



September 4, 2020

The Honorable James Comer
Ranking Member
House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

RE: Examination of Recent Trends in Regulation and Regulatory Reform

Dear Ranking Member Comer,

The Manufactured Housing Institute (MHI) is pleased to provide comments to the House Committee on Oversight and Reform as it launches an examination of recent trends in regulation and regulatory reform. We appreciate Ranking Member Comer's efforts to review the effects of the Obama Administration's regulatory expansion and the Trump Administration's regulatory relief initiatives, as well as what regulatory developments will be most important to promote or avoid over the course of the next several years, as the nation recovers from the COVID-19 pandemic.

MHI is the only national trade association that represents every segment of the factory-built housing industry. Our members include home builders, suppliers, retail sellers, lenders, installers, community owners, community operators, and others who serve the industry, as well as 49 affiliated state organizations. In 2019, our industry produced nearly 100,000 homes, accounting for approximately 10 percent of new single-family home starts. These homes are produced by 34 U.S. corporations in 130 plants located across the country. MHI's members are responsible for close to 85 percent of the manufactured homes produced each year. Today, twenty-two million people live in manufactured housing and our industry employs tens of thousands of Americans nationwide.

Manufactured housing remains 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 (the HUD Code) overseen by the U.S. Department of Housing and Urban Development (HUD). It is also the only type of housing recognized by Congress as playing a vital role in meeting America's housing needs as a significant source for affordable homeownership accessible to all Americans.¹ Similarly, HUD's recently released Housing Finance Reform Plan (the Reform Plan) states that "manufactured housing plays a vital role in meeting the nation's affordable housing needs."² Manufactured housing is one solution—and the only unsubsidized solution—that is addressing America's affordable housing shortage and making the dream of homeownership an attainable reality for millions of Americans.

Administration Focus on Eliminating Regulatory Barriers to Affordable Housing

On June 25, 2019, the President issued an Executive Order entitled "Establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing."³ The Executive Order specifically references manufactured housing as an area that has been hindered due to "outdated manufactured housing regulations and restrictions" and refers to other regulatory barriers that inhibit or delay the availability of

¹ 42 U.S.C. § 5401(a).

² See page 21 of HUD's "Housing Finance Reform Plan" (September 2019).

³ 84 Fed. Reg. 30853 (June 28, 2019).

manufactured housing, including overly restrictive zoning, growth management controls and cumbersome building and rehabilitation codes.⁴

Shortly after the Executive Order was issued, on September 5, 2019, HUD released the Reform Plan, which focuses on manufactured housing and includes a section titled “Eliminating Regulatory Barriers to Affordable Housing Including Manufactured Housing.”⁵ In the Reform Plan, HUD recognizes that, “policies that exclude or disincentivize the utilization of manufactured homes can exacerbate housing affordability challenges because manufactured housing potentially offers a more affordable alternative to traditional site-built housing without compromising building safety and quality.”⁶

HUD’s Reform Plan also incorporates several recommendations that MHI has long advocated for and supported; proposals that will eliminate barriers blocking greater adoption of manufactured housing. Proposals in the Reform Plan that mirror MHI’s recommendations include:

FHA should consider innovative proposals to modify single-family housing mortgage finance underwriting to further encourage and promote additional supply of entry-level housing, particularly manufactured housing.

To encourage innovation in manufactured housing, HUD should create a formal framework for identifying and evaluating new building, construction, and design developments and ensuring that HUD’s regulations do not unnecessarily impede their adoption. This framework would help gather the evidence necessary to update HUD’s regulations on a regular cadence, thereby better keeping up with evolving technology.

HUD should devote resources to ensure the HUD Code is modernized to incorporate the standards recommended by the MHCC, to minimize overly burdensome regulatory and compliance requirements, and to encourage innovation. Once revised, HUD should also move to a regular cadence of updating its [HUD] Code to ensure that it is keeping pace with evolving technologies and best practices.

HUD should publish updated Title I standards that address regulatory burdens of participating in the program as part of its Single-Family Housing Policy Handbook 4000.1 . . . which is intended to serve as the consolidated, consistent, and comprehensive source of FHA Single Family Housing policy.

HUD should elevate the Office of Manufactured Housing Programs within HUD and appoint a Deputy Assistant Secretary to lead it.⁷

Again, MHI appreciates the House Committee on Oversight and Reform’s request for feedback regarding regulations, programs and initiatives that are currently negatively impacting the manufactured housing industry and raising the cost of affordable housing. Highlighted below are several items that we recommend the House Committee on Oversight and Reform strongly urge HUD to immediately address to ensure manufactured housing remains an attainable option for the millions of people seeking the dream of homeownership.

Recommendation No. 1 – Combat Zoning and Restrictive Land Ordinances

Manufactured homes serve many housing needs in a wide range of communities, from rural areas where housing alternatives are few and construction labor is scarce or prohibitively expensive, to higher-cost metropolitan areas as in-fill applications. However, zoning and land planning ordinances have a profound

⁴ *Id.*

⁵ See pages 20-22 of HUD’s “Housing Finance Reform Plan” (September 2019).

⁶ *Id.* at 21.

⁷ *Id.* at 22.

impact on housing patterns. For example, restrictive local ordinances, which can include limitations or outright prohibitions against manufactured homes, are discriminatory barriers against affordable housing.

Moreover, zoning ordinances that are exclusionary or restrictive with respect to manufactured housing usually violate the Fair Housing Act, which has been confirmed by HUD and the Department of Justice (DOJ). According to a November 10, 2016, HUD-DOJ Joint Statement titled, “State and Local Land Use Laws and Practices and the Application of the Fair Housing Act”:

Examples of land use practices that violate the Fair Housing Act under a discriminatory effects standard include minimum floor space or lot size requirements that increase the size and cost of housing if such an increase has the effect of excluding persons from a locality or neighborhood because of their membership in a protected class, without a legally sufficient justification.⁸

Across the country, there are countless examples of state and local zoning, planning, and development restrictions that either severely limit or outright prohibit the placement of a manufactured home. These discriminatory practices include:

- A. Outright Bans – Adoption of ordinances that eliminate or ban the placement of manufactured homes in cities, localities, or municipalities.
- B. Zoning Barriers – Subsequent changes to zoning laws after developers have already purchased the land to prevent the development of manufactured home communities.
- C. Segregated Zoning – Banning manufactured homes as a “permitted use” in residential zones and segregating them into one special overlay zone in one area of the community. These segregated areas are usually removed from essential community services (e.g., grocery stores, schools, churches, and civic centers) or manufactured homes are used as a buffer between other “more premium” residential zones and commercial or industrial zones.
- D. Lot Size Restrictions – Requiring a lot or tract to include a minimum number of acres for placement of a manufactured home on private land.
- E. Valuation Requirements – Setting an arbitrary and capricious retail or appraised value requirement that a manufactured home must meet before it can be sited in the city, locality, or municipality.
- F. Home Age Restrictions – Prohibiting placement or movement of a manufactured home based exclusively on the home’s age, notwithstanding any other factor.

MHI believes HUD must exercise its preemption authority when local construction regulations or zoning, planning, or development policies adversely affect the placement of manufactured housing. While 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, HUD must play a much greater role in this effort, and it has a congressional mandate to do so.⁹ Furthermore, HUD has jurisdictional authority to move beyond case-by-case enforcement, and it should renew its policy position opposing state and local regulatory schemes that are inconsistent with Congressional intent.

⁸ See the “Joint Statement of the Department of Housing and Urban Development and the Department of Justice: State and Local Land Use Laws and Practices and the Application of the Fair Housing Act” (November 10, 2016).

⁹ 42 U.S.C. § 5401(b).

In 1997, HUD determined it had authority under the Manufactured Home Construction and Safety Standards Act (the MHCSS Act) to issue a “Statement of Policy 1997-1 State and Local Zoning Determinations Involving HUD Code” (the 1997 Policy Statement) that summarized HUD’s position concerning federal preemption and certain zoning decisions made by state or local governments.¹⁰ Following passage of the Manufactured Housing Improvement Act of 2000 (the Improvement Act), which significantly strengthened HUD’s preemption authority, HUD clearly has the authority to make necessary updates to its original statement.¹¹ MHI recommends that HUD update its 1997 Policy Statement because it was issued after enactment of the MHCSS Act, but before passage of the Improvement Act.

Given that the Improvement Act expanded HUD’s authority, MHI believes it is past time for HUD to update its 1997 Policy Statement. Further, updating the statement would galvanize HUD’s pledge to facilitate the availability of affordable manufactured homes and to increase homeownership for all Americans.¹²

Recommendation No. 2 – Update FHA Title I and II Financing Programs

The impacts of this unprecedented national emergency make access to the FHA financing programs more critical than ever. It is important that these programs work for consumers seeking homeownership through manufactured housing. While updates to both the Title I and Title II programs have been needed for some time, such revisions are particularly important as the industry launches a new class of CrossMod™ homes. FHA Title I and Title II programs are underutilized—and loan volumes continue to shrink—because outdated rules make them impractical financing options.

For the FHA Title II Program, as the industry begins delivery of its new class of CrossMod™ manufactured homes, revisions are particularly important. While there are efforts underway to support CrossMod™ with financing comparable to site-built mortgages through the Fannie Mae MH Advantage® and Freddie Mac CHOICEHomeSM programs, the FHA Title II program must be updated to provide similar financing options.

Updates to the FHA Title I program would reduce credit risk, increase consumer access to financing, and help promote a viable secondary market for manufactured homes that are titled and financed as personal property. Today, approximately 76 percent of manufactured homes are titled and financed this way (also known as home-only loans or chattel loans). These homes are usually sited on land that is already owned by the borrower or a family member or in a land-lease manufactured home community. Despite the demand for personal property loans, financing options are limited. This is because there is no secondary market for these loans, which forces lenders that offer personal property financing to keep the loans in portfolio. This dynamic increases the lender’s credit risk, and that is transferred to the consumer through higher financing costs.

Recommendation No. 3 – Update the HUD Code in a Timely Manner

On January 30, 2020, HUD proposed the first comprehensive changes to the HUD Code in nearly a decade. As HUD finalizes this proposed rule, the Department must also develop and implement a streamlined process for updating the HUD Code, so future revisions are introduced more consistently. MHI believes updates are repeatedly delayed because the Office of Manufactured Housing Programs is a “low priority” within HUD’s organizational hierarchy. Further, the comingling of resources with other offices or teams—resources that should be dedicated to cyclical HUD Code updates—magnifies this problem. Because HUD is the standard-setting body for the nation’s manufactured home construction and safety standards, updates must follow a distinct administrative path and must be prioritized separately from unrelated policy matters. Such an

¹⁰ 62 Fed. Reg. 24337 (May 5, 1997).

¹¹ Pub. L. § 106-569.

¹² 42 U.S.C. § 5401(b)(2).

approach was recommended by the Government Accountability Office (GAO) in 2014 and by HUD's Office of Policy Development and Research (PD&R) in 2019.¹³ In its report, the GAO recommended that HUD "develop and implement a plan for updating construction and safety standards for manufactured homes on a timely, recurring basis to include: addressing unresolved issues related to defining and developing sufficient economic analyses tied to proposed changes to the construction and safety standards; and ensuring sufficient resources and capacity within HUD and the MHCC and its administering organization."¹⁴ In its 2019 report to Congress, PD&R shared similar recommendations.¹⁵

MHI believes HUD must develop and implement a streamlined process for HUD Code updates, so future revisions are introduced on a more consistent cadence. MHI encourages HUD to quickly finalize the proposed updates to the HUD Code with our suggested enhancements. HUD must also move forward with the subsequent sets of updates that have been approved by the MHCC but are still pending HUD action. These changes include several items that are critical to our industry, such as incorporating roll-in showers and tankless water heaters into the HUD Code.

Conclusion

MHI appreciates the House Committee on Oversight and Reform's efforts to review and examine current rules and regulations that are negatively impacting businesses across the country. Manufactured homes remain the most affordable and attainable homeownership option available in the U.S. today. MHI appreciates the opportunity to offer our ideas to the Committee about how to ensure the industry can further support the economy, particularly in response to the COVID-19 pandemic. MHI would appreciate the Committee's help to urge HUD to revise its current manufactured housing rules and regulations, and work to not only encourage innovation, but also eliminate unnecessary regulatory and administrative barriers at all levels of government that impede consumer access to safe, affordable manufactured homes.

Sincerely,



Lesli Gooch, Ph.D.
Chief Executive Officer

¹³ U.S. Gov't Accountability Office, GAO-14-410, Manufactured Housing: Efforts Needed to Enhance Program Effectiveness and Ensure Funding Stability (July 2, 2014). See also HUD's "Report to Congress on the On-Site Completion of Construction for Manufactured Homes" (June 18, 2019).

¹⁴ *Id.*

¹⁵ *Id.*