



April 14, 2017

Chairman Mike Crapo
Ranking Member Sherrod Brown
U.S. Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown,

Thank you for providing the Manufactured Housing Institute (MHI) the opportunity to share with you our ideas for helping to foster economic growth. MHI is the only national trade organization representing all segments of the factory-built housing industry. MHI members include manufactured home builders, lenders, home retailers, community owners and managers, suppliers and others serving or affiliated with the industry. MHI's membership includes 50 affiliated state organizations. Our suggestions are focused on financial regulations that impede the availability of financing for consumers to purchase manufactured homes and HUD's overreach when it comes to the regulation of manufactured housing construction, which impacts affordability and consumer choice.

In 2016, the manufactured housing industry produced over 80,000 homes, approximately nine percent of new single family home starts. These homes are produced in 128 manufacturing facilities located throughout the United States by 28 U.S. corporations. Manufactured homes are a critical source of affordable housing for more than 22 million people. The manufacturing sector of the manufactured housing industry contributes almost \$3 billion dollars each year to the Gross National Product and provides approximately 23,000 jobs to American workers¹.

The average cost of a manufactured home is \$68,000, with single section homes averaging just over \$45,000 and multi-section homes just over \$86,000. Manufactured housing can offer this value to consumers because of technological advancements and cost savings associated with the factory-built process. The affordability of manufactured homes enables first-time homebuyers, retirees and families in rural areas to obtain housing that is much cheaper than renting or purchasing a site-built home. The median income for manufactured homeowners is about \$26,000 per year, which is almost half of all homeowners in the nation. About two-thirds of all occupied manufactured homes in the U.S. are in rural or non- Metropolitan Statistical Areas.

Because of the important role that manufactured housing has in providing affordable housing to hundreds of thousands of people every year, manufacturers are focused on delivering high quality housing at reasonable costs. Over the past several years, there have been a number of federal regulations that have strained this value proposition through increased compliance burdens and costs that have been passed on to the consumer. MHI's members have become uniquely

¹ Dr. Steven Cook, Alward Institute for Collaborative Science

attuned to the cost and compliance burdens of regulations that often do not have clear public benefits, stifle innovation, and challenge their ability to meet consumer demands.

The industry faces three strong headwinds that keeps it from achieving its full potential in addressing the affordable housing needs of the nation. The first is a housing finance regulatory system that does not adequately account for the unique way manufactured housing is financed. Second, the legislation that established the manufactured housing construction safety standards (HUD Code), was enacted in 1974 and has become antiquated. Enacted at a time when manufactured housing was in its infancy and transitioning from a “travel trailer” industry to one that provides permanent single family residential housing, the law needs to be updated so that the industry can continue to drive innovations in manufacturing. The third challenge is a regulatory structure that lacks clarity, has the potential to overlap, and does not adequately incorporate industry feedback into regulations and guidelines. By addressing these three important challenges, through legislative language and specific regulatory changes, the Committee can help ensure the manufactured housing industry can further support the American dream of homeownership for working families, seniors, and young professionals, which is critical to a healthy economy.

The Challenge of Financing Manufactured Housing

MHI is eager to work with the Committee to reduce the regulatory burdens harming consumers seeking to achieve homeownership by purchasing a manufactured home. The manufactured housing industry is fully committed to protecting consumers throughout the home buying process. MHI recognizes the importance of responsible lending and improving the consumer experience. Unfortunately, current regulations and the housing finance system harms consumers of manufactured housing by inadvertently limiting financing for this affordable homeownership option.

Reducing Regulatory Burdens to Financing for Manufactured Homes

Recent federal regulations have jeopardized access to manufactured housing financing. The rules have penalized home buyers that cannot access traditional mortgage financing needed for single-family home ownership or live in rural areas where affordable rental or site-built housing is scarce or non-existent. Additionally, many at-risk families have seen the equity they have diligently built up in their manufactured homes wiped out because lenders are not providing the financing needed for resale due to these regulations.

There are two slight revisions to Consumer Financial Protection Bureau (CFPB) regulations that can spur lending without harming the consumer protections contained in the Dodd-Frank Act.

- 1) *High-Cost Mortgage Definition.* The HOEPA provisions of the Dodd-Frank Act that established parameters for which mortgage loans are classified as “high cost” included more flexible annual percentage rate (APR) and points and fees provisions for small loans. This was in recognition of the simple mathematical fact that fixed costs on smaller loans translate into

higher percentages of the total loan amount. Unfortunately, in practice, this flexibility has not been sufficient to address market realities. The 2014 Home Mortgage Disclosure Act (HMDA) data offers empirical evidence of the negative real world impact from the current HOEPA small loan thresholds, confirming conclusively that manufactured home lenders are not making loans with the “high-cost” HOEPA designation. The HMDA data shows that lenders made such loans before the rules went into effect, and they did not make them after. Manufactured home loans of all size categories went down by double digits, and the lower the dollar amount size the more pronounced the year-over-year decline. In comparison, overall mortgage loan data (for all homes) shows a 2013 to 2014 year-over-year increase in the number of mortgage loans. A simple adjustment to these thresholds is necessary to enable lenders to fully meet the demand for affordable financing for manufactured homes.

- 2) *Loan Originator Definition.* The definition of loan originator established by the Dodd-Frank Act is based on traditional mortgage market roles that do not reflect the distinct features of the manufactured housing market. While they are only in the business of selling homes and do not originate loans, manufactured home retailers and sellers currently run the risk of being considered mortgage loan originators. Manufactured housing retailers and sellers should be excluded from the definition of a loan originator, so long as they are only receiving compensation for the sale of the home and not engaged in financing the loans. This simple change will not result in individuals receiving kickbacks for referrals, because they are barred from receiving compensation related to the loan.

These are modest modifications, but they are much needed to alleviate the challenges facing working families seeking quality affordable housing and families currently living in manufactured housing. The proposed statutory changes would more accurately take into account the price pressures unique to manufactured home lending while still maintaining significant consumer protection from predatory lending practices. The terms typically associated with manufactured home loans—namely fixed interest rates, full amortization, and the absence of alternative features (such as balloon payments, negative amortization, etc.)—allow lenders to satisfy the requirements of what the Dodd-Frank Act would consider conservative and prudent underwriting standards. In addition, existing regulatory requirements and statutory guidelines outlined in the Dodd-Frank Act provide significant consumer protections and disclosures while prohibiting many predatory loan features. These proposed revisions ensure that substantial protections are available to consumers while ensuring financing remains available for manufactured housing.

MHI commends the Senate Banking Committee for recognizing that consumers are being harmed by current regulations that limit the availability of financing for manufactured homes. In particular, MHI appreciates the Committee’s leadership in passing these important provisions in the 114th Congress. MHI hopes the Committee will continue to work toward the enactment of these revisions in the 115th Congress. Specific legislative language can be found in the Preserving Access to Manufactured Housing Act (S. 682 in the 114th Congress), which was introduced by Senators Donnelly (D-IN), Toomey (R-PA), Manchin (D-WV), and Cotton (R-AR).

Improving FHA's Programs for Manufactured Housing Finance

1) *FHA Title I Program.* The FHA Title I program provides an affordable financing option for personal property manufactured homes. However, due to a number of outdated program rules, FHA only endorsed \$24 million in Fiscal Year 2014. This is woefully inadequate given that manufactured homes comprise seven percent of total occupied housing units in the United States. In many areas of the country, particularly rural areas, manufactured housing is the only form of quality affordable housing available. Improvements to the FHA Title I program would help ensure families in these communities have access to financing for manufactured homes through the Title I program.

The following are administrative changes HUD should implement to make the Title I program more effective:

- *Origination Fees.* The low dollar principal amounts of new personal property manufactured home loans means that the existing cap of two percent of the loan amount on the fees a lender can charge is not high enough to cover the cost of underwriting these loans, particularly with increased compliance costs related to new requirements under the Dodd-Frank Act. We believe this helps to explain the lack of utilization of the Title I program. Other laws, including Qualified Mortgage (QM) and HOEPA, have provisions that take into account the impact of lower balance personal property loans. FHA already permits a minimum underwriting fee of \$2,500, for example, for a reverse mortgage (HECM) loan. The FHA Title I manufactured home loan program should also adopt a reasonable minimum permissible origination fee. MHI recommends that HUD amend its current underwriting loan fee cap of two percent of the loan amount to also allow a flat dollar amount of \$2,000 for all loans.
- *Appraisals.* There are a limited number of eligible appraisers (80-85 in the entire country) who are qualified to perform Title I manufactured home appraisals. In many rural areas, where the majority of manufactured homes are located, there are literally no Title I qualified manufactured home appraisers who are available to perform an appraisal. Current appraisal requirements in the Title I program have resulted in fewer qualified appraisers and limited competition in the marketplace. HUD should amend the current requirement that requires all appraisers to be certified by a single private company (NADA) to also allow inspectors trained by qualified firms to do the on-site inspection, provided the work is ultimately reviewed and approved by NADA certified individuals. This would inject more competition into the provision of these appraisal services, while maintaining overall quality standards through the NADA certification process.
- *Underwriting Standards.* The detailed loan underwriting standards in the Title I program need to be updated to better align with the FHA Title II loans program. In particular, Title I underwriting standards regarding DTI ratios, treatment of Chapter 7 bankruptcy and other derogatory credit items, treatment of medical collections, and treatment of total unpaid collections should be changed to match those requirements in the Title II program.

- 2) *FHA Title II Program.* The FHA Title II program is commonly used for “real estate” manufactured home loans, where the mortgage covers the land and the home. MHI recommends HUD update its installation requirements to conform to the HUD Minimum Installation Standards that were established in 2009, rather than utilizing the requirements in the outdated 1994 handbook. This would align installation requirements with more recently adopted standards that were implemented under the comprehensive 2000 regulatory legislation.

Establishing a Secondary Market for Chattel Loans

The 2008 Housing and Economic Recovery Act (“HERA”)² singled out manufactured housing as one of only three Underserved Markets. This reflected frustration with the declining volume of Enterprise manufactured housing loan purchases at the time and with the virtual exclusion of chattel loans from the types of loans they would purchase. FHFA is in the process of implementing its Duty to Serve rule. Since chattel loans constitute almost 70 percent of the manufactured housing market and are the most underserved segment of that market, MHI believes the Enterprises cannot fulfill their statutory responsibility to serve the manufactured housing market without a meaningful commitment to purchase chattel loans.

Over the past eight years, the Enterprises have done little to support manufactured housing. Outside of some pre-financial crisis efforts to create a secondary market for chattel loans, the Enterprises have made no effort to purchase chattel loans despite significant improvements in the housing market and chattel lending underwriting guidelines and sound industry risk management practices. Additionally, even when measured against conventional mortgages, the Enterprises have purchased little in the way of conventional manufactured home loans. In fact, according to a 2014 GAO report, only 7 percent of conventional manufactured home mortgages were sold to the Enterprises

To put a finer point on why a secondary market is necessary to support manufactured housing, the Consumer Financial Protection Bureau, in its September 2014 paper on manufactured housing, stated that chattel loans are approximately 50 to 500 basis points more expensive than real property loans.³ In large part this disparity is due to the additional risks the lender takes on: a lack of a significant secondary market for chattel loans which may account for 100 to 150 basis points, concomitant interest rate risk, which combined may account for an additional 150 to 200 basis points, higher servicing costs and very limited risk sharing with lenders by either the private or government sectors, which may account for an additional 150 basis points.

A strong secondary market for chattel loans has the potential to not only ease financing costs for consumers but also expand consumer choice as more lenders enter the market. A strong secondary market will also provide refinancing opportunities to manufactured homeowners as

² The Housing and Economic Recovery Act of 2008, Pub.L. 110-289, Div. A, Title I, §§ 1128(c)(1), 1129(a), July 30, 2008, 122 Stat. 2701, 2703, added 12 U.S.C.A. § 4565 (Duty to serve underserved markets and other

³ CFPB, “Manufactured Housing Consumer Finance in the United States September 2014, p.6

market conditions warrant.

MHI has strongly recommended that FHFA ensure a meaningful chattel loans pilot is developed. To accomplish this, we believe that FHFA and the Enterprises should ensure the Underserved Markets Plans that are currently under development consider the following:

- In the initial phase of DTS manufactured housing implementation, an Enterprise should not be able to receive a minimally passing performance rating unless it carries out a pilot program to purchase a substantive amount of chattel loans by each Enterprise, and
- The pilot program should be designed to incorporate a representative sample of the market by including a cross section of loans varied by new home purchases, refinances, pre-owned home resales, seasoned loans held on portfolio, and loans varied by geography and socio-economic diversity.
- While the program will be evaluated over time, the goal is to structure the chattel pilot program so the Enterprises have a strong comfort level that the proper protections are in place and the program is sustainable. In later phases, once performance of the loans in the pilot phase demonstrates that chattel loans can be safe and profitable, such purchases should be expanded significantly.

We look forward to our continued engagement with the Enterprises and FHFA on this important initiative.

The Challenge of Outdated Manufactured Housing Construction and Safety Standards

The Manufactured Housing Construction and Safety Standards Act of 1974 (MHCSS Act) provides the statutory basis for federal construction and safety standards, which apply to all manufactured homes nationwide. The law, last amended in 2000, needs a number of updates to ensure it is effectively preserving this affordable home ownership option. For example, the manufactured housing industry operates under an outdated law that in some instances treats homes like automobiles - by requiring, for example, a steel chassis and subjecting the industry to federal lemon laws. Adhering to these outdated standards incurs costs on both the construction side and the risk management side.

Thus, changes to the 1974 Act would enhance affordability by allowing more design options under the HUD Code and moving the regulations away from non-applicable automotive laws. Changes would eliminate the need for the industry to build on a steel chassis, which would give manufacturers and homebuyers more affordable housing options, while not impacting the safety and soundness warranties that are administered at the state level.

Amend the Definition of “Manufactured Home” (42 U.S.C. 5406)

The current statutory definition of a manufactured home found at 42 U.S.C. 5406 is outdated, as it was developed when the manufactured housing industry was in its infancy, transitioning from a “travel trailer” industry to an industry that provides permanent single family residential housing. For this reason, the definition contains size, length and width requirements

that are more appropriate for vehicles traveling down a highway. More important, the definition specifies that a manufactured home be built on a permanent chassis.

This obsolete statutory definition has constrained the ability for homes to be designed and permanently sited utilizing traditional methods of foundation design and construction comparable to site-built and modular housing. It also adds unnecessary costs to homebuyers and can make it difficult, if not impossible, for manufactured homes to be aesthetically compatible with other forms of single family housing. Further, it is a barrier to more favorable zoning. Updating the definition of a manufactured home would eliminate confusion between all types of recreational vehicles which are designed for recreational, temporary use, and are not designed for permanent residential use.

Eliminate Current Requirements for Notification and Correction of Defects (42 U.S.C 5414)

The MHCSS Act sets forth a complex system of notification and repair of manufactured homes for non-compliance, defects, and serious defects or imminent safety standards for the entire life of the home. The system is based on federal and state laws that address warranty issues more common to automobiles and other consumer products. Residential housing is not covered by the Magnusson-Moss Warranty Act, which is the federal “lemon law.” Manufactured homebuilding is very competitive and manufacturers take consumer satisfaction very seriously. The HUD Code provides for a robust quality control system and stringent compliance and enforcement requirements that are sufficient to protect consumers from serious safety hazards.

Under current law and regulation, a one-year warranty for all defects in a manufactured home is required. In lieu of the burdensome, lifetime requirements of “Subpart I –Notification and Correction,” Congress should consider requiring an extended warranty for major structural, plumbing, electrical and mechanical systems in the home. The Subpart I regulations authorized under 42 U.S.C. 5414 were never intended to resolve complaints concerning defects and workmanship. Nor is it practical or cost effective to divert the attention of the code enforcement system to workmanship issues. Home defects and consumer complaints are more appropriately handled through a long term warranty program that complements market realities of total quality assurance and consumer satisfaction. These provisions should be modernized, therefore, to recognize the current state of the manufactured home market and the homes being built today.

The Challenge of Regulatory Overreach by HUD

One of the greatest challenges faced by the manufactured housing industry, however, lies not with the legislation that governs it, but with the regulatory oversight - and overreach - by the Department of Housing and Urban Development during the previous administration. The regulatory framework, and the manner in which HUD has implemented it, does not “facilitate the availability of affordable manufactured homes [or help] to increase homeownership for all Americans,” as prescribed by the federal statute. Nor, in many instances, do the Department’s regulations “ensure that the public interest in, and need for, affordable manufactured housing is

duly considered in all determinations relating to the Federal standards and their enforcement” as also directed by the relevant statutory language.

Some of these regulatory problems may be a result of the structure of the Department, and manufactured housing’s low priority placement within that structure. Organizationally, the Office of Manufactured Housing Programs (OMHP) is not well positioned within HUD to ensure that manufactured housing is at the center of policy discussions surrounding the Department’s affordable housing mission. The OMHP is housed at the Federal Housing Administration’s Office of Risk Management and Regulatory. Because it is buried deep within HUD’s bureaucracy, when discussions are held regarding the shortage of affordable housing, the important role of manufactured housing in addressing that issue is not a part of the conversation. We believe strongly that, because manufactured housing provides non-subsidized, safe and affordable - made in America - housing to low and moderate income citizens, its position within HUD should be elevated from its current location within the Department, elevating it to Deputy Assistant Secretary position.

In general, MHI hopes that the regulatory enforcement problems faced by manufactured housing will be significantly alleviated with the change in administrations. Given the clear guidance from President Trump through his Executive Orders regarding reducing regulations, streamlining government and fostering innovation and creativity, HUD’s approach to manufactured housing should change. If not, greater Congressional oversight of the regulatory regime - and more importantly, the way it is enforced – will be needed to ensure that HUD is carrying out the express statutory purposes of the HUD Code to make housing more affordable and available for consumers, while ensuring their safety.

Examples of Burdensome Regulations

MHI has been focused on ensuring that regulatory initiatives undertaken by HUD foster uniformity, ease of compliance, and minimize discrepancies and overlap with state and local codes. This includes revisiting and revising HUD’s existing rules and programs in line with statutory parameters. Yet, we have seen OMHP take steps that are counterproductive to this goal by expanding regulatory programs to intrude into state functions, reinterpreting regulations to the detriment of long standing and accepted building practices, and implementing rules that unnecessarily limit consumer choice. Highlighted below are several examples where HUD has either overstepped its statutory authority or failed to ensure regulatory clarity.

1. *Intrusive Installation Programs.* While the statute provides that HUD is the primary regulator of the design and construction of manufactured homes inside the factory, the regulation of the installation of the homes is intended to be done at the state and local level. State administrative agencies are tasked with ensuring that installations comply with manufacturer standards and are appropriate for local conditions. Recently, HUD has initiated efforts to regulate the installation of all homes in areas of the country susceptible to frost and frost heave, regardless of the presence of state administrative agencies. Without clear evidence that installation systems are failing, HUD is effectively limiting the ability of states to administer their own installation

programs. In states like Maine, Wisconsin, and New York, approved installation practices have been administered for years at the state level and have no instances of failures. The recent “polar vortex” winters, with no resulting instances of installation failures, demonstrates that this process is working. HUD’s intrusion into a system that is working with a one-size-fits-all approach is unnecessary and burdensome. This is an example of clear overreach by HUD, and is clearly beyond its authorities in the HUD Code.

2. *Burdensome and Unnecessary On-Site Completion of Construction Rule.* Finalized on September 8, 2015, and effective September 7, 2016, the On-Site Rule establishes extensive new requirements for the on-site completion of construction of manufactured homes, and covers many consumer preferred amenities such as French doors. In finalizing the rule, HUD failed to assess the costs associated with the expanded design approval and inspection requirements for homes that are substantially complete when they leave the factory. MHI estimates that the rule impacts as many as 10-15 percent of all new homes produced, with a cost to the industry could be as much as \$7 to \$10.5 million. This cost does not include one-time design reviews for each site-construction labeled home, nor does it include increased costs to track inspections and keep records. While HUD has issued numerous clarifications to try and ease compliance, consumers are being negatively impacted because manufacturers are no longer offering consumer popular amenities if they fall under the scope of the rule.

3. *Shifting Guidelines on Alternative Construction.* The HUD Code provides for an Alternative Construction process whereby manufacturers can provide additional consumer amenities, such as enclosed garages, second floors, and enclosed porches, provided that manufacturers and their third-party design inspectors can demonstrate that the proposed design meets or exceeds HUD Code standards. In 2014, HUD issued guidance that clarified that attached garages, enclosed porches, and enlarged living rooms would require Alternative Construction approval. In 2016, HUD arbitrarily expanded their interpretation of the 2014 guidance letter to include designs of carport ready homes. Carports are free standing and merely attached to the roof by a support beam calibrated to withstand the extra weight. These structures are not used for storage and do not add living space. It should be noted that carport-ready homes have been a staple of the industry for decades.

4. *Regulatory Overlap with the Department of Energy.* The 2007 Energy Independence and Security Act mandated that manufactured housing meet higher energy efficiency standards. When the Department of Energy (DOE) proposed a rule last year to implement this provision, it failed to adequately assess the impact the associated cost increase would have on consumers, nor did it confer with HUD in developing a clear compliance path to avoid overlapping regulations and ensure clarity. The proposed rule would have increased manufactured home prices between 3 and 10 percent, while producing negligible cost savings for consumers.

Conclusion

MHI looks forward to working with you to ensure the manufactured housing industry can foster economic growth by supplying quality, affordable housing to consumers. Manufactured

homes are the most affordable homeownership option in the market today and MHI appreciates the opportunity to offer our ideas to the Committee about how to ensure the industry can further support the economy. MHI would appreciate the Committee's help to improve access to credit for families buying these homes, to update outdated construction standards that impact cost and innovation, and to ensure regulations are streamlined and regulatory barriers to affordability are removed. MHI stands ready to work with the Committee to develop appropriate legislative language and make specific regulatory changes to implement these recommendations.

Sincerely,

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

Lesli Gooch, Ph.D.

Senior Vice President, Government Affairs & Chief Lobbyist