

**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) (ii)

**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 that 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 Dockett 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.**

United States House of Representatives  
Committee on Financial Services

“TRUTH IN TESTIMONY” DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

<b>1. Name:</b>  Dana C. Roberts	<b>2. Organization or organizations you are representing:</b>  Former Chairman Manufactured Housing Consensus Committee
<b>3. Business Address and telephone number:</b>  	
<b>4. Have <u>you</u> received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>5. Have any of the <u>organizations you are representing</u> received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.</b>          	
<b>7. Signature:</b>  	

*Please attach a copy of this form to your written testimony.*