

**IMPLEMENTATION OF THE MANUFACTURED  
HOUSING IMPROVEMENT ACT OF 2000**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
INSURANCE, HOUSING AND  
COMMUNITY OPPORTUNITY  
OF THE  
COMMITTEE ON FINANCIAL SERVICES  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED TWELFTH CONGRESS  
SECOND SESSION

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## IMPLEMENTATION OF THE MANUFACTURED HOUSING IMPROVEMENT ACT OF 2000

Wednesday, February 1, 2012

U.S. HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON INSURANCE, HOUSING  
AND COMMUNITY OPPORTUNITY,  
COMMITTEE ON FINANCIAL SERVICES,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:03 a.m., in room 2128, Rayburn House Office Building, Hon. Judy Biggert [chairwoman of the subcommittee] presiding.

Members present: Representatives Biggert, Hurt, Miller of California, Duffy, Dold, Stivers; Gutierrez, Velazquez, and Sherman.

Also present: Representative Green.

Chairwoman BIGGERT. This hearing of the Subcommittee on Insurance, Housing and Community Opportunity entitled, "Implementation of the Manufactured Housing Improvement Act of 2000," will come to order. We will begin with opening statements, and I will yield myself 5 minutes.

Good morning everyone, and I would like to welcome our panel of witnesses. The manufacturing housing sector has long been an important supplier of affordable housing as well as American jobs. This hearing will provide valuable insight into the forces that have weakened the manufacturing housing market, as well as the effectiveness of HUD's response and its implementation of the Manufacturing Housing Improvement Act of 2000.

We will examine issues including building codes, safety and installation standards, and Federal preemption.

With that, I would like to insert into the record a November 29, 2011, letter that Chairman Baucus and I sent to GAO requesting that they examine various aspects of HUD's regulation of the manufacturing housing industry. We hope to have this report from GAO at some point this year. And without objection, I would like to submit the letter.

I would also like to submit the following inserts for today's hearing record. I ask unanimous consent to do so: a January 31, 2011, letter from the Corporation for Enterprise Development; a February 1, 2011, letter from the Manufactured Home Owners Association of America; a January 31, 2011, letter from the Mobile Homeowners Association of Illinois; a January 29, 2000, letter from the Manufactured Home Owners Association of New Jersey; and a January 31, 2011, letter from the Wisconsin Manufactured Home Owners Association.

Finally, as a member of the House Democracy Partnership Commission, I am honored to recognize 10 members of the Democracy Committee of Parliament from the Central Asian nation of Kyrgyzstan. If you wouldn't mind standing so people can see who you are?

Thank you very much. This week, they are visiting Washington, and particularly Congress, to observe and study our operations and identify practices that they could adopt for their parliament as they continue to transition to a parliamentary democracy, so welcome, welcome to all of you.

And with that, I recognize the ranking member of the subcommittee, Mr. Gutierrez.

Mr. GUTIERREZ. Thank you, Madam Chairwoman, and thank you to all of the witnesses for joining us this morning to discuss the ongoing implementation of the Manufactured Housing Improvement Act of 2000. This has a profound effect on housing equality and affordability for millions of families across the country. I think it is important that we hear different perspectives on these issues, so I am glad to see witnesses representing HUD, the manufactured housing industry, and homeowners here today. Although, I have to admit that the industry seems to have gotten more representatives than anyone else. But that is okay.

We need to hear from them. From what I understand, industry groups are concerned about the Manufactured Housing Consensus Committee, which was created by the 2000 Act. They say it isn't functioning the way that Congress intended it to function. They believe that HUD is ignoring the committee's proposal in marginalizing it. They point to their recommendations per national standards and other reforms and wonder what is taking HUD so long.

Consumer advocates might agree with some of these, but they seemed to see things from a different perspective. To them, the Consensus Committee is one of the few places where homeowners and the consumers have an equal voice, where the industry doesn't always dominate.

Consumer advocates also point out that some of the committee's dysfunction is the industry's own doing. Important safety and accessibility standards have language in the committee for a decade before coming up for a vote. Industry representatives constantly fall back on affordability as the reason to oppose more stringent standards, even when the benefits to consumers far outweigh the potential cost.

I agree that HUD has important questions to answer today. I believe that HUD could do more to implement the reforms laid out in the 2000 Act. But as long as we are being honest, I think the industry also needs to take some responsibility. It isn't serving its customers as well as it should. It offers a product that doesn't work for many people as advertised. It seems to resist innovations and improvements in customer service if they don't obviously improve as the bottom line.

Personally, I am interested in reforms that the industry and consumer advocates agree on, things like access to good financing, better laws protecting manufactured homeowners who rent their land, better implementation of installation standards and dispute resolu-

tion, and more efficient HUD management. These are things that matter, and which as a homeowner can improve the quality of your life. These are things that we can start figuring out how to fix.

I want to thank you once again, Madam Chairwoman, for calling this hearing. Before I yield back the balance of my time, I would like to ask unanimous consent to have four letters representing concerns of consumers entered into the record.

Chairwoman BIGGERT. Without objection, it is so ordered.

Mr. GUTIERREZ. Thank you, Madam Chairwoman.

Chairwoman BIGGERT. We will now go to the vice chair of the subcommittee. The gentleman from Virginia, Mr. Hurt, is recognized for 2 minutes .

Mr. HURT. Thank you for yielding, Madam Chairwoman. I appreciate your leadership and focus on the subject of manufactured housing, which is of great importance to my constituents, the citizens of Virginia's Fifth District.

Also, I want to thank you, Chairwoman Biggert, for allowing this subcommittee to conduct a field hearing in Danville, Virginia, last November on the state of the manufactured housing industry, which is not only a producer of affordable housing for thousands of central and south side Virginians but is also a critical source of jobs in manufacturing, retail, and related services in my district and throughout the country.

I would like welcome Administrator Czauski and thank him for his appearance before our subcommittee today. Mr. Czauski was gracious enough to come to Danville for the subcommittee's field hearing on manufactured housing policy. I appreciate the perspective you shared on the state of the industry at our previous hearing, and I look forward to continuing that dialogue today. Thank you for being here.

As we learned in Danville at the field hearing, the manufactured housing industry's ability to respond to the changing economic conditions is being hindered by the lack of financing available to those who wish to purchase these homes.

We also have found that the one-size-fits-all provisions of the Dodd-Frank Act failed to account for the unique method of financing for manufactured homes, creating troubling, unintended consequences, namely decreased access to affordable housing choices for consumers and fewer jobs in the manufactured housing industry.

Today's hearing will focus on other aspects of the regulation of manufactured housing industry, the manner in which HUD administers the Manufactured Housing Improvement Act of 2000, and how these issues are impacting the industry and the consumers it serves.

Again, I would like to thank the chairwoman for holding this important hearing today, and I look forward to hearing from our witnesses. I yield back the balance of my time.

Chairwoman BIGGERT. Thank you, Mr. Hurt, and I thank you for having the field hearing earlier in Virginia.

With that, I would like to recognize the gentleman from Texas, Mr. Green, for 2 minutes.

Mr. GREEN. Thank you, Madam Chairwoman. I thank you and the ranking member for hosting the hearing also. I also thank you

for allowing me to be a part of the hearing, since I am on the Financial Services Committee but not on this subcommittee. So, I thank you.

Chairwoman BIGGERT. But you have the best attendance.

[laughter]

Mr. GREEN. Well, thank you very much.

I am honored to have the opportunity to hear the witnesses today, and I am interested in some of the things that happened when Hurricane Katrina hit the Gulf Coast. We have a lot of concerns with manufactured housing. After Katrina, we have the concerns with the formaldehyde and some of the safety issues associated with manufactured housing.

Someone is going to give us a little bit of an update on how we have improved some of those standards such that persons, consumers can purchase a home and be assured that the home is going to provide shelter without a fear of some sort of harm from some of the things that may be contained within the actual product itself.

With this, I thank you, and I yield back the balance of my time.

Chairwoman BIGGERT. The gentleman yields back.

The gentleman from California, Mr. Miller, is recognized for 2 minutes.

Mr. MILLER OF CALIFORNIA. Thank you, Madam Chairwoman.

The manufactured housing industry has faced significant hurdles over the past decade. New manufactured home construction has fallen roughly 80 percent over the past decade which has accounted for more than 160 plant closures, more than 7,500 home center closures, and the loss of 200,000-plus jobs.

In addition to current economic conditions, Federal regulations are contributing significantly to the decline and demand for manufactured housing. It is not that manufactured housing is less desirable for consumers but rather that Federal regulation has made it difficult for consumers to buy manufactured homes, for example, a significant decrease in finance availability for homebuyers, overly strict rules interpretations regarding loan origination, and the outdated HUD code. This is unacceptable.

Congress must address the problem the Federal Government has caused that impedes the ability of consumers to obtain mortgage financing for manufactured homes. In conjunction with the Manufactured Housing Institute, my colleagues Representative Fincher and Donnelly and I have developed a bipartisan bill to address some of these concerns.

Yesterday, Representatives Fincher, Donnelly, and I introduced the Preserving Access to Manufactured Housing Act, H.R. 3849.

Chairwoman Biggert, I ask unanimous consent to introduce this into the record.

Chairwoman BIGGERT. Without objection, it is so ordered.

Mr. MILLER OF CALIFORNIA. The bill addresses two main issues facing the industry. This bill will make sure qualified homebuyers have access to financing for manufactured homes. Specifically, this provision would amend the definition of high-cost loans or recognize that small balance loans are fundamentally different than large balance loans and treat them accordingly.

The bill reduces unnecessary regulatory compliance and training costs by appropriately defining the loan origination process. Specifically, the bill would clarify that manufactured housing employees are not required to register and train as loan originators under the SAFE Act so long as they don't engage in the business of loan origination.

It is important to note that the actual loan originators would still be subject to the SAFE Act. I think it is something we need to do for the industry. We need to turn the process around and give the industry a chance to recoup after this downturn they faced.

I yield back the balance of my time.

Chairwoman BIGGERT. The gentleman yields back.

The gentleman from Wisconsin, Mr. Duffy, is recognized for 2 minutes.

Mr. DUFFY. Thank you, Madam Chairwoman. I want to thank the panel for coming in today. Specifically, I want to thank Mr. Hussey for coming in. He is involved with Liberty Homes that manufactures housing not only around the country, but in my district, where Liberty Homes employs 80 people in Dorchester, Wisconsin.

We are well aware that they are a great job creator but they also provide affordable, safe, low-cost housing to people in my district. That is a dual benefit that we have from Liberty Homes in Wisconsin's Seventh Congressional District.

I am well aware of the December 2000 law that passed Congress, the Manufactured Housing and Improvement Act of 2000. Its intent was to streamline the regulatory burdens and open up financing for homeowners. I am well aware that quite a few folks on this panel don't believe that the intent of the law has come to pass, and I look forward to hearing the testimony of the panel about some of the issues that you face, and to pass on some of the solutions that we may address to resolve the problem.

I yield back.

Chairwoman BIGGERT. The gentleman yields back.

The gentleman from Illinois, Mr. Dold, is recognized for 5 minutes.

Mr. DOLD. Thank you, Madam Chairwoman and—

Chairwoman BIGGERT. Sorry, 2 minutes.

Mr. DOLD. Oh, she has already cut the time. Okay. I will take 2 minutes, maybe even less.

Certainly, Madam Chairwoman, thank you very much for holding this hearing, and I want to thank our panelists for being here today. I certainly look forward to your testimony.

As you know, Congress has an ongoing obligation to review and monitor the laws that it passes to ensure that these very laws make sense in the real world, that they are having the intended effect, and that they have not caused unintended negative consequences as well.

A very significant part of this ongoing congressional obligation includes oversight responsibility for the various Executive Branch agencies to ensure that they are correctly implementing and executing the laws passed by this body.

In this case, it has been over a decade since Congress passed the Manufactured Housing Improvement Act of 2000. That 2000 law

was designed to reform the entire regulatory framework of the manufactured housing industry and was passed on a bipartisan basis after many years of study, negotiation, and compromise.

However, in the 12 years since the 2000 law was enacted, many have alleged that HUD throughout both the Bush and Obama Administrations has systematically undermined and effectively invalidated the 2000 Manufactured Housing Law and wasted taxpayer dollars while doing so.

Today, as part of our ongoing oversight responsibilities, we consider whether HUD has properly and responsibly implemented the 2000 Manufactured Housing Improvement Law and if not, why not. What are the resulting consequences and what should Congress do about it?

The manufactured housing industry has struggled with so many job losses and plant closings over the past 12 years while customers have found financing options extremely limited, unavailable or unaffordable.

I look forward to hearing from our witnesses today to what extent HUD's interpretation and implementation of the 2000 Manufactured Housing Law has contributed to these significant industry challenges.

And with that, I yield back.

Chairwoman BIGGERT. The gentleman yields back. Without objection, all Member's opening statements will be made a part of the record.

I will now introduce our panel of witnesses: Henry Czauski, Acting Deputy Administrator for the Office of Manufactured Housing Programs, U.S. Department of Housing and Urban Development; John Bostick, chairman, Manufactured Housing Association for Regulatory Reform; Ishbel Dickens, executive director, Manufactured Home Owners Association of America; Edward Hussey, immediate past chairman, Manufactured Housing Association for Regulatory Reform; Dana Roberts, past chairman, the Manufactured Housing Consensus Committee; and Manuel Santana, director of engineering for Cavco Industries, on behalf of the Manufactured Housing Institute.

And with that, each panel witness will be recognized for 5 minutes for a summary of your testimony.

We will start with Mr. Czauski. You are recognized for 5 minutes.

**STATEMENT OF HENRY S. CZAUSKI, ACTING DEPUTY ADMINISTRATOR, OFFICE OF MANUFACTURED HOUSING PROGRAMS, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)**

Mr. CZAUSKI. Chairwoman Biggert, Ranking Member Gutierrez, and members of the subcommittee, thank you for the opportunity to testify today.

My name is Henry Czauski, and I am the Acting Deputy Administrator for the Office of Manufactured Housing Programs at HUD.

My remarks today will highlight key aspects of the Manufactured Housing Improvement Act of 2000 and will outline the actions undertaken by HUD since this legislation was enacted to demonstrate how it has and continues to implement the Act.

In 1974, Congress enacted the National Manufactured Housing Construction and Safety Standards Act, which was amended by the 2000 Act. HUD was charged with administering this legislation.

The key aspects of the 2000 Act included the creation of a Consensus Committee and an organizational infrastructure to support it, a process for revision of the construction and safety standards, enhanced preemption, establishment of installation standards, and a dispute resolution program and a label fee.

A Consensus Committee known as the “Manufactured Housing Consensus Committee,” the MHCC, was created as a Federal Advisory Committee to provide recommendations to HUD to adopt and revise Federal manufactured housing construction and safety standards, as well as procedural and enforcement regulations.

To assist the MHCC, the Act provided for HUD a contract with an administering organization. In 2001, HUD contracted with the organization and has continuously maintained a contract to this date. The makeup of the MHCC is determined by the 2000 Act, which provides for 21 voting members appointed by the Secretary that includes 7 producers, 7 users representing consumer interests, and 7 persons representing public officials and the general interest.

HUD announced the initial 21 members of the committee in August 2002 and has continued this process for appointment of members to the committee to the current time. Since the creation of the committee, approximately 35 meetings have been held, an average of 3 meetings per year.

The Federal standards are the subject of ongoing review and updating. Over the years, numerous standards were reviewed by the committee and submitted to the Secretary, including recommendations on ventilation, fire protection, carbon monoxide detection, anti-scald protection, and energy efficiency.

In addition, HUD established installation standards and a dispute resolution program by regulation in 2007. Federal preemption is the key concept and provides that no State or political subdivision has authority to establish any standard which is not identical to the Federal standards.

The 2000 Act provided preemption to be broadly and liberally construed to ensure that disparate State and local requirements or standards do not affect the uniformity and comprehensiveness of the Federal standards. HUD has been and continues to implement preemption. Jurisdictions attempting to enforce local standards have been notified that local laws are subject to Federal preemption.

The 2000 Act also reaffirmed the authority of the Secretary to establish and collect the reasonable label fee to offset the expense of carrying out the Act. The label fee was set at \$39 in 2002. Revenues generated from this fee are used in accordance with the 2000 Act for conducting inspections and monitoring; providing funding to the States with approved plans; administering MHCC; and the administration of the enforcement of installation standards and a dispute resolution program.

Although a fee increase of \$60 was considered, that fee has not been increased, and the Department intends to consider the impact of an increase on the industry before implementing any change.

HUD also insures loans for the purchase of manufactured homes and Title I and Title II of the National Housing Act.

These FHA loans are eligible for inclusion in mortgage-backed securities issued by the Government National Mortgage Corporation, Ginnie Mae. In June 2010, Ginnie Mae launched a new manufactured housing securitization program, and in 2011, securities from Ginnie Mae guaranteed nearly \$100 million in mortgage-backed securities for manufactured housing loans. Together, FHA and Ginnie Mae have provided guarantee mechanisms which facilitate the availability of capital for manufactured housing.

In closing, the Department has acted diligently to fully implement the 2000 Act, has a history of actively engaging with all the stakeholders, and will continue to do so. I want to thank you for the opportunity to provide testimony before the subcommittee today, and I would be pleased to answer any questions.

[The prepared statement of Mr. Czauski can be found on page 58 of the appendix.]

Chairwoman BIGGERT. Thank you very much.

Mr. Bostick, you are recognized for 5 minutes.

**STATEMENT OF JOHN BOSTICK, CHAIRMAN, MANUFACTURED HOUSING ASSOCIATION FOR REGULATORY REFORM (MHARR)**

Mr. BOSTICK. Good morning. My name is John Bostick. I am the chairman of the Manufactured Housing Association for Regulatory Reform (MHARR). I am also president of Sunshine Homes headquartered in Red Bay, Alabama, and I also live in a Sunshine manufactured home.

Sunshine Homes is a producer of manufactured homes built in accordance with the Federal construction and safety standards enforced by the U.S. Department of Housing and Urban Development.

MHARR is a national trade association founded in 1985 and based here in Washington, D.C., which represents the views and interests of mostly smaller independent producers of federally-regulated manufactured housing including Sunshine Homes.

With me here today is Ed Hussey, my predecessor as the chairman of MHARR, who was chosen by Congress to serve on the National Commission on Manufactured Housing.

Historically, manufactured homes have accounted for about 20 to 25 percent of the new single-family homes sold in the United States. In 1998, our industry manufactured 373,000 homes. Since then, however, the industry has experienced a decline that is unprecedented in severity and length and has seen production and sales decline by nearly 90 percent. In 2010 and 2011, total industry production was approximately 50,000.

The decade-plus decline of the industry is a result of entrenched discrimination against both the product and the market segment that it primarily serves, discrimination that has grown in recent years due to the intentional policy decisions by Federal regulators and as an unintended consequence of other decisions within the Federal buracracy; this discrimination was supposed to have been a thing of the past.

More than a decade ago, Congress enacted the Manufactured Housing Improvement Act of 2000. That landmark Act, which amended the original National Manufactured Housing Act of 1974,

was designed based on 12 years of congressional study and the findings of a National Commission on Manufactured Housing to complete the transition of manufactured homes from the trailers of yesteryear to legitimate housing at full parity with other types of homes.

Congress in that law not only acknowledged the importance of the affordability of manufactured homes, making the maintenance of that affordability an express purpose of the Act, but also enacted specific reforms to the HUD Manufactured Housing Programs designed to end past abuses and transform the program into a housing program that would ensure equal treatment in the role of manufactured housing for all purposes within HUD and elsewhere.

The reality has been much different, as is detailed in MHARR's comprehensive written testimony. HUD has failed to fully and properly implement the vast majority of the key programs that Congress deemed necessary in the 2000 law. After 12 years, Congress needs to send HUD a clear and unmistakable message that the 2000 law means what it says and that HUD must change course and implement the law in accordance with the expressed terms in its full intent and purpose. The 2000 law is not in need of change. It is HUD's implementation of that law which has to change.

Chairwoman Biggert and Ranking Member Gutierrez, I thank you for holding this hearing, and for the opportunity to appear here today and address the subcommittee.

MHARR has already submitted comprehensive and detailed written testimony addressing all of these issues, and we would ask that it be included in the record for this hearing.

We also look forward to answering any questions that you or your colleagues may have. Thank you.

[The prepared statement of MHARR can be found on page 36 of the appendix.]

Chairwoman BIGGERT. Thank you, and that material is included with your testimony which is included in the record. So, thank you.

Ms. Dickens, you are recognized for 5 minutes.

**STATEMENT OF ISHBEL DICKENS, EXECUTIVE DIRECTOR,  
MANUFACTURED HOME OWNERS ASSOCIATION OF AMERICA  
(MHOAA)**

Ms. DICKENS. Good morning Chairwoman Biggert, Ranking Member Gutierrez, and members of the subcommittee. Thank you for the opportunity to share the Manufactured Home Owners Association's perspective with you.

My name is Ishbel Dickens, and I am the executive director of the Manufactured Home Owners Association of America. I have been working with manufactured home owners for more than 20 years. I started out as a volunteer, collecting signatures to prevent a manufactured housing community in the vicinity of my church from being closed. I then became a community organizer and then went to law school specifically to get my law degree to advocate for people who own their homes and but not the land under them. In 2010, I completed Harvard University's Kennedy School Achieving Excellence Program, and I have been the executive director of MHOAA since November of 2010.

MHOAA is a national association of manufactured homeowners and represents the interests of 17 million people who live in manufactured homes. In fact, there are approximately 3,400,000 manufactured homeowners represented in the 12 States on this subcommittee.

There are more than 50,000 manufactured housing communities throughout the United States, and they provide rental spaces for 2.9 million households upon which to place their homes.

There are a number of reasons why people choose to live in manufactured homes, including the fact that the homes tend to be less expensive and can often be purchased without a downpayment. They are often seen as attractive options for seniors and for young families just starting out on the homeownership ladder.

Many people choose to live in manufactured housing communities because the preference is for the gated communities; safe places to live. However, manufactured homeowners, especially those living in land lease communities, soon begin to realize that their American dream of homeownership is turning into a nightmare as landlords impose higher and higher rents without any corresponding improvement in the community and most especially when landlords sell the land under their homes without compensating them for the result and displacement in the loss of their homes.

Other negative aspects related to manufactured home living relate to the cost of buying a manufactured home. Most purchasers are steered towards chattel rather than real estate loans. This means they have to pay a higher interest rate over a shorter period of time resulting in double monthly payments.

Besides the ever-increasing rent and the constant looming threats of the land under the home being sold, homeowners are also very worried about lack of security of tenure. Landlords provide only one-year rental agreements that may or may not be renewed and certainly don't provide the homeowner with security of tenure. Why would they spend their life savings and take cash in an expensive chattel loan to purchase a manufactured home if they have no security of tenure. Thus, the current state of manufactured housing in this country is fraught with anxiety, inequality, and lack of predictability.

I wanted to address some of the MHCC issues that have come up. I think the Manufactured Housing Consensus Committee plays a vital role for both consumers and the industry. The makeup of the Committee—seven members representing consumers, seven representing the industry and seven representing the general public—is the only place where manufactured homeowners will have an equal voice.

When manufactured housing community landlords have the power to close the communities and displace all the homeowners, when they have the power to raise the rent to such an extent they cause economic eviction, and when the enforced rules which basically have absolved them of all the responsibility then the playing field is so uneven that manufactured homeowners begin to feel like prisoners in their own homes.

At least on the MHCC, manufactured homeowners have an equal voice. They have a forum where their voice matters. They exercise

that voice, and they make sure that the homes that are built are durable and long-lasting. The MHCC is there to advise the Department on a range of issues related to construction and safety of manufactured homeowners. This quality oversight is vital for consumers.

The MHCC is required to meet not less than once every 2 years. I have been to two in-person meetings in 2011 and an additional orientation meeting as a new member of the committee.

The MHCC bylaws allow for public participation in both the general and all subcommittee meetings; therefore, the two main industry players, MHI and MHARR, are very well represented. In fact, I think the record will show that the public comment session is dominated by the industry.

There are four subcommittees on the MHCC, and we meet by telephone between in-person meetings to discuss a variety of issue that are brought before us. A majority vote on the subcommittee is enough to bring those issues to the full committee, and a two-thirds vote on the full committee is what takes the issue forward to the Department. It is a laborious process, but it works because it gives everyone a voice, and it is really worthwhile in the time it takes to get us to consensus.

I think there are some solutions, and I think there are ways that the industry and the homeowners can work together, and I would like to address just a few of them. Both the homeowners and the producers want a quality product at an affordable price that will last, allowing homeowners to age in place.

Manufactured homeowners also want to know that when they take out a loan, it is on a product where the financing will be affordable, and that the land upon which they place that home will be there for the long term. More homes would be sold if the industry worked with manufactured homeowners to guarantee long-term leases to ensure people were not displaced due to economic eviction and where manufactured home communities had security of tenure either through purchase of the land wherein the landlord wants to sell it or through zoning laws to preserve manufactured housing communities long term.

The industry could also encourage more manufactured home sales if they supported a titling and had manufactured homes provided with the same financing tools that are available for site-built homes.

I think the government also has a role to play, and I would like to point out that there are some 14 States where there are no protections for manufactured home owners. It would be great if the Federal Government could require HOME States to have manufactured housing protection laws in place before they were given HOME dollars for instance, or where the Federal Government could provide tax incentives to encourage community owners to sell to homeowners' associations or to housing authorities.

Also, I think before this community next week, there will be a hearing on the Affordable Housing Self-Sufficiency Improvement Act. It would be great if homeowners could use those vouchers not only to pay for the rental on the land but also to pay for the mortgage or the insurance on those homes.

I appreciate the opportunity to come here this morning, and I hope that MHOAA will continue to have conversations with both the industry and the government as together we ensure the long-term viability of the manufactured home industry and realize the potential for manufactured homes to play a large role in addressing the affordable housing crisis in this country today.

Thank you for the opportunity, and I look forward to further dialogue on this important topic.

[The prepared statement of Ms. Dickens can be found on page 63 of the appendix.]

Chairwoman BIGGERT. Thank you.

Mr. Hussey, you are recognized for 5 minutes.

**STATEMENT OF EDWARD HUSSEY, IMMEDIATE PAST CHAIRMAN, MANUFACTURED HOUSING ASSOCIATION FOR REGULATORY REFORM (MHARR)**

Mr. HUSSEY. My name is Edward Hussey. I am appearing today in my capacity as immediate past chairman of the Manufactured Housing Association for Regulatory Reform. I am also vice president of Liberty Homes Inc., headquartered in Goshen, Indiana, a manufacturer of manufactured and modular homes.

Over the course of more than 35 years, I have been involved in nearly every aspect of the production and marketing of manufactured homes and the Federal regulation of manufactured home construction and safety. I have had the privilege of testifying before Congress previously about the benefits and advantages that manufactured homes provide to families seeking the American dream, and I was honored to serve as a House of Representatives appointee to the National Commission on Manufactured Housing in the 1990s which developed a conceptual blueprint for reforms to the Federal Manufactured Housing Program at the U.S. Department of Housing and Urban Development that were ultimately enacted by Congress as part of the Manufactured Housing Improvement Act of 2000. The enactment of the 2000 law was a major watershed event for the manufactured housing industry. From humble origins nearly 80 years ago as a type of quasi vehicle, mobile homes in the 1960s and 1970s experienced a period of rapid growth of evolution that pointed to the need for Federal regulation to ensure quality and protect homeowners while ensuring the affordability and acceptance of manufactured homes nationwide.

As a result, Congress adopted the Manufactured Housing Construction and Safety Standards Act of 1974, which established the current HUD Regulatory Program based on three interrelated principles: first, uniform performance-based Federal construction and safety standards to allow innovation and to take advantage of the efficiencies of factory built construction; second, robust Federal preemption to avoid a multitude of nonconforming State and local standards that would unnecessarily increase cost; and third, uniform, federally-based enforcement of the standards.

While the original 1974 law fostered major technological advances that saw the trailers of the post-World War II era become legitimate housing that in almost all instances remained at the original home site once installed, the HUD program established by

that law was effectively a program for trailers complete with recall provisions.

As the industry progressed, it became evident by the 1990s that both the Federal Manufactured Housing Law and the Federal program needed to change in order to keep pace with the industry, allow manufactured housing to reach its full potential, and remedy HUD program deficiencies that had become evident since the inception of the Federal regulation in 1976.

Following 12 years of study and analysis including the recommendations of the National Commission, Congress enacted the 2000 law making what were supposed to be major changes to the HUD Manufactured Housing Program. Those changes were designed in part to ensure the continuing affordability of manufactured housing and more importantly to complete the final transition of manufactured homes from the trailers of yesteryear to legitimate housing at parity with all other types of homes.

Among the centerpiece reforms of the 2000 law were: one, the creation of a strong independent Consensus Committee similar to those used to develop other American building codes, to consider new and revised standards, enforcement regulations, interpretations, and changes to enforcement policies and practices; and two, an appointed noncareer administrator for the HUD program to finally bring manufactured housing into the mainstream of HUD programs, policies, and initiatives.

Unfortunately, it has not worked out the way that Congress had intended. Instead of fully implementing the 2000 law as Congress and the National Commission intended, HUD has done everything in its power to maintain the old status quo of pre-2000 and either ignore or materially alter the changes that Congress sought to bring about.

The result is that manufactured housing, as far as HUD and other governmental and quasi governmental agencies are concerned, stands essentially where it did when Congress convened the National Commission in 1993, a semi-vehicular "trailer" in need of "improvement" through constantly expanding regulation and enforcement. This outdated and indefensible orientation has had a domino effect on the entire industry and its consumers, subjecting both to ever worsening discrimination that among other things has virtually eliminated public and private consumer financing for manufactured home purchases and has negatively impacted the placement and acceptance of manufactured housing.

As detailed in our MHARR written statement, manufactured housing production since the enactment of the 2000 law has declined more than 86 percent from 374,000 homes in 1998 to 50,000 homes in the last 2 years. Over the same period, nearly 75 percent of the industry's production facilities have closed and more than 7,500 retail centers have closed.

This represents a devastating loss of affordable housing opportunities for lower- and moderate-income American families, and hundreds of thousands of jobs throughout the manufactured housing industry have simply disappeared.

And this has occurred in no small part due to HUD's refusal to embrace manufactured housing and the clear directives that Congress set out in the 2000 law. Manufactured housing can and

should be a private sector solution in conjunction with other programs to meet the housing needs of Americans on all rungs of the economic ladder without the need for subsidies that needlessly burden taxpayers and increase the Federal deficit and Federal debt. Manufactured housing can fulfill this role and provide the American dream—

Chairwoman BIGGERT. Mr. Hussey, if you could wrap up please?

Mr. HUSSEY. I am. Just to be clear, Madam Chairwoman, there is nothing wrong with the 2000 law. It does not need to be altered or amended. The issue is its implementation by HUD.

Chairwoman Biggert, Ranking Member Gutierrez, we thank you for holding his hearing and for the opportunity to address the subcommittee.

[The prepared statement of MHARR can be found on page 36 of the appendix.]

Chairwoman BIGGERT. Thank you.

Mr. Roberts, you are recognized for 5 minutes.

**STATEMENT OF DANA ROBERTS, PAST CHAIRMAN, THE  
MANUFACTURED HOUSING CONSENSUS COMMITTEE (MHCC)**

Mr. ROBERTS. Thank you, Chairwoman Biggert and Ranking Member Gutierrez. My name is Dana Roberts. I am here today because I was a member for over 6 years of the Manufactured Housing Consensus Committee, and its first chairman until my resignation from the committee in July of 2008. Until my retirement from the State of Oregon, I served as Oregon's operation's manager for the manufactured housing program.

Among my responsibilities were Oregon's implant inspections, Oregon's Consumer Assistance Program that includes investigating concerns by homeowners involving dealers, retailers, manufacturers, and sellers and reaching resolution of those concerns under either Federal or State law. I also administered Oregon's manufactured installation set-up standard and was the chairman of the committee that created that standard.

Based upon my years of experience managing Oregon's Manufactured Housing Program, I am of the opinion that the manufactured housing industry produces quality homes in the plant that are equal to site-built homes for the money. The number one problem facing the industry before the 2000 Act is not using the right type of foundation for the home's use. The law allows the industry to use two different types of foundations: one, for houses that retain the ability to move from one piece of land to another; and two, one for houses that would be permanently attached to piece of land and considered just like any other site-built housing.

Upon the passage of the Act and my experience as member and chairman of the Consensus Committee where we interpreted the Act and had to reach a two-thirds consensus before we made any recommendations to HUD—the opinion, the Act, legislation gives the Department all the tools needed to administer a National Manufactured Housing Program.

The number one problem facing the industry today is HUD's administration and interpretation of the Act. I would note that writing more statutory language, so HUD can misinterpret the language, doesn't fix the problem.

HUD has declared major portions of work to build the house as not part of the home's construction. They have declared building any part of the foundation, completing the end walls including siding, sealing around the windows, exterior painting, completing the joining of sections together, connecting to utility service, completing the roof between sections, installing any shipped loose items such as plumbing, electrical, appliances, laying down of the carpet, completing tape and texture is not part of the home's construction.

This interpretation has allowed HUD to make additional interpretations that deviate from the purposes of the Act. Utilizing this interpretation, HUD has interpreted the Act to not utilize the Consensus Committee to solicit consensus-based recommendations and program actions such as rules, regulations, policies, and interpretations. They are not considered construction standards according to HUD's definition.

As a result of that, the MHC has no responsibility to provide periodic recommendations regarding the installation standards for updating because they don't view installation standards as construction standards. HUD has also rejected from the Consensus Committee's recommendation for a national installation standard the distinguishment between the two types of foundations that I mentioned previously.

We also tried to put in place a process according to the Act to update the standards on a regular basis like other construction standards do or site built for modular housing. We did get HUD to, in 2007, solicit public information on how to update the standards but they have done nothing with it.

HUD viewed any recommendation on standard changes from the committee as not been formally in front of them until we put it in a rule format where they could file it in the Federal Register. The Consensus Committee does not have the expertise to complete a rule format as required by the Department for submittal in the Federal Register. We can show how to change a rule or we can't add all but the departmental caveats that go to the Federal Register.

In conclusion, the Act does not need to be changed. What needs to be changed is HUD's interpretation of the Act and a need to clarify what type of installation and foundation is needed to permanently attach a home into a piece of land so that lenders and homeowners can have reliance that a manufactured home is just like other conventional housing and is equal to or as equal to site built or modular housing.

You will find further information about these issues in my written testimony. I am asking you today to direct HUD to change their interpretations in keeping with your intent in the Act and to do three things. Consider installation as construction. The Congress intends to use the Consensus Committee to receive input from the industry and consumers before they take action, and Congress intends to use a consensus-based process for updating of the standards.

Thank you for giving me the opportunity to appear.

[The prepared statement of Mr. Roberts can be found on page 71 of the appendix.]

Chairwoman BIGGERT. Thank you, Mr. Roberts.

Mr. Santana, you are recognized for 5 minutes.

**STATEMENT OF MANUEL SANTANA, DIRECTOR OF ENGINEERING, CAVCO INDUSTRIES, ON BEHALF OF THE MANUFACTURED HOUSING INSTITUTE (MHI)**

Mr. SANTANA. Thank you, Chairwoman Biggert, Ranking Member Gutierrez, and members of the subcommittee for the opportunity to testify this morning.

My name is Manuel Santana, and I am the director of engineering for Cavco Industries. I am appearing today on behalf of the Manufactured Housing Institute. I also serve on the HUD Manufactured Housing Consensus Committee.

Today, I will focus on a few key aspects regarding HUD's implementation of the Improvement Act of 2000. There is no question that an efficient streamlined system of building regulations is important to ensure a robust economy, the availability of financing, and enhanced acceptance from homebuyers and communities across the Nation. In spite of a number of regulatory challenges facing our industry, there is no shortage of consumers who want to purchase manufactured homes. The most significant impediment faced by manufactured housing and its 19 million residents remains the availability of an access to financing.

MHI was pleased to testify last November during a hearing before this subcommittee on this important issue and we continue to work on a bipartisan basis to educate Members of Congress about the unique financing challenges present within our industry. We are grateful for the consideration and leadership the committee has provided in this area.

The Improvement Act has made a number of important changes to streamline an update to HUD code and increase the availability of affordable housing. Of significance, it allowed for the creation of minimum Federal installation standards. While HUD's implementation of this important component of building code regulation is not yet complete, it has gone a long way to enhance consumer satisfaction and improve the quality and durability of manufactured housing.

There are other aspects of the Improvement Act that remained incomplete. MHI is committed to partnering with the professional and dedicated workforce at HUD to help achieve the goals of the Improvement Act. We look forward to addressing the challenges that remain. First, the efficiency of the rulemaking process. The Improvement Act requires HUD to take action and approve or reject proposed standards within 12 months after submittal by the Consensus Committee.

Since its inception, the Consensus Committee has met numerous times and has recommended numerous revisions and updates to the HUD Code. Unfortunately, the vast majority of these recommendations have not reached completion. As a result, the HUD Code has not been able to keep pace with changing construction practices, standards, and new technologies. It has hindered industry's ability to keep pace with consumer demand and expectation. More importantly, an outdated HUD Code has led to the development of additional regulations by a second Federal agency.

MHI is seriously concerned about new energy standards to be imposed by the Department of Energy. A lack of action by HUD to update energy standards now means that industry will be subjected to duplicative Federal building code regulations and enforcement. This will have the real impact of raising the cost of manufactured housing.

The Improvement Act requires that changes to policies, practices or procedures affecting standard regulations and inspections or other enforcement activities must be submitted to the Consensus Committee for review. HUD has long hold the position that only construction and safety standards are subject to consider this committee purview. This has served to limit the influence and impact that the Improvement Act intended not preemption.

The Improvement Act underscored the preeminent status of the HUD Code over all other State and local building code. Congress recognized the importance of Federal preemption as a key element to the production and distribution of manufactured housing. A single uniform code is essential to manufacture housing and that it preserves affordability. Unfortunately, HUD has not followed through our request from MHI and the Consensus Committee to update its policy and preemption so that it is more tuned to the Improvement Act.

The Improvement Act specifically calls for the broad and liberal interpretation of the HUD Code. In practice, HUD's interpretation has been narrow and conservative. This has led to an increase in State and local efforts to support the HUD Code with additional local and State regulations.

Finally, the appointment of a noncareer administrator. Even though the Improvement Act does not mandate the appointment of a noncareer administrator, such an individual is key to an effective manufactured housing program in order to oversee the timely development of code and standards and to serve as a much needed advocate for manufactured housing and its consumers in HUD's overall mission, policies, and programs. And considering the necessity of a fee increase, it is important to evaluate the current program and objectively determine if the agency is meeting program priorities within its existing budget.

Appointing a noncareer administrator is an essential first step that should be taken prior to implementing any fee increase. The Improvement Act was intended to facilitate the availability of affordable manufactured housing and to increase homeownership to all Americans. MHI believes that the issues we have outlined today must be resolved in order to achieve these important goals and will remain committed to working with HUD, Congress, and other stakeholders.

Chairwoman Biggert and members of the subcommittee, thank you for the opportunity to testify of this important issue. I welcome any questions.

[The prepared statement of Mr. Santana can be found on page 81 of the appendix.]

Chairwoman BIGGERT. Thank you, Mr. Santana.

We will now move to the questions from the members and I will yield myself 5 minutes.

My first question is for Mr. Santana. In your view, how could the HUD Manufactured Housing Program be improved to foster more innovation? Can you provide an example of how outdated building codes have impeded innovation and utilization of state-of-the-art building products and construction methods?

Mr. SANTANA. In my view, the best way to improve the process is to help streamline the acceptance of new products and materials. Currently, the process is burdensome and it takes a long time to complete. Because of this, we are unable to get certain appliances approved in a timely fashion, for example, tankless water heat heaters which we install in modular homes. They are installed in residential stick-built construction and they are also installed in—we have to follow a lengthy process to get acceptance of this well-established appliance.

Chairwoman BIGGERT. Thank you.

Mr. Czauski, how often has the HUD Code been updated since the passage of the 2000 Act? Has the HUD Code kept up with building technology, and do you have any suggestions to improve the process for developing and updating the HUD Code?

Mr. CZAUSKI. Updating the HUD Code has been an ongoing process since the 2000 Act. There have been a number of changes and I mentioned some of those in my testimony regarding ventilation and energy efficiency, and with regard to improving the process, I certainly applaud the Consensus Committee and support the efforts of the Consensus Committee in providing recommendations to the Department with regard to improvements and improving technology. They are what Congress believes to be experts and it is a group of manufacturers, users, State regulators, and others who make the Consensus Committee effective in what it does in making those recommendations to the Department.

Chairwoman BIGGERT. We heard that HUD limits what the consensus group can take up.

Mr. CZAUSKI. I did hear that comment, but to my knowledge, and I have been Acting Deputy Administrator since July of last year, I am not aware of and I certainly have no reason to believe that HUD would want to limit the input of the Consensus Committee on matters involving manufactured housing. I think it is—for the Secretary's benefit, it is a second bite at the apple, so to speak, when we get input from the Consensus Committee and then we go out with the Federal Register notice for public comment. I think it is the best of both worlds.

Chairwoman BIGGERT. All right. And my third question is for anyone who would like to answer it.

There are existing organizations that develop codes for residential housing and commercial buildings, that develop codes and review and revise these codes. Do you know how long these groups take to revise it and review and issue a new code? And is this a method for updating regularly, updating building codes for your industry that you would prefer over HUD or consider as an alternative to HUD performing this function?

Mr. Roberts, I thought you might want to take this question?

Mr. ROBERTS. Thank you, Madam Chairwoman. Most site-built and modular construction codes are either on a 2- or 3-year cycle.

The 2000 Act choosing 2 years is in keeping with the other construction codes, so I don't think you need to change the timeframe.

The other codes used a consensus-based committee to make those recommendations. And they go into the code and they tell you what changes to specific language of the code need to occur. Once that happens, it goes to the governing bodies, be it a city or State depending on who adopts the codes or—and they actually go through their rulemaking process to enforce that code after it has been adopted.

And I view the Consensus Committee's responsibility for every 2 years to make those recommendations to the Department as normal. Within 2 years of our enactment, by 2004, we gave the Department 185 changes to their construction standards. In 2005, they adopted about 50 of those. The other 135 changes have sat on their desk since 2005 and now are so outdated because some of the changes we made were based on codes that have been further changed. So now, they have to go back through the process.

Chairwoman BIGGERT. So you think that there might be a better way to do that with an alternative?

Mr. ROBERTS. I think the better way to do that is to remove HUD's interpretation that they can't act on a Consensus Committee proposed rule until it is in a format to be filed in the Federal Register. And until that happens, HUD says, "We haven't officially received it."

Chairwoman BIGGERT. All right. Thank you. And my time has expired.

The gentleman from Illinois, the ranking member of the subcommittee, is recognized for 5 minutes.

Mr. GUTIERREZ. Thank you very much. Welcome to you all.

So as I hear the testimony today, four of you believe that HUD is really the problem that the mobile home—modular home industry has, because that is what I have been hearing. It is HUD, HUD, HUD, HUD, and nobody else's problem. You are not, any of you, responsible in your industry for any of the problems that you might be having. As a matter of fact, if HUD would just listen to you, all your problems would be resolved. And maybe that is the case.

But just so that we are clear, I, when I was chairman of the housing committee in the City of Chicago, I had a demonstration project of modular pre-manufactured housing in my district. Six of those buildings have since been demolished. They are gone. The other two have never appreciated in value as much as the homes adjacent to them.

I think there is a question of what are these people purchasing and the quality of the construction that people are purchasing. And I really enjoyed the scenes with my colleagues on the other side of the aisle as they continue to insist that Washington doesn't have the answers, that the answers really are at the local level, that we should be listening to people at the local level and not the Washington inside-the-beltway answers.

I agree with them. I think there are standards for housing, for codes that are developed across this country and I think those housing codes should be respected. If people want to come in and construct in the City of Chicago or in the City of Las Angeles or

in the City of Santa Fe or Seattle or any other city, they should respect those housing codes that exist there, because those housing codes are supported by the people and the localities that exist there by city councils, mayors, and State legislators who have created those laws. So I agree with my colleagues on the other side of the—they do know how to do it better at the local level, and Washington, D.C., doesn't have all of the answers.

I would like to say that as I look at this, because I heard testimony that the percentage of manufactured housing compared to new single family home sales and, let me say in 1990, it was 35 percent of all the sales, in 1995, it went to 51 percent, that is the majority of sales of homes in the United States were manufactured. But then it went down and it just seems to me that it is kind of like the economy, right? People do better and people did better. In 1997, 1998, 1999, and 2000, people did better.

And if people did better, they are going up, I believe, for a more expensive home and one that is built on-site, because that is the home that does not depreciate in value, because many mobile homes and many pre-manufactured homes actually do once you take them out; they are like my car. Once I drive it off the lot, it is worth a lot less than when I looked at it all nice and shiny on the lot. And so, people will have a tendency of doing that.

And the other thing is that we had an incredible bubble which you participated in. People bought more homes as a bubble, but if I can buy a—if I can buy a stick-built house or on-site house and I can get a no-doc mortgage and I can get a loan, I am going to go there instead of the difficulties that many of you would have. But I noticed that your percentage is actually, as the economy improves, it is actually improving also. So it seems like the bubble hit, and now you are getting a larger percentage.

I would like to ask Ms. Dickens—your testimony reminds me of issues that we deal with in public housing in Section 8. We have laws that ensured that resident advisory boards have rights, that affordable housing units are preserved when private owners sold their properties and tenants are given some degree of choice. But it sounds like manufactured homeowners faced a unique set of problems in their community. They don't have protection. Is this something that you hear a lot from your members, and what do you think we can do about it?

Ms. DICKENS. Thank you, Mr. Gutierrez. Yes, the majority of the MHOAA members are incredibly fearful of economic eviction, of closure of their communities or the loss of their largest asset, their homes. And it seems to me that the industry could really help us there. I kind of feel like the industry wants both, because the members of MHI and the members of MHARR want to sell more homes, but there are also members who are raising the rents in these communities and you can't have it both ways.

If the industry would work with us to encourage community owners who may be their members to have long-term leases, to provide security of tenure, to encourage their members when they sell their communities, to sell to the resident's associations and there are national models. ROC USA is a national model of a very well-run and organized program that helps homeowners form associations and

purchase the land under their homes as cooperatives, none of which have ever foreclosed on their loans.

There are also housing authorities and other nonprofit agencies who can step in and have stepped in and purchased manufactured housing communities to preserve affordable homeownership opportunities as part of the continuum of affordable housing.

Manufactured housing is the largest unsubsidized source of affordable homeownership in this country and I believe we need to continue to preserve and maintain that opportunity for seniors, and for young families just starting out on a homeownership ladder. Indeed, there are things we can do that would make purchasing a manufactured home actually an attractive option.

I would like to share with you, I was once in a public hearing in Washington State where the attorney for the community owners was asked if he would encourage his mother to move into a manufactured-home community. His response was, "Not only would I not encourage my mother to move into a manufactured-housing community, I would not advise anybody to move into a manufactured-housing community." And this was the attorney for the landlords. So if they don't want you to move in, why should the homeowners themselves ever consider it?

Mr. MILLER OF CALIFORNIA [presiding]. Thank you.

Mr. Hurt, you are recognized for 5 minutes.

Mr. HURT. Thank you, Mr. Chairman.

I thank each of you for appearing today. I had sort of two subjects that I want to cover and I was hoping to hear from Mr. Czauski as well as Mr. Bostick and Mr. Hussey in particular.

The first deal is with the label fee. We discussed this in Danville at our hearing. I have a concern any time that we are going to impose additional fees, especially at the time when small businesses and manufacturers are having a hard enough time surviving, especially as it relates to this sector. Obviously, those costs will have to be borne by the ultimate customer and when you look at where we are with housing in this country and what has happened in the last 4 years since the crash in 2008, affordable housing is now more important than ever, and obviously we don't want to be at cross purposes in making—in putting additional burdens on manufactured housing.

So I understand the proposal to increase the fee from \$39 to \$60. I would like to hear from Mr. Czauski as well as Mr. Bostick and Mr. Hussey as to: first, how do you justify that; and second, how will that impact the manufacturers of manufactured housing and will that be an unreasonable cost?

And in the second part, it has to do with financing. I think what we heard in Danville was that the financing was more and more difficult at a time again where we have, I think as Mr. Hussey said, "We have a private sector solution here for making housing more affordable for Americans," and I wonder what can be done at HUD and what can be done by this committee as it relates to Dodd-Frank in the lending and appraisal standards. What can be done to address the lack of financing at the administrative level that is at the HUD level as well as at this committee level in terms of legislation and dealing with Dodd-Frank?

So Mr. Czauski, if you could address both of these issues briefly and then I would like to hear from Mr. Bostick and Mr. Hussey on these issues.

Mr. CZAUSKI. Yes, sir. With regard to the first issue of the fee increase, the fee increase had been raised from \$39 to \$60 and that had been a number of years ago when I had entered into this position, we did review that proposal and tried to ascertain the justification for raising that fee. And after receiving feedback internally and from the meeting in Danville, the Department is currently in the process of evaluating the justification for raising that fee, the impact that fee would have on the industry, and any negative consequences. So with regard to the fee issue, we are reevaluating the decision or the proposal to raise the fee and to what extent it should be raised.

With regard to the second question, I did—a representative from Ginnie Mae did join me today, and with your permission, I will defer to him and address—

Mr. HURT. I would like to leave enough time for Mr. Bostick and Mr. Hussey so if it is very, very briefly—is the person with you there, is that the idea?

Just if you could state your name and what you are doing and then if you could just very briefly try to answer the question.

Mr. KEITH. Yes, sir. My name is Gregory Keith and I am the chief risk officer at Ginnie Mae.

I don't think I am really qualified to speculate on some of the issues that you are focused on related to Dodd-Frank. Obviously, our role is to facilitate the securitization of this product and create liquidity in the market place. So unfortunately, I don't think I can address your question related to Dodd-Frank.

Mr. HURT. All right.

Mr. Bostick?

Mr. BOSTICK. When you understand the need for or looking at the label increase, our question would be, what is HUD planning to do with the money? In my business, during the downturn of our industry, we downsized, laid off, did everything under the sun to survive. And my question is, is HUD going to use this money to get bigger in a time when the industry is getting smaller? That would be my response on the label fee.

Mr. HURT. What about financing?

Mr. BOSTICK. On financing, we have some good examples of discrimination against our industry. We are 20 percent at least or a minimum of 20 percent of the housing available in this country. At Fannie Mae, we are less than 1 percent of their portfolio, Freddie Mac less than 1 percent of their portfolio.

Mr. HURT. So just very briefly, we are over time. Briefly, how we do we address that? What can we do?

Mr. BOSTICK. They tell us that they don't purchase manufactured housing loans, but in the turn around, they tell us that manufactured housing loan performance is way out or better than site built.

Mr. HURT. Thank you, Mr. Bostick. And I think maybe if I get time at the end of the hearing, maybe we will get to you, Mr. Hussey. I apologize for going over.

Mr. MILLER OF CALIFORNIA. Mr. Green, you are recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

Again, I thank the witnesses for appearing and I apologize if this is slightly off topic, but it is something of concern to me. I represent a district in Houston, Texas, and as you can well imagine, when Katrina hit as well as Rita, we had some contact with persons in Louisiana and Mississippi and I want to harken back if we can to the Katrina trailers issue.

As you know, we passed legislation to deal with formaldehyde in trailers and I understand as legislation interested in doing to what extent it has been properly implemented, because we had a January 1, 2013, deadline for promulgating the rules and regulations for implementation of the Formaldehyde Standards for Composite Wood Products Act. So, I am interested in this.

But before we get to this, I would like to, if I may, ask about the Katrina trailers. We had over 100,000 of these, as I understand it. What happened ultimately to these Katrina trailers, many of which were thought to have levels of formaldehyde that produce some concerns, irritation of the throat, the eyes? What happened to these trailers?

The representative from HUD, please?

Mr. CZAUSKI. Thank you for your question. The trailers that you are referring to, for the mobile homes were sold to FEMA, I understand. And they were under the jurisdiction of FEMA.

I know that there is an issue with regard to whether or not some of these homes were—as opposed to manufactured homes, HUD manufactured homes under the code. I understand that recently FEMA has issued a policy to the extent that it is their intention to use HUD manufactured homes with regard to any emergency housing in the future.

With regard to the formaldehyde issue, HUD didn't have formaldehyde guidelines with regard to the construction of manufactured housing. And—

Mr. GREEN. Could you repeat that? I am sorry. I didn't quite understand that last sentence.

Mr. CZAUSKI. HUD didn't have guidelines with regard to formaldehyde under legislation. I understand that EPA is otherwise overseeing the issue of formaldehyde limits and that HUD will comply with the rulemaking that EPA issues with regard to formaldehyde.

Mr. GREEN. Can the public be assured that, as it related to HUD, we are doing all that we can to deal with the question of—the formaldehyde and the wood products that go into these mobile homes, manufactured homes?

Mr. CZAUSKI. At the current time, I believe that Congress had delegated authority to the EPA to address the issues of formaldehyde. HUD did have its own limit with regard to formaldehyde emissions from wood products. And to the extent that is now required to comply with the EPA guidelines, we are deferring to them and the rulemaking process which I assume will include public comments or just add issue.

Mr. GREEN. Thank you. I will continue this, I am sure, at another hearing. But I do appreciate your sharing with me.

Let me ask one additional question. Ms. Dickens, you have spoken about mobile home security to a limited extent and how per-

sons buy into what they believe to be secured areas and how they find themselves being evicted by virtue of increases in the cost of actually maintaining the property. Is there something else you would like to add to this, because I know that in your statement you didn't get quite through it? Would you like to add anything more?

Ms. DICKENS. Thank you, Mr. Green. The main issues are where manufactured homeowners often feel like prisoners in their own homes. They really don't have any other options. When the community owner continually raises the rent beyond what the homeowners can afford, it continually passes on to the homeowners costs that used to be absorbed by the community owner, for instance, the care of the trees on the their lots, repaving the driveways, and taking care of things that used to be the landlord's responsibility. And the homeowners are just completely stuck. They cannot sell their homes, because no one else would want to move into that situation, and they can't act like apartment dwellers who simply pack their bags and move on somewhere else.

They really do feel like they have this millstone around their necks. And I think that when they do have security of tenure, when they do have the ownership of the land opportunity then you get very well maintained, very well organized communities where the homeowners really do work together to preserve the property for themselves. Right now, it is like share cropping. They improve the land for the benefit of the landlords and they get no return on that investment when the community closes it and the landlord sells it.

And so, they really are stuck between a rock and a hard place, and they don't get the same protection as single-family homeowners, the chattel mortgages are very expensive. You can't deduct mortgage interest on a chattel loan the way you can in a real estate loan. So they are buying an expensive product or at least using expensive money to buy an affordable home, if you like. But then, there are big problems in situations in manufactured housing communities that they cannot easily get out of. When the community closes and they are displaced, they get no compensation for the loss of their largest asset, their home. They are just simply left to deal with that themselves.

Mr. GREEN. Thank you. We have gone beyond my time. I yield back the time that I do not have.

Mr. MILLER OF CALIFORNIA. Thank you. Now I give myself 5 minutes.

I have been involved in the construction industry since my early 20s as a builder/developer. And I have been through the 1970s recession, the 1980s recession, the 1990s recession, and this one is different, but they were all different. I remember prime in 1981, 1982 going to 21½ percent and nobody could get a loan at prime. But financing has impacted every aspect of the industry today. It seems like a few years ago, if you could read and sign your name, they would give you loan. Now, even if you are very qualified, you can't get a loan.

I guess my first question would be to either Mr. Bostick or Mr. Hussey—legislation that recognizes small business loans are fundamentally different than large bounce loans and they should be

treated appropriately by the Federal regulators. Our bill is to distinguish manufactured housing employees from loan originators. How important are these changes in the industry and how urgently should it be applied?

Mr. Hussey?

Mr. HUSSEY. I think they are very important to the industry and they should be applied as quickly as we possibly can. You talk about the last 2 years being a bust for the housing industry. Our industry has been in a bust since 1998 and has been going downhill ever since and has not recovered. And the main reason for that is the financing for the homes. Congress recognized that a couple of years ago when it passed in 2008, I think, a provision in that law which stated that the GSEs had a duty to serve manufactured housing, as well as other underserved markets and that provision would have provided additional funding and additional financing for manufactured housing if the GSEs had survived.

I think one of the the points that needs to be made concerning the 2000 Act and your bill is that we still need that noncareer administrator there at HUD to champion these causes. Had that non-career administrator been there from the year 2000 on, hopefully, we would have been included in a lot more financing programs, we would have qualified for a better financing programs for our homes, not only our chattel homes which comprise about 30 percent or 35 percent of our market, but also real property loans that comprise 65 to 70 percent of the market.

If we had that individual there to champion those programs and the sense of Congress for the duty to serve, I think we would be in a lot better shape today, and if that individual was there after your law passes as quickly as possible—

Mr. MILLER OF CALIFORNIA. I have a question. We were—

Mr. HUSSEY. —we would have championed those—

Mr. MILLER OF CALIFORNIA. —a little confused on the noncareer versus career that has been brought up repeatedly and has not really been defined so far. Why do you think there is a difference there?

Mr. HUSSEY. I think if an individual is within the bureaucracy for an extended period of time, it has been our experience that they tend to lose the focus for the outside of the industry—they are not responsible to the Administration directly that appointed them.

Mr. MILLER OF CALIFORNIA. Okay.

Mr. HUSSEY. I think that—plus I believe we can get someone to take that position who has a good knowledge of manufactured housing, who doesn't confuse manufactured housing with RVs and modular housing, and other forms of factory-built—

Mr. MILLER OF CALIFORNIA. How would a noncareer be to your benefit then versus—

Mr. HUSSEY. I think that individual is more responsive to the Administration that appoints him and would not be directly involved with the career individuals. Really, the career individuals at HUD who have run this program have been there for a long time.

Mr. MILLER OF CALIFORNIA. Yes.

Mr. HUSSEY. And it is their reluctance to—

Mr. MILLER OF CALIFORNIA. Do you think it is ingrained within the bureaucracy that you are actually being discriminated against

in that fashion. I know today, there are adequate funds from multi-family housing, and they are doing very well; apartments, condos, townhomes, but you are being discriminated against in your reality or your perspective. Is that correct?

Mr. HUSSEY. That is correct.

Mr. MILLER OF CALIFORNIA. Is it because of the difficulty of convincing people that you are providing quality, readily available housing versus the nontraditional construction type house that has been developed?

Mr. HUSSEY. It is difficult convincing even this panel of the differences between or the similarities between conventional housing and our housing, our factory-built housing and the differences between recreational vehicles.

Mr. MILLER OF CALIFORNIA. I understand the similarities. I remember when you were—they came on pretty strong in the 1970s and you were out competing with the stick-and-brick builders out there, and you are providing very nice housing at a better price and quicker. I think there is a true benefit out there. I don't see a major difference at all.

Mr. HUSSEY. There is a tremendous cost advantage—

Mr. MILLER OF CALIFORNIA. There is a cost advantage.

Mr. HUSSEY. —to the factory built housing, yes.

Mr. MILLER OF CALIFORNIA. Yes, and time. Time is money. And you can compete in a way they can't.

Mr. HUSSEY. Right.

Mr. MILLER OF CALIFORNIA. I guess, Mr. Santana, could you expand on the effects of vague guidance from HUD and the State implementation of the SAFE Act on your industry?

Mr. SANTANA. At its most basic, the SAFE Act has led to disservice to consumers who are trying to buy a manufactured home because the sales reps are hesitant to educate or provide any kind of assistance on the financing process due to a fear of violating portions of the SAFE Act that are unclear.

And I think that might sum it up right there. If a consumer goes into a retail store to buy a house, and they select one and they say, "Okay, where do I go from here?" The rep says, "I can't help you because I am afraid to violate the SAFE Act."

I think it is very important to try to expand and explain what was actually intended by the SAFE Act and who it would apply to and who it does not.

Mr. MILLER OF CALIFORNIA. I didn't mean to cut you off, Mr. Hussey, but we are running out of time. You and I could have gone on for another half-hour, I think.

Mr. Sherman, you are recognized for 5 minutes.

Mr. SHERMAN. Ms. Dickens asked this question to my staff about once every 2 years for quite some time, what can we do to help those who live in manufactured housing? I will ask you—I have read your testimony. The one thing you suggest is the voucher program change, so I am aware of that idea. But I have a more specific question about home financing.

Outside of home financing in this voucher program, is there anything for the Federal Government to do to help California mobile home owners?

Ms. DICKENS. Thank you, Mr. Sherman. I believe that supporting the MHCC is one thing that the Federal Government can do. The MHCC is a really important venue for manufactured homeowners where we have an equal voice. It is the only place—

Mr. SHERMAN. I have read your testimony on that. From what I hear, and correct me if I am wrong, lenders are charging much higher interest rates on mobile homes and requiring much higher downpayments; that makes it hard to sell a mobile home, depresses the value of mobile homes in a particular park, and apart from that is because the lender is—why is it that the lenders charge so much interest? Is it because of the liability they might have if the mobile home isn't up to spec?

Ms. DICKENS. Yes, certainly, for lenders where the home is placed in a manufactured-housing community, the lender has no guarantee that the home is going to be there long term and neither does the homeowner have any guarantee that the home is going to be there long term. So yes—

Mr. SHERMAN. So, one—

Ms. DICKENS. —it is certainly—

Mr. SHERMAN. —reason why the interest rate is high is the mobile home park may cease to exist.

Ms. DICKENS. That is part of it. The other part may be that most likely, it is a chattel loan which has a much higher interest rate than a regular real estate mortgage loan.

Mr. SHERMAN. Although the mobile home interest rates seem to be much higher than automobile interest rates these days.

Ms. DICKENS. I have known of people buying manufactured homes with a personal credit—

Mr. SHERMAN. Are Fannie and Freddie willing to buy these loans?

Ms. DICKENS. I am sorry?

Mr. SHERMAN. Will Fannie and Freddie buy mobile home loans, have they bought any significant number?

Ms. DICKENS. I am sorry. I don't know the answer to that, but I will get back to you on that one.

[Ms. Dickens' response can be found on page 128 of the appendix.]

Mr. SHERMAN. Okay. What would you think of an idea that would say, if you have lived in your home for at least 3 years and you sell it, the lender does not have any vicarious liability for whether the home is up to spec at that point?

Ms. DICKENS. That might help encourage the lenders to be more willing to loan on those homes, absolutely.

Mr. SHERMAN. But as to the rest of the industry, focusing on somebody who has lived in their home for a few years, who now wants to sell to somebody who can get financing, what can we do to help them?

Mr. HUSSEY. I think if I may respond, Mr. Sherman?

Mr. SHERMAN. Okay.

Mr. HUSSEY. I think, providing a reasonable secondary market for chattel loans, if someone has lived in their home for a couple of years, now they are going to sell just the home—

Mr. SHERMAN. We do have a secondary market for auto loans, so that is the secondary market for chattel loans. Does that market accommodate mobile home loans?

Mr. HUSSEY. As I understand it, there is no secondary market for chattel manufactured home loans.

Mr. SHERMAN. Okay. And do you know whether under California law, these are typically true to this chattel?

Mr. HUSSEY. In California law, no. In the Indiana law, I can tell you that if the home is a home-only loan, it is treated as a chattel loan.

Mr. SHERMAN. Okay.

Mr. HUSSEY. If the home is combined with real property, it can be treated—

Mr. SHERMAN. No, one advantage homebuyers have is Fannie and Freddie still exist, and they put in effect a Federal guarantee on these loans which is why the secondary market is very happy to buy loans secured by a single-family residences even at 4 percent interest rates.

Does the industry or anybody here have any proposal for getting Fannie and Freddie to do for the mobile home buyer what it is doing for the stick and brick and mortar homebuyer?

Mr. HUSSEY. I think that the industry has in the past asked both the GSEs for programs to provide secondary markets for chattel loans and for manufactured home loans. At one time, both the GSEs had about a 4 to 5 percent of their portfolio that consisted of manufactured homes.

Of course, these are traditional mortgage-type loans. Today, that has less than 1 percent of their—

Mr. SHERMAN. So, you had a proposal, you weren't able to convince them at that time, and now they have a very, very small ownership of mobile home loans?

Mr. HUSSEY. That is correct.

Mr. SHERMAN. Okay. Do you want to get those proposals to my office?

Mr. HUSSEY. Certainly.

Mr. SHERMAN. We have a feather duster, and we will dust them off—

Mr. HUSSEY. We will be happy to.

Mr. SHERMAN. And whether we can prod them in the right direction.

Mr. MILLER OF CALIFORNIA. The gentleman's time has expired.

Mr. SHERMAN. I think my time has expired.

Mr. MILLER OF CALIFORNIA. You could ask a question before it expires.

Mr. Dold, you are recognized for 5 minutes.

Mr. DOLD. Thank you, Mr. Chairman. I certainly appreciate, again, our witnesses taking the time to join us this morning.

Mr. Hussey and Mr. Roberts, you both had expressed that the 2000 law did not need to be changed, but instead focus on what is going on at HUD in terms of how it is being implemented. I think one of the roles that we have certainly here on this committee and in this body is to try to make sure again, on the oversight capacity, that those laws are being followed. And also trying to make sure that there are no unintended negative consequences.

And so, I guess my first question to you, to try to make sure that we are safeguarding the ability to have manufactured homes and that we have this alternative that oftentimes is at more of an affordable cost, is what can we be doing? What should we be doing? And what should HUD be doing differently in order to make sure that we are moving this process forward?

Mr. ROBERTS. Yes, Congressman. I believe you need to direct HUD to change their interpretation of the Act.

Mr. DOLD. Okay, specifically, if you can—

Mr. ROBERTS. Specifically, they have said work done on-site, like the installation, like the joining of sections, is not part of the home's construction. They don't view that as being part of the construction of a home. When they make that decision, then they can say anything related to that activity is not part of the Consensus Committee.

They further go on and say the work that is part of the Consensus Committee, which is how you build the home inside the plant, we won't consider it until you put it in the form of a formal rule ready to be filed in the Federal Register, which means all of those recommendations we did in 2004 sat on the shelf for 7 or 8 years not brought forth for consideration for public comment because they weren't put in the form of a formal rule, which the Consensus Committee lacks the expertise to do.

Mr. DOLD. If I can just stop you there for a second, because I would like HUD to have a chance to talk about that. We have 180 recommendations that are sitting on the shelf, and why in the world is HUD not taking a more active role to try to adopt some of these recommendations or at least bring them to light?

Mr. CZAUSKI. Let me explain the process just a little bit to help clarify.

Mr. DOLD. Okay.

Mr. CZAUSKI. Under the 2000 Act, an administering organization was to be under contract to provide assistance to the Consensus Committee in managing and operating that committee, which included maintaining a list of any recommendations that the Consensus Committee would submit to HUD. The Consensus Committee has not always reached a consensus, but to the extent that it has, it has forwarded recommendations to HUD.

HUD has either acted or is in the process of acting on those, and I can provide you with a list of all of those recommendations that HUD has acted upon, but I am not aware of any delay, that HUD is intentionally not acting on any of the recommendations of the Consensus Committee.

Mr. DOLD. Okay. Maybe I am misunderstanding, because what I am hearing from Mr. Roberts is the fact that the Consensus Committee has made recommendations as early as 2004 to the tune of about 180, is that correct Mr. Roberts? And what you are saying is that there is no delay that you know of. I consider between 2004 and today to be a pretty significant delay. If you reviewed them and said, "We are not going to do them," that is fine. But to say that there are 180 on the shelf, I think there is a significant problem. I would like to shift if I could—

Mr. ROBERTS. Just a point of clarification. Out of the 180 in 2005, they have adopted about 50 of them. What has been on the shelf is the remaining 135.

Mr. DOLD. Okay. That is certainly helpful. Ms. Dickens, you had made some opening comments with regard to some of the concerns that are out there for those individuals who have purchased manufactured homes, and I certainly would love to get your recommendations on how this body, the Federal Government, and again, I am concerned that we don't want to be having a heavy hand if the Federal Government comes down to individual States and municipalities. But what do you think we ought to be doing to—

Ms. DICKENS. Thank you.

Mr. DOLD. —better enable homeowners?

Ms. DICKENS. Thank you, Mr. Dold. Yes, you are absolutely right that for the most part, a lot of the relationship between the community owner and the homeowner rests at the State level. However, there are 14 States in the Union that do not have any State protections for manufactured homeowners, and the one thing that I think the Federal Government might want to consider so that at least the community, the homeowners in those 14 States have some fundamental freedom, some protection to exercise constitutional rights, would be to require those 14 States to have on their books some legislation that determines the real relationship between the community owners and the homeowners.

And I know that you can't impose a heavy hand as you say but perhaps, considering that there are some proposed regulations around HOME funds right now, that perhaps those HOME dollars could be withheld from States that do not have mobile home landlord-tenant acts in place until such time that they do have them in place.

HOME dollars are to help provide affordable housing. If those 14 States enacted the legislation to protect manufactured homeowners, then you wouldn't need those HOME dollars to help displaced manufactured homeowners. Those HOME dollars could go and help other people who need assistance with affordable housing. That is one thing that is current and very pertinent to the Federal Government.

Another idea would be ways to encourage community owners. When they choose to sell, again, not requiring them to sell, but if and when they choose to sell, provide them with some kind of Federal tax credit that would encourage them to sell to the resident homeowners association or to a local nonhousing authority or non-profit affordable housing entity, in that way, we continue to boost our manufactured housing as part of the continuum of affordable housing.

And then the third thing, a bill that will be coming before this committee next week, the Affordable Housing Improvement Act, allows manufactured homeowners to use vouchers to help pay towards the rental of their space. It would be wonderful if vouchers could also be used by manufactured homeowners to help pay towards the mortgage and insurance on their home.

So, those are the three very specific things that the Federal Government could consider. Thank you.

Mr. DOLD. Thank you so much. Mr. Chairman, my time has expired.

Mr. MILLER OF CALIFORNIA. Following up one question with what Mr. Dold was asking Mr. Czauski and it wasn't responded to, out of 185 regulations, 50 were implemented, where the heck are the other 135 and why haven't they have been implements? That was never responded to.

Mr. CZAUSKI. Oh, I—with regard to the number, I cannot—

Mr. MILLER OF CALIFORNIA. I believe that the 130—

Mr. CZAUSKI. The number is—

Mr. MILLER OF CALIFORNIA. Where are they?

Mr. CZAUSKI. It is my understanding that probably the number was much higher with regard to the number of recommendations—

Mr. MILLER OF CALIFORNIA. I would ask you, on behalf of the committee then to respond back to the committee in writing what regulations are out there that haven't been implemented, where they are at, and why are they sitting there? With the consent of the committee, we ask that you respond back. What is the reasonable amount of time to do that?

Mr. CZAUSKI. Certainly.

Mr. MILLER OF CALIFORNIA. Thirty days?

Mr. CZAUSKI. Let me check with our administering, within—

Mr. MILLER OF CALIFORNIA. As soon as possible.

Mr. CZAUSKI. As soon as possible.

Mr. MILLER OF CALIFORNIA. We are just not telling you but that—based on the situation of the industry that seems, from 2004, I believe it is unreasonable. I am a member of the committee to accept the fact that of 185, let us say only 50 have been implemented and 135 were sitting there.

Anyway, Mr. Stivers, you are recognized for 5 minutes.

Mr. STIVERS. Thank you, Mr. Chairman. I appreciate it, and I appreciate the witnesses' time. I have learned a lot about manufactured housing. I want to follow up on some questions asked by other members. It seems to me that the panel has really talked about some great positives of manufactured housing, the affordability, the fact that it can be manufactured for 10 to 35 percent less, but there are clearly some issues involving more expensive financing and some tenant issues.

My first question is for Ms. Dickens, because it hasn't really come up. What percent of folks in manufactured housing are tenants and rent the ground under their feet versus the people who actually purchase ground and pour a pad themselves and do all that?

Ms. DICKENS. Thank you, Mr. Stivers. I believe that there are about 2.9 million households who rent the land under their homes in about 50,000 to 56,000 manufactured housing communities across the country, and there are probably—I am guessing, and maybe the industry can give you a better answer—3.8 million households who own their homes and a few simple situations where they also own the land.

Mr. STIVERS. Go ahead, sir.

Mr. SANTANA. According to a census data, it is more like 25 percent.

Mr. STIVERS. I am sorry?

Mr. SANTANA. It is 25 percent.

Mr. STIVERS. Twenty-five percent own and 75 percent rent. Is that what you are saying?

Mr. SANTANA. No, it is the other way around.

Mr. STIVERS. Other way around, 75 percent only.

It does seem to me, and I am new at this, that the issues, the tenant issues and everything, and I know Mr. Gutierrez has talked about how home values didn't keep up in some of the manufactured home communities. Some of that might be based on the fact of the folks who choose to purchase the home and rent the ground, and it is maybe a situation that is just not working.

How many folks inside the industry have worked to try to change that, and I do want to talk to Mr. Czauski about the HUD regulation that probably make that more difficult but we talked about earlier that don't consider foundation work, don't consider work with windows or siding or ceiling or any of those things as part of the home loan process or part of the construction process.

Is there any move away from the mobile home parks toward real ownership of land? Is that something you are seeing more of in the industry and in the marketplace? Anybody can answer.

Mr. HUSSEY. Maybe I can give some guidance. Over the years, there has been a move away from chattel mortgages and away from communities. Not very many communities are currently being developed in the United States. That has been more of a zoning issue than anything else and the parks that are out there, the communities that are out there relatively full depending on which part of the country you are in.

Our industry is building more and more sectional-style houses that are going on real property, that are being put on permanent foundations and being treated as real property.

Mr. STIVERS. Sure. And like Mr. Sherman asked earlier, we do want to make sure we look out for the 2.9 million people who are already in these situations. With that, I do want to ask Mr. Czauski about this whole idea of site work. If you don't have a foundation on a house, whether it is bricks and mortar or whether it is a manufactured home, it is not a sustainable situation. Why is that not considered part of the manufacturing process?

Mr. CZAUSKI. Oh, it is part of the manufactured housing process, sir. In 2007, in accordance with the 2000 Act, HUD did issue model installation regulations, and there are 33 States that have—and those are minimum standards for installation. The Department works with States as—

Mr. STIVERS. It is wrong when all these witnesses have said that any part of the foundation work including putting walls, stabilizing supports, anchoring it all, that is not considered part of the house as construction?

They have just said something that is not true?

Mr. CZAUSKI. I can only speak to the existing statute and the regulations which do provide installation standards that are published in the Federal Register in the 24 CFR. And in addition, by statute, it allows States to implement their own installation requirements. There are 33 States that have already done that, and we work with State regulators that review those installations according to the State's standard.

Mr. STIVERS. And I am almost out of time so, I know a couple of people raised their hands, would you like to respond to that?

Mr. SANTANA. Yes, I would. I am a little unclear on the issue here because the way that I understand it, although set up in foundation and site completion isn't part of the construction of the home. It is part of the program. There is an installation standard that is out there that specifies a need for a way to set a home, a way to peer a home, a way to complete the home on site.

Mr. STIVERS. Would one of the folks, and I am almost out of time, actually, I am out of time, if the chairman would allow me. Would one of the folks who brought up that point like to clarify what the issue is?

Mr. ROBERTS. Yes, Mr. Chairman. Mr. Santana just said it. He said that is not part of the construction but there is a standard. The Federal Government doesn't consider it part of the construction under the Act, then they don't have to regulate it under the Act. All they have to do is adopt the minimum standard and that is it. And they have directed that it is not preempted then, under the Act.

Further, they have directed that the Consensus Committee doesn't treat it as a construction standard under the Act and have periodic updates to that.

Mr. MILLER OF CALIFORNIA. Would anybody like to briefly answer that?

Mr. ROBERTS. Excuse me, one point, and to further clarify that, they put it a separate section in their regulations for the construction standards so they can keep that clear distinction between what is the construction standard and what is an installation.

Mr. SANTANA. If I may?

Mr. MILLER OF CALIFORNIA. Yes, sir.

Mr. SANTANA. I think what Mr. Roberts is getting at is that there are a lot of components to the HUD program. You have a set of standards, you have a set of regulations, and you have a set of installation standards. And I think what this comes back to is HUD's interpretation on what is under the purview of the Consensus Committee. They have stated that only the standards are under the purview while the Act says that all the standards, regulations, and installation standards should be under or should be available for Consensus Committee review.

Mr. MILLER OF CALIFORNIA. The time has expired, but there are a significant number of questions that have arisen and have yet to be answered. One of them would be construction standards, installation, etc. The most glaring would have to be the regulations and the lack of understanding and enforcement of those. I think that is an appropriate hearing in the future that should be considered by this subcommittee to deal specifically with those regulations. But I want to thank the panel; you have been very informative. I wish we had more time to delve into your concerns and issues.

The Chair notes that some Members may have additional questions for the panel which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for Members to submit written questions to these witnesses and to place their responses in the record.

This hearing is adjourned.

[Whereupon, at 11:46 a.m., the hearing was adjourned.]

# **A P P E N D I X**

February 1, 2012



**Manufactured Housing Association for Regulatory Reform**

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**TESTIMONY OF THE  
MANUFACTURED HOUSING ASSOCIATION FOR REGULATORY  
REFORM**

**ON THE IMPLEMENTATION OF THE MANUFACTURED  
HOUSING IMPROVEMENT ACT OF 2000**

**BEFORE THE  
SUBCOMMITTEE ON INSURANCE, HOUSING AND COMMUNITY  
OPPORTUNITY  
OF THE  
COMMITTEE ON FINANCIAL SERVICES  
U.S. HOUSE OF REPRESENTATIVES**

**February 1, 2012  
Washington, D.C.**

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## **I. INTRODUCTION**

The following testimony is submitted on behalf of the members of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a Washington, D.C.-based national trade association representing the views and interests of producers of manufactured housing regulated by the U.S. Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000 (2000 law). MHARR was founded in 1985 and primarily represents medium and smaller-sized independent producers of manufactured housing from all regions of the United States.

MHARR commends the Subcommittee on Insurance, Housing and Community Opportunity, Chairperson Judy Biggert and Ranking Member Luis Gutierrez for convening this oversight hearing to specifically examine the implementation of the Manufactured Housing Improvement Act of 2000 and for providing MHARR the opportunity to detail the failure of the HUD Office of Manufactured Housing Programs (HUD program) to fully and properly implement key reform provisions of that law, as well as the impact of that failure on the manufactured housing industry and American consumers of affordable housing. MHARR also commends and appreciates the request made by Chairperson Biggert and Financial Services Committee Chairman Spencer Bachus to the Government Accountability Office (GAO) -- in conjunction with this hearing and the November 29, 2011 Danville, Virginia field hearing on "The State of Manufactured Housing" -- for a probe of specific aspects of the HUD manufactured housing program, including its implementation of the 2000 law and its excessive budget, appropriations requests and misspending.

Today's manufactured homes are a much superior product than the "mobile homes" of years past due to the maturation of the industry, innovative manufacturing techniques that take full advantage of the efficiencies inherent in indoor production and assembly, and updates to the federal law that governs the industry -- contained in the Manufactured Housing Improvement Act of 2000 -- that ensure the proper installation of all manufactured homes and the prompt resolution of consumer issues in addition to the regulation of manufactured housing construction and safety as established by the original 1974 manufactured housing law.

Manufactured housing is an outstanding value for consumers. Factory construction allows builders to produce manufactured homes for 10-35% less than the cost of comparable site-built construction. These savings, in turn, are passed on to homebuyers, as the average price (without land) for a manufactured home is \$63,000, as contrasted with an average of \$273,000 for a site-built home. Modern manufactured homes thus provide millions of Americans with the most affordable housing and home ownership option available without costly government subsidies. Literally, manufactured housing stands alone in its ability to help lower and moderate-income Americans achieve the American Dream of home ownership.

The manufactured housing industry is also uniquely American. Comprised of thousands of mostly smaller businesses, it has historically been not only the nation's leading source of inherently affordable home ownership, but an important source of manufacturing jobs and job opportunities in related industries across the heartland of America, including retail centers, communities, component fabricators and suppliers, transporters, insurers and finance companies, among many others. Today, though, millions of Americans who wish to own and live in their

own home and are attracted to manufactured housing because of its affordability and quality are unable to purchase a manufactured home because of discrimination rooted in federal policies and particularly HUD's failure – as the industry's federal regulator – to fully and properly implement crucial reforms contained in the 2000 law.

The numbers are startling. Over the past decade, manufactured home production has declined by more than 86% (from 373,143 homes in 1998 to 50,046 in 2010 and 50,000 +/- in 2011). Over the same period, nearly 75% of the industry's production facilities have closed (from 430 to fewer than 110), as have more than 7,500 retail centers. This represents a devastating loss of affordable housing opportunities for lower and moderate-income American families, while tens, if not hundreds of thousands of jobs throughout the manufactured housing industry have simply disappeared.

As these statistics demonstrate, the industry's downturn began long before the financial crisis and decline of the broader housing market starting in 2008, and has been much more severe. This indicates that while the manufactured housing market is not immune from trends within the broader economy and the broader housing market, its unprecedented decline – both in production levels and duration – is a consequence of other factors unique to manufactured housing, specifically, continuing and worsening financing and regulatory discrimination against manufactured housing and manufactured home-buyers that flows directly from policy decisions by HUD concerning the implementation of the Manufactured Housing Improvement Act of 2000.

That watershed law, enacted by Congress with unanimous bi-partisan support, was designed to modernize and reform the HUD manufactured housing program and complete the transition of manufactured housing from the "trailers" of yesteryear to legitimate "housing" at parity with all other types of homes. HUD, though, instead of implementing this legislation fully and in accordance with its express terms and purposes has, over multiple administrations, made a mockery of its most important reforms, ignoring some and distorting others through unilateral "interpretations," as is explained in detail below. By failing to fully and properly implement the 2000 law and by failing to achieve or even pursue its fundamental purpose of ensuring the status of manufactured homes as legitimate housing for all purposes, HUD has placed the manufactured housing industry and manufactured homebuyers in a no-win position.

First, it has enabled and facilitated discrimination against manufactured housing and manufactured homebuyers in public and private financing by the Government National Mortgage Association (GNMA) and the Government Sponsored Enterprises (GSEs), which effectively view manufactured homes as "trailers" and have thus imposed punitive terms and restrictions on manufactured home financing. These restrictions have decimated the availability of manufactured home purchase financing – especially the industry's most affordable homes financed through personal property (i.e., chattel) loans – have frozen millions of lower and moderate-income Americans out of the manufactured housing market altogether and have undermined competition within the manufactured housing finance market.

Second, the affordability of manufactured housing is being needlessly undermined by unnecessary and unnecessarily costly expansions of federal regulation wholly outside of the consensus process and other reforms established by the 2000 law. These policies, moreover, by disproportionately increasing regulatory burdens, compliance costs and financing difficulties for

the industry's smaller independent businesses, are destroying competition and underwriting the domination of the manufactured housing market by one or two large conglomerates to the ultimate detriment of consumers and the industry as a whole.

It must be stressed, however, that the 2000 law, itself, is not at fault. Indeed, Congress deserves to be commended for crafting such a forward-looking, comprehensive housing law. That law, based on 12 years of study, fact-finding and debate, including the analysis and recommendations of the National Commission on Manufactured Housing -- created by Congress and representing all stakeholders in the federal manufactured housing program -- is clear and unequivocal in expressing Congress' intent and in mandating specific reforms to the HUD manufactured housing program. Rather, it is HUD's improper and distorted implementation of the law that is responsible for the extended and continuing decline of the industry -- and corresponding hardships for manufactured housing consumers -- since its adoption.

As a result, the solution for the industry and consumers of affordable housing does not lie in the enactment of more laws or amendments to the existing law. Rather it lies in effective oversight by Congress designed to: (1) re-state and reaffirm that, in the view of Congress, HUD has failed to fully and properly implement the 2000 law; and (2) compel HUD to re-evaluate its interpretation and implementation of the 2000 law to date and revise its positions and policies to comply with the express terms of the law and its full intent.

The following sections, accordingly: (1) document key 2000 law reforms that HUD has failed to fully and properly implement; (2) detail the negative impacts of that failure on both the industry and manufactured homebuyers; and (3) explain and refute the rationalizations and excuses that HUD has offered for its distortion of these reforms and the 2000 law.

## **II. HISTORY OF THE FEDERAL MANUFACTURED HOUSING PROGRAM AND FEDERAL REGULATION**

Manufactured housing is affordable housing, historically used primarily by lower and moderate-income families. In order to maintain that affordability without the need for costly government subsidies, manufactured housing construction and safety must be regulated at the federal level. Federal regulation allows the full cost efficiencies and savings of factory-based construction to be passed to homebuyers by ensuring: (1) federal preemption of state and local standards, regulations and requirements, which facilitates interstate commerce and allows manufactured homes to be sited anywhere in the United States; (2) uniform, performance-based standards which facilitate technological innovation to achieve cost savings; and (3) uniform federal enforcement based on a balance between affordability and full protection of homeowners.

These unique concepts to ensure affordable homeownership, especially for lower and moderate-income families, were enshrined by Congress in the National Manufactured Housing Construction and Safety Standards Act of 1974. This law established the basic framework for the current HUD manufactured housing program and most aspects of the federal standards and enforcement system. At the time the 1974 law was adopted, however, manufactured homes were still transitioning from the vehicle-like "trailers" of the Post-War Era to legitimate, full-fledged housing. As a result, Congress based the 1974 law on the existing federal safety law for

automobiles, the National Traffic and Motor Vehicle Safety Act of 1966 (NTMVSA), complete with vehicle-like recall provisions.

As manufactured housing progressed and evolved into full-fledged housing, however, both Congress and the stakeholders in the federal program recognized the need to reform and modernize the original law to acknowledge and protect manufactured homes as legitimate, affordable “housing” at parity, for all purposes, with other types of housing. At the same time, a string of HUD regulatory abuses involving the adoption and enforcement of de facto standards, regulations and regulatory practices through “interpretations” adopted without notice and comment rulemaking, which denied the due process rights of manufacturers and simultaneously imposed needless and unjustified costs on both producers and consumers, highlighted the need for an open, transparent and accountable process for the development of standards, enforcement regulations, enforcement practices and related activities, as well as other fundamental program reforms.

Thus, in December 2000, after 12 years of congressional hearings, studies and analysis – and based upon the recommendations of the National Commission on Manufactured Housing (See, Final Report and Minority Report of the National Commission on Manufactured Housing, August 1, 1994, Attachments A and B) – Congress, on a fully bi-partisan basis, enacted the Manufactured Housing Improvement Act of 2000. This landmark legislation adopted key reforms to the original 1974 law which, if fully and properly implemented by HUD, would help transform manufactured housing from the “trailers” of yesteryear to modern, legitimate housing at parity with other types of homes. These seminal reforms include, but are not limited to:

1. Specific congressional recognition of manufactured housing as “affordable” housing and mandatory consideration of affordability in all decisions relating to the standards and their enforcement (section 602);
2. Creation of an independent, statutory consensus committee comprised of representatives of all program stakeholders with defined authority and procedures to consider, evaluate and recommend new or revised standards, enforcement regulations, interpretations and enforcement and monitoring practices and policies (section 604);
3. Presumptive Manufactured Housing Consensus Committee (MHCC) prior review of all program policies and practices of general applicability and impact (section 604(b)(6));
4. Mandatory appointment of a non-career manufactured housing program administrator as a statutory “responsibility” of the Secretary (Section 620);
5. Significantly enhanced preemption, to be broadly and liberally construed, applicable to all state or local standards or requirements (section 604(d));
6. Establishment of preemptive minimum federal installation standards as part of the Federal Manufactured Housing Construction and Safety Standards and a federal enforcement program for states without state law installation programs (section 605);

7. Establishment of a federal dispute resolution program for states without a state law alternate dispute resolution program meeting specified criteria (section 623);
8. Mandatory congressional appropriations approval of any change to the user fee paid by manufacturers to fund the program (section 620);
9. A prohibition on the use of any such revenues for any purpose not “specifically authorized” by the law as amended (section 620); and
10. Provisions requiring separate and independent contractors for all contract-based program functions including in-plant monitoring and inspections (section 620).

HUD, however, as detailed herein, has failed to fully and properly implement these reforms, effectively leaving manufactured homes as second-class “trailers” for purposes of federal regulation, financing, zoning, placement, insurance and other purposes, subject to overt and specific forms of discrimination that have undermined the availability of affordable manufactured homes and the ability of lower and moderate-income consumers to purchase and own a home that they can truly afford.

### **III. SPECIFIC 2000 LAW REFORMS THAT HAVE NOT BEEN FULLY AND PROPERLY IMPLEMENTED BY HUD**

#### **1. HUD Has Not Appointed a Non-Career Program Administrator**

Section 620(a)(1)(C) of the 2000 law directs HUD to “provid[e] ... funding for a non-career administrator within the Department to administer the manufactured housing program.” Congress directed the appointment of a non-career program Administrator not only to increase the accountability and transparency of the federal program, but also to act as a full-time advocate for manufactured housing, to “facilitat[e] the acceptance of the quality, durability, safety and affordability of manufactured housing within the Department.” Since 2004, however, the manufactured housing program has not had a non-career administrator, while HUD has consistently refused pleas by the industry to comply with this critical reform.

Without an appointed administrator, the HUD program today remains what it has always been since the inception of federal regulation in 1976, a “trailer” program, focused on “improving” presumptively deficient manufactured housing (even though the industry today is producing its best, highest quality homes), instead of increasing the availability and utilization of manufactured housing as a superior source of affordable, non-subsidized home ownership, as directed by Congress in the 2000 law. This program “culture” views ever more onerous, burdensome and costly regulation, with no proven benefits for consumers, as the ultimate objective of the program. (See, e.g., Attachment C, January 11, 2010 correspondence from HUD General Counsel Helen R. Kanovsky to Rep. Travis W. Childers (D-MS): “...updates to the relevant standards and regulations and [HUD efforts] to improve quality control practices will ... attrac[t] lenders back to manufactured housing.” See also, Attachment D, June 22, 2010 correspondence from HUD Assistant Secretary David H. Stevens to Rep. Bennie Thompson (D-MS): “You can, therefore, expect to see the Department ... concentrating on maintaining

preemption by updating the elements of performance addressed by the [HUD] construction and safety standards.”)

This negative program culture harms the public image of manufactured housing, negatively affecting sales, appreciation, financing, zoning, placement and a host of other matters to the detriment of both the industry and consumers. Moreover, at present, with career-level program management, the manufactured housing program is -- and remains -- cut-off from mainstream policy-making within HUD. This isolates manufactured housing from initiatives that could benefit the industry and consumers, allows continuing discrimination against manufactured housing and its consumers within HUD and elsewhere within the government, and leaves manufactured housing in perpetual “second-class” status at HUD.

HUD has maintained since 2004 that the 2000 reform law “contains no express or implied requirement for the Secretary to appoint a non-career administrator.” (See, e.g., Attachment C; Attachment D at p.2). However, this represents a fundamental misreading of the 2000 law.

Section 620(a) of the Act, as amended by the 2000 law, states that the Secretary of HUD “may -- (1) establish and collect from manufactured home manufacturers a reasonable fee ... to offset the expenses incurred by the Secretary in connection with carrying out the responsibilities of the Secretary under this title, including ... (A) conducting inspections and monitoring ... [and] (C) providing the funding for a non-career administrator within the Department to administer the manufactured housing program.” (Emphasis added).

By the plain wording of this section, it is the establishment of the program user fee that is subject to the qualifier “may” and is, therefore, permissive. Once that fee is established, however -- as it has been for decades by regulation -- it is to be used to offset expenses incurred in carrying out the Secretary’s “responsibilities” as delineated in section 620(a)(1)(A-G). As a matter of black-letter statutory construction, giving each word of the 2000 law its plain, ordinary and common meaning, a congressionally prescribed “responsibility” of a federal official is mandatory, not permissive or discretionary. If HUD’s construction of section 620(a)(1) were correct, its “responsibility” to “conduc[t] inspections and monitoring” of manufactured homes, their production and their compliance with the federal standards under section 620(a)(1)(A) would be just as discretionary as its “responsibility” under section 620(a)(1)(C), but HUD has never made any such claim or assertion over the entire 36-year history of the program -- nor would it. Thus, construing section 620(a)(1) consistently, as a whole, the Secretary’s responsibility to appoint a non-career administrator for the program is every bit as mandatory as the responsibility to conduct inspections and monitoring in order to enforce the federal standards and Congress should reiterate the mandatory nature of this key program reform.

Congress, accordingly, should instruct HUD to appoint a non-career manufactured housing program administrator with no further delay.

## **2. Collective Industry Representation on the MHCC Must be Restored**

The Manufactured Housing Consensus Committee, as recommended by the National Commission on Manufactured Housing (National Commission) (see, Attachment A at pp. 37-43), was provided by Congress with express statutory authority to review and comment on virtually all HUD actions affecting the federal standards and their enforcement, and to initiate proposed standards, regulations and interpretations, is the centerpiece reform of the 2000 law. Because of its crucial role within the HUD regulatory structure – providing an open, transparent forum for the vetting of proposed actions impacting the construction, safety and affordability of manufactured housing and the development of recommendations to HUD representing a consensus of program stakeholders – it is essential that the MHCC allow for the voting participation and the full, fair and free expression of the views, concerns and interests of all program stakeholders. (As noted by the National Commission, “The consensus collaborative process ... is a critical component of the Commission’s mechanism for change. A balance of all interests on the consensus committee guarantees the integrity of the standards.” See, Attachment A at p. 41). This is particularly important for HUD Code manufacturers, which are the primary focus of – and bear the highest direct costs under -- both the federal standards and HUD’s Procedural and Enforcement Regulations (24 C.F.R. 3282).

Consequently, when the MHCC was organized in 2002, HUD correctly and properly appointed, among seven total “producer” representatives, the leaders of the industry’s two national trade organizations (MHARR and the Manufactured Housing Institute – MHI) in order to ensure that the Committee, on each matter coming before it, would have the benefit of the industry’s collective perspective and viewpoint. HUD, though, since 2009, has barred collective industry representatives from voting membership on the MHCC based on the stated “preference” of the Administration, later detailed in a June 18, 2010 Presidential Memorandum, that registered federal lobbyists not be appointed to federal agency committees and boards. Under an extension of this policy, HUD has also refused, over the same period, to appoint otherwise qualified, non-lobbyist officials of the two collective national industry organizations to the MHCC, including an MHARR officer who has previously submitted applications.

This action has severely impacted the representation of the industry on the MHCC, depriving it of the benefits of the collective knowledge, know-how, expertise and institutional memory that it has assembled in Washington, D.C. to advance the industry’s collective views and positions on standards and regulatory issues, while ensuring that the MHCC functions in full compliance with law. Although HUD has appointed representatives of individual industry businesses to the MHCC, those businesses are regulated by HUD and face potential regulatory backlash and retribution. In addition, individual company representatives are inevitably affected by company-specific concerns, as contrasted with collective industry representatives, who have a duty to act in accordance with broader industry interests.

Thus, industry businesses and most particularly smaller businesses which, for years, have entrusted such functions to collective representatives, have a right – equal to any other MHCC interest group – to be represented on a collective basis. And, in fact, no similar limitation has been placed on any other MHCC interest group. For example, the Executive Director and three other members of the Board of Directors of the same national organization of manufactured homeowners currently serve as MHCC members. Such appointments, combined with the

complete de facto ban on collective industry representation, have drastically skewed the orientation of the MHCC, undermining its carefully crafted balance as required by the 2000 law.

For these reasons alone, collective national industry representation should be restored to the MHCC, given the MHCC's unique statutory mandate, authority and purpose. More importantly, though, recently published "guidance" from the Office of Management and Budget (OMB) implementing the Administration's "preference" regarding lobbyists, shows that HUD's much broader exclusion of non-lobbyist employees and officials from the MHCC is inconsistent with Administration policy and is unsupportable. Specifically, in its "Final Guidance on Appointment of Lobbyists to Federal Boards and Commissions," (see, Attachment E, 76 Federal Register, No. 193, October 5, 2011 at pp. 61756-7), OMB states: "Q2: Does the policy restrict the appointment of individuals who are themselves not federally registered lobbyists but are employed by organizations that engage in lobbying activities? A2: No, the policy established by [Presidential] Memorandum applies only to federally registered lobbyists and does not apply to non-lobbyists employed by organizations that lobby." (Emphasis added).

Therefore, even if HUD's premise that the Administration policy applies to the MHCC is correct – which MHARR disputes and does not accept – the policy does not extend to non-lobbyist employees of MHARR and MHI.

Congress, accordingly, should direct HUD to immediately appoint non-lobbyist representatives of the industry's national trade organizations to the MHCC as voting members in order to restore the effective representation of industry producers most directly and dramatically impacted by the standards and enforcement regulations, and to restore the balance of the MHCC required by the 2000 law.

### **3. HUD Has Undermined the Role and Authority of the MHCC**

A key mission of the MHCC, as stated in the 2000 law, is to provide HUD with "periodic" recommendations to "adopt, revise and interpret" both the federal construction and safety standards and the HUD program's "procedural and enforcement regulations, including ... the permissible scope of and conduct of monitoring...." (See, section 604(a)(3)(A)(i-ii). See also, section 603(20) defining the "monitoring" function).

While the MHCC has, in fact, provided HUD with such recommendations, those consensus recommendations, particularly regarding the HUD regulations and enforcement matters, have routinely been rejected by HUD. HUD, moreover, in more recent years, has refused to even bring regulatory and enforcement matters to the MHCC for consensus review and comment, leaving the MHCC's Regulatory Enforcement Subcommittee with literally no action items despite major changes to the in-plant inspection system as detailed below. It is evident that, at least in part, this action to undermine a core MHCC function is driven by HUD's unwillingness to provide the specific justification and cost-benefit analysis that is required for the MHCC process by the 2000 law. (See, section 604(e) – "The consensus committee, in recommending standards, regulations and interpretations ... shall (4) consider the probable effect of such standard on the cost of the manufactured home to the public; and (5) consider the extent to which any such standard will contribute to carrying out the purposes of this title...."). Furthermore, even MHCC recommendations to update the construction and safety standards

have languished at HUD without action for years – in some cases so long that incorporated reference standards became outdated, forcing further study to update the pending MHCC recommendation. Thus, HUD resistance to the full and proper implementation of the 2000 law has stymied the work of the MHCC in attempting to keep the standards updated and enforcement practices consistent with the purposes of the law and the public interest.

The MHCC was established by Congress in the 2000 law as a replacement for the National Manufactured Housing Advisory Council (Advisory Council), which was simultaneously abolished. Congress terminated and replaced the Advisory Council for two fundamental reasons corresponding with the primary purposes of the 2000 law – to achieve parity between manufactured housing and other types of homes and to reform the HUD program by remedying past abuses involving the development, interpretation and enforcement of the standards.

First, the Advisory Council, as a conventional federal advisory committee, did not function as a “consensus committee.” Consensus committees and consensus processes, however, are used to develop, update and construe all other residential building codes in the United States. Thus, the National Commission, noting that “the creation and revision of the [HUD standards] within HUD and without the benefit of an open forum of interests and ideas, is viewed with skepticism,” recommended the creation of an independent consensus committee with specific statutory authority representing all program stakeholders that would “not be subject to the provisions of the Federal Advisory Committees Act.” (See, Attachment A, p. 40, paragraph 3 and p. 42, recommendation 2.4) (Emphasis added). Congress accepted and expanded this recommendation in establishing of the MHCC and the MHCC consensus process.

Second, Congress abolished the Advisory Council and replaced it with the MHCC because the scope of the Advisory Committee’s review authority -- limited solely to HUD-proposed standards -- was inadequate to address major cost and cost-efficiency concerns related to interpretations of the standards and enforcement practices, and because the Advisory Council, due to inadequate statutory authority and independence (being, among other things, chaired by a program regulator), was easily and consistently bypassed, manipulated and/or ignored by HUD, which was not required to consider or act on its recommendations, making it ineffectual. (See, Attachment F, November 12, 1987 correspondence excerpts from former Rep. John Linder (R-GA) to HUD Secretary Samuel R. Pierce).

By contrast, the MHCC was designed by Congress to have presumptive authority to review and comment on virtually all HUD proposals and actions affecting the federal standards and enforcement regulations, and their interpretation, and to develop its own standards and enforcement proposals -- a view shared by the entire manufactured housing industry (see, Attachment G, June 1, 2004, Coalition to Advance Manufactured Housing, “Analysis of HUD’s Interpretation of the Role and Authority of the Manufactured Housing Consensus Committee” generally and at pp.7-8) and, more importantly, the MHCC itself. (See, Attachment H, February 17, 2004 MHCC letter to HUD Secretary Alphonso Jackson, paragraph 2). (See also, Attachment I, August 11, 2004 MHCC Resolution). The 2000 law thus includes specific statutory mandates as to what types of matters that must be brought before the MHCC (i.e., proposed new or revised standards or enforcement regulations, interpretations, and changes to enforcement-related policies and practices) and when those matters must be brought to the MHCC (i.e., in advance, or be deemed “void” under section 604(b)(6)). It also establishes

specific substantive (*i.e.*, section 604(e)) and procedural requirements (*i.e.*, section 604(a)) for MHCC consideration of those matters, as well as actions the Secretary must take with regard to MHCC recommendations (*i.e.*, sections 604(a)(5) and 604(b)(3)-(4)), which can only become operative with the approval of the Secretary.

HUD, however, since 2004, has maintained that the MHCC is a routine federal advisory committee and has attempted to severely limit its substantive role through baseless, highly restrictive interpretations of the law. HUD has also imposed extreme restrictions on MHCC procedures, based on the Federal Advisory Committees Act (FACA). As is explained in greater detail in section 4, below, however, even if HUD is correct in maintaining that the MHCC is a FACA committee, FACA, by its express terms, can be – and in this case is – superseded by the more specific provisions of the 2000 law.

In a May 7, 2004 opinion letter to the MHCC (responding to Attachment D), HUD interpreted the 2000 law to limit the review and comment authority of the MHCC solely to the federal standards and only those enforcement regulations that “seek to assure compliance with the construction and safety standards.” (*See*, Attachment J at p. 2, paragraph 3). Thus, in one stroke, HUD, by unilateral interpretation of the 2000 law, emasculated the statutory authority of the MHCC to consider and address crucial program matters such as regulations related to the program user fee, payments to the states, program budgeting, use of contractors and use of separate and independent contractors, among others, together with a host of other decisions, policies and practices affecting the cost and availability of manufactured housing, but not constituting a formal standard, regulation or Interpretive Bulletin.

Subsequently, on February 5, 2010, HUD issued a formal “interpretive rule,” without opportunity for public comment, which effectively 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 involving enforcement policies and practices that do not fall under the formal Administrative Procedure Act (APA) definition of a “rule.” (*See*, Attachment K, 75 Federal Register No. 24, February 5, 2010, “Federal Manufactured Home Construction and Safety Standards and Other Orders: HUD Statements That Are Subject to Consensus Committee Processes”).

Through these two related actions, HUD regulators have effectively excluded from MHCC consensus review and comment the vast majority of program decisions concerning enforcement, inspections and monitoring which substantially impact the cost and affordability of manufactured housing for consumers – contrary to the intent of the 2000 law. Not surprisingly, then, for at least the past three years, HUD has failed to bring any change in the regulations or enforcement practices to the MHCC under section 604(b) of the 2000 law, even though such changes, including a fundamental change in the focus and character of in-plant regulation (*see*, section II-4, below) have been implemented.

HUD claims, in support of these actions, 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.” Thus, according to HUD, “the Department must ... 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” (such as the “responsibility” under section 620(a)(1)(C) to appoint a non-career program administrator), this issue was addressed fully during the legislative process

leading to the 2000 law, and is precisely why the MHCC issues recommendations that do not gain the force of law unless they are approved by the Secretary and promulgated through notice and comment rulemaking.

Since the power of the MHCC is statutorily limited to recommendations only, the law is very broad in identifying the types of HUD actions that must be brought to the MHCC for review and comment. In addition to standards, enforcement regulations and interpretations of both, as addressed by sections 604(a) and 604(b) respectively, the “catchall” section of the Act, 604(b)(6), was designed to ensure that virtually all quasi-legislative actions of the Department -- as contrasted with quasi-judicial enforcement activities -- whether characterized 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, prior to implementation, by the MHCC. (See, Attachment G at p. 6). This section, which deems any such action “void” without prior 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 developed behind closed doors and implemented without rulemaking or other safeguards.

The law, accordingly, 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 such rules are, by definition, subject to rulemaking and public comment anyway. Instead, section 604(b)(6) was intended to ensure 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 law and should be compelled by Congress to withdraw its February 5, 2010 “Interpretive Rule” and bring all quasi-legislative matters involving its regulation of manufactured housing to the MHCC for prior review and comment in accordance with the express terms of section 604(b) and the full purposes and intent of the 2000 law.

#### **4. HUD Has Undermined the Independence of the MHCC**

In addition to emasculating the substantive role of the MHCC through unsupported unilateral interpretations of the 2000 law, HUD has also sought to undermine the independence of the MHCC, characterizing it as a run-of-the-mill federal advisory committee and subjecting it to an extremely narrow interpretation and application of the Federal Advisory Committees Act, in an effort to transform the MHCC into a meaningless rubber stamp, akin to the defunct Advisory Council. (It is for this precise reason that the National Commission recommended that the consensus committee “not be subject to the provisions of the Federal Advisory Committees Act,” see, Attachment A at p. 42). The Department therefore, relying on its construction of FACA, has acted to: (1) take complete control of the issues that may be considered by the MHCC, by setting the contents its meeting agendas; (2) has drastically limited public participation in MHCC meetings; (3) has taken control of the prioritization of the proposals considered by the MHCC; (4) has assumed veto power over the composition of MHCC subcommittees; (5) has taken control over the assignment of proposals to subcommittees; (6) has assumed the power to appoint the MHCC Chairman and subcommittee chairmen; and (7) has

characterized the mission of the MHCC as commenting on standards and regulations proposed by HUD.

Nothing in FACA, however, requires or even supports such a HUD takeover of the MHCC. (1) FACA provides no authority for HUD to dictate the content and substance of MHCC meeting agendas. While FACA authorizes the Designated Federal Officer (DFO) for any committee to “approve” meeting agendas, the bylaws of other FACA advisory committees routinely allow for the content of such committees to be set by the committee chairman, and expressly allow for committee members and even members of the public to place issues on the agenda. (2) FACA provides no authority to restrict public participation in MHCC meetings to an extremely limited period of time. To the contrary, section 604(a)(3)(A)(iii) of the 2000 law requires the MHCC to “carry out its business in a manner that guarantees a fair opportunity ... for public participation.” (3) Nothing in FACA authorizes HUD to control which issues are prioritized for review. (4) Nothing in FACA addresses agency veto power over subcommittee composition. (5) Nothing in FACA authorizes the agency to control subcommittee assignments or (6) chairmanships. And (7), the 2000 law itself clearly provides that the function of the MHCC is not just to consider and comment on HUD proposed standards and regulations, but to consider and comment on HUD interpretations (604(b)), to develop and submit its own recommended standards (604(a)), regulations (604(b)) and interpretations (604(b)), as well as to consider and comment on the entire range of HUD actions covered by section 604(b)(6).

FACA, moreover, states that its “provisions ... apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.” Thus, as a FACA expert brought before the MHCC by HUD confirmed, specific provisions of the 2000 reform law regarding the authority and procedures of the MHCC supersede more general or inconsistent provisions of FACA. Therefore, the specific procedural provisions and substantive powers conferred upon the MHCC by Congress in sections 604(a) and 604(b) take precedence over any more general provisions of FACA.

Very clearly, if Congress wanted a mere “advisory” committee for the HUD program, with sharply limited independence and authority as maintained by HUD, it simply could have retained the former National Manufactured Housing Advisory Council established by the original 1974 law. That body was purely advisory and its scope was limited to standards proposals submitted by HUD. Congress, however, did not want such a limited committee that would simply act as a rubber stamp for HUD regulators. Instead, it designed the MHCC to be an independent check and balance, with its own statutory authority, procedures, administration and funding, to ensure that prior abuses of the regulatory process by the HUD program do not recur.

Accordingly, Congress should compel HUD to revoke the limitations that it has imposed on the independence of the MHCC and return the Committee to its original status as provided by the 2000 law and its original organization and procedures.

##### **5. HUD Has Not Implemented Enhanced Federal Preemption**

Federal preemption, in order to prevent states and localities from imposing a multitude of divergent mandates on manufactured housing which would undermine its fundamental affordability is a crucial element of the federal program. From the very inception of federal

regulation in 1976, however, HUD has taken a narrow and extremely constrained approach to federal preemption. That approach was confirmed by a February 9, 1995 internal legal opinion adopting the narrowest possible construction of the “same aspect of performance” test which, under the original 1974 law, was the touchstone of federal preemption (see, Attachment L, February 9, 1995 Memorandum from HUD General Counsel Nelson A. Diaz to Federal Housing Commissioner Nicholas P. Retsinas), and was extended even further in a December 19, 1995 ruling by the HUD Federal Housing Commissioner, stating that narrow preemption within the manufactured housing program “reflects ... the favored trend in this country and in Congress – a deference of power by the federal government when it is unclear that the power in question is vested in the federal government.” (See, Attachment M, December 19, 1995 letter from Federal Housing Commissioner Nicholas P. Retsinas to Danny D. Ghorbani).

In the 2000 law, however, Congress legislatively overruled this extremely narrow interpretation and application of federal preemption by significantly enhancing the scope of preemption and directing HUD, among other things, to construe federal preemption “broadly and liberally.” (See, section 604(d)).

HUD claims, as asserted in a June 22, 2010 letter to Congress from former HUD Assistant Secretary David H. Stevens (see, Attachment D), that it now takes a “broad and liberal” view of preemption in accordance with the 2000 law. This assertion, however, has not been matched by action to implement enhanced preemption. Moreover, as the June 22, 2010 HUD letter demonstrates, the Department continues to misapprehend the scope of enhanced preemption.

HUD states in its June 22, 2010 letter (Attachment D) that “for preemption to work ... the Act requires that HUD’s construction and safety standards address the same elements of performance as the International Residential Code (IRC) and other state and local codes.” This formulation of preemption, however, is simply wrong. First, the law does not -- and never has -- referred to the IRC, or conditioned preemption on addressing the “same elements of performance” of the IRC. This claim has no statutory basis whatsoever. Second, the law does not -- and never has -- referred to the same “element” of performance. Under the original 1974 law, the touchstone of federal preemption was whether a federal standard covered the same “aspect” of manufactured home performance as a state or local standard. But even this was drastically changed by the 2000 law.

The 2000 law expanded preemption three ways. It told HUD to apply preemption “broadly and liberally;” it extended preemption to state or local “requirements” that are not necessarily standards; and it expanded the basis for preemption to include interference with the comprehensive federal “superintendence” of the industry. As a result, the touchstone of federal preemption is no longer limited to the extremely narrow, “same aspect of performance” test that HUD routinely used as an excuse not to enforce preemption under the 1974 law. HUD, however, has given no indication that it is prepared to implement preemption as expanded by the 2000 law, or, indeed, that it even understands the nature and impact of that expansion. Thus it is not surprising that the Department, 12 years later, has not retracted outdated and highly restrictive internal guidance regarding federal preemption, issued before the 2000 reform law (see, Attachment N, HUD “Notice of Staff Guidance,” 62 Federal Register 15, January 23, 1997, 3456-3458), that has led to confusion and unnecessary disputes and has yet to take action to formally preempt extremely costly and unnecessary state and local sprinkler requirements based

on the existing HUD “fire safety” standards which provide reasonable fire safety for manufactured home residents as required by federal law.

Congress, therefore, should compel HUD to retract its outdated 1997 Notice of Staff Guidance, expressly reject a narrow application of the “same aspect of performance” test and fully implement and enforce enhanced preemption as established by the 2000 law.

#### **6. HUD’s Regulatory Expansion Violates Sections of the Law**

While the original 1974 federal manufactured housing law included specific procedural and substantive requirements for the development and adoption of federal manufactured housing construction and safety standards, it contained no parallel requirements for the development of enforcement-related regulations. Congress changed this in the 2000 law, establishing specific procedural and substantive requirements not only for enforcement regulations, but also for enforcement practices and policies and interpretations of the enforcement regulations. These requirements are set forth in section 604(b) of the 2000 law and particularly section 604(b)(6), which states that any changes adopted by HUD in violation of these requirements are “void.”

HUD has maintained, as “a fundamental tenet of administrative law that the agency that promulgates a rule may interpret that rule as necessary for enforcement purposes.” It then claims that nothing in the 2000 law “suggests that HUD must suspend enforcement of its standards or regulations” while the MHCC considers proposed interpretations. Effectively, then HUD argues that it can enforce a new interpretation of the standards prior to any review or comment on that new interpretation by the MHCC.

Whether and to what extent this is a “fundamental tenet” of administrative law is irrelevant, because while under section 604(b)(2) of the 2000 law, “the Secretary may issue interpretative bulletins to clarify the meaning of any standard ... or procedural and enforcement regulation,” the Secretary under section 604(b)(3) of the law, “before issuing” any such interpretation, must “provide the consensus committee with a period of 120 days to submit written comments.” Obviously, if the MHCC must be provided with an opportunity to review or comment on an interpretation “before” it is “issued,” no such interpretation may be enforced by HUD prior to such review.

HUD further states that “If the MHCC disagrees with an enforcement decision made by HUD, then the MHCC may propose its own interpretation ... for the Secretary’s consideration.” As HUD is aware, however, any such action by the MHCC would be difficult or impossible, now that HUD program regulators have assumed control over the subjects that can come before -- or be considered by -- the MHCC. (See, section II-4, above).

Moreover, as noted above, section 604(b)(6), by its express terms, provides that any change by HUD to policies, practices, or procedures relating to the standards, inspections, monitoring, or other enforcement activities, must be brought to the MHCC, or are otherwise deemed “void” by the law. Clearly, if HUD began to enforce such a change that had not been brought to the MHCC beforehand, the change underlying that enforcement would be void, as would be the enforcement action itself.

To more clearly illustrate the deficiencies of HUD's position, the following is an example of a major change to the enforcement process that has not been brought to the MHCC as it should have under section 604(b), and has caused significant hardship for the industry.

In recent years, both HUD and its monitoring contractor have been pressuring manufacturers to implement costly changes to their in-plant inspection procedures based on "enhanced" checklists that go beyond the requirements of the current standards and a "Standard Operating Procedure" developed behind closed doors by program regulators. None of these de facto standards have gone to the MHCC, even though they make major changes to HUD policy and practice regarding inspections and monitoring. None have had a cost-benefit analysis, and none have been shown to produce any benefits for consumers to offset their increased cost. Moreover, related proposed changes to the regulations to support this activity did gain consensus approval by the MHCC specifically because HUD failed to provide cost data or justification for the changes to the MHCC, as required by the 2000 law, and have not been published as a proposed rule.

This expansion of in-plant regulation, designed by HUD to change the entire focus of the in-plant inspection system from inspection of the home itself for compliance with the federal standards to prescriptive criteria and inspection of the manufacturer's "quality assurance system" (see, Attachment O, May 10, 2010 HUD "Field Guidance – Certification Reports and Updating Certification Records" at paragraph 2), with its multiple "enhanced checklists," "standard operating procedures" and statements of "field guidance," characterized initially by HUD as "voluntary" and "cooperative" and then "not voluntary" (see, Attachment P, March 3, 2010, HUD "Field Guidance – Compliance with 24 C.F.R 3282.203(c) and (d) Not Voluntary") is precisely the type of fundamental change in regulatory practices and policies that should have been brought to the MHCC for prior review and comment under section 604(b) and specifically section 604(b)(6).

Whether or not these changes to in-plant enforcement policies and practices constitute a formal "rule" as defined by the APA is – and should be – irrelevant. The fact is that they constitute a disruptive change in enforcement policies and procedures that results in increased costs for both producers and homebuyers. As a result, under the express terms of section 604(b)(6), as written by Congress, they should have been brought to the consensus committee for prior review and consensus recommendations. HUD's failure to do so illustrates a key aspect of HUD's failure to fully and properly implement the 2000 law and especially the corrosive effect of its February 5, 2010 Interpretive Rule effectively reading section 604(b)(6) out of the law.

#### **7. HUD Has Used the Same Monitoring Contractor for 35 Years Without Full Competition**

The HUD manufactured housing program has had the same monitoring contractor (i.e., the same continuing entity, with the same personnel, albeit under different names – initially the "National Conference of States on Building Codes and Standards" and now the "Institute for Building Technology and Safety") since the inception of federal regulation in 1976. Although the monitoring function contract is subject, officially, to competitive bidding, the contract is a de facto sole source procurement. Because the federal program is unique within the residential construction industry and no other entity has ever served as the monitoring contractor, no other

organization has directly comparable experience. Thus, solicitations for the contract have been based on award factors that track the experience and performance of the existing contractor, effectively preventing any other bidder from competing for the contract. Moreover, the one time that another organization did submit a bid, its lower-priced offer was subject to a second round of analysis that ultimately deemed the incumbent contractor's proposal best for HUD, based on its years of direct program experience.

Without new ideas and thinking the program, effectively, remains frozen in the 1970's and has not evolved along with the industry. This is one of the primary reasons that the federal program, government at all levels and other organizations and entities continue to view and treat manufactured homes as "trailers," causing untold difficulties for the industry and consumers, including financing, zoning, placement and other issues. The 2000 law, moreover, was designed to assure a balance between reasonable consumer protection and affordability. But the HUD program and the entrenched incumbent contractor have a history of continually ratcheting-up regulation, with more detailed, intricate and costly procedures, inspections, record-keeping, reports and red-tape, despite the fact that consumer complaints regarding manufactured homes, as shown by HUD's own data, are minimal. This is a result, in part, of an enforcement and contracting structure that provides an incentive for the monitoring contractor to find fault with manufactured homes.

For the manufactured housing industry to recover and advance from the decline of the past 13 years, this cycle must be broken and the federal program must be brought into full compliance with the objectives and purposes of the 2000 law. It is thus essential that the program ensure that there is full and open competition for the monitoring contract when the next solicitation occurs later this year, with new award criteria that do not penalize or ward off new bidders without direct program experience and a structure that does not provide a financial incentive for excessive or punitive regulation.

#### **8. HUD Has Wrongly Re-Codified New 2000 Law Programs**

HUD, citing the legislative history of the 2000 reform law, claims that the law "specifically guarantees that the federal installation standards will not preempt state installation standards." The Department thus contends that its codification of the federal installation standards -- authorized and required by the 2000 law -- outside of the preemptive Part 3280 construction and safety standards, is correct and consistent with the law. This is an accurate statement as far as it goes, but again, it represents a serious misreading of the clear language of the law.

The 2000 reform law is based largely on the 1994 recommendations of the congressionally-chartered National Commission on Manufactured Housing. The National Commission, in its report to Congress, specifically recommended that a new statutory consensus committee "develop and maintain minimum installation standards as part of the national manufactured home construction and safety standards" -- i.e., the preemptive Part 3280 standards. The National Commission similarly recommended that "any state [be permitted] to establish and enforce installation standards that equal or exceed the minimum national standards." (See, Attachment A at p.15). Consequently, the National Commission recommended

that the installation standards be part of the preemptive Part 3280 standards and understood that those installation standards would thus be preemptive, subject to an express reservation to the states to adopt equal or higher standards approved by HUD.

And that, in fact, is how the 2000 law is structured. Section 605 requires the development and enforcement of minimum federal installation standards subject to an express reservation to each "state," in section 604, to develop and enforce equal or higher installation standards pursuant to approval by HUD. It is important however, to compare the preemption language of the 2000 law to this reservation, which directly follows it. Under the 2000 law, federal standards preempt non-identical "state or local" standards or requirements. The reservation that follows it, however, is limited to the "states."

Viewed in the context of the National Commission's recommendations, these sections are logical, consistent and clear. A reservation of power to the states is consistent with the federal standards, in fact, being preemptive. Preemptive federal installation standards would preempt non-identical state and local installation standards. Congress, therefore, consistent with the recommendations of the National Commission, exempted HUD-approved state installation standards and programs from that preemption. Such an exemption or reservation would be unnecessary and superfluous if Congress did not intend (like the National Commission) for the federal standards to be preemptive in the first place. And, indeed, nothing in the statements from the legislative history are inconsistent with the states being exempted from the preemptive effect of the federal installation standards. Significantly, though, there is no reservation or exemption from preemption for local jurisdictions. Thus the most logical and consistent reading of the 2000 Act is that the federal installation standards are to be preemptive of: (1) state standards that have not been approved by HUD; (2) local installation standards in non-approved default states; and (3) local standards in approved non-default states, where such local standards differ from the HUD-approved state standards.

HUD's position by contrast, will leave the industry and its consumers subject to a patchwork of differing local standards that at best will unnecessarily increase the cost of manufactured housing and, at worst, could be used to discriminate against -- or even exclude -- manufactured housing from communities around the country, contrary to the law.

The re-codification of dispute resolution similarly leaves that entire subject area outside of the review and update authority of the MHCC, which is statutorily defined as addressing matters relating to the Part 3280 manufactured housing construction and safety standards and the Part 3282 Procedural and Enforcement Regulations. HUD has maintained that it resolved this issue by including a provision in the final dispute resolution rule that provides for continuing consultation with the MHCC on this issue. A regulatory provision, however, may be easily revoked or amended and is no substitute for the statutory authority that the MHCC would have over this critical subject if it had been properly codified as part of the Procedural and Enforcement Regulations. This is particularly true given HUD's recent efforts to limit the role, authority, independence and functionality of the MHCC, as detailed above.

**9. Misdirected HUD Program Budgets Need to Be Scrutinized and Subject to Accountability**

The financial aspects of the HUD manufactured housing program, including budgets, revenues, expenditures and appropriations, particularly since 2009, have spiraled out of control, leading to mismanagement of the federal program and the misallocation of its resources in ways that have diverted it from its main objective and mission under the 2000 law – protecting homebuyers while maintaining the affordability of manufactured homes as “housing.”

Of the seven specific program “responsibilities” to be funded by the Secretary under the 2000 law (see, section 620(a)(1)(A-G)), HUD has used misdirected program budgets to primarily focus on just two – (1) expanding “inspections and monitoring” by creating new, unnecessary, unnecessarily complex and unnecessarily costly “make-work” inspection requirements that have been used to sustain and increase payments to the entrenched program monitoring contractor, even as industry production has significantly declined; and (2) substantially increasing program staff, despite the pronounced industry downturn of the past decade-plus. At the same time, HUD has refused to fund and appointed non-career program administrator, as required by section 620 (a)(1)(C) of the 2000 law, and is denying its state partners – the State Administrative Agencies (SAAs) – badly needed revenue, even though those agencies, unlike the monitoring contractor, are the first line of protection of a steadily growing number of consumers living in both new and existing homes.

HUD regulators have been able to advance this highly skewed agenda because of an artificially inflated program budget that has grown even as industry production has declined, without effective oversight by Congress until the Fiscal Year (FY) 2012 appropriations cycle. Designed to be self-funding, the HUD program has sought large infusions of general revenue funds since 2009 (i.e., \$5.4 million in 2009, \$9.0 Million in 2010, \$7.0 million in 2011 and \$7.0 million in 2012) and, for FY 2012, has announced a label fee increase from \$39.00 to \$60.00 per home section. Although sought by HUD, ostensibly, to fund contracts to implement the new installation and dispute resolution programs mandated by the 2000 law, these funds, instead, have been diverted to a needless regulatory expansion that unnecessarily increases costs for manufacturers and consumers, while the installation and dispute resolution programs remain only partially implemented, and funding for the SAAs has been slashed from \$6.6 million in 2005 to \$3.7 million in 2012. (See, Attachment Q, “Testimony of the Manufactured Housing Association for Regulatory Reform Regarding the 2012 Budget Request and Justifications of the U.S. Department of Housing and Urban Development for the Federal Manufactured Housing Program,” April 2011).

While Congress, as part of the FY 2012 HUD appropriations bill, did begin to reduce overall funding for the HUD program -- to \$6.5 million -- while limiting the program’s direct appropriation to \$2.5 million, based on long-delayed oversight which exposed HUD’s inability to justify the much larger amounts sought in its FY 2012 budget request (see, Attachment R, Conference Report to H.R. 2112, “Agriculture, Rural Development, Food and Drug Administration and Related Agencies Programs for the Fiscal Year Ending September 30, 2012 and for Other Purposes”), Congress still needs to closely examine HUD’s continuing misallocation of program user fees and appropriated funds for purposes other than those specified in the 2000 law, to the detriment of the industry and consumers.

Accordingly, as part of this oversight process and as part of the FY 2013 (and subsequent) appropriations process, Congress should condition program funding on the full and proper implementation of all the key reforms of the 2000 law as set forth herein and should eliminate continuing program funding for any and all activities that are not specifically authorized by the Act as amended. Moreover, MHARR would not object to a user (label) fee increase from the current amount to \$60.00 per transportable home section if, but only if, any such increase is specifically justified by HUD and approved in advance by Congress as required by the 2000 law (see, section 620(e)), is properly allocated so that the program is provided a non-career administrator, as provided by the 2000 law, contractor revenues and functions are reduced in proportion to industry production and state SAAs are provided sufficient revenue to perform their key program functions.

**10. HUD's Failure to Fully and Properly Implement the  
2000 Law Has Negatively Impacted Consumer Financing**

While HUD has claimed that the long-term scarcity of manufactured home financing is attributable to the performance of manufactured homes, asserting, among other things, that improvements to producers' "quality control" would "attract lenders back to manufactured housing (see, Attachment C, supra), the reality is that HUD itself, by failing to fully and properly implement the 2000 law and failing to ensure the status of manufactured homes as legitimate housing for all purposes, has placed the industry and its consumers in a no-win position, where modern manufactured homes, despite state-of-the-art construction and high quality are perceived, treated and penalized as "trailers" for purposes of financing and a host of other matters.

Thus, the Government National Mortgage Association (GNMA) – a government corporation established within HUD – in June 2010 and November 2010 announced requirements for the securitization of Federal Housing Administration (FHA) Title I program personal property (chattel) manufactured housing loans that significantly exceed those for originators of all other types of FHA-insured loans. Specifically, FHA Title I manufactured housing lenders must have minimum net worth of at least \$10 million -- as compared with \$2.5 million for site-built lenders – plus 10% of the dollar amount of all outstanding manufactured housing Mortgage Backed Securities (MBS). (See, Attachment S, GNMA November 1, 2010 Memorandum APM10-18, "New Ginnie Mae Title I Manufactured Home Loan Program...."). Because this "10-10" rule requires disproportionately large assets for manufactured housing lenders, it has had the unintended consequence of limiting the Title I program, which has historically provided financing for the industry's most affordable homes, to one or two large finance companies. This, in turn, has kept FHA Title I originations artificially low, has placed smaller, independent producers of manufactured housing at an extreme competitive disadvantage and, most importantly, has led to the unnecessary and unjustified exclusion of large numbers of consumers from the manufactured housing market and, in many if not most cases, from the American dream of home ownership.

Similarly, given HUD's failure to fully and properly implement the 2000 law in accordance with its fundamental transformative purposes, the GSEs – Fannie Mae and Freddie Mac – continue to discriminate against manufactured homes and manufactured homebuyers. Despite being instructed by Congress, in the 2008 HERA law, to "develop loan products and

flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low-, low- and moderate-income families,” a final rule to implement this duty to serve has never been issued by the GSEs’ federal regulator, the Federal Housing Finance Agency (FHFA) and an initial proposed rule, published in 2010 (see, 75 Federal Register No. 108, June 7, 2010 at pp. 32099-32117, “Enterprise Duty to Serve Underserved Markets”), would have excluded manufactured housing personal property (chattel) loans from the “duty to serve” altogether. Thus, at present, manufactured housing accounts for less than 1% of the GSEs total business, even though manufactured housing, since 1989, has accounted for 21% of all new homes sold.

The scarcity of manufactured home financing, therefore, is not a product of insufficient HUD regulation. It is a product of a HUD regulatory program that continues to treat manufactured homes as “trailers” and continues to relegate manufactured housing to second-class status, even though Congress has instructed HUD to treat manufactured homes as “housing.” For an industry subject to comprehensive federal regulation, such as manufactured housing, this second-class treatment fuels and rationalizes discrimination which impacts everything else, including financing. Thus, HUD’s failure to fully and properly implement the 2000 law, together with its outdated approach to manufactured housing, has had a devastating impact on both the industry and consumers of affordable housing. Yet, the program, instead of changing course has, as detailed above, accelerated its efforts to neutralize the reforms of the 2000 law and Congress’ objectives for the program, the industry and consumers.

Consequently, in order to create an environment where manufactured home purchase financing can be restored and extended to consumers – and particularly lower and moderate-income families – who seek a home that they can truly afford without government subsidies, it is essential that HUD be compelled by Congress to fully and properly implement the 2000 law.

#### **IV. CONCLUSION**

Based on all of the foregoing information, Congress should act to compel HUD to fully comply with all of the reform provisions of the 2000 law in accordance with their express terms and the purposes and intent of the law as a whole.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410

**Testimony of Henry S. Czauski  
Acting Deputy Administrator  
Office of Manufactured Housing Programs  
U.S. Department of Housing and Urban Development (HUD)**

**Before the  
House Committee on Financial Services  
Subcommittee on Insurance, Housing and Community Opportunity**

**“Implementation of the Manufactured Housing Improvement Act of 2000”  
February 1, 2012**

Chairman Biggert, Ranking Member Gutierrez and Members of the Subcommittee, thank you for the opportunity to testify today on the implementation of Manufactured Housing Improvement Act of 2000, which is administered by the U.S. Department of Housing and Urban Development (HUD). My name is Henry Czauski and I am Acting Deputy Administrator for the Office of Manufactured Housing Programs.

My remarks will identify key aspects of the Manufactured Housing Improvement Act of 2000, the role HUD has played in implementing that legislation, and the benefits to stakeholders.

**Legislation**

In 1974, Congress enacted the National Manufactured Housing Construction and Safety Standards Act, which was amended by the Manufactured Housing Improvement Act of 2000. These pieces of legislation exemplify Congress’ recognition of the vital role played by manufactured housing in meeting the housing needs of the nation, and that manufactured homes provide a significant resource for affordable homeownership and rental housing accessible to all Americans.

### **HUD's Mission in Implementing the Manufactured Housing Improvement Act of 2000**

Through the Office of Housing, HUD administers and carries out the directives of this legislation: protecting the quality, durability, safety and affordability of manufactured homes; facilitating the construction and availability of affordable homes; establishing practical, uniform nationwide Federal construction standards; encouraging innovative and cost-effective construction techniques; protecting the residents with respect to personal injuries due to substandard manufactured housing; using a balanced consensus process through a committee composed of stakeholders, for the development of Federal standards; ensuring uniform and effective enforcement of the standards; and finally, ensuring that the public interest in, and need for, affordable manufactured housing is duly considered in all determinations relating to Federal standards and their enforcement.

### **Key Aspects of the 2000 Act Implemented by HUD**

My testimony will focus on the following key aspects of the 2000 Act:

- the creation of a consensus committee and an organizational infrastructure to support the committee;
- establishment of the process for revising the manufactured housing home construction and safety standards;
- enhanced pre-emption to ensure consistency of building standards nationwide;
- establishment of new model manufactured home installation standards;
- establishment of dispute resolution program standards; and
- establishment and collection of a fee from manufacturers to offset the expenses of the Secretary in carrying out the legislation.

### **Consensus Committee**

One of the most significant aspects of the 2000 Act was the creation of a “consensus committee” which has come to be known as the Manufactured Housing Consensus Committee (MHCC). The MHCC, which includes stakeholders such as manufacturers, retailers, consumers, state regulators and others, assists HUD in carrying out its mandate under the Act. Established as a Federal Advisory Committee, the MHCC provides recommendations to the Secretary of HUD to adopt and revise Federal manufactured housing construction and safety standards, as well as procedural and enforcement regulations. As a Federal Advisory Committee, the consensus committee is subject to and must comply with the Federal Advisory Committee Act (FACA). HUD has worked diligently to ensure that the committee functions in full compliance with FACA by, amongst other requirements, conducting business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and public participation.

To assist in the management and operation of the committee, the Act provided for the Secretary to contract with an “administering organization” for the purpose of recommending members for

the committee, administering the consensus standards development process and the process for procedural and enforcement regulations. HUD first implemented this provision after enactment of the 2000 Act by contracting with an administering organization which commenced a search for the initial committee members and provided ongoing support to the MHCC. Periodically, as dictated under Federal contracting rules, HUD must compete this contract. Throughout the many rounds of mandated competition throughout the years, HUD has always maintained a contract with an administering organization for the purpose of ensuring the committee continues to meet all statutory requirements. By statute, the MHCC is composed of twenty-one voting members appointed by the Secretary that include seven producers/retailers, seven users representing consumer interests and seven persons representing public officials and general interest. HUD implemented these provisions of the Act and announced the names of the initial twenty-one members of the committee in August 2002 and has continued the process of appointment of members to the committee to the current time.

Since the creation of the committee, approximately thirty-five meetings have been held, an average of three meetings per year. In Fiscal Year 2011, the full consensus committee met on four occasions to discuss Federal standards and subcommittees held ongoing meetings throughout the year.

#### **Revision of Standards**

The 2000 Act also established the process for the consideration of revisions to the manufactured home construction and safety standards and outlined the roles and requirements of the MHCC the Secretary in making those revisions. The Federal standards have been the subject of ongoing review and updating. Over the years, numerous standards were reviewed by the committee and submitted to the Secretary. Recent revisions to the standards have included lighting and ventilation, fire protection requirements, the use of thermal insulation materials, and test procedures for roof trusses.

#### **Federal Preemption**

Federal preemption was a key concept in the National Manufactured Housing Construction and Safety Standards Act of 1974. It provided that once Federal standards were established, no State or political subdivision would have the authority to establish any standard which is not identical to the Federal standards. The 2000 Act added language to this provision providing that Federal preemption should be “broadly and liberally construed to ensure that disparate State or local requirements or standards do not affect the uniformity and comprehensiveness” of the Federal standards. The major benefit of preemption is that it allows a manufacturer in one state or local government jurisdiction to deliver and install a home built under the Federal code, rather than having to build each home to conform to the code of the local jurisdiction where the home will be sold. HUD was charged with implementing Federal preemption, which the agency continues

to do. If and when HUD receives information suggesting that a jurisdiction is attempting to enforce State or local standards, HUD issues a letter to that jurisdiction informing them that local laws are subject to Federal preemption. Enforcement of preemption has been carried out through education and notification.

#### **Establishment of Model Manufactured Home Installation and Dispute Resolution Program Standards**

The 2000 Act also provided for the development and establishment of model manufactured home installation and dispute resolution program standards. HUD has implemented standards for both of these statutory directives. Model Manufactured Home Installation Standards were promulgated by regulation in 2007 and provide minimum requirements for the installation of new manufactured homes. A Dispute Resolution rule was also issued the same year and provides a process for the timely resolution of disputes among manufacturers, retailers and installers.

#### **Collection of Fees**

Once a manufactured home is determined to meet the Federal Standards, a “certification” label is permanently affixed to each home. This red label assures the consumer that the home was constructed in accordance with the Federal Standards.

The 2000 Act reaffirmed the authority of the Secretary to establish and collect from manufacturers a reasonable fee to offset the expenses of carrying out the responsibilities under the Act. The label fee was set at \$39 in 2002 for each transportable section of a manufactured home and has not been increased. The use of the label fees collected was specified in the 2000 Act, for the purposes of conducting inspections and monitoring; providing funding to the States that have approved plans; administering the consensus committee; facilitating the acceptance of quality, durability, safety and affordability of manufactured housing; and the administration of the enforcement of installation standards and a dispute resolution program. The fees have been allocated for these purposes.

#### **Financing of Manufactured Homes**

In addition to having oversight over construction and safety standards of manufactured homes, under the National Housing Act (NHA), HUD has authority to insure loans for the purchase of manufactured homes under titles I and II of the National Housing Act. For both insurance programs, the property must be deemed to meet HUD requirements for this type of housing including, for example, existence of the “label”.

Generally speaking, under Title I, borrowers can apply for an FHA insured loan for a home that is physically mobile, whereas under Title II – which includes the most commonly used FHA

insured loan product, the 203(b) forward mortgage – the manufactured home must be affixed to a permanent foundation.

Any properly originated FHA insured loan, regardless of the underlying loan type, is eligible for inclusion in mortgage backed securities issued by the Government National Mortgage Corporation (Ginnie Mae). Ginnie Mae furthers the overall mission of HUD by making affordable housing a reality for millions of low- and moderate-income households across America by channeling global capital into the nation's housing markets.

Although Ginnie Mae began securitizing manufactured housing collateral in the 1970s, a moratorium was placed on the program in 1989 due to significant losses. On June 10, 2010, Ginnie Mae launched a new manufactured housing securitization program. In 2011, Ginnie Mae guaranteed nearly \$100 million MBS backed by manufactured housing loans.

Together, FHA and Ginnie Mae have provided guarantee mechanisms which facilitate the availability of capital for manufactured housing. And both agencies continue to discuss with industry stakeholders additional ways to prudently extend financing for manufactured housing in accordance with market demand.

**Conclusion:**

In closing, I want to assure the Subcommittee that the Department has and continues to fairly and diligently implement the 2000 Act in accordance with the statutory purposes to protect the quality, durability, safety and affordability of manufactured housing. We actively engage with all stakeholders, including the committee, manufacturers, retailers, users, consumer groups, State regulators and others to ensure that manufactured housing continues to be available as an affordable and valuable option for housing. I want to thank you for the opportunity to provide testimony before the Subcommittee today and would be pleased to answer any questions.

**MHOAA**

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United State House of Representatives  
Financial Services Committee  
Subcommittee on Insurance, Housing and Community Opportunity

“Implementation of the Manufactured Housing Improvement Act of 2000”

Wednesday, February 1, 2012  
2128 Rayburn Housing Office Building  
Washington, DC

Testimony

Ishbel Dickens  
Executive Director  
Manufactured Home Owners Association of America (MHOAA)

Good morning Madam Chair Biggert, Ranking Member Gutierrez, and Members of the Committee. Thank you for the opportunity to share the manufactured home owners’ perspective with you this morning.

My name is Ishbel Dickens and I am the Executive Director of the Manufactured Home Owners Association of America (MHOAA).

I have been working with manufactured home owners for more than 20 years. First as a volunteer for my church, gathering signatures to help preserve a manufactured housing community nearby; then as a community organizer, working with manufactured home owners in Washington to help them gain stronger legal protections to save their communities and consequently their biggest asset – their homes. Since that time I had the opportunity to attend the University of Washington, School of Law and earned my law degree specifically to be a stronger advocate for people who own their homes but not the land under them. After law school, I was awarded a two year fellowship by Equal Justice Works to continue my manufactured housing work and was then hired as a staff attorney by a legal services agency. I have been the Executive Director of MHOAA since November 2010.

*The mission of MHOAA is to promote, represent, preserve, and enhance the rights and interests of manufactured home-owners throughout the United States.*

MHOAA is a national association of manufactured home owners and represents the interests of 17 million people who live in manufactured homes in this country.

There are more than 50,000 manufactured housing communities throughout the United States and they provide rental spaces for 2.9 million home owners and their families upon which to place their manufactured homes.

There are a variety of reasons why people choose to purchase manufactured homes, not least being their relative affordability. The average price of a new manufactured home is \$68,000. This may seem like a "steal" and it may be if the owner is able to afford to own the land upon which they want to place the home. Additionally, manufactured home living can be a good way for young families to start out on the home ownership ladder, and it can also be a way for seniors to "downsize" when adult children have moved out or when a spouse has passed away and the seniors want to continue to live independently in their own homes. However, if the home owner does not own land and is considering placing the home in a manufactured housing community, then the dream of home ownership may quickly turn into a nightmare when the home owner realizes what renting space in a manufactured housing community really means.

For instance, does it make sense to purchase a home and then place it on a rented pad when you do not have security of tenure? Yet that is the reality facing manufactured home owners. Most states that have Manufactured/mobile Home Landlord Tenant Acts (and 15 states have no such laws) allow for no more than one year rental agreements, and some do not even allow that. State laws also allow community owners to close the community without compensating the home owners for any costs associated with this displacement, thus not only is the household displaced from their neighbors, friends, chosen location, but in all likelihood they will also lose their biggest asset, their home, as a result of the community closure since it is unlikely that there are vacant lots in other manufactured housing communities to move to.

Additionally, manufactured home owners, living in land lease communities find themselves at the mercy of landlords, who can raise lot rents as much as they want, knowing full well that they have a "captive audience" since the home owner, unlike someone renting an apartment, cannot simply up and move when the rent gets too high or the landlord neglects the upkeep in the community.

Indeed, many manufactured home owners feel like "prisoners in their own homes" since they lack any other affordable housing option. Thus, instead of rewarding people who choose to live within their means by purchasing an inexpensive home, we are crippling them by forcing them to stay in communities that are becoming less and less affordable to seniors on fixed incomes.

I do not make this claim, inadvisably. Indeed, at a public hearing before the Lynnwood City Council in Snohomish County WA, a city council member asked the attorney representing the

community owners if he would advise his own mother to move into a manufactured housing community. The attorney responded that not only would he not advise his mother to move into a manufactured housing community, but he would not advise anyone to move into a manufactured housing community.

However, despite the significant barriers to manufactured home ownership, a significant number of people choose to purchase manufactured homes. If only it was easier to do so! For instance, it is rare for a potential purchaser of a manufactured home to have access to the same financing products as are available to the potential purchaser of a "site built" home. Manufactured home purchasers are more often steered towards chattel loans which tend to have much higher interest rates and shorter amortization times than real estate mortgages. Some may argue that chattel loans are better for manufactured home owners because the closing costs may be less. That may be true, but the actual monthly payments on a chattel loan will be almost double the amount that would be required if the same loan had been financed with a real estate loan product. For instance, the principal and interest monthly payments for an FHA 5.375% fixed rate 30 year mortgage on \$100,000 are \$560 whereas someone with a chattel loan for the same amount would likely pay \$1,136/month since the loan would be offered at an interest rate of 10.99% and would have a maximum term of 15 years. Indeed, I heard recently that a triple-wide home owner who has his home on waterfront property was required by his credit union to pay 1% higher interest on his mortgage because when Chase took over his former bank they refused to allow him to refinance his loan.

By highlighting the issues inherent in manufactured housing community living, I hope I have also identified some of the areas where the consumers that I work with and represent could also get together with the manufactured housing industry to work on matters of common concern. After all if home owners are scared away from living in manufactured housing communities because of ever increasing rents, short-term leases, and lack of security of tenure, then the sales of manufactured homes are going to continue to decrease.

MHOAA welcomes the opportunity to work with the industry as together we do our best to guarantee (i) adequate financing products to ensure loans on manufactured homes are as competitive as those for "site built" homes, (ii) long-term security of tenure, and (iii) reasonable rents and rules so that manufactured housing community living really is an attractive option for lower income households and retirees who desire to own their own homes, and so that home owners are not forced to abandon their homes as a result of economic eviction.

MHOAA also welcomes the opportunity to work with the Department on two very specific issues that could make a huge difference in the lives of the 2.9 million households who live in manufactured housing communities. For instance, as I mentioned earlier there are 14 states that do not have any laws on the books to protect the rights of home owners living in manufactured housing communities. This means that these home owners are amongst the most vulnerable home owners in the country. Indeed, not only are they at risk of losing their

biggest asset, their homes, but they may well be living in situations where their basic constitutional rights are being infringed upon, since their landlords may have established rules that prevent them from meeting together to discuss issues of common concern, or they may fear retaliation if they attempt to pass out fliers inviting their neighbors to a meeting. MHOAA encourages the Department to look at ways to incentivize states to establish manufactured home landlord tenant acts so that manufactured home owners are entitled to the same fundamental freedoms (freedom of speech, freedom of assembly, freedom from retaliation, and equal protection under the law) as everyone else in the country can exercise without fear of eviction. One way to do this would be to withhold HOME funds from any state that had not enacted a manufactured housing landlord tenant act.

A second proposal that the Department might consider, which would be of great importance to manufactured home owners, would be to look at ways to incentivize community owners so that they are encouraged, should they be considering selling their property, to sell it to the home owners' association, the local housing authority, or another non-profit affordable housing agency. This way manufactured housing communities can be preserved and continue to provide affordable housing options for senior and low income households. There are over 100 resident owned communities in the country and not one of them has yet defaulted on its loan. Housing Authorities in some jurisdictions have also stepped in to purchase at-risk manufactured housing communities and preserved them as affordable housing for hundreds of home owners. An incentive program that encouraged community owners to sell the land to their tenants and/or other non-profit affordable housing agencies would help preserve this affordable home ownership opportunity for current and future low income households.

Furthermore, next week this Committee will be considering a housing voucher reform bill, the "Affordable Housing and Self-Sufficiency Improvement Act of 2012". As currently drafted this bill only allows manufactured home owners to use vouchers to help pay for the lot rental in a manufactured housing community, but there is no language in the bill that allows a low income household to use the voucher to help pay off the mortgage or insurance on the home. I encourage you to consider amending the voucher reform bill to include such additional opportunities for manufactured home owners.

These are just three examples of ways that the federal government could help protect and preserve this unique home ownership opportunity in a way that would benefit both the consumers and the industry.

My invitation to participate in this hearing asked that I not only address the current state of manufactured housing but that I also focus on four specific questions which were listed in the invitation. I turn to them now.

1. *Has the Department fully implemented the Manufactured Housing Improvement Act of 2000?*

I believe the Department is better placed to respond to this question than I am. It is my understanding that given the limited resources available to HUD to carry out the intent of the Manufactured Housing Improvement Act of 2000 that staff are doing what they can.

2. *How does the Department determine the make-up of the Manufactured Housing Consensus Committee (MHCC)? What role does the 2000 Act give to the MHCC?*

The Manufactured Housing Consensus Committee (MHCC) is made up of 21 voting members, seven represent the manufactured housing industry, seven represent consumers, and the remaining seven are supposed to represent the general public. Each member of the MHCC serves a three-year term and may renew for one additional three year term. I have been serving on the MHCC since January of 2011 and was appointed by the Secretary of HUD following the submission of my application and due consideration. It is my understanding that the MHCC is required to meet no less than once every two years. Indeed, I attended two in-person meetings in 2011, as well as an in-person new member orientation meeting. There were also several sub-committee conference calls. The MHCC's role is to advise HUD on issues relevant to the construction of manufactured housing to ensure quality products are available to consumers, and to provide balanced input regarding regulations relating to manufactured housing. This quality oversight is of vital importance to consumers since they are investing in their biggest asset, their home, and they need to know that is durable, mold resistant, has healthy indoor air quality, is energy efficient, is built to last and will not fall apart after the warranty period has expired.

3. *How often are the construction and safety and installation standards for manufactured housing updated? How does the Department utilize the MHCC in updating these standards?*

The MHCC has four sub-committees: General, Regulatory Enforcement, Technical Structure & Design, and Technical Systems. Every MHCC member serves on two sub-committees. The sub-committees meet as and when needed, sometimes by conference call between in-person meetings of the whole and generally there is time set aside at the in-person meeting for sub-committee meetings too. All committee and sub-committee meetings are open to the public and the public also has the ability to submit written comments for the MHCC members to review. The main industry representatives, the Manufactured Housing Association for Regulatory Reform (MHARR) and the Manufactured Housing Institute (MHI), make very good use of the public process that is provided for their input. Indeed, I would go so far as to suggest that MHI and MHARR dominate the public comment period and, on occasion, provide in-depth written materials for the MHCC members to digest and consider. MHCC members are provided with a log that lists all the requests for changes to the HUD code regarding manufactured housing and these log items are assigned to the appropriate sub-committee for discussion and review.

In my opinion, the MHCC spends considerable time, sometimes too much time, reviewing proposals, but also providing opportunities for expert and public input, and discussing the pros and cons of particular proposals.

Ultimately, while the sub-committee needs only a majority vote to bring the proposal to the full MHCC for further deliberation, it requires 2/3 vote of the MHCC members before the

proposal can move forward to HUD. In addition, the MHCC members may choose to vote definitively, vote in principal, or reject any proposal before them.

I must say the process can seem labored at times, especially when an issue one cares deeply about gets stalled repeatedly. I believe consumers and industry representatives on the MHCC have all felt frustrated by the process at different times. Several examples that have frustrated me recently are:

- (1) The unwillingness of industry representatives to support energy efficiency standards that had been proposed. Given the high cost of utilities it certainly made sense to the consumers that manufactured homes be produced to be as energy efficient as possible but there were not enough votes to get energy standards out of the Committee. Fortunately, the Department of Energy currently has jurisdiction over energy efficiency standards for all types of housing (manufactured and "site built") so at least manufactured housing consumers can be assured that their homes are no less energy efficient than other housing types;
- (2) Indoor air quality standards. A member of the public brought this issue to the MHCC in 2009 and illustrated quite graphically how roof ventilation systems that did not meet residential building code standards are causing manufactured home owners serious illness. (The residential code requires 10 feet minimum between the combustion exhaust and the ventilation intake yet in manufactured homes only three feet is required between them.) This issue has yet to be acted upon by the MHCC; and
- (3) Despite a presentation, in March 2011, from an expert on improving moisture durability standards for manufactured homes, the MHCC has had no further discussion on this important issue.

From the consumer perspective the 2/3 vote required to move these issues forward to the Department was incredibly frustrating especially as at least one of the issues deals with health risks that some manufactured home owners currently face since their indoor air quality could be making them very sick.

However, it might be helpful to know that even where there is consensus and the Department moves forward to issue proposed regulations based on the advice of the MHCC, individual MHCC members, as well as the general public, are still at liberty to provide their own comments regarding the proposed rules and therefore have an opportunity to voice concerns contrary to the vote of the MHCC should they choose to do so.

4. *In its FY 2012 budget, the Department proposed to charge a \$60 label fee for each transportable manufactured housing unit produced. What is the Department's process for collecting and administering revenue generated from its label fees? How are these fees used in accordance with the 2000 Act and what effect will the increased fee have on production levels for the manufactured housing industry?*

The Department's process for collecting and administering revenue is laid out in the 2000 Act. See Section 620 (42 U.S.C. 5419). Given the limited resources currently available to the Department I would assume that these fees will be deposited in the Manufactured Housing Fees Trust Fund and that the money will be used to support the State Administrative Agencies (SAAs) (the states' manufactured housing inspection programs) and the Dispute Resolution

Program so that consumers can access timely help if they need to address problems caused by either the manufacture, sale, or installation of their manufactured home, since this dispute resolution program is only available for the first 12 months after the installation of the home. Presumably the cost of the fee will be passed along to the consumers and the increase to \$60 will be money well spent since the SAAs and access to the Alternative Dispute Resolution Program provide consumers with meaningful programs to ensure that they purchase and have installed the best products available and ones that are in compliance with federal and state building and installation codes.

Having responded, as best as I am able, to the specific questions presented, I would now like to offer some personal reflections on the value of the MHCC to consumers.

One of the most important aspects of the MHCC from the consumer perspective is the opportunity it provides to “level the playing field.” Consumers of manufactured homes are always at a disadvantage. They do not have access to the same loan products as those buying more conventional homes; people who place their homes in manufactured housing communities have no security of tenure, no guarantee of reasonable rents, and few legal protections; and without government oversight there would be no way for manufactured home owners to be assured that the home they were purchasing was going to last. Thus, the MHCC provides consumers with a venue to share their concerns with the manufactured housing industry and to find ways to work with the industry to improve its product so that it will continue to be a viable affordable home ownership option for millions of home owners for years to come.

Additionally, unlike the producers of many other products, the manufactured housing industry does not really need to rely on “brand loyalty”. It is unlikely that a manufactured home purchaser will ever need to buy another manufactured home, so without regulation and oversight, it would be possible for the industry to simply provide a product that looks good at the dealers’ lot and can survive the one year warranty period but that might not be habitable for the long-term. The MHCC and the Department provide necessary checks and balances for the consumers and provide guidance to the industry in a way that benefits everyone.

There are more and more “small footprint” homes on the market every day – one only needs to put the words “small footprint homes” into a search engine to be inundated with webpages devoted to this subject. A lot of these small footprint homes are too expensive for the average manufactured home owner but it might give the industry pause to consider how they can compete with this up and coming market in a way that will provide lower income households and seniors with quality affordable manufactured homes.

In closing, let me reiterate some of the ways in which I believe the consumers and the industry could work together for the benefit of all involved. First of all I think it would be extremely helpful if the industry could support better financial tools for the purchase of manufactured homes. Indeed, homes will not sell if potential purchasers cannot afford the loan payments, and chattel loans, as I pointed out earlier, are relatively expensive to pay off.

Second, having the industry work with home owners to secure long term leases in manufactured housing communities, as well as reasonable rent structures and other legal protections, would go a long way towards encouraging potential purchasers to buy manufactured homes. This is especially important as more and more manufactured housing communities are being owned by large corporations who register as "Real Estate Investment Trusts" (REITS). REITS are exempt from paying federal corporate income tax, so at the same time as they are raising lot rents and pricing seniors and low income households out of their homes, these companies are also benefitting from not having to pay corporate income tax.

Finally, having the consumers and the industry work together to improve the "image" of manufactured housing, by showing that these homes are energy efficient, durable and healthy, will allow seniors to "age in place", and will be an asset that will have increased equity over time could really help boost the sales of manufactured homes.

Thus the opportunity for manufactured home owners and industry representatives to meet together through the MHCC has real benefit and I would hope that we can continue to explore areas of mutual interest for the betterment of all concerned.

Thank you.

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**TESTIMONY OF  
DANA ROBERTS, FORMER CHAIRMAN OF  
THE MANUFACTURED HOUSING CONSENSUS COMMITTEE**

**REGARDING THE IMPLEMENTATION OF THE  
MANUFACTURED HOUSING IMPROVEMENT ACT OF 2000**

**BEFORE THE  
SUBCOMMITTEE ON INSURANCE, HOUSING AND COMMUNITY OPPORTUNITY  
OF THE  
COMMITTEE ON FINANCIAL SERVICES  
U.S. HOUSE OF REPRESENTATIVES**

**February 1, 2012  
Washington, D.C.**

For the record, my name is Dana Roberts. I was a member for over six years and the first Chairman of on the Manufactured Housing Consensus Committee (MHCC) from its inception in August 2002 until my resignation in July 2008.

I have been involved with Oregon's Manufactured Housing industry since 1992 and for many years I served as an Assistant Administrator in the Building Codes Division of the State of Oregon where part of my duties included the responsibility for the regulation of the manufactured housing industry. I was the person in charge of Oregon's State Administrative Agency, including consumer assistance, inspection of manufactured home plants, and development / implementation of Oregon's Manufactured Housing Installation standard and program. Oregon's installation standard used in lieu of the manufacturer's installation manuals to site homes in Oregon.

Based on my years of managing Oregon's Manufactured Housing Program and my experience on the Manufactured Housing Consensus Committee, I am of the opinion:

- The manufactured housing industry produces quality homes in the plant that are equal to or better than site built homes for the money
- The 2000 Act legislation gives the Department of Housing and Urban Development (HUD) all the legislative tools needed to administer the national Manufactured Housing Program.
- The number one problem facing the industry before the 2000 Act was installation and completion of the home on the appropriate foundation that is dependent on the home's use. It is unfortunate that this remains the number one problem in spite of the 2000 Act and MHCC's recommendations to address the problem that were rejected by HUD.
- What is wrong with the manufactured housing industry today is HUD's administration and interpretation of the 2000 Act.

I am asking today that you direct HUD to change their interpretations of the 2000 Act and to adopt interpretations and administrative actions that are in keeping with your intent under the 2000 Act.

There are 21 members on the MHCC with 7 representatives in three groups: producers, users and general interest. To make a recommendation to HUD required consensus from two-thirds of the 21 representatives. The original 21 members could not understand how HUD could reject our consensus understanding of the 2000 Act and interpret the 2000 Act to allow HUD to:

- A. Declare major portions of the work to build a house is not part of the home's construction including work that HUD considered construction before the 2000 Act
- B. Neutralize the role and responsibility of the MHCC consensus committee established by the 2000 Act by rejecting the MHCC consensus based process for

- soliciting MHCC recommendations on non-emergency program actions such as rules, policies and interpretations
- C. Determine the MHCC has no responsibility to provide periodic recommendations regarding installation standards and the accompanying procedural / enforcement regulations since HUD has interpreted that installation works to complete the home is not construction
  - D. Reject MHCC's recommendation in the MHCC model installation standard to clearly distinguish between the two types of foundation allowed under the ACT depending upon the homes intended use:
    - o One for houses that retain the ability to move from one piece of land to another
    - o One for houses that would be permanently attached to a piece of land
  - E. Reject MHCC efforts to help HUD put in place as required by the 2000 Act a Process for updating the manufactured housing construction and safety standards like those utilized to update site-built and modular construction standards
  - F. Reject MHCC's recommendation to hold people accountable for the work they do. Instead HUD holds the manufacturing plant accountable for work done by other companies and workers

**LOOKING INTO THESE SIX INTERPRETATION POSITIONS YOU FIND:**

- A. HUD has declared major portions of the work to build a house is not part of the home's construction including work that HUD considered construction before the 2000 Act
  1. Title VI definitions:
    - "manufactured home construction means all activities relating to the assembly and manufacturer of a manufactured home including but not limited to those relating to durability, quality, and safety" Section 603 (1)
    - "manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes for resale" Section 603 (1)
    - "Federal manufactured home construction and safety standard": means a reasonable standard for the construction, design, and performance of a manufactured home which meets the need for quality, durability, and safety" Section 603 (7)
  2. Even though these definitions are in federal law, HUD has interpreted the 2000 Act to mean the following work is not part of the home's construction and as a result not subject to the construction and safety standard protections under the law:
    - Building any part of the foundation including footings, walls, stabilizing supports, anchoring the home to the ground etc. is not part of the house's construction

- Completing the end walls including installing siding, sealing around any windows and painting
- Completing the joining of two or more sections including attaching the sections together
- Connecting utility service between sections
- Completing the roof at the roof's peak between sections
- Installing any shipped loose plumbing, electrical, appliances, laying down of carpet, completing the tape and texture and interior painting and the attachment of any site built elements such as garages
- Connecting to service utilities on-site
- Placing the house on its foundation installing the vapor barrier, and building the porch is not part of the house's construction.
- Joining two sections together is not part of the house's construction
- Preparing the site to build the foundation and ensure drainage away from the home or to prevent frost heave

**B. HUD has neutralized the role and responsibility of the MHCC consensus committee established by the 2000 Act**

**1. Title VI definitions and requirements:**

- "consensus standards development process" means the process by which additions, revisions, and interpretations to the Federal manufactured home construction and safety standards and enforcement regulations shall be developed and recommended to the Secretary by the consensus committee" Section 603 (16)
- "The Secretary shall establish by order, appropriate Federal manufactured home construction and safety standards.....(B) except as provided by subsection (b) shall be established in accordance with the consensus standards development process" Section 604 (a) (1) Note: subsection (b) (5) is the emergency clause to allow the Secretary to act outside the consensus process.
- "There is established a committee to be known as the "consensus committee" which shall , in accordance with this title-
  - i. Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured home housing construction and safety standards in accordance with this subsection;
  - ii. Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations including the regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b)" Section 604 (a) (3)
- The HUD Secretary has the Authority to act in an Emergency outside of the consensus development process if the Secretary in writing

provides the MHCC a written description and sets forth the reasons why action is necessary including all supporting documentation and follows APA rule procedures Section 604 (b) (5)

- MHCC consensus committee is 21 members comprised of 7 producers or retailers, 7 persons representing consumer interests such as consumer organizations, recognized consumer leaders, and owners who are residents of manufactured homes and 7 general interest and public official members Section 604 (a) (3)
  - “The Secretary, in appointing the members of the consensus committee .... shall ensure that all directly and materially affected interests have the opportunity for fair and equitable participation without dominance by any single interest; Section 604 (3) (E)
  - “DOMINANCE DEFINED---In this subparagraph, the term “dominance” means a position or exercise of dominant authority, leadership, or influence by reason of superior leverage, strength or representation” Section 604 (3) (E)

2. MHCC members:

- As originally established the committee was composed of the following by category;
  - Producers: 3 VP’s of engineering for different companies, 2 representatives from the national manufactured associations, a Retailer and a Director of Engineered Products
  - Users: 4 representatives of difference state manufactured Homeowner Associations, Board Director AARP, Project Director for a Non-profit housing corp. and a manufactured home owner / State AARP member
  - General Interest: 3 State manufactured housing program managers, 3<sup>rd</sup> party inspection agency representative and 3 VP’s representing different manufactured housing lending agencies
- Today, HUD has appointed two former HUD employees, 4 members from the same Consumer Organization, removed all representation from the two national manufactured housing associations, and has no lending agency representation.

3. Initially- The Chairman and Vice-Chairman were selected by the MHCC and referred to the agency for approval. The first persons selected, referred and confirmed were for Chairman, General interest- Oregon manufactured housing manager and for Vice-Chairman, User – AARP Board Director

- Agendas were worked out together with the MHCC Chairman, Designated Federal Officer (DFO) and MHCC Administering Manager with NFPA. Once approved, the DFO obtained agency head approval.

- **5 Subcommittees were established: Standards, Enforcement, Installation, Planning & Prioritization and Standards / Regulatory Processing**
- 4. **Over the last 10 years HUD has taken actions to neutralize the MHCC role and impact on providing consensus based recommendations to the Secretary since the Act requires the Secretary to explain why he rejects an MHCC recommendation: Actions include:**
  - **HUD has interpreted the Act to provide:**
    - **HUD, with the authority to determine what is “manufactured home construction” and what is a “manufactured home construction and safety standard”**
    - **HUD has further interpreted that any work or activity not related to their interpretation of construction and safety is not subject to MHCC review, comment or ability to provide recommendations on any rules, policies, interpretations and procedures. Construction work or activity now outside MHCC involvement include:**
      - ✓ **Installation standards**
      - ✓ **Installation program administration**
      - ✓ **On-site completion of the home**
      - ✓ **Rules and procedures governing installation program administration**
      - ✓ **In-plant home construction rules, procedures, plant monitoring, interpretations and policies**
      - ✓ **In-plant quality control programs the manufacturer must put in place to ensure homes meet the standards**
      - ✓ **Dispute Resolution / Consumer Complaints**
    - **MHCC has no authority to review and comment on any regulation that is not related to HUD’s definition of what are Construction & Safety Standards**
    - **MHCC has no authority to provide recommendations if HUD deems the action is an administrative action**
    - **HUD can adopt program policies, practices and procedures outside of the consensus process and not declared an emergency under the Act contrary to Title VI requirements**

- HUD can unilaterally interpret standards without MHCC involvement
  - HUD with the authority to alter MHCC recommendations in the rule development process without MHCC involvement and/or chance to provide recommendations
  - HUD need not act on MHCC recommendations that are not in rule format and with justification acceptable to HUD
  - HUD has determined the MHCC has no oversight authority with respect to program contracting, budgets, research or plant monitoring activities
  - HUD now , without MHCC involvement, appoints the Chairman, appoints subcommittee chairmen and determines what is on the agenda
  - HUD no longer makes any attempt to put in place a process to up-date the standards
  - HUD no longer seeks to reach consensus through the MHCC on issues facing the program
- C. HUD has determined the MHCC has no responsibility to provide periodic recommendations regarding installation standards and the accompanying procedural / enforcement regulations since HUD has interpreted that installation work to complete the home is not construction. (See HUD's letter of interpretation dated May 7, 2004 to Dana Roberts, Chairman of MHCC)
1. By declaring work to complete and install a home on the building lot is not construction there is no requirements or process under the Act to up-date the national standard
  2. HUD is not required to seek an MHCC consensus recommendation on what should be done to address issues or changes to the installation program or installation standards
  3. Installation standards are not preemptive and can be changed by any city, county, or state
- D. HUD has rejected the MHCC recommendation in the model installation standard developed by the MHCC to clearly distinguish between the two types of foundation allowed under the Act depending upon the homes intended use:
- One for houses that retain the ability to move from one piece of land to another
  - One for houses that would be permanently attached to a piece of land
1. The MHCC recognized the number one problem facing the industry was the confusion under the Act between the two types of foundations a manufactured home could be place on. For that reason, the MHCC

recommended to HUD to include in the national standard requirements for “permanent foundations”

- In rejecting the MHCC recommendations HUD stated:
    - “Mortgage lenders are not governed by the Model Standards”
    - “States and local governments are not restricted from establishing specific requirements for permanent foundations” See Federal Register/Vol. 72, No 202 / Friday, October 19, 2007 59348 Comment and response to Section 3285.314 (a)
  - 2. HUD’s Inspector General Audit Report 2007-KC-004 found: “Of the FHA Title II insured manufactured housing loans that closed from 2003 to 2005, at least 50,000 ( or more than 80 percent of financed homes) were installed on substandard foundations”
    - Manufactured housing program responses included statements such as:
      - “there is currently no universally accepted definition of permanent foundation or a substandard foundation”
      - “many jurisdictions throughout the country have adopted building codes which address foundation requirements”  
Note: HUD’s nationwide standard removed the requirement to follow local codes for permanent foundations
      - “we believe it is more efficient and effective to devolve to nationwide standards” Note: HUD’s nationwide standards removed permanent foundation requirements
- E. HUD has rejected MHCC efforts to help HUD put in place as required by the 2000 Act a process for updating the manufactured housing construction and safety standards like those utilized to update site-build and modular construction standards Section 604 (a) (4)
1. The Act states: “the consensus committee shall not less than once during every two year period (i) consider revisions to the Federal manufactured home construction and safety standards; and (ii) submit proposed revised standards, if approved in a vote of the consensus committee by two-thirds of the members, to the Secretary in the form of a proposed rule, including economic analysis” Section 604 (a) (4) (A) (ii)
    - HUD has interpreted this to mean in the form of a proposed rule meeting all the internal HUD requirements for rule development and ready to file in the federal register
    - The MHCC has submitted, with two-thirds approval, changes to the rules concerning construction standards with economic analysis that HUD has rejected because they were not ready for filing in the Federal Register
  2. The MHCC did get HUD to solicit requests for public proposals to up-date and/or revise the standards in May of 2007.

- However, nothing has been done with the submittals
  - No process is in place to periodically up-date the standards as contemplated by the Act
- F. HUD has rejected the MHCC recommendation to hold people accountable for the work they do. Instead HUD holds the manufacturing plant accountable for work done by other companies and workers for work done on the building lot by persons who have no relationship with the manufacturing plant.
1. Under the Act, manufacturer is defined:
    - “manufacturer means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes for resale” Section 603 (5)
  2. The MHCC in developing and recommending a national installation standard recognized that HUD would be regulating additional persons outside the manufacturing plant that are involved in completing the work to build the foundation and installing the home on a building lot.
  3. To address this problem, the MHCC adopted the premise that persons doing the work should be accountable for the work they do and they could be covered under the part of the manufacturer definition regarding assembly.
    - The MHCC developed a “Consumer Assistance Program proposal based on this premise and sent the consensus based proposal to the Secretary
    - The Secretary indicated the MHCC did not have the authority to present such a recommendation to the Secretary. However, HUD did publish the MHCC proposal and their reasons for rejecting the proposal. Among the reasons were:
      - “Congress placed responsibility for the correction and notification of defects in manufactured homes on manufacturers”
      - “HUD does not have the authority to shift statutory responsibilities away from manufacturers”
      - “The proposal adds significantly to the administrative responsibilities of HUD and the States” See Docket No. Fr-4867-N-03

G. Label Fees:

Historically transportable section label fees which are collected from the manufacturer and sent to HUD was used to fund both Federal and State activities in the manufactured housing program. \$9.00 of the fee went to a State receiving a transportable section and \$2.50 went to the State that produced the transportable section. States involved in the inspection of manufactured plant productions could charge additional fees to cover their cost. (See 3282.307)

The States are the ones who have not been supported by HUD by an increase in their share of label fees or with General Fund support from HUD. HUD has

primarily used the General fund it received to backfill for lower production levels to support the its third party monitoring of State and private in-plant activities and to require new quality control procedures in the manufacturing plant that was adopted outside the MHCC consensus based review process.

To see if the \$60 label fee is justified, the Committee should direct HUD to present the proposed fee increase to the MHCC for a cost benefit analysis as required under 604(e) of the 2000 Act.

**CONCLUSION:**

I am asking today that you direct HUD to change their interpretations of the 2000 Act and to adopt interpretations and administrative actions that are in keeping with your intent under the 2000 Act.



**Testimony of Mr. Manuel Santana, P.E.  
Director of Engineering, Cavco Industries**

**Before the  
Subcommittee on Insurance, Housing and Community Opportunity  
Committee on Financial Services  
U.S. House of Representatives**

**Hearing on  
Implementation of the  
Manufactured Housing Improvement Act of 2000  
February 1, 2012**

**Washington, DC**

Thank you, Chairwoman Biggert, Ranking Member Gutierrez and members of the subcommittee for the opportunity to testify this morning on the implementation of the Manufactured Housing Improvement Act of 2000.

**My name is Manuel Santana and I am testifying on behalf of the Manufactured Housing Institute.** I am Director of Engineering for Cavco Industries. In this capacity, I oversee the engineering departments of Cavco Industries, Fleetwood Homes and Palm Harbor Homes. I have responsibility for the engineering design, development and maintenance of our products, which range from HUD-Code homes, factory-built housing and recreational park trailers. My tasks include maintaining relations with Department of Housing and Urban Development (HUD) inspectors, In-plant Primary Inspection Agencies (IPIAs), Design Approval Primary Inspection Agencies (DAPIAs) and state and local officials. I am a member of the International Code Council (ICC) and registered as a Professional Engineer in Arizona, California, Colorado, Georgia, Nevada, New Mexico and Texas. In addition, I currently serve on HUD's Manufactured Housing Consensus Committee (MHCC).

#### **MHI AND CAVCO INDUSTRIES**

**The Manufactured Housing Institute (MHI) is the national trade organization representing all segments of the factory-built housing industry.** MHI members include home builders, lenders, home retailers, community owners, suppliers and others entities affiliated with the industry. MHI's membership includes 50 affiliated state organizations. MHI members currently build 80 percent of all manufactured homes in this country.

**Headquartered in Phoenix, Arizona, Cavco Industries, Inc. designs and produces factory build housing and is the nation's second largest producer of HUD Code manufactured homes,** which are marketed under a variety of brand names including Cavco Homes, Fleetwood Homes, Palm Harbor Homes and Nationwide Homes. Cavco is also a leading producer of park model homes, vacation cabins, modular homes, and systems-built commercial living structures. Together with its subsidiaries Fleetwood, Nationwide and Palm Harbor, Cavco operates 15 homebuilding production facilities across the country and employs more than 2,500 people.

#### **MANUFACTURED HOUSING**

Manufactured housing is a key source of quality affordable single-family housing for 19 million Americans. During this critical time for our nation's housing markets, manufactured housing can play an even greater role in providing reliable sustainable housing for current and future homeowners looking to meet a variety of housing and lifestyle needs.

Manufactured homes are built in a controlled environment, transported to the building site, and installed on the home-site in accordance with federal building codes and enforcement regulations administered by the Department of Housing and Urban Development (HUD). These governing rules are commonly referred to as the "HUD Code." Since HUD oversees and regulates virtually every facet of the construction process, manufactured housing is one of the most heavily regulated industries in the construction field.

As the only federally-regulated national building code, the HUD Code regulates home design and construction, installation requirements for strength and durability, resistance to natural hazards, fire safety, electrical systems, energy efficiency, and all other aspects of the home. Homes are inspected every step of the way and our industry adheres to a robust quality assurance program which offers far greater controls than anyone else in the home building industry.

The affordability of manufactured housing can be attributed directly to the efficiencies emanating from the factory-building process. The controlled environment and assembly-line techniques remove many of the challenges encountered during traditional home construction, such as poor weather, theft, vandalism, damage to building products and materials and unskilled labor. Factory employees are trained and managed more effectively, efficiently, and with a higher degree of safety than the system of contracted labor employed by the site-built home construction industry.

Manufactured housing's importance as a sustainable source of affordable housing is reinforced by data (according to the U.S. Census Bureau) indicating that in 2010 it accounted for:

- 72 percent of all new homes sold under \$125,000;
- 47 percent of all new homes sold under \$150,000; and
- 27 percent of all new homes sold under \$200,000.

Manufactured homes serves many housing needs in a wide range of communities—from rural areas where housing alternatives (rental or purchase) are few and construction labor is scarce and/or costly (nearly two of three manufactured homes are located in rural areas), to higher-cost metropolitan areas as in-fill applications. Without land, the average purchase price of a new manufactured home is \$62,800 versus \$206,500 (excluding land costs) for a new site-built home (Source: U.S. Census Bureau), which is affordable by almost any measure.

In addition to the valuable role it plays in providing reliable, efficient and affordable housing for 19 million Americans, the manufactured housing industry is an important economic engine. In 2010, the industry produced 50,000 new homes, which were produced in more than 120 home building facilities, operated by 45 different companies, and sold in 4,000 retail home sales centers across the U.S.—generating 75,000 full-time, good-paying, jobs.

For manufactured homes to be a part of the solution to America's growing housing challenges, the industry relies on the HUD Code to be a dynamic standard that supports innovation, consumer safety and quality, while preserving manufactured housing's affordability.

**THE HUD CODE AND THE MANUFACTURED HOUSING IMPROVEMENT ACT OF 2000**

For over 35 years (since 1976), the HUD Code has set the quality assurance and safety standards for every manufactured home in America. HUD regulates home design and construction in the same way that state and local building codes do for site-built homes by setting requirements for strength and durability, resistance to natural hazards, fire safety, energy efficiency and all other aspects of the home. HUD regulations also strictly govern quality control and inspection measures.

The HUD Code is specifically designed for the factory-built environment. The inspection and enforcement process starts well before production. Plans must be approved by professional engineers and HUD, and factories must receive certification by HUD to be approved to build homes. There is then continual oversight throughout the building process and which does not end until the home receives a numbered certification label that indicates the home has been designed, constructed and inspected in accordance with the HUD Code.

In 2000, Congress passed the Manufactured Housing and Improvement Act (MHIA), which expands HUD's mission with regard to manufactured housing, and improves the process for establishing, revising,

enforcing, and updating the HUD Code. The law created the Manufactured Housing Consensus Committee (MHCC)—an advisory committee comprised of industry and responsible for recommending revisions and interpretations of the code.

Within MHIA, Congress intended for HUD to partner with the MHCC to update safety and construction standards. Specifically, Congress indicated that the key considerations that should guide the MHCC and HUD in their work include:

- Giving affordability and increasing homeownership equal weight with quality, durability and safety of homes;
- Ensuring that construction standards are practical, uniform and performance-based;
- Encouraging innovative and cost-effective construction techniques; and
- Ensuring that the process for developing, revising and interpreting safety and construction standards is balanced.

HUD must ensure that the HUD Code revision process can meet the increasing advancements in design that the industry makes each year. MHI believes it is crucial that HUD obtain and deploy the resources necessary to accomplish this mandate that fully engages the industry and the MHCC as envisioned in MHIA.

#### **CHALLENGES IN IMPLEMENTING MHIA AND RECOMMENDATIONS FOR IMPROVEMENT**

The MHIA's key provisions were designed to preserve the vital role manufactured housing plays in meeting the nation's housing needs. However, implementation of the Act has not been without challenges. There are several key action areas outlined in the Act which are not being implemented and that are of significant concern to MHI. These include provisions designed to:

- Promote innovation and affordability with timely construction codes and standards;
  - Enhance preemption to streamline production and reduce regulatory barriers;
  - Implement manufactured home installation standards to the benefit of consumers and industry; and
  - Strengthen manufactured housing as a priority within HUD through the appointment of a non-career administrator.
- **Promote Innovation and Affordability with Timely Construction Codes and Standards**

MHI believes the HUD Code is a "living" code that needs consistent attention and updating. Unfortunately, since its establishment and initial meeting in 2002, the MHCC has met nearly 200 times and has made dozens of recommendations to revise the HUD Code. Yet ten years later, the majority of these recommended updates remains pending and awaits final action by HUD.

The MHCC has recommended three comprehensive sets of updates to the HUD Code, including numerous updates to various non-controversial reference standards used in the residential building industry. To date, only one update, in 2005, was finalized and implemented by HUD.

The MHCC has recommended four significant rewrites of enforcement regulations and, to date, none have been implemented. Of particular importance to MHI is a proposal considered by the MHCC in 2007-2008 to streamline the regulations for obtaining approval for designs for alternative construction.

Under the current regulations (24 CFR Part 3282.14), manufacturers must obtain individual approval from HUD for each new home design or construction technique that is not in compliance with the HUD Code.

Because consumers are increasingly requesting homes with customized designs, the number and frequency of these approval requests has significantly increased. As a result, due to the inability of the HUD Code to keep pace with these practices, it often takes months to receive the required HUD approval of these non-standard designs. These delays result in lost sales and unnecessary interruptions in the construction process, which ultimately lead to loss of jobs and lost economic opportunity for the industry.

A lack of updated codes and standards has resulted in the very certain likelihood that the manufactured housing industry will be subject to energy efficiency standards established and enforced by the Department of Energy (DOE). The Energy Independence and Security Act of 2007 (EISA; P.L. 110-140) contains provisions requiring DOE to establish, implement and enforce compliance with energy efficiency standards for manufactured housing (Sec. 413).

The law effectively replicates HUD's statutory responsibility for manufactured home energy standards within DOE and established a duplicative regulatory standard and system for the manufactured housing industry. MHI believes this dual regulation will have the real impact of raising the costs on affordable manufactured housing and costing jobs in an industry already suffering through a significant decline.

- **Enhance Preemption to Streamline Production and Reduce Regulatory Impediments**

The HUD Code preempts state and local building codes affecting manufactured housing. This concept of federal supremacy is reinforced in MHIA, which states the HUD Code should be "broadly and liberally construed" to ensure that "disparate State or local requirements or standards do not affect the uniformity and comprehensiveness" of the HUD Code.

Congress recognized the importance of federal preemption as a key element to the production and distribution of manufactured housing. A single uniform building code is essential to interstate commerce and to preserving manufactured housing's affordability.

However, there has been an erosion of the HUD Code's preemptive identity resulting in local attempts to establish building code requirements (for manufactured housing) not required by the HUD Code. In addition, local exclusionary zoning and land use requirements continue to plague the industry and limit the availability of affordable housing.

MHI has requested HUD update its policy on preemption to reflect the expanded authority Congress specifically provided in MHIA. The MHCC, last year during consideration of proposed fire sprinkler standards, also requested HUD revisit its official policy on preemption.

- **Implement Installation Standards to Benefit Consumers and Industry**

HUD is empowered to enact minimum state installation standards for manufactured homes. *Model Manufactured Home Installation Standards* established by HUD in 2007 prescribes methods for performing specific operations or assembly of a manufactured home to ensure that compliance with the HUD Code is preserved and maintained.

The implementation of minimum installation standards and state installation programs—including licensing and training—has significantly reduced the number of consumer complaints and provided assurances that a manufactured home is installed according to design requirements.

HUD is required to develop licensing, training and enforcement programs governing the installation of manufactured homes for those states that lack individual HUD-approved programs. However, HUD has failed to develop these programs. The development of substantive programs in these areas would greatly aid industry efforts to ensure both consumer satisfaction and product reliability is maximized.

- **Make Manufactured Housing a Priority within HUD; Appoint a Non-Career Administrator**

HUD has failed to recognize manufactured housing as important to fulfilling its mission to “create strong, sustainable, inclusive communities and quality affordable homes for all.”

Indeed, despite serving as the housing choice for 19 million Americans, HUD’s *FY 2010-2015 Strategic Plan* fails to mention the role manufactured housing can play meeting HUD’s programmatic mission and goals. Specifically, HUD has identified five major goals and 18 sub-goals to fulfill its mission. However, agency’s manufactured housing program is only given cursory mention and a limited scope related to HUD’s overall mission —“to protect and educate consumers when they buy, refinance or rent a home.”

A key provision within the law is for HUD to appoint a non-career administrator to oversee the agency’s manufactured housing program. Congress intended the administrator to oversee the development of codes and standards and to serve as an advocate for manufactured housing in HUD’s overall mission, policies and programs. However, this position remains vacant.

HUD’s FY2012 budget envisions an increase in the label fee paid by home manufacturers to offset the expenses incurred by the agency in carrying out its regulatory responsibilities. However, it is unclear whether increasing label fees will translate into a more effective program. We were pleased to hear in HUD’s testimony before this committee in November that the MHCC will have the opportunity to evaluate any fee increase proposed by HUD.

With recent budget cuts to HUD’s manufactured housing program and increases in labeling fees imposed on manufactured homes producers, the need for a key advocate to serve the larger manufactured housing market has never been greater. In considering a label fee increase, it is necessary to thoroughly evaluate current program initiatives to accurately determine if the agency is meeting program priorities within the existing budget confines. Appointing a non-career administrator for the manufactured housing program is essential an essential first step that should be taken prior to the adoption of any fee increase.

#### **MANUFACTURED HOUSING INDUSTRY AND CONSUMER FINANCING CHALLENGES**

Despite its role as a valuable source of affordable housing; a driver of the U.S. economy; and a model of efficiency and sustainability in the larger housing industry, the manufactured housing industry has had ongoing challenges over the past decade. Since 2005, the pace of new manufactured homes sold in the U.S. has declined by 65 percent (146,881 in 2005 vs. 50,046 in 2010) and there has been a decline of nearly 80 percent since 2000 (when 250,419 new manufactured homes were produced).

The decline in home sales and activity within the manufactured housing market and its resulting job losses coincides with a number of challenges:

- the lack of liquidity and credit in the manufactured housing finance sector has limited financing options for our homebuyers;
- the uncertainty and impact of new financial services and mortgage finance regulations has hindered growth; and
- the slow pace of adoption for new standards within the HUD Code has prevented the manufactured housing industry from remaining on the cutting-edge of design and construction.

While the manufactured housing industry would benefit from an up-to-date building code and a responsive and engaged regulatory body and is appreciative of the subcommittee's willingness to examine and evaluate MHIA's impact and effectiveness, the single most important issue impacting the manufactured housing market remains the availability of accessible and affordable financing for those seeking to purchase manufactured housing.

Lack of a viable secondary market for manufactured home loans coupled with growing regulatory burdens threaten to further constrict the limited financing options that currently exist within the manufactured housing market.

Over the past year, MHI has worked to educate Members of Congress and the Administration regarding some of the unforeseen impacts recently enacted legislation would have on limiting access to credit for the purchase of affordable manufactured housing.

Specifically, provisions within the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) and the Secure and Fair Enforcement of Mortgage Licensing Act (SAFE Act; P.L. 110-289) would have the very real unintended consequence of limiting the availability of and access to credit for the purchase of affordable manufactured housing.

Fortunately, MHI has been working with majority and minority leaders of the House Financial Services Committee to develop a bipartisan solution to these issues that will provide relief for manufactured homeowners while maintaining consumer protections.

New manufactured home construction has fallen roughly 80 percent over the past decade, which has accounted for more than 160 plant closures, more than 7,500 home center closures, and the loss of over 200,000 jobs. More importantly, thousands of manufactured home customers have been left unable to purchase, sell or refinance homes. Without action in these key areas, the people who live in manufactured homes and whose livelihood is connected to this industry are at significant risk.

Chairman Biggert, Ranking Member Gutierrez and members of the subcommittee, I thank you for the opportunity to testify and welcome any questions you may have.



June 7, 2012

MS12-08

The Honorable Judy Biggert  
 2113 Rayburn House Office Building  
 Washington, DC. 20515

Subject: "Implementation of the Manufactured Housing Improvement Act of 2000"  
 Follow up Questions

Chairwoman Biggert:

I want to thank you for the opportunity to testify on behalf of the Manufactured Housing Institute before the Insurance, Housing and Community Opportunity Subcommittee on February 1, 2012. Below is my response to the follow up questions regarding the "Implementation of the Manufactured Housing Improvement Act of 2000".

1. In your testimony, you indicate that the Manufactured Housing Improvement Act of 2000 provided the Department of Housing Development (HUD) with authority to establish a "HUD Code," which would preempt state and local government codes. You also mention that this federal preemption is one of the primary reasons that manufactured housing is affordable housing. Can you explain how affordable manufactured housing could become more expensive and therefore, less affordable should state and local codes exceed the "HUD Code," given that it is outdated or not enforced?

Every time that HUD allows a local or state jurisdiction to enforce their own regulations or standards, the uniformity of the standards is reduced and HUD's preemptive identity is diminished. Manufacturers are required to keep track of different requirements from different jurisdictions and in many cases, submit documentation for approval and be subject to additional plant and on-site inspections.

This adds to the cost of producing homes and erodes the fundamental purpose of a single, uniform building code for factory built housing—to foster a healthy national market and minimize unnecessary, disparate and overlapping requirements. The federal regulatory system for manufactured housing envisions a code void of technical and administrative impediments, including questionable improvements, restrictions on cost-saving materials and technologies, impediments to efficient and large scale production, administrative conflicts, delays, and excessive fees.

Central Office

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Examples are plentiful, but two of the biggest ones are fire sprinklers in California and Exterior Ignition Resistant Construction in California. Both of these items require submittal of design documents to a State- approved agency and require inspections, both in the plant and on-site, that are in addition to and sometimes conflict with, the HUD system of approvals and inspections. Such state and local regulations are outside of the HUD program and therefore not required to go through the MHCC for comment and are not bound by the basic tenets of affordability and practicality required of the HUD code.

It is important to note that, with the exception of the HUD Code, state and local building codes are revised with little or no cost-benefit analysis. Also, building codes are increasingly being used to inform and direct other policy objectives beyond their original purpose for health and safety. Other objectives regarding mechanical fire prevention and water conservation are the primary examples. Many jurisdictions use zoning ordinances to define the type and design of homes acceptable to a community, including building code requirements.

The importance of preemption cannot be stressed enough. Preemption allows for a single federal standard to exist. Preemption allows for uniformity in the design, approval, inspection and installation of manufactured homes. Uniformity equals lower costs to produce a house which means lower cost to the consumer. A less expensive house is equivalent to increased homeownership.

The solution to a poorly enforced HUD Code is not to eliminate the program, which is sound in its concept and vital to affordable housing, but rather to take steps to correct the manner in which it is enforced and maintained.

- 2. In your statement, you indicated HUD's implementation of manufactured housing installation standards, authorized by the Manufactured Housing Improvement Act, is important to upgrading the quality and durability of manufactured homes and increasing consumer acceptance of manufactured housing. Can you explain this? In addition, what roles do HUD and state and local governments play in regulating installation standards?**

Many of the service issues that industry deals with can be traced to improper installation of the home. A reason for this is non-uniform enforcement of the manufacturer's installation requirements, and a largely untrained, unskilled workforce.

The Model Manufactured Home Installation Standards are an important step towards increasing quality and durability of manufactured homes because it emphasizes the importance of licensed, trained installers, and state-wide monitoring and enforcement.

The model manufactured home installation standards are minimum requirements that are applicable in all States. The standards cover all aspects of installation from site drainage and grading to connection of modules, proper piercing and tie downs as well as completions of vent pipes and connections to utilities. The Manufactured Housing Installation rules and regulations also require installers to meet licensing, training and insurance requirements.

HUD is responsible for enforcing the installation standards nationwide and all HUD manufacturers are required to produce installation manuals that comply with the minimum standards. The Manufactured Housing Installation Rules and Regulations allow for states to participate in the installation program by submitting and receiving HUD approval of the state installation program. HUD will act as the enforcement agency in states that do not participate in the installation program. There are currently 32 states with their own installation programs.

An emphasis on proper installation of manufactured homes will improve their long-term performance, reduce issues and ultimately help eliminate some of the public stigma that manufactured housing is a subpar option to conventional site-built homes. This can lead to increased consumer acceptance of manufactured homes as a viable housing option.

**3. It is my understanding that more than twenty five percent of families living in manufactured housing choose to locate their home in a manufactured housing community. Why would a consumer choose to locate his or her manufactured home in a manufactured housing community? What benefits could a consumer have while living in a manufactured home in a manufactured housing community versus in a non-manufactured housing community?**

There are many reasons why people choose to live in a manufactured home community. However, affordability and lifestyle are perhaps the biggest reasons why over 2 million families choose to live in manufactured home communities.

Manufactured home communities, like larger neighborhoods and other residential communities, are comprised of both renters and homeowners. These communities offer a unique balance between private ownership, communal and shared use of recreational and green space, shared responsibilities for home and yard maintenance as well as services such as lawn maintenance, trash and snow removal to amenities like pools, clubhouses and playgrounds. Manufactured home communities may also offer amenities and services including road maintenance, snow removal, trash collection and security. Active adult communities offer organized social activities, walking trails, fitness centers and even golf courses.

Successful sustainable manufactured home communities are inclusive and stable. They provide a high quality and affordable living environment for residents. Unlike traditional multifamily rental housing, tenants in manufactured home communities have a monetary investment in the community and community owners recognize this business partnership is essential to a successful community. The homeowner has the opportunity to build equity and own their home.

There are many financial and tax benefits to living in a land-lease manufactured home community. The homebuyer purchases the home only, which makes initial out-of-pocket investment much lower. Lower monthly payments leave more money in your budget for other things. And, just like with site-built homes, the interest on a manufactured home loan is tax -deductible in most cases.

A major benefit of living in a manufactured home community comes from living in a modern manufactured home. Today's manufactured homes offer the best value for the highest quality home on the market. Manufactured homes can offer all of the amenities and comforts found in a site-built home but often cost 20 to 35% less per square foot. Living in a manufactured home community offers one of the most cost effective homeownership options available. In the current economic climate, manufactured home communities also serve an important need for affordable rental housing.

Looking at future housing trends, the manufactured housing industry is poised to continue to serve as a critical component to a healthy and vibrant housing market. The upcoming millennial generation contains five million more people than the baby boomer generation, and the first of the millennials is just now beginning to enter the home buying market. The millennials are very educated consumers, with an eye to maximizing their housing dollar. Studies indicate they will be looking for more environmentally friendly and energy efficient homes, and will be looking for homes which are smaller in size and that they will be able to responsibly afford. The manufactured housing industry is ready to meet this market demand.

Very Truly Yours,

A handwritten signature in cursive script that reads "Manuel Santana".

Manuel Santana, P.E.  
Director of Engineering  
Cavco Industries, Inc.

SPENCER BACHUS, AL, CHAIRMAN

United States House of Representatives  
Committee on Financial Services  
Washington, D.C. 20515

BARNEY FRANK, MA, RANKING MEMBER

November 29, 2011

The Honorable Gene L. Dodaro  
Comptroller General  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Dodaro:

We are writing to request that the Government Accountability Office (GAO) examine several aspects of the Department of Housing and Urban Development's (HUD's) regulation of the manufactured housing industry.

As you know, a manufactured home is built entirely in a factory, transported to a site, and installed there. It is distinguished from "modular," "panelized," and "pre-cut" homes, which are also factory-built but assembled on the site. Manufactured houses usually are built without knowing where they will be sited, and they are subject to a Federal building code administered by HUD.

The Manufactured Housing Improvement Act of 2000 (P.L. 106-569) was intended to benefit both the manufactured housing industry and homeowners by providing a more timely method of establishing the standards to which manufactured homes are built. A private sector committee, known as the Manufactured Housing Consensus Committee, was established to make recommendations to the Secretary of HUD on ways to keep the HUD code up-to-date. The law also clarified the scope of federal preemption and provided HUD with additional staff and resources to address manufactured housing issues. Further, homeowners and the industry were expected to benefit from the requirement that each state institute an installation program and a dispute resolution program within five years of the law's enactment.

We request that GAO examine how HUD has implemented the Manufactured Housing Improvement Act of 2000 and what effect that Act has had on the overall state of the manufactured housing industry. We are particularly interested in what effect the Manufactured Housing Consensus Committee has had on revisions to HUD's manufactured housing construction, safety, and installation standards. We also request that GAO look at the effect the Act has had on ensuring that these standards are timely and up-to-date, and examine the specific authority of the Consensus Committee in advising HUD.

In addition, HUD collects a certification label fee, commonly known as an inspection fee, from manufacturers for each transportable unit of manufactured housing produced. Prior to fiscal year 2009, according to HUD, its program office for manufactured housing was funded solely through the collection of these label fees. Now, the Department must supplement the label fee funds with an annual appropriation. We request that GAO examine the annual inspection process, including HUD's process for collecting and

The Honorable Gene L. Dodaro  
Page 2  
November 29, 2011

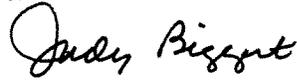
administering the fees; whether the fees are used in accordance with the 2000 Act; and the effect the fees have on production levels for manufactured homes.

We look forward to working with your staff, and if you have any questions about this request, please contact Clinton Jones or Tallman Johnson at 202-225-7502.



SPENCER BACHUS  
Chairman

Sincerely,



JUDY BIGGERT  
Chairman  
Subcommittee on Insurance, Housing,  
and Community Opportunity

Charles W. Onsum

44 Bel Aire Drive  
Madison, WI 53713  
608-223-9905

Dear Representative Duffy,

I am the Director at Large of the Wisconsin Manufactured Home Owners Association (WIMHOA). There are in excess of 200,000 manufactured home owners and their families living in Wisconsin and we have been working for 15 years on issues related to improving conditions for households who own their homes but not the land under them.

I am contacting you at this time because our state association is also a member of the Manufactured Home Owners Association of America (MHOAA) and I understand that Ms. Dickens, MHOAA's Executive Director will be testifying before the Financial Services Subcommittee on Insurance, Housing and Community Opportunity on Wednesday February 1, 2012.

I want to take this opportunity to underscore some of the issues that are so important to manufactured home owners, especially those who own their homes but who rent the land under them and live in land lease communities.

When we bought our homes many of us did not realize how difficult manufactured housing living would be. We assumed that if we paid our rent and followed the community rules that we would be able to live our lives as we pleased. However, ever increasing rents are forcing some of us to abandon our homes – we are facing economic eviction. Others of us have to pay for more and more services and amenities as the community landlord changes the rules and items that used to be included in rent are now separate line items on our monthly bills.

Most manufactured home owners do not have security of tenure. Even though we own our homes our landlords are able to sell the land out from under us at any time and it is virtually impossible for us to find another place to move to so we end up losing our homes even if we have not paid off the mortgage. In fact, the mortgage itself is part of the problem since we are

not able to use the same financial loans as people buying site built homes, we are stuck with chattel loans which are very expensive.

It would really help manufactured home owners if the government was able to guarantee that we could get the same loan products as are available to other home buyers, either by providing such products or by allowing us to title our homes as real estate so that we qualify for other types of financing.

It would also be great if the government could do something to make sure manufactured home owners had long term leases so that our homes could increase in equity just like other homes do and that our rents were stabilized or at least that rent increases were justified based on increased costs and not simply on the landlord's need for more profit.

I understand that a lot of the issues related to living in a manufactured housing community are dealt with at the state level but if there is anything that you and your colleagues can do to pass laws at the federal level that would provide manufactured home owners with safe secure places to live it would be much appreciated. After all, manufactured home ownership is the largest source of unsubsidized affordable housing in the country and it certainly makes economic sense to preserve this affordable home ownership opportunity for years to come.

Please do not hesitate to contact me at: [Charles\\_Wm@Onsum.net](mailto:Charles_Wm@Onsum.net) or (608)223-9905 if you would like more information regarding manufactured housing issues in Wisconsin.

Sincerely,  
Charles Onsum  
44 Bel Aire Dr  
Madison, WI 53713  
Director at Large WIMOHA



January 31, 2011

The Honorable Judy Biggert  
 The Honorable Robert Hurt  
 The Honorable Luis Gutierrez  
 Subcommittee on Insurance, Housing and Community Opportunity  
 House Financial Services Committee  
 Washington, DC 20515

Re: Corporation for Enterprise Development, Statement submitted for the record of the February 1, 2012 hearing on "The Implementation of the Manufactured Housing Improvement Act of 2000"

Dear Subcommittee Chairman Biggert, Vice Chairman Hurt, and Ranking Member Gutierrez:

The Corporation for Enterprise Development (CFED) appreciates the attention shown by the Subcommittee to the current state of manufactured housing and the Department of Housing and Urban Development's implementation of the Manufactured Housing Improvement Act of 2000 (MHIA). With this written testimony we offer our opinions on the plight of owners and buyers of manufactured homes, the value of the institutions established by MHIA, and opportunities for partnership between affordable housing advocates, consumers and the manufactured housing industry in a way that alleviates the affordable housing crisis and builds the financial security of the home buyer.

CFED is a national, nonpartisan nonprofit organization that works to expand economic opportunity to all Americans by promoting asset-building activities that expand access to financial services resulting in homeownership, education and entrepreneurship. Since 2005, CFED has worked to realize the potential of manufactured homes to enable families to enjoy attractive and affordable homes, achieve financial self-reliance and build wealth through an appreciating and resalable asset. Manufactured homes can be part of the solution to an expensive housing market that requires far too many families to pay far too much for housing.

The Manufactured Housing Improvement Act of 2000, which tasked the Department of Housing and Urban Development (HUD) with modernizing the requirements laid out in the National Manufactured Housing Construction and Safety Standards of 1974, was designed with the express intent of protecting owners of manufactured homes<sup>1</sup>. Having recognized the value of manufactured housing as a prime source of affordable housing for millions of American families, Congress crafted this bill to further promote the durability, quality, safety and affordability of manufactured homes and to establish a balanced process for the development, review and interpretation of federal construction and safety regulations for manufactured homes. By establishing the Manufactured Housing Consensus

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<sup>1</sup> Public Law 106-569



Committee (MHCC), the Act effectively provided consumers of manufactured homes with an opportunity to exercise their voices and represent their interests as homeowners, which remain otherwise unheard in the federal regulatory and legislative arenas. The Congressional Manufactured Housing Caucus, for instance, pursues a set of legislative objectives shared by a constituency that includes only manufacturers, suppliers, retailers, community owners, financial services providers and other industry players. The most important constituency—owners and buyers of manufactured housing—is excluded from representation in that forum.

In addition to providing consumers with a platform and power to hold industry actors to a standard of quality and affordability, the Act also affords owners of manufactured homes a method of recourse to correct home defects for which installers, manufacturers and retailers may be responsible. The consequence of these and other important enhancements to the original standards released in 1974 heighten the material importance of effective implementation and enforcement of this Act.

#### **Who lives in Manufactured Housing?**

More than 17 million Americans live in manufactured homes.<sup>2</sup> Manufactured housing is a significant portion of the housing stock: in fact, if manufactured homes were excluded, the nation's homeownership rate would fall by five percent. Eighty percent of manufactured home occupants own their home while 20% rent their home. In 2009, the median household income for those living in manufactured housing was \$30,000, compared to a national median of \$49,777. Owners of manufactured homes are older than the general population: about 20% are over age 65. Manufactured homes can be more affordable: more than half (56%) of all manufactured home residents pay between \$100 and \$499 in monthly housing costs, compared to only 23% of site-built home occupants.

Manufactured housing is a particularly important affordable housing resource in rural areas. Sixty-nine percent of the housing stock is located in rural areas, and 26% of low-income homeowners in rural areas own a manufactured home. At the same time, the experience of I'M HOME and partners such as ROC USA® demonstrates that manufactured housing communities also play an increasingly important role in providing affordable housing in high-growth or high-cost suburban areas.

#### **Characteristics of Manufactured Homes**

The nearly 7 million owner-occupied manufactured homes in the U.S. represent 7% of the total housing stock, 11% of all housing for low- and moderate-income (LMI) families and the largest source of unsubsidized affordable housing in the country. Since 1989, manufactured housing has accounted for

<sup>2</sup> It is difficult to estimate the total number of manufactured homes. The American Housing Survey of the U.S. Census estimates that approximately 8.6 million units exist, of which 6.8 million are occupied. The Manufactured Housing Institute, using an alternative methodology, estimates that there are more than 10 million manufactured homes.



21% of all new single-family homes sold. In 2009, manufactured housing accounted for 43% of all new homes sold for under \$150,000.

Today's new manufactured homes are similar in quality to site-built homes and have similar expected lifespans. The vast majority of manufactured homes are never moved after being installed.<sup>3</sup> Manufactured homes cost approximately half the price per square foot as site-built homes (excluding land costs), in large part because the manufacturing process provides remarkable efficiencies. Even though the same materials are used for both, manufacturing efficiencies allow faster construction and generate as much as 45% less waste than comparable site-built construction.

The modern manufactured home industry has evolved significantly since its roots back in the 1960s, when "mobile homes" intended for full-time occupancy first became popular. "Mobile homes" were wider and longer than recreational vehicles such as travel trailers. Owners frequently occupied them as permanent homes. Back then, so-called "mobile homes" were unregulated and did not meet the same standards for quality and durability as site-built homes. "Mobile homes" lacked the high-quality construction materials, adherence to safety standards, and capacity for appreciation that characterize today's manufactured homes.

The increased quality of manufactured homes results from the National Manufactured Housing Construction and Safety Standards Act of 1974. The Act effectively segmented the recreational vehicle and manufactured housing industries by defining both and regulating the construction of the latter.<sup>4</sup> Since the Act took effect in 1976, the Department of Housing and Urban Development (HUD) has regulated, monitored and enforced federal standards for manufactured homes according to its Code of Regulations for Federal Manufactured Home Construction and Safety Standards, commonly known as the HUD Code. An additional code related to energy efficiency was added in 1994.

### **The Department of Housing and Urban Development's Implementation of the Manufactured Housing Improvement Act of 2000**

- **Representation on the Manufactured Housing Consensus Committee**

In accordance with the Act, the Manufactured Housing Consensus Committee (MHCC) is made up of 21 voting members: seven represent producers or retailers of manufactured housing, seven represent

<sup>3</sup> Various data sources find conflicting rates at which permanently set manufactured housing is relocated. Estimates range from as little as 1% to as much as 20%, but the great majority of homes are never moved.

<sup>4</sup> Modular homes, a different type of factory-built housing, are built to the local building code of the jurisdiction where they will be sited, not the HUD Code. The other critical difference between manufactured housing and modular housing is their foundations. A manufactured home is built on steel chassis that provides structural integrity even when the home is not placed on a permanent foundation. A modular home does not have this steel chassis and lacks structural integrity until it is placed on a permanent foundation.



consumers, and the remaining seven represent the general public. Each member of the MHCC serves a three-year term and may renew for one additional three year term. Per Administration policy, HUD eliminated all federally registered lobbyists from advisory boards in 2009, including the MHCC<sup>5</sup>. This Memorandum was intended to reduce the influence of special interests on the federal government and the American public. Even with this prohibition of registered lobbyists from the MHCC, industry representatives—including home builders and retailers—still account for the mandated one-third of the MHCC’s membership.

In addition to this directive issued by the President, the Manufactured Housing Improvement Act allows that the Secretary may “reject the appointment of any one or more individuals in order to ensure that there is not dominance by any single interest.” Dominance is defined as a “position or exercise of dominant authority, leadership, or influence by reason of superior leverage, strength or representation.” This provision is included for the same reasons that the June 18 Memorandum was released: to ensure that the advice to government offered by the MHCC remains open, balanced, time-limited and objective. Collective industry representatives already do, in fact, attend MHCC meetings and are given abundant opportunities to voice their positions on the issues voted on by the committee, despite the fact that they are not appointed members of the committee. Including those collective industry representatives as voting members of the committee would undoubtedly create an imbalance of influence by reason of superior leverage, strength *and* representation.

The current makeup of the MHCC membership provides a fair and invaluable voice to several key constituencies, including key industry players. Industry associations have expressed concern that other collectively representative groups—like the Manufactured Home Owners’ Association of America—have received unwarranted preference as voting members. However, the Act is explicit in granting membership to “Users.—Seven persons representing consumer interests, such as consumer organizations, recognized consumer leaders, and owners who are residents of manufactured homes,” whereas membership for “Producers” is limited to “Seven producers or retailers of manufactured housing.” Given these considerations *and* the fact that industry representatives—both producers and retailers—are already included on the panel, the current makeup of the MHCC membership is reasonable and there is no cause for concern, in this situation, that qualified experts are being excluded from participating in the MHCC.

- **Role of the MHCC and Value for Homeowners**

The Manufactured Housing Improvement Act of 2000 provides the MHCC with the authority to advise HUD and its Office of Manufactured Housing on the adoption, revision and interpretation of the federal manufactured housing construction and safety standards. The Committee may also provide periodic recommendations to the Secretary about procedural and enforcement regulations, including

<sup>5</sup> <http://www.whitehouse.gov/the-press-office/presidential-memorandum-lobbyists-agency-boards-and-commissions>



those specifying the allowable scope of monitoring. Accordingly, the MHCC plays a central role in leveling the playing field for consumers of manufactured homes, who are almost always placed at a disadvantage. Owners and buyers of manufactured homes do not have access to the same safe, high-quality loan products made available to those buying site-built homes. Those homeowners who then place their homes in manufactured home communities find themselves at the mercy of community owners—they deal with insecure tenure, unreasonable lot rents, unjustified rent increases and few legal protections. At the least, the MHCC affords consumers the opportunity to ensure that the quality of the homes they purchase can be held to a high standard.

- **Use of Fees in Accordance with MHIA**

Pursuant to Section 620 of the Act, HUD is authorized to establish and collect from manufactured home producers a reasonable fee to offset the expenses incurred by any of the activities for which the Secretary is responsible under this MHIA. Among those responsibilities included, the fees collected can fund inspections of manufactured home installations, the facilitation and implementation of State administrative plans, administration of the MHCC, enforcement of installation standards, and management of dispute resolution programs. Given that the fee is presumably passed along to consumers in homes' purchase prices and that it seems to be a justifiable expense—providing homeowners with essential programs that ensure home quality—the chance that the proposed fee increase for FY2012 would negatively affect production levels for the industry is unlikely.

The MHIA also assigned the MHCC the task of developing and submitting a set of proposed model standards for home installation within its first 18 months of operation. Although these Model Manufactured Home Installation Standards were issued by HUD years ago, implementation of the standards has not been consistent. It is important that HUD and the state agencies responsible for implementing the installation programs carefully monitor and enforce the issuance of high-quality design and installation instructions based on the model standards, training and licensing of manufactured home installers and inspections of manufactured home installation of those installation programs. Even twelve years after the Act's passage, based on feedback from CFED's network of partners in the field that work with manufactured housing community residents, we understand that there are still homes being installed that do not meet the model standards laid out by HUD. It is also unclear whether all states have a working dispute resolution process in place. Given HUD's oversight of these programs and the fact that fees collected under MHIA are utilized to fund the administration of state programs responsible for conducting inspections and monitoring, it is pertinent that these programs firmly enforce the model standards during inspections. As a leading voice in consumer protections in this housing segment, we encourage the members of this committee to determine why this issue persists.

### **Treatment of Manufactured Housing in the Current Housing Financing System**



The MHARR, an industry group representing small retailers and manufacturers, contends that manufactured home financing scarcity is attributable to HUD's treatment of manufactured housing, implementation of the MHIA and, subsequently, the GSEs' treatment of manufactured home loans on the secondary market. While CFED would argue that HUD and other federal agencies have a long way to go in assuring that manufactured housing becomes part of the national affordable housing strategy, we also acknowledge that the manufactured housing industry itself is largely responsible for creating many of the conditions that make manufactured homes difficult candidates for long-term, conventional mortgages that *could* be purchased by GSEs' on the secondary market. The majority of manufactured homes are financed with chattel loans, which are typically high-cost loans featuring weak consumer protections, as well as fewer disclosure requirements. In addition, manufactured home dealers often steer buyers toward disadvantageous chattel loans.

The ways in which manufactured homes are sold, sited, titled and appraised have great bearing on the types of financing available to home buyers. The sales and finance system inspired by the travel trailer industry and perpetuated by the current manufactured housing industry often imposes significant costs on owners of manufactured homes. A shift in industry practices to develop a better financing system for manufactured homes is absolutely critical for the long term survival and success of the industry. I'M HOME partners like the New Hampshire Community Loan Fund have proven that a home financing system that mimics the single-family, site built mortgage market can work for manufactured housing as an alternative to the current expensive chattel lending system for manufactured homes. This industry shift would need to be accompanied by changes to state policy to improve the ways manufactured homes are titled, changes to the appraisal industry to improve familiarity with more accurate manufactured home valuation techniques, and improved enforcement of siting standards.

#### ***Manufactured Home Titling & Placement***

The placement and titling of manufactured homes are two fundamental issues that complicate the acceptance of manufactured homes for conventional mortgage financing. Once it leaves the factory, a manufactured home is placed either on land owned by the homebuyer ("fee simple") or in a community of multiple manufactured homes and residents ("in-community," sometimes known as "parks"). There are approximately 3.9 million manufactured homes located on "fee-simple" sites and 2.9 million manufactured homes located in approximately 56,000 communities. Manufactured home communities are generally single parcels of land owned by commercial investors who in turn rent or lease sites to homeowners. State law regulates the rental relationship between community owners and homeowners. Through the 1980s, slightly less than half of manufactured homes were placed in land-lease communities<sup>6</sup>, but the proportion has declined dramatically since then. In 2010, only 26% of new

<sup>6</sup> George, Lance and Jann Yankausas. *Preserving Affordable Manufactured Home Communities in Rural Areas: A Case Study*. Housing Assistance Council, March 2011. Available online at [www.ruralhome.org/storage/documents/rcbi\\_manufactured.pdf](http://www.ruralhome.org/storage/documents/rcbi_manufactured.pdf).



manufactured homes were placed in land-lease communities and 74% were placed on fee-simple land owned by the homebuyer. Industry experts and housing researchers indicate that this trend is likely to continue in the future.

The laws governing personal property or real property treatment vary by state. Homes in land-lease communities are most often titled as personal property but may in some states be titled as real property. Homes placed on fee-simple land owned by the homeowners are titled either as real or personal property.<sup>7</sup> As of 2008, 63% of all manufactured homes were titled as personal property instead of as real property.<sup>8</sup> These homeowners cannot access conventional home mortgages but must rely on more expensive chattel financing which does not provide the same tax benefits or legal protections as a mortgage. CFED supports efforts by The Uniform Law Commission which is drafting a model law that will regulate the titling of manufactured homes—we are advocating for a policy that will treat more manufactured homes as real estate. However, for the near future inconsistent systems will persist at the state level.

Personal property titling generally precludes conventional mortgage financing. A home classified as personal property is appraised differently than a site-built home, using a formula similar to motor vehicle valuation, which automatically assumes depreciation of the home regardless of other relevant attributes such as land tenure. For this reason, as well as concerns over security of land tenure, mortgage lenders generally will not finance homes titled as personal property. Buyers and owners of such homes are limited to personal property loans (also called chattel loans). These loans are generally available from a relatively small number of specialized lenders, many of which are non-bank entities and often affiliated with manufactured home retailers or manufacturers. This often reduces transparency and constrains buyers' ability to shop for the most affordable and personally appropriate loans.

The 22% of new manufactured homes that are titled as real property are appraised through similar methods as those used for site-built homes, and as such are more likely to appreciate in value, particularly if real estate titling is combined with secure land tenure.<sup>9</sup> This makes them more attractive to conventional mortgage lenders. Key advantages of conventional mortgage financing include longer

<sup>7</sup> Even though most new homes are now placed on private land, in 2009 only 27% of new homes were titled as real estate.

<sup>8</sup> "Cost and Size Comparisons for New Manufactured Homes and New Single Family Site Built Homes 1995-2010."

*Manufactured Homes Survey*. Data produced by U.S. Census Bureau, sponsored by the U.S. Department of Housing and Urban Development. Available online at <http://www.census.gov/const/mhs/supplemental.html>.

<sup>9</sup> Contemporary manufactured homes have the potential to appreciate in value when they are properly installed on a high-quality foundation and on land over which the homeowner has long-term control, whether through traditional ownership, cooperative ownership or a long-term lease with built-in tenant protections. Consumers Union studied manufactured housing appreciation rates and found that "consumers can make decisions which can improve the appreciation of a manufactured home. Land ownership, location, purchase price and maintenance expenditures are among the factors that predict appreciation." See: <http://www.consumersunion.org/other/mh/overinfo.htm>.



repayment periods, lower interest rates, enhanced rights when in default and more competitive lending.

#### ***Manufactured Home Loan Consumer Protections***

Apart from titling and loan options, owners of manufactured homes generally have fewer rights and benefits: for example, the Real Estate Settlement and Procedures Act (RESPA) does not require disclosure of closing costs when a manufactured home classified as personal property is financed without land. Regulators and lenders alike have expressed uncertainty as to whether disclosure is required when a manufactured home is titled as real property but not financed with land. Additionally, the Truth in Lending Act (TILA) includes exemptions for some employees of manufactured housing retailers who assist consumers with financing. Consequently, homeowners have fewer consumer protections from the moment they begin shopping for a loan. Owners of manufactured homes face steeper barriers to successful and sustainable homeownership than others because of loan steering, limited and subprime lending, limited rights when in default and higher loan costs.

Manufactured home lenders, especially those who are affiliated with retailers or manufacturers, have less incentive to engage in strong underwriting practices on chattel loans because of their interest in selling the home and related products, which produces up-front profits. This can create a vicious cycle of higher default rates which drive loan prices up which contributes to higher default rates and so on. As a result, the long-term sustainability and performance of chattel loans is far lower than that of conventional mortgages; nearly 20% of chattel loans eventually default.<sup>10</sup> The poor underwriting and performance of these loans creates the impression that well-underwritten manufactured housing mortgages are riskier than they actually are which negatively impacts an already tarnished image among potential investors in the secondary market.

Retailers and lenders have a strong incentive to steer borrowers into chattel loans, often loans that they themselves offer or that are available from affiliated entities. Chattel loans are often disadvantageous for the consumers: they are more expensive, offer fewer consumer protections, fewer disclosure requirements, and are more likely to go into default and face extremely limited capacity for refinance or resale. Consumers, however, are generally unaware of their titling options, much less how the titling impacts the types of loans they may receive. For these reasons, loan steering is a serious problem in the manufactured housing finance market.

Another unique element of the manufactured housing finance market is that nearly one-third of manufactured homes are located in communities or parks, where owners rent or lease the land on which their homes are sited. Homeowners face unique challenges related to leasing the land

<sup>10</sup> "Federal Housing Administration: Agency Should Assess the Effects of Proposed Changes to the Manufactured Home Loan Program." U.S. Government Accountability Office Report to Congress. GAO-07-879. August 2007.



underneath their homes. Community owners, for example, are often able to sell communities with little or no notice to home owners, leading to sharp increases in lot rents and mass evictions. The Manufactured Home Owners Association of America (MHOAA) reports cases in which homeowners in land-lease communities made on-time payments on their homes and rent payments on the land, but who were still subject to eviction if the community owners defaulted on their loans.

Even today, some states and some lenders offer real estate mortgages to homes with long-term leases in communities. Nevertheless, the majority of homeowners in communities are captive to the chattel financing market. These homeowners can be subject to steep lot rental increases as well as limitations on resale and limitations on their constitutional rights to due process, to assemble and to petition for grievances.

#### **CFED Recommendations for Congressional Action**

CFED bases our recommendations on our success with the Innovations in Manufactured Homes (I'M HOME) initiative. I'M HOME develops, promotes and implements market- and policy-based strategies to help owners of manufactured homes gain financial security and build assets. I'M HOME's goal is to enable owners of manufactured homes to enjoy the same benefits of homeownership as those realized by owners of site-built homes. I'M HOME advocates for enhanced consumer protections, expanded access to conventional mortgage financing, resident ownership of communities and the use of high-quality, energy-efficient manufactured housing to increase and upgrade the nation's affordable housing stock.

I'M HOME and its network of national and community partners have established a robust field of nonprofit practice focused on manufactured housing as an asset-building strategy. In 2004 there were fewer than five organizations working to improve the manufactured housing space; today there are more than 30. I'M HOME has provided approximately \$4.5 million in funding, which has leveraged nearly \$12 million in match funds. I'M HOME provides an infrastructure for peer learning, networking and technical assistance for this emerging field, in addition to pursuing a manufactured housing policy agenda and supporting two social enterprises.

CFED has participated in the incubation and launch of social enterprises to take our manufactured housing strategies to scale.

- ROC USA® is an innovative social venture that is making resident ownership of manufactured housing communities possible nationwide. In its first three years, ROC USA® has preserved more than 1,996 affordable homes through the conversion of 32 communities to resident ownership.
- Next Step™ is an emerging social enterprise that is building a national network of nonprofit developers to deliver energy-efficient manufactured homes through an innovative partnership



with Clayton Homes, the nation's largest manufacturer. Next Step™ provides technical assistance and financing to replace pre-HUD code homes with ENERGY STAR manufactured homes. The Next Step™ launch builds off the experience of the I'M HOME network in siting more than 100 homes.

As successful as our efforts have been, our goals to improve the homeownership experience for buyers and owners of manufactured housing will benefit from Congressional action. CFED recommends that Congress pass legislation to implement the following policies:

- Support the replacement of outdated, pre-HUD-code homes with new, energy efficient manufactured homes by allowing owners of pre-HUD-code mobile homes to participate in federal down payment assistance programs so they can purchase a new ENERGY STAR manufactured home.
- Establish streamlined minimum standards across multiple federal agencies so that all federal housing programs support diverse, sustainable manufactured home communities and loan portfolios.
- Extend all consumer protection laws and regulations that cover owners of site-built homes to owners of manufactured homes.
- Promote community acquisitions by homeowner co-ops by supporting community financing.
- Include manufactured housing in government loan purchase, securitization and reinsurance programs and in housing finance reform legislation.

The federal government can improve the market so that homeowners are not limited to expensive financing options. Congress should require the removal of restrictions on manufactured housing as an eligible use within federal homeownership assistance programs. Congress should ensure that manufactured homebuyers receive consumer protections. Federal regulatory agencies should prevent the proliferation of predatory lending practices.

***Replace outdated, pre-HUD-code homes with new, energy efficient manufactured homes***

Congress should prioritize replacing mobile homes that were fabricated prior to the 1976 implementation of the HUD Code. As many as 1.5 million people currently live in such homes. Some are in good shape but many must be replaced. Unfortunately, their owners have few options. Pre-1976 mobile homes have virtually no resale value, so residents cannot simply sell and use the proceeds to pay for moving to new housing. The majority of these homeowners are low-income and would require assistance to pay for the disposal of their current homes and down payments on new homes. They are, however, ineligible for most federal, state and local housing assistance programs because they do not qualify as first-time homebuyers. Pre-1976 mobile homes are technically eligible for weatherization funds but for many, adding new windows or insulation is just a waste of money—it would not fix the overall dilapidation of the home, which contributes to extremely high heating and cooling costs.



Legislation to address this issue should:

- Authorize the Department of Energy to use its weatherization program funds to replace pre-HUD Code mobile homes with new ENERGY STAR qualified manufactured homes.
- Authorize the Department of Health and Human Services to use Assets for Independence (AFI) program funds to match the savings of current owners of pre-1976 mobile homes who are saving to purchase new manufactured homes. The Stephanie Tubbs-Jones Assets for Independence Reauthorization Act (H.R. 1623)<sup>11</sup> would accomplish this.
- Enable owners of pre-1976 mobile homes to qualify as first-time homebuyers within all federal homebuyer assistance programs.

Authorize the Department of Health and Human Services to use Low-Income Housing Energy Assistance Program (LIHEAP) funds to provide down-payment assistance for owners of pre-1976 mobile homes who are unable to afford basic heating due to the inefficiency and dilapidation of their homes. The Government Accountability Office (GAO) is currently studying the impact this proposal, at the request of Senator Bingaman, Chairman of the Senate Committee on Energy and Natural Resources.

***Establish streamlined minimum standards across multiple federal agencies:***

Congress should facilitate the creation of streamlined, consistent standards and requirements for manufactured housing across government financing programs, including down payment assistance, direct loans and loan guarantees. Currently, different rules and requirements—sometimes conflicting—govern the eligibility of manufactured housing in programs offered by the Rural Development Agency (RD) and Federal Housing Administration (FHA). For example, FHA insures manufactured housing loans made by FHA-approved lenders under the Title I and Title II programs. Title I insures loans that finance or refinance a manufactured home, the land on which a manufactured home will be placed or the combination of land and home. This includes “home only” loans in manufactured housing communities. Title II insures loans on manufactured homes placed on a permanent foundation that are classified as real estate. Title II helps buyers who can qualify for and afford market-rate mortgages to purchase manufactured homes with conventional financing. These variations are confusing to lenders and buyers.

Meanwhile, the Rural Development Section 502 Program (RD 502) offers both direct loans and loan guarantees to help low- and moderate-income home buyers in rural areas. RD 502 direct loans provide down payment assistance and below-market financing to low- and very low-income borrowers. To

<sup>11</sup> For additional details, see: [http://cfed.org/policy/federal\\_policy\\_advocacy/AFI\\_112th\\_legislative\\_text.pdf](http://cfed.org/policy/federal_policy_advocacy/AFI_112th_legislative_text.pdf).



receive direct loans, manufactured homes must be purchased from and permanently installed by RD-approved dealers or contractors. The RD 502 guarantee program guarantees loans made by private lenders on manufactured homes purchased from and permanently installed by RD-approved dealers or contractors. Manufactured housing is an allowable use of RD 502 funds<sup>12</sup> but state office officials have, in some cases, misinterpreted regulations and excluded manufactured homes from their state's RD 502 financing activities. This is particularly troubling in light of the fact that manufactured homes represent a large proportion of the housing stock in rural areas.

Unfortunately, the eligibility of manufactured housing for federal housing funds is frequently left to the discretion of state and regional program administrators. In some areas, strong and unreasonable opposition to manufactured housing diminishes its availability as a housing option. HUD, USDA, FHFA and others can and should do more to highlight the benefits of manufactured homes in expanding the stock of affordable housing. A recent HUD report, *Regulatory Barriers to Manufactured Housing Placement in Urban Communities*, is one of many with useful case-studies and recommendations to better include manufactured homes as a solution to the affordable housing crisis.<sup>13</sup>

Congress should pass legislation directing the agencies to develop a single, unified set of minimum standards for manufactured homes to determine their eligibility for federal housing programs. This set of minimum standards should be consistent across all federal housing programs in which manufactured housing is accepted. Minimum standards should address energy efficiency, foundation quality, square footage and other characteristics of manufactured homes. Single-section homes should be eligible as long as they meet minimum standards. Federal housing programs that allow manufactured homes to participate should be able to finance loans on new manufactured homes and loans on existing homes.<sup>14</sup> Existing homes should be required to be in good condition and meet standards similar to what FHA Title I currently requires.

CFED has convened officials from all federal agencies that impact manufactured homes and is encouraging them to coordinate action and policies where possible. The final *Convening Report*<sup>15</sup> and CFED's *Action Agenda for Federal Agencies*<sup>16</sup> are available on the CFED website.

***Extend all consumer protection laws and regulations to owners of manufactured homes:***

<sup>12</sup> RD 502 is not available for homes in communities, although another program – RD Section 504 – can be used for home improvements to homes in communities.

<sup>13</sup> [http://www.huduser.org/portal/publications/affhsg/rb\\_mhpuc.html](http://www.huduser.org/portal/publications/affhsg/rb_mhpuc.html)

<sup>14</sup> RD 502 currently does not finance single-section homes and will only refinance existing homes that were previously financed by RD 502. FHA finances both single-section and multi-section homes.

<sup>15</sup> See: [http://cfed.org/programs/manufactured\\_housing/MHConvening\\_Proceedings.pdf](http://cfed.org/programs/manufactured_housing/MHConvening_Proceedings.pdf).

<sup>16</sup> See: [http://cfed.org/programs/manufactured\\_housing/MHConvening\\_ActionAgenda.pdf](http://cfed.org/programs/manufactured_housing/MHConvening_ActionAgenda.pdf).



Loans and financing made available to buyers of manufactured homes have inadequate oversight. The enactment of the Dodd-Frank Act and the creation of the Consumer Financial Protection Bureau provide the authority to regulate disclosures that come with these loans to ensure that people understand the terms and potential risks of the financing they receive. The right loan product can help buyers avoid becoming delinquent or foreclosing due to balloon payments or placement on land where they could easily be displaced.

In addition, we look forward to the pending duty-to-serve final rule from the Federal Housing Finance Agency. The Housing and Economic Recovery Act of 2008 requires manufactured home loans be included in the GSEs' duty-to-serve requirements. CFED joined dozens of others in recommending that the preference for duty-to-serve be limited to mortgages over chattel financing. We also urged the FHFA to include loans made to resident owned cooperatives. The duty-to-serve rules can improve the financial market by requiring long-term land leases in communities, providing financing for resale of homes and financing homes in resident-owned cooperatives. Unfortunately, Acting Director DeMarco has not finalized these regulations, more than three years after Congress directed the agency to draft and implement them.

Developing a more efficient manufactured home financing market would provide substantial benefits to low- and moderate-income owners of manufactured homes. While many obstacles stand between the current system and the development of a more efficient financing system, the same was once true for site-built homes when credit was expensive and home-ownership rates were low. In the past fifty years, however, the U.S. mortgage market has developed ample capital flows and continued product innovation that has contributed to a much higher home-ownership rate. Improvements to the sales and distribution, siting, consumer protections, fundamental freedoms for homeowners in parks, titling and appraisal components of the manufactured housing industry, could transform the manufactured home industry and the asset-building potential of owning a manufactured home. The MHIA represents a critical component of that new system. It is clear in its intent to protect and empower owners of manufactured homes with a set of standards for home installation, allow both consumers and industry representatives to advise HUD on certain construction and safety standards, provide oversight for installer licensing and establish a set of procedures for resolving disputes with producers and installers.

There is much that Congress can do to ensure that the MHIA is implemented fully and most efficiently, improve the regulatory marketplace so buyers get the best possible loans, ensure that federal agencies can use their resources to help homeowners buy a quality home that they can afford, and expand protections for owners living in communities. Everyone, including those who design, build, sell, finance and buy manufactured homes should work together to improve the outcomes for buyers, and the MHCC is a clear manifestation of the value of such a collaborative effort.

Please contact me at [rhaughey@cfed.org](mailto:rhaughey@cfed.org) or 202.2070155 if you would like further information.



Sincerely,

Richard M. Haughey  
Director of Affordable Housing Initiatives  
Corporation for Enterprise Development  
1200 G Street NW, Suite 400  
Washington, DC 20005  
[www.cfed.org](http://www.cfed.org)

CC: The Honorable Spencer Bachus, Chairman  
The Honorable Barney Frank, Ranking Member  
House Financial Services Committee

**Manufactured Home Owners  
Association of New Jersey**

PO Box 104, Jackson NJ 08527  
(732) 534-0085 – [www.mhoanj.org](http://www.mhoanj.org)



The Honorable Scott Garrett  
United States House of Representatives  
2373 Rayburn House Office Building  
Washington, D.C. 20515-3004

January 29, 2012

Dear Representative Garrett

I am a Board Member of the Manufactured Home Owners Association of New Jersey and President of Paradise Park Homeowners Association . There are just under 30,000 manufactured home owners and their families living in New Jersey and we have been working for over 50 years on issues related to improving conditions for households who own their homes but not the land under them.

I am contacting you at this time because our state association is also a member of the Manufactured Home Owners Association of America (MHOAA) and I understand that Ms. Dickens, MHOAA's Executive Director will be testifying before the Financial Services Sub-committee on Insurance, Housing and Community Opportunity on Wednesday February 1, 2012.

I want to take this opportunity to underscore some of the issues that are so important to manufactured home owners, especially those who own their homes but who rent the land under them and live in land lease communities.

When we bought our homes many of us did not realize how difficult manufactured housing living would be. We assumed that if we paid our rent and

followed the community rules that we would be able to live our lives as we pleased. However, ever increasing rents are forcing some of us to abandon our homes – we are facing economic eviction. Others of us are having to pay for more and more services and amenities as the community landlord changes the rules and items that used to be included in rent are now separate line items on our monthly bills.

Most manufactured home owners do not have security of tenure. Even though we own our homes our landlords are able to sell the land out from under us at any time and it is virtually impossible for us to find another place to move to so we end up losing our homes even if we have not paid off the mortgage. In fact, the mortgage itself is part of the problem since we are not able to use the same financial loans as people buying site built homes, we are stuck with chattel loans which are very expensive.

It would really help manufactured home owners if the government was able to guarantee that we could get the same loan products as are available to other home buyers, either by providing such products or by allowing us to title our homes as real estate so that we qualify for other types of financing.

It would also be great if the government could do something to make sure manufactured home owners had long term leases so that our homes could increase in equity like other homes do. Further if our rents were stabilized or at least if rent increases were justified based on increased costs and not simply on the landlord's need for more profit that would help us to preserve our homes and the equity in our homes.

I understand that a lot of the issues related to living in a manufactured housing community are dealt with at the state level but if there is anything that you and your colleagues can do to pass laws at the federal level that would provide manufactured home owners with safe secure places to live it would be much appreciated. After all, manufactured home ownership is the largest source

of unsubsidized affordable housing in the country and in the state of New Jersey, and it certainly makes economic sense to preserve this affordable home ownership opportunity for years to come.

Please do not hesitate to contact me at: [dibble@rci.rutgers.edu](mailto:dibble@rci.rutgers.edu) or 732 708-1880 I would be happy to provide you with more information regarding manufactured housing issues in New Jersey.

Sincerely,

Loretta Dibble

Legislative Representative

Manufactured Home Owners Association of New Jersey

**MHOAI**

Mobile Homeowners Association of Illinois

January 31, 2012

Re: Insurance, Housing and Community Opportunity Subcommittee Hearing on "Implementation of the Manufactured Housing Improvement Act of 2000". February 1, 2012 Committee Hearing

Dear Representative Judy Biggert,

I would like to start out introducing myself, which will show my long time passion and involvement representing consumers/homeowners in the manufactured housing market. I have been a resident in a manufactured home community located in Des Plaines, Illinois for 37 years.

- I have served on the Mobile Home Owners Association of Illinois board since 1995, as President, 2001 to present.
- In 2000 I aided in forming and still service on the Manufactured Homeowners Association of America (MHOAA).
- I have served on the Manufactured Home Consensus Committee (MHCC) since 2005. I worked with other consumer allies towards the passage of the Manufactured Housing Improvement Act of 2000.
- I have served on Illinois state committees and task forces representing manufactured homeowners/consumers put in place by Illinois legislation.

In the United States there are approximately 17 million homeowners. In Illinois there are approximately 2,000 communities and about 300,000 residents/consumers in this housing market. This is a housing market that allows seniors on fixed incomes and low to moderate households with home ownership. In Illinois there are several communities that you must be 55 and older to move into the community

HUD has many rolls that affect this housing market. One is the needed representation that the MHCC committee allows for the only true voice consumers have in a federal playing field. It is my hope that you and other Illinois elected officials of Congress will find manufactured homeowner and consumer issues as important in your decision making as those affected by decisions are.

Because of the many years I have been involved with MHCC I have seen what I consider the ups and downs. These include meetings and conference calls. Face to face meeting went from 2 to 1 a year.. Conference calls went from one or two a month to none. This includes the two sub-committees I am on. I am told it has to do with costs, and was pleased that HUD had two face to face meetings last year. I must share something I can not seem to wrap my thoughts around. When a recall is requested by a manufacturer by HUD, HUD does not keep track of them, nor do the states. When our group representing consumers bring up an issue, opponents ask for a fact finding mission that is not out there. HUD does the recalls, why is it they can not keep the records over the years? Homes are built to last 50 years according to manufactures. If I were not on this committee I would not know, and manufacturers are not going to share recalls they are involved in with me.

I have seen the list of those who will be speaking. To keep this letter short, an extremely import issue with my concerns includes SAA's in each state. I was involved in getting an SAA in Illinois, which is with the Illinois Department of Public Heath. I keep in touch with SAA's from other states and in Illinois because as an MHCC committee member, they are the ones that have the responsibility of enforcement of MHCC and HUD decision making. Over time, these states that do have an SAA need help, in my opinion. I strongly believe their issues need to be addressed with a true effort.

From what I have read, your committee is addressing many issues that have an impact with this housing market. Issues that can be addressed on a federal level regarding the reason for sales down in this housing market. I want to share what is happening in Illinois in real time. An elephant in the room with the MHCC committee which allow manufacturers to complain sales are down is not allowed to be addressed out loud. The MHCC committee deals with how the home is built regarding safety standards and dispute resolution issues. It is my opinion that while certain groups have development companies/landlords as members, until this elephant is addressed in some form, certain issues will continue.

In sharing this with you please remember the many states do not have a volunteer organization in their state to help the thousands of families impacted as in Illinois. Capitol First Realty owned 18 communities in the Midwest. Their parent company was located in Chicago. In Illinois they owned 5 communities and four had over three hundred families as residents. Capitol First Realty had a plant in Indiana called Falls Creek. They sold these homes to consumers in their communities. They also did the financing allowing homeowners to get a loan. They also installed the homes. They were also the landlord. What they did not tell the consumer was they were the same company wearing different hats. The argument from opponents that the consumer should know better does not fly with me. These development companies have different names and different websites. It is not required by law to share this information. Anyway, the plant in Indiana has issues and goes under. I am keeping this short. Capitol First then rises rent knowing that with the loan the homeowners can no longer afford both. So the homeowner turns over the title and Capitol First can resale a 5 year or less aged home to new buyer. Buy the way, these homes cost \$130,00. Our organization started receiving many calls because the instillation of homes was not correct. Ceilings becoming cracked are an example. Our organization then contacts the SAA in our state allowing him and the manufacturer to come to these homes. I was surprised to learn Falls Creek was not longer in business, because a person from another business showed up. Keep in mind, Illinois has no manufactured plants and all our homes are imported. Next was a continued raise in rents and the landlord priced out his bread and butter. Next thing we find is Capitol First, owes over 200 million to creditors. Homeowners learn this via media such as Craine news media. Now what? We have 5 communities where homeowners have assets in their homes. No help, you can not move the home, costs to move or some where to move it are big issues. At the end of the day banks such as Wells Fargo are now landlords.

I am hoping that after your committee hearing you will contact me with any questions you have. I would like to talk to you regarding more on the issues my letter addresses. I would also appreciate a copy of notes to the public taken from this hearing sent to me. Thank you for your time.

Sincerely,

Terry Nelson  
1330 E. Rand Road #135  
Des Plaines, IL 60016  
847-220-2692

**Tim Sheahan***Volunteer mobile/manufactured home owner advocate*

2907-2 South Santa Fe Avenue San Marcos, CA 92069  
 Telephone and FAX: (760) 727-4495  
 E-mail: tpsheahan@cox.net

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February 1, 2012

United State House of Representatives  
 Financial Services Committee  
 Subcommittee on Insurance, Housing and Community Opportunity

**Re: "Implementation of the Manufactured Housing Improvement Act of 2000"**

Honorable Chairperson Biggert and fellow Committee members:

My name is Tim Sheahan and I am immediate past President of Golden State Manufactured-home Owners League (GSMOL), which represents over 350,000 mobile/manufactured home owners and their families living in California. GSMOL is a non-profit organization that has been working for 50 years with the goal of improving conditions for households who own their homes but not the land under them. I am contacting you as an individual rather than on behalf of GSMOL but am doing so at this time because GSMOL myself personally are members of the Manufactured Home Owners Association of America (MHOAA) and I understand that Ms. Ishbel Dickens, MHOAA's Executive Director, will be testifying before your Financial Services Sub-committee on Insurance, Housing and Community Opportunity.

As a consumer (user) member of the HUD Manufactured Housing Consensus Committee (MHCC) the past three years, I've come to learn and appreciate the many concerns of producers of manufactured homes in the United States. That, coupled with the knowledge I've gained in over 40,000 hours of volunteer service the past 15 years serving owners of mobile/manufactured homes and considering current disturbing trends in the industry, I fear for the survival of manufactured housing as a continuing viable source of unsubsidized affordable housing in the United States as we look to the future. I do feel industry concerns/complaints that HUD, along with regulatory constraints, is responsible for the devastating downturn in production and sales of new homes are misdirected, however.

The current dire condition of the industry has resulted largely from a perfect storm of factors, including, but not limited to the following; the financial crisis and shortage of loan products available to home buyers, classification of manufactured homes as "chattel", the real estate meltdown that made foreclosed conventional homes on fee-simple land more attractive as an investment compared to placement of new manufactured homes in land-lease communities with little security of tenure, and finally, rapidly escalating lot rents that have caused economic eviction of homeowners from their own homes, placing a greater number of devalued used MHs on the market. **The greatest continued threat to the industry is that of escalating rents.** Unreasonable lot rents, now surpassing rent for three-bedroom apartments in some areas, adversely affect not only homeowners but also manufacturers, dealers, lenders, contractors and a number of other related interests.

Community owners have a three-pronged motivation to raise lot rents in land-lease communities. First, any rent increase naturally creates more monthly revenue and profit. Second, any increase in revenue raises the value of the property (business) itself. And third, if lot rents are raised to a point beyond the ability of the captive homeowner to pay, the community owner is able to seize the home for little or no money and then either resell the home at a big profit or rent the home and lot together.

I don't envy the **Manufactured Housing Institute's** (MHI's) mission of representing both manufacturers and community owners because some of its own members are the most aggressive and opportunistic community operators, adversely impacting new home sales the most. Operators such as **Equity Lifestyle Properties** (ELS) and **Tatum & Kaplan** are today's version of the Robber Barons, comparable to both the medieval feudal lords who collected unjust tolls from captive merchant ships along the Rhine river, or the 19<sup>th</sup> Century Industrialists who had so much money they could buy virtually unlimited power and influence. The word "Vulture Capitalist" has been widely used in the media in recent days and while that term certainly applies to many community owners, a great number of them operate in an even more targeted and predatory manner, targeting the elderly and others facing economic, physical or psychological challenges living in manufactured home communities. These Predatory Capitalists, some of which are Real Estate Investment Trusts that don't even have to pay Federal Corporate Income Tax, seem to have no scruples and are determined to maximize profits, no matter the impact on their captive "customers."

One of MHI's members is the California law firm of **Hart, King and Coldren** who has been suing cities throughout California that have rent stabilization ordinances. One of their attorneys, Mark Alpert, has even publicly declared that part of their strategy is to run-up the legal costs of defending local ordinances until the local jurisdictions abandon their ordinances because they can no longer afford the litigation, even when the cities win. This devious legal strategy by park owner attorneys makes a mockery of the legal system by making it a war of attrition rather than a search for justice, especially in these economic times where many community owners have deeper pockets financially than many cities. The text box below includes an excerpt of an Alpert presentation in 2004.

Speech from *Proceedings of the Eighth Annual New York Conference  
on Private Property Rights* (2004)

HOPE FOR PEOPLE FIGHTING RENT CONTROL

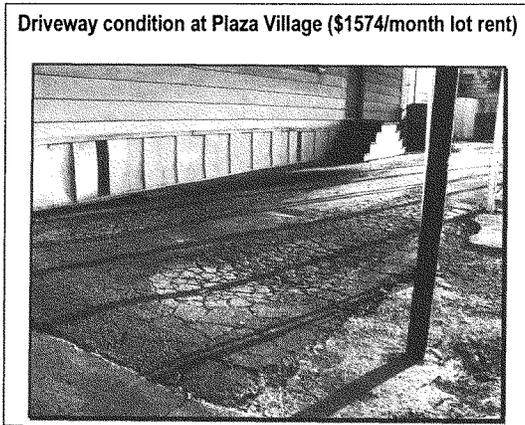
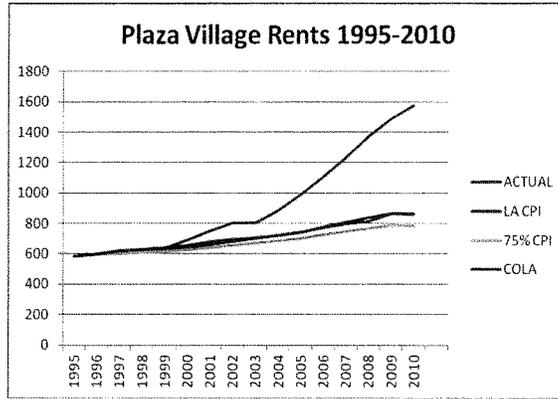
**Attorney Mark Alpert**

***"Third is actually make it expensive. Litigation is a strategy that works especially when cities are strapped for money. That often brings them to the table. It has worked for us. It has worked even in places like New Jersey where we have challenged rent control. In essence, What happens is that the cities just get tired of fighting litigation. They can't afford to protect the small group's interest and bust the budget."***

Another member of MHI is the **California Mobilehome Parkowner Alliance** (CMPA), of which **Equity Lifestyle Properties** (ELS) and **Tatum & Kaplan** are members.

ELS, which owns hundreds of MH communities nationwide, has spent millions of dollars in California with a goal of deregulating the industry by wiping-out rent protections for homeowners. After suing the City of Santa Cruz into submission, they have since told residents of De Anza Mobilehome Park that when they try to sell, lot rent to their buyers could be as high as **\$5,000 per month!** Needless to say, such high rent makes the homes nearly worthless. In the rent control city of Santee, CA, ELS recently tried to raise lot rents by over \$400/month to over \$1,100/month at Meadowbrook MHP, claiming that was "fair market" for the area. ELS failed to disclose that in another one of their parks, less than six miles away and not subject to rent control, they were charging \$950/month to rent brand new manufactured homes on lots. In that same park of fewer than 160 lots, many homes remain unsold or rented and there were roughly 25 vacant lots, as of last week.

**Tatum & Kaplan**, which doesn't even own the land at some of their communities, has been relentlessly raising rents for years. Below is a graph showing rent increases for a resident of one of their communities, Plaza Village MHP located in Santa Ana, CA. **After the lot rent approached \$1,600/month, the homeowner abandoned her MH and found a three-bedroom apartment for \$100 less than her lot rent at Plaza Village!**



The following article describes the deplorable conditions at a Tatum & Kaplan community in El Monte, CA.

### **Councilwoman angered by conditions, rent prices at El Monte mobile home park**

by Daniel Tedford, San Gabriel Valley Tribune  
September 22nd, 2011

Councilwoman Norma Macias is speaking out against what she calls "shameful" conditions at a local mobile-home park.

Macias recently visited Brookside Mobile Country Club, next to Mountain View High School, after receiving complaints from some residents of deplorable conditions and exorbitant rents. The councilwoman said she intends to do whatever she can, including raising the issue with her council colleagues, to support residents of the park. "What is taking place here is nothing short of criminal, to take advantage and gouge these people," Macias said. "I, for certain, want to make an issue of what is going on here. We need to do our best to protect our residents."

Officials with Tatum-Kaplan Financial Group, which owns the park through its subsidiary Brookside Investments LTS, declined an interview request for this story. The park's management company, Mobile Community Management Co., a Santa-Ana based group also owned by Kaplan, responded with a fact sheet about the property and company.

Macias, who is considering running for the new 32nd Congressional District, said mobile-home residents are naturally placed in a tough situation when it comes to renting spaces for their homes. Despite the name, mobile homes are often difficult to move because they are damaged or a transfer is too costly. Park owners take advantage, Macias said.

"These people are stuck," she said. "The landlord knows these people are stuck. It really breaks my heart." One resident, who asked to remain anonymous for fear of retaliation, said his family has lived in the community for more than 30 years and has seen their rent skyrocket. When they first lived there, rent was \$100. Now, it is \$1,160 a month "just for the dirt," he said. According to the U.S. Census American Community Survey, the median rent for apartments and homes in El Monte from 2005 to 2009 was \$1,003. The man said he would move from Brookside but doesn't have the money. "It can cost \$10,000 to move one of these," he said. "We live on a fixed income, and (the landlords) know it. It is all for the money."

Some people have moved away. Walking through the more than 400-space mobile home park at 12700 Elliot Ave., it is easy to tell the park has numerous vacancies. Bare, gray cement slabs are scattered throughout as homes have been removed or transferred. Other homes have been left behind, now boarded up to prevent transients from squatting. "They have an astonishing rate of vacancy," El Monte redevelopment attorney Dave Gondek said. Roads are cracked and in one area of the park a former retaining wall is broken and buried beneath a hill of sand.

The park's poor appearance also stems from some residents' lack of concern or an inability to perform maintenance, officials said. Some homes are cracked and worn, and others have overgrown brush and weeds. Police Capt. Santos Hernandez said police and city staff helped an elderly resident by cutting back overgrown shrubs in the back of her property. Code-enforcement officers said they are reviewing the property, including the retaining wall, but had no determinations on violations.

#### **Rent control**

Like the feudal system in medieval England in which a free man owned his cottage and a feudal lord owned the land and charged a fee for using it, most mobile-home residents own their homes but rent the land beneath the property. Renters at the Brookside property said rent ranges from \$1,000 to \$1,500. Officials with other local cities said mobile-home spaces rent for about \$800 or less. Glendora has rent control that keeps rents at about \$800. Advertisements show rents in Palmdale, Riverside and Pomona for more than 1,000-square-foot lots are about \$450. The Whittier East Community rents lots at \$593 a month. In Laguna Beach, a 2,400-square-foot lot is advertised at \$1,876.

Unlike Glendora, El Monte doesn't have rent control because of a 1990 ballot initiative. That same initiative also prevents the city from even trying to revisit the issue, which was passed with the help from the owners of Brookside, the Tatum-Kaplan Financial Group, Gondek said. In 1988, in an effort to stymie rapidly increasing rents for mobile-home parks, the City Council adopted a rent-control ordinance, Gondek said. It established an avenue for rent review between tenant and park owner with mediators overseeing the review. Park owners challenged the ordinance with a referendum, but narrowly lost.

Two years later in 1990, the Tatum-Kaplan group, led by Jeffrey Kaplan, brought forth an initiative that proposed to abolish the rent-control ordinance, Gondek said. The selling point of the new plan was rental assistance for low-income senior citizens. Those who qualified would receive a 10 percent discount on rent. Voters passed the ordinance, and it has been the rule of law ever since.

And if the city ever wanted to challenge it, it couldn't, Gondek said. The redevelopment attorney said Kaplan's team was "clever," and within the language of the voter-approved ordinance, the city is forbidden from contributing any staff time or city funds toward efforts to overturn the law or establish rent control. For the city to get involved, a new ballot initiative must overturn the law to free the city, Gondek said. "The language of the ordinance pretty much puts the city of El Monte, as a unit of local government, in a straitjacket," he said.

#### **The mobile home market**

A \$1,200 rent at a mobile home park should pay for a top-of-the-line, large space in a well-to-do neighborhood, according to mobile home expert Jim Anderson. Anderson is the vice president of Golden State Manufactured-home Owners League, a group that advocates for mobile home residents. He lives in a mobile home in La Verne. He said the most expensive lot for rent where he live is \$925. That is the biggest lot at the property, which is well-maintained and includes several amenities, he said. Anderson said Brookside's rates are out of whack with the market. "For El Monte, that seems like an excessive amount," he said. It is a common problem for mobile home residents to get caught in gouging situations, Anderson said. In some instances of older mobile homes, owners must get clearance from the city to move the home and are sometimes denied if the building isn't structurally sound, Anderson said. Park owners are often aware which homes can and can't be moved. "They know they can squeeze," Anderson said. Anderson's group tries to help mobile home owners understand their rights. For instance, all owners should know they have options secured by law when renting a space for their home, including a month-to-month program or a long-term lease. In addition, if a resident has a lease, they are entitled to 90 days' notice for a rent increase, Anderson said.

Mobile Community Management said they have programs to assist residents with their rent, including a voluntary emergency rent stabilization it initiated in 2008. The park will give a discount on annual rent increases through the program, which 30 percent of residents have opted for, according to the company's fact sheet. The resident has to submit to a modified contract to get the discount.

#### **Tatum-Kaplan's history**

Anderson said he is familiar with the Tatum-Kaplan Financial Group, the firm that owns numerous mobile-home parks under several business names, including Brookside.

"They have a tendency to look at the bottom line. A lot of them are that way," he said. Jeffrey Kaplan and Thomas Tatum own Mobile Community Management Company. Although that company runs Brookside, the land at Brookside is owned by First National Finance, another organization run by Kaplan and Tatum, according to company officials and the Los Angeles County Assessor's Office. Kaplan, a lawyer who heavily invested in the mobile-home business in the 1980s, owns more than a dozen mobile-home parks in Southern California, according to records from the California Secretary of State's office. He purchased the Brookside park in the 1980s and initially leased the land, including a 2.1-acre parcel from El Monte Union High School District, city officials said. He later bought the property, including a 2004 deal to buy the school district property for \$450,000, according to the purchase agreement.

Kaplan also led a failed state initiative in 1996, similar to the El Monte ordinance, to do away with rent control for mobile homes. Kaplan and his companies have had their share of lawsuits regarding mobile home parks. Kaplan, Tatum or Mobile Community Management are named in 11 civil suits in San Bernardino County dating back to 1998 and another 10 in Orange County from 1989 to 2010, including fraud, unfair business practices and breach of contract. A lawsuit has also been filed by residents at Brookside, but attorneys representing the group did not return phone calls seeking comment.

Objecting to rent increases, some Brookside residents formed an association in 2008 and threatened a rent strike, according to the fact sheet provided by Mobile Community Management. In 2009, about one-third of Brookside residents filed a lawsuit against their landlords after meetings with them dissolved, according to the sheet. Park managers deny any wrongdoing, according to the fact sheet. Residents disagree.

"They are finding the fastest way to get money out of people's pockets," a resident said.

A check of [www.MHvillage.com](http://www.MHvillage.com) within the past 24 hours revealed that Tatum & Kaplan's sales affiliate, **Community Mobilehome Sales (CMS)** currently has **85 homes for sale** among eight Tatum & Kaplan communities in California. As you can see from a flier for Terrace View MHP in Lakeside, CA, these aren't new homes, they are homes that likely have been abandoned or confiscated for little or no money and are being sold at a big profit.

## Terrace View Mobile Estates

(619) 561-5409

SPACE	YEAR	MAKE	SIZE	BED/BATH	PRICE
13	1970	GOLDENWEST	20x52	2/2	\$ 19,900
17	1971	FUQUA	24x56	3/2	\$ 19,900
60	1998	CHAMPION	24x40	3/2	\$ 32,900
64	1990	SILVERCREST	24x56	2/2	\$ 37,900
74	1991	SILVERCREST	26x56	3/2	\$ 40,300
75	2001	CAVCO	32x60	3/2	\$ 46,900
117	1972	KAUFMAN	12x48	2/2	\$ 12,900
121	1971	NEWPORT	20x40	2/2	\$ 17,900
137	1972	CASA VEGA	24x56	2/2	\$ 19,900
148	1997	FLEETWOOD	24x52/53	3/2	\$ 34,400
182	1971	GUERDON	24x60	2/2	\$ 20,600
184	1997	FLEETWOOD	24x56	3/2	\$ 36,800
198	1986	SKYLINE	20x52	2/2	\$ 25,900
203	1992	SKYLINE	24x56	2/2	\$ 31,900

Serial numbers are: (13) 5088200901, (17) 570611276, (60) 0999406302580A/B, (64) A18156C8311ACA, (74) A3128AC8888CA, (75) CAVAZLPG131813041, (117) 58115, (121) 52899001, (137) 11286K41, (148) CAFLV68A/8209425H12, (182) 5245530A00L, (184) CAFLV68A/82094513, (198) 25716085A/BV, (203) 1V7104101A/B

See More Homes at [CMSHomes.MHvillage.com](http://CMSHomes.MHvillage.com)

(855)426-4663 - (619)561-5409

13162 Highway 8, Business, El Cajon, CA 92021



All information deemed reliable although not guaranteed. Subject to Prior Sale/Offer. All sizes are approximate. Sales Price does not include other fees such as escrow, filing fees, taxes, or fees incurred due to financing such as appraisals/insuring costs/insurance. All homes sold as is, where is, with all faults. Buyer must obtain independent approval to reside in the Community.

Community Mobile Home Sales Lic#92764

January 1, 2012

Prices good for 45 days

Below is an article from a park owner trade newsletter from 1994 celebrating "Slaying the Dragon of Rent Control in San Diego County" and showing an attorney awarding a sword to his park owner client. The real "Dragons" who were slain were the helpless homeowners victimized by escalating rents that economically evicted them from their own homes! The article and photo below demonstrate that operating a MH community is as much a GAME as a business to many millionaire and billionaire park owners.

At a WMA Unit S-6 meeting on April 21, Unit Vice President John Baldwin received one of the biggest surprises of his life: a 4'-long sword adorned with a dragon, in honor of his long-standing battle against rent control in San Diego County.

The idea for the award was Mike Walters', a WMA-member attorney (also from San Diego County) and long-time friend of John's. In addition to the sword, John also received a plaque with the following inscription: "Presented with honor to John L. Baldwin for slaying the dragon of rent control in San Diego County. A.D. 1994."

The sword's brass dragon relief, complete with ruby-colored eyes, breathes fire onto the shaft of the sword. There is even a removable dagger at the hilt. Mike decided that the sword would be an appropriate award for John, symbolizing John's battle of many years against the ugly monster of rent control in this Southern California county. According to reports, the unexpected honor left John feeling overwhelmed.

In addition to being unit vice president, Baldwin is also a regional director on the WMA Board of Directors. ■



WMA-member attorney Mike Walters (kneeling) presents the dragon sword to Unit S-6 Vice President John Baldwin. The sword was given in recognition of Baldwin's hard work in fighting rent control in San Diego County.

WMA Reporter

## **WMA "Dragon Slayers" Sir John Baldwin and Sir Michael Walters**

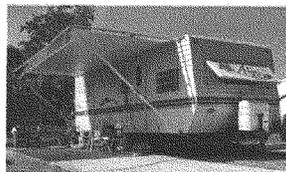
In closing, I do appreciate a seat at the table of the MHCC and serving in an advisory capacity with the goal of helping to improve the construction standards and image in general, of manufactured housing in the United States. To remind you, we are homeowners who often pay property tax at the same rate as owners of conventional homes. New manufactured homes can cost over \$200,000, which is a large amount to risk when placing such homes in a land-lease communities. Our homes are not mobile, making our way of life extremely precarious and vulnerable to the monopolistic whims of greedy community owners. While there are many good and upstanding community owners, we need and deserve protections at the local, state and federal levels to provide us with **home/land security** from the growing number of unscrupulous operators.

Please do not hesitate to contact me at: [tpsheahan@cox.net](mailto:tpsheahan@cox.net) /760 727-4495 if you would like more information regarding manufactured housing issues in California.

Sincerely,



Tim Sheahan  
Vice President Zone D and immediate past President, GSMOL  
Board member, Manufactured Home Owners Association of America (MHOAA)  
HUD Manufactured Housing Consensus Committee (MHCC)



*There IS a difference between a motor home, Trailer and Mobile/Manufactured Home!*



112TH CONGRESS  
2D SESSION

# H. R. 3849

To amend the S.A.F.E. Mortgage Licensing Act of 2008 to provide an exception from the definition of loan originator for certain loans made with respect to manufactured homes, to amend the Truth in Lending Act to modify the definition of a high-cost mortgage, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 2012

Mr. FINCHER (for himself, Mr. DONNELLY of Indiana, and Mr. GARY G. MILLER of California) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To amend the S.A.F.E. Mortgage Licensing Act of 2008 to provide an exception from the definition of loan originator for certain loans made with respect to manufactured homes, to amend the Truth in Lending Act to modify the definition of a high-cost mortgage, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preserving Access to  
5 Manufactured Housing Act”.

1 **SEC. 2. MODIFICATIONS TO DEFINITIONS.**

2 (a) **LOAN ORIGINATOR DEFINITION.**—Section  
3 1503(4) of the S.A.F.E. Mortgage Licensing Act of 2008  
4 (12 U.S.C. 5102(4)) is amended—

5 (1) in subparagraph (A)—

6 (A) in clause (iii), by striking “and” at the  
7 end;

8 (B) in clause (iv), by striking the period  
9 and inserting “; and”; and

10 (C) by adding at the end the following new  
11 clause:

12 “(v) does not include an individual or  
13 entity that is a seller of manufactured  
14 homes unless such individual or entity is  
15 engaged in the business of a loan origi-  
16 nator or receives compensation or gain for  
17 engaging in activities described under  
18 clause (i) that is in excess of any com-  
19 pensation or gain received in a comparable  
20 cash transaction.”; and

21 (2) by adding at the end the following:

22 “(E) **ENGAGED IN THE BUSINESS OF A**  
23 **LOAN ORIGINATOR.**—For purposes of this para-  
24 graph, the term ‘engaged in the business of a  
25 loan originator’ means to perform loan origi-  
26 nator activities described under subparagraph

1 (A)(i) as a regular course of trade or business  
2 in exchange for compensation or gain paid sole-  
3 ly for engaging in the sale or distribution of  
4 residential mortgage loans.”.

5 (b) HIGH-COST MORTGAGE DEFINITION.—Section  
6 103(bb)(1)(A)(i) of the Truth in Lending Act (15 U.S.C.  
7 1602(bb)(1)(A)(i)), as added by section 1431 of the Dodd-  
8 Frank Wall Street Reform and Consumer Protection Act,  
9 is amended—

10 (1) in subclause (I)—

11 (A) by striking “(8.5 percentage points, if  
12 the dwelling is personal property and the trans-  
13 action is for less than \$50,000)”;

14 (B) by striking “or” at the end;

15 (2) in subclause (II), by adding “or” at the  
16 end; and

17 (3) by adding at the end the following:

18 “(III) by a first mortgage on a  
19 consumer’s principal dwelling that is  
20 considered personal property (or is a  
21 consumer credit transaction that does  
22 not include the purchase of real prop-  
23 erty on which a dwelling is to be  
24 placed), the annual percentage rate at  
25 consummation of the transaction will

1 exceed the average prime offer rate,  
2 as defined in section 129C(b)(2)(B),  
3 for a comparable transaction, by more  
4 than—

5 “(aa) 8.5 percentage points,  
6 in the case of a transaction in an  
7 amount of \$50,000 or more, but  
8 less than \$75,000 (as such  
9 amounts are adjusted by the Bu-  
10 reau to reflect the change in the  
11 Consumer Price index);

12 “(bb) 10.5 percentage  
13 points, in the case of a trans-  
14 action in an amount of \$30,000  
15 or more, but less than \$50,000  
16 (as such amounts are adjusted by  
17 the Bureau to reflect the change  
18 in the Consumer Price index); or

19 “(cc) such percentage  
20 points, above those described  
21 under item (bb), as the Bureau  
22 shall prescribe, in the case of a  
23 transaction that is in an amount  
24 of \$30,000 or less (as such  
25 amount is adjusted by the Bu-

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1 reau to reflect the change in the  
2 Consumer Price Index);”.

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## RESPONSE TO MR. SHERMAN

At the hearing on Feb. 1, Mr. Sherman asked me a questions regarding whether or not Fannie and Freddie bought manufactured housing loans on the secondary market. I did not know the answer to that question and offered to get back to him once I found out. I apologize that it has taken me this long to respond, but here is what I know.

Right now, Freddie technically will buy mortgage loans backed by manufactured housing but the home MUST be titled as real estate AND include financing for the land under the home. There are also lots of restrictions on the mortgage terms. For instance it does not include chattel loans or loans on manufactured homes located in manufactured housing communities. See: <http://www.freddiemac.com/sell/factsheets/pdf/mhle.pdf>

Fannie's loan requirements for manufactured housing is similar. See: <https://www.efanniemac.com/sf/guides/ssg/annltrs/pdf/2007/0706.pdf>

Basically, this means that neither Freddie nor Fannie have bought manufactured home loans in the 2000s.

In 2008, before conservatorship happened, Freddie was working on developing different product specifications for manufactured homes that would allow loans for homes in communities if they had other homeowner protections in place.

Then HERA passed, which included a new duty to serve for Freddie and Fannie, requiring them to provide liquidity to the manufactured housing sector in all areas of the U.S. at all times. Basically, manufactured homes in communities could no longer be excluded. FHFA is supposed to release regulations regarding this process but so far nothing has been released, so this part of the law has not been implemented.

However the GSEs then entered conservatorship and so they are no longer allowed to undertake any new activities. Freddie has interpreted this conservatively—they will not go any further in their work to develop new product specifications for loans backed by manufactured housing.

Staff at CFED provided this information to me – they have been involved in offering comments regarding the FHFA proposed rules – Duty to Serve. It would be great if Mr. Sherman could put pressure on FHFA to release the final Duty to Serve regulations – it seems we have been waiting for more than a year for these.

It would also be very beneficial to manufactured home owners if Mr. Sherman would consider writing legislation that requires the GSEs or any successor entity to buy loans backed by manufactured housing with certain characteristics, broader than the older policies but keeping out the bad chattel loans which are so onerous to manufactured home owners.

RESPONSE TO MR. DOLD

I testified before the sub-committee on Insurance, Housing and Community Opportunity on Feb 1, 2012 and Mr. Dold asked me a couple of questions.

I was gratified to know that he had an interest in the role the federal government might play to ensure the long-term viability of manufactured housing communities since they provide affordable home ownership opportunities for 2.9 million households across the country.

One of the best ways for the federal government to help preserve manufactured housing communities so that the home owners living in them can establish equity in their homes would be to provide a tax credit incentive to the community owners. This incentive would be available to any community owner who chose to sell their community to either the homeowners' association, a local housing authority, or another non-profit committing to preserve the manufactured housing community for low income seniors and young families just starting out on the home ownership ladder.

I would be more than happy to discuss this idea with either of you or Mr. Dold at any time in the future. Please do not hesitate to contact me if I can be of assistance.