



Manufactured Housing Association for Regulatory Reform

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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 112th 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 Cocks, 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.

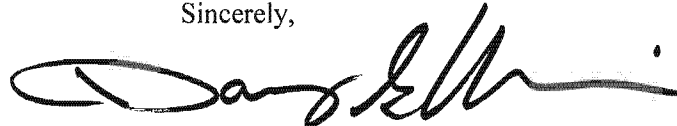
To be fair, the perception of many in the industry is that this and other recent HUD actions may be a byproduct of misunderstanding and miscalculation by program regulators, due to their cozy relationship with the industry establishment. This relationship has, either knowingly or unknowingly, produced 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 Mortgagee 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 flourish at the end.

Danny D. Ghorbani
President

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