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United States Senate
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS
WASHINGTON, DC 20510-6075

April 3, 2023

The Honorable Jennifer Granholm
Secretary
U.S. Department of Energy
1000 Independence Ave., SW
Washington, D.C. 20585

Dear Secretary Granholm:

I write to express disappointment in the decision of the Department of Energy (“DOE”) to publish a final rule imposing standards for energy conservation in manufactured housing. Though Congress directed DOE to establish standards for energy efficiency in manufactured housing (“DOE Standards”),¹ such standards must be appropriately tailored to ensure the continued availability of manufactured housing as an affordable housing option. I am concerned the DOE Standards will unnecessarily limit consumer choices and raise costs for families seeking affordable homeownership opportunities.

The Department of Housing and Urban Development (“HUD”) is the primary regulator of manufactured housing, a point you concede in your final rule. Therefore, Congress required meaningful consultation with HUD prior to establishing the DOE Standards.² Such consultation is necessary, as Congress has authorized HUD to regulate the manufactured housing industry and receive recommendations from the Manufactured Housing Consensus Committee (“MHCC”) to adopt, revise, and interpret the Manufactured Home Construction and Safety Standards (“HUD Code”).³ Because, as you know, HUD already updates the HUD Code and has established energy conservation requirements in its regulations,⁴ any effort by DOE to develop the DOE Standards should not undermine HUD’s long-established requirements, but must complement existing requirements to ensure appropriate consideration of the affordability and availability of such housing choices for consumers.

Moreover, Congress expressly authorized DOE to consider design and factory construction techniques of manufactured homes when developing the DOE Standards.⁵ Given the importance attached to this effort, DOE correctly determined that development of manufactured housing energy conservation standards would benefit from a negotiated rulemaking process that included

¹ Energy Independence and Security Act § 413, 42 U.S.C. § 17071 (2007).

² Energy Conservation Program: Energy Conservation Standards for Manufactured Housing, 87 Fed. Reg. 32,728, 32,741 (May 31, 2022).

³ National Manufactured Housing Construction and Safety Standards Act, Pub. L. No. 93-383 (1974), *amended by* Manufactured Housing Improvement Act, Pub. L. No. 106-569 (2000).

⁴ See 24 C.F.R. subpt. F.

⁵ § 413(b)(2)(A).

the expertise of representatives of manufacturers and consumers.⁶ Notably, DOE consulted with the same set of representatives that comprise the MHCC and assist HUD in developing the HUD Code. It is surprising, therefore, that despite such stated efforts of collaboration, the MHCC determined that DOE “circumvented the standards development process prescribed in [law]” when establishing the DOE Standards and published a rule that it concludes “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.”⁷ Failure to impose standards that are consistent with the law and protect affordability is unacceptable.

DOE estimates that the imposition of its energy conservation standards would result in thousands of dollars in added cost for many families looking to purchase manufactured homes.⁸ Worse yet, despite recommendations from the MHCC to include the cost of testing, enforcement, and regulatory compliance in the DOE Standards,⁹ DOE expressly ignores these foreseeable costs in its rulemaking, admitting that “it has not fully enumerated testing and enforcement costs.”¹⁰ Blatantly disregarding reasonably foreseeable costs associated with such restrictive regulations conflicts with the statutory requirement that DOE consider cost-effectiveness of energy standards for manufactured housing.¹¹

Manufactured housing is truly one of the best opportunities for helping families realize the dream of homeownership, accounting for roughly six percent of housing stock and being the largest source of unsubsidized affordable housing in the country.¹² The DOE Standards are overly broad, unduly burdensome, and undermine commonsense efforts to increase supply and assist families looking for affordable housing opportunities. Moreover, they limit consumer choice for a segment of the market that is unfairly asked to bear the costs imposed by climate alarmists.

I ask that you immediately delay implementation of this rule to provide hard-working families relief from this costly and misguided regulation. Furthermore, I ask that you consider withdrawing this rule and incorporate appropriate modifications, in consultation with HUD and

⁶ Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Intent To Establish the Manufactured Housing Working Group To Negotiate a Notice of Proposed Rulemaking (NPR) for Energy Efficiency Standards for Manufactured Housing, 79 Fed. Reg. 33,873 (June 13, 2014); Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Membership of the Working Group for Manufactured Housing, 79 Fed. Reg. 41,456 (July 16, 2014).

⁷ Manufactured Housing Consensus Committee *MHCC Working Document from October 18-20, 2022 and November 15-17, 2022 MHCC Meetings* 1 (Dec. 2, 2022), <https://www.hud.gov/sites/dfiles/Housing/documents/MHCC%20Working%20Document%20from%20October%2018-20%20and%20November%2015-17%2C%202022%20Meetings%20.pdf>.

⁸ 87 Fed. Reg. at 32,749.

⁹ Manufactured Housing Consensus Committee *supra* note 7, at 2.

¹⁰ 87 Fed. Reg. at 32,758.

¹¹ See § 413(b)(1).

¹² Consumer Financial Protection Bureau *Manufactured Housing Finance: New Insights from the Home Mortgage Disclosure Act Data* 3, (May 2021), https://files.consumerfinance.gov/f/documents/cfpb_manufactured-housing-finance-new-insights-hmda_report_2021-05.pdf.

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the MHCC as statutorily required, to ensure that any future regulation does not irresponsibly contribute to unnecessary costs for Americans pursuing the dream of homeownership.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Scott", with a long horizontal flourish extending to the right.

Tim Scott
Ranking Member

cc: The Honorable Marcia Fudge, Secretary, U.S. Department of Housing and Urban
Development