
MHARR Viewpoint

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“Restoring the Stature and Status of the MHCC”

The Manufactured Housing Consensus Committee (MHCC) was established by Congress as one of the centerpiece reforms of the Manufactured Housing Improvement Act of 2000. Ongoing fallout, though, from the April 2010 MHCC meeting in Tulsa, Oklahoma, shows that a sustained effort to undermine this important forum through misinformation, misdirection and misstatements is taking a toll that warrants further action based on the facts. Once those facts are considered, the new program management at HUD can, should and (hopefully) will move forward expeditiously to restore the role, authority, functionality and independence of that important body. MHCC members should assist the new HUD program management with this process, recognizing, at the same time, that they -- as appointed members of a body created by Congress -- have a solemn responsibility to uphold the status and stature of the MHCC as provided by law, regardless of what HUD regulators might say or claim. __

Congress established the MHCC under the 2000 reform law as a replacement for the ineffective and dysfunctional National Manufactured Home Advisory Council (Advisory Council) created by the original Manufactured Housing Construction and Safety Standards Act in 1974. Looking at the 1974 law, the reasons for the failure of the Advisory Council are obvious. The Advisory Council had a weak mandate -- the law only encouraged HUD to “consult” with the Advisory Council as “feasible.” The Advisory Council also had an extremely narrow role, as “consultation” was limited to HUD-proposed standards -- with no provision for consultation on regulations, interpretive bulletins or other program actions. And, because this “consultation” was completely discretionary with HUD, the 1974 law had no “teeth,” no sanction(s) if the Department failed or refused to go to the Advisory Council.

Not surprisingly, HUD rarely found it “feasible” to consult with the Advisory Council. As a result, the standards were rarely updated, while regulations were routinely expanded through HUD “interpretations” developed behind closed-doors and imposed without rulemaking. Costly de facto regulations like the Acceptable Quality Level (AQL) criteria were developed and imposed without transparency, accountability or any process that provided for input by all program stakeholders and particularly the by regulated party. Such abuses inevitably -- and regularly -- led to disputes that wound-up before Congress.

To get these disputes resolved at the program level, Congress scrapped the Advisory Council and -- with the support of all program stakeholders, including the industry and consumers -- established the MHCC with a greatly strengthened mandate, specific authority and specific procedures -- all designed to close the loopholes and correct the weaknesses that plagued the former Advisory Council. Consequently, under the 2000 reform law, except for emergencies, virtually all program actions relating to the standards, regulations and inspections, including “interpretations,” must be taken by HUD in consultation with the MHCC or proposed by the MHCC itself. Otherwise, the law declares any such action “void” (section 604(b) (6) of the 2000 reform law).

HUD regulators, however, have never supported the concept or reality of a robust consensus committee and consensus process that would hold them and the entrenched program contractor accountable, and ensure the rights of program stakeholders. Consequently, the program has methodically sought to chip away at the role, authority, functionality and independence of the MHCC, to the point -- as displayed at Tulsa -- that the MHCC is in danger of becoming another ineffective, irrelevant Advisory Council. Among other things, program regulators, through creative “interpretations” of the 2000 reform law and other enactments, and with the tacit acceptance of half the industry in Washington, D.C., have:

- Falsely claimed that the MHCC is subject to all the limitations of the Federal Advisory Committee Act (FACA), although FACA states its provisions apply except to the extent that an “Act of Congress establishing [an] ... advisory committee expressly provides otherwise,” as is the case with the MHCC;
- Attempted to strip the MHCC of the authority granted to it by “catchall” section 604(b)(6) of the 2000 reform law -- to address most changes to the regulations and inspection practices -- through an “Interpretive Rule,” issued with no opportunity for public comment, that effectively reads that section out of the law;
- Falsely claimed that the MHCC, as a federal advisory committee, can only respond to standards proposed by HUD, when the 2000 reform law gives the MHCC specific authority to develop and submit its own proposed standards, regulations, interpretations and amendments;
- Refused to bring major regulatory changes to the MHCC, such as its “voluntary” overhaul of in-plant inspections;
- Misused FACA in an effort to take total procedural control of the MHCC and the matters that it can address, including control over the content of meeting agendas, prioritization of proposals, assignment of proposals to subcommittees, the composition of subcommittees and the Committee’s bylaws;
- Misused FACA in an effort to unduly restrict public participation in MHCC meetings, even though the 2000 reform law requires “a fair opportunity for the

expression and consideration of various positions and for public participation.” (Section 604(a)(3)((A)(iii) of the 2000 reform law);

- Sought to skew the balance of the MHCC -- and the information and viewpoints available to it -- through politicized appointments of special interest advocates and consultants, while simultaneously excluding collective representation of the industry under vague “guidance” regarding registered lobbyists that is not in any law or executive order;
- Attempted to dilute the representation of all manufacturers -- and particularly smaller producers -- by allowing the multiple representation of one company; and
- Have effectively stripped the MHCC of its statutory authority to address installation and dispute resolution via re-codification.

And these are only the most egregious examples of actions that have been taken to downgrade the stature and status of the MHCC.

It is extremely important to note, moreover, that collective representation of the industry (i.e., the regulated party) on the MHCC is essential, because only through the institutional memory, knowledge know-how and expertise of the industry’s collective representation can the efforts by program regulators to undermine the MHCC be effectively neutralized.

As things stand now, and as was clearly demonstrated in Tulsa, the role, authority, functionality and independence of the MHCC have been -- and are being -- severely degraded. This threatens to undermine the viability and legitimacy of the MHCC, and its ability to effectively function as Congress planned and as needed by the industry, consumers and all program stakeholders.

As a result, this is an urgent issue that needs to be carefully addressed, from a fresh perspective, based on the facts, and resolved expeditiously by the new management of the HUD program. MHARR has strongly urged the full restoration of the stature and status of the MHCC as a top priority going forward, and so should the rest of the industry, consumers and all other program stakeholders.

In MHARR’s view, a return to the days of the dysfunctional Advisory Council is unacceptable, thus the current trend must be reversed as expeditiously as possible.

MHARR is a Washington D.C.-based national trade association representing the views and interests of producers of federally-regulated manufactured housing.