured home without land being \$78,500. One of the statutory goals of the Manufactured Home Construction and Safety Standards Act is to "facilitate the availability of affordable manufactured homes and to increase homeownership for all Americans."<sup>2</sup> Congress has already acknowledged the vital role manufactured housing plays in meeting America's housing needs. MHI believes state and local leaders should, as well.

### **Revising the Definition of Affirmatively Furthering Fair Housing**

An important part of the proposed rule is to change the current AFFH definition from a focus on a range of factors such as disparities in housing needs, access to opportunity, segregation, and compliance with fair housing laws, to a more focused objective of "advancing fair housing choice within the program participant's control or influence." MHI supports this focus on actions within the control of local jurisdictions, with the main goal of advancing housing choices for residents living in the jurisdiction.

Additionally, MHI believes that jurisdictions' zoning and land use decisions have historically had an adverse impact on the advancement of housing choices for residents, as jurisdictions have utilized these tools to limit and restrict manufactured housing, the most affordable option nationwide for single-family homeownership.

### **Increasing Fair Housing Choice by Increasing Supply of Affordable Manufactured Homes**

The proposed rule appropriately recognizes that promoting and providing incentives for innovation in the areas of affordable housing supply is a key part of advancing fair housing choice. The proposed rule also recognizes that expansion of the supply of affordable housing is to some degree within the control of local jurisdictions.

Since manufactured housing is the most affordable homeownership option, an important way HUD can achieve this goal is revise the certification process to focus on reducing local jurisdictions' actions that exclude or inhibit manufactured housing and strengthen and enforce its preemption authority.

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<sup>1</sup> 42 U.S.C. § 5401(a)(2).

<sup>2</sup> *Id.* at § 5401(b)(2).

**A. HUD Should Strengthen the Rule's Focus on Local Manufactured Housing Actions**

Under the proposed rule, HUD would establish three criteria for which jurisdictions would be measured: “(1) is free of adjudicated fair housing claims; (2) has an adequate supply of affordable housing throughout the jurisdiction; and (3) has an adequate supply of quality affordable housing.” HUD would focus its remedial and enforcement efforts on those jurisdictions with poor performance. Given that local zoning decisions excluding or discouraging manufactured housing continue to interfere with housing choices, MHI recommends adding a fourth goal that would evaluate a jurisdiction’s land use planning, as this goal is inextricably linked with two of the three goals that focus on the amount and quality of available affordable housing, and is clearly within their control or influence.

The proposed rule would also replace the AFFH assessment tool with a revised AFFH certification process requiring jurisdictions to identify goals or obstacles they will address over the next five years.

MHI is pleased that the proposed non-exhaustive list of 16 common barriers to fair housing choice includes “unnecessary manufactured housing regulations and restrictions.” However, we would urge HUD to move up manufactured housing to immediately follow “(G) Regulatory provisions or other administrative practices that have the effect of restricting or otherwise materially impeding the approval of affordable housing development,” as such barriers are common to manufactured housing. Given that regulatory barriers are common in the area of manufactured housing, elevating manufactured housing will signal to jurisdictions the importance of removing such barriers since jurisdictions may incorrectly view the non-exhaustive list as a priority list.

In response to HUD’s “Question for Comment 4: Are there other factors, in addition to the ones listed in this proposed regulation, which are generally considered to be inherent barriers to fair housing?” MHI recommends incorporating specific factors or questions relating to manufactured housing into the certification framework, including the following:

- “Do the local jurisdiction’s land use planning laws in any way limit the placement of manufactured housing, to specific areas that are lower income or lower opportunity, include conditional use and variances that limit manufactured housing, or impose arbitrary lot size and density requirements?”
- “Is the local jurisdiction’s enforcement of its land use planning laws in any manner selectively enforced against persons who reside in manufactured homes?”
- “What is the local jurisdiction affirmatively doing to address disparities in access to manufactured homes and rental units?”

**B. HUD Should Strengthen its Statutory Preemption Authority**

AFFH is not the only tool that HUD can utilize to ensure that localities do not adopt exclusionary or discriminatory policies with respect to manufactured housing. HUD also has preemption authority through the Manufactured Home Construction and Safety Standards Act regarding construction and safety standards for manufactured homes. HUD should fully utilize this authority to ensure that local regulatory construction standards and zoning, planning, or development policies do not adversely affect consumer housing choice – a primary objective of the proposed rule.

While we appreciate that HUD has pursued individual cases where local jurisdictions have introduced construction and safety standards that are not consistent with the HUD Code or have imposed zoning and planning requirements that exclude HUD-compliant manufactured homes, MHI believes HUD should strengthen its “Statement of Policy 1997-1 State and Local Zoning Determinations Involving HUD Code” (1997 Statement of Policy).

Congress granted HUD expanded preemption authority in 2000 when it passed the Manufactured Housing Improvement Act of 2000 (Public Law 106-569), which made significant amendments to the Manufactured Housing Construction and Safety Standards Act, including strengthened preemptive authority. The Senate report language that accompanied the bill reflects this expansion. Specifically, the report states that “the revisions to Section 604 [of Public Law 93-383] would also clarify the scope of Federal preemption to ensure that disparate State or local requirements do not affect the uniformity and comprehensive nature of the Federal standards.” Further, Section 604 itself states that “Federal preemption under this subsection shall be broadly and liberally construed to ensure that disparate State or local requirements or standards do not affect the uniformity and comprehensiveness of the standards promulgated under this section nor the Federal superintendence of the manufactured housing industry as established by this title.”<sup>3</sup>

Accordingly, we urge HUD to utilize this authority to strengthen its 1997 Statement of Policy to ensure that localities are furthering affordable housing choices for manufactured homes.

### **Conclusion**

MHI appreciates the efforts of this Administration and HUD to promote fair housing choice, which augments its efforts in its Housing Finance Reform plan issued last year, which stated that “manufactured housing plays a vital role in meeting the nation’s affordable housing needs.” As the Department finalizes its revised AFFH regulations, we respectfully request consideration of our recommendations to increase affordable manufactured housing opportunities.

Sincerely,

A handwritten signature in black ink that reads "Lesli Gooch". The signature is written in a cursive, flowing style.

Lesli Gooch  
Chief Executive Officer

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<sup>3</sup> See also 42 U.S.C. § 5403(d).

## **Appendix I**

### **Examples of Land Use Planning Actions Adverse to Manufactured Housing**

#### **Outright Bans**

**Bryan, TX** – In April 2019, the City of Bryan, TX, voted to eliminate the city’s MU-1 mixed-use residential district zone, which is the only zoning district in the city that allows manufactured homes on individual lots. According to news reports, the zoning change would affect roughly 2,600 parcels of land and 1,167 landowners, rendering 750 manufactured homes as nonconforming uses (and essentially stripping them of all value). Additional bans have occurred in Haughton, LA, Stillwater, NY and Huntsville, TX.

#### **Zoning Barriers**

**Coxsackie, NY** – In 2005, UMH Properties (“UMH”) purchased 180 acres of land (and then an additional 70 acres), the majority of which is located in the Village of Coxsackie, NY (“Village”). At the time, the Village zoning laws allowed for the development of the 330 manufactured home community UMH proposed on the property. Despite the zoning law at the time of purchase, for the next fourteen years the Village set up various land planning roadblocks under the auspices of its zoning code to reject UMH’s project. In October 2018, UMH brought a disparate impact case against the Village for its rejection of affordable housing.

#### **Segregated Zoning**

**Panama City, FL** – Panama City, FL, recently banned manufactured homes as a “Permitted Use” in all residential zones, segregating manufactured homes into one special overlay zone.

**St Tammany Parish, LA, and Aransas Pass, TX** – Both cities placed zoning for land-lease communities in locations far away from essential services and as buffers to commercial zones.

**City of Sandersville, GA** – The city of Sandersville, GA, recently banned manufactured homes as a “Permitted Use” in several residential zones, segregating them into one special overlay zone in one area of the city.

#### **Lot Size**

**Harrison County, KY** – In 2018, this rural Kentucky county passed legislation requiring ten acres of land for placement of a manufactured home on private property.

**Chandler, GA** – Chandler, GA, requires five acres for placement of a manufactured home on private property.

**Shelby County, IL** – Shelby County, IL, requires a minimum of one acre for the placement of a manufactured home on private property.

**Carroll County, GA** – Carroll County, GA, requires a minimum of five acres for the placement of a manufactured home on private property.

#### **Value**

**McCrary, AR** – In 2017, the city of McCrary, AR, settled a lawsuit banning the placement of a manufactured home in its limits because the home was valued under an arbitrary and capricious amount (\$7,500) as dictated by city ordinance. Newark, AR, has a similar ordinance and is also facing litigation.

### Age

Many local jurisdictions prohibit placement or movement of a home based upon its age:

- **Jasper County, SC** – twenty years
- **Mohave County, AZ** – seven years

### Conditional Use

**Pearl, MS, and Lodi, OH** – Many cities, including Pearl, MS, and Lodi, OH, have taken administrative action (without a hearing or a vote) to treat the removal of a single home from a manufactured home community as a change in use, thus disqualifying the particular foundation for a replacement home.

**Clayton County, GA** – In parks and communities in Clayton County, GA, if a pad is empty and has not been utilized in six months, it is not permitted to place another home on the pad, either new or used.

### Density/Setback

**Harker Heights, TX** – In Harker Heights, TX, building Code requires a twelve-foot-five-inch setback between homes, which was changed to 35 feet for manufactured homes.

### Disparate Treatment

**Georgetown, SC** – Ignoring its own Comprehensive Plan, the city of Georgetown, SC, council rejected a petition from residents of the minority populated West End to allow residents to replace older existing manufactured homes with newer used models.

### Flood Zone Manufactured Home (MH) Exemption

**Florida and Mississippi** – In an effort to achieve higher Community Rating System (CRS) numbers, thus lowering the premium for flood insurance, cities and counties on the Gulf Coast began removing the FEMA/MH height exemption. Under the former rule, manufactured homes located in Flood Zone A (100-year floodplain) must be elevated 36 feet on reinforced concrete piers. The change being made would require new manufactured homes to be elevated at the bottom of the frame to the Base Flood Elevation (BFE). In some cases, the new elevation could be six to eight feet higher.

### Other

**Green County, WI** – In Green County, WI, the County Administrator determined that a HUD Code home must have a basement in order to be considered a dwelling under local law.

**O'Fallon, IL** – O'Fallon, IL, refused to recognize manufactured homes as dwellings.

**Alvin, TX** – Cities like Alvin, TX, have required incredibly expensive renovations for manufactured home communities, including concrete road construction, streetlights, and other pretextual requirements that are intentionally cost-prohibitive, forcing many communities to close. These requirements are targeted specifically at manufactured home communities and never similarly imposed on the cities' historical downtowns, site-built neighborhoods, or even aging site-built homes.