Manufactured Housing Association for Regulatory Reform

1331 Pennsylvania Avenue, NW • Suite 512 • Washington, DC 20004 • 202-783-4087 • Fax 202-783-4075 • mharrdg@aol.com

January 30, 2025

VIA FEDERAL EXPRESS

Hon. Scott Turner
Secretary-Designate
U.S. Department of Housing and Urban Development
Suite 10000
451 Seventh Street, S.W.
Washington, D.C. 20410

Re: Restoring and Expanding the Affordable Housing Role of Manufactured Homes

Dear Secretary-Designate Turner:

I am writing as a follow-up to my previous communications of November 25, 2024, January 22, 2025 and January 23, 2025 (see, Attachment 1).

The Manufactured Housing Association for Regulatory Reform (MHARR), as noted in those prior communications, is a Washington, D.C.-based national trade organization, established in 1985, representing the views and interests of producers of manufactured housing subject to regulation by the U.S. Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401, et seq.) as amended by the Manufactured Housing Improvement Act of 2000 (2000 Reform Law). MHARR's members are primarily smaller and medium-sized independent producers of manufactured housing, located in all regions of the United States.

As the United States faces an unprecedented affordable housing crisis, with the supply of affordable homes and, more particularly, affordable "starter" homes, millions of units below existing (and growing) demand,[1] HUD-regulated manufactured homes offer American families at all income levels (and most especially moderate and lower-income American families), an inherently affordable, non-subsidized source of housing and homeownership. Yet, the availability (and ultimately the utilization) of this crucial affordable housing resource, expressly protected and guaranteed by Congress in federal law,[2] has been undermined across the United States by endemic mismanagement of the HUD manufactured housing program as well as specific bottlenecks that HUD has both the authority and -- more importantly – the responsibility to alleviate and remove,

[1] See e.g., "The Significant Shortage of Starter Homes," Freddie Mac Research and Perspectives, S. Khater (April 15, 2021).

[2] The 2000 Reform Law states, in part: "The purposes of this chapter are: *** (2) to facilitate the availability of affordable manufactured homes and to increase homeownership for all Americans." (42 U.S.C. 5401(b)(2)).

but has failed or (even worse), refused to address and remedy, for decades. Our purpose in this communication, accordingly, is to highlight those program defects and bottlenecks, as well as the statutory tools that Congress has provided to HUD (and others) to address such matters and ensure the statutorily-mandated availability of HUD Code manufactured housing.

At the outset, it should be stressed that manufactured housing is, must be – and must remain – federally regulated. Unlike other types of housing, which are either constructed on or constructed for a specific known lot, site or location in a specific known jurisdiction, manufactured homes are assembled in factories and then shipped to purchasers or retailers who site the homes at locations unknown to the manufacturer at the time of construction. As a result, manufactured homes are routinely transported across state lines and may, even after initial siting, be moved to other locations and other jurisdictions. As a result of this production model and enduring transportability (as mandated by applicable federal law), manufactured homes must be regulated pursuant to:

(1) uniform federal standards; and
(2) uniform federal enforcement; in conjunction with
(3) robust federal preemption.

These three pillars of HUD manufactured housing regulation ensure not only that manufactured homes can be sited anywhere in the United States at the time of initial retail sale or thereafter, but also ensure unparalleled construction efficiencies and savings that manufacturers pass to consumers. Consequently, uniform federal standards, uniform federal enforcement and strong federal preemption, are the primary mechanism that ensures the inherent, non-subsidized affordability of today's mainstream manufactured homes, in accordance with the purposes and objectives of applicable federal law, and also distinguish HUD-regulated manufactured homes from all other types of factory-built dwellings that are not federally regulated.

Consequently, a properly functioning federal program is essential for manufactured housing to reach its full potential. Yet, the HUD manufactured housing program has suffered from both poor management and poor oversight, as the Department has consistently focused more on wasteful public housing programs and related grants and subsidies, rather than the private-sector affordable solution offered by manufactured housing. This failure has been especially damaging for the smaller, independent manufactured housing producers represented in the nation's capital by MHARR, which have been disproportionately impacted by excessive and unnecessary regulation, including extra-legal mandates imposed by an entrenched HUD program "monitoring contractor," which (apparently without precedent in Washington, D.C.) has continuously held what amounts to a de facto sole-source contract since the inception of federal regulation fifty years ago. At the same time, as addressed in my previous communication of January 22, 2025, smaller, independent manufacturers have been denied full and equal participation in the HUD Manufactured Housing Consensus Committee (MHCC) – the most significant program reform enacted by the 2000 Reform Law – through their collective representative, MHARR, for nearly two decades. For manufactured housing and the federal manufactured housing program to both meet their full potential, significant program reform to remedy these failures (and other) is essential and must be a priority under the Trump Administration.

Beyond, these major failures of the HUD program, three principal bottlenecks have impaired the availability and utilization of affordable, HUD-regulated manufactured housing, as mandated by federal law. These principal bottlenecks include impending draconian Biden Administration "energy conservation" standards, previously addressed in MHARR's January 23, 2025 communication to you, and a discriminatory lack of federal support for manufactured home consumer lending (including Federal Housing Administration programs and Ginnie Mae requirements, as well as the nearly two-decade failure of Fannie Mae and Freddie Mac to implement the statutory "Duty to Serve Underserved Markets" directive for the vast bulk of the manufactured housing market), which we will address in greater detail in a future communication to the incoming director of the Federal Housing Finance Agency (FHFA).

The most significant bottleneck, however, as you become HUD Secretary, is the fact that the availability and utilization of affordable, mainstream HUD-regulated manufactured homes – and the growth of manufactured housing as a vital affordable housing resource -- has been undermined, subverted and needlessly restricted in vast areas of the United States through discriminatory and exclusionary zoning mandates that bar manufactured homes and manufactured homeowners (including a significant proportion of minority manufactured homeowners[3]) from entire communities.

While the discriminatory targeting of manufactured housing and manufactured homeowners for zoning exclusion by state and local governments is not new,[4] it has become more prevalent, more pronounced and more extreme in recent decades. It is no coincidence that this radical campaign of discriminatory exclusion has corresponded with an unprecedented long-term decline in the production of new manufactured homes. Specifically, prior to 2007, manufactured home production routinely exceeded 100,000 homes per year and reached its all-time maximum level of 373,143 new homes in 1998. Since 2007, however, manufactured home production has exceeded the 100,000 home benchmark only two times (2021 and 2022) and fell to its modern historical low of 49,683 in 2009. This discriminatory targeting is directly and blatantly contrary to the express purpose and letter of the 2000 Reform Law, which was designed and enacted by Congress to complete the transition of manufactured homes to legitimate housing for all purposes and to ensure the parity of HUD-regulated manufactured homes with site-built (and other) homes for all purposes.

Although federal law, since the adoption of the original National Manufactured Housing Construction and Safety Standards Act in 1974, has included a federal preemption provision (see, 42 U.S.C. 5403(d)) prohibiting states and local jurisdictions from maintaining standards pertaining to any aspect of manufactured housing construction and/or safety which differ from a federal standard applicable to the same "aspect of performance," HUD refused to apply that federal preemption to zoning exclusion, alleging that preemption, under the 1974 Act, was limited solely to state and local construction and/or safety standards. As a result, HUD did nothing while a

[3] The importance of HUD-regulated manufactured housing as a source of affordable homeownership for minority purchasers was addressed by the Consumer Finance Protection Bureau in a report entitled "Manufactured Housing Finance – New Insights from the Home Mortgage Disclosure Act Data," (May 27, 2021).

[4] See e.g., "Testimony of the Pennsylvania Manufactured Housing Association – Promoting Housing Affordability Through Land Use Reforms," (May 3, 2023) at p. 5.

proliferation of exclusionary zoning measures specifically targeting manufactured housing emerged.

Subsequently, urged by MHARR and an industry coalition, Congress, in 2000, developed and enacted landmark legislation to reform and modernize both the federal manufactured housing program and the legal treatment of manufactured homes for all purposes. Especially significant, among the many program reforms of the 2000 Reform Law, was an amendment to the 1974 Act's preemption provision, designed to make it more expansive and more robust in protecting and advancing the availability of HUD-regulated manufactured homes.

Specifically, the 2000 Reform Law amended the federal preemption provision of the 1974 Act by adding a statement 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 chapter." (42 U.S.C. 5403(d)) (emphasis added). This "enhanced federal preemption" of the 2000 Reform Law, significantly expanded the scope, extent and reach of preemption to correspond with and effectuate the expansive remedial and beneficial purposes of the 2000 Reform Law more generally.

The enhanced preemption "broadly and liberally construed" mandate, was added by the 2000 Reform Law specifically because MHARR document requests under the Freedom of Information Act (FOIA) showed conclusively that HUD has been interpreting and applying the scope of federal preemption under the original 1974 Act as narrowly and in as limited a fashion as possible, directly contrary to claims it had previously made to Congress and the industry that it was enforcing federal preemption broadly and vigorously.

Similarly, the enhanced preemption term "requirements or" was added to the preemption clause by the 2000 Reform Law to make it unmistakably clear that federal preemption applies not only to conflicting state or local construction and/or safety *standards*, but also to any state or local "requirement" that impairs HUD's federal superintendence of the industry. That federal superintendence, as specifically defined by the 2000 Reform Law, expressly includes "facilitat[ing] the availability of affordable manufactured homes...." (42 U.S.C. 5401(b)(2)). Therefore, insofar as discriminatory and exclusionary state and/or local zoning measures barring HUD-regulated manufactured homes undermine, conflict with and defeat the fundamental, essential and core federal purpose of the 1974 Act as amended by the 2000 Reform Law – to facilitate and ensure the availability of affordable manufactured homes – such mandates are, should be, and, in fact, must be federally preempted under the enhanced preemption of the 2000 Reform Law.

There can be no doubt, moreover, that the 2000 Reform Law amendments to the Act's preemption provision were designed to – and must necessarily have – such an impact and effect. In a November 13, 2003 communication to then-HUD Secretary Mel Martinez, leading congressional proponents of the 2000 Reform Law stated unequivocally that "these combined changes" to the law, "have given HUD the legal authority to preempt local requirements or

restrictions which discriminate against the siting of manufactured homes (compared to other single family housing) simply because they are HUD Code homes."[5]

It is long past time, accordingly, for HUD to take strong action to stop states and/or localities from acting to undermine and negate federal law and the federal affordable housing policies underlying both the 1974 Act and the 2000 Reform Law by discriminatorily excluding HUD-regulated manufactured homes.

In order to accomplish this, HUD should first take immediate action to withdraw and repudiate two preemption "guidance" statements published in 1997.[6] These statements, which continue to be misconstrued, misapplied and misused by courts to the detriment of both the industry and American consumers of affordable housing, do not include, reflect, or consider the substantive changes to federal preemption enacted by Congress in the 2000 Reform Law (i.e., enhanced federal preemption). As a result, they are no longer accurate, legitimate or valid and must be withdrawn.

Second, the withdrawn 1997 preemption "guidance" statements should be replaced as rapidly as possible with new HUD "guidance" based on the purposes and express terms of the 2000 Reform Law as set forth above. Any such guidance should (and must) be developed and proposed by the MHCC in accordance with the 2000 Reform Law and adopted by HUD with all due speed.[7]

Third, HUD should immediately begin to enforce the enhanced federal preemption of the 2000 Reform Law against jurisdictions which discriminatorily exclude affordable, mainstream, HUD-regulated manufactured housing. As needed and, if necessary, this should include legal action (to the highest level necessary) to prevent and/or eliminate such unlawful zoning measures which stand as an obstacle to – and frustrate the achievement of – federal affordable housing policy as enunciated in the 2000 Reform Law.

Insofar as the foregoing matters are of the utmost importance to MHARR's members, the broader housing industry and American consumers of affordable housing, we will contact your office, upon your confirmation and arrival at HUD, to seek a meeting with you at the earliest opportunity. Again, please accept our congratulations on your nomination and we look forward to

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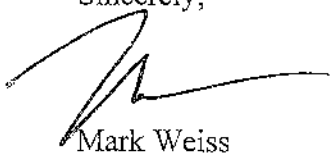
[5] See, Attachment 2 hereto, November 13, 2003 communication to Hon. Mel Martinez from Hon. Barney Frank, Bennie Thompson, Baron P. Hill, Maxine Waters, Ken Lucas and Julia Carson.

[6] See, 62 Federal Register No. 15, "Manufactured Housing Construction and Safety Standards: Notice of Internal Guidance on Preemption" (January 23, 1997) at p.3456, et seq. See also, 62 Federal Register No. 86, "Manufactured Housing: Statement of Policy 1997-1, State and Local Zoning Determinations Involving HUD Code" (May 5, 1997) at p. 24337, et seq.

[7] In this regard, see, Attachment 3, August 22, 2016 communication from the Arkansas Manufactured Housing Association to Edward Golding, HUD Principal Deputy Assistant Secretary, "HUD's Preemption Policy Regarding Manufactured Housing."

meeting with you soon.

Sincerely,



Mark Weiss
President and CEO

cc: Hon. Tim Scott
Hon. Katie Britt
Hon. French Hill
Hon. Mike Flood
Hon. Russell Vought
Hon. Susan Wiles
Mr. Matthew Ammon

ATTACHMENT 1

Manufactured Housing Association for Regulatory Reform

1331 Pennsylvania Avenue, NW • Suite 512 • Washington, DC 20004 • 202-783-4087 • Fax 202-783-4075 • mharrdg@aol.com

November 25, 2024

VIA FEDERAL EXPRESS

Hon. Scott Turner
Secretary-Designee
U.S. Department of Housing and Urban Development
C/O 1100 S. Ocean Boulevard
Palm Beach, Florida 33480

Dear Secretary-Designee Turner:

On behalf of the manufacturer members of the Manufactured Housing Association for Regulatory Reform (MHARR), please accept our congratulations on your nomination to become Secretary of the U.S. Department of Housing and Urban Development (HUD).

MHARR is a Washington, D.C.-based national trade organization representing the views and interests of producers of manufactured housing regulated by HUD pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401, et seq.) as amended by the Manufactured Housing Improvement Act of 2000 (2000 Reform Law). MHARR's members are independent businesses located in all regions of the United States.

As you may already be aware, HUD Code manufactured housing is the only type of residential construction that is directly and comprehensively regulated by the federal government. In the unique instance of manufactured housing, which is routinely transported across state lines, federal regulation – resting on a three-part structure of robust federal preemption, uniform federal standards and uniform federal enforcement – is critical to maintaining both the availability and affordability of HUD Code homes for moderate and lower-income American families. Moreover, sound judgment in the exercise of this authority is essential not only to the health of the industry – which provides tens of thousands of much-needed manufacturing jobs across the country – but also in meeting the needs of consumers who rely on the industry and its homes every day.

In this regard, we wish to bring to your attention an urgent regulatory matter that could have a disastrous impact on both the industry and the availability of affordable housing in a market that is already millions of units short of needed supply. Specifically, the U.S. Department of Energy (DOE) as part of its extremist "climate change" agenda, is about to issue destructive manufactured housing "energy conservation" standards (with a parallel regulatory component at HUD) that would wholly undermine both HUD's superintendence of the manufactured housing industry as well as the historically inherent affordability of manufactured housing. We have already brought this matter to the attention of President-Elect Trump and his transition team (see

attached document). For the reasons explained in those materials, this impending rule should be withdrawn and/or repealed in all its aspects at both DOE and HUD.

Beyond this immediate regulatory matter, we look forward to working with you and your staff to complete the full and proper implementation of all the reforms legislated by Congress in the 2000 Reform Law. Toward that end, we will contact your office following your confirmation to arrange an introductory meeting and the start of a constructive dialogue regarding the federal manufactured housing program and the positive role that it can play under your leadership during the Trump Administration.

Again, congratulations on your nomination. We look forward to meeting with you soon.

Sincerely,

Mark Weiss
President & CEO

Attachments

Manufactured Housing Association for Regulatory Reform

1331 Pennsylvania Avenue, NW • Suite 512 • Washington, DC 20004 • 202-783-4087 • Fax 202-783-4075 • mharrdg@aol.com

January 22, 2025

VIA FEDERAL EXPRESS

Hon. Scott Turner
Secretary-Designate
U.S. Department of Housing and Urban Development
Suite 10000
451 Seventh Street, S.W.
Washington, D.C. 20410

Re: Revocation of Last-Minute Biden Appointments

Dear Secretary-Designate Turner:

I am writing on behalf of the members of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a Washington, D.C.-based national trade organization representing the views and interests of producers of manufactured housing regulated by the U.S. Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401, et seq.) as amended by the Manufactured Housing Improvement Act of 2000 (2000 Reform Law). MHARR's members are primarily smaller and medium-sized independent producers of manufactured housing, located in all regions of the United States.

On November 25, 2024, we wrote to introduce you to MHARR and one of its primary concerns regarding the pending implementation of ruinous and totally unnecessary manufactured housing "energy conservation" standards by HUD and the U.S. Department of Energy (DOE) as an element of the former Biden Administration's discredited "Climate Agenda." (See, copy attached).

Since the time of that communication, however (and at the very end of the Biden Administration) there has been another development concerning the federal regulation of manufactured housing and the HUD Office of Manufactured Housing Programs (OMHP) which requires your (and the Trump Administration's) immediate attention and intervention.

Specifically, on January 16, 2025, during the last hours of the Biden Administration, HUD announced seven new appointments to the 21-member Manufactured Housing Consensus Committee (MHCC), established by the 2000 Reform Law. (See, attached HUD News Release – "HUD Announces New Appointments to Manufactured Housing Consensus Committee). These

applicable law and sound public policy, reflect ongoing HUD mismanagement of the MHCC, and should be revoked immediately.

The MHCC was established in 2001, as one of the principal program reforms of the 2000 Reform Law – a law developed with the full and integral participation of MHARR and passed in Congress by unanimous consent. The MHCC was designed by Congress to ensure the full and effective input of affected parties and interests into the consensus development of HUD manufactured home construction standards, installation standards, enforcement regulations, and interpretations of such standards and regulations. It is statutorily-mandated to include representatives of manufactured housing producers, retailers, users and general interests. (See, 42 U.S.C. 5403(a)(3)(D)).

Significantly, the MHCC was established to replace the toothless, sham Manufactured Housing Advisory Council (Advisory Council), instituted by the original 1974 Act. Testimony before Congress in support of the 2000 Reform Law, showed that the Advisory Council had been deceitfully controlled, maneuvered, manipulated and mismanaged by HUD, both substantively and through biased appointments and rank favoritism. The 2000 Reform Law, accordingly, sought to remedy this failure by mandating an independent MHCC, that would formulate proposed standards, regulations and interpretations free of undue HUD influence, either substantively or via favoritism and biased, politicized appointments.

Unfortunately, though, in recent years and most particularly over the course of the Biden Administration, the independence and statutory role of the MHCC have been undermined and subverted by HUD, substantively, procedurally, and via politicized, biased appointments and favoritism. These appointments have intentionally diminished the role and representation of smaller and medium-sized producers (represented by MHARR) – which are disproportionately impacted and harmed by excessive and unnecessary regulation -- while accentuating the role, power, influence and position of the nation's largest manufactured housing corporate conglomerates (the largest of which is a subsidiary of Warren Buffet's Berkshire Hathaway, Inc.). This has been done by the repeated appointment, re-appointment and re-re-appointment of certain favored interests, companies, organizations and individuals, while smaller and medium-sized producers have been consistently shortchanged, and MHARR, as their collective representative, nationally and in the nation's capital, with decades of directly applicable knowledge, know-how, experience and collective/institutional memory, has been denied direct staff (and/or Board Member) membership for nearly 20 years without any valid or legitimate reason or basis.

Accordingly, and insofar as all MHCC members serve "at the pleasure" of the HUD Secretary, MHARR calls on you (and the Trump Administration) to withdraw the January 16, 2025 HUD-MHCC appointments, and select a new slate of appointees, including direct MHARR staff representation, that will be consistent with both the purposes and objectives of the 2000 Reform Law and the policies and priorities of the Trump Administration, including, but not limited to, a level playing field for small businesses.

Mr. Secretary-Designate, manufactured housing plays a vital role as the nation's leading resource for inherently affordable, non-subsidized homeownership. Neither the Trump Administration, nor you as HUD Secretary-Designate, should allow entrenched HUD bureaucrats

– many with ties to the former administration – to subvert sound housing policy through favoritism and biased, politicized appointments such as those announced on January 16, 2025.

We seek an opportunity to speak with you about this matter and others as set forth in our initial communication. Once you are confirmed by the Senate, we will contact your office to schedule such a meeting. We look forward to meeting you in person and discussing the benefits and advantages of affordable manufactured housing and the role it can – and should – play in alleviating the nation's affordable housing crisis with, among other things, a fully reformed HUD manufactured housing program that is properly managed, fully accountable and not dependent on a 50-year, entrenched sole-source enforcement contractor.

Sincerely,

Mark Weiss
President and CEO

cc: Hon. Tim Scott
Hon. Katie Britt
Hon. French Hill
Hon. Mike Flood
Hon. Russell Vought
Hon. Susan Wiles
Mr. Matthew Ammon

Manufactured Housing Association for Regulatory Reform

1331 Pennsylvania Avenue, NW • Suite 512 • Washington, DC 20004 • 202-783-4087 • Fax 202-783-4075 • mharrdg@aol.com

January 23, 2025

VIA FEDERAL EXPRESS

Hon. Chris Wright
Secretary-Designate
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Hon. Scott Turner
Secretary-Designate
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

Re: Regulatory Freeze – Manufactured Housing Energy Regulations

Dear Secretaries-Designate Wright and Turner:

I am writing on behalf of the members of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a Washington, D.C.-based national trade organization representing the views and interests of producers of manufactured housing subject to regulation by the U.S. Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401, et seq.) as amended by the Manufactured Housing Improvement Act of 2000 (2000 Reform Law) and by the U.S. Department of Energy (DOE) pursuant to section 17071 of the Energy Independence and Security Act of 2007 (EISA) (42 U.S.C. 17071). MHARR's members are primarily smaller and medium-sized independent producers of manufactured housing, located in all regions of the United States.

In November 2024, we wrote you both to introduce you to MHARR and to apprise you of one of its primary regulatory concerns – i.e., the pending implementation of ruinous and totally unnecessary manufactured housing "energy conservation" standards and proposed enforcement regulations developed by the U.S. Department of Energy (DOE) (and under consideration by HUD) as an element of the former Biden Administration's discredited "Climate Agenda." (See, copies attached). Specifically, MHARR called on President Trump, DOE and HUD to halt the implementation of (and further regulatory activity regarding) baseless DOE manufactured housing "energy conservation" standards slated for enforcement beginning on a designated date following DOE publication of a final enforcement regulations rule.[1] Such enforcement regulations were

[1] The DOE manufactured housing energy conservation standards were published on May 31, 2022. See, 87 Federal Register, No. 104 "Energy Conservation Standards for Manufactured Housing," (May 31, 2022) at p. 32728, et seq. The compliance date for "Tier 1" of the DOE standards was subsequently delayed by DOE until "60 days after publication of its final enforcement procedures," and compliance with the Tier 2 standards was delayed until July 1,

published as a proposed rule in the Federal Register on December 26, 2023,[2] but have not yet been adopted by DOE as a final rule.

Significantly, however, since the time of MHARR's November 2024 communications, President Trump has issued two Executive Orders (EO) that are directly relevant to these standards and proposed regulations. Specifically, President Trump, on January 20, 2025, issued an EO entitled "Regulatory Freeze Pending Review." That EO, in relevant part, directs all executive departments and agencies to:

1. "Not propose or issue any rule in any manner ... until a department or agency head appointed or designated by the President after noon on January 20, 2025 reviews and approves the rule; and

2. "[C]onsider postponing for 60 days from the date of this memorandum the effective date for any rules that have been issued in any manner but have not taken effect, for the purpose of reviewing any questions of fact, law and policy that the rules may raise."

Insofar as the DOE manufactured housing energy standards enforcement rule has not been adopted or published as a final rule and has the legal status of only a proposed rule, that action, pursuant to the aforesaid EO, cannot proceed – and may not be adopted or published as a final rule -- without the approval of a duly-appointed Trump Administration official. Such approval, however, should not be granted for all the reasons set forth in MHARR's January 24, 2024 comments on that proposed rule,[3] and we ask that the Trump Administration disavow and withdraw this proposed rule.

Further, insofar as compliance with the May 31, 2022 DOE manufactured housing "energy conservation" standards has been extended and delayed, by final DOE agency action, to a date after the "publication of ... final enforcement procedures," and those final enforcement procedures may not be published under the aforesaid EO, then DOE, under the aforesaid EO, may not, cannot and must not implement, enforce, demand or compel compliance with the May 31, 2022 manufactured housing energy standards by any party or otherwise take any action to compel, demand or enforce compliance with the said standards.

Consistent with the foregoing, we ask that the Trump Administration disavow and withdraw both of these actions. The aforesaid standards rule and proposed enforcement rule are both the product of junk science and radical environmental extremism, including the discredited (and again rescinded by President Trump) "Social Cost of Carbon" (SCC) construct,[4] rather than sound and legitimate scientific bases. The manifold failures and fatal defects of the DOE

2025. See, 88 Federal Register, No. 103 "Energy Conservation Standards for Manufactured Housing; Extension of Compliance Date," (May 30, 2023) at p. 34411, 34412, col.3.

[2] See, 88 Federal Register No. 246 "Energy Conservation Standards for Manufactured Housing; Enforcement," (December 26, 2023) at p. 88844, et seq.

[3] See, MHARR January 24, 2024 comments, "Energy Conservation Program: Energy Conservation Standards for Manufactured Housing: Enforcement" (EERE-2009-BT-BC-0021), attached hereto as Attachment 1.

[4] See, Executive Order, "Unleashing American Energy" (January 20, 2025), section 6(b).

procedures and purported analyses leading to both such agency actions, including far-reaching "questions of fact, law and policy," have been well documented in comments filed by MHARR as well as litigation against the standards rule currently pending in federal court.[5] Moreover, the DOE standards were specifically rejected by HUD's statutory Manufactured Housing Consensus Committee (MHCC), which also found that DOE did not validly and legitimately consult with HUD regarding the standards or proposed enforcement rule as affirmatively mandated by EISA.[6]

Furthermore, the January 20, 2025 EO entitled "Delivering Emergency Price Relief for American Families and Defeating the Cost-Of-Living Crisis" states in relevant part: "[M]any Americans are unable to purchase homes due to historically high prices, in part due to regulatory requirements that alone account for 25 percent of the cost of constructing a new home.... I hereby order the heads of all executive departments and agencies to deliver emergency price relief ... to the American people.... This shall include pursuing appropriate actions to lower the cost of housing and expand housing supply...." (Emphasis added).

Insofar as both the DOE manufactured housing energy standards rule and energy standards enforcement proposed rule – as fully documented and explained by MHARR in its attached comments – would needlessly, unnecessarily and without legitimate basis, significantly increase the cost of manufactured housing and simultaneously reduce its availability as a premier source of affordable, non-subsidized homeownership in direct violation of both existing federal law and sound public policy,[7] those regulations should not only be delayed pursuant to the aforesaid regulatory freeze EO, but should also be rescinded and withdrawn pursuant to President Trump's emergency housing cost relief EO.

Accordingly, based on the aforesaid Executive Orders, and based on the fatal, organic flaws inherent in the DOE manufactured housing energy standards and proposed enforcement regulations as a matter of fact, law and policy – which would needlessly and without valid basis destroy the affordability of federally-regulated manufactured housing and exacerbate the nation's unprecedented and worsening affordable housing crisis – those regulations should be immediately delayed and thereafter rescinded, revoked and withdrawn.

Thank you in advance and we look forward to meeting with you to address this (and other) matters affecting manufactured housing.

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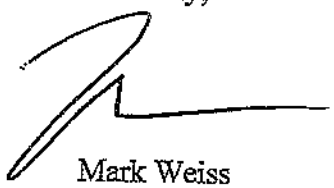
[5] In addition to Attachment 1, hereto, see, MHARR October 25, 2021 Comments and November 22, 2021 Supplemental Comments, "Energy Conservation Program: Energy Conservation Standards for Manufactured Housing: Enforcement" (EERE-2009-BT-BC-0021), attached hereto as Attachments 2 and 3. See also, Manufactured Housing Institute v. Department of Energy, No. 1:23-CV-00174 DAE (W.D. TX.).

[6] See, Minutes of the February 15-16, 2024 MHCC Meeting, Appendix C.

[7] The National Manufactured Housing Construction and Safety Standards Act, as amended by the 2000 Reform Law, was enacted, as one of its primary congressional purposes, "to facilitate the availability of affordable manufactured homes and to increase homeownership for all Americans." See, 42 U.S.C. 5401(b)(2).

Sincerely,



Mark Weiss
President and CEO

cc: Hon. Russell Vought
Hon. Susan Wiles
Ms. Ingrid Kolb
Mr. Matthew Ammon

ATTACHMENT 2

Congress of the United States

Washington, DC 20515

November 13, 2003

Honorable Mel Martinez
Secretary
Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Dear Secretary Martinez:

We are writing to express our deep disappointment in HUD's July 17 rejection of the Manufactured Housing Consensus Committee recommendation, which addresses the problem of discrimination in the siting of manufactured homes. We ask HUD to use its expanded authority under the "Manufactured Housing Improvement Act of 2000" to address this growing problem, which is undermining homeownership opportunities for low-income and minority Americans.

The Millennial Housing Commission concluded that "During the 1990s, manufactured housing placements accounted for one quarter of all housing starts and, from 1997 to 1999, 72 percent of new units affordable to low income homebuyers." Unfortunately, discrimination against the siting of manufactured homes continues to undermine its full potential to meet the needs of low-income homebuyers. A September 2002 Ford Foundation study on manufactured housing notes that "zoning and code rules continue to be a major barrier," and that "the vast majority of local governments continue to discriminate against manufactured housing, thereby limiting its potential to meet the need for affordable housing."

You have made homeownership a top Administration priority, emphasizing opportunities for low-income Americans. You have also made reducing local barriers to affordable homeownership a top priority, announcing on June 10th a Department-wide effort to break down such barriers, in order to create "an environment to increase minority homeownership."

The very first recommendation of the the Manufactured Housing Consensus Committee addressed the problem of discrimination against the siting of manufactured homes, through a prohibition against localities enforcing discriminatory covenants made by private landowners. We believe HUD's summary rejection of this proposal is inconsistent with HUD's stated priority of removing barriers to affordable low-income homeownership opportunities.

We understand that HUD may have concerns about its legal authority to implement this particular proposal. But, we believe HUD should have taken this opportunity to use its expanded legal preemption authority under the 2000 Act to develop a Policy Statement or regulation to make it clear that localities may not engage in discriminatory practices that unfairly inhibit or prohibit development and placement of manufactured housing. We understand that some in the industry have asked HUD to take such action and we urge HUD to be responsive to this request.

We are also troubled by the legal analysis HUD used in its July 17th rejection of the Consensus Committee recommendation. HUD's analysis relies on rulings in court cases that predated the 2000 Act amendments, which render such rulings obsolete. Moreover, HUD's legal analysis states that the 2000 Act amendments "did not modify the basic substance of the statutory preemption provision." Such a statement ignores the plain language of the 2000 Act changes.

Prior to the 2000 Act changes, the statute merely prohibited states and localities from establishing any standard regarding construction or safety "applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard." The 2000 Act broadened this provision to add 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." [italics added].

The 2000 Act amendments also expanded the findings and purposes of the Act. Prior to 2000, the statutory findings declared it necessary to establish construction and safety standards merely "to reduce injuries, deaths, insurance costs and property damage," and "to improve the quality and durability of manufactured homes." The 2000 Act amendments introduce the new findings that "manufactured housing plays a vital role in meeting the housing needs of the nation," and that "manufactured homes provide a significant resource for affordable homeownership." New purposes were also introduced by the 2000 Act, which include protecting the "affordability of manufactured homes," and "facilitating the availability of affordable manufactured homes and to increase homeownership for all Americans."

Thus, the 2000 Act expressly provides, for the first time, for "Federal preemption," and states that this should be "broadly and liberally construed" to ensure that local "requirements" do not affect "Federal superintendence of the manufactured housing industry." Combined with the expansion of the findings and purposes of the Act to include for the first time the "availability of affordable manufactured homes," the 2000 Act changes have transformed the Act from solely being a consumer protection law to also being an affordable housing law.

More specifically, these combined changes have given HUD the legal authority to preempt local requirements or restrictions which discriminate against the siting of manufactured homes (compared to other single family housing) simply because they are HUD-code homes. We ask that HUD use this authority to develop a Policy Statement or regulation to address this issue, and we offer to work with you to ensure that it comports with Congressional intent.

Sincerely,

BARNEY FRANK

BENNIE G. THOMPSON

BARON P. HILL

MAXINE WATERS

KEN LUCAS

JULIA CARSON

ATTACHMENT 3

ARKANSAS MANUFACTURED HOUSING ASSOCIATION

August 22, 2016

Mr. Edward L. Golding
Principal Deputy Assistant Secretary
Office of Housing
Department of Housing and
Urban Development
451 7th St. SW
Washington, DC 20410

Ms. Helen R. Kanovsky
General Counsel
Department of Housing and
Urban Development
451 7th St. SW
Washington, DC 20410

Re: **HUD's Preemption Policy Regarding Manufactured Housing**

Dear Mr. Golding and Ms. Kanovsky:

I am writing on behalf of the Board of Directors and members of the Arkansas Manufactured Housing Association (AMHA) and the hundreds of very low, low, and moderate income families in Arkansas who choose manufactured homes as affordable, non-subsidized housing each year - to bring to your attention the on-going practice of cities and towns in this state of prohibiting or unduly restricting the placement of manufactured housing within their boundaries. It is my sincere hope that the Department will work with the manufactured home industry to promote fair and affordable housing and to eradicate unreasonable regulatory barriers against HUD-Code homes - often based on outdated myths, misconceptions and stereotypes about the product and the people that live in the product.

It is my understanding that the Department has met with industry representatives on this matter, and has challenged the industry to prove that the Department can offer more assistance in the future.

I believe that the Department has not only the authority, but also the responsibility to work to remove barriers to the use of manufactured housing as an affordable housing resource, as evidenced here:

PREEMPTION IN THE ACT OF 1974

Prior to the enactment of the Manufactured Housing Improvement Act (MHIA) of 2000, the Manufactured Home Construction and Safety Standards Act (MHCSS) of 1974 [42 U.S.C. 5403 (d)] read:

(d) Supremacy of Federal standards

Whenever a Federal manufactured home construction and safety standard

(MORE)

> established under this chapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding the construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.

This clause has been cited time and again by the Department of as the specific basis of the program's 'preemption power' over state and local jurisdictions' authority to establish or continue in effect construction and safety standards which are not identical to the Federal standards – provided that a Federal standard governing the same aspect of performance exists.

The Department has also established its regulatory authority under the preemption power created under the Act in a more general nature – by determining that states (and political subdivisions of the states) "may not take any action that could interfere with the Federal superintendence of the industry as established by the Act". [24 CFR 3282.11]

NOTICE OF INTERNAL GUIDANCE

HUD addressed this 'supremacy clause' in its *Notice of Internal Guidance* – published in *The Federal Register* on January 23, 1997. In the notice by Stephanie A Smith, General Deputy & Assistant Secretary for Housing – Federal Housing Commissioner, the Department stated its positions on the preemptive nature of the Act relative to a number of specific circumstances: *installation, zoning, state enforcement, utility providers*, and *state construction and safety standards*.

In this document, the Department stated specific preemptive power over disparate state and local standards which address aspects of performance which are covered by Federal standards ***and*** the more general authority over the Federal superintendence of the program. The notice reads:

> **2. Superintendence**. It is also possible that a State or local law may be preempted even though the local rule does not meet the differing aspect of performance standard. As stated above, 24 CFR 3282.11(d) sets forth an additional standard of preemption. A State rule must give way if it impairs the Federal superintendence of the manufactured home industry as established by the Act.
>
> **Thus, for example, a local requirement that all homes be constructed on site, while not covering any aspect of performance, would be so fundamentally in conflict with the Federal standards as to impair the Federal superintendence of the manufactured home program. Such a requirement would be preempted under the HUD regulations.** *[Emphasis added]*
>
> The scope of this regulatory provision is limited by the language ``as established by the Act''. This language limits the Federal superintendence of the industry, since section 604(d) of the Act limits the preemption of standards to only those issues dealing with the same aspects of performance.

STATEMENT OF POLICY 1997-1

The Department followed-up the Notice of Internal Guidance with its *Statement of Policy 1997 -1, State and Local Zoning Determinations Involving HUD-Code* published in *The Federal Register* on May 5, 1997. In this notice from Nicholas Retsinas, Assistant Secretary for Housing – Federal Housing Commissioner, the Department again clearly stated its preemptive authority over state and local construction and safety standards governing aspects of performance which are covered by the

Federal standards.

The Statement of Policy was more narrowly-worded than the Notice of Internal Guidance.

In the Statement of Policy, HUD focused on a couple of terms which appear to further restrict the Department's preemptive power found in 42 U.S.C. 5403. In the Statement, the Department addresses zoning ordinances or enforcement decisions that are "based ***solely*** on a construction and safety code that is different from the Federal standards" and "excluding or restricting ***only*** manufactured homes built to the Federal standards". *[Emphasis added]*

Additionally, the Statement of Policy references structures meeting state or local codes – *units over which the Department has no regulatory authority* – as 'manufactured homes meeting other standards' or 'manufactured homes built to State or local codes'. Congress introduced the term 'manufactured home' into the enabling legislation for the Construction and Safety Standards Program in 1980 – eliminating the term 'mobile home' – recognizing the inherent differences between structures which met the Federal standards and those which did not. The Department's inclusion of an example in the Statement of Policy which refers to structures - 320 square feet or more, built on a permanent chassis – confuses 'manufactured homes' as defined in 42 U.S.C. 5402 (6) with units which could be more correctly defined as 'modular homes' or even certain 'park models'.

While the Statement of Policy clearly addresses the lack of State and local authority to establish standards for manufactured homes which are "different from the Federal standards" – it fails miserably by appearing to grant localities a 'de-facto right to discriminate', provided that all forms of factory-built housing are equally excluded or restricted:

> "If under the local zoning laws the locality accords the same treatment to all structures that meet the Act's definition of a ''Manufactured home''(42 U.S.C. 5402(6)), the locality is not in conflict with the preemptive provisions of the Act.

The Statement of Policy was *"issued as an initial step toward the elimination of barriers to the use of manufactured housing..."*. After almost two decades, the industry believes that it is time for the Department take another long-awaited step toward that goal, by updating its guidance and policy on Federal preemption to incorporate changes to the 1974 Act made in the Manufactured Housing Improvement Act (MHIA) of 2000.

THE MHIA OF 2000...

With the adoption of the Manufactured Housing Improvement Act (MHIA) of 2000, a number of items contained in HUD's Notice of Internal Guidance and the Statement of Policy from 1997 became obsolete.

Now, nearly twenty years later, it is time for the Department to revisit these documents and formulate guidance and policy which carries out the directives given to HUD in the 2000 Act's 'Findings and Purposes' section and ensures that the Federal superintendence of the industry is not impaired by state or local laws, regulations or ordinances which exclude or unduly restrict the placement of manufactured homes.

The adoption of the MHIA of 2000 directly addressed a number of items contained in the 1997 Notice of Internal Guidance – specifically, the establishment of model manufactured home installation standards (MMHIS) and additional grants of authority for states to institute installation programs, industry education and dispute resolution.

(MORE)

In 1997, there was no 'universal' installation guideline and state programs were designed to deal primarily with notice and correction of construction defects. The 2000 Act has resulted in the development of model standards for the installation of new homes and charged states with developing programs for installation monitoring and dispute resolution as state administrative agencies of 'default states'. The Notice of Internal Guidance is obsolete on these issues, and should be updated.

And, in the area of 'preemptive power', the MHIA of 2000 added important language to 42 U.S.C. 5403 (d), which was amended to read:

(d) Supremacy of Federal standards

> Whenever a Federal manufactured home construction and safety standard established under this chapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding the construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard. **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..."**
> *[Emphasis added]*

It is important to note the inclusion of a new term in this section – 'State or local ***requirements*** or standards'. *[Emphasis added]* The addition of the word 'requirements' has been overlooked - or ignored - by the Department in its post-2000 interpretations of the scope of preemption. The existence of the term in this section indicates Congress' intention that the preemption power created here would apply to local conditions or restrictions – other than construction 'standards' – which could affect the Federal superintendence of the manufactured home industry.

To the contrary, the Department's interpretation of this amendment language has been limited to "disparate state or local requirements or standards" which the Department has narrowly interpreted to be construction and safety standards **only** – largely ignoring Congress' intent that preemption under the amended Act be "broadly and liberally construed" to apply to "state or local requirements" that affect the "Federal superintendence of the manufactured housing industry".

In rejecting a proposed recommendation for a regulation concerning land use regulation by the Manufactured Housing Consensus Committee in 2003, the Department narrowed its interpretation of the language from the 2000 Act even further - to apply **only** to construction and safety standards referenced in 24 CFR 3280 – stating: *"The amendment did not modify the basic substance of the statutory preemption provision. By its specific terms, the provision apply (sic) to construction and safety standards, generally codified in 24 CFR part 3280. It does not apply to other regulations, including the Manufactured Home Procedural and Enforcement Regulations in 24 CFR part 3282."*

Since that time, the Department has consistently taken the most narrow approach to the application of the term "broadly and liberally construed" – maintaining that the other portions of the manufactured home program, *(including installation standards and dispute resolution)* somehow do not fall under the 'preemptive powers' of the Department's Federal superintendence of the industry.

(MORE)

The Department has also appeared to side-step the Congressional directive found in the 2000 Act's 'Findings and Purpose' section: "*to facilitate the availability of affordable manufactured homes and to increase homeownership for all Americans*" – by re-stating its narrow interpretation that preemption applies ***only*** to construction standards.

CONCLUSION

What began as an attempt by the Department to provide guidance for staff and clearly state HUD's policy on the authority of State and local jurisdictions to set disparate construction and safety standards AND regulations which exclude or restrict manufactured homes – ***which the Department held in early 1997 would impair the Federal superintendence of the manufactured home industry*** – has become more and more limited through HUD's interpretation of statue and regulation --- even as the enabling legislation defining the preemptive nature of the program has been amended to expand the scope and reach of preemption and to direct the Department to 'do more' to promote manufactured housing as an affordable housing resource.

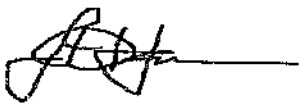
The array of state and local activity which Department clearly believed it had authority to prohibit under the 'Federal superintendence' clause in 1997 has been eroded by self-imposed interpretations of the limits of the scope preemption.

It is far beyond time that the Department of Housing and Urban Development review its commitment to providing affordable housing opportunities to all Americans – particularly those low-to -moderate income families who choose to pursue 'The American Dream' of homeownership by purchasing a manufactured home.

Reducing the discriminatory regulations, ordinances and practices of certain local governments through the broad and liberal application of preemption power by the Department of Housing and Urban Development would be a 'next step' that is many, many years overdue.

The Arkansas Manufactured Housing Association (AMHA) is committed to working with the Department on this issue of utmost importance to the industry and working families of our state.

Respectfully submitted,



J.D. Harper
Executive Director
Arkansas Manufactured Housing Association