



Preserving the American Dream of Home  
Ownership Through Regulatory Reform

# MHARR

# NEWS

**FOR IMMEDIATE RELEASE**

**Contact: MHARR  
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## **MHARR TESTIMONY URGES CONGRESSIONAL INTERVENTION TO REVIVE INDUSTRY**

**Washington, D.C., January 26, 2011** -- The Manufactured Housing Association for Regulatory Reform (MHARR) has submitted testimony to a key congressional committee detailing the drastic decline of the federally-regulated manufactured housing industry and urging Congress to intervene and conduct further oversight into the U.S. Department of Housing and Urban Development (HUD) programs responsible for regulating the industry and supporting manufactured home financing for millions of lower and moderate-income American consumers. (See, attached comprehensive package).

The January 26, 2011 House Financial Services Committee hearing, entitled "Promoting Economic Recovery and Job Creation: The Road Forward" is, according to the Committee, the first in a series of hearings to review the roadblocks that small businesses face, including "mixed messages" from federal regulators, "competitive disadvantages" created by government policies and a climate of "regulatory uncertainty." In announcing the hearing, Committee Chairman, Spencer Bachus (R-AL), noted, "If we are to enjoy a full economic recovery, new job creation must come from the private sector...and this hearing is just the beginning of our work to ensure government is encouraging, not inhibiting, job creation and economic recovery."

As MHARR's testimony explains, however, it is government policies -- specifically HUD's failure to fully and properly implement the reforms of the Manufactured Housing Improvement Act of 2000 and other relevant consumer finance laws -- that lie at the root of a severe decade-plus decline that has cut manufactured home production by 87% and has led to the closure of nearly two-thirds of the industry's manufacturing plants, with huge job losses in the industry's production, retail and community development sectors, as well as related industries (e.g., component and product suppliers, installers, transporters and others).

This testimony is among the first steps by MHARR to implement a plan of action adopted by the Association in November 2010, based on the fundamental shift in the

**Manufactured Housing Association for Regulatory Reform**

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political climate and priorities in Washington, D.C. growing out of the results of the November 2010 congressional elections. It documents and explains HUD's failure, since 2000, to fully and properly implement laws passed with overwhelming bi-partisan support by different Congresses, and the need to reverse these policies in order to revive the industry and ensure the availability of affordable non-subsidized home ownership for millions of lower and moderate-income families. As such, it is a key element of MHARR's broader program, which is designed to fully engage Congress on multiple fronts, including the deterioration of the federal program; continued discrimination against manufactured housing and particularly the industry's smaller businesses; investigation of the ways that regulators have undermined relevant laws; and an examination of the HUD program's runaway budget and appropriations, which have enabled a costly expansion of regulation by the Department and its contractors -- despite sharply reduced production -- at the expense of revenue-deprived state agencies that, by law, are the first line of protection for consumers.

In Washington, D.C., MHARR President, Danny D. Ghorbani, stated: "With major shifts in the Washington, D.C. political climate resulting from the November 2010 elections, including the Administration's sharp new focus on regulation and jobs, especially relating to small businesses, the manufactured housing industry has a golden opportunity to press for real reform of discrimination against the industry and consumers of affordable housing in the nation's capital, in ways that could lead to recovery from the alarming decline of the past twelve years." Ghorbani continued, "Real progress, though, is not going to come from the industry's boilerplate go-along-to-get-along approach in Washington, D.C., which has sacrificed the interests of the industry and American consumers for a feel-good atmosphere while the industry is at the brink and consumers cannot obtain the affordable home ownership that they need and want."

The Manufactured Housing Association for Regulatory Reform is a Washington, D.C.-based national trade association representing the views and interests of producers of federally-regulated manufactured housing.



## **Manufactured Housing Association for Regulatory Reform**

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January 26, 2011

### VIA ELECTRONIC DELIVERY

Hon. Spencer Bachus  
Chairman  
House Financial Services Committee  
Room 2246  
Rayburn House Office Building  
Independence Ave. & S. Capitol St., S.W.  
Washington, D.C. 20515

Hon. Barney Frank  
Ranking Member  
House Financial Services Committee  
Room 2252  
Rayburn House Office Building  
Independence Ave. & S. Capitol St., S.W.  
Washington, D.C. 20515

Re: Financial Services Committee January 26, 2011 Hearing - "Promoting  
Economic Development and Economic Recovery -- The Road Forward"

Dear Chairman Bachus and Ranking Member Frank:

We ask that this letter and its attachments be included as part of the hearing record of the House Financial Services Committee's January 26, 2011 hearing, "Promoting Economic Development and Economic Recovery -- The Road Forward."

The Manufactured Housing Association for Regulatory Reform (MHARR) is a Washington, D.C.-based national trade organization representing the views and interests of producers of manufactured housing regulated by the Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000 (2000 law). MHARR members are primarily small and medium-sized businesses, located throughout the United States.

Manufactured housing has historically been the nation's leading source of inherently affordable, non-subsidized home-ownership. It provides a quality home at a price that nearly every American can afford without government subsidies or risky financing schemes. Manufactured housing is also a uniquely American industry, that has historically provided hundreds of thousands of jobs in manufacturing plants, retail centers communities and related industries (e.g., suppliers, installers, insurers and others) throughout the nation's heartland.

But the manufactured housing industry -- a key part of the American housing market for over 70 years -- is today in danger of disappearing, with devastating

consequences for affordable housing, employment, and job creation, particularly in rural America. Over the past two years alone, industry production has declined by 40% -- to an estimated 49,199 homes in 2010 -- and is now 87% below peak production of nearly 400,000 homes in 1998. (See, Attachment 1, Sustained Decline of the Manufactured Housing Industry). During the same 12-year period, nearly two-thirds of the industry's production facilities have closed, from 430 active plants in 1998, down to fewer than 130 today. This translates into many thousands of jobs lost and even greater hardship for lower and moderate-income Americans who seek affordable home-ownership, but cannot obtain necessary financing for a new manufactured home. The industry's downturn, moreover, began long before the decline of the broader housing market over the last several years, and has been much more severe.

This dramatic deterioration, and its disconnect from the economy of the broader housing market, is a result of continuing -- and worsening -- regulatory and financing discrimination against manufactured housing and manufactured home-buyers. This discrimination flows directly from policy decisions by HUD, which not only comprehensively regulates the manufactured housing industry, but has also been charged by Congress with supporting manufactured home financing through the Federal Housing Administration's (FHA) Title I and II programs, which were updated and improved as part of the Housing and Economic Recovery Act of 2008 (HERA).

The policy decisions at issue relate to the implementation of the Manufactured Housing Improvement Act of 2000. That watershed law, enacted by Congress via unanimous consent and with full bi-partisan support, was designed to modernize and reform the HUD manufactured housing program, and to complete the transition of manufactured housing from the "trailers" of the post-war era to legitimate, full-fledged "housing," to be treated equally, for all purposes, with other types of housing. As is shown by the attached documents, however, HUD regulators, instead of implementing this legislation, fully and in accordance with its purposes, have either ignored or made a mockery of its most important reforms (see, Attachment 2, MHARR's December 3, 2010 letter to HUD manufactured housing program Administrator Teresa Payne), while at the same time directly contravening Administration regulatory policy as set forth in President's Executive Order of January 18, 2011 (see, Attachment 3, MHARR's January 19, 2011 letter to HUD Assistant Secretary David Stevens and Attachment 4, Executive Order of January 18, 2011).

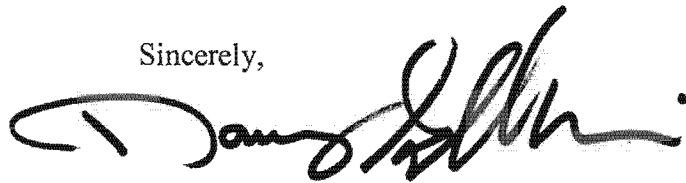
By failing to fully and properly implement the 2000 law and by failing to achieve or even pursue its fundamental purpose of ensuring the status of manufactured homes as legitimate housing for all purposes, HUD has placed the manufactured housing industry and its consumers in a no-win position. Effectively, HUD, through FHA, is refusing to finance manufactured homes on an equal footing because it views them as "trailers," but, at the same time, it refuses to fully and properly implement the 2000 law, that was designed to change that. Thus, discrimination against affordable manufactured housing has grown and is still mounting, the affordability of manufactured housing is being undermined by unnecessary and unnecessarily costly expansions of regulation, and modern manufactured homes, despite of state-of-the-art construction and high quality are

treated and penalized, by FHA and the Government Sponsored Enterprises (based on HUD's policies), as "trailers" for purposes of both public and private financing. The same policies moreover, either knowingly or unknowingly, by disproportionately increasing regulatory burdens, compliance costs and financing difficulties for smaller businesses, are destroying competition and underwriting the domination of the manufactured housing market by one or two large conglomerates to the detriment of smaller businesses and consumers.

Therefore, we ask that both Houses of Congress intervene by initiating a complete investigation of the HUD program, which is responsible for a significant portion of the nation's supply of affordable housing, and hold oversight hearings focusing on the decline of the industry and its relationship to HUD's failure to comply with relevant law, including the 2000 law and the FHA-related provisions of HERA. By holding HUD accountable for the full and proper implementation of these laws, Congress could help change the course of the past 12 years and place the industry on a path toward economic recovery, while simultaneously benefiting consumers of affordable housing.

Thank you for the opportunity to apprise the Committee of this important matter and we look forward to working with you to halt and reverse the decline of the federal program and the nation's manufactured housing industry.

Sincerely,

A handwritten signature in black ink, appearing to read "Danny D. Ghorbani", with a stylized flourish at the end.

Danny D. Ghorbani  
President

cc: Hon. Judy Biggert, Chairwoman, Housing Subcommittee  
Hon. Luis Gutierrez, Ranking Member, Housing Subcommittee



SUSTAINED DECLINE OF MANUFACTURED HOUSING INDUSTRY

<u>YEAR</u>	<u>MANUFACTURED HOMES PRODUCED</u>
1998	----- 374,000 homes
1999	----- 348,000 homes
2000	----- 250,000 homes
2001	----- 193,000 homes
2002	----- 165,000 homes
2003	----- 130,000 homes
2004	----- 130,000 homes
2005	----- 146,000 homes (includes emergency relief homes for Gulf Coast hurricane victims)
2006	----- 117,000 homes
2007	----- 95,000 homes (fewer than 100,000 homes for first time since 1961)
2008	----- 81,000 homes
2009	----- 49,683 homes
2010	----- 49,000+ homes (projected)



## **Manufactured Housing Association for Regulatory Reform**

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December 3, 2010

### VIA FEDERAL EXPRESS

Ms. Teresa B. Payne  
Administrator, Federal Manufactured Housing Program  
U.S. Department of Housing and Urban Development  
451 Seventh Street, S.W.  
Washington, D.C. 20410

Re: HUD Manufactured Housing Program Issues -- Alarming State of the Industry

Dear Ms. Payne:

As MHARR officials promised you on November 23, 2010, we are writing to explain, in greater detail, the very serious concerns that members of the manufactured housing industry share regarding the direction of the federal Title VI manufactured housing program including, most particularly, HUD's ongoing failure to properly implement key reforms of the Manufactured Housing Improvement Act of 2000 (2000 law), and the harm this is causing to the manufactured housing industry and the millions of lower and moderate-income American families that rely on unsubsidized, affordable manufactured housing. This detail is unavoidably lengthy given the complexity of the issues involved and the need for full congressional engagement in these issues for the first time since the 2000 law was unanimously enacted by both houses of Congress.

The 2000 law was a major watershed for both the manufactured housing industry and consumers. It made significant changes to the original Manufactured Housing Construction and Safety Standards Act of 1974, based on decades of experience and the recommendations of a congressional commission (the National Commission on Manufactured Housing), which showed that the orientation and practices of the HUD regulatory program were impairing the growth, evolution and transition of manufactured housing as a crucial source of affordable housing -- in part through an anachronistic "trailer"-based view of manufactured homes, and in part through closed-door procedures that undermined the accountability, transparency and legitimacy of the program, while resulting in unnecessary and unnecessarily costly regulation.

Ten years later, the fundamental promise and purpose of the 2000 law -- to complete the transition of manufactured housing from the "trailers" of the post-war era to legitimate housing for all purposes -- remains unfulfilled, as the most important reforms enacted by Congress have either been ignored by the Department or circumvented through "interpretations" that have undermined their content, meaning and intended effect. The impact of HUD's failure to properly implement the reforms of the 2000 law and thereby establish the legitimate parity of manufactured homes with other types of residential housing is far-reaching and has been extremely damaging, as it affects the treatment of manufactured housing by government at all levels (as well as the private sector), in matters as diverse as zoning, placement and financing.

Indeed, financing discrimination against manufactured homes and manufactured home buyers has actually worsened over the past decade, as it has become apparent that the HUD program would continue to treat manufactured homes as “trailers” and HUD itself has acted to restrict the availability of manufactured home financing.

Accordingly, and based on our recent discussions, and as explained in greater detail below, the following are major issues that are harming the industry and consumers and need to be resolved before the industry loses critical mass and disappears as a significant source of affordable, non-subsidized housing.

### **EXPANDED IN-PLANT REGULATION**

The ongoing effort to expand in-plant regulation and prescriptively control the production process, without any justification whatsoever based on consumer complaints or any evidence of systemic deficiencies in the current system -- outside of one California plant of a producer that subsequently went bankrupt and was acquired by another company -- is the premier illustration of the program’s failure to implement the most important program reforms of the 2000 law.

Originally termed “voluntary” by HUD, this regulatory expansion has since been characterized as “not optional” and is now on the verge of mandatory enforcement through extremely costly multi-day in-plant “audits” by HUD’s monitoring contractor, even though, again, statistics from HUD’s own dispute resolution program show a minimal level of consumer complaints regarding manufactured homes. And although this program is based on “enhanced” inspection criteria and a “Standard Operating Procedure” that impose requirements not contained in the existing program regulations and materially change the entire focus of in-plant regulation, as HUD itself has acknowledged, none of these new de facto regulations have been brought to the Manufactured Housing Consensus Committee (MHCC) for consensus review and input to the Secretary, nor have they been published for public notice and comment, as required by the 2000 law.

While such a change in the entire focus of in-plant regulation falls squarely within the scope of section 604(b) of the 2000 law and, particularly, section 604(b)(6) -- a catchall provision which requires all changes to “policies, practices, or procedures relating to ... inspections, monitoring or other enforcement activities” to be presented to the MHCC and put through rulemaking or be deemed “void” -- the program circumvented this reform by unilaterally issuing an interpretive rule in February 2010 (without opportunity for public comment), that effectively reads this section out of the law by limiting its scope to actions that would be deemed “rules” under the Administrative Procedure Act (APA). But a “rule” for purposes of the APA would be subject to notice and comment procedures anyway, under that law, leaving section 604(b)(6) devoid of any content.

Thus, a key reform of the 2000 law, designed to prevent the development of new de facto regulations and standards behind closed doors -- as occurred regularly in the 1980’s and 1990’s -- has simply been disavowed by HUD. This has allowed HUD to expand in-plant regulation without showing any justification for those changes or determining and justifying their regulatory compliance cost-impact on consumers -- both of which are required by the 2000 law as part of the MHCC review procedure. This has paved the way for the development of this entire program of costly expanded in-plant regulation and enforcement behind closed doors, beginning with meetings in 2008 between HUD program personnel, selected third-party inspection agencies and manufacturers (details of which HUD continues to withhold notwithstanding an MHARR



Freedom of Information Act request filed in September 2009), and continuing, just two weeks ago, in a closed-door meeting of HUD, monitoring contractor and third-party personnel, where an elaborate and costly new scheme for the enforcement of these supposedly “voluntary” changes was unveiled and developed.

The 2000 law was designed by Congress to bring the development of new or changed standards, regulations and interpretations into the open, through a transparent consensus process that would assure reasonable, cost-effective regulation and broad-based acceptance of those actions by program stakeholders, thereby avoiding unnecessary disputes and litigation. HUD’s expansion of in-plant regulation, however, entails an unacceptable regression of the program back to the types of abuses that led to the reforms of the 2000 law in the first place.

### **RESTORING THE ROLE AND AUTHORITY OF THE MHCC**

The MHCC is the centerpiece reform of the 2000 law. For more than two years, however, the HUD program has done everything in its power to undermine the role, authority, independence and functionality of the MHCC.

HUD has sought to unilaterally strip the MHCC of half of its authority -- to review and provide recommendations to the Secretary on regulations and enforcement-related matters. First it issued its February 2010 “interpretive” rule, which is designed to eliminate MHCC review of virtually all matters relating to enforcement. Now, it is evident that HUD is also attempting to skirt the entirety of section 604(b) of the 2000 law as well, which requires HUD to comply with the MHCC consensus process for new or modified regulations of any type. For example, even though HUD and its contractors are engineering an unprecedented expansion of in-plant regulation, none of this expansion is being brought to the MHCC, even though new elements are still evolving, such as an undefined “continuous improvement process” for manufacturer quality control and related auditing, which was discussed at a September 2010 meeting between HUD and the State Administrative Agencies (SAAs), but has never been brought before the MHCC.

HUD has also maneuvered to take complete control of the MHCC through a new Charter and Bylaws, imposed without MHCC involvement or consent. HUD has claimed that changes in both documents are required by the Federal Advisory Committees Act (FACA), but changes designed to undermine the MHCC go far beyond anything required by either FACA or the 2000 law that created the MHCC. For example: (1) the new Charter attempts to give HUD complete control over the subjects the MHCC can consider by empowering the Designated Federal Officer (DFO) -- a HUD program official (career staff) -- to “prepare” all meeting agendas. The new Bylaws similarly abolish the former Planning and Prioritization Subcommittee. There is no such requirement or authority contained in FACA; (2) the new Charter gives the Secretary (or his “designee”) “exclusive authority to create subcommittees.” Nothing in FACA or the 2000 law gives HUD this power, “exclusively” or otherwise; (3) the new Charter and Bylaws say nothing about public participation in MHCC meetings and do not guarantee such participation, even though the 2000 law specifically requires “a fair opportunity for the expression and consideration of various positions and public participation;” (4) the new purported Bylaws require three of the seven members of the “general interest” group to be “public officials.” Nothing in the 2000 law or FACA requires this or authorizes HUD to unilaterally change the law as enacted by Congress.

Moreover, even if FACA did contain such requirements, FACA itself states, as MHARR has previously pointed out, that it applies “except to the extent that” an “Act of Congress establishing any such advisory specifically provides otherwise,” as is the case with the 2000 law,

which spells out, in detail, the role, authority and procedures of the MHCC. Accordingly, HUD is improperly attempting to use FACA to emasculate the MHCC.

Further, HUD has also sought to exclude from the MHCC the collective representation of the industry, thereby depriving the industry of the benefit of the many decades of collective knowledge, know-how, expertise and institutional memory that it has assembled in Washington, D.C. in order to make certain that the MHCC functions in full compliance with law. In doing so, the Department has improperly extended a ban on registered lobbyists to include non-lobbyist association staff members as well. And while the Department has appointed individual manufacturers to the MHCC, this role cannot be properly filled by representatives of individual companies subject to regulation (and potential reprisal) by HUD that have, instead, entrusted such functions to their collective industry representatives in Washington, D.C. for decades.

### **ENHANCED PREEMPTION**

Federal preemption is key to maintaining the affordability of manufactured housing insofar as, properly applied, it ensures the uniformity of both the standards applied to manufactured housing and the enforcement of those standards. The 2000 law expanded the federal preemption of the original 1974 law in three ways: (1) it told HUD to apply preemption “broadly and liberally;” (2) it extended preemption to state “requirements” that are not necessarily standards; and (3) it expanded the basis for preemption to include interference with the comprehensive federal “superintendence” of the industry. As a result, preemption is no longer limited to the old, narrow, “same aspect of performance” test that HUD routinely cited as an excuse in the past not to enforce federal preemption.

Despite this major enhancement of federal preemption HUD, in the ten years since the enactment of the 2000 law, has not changed any of its previously-stated positions concerning preemption. HUD has not only failed to reevaluate and reassess all aspects of the program to determine where such enhanced preemption would be applicable (and beneficial to consumers), it has not even retracted outdated and highly restrictive internal guidance and policy statements regarding preemption that were issued before the 2000 reform law, leading to confusion that could result in erroneous decisions by courts as well as state and local governments.

Nowhere is this failure to implement the enhanced preemption of the 2000 law more evident than in the case of fire sprinklers. Despite the fact that HUD currently has “fire safety” standards designed to assure “reasonable fire safety” for manufactured home residents -- that have been proven both effective and cost-efficient -- HUD continues to maintain that state and local fire sprinkler requirements are not preempted. This despite the fact that HUD at one time, prior to the 2000 enhancement of preemption (i.e., under much weaker preemption language) concluded that such state and local standards were preempted. Congress, therefore, based largely on HUD complaints that the preemption of the original 1974 law was too narrow, went to the trouble of providing enhanced preemption in the 2000 law, but HUD still refuses to use that power for the benefit of manufactured housing consumers, even in a simple and straightforward case like fire sprinklers.

### **NEW MONITORING CONTRACTOR**

The federal program has had the same monitoring contractor (notwithstanding changes in the name of that entity) since the inception of federal regulation in 1976. Although the

monitoring contract is subject, officially, to competitive bidding, the contract is a de facto sole source procurement because solicitations are consistently based on award factors that track the experience and performance of the existing contractor -- experience that cannot be duplicated by other bidders due to the unique character of the HUD program as the only federal building code and national enforcement program -- effectively preventing any other bidder from successfully competing for the contract. And, in the one rare case where the solicitation did result in a competing bidder, HUD requested a second round of proposals and ultimately awarded the contract to the entrenched incumbent, even though its initial proposal was priced higher than the competing bidder.

This practice has had a dire impact on the industry and on consumers of affordable manufactured housing by depriving the program of the new blood and fresh thinking that it needs to progress and grow. With the same contractor for 34 years, the program remains mired in the 1970's "trailer" era and has not evolved along with the industry. This is one of the primary reasons that the program, governments at all levels, and others, continue to view and treat manufactured homes as "trailers," causing untold problems for the industry and consumers, including financing, placement and other issues.

Moreover, the 2000 law was designed to assure a balance of reasonable consumer protection and affordability. But the HUD program and its contractor have a history of constantly ratcheting-up regulation, with more detailed, intricate and costly procedures, inspections, record-keeping, reports and red-tape -- demands that never end and cannot reasonable be met by anyone -- despite the fact that consumer complaints, as shown by HUD's own data are minimal. This cycle must be broken, and the program must be brought into compliance with the objectives and focus of the 2000 law. It is thus essential that the program ensure that there is full and open competition for the monitoring contract when the next solicitation occurs in 2012, and that a new contractor, with a new, more modern, more cost-effective and less damaging approach to the monitoring function is ultimately retained.

#### **RE-CODIFICATION OF INSTALLATION**

Congress, in the 2000 law, created two new programs -- installation and dispute resolution -- designed to close the loop on consumer protection and ensure that manufactured homes are not only safe and properly constructed, but are also installed properly and perform as intended once installed. In establishing the new installation program, in particular, Congress was following a recommendation of the National Commission on Manufactured Housing (National Commission) that the federal installation standards be adopted and included within the existing Part 3280 construction and safety standards, so that they would be preemptive of potentially discriminatory local standards and less stringent state installation standards. HUD, however, citing the "structure" of the 2000 law, has re-codified installation outside of the Part 3280 standards, leading to chaos, confusion and difficulties for the industry and consumers that Congress did not intend.

HUD maintains that because installation is addressed in section 605 of the 2000 law, separately from the development of Part 3280 construction and safety standards in section 604, that it is appropriate to codify the installation standards outside of the Part 3280 construction and safety standards. But this flies in the face of the specific recommendation of the National Commission and also ignores the simple reality that when Congress disbanded the National Manufactured Housing Advisory Council, section 605 was left without any content and, in order to avoid a renumbering of the law, Congress simply inserted the new installation mandate as the

new section 605, without intending that the resulting installation standards would be anything other than Part 3280 standards.

This re-codification of installation outside of the Part 3280 standards is causing significant problems that are only likely to get worse. First, the re-codification of these new programs mandated by the 2000 Act strips the MHCC of any statutory authority to review or propose changes. Second, and more importantly, the artificial distinction between construction and installation that re-codification is based upon, gives carte blanche to state and local officials to discriminate against manufactured housing with “installation” standards that are actually designed to restrict its placement or eliminate it altogether, and exposes manufactured homes to varying local installation standards (in states without compliant installation programs) that should be clearly preempted, but have been left in limbo because “installation” matters are not subject to federal preemption under re-codification.

This again, will bring about needless disputes and confusion that will negatively impact the affordability, availability and utilization of manufactured housing, particularly when the federal installation program is fully implemented.

#### **APPOINTMENT OF A NON-CAREER PROGRAM ADMINISTRATOR**

While MHARR will continue to work with you as the career Administrator of the federal program, this remains a key reform of the 2000 law that HUD has failed to implement. The appointment of a non-career Administrator for the federal manufactured housing program is essential, because the fundamental character and focus of the federal program will not change in the absence of an appointed policy-level official to act as a full-time liaison between the highest policy-making levels of HUD and the Administration, and the federal program and its stakeholders. Notwithstanding the positive change in tone that you have brought to the program, it has been -- and remains -- cut-off from mainstream policy-making within HUD. This isolates manufactured housing from initiatives that could benefit the industry and consumers, allows continuing discrimination against manufactured housing and its consumers and leaves manufactured housing in perpetual “second-class” status at HUD and elsewhere within the government.

Furthermore, an appointed non-career Administrator is essential to ensuring full and proper accountability for the actions of the program and specifically for compliance with the 2000 law. It is noteworthy that the rapid deterioration of the program began when the program Administrator position was converted from non-career to career status approximately five years ago and, as detailed above, has accelerated ever since.

While HUD has maintained that the 2000 reform law “contains no express or implied requirement for the Secretary to appoint a non-career Administrator,” this represents a misreading of the 2000 law. Section 620(a), as amended by the 2000 reform law does, in fact, give the Secretary discretion in whether or not to establish a user fee to fund the program, but once that fee is established -- as it has been -- those funds are to be used “to offset the expenses incurred ... carrying out the responsibilities of the Secretary,” including “funding for a non-career administrator within the Department to administer the manufactured housing program.” Thus, while the establishment of the label fee is permissive, once that fee is established, it is to be used to offset the Secretary’s non-discretionary “responsibilities” including the appointment of a non-career program Administrator.

## CONSUMER FINANCING

While HUD has maintained, such as in a January 2010 letter to Congressman Travis Childers (D-MI), that the scarcity of manufactured home financing is attributable to the performance of manufactured homes (stating, e.g., that that improvements to producer “quality control” would “attract lenders back to manufactured housing”), the reality is that HUD itself, by failing to fully and properly implement the 2000 law and by failing to achieve or even pursue its fundamental purpose of completing the transition of manufactured homes from the “trailers” of yesteryear to legitimate housing and ensuring the status of manufactured homes as legitimate housing for all purposes, has placed the industry and its consumers in a no-win position where modern manufactured homes, despite of state-of-the-art construction and high quality are perceived, treated and penalized as -- “trailers” for purposes of financing and a host of other matters.

Thus, it is not surprising that the Government National Mortgage Association (GNMA) -- a wholly-owned government corporation established within HUD -- earlier this year, announced requirements for the securitization of Federal Housing Administration (FHA) Title I program manufactured housing loans that significantly exceed those for originators of all other types of FHA-insured housing loans and, because they require disproportionately large assets, effectively limit the Title I program to one large finance company affiliated with the industry’s largest manufacturer -- at the expense of the industry’s smaller businesses and consumers.

Nor is it surprising, given HUD’s failure to fully and properly implement the 2000 law in accordance with its fundamental transformative purpose, that the Government Sponsored Enterprises -- Fannie Mae and Freddie Mac -- continue to discriminate against manufactured homes and manufactured home buyers, and that the Federal Housing Finance Agency (FHFA) is proposing to exclude nearly two-thirds of all manufactured home loans (financed as personal property -- the most affordable manufactured homes) from the “duty to serve” mandate of the Housing and Economic Recovery Act of 2008 (HERA).

Indeed, as the guardian of this unique federal-state program, HUD has an obligation -- beginning, but not ending with its statutory obligation under the 2000 law to “facilitate[e] the acceptance of ... manufactured housing within the Department” -- to ensure that the reforms of the 2000 law and the vision of the federal program set forth in that law are fully and properly implemented, not only to ensure that the health and safety of consumers are protected, but to support, as well, their ability to purchase and finance affordable manufactured homes.

Accordingly, the scarcity of manufactured home financing is not a product of insufficient HUD regulation. It is a product of HUD regulation and a HUD regulatory program that continue to treat manufactured homes as “trailers” even though Congress has instructed the Department to treat manufactured homes as “housing.”

Predictably, then, HUD’s failure to implement the 2000 law, together with its outdated approach to manufactured housing, has had a devastating impact on both the industry and American consumers of affordable housing. In the ten years since the 2000 law was enacted, production and sales of HUD-regulated manufactured homes have declined by more than 90% -- from a high of nearly 400,000 homes in 1998 to just 49,683 homes in 2009 -- the lowest level in over four decades. Between 2008 and 2009 alone, production and sales fell by 40% and a further decline is currently projected for 2010, with expected production of just 49,199 homes. Moreover, this prolonged decline began long before the decline of the broader housing market

and is continuing even after the broader housing market has stabilized and begun a modest recovery. Yet, the program, instead of changing course, has actually accelerated its efforts to effectively neutralize the reforms of the 2000 law and Congress' objectives for the program, the industry and consumers.

All of these matters lie at the heart of the alarming decline of the manufactured housing industry.

While MHARR and its members understand that you personally did not initiate these policies and appreciate the positive change in tone that you have brought to the HUD program since your appointment as its career Administrator in April 2010, the substantive direction of the program remains seriously misguided -- as it has been for years -- and must be changed. Given the fact that HUD continues to downgrade the reforms of the 2000 law, the industry, in order to return the program to the course and purposes set out by Congress in the 2000 law, is left with no alternative but to seek congressional engagement, oversight and intervention for the purpose of reassessing and ultimately reversing the positions that HUD has taken regarding key reforms under the 2000 law, beginning with the urgent matters set forth above.

We thank you again for the time and counsel that you have afforded the industry under difficult circumstances. But given the fact that ten years after the 2000 law, the federal program continues to be diminished and degraded, we strongly believe that in order to slow and reverse the harm that has been done and put the program back on the correct track, it is time for Congress to become engaged in this matter and undertake appropriate oversight and intervention.

Sincerely,



Danny D. Ghorbani  
President

cc: Hon. Tim Johnson, Senate Banking Committee  
Hon. Richard Shelby, Senate Banking Committee  
Hon. Robert Menendez, Senate Housing and Transportation Subcommittee  
Hon. David Vitter, Senate Housing and Transportation Subcommittee  
Hon. Barney Frank, House Financial Services Committee  
Hon. Spencer Bachus, House Financial Services Committee  
Hon. Maxine Waters, House Housing and Community Opportunity Subcommittee  
Hon. Shelly Moore Capito, House Housing and Community Opportunity Subcommittee  
Hon. Shawn Donovan, HUD Secretary  
Hon. David Stevens, HUD Assistant Secretary





## **Manufactured Housing Association for Regulatory Reform**

1331 Pennsylvania Avenue, NW • Suite 508 • Washington, DC 20004 • 202-783-4087 • Fax 202-783-4075

January 19, 2011

VIA FEDERAL EXPRESS

Hon. David H. Stevens  
Assistant Secretary for Housing -  
Federal Housing Commissioner  
U.S. Department of Housing and Urban Development  
Room 9100  
451 Seventh Street, S.W.  
Washington, D.C. 20410

Re: HUD Opportunity to Fully Comply with President  
Obama's January 18, 2011 Regulatory Executive Order

Dear Secretary Stevens:

To begin, please accept our wishes for a Happy New Year and all the best in 2011.

As you know, since you and Secretary Donovan arrived at HUD, MHARR has been warning that the federal manufactured housing program is in dire need of a shake-up and change of direction to fully comply with the Manufactured Housing Improvement Act of 2000. The urgent need for change is proven by the fact that industry production has declined by 40% over the past two years alone, and is now 87% below peak production in 1998 -- a sharp downturn that began long before the decline of the broader housing market over the last few years, and has been much more severe. And now, President Obama has issued an Executive Order, "Improving Regulation and Regulatory Review" (January 18, 2011) that both validates and reinforces the points that MHARR has raised with you, the Secretary and program officials.

In particular, MHARR has maintained that a real change of direction can only be accomplished through the appointment of a non-career program Administrator, as provided by the 2000 reform law. However, for the reasons set out in your June 22, 2010 letter to Rep. Bennie Thompson, you decided to continue the administration of the program at the career level, and named Ms. Payne to that position. While MHARR continues to disagree with HUD regarding its interpretation of the 2000 law on this matter, we nevertheless have worked with Ms. Payne, and commend her for the change in tone that she has brought to the program and the break that she has brought from the chaos and confusion that prevailed prior to her arrival.

That said, however, the substantive direction of the program and particularly its continued defiance of basic transparency and due process reforms required by the 2000 law has not changed -- and has, indeed, gotten worse -- and continues to impact the industry and

consumers of affordable housing in an extremely negative way, as shown by the industry's continued decline. All of this is detailed in our December 3, 2010 letter to Ms. Payne, which was copied to you as well. And, while MHARR has begun to address these HUD policy matters on several fronts with the 112<sup>th</sup> Congress, in order to seek their reform, we also continue to look to you, as the highest-ranking HUD appointed official with direct responsibility for the manufactured housing program and public consumer financing, to ensure that the routine procedural aspects of these programs are, at the very least, fair and reasonable and maintain some semblance of consistency with applicable law and regulations, particularly with respect to the industry's smaller businesses.

Specifically, a major issue for the industry, and particularly its small businesses, is the ongoing effort by program regulators and contractors to significantly expand the scope of in-plant regulation. What began as an innocuous push for "voluntary cooperation" to update manufacturer quality control systems, has now evolved, bit-by-bit, into a full-blown, unnecessary and unnecessarily costly, de facto regulation -- all without review and comment by the Manufactured Housing Consensus Committee (MHCC), or notice and comment rulemaking procedures.

The most recent step in this progression was a November 2010 meeting convened by HUD, which was open only to monitoring contractor personnel and other third-party contractors. Upon learning of this planned meeting, MHARR's Senior Vice President, Mark Weiss, specifically requested, in both verbal and written communications with assistant program Administrator Ms. Liz Cocke, that the meeting be open to individual and collective representatives of HUD Code manufacturers. This request, however, was denied.

Now, though, information regarding this meeting is emerging piecemeal, through word-of-mouth and otherwise, creating uncertainty and confusion among small businesses that are using all their resources just to keep their plants open, avoid layoffs, and continue supplying affordable homes for American consumers. For example, a "Pilot Audit Process Structure" apparently presented at the November meeting includes extremely costly requirements, as follow, that either exceed current regulations or lack any objective standard for determining compliance:

- Reviewing training records to verify that an employee's "training *is appropriate* for the task assigned;"
- Reviewing material inspection records and information to verify that "inspections of materials *are appropriate*;"
- Determining if employees are "*technically knowledgeable* to fulfill their responsibilities;"
- Auditors must evaluate Quality System Issues as described in "Guidelines for the Investigation and Reporting of Quality System Issues (QSI)," developed by the monitoring contractor. This document is neither a regulation or standard;
- Auditors must conduct inspection for "compliance with CCI items." CCI, or Computer Coded Items, were developed by the monitoring contractor and are neither a standard or regulation.
- Auditors must "inspect a recently labeled home for failures to conform" at a retailer lot within 50 miles of the plant. (This item would specifically target retailers for costly and unnecessary regulation).

Other elements of expanded regulation addressed at the November meeting will require IPIAs to conduct retailer lot inspections if a non-compliance is found in a production facility, as well as other activities that will significantly expand their Subpart I involvement and manufacturers' Subpart I compliance costs, again without consensus review and required

rulemaking. Thus, a document entitled "IPR Functional Category Checklist Level I, II & III Evaluation Criteria" requires that IPIAs be evaluated by the "monitoring" contractor based, in part on whether:

- The IPIA Inspector has identified and inspected homes released by the plant, but not yet sold, which either the IPIA's records or records of the manufacturer indicate may not conform to the design or the standards;
- The IPIA Inspector has made inspections of manufactured homes at locations other than the factory.

These are just some examples of multiple new unnecessary and unnecessarily costly requirements that, under the 2000 law, should have -- but have not -- been reviewed and addressed by the MHCC and followed by notice and comment rulemaking, and HUD's failure to do so, based on its selective avoidance of section 604(b) of that law and its February 5, 2010 "Interpretive Rule," effectively reading section 604(b)(6) out of the law, as noted above, is simply unacceptable to small industry businesses struggling to survive. But with the publication of the President's January 18, 2011 Executive Order, these actions now specifically contravene Administration policy regarding both new and existing agency action, in that they have not been shown to be necessary or cost effective (Section 1(b)), would undermine competitiveness and job creation (Section 1(a)) and have not been enacted through a process "that involves public participation" (Section 2(a)), among other provisions.

To continue with the closed-door process that has been used to date would not only violate this Executive Order, but would discriminate against the HUD Code industry and its consumers, by singling them out for disparate regulatory treatment. This would compound existing HUD discrimination against the industry, and particularly its small businesses, as reflected by its refusal, for a year-and-a-half to respond to a routine MHARR Freedom of Information Act (FOIA) request concerning this regulatory expansion, contrary to the FOIA law itself, HUD's own regulations, and the Attorney General's March 19, 2009 Memorandum to agency heads establishing a "presumption of openness" in addressing FOIA requests.

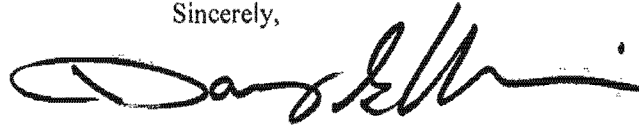
To be fair, the perception of many in the industry is that this and other recent HUD actions may be a byproduct of misunderstanding and miscalculation by program regulators, due to their cozy relationship with the industry establishment. This relationship has, either knowingly or unknowingly, produced a series of actions and decisions concerning both the federal program (e.g., the current expansion of in-plant regulation, MHCC-related matters, not triggering enhanced preemption, etc.) and consumer financing ((e.g., FHA Title I program restrictions contained in the June 1, 2010 and November 1, 2010 Ginnie Mae Mortgage Letters) that have benefited a few industry conglomerates at the expense of the industry's smaller businesses and consumers of affordable housing. (See, MHARR's letter of December 3, 2010 for further detail).

A particularly glaring example of the impact of this relationship concerns fire sprinklers. On this issue, HUD regulators have aligned with the industry establishment in advancing a conditional "as needed/required" federal sprinkler standard that would benefit a few large manufacturers, despite knowing full well that a conditional standard is not authorized by relevant law and that the Secretary would ultimately be obliged to enforce such a standard against the entire industry (upon petition by an interested party or any member of the public), thereby saddling the industry and consumers with an extremely costly yet unnecessary new standard, given the proven effectiveness of the existing HUD standards and the widespread rejection of sprinkler mandates by state and local authorities. Program regulators, in conjunction with the industry establishment, are continuing to press this matter before the MHCC, after conveniently

shifting the balance of the Committee membership against the industry's smaller businesses.

Based on all of this, MHARR requests that you take action to halt all activity on expanded in-plant regulation, as this entire matter should be reviewed in light of the President's January 18, 2011 Executive Order. Afterward, if HUD still believes that this expansion is consistent with Administration policy, it should bring this matter to the MHCC and proceed via rulemaking thereafter, in full compliance with the 2000 law.

Sincerely,

A handwritten signature in black ink, appearing to read 'Danny D. Ghorbani', with a large, stylized initial 'D'.

Danny D. Ghorbani  
President

cc: Hon. Shaun Donovan  
Hon. Peter Kovar  
Ms. Teresa Payne  
HUD Code Manufacturers and Retailers

**The White House**

Office of the Press Secretary

For Immediate Release

January 18, 2011

Improving Regulation and Regulatory Review - Executive Order

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

Section 1. General Principles of Regulation. (a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

(b) This order is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993. As stated in that Executive Order and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(c) In applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Sec. 2. Public Participation. (a) Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent

feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.

(b) To promote that open exchange, each agency, consistent with Executive Order 12866 and other applicable legal requirements, shall endeavor to provide the public with an opportunity to participate in the regulatory process. To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days. To the extent feasible and permitted by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings.

(c) Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.

Sec. 3. Integration and Innovation. Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Greater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules. In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.

Sec. 4. Flexible Approaches. Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.

Sec. 5. Science. Consistent with the President's Memorandum for the Heads of Executive Departments and Agencies, "Scientific Integrity" (March 9, 2009), and its implementing guidance, each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency's regulatory actions.

Sec. 6. Retrospective Analyses of Existing Rules. (a) To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance



with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible.

(b) Within 120 days of the date of this order, each agency shall develop and submit to the Office of Information and Regulatory Affairs a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

Sec. 7. General Provisions. (a) For purposes of this order, "agency" shall have the meaning set forth in section 3(b) of Executive Order 12866.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

THE WHITE HOUSE,  
January 18, 2011.