



March 10, 2023

Office of Management and Budget
725 17th St., NW
Washington, DC 20503

**Re: Office of Information and Regulatory Affairs
Broadening Public Engagement in the Federal Regulatory Process**

Dear Sir/Madam,

The Manufactured Housing Institute (MHI) is pleased to provide comments in response to Office of Information and Regulatory Affairs (OIRA) proposed recommendations for broadening public engagement in the federal regulatory process.

MHI is the only national trade organization that represents every segment of the factory-built housing industry. Our members include home builders, suppliers, retail sellers, lenders, installers, community owners, community operators, and others who serve the industry, as well as 48 affiliated state organizations. In 2022, our industry produced nearly 113,000 homes, accounting for about 11 percent of new single-family home starts. These homes are produced by 34 U.S. corporations in 145 plants located across the country.

MHI believes it and other trade associations and organizations are important links between impacted stakeholders and the federal regulatory process. But MHI's ability, and the ability of other trade organizations, to engage impacted stakeholders depends on an open and honest channel of communication and information sharing between federal agencies and the public. And this channel needs to be always open, from the beginning of the process through rulemaking and then after a rule is promulgated. To that end, MHI is excited about recommendations made by OIRA to improve this exchange.

First, MHI strongly supports OIRA's recommendation to require agencies to "conduct outreach to key communities and stakeholders when agencies are still formulating regulatory priorities and communicate clearly and plainly to the public as appropriate about how agencies are thinking about policy problems, needs, and alternatives." MHI feels that this recommendation could help ensure agencies better understand those they seek to regulate and the implications of their policies.

In our experience, rules have been driven by inside-the-beltway advocacy groups that have a laudable idea but lack the on-the-ground technical knowledge required for effective and durable regulations. Without better engagement, policymakers lack necessary information related to the realities of implementing new regulations and the true impact the regulation will have on industry, consumers, and other stakeholders. And without engaging experts on the technical details, we have experienced outputs that have not considered the practical implications of the regulation.

For example, manufactured homes are built to a federal construction code administered by HUD—the only federal residential construction code. HUD, through its Office of Manufactured Housing Programs, has made significant improvements in its process to ensure they receive the technical

engineering feedback they need to regulate our construction code. Its work relies on a federal advisory committee, which ensures that HUD policies are well-informed by stakeholders.

Unlike that process at HUD, the Department of Energy (DOE) issued energy efficiency standards without engaging with stakeholders. The result was a regulation based on a building code that is for site-built homes, which is where materials are taken to a construction site where the home is built. The code that is based on the site-built process does not apply to the construction methods of manufactured homes, which are assembled in a factory and then transported to the home site. In fact, HUD's federal advisory committee, which includes engineers, industry participants, and consumers of manufactured housing, said this about the DOE rule¹:

DOE provided an energy conservation standard which was based on site-built construction and applied it to a performance-based national code. If adopted as written, the final rule would adversely impact the entire Manufactured Housing program and cost increases associated with compliance would reduce prospective purchasers (especially minorities and low-income consumers) from durable, safe, high quality and affordable housing.

Moreover, the Department of Energy did not provide for any provisions in the regulation regarding certification, testing, or compliance. The cost of such certification, testing, and compliance that must now be passed on to the consumer exceeds the average cost savings the Department of Energy stated would be achieved by the regulation. As such, the Department of Energy's priority of energy savings failed because the regulation did not account for the substantial cost of certification, testing, and compliance, among other things.

Additionally, if the DOE had engaged with stakeholders, the Department would have realized the negative impact the regulation will have on low-income and minority homebuyers by increasing the purchase price of a manufactured home. Black or African American manufactured home purchasers are approximately 22.5% more likely to finance their manufactured home purchase with a home-only loan as compared with a land-home loan. Likewise, Hispanic manufactured home purchases are 11% more likely to finance their home purchase with a home-only loan. While it is difficult to quantify the percentage of individuals that will no longer qualify for a mortgage loan because of the higher purchase price resulting from the new energy standards, it will clearly result in some percentage of previously eligible homebuyers that will no longer be able to buy a home because they no longer meet debt-to-income ratios.

Early communication could have prevented this poor outcome. MHI supports OIRA's work to change the process and improve the public exchange of information before, during, and after agencies engage in rulemaking.

Second, MHI agrees with the recommendation to require agencies to "proactively disseminate relevant materials, especially through partnerships with community-based organizations, industry intermediaries (such as trade associations), and other institutions." MHI feels, however, that this dissemination of "relevant materials" needs to be expanded to include a more thorough disclosure and explanation of the technical data that undergirds rulemaking and regulations. In many instances, industry groups cannot reconcile technical data and modeling provided by an agency as support for a regulation. When that occurs, agencies often do not sufficiently explain and make available their technical data.

¹<https://www.hud.gov/sites/dfiles/Housing/documents/MHCC%20Working%20Document%20from%20October%2018-20%20and%20November%2015-17%2C%202022%20Meetings%20.pdf>

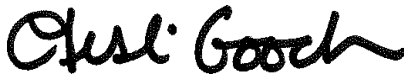
Take the modeling and data for the Energy Conservation Standards for Residential Furnaces issued by DOE. Many industry players and groups have been unable to replicate the modeling and data used by DOE to support this standard. Despite holding a listening session on the data, the data was not explained to the industry groups. MHI feels that agencies should provide more transparency on their technical data and engage in more robust discussions where the data is challenged or cannot be reconciled.

Finally, along with the recommendations OIRA proposes, MHI feels that another recommendation could be made and implemented to require agencies to provide more feedback about public comments. In the current regulatory process, final rules discuss public comments and provide a short statement of an agency's consideration and treatment of them. These statements are often short and non-substantive. And they are provided after the agency has already decided how it views a particular public comment. MHI recommends more direct discussion in the public comment period that could then be incorporated into the administrative record.

Ultimately, MHI believes that the process by which rules are formulated should allow for transparency, adequate cost-benefit analysis, and appropriately account for the viewpoints of all stakeholders. Agencies should be clear about how they assess the relative weight of each perspective to avoid outsized influence by certain stakeholders, which produce outcomes that are skewed. For our industry, improved processes would avoid outcomes that have a detrimental impact on the ability of consumers to attain homeownership through manufactured housing.

Thank you for the opportunity to provide these comments. MHI looks forward to seeing how OIRA implements and furthers its proposed recommendations to improve the public's participation in the regulatory process and create more effective and durable regulations.

Sincerely,

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

Lesli Gooch, Ph.D.
Chief Executive Officer