

**FULL AND PROPER IMPLEMENTATION OF THE MANUFACTURED HOUSING
IMPROVEMENT ACT OF 2000 -- FACT SHEET # 3**

HUD HAS UNDERMINED THE ROLE AND AUTHORITY OF THE MHCC

Because the Manufactured Housing Consensus Committee (MHCC) is not a routine federal advisory committee but, instead, has specific authority under the 2000 law, HUD has attempted to severely limit its role through baseless, highly restrictive interpretations of the law. Specifically, HUD has refused to trigger section 604(b) of the 2000 law, which requires proposed regulations and regulatory interpretations to be brought to the MHCC. Further, HUD issued an “interpretive rule” on February 5, 2010, without opportunity for public comment, which strips the MHCC of nearly all its authority under section 604(b)(6) of the 2000 law to review and comment on a wide range of HUD actions that do not fall under the formal definition of a “rule.” These positions, however, are plainly inconsistent with the 2000 law.

HUD claims that “as a private advisory body not composed of federal employees, the MHCC does not have HUD’s responsibilities for public safety and consumer protection. The Department must, therefore, remain free of the MHCC process to make program decisions that would not be considered rules under the Administrative Procedure Act.” While HUD is correct that the MHCC does not have HUD’s statutory “responsibilities,” this issue was addressed fully during the legislative process and is precisely why the MHCC issues recommendations that do not gain the force of law unless they are approved by the Secretary and subject to rulemaking.

Since the power of the MHCC is limited to recommendations only, the law is very broad in identifying the types of HUD actions that must be brought to the MHCC. In addition to standards, enforcement regulations and interpretations of both, as addressed in sections 604(a) and 604(b), the “catchall” section of the Act, 604(b)(6), was designed to ensure that virtually all regulatory actions of the Department, whether characterized by HUD as a “rule” or not, to establish or change existing standards, regulations and inspection, monitoring and enforcement policies or practices, would be subject to review, consideration and comment by the MHCC. This section, which deems any such action “void” without MHCC review, was included in the law as a remedy for past abuses where major changes to enforcement procedures and the construction of the standards were implemented without rulemaking or other safeguards.

The law, therefore, addresses HUD’s point by limiting the power of the MHCC to recommendations, not by severely limiting the actions subject to MHCC review as HUD claims. To construe section 604(b)(6) to apply only to formal “rules” makes no sense, because rules are subject to rulemaking and public comment anyway. Instead, section 604(b)(6) is designed to provide an opportunity for MHCC consensus comment and recommendations on a wide range of program actions that would not otherwise be subject to public review or comment. HUD, therefore, has misconstrued the 2000 law.