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

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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 productions 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 I), 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.

MHARR Written Testimony

ATTACHMENT A

"The complete text of attachment A has beeen submitted for the hearing record in hard-copy format"

FINAL REPORT

National Commission on Manufactured Housing

NATIONAL COMMISSION ON MANUFACTURED HOUSING

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Introduction by the Chairman

Last year, roughly a quarter of a million manufactured homes were sold in the United States—one out of every four new homes built. At its best, housing production in a factory combines the ability to produce quality housing with a price that is affordable to those with very modest incomes—from young families struggling to purchase their first homes to retirees living on fixed incomes. The National Commission on Manufactured Housing has been dedicated to improving the potential of this industry to address the urgent demand for affordable housing in this country. This potential can only be realized, however, when manufactured housing is treated like other types of housing—with comparable standards of construction and performance, comparable competitive financing, and comparable zoning and regulatory treatment.

In 1974, Congress recognized the potential of manufactured housing by granting it unique status as the only type of housing with a Federal preemptive building code. Though much has changed since that time, the Federal manufactured housing program has changed little—leaving industry and consumers alike increasingly frustrated by the program's inability to respond to problems and adapt to changing markets and housing standards. Because of the potential of this industry and the unique status of its product among housing types, I believe that no housing issue could be more compelling for Congressional attention than the future of the manufactured housing program.

After a very divisive and inconclusive debate on the future of the manufactured housing program in 1990, Congress established the National Commission on Manufactured Housing with a charge to "develop an action plan containing specific recommendations for legislative and regulatory revisions to the present law." The Commission was granted an extension for its work in November 1993 with the clear understanding that it was to develop recommendations upon which Congress could act as part of the housing reauthorization process in 1994. To that end, the Commission has worked very diligently over the past year and a half and reached consensus in February of this year on a plan of action, the outline of which was conveyed to Congress in the form of an Interim Report. (A copy of the Interim Report is included as Appendix D.)

Since reaching consensus on the major issues, the Commission has worked on two tracks to achieve the Congressional mandate to provide specific and timely recommendations. On advice of Congressional staff, we have drafted proposed legislative language that has been conveyed to Congress for consideration as part of the housing reauthorization process. The Commission has also produced this Final Report to Congress, which meets the statutory deadline of August 1, 1994.

In general, the Commission's recommendations seek to make manufactured housing more like other types of housing—with all the benefits and responsibilities that go with that status. If enacted, these recommendations would reduce discriminatory practices in financing, zoning, public services, and Federal housing subsidies that increase homebuyer costs and limit the market potential of this type of housing. The Commission's recommendations would also increase the accountability of manufacturers and retailers—not through accountability to heavy-handed regulators, but through warranty requirements that provide direct financial accountability to homeowners.

The Commissioners also sought to improve the effectiveness and accountability of HUD and its agents in the regulatory, monitoring, and enforcement roles of the Department. At

the same time, we were aware of the limited resources and capacity of the Department to take on new responsibilities. To improve the program, the Commission has recommended establishing a new independent consensus body to update construction and installation standards. This approach would make the process for establishing manufactured housing standards more like standards-setting for other types of housing and will minimize the bottlenecks at HUD that have proven an obstacle to needed change. We have also recommended an enhanced role for States in the enforcement process while providing the funding to do so. There are no unfunded mandates in our recommendations.

The Commission was dedicated to finding the least expensive and least intrusive means to achieve genuine reform. Indeed, the proposed legislative language wo' ld provide regulatory relief from unnecessary requirements with respect to standards, inspections, and notification for defects. The Commission's staff estimates that this reform to the regulatory system represents an additional cost of only $43 per floor. Additional costs to the manufacturer and retailer for a builder-backed or insurance-backed warranty should be minimal (some manufacturers already provide a 5-year warranty). The gaps in accountability in the current system too often reward those who cut corners at the expense of consumers and competitors who act responsibly in providing quality homes and services. The financial incentives under the system we propose will reward manufacturers and retailers who provide quality, as many now do, and will penalize those who provide inferior workmanship.

Compromise was required from both sides to reach the consensus reflected in the Interim Report. Consumer representatives, myself included, started this process by suggesting that comparability would be best achieved for manufactured housing by requiring compliance with national model codes and requiring independent inspections of all systems like most site-built homes must undergo. We have come to the position that comparability can be achieved just as effectively and at less cost through a standard that emphasizes actual performance and an enforcement system that relies on strong warranty protection. For their part, representatives of the manufacturing and retailing industries made significant concessions to achieve the warranty protections necessary as an alternative to more intrusive inspection-based enforcement.

Regrettably, I must note that representatives of the manufacturing and retailing industries have withdrawn their support for positions they had accepted in February 1994—agreements the Commission had further refined to meet industry concerns in our March and April meetings. Contrary to the clear intent of Congress, the industry representatives indicated their opposition to any legislation this year and walked out of the Commission's May meeting. (A detailed month-by-month description of the Commission's meetings and the agreements reached is included as Appendix B. Draft legislation approved by the Commission and submitted to Congress on May 31, 1994, is included in Appendix H.) The industry's reversal did not occur over changes made in the consensus by the Commission but rather over the issue of accepting accountability to homeowners. Specifically, the negotiations broke down when the industry representatives indicated that they could not live with their earlier agreement to provide a seamless 5-year warranty on major structural components of the home that covers problems that might arise from improper installation. Universal estimates by experts in the field that at least half of major problems with manufactured homes stem from improper installation underscore the necessity to improve installation practices if manufactured housing is to enjoy the confidence of homebuyers, financiers, regulators, and local zoning commissions.

The reversal of the industry's position is disappointing not only because it undermines the hard work of the Commission, but also because of the failure of vision it represents. The

Commission's report is based on a foundation of hope for the enormous potential that this type of housing could have for providing affordable housing and homeownership. The industry's refusal to accept greater accountability to homeowners betrays a lack of confidence in its own product and workmanship that will only continue to hamper the ability of manufactured housing to realize its full potential.

Despite my disappointment that some Commissioners did not support the F nal Report, I join with Secretary of Housing and Urban Development Henry G. Cisneros in strongly urging Congress to adopt reform legislation this year. Failure to act would not only delay much needed improvements for years, but would also undermine the basis on which this compromise consensus was painstakingly crafted. The Commission's work will not be in vain if legislation based on our recommendations can be enacted. However, if this Congress is unable to enact major reform, a future Congress will have to address whether or not the public's interest is served by continuation of the current federally preemptive program that lacks accountability and simply does not work in critical ways.

Finally, on behalf of the Commission, I want to express profound gratitude to the Members of Congress who expressed their confidence in us by appointing us to this important Commission. We are also very grateful to Secretary Cisneros for his strong personal support for reforms to the manufactured housing program and to his staff for their technical support of the Commission's efforts. Above all, I want to thank our Executive Director Robert Wilden and the fine staff he assembled for their tireless dedication and their uncanny ability to anticipate and research every conceivable issue our diverse Commission could throw at them. Lastly, I want to extend my personal gratitude to my fellow Commissioners for their dedication and mutual respect even during difficult negotiations.

Helen Boosalis
Chairman

Lincoln, Nebraska
July 1994

GLOSSARY

ACUS	Administrative Conference of the United States
ADR	Alternate Dispute Resolution
ANSI	American National Standards Institute
ANSI A225.1	Standard for Manufactured Home Installations
APA	Administrative Procedure Act
ARR	Association for Regulatory Reform
ASTM	American Society for Testing and Materials
BOCA	Building Officials and Code Administrators, Inc.
CABO	Council of American Building Officials
DAPIA	Design Approval Primary Inspection Agency
DEPARTMENT	HUD
DPR	DAPIA Performance Review
FANNIE MAE	FNMA
FHA	Federal Housing Administration
FHLMC	Federal Home Loan Mortgage Corporation
FNMA	Federal National Mortgage Association
FREDDIE MAC	FHLMC
GINNIE MAE	GNMA
GNMA	Government National Mortgage Association
HUD	U.S. Department of Housing and Urban Development
HUD CODE	MHCSS
IPIA	Production Inspection Primary Inspection Agency
IPR	IPIA Performance Review
ISO	International Standards Organization
MHCSS	Manufactured Home Construction and Safety Standards
MHI	Manufactured Housing Institute
MHMA	Mobile Home Manufacturers Association (became MHI)
NCSBCS	National Conference of States on Building Codes and Standards
NEC	National Electrical Code
NFPA	National Fire Protection Association
NIBS	National Institute of Building Sciences
OMB	Office of Management and Budget
PIA	Primary Inspection Agency
SAA	State Administrative Agency
SECRETARY	Secretary of Housing and Urban Development
VA	U.S. Department of Veterans Affairs

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EXECUTIVE SUMMARY

Introduction

The problem of housing affordability touches many Americans: young couples with limited savings, single-parent families and low-income households that seek decent shelter at a reasonable price, retired persons looking for smaller homes with less maintenance, and persons commuting long distances because they cannot afford close-in housing. More than half of all American families are unable to afford a median-priced, site-built home.

Manufactured housing provides a homeownership option for persons who may not be able to afford, or choose not to purchase, site-built housing. Currently, 15.4 million people—7 percent of all Americans—live in more than 7 million manufactured homes. These households constitute a broad spectrum of backgrounds that defy stereotyping. (See Figures 1 and 2.) Manufactured homes are no longer confined to rental communities. The percentage of such homes located in rental communities has fallen from 43 percent in 1981 to 37 percent in 1990. In addition, multisection homes accounted for 47 percent of all homes sold in 1993, compared with 27 percent in 1983.

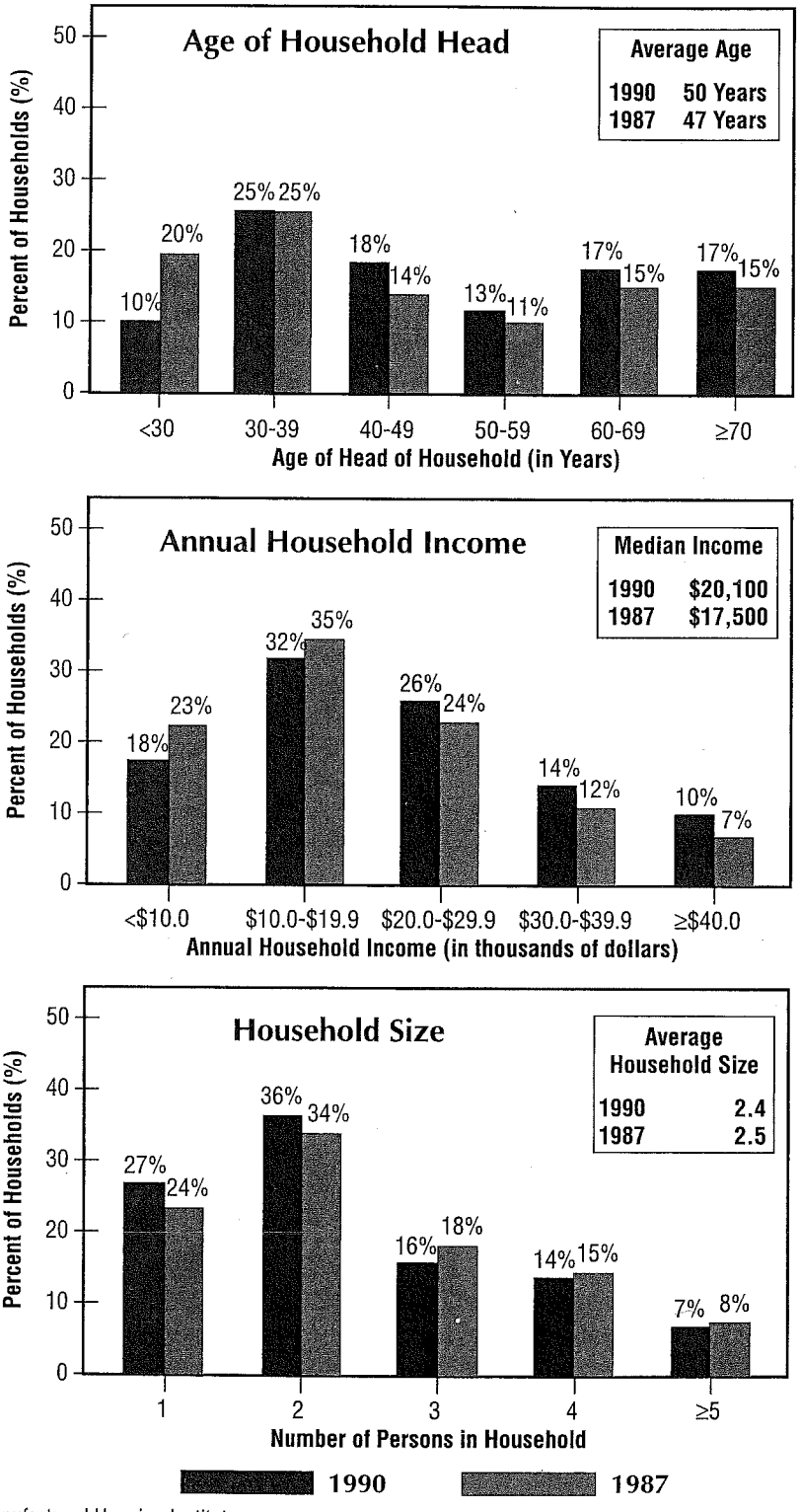
The origin of today's manufactured home can be traced back to the factory-assembled travel trailers of the 1920s. A lack of uniform code requirements, however, hindered interstate shipment of manufactured homes. In addition, consumer complaints about poor quality and safety hazards led Congress to consider stricter and more uniform construction standards for manufactured housing. While the National Manufactured Housing Construction and Safety Standards Act of 1974 created a uniform construction standard applicable nationwide, failure to update it regularly has resulted in an outdated standard in relation to other building construction standards. The National Commission on Manufactured Housing believes that a standards-setting process is needed that will ensure that manufactured homes meet standards of safety, quality, durability, and energy efficiency that yield levels of performance comparable to other forms of housing, while considering the importance of affordability.

Manufactured housing represents an important segment of the Nation's housing market. In 1992, manufactured homes represented 26 percent of all new single-family homes sold and 17 percent of all new single-family housing starts. In 1993, 93 corporations with 245 factories nationwide produced 254,276 homes, representing potential retail sales of more than $7 billion. More than 4,600 retailers, according to the Manufactured Housing Institute, market homes to consumers. The total economic impact, which includes employment of factory workers, purchases from suppliers, and the multiplier effect of selling homes to consumers, is well in excess of $7 billion. The Manufactured Housing Institute estimated the total economic impact in 1992 was approximately $13 billion. (See Figure 3.)

Manufactured housing tends to be located in nonmetropolitan areas, with heavy concentrations in the South. According to the latest U.S. Census, 52 percent of manufactured homes are located in nonmetropolitan areas, compared with 20 percent of other dwellings. Half of all manufactured homes are located in the South, compared with 33 percent of other housing units. The five States with the largest number of manufactured homes are California, Florida, Georgia, North Carolina, and Texas. (See Figures 4 and 5.)

While there continues to be a public perception that manufactured housing is an inferior product compared with site-built housing, and it continues to be difficult to obtain local

Figure 1. Manufactured Home Purchasers' Demographics



Source: Manufactured Housing Institute.

Figure 2. Manufactured Housing Facts

Who lives in manufactured housing?

- **Education:** 33 percent have not graduated from high school; 42 percent are high school graduates; 25 percent have attended college; 6 percent have graduated from college; and 4 percent have completed some postgraduate work.
- **Employment:** 60 percent are employed full-time; 7 percent are employed part-time; 6 percent are unemployed; and 27 percent are retired.
- **Occupation:** 15 percent are laborers/operators; 13 percent are craftsmen/repairmen; 13 percent are students, are members of the armed forces, or have another occupation; 12 percent hold managerial/professional positions; 10 percent are in technical/sales/administrative support positions; 8 percent have service industry positions; 2 percent are involved in farming/forestry/fishing; and 27 percent are retired.
- **Marital status:** 58 percent are married; 32 percent are divorced, widowed, or separated; and 10 percent are single.

Source: Manufactured Housing Institute.

Figure 3. Summary of Regional Manufactured Housing Economic Impacts—1992

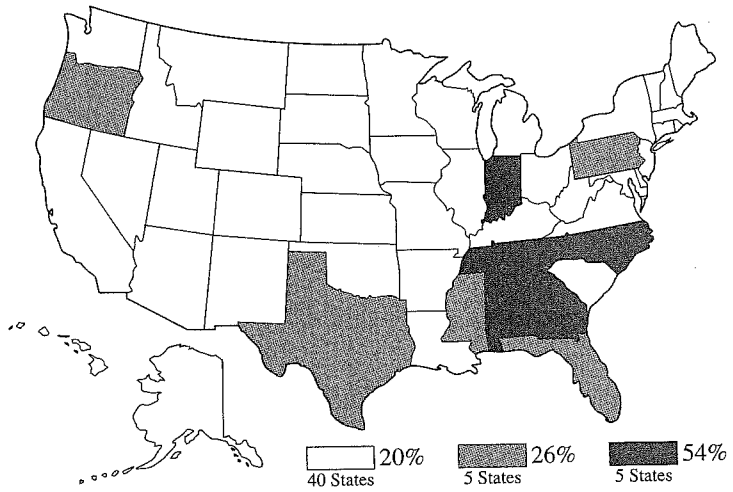
Region	No. of Homes		Economic Impact			
	Shipped	Produced	Shipment	Production	Total	Percent of Total
New England	2,845	0	$49,093,421	$0	$49,093,421	0.4
Middle Atlantic	11,846	12,327	196,027,372	613,414,348	809,441,720	6.2
East North Central	27,628	30,058	460,114,879	1,382,282,010	1,842,496,689	14.1
West North Central	11,863	7,441	172,077,333	322,080,358	494,157,691	3.8
South Atlantic	71,605	69,957	1,082,660,787	3,104,843,230	4,187,504,017	32.1
East South Central	31,432	48,238	438,947,106	1,977,839,288	2,416,786,394	18.5
West South Central	19,304	9,004	328,645,338	462,721,429	791,366,767	6.1
Mountain	13,375	7,524	240,124,717	460,441,890	700,566,607	5.4
Pacific	15,970	17,044	434,079,182	1,316,374,342	1,750,453,524	13.4
U.S. Total	**205,866**	**201,593**	**$3,401,770,135**	**$9,640,096,695**	**$13,041,867,030**	**100.0**

Source: Manufactured Housing Institute.

Figure 4. Top Ten Producing States, January through November 1993

Rank	State	Units	Percent of Total
1	Georgia	31,930	13.7
2	North Carolina	27,616	11.8
3	Alabama	25,436	10.9
4	Indiana	22,700	9.7
5	Tennessee	17,847	7.6
6	Texas	15,462	6.6
7	Florida	12,480	5.3
8	Pennsylvania	12,177	5.2
9	Mississippi	9,974	4.3
10	Oregon	9,749	4.2

1992 HUD Code Home Production
(Percent of Total Homes in Groups of States)



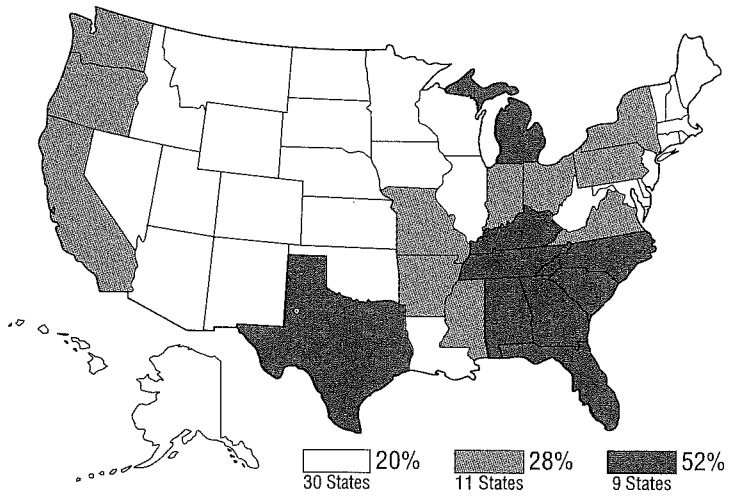
Low Producers				Middle Producers	Top Producers
Alaska	Iowa	Nebraska	Utah	Florida	Alabama
Arizona	Kansas	Nevada	Vermont	Mississippi	Georgia
Arkansas	Kentucky	New Hampshire	Virginia	Oregon	Indiana
California	Louisiana	New Jersey	Washington	Pennsylvania	North Carolina
Colorado	Maine	New Mexico	West Virginia	Texas	Tennessee
Connecticut	Maryland	New York	Wisconsin		
Delaware	Massachusetts	North Dakota	Wyoming		
Hawaii	Michigan	Ohio			
Idaho	Minnesota	Oklahoma			
Illinois	Missouri	Rhode Island			
Indiana	Montana	South Carolina			

Source: HUD, February 1993.

Figure 5. Top Ten Receiving ("Shipment") States, January through November 1993

Rank	State	Units	Percent of Total
1	North Carolina	22,548	9.6
2	Texas	16,817	7.2
3	Florida	15,792	6.8
4	Georgia	12,553	5.4
5	South Carolina	12,402	5.3
6	Tennessee	10,667	4.6
7	Alabama	10,475	4.5
8	Kentucky	9,729	4.2
9	Michigan	8,685	3.7
10	Indiana	6,493	2.8

1992 HUD Code Home Shipments
(Percent of Total Homes in Groups of States)



Lowest No. of Homes			Middle No. of Homes	Highest No. of Homes
Alaska	Louisiana	New Mexico	Arkansas	Alabama
Arizona	Maine	New York	California	Florida
Colorado	Maryland	North Dakota	Indiana	Georgia
Connecticut	Massachusetts	Oklahoma	Ohio	Kentucky
Delaware	Minnesota	Rhode Island	Oregon	Michigan
Hawaii	Montana	Utah	Mississippi	North Carolina
Idaho	Nebraska	Vermont	Missouri	South Carolina
Illinois	Nevada	West Virginia	Virginia	Tennessee
Iowa	New Hampshire	Wisconsin	Washington	Texas
Kansas	New Jersey	Wyoming		

Source: HUD, February 1993.

approval of manufactured housing on well-located sites in metropolitan areas, several trends within the industry could help to overcome this perception. Today, manufacturers are adopting Total Quality Management (TQM) techniques to improve assembly quality and consumer satisfaction. Computer-assisted design is also being employed to increase the efficiency and accuracy of the construction process and to provide wider options for customizing of units. The distribution system for manufactured housing is also changing. Homes are increasingly being sold as a traditional home-land package in subdivisions and communities. One large manufacturer recently initiated a warranty that covers structural systems for 5 years, and other manufacturers are beginning to follow this lead.

The impacts on the economy and on the housing market by manufactured housing are substantial. In terms of national housing policy, manufactured housing is an important ingredient in the provision of affordable housing. In 1992, the average cost of a new manufactured home was $28,400, without land. According to the 1991 American Housing Survey, the median income of households living in manufactured housing was $19,511, compared with $28,807 for all households. Given the need for affordable housing, and the diminishing Federal resources available to provide subsidies in support of lower-income housing, the potential role for manufactured housing could be even greater.

In order to realize this potential, changes are necessary in the regulatory system under which such housing is produced and distributed. The Commission identified the following problems that need to be addressed:

1. **The U.S. Department of Housing and Urban Development (HUD) as Regulator.** Since enactment in 1974 of the National Manufactured Housing Construction and Safety Standards Act, HUD has been responsible for establishing and updating the manufactured housing standards, also known as the HUD Code. HUD is also responsible for enforcing the Code. HUD has not done either adequately. Inadequate staff resources and the cumbersome nature of the regulatory process have contributed to the problem.

2. **Standards-Setting Process.** Manufactured housing is subject to the HUD Code, whereas site-built and modular housing are subject to State and local building codes. Most jurisdictions make use of one of the national model building codes, and may add requirements of their own. Private code-setting organizations establish the model building codes, which are generally updated on an annual or biennial cycle. There is no process for regularly updating the HUD Code, which has obsolete requirements. The result is a code that is less comparable to other housing codes as standards are updated and as other codes evolve over time.

3. **Unclear Federal and State Agency Relationships.** The manufactured housing program is unique in that the Federal Government has the primary role of regulating the construction process through the HUD Code, which preempts all State and local codes. The division of responsibility among the Federal, State, and local governments is not simple. First, although the HUD Code covers construction within the manufacturing plant, it does not cover installation of the home. Some but not all States have installation standards. Failure to install the home properly can result in major structural damage to the home. Second, the National Manufactured Housing Construction and Safety Standards Act allows for—but does not require—a State role in enforcement. Third, HUD often does not act even when it has clear authority to do so. The combination of limited staff and travel resources, together with other higher priorities, often results in HUD's failure to take appropriate action in support of State enforcement efforts.

4. **High-Tech Approach to Housing Environment.** A unique feature of the manufactured housing program is the performance nature of the HUD Code. Performance

requirements offer greater opportunities to cut the costs of construction. Model building codes tend to be more prescriptive in nature, setting forth the kinds of materials and construction techniques required to meet the code. Performance requirements state the desired ends while prescriptive requirements state the desired means. The manufacturer is required to submit engineering calculations or testing data that demonstrate that the design for each model or type of home meets the performance standards set forth in the HUD Code. Because the HUD Code does not require a standard testing protocol, individual engineers may disagree on whether a particular design or testing procedure demonstrates conformance with the code. HUD does not do particularly well at refereeing these disagreements, although only HUD has the ultimate authority necessary to resolve them.

5. **Preemption.** Preemption means the HUD Code, not State or local codes, is the construction standard for manufactured housing. The preemptive nature of the HUD Code is what makes it possible for manufacturers to ship homes to all States without having to conform to State or local codes. The authority of the Federal Government is required to preempt all State and local building codes. Over time, however, HUD has either delegated much of its authority to its monitoring agent or not exercised its role as regulator. The result is a lack of checks and balances within the regulatory system, a tendency on the part of States to avoid responsibility, a general inability on the part of States to remedy homeowner problems when the regulatory system breaks down, and a loss of clear accountability.

6. **Division of Responsibility Within the Industry.** The manufactured housing industry is built around a delivery system consisting of roughly 4,600 independent retailers. Manufacturers do not typically control their retailer networks. Transportation of the home may be undertaken by either party. Storage and installation are typically carried out by the retailer. The problem with the delivery system is that, if there is a deficiency in the home, the homeowner may end up dealing with more than one entity. The consumer is at a disadvantage in that it may not be clear who caused the problem, and the burden of proof is with the homeowner to demonstrate who is responsible for fixing the problem.

7. **Level of Accountability.** The division of responsibility among the various parties within the industry, together with the unclear Federal-State agency relationship, makes for a regulatory system that lacks accountability. The system allows each party to place the blame elsewhere. The homeowner bears the brunt of this problem.

8. **Lack of Adequate Consumer Information.** The purchaser of manufactured housing does not have access to the kind of comparative information that is available to the purchaser of other mass-produced items. Comparative information as to the performance, durability, and service requirements of manufactured homes is simply not available. Comparative data on manufacturers and retailers is likewise difficult to obtain. Many consumers shop local retailers based on the retail price of the product. But a low retail price may indicate a retailer that provides little or no follow-up service to the homebuyer.

9. **Unfair Treatment by State and Local Governments.** Dissatisfaction with the preemptive HUD Code, together with the perception that manufactured housing is inferior to site-built housing, is translated into exclusionary zoning and other kinds of discrimination at the local level. Even in urban and suburban localities that permit manufactured housing, few such homes exist because of the negative image of the product. Many localities have limited manufactured housing to parks located in relatively less desir-

able areas within the community. In many cases, residents of existing parks do not receive the same municipal services that others routinely receive, such as trash pickup and street maintenance.

Until these problems are adequately addressed, the manufactured housing industry cannot be expected to realize its potential as a source of affordable housing.

Purpose of the Commission

The National Commission on Manufactured Housing was created by Congress pursuant to Section 943 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Public Law 101-625). The purpose of the Commission is "to develop recommendations for modernizing the National Manufactured Housing Construction and Safety Standards Act of 1974." The Commission represents a compromise between the House of Representatives and the Senate; its creation followed a vigorous debate over the direction of the Federal manufactured housing program. In the Conference Report to the Cranston-Gonzalez Act, Congress recognized the need for changes in the program, but indicated its desire that they be developed "in a thorough, comprehensive manner with full consultation with a broad range of experts."

Public Law 101-625 requires the Commission to "study and investigate the National Manufactured Housing Construction and Safety Standards Act of 1974 and current construction and safety regulatory standards applicable to manufactured housing." Further, it requires the Commission to "assess the effectiveness" of the Act and "develop an action plan containing specific recommendations for legislative and regulatory revisions to the present law." The Conference Report notes that these recommendations "would form the basis for legislation next year [1991]." In conducting this study, Congress required the Commission to examine and make recommendations on the following issues:

- Deletion of the reference to the permanent chassis in the existing definition of a manufactured home, and the effect of such a change on the affordability and durability of manufactured homes;
- Implications for State regulatory jurisdiction over modular housing, in the event of changes in definitions and standards relating to manufactured housing;
- The need for additional and revised standards applicable to manufactured housing including, but not limited to, standards in the areas of construction, installation, thermal insulation, energy efficiency, and fire safety;
- The current system of inspections of manufactured housing and enforcement of applicable standards, and recommend improvements to the system;
- The need for independent financing of inspection agencies to ensure the autonomy of regulators;
- The impact of the manufactured housing program under Title I of the National Housing Act on the actuarial soundness of Federal mortgage insurance and secondary market programs, and the impact that proposed changes to current law would have on financing of these homes; and
- A system for reviewing and updating applicable (construction and safety) standards on an annual basis.

Congress added to the Commission's assignment two new items in 1992. The Housing and Community Development Act of 1992 (Public Law 102-550), requires the Commission to examine and make recommendations on the following additional issues:

- The extent to which manufacturers in compliance with Federal standards do and should comply with State-implied or expressed warranty requirements; and
- The feasibility of expanding and establishing standards governing manufactured home sales, including transportation and onsite set-up.

The Commission is composed of the Secretary of Housing and Urban Development and 16 members appointed by Congress. Commissioners were appointed from the following categories: State and local elected officials, manufactured housing industry, consumer organizations, building code officials, and homeowners. Appointments to the Commission were completed in May 1992.

Public Law 101-625, as amended by the HUD Demonstration Act of 1993 (Public Law 103-120), requires the Commission to submit a final report to the Secretary of Housing and Urban Development and the Congress by August 1, 1994. The final report is required to contain the evaluations and recommendations specified in the authorizing statute, as noted in the previous paragraphs. Operating authority for the Commission expires on September 30, 1994.

Based on this Congressional mandate, the National Commission on Manufactured Housing has set as its goal that of serving the public interest by expanding the role of manufactured housing in meeting the Nation's housing needs. The recommendations set forth in this report provide a basic framework for a revitalized and credible national manufactured housing program. The Commission looks forward to working with Congress, the Administration, and all interested parties to implement these recommendations, and to help more Americans to realize the dream of homeownership.

Reform Strategy

In developing its recommendations, the Commission recognized that more than one approach is possible to regulatory reform and to generating positive changes within an industry. One approach is to increase regulation. Another is to change the incentive system to induce manufacturers and retailers to deliver excellent service. A third approach is to provide data to consumers to assist them in making informed choices.

The Commission did not believe that increased regulation offered the best road to reform, for several reasons. First, because HUD will clearly continue to face staffing shortages as well as limitations on travel funds, recommending significant added workload for the Department did not appear to be a viable option. Second, although States have an appropriate role, the Commission did not believe that a national construction code could be uniformly administered at the State level. Third, industry representatives on the Commission made clear that the industry feels overregulated. They were convinced that additional regulation would inhibit the ability of responsible manufacturers to produce a cost-effective product, while at the same time not curbing or eliminating the undesirable performance of some industry participants. Fourth, homeowner representatives on the Commission made clear that homeowners do not feel adequately protected under the current regulatory system. The Commission therefore explored other alternatives for providing homeowner protection, rather than depending on increased regulation, which did not seem feasible given the above considerations.

The Commission used a mix of the three approaches described above, but with major emphasis on changing the incentive system so that manufacturers and retailers would be clearly accountable and would be rewarded for providing excellent products and service. The vehicle for changing the incentive system is the comprehensive multiyear warranty, backed by an alternate dispute resolution system and a recovery fund administered at the State level. For the first time, installation of the home would be covered by warranty. By placing the warranty requirements in Federal law, but administering the warranty at the State level, the Commission believed that homeowners would be assured consistent coverage nationwide, and States would be given a clear role as well as the necessary resources and authority to administer the warranty protections.

Because the States would set up and administer their own recovery funds, they would have strong incentives to control costs. Manufacturers and retailers would have equally strong incentives to honor the warranty. A State would have the authority and the obligation to revoke the registration of any manufacturer or retailer, thereby halting their ability to sell within the State, if, after alternate dispute resolution, the manufacturer or retailer failed to perform work required under the warranty. In such cases, the State recovery fund would pay for the work, so that the homeowner's needs were met, and the manufacturer's or retailer's registration would not be restored until they repaid the recovery fund.

While the major strategy for achieving reform is embodied in the Commission's recommendation for a comprehensive multiyear warranty, the Commission also recognized that some alterations to HUD's regulatory role were appropriate. Given HUD's difficulty in updating the construction standard, it seemed appropriate to delegate the task to an independent consensus committee where the interests of the various parties could be carefully balanced. The committee would be charged with updating the code on a 2-year cycle. HUD would retain final decisionmaking authority, but would be required to act on such recommendations within 1 year. The Commission also recommends a minimum installation standard, for inclusion in the HUD Code, which would be maintained and revised by the consensus committee.

The Commission's other recommended changes to the regulatory system increase the accountability of all parties. For example, the Commission recommends minor modification to the third-party enforcement system to increase accountability, including making third-party agents subject to civil money penalties under the Act. The Commission also recommends that monitoring reports, results of complaint investigations, and other enforcement records be treated as public records.

The Commission believes that these changes will improve or eliminate poor-performing manufacturers or retailers and enhance protection for consumers, while maintaining the affordability of the manufactured home. The comprehensive warranty provides the incentive for manufacturers' high-quality performance without requiring added regulation at the Federal level. The Commission's recommendations expand HUD's oversight role. They also clarify and increase the role of the States, and provide funding vehicles so that the States receive adequate resources to carry out their tasks.

The Commission also believes that, over the long term, these changes will improve the public's perception of manufactured housing, and help to overcome the notion that it is an inferior product compared with site-built housing. Over time, the industry can benefit from a greater share of the housing market, better financing, and satisfied consumers.

The Commission was concerned that its recommendations not result in significant costs to the consumer, because manufactured housing is the most affordable homeownership option in this country and can and should remain that way. The sum total of the Commission's

recommendations, if implemented, would raise the average cost of a home to the homeowner only a very modest amount. In return, the homeowner will receive a level of protection that far exceeds that typically provided under the current regulatory system.

Recommendations

Purpose of the Act

The Commission recommends that the statement of purpose in the National Manufactured Housing Construction and Safety Standards Act should be amended to read:

1.1. Congress recognizes the vital role of manufactured housing in meeting the Nation's housing needs. Manufactured homes provide a significant resource of affordable homeownership and rental housing accessible to all Americans, especially first-time homebuyers, low- and moderate-income families, and the elderly. In order to promote the quality, affordability, and availability of manufactured housing, Congress declares that the purposes of this title are:

- To enhance quality, manufactured housing should meet standards of safety, quality, and durability that yield levels of performance comparable to other forms of housing.
- To encourage innovative and cost-effective construction techniques that also minimize the long-term operating costs of manufactured housing to homeowners.
- To develop financing, zoning, and the provision of local government services that remove regulatory barriers that deny equal treatment for manufactured housing compared to other types of housing.
- To encourage State-Federal partnership within the Federal system that would enable each level of government to do what it does best while eliminating duplication and gaps between them.
- To establish a balanced consensus process for the development and revision of national construction and safety standards for manufactured homes.
- To strengthen warranty protections and increase access to affordable financing for the purchasers of manufactured homes.
- To ensure uniform and effective enforcement of national construction and safety standards for manufactured homes.
- To remove regulatory barriers to the use of innovative construction technologies.

Procedures and Process for Standards Development, Revision, Adoption, and Interpretation

The Commission recommends to the Congress that:

2.1. Consistent with the purposes of the Act, the manufactured home construction and safety standards shall be updated on a 2-year cycle through a consensus process, and the resulting standards shall be submitted for approval as an American National Standard.

2.2. HUD shall be required to adopt, modify, or reject the consensus-developed standards within 12 months of submission to the Department, using the Administrative Procedure Act (APA) process. HUD's failure to act within the stated time period would lead to automatic adoption by law.

2.3. A consensus committee to develop the consensus standards shall be organized and administered by the National Institute of Building Sciences (NIBS). The committee shall operate in conformance with procedures established by the American National Standards Institute (ANSI). The ANSI interest categories shall be modified for these purposes to include manufacturers, retailers, and suppliers in the "producer" category, to include exclusively homeowners, consumers, and public officials in the "user" category, and to include Primary Inspection Agency (PIA) personnel in the "general interest" category, but constituting no more than 20 percent of that category.

2.4. Members of the consensus committee shall be qualified by background and experience to participate in the work of the committee. Members of the "user" and "general interest" categories, other than PIA personnel, shall not have a financial interest in the manufactured housing industry. The committee shall apply to ANSI for accreditation as an American National Standards Developer. The committee shall not be subject to the provisions of the Federal Advisory Committee Act.

2.5. The consensus committee shall have staff resources that include one consumer technical analyst.

2.6. The consensus committee shall establish, based on a finding of need, uniform test or evaluation methodologies that will adequately evaluate compliance of specially designed materials or assemblies with the manufactured home standards. HUD or other interested parties may request the committee to develop or evaluate the validity of a test method.

2.7. The consensus committee shall issue written interpretations of the manufactured home construction and safety standards, upon request and after a finding of necessity, that become binding upon approval by the Secretary. The Secretary may reject or modify an interpretation upon a finding that it would jeopardize public health or safety or is inconsistent with the purposes of the Act. If such action does not occur within 60 days of receipt of an interpretation from the consensus committee, approval is presumed and the interpretation becomes binding.

2.8. HUD shall have the authority to request the consensus committee to develop, at any time in its 2-year cycle, emergency amendments to the standards to respond to an emergency health or safety issue.

Warranty and Recovery Fund Protections for Homeowners

The Commission recommends the following:

3.1. Term and Coverage. Manufacturers and retailers shall be required to each provide a warranty for their respective functions under the Act. Coverage shall include:

- 1 year for all defects, including transportation arranged by the manufacturer, and weatherability. Defects covered under the warranty for weatherability shall include (except leaks caused by severe weather events such as hurricanes, tornadoes, and severe icing): Rainwater or snow leaks in roofs, walls, floors, siding,

windows, or doors, based on a reasonable level of occupant care and maintenance as prescribed in the manufacturer's consumer manual. Repair of weatherability defects includes repair of items necessary to restore their weatherability functions and repair of other components of the structure damaged by the weatherability defects;

- 1 year for appliances; and
- 1 year by the retailer for installation and transportation arranged by retailer; 5 years as installation or such transportation affects structural integrity.

In cases where the homebuyer undertakes his or her own site preparation, the retailer has the right to ask the homebuyer for an engineering certification, contractor certificate, or building inspection certification that preparatory work is in accordance with code or regulations. If the homebuyer fails to provide such certification to the retailer, the warranty is limited to 1 year. Written disclosure of correct site preparation and these limitations to the customer must be made by the retailer before sale. Retailers will be required to offer conforming installation. If the offer and disclosure are not made, the warranty is for 5 years.

If the homebuyer chooses to install the unit himself, there is no installation warranty.

- 5 years for plumbing, electrical, air distribution, and structural systems within the dwelling unit provided by the manufacturer.

Defects shall be repaired within 60 days of receipt of written notice and 5 days in emergency situations. The warranty shall cover defects regardless of whether they arise as a result of faulty design, construction, transportation, or installation.

Manufacturers and retailers should retain reasonable flexibility both in drafting their warranties and in providing coverage for items not required by statute. States should have flexibility in requiring coverage for items not covered by Federal statute.

3.2. Performance Guidelines. The validity of any homeowner's claim under the warranty shall be determined on the basis of good industry practice that ensures quality of materials and workmanship. The consensus committee shall develop minimum requirements for the level of quality of materials, performance, and workmanship to assist SAAs and other dispute settlers in resolving warranty claims and minimizing the need for litigation. The consensus committee shall be mindful that it does not create absolute requirements that totally foreclose manufacturer and retailer flexibility in the drafting of warranties. The consensus committee may create a subcommittee or working group to undertake the initial development of the guidelines. The warranty performance guidelines are not intended to be interpreted by HUD as replacing, modifying, or supplementing current or future performance construction standards.

The goal of warranty performance guidelines is to assure that consumers benefit from warranties that meet at least minimum standards of coverage, which do not include unreasonable exclusions, and which are uniformly interpreted and administered. The performance guidelines do not cover damage due to failure to carry out required homeowner maintenance as set forth in the manufacturer's consumer manual, or homeowner abuse of the home. (See Appendix E for Sample Warranty Terms.)

3.3. Claims Process. A claims process shall be established that allows the homeowner to file a claim with one entity and that ensures correction within a reasonable time. Manufacturers and retailers will have first opportunity to correct the defect. If the defect is not corrected satisfactorily, an alternate dispute resolution process (ADR) would be initiated. Under the ADR process, an impartial dispute settler would investigate the problem and issue a ruling that identifies the party responsible for correcting the defect, the items to be corrected, and the time period for correction. An ADR determination favorable to the consumer shall result in prompt correction of the defect.

State ADRs must fulfill Federal statutory requirements in the following areas:

- The dispute settler is independent and has no financial ties to any party;
- There is no cost to the homeowner;
- The availability of the ADR process is prominently displayed and advertised;
- The process includes two steps: the first is required informal dispute settlement; second, if the first step does not resolve the dispute, the homeowner may elect to proceed to a formal dispute resolution process or litigation;
- Resolution is accomplished within 30 days;
- Judicial appeals of the results of the formal dispute resolution process are limited to factual, legal, or procedural errors made by the dispute settler that are material to the decision; and
- The ADR process is evaluated periodically.

HUD should contract with the Administrative Conference of the United States (ACUS) to develop rules, principles, and procedures to assist the States in designing the ADR process.

3.4. State Recovery Funds. State recovery funds should be established under the Act. The funds should cover claims of homeowners if manufacturers or retailers go out of business or if the manufacturer or retailer refuses to make repairs under the warranty after such responsibility has been determined. Claims will be paid only upon completion of the ADR or the judicial process. The State recovery funds will be financed by charges levied on manufacturers, retailers, and related industry parties based on actuarial factors. State recovery funds must fulfill Federal statutory requirements in the following areas:

- Registration of manufacturers and retailers as an enforcement mechanism
- Actuarial soundness
- Uniform claims process
- Private reinsurance obtained within 7 years
- Funds cover only the actual reasonable cost of repairs or the value of the home, whichever is less
- A time limit for implementation of remedies

If a State has not enacted legislation within 4 years and implemented a State recovery fund within 5 years, HUD shall contract with a private entity, preferably within the State, to administer all the functions of the State recovery fund program.

3.5. Manufacturer and Retailer Registration. All manufacturers and retailers shall be required to register with the SAA or contract agent for the recovery fund in each State. Registration shall be required to sell homes. Revocation of registration shall be mandatory if a manufacturer or retailer fails to correct a defect that has been determined to be its responsibility. Suspension of registration may be rescinded if the manufacturer or retailer repays the recovery fund.

3.6. Data Collection and Dissemination. HUD shall aggregate and distribute to the SAAs claims data collected by State recovery funds on types of defect, frequency, and location by manufacturer, plant, model, or system. HUD will use such data to assist in the monitoring of Production Inspection Primary Inspection Agency (IPIA) performance.

3.7. Preemption. States with existing recovery funds and bonding programs equal to or exceeding Federal program requirements would not be preempted. HUD shall be required to make such determinations in conformance with statutory guidelines.

The Permanent Chassis Requirement

The Commission recommends that:

4.1 The definition of a manufactured home under the Act should be modified to eliminate the requirement that homes permanently sited on land owned by the homeowner be "built on a permanent chassis," subject to specific standards developed by the consensus committee.

Installation Standards and Inspection

The Commission recommends that:

5.1. The consensus committee shall develop and maintain minimum installation standards as part of the national manufactured home construction and safety standards.

5.2. Manufacturers shall provide an installation manual to purchasers, which shall contain necessary installation instructions. Such manuals shall be easily understood and shall be periodically updated to reflect substantial changes in products, procedures, and requirements.

5.3. The Design Approval Primary Inspection Agency (DAPIA) shall continue to review and approve the manufacturer's installation instructions.

5.4. Any State may establish and enforce installation standards that equal or exceed the minimum national standards.

5.5. The States shall provide for a minimum level of installation inspections, as prescribed by HUD.

Design Reviews and Production Surveillance

The Commission recommends to Congress that the third-party inspection system remain in place, with the following improvements to the program:

6.1. IPIAs shall be required to develop plant-specific inspection plans that focus the inspection effort on fundamental structural and system issues.

6.2. When DAPIAs issue retroactive approvals, they shall be required to notify HUD's monitoring agent, flag the retroactive approval, and state the provision that was approved and the reason for the retroactive approval.

6.3. Requirements for quality assurance manuals shall be upgraded to be more in line with international standards for quality control, such as the International Standards Organization (ISO) 9000 series, to improve the international competitiveness of the manufactured housing industry.

Enforcement

The Commission recommends the following with regard to enforcement:

7.1. HUD Authority. HUD shall retain primary responsibility and authority for the enforcement system. Current provisions under the Act and regulations for optional State participation in enforcement activities shall be strengthened, to enable States to assert some authority without establishing an SAA. The State of siting as well as the State of manufacture would have enforcement authority. The first SAA to open a case shall have primary jurisdiction. Primary jurisdiction may be transferred by mutual agreement.

7.2. PIA Termination. Manufacturers and PIAs shall be required to promptly notify HUD of a change in the third-party agency and state the specific reason(s) for the change.

7.3. Enforcement Remedies. A definition of primary inspection agencies should be included in the Act; penalties under Section 621 shall be decriminalized and extended to cover violations by the PIAs. Potential fines should be increased to $5,000 per violation with a maximum of $1 million for any series of violations. Civil penalties under Section 611 should be raised from $1,000 to $5,000 per violation. Fines for willful violations by corporate officers should be increased from $1,000 to $100,000. Civil penalties under Section 611 should be handled administratively as with other Departmental civil penalties.

7.4. Subpart I Requirements. Requirements for notification of defects alone under Subpart I shall be eliminated. Where a serious defect or safety hazard is discovered, States shall be required to notify the manufacturer, other States, and HUD to facilitate investigation and any necessary enforcement actions including notification of the consumer and correction by the manufacturer. Serious defects shall be defined as "any nonconformance with national manufactured home construction and safety standards that results in a defect in the performance, construction, or material of a manufactured home that constitutes a safety hazard or that affects the home to the extent it becomes unsafe or otherwise unlivable."

7.5. Enforcement Information and Oversight. Monitoring reports, the results of complaint investigations, and other enforcement records are public records and should be accessible to SAAs and interested citizens. HUD should establish committees to review the monitoring process and provide peer review by State and private PIAs of monitoring reports. The committees should review the performance of participants in the enforcement system, specifically the SAAs, IPIAs, DAPIAs, and those individuals performing HUD's monitoring function, to ensure that they are performing their duties in a reasonable and effective manner. The committees should make nonbinding recommendations to the Secretary for corrective action. The committee shall not be subject to provisions of the Federal Advisory Committee Act.

7.6. Travel Funds. A dedicated fund should be established within HUD that prevents the commingling of manufactured housing label fees with other Departmental funds and permits the Office of Manufactured Housing to utilize the fund for program management with appropriate controls. The use of these fees by the Secretary for staffing, monitoring, oversight, field investigations, training, and related travel shall not be subject to general or specific limitations on appropriated funds.

Transportation and Storage Requirements

The Commission recommends that:

8.1. The manufacturer shall prepare transportation and storage requirements when necessary to ensure that the unit will remain in compliance with the standards under ordinary transportation and storage practices.

8.2. The consensus committee shall establish requirements for the review of transportation loads and testing procedures to ensure that manufactured homes reach retailer and installation sites in conformance with the national manufactured home construction and safety standards.

8.3. Random inspections of retailer lots, as prescribed by the Secretary, shall be a mandatory activity for SAAs. In States without an SAA, HUD or its designee shall carry out such inspections.

Training

The Commission recommends the following with regard to training:

9.1. The Secretary shall establish voluntary educational requirements for manufacturer quality control personnel and retailer installation inspection personnel, and mandatory educational requirements for PIA technical personnel, SAA personnel, and any Federal or contract staff having technical functions.

9.2. Educational requirements will include successful completion of specified training and a minimum competence examination.

9.3. The Secretary will establish continuing education requirements.

9.4. The Secretary or his designee will develop and implement training programs for the monitoring agent, PIA, and SAA personnel; such programs will be made available to manufacturers and retailer personnel at cost.

9.5. Costs of the training of SAA, PIA, and Federal personnel will be met through a specifically dedicated portion of the label fees.

Removing Regulatory Barriers and Discriminatory Practices at the State and Local Levels

The Commission recommends that:

10.1. The Act should be amended to provide that a State or local government may not exclude any manufactured home, simply by reason of its HUD label, from installation on land when other residential uses are permitted. Similar requirements should

govern manufactured housing rental communities when densities do not exceed zoning designations.

10.2. The Act should prohibit the use of State or local government ordinances to deny equitable treatment with respect to tax assessments and the provision of municipal services (such as water, sewerage, street lighting, and road maintenance) to manufactured housing rental communities.

Financing of Manufactured Home Purchases

The Commission recommends that:

11.1. HUD exercise existing authority to use manufactured homes in all mortgage insurance programs, the Section 8 rental assistance program, and the Community Development Block Grant and HOME programs; Congress continue to authorize the use of HUD Code homes in its Public Housing and Section 8 homeownership initiatives.

11.2 Direct, upfront subsidies linked to further energy-related upgrades be made available. These subsidies might be modeled on those currently in operation for manufactured housing in the Northwest.

11.3. Where homes are labeled as complying with the revised construction standard, the Government National Mortgage Association (Ginnie Mae) shall be authorized to guaranty pools of manufactured home 30-year mortgages; Ginnie Mae guarantees timely payment of principal and interest to holders of securities; and the guaranty is backed by the full faith and credit of the United States.

11.4. Where standard 30-year Ginnie Mae-backed mortgages do not bring interest rates for homes complying with the revised standards down to levels comparable to those for site-built housing because they are located in manufactured housing communities, a Ginnie Mae special assistance mortgage purchase program (Ginnie Mae tandem plan) shall be authorized and funded.

11.5. Congress amend the Section 207(m) program to assist resident purchase of manufactured housing rental communities.

11.6. HUD simplify the Section 203(b) program, so that bank participation will be increased.

11.7. HUD revise the Title I program to simplify its administration so that bank participation will be increased.

11.8. HUD direct Ginnie Mae to end the moratorium on Title I lenders.

11.9. Congress direct HUD and the U.S. Department of Veterans Affairs to make their respective manufactured home programs viable, including lower downpayment requirements to encourage greater homeownership by low- and moderate-income families.

11.10. Congress direct the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) to establish secondary market programs for conventional personal property manufactured home loans.

CHAPTER 1.
The Regulatory System for Manufactured Housing

History of the National Manufactured Housing Construction and Safety Standards Act

The origin of today's manufactured home can be traced back to the factory-assembled travel trailers of the 1920s. In the early years of their development, manufactured homes were largely exempted from building code requirements. This period allowed the industry to develop new production techniques and experiment with new materials. The lack of regulation, however, also permitted the sale of poor quality and, in some cases, dangerous products. By the 1950s, attempts by municipalities to ban manufactured homes and a desire to improve the image of manufactured homes led the industry to develop and promote its own standards. In 1963, a joint standard on plumbing, heating, and electrical installations was published by the American National Standards Institute (ANSI) in association with the manufactured housing industry and the National Fire Protection Association (NFPA). By 1969, the standard—ANSI A119.1 for Mobile Homes–Body and Frame Design and Construction: Installation of Plumbing, Heating, and Electrical Systems—had been expanded to cover body and frame construction.

The Mobile Home Manufacturers Association (MHMA, which became the Manufactured Housing Institute (MHI) in 1975), the trade association for manufacturers east of the Rockies, required that its members comply with ANSI A119.1. Manufacturers were expected to self-certify that their homes complied with the standards, and MHMA had as many as 14 inspectors to conduct in-plant inspections. In addition to MHMA's requirement that its members build to the ANSI standards, the industry trade association encouraged States to recognize and adopt ANSI A119.1.

By 1974, 45 States had adopted the ANSI standards, or some modification thereof. Although based on ANSI, the State requirements varied considerably. Some States had effective enforcement programs with inspectors and procedures (e.g. California and North Carolina) while others had no inspection or enforcement mechanism to determine construction compliance (such as Louisiana, Michigan, Missouri, Montana, Nebraska, New Hampshire, Oklahoma, and West Virginia).

State-by-State variations made it difficult for the industry to build homes that were uniform and prevented full interstate reciprocity. Multiple inspections of the same unit raised costs, and in up to 10 States no regulations at all governed manufactured home construction. In the early 1970s, as a result of complaints received from purchasers, consumer organizations, most notably the Center for Auto Safety, began to call for stricter and more uniform construction standards for manufactured homes.

In 1972, Representative Louis Frey of Florida introduced legislation in the U.S. House of Representatives to standardize code requirements for manufactured housing at the national level. Mr. Frey's bill would have permitted State or local codes to be equal to or more stringent than the Federal standards. Senator William Brock of Tennessee introduced a bill that would have preempted State and local codes. In 1973, Senator William Proxmire of

Wisconsin introduced legislation that would have permitted States to adopt higher standards than those in the proposed Federal code. The Senate passed a compromise between the Brock and Proxmire bills, and required the Federal standards to be the "highest standards of protection" but preempted State and local codes and allowed for State handling of any issue (such as installation) not expressly covered by the Federal standards. It also contained provisions requiring manufacturers and retailers to provide 1-year warranties for both the home and its installation. The House did not pass the bill.

In 1974, a compromise between the Brock-Proxmire bill of the Senate and a similar but less stringent House bill introduced by Representative Robert Stephens of Georgia was passed and signed into law. This bill, the National Mobile Home Construction and Safety Standards Act of 1974, dropped provisions in the Senate bill for the warranties and a new Assistant Secretary of Housing and Urban Development (HUD) for Manufactured Housing. In recognition of the less mobile nature of modern factory-built homes, Congress changed the title of the Act in 1980 to the National Manufactured Housing Construction and Safety Standards Act ("the Act"). The law has remained essentially unchanged since 1974.

The Act directed HUD to develop a Federal code that "[was] reasonable and [met] the highest standards of protection." HUD was also charged with establishing a Federal enforcement program to guarantee compliance.

Overview of the Regulatory System

Standards Development and Promulgation

The manufactured home industry is the only segment of American housing that is regulated by a national building code and a federally controlled enforcement system. The Act defines six major criteria for the Secretary of Housing and Urban Development to employ in establishing standards. These criteria include conducting research and testing, evaluating relevant manufactured home construction and safety data, consulting with the States, determining fitness in a geographic region, gauging the effect of a standard on the cost to the public, and determining the effect of such a standard on improving the safety, durability, and quality of manufactured housing. Later, another criterion was added for considering a proposed standard—OMB's requirement that major changes must undergo cost-benefit and risk analyses before final rulemaking.

As of June 15, 1976, the Federal Manufactured Home Construction and Safety Standards (MHCSS) were considered mandatory and preemptive of all State laws. The MHCSS consists of the following construction and safety criteria:

Subpart A: General (Administrative)

Subpart B: Planning Considerations

Subpart C: Fire Safety

Subpart D: Body/Frame Construction Requirements

Subpart E: Testing

Subpart F: Thermal Protection

Subpart G: Plumbing Systems

Subpart H: Heating, Cooling, and Fuel-Burning Systems

Subpart I: Electrical Systems

Subpart J: Transportation

According to the Act, the Secretary may also amend or revoke any HUD Code standard by publishing a notice of such proposed action in the *Federal Register* with a minimum 30-day public comment period. Until late 1993, the HUD Code had undergone only minor revisions, with fire safety and formaldehyde criteria being the only major changes made. In October 1993, HUD published revised energy standards and met a Congressional deadline, after which the States would have been allowed to enforce their own energy standards. Before such revisions, the last change to the standards occurred in 1987. More recently, HUD issued a final rule revising the wind resistance standards in January, 1994, to take effect on July 13, 1994. HUD has also issued Interpretative Bulletins to clarify or assist in enforcement of the standards. Prior to the issuance of bulletins on the new wind standards in April and June of 1994, however, the most recent Interpretative Bulletins were issued in 1988.

Absent in the Act itself but outlined in Section 3280.1(b) of the MHCSS, the HUD Code standards "seek, to the maximum extent possible, to establish performance requirements." The MHCSS contains performance criteria for structural and thermal components and prescriptive criteria for most other components and systems. This performance concept translates into the HUD Code specifying the loads that structural members (walls, roof, floor, nails, etc.) must carry and the maximum heat flow that the building envelope may convey; an engineering analysis will then determine the materials and methods of construction that will perform those functions. The prescriptive criteria in the MHCSS spell out the type or size of materials, the national standards that equipment must comply with, and the installation methods employed. In other words, performance requirements state the desired end, and prescriptive requirements state the desired means.

Enforcement

The Federal manufactured housing program requires manufacturers to participate in a system of design approvals and inspections to ensure that the homes being produced will conform to the national construction and safety standards. The Federal manufactured home procedural and enforcement regulations note the following:

> Such approvals and inspections provide significant protection to the public by decreasing the number of manufactured homes with possible defects in them, and provide protection to manufacturers by reducing the number of instances in which costly remedial actions must be undertaken after manufactured homes are sold. [Part 3282.201(b)]

Enforcement activities under the Federal program fall into three broad categories: preproduction design approval, production surveillance, and post-production consumer complaint handling. In the preproduction phase, the manufacturer hires a HUD-approved independent third-party DAPIA to review and approve the manufacturer's design of the proposed home. The DAPIA also reviews and approves the manufacturer's quality assurance manual that will be followed during production to ensure that the units produced will conform to the national construction and safety standards. As of January 1, 1994, HUD listed eight private organizations and one State agency as approved DAPIAs.

A HUD-approved independent third-party IPIA is hired by the manufacturer to assist in ensuring that the homes constructed in the plant comply with the DAPIA approved designs, quality assurance manuals, and the Federal standards. (Under the National Manufactured Housing Construction and Safety Standards Act, a State with an approved SAA

may, if accepted by HUD as an IPIA, act as the exclusive IPIA within the State.) The IPIA uses the designs and the quality control manual approved by the DAPIA to inspect each home produced in the factory to verify compliance.

Before a manufacturer is allowed to construct its first home in a plant, the IPIA conducts a plant certification inspection during which every home is inspected in each phase of production until the IPIA is satisfied that the manufacturer is able to produce homes conforming to the Federal standards on a continuing basis. During its ongoing production surveillance, the IPIA inspects every home in at least one stage of its production.

One of the IPIA's primary functions is to determine if the approved quality assurance manual is being followed. If the IPIA finds a nonconformance with Federal standards, the manufacturer is required to correct the problem in any homes still in its plant. If the IPIA discovers that the manufacturer's quality control program is not functioning at an acceptable level, the IPIA may increase the frequency of its inspections and withhold certification labels.

All manufactured homes sold in the United States must bear a label (known as the "certification" or "HUD Label") certifying that the home has been inspected in accordance with HUD requirements and is constructed in conformance with the Federal manufactured home construction and safety standards. As of January 1, 1994, HUD listed 14 State agencies and seven private organizations as approved IPIAs.

HUD employs a contractor (the "Secretary's Agent") to monitor the performance of the DAPIAs and IPIAs. The National Conference of States on Building Codes and Standards (NCSBCS) has been the monitoring contractor since the inception of the Federal manufactured housing program. The monitoring agent conducts one audit at each manufacturing facility annually, and more frequently if problems arise. In addition, special monitoring audits are conducted at approximately 20 percent of the facilities annually. Under the terms of its contract with HUD, NCSBCS also reviews at least 20 percent of all home designs approved by each DAPIA. NCSBCS reports to HUD monthly and provides formal annual reports on the performance of each DAPIA and IPIA. DAPIA Performance Reviews (DPRs) are based on the monitoring agent's review of the design packages and quality assurance manuals approved by the DAPIA. IPIA Performance Reviews (IPRs) are based on in-plant audits. These audits are carried out by joint monitoring teams composed of various SAA and NCSBCS personnel.

The Act provides for injunctive relief and gives HUD broad authority, including subpoena power, to investigate potential violations. Prohibited acts such as knowingly selling a home that fails to comply with the standards, failure to cooperate with the Secretary in an investigation, or failure to furnish notification of a defect are subject to criminal penalties of imprisonment of up to 1 year and a $1,000 fine. A similar penalty may be brought against any employee of the Secretary or a State inspector who knowingly fails to report a violation of a standard. HUD may also conduct testing and collect data for enforcement purposes.

The Act requires manufacturers to furnish notification of any defect if the manufacturer determines that it relates to a Federal manufactured home construction or safety standard or contains a defect that constitutes an imminent safety hazard. The Act defines defect as including "any defect in the performance, construction, components, or materials of a manufactured home that renders the home or any part thereof not fit for the ordinary use for which it was intended." An imminent safety hazard is defined as "an imminent and unreasonable risk of death or severe personal injury." The Act also gives HUD the authority to require notification or notification and correction if the Secretary determines that a home(s) does not comply with an applicable Federal standard or contains an imminent safety hazard.

While the Act requires a manufacturer to notify the homeowner of a defect if it discovered that such a defect is present in a class of homes, correction is required only in cases where the defect presents an unreasonable risk of injury or death to the occupants and the defect can be related to a manufacturer's error in design or assembly of the manufactured home. The Act requires corrections to be made without expense to the homeowner and to be carried out within 60 days after the date of discovery or determination of the defect or failure to comply. A manufacturer may be required to repurchase or replace a home if it cannot be adequately repaired within the 60-day period. However, HUD has rarely exercised this authority.

Failure to furnish notification of any defect as required under the Act is punishable by a fine not to exceed $1,000 per violation (with a cumulative limit of $1 million for any series of related violations occurring within 1 year) or imprisonment of not more than 1 year or both. The Act requires manufacturers to maintain records of home purchases and gives the Secretary authority to establish procedures for recordkeeping needed to implement the notification and correction provisions.

Role of the States

Recognizing the States' extensive involvement in the regulation of manufactured housing and code enforcement, the Act and regulations provide States with significant opportunities to enforce the construction and safety standards and other program requirements. The Act authorizes States to enforce the Federal standards upon the Secretary's approval of a State plan. (To implement this provision of the Act, the manufactured home procedural and enforcement regulations provide for approval of States as SAAs.) A fully approved SAA has the same enforcement authority as HUD. Full approval requires the State to provide authority under *State law* to enter and inspect factories, impose civil and criminal penalties, require notification and correction, and review plans and provide information, *identical* to that provided HUD under the Act. Currently, 21 SAAs are fully approved and 15 States operate with conditional approval. (See Table 1: Fully Approved, Conditionally Approved, and Non-SAA States.) HUD is responsible for enforcement functions, including consumer complaint handling, in the 14 non-SAA States. HUD does not maintain specific data on the number and types of consumer problems experienced in non-SAA States.

The Manufactured Home Procedural and Enforcement Regulations state the following:

> It is the policy of the Department to involve State agencies in the enforcement of the Federal manufactured home standards to the maximum extent possible consistent with the capabilities of such agencies and the public interest. [Part 3282.1(b)]

To implement this policy, the regulations provide options for States to perform specific enforcement activities. These include SAA, DAPIA, IPIA, exclusive IPIA, and monitoring functions. The regulations provide specific enforcement powers for each function.

SAAs monitor manufacturer compliance with the notification and correction provisions of the Act and consumer handling provisions of HUD's enforcement regulations known as Subpart I. They may also refer and investigate complaints from individual homeowners. SAAs are authorized to inspect complaint files at the manufacturing plant and may determine the format of such records. The SAA has the authority to require, approve, and oversee notification and correction campaigns under the Act. It may hold hearings, issue preliminary determinations of a defect or noncompliance, and seek civil and criminal penalties for violations. The regulations also provide for a number of optional consumer protection activities that may be undertaken by the SAA. These include monitoring of retailer

Table 1. Fully Approved, Conditionally Approved, and Non-SAA States

Fully Approved	Conditionally Approved	Non-SAA
Alabama	Colorado	Alaska
Arkansas	Florida	Connecticut
Arizona	Indiana	Delaware
California	Iowa	Hawaii
Georgia	Kentucky	Illinois
Idaho	Michigan	Kansas
Louisiana	Nebraska	Massachusetts
Maine	New Mexico	Montana
Maryland	New York	New Hampshire
Minnesota	North Carolina	North Dakota
Mississippi	Rhode Island	Ohio
Missouri	South Dakota	Oklahoma
Nevada	Utah	Vermont
New Jersey	Virginia	Wyoming
Oregon	Washington	
Pennsylvania		
South Carolina		
Tennessee		
Texas		
West Virginia		
Wisconsin		

Source: HUD

lots, approval of alterations by retailers, monitoring of installations, regulation of used homes, and regulation of manufactured home transportation not preempted by Federal authority. Currently, 36 States function as SAAs.

States may undertake the functions of DAPIAs and IPIAs. DAPIAs check the manufacturer's designs for conformance with the standards and have the authority to approve or reject such designs. They also have authority to approve or reject quality assurance manuals. IPIAs certify that manufacturing plants are able to follow approved quality control procedures (quality assurance manual) and conduct ongoing surveillance of the manufacturing process for conformance with the standards. The regulations give IPIAs the authority to increase the frequency of inspections, "red tag" units that fail to conform, and withhold labels from nonconforming units. Only an IPIA may provide labels to the manufacturer. Currently, one State, Nebraska, is a DAPIA and 14 are IPIAs.

The enforcement regulations provide that a State may act as the exclusive IPIA within its jurisdiction and establish fees paid by manufacturers for such purposes. This means that only the State agency may conduct production surveillance. Currently, 11 of the 14 State IPIAs are exclusive. (See Table 2: State IPIAs.)

Table 2. State IPIAs*

Exclusive	Non-Exclusive
Arizona	Arkansas
Colorado	Indiana
Florida	Wisconsin
Georgia	
Idaho	
Louisiana	
Nebraska	
Oregon	
Tennessee	
Texas	
Washington	

* As of January 1, 1994

Source: HUD.

SAA personnel may also serve on monitoring teams that inspect manufacturing plants that ship homes into their States to ensure that they comply with the Federal standards. In addition, the enforcement regulations permit a State to carry out monitoring of IPIA functions within the State if the State is not acting as the IPIA. SAA personnel currently serve on the NCSBCS monitoring teams. No States undertake independent monitoring at the present time.

The authority provided under the Act for consumer complaint handling is often supplemented by State licensing and warranty statutes. For States that have it, this authority is often more significant than the remedies provided under the Federal Act that require correction only for serious defects and imminent safety hazards. (See Table 3: State Licensing of Manufactured Housing; and Table 4: State Mandatory Manufactured Home Warranty Laws.)

SAAs receive $9 from the HUD label fee for each floor of each home that is sited in their State and $2.50 for each floor of each home that is produced in their State. Approximately $3.4 million from the label fees are currently provided to the SAAs. Testimony before the Commission indicates, however, that the majority of funding for SAA agencies comes from State sources, especially license and permit fees.

Table 3. State Licensing of Manufactured Housing

State	State has SAA	No. of Manufacturers In-State	Licensing						
			Manufacturers						
			In-State	Out-of-State	Retailers	Installers	Brokers	Sales-People	Repairer/ Refurbisher
Total for each category*	36	—	25	22	35	19	8	16	6
Alabama[1]	yes	21	x	x	x				
Arizona	yes	7	x	x	x	x		x	
Arkansas	yes	1	x	x	x	x		x	
Alaska	no	0							
California	yes	15	x	x	x	x		x	
Colorado[2]	yes	1							
Connecticut	no	0			x				
Delaware	no	0							
Florida	yes	20	x	x	x				
Georgia	yes	15	x	x	x	x			
Hawaii	no	0							
Idaho	yes	5	x		x	x	x	x	
Illinois	no	0			x[3]				
Indiana	yes	29							
Iowa	yes	0			x				
Kansas	no	23	x	x	x[4]	x			
Kentucky	yes	1	x	x	x	x	x		
Louisiana	yes	1	x	x	x		x	x	
Maine	yes	2	x	x	x	x	x	x	
Maryland[5]	yes	0							
Massachusetts	no	0							
Michigan	yes	1			x	x			x
Minnesota	yes	4	x	x	x	x			
Mississippi	yes	6	x		x				
Missouri	yes	2	x	x	x				x
Montana	no	0							
Nebraska	yes	4	x	x	x			x	
Nevada	yes	0		x	x	x	x	x	x
New Hampshire	no	0							
New Jersey	yes	0							
New Mexico	yes	0	x	x	x	x	x	x	x
New York	yes	1							
N. Carolina	yes	23	x	x	x	x		x	
N. Dakota	no	0			x[6]				

Table 3. Continued

State	State has SAA	No. of Manufacturers In-State	Licensing						
			Manufacturers						
			In-State	Out-of-State	Retailers	Installers	Brokers	Sales-People	Repairer/ Refurbisher
Ohio[7]	no	0			x			x	x[8]
Oklahoma	no	0			x[9]				
Oregon	yes	9			x	x			
Pennsylvania	yes	19			x[10]				
Rhode Island	yes	0				x			
S. Carolina	yes	1	x		x			x	
S. Dakota	yes	1							
Tennessee	yes	12	x	x	x	x			
Texas	yes	6	x	x	x	x	x	x	x
Utah	yes	0			x	x		x	
Vermont	no	1	x			x[11]			
Virginia[12]	yes	3	x	x	x		x	x	
Washington	yes	4	x	x	x				
W. Virginia	yes	0	x	x	x				
Wisconsin	yes	4	x	x	x			x	
Wyoming	no	0							

"x" indicates licensing of the indicated entitites is done within the State.

Notes:

1. No recovery fund, no bonding; governor vetoed installation standard passed by legislature in 1990.
2. Sunset law (6/30/93) eliminated Dealer Licensing Board and retailer licensing.
3. Licensed through Secretary of State's office.
4. Licensed through Department of Revenue.
5. Maryland imports approximately 100 manufactured homes per month (1,111 in 1993); some counties have licensing or installation requirements.
6. Licensing done through Department of Motor Vehicles; license covers new, used, and refurbished homes.
7. All licensing done through Department of Motor Vehicles; also license dealers of manufactured housing.
8. "Salvagers".
9. Licensed through Used Motor Vehicle and Parts Commission (independent of any State agency); one license covers manufactured housing dealers of new, used, and refurbished homes.
10. Licensing through State Department of Transportation, "similar to licensing of used car dealers."
11. Licensed through Secretary of State's office to conduct business (license not specific to Manufactured housing).
12. Also license contractors.

Source: Table compiled by National Commission on Manufactured Housing staff

Table 4. State Mandatory Manufactured Housing Warranty Laws

		AK	AR	CA	CT	FL	ID	KS	KY	LA	ME	MI	MN	MS	NC	NM	NY	TX	VA	WA	WI	WY
RELATIVE LIABILITY/RESPONSIBILITY OF M AND D UNDER WARRANTY	Manufacturer alone		■				■	■	■	■												
	M and D* make separate, different warranties					■									■	■		■	■	■		
	M and D each have warranty responsibility, but statute does not delineate division				■							■		■								
	Both M and D, but M must compensate D for any repairs made by D																■			■		
	M and D jointly and severally liable[1]	■		■							■		■					■	■		■	■
LIMITS FOR REPAIRS	Within a reasonable time[2]								■				■			■		■				■
	Special time limit (days)[3,4]		30			30											60	30	45	45	30	60
SET-UP	Set-up must be warranted[5]					■									■	■		■	■	■		
	M and D not responsible for set-up done by someone other than themselves or their agent[6]					■				■		■						■				■
TRANSPORTATION	Transportation must be warranted[7]					■				■		■			■				■			
	M and D not responsible for transportation done by someone other than themselves or their agents							■	■			■										

*M= Manufacturer D= Dealer

Table 4. Continued

		AK	AR	CA	CT	FL	ID	KS	KY	LA	ME	MI	MN	MS	NC	NM	NY	TX	VA	WA	WI	WY
Free of substantial defects in materials or workmanship[8]		■	■	■	■	■	■	■		■	■	■			■	■	■	■	■		■	■
Mobile home complies with code, standards, or other law[9,10]							■	■	■		■	■		■	■			■	■		■	■
Utility systems covered (e.g., plumbing, heating, and electrical)[11]		■		■	■	■	■	■	■		■	■		■	■			■	■		■	■
Appliance covered[12]		■		■	■	■	■		■		■	■			■	■		■	■		■	■
One year in duration		■		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■		■	■
Repairs must be done at homesite[13]		■	■	■	■	■	■	■	■		■	■	■	■	■	■	■	■	■		■	■
Repairs must be done at no charge to consumer																					■	■
CONSUMER MUST GIVE NOTICE OF DEFECT TO WARRANTOR	Written notice required[14]	■	■	■	■	■	■	■	■		■	■	■				■		■			
	Written notice not specified													■	■	■		■	■		■	■
Warranty is in addition to existing rights; requiring consumer to waive warranty is prohibited and such waiver is void[15]		■	■	■	■	■	■	■		■	■	■	■				■	■	■		■	■
TYPE OF WARRANTY	Written[16]	■	■	■	■	■	■	■		■	■	■		■	■	■	■	■	■		■	■
	Implied								■				■								■	

Notes:

1. In Alaska, the manufacturer must reimburse a dealer who incurs expenses as a result of the manufacturer's warranty obligation. Texas makes the dealer liable if the manufacturer is no longer registered or goes out of business. Service agreements in North Carolina and Virginia do not remove liability; the warranty of the manufacturer remains in effect despite supplier warranties.

2. Texas regulations define "reasonable time" or 40 days for ordinary defects, but serious defects or those involving an imminent safety hazard require "immediate corrective action."

Table 4. Continued

3. In Wyoming, defects involving an "unreasonable risk of death or injury" or relating to a design or construction error must be repaired "within a reasonable time"; all other defects, within 60 days. North Carolina allows 5 days to remedy an imminent safety hazard; Virginia allows 3 days; and Washington allows 72 hours.

4. California imposes a time limit of 90 days for all substantial defects; Florida and Texas each impose a time limit of 30 days for warranty repairs, but do not require that this time limit be disclosed in the mandatory warranty.

5. In Florida, dealers must warrant any set-up they or their agents perform; in New Mexico, the installer must warrant set-up for 90 days.

6. In Texas, dealers and manufacturers are jointly and severally liable for warranty that set-up is in accordance with State standards; if some other party performs set-up, that party must warrant it.

7. In Florida, North Carolina, and Virginia, the dealer's warranty includes transportation to homesite; in Louisiana and Michigan, the manufacturer warrants that the mobile home is delivered to the dealer free of defects.

8. Alaska requires that manufactured housing be "Free from substantial defects in materials and workmanship"; New Mexico, Texas, and Wisconsin specify that the home be "Free from defects in materials and workmanship"; Kansas requires that it be "Free from material defects and manufactured in a workmanlike manner"; and Wyoming requires that it be "Free from defects if it receives reasonable care and maintenance."

9. Kentucky requires that "Any mobile home that within twelve months after deliver . . . has a defect [which poses an imminent danger to the occupant's health or safety or right of occupancy and] which costs the owner at least 4% of the purchase price to repair and which requires repair on 3 separate occasions shall be presumed to be nonmerchantable."

10. Minnesota requires that every manufactured home "Conforms in all material aspects to applicable Federal or State law or regulations [and is merchantable and fit for a particular purpose]."

11. Some States include utility systems and appliances in their definition of "mobile home"; others expressly require terms in the warranty specifying coverage of these items.

12. California, Connecticut, Idaho, Maine, and Texas mandate that even when appliance manufacturers may issue their own warranties, the "primary responsibility for warranty repair" rests on the mobile home manufacturer (and dealer as well in California, Connecticut, and Texas).

13. Arkansas, California, Connecticut, Idaho, Kansas, Maine, Michigan, New Mexico, and Texas, require provision for "appropriate corrective action"; Wisconsin and Wyoming provide for "corrective action"; Minnesota provides for "service or repair"; Florida provides that "the defect shall be remedied"; Kentucky requires the manufacturer to put the home in merchantable condition, or refund the purchase price, or replace the home, at manufacturer's option.

14. The consumer is required to notify: the manufacturer in Arkansas and Kansas; the manufacturer or dealer in California, Connecticut, Florida, Idaho, Maine, Michigan, New Mexico, New York, Texas, Wisconsin, and Wyoming; the manufacturer and dealer in Kentucky; notice is required in Minnesota, but to whom is not specified. In New Mexico, the consumer can file a written notice within a 2-year period form the start of the original warranty provided.

15. Virginia does not include a waiver.

16. Wyoming mandates both an express and implied warranty, each with identical terms.

Source: Mobile Home Sales and Service, Final Staff Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 441), Bureau of Consumer Protection, Federal Trade Commission, August 1980. Updated by National Commission on Manufactured Housing staff.

Identification of Systemic Problems

Introduction

During the course of its deliberations, the Commission identified a number of problems in the manufactured housing regulatory system. These problems are termed "systemic" because they are ingrained in the overall regulatory system covering manufactured housing, they affect the incentive system for both manufacturers and retailers, and they affect the interaction between regulators and the industry and between the industry and its homebuyers. The systemic problems are discussed below.

HUD as Regulator

Since enactment in 1974 of the National Manufactured Housing Construction and Safety Standards Act, HUD has been responsible for establishing and updating the manufactured housing standards, also known as the HUD Code. HUD is also responsible for enforcing the Code. HUD has not done either adequately.

HUD faces two major difficulties in maintaining a currently updated code. The first involves the time required to change the code. The Administrative Procedure Act, which was enacted in 1946, sets forth the rulemaking process, which is lengthy and involves substantial review both within the Department and the Office of Management and Budget (OMB). Even under favorable circumstances, generally 2 years or more pass from the time of initiation to the time a final rule is published and takes effect.

The second problem for HUD is that the manufactured housing program, substantial as it is, tends to be viewed in both the Congress and HUD as a relatively small part of HUD's mission, and as such it receives relatively little attention. Regulatory changes affecting manufactured housing must compete with other more visible programs for attention and resources. The result is that needed regulatory changes to the HUD Code have frequently been set aside before reaching the *Federal Register* as proposed rules for public comment. Deregulation in the Federal Government during the 1980s has tended to exacerbate this problem, as HUD has been required to focus attention on a very few top-priority regulations. Manufactured housing rarely makes such a list, absent a crisis such as Hurricane Andrew, which triggered a review of the wind standards.

Enforcement of the HUD Code has been as much a problem for HUD as the standards-setting process itself. Although HUD has an extensive field office structure, only headquarters staff administer the manufactured housing program. Cutbacks in the HUD staff over the past decade have posed problems in administration for all programs, including manufactured housing. Industry, homeowner, and consumer representatives have had difficulty understanding why HUD has not provided more staffing for manufactured housing, given that the program is largely self-supporting through HUD-imposed label fees paid by the manufacturers. Unfortunately, the Federal Government's budget process does not include outside fee income in its allocation of staffing and travel resources. The Office of Manufactured Housing competes with all other offices in HUD headquarters for staff and travel resources, despite the availability of outside fee income to support this office. The result is that staff resources are scarce, and severe limitations restrict the ability of the staff to travel.

To compensate for HUD's lack of resources to carry out enforcement activities effectively, the Department has contracted with NCSBCS to monitor the activities of third-party con-

tractors; provide training to plant personnel, inspection agencies, and the SAAs; and monitor compliance with the notification and correction provisions of the Act in the 14 non-SAA States. The ability of the SAAs to assist HUD in its enforcement effort is limited because the States' authority does not extend to manufacturers or retailers located outside their borders.

The enforcement system described above is sorely in need of improvement. Because of delegation by HUD of much of its authority under the Act, there is a lack of checks and balances and a lack of a review process for participants in the enforcement system who may abuse or exceed their authority. The monitoring agent is perceived by many in the industry as an enforcer, although it has no enforcement authority under the Act or the regulations. HUD's inability to provide timely decisions on monitoring and other issues reinforces this perception. Manufacturers and PIAs often feel that HUD is too dependent on advice from the monitoring agent and that they lack a forum to appeal monitoring agent findings. SAAs testifying before the Commission expressed frustration with the current consumer complaint process and their inability to resolve problems concerning homes produced by manufacturers located outside their States.

Standards-Setting Process (Comparability)

The second systemic problem relates to the first, and has to do with the construction standards-setting process. Manufactured housing is subject to the HUD Code, whereas site-built and modular housing are subject to State or local building codes. Most jurisdictions make use of one of the national model building codes, and may add requirements of their own. Private code-setting organizations establish the model building codes, which are generally updated on an annual or biennial cycle.

The major difficulty with the HUD Code standards-setting process is the lack of a cycle for regularly updating the code. For example, in 1994 the HUD Code still referenced the 1984 National Electrical Code (NEC), although that code has been revised several times since then. Some electrical components set forth in the 1984 NEC are not even made any more. Inability to update the HUD Code regularly not only results in obsolete requirements, but also results in a code that is less comparable to other housing codes as standards are updated and as other codes evolve over time.

To understand the difference between the current HUD Code and the model building codes, the Commission contracted for a study to compare the cost of the least expensive single-section home built under the HUD Code and the identical unit built to the minimum standard set forth in the Building Officials and Code Administrators' (BOCA) Code. The difference in material costs was $1,623, with the BOCA unit being the more expensive of the two. Approximately half of the difference was accounted for by windows: The BOCA unit included insulated vinyl windows whereas the HUD Code unit included single glazed metal windows. One area of savings for HUD Code units, and one that the Commission wishes to preserve, is the performance nature of the HUD Code, which permits the manufacturer to innovate in a way that the model building codes generally do not.

The HUD Code offers significant benefits to both manufacturers and homeowners. It makes possible cost savings from efficiencies of scale, and assures the manufacturer that the assembly line product will be acceptable in all States. The performance nature of the HUD Code encourages innovation by allowing the manufacturer to use newly developed materials or technologies to meet the construction standard. It provides the purchaser with a

less costly alternative to site-built housing. However, the standards-setting process must be altered in a way that results in a regularly updated code that is current in terms of building technology and that yields levels of product performance comparable to other forms of housing.

Unclear Federal and State Agency Relationships

The Federal manufactured housing program is unique in that the Federal Government has the primary role of regulating the construction process. The division of responsibility among the Federal, State, and local governments is not simple. The features of the manufactured housing regulatory system that result in unclear relationships among various jurisdictions are described next.

First, the HUD Code is not fully preemptive. Although it covers construction within the manufacturing plant, it does not cover activities outside the plant, such as transportation, storage, and installation of the home. Some, but not all, States have installation standards. Failure to install the home properly can result in major structural damage to the home, no matter how well it was built in the factory.

Second, the National Manufactured Housing Construction and Safety Standards Act allows for—but does not require—a State role in enforcement. A total of 36 States have become fully approved or conditional SAAs. For HUD to fully approve a State as an SAA, the State must enact laws that provide enforcement authority parallel to and virtually identical with HUD's authority. In practice, however, States are often reluctant for many reasons to take enforcement actions against a manufacturer. The States may assert that HUD should be the primary enforcer, because the HUD Code preempts State and local codes. Some SAAs may be reluctant to act against a manufacturer because of the political power that the manufacturer exerts within the State, which in some cases can be considerable. The division of labor between the Federal and State governments also leaves gaps in the enforcement system. For example, SAAs are urged but not required by HUD to include in their State plan the following activities: (1) monitoring of retailer lots; (2) approval of retailer alterations to homes; (3) monitoring of installation; (4) inspection of used homes at time of sale; and (5) regulation of transportation of homes. HUD neither performs these functions nor requires that the States do so.

Third, HUD often does not act even when it has clear authority to do so. The combination of limited staff and travel resources, together with other higher priorities, often results in HUD's failure to take appropriate action in support of State enforcement efforts. HUD also must overcome significant constraints, such as convincing the Department of Justice to initiate criminal or civil action against a manufacturer that has produced homes with serious defects or imminent safety hazards. The result has generally been that enforcement actions are taken only in the case of the most serious violations. The deterrent value of the enforcement regulations is diminished, as the industry perceives limited enforcement potential.

The lack of clarity with regard to enforcement places the homeowner in a very difficult situation. To their credit, most manufacturers and retailers resolve most consumer problems to the satisfaction of the homeowner. When problems are not resolved, however, or a disagreement develops between the manufacturer and the retailer over who is responsible for resolving a problem with the home, the homeowner can have great difficulty in obtaining enforcement action from government at any level.

High-Tech Approach to Housing Environment

A unique feature of the manufactured housing program is the performance nature of the HUD Code. Performance requirements offer greater opportunities to cut the costs of construction. Model building codes tend to be more prescriptive in nature, setting forth the kinds of materials and construction techniques required to meet the code (although a performance alternative is still available). Prescriptive codes are useful for building contractors who lack engineering capacity, because engineering work is not needed if the prescriptive code is followed. The performance characteristics of a wall built of graded 2x4 lumber positioned 16 inches apart and installed with a specific number of nails of a certain size are known, are generally accepted practice, and need not be re-engineered.

The manufacturer is required to develop a design for each model or type of home that it intends to build, and the design must be approved by a DAPIA. The manufacturer is required to submit engineering calculations or testing data that demonstrate that the design meets the performance standards set forth in the HUD Code. Because no standard testing protocol is required under the HUD Code, individual engineers may disagree on whether a particular design or testing procedure demonstrates conformance with the performance criteria of the code.

The practical result of this system is that the manufacturer, the third-party agent who approves the designs, the third-party agent who inspects production, HUD's monitoring agent, and HUD may well not agree on whether a particular design meets the HUD Code, or whether a particular test demonstrates conformance of the tested component with the performance standards. For reasons described earlier, HUD does not do well at refereeing these disagreements, yet it is HUD that has the ultimate authority necessary to resolve them. Because building manufactured homes is a fairly straightforward manufacturing process, standard testing protocols for most structural systems or a prescriptive alternative to engineering each component might be helpful in reducing or resolving many of the disputes.

Preemption

The preemptive nature of the HUD Code sets it apart from all other model or local building codes. The HUD Code is the only federally administered housing construction code in this country. The authority of the Federal Government is necessary to preempt State and local building codes. The 1974 Act quite logically gave HUD the responsibility for being the regulator, because HUD is the Cabinet-level department with the broadest Federal responsibility in housing. At the same time, the constraints it faces make it very difficult for HUD to carry out its regulatory role adequately.

The way the regulatory system has worked is that HUD, which has ultimate authority, has either delegated much of its authority to the monitoring agent or not exercised its role as regulator. The result is a lack of checks and balances within the regulatory system, a tendency on the part of States to avoid responsibility because the Federal Government has preempted their authority with regard to building codes, and a general inability on the part of the States to remedy homeowner problems when the regulatory system breaks down.

The failure of the preemptive code to cover home installation results in divided responsibility, with the Federal Government responsible for ensuring that the code is met in the factory, and the States ensuring that the home is properly installed.

Although preemption need not be an inherent problem, it has become a problem because of the way the HUD Code has been administered, for several reasons. First, incomplete preemption sets up divided responsibility and accountability. Second, building codes have traditionally been administered at the local level, so that many local and State officials view a preemptive Federal system as an intrusion into their jurisdictions. Third, the political trade-offs necessary to gain Congressional approval of preemption in the 1974 Act gave the States a role in enforcement, but this role has in practice been incomplete and unclear, resulting in a loss of clear accountability.

Division of Responsibility Within the Industry

The manufactured housing industry is built around a delivery system consisting of roughly 4,600 independent retailers. Unlike the automobile industry, the manufacturers do not typically control their retailer networks. Any given retailer may sell products of one or more manufacturers, and the manufacturer has limited control over what the retailer does. The transporting of the home from the factory to the retailer lot may be under the control of either the manufacturer or the retailer. Storage on the retailer's lot, transportation of the home from the lot to the installation site, and installation of the home at the site are typically under the control of the retailer, which may carry out the installation with its own staff or contract out the installation.

The delivery system has both benefits and problems. One benefit is that the independent retailer network has been quite effective in widely marketing the product, and minimum capital requirements are needed to establish a new retail outlet. The delivery system also relieves the manufacturer of the responsibility for financing and overseeing the retailer network. The problem with the delivery system is that, if there is a deficiency in the home, the owner may end up dealing with up to four separate entities (manufacturer, transporter, retailer, and installer). The consumer is at a distinct disadvantage in that it may not be clear who caused the problem, and the burden of proof is with the homeowner to demonstrate who is responsible for fixing the problem.

Level of Accountability

The division of responsibility among the various parties within the industry, together with the unclear Federal-State agency relationship, makes for a regulatory system that lacks accountability. The lack of accountability touches all parties: HUD, the monitoring agent, SAAs, IPIAs and DAPIAs, manufacturers, transporters, retailers, and installers. The system allows each party to place the blame elsewhere. The homeowner bears the brunt of this problem. The fact that the current system works as well as it does is a tribute to the many manufacturers and retailers who take care of consumer problems because it is the right thing to do. When the manufacturer or retailer goes bankrupt, however, the homeowner is left without a safety net. Seven States (Arkansas, Arizona, California, Florida, Texas, Virginia, and West Virginia) have established recovery funds to pay for correction of defects in homes whose manufacturers have gone bankrupt.

One reason that it is so difficult to effect change to the manufactured housing regulatory system is that the pervasive nature of the accountability problem makes it seem in no party's immediate self-interest (other than the homeowner's) to bring about greater accountability. Yet, the lack of accountability, and the homeowner problems that go unresolved as a result, give both the industry and the regulatory system a black eye, making it in everybody's long-term interest to bring accountability to the system.

Lack of Adequate Consumer Information

The purchaser of manufactured housing does not have access to the kind of comparative product information that is available to the purchaser of other mass-produced products. Comparative information as to the performance, durability, servicing requirements, and pricing of manufactured homes is simply not available. Comparative data on manufacturers and retailers are likewise difficult to obtain. Many consumers shop local retailers based on the retail price of the product. But a low retail price may indicate a retailer that provides little or no follow-up service to the purchaser.

Monitoring information developed by the IPIAs or the HUD monitoring agent is also unavailable to the public. While the monitoring agent has developed a computer database for complaint information collected by the SAAs, the system has yet to demonstrate that it will produce information useful to consumers.

Given the lack of accountability in the current regulatory system, the consumer is at a real disadvantage when he or she tries to obtain relevant comparative information on which to base an informed decision. In some instances, purchasers have invested a substantial portion of their life savings in a home that is seriously defective, without obtaining satisfactory relief.

Unfair Treatment by State and Local Governments

Dissatisfaction with the preemptive HUD Code, together with the perception that manufactured housing is inferior to site-built housing, is translated into exclusionary zoning and other kinds of discrimination at the local level. Many localities have effectively zoned manufactured housing out of their communities altogether. Others have limited approval of manufactured housing parks to relatively less desirable locations within the communities. Even in urban and suburban localities that permit manufactured housing, few such homes exist because of the negative image of the product. In many cases, residents of existing parks do not receive the same municipal services that others routinely receive, such as trash pickup, street maintenance, police protection of streets, and public water and sewer hookups for each home. In many parks, the park owner functions as a mini-city government, providing many of these services and building the cost into the lot rent. The result of such discrimination is that many residents of manufactured housing are treated as second-class citizens, and many other persons of modest income are denied the opportunity for affordable home ownership that manufactured housing offers.

CHAPTER 2. Recommendations

Purpose of the Act

Discussion

The Commission recommends that the statement of purpose in the National Manufactured Housing Construction and Safety Standards Act of 1974 be revised to reflect the significant role of manufactured housing in meeting the Nation's housing needs and to establish policy goals for expanding that role in the future. Quality, innovation, affordability, availability, and the development of State-Federal partnerships should be key purposes under the Act. These purposes should be achieved through a balanced consensus process for developing and revising national construction and safety standards, strengthening warranty protections for homebuyers, ensuring uniform and effective code enforcement, improving financing systems, and removing regulatory barriers.

The Commission's recommendation retains the references to safety, quality, and durability in the current statement of purpose, but eliminates outdated language regarding accidents in homes built prior to the promulgation of Federal standards. Further, in establishing quality as a purpose under the Act, the recommendation requires that manufactured homes yield levels of performance comparable to other forms of housing. The Commission expects that, once established, a consensus committee will immediately begin to review the current Federal construction and safety standards to ensure that any necessary updates and improvements will be provided to HUD to implement this purpose. In addition, the biennial cycle recommended by the Commission will help to ensure that relevant advances in scientific and technical knowledge will be incorporated into the standards on a timely basis.

To help make homeownership more achievable for lower income consumers, the Commission makes affordability a purpose under the Act. The Commission believes that primary reliance on performance standards, as opposed to prescriptive standards, is essential to promote affordability, but only if conformance to the performance standards is closely monitored. Performance standards allow product innovation and cost control and, properly enforced, can assist in keeping housing affordable for low- and moderate-income households.

The Commission intends cost-effectiveness as well as durability, safety, and quality to be integral factors in the consideration of new standards. The consensus committee would be required to consider both initial costs and long-term maintenance and operating costs for homeowners in evaluating cost-effectiveness.

Regulatory barriers at the Federal, State, and local levels continue to restrict innovation and the use of manufactured housing. Such barriers include restrictive zoning and discriminatory policies for providing municipal services. The statutory requirement for a permanent chassis also restricts innovation. In addition, financing terms available to purchasers of manufactured homes are frequently less favorable than those available to purchasers of site-built housing. This situation reduces the ability of those households most in need of affordable housing to obtain financing. The Commission's recommendation makes the elimination of these barriers one purpose of the Act.

The Commission believes that a strong partnership between the Department and State agencies is essential to effective implementation of the Act. Therefore, the Commission's recommendation makes State-Federal partnerships a purpose under the Act. State agencies currently play a significant but limited role in code enforcement and consumer complaint-handling. Commission recommendations broaden and enhance these roles. Recognition and support for these State functions are particularly important in light of planned staff reductions at the Department. The Commission envisions significant efforts on the part of the Department to improve funding, information sharing, and training opportunities for SAAs and their staffs.

Recommendations

The Commission recommends that the statement of purpose in the National Manufactured Housing Construction and Safety Standards Act should be amended to read:

1.1. Congress recognizes the vital role of manufactured housing in meeting the Nation's housing needs. Manufactured homes provide a significant resource of affordable homeownership and rental housing accessible to all Americans, especially first-time homebuyers, low- and moderate-income families, and the elderly. In order to promote the quality, affordability, and availability of manufactured housing, Congress declares that the purposes of this title are:

- **To enhance quality, manufactured housing should meet standards of safety, quality, and durability that yield levels of performance comparable to other forms of housing.**
- **To encourage innovative and cost-effective construction techniques that also minimize the long-term operating costs of manufactured housing to homeowners.**
- **To develop financing, zoning, and the provision of local government services that remove regulatory barriers that deny equal treatment for manufactured housing compared to other types of housing.**
- **To encourage State-Federal partnership within the Federal system that would enable each level of government to do what it does best while eliminating duplication and gaps between them.**
- **To establish a balanced consensus process for the development and revision of national construction and safety standards for manufactured homes.**
- **To strengthen warranty protections and increase access to affordable financing for the purchasers of manufactured homes.**
- **To ensure uniform and effective enforcement of national construction and safety standards for manufactured homes.**
- **To remove regulatory barriers to the use of innovative construction technologies.**

Procedures and Process for Standards Development, Revision, Adoption, and Interpretation

Discussion

The manufactured housing industry is the only segment of American housing that is regulated by a national building code and a federally controlled enforcement system. The Manufactured Home Construction and Safety Standards (MHCSS, or HUD Code) were mandated by Congress in 1974 and are at the heart of the national program. All parties with an interest in manufactured homes, and most witnesses who testified before the Commission, agreed that the HUD Code is chronically out-of-date because of cumbersome procedures and an absence of periodic cycles for revising it. Since the program's inception, HUD has been responsible for developing and generating changes to the MHCSS, and HUD has had difficulty making timely or needed changes. It is also widely acknowledged that HUD has not kept its code current with the generally accepted engineering practices to which other forms of housing construction conform; for example, many of the other documents that the HUD Code references for use in construction of manufactured homes are outdated and some are no longer in print. Further, Congress forced the revision of the MHCSS energy conservation measures in 1987 legislation; HUD published revised standards in late 1993 for an effective date in late 1994.

The current system of updating the standards begins with the drafting of proposed provisions within HUD's Office of Manufactured Housing. After drafting changes, the regulatory process includes clearance through HUD, clearance through OMB, publication of the proposed rule in the *Federal Register,* analysis of the public comments, drafting of the final rule, OMB clearance again, Departmental clearance again through an estimated 60 offices, and publication of the final rule. This process typically takes 2 to 3 years, although HUD published revised wind standards for manufactured home construction 17 months after Hurricane Andrew caused widespread damage to manufactured homes in its path and prompted review of the existing standards..

Since 1989, HUD has received proposed changes to the MHCSS from a consensus committee of the Council of American Building Officials (CABO), which HUD selected in 1988 to administer a procedure for considering revisions. Another code-developing body, the MHCSS Consensus Committee organized by the Manufactured Housing Institute, was set up at the same time, when HUD acknowledged in the *Federal Register* on February 16, 1988, that "the Department [did] not consider CABO as an exclusive or preferred source of model standards." Both committees are structured to some degree according to procedures established by ANSI for developing voluntary consensus standards in the United States, although neither committee has been accredited by ANSI as an American National Standards Developer. The significance of ANSI procedures is that they attempt to encourage balance among all interest categories, so that no single interest can dominate. HUD has not, however, acted on many of the approximately 200 proposed changes submitted by either consensus committee since 1989.

In keeping with its mandate from Congress to consider the need for additional and revised manufactured home standards, the Commission focused on improving the process for developing and updating the HUD Code, rather than on specific technical changes that might be desirable. The Commission recognized that it was more appropriate for a committee with technical competence, rather than a Commission composed mostly of generalists, to develop specific changes. The Commission concurred, however, with the more stringent energy conservation measures that will take effect in the HUD Code in the fall of 1994. The

consensus committee will be responsible for continuing to update energy standards along with other construction standards.

Commission research compared the HUD Code with the model building codes enforced for all other housing construction, both site-built and modular. The MHCSS is primarily a performance code, meaning that certain loads are specified that the structural members of the home (walls, roof, floor, nails, etc.) must carry, and then an engineering analysis will determine the materials and methods of construction that will perform those functions. The model codes, on the other hand, have performance standards available as alternatives, but are generally more prescriptive in nature, in that they state the required type or size of materials.

The performance nature of the HUD Code has given the manufactured housing industry more flexibility in constructing affordable homes, and has allowed for the development of new materials or techniques and innovative designs. A comparison of the structural components of manufactured homes built to the performance-based HUD Code and modular homes with the same square footage but built to the prescriptive criteria of one of the model codes revealed that costs for the modulars were roughly $1,600 more for a single-section home and $3,300 more for a double-section home. Nearly one-half of these increased costs were for double-pane vinyl windows, with the remainder covering wider lumber, thermal insulation, sheathing, and siding. This analysis did not attempt, however, to determine whether the additional upfront costs were outweighed by the maintenance and life cycle cost savings resulting from the different construction techniques.

Consumers, State officials, and securities market representatives testified that the HUD Code was perceived to be inferior because it was different from other housing construction codes. The creation and revision of the code itself, within HUD and without benefit of an open forum of interests and ideas, is viewed with skepticism. The Commission found that a fundamental difference between the minimum requirements of the HUD Code and the model building codes results from the fact that the model codes change and advance regularly as building technology changes and advances, and that all affected parties encourage and accept the code change process. The HUD Code, on the other hand, has not been updated to keep pace with engineering science.

The model building code organizations revise their codes on a yearly basis using a process where consensus is defined as every interested party having the right to present its point of view. A strict balance of interests in the decisionmaking process is missing, however. State and local code officials are the voting members of the model code organizations and are eligible to vote on code changes. Builders, designers, and consumers cannot vote on code changes. The absence of such input may mean that the practicality or affordability of certain code changes is ignored.

The Commission discussed the option of adopting one of the model building codes as the HUD Code. Such an action would automatically provide performance equivalence between manufactured and other U.S. housing, and would eliminate the perception of inferiority. One Commissioner clarified the discussion as follows:

> I was leaning toward a model code, and my reasons are twofold. One is, I know there are model codes. There's a model code process, and it's been working and functioning, and it's something I know will work in terms of keeping up to date, getting distributed widely, etc., whereas creating something new creates uncertainties about whether it will work. And, two, the fact that model codes have been adopted by reference by so many jurisdictions around the country. . . tells me that there's some integrity in these codes.

Industry representatives argued, however, that adoption of a model code as the manufactured housing standards would adversely affect the industry because enforcement of the model codes might require compliance to prescriptive criteria, thereby eliminating the technological and cost-saving innovations that a performance code provides. Consumer representatives on the Commission also pointed out problems with the model code process: that it is primarily developed for site-built homes, rather than manufactured homes; there is no clear mandate to consider the cost of a code provision; and consumers are not represented on the model code change committees or decisionmaking bodies.

Another point of discussion for the Commission was the lack of uniform criteria established by the standards for testing or evaluation of new materials and building assemblies for compliance with the performance standards of the HUD Code. Scientifically valid testing and evaluation are essential to determine whether a particular design in fact conforms with the performance standard. The Commission heard testimony that the lack of such testing and evaluation criteria is a significant flaw in the current program, because, as one Commissioner pointed out, "one engineer developing a design procedure without a broader analysis by fellow engineers produces a subjective and untested methodology."

The Commission recognized set-up of manufactured homes onsite as a serious problem because faulty installation can cause serious structural problems. But the HUD Code omits installation standards. A national voluntary standard, ANSI Standard A225.1 for Manufactured Home Installations, is available for States and local jurisdictions to adopt, but it is neither mandatory nor uniformly adopted or enforced. Some States have developed their own installation standards, which are comprehensive and well enforced. The Commission's concern focused on the lack of consistency across State lines.

Prior to 1974, when Federal preemption created a uniform construction code requirement for manufactured housing, an ANSI standard for manufactured home construction was available, but it was not consistently adopted or enforced by the States. The Commission was unanimous in its desire to see the standards by which manufactured homes are constructed established by a process that can produce regular code revisions with the participation of all interested parties. The goal of such a consensus-developed building code for manufactured housing, according to the Commission, is to provide homes that meet standards of safety, quality, durability, and energy efficiency that yield levels of performance comparable to other forms of housing, while considering the importance of affordability. In such a scenario, the standards are maintained, revised, and interpreted by a balanced consensus process, and HUD can oversee the entire program.

The consensus, collaborative process for maintaining and developing the MHCSS 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. No interest will dominate to the detriment of another interest. By adhering to ANSI principles, one Commissioner pointed out, "the committee would be required to do what they call 'resolve the negatives.' Whenever anyone votes against the standard, the committee as a whole would have to consider that negative vote and develop some sound reasons for having overlooked or overruled the negative vote."

A final concern of the Commission—requiring HUD to be prompt in its acceptance of proposed revisions to the standards from a consensus committee—was addressed in a legal opinion from the law firm of Steptoe & Johnson, and confirmed by the law firm of Latham & Watkins. Imposing a reasonable time limit on a Federal agency to review and act on recommendations has precedence in the mandatory language of the Occupational Safety and Health Administration statute for the Secretary of Labor. The Environmental Protec-

tion Agency is also subject to statutory deadlines for promulgating regulations. And because HUD maintains the authority to modify or reject recommendations received from an independent standards development committee and is given reasonable time limits in which to act, there can be little substantive argument that governmental powers have been impermissibly delegated to a private body.

Recommendations

The Commission recommends to the Congress that:

2.1. Consistent with the purposes of the Act, the manufactured home construction and safety standards shall be updated on a 2-year cycle through a consensus process, and the resulting standards shall be submitted for approval as an American National Standard.

2.2. HUD shall be required to adopt, modify, or reject the consensus-developed standards within 12 months of submission to the Department, using the Administrative Procedure Act (APA) process. HUD's failure to act within the stated time period would lead to automatic adoption by law.

2.3. A consensus committee to develop the consensus standards shall be organized and administered by the National Institute of Building Sciences (NIBS). The committee shall operate in conformance with procedures established by the American National Standards Institute (ANSI). The ANSI interest categories shall be modified for these purposes to include manufacturers, retailers, and suppliers in the "producer" category, to include exclusively homeowners, consumers, and public officials in the "user" category, and to include Primary Inspection Agency (PIA) personnel in the "general interest" category, but constituting no more than 20 percent of that category.

2.4. Members of the consensus committee shall be qualified by background and experience to participate in the work of the committee. Members of the "user" and "general interest" categories, other than PIA personnel, shall not have a financial interest in the manufactured housing industry. The committee shall apply to ANSI for accreditation as an American National Standards Developer. The committee shall not be subject to the provisions of the Federal Advisory Committee Act.

2.5. The consensus committee shall have staff resources that include one consumer technical analyst.

2.6. The consensus committee shall establish, based on a finding of need, uniform test or evaluation methodologies that will adequately evaluate compliance of specially designed materials or assemblies with the manufactured home standards. HUD or other interested parties may request the committee to develop or evaluate the validity of a test method.

2.7. The consensus committee shall issue written interpretations of the manufactured home construction and safety standards, upon request and after a finding of necessity, that become binding upon approval by the Secretary. The Secretary may reject or modify an interpretation upon a finding that it would jeopardize public health or safety or is inconsistent with the purposes of the Act. If such action does not occur within 60 days of receipt of an interpretation from the consensus committee, approval is presumed and the interpretation becomes binding.

2.8. HUD shall have the authority to request the consensus committee to develop, at any time in its 2-year cycle, emergency amendments to the standards to respond to an emergency health or safety issue.

Warranty and Recovery Fund Protections for Homeowners

Discussion

The National Manufactured Housing Construction and Safety Standards Act of 1974 does not require manufacturers to provide a warranty to home purchasers. HUD requires that Federal Housing Administration (FHA)-insured mortgages contain a 1-year warranty, but this provision affects only a small percentage of manufactured homes sold each year. Manufacturers typically provide a 1-year warranty that covers all defects in the home, but not those resulting from improper transportation or installation. Twenty States require a 1-year manufacturer's warranty by law. (See Table 4.)

The Commission identified several gaps in the warranty protections available to purchasers of manufactured housing. These gaps include the lack of long-term warranty coverage, exclusion of defects arising from improper installation and transportation, and the lack of a uniform system to provide timely resolution of warranty disputes and ensure compliance with warranty provisions.

The Commission heard testimony and had access to HUD and SAA reports documenting defects that only became apparent after the term of the warranty had expired. Examples of such "latent" defects include defective rafters and ridge beams; defective design, materials, and workmanship in the installation of exterior coverings; improper installation of roof coverings; water infiltration and resulting damage attributable to improper installation and sealing of windows, doors, and roof flashing; and failed floor frame systems. While not indicative of the overall level of construction quality within the industry, these situations often leave the homeowners without recourse. Implied warranties are usually limited to the duration of the written warranty. The current Act requires correction only in instances where the defect involves an unreasonable risk of injury or death. In most cases, it would be difficult to prove that the defect is life-threatening.

While extended warranties are available from insurance companies, they may be expensive and the purchasers of manufactured housing generally have modest incomes. Half have annual incomes under $20,000 and three-quarters have incomes below $30,000. As a result, few homeowners purchase these extended warranties. Further, these warranties tend to have the same exclusions as the manufacturers' warranties.

Manufactured homes are usually transported from the factory to a retailer's lot and upon sale to the homeowner's site or rental space. Federal regulations require the manufacturer to provide an installation manual with each home. Use of these instructions, however, is mandatory only if required by State or local regulations. Proper performance of an installation is essential to ensuring that the home performs according to design specifications. Failure can result in costly repairs and reductions in the value of the home.

The Commission found that improper installation is a more frequent source of defects than manufacturing or design errors. In testimony before the Commission, representatives of SAAs estimated that more than half of all complaints are related to installation. Industry and homeowners also acknowledged that improper installation was a significant problem.

A Commission review of manufacturer warranties from 28 of the 97 HUD Code producers, representing 18 of the top 25 producers in 1992, found that none of the warranties covered problems resulting from installation or transportation of the home. Only seven States (Florida, New Mexico, North Carolina, South Carolina, Texas, Virginia, and Washington) require installation to be warranted, while five States (Florida, Louisiana, Michigan, North Carolina, and Virginia) require retailers to warrant transportation to the home site.

The Commission believes that most manufacturers and retailers attempt to complete warranty service in a timely manner. Delays can occur, however, when a defect is suspected of being caused by improper installation or transportation. Because retailers usually perform or arrange for these services, disputes can arise with the manufacturer as to the cause of the problem and who is responsible for paying the repair costs. The homeowner may be refused service by both parties until the dispute is resolved or may end up paying for repairs by a third party. Although homeowner's manuals are required to list the SAA for each State, a number of the addresses and phone numbers listed in current manuals reviewed by Commission staff were out of date. In addition, homeowners are often unaware of the purpose or even the existence of these agencies. Further, the remedies available to resolve consumer complaints under the National Manufactured Housing Construction and Safety Standards Act are extremely limited and time-consuming. Authority to intervene under State law varies considerably.

Delay in making repairs can increase damage to the home. Nine States impose time deadlines ranging from 30 to 60 days for repairs. In addition, several States require more immediate responses for emergencies such as inadequate heat in freezing weather, failure of sanitary facilities, electrical shock, and major structural failure. (See Table 4.)

If a manufacturer or retailer goes out of business or refuses to provide warranty service, the homeowner is usually not in a position to make claims or bargain equally with the manufacturer or retailer. Thousands of homes may be affected in the bankruptcy of a medium-sized manufacturer. The Commission heard testimony concerning the bankruptcy of a major manufacturer and its impact on homeowners in the State of Maine. In disputes over service, the homeowner can be pressured into accepting a partial resolution because the problem may be adversely affecting the normal use of the home. While the Magnuson-Moss Warranty Act and State laws provide for attorney fees and legal remedies, litigation is expensive and can delay needed repairs.

The Commission found State recovery funds, in combination with State licensing laws, to be an effective mechanism for dealing with legitimate warranty claims arising from manufacturer and retailer bankruptcies or refusals to provide service. Recovery funds have been established in seven States (Arkansas, Arizona, California, Florida, Texas, Virginia, and West Virginia). They incorporate a claims process that investigates problems, establishes responsibility, and assesses costs of repair, which the fund pays. Licensing is a requirement for manufacturers and retailers doing business in the State and is coordinated with the operation of the recovery fund. If the license of a firm is revoked or suspended, warranty claims may be paid out of the fund. In several of the States, licenses of manufacturers or retailers responsible for disbursements are suspended until the fund is repaid. Claims are also sought against firms in bankruptcy. In addition, two States require bonding: Florida for retailers and manufacturers; and Texas for retailers, manufacturers, installers, and brokers. The recovery funds are capitalized by assessments on manufacturers, retailers, installers, brokers, salespeople, and sometimes homeowners through title fees. Some funds also have provisions to trigger special assessments should the dollar amount in the fund dip below a specified level; to date, no fund has implemented such a provision.

Despite some initial concerns, the industry has found that, for a modest initial investment, the funds have helped to improve the reputation of manufactured housing by assisting homeowners under difficult circumstances. The Manufactured Housing Institute recently approved a Proposed Model Recovery Fund Program for States to review. (See the chart on the following page.)

The Commission recommends establishing a mandatory 1/5 year warranty requirement under the Act and proposes to require by statute the following warranty coverages:

1 year All defects, including those resulting from transportation performed or arranged by the manufacturer; installation and transportation performed or arranged by the retailer; weatherability; and all appliances.

5 years Defects in the plumbing, electrical, air distribution, and structural systems within the home provided by the manufacturer; and defects in structural systems arising from transportation or installation performed, arranged, or contracted by the retailer.

The Commission's recommendations would not require the retailer to provide an installation warranty if the homebuyer chooses to install the home. In cases where the homebuyer undertakes his or her own site preparation, the retailer may ask the homebuyer for an engineering certification, contractor certificate, or building inspection certification that preparatory work conforms to applicable code or regulations. The Commission's recommendations would limit the retailer's installation warranty to 1 year if the homebuyer fails to provide proper certification. Retailers will be required to provide written disclosure of these conditions and the necessary site-preparation instructions to the customer prior to sale. The retailer will also be required to offer to perform or arrange for a conforming installation. If the required disclosures and offer of a conforming installation are not provided, the retailer would be liable for 5 years.

These recommendations are intended to fill current gaps in warranty coverage identified by the Commission and should go into effect 180 days after passage of the authorizing legislation. Because the HUD Code does not require the redundancy in construction inherent in other building codes, the Commission believes the risk of failure for some manufactured homes is increased if engineering calculations are inaccurate or fail to predict actual conditions. Further, the relatively low incomes of purchasers of manufactured homes make it difficult for these homeowners to meet unexpected repair expenses. These factors justify a longer term and more comprehensive coverage to protect against latent defects. In addition, the Commission believes that the notification and correction provisions under the Act and Subpart I of the enforcement regulations were never intended to resolve complaints concerning defects and workmanship. Nor is it practical or cost-effective to divert the attention of the code enforcement system to workmanship issues. The Commission believes that the vast majority of homeowner complaints are more appropriately handled through a long-term comprehensive warranty program that complements market trends toward total quality management and consumer satisfaction.

Within the past year, several manufacturers have extended the term of their warranties to 5 years. The Commission believes its recommendations will support these initiatives and ensure that homeowners in every State will enjoy the same level of protection. The Commission considered but rejected a proposal to require manufacturers to provide a 10-year, insurance-backed warranty. The Commission found that such warranties are mainly available for manufactured homes sited on permanent foundations, and the potential costs for other units was unknown. In addition, Commissioners were concerned about claims-ad-

Proposed Model Recovery Fund Program

Established (how administered)	A Board appointed by the Governor, consisting of consumer, industry, and government representatives.
Funding method	Manufacturers, retailers, brokers, and installers would pay initial fee of 1/4 to 1/3 of total required to reach minimum. Retailers would be assessed per retail location. Consumer fee collected with each title transfer; licenses required.
Minimum fund level	Minimum based on need—production, sales, past experience, and number of homes owned. Funds must be actuarially sound.
Maximum fund level	Maximum level based on production and sales and previous experience of bankruptcy, etc.
Use of excess above maximum	Percentage of amount above total could be used for consumer education.
Method to replenish fund	None required unless major bankruptcy or warranty problem. Special assessment if fund drops below predetermined amount in order to keep fund actuarially sound.
Who may recover	Consumers, i.e., purchasers of manufactured homes for personal, family, household, or residential use.
Method of recovery	Consumer Petitions Board. Board determines violation based on informal presentation of views. Regulant may ask for formal hearing. Board directs regulant to pay for actual damages. Fund pays if regulant does not act within 30 days. Regulant has opportunity to correct consumer problem before initiating informal hearings.
Grounds for recovery	Failure by manufacturer, any retailer, installer, or broker who is out of business or no longer does business in the State to perform repairs under warranties. Board has sole discretion to determine violation. Provision for appeal by regulant.
Maximum award for each claim	$25,000.00/claim.
Damages/recoupment	Actual compensatory damages only—not attorney's fees, punitive or exemplary damages or court costs. Fund to pay only in event that regulant cannot or will not pay.
Time frame for making a claim	One year.
Penalty/sanction	Immediate revocation of license upon payment by Board from fund; reinstatement of license upon repayment by regulant to fund.

Source: Manufactured Housing Institute.

justment problems experienced by homeowners in several of the insurance-backed warranty programs.

The Commission's recommendation to require warranty coverage for transportation and installation eliminates a significant omission in current warranties. It is the Commission's intention to avoid gaps in warranty coverage. If, in the third year, for example, a plumbing or electrical problem attributable to improper installation develops inside the home, the manufacturer's warranty would provide coverage. In the same instance, repair of any damage to the structure of the home caused by improper installation would be the responsibility of the retailer. Similarly, leaks resulting from defects in the structure attributable to design would be covered under the manufacturer's warranty for 5 years. A defective component would not be required to fail completely before repairs or replacement could be initiated under the warranty. If the drywall in the home were damaged as a result of the leak, it would also be eligible for repair. Damage to possessions in the home, however, such as a piano or the priceless vase won at the county fair, would not be covered. The Commission recommendations require that all warranty repairs be completed within 60 days of receipt of written notice and 5 days in emergency situations.

Under the Commission's recommendations, the manufacturer and the retailer each will provide written warranties to the homeowner verifying the required coverages. The Commission recommends that these warranties be presented to the homeowner at the same time. The Commission considered and rejected an option to reduce the retailer's warranty for installations to one year if the State agreed to inspect every new home installation and to cover any structural defects for years 2 through 5 through the State recovery fund. The Commission continues to be concerned about the cost of inspecting all new homes, however, particularly in light of budget limitations at the State level. Further, the Commission believes that warranty requirements are preferable to traditional inspection programs and, in the long term, the most effective way to ensure that homes are installed correctly.

The Commission recommends that the Act require the establishment of a recovery fund for each State to resolve warranty disputes, ensure compliance with warranty requirements, and protect homeowners in the event of the bankruptcy of a manufacturer or retailer. The Act should provide for States to enact authorizing legislation within 4 years and begin recovery fund operations within 1 year later. The funds should be required to meet minimum requirements established by the Act. These would include actuarial soundness, an alternate dispute resolution (ADR) mechanism, and the registration of manufacturers and retailers. HUD would be required to make a determination of conformance based on the statutory requirements. In the event a fund failed to meet the minimum statutory requirements or a State declined to establish a recovery fund program, HUD would be required to contract with a private entity, within the State if practicable, to administer all the functions of a State recovery fund program. Regional funds should be permitted for States where few new homes were sited.

It is the intention of the Commission that the recovery funds be established, financed, and operated in a manner similar to the funds currently in operation. The requirement for actuarial soundness is intended to be an objective standard rather than a strict interpretation of actuarial assumptions. Experience has shown that assumptions concerning losses are often overly pessimistic, and the funds can easily generate additional income through special assessments. In addition, the Commission has recommended that private reinsurance be required after 7 years. The Commission's recommendations for a recovery fund are not intended to preempt State bonding requirements. It is the Commission's view that decisions to impose such requirements should be left to the discretion of the States.

The establishment of a uniform claims and ADR process is a key requirement for the State recovery funds. Under the Commission's recommendations, recovery funds would compensate claims only upon completion of the ADR process or after litigation. The Commission envisions an ADR process that incorporates informal dispute settlement by the SAA or other designated organization prior to a homeowner's choice to proceed to a formal dispute resolution process or the courts. The ADR process will also be available to settle warranty disputes involving manufacturers and retailers. All participants will be required to complete the informal dispute settlement phase before proceeding with formal ADR or litigation. Experience indicates that most warranty problems can be settled through informal negotiation among the homeowner, manufacturer and retailer, and the SAA.

The Commission recommends a number of statutory requirements for State ADR programs. These include the use of independent dispute settlers without ties to any party; no cost to the user; prominent display of availability; a progressive two-step process that begins with informal settlement; limiting judicial appeal of the results of formal dispute resolution to factual, legal, or procedural errors; and provision of an evaluation mechanism for the ADR process. The Commission intends that resolution of disputes should be accomplished within 30 days and that a decision in favor of the consumer will result in prompt correction of the defect. SAAs or other independent organizations designated by the State may administer the ADR program. Finally, the Commission recommends that HUD contract with the Administrative Conference of the United States to assist the States in designing ADR systems. The main purpose of ADR is to achieve timely and fair resolution of disputes. Poorly designed systems can defeat these goals.

The improved coverages offered by the 1/5 year warranty should greatly assist in reducing problems and strengthening the mediating role currently played by many SAAs. Further, warranty performance guidelines will be developed by the consensus committee to assist SAAs and other dispute settlers in resolving warranty claims and minimizing the need for litigation.

Warranty performance guidelines are used extensively in warranty programs for site-built housing. They benefit consumers and industry alike by ensuring that warranties meet minimum standards of coverage and do not contain unreasonable exclusions, and provide more uniform interpretation of warranty provisions. The Commission intends that manufacturers and retailers retain reasonable flexibility in drafting their warranties and providing coverage for items not required by statute. Further, it is the Commission's intention that States be permitted to require coverage for items not specified in the Act. The performance guidelines would preclude warranty coverage for items damaged by homeowner abuse or failure to carry out required maintenance as set forth in the manufacturer's consumer manual.

The recovery fund and ADR process would be enforced through a registration requirement modeled on State licensing laws. The Commission recommendation requires that all manufacturers and retailers register with the SAA or contract agent administering the recovery fund in each State. This provision is intended to complement and strengthen existing licensing laws in the States (25 States license in-State manufacturers, 22 license out-of-State manufacturers, 35 license retailers, and 19 license installers). Registration would be required to sell homes. Suspension of the registration would be mandatory if a firm failed to correct a problem that the ADR process has determined was its responsibility. The recovery fund would pay for repairs in such cases. Suspension of registration would be rescinded if the fund were reimbursed.

The Commission considered but rejected a proposal to recommend the establishment of a national recovery fund. The industry members of the Commission were concerned that a national fund would be overly bureaucratic; the balance of the Commission accepted the industry's concerns in the spirit of consensus. The State-based approach offers a number of advantages. Maintaining fee collection at the State level is more likely to ensure close monitoring of fund disbursements and to permit direct ties to the existing enforcement system. State-administered funds are less burdensome to HUD and encourage maximum State participation in the manufactured housing program. Finally, legal analysis indicates the recommendation is similar in concept to the existing SAA program and is constitutionally permissible.

Recommendations

The Commission recommends the following:

3.1. Term and Coverage. Manufacturers and retailers shall be required to each provide a warranty for their respective functions under the Act. Coverage shall include:

- **1 year for all defects, including transportation arranged by the manufacturer, and weatherability. Defects covered under the warranty for weatherability shall include (except leaks caused by severe weather events such as hurricanes, tornadoes, and severe icing): Rainwater or snow leaks in roofs, walls, floors, siding, windows, or doors, based on a reasonable level of occupant care and maintenance as prescribed in the manufacturer's consumer manual. Repair of weatherability defects includes repair of items necessary to restore their weatherability functions and repair of other components of the structure damaged by the weatherability defects;**
- **1 year for appliances; and**
- **1 year by the retailer for installation and transportation arranged by retailer; 5 years as installation or such transportation affects structural integrity.**

In cases where the homebuyer undertakes his or her own site preparation, the retailer has the right to ask the homebuyer for an engineering certification, contractor certificate, or building inspection certification that preparatory work is in accordance with code or regulations. If the homebuyer fails to provide such certification to the retailer, the warranty is limited to 1 year. Written disclosure of correct site preparation and these limitations to the customer must be made by the retailer before sale. Retailers will be required to offer conforming installation. If the offer and disclosure are not made, the warranty is for 5 years.

If the homebuyer chooses to install the unit himself, there is no installation warranty.

- **5 years for plumbing, electrical, air distribution, and structural systems within the dwelling unit provided by the manufacturer.**

Defects shall be repaired within 60 days of receipt of written notice and 5 days in emergency situations. The warranty shall cover defects regardless of whether they arise as a result of faulty design, construction, transportation, or installation.

Manufacturers and retailers should retain reasonable flexibility both in drafting their warranties and in providing coverage for items not required by statute. States should have flexibility in requiring coverage for items not covered by Federal statute.

3.2. Performance Guidelines. The validity of any homeowner's claim under the warranty shall be determined on the basis of good industry practice that ensures quality of materials and workmanship. The consensus committee shall develop minimum requirements for the level of quality of materials, performance, and workmanship to assist SAAs and other dispute settlers in resolving warranty claims and minimizing the need for litigation. The consensus committee shall be mindful that it does not create absolute requirements that totally foreclose manufacturer and retailer flexibility in the drafting of warranties. The consensus committee may create a subcommittee or working group to undertake the initial development of the guidelines. The warranty performance guidelines are not intended to be interpreted by HUD as replacing, modifying, or supplementing current or future performance construction standards.

The goal of warranty performance guidelines is to assure that consumers benefit from warranties that meet at least minimum standards of coverage, which do not include unreasonable exclusions, and which are uniformly interpreted and administered. The performance guidelines do not cover damage due to failure to carry out required homeowner maintenance as set forth in the manufacturer's consumer manual, or homeowner abuse of the home. (See Appendix E for Sample Warranty Terms.)

3.3. Claims Process. A claims process shall be established that allows the homeowner to file a claim with one entity and that ensures correction within a reasonable time. Manufacturers and retailers will have first opportunity to correct the defect. If the defect is not corrected satisfactorily, an alternate dispute resolution process (ADR) would be initiated. Under the ADR process, an impartial dispute settler would investigate the problem and issue a ruling that identifies the party responsible for correcting the defect, the items to be corrected, and the time period for correction. An ADR determination favorable to the consumer shall result in prompt correction of the defect.

State ADRs must fulfill Federal statutory requirements in the following areas:

- The dispute settler is independent and has no financial ties to any party;
- There is no cost to the homeowner;
- The availability of the ADR process is prominently displayed and advertised;
- The process includes two steps: the first is required informal dispute settlement; second, if the first step does not resolve the dispute, the homeowner may elect to proceed to a formal dispute resolution process or litigation;
- Resolution is accomplished within 30 days;
- Judicial appeals of the results of the formal dispute resolution process are limited to factual, legal, or procedural errors made by the dispute settler that are material to the decision; and
- The ADR process is evaluated periodically.

HUD should contract with the Administrative Conference of the United States (ACUS) to develop rules, principles, and procedures to assist the States in designing the ADR process.

3.4. State Recovery Funds. State recovery funds should be established under the Act. The funds should cover claims of homeowners if manufacturers or retailers go out of business or if the manufacturer or retailer refuses to make repairs under the warranty after such responsibility has been determined. Claims will be paid only upon completion of the ADR or the judicial process. The State recovery funds will be financed by charges levied on manufacturers, retailers, and related industry parties based on actuarial factors. State recovery funds must fulfill Federal statutory requirements in the following areas:

- Registration of manufacturers and retailers as an enforcement mechanism
- Actuarial soundness
- Uniform claims process
- Private reinsurance obtained within 7 years
- Funds cover only the actual reasonable cost of repairs or the value of the home, whichever is less
- A time limit for implementation of remedies

If a State has not enacted legislation within 4 years and implemented a State recovery fund within 5 years, HUD shall contract with a private entity, preferably within the State, to administer all the functions of the State recovery fund program.

3.5. Manufacturer and Retailer Registration. All manufacturers and retailers shall be required to register with the SAA or contract agent for the recovery fund in each State. Registration shall be required to sell homes. Revocation of registration shall be mandatory if a manufacturer or retailer fails to correct a defect that has been determined to be its responsibility. Suspension of registration may be rescinded if the manufacturer or retailer repays the recovery fund.

3.6. Data Collection and Dissemination. HUD shall aggregate and distribute to the SAAs claims data collected by State recovery funds on types of defect, frequency, and location by manufacturer, plant, model, or system. HUD will use such data to assist in the monitoring of Production Inspection Primary Inspection Agency (IPIA) performance.

3.7. Preemption. States with existing recovery funds and bonding programs equal to or exceeding Federal program requirements would not be preempted. HUD shall be required to make such determinations in conformance with statutory guidelines.

The Permanent Chassis Requirement

Discussion

Congress mandated the Commission to "consider the deletion of the reference to the permanent chassis in the existing definition of a manufactured home and the effect of such a change in the affordability and durability of manufactured homes." In addition, it charged the Commission with examining "the implications for State regulatory jurisdiction over modular housing" if changes were made to the definition and construction standards applicable to manufactured homes. The current definition in the Manufactured Housing Construction and Safety Standards Act of 1974 specifies that a manufactured home is built on a permanent chassis. From 1980 to 1986, however, a number of manufacturers (estimated at

25) obtained approval to construct manufactured homes with a removable chassis option; this "alternative construction" approval was predicated on designs that provided at least equivalent performance to the existing standards.

In 1986, HUD made a decision, affirmed by the United States District Court for the District of Columbia in *A.R.R.* v. *Pierce*, that it did not have the authority to approve chassis removal when Congress required chassis permanence. In its letter to manufacturers stating the new policy of withholding approval of designs for chassis removal, HUD stated that the permanent chassis became the clear distinction between modular homes (constructed under State jurisdiction) and manufactured homes (constructed under Federal jurisdiction). The court case reiterated Congress's intention that manufactured homes be transportable.

An attempt was made in the so-called Hiler Amendments to the Affordable Housing Act of 1990 to delete the reference to a permanent chassis. In support of the proposal, the manufactured housing industry argued that the requirement was obsolete because very few homes were relocated after initial installation and it added an unnecessary financial burden to the homebuyer. The 1983 Annual Housing Data Survey indicated that, before 1980, more than 10 percent of both single and multisection homes were moved, whereas in 1983 only 2.6 percent were moved. No comparable data are available for the years following, but for 1992, a major commercial transportation firm contacted for such information indicated that fewer than 2 percent of multisection homes were again moved.

Opposition to the proposed Hiler Amendments came from various directions. A number of States opposed the removal of the permanent chassis requirement from the definition of a manufactured home because the chassis serves as the visible distinction between a manufactured home and a modular home and because of the risk that modular housing might then fall under Federal regulation. Several representatives of manufactured housing homeowners in principle opposed deletion of the "permanent chassis" requirement unless such owner-occupied homes were permanently sited on private property, thereby protecting homeowners in rental communities who might be forced to relocate their homes. Additionally, these homeowner representatives expressed concern that chassis removal might be permitted without reevaluation of construction standards to ensure durable and quality homes without a chassis. Some consumer groups argued against removal because that would allow modular manufacturers to opt for regulation under the HUD program, thereby avoiding stricter State requirements. These groups wanted to preserve State authority to provide stronger consumer protections in the modular market than those provided in the HUD program.

The modular industry unanimously opposed the removal of the permanent chassis to maintain a clear and visible distinction between its product and a manufactured home. The modular builders were adamant about their desire to be excluded from Federal regulation. Further, without the permanent chassis, they argued, a prospective buyer might not note the distinction and might choose to purchase the less expensive, yet differently constructed, manufactured home, resulting in a confused purchaser and a reduction in the modular market share. The Hiler Amendments passed the House but were not included in the Senate bill. In conference, the Hiler Amendments were stricken, and provisions to establish the Commission were substituted.

The Commission recognizes that the permanent chassis issue is technical, substantive, and political, in that support for and opposition to chassis removal in the Hiler Amendment focused on the durability and affordability of the home as well as the impact of a "market advantage" or "market disadvantage" on the industries affected or the elimination, at the manufacturer's option, of State regulatory authority. Discussion within the Commission concentrated primarily on the technical aspects of the issue.

Commission research indicated that, technically, a manufactured home can be designed, constructed, transported, and ultimately installed onsite with the chassis removed to be at least equivalent in durability and safety to a home with a permanent chassis. Cost data for a typical double-section home, obtained from several manufacturers, showed that the savings to the buyer of a manufactured home with a removable-chassis floor system ranged from approximately $1,100 (savings on the frame only) to $3,500 (for frame removal and avoidance of providing a deeper basement space to accommodate the rigid beams on the underside of the home).

The Commission also considered the public policy implications of preventing States from asserting regulatory jurisdiction over modular homes where the manufacturer opts for a HUD label rather than a State label. A consumer member of the Commission had strong reservations about such an approach, particularly in light of the problems some consumers have faced under the current HUD program. The balance of the Commission felt that a centralized, uniform regulatory system for all types of factory-built housing was a positive step in the promotion of affordable housing.

The Commission recognizes the need for alleviating both technical and political qualms about removal of the chassis. If the construction standards could specify requirements for the design of homes with a removable chassis, and Congress expressly excluded modular housing from Federal jurisdiction, the Commission reasoned, another form of affordable housing might become available to the homebuyer. One Commission member offered that, "if Congress's goal is to increase the affordable housing that's available in this country, certainly they would have to recognize [the removable chassis] as an issue, and I would think that just the directives they've given us show some change in thinking in where they want us to head."

A building code official member of the Commission, who is involved with the Industrialized Buildings Commission (a multi-State compact that coordinates State oversight of modular buildings), concluded that, "we want to allow these frames to come off when it can be done safely and properly, and we're going to validate that through the consensus committee [that will revise the HUD Code]. . . . I['ve] learned and understood really for the first time that this [system] does not intrude on modular. They can still do their thing and give you [the manufactured housing industry] an opportunity that you don't have now, [without] a good technical reason not to give you the opportunity if we spiff up this system to the degree we have."

The Commission considered two other options: (1) retain the current definition of "manufactured home" in the Act, and maintain the requirement for a permanent chassis; or (2) remove the reference to a "permanent chassis" in the Act, without any qualifications. The Commission rejected the first option because it denied substantial savings to potential homebuyers and innovation and greater design flexibility to the manufactured housing industry where the technology is currently available to produce homes without a permanent chassis. It rejected the second option because it gave no protection to consumers in rental communities or on temporary sites who might need to relocate their homes, and no guarantees that new standards would be developed for chassis removal.

Recommendation

The Commission recommends that:

4.1 The definition of a manufactured home under the Act should be modified to eliminate the requirement that homes permanently sited on land owned by the homeowner be "built on a permanent chassis," subject to specific standards developed by the consensus committee.

Installation Standards and Inspection

Discussion

Improper installation and installation-related problems have been acknowledged by State officials, industry spokespersons, and consumer representatives as the major source of homeowner complaints. The problem arises from the lack of a uniform installation standard and warranty protections for defects arising from improper installation, inadequate installation instructions, and training of installers as well as an absence of licensing and registration requirements for manufacturers, retailers, and installers. As a result, the consumer often does not know where to turn when installation problems arise because, in most cases, it is not clear who is ultimately liable for rectifying the problem.

In a letter to the Commission dated June 12, 1993, the Washington State SAA Program Manager noted that, "we find manufactured home installation problems present in 50 percent of the homes consumers call us about." Similarly, a North Carolina SAA administrator testified before the Commission that, "last year we investigated basically 500 and some consumer complaints. That obviously reflects a very small percentage of consumer complaints .... Out of those 500 and some consumer complaints, basically 60 to 70 percent of them are setup-related." These findings are consistent with estimates from SAAs in Arkansas, Florida, and Missouri, where installation-related problems were included in 60 to 75 percent of all homeowner complaints.

In attempting to address the problem, the Manufactured Housing Institute published the *Model Manufactured Home Installation Manual* for voluntary industry use as a guide for the preparation of specific and detailed instructions to accompany the shipment of homes. The National Conference of States on Building Codes and Standards, in a report entitled *Fulfilling the Public's Trust*, recommended establishment of a uniform national State-based system of installation to promote the adoption and enforcement of manufactured housing installation standards by State and local units of government. NCSBCS also recommended that the system promote the bonding and licensing of retailers and installers. Currently, 8 States with SAAs bond installers (Idaho, Iowa, Minnesota, New Mexico, North Carolina, Oregon, Tennessee, and Texas) and 15 bond retailers (Florida, Idaho, Iowa, Louisiana, Michigan, Minnesota, Nebraska, New Mexico, North Carolina, Oregon, South Carolina, Tennessee, Texas, Washington, and Wisconsin). These recommendations would probably help improve the current situation because they should provide a degree of uniformity to the installation process, along with some accountability for the problems that occur. It has also been noted that changes in financing for manufactured homes to include sufficient upfront funds to pay for installation would improve the situation. This concern has been voiced by spokespeople from several cold-weather States, where a foundation, piers, or footings would have to extend below the frostline to be effective over time. Such an installation has been estimated to cost between $4,000 and $5,000 per home.

Manufactured home installation practices and procedures currently vary from State to State, with manufacturers, retailers, and installers assuming different roles and responsibilities, depending upon their location. Thirty-six States are now approved as SAAs, each handling installation differently and with varying degrees of effectiveness. The remaining States without SAAs virtually leave the matter to the retailers. Among all States, approximately 35 currently license retailers while only 19 license installers. Even when a State has an installation standard, licensing requirements for installers are uneven. For example, installers in Kentucky must pay an application fee of $50, complete 15 hours of an approved course of

installer education, and pass the Certified Installer Examination from the Mobile Home Certification and Licensure Board. Alabama, on the other hand, charges a $100 flat fee for an installer's license: the fee is the only requirement. HUD exercises limited jurisdiction over installation. In a letter dated August 3, 1976, HUD stated that its installation authority was limited to the manufacture of the home and the provisions included on the home for installation purposes:

> [I]t is the Department's position that the National Mobile Home Construction and Safety Standards Act of 1974, 42 USC 5401, *et seq.*, (hereafter, the Act) authorizes the Department to establish mobile home construction and safety standards only for the mobile home as it is produced by the mobile home manufacturer. The Act does not authorize the Department to establish standards for installation or tiedown of mobile homes except to the extent that equipment for such installation or tiedown must be installed on the mobile home at the time of manufacture. The Department cannot require that mobile homes be tied down, and the Department cannot require that a particular method of tiedown or installation be used if a home is tied down. The Department can require only that provision be made for installation and tiedown on the mobile home as it is manufactured.

The letter further explained the basis for HUD's position on installation authority:

> The definitions of "mobile home construction" and "mobile home safety" are more conclusive on this point. The former means "all activities relating to the *assembly* and *manufacture* of a mobile home ... " [emphasis supplied]. That definition is limited to the mobile home as it is handled by the manufacturer. Similarly, mobile home safety means "the performance of a mobile home in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the *design* or *construction* of such mobile home ..." [emphasis supplied]. Again, it is the design or construction of the mobile home that this definition reaches. It does not reach beyond the design or construction of the mobile home itself to how that home is installed or tied down. It may be argued that the definition of "Federal mobile home construction and safety standard" indicates that installation and tiedown is to be covered because that definition refers to "a reasonable standard for the ... performance of a mobile home ...." However, that reference cannot refer to any aspect of performance other than that referred to in the two definitions previously discussed, since those definitions are combined in this one. The only reference to performance in either of those is in the definition of "mobile home safety," and there the performance is tied to the design or construction of the mobile home, not to the way in which it is installed.

The separation of the manufactured home from its installation is further reflected in the literal distinction of the home from its support and anchoring systems in the Manufactured Home Construction and Safety Standards section on windstorm protection: "The manufacturer of each manufactured home is required to make provision for the support and anchoring systems but is not required to provide the anchoring equipment or stabilizing devices ...."

Based on these interpretations, responsibility for installation has been left to the States. The enforcement regulations include several "suggested provisions" for SAA plans "to provide full consumer protection and assurances of manufactured home safety." These suggested provisions state that the SAAs are urged to monitor the installation of manufactured homes to ensure that the homes are properly installed and, where necessary, tied down. A number of States do neither.

The absence of specific installation requirements in the enforcement regulations also reflects HUD's determination that its authority does not cover installation. Lacking any direction from HUD, manufacturers provide installation guidelines in their consumer manuals that are not necessarily updated to include installation directions for every particular model, are often written by professional engineers in language that may be too technical for the installers, and may have poor print quality of the mechanical drawings and text. All of these problems can contribute to the improper installation of homes.

States that have installation programs in effect specify that one of three guideline types be followed: (1) the guidelines set forth by the SAA in its own regulations; (2) the manufacturer's installation guidelines; or (3) in the absence of the manufacturer's guidelines, directions developed by a registered professional engineer or ANSI Standard A225.1. Only 31 States have installation regulations in effect, all of them States that have SAAs. Sixteen States currently license installers, and all but Kansas are SAA States. The industry has made a concerted effort to support passage of State installation standards, and several more States are currently in the process of developing theirs.

Under the current Act, responsibility for repair of homes is limited to instances of a serious defect or imminent safety hazard that would involve an unreasonable risk of injury or death to the occupant of the home. In cases involving installation or transportation complaints where responsibility may be difficult to determine, the manufacturer will most likely make repairs. Concerning complaints in general, in cases where the complaint is valid and does not involve a noncompliance, defect, serious defect, or imminent safety hazard, it is agreed that the manufacturer or retailer who cares about the company's reputation will often make reparations. This assumption of responsibility is not required, however, and manufacturer warranties routinely exclude installation. This is the point where the system breaks down and the consumer has had the biggest problem, that of identifying who is responsible for fixing the installation. A few States do require retailers to warrant installations under their manufactured home warranty laws; unless retailers tell them about this State requirement, however, consumers will probably be unaware of this protection.

NCSBCS has recommended that HUD require States to implement effective installation laws and enforcement systems. The Oregon SAA Administrator testified before the Commission that, where there is no State involvement in installation, HUD needs the authority to establish preemptive installation standards and to approve third-party agencies to provide the inspection services that are necessary to carry out these responsibilities. In testimony, HUD representatives raised the issue of requiring the manufacturer alone or in combination with the retailer to be responsible for installations. The Commission has made some recommendations concerning manufacturer and retailer warranty requirements for installations, and these appear in the Warranty and Recovery Fund Protections for Homeowners section of the Commission recommendations.

It should be noted, however, that the current HUD administration has undertaken a review of its longstanding interpretation that HUD lacks authority to regulate installation and may issue an opinion reversing its initial interpretation of the law. In any event, Secretary Henry G. Cisneros has indicated to the Commission that the Department recognizes the need to establish clear legislative authority for Federal manufactured housing installation standards.

The Commission recommends that all new manufactured homes be installed according to minimum installation standards developed by the consensus committee and included in the HUD Code. States may enforce equivalent or more stringent State installation standards in accordance with specific local conditions and needs. Should a State not assume jurisdiction over installation through its State plan, the Secretary, or the Secretary's designee, shall have the authority to enforce the national installation requirements.

While a number of States currently inspect all set-ups of manufactured homes, the Commission was concerned about the cost of making 100 percent inspections a national requirement. The Commission recommends that installation inspections be mandatory by SAAs, with the minimum number of inspections determined by the Secretary. The Commission has based its cost estimates (See Cost Analysis of Recommendations) on a minimum of 10 percent of all installations being inspected yearly. If conducted on a random basis, the Commission believes such a system should be effective in detecting problems. Rather than relying on inspection of 100 percent of new home installations, the Commission expects the retailer installation warranty to provide the necessary incentive for correct installations.

Recommendations

The Commission recommends that:

5.1. The consensus committee shall develop and maintain minimum installation standards as part of the national manufactured home construction and safety standards.

5.2. Manufacturers shall provide an installation manual to purchasers and shall contain necessary installation instructions. Such manuals shall be easily understood and shall be periodically updated to reflect substantial changes in products, procedures, and requirements.

5.3. The Design Approval Primary Inspection Agency (DAPIA) shall continue to review and approve the manufacturer's installation instructions.

5.4. Any State may establish and enforce installation standards that equal or exceed the minimum national standards.

5.5. The States shall provide for a minimum level of installation inspections, as prescribed by HUD.

Design Reviews and Production Surveillance

Discussion

The Manufactured Home Procedural and Enforcement Regulations, issued by HUD pursuant to the Manufactured Housing Construction and Safety Standards Act of 1974, prescribe the use of a third-party inspection system to ensure compliance with the HUD Code in design and construction. HUD approves State and private primary inspection agencies (PIAs). Manufacturers contract with PIAs to review manufactured home designs as a design approval PIA (or DAPIA) and to conduct production surveillance in the factory as a production inspection PIA (or IPIA).

In the preproduction phase of this system, the manufacturer hires one or more DAPIAs to review and approve drawings, designs, and calculations for the proposed home. The DAPIA also reviews and approves the manufacturer's quality assurance manual, which HUD regulations require and which is followed by plant personnel during production to ensure that units conform to the HUD Code. If the DAPIA rejects as noncompliant any portion of the manufactured home designs or the quality assurance program as outlined in the manual, the manufacturer must resubmit corrected data before production can begin. The regulations prohibit DAPIAs from performing design or quality assurance manual approvals on such materials created or prepared by members of the same PIA organization, but do allow

the DAPIA and IPIA functions to be performed by the same agency. As of January 1, 1994, HUD listed eight private agencies and one State agency as approved DAPIAs.

For the construction phase, the manufacturer hires an IPIA at each manufacturing plant, which uses the designs and the quality assurance manual approved by the DAPIA, to inspect each home in at least one stage of production in the factory to verify compliance with the HUD Code. If the IPIA finds a nonconformance with the Federal standards, the manufacturer must correct the problem in any homes still in the plant. If the IPIA discovers that the manufacturer's quality assurance program is not functioning at an acceptable level, the IPIA may increase the frequency of its inspections and withhold certification labels (a label certifying inspection and conformance with the HUD requirements is required for all manufactured homes sold in the United States). As of January 1, 1994, HUD had approved seven private agencies and 14 State agencies as IPIAs. Eleven of those State IPIAs act as the exclusive IPIA within the State, based on HUD approval of a State plan indicating the capability to perform IPIA services for all plants operating in the State.

When establishing the National Commission on Manufactured Housing, Congress specifically requested a review of the current inspection system for manufactured housing, with recommendations for improvements, if necessary. Additionally, the Commission was directed to "consider the need for independent financing of inspection agencies to insure the autonomy of regulators." These issues are discussed in detail in the Enforcement section of the Commission recommendations.

An area of concern expressed in Commission testimony was the current regulation that requires each home to be inspected at least once, without specifying the area or system to be inspected. Witnesses proposed that, if only one inspection is to be made, the inspection focus on basic structural and systems components rather than on less critical components. Production surveillance, however, is not intended to improve workmanship quality. Rather, it is intended to ensure compliance with construction and safety standards.

Maintaining the current third-party inspection program is consistent with the factory-built construction industry in the United States. In addition, more and more State and local building code enforcement offices are using third-party inspection agencies. The current system also avoids the need for a large contingent of HUD inspectors to determine compliance with the Federal standards. The realities of government downsizing quickly eliminated the option of recommending that Federal inspectors undertake design review and production surveillance functions. The Commission consensus recognized that a comprehensive warranty package, plus the incremental changes suggested herein, will produce the desired improvements in quality.

In the current Act, HUD is limited in the remedies available for enforcement actions based on violations of the Act. The PIAs are not named in the Act and are therefore not liable for penalties thereunder. This area is a matter of concern and is covered in the Enforcement section of the Commission recommendations.

A related issue that arose in Commission hearings involved DAPIA personnel approving changes in designs after the manufacturer had already produced homes with those design changes. It was explained that because of the number of different home designs available in one plant and the rapid pace of production, some homes have been produced with features or components that differed from the actual plans. Upon discovery, the manufacturer then submitted the new designs for approval as conforming to the standards. Such retroactive approvals did not always come to the attention of HUD or its monitoring agent.

The Commission discussed and then rejected the option of eliminating retroactive approvals by DAPIAs. The Commission believes that its recommendation on notification of retroactive approvals will alert HUD but will not automatically trigger remedial actions that are costly to the manufacturer and of no significant benefit to the homeowner. In such cases, the Commission recognized that occasionally a mistake can be made where the home does not conform to the design but meets the standards.

The Commissioners then focused on the need for more effective quality control programs to eliminate the need for retroactive approvals, as much as is possible in such a fast-paced production line, and to provide procedures for ensuring quality homes. An industry member of the Commission pointed out, "quality control manuals have to do with making sure the home complies with the building code." Another Commissioner clarified this point:

> Our interest at this point is to give greater detail in the quality assurance manuals in terms of [identifying] the station at which this component will be correct and in compliance with the standard, and if it's not in compliance, it's got to be fixed before it moves from this station to the next. It's not "we'll catch it downstream."

Recommendations

The Commission recommends to Congress that the third-party inspection system remain in place, with the following improvements to the program:

6.1. IPIAs shall be required to develop plant-specific inspection plans that focus the inspection effort on fundamental structural and system issues.

6.2. When DAPIAs issue retroactive approvals, they shall be required to notify HUD's monitoring agent, flag the retroactive approval, and state the provision that was approved and the reason for the retroactive approval.

6.3. Requirements for quality assurance manuals shall be upgraded to be more in line with international standards for quality control, such as the International Standards Organization (ISO) 9000 series, to improve the international competitiveness of the manufactured housing industry.

Enforcement

Discussion

Major enforcement issues include: the scope of the enforcement program and availability of resources to implement it, the autonomy of the primary inspection agencies, monitoring implementation and procedures, the role of HUD, the role of States, and the adequacy of current remedies for resolving consumer complaints.

In 1993, 254,276 homes were produced under the National Manufactured Housing Construction and Safety Standards Act. These homes were manufactured by 93 different firms with 245 manufacturing plants, and sold by 4,600 retailers. The key administrative mechanism for ensuring compliance with the Federal standards is the requirement that a certification label (the "HUD label") be attached to every manufactured home sold in the United States. With the assistance of the monitoring agent, HUD issues labels, maintains records, and collects label fees for each unit constructed.

The manufacturer's certification of conformance is backed up by a system of design reviews and production surveillance carried out by State and private PIAs. HUD reviews and approves the qualifications of PIAs. In non-exclusive States (the 39 States that decline to exercise the option under the enforcement regulations of becoming the sole IPIA), manufacturers may select PIAs from the list of approved agencies to conduct the required reviews and surveillance. With the assistance of the monitoring agent, HUD monitors and evaluates the performance of the PIAs. There are 9 DAPIAs and 21 IPIAs. The monitoring agent conducts one audit at each manufacturing facility annually, and more frequently if problems arise. More than 300 plant audits are conducted each year. HUD engineers review roughly half of the audit reports and then provide direction to the monitoring agent's staff on any corrective actions or increased monitoring. Department and monitoring agent engineers also review at least 20 percent of all home designs approved by each DAPIA. Design documents are maintained in a central library by the monitoring agent. Some 180,000 design documents are received every year.

HUD reviews and approves plans of those States that wish to participate in the Federal enforcement program as SAAs. Currently, 36 States participate in the SAA program. The Department monitors and evaluates the performance of these agencies. In addition, with the assistance of the monitoring agent, HUD monitors compliance with the notification and correction provisions of the Act and Subpart I of the enforcement regulations, and handles consumer complaints in the 14 States that do not participate in the SAA program. The SAAs and HUD carry out compliance reviews at least twice a year. These reviews may also be supplemented by field inspections of homes and consumer contacts to verify satisfactory completions of repairs and accuracy of manufacturer records. According to HUD, roughly 7,000 consumer complaints are received annually.

Although the Federal manufactured housing program is funded almost entirely by label fees, staffing levels for the HUD Office of Manufactured Housing are set according to Congressional appropriations and Departmental allocations established by OMB and are not directly tied to fee collections. Staff levels in the Office of Manufactured Housing have declined since the inception of the program. Currently, five professional and technical staff in the Compliance Branch and four professional staff persons in the State and Consumer Liaison Branch handle enforcement functions. The Program Compliance Division of the Office of General Counsel currently has one staff year of attorney services devoted to the manufactured housing program. As noted in testimony before the Commission, the program could not operate at its current level without the logistical and technical support provided under contract by the monitoring agent.

The following testimony by the Chief of the Compliance Branch in the Office of Manufactured Housing at HUD illustrates the dilemma posed by further staff reductions:

> The work load of the Department in terms of its interest both on the code side and on the enforcement side and all of the discussions that we're having about future directions are really burdening everyone, and we're just basically surviving at this point and trying to do all of the challenges that we have.

Several witnesses before the Commission suggested that current levels of monitoring are excessive and recommended reducing the number of plant audits and reviews of DAPIA approved design packages from the current 20 percent to the 10 percent minimum provided by the enforcement regulations. The Department noted that there has been a reduction in plant audits in recent years, however, from an average of 2 or more per plant to a current level of 1.52 per plant per year. HUD staff also expressed concern that further reductions would impair the ability of the monitoring program to detect problems.

Departmental restrictions on travel have hampered the enforcement program. HUD staff have been unable to participate in plant audits and DAPIA performance reviews. Performance reviews of the SAAs have not been undertaken for a number of years. The travel restrictions also make investigation and documentation of possible violations more difficult. Both HUD and monitoring agent personnel have indicated a desire for a greater HUD presence during plant audits and headquarters visits to provide more guidance and obtain first-hand information concerning program operations and problems.

Another impediment to the enforcement program is the lack of regular updates to the HUD Code. For example, the DAPIAs have been required to use the 1984 version of the National Electrical Code, despite the issuance of several subsequent editions. These reference standards are no longer in print and may not be applicable to electrical components now used by manufacturers. In addition, the failure to update the standards has prevented SAAs and PIAs from being able to protect home purchasers when field experience has shown certain designs or materials, such as hardboard siding, to be inappropriate under particular circumstances.

Certain aspects of the HUD Code may also precipitate disputes among the monitoring agent, PIAs, and manufacturers. For example, the HUD Code permits individual manufacturers to develop test protocols rather than requiring use of consensus engineering standards, as do other performance codes. This procedure facilitates innovation but can result in disputes when the validity of a test is questioned. In other cases, the standard may not be clear or a professional difference of opinion may arise as to what the standard means and what constitutes a nonconformance. Testimony before the Commission indicates that HUD, rather than making a determination itself, often refers interpretation issues to groups such as the DAPIA Technical Advisory Group, which can cause considerable delay. In addition, some segments of the industry believe that HUD is too dependent on the monitoring agent for technical advice in making such interpretations.

State IPIA personnel and some members of the HUD staff expressed concerns to the Commission about the autonomy of the PIA design review and production surveillance process because the manufacturers directly hire and pay the PIAs. They felt that competition among PIAs in non-exclusive States might lead to less thorough surveillance to avoid being replaced. Data supplied by the monitoring agent showed a turnover rate below 3 percent between 1987 and 1993, and a decline in the number of PIA changes since 1987. In examining this issue, the Commission was not able to determine any significant difference in the detection of nonconformances between private and State agencies. The Department did suggest, however, that notification be required when a PIA change occurred to facilitate required plant recertifications and monitoring audits.

Controversy has also periodically erupted over the criteria used to evaluate the performance of the PIAs. Critics believe that the criteria amount to *de facto* standards that enable the monitoring agent to impose production-line changes on manufacturers without the benefit of review through the Federal rulemaking process. The Department and the monitoring agent vehemently deny any such intention or application. As the monitoring program has become increasingly privatized, however, the distinctions between policy development and implementation functions have become blurred. The frequent inability or unwillingness of the Department to make timely decisions places the monitoring agent in a difficult situation. Opinions can become policy in lieu of direct guidance. These pressures are exacerbated in a factory setting because production delays can be very costly to the manufacturer. The Commission is concerned about the level of contention within the monitoring process and the lack of a forum for participants in the enforcement system—HUD, PIAs, SAAs, and the monitoring agent—to appeal and review monitoring actions.

The Commission heard extensive testimony from SAA personnel on the difficulties they face in investigating potential code violations and resolving consumer complaints. Reviewing manufacturer complaint records for a specific type of defect suspected of being introduced in a class of homes is often difficult because the records are voluminous and are not readily searched. Budget restrictions at the State level have also reduced the amount of time and personnel that SAAs can devote to oversight. In addition, the SAAs have not been routinely linked to each other or to other agencies in the regulatory system to provide information to identify potential class problems. Unless the SAA is also an IPIA, the monitoring reports on factories in the State are not available to the SAA. About 50 percent of production is located in States where the SAA is not an IPIA.

SAAs felt they lacked adequate authority to stop defective homes from entering their jurisdictions and noted difficulties in resolving consumer complaints on homes produced by out-of-State manufacturers. Currently, the manufactured home enforcement regulations require an SAA to refer the complaint to the SAA of the State where the home was manufactured. This procedure puts greater burdens on SAAs in production States. Further, only HUD has the power to make a final determination as to whether a defect is serious enough to require correction under the Act. The limited circumstances provided under the Act for the repair of homes and the Department's cumbersome decisionmaking process have frustrated SAAs and homeowners who have sought assistance. In States without an SAA, consumer complaints can be filed with HUD if the homeowner knows to do so. HUD does not, however, maintain specific data on the number and types of consumer problems experienced in non-SAA States.

The Act and Subpart I of the enforcement regulations limit requirements for correction of defects to rare instances where they present an unreasonable risk of injury or death. Notification is the only remedy available for defects that affect the use of the home but are not life-threatening. One witness likened such notification to "rubbing salt in the wound." While most manufacturers will attempt to correct problems, particularly if a warranty is still in effect, they are not required to do so under Subpart I. Witnesses also felt that under the current regulations, the manufacturer and the SAA expend inordinate amounts of energy on making sure the paperwork is correct rather than addressing the homeowner's complaint.

The Commission's recommendations are intended to respond to the continuing need for an effective enforcement system and the likelihood of continued scarce staff resources at HUD. This goal would be achieved by assigning several enforcement tasks now performed by HUD personnel to the new consensus committee. These include issuance of interpretations of the standards and development and approval of testing procedures. In addition, transfer of the standards development function to the consensus committee would provide additional flexibility to reassign personnel as needed. Further, the Commission recommends that the use of label fees to conduct monitoring, oversight, and field investigations not be subject to Departmental restrictions on travel. This approach should reduce dependence on the monitoring agent to undertake routine oversight functions and allow the Department to provide direct guidance to the PIAs, SAAs, and the monitoring agent.

A proposal to permit termination of PIAs only for "cause" and to require the Department to review inspection agency fees was rejected by the Commission as unnecessary and administratively burdensome. The Commission believes that an effective monitoring program is the best safeguard against conflicts of interest in the design review and production surveillance system. Further, it is the Commission's intention that, at a minimum, current levels of monitoring be maintained. The Commission believes that these levels are adequate to

enable the Department to make appropriate judgments concerning the performance of the PIAs and ensure compliance with the construction and safety standards. To ensure that the Department is aware of PIA changes when they occur, the Commission recommends that manufacturers and PIAs be required to notify the Department promptly of any change and state the specific reasons for such changes. In addition, the Commission recommends that a definition of primary inspection agency be included in the Act and that their personnel be subject to penalties under Section 621 for failure to report a violation. The Commission recommendation would increase the potential fines that could be levied under the Act and would allow civil penalties under Section 611 to be handled administratively. Rather than requiring HUD to seek a judgment in Federal district court, this recommendation allows civil penalties under the Act to be handled in the same manner as other Departmental civil penalties. This procedure is recommended by the Administrative Conference of the United States.

To reduce the level of contention in the monitoring program, the Commission recommends that the Department establish committees on an informal basis to review the monitoring process and provide peer review of monitoring reports by State and private PIAs. Many issues in the monitoring program are highly technical and subject to professional differences of opinion. Further, there is a need to ensure fairness of procedures and policy. It is the Commission's intention to ensure balance in evaluations of performance by creating an opportunity for affected agencies to present their views to a panel of experienced PIA and SAA personnel who can offer additional perspectives and advice to the Department on enforcement matters. In making this recommendation, the Commission does not imply any inappropriate or unauthorized action on the part of the monitoring agent and recognizes its essential contributions to the Federal manufactured housing program.

The Commission considered but rejected a proposal that would have given the States primary responsibility for enforcement and made the SAAs responsible for monitoring the PIAs. States already have the option of participating in the Federal enforcement program. However, the problems that hinder HUD's enforcement efforts—limitations on budget and staff, outdated standards, lack of remedies to resolve consumer complaints—also affect State enforcement efforts. Further, the Federal Government can encourage States through various incentives to enforce Federal standards, but it cannot legally compel them to enact or administer a Federal program. HUD would still be required to retain monitoring and enforcement capability for the foreseeable future, because it is likely that a number of States would be unable or unwilling to become SAAs or undertake monitoring of the PIAs. The Commission also believes that it would be more difficult to maintain uniformity of enforcement policies and procedures in a State-based system. The current enforcement program avoids regulatory differences among States that could unnecessarily increase the cost of homes while allowing significant State participation.

To ensure the development of a strong partnership with the States, the Commission recommends that the Act be amended to delegate more authority to the 14 States that are not SAAs and the 15 conditionally approved SAAs; by so doing, those States will have some investigational and enforcement authority without State enabling legislation, which may be impossible to pass for political reasons. States would still be required to submit a plan to the Secretary in order to receive label fees. This plan would outline enforcement activities to be undertaken by the States, including the minimum level of installation inspections as prescribed by the Secretary, qualifications of personnel, and provision of State funds to administer and enforce the standards.

In addition, the Commission recommends retaining the current provisions under the enforcement regulations that permit States to participate in the enforcement program as SAAs, DAPIAs, IPIAs, and on joint monitoring teams. The Commission encourages HUD to make stronger efforts to implement its current policy to "involve State agencies in the enforcement of Federal manufactured home standards to the maximum extent possible," by recommending that the Act be changed to allow States to exercise the investigational and enforcement authority of the Secretary without enacting State legislation to that effect. While the Department retains primary responsibility for enforcement, the Commission's recommendations would enhance the ability of SAAs to investigate possible violations and resolve consumer complaints. The Commission recommends that an SAA in the State where a home is sited, as well as the SAA where the home was manufactured, have authority to investigate potential violations. SAAs would allocate jurisdiction by mutual agreement. The Commission is confident that SAAs will exercise due caution in avoiding duplicative enforcement actions given their strong record of interagency cooperation. Further, current legal doctrines offer manufacturers significant protections against multiple litigation of the same claims. In cases of multiple claims in different jurisdictions, the preemptive construction and safety standards provide an additional level of protection not available to most other industries. The Commission's recommendation would also enable States to make final determinations regarding serious defects under the Subpart I regulations. The definition of serious defect would extend to cases where a home was rendered unlivable, not merely those that could cause injury or death. Further, the Commission recommends that the Department make monitoring reports and other enforcement records available to the SAAs on a routine basis.

The Commission recommends elimination of the requirement for notification of defects in a class of homes under the Act and Subpart I of the enforcement regulations. Defects and workmanship problems would be covered under the mandatory 1- and 5-year warranties recommended by the Commission. Notification currently does not provide a significant benefit for consumers and the cost of recordkeeping under the Subpart I regulations is a major concern for manufacturers and retailers. Currently, every determination, no matter how minor the problem, must be retained. The Commission's recommendation would still require manufacturers to provide notification and correction of serious defects for the life of the home.

Recommendations

The Commission recommends the following with regard to enforcement:

7.1. HUD Authority. HUD shall retain primary responsibility and authority for the enforcement system. Current provisions under the Act and regulations for optional State participation in enforcement activities shall be strengthened, to enable States to assert some authority without establishing an SAA. The State of siting as well as the State of manufacture would have enforcement authority. The first SAA to open a case shall have primary jurisdiction. Primary jurisdiction may be transferred by mutual agreement.

7.2. PIA Termination. Manufacturers and PIAs shall be required to promptly notify HUD of a change in the third-party agency and state the specific reason(s) for the change.

7.3. Enforcement Remedies. A definition of primary inspection agencies should be included in the Act; penalties under Section 621 shall be decriminalized and extended to cover violations by the PIAs. Potential fines should be increased to $5,000 per

violation with a maximum of $1 million for any series of violations. Civil penalties under Section 611 should be raised from $1,000 to $5,000 per violation. Fines for willful violations by corporate officers should be increased from $1,000 to $100,000. Civil penalties under Section 611 should be handled administratively as with other Departmental civil penalties.

7.4. Subpart I Requirements. Requirements for notification of defects alone under Subpart I shall be eliminated. Where a serious defect or safety hazard is discovered, States shall be required to notify the manufacturer, other States, and HUD to facilitate investigation and any necessary enforcement actions including notification of the consumer and correction by the manufacturer. Serious defects shall be defined as "any nonconformance with national manufactured home construction and safety standards that results in a defect in the performance, construction, or material of a manufactured home that constitutes a safety hazard or that affects the home to the extent it becomes unsafe or otherwise unlivable."

7.5. Enforcement Information and Oversight. Monitoring reports, the results of complaint investigations, and other enforcement records are public records and should be accessible to SAAs and interested citizens. HUD should establish committees to review the monitoring process and provide peer review by State and private PIAs of monitoring reports. The committees should review the performance of participants in the enforcement system, specifically the SAAs, IPIAs, DAPIAs, and those individuals performing HUD's monitoring function, to ensure that they are performing their duties in a reasonable and effective manner. The committees should make nonbinding recommendations to the Secretary for corrective action. The committee shall not be subject to provisions of the Federal Advisory Committee Act.

7.6. Travel Funds. A dedicated fund should be established within HUD that prevents the commingling of manufactured housing label fees with other Departmental funds and permits the Office of Manufactured Housing to utilize the fund for program management with appropriate controls. The use of these fees by the Secretary for staffing, monitoring, oversight, field investigations, training, and related travel shall not be subject to general or specific limitations on appropriated funds.

Transportation and Storage Requirements

Discussion

The effect of transportation and storage on the structural integrity of a manufactured home is among the most elusive of questions arising from homeowner complaints. Perhaps the most perplexing problem involves latent defects that become apparent a few years after any home warranties, provided either by the manufacturer or retailer, have expired. Manufactured homes are built directly on a rigid chassis that provides the primary support for their transportation. Transportation may subject the home to damage even before it has been installed and occupied. Attributing a defect directly to a home's transportation or storage can be very difficult, however, especially if the problem is discovered only after passage of time.

Manufactured homes are usually transported by specialized "toting" companies hired by a manufacturer or retailer. When problems occur while the manufactured home is transported from the manufacturer to the retailer, the manufacturer is usually the owner of record

and therefore liable for any problems. When the home is being delivered from the retailer lot to its installation site, the retailer, as the owner of record, assumes responsibility. In some cases, a manufacturer or retailer will assume direct control and responsibility for transportation by owning or leasing and operating their equipment.

The homes themselves are moved by using running gear, which includes suspension springs, axles, brakes, and tires. The running gear is attached to the manufactured home's rigid chassis to move the structure and usually is later purchased from homebuyers to be recycled and reused.

Concerns with manufactured home transportation center on potential damage to the home during its moves from manufacturer to retailer, from retailer to home site, and from one home site to another. The actual prevalence of problems attributable to transportation is a matter of contention. Some sources think it is widespread, while others believe that any negative effect is minimal. Most complaints concern: tire blowouts, which can cause damage to the manufactured home's floor joists; uneven rides, which can result in the home being "racked," (i.e. the frame being thrown out of square); riding on unpaved road shoulders, which can undermine a wide (14-, 16-, and 18-foot) home's structure; running gear that is reused and may not be sufficiently capable of supporting some upgraded homes' heavier-than-normal roofs and energy efficient walls; and high driver speeds, which can cause damage to the home from excessive movement.

Determining whether transportation actually caused a home's problem is difficult. For instance, if a defect in the home becomes obvious after it has been delivered, is it because of faulty construction that was not detected earlier, an accident during its transportation, or a construction problem that was exacerbated during transportation to the point where it becomes noticeable? The Manufactured Home Construction and Safety Standards deal with this type of situation, and the particular section was identified as a problem in itself by a HUD official during the Commission's July 1993 meeting:

> Section 903(c) of the regulations ... allows manufacturers in lieu of engineering analysis or highway test to provide the Department with a statement that, to the manufacturer's knowledge, no latent damage has occurred as a result of transportation. The problem is that manufacturers in some cases are providing certification once and say that it is applicable to all models and designs. Therefore, in enforcement actions, we have no engineering analysis that we can enforce against. It makes enforcement cases dealing with transportation extremely difficult, and there have been suggestions in the past that the regulations require that all transportation standards be based on engineering calculations and testing.

The retailer assumes considerable responsibility in this area, inspecting homes upon arrival from the manufacturer and requiring the manufacturer to correct any problems prior to accepting the home. In addition to protecting its own reputation, the retailer prevents the unlawful sale of a home that contains a noticeable defect. To provide the best customer service, some retailers assume total control over and responsibility for the entire sales process, from transporting the manufactured home from the manufacturer through installation.

Subpart J of the Federal construction and safety standards covers the general requirement that the design of the structure of the manufactured home withstand fully the adverse effects of transportation shock and vibration. Specific requirements are listed for designing the transportation system, including the drawbar, coupling mechanism, chassis, running gear assembly, spring assemblies, axles, hubs and bearings, tires, wheels and rims, brake assemblies, and lights and associated wiring.

A State has the option of assuming several administrative roles in the Federal manufactured home program concerning transportation and storage requirements. As overseers of the intrastate highway systems, States assume responsibility for many transportation issues, including: when manufactured homes can be moved within their borders, the routes that can be used, and driver speed. States usually have specific guidelines for the transportation of 14-, 16-, and 18-foot-wide homes. State control over these and other related issues can complicate expeditious transportation of manufactured housing when adjacent States' requirements differ significantly. Compliance can cause delay and added expense that will most likely be passed on to the purchaser. It should be noted that States assume the authority mentioned here, whether or not they are approved as an SAA.

Several "suggested" provisions for SAA plans are listed in the enforcement regulations, among them the monitoring of retailers' lots within the State for transit damage, seal tampering, and retailer performance generally; approval of all alterations made to certified manufactured homes by retailers in the State to verify that the alterations did not result in the failure of the manufactured home to remain in compliance with the standards; and the regulation of manufactured home transportation over the road, to the extent that such regulation is not preempted by Federal authority. Indeed, a major criticism of the system is HUD's decision not to require these provisions. The Commission recommends that those items previously suggested for regulation by the States be, in fact, mandatory.

Recommendations

The Commission recommends that:

8.1. The manufacturer shall prepare transportation and storage requirements when necessary to ensure that the unit will remain in compliance with the standards under ordinary transportation and storage practices.

8.2. The consensus committee shall establish requirements for the review of transportation loads and testing procedures to ensure that manufactured homes reach retailer and installation sites in conformance with the national manufactured home construction and safety standards.

8.3. Random inspections of retailer lots, as prescribed by the Secretary, shall be a mandatory activity for SAAs. In States without an SAA, HUD or its designee shall carry out such inspections.

Training

Discussion

The Manufactured Home Procedural and Enforcement Regulations currently require DAPIA and IPIA personnel to meet qualifications established by the American Society for Testing and Materials (ASTM) Standard E541. Testimony before the Commission indicates that these standards are outdated and do not adequately define the minimum requirements for PIA personnel. In addition, the regulations only require SAA personnel to be "qualified." While HUD, with the assistance of the monitoring agent, has sponsored periodic training seminars for PIA and SAA personnel, the Commission recommends that the educational requirements for these regulatory personnel be updated. In addition, the Department should establish voluntary educational guidelines for manufacturer quality control personnel. The

Department should work with the proposed enforcement peer review committee in developing these requirements and guidelines. The Commission believes that the new warranty requirements will provide an additional incentive for the training of manufacturer quality control personnel.

To avoid placing additional burdens on HUD, the Commission has not recommended a certification program for PIA and SAA personnel. It is the intent of the Commission, however, that training sponsored by the Department should include examinations to establish successful completion of the required training program. Funds from the label fee may be used to defray the costs of the training program. Such training should be made available to manufacturer and retailer personnel at cost.

Recommendations

The Commission recommends with regard to training:

9.1. The Secretary shall establish voluntary educational requirements for manufacturer quality control personnel and retailer installation inspection personnel, and mandatory educational requirements for PIA technical personnel, SAA personnel, and any Federal or contract staff having technical functions.

9.2. Educational requirements will include successful completion of specified training and a minimum competence examination.

9.3. The Secretary will establish continuing education requirements.

9.4. The Secretary or his designee will develop and implement training programs for the monitoring agent, PIA, and SAA personnel; such programs will be made available to manufacturers and retailer personnel at cost.

9.5. Costs of the training of SAA, PIA, and Federal personnel will be met through a specifically dedicated portion of the label fees.

Removing Regulatory Barriers and Discriminatory Practices at the State and Local Levels

Discussion

The availability of manufactured housing has been limited by regulatory barriers and discriminatory practices, largely fueled by an outdated perception of the housing itself and the parks in which many homes are placed. Visions of run-down and unkempt "trailer parks" and dilapidated "mobile homes" persist, despite design and quality advances that have taken place over the past 20 years. However outdated these attitudes are, perceptions and fears persist.

The NIMBY syndrome, described in *Not In My Back Yard: Removing Barriers to Affordable Housing*, the report by the Advisory Commission on Regulatory Barriers to Affordable Housing, has clearly been evident in discrimination against manufactured housing. Defined in the report as "opposition by residents and public officials alike to additional or different kinds of housing units in their neighborhoods and communities," the NIMBY syndrome often is widespread, deeply ingrained in people, intentionally exclusionary, and growth-

inhibiting. This syndrome has led to political actions that promote discrimination, particularly at the local level.

It has long been an American tradition that land use be determined at the local level because that is where the effects of decisions are most directly felt. While local control has produced many benefits in terms of quality of life, other results are less desirable: exclusionary zoning ordinances, inflexible siting and infrastructure requirements, and arbitrary restrictions against certain types of housing, particularly manufactured housing. These results have combined to make housing less affordable for many households of all income levels.

States and localities can work cooperatively to promote manufactured housing as a unique affordable housing resource by enacting similar legislation and programs. The Advisory Commission on Regulatory Barriers to Affordable Housing made several recommendations that can be applied here. Restricting the use of manufactured housing solely because it is manufactured housing prevents the public from enjoying its full potential. States and localities must recognize that, when appropriate conditions are met, particularly concerning standards and installation, manufactured housing can be as durable as site-built or modular housing. The affordability of manufactured housing for the consumer dictates that States and localities revise their zoning laws to include the units where other single-family housing types are permitted. States must decree that any size, style, or lot use requirements apply to all housing regardless of type, and that any local restrictions that appear to target manufactured housing are unlawful.

States and localities must treat manufactured home communities equitably to avoid the possibility of taxation disparity or the need for unreasonable cost outlays by park owners to provide basic services and infrastructure. Costs are usually passed on to the residents. It is also necessary to prohibit such practices so that manufactured home parks can be situated in more desirable residential locations than often occurs.

Also in support of manufactured housing, flexible building site requirements and appropriate variances should be promoted to enable affordable community development and to encourage the practice of good design by developers (for example, the inclusion of landscaping, communities that include shorter and curvilinear streets, variations of home setbacks and exterior materials, etc.). Combining these reforms with a renewed awareness of the potential of manufactured housing as an affordable housing resource should help answer the question of why manufactured housing has not been allowed to grow, develop, and improve in the public minds' eye, as have other housing types over time. Overcoming the "trailer park" image will be a challenge in some communities, but enabling factors must be put in place to allow manufactured housing to accomplish what brownstones and bungalows have done before.

Recommendations

The Commission recommends that:

10.1. The Act should be amended to provide that a State or local government may not exclude any manufactured home, simply by reason of its HUD label, from installation on land when other residential uses are permitted. Similar requirements should govern manufactured housing rental communities when densities do not exceed zoning designations.

10.2. The Act should prohibit the use of State or local government ordinances to deny equitable treatment with respect to tax assessments and the provision of municipal services (such as water, sewerage, street lighting, and road maintenance) to manufactured housing rental communities.

Financing of Manufactured Home Purchases

Discussion

Financing of manufactured homes generally resembles automobile financing rather than conventional home mortgage financing. As a result, manufactured home loans typically have shorter terms and higher interest rates than conventional mortgage loans, for two primary reasons:

- A substantial number of homes (37 percent in 1990) are located in rental parks, and are not eligible for real estate financing; and
- Most new homes are sold by retailers, who typically do not provide access to mortgage financing, even for those who place their homes on private property. Retailers prefer to finance manufactured homes with conventional personal property loans, which can be approved much more quickly because they can be disbursed before the unit is moved and installed in its new location, thereby eliminating the need for temporary financing to cover the period from purchase to time of installation. Also, underwriting requirements for personal property loans are different, and such loans are typically processed in 1 or 2 days, compared with 30 days or more for processing and approving mortgage loans.

Under the current financing system, homeowners lose some benefits of affordability because their monthly loan payments are higher than they would be for conventional mortgage financing. For example, the monthly payment for principal and interest on a 30-year, 7 percent mortgage loan of $30,000 is $200, whereas the payment for a 12-year, 11 percent personal property loan of the same amount is $376.

Only about 10 percent of manufactured homes sold today benefit from conventional mortgage financing. The trend, however, is in the direction of more homes being financed with mortgage loans rather than personal property loans. This trend reflects the increasing tendency to place homes on the owner's private property. In 1981, 33 percent of existing homes were located on the owner's private property, and by 1990 that percentage had risen to 39 percent. Furthermore, in 1981, only 28 percent of the new homes sold were placed on the owner's private property, while by 1990, 41 percent of the new homes were so placed. Some manufacturers are becoming subdivision developers and selling their homes in the same way as conventional site-built homes are sold.

The Commission believes that the trend toward real estate mortgage financing is economically healthy and should be accelerated. The Commission also recognizes that a significant number of homes will be located in rental parks for the foreseeable future, and that improved financing for these homes is desirable. Testimony before the Commission documented the need for financing for resident purchases of rental parks.

Over the past several years, HUD and the U.S. Department of Veterans Affairs (VA) manufactured housing programs have tended to be relatively little used, in part because, with falling interest rates, private lenders were prepared to make conventional personal prop-

erty loans without the guaranty of Federal Government insurance. The moratorium by the Government National Mortgage Association (Ginnie Mae) on the approval of new Title I lenders, which has been in effect for several years and was imposed due to losses sustained by Ginnie Mae under Title I, has resulted in a further reduction of activity under HUD's manufactured housing program. A substantial rise in interest rates could, however, result in greater demand for these programs.

The Commission's financing recommendations reflect a threefold strategy. First, the Commission wants HUD to make all of its housing programs available for financing manufactured housing. Second, real estate mortgage financing should be used to the maximum extent possible for manufactured housing. Third, where real estate mortgage financing is not available, personal property loans should be available with low downpayments, and with interest rates and loan terms much closer to those available for real estate mortgages.

The Commission encourages HUD to use manufactured housing in all of its housing programs, including the subsidized programs. Such programs include Public Housing, the existing Section 8 rental assistance program, and the Community Development Block Grant and HOME programs, to the extent that they are used to finance housing and the locations are appropriate for manufactured homes.

The Commission recommends that HUD revise and extend the Title II programs, which provide mortgage insurance for single- and multifamily housing. Simplification of the Section 203(b) single-family program, and expansion of its use to cover homes in resident-owned manufactured housing communities is needed. Revision of the Section 207(m) manufactured housing park program to make it available for resident purchase or development of manufactured housing communities with modest downpayment requirements would also help.

Finally, the Commission recommends that HUD and VA simplify and reduce the downpayment requirements on their respective manufactured housing programs. They need to review installation guidelines, to ensure that sufficient amounts are included in the loan to cover adequate home installation costs. Ginnie Mae and HUD need to work together to revise the Title I program, which provides protection to lenders which make personal property loans, to resolve the conditions that resulted in substantial losses to Ginnie Mae, which led to the moratorium on approval of new Title I lenders. Initial processing delays as well as claims payment delays have discouraged lenders from using the Title I program. Program changes should make the program more user-friendly without posing additional risk to the Federal Government. The Commission also recommends that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) provide secondary market financing for conventional personal property manufactured home loans. These actions are necessary to ensure that a dependable source of credit for homes not eligible for mortgage financing is available to assist purchasers of affordable housing.

Recommendations

The Commission recommends that:

11.1. HUD exercise existing authority to use manufactured homes in all mortgage insurance programs, the Section 8 rental assistance program, and the Community Development Block Grant and HOME programs; Congress continue to authorize the use of HUD Code homes in its Public Housing and Section 8 homeownership initiatives.

11.2 **Direct, upfront subsidies linked to further energy-related upgrades be made available. These subsidies might be modeled on those currently in operation for manufactured housing in the Northwest.**

11.3. **Where homes are labeled as complying with the revised construction standard, the Government National Mortgage Association (Ginnie Mae) shall be authorized to guaranty pools of manufactured home 30-year mortgages; Ginnie Mae guarantees timely payment of principal and interest to holders of securities; and the guaranty is backed by the full faith and credit of the United States.**

11.4. **Where standard 30-year Ginnie Mae-backed mortgages do not bring interest rates for homes complying with the revised standards down to levels comparable to those for site-built housing because they are located in manufactured housing communities, a Ginnie Mae special assistance mortgage purchase program (Ginnie Mae tandem plan) shall be authorized and funded.**

11.5. **Congress amend the Section 207(m) program to assist resident purchase of manufactured housing rental communities.**

11.6. **HUD simplify the Section 203(b) program, so that bank participation will be increased.**

11.7. **HUD revise the Title I program to simplify its administration so that bank participation will be increased.**

11.8. **HUD direct Ginnie Mae to end the moratorium on Title I lenders.**

11.9. **Congress direct HUD and the U.S. Department of Veterans Affairs to make their respective manufactured home programs viable, including lower downpayment requirements to encourage greater homeownership by low- and moderate-income families.**

11.10. **Congress direct the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) to establish secondary market programs for conventional personal property manufactured home loans.**

Cost Analysis of the Recommendations

Discussion

Since its inception, the Federal manufactured housing program has been largely self-supported, using revenues from fees assessed by HUD on each certification label attached to each manufactured unit. The label fee, paid by manufacturers, was $19 per floor until the late 1980s, when it was raised to the current $24 per floor.

At the State level, the SAAs that enforce the Federal standards and other program requirements receive $9 for each floor sited in their State and $2.50 for each produced in their State, all of which come from the HUD label fee. The majority of SAA funding, however, comes from State revenues, especially from licensing and permit fees.

Because the purchaser of a manufactured home will ultimately bear the cost of any increases in HUD-assessed label fees paid by the manufacturer, the Commission is adamant

about keeping the costs of its recommendations reasonable. Appropriate funding mechanisms to support necessary programs must be developed that maximize the benefits to the consumers and to industry alike.

Components of the Commission's recommendations for which funding will likely be necessary, and conservative estimates of the costs, are as follows:

1. **Consensus standards-development process.** The Commission anticipates that HUD will contract with the National Institute of Building Sciences to administer the consensus committee. The committee members will be charged with reaching consensus on approval of code changes, and as such will be doing most of the work. The Commission views this body as a volunteer committee, although it recommends a nominal stipend of $100/day for those committee members who, by reason of employment or retirement, are not compensated for their time during committee meetings. The costs associated with this consensus committee work include several staff positions to cover administrative, facilitation, and research functions; travel and per diem for committee members (and subcommittee members as necessary); funds for testing and evaluating materials and assemblies; and general and administrative costs levied by the administering organization. The Commission estimates that the annual cost of administering the consensus committee may be up to $800,000. (See Consensus Committee Estimated Annual Budget.)

2. **HUD staff.** The Commission's recommendations have removed a key function of HUD in the manufactured housing program—that of revising the construction and safety standards. At the same time, HUD oversight will be required for several new activities, specifically the warranty and State recovery fund programs. Additionally, the Commission recommends that HUD staff be able to participate in various essential activities in the field, so funding for travel must be available. The Commission estimates that the additional workload for HUD can be accommodated by three additional technical staff positions and one legal staff position with fully burdened annual salaries of $75,000, or $300,000 total. Fifty 3-day trips per year—for monitoring manufacturing plants and SAA offices, attending training seminars, or investigating complaints or enforcement actions—would cost approximately $1,000 each for airfare, lodging, and per diem. The total cost for additional HUD staffing and travel is $350,000.

3. **State recovery funds.** To date, seven States (Arkansas, Arizona, California, Florida, Texas, Virginia, and West Virginia) have established recovery funds for manufactured housing claims, with the minimum fund balances ranging from $200,000 to $1,000,000, except for Texas which has a balance of $5,800,000 (and with a total fund balance of all the recovery funds of roughly $8,000,000). These seven States account for approximately 20 percent of the new homes sited in 1992. Each State has different regulations establishing who pays into the fund to build the balance; the variations and range of payment are as follows:

   - Manufacturers—$40-$4,000 annually; average = $2,385
   - Retailers per lot—$40-$1,000 annually; average = $558
   - Retailers per home sold—$30
   - Salespersons—$25-$50/home; average = $35
   - Installers—$500 annually
   - Title transaction—$1-$10 per home; average = $7

Consensus Committee Estimated Annual Budget

Personnel		
Project Manager/Facilitator (1/2 time)	$45,000	
Technical Consumer Analyst	60,000	
2 Support Staff	60,000	
Total salaries	$165,000	
Fringe benefits (25%)	41,250	
Total personnel		$206,250
Travel		
15 committee members, 2 trips, 2 days each		
Plane fare @ $700 each	21,000	
Lodging and per diem @ $148/day	8,880	
33 subcommittee members,[1] 2 trips, 2 days each		
Plane fare @ $700	46,200	
Lodging and per diem @ $148/day	19,536	
Total travel		95,616
Testing and Evaluation		200,000
Office		
Printing	6,000	
Miscellaneous	4,000	
(Telephone and postage included in G&A)		
Total office		10,000
Subtotal		511,866
G&A (General and Administrative (41%)	209,865	
Subtotal		721,731
Fee (6%)	43,304	
TOTAL		**$765,035**

1. **Subcommittees might include: Interpretations, Construction, Thermal/Ventilation, Electrical/ Mechanical, Fire Safety, Installation**

The fund balance necessary to maintain actuarial soundness and the administrative costs to run the recovery programs are based on the number of homes sited within a State. The costs for operating the recovery fund are broken out from the general SAA budget in only one State (Texas), in which 5 percent of the homes in 1992 were sited and which estimates that administrative costs will be $350,000 for fiscal year 1994. The remaining States with recovery funds cover their administrative costs in their general SAA budgets, which as stated above are funded by label fees and State revenues. In the States that choose not to establish recovery funds pursuant to requirements in the amended Act, HUD will be required to contract with a private entity to administer the recovery fund. In such a case, HUD might provide funding out of label fees to cover administrative costs, which could be as high as $350,000 per State, depending on the level of manufactured home sales and sitings in each State; alternately, the costs of an administering organization could be covered by the recovery fund fees levied by that entity. The Commission estimates that recovery funds in the 43 States currently without such programs may require a total fund balance of $10,000,000, with annual administrative costs of an estimated $5,000,000. (See Estimated Costs of State Recovery Funds.)

4. **Installation inspections.** A number of States currently inspect some or all of the setups of manufactured homes, either through the SAA office or the local building code enforcement office, although the Federal manufactured housing program does not currently require it. Generally, the costs of inspections conducted by local code officials are covered by permit fees paid by the homeowner, while inspections by SAA personnel are covered in the SAA budget. With the Commission's recommendation that at least a minimum level of all new home installations be mandated for inspection by State personnel, additional funds will be required. Based on an assumption that 10 percent of the installations will be inspected, and based on the travel distance from an SAA or code enforcement office, such an inspection may take 2 to 6 hours and cost $40 to $120 (or an average of $80) per home, at a fully burdened salary of $20/hour.

5. **Increased training.** The Commission recommends that training of SAA, PIA, and certain Federal or contract personnel be mandated, and that the same training be available on a volunteer basis to manufacturer quality assurance personnel. Based on workshop and seminar activities currently and previously undertaken, doubling that level of effort would satisfy the proposed increased training needs, which might include updated SAA workshops, recovery fund administration training, HUD Code and design approval seminars, and quality assurance training. The annual cost of such additional training is estimated at $350,000.

6. **Retailer lot inspections.** The Commission recommends that the SAAs conduct annual random inspections of the estimated 4,600 retailer lots in the United States. Based on an assumption that 50 percent of the lots will be inspected yearly, and based on the travel distance from the SAA office, such an inspection may take 2 to 6 hours and cost $40 to $120 (or an average of $80) per lot, at a fully burdened salary of $20/hour.

Estimated Costs of State Recovery Funds

Recovery Fund	Percent of New Homes (1992)	Minimum Fund Balance		Administrative Costs/Annual
New England	1.36	$187,000		$95,200
Mid Atlantic	1.1	151,250		77,000
Plains	1.6	220,000		112,000
Mountain	1.62	222,750		113,400
Alabama	4.4	605,000		308,000
Arkansas	1.8	250,000	(Existing)	unknown
Arizona	1.7	200,000	(Existing)	unknown
California	2.4	1,000,000	(Existing)	unknown
Florida	9.7	750,000	(Existing)	unknown
Georgia	5.3	728,750		371,000
Iowa	1.0	137,500		70,000
Idaho	0.8	110,000		56,000
Illinois	1.4	192,500		98,000
Indiana	3.1	426,250		217,000
Kentucky	3.9	536,250		273,000
Louisiana	1.7	233,750		119,000
Michigan	4.4	605,000		308,000
Minnesota	0.9	123,750		63,000
Missouri	2.2	302,500		154,000
Mississippi	2.5	343,750		175,000
North Carolina	9.7	1,333,750		679,000
New Mexico	1.6	220,000		112,000
Nevada	0.8	110,000		56,000
New York	2.6	357,500		182,000
Ohio	3.0	412,500		210,000
Oklahoma	0.8	110,000		56,000
Oregon	2.5	343,750		175,00
Pennsylvania	3.0	412,500		210,00
South Carolina	5.1	701,250		357,000
Tennessee	4.5	618,750		315,000
Texas	5.0	5,800,000	(Existing)	[350,000]
Virginia	2.5	250,000	(Existing)	unknown
Washington	2.9	398,750		203,000
Wisconsin	1.5	206,250		105,000
West Virginia	1.5	300,000	(Existing)	Unknown
Total	99.9	$10,351,000 $8,550,000	(New) (Existing)	$5,269,600

Notes:

The following assumptions were used to estimate the costs presented above of individual State (or regional) recovery funds:

- Costs are for contracts let by HUD, where States opt not to establish a recovery fund.
- The minimum balance required for an actuarially sound recovery fund is based on the number of new manufactured homes sited within the State (or region).
- Administrative costs of a recovery fund are based on the number of new homes sited within a State (or region).

Estimated Costs of State Recovery Funds-Continued

- Administrative costs of a recovery fund are based on figures for the State of Texas (the only State that breaks down such costs): $350,000 per annum for roughly 5 % of the new homes sited (1992 MHI figures), or $70,000 for each 1% of new homes.
- The recovery fund minimum balances are based on the fund levels of six existing State recovery funds, and exclude the seventh recovery fund that distorts the trend with a $5.8 million fund level: $2,750,000 for approximately 20% of new homes (1992 MHI figures), or $137,500 for each 1% of new homes.
- HUD may let contracts for regional recovery funds for States with few new homes sited. The following regions are anticipated:

New England:	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont
Mid Atlantic:	Delaware, Maryland, and New Jersey
Plains States:	Kansas, Nebraska, North Dakota, and South Dakota
Mountain States:	Alaska, Colorado, Montana, Utah, and Wyoming

Source: National Commission on Manufactured Housing Staff.

Conclusion

Under conservative assumptions, the costs of mandatory requirements recommended by the Commission are as follows:

Consensus committee	$800,000
HUD Staff	350,000
Recovery funds[1]	
Administrative	5,000,000
Fund balance	10,000,000
Installation inspections	2,500,000
Increased training	350,000
Retailer lot inspections	184,000
Cost of additional programs	$19,184,000
Additional cost per home (@ 300,000 homes produced annually)	$64
Additional cost per floor (@ 450,000 floors produced annually)	$43

The above estimates of increased costs for the implementation of the Commission's recommendations are solely informational. In addition these figures are exclusive of Ginnie Mae or other financing reforms recommended. The funding mechanisms established to cover the cost of new tasks or functions under the national manufactured housing program may include an increase in the HUD label fee, new licensing or registration fees, or other assessments. If the current HUD label fee of $24 per floor is increased by the amount estimated above, the total floor fee would be $67. The Commission believes that such an increase is reasonable for these additional regulatory recommendations, since the total fees assessed by the manufactured housing trade associations—the Manufactured Housing Institute nationally and manufactured housing associations at the State level—range from $36 to $116 per home.

1. These figures assume that label fees will cover costs in the 43 States currently without State recovery funds.

CHAPTER 3.
Recommendations for Implementation

Legislative Actions

Congress directed the Commission to develop an action plan containing specific recommendations for legislative and regulatory revisions to current law to modernize the National Manufactured Housing Construction and Safety Standards Act of 1974. Congress also directed the Commission to take into account Section 766 of the National Affordable Housing Act of 1990, as passed by the House of Representatives (H.R. 1180).

The goal of the Commission is to recommend legislative language sufficiently early to be included in the initial 1994 housing reauthorization bill as it is marked up in the House Committee on Banking, Finance and Urban Affairs and the Senate Committee on Banking Housing and Urban Affairs.[1]

The housing authorization bill currently under consideration by Congress presents another opportunity to incorporate needed changes in the Act. It is crucial that Congress enact the Commission's recommendations now because the opportunity to legislate will not come again until 1996 (the next housing reauthorization cycle) at the earliest. Even with enactment of these recommendations in 1994, many of the benefits of the changes will not be realized until well after 1997 because of the time needed to establish the standards development consensus committee and then to revise the standards. In addition, States must begin the process of establishing an alternate dispute resolution (ADR) and recovery fund system and of establishing or upgrading their installation inspection programs. The Commission also believes that Congress will greatly benefit by initiating legislation during the Commission's tenure, so that the Commission can work with Congress to translate the consensus recommendations into action.

Following its March 1, 1994, Interim Report to Congress, the Commission submitted draft legislation to Congress on May 31, 1994. Congressional Committee action on the housing reauthorization bill is under way as this final report is being written.

Once the Commission recommendations have been passed by Congress, HUD, the States, the manufactured housing industry, and the consensus committee will have much work to do to comply with the new statute. The following outlines the responsibilities of the affected parties.

HUD Responsibility

It will be crucial for HUD to move expeditiously to promulgate regulations required by the statute and to enhance its monitoring systems to ensure that the new recommendations are administered properly.

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1. Congress intended the Commission to complete its work in 1991 so that the recommended legislative revisions could become the basis for legislation in the 1992 housing bill. However, that opportunity was lost due to a technical problem in the funding of the Commission prior to 1992.

HUD's first task will be to contract with the National Institute of Building Sciences to establish the proposed consensus committee. After the consensus committee submits changes to the construction standards, HUD will be required within 12 months to adopt, modify, or reject the proposed changes. HUD will also be responsible for approving, within 60 days of receipt of the proposed interpretation, interpretations of the standards developed by the consensus committee. HUD must also promulgate regulations on warranty performance guidelines developed by the consensus committee.

HUD will need to monitor State legislative actions to establish State recovery funds and uniform claims processes. If States fail to enact legislation to establish the recovery fund systems, within 4 years, HUD must contract with an entity, within the State if practicable, to fulfill that function. It is recommended that HUD contract with the Administrative Conference of the United States (ACUS) to develop model rules and procedures for the ADR process that can be referenced by States in establishing their systems.

HUD will be required to expand and implement training programs for SAA and PIA personnel and Federal or contract staff performing technical functions. In addition, HUD must establish a peer review committee of State and private PIAs to make nonbinding recommendations to the Secretary on problems in the enforcement system. HUD is responsible for oversight in the following areas:

- Oversee States to ensure that SAAs inspect at least 10 percent of the installations of manufactured homes in each State;
- Monitor States to ensure that SAAs conduct targeted inspections of retailer lots or require the HUD monitoring agent to complete these inspections in States without SAAs;
- Upgrade its SAA computer database system to facilitate investigations and enforcement actions after discovery of serious defects or safety hazards by the States;
- Modify enforcement regulations to upgrade requirements for quality assurance manuals and to accommodate recommended changes in the Subpart I notification and correction procedures;
- Make monitoring reports, the results of complaint investigations, and other enforcement records available to SAAs and the interested public to a much greater degree than it has done previously. Its current policies must be reviewed and revised to accommodate proposed changes in the Act; and
- Develop and provide to prospective purchasers and homeowners brochures on consumer rights under the Act. These should be developed in cooperation with SAAs, consumer and homeowner organizations, and industry.

Consensus Committee Responsibility

The main task of the consensus committee will be to consider, on a biennial basis, revisions to the construction standards for manufactured housing, including minimum installation standards. The consensus committee will also be charged with establishing specific standards for homes sited without a permanent chassis. In addition, the committee must develop warranty performance guidelines to assist the SAAs and the ADR process to resolve warranty claims. The Commission has also recommended that the committee review, and update if necessary, the current transportation loading and testing requirements for manufactured homes.

The Commission has specifically recommended that the consensus committee establish uniform test or evaluation methodologies for the standards to determine code compliance for materials or assemblies used in manufactured housing construction. In addition, the committee will issue interpretations of standards on an as-needed basis. These interpretations will be binding if HUD approves them. The Commission recommends that HUD publish the interpretations in the *Federal Register* to ensure wide dissemination.

State Government Responsibility

The Commission recommendations create a State-Federal partnership that enhances the State role in protecting consumers. State governments, closer to the citizens, are best equipped to ensure success of this program. It is now crucial that States keep consumers informed of their rights under this new system. The States are urged to move quickly to establish these programs. An important criterion of the Commission recommendations is the need for States to establish and operate a recovery fund within a 5-year time limit. If States fail to act within this period, HUD will contract with a private entity to establish such a fund. As part of its SAA functions, each State will need to establish an ADR process to resolve warranty disputes. A recovery fund will be required in every State to pay valid claims where the manufacturer or retailer fails to pay for repairs found to be their responsibility. To ensure compliance with warranty provisions, State SAAs or the recovery fund agent must establish a system in which all manufacturers and retailers are registered as a condition to sell manufactured homes in that State. The registration system must be able to revoke the registration of any manufacturer or retailer who fails to pay a claim for which the ADR process has assessed responsibility.

The Commission recommendations will require the States to develop or enhance their programs for inspection of manufactured home installations. They must ensure that at least 10 percent of the installations in each State are inspected by SAA personnel or appropriate building officials for compliance with the appropriate installation requirements. States will also need to establish systems to conduct inspections of retailer lots at least biennially to inspect homes being stored for marketing.

Industry Responsibility

The recommendations on warranties will require manufacturers and retailers to revise or develop new warranties that cover the items required by statute. Industry associations may wish to assist compliance by developing model documents. Retailer personnel must be conversant with the new warranty requirements since they are the first point of contact for most purchasers. It is important that the information they provide be accurate.

The chances for State enactment of recovery funds would be greatly enhanced by the support of industry associations. The Manufactured Housing Institute (MHI) supports financially sound recovery systems. MHI believes that States should create recovery funds and ADR systems to allow the resolution of warranty disputes, particularly when companies go out of business.

An important area for industry attention is the improvement of installation manuals and the training of installers. MHI has published the *Model Manufactured Home Installation Manual* as a reference for manufacturers. Once the consensus committee has developed a minimum national installation standard, manuals may need to be revised to reflect these requirements. Manufacturers may wish to have DAPIAs review such documents for con-

formance with the national and any additional State and local requirements. Equally important is the need to ensure that installation personnel are fully aware of the new requirements. It is the Commission's hope that the training of retailer and installer personnel will be a significant focus of attention for the industry.

Complementing the development of a minimum national installation standard is the need to present the installation guidelines in homeowner manuals clearly, in easily understood language and graphics. Manufacturers should provide installation guidelines that are specific for each manufactured home model they produce. Homeowner manuals, in general, should be periodically updated to reflect changes in products, procedures, and requirements for home maintenance. It is also recommended that, along with providing current SAA addresses and telephone numbers in homeowner manuals, a description of SAA purposes and the role they play in homeowner satisfaction be included.

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APPENDIX A
Comments of Minority Commissioners on the Final Report of the National Commission on Manufactured Housing

Overview

These comments are submitted by the six Commissioners who voted against approval of the final report at the meeting of the National Commission on Manufactured Housing on May 26, 1994, in Washington, D.C. The Commissioners listed below include all four industry members, one building code official and one elected official. They are:

Edward Hussey, Jr.
William H. Lear
Patrick Kennedy
Steve J. Logan
David R. Scarponi
Rod Taylor

The final report and the recommendations set forth in it should not be viewed as the report of the Commission as a whole but only the report of ten of the seventeen Commissioners. The vote was 10 in favor, 6 opposed and the U.S. Department of Housing and Urban Development (HUD) representative abstained. The Commissioners voting in favor of the final report were all from the public and consumer sectors. The recommendations they are proposing will create a more bureaucratic program with more oversight responsibility given to the federal government in areas traditionally administered well by the states. The six Commissioners voting against the final report participated in the Commission meetings for almost two years in high hopes of producing a consensus report designed to move manufactured housing into the 21st Century without shackling it with a cumbersome federally controlled bureaucratic system.

The six Commissioners (hereafter referred to as the "minority") voted against the final report as a whole because it contains major flaws that are so interwoven as to make editorial comments inadequate. The final report, in many instances, presents an inappropriately negative tone without adequately pointing out the positive aspects of the current system and practices that produce the most affordable unsubsidized housing in the country. Often rationalizations are overstated in order to justify the proposals being put forward. Furthermore, in many instances the final report goes beyond or simply does not adhere to areas of consensus reflected in the interim report.

One of the major problems is that the Commission exceeded the scope of its Congressional authorization by actually drafting a proposed legislative package. The minority was very concerned with the high priority placed by the other ten Commissioners (hereafter referred to as the "majority") on speeding through the legislative process to have their recommendations incorporated into the 1994 housing bill without due legislative deliberation including any hearings. This gave the minority grave concerns that this critical legislation with such dramatic impact on an entire industry would be adopted and implemented without time for thorough analysis and deliberation. To compound this problem, the Commissioners worked on the proposed legislative package prior to approving the final report. This is certainly a case of putting the "cart before the horse."

On the first day of the Commission's May 1994 meeting, the industry Commissioners presented the National Commission with the industry's list of critical issues and problems with the final report. Among other things the Commissioners noted that:

- HUD's role would be increased under the recommendations even though the Commissioners, throughout their meetings, unanimously recognized HUD's spotty regulatory record regarding manufactured housing as a major systemic problem. Therefore, it is totally inappropriate for the Commission to recommend legislation that would grant HUD significant additional authority in areas including installation, warranty standards, recovery fund monitoring and training. The recommendations contained in the final report would exacerbate the excessive delegation of authority to private contractors that is identified as a systemic problem.
- The final report's recommendation's would bring about a major loss of regulatory authority currently held by state governments in the areas of installation, warranty standards, and recovery fund administration.
- The report would require retailers, many of whom currently offer no warranty protection, to suddenly provide a five-year extended warranty for defects affecting the structural integrity of the home caused by installation or transportation arranged by the retailer.
- The recommendations would establish a federal minimum installation standard to be incorporated into the HUD Code.
- The recommendations would require HUD to approve all state recovery funds for compliance with federal criteria and if not approved in four years HUD would administer such a fund in those states - most likely through a contractor.
- The report fails to fully decriminalize the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act).
- The report fails to provide any protection of confidentiality of certain documents provided to HUD and its monitoring agent by manufacturers and retailers.
- Finally, as Secretary Cisneros pointed out in his letter dated May 4, 1994, to Commission Chair Helen Boosalis, there is an "absence of a complete assessment of the label fees and home cost increases that would be associated with the changes advocated in the Report." Without such an analysis of the cost impact on the home of the recommendations, the report is fatally flawed.

During the May 1994 meeting, the majority substantially revised the draft final report and made many changes which are contrary to the recommendations contained in the interim report. The minority strenuously opposes these changes. Among these, two extremely critical changes are:

- The requirement that a home be sited on land owned by the homeowner before the permanent chassis can be removed; and
- The increase in the amount of fines in Sections 611 and 621 from $1,000 per violation to $5,000 per violation and for willful violations by corporate officers from $1,000 to $100,000; and the change to allow HUD to handle the civil penalties administratively.

Even though the minority could not vote in favor of the final report, there are many areas and recommendations that they do support and regarding which there is a consensus. These include; permitting the removal of the "permanent" chassis, the recommendations designed

to expand the availability of financing for manufactured housing and those regarding the removal of regulatory barriers and discriminatory practices at the state and local levels to the installation of manufactured housing when other residential uses are permitted.

This minority report will first explain the Commissioners' general objections as set forth above and then detail specific objections to provisions contained in the final report. For greater ease of reference, general objections will be discussed by following the chapter sequence of the final report.

Purpose of the Act

The recommendation of the final report for the wording of a new statement of purpose for the Act has been detrimentally changed from the statement of purpose set forth in the interim report. The following changes should be made in the statement of purpose to reflect the language in the interim report:

- The second purpose should read: "To promote innovation and affordability, new manufacturing standards should encourage cost-effective construction techniques that also minimize the long-term operating costs of manufactured housing to consumers."
- The third purpose should read: "To expand the availability of this important home ownership opportunity, all levels of government should develop financing, zoning, and public services policies that remove regulatory barriers to equivalence between manufactured housing and other types of housing."

This language is critical because of the need to emphasize the importance of maintaining the affordability of manufactured housing and expanding its availability. It is particularly necessary to state that new standards must promote innovation and affordability because of the recognized failure of other standards-making bodies in evaluating cost when promulgating standards.

Procedures and Process for Standards Development, Revision, Adoption, and Interpretation

In general, the minority Commissioners agree that the National Manufactured Home Construction and Safety Standards should be updated through a consensus process. However, they are opposed to the selection, in the final report, of a specific organization to administer the consensus committee. Under Recommendation No. 2.3, the National Institute of Building Sciences is chosen to administer the consensus committee. This selection occurred when legislative language was being drafted and *before* presentations were made by the American Society for Testing and Materials (ASTM) joined by the National Fire Protection Association (NFPA), the Council of American Building Officials (CABO) and the National Institute of Building Sciences (NIBS). There was inadequate time to review the credentials of each organization and fully evaluate the pros and cons of their presentations. Furthermore, there was inadequate time to review, evaluate and verify the cost information presented for performing this function. For these reasons, the minority believes that it was inappropriate for the Commission to go forward with a vote on selecting one of the organizations at its May 1994 meeting.

Under Recommendation No. 2.4 of this section, members in the "user" and "general interest" categories, other than PIA personnel, shall have *no* financial interest in the manufactured housing industry. The term normally used is that participants should not have a

"significant" financial interest. To prohibit *any* financial interest limits the committee's use of many individuals with vast expertise regarding manufactured housing such as academics who also perform research for the industry and others on a consultant basis. For the "user" category, it means that home financier and insurer interests would be inappropriately grouped with home producers.

In addition, Recommendation No. 2.5, that the consensus committee have staff resources that include one consumer technical analyst is opposed as an unnecessarily costly mandate. As will be discussed further under other sections, the minority also opposes the deletion in the final report of the following interim report recommendation:

> The consensus committee shall assume the role of Secretariat of ANSI Standard A225.1.

Warranty and Recovery Fund Protection for Homeowners

Several of the minority's major objections are covered under this section. The recommendations contained in this section greatly expand HUD's responsibilities over the manufactured housing program. This expansion of HUD's role is recommended by the majority in spite of the identification by both the majority and minority that HUD's handling of its responsibilities as a regulator is one of the major systemic problems. In fact, the final report concludes that HUD has not adequately performed its responsibilities of establishing and updating standards or enforcing the Code. Therefore, it is totally inappropriate for the Commission to be recommending legislation that would grant HUD significant additional authority in the areas of warranty standards, state recovery fund monitoring, and the requirements for establishing the new claims process.

Currently, many states have requirements concerning manufactured home warranty coverage by manufacturers, retailers, and installers. Under the Commission's Recommendation No. 3.2, the consensus committee would develop minimum federal warranty *requirements*, not "guidelines." Because all warranty requirements developed by the consensus committee are subject to HUD's modification or rejection, HUD would then exert control over the warranty requirements. Since the inception of the HUD Act, however, the states and industry have performed this function very well without federal oversight.

HUD's role is also increased under the proposed alternate dispute resolution process (ADR) set forth in Recommendation No. 3.3 because HUD would be required to contract with the Administrative Conference of the United States "to develop rules, principles, and procedures to assist the states in designing the ADR process." Even in this claims processing area, which many SAAs have handled so well over the years, HUD will now have oversight responsibility. This section is replete with examples of recommendations that would give HUD more control and responsibility and, at the same time, take away responsibility and authority from the states. The areas of HUD's increased responsibility are boldly set forth in the final report under the section entitled "HUD Responsibility." This section illustrates a key concern of the minority with the report. Specifically, the majority seeks to have it both ways. On the one hand, it blames HUD for many of the inadequacies of the program. On the other hand, it seeks to remedy these deficiencies by heaping even more responsibility upon HUD. The majority accordingly is attempting to cure a problem with even greater doses of the *cause* of the problem—a result that is both anomalous and directly contrary to the evidence before the Commission.

The minority also opposes recommendations that would assert HUD's control over state recovery funds. Seven states have already adopted such funds and the Manufactured Hous-

ing Institute (MHI) has approved a Proposed Model Recovery Fund Program for states to review. The final report Recommendation No. 3.4 however, would interpose HUD and its contractors into this state process by requiring the funds to meet federal statutory requirements and providing that HUD shall contract with a private entity to administer a recovery fund in any state that does not enact legislation within four years and implement a recovery fund within five years. HUD would have the responsibility of approving the state recovery fund programs. This means that these no longer would be state-based programs but a *federal* recovery fund program, with extensive authority delegated to private contractors.

Another problem, besides HUD's expanded role, regarding the establishment of state recovery funds is the proposal that state recovery funds obtain mandatory private reinsurance within seven years. This mandate, however, is proposed without any assessment of its cost impact or practicality.

Finally, the minority opposes the five year retailer warranty for structural defects caused by installation or transportation as arranged by the retailer set forth in Recommendation No. 3.1. This is a case of too much, too soon. Many retailers currently do not provide a one year warranty for installation and transportation; therefore an agreement to provide such a warranty is a major first step. The consumer representatives contend that they want a "seamless warranty," but the implementation of such a concept is both unenforceable and costly to government, small business, and the homeowner. It is detrimental to the continued existence of independent retailers. It would be better to establish a requirement that will be implemented by broad-based consensus than to establish a requirement that small businesses cannot implement.

The Permanent Chassis Requirement

The final report has made a critical change to the interim report's recommendation concerning the permanent chassis, which greatly hinders this recommendation's usefulness. The interim report recommendation, which the minority supports, simply states:

> The definition of a manufactured home under the Act should be modified to eliminate the requirement that permanently sited homes be "built on a permanent chassis" subject to standards developed by the consensus committee.

The final report, however, in Recommendation No. 4.1 was revised by the majority to add the requirement that the *land* must also be *owned by the homeowner* before the permanent chassis can be removed. Such a requirement prevents the removal of the permanent chassis for homes permanently sited in land-lease communities with long term leases that exceed the term of the mortgage. This restriction prevents the continued development of these manufactured home land-lease communities, which is one of the most affordable housing forms available. These land-lease manufactured home communities are consistent with good modern planning practices; and adding the requirement that the land must be owned by the homeowner does not recognize the advances in the development of manufactured home land-lease communities.

Installation Standards and Inspection

The minority strongly opposes the establishment of a federal minimum installation standard to be included in the HUD Code as well as leaving to the HUD Secretary's determination the number of installation inspections that would be required as set forth in Recom-

mendation Nos. 5.1 and 5.5. The minority is very concerned about increasing HUD's role to the detriment of effective state installation programs. Currently, 31 states already have installation regulations in effect. Seventeen states currently license installers. Even in those states that do not have statewide standards, many metropolitan areas enforce local installation standards. As noted in the final report, the industry has made a concerted effort to support passage of state installation standards, and several more states are currently in the process of developing theirs.

The final report's installation and inspection recommendations differ sharply from those of both the interim report and the draft final report sent to the Commissioners prior to the May 1994 meeting. The interim report simply states that the consensus committee should seek to become the Secretariat for the ANSI A225.1 installation standard. The interim report proposes that states establish an enforcement system to monitor at least 10 percent of all manufactured home installations each year. The interim report did *not* recommend the establishment of a federal standard nor did it leave to HUD's determination the number of installation inspections that would be required.

Furthermore, the draft final report did not recommend that the consensus committee develop an installation standard that would be included in the HUD Code. Instead it recommended that:

- The national consensus standard ANSI A225.1-1994, "Manufactured Home Installations," become the vehicle for establishing a minimum national standard for the nation.
- Manufacturers shall model their installation instructions after ANSI A225.1.
- The states shall pass legislation requiring that every new manufactured home be installed in accordance with the manufacturer's installation instructions.
- The states shall enforce the installation program by inspecting a minimum of 10 percent of new inspections.

The minority supports leaving in place the current state-based installation programs by the adoption of the above recommendations instead of the recommendations on installation standards and inspection contained in the final report. Obviously, installation conditions vary from state to state. For this reason, state governments are in a better position than HUD to assess the installation needs of homes sited within their borders. Thirty-one states already require that manufactured homes be installed in accordance with the manufacturer's installation instructions. These state installation programs have been successful and should not be usurped by the federal government.

Enforcement

It is the understanding of the minority that it was the intention of the Commission to recommend the decriminalization of the provisions of the Act. The final report in Recommendation No. 7.3 recommends that penalties under Section 621 be decriminalized but fails to decriminalize Section 611 of the Act.

The final report has set forth totally new recommendations under "Enforcement Remedies," which were not contained in the interim report or the draft final report. The minority strongly opposes the Recommendations in No. 7.3:

- To increase the potential fines to $5,000 per violation in Section 621;
- To increase the civil penalties under Section 611 from $1,000 to $5,000 per violation;

- To increase fines for willful violations by corporate officers from $1,000 to $100,000; and
- To require that civil penalties under Section 611 be handled administratively.

At no time during the Commission's deliberations was there any evidence placed in the record which would support the need for increasing fines and civil penalties under the Act. Indeed, there was little or no information on HUD's use of the current Act's provisions regarding civil and criminal penalties. This means that the recommendations for increasing these penalties are totally unfounded and unwarranted.

In addition, because there is no information on HUD's attempts to invoke civil and criminal penalties under the Act by pursuing a judgment in court, there is no reason to support requiring HUD to now assess civil penalties administratively. It adds another responsibility to HUD's Office of General Counsel when the final report states that there is only one staff year of attorney support services devoted to the manufactured housing program. Finally, the SAAs have the authority in their own states to seek civil penalties and many states can revoke and suspend manufacturers and retailers licenses to do business. In short, there are adequate enforcement tools under the Act and with the states without increasing penalties and allowing HUD instead of the courts, which guaranty certain due process protections, to impose them.

Recommendation No. 7.5 of this section states that "Monitoring reports, the results of complaint investigations, and other enforcement records are public records and should be accessible to SAAs and interested citizens." This proposal however, fails to provide any of the current provisions for protection of the confidentiality of certain documents provided to HUD and its monitoring agent by manufacturers and retailers. This will force manufacturers and retailers to incur the cost of litigation to obtain protection for privileged documents instead of cooperating with HUD and its monitoring agent.

The final report in this section includes a totally new provision which was not contained in the interim report. It recommends that "Current provisions under the Act and regulations for optional State participation in enforcement activities shall be strengthened to enable states to assert some enforcement authority without establishing an SAA." This would serve to substantially undermine the recommendation that "HUD shall retain primary responsibility and authority for the enforcement system," and erode the uniformity of the current system—a cornerstone of the existing system. It would also devolve significant authority to state regulators without simultaneously requiring the infrastructure and procedures necessary to ensure proper enforcement.

Finally, the final report is internally inconsistent with regard to the role of HUD contractors. On one hand, the report recognizes HUD's substantial dependence upon contractors and the problems that have resulted from that dependence. At the same time, however, it recommends significant increases in the scope of HUD's authority—much of which will be devolved upon contractors.

In effect, then, the final report plays lip service to the industry's concern over excessive delegation of authority to contractors, but then endorses and underwrites that practice in such diverse areas as recovery funds, installation inspections and warranties.

Cost Analysis of the Recommendations

The minority agrees with Secretary Cisneros' May 4, 1994, letter to Chairperson Boosalis which states in part, "the Department is concerned by the absence of a complete assessment of the label fees and home cost increases that would be associated with the changes

advocated in the Report." The final report is *totally* silent on the cost impact on the home of the Commission's recommendations. Furthermore, the costs associated with the recommendations do not take into account the cumulative cost effect of these changes along with the costs associated with HUD's new energy and wind safety standards.

The final report differs from the draft final report by adding $350,000 for additional HUD staff in recognition of HUD's increased role under these proposals. However, the final report fails to consider the additional funding which will be required for the SAAs to fulfill their additional responsibilities. Moreover, as noted above, the entire concept of expanding HUD's authority contradicts the Commission's identification of systemic problems.

The final report also includes $800,000 in funding for the consensus committee. Because of the lack of cost information received from the four organizations interested in being selected as the administering organization, this however, $800,000 amount has not been adequately evaluated or justified.

Finally, the minority agrees with Secretary Cisneros' further statement in his May 4, 1994, letter in which he states, "Because any cost increases should be justified by improvements in the quality of the homes, it is difficult to endorse or evaluate fully all the Commission's recommendations without a reliable estimate of the impact on housing affordability."

Recommendations for Implementation

The minority Commissioners disagree with the stated goal that the Commission's recommendations be incorporated in pending 1994 housing legislation. They believe that there is a crucial problem with going forward with the final report recommendations on such a rapid schedule even before the final report itself is complete and submitted to Congress. Because this report recommends such vast changes from how the industry currently operates, it would be impossible and undesirable for the industry to absorb so quickly such a major restructuring of its operations.

Conclusion

The six Commissioners voting against the final report have submitted this minority report to set forth their reasons for dissenting. Even though there are some recommendations contained in the final report which the minority supports, the minority has concluded that because of major flaws and certain recommendations which they strongly oppose, they could not approve the final report.

This minority report has set forth the major areas and reasons of disagreement with the final report. The Commissioners' reasons for disapproval of the recommendations discussed above and the final report can be summarized as follows:

- The final report has not been properly reviewed by the entire Commission before its publication. Only a subcommittee of three of the majority were assigned to review and edit the report for the Commission;
- The recommendations of the final report opposed by the minority are not based on the facts available to the Commission; and therefore ignore reality;
- The cited recommendations are detrimental to both homeowners and the industry, and will not achieve the objectives for which they are purported to meet; and
- Finally, the majority did not fulfill the Commission's legislative charter by obtaining statistical data to support the need for the cited recommendations or the feasibility of implementing such recommendations.

Based on the above, the minority respectfully requests that Congress not go forward with any of the proposed statutory changes to the Act recommended by the majority until the opposition, as expressed in this report, has been resolved and consensus has been achieved.

Specific Concerns and Comments on Final Report

In addition to the general concerns and objections to the final report expressed by the minority in the previous section, the minority has specific concerns and comments on the final report. These concerns and comments are addressed in this section as they correspond to the chapters and pages of the final report.

Because of the many revisions which were made after the May 1994 meeting to the draft final report and the limited time given for review of the final report, which was not distributed until June 24, 1994, for comment by the minority on or before July 7, 1994, it was extremely difficult to make the necessary comparisons and identify all possible changes. However, as shown below, the minority has identified many statements that are inaccurate, mere conjecture, misleading, or far afield of the interim report's recommendations. With the number of critical concerns identified, it makes it imperative that Congress refrain from taking any action on the final report as it is currently presented.

Executive Summary

1.1. Introduction.

- Page 1, paragraph 3: There is a problem with using the phrase "comparable to other forms of housing." In many cases at least, manufactured homes are substantially less expensive than site-built homes and in fact no "comparable" site-built homes are in existence for many of the low-priced single section homes the industry sells by the thousands. The goal of national housing policy should be to produce decent, safe housing for people at a price they can reasonably afford, with the performance of basic systems being comparable from the standpoint of safety and function to those of other forms of housing. The minority is concerned that this phrase is imprecise and could be misinterpreted or abused.

1.2. Purpose of the Commission.

- Page 9, paragraph 4: The statement that begins, "The Commission looks forward to working with Congress . . . ." should be deleted because the Commission ceases to exist on September 30, 1994.
- Page 9: The report needs to include the requirement of HUD to consult with the Commission on the development of a new federal standard for hardboard panel siding on manufactured homes, which was mandated by Congress in 1992.

1.3. Reform Strategy.

- Page 9: In the first paragraph under "Reform Strategy" delete the sentence: "Another is to change the incentive system to induce manufacturers and retailers to deliver excellent service." These recommendations should not be considered based on changing the incentive system for inducing excellent service. This is also true of page 10 for the first sentence.

- Page 10: In the first paragraph, the minority is concerned that placing the warranty requirements in federal law gives too much authority to HUD and its contractors in derogation of the states' role.
- Page 10: In the third paragraph, the inclusion of a federal installation standard under HUD control would dramatically increase the authority of HUD and its contractors again in derogation of state authority.
- Page 10, paragraph 4: As discussed in this report, the minority opposes the treatment of monitoring reports and other enforcement records as public records.
- Page 10, paragraph 5: The minority agrees that the final report recommendations "expand HUD's oversight role," and they strongly oppose such an expansion as being inconsistent with the systemic problems identified in both the interim and the final reports.
- Pages 10-11: In the last paragraph under "Reform Strategy" the final report claims that the average cost of a home to the homeowner would raise "only a very modest amount." As discussed in the minority report, there is no analysis in the report to support any conclusion as to how much the recommendations would cost the consumer.

1.4. Recommendations.

- Pages 11-18: The minority's problems with and opposition to specific recommendations will be discussed below.

Chapter 1: The Regulatory System for Manufactured Housing

2.1. History of the National Manufactured Housing Construction and Safety Standards Act.

- Page 19, paragraph 3: Michigan should be deleted from the list of states which had no inspection enforcement mechanism in 1974. It would be best not to include names of states listed in this paragraph.
- Page 20, paragraphs 1 and 3: The complete provision of the Act should be quoted as the "highest standards of protection, taking into account existing state and local laws relating to manufactured home safety and construction" wherever it is referenced.

2.2. Overview of the Regulatory System.

- Page 21, paragraph 2: The second sentence should state "The MHCSS contains performance criteria for structural and thermal components and the remainder is a combination of performance and prescriptive criteria."
- Page 22, paragraph 2: In the sentence that begins "Before a manufacturer ...." the word "construct" should be changed to "deliver."

2.3. Identification of Systemic Problems.

- Page 31, paragraph 2: Delete "HUD has not done either adequately." Instead state the following: "HUD has done adequate inplant monitoring."
- Page 31, paragraph 3: The minority does not agree that the APA, in itself, is a "problem." HUD is no different from any other federal agency in being required to comply

with the APA. Moreover, the procedural requirements of the APA provide due process safeguards to all participants in the regulatory process that unlike other types of housing is not currently consensus-based. To the extent that there have been procedural difficulties in adopting new standards, they have resulted from HUD's promulgation of *unreasonable* proposed standards and public opposition thereto.

- Page 32: Delete the term "Comparability" from the heading.
- Page 32, paragraph 5: This paragraph also needs to include a discussion of the material cost difference between a multi-section HUD Code home and an identical BOCA Code home.
- Page 33, paragraph 3: The HUD Code does cover transportation in Subpart J of the Standards.
- Page 33, paragraphs 4 and 5: In the fourth paragraph, delete the sentence beginning with "Some SAAs" and ending with "considerable" because it is purely speculative. Paragraph 5 should be deleted entirely because it is also only conjecture.
- Page 34: The entire section on "Preemption" should be revised because it fails to discuss the positive aspects of preemption. The last paragraph on preemption should be totally deleted.
- Page 35: In the first paragraph under "Level of Accountability," there should be added at the end of the sentence, "When the manufacturer or retailer goes bankrupt, however, the homeowner is left without a safety net," the following, "the same as a site-built housing builder." Also it should be added that some states have bonds and other remedies.
- Page 36: In the first paragraph under "Lack of Adequate Consumer Information," this report should not be comparing manufactured housing to "other mass-produced products" because the objective is to recognize it as housing.
- Page 35, paragraph 4: The minority Commissioners do not agree that the current system is characterized by a "lack of accountability," unless the majority is referring to the relationship between HUD and its contractors. The remainder of this paragraph is anecdotal.
- Page 36, paragraph 4: At the beginning, delete the phrase "Dissatisfaction with the preemptive HUD Code" because this is not a principal reason for discriminatory practices. The main reason is that the product is built in a factory to a different code.

Chapter 2. Recommendations

3.1. Purpose of the Act.

- Pages 37-38: Regarding the recommendation requiring that manufactured homes yield levels of performance comparable to other forms of housing, the same comment is applicable here as discussed under the "Introduction" of the Executive Summary above.
- Page 37: In the final report the sentence "In addition, the Department is responsible for conducting, as part of its review process, cost-benefit analysis of all consensus-developed recommendations," should be included as it was in the draft final report. It should be enhanced by stating that such an analysis "must be realistic and honest, rather than being results-oriented."

- Page 38, Recommendation No. 1.1, paragraph 3: The phrase "long-term operating loss" is vague and inherently subjective. As a result, it is inappropriate for inclusion in the Act.

3.2. Procedures and Process for Standards Development, Revision, Adoption and Interpretation.

- Page 39, last paragraph: The final report contains the following with which the minority does not necessarily concur: "The Commission concurred, however, with the more stringent energy conservation measures that will take effect in the HUD Code in the Fall of 1994." There was no official vote of the Commission to this effect.
- Page 40, last paragraph: Commissioner's quote should be deleted as not germane and superfluous.
- Page 41, paragraph 3: Delete the sentence which states, "The HUD Code omits installation standards." This is not the reason that set-up is a serious problem. Furthermore, this is not completely accurate. The HUD Code requires each manufacturer to include set-up instructions in its consumer manual for each home. Under windstorm protection, each manufactured home must have provisions for support and anchoring systems. The problem is not with the existence of installation standards by HUD or the states but with their enforcement.
- Pages 42-43: The minority report addresses the problems with certain recommendations in this section.

3.3. Warranty and Recovery Fund Protections for Homeowners.

- Page 43, paragraph 5: The discussion of extended warranties is too cursory and perhaps misleading. The cost and exclusions should be compared to site-built housing warranties at a minimum.
- Page 43, paragraph 6: It is inaccurate to state that manufactured homes are "usually" transported from the factory to a retailer's lot first. This is the way it used to be.
- Page 44, paragraph 2: This discussion seriously understates the remedies available to homeowners and the knowledge of avenues to obtain assistance. "Authority to intervene under state law" may vary, but it exists in every state with which the minority is familiar and is utilized in an effective manner by most state authorities.
- Page 45, paragraph 2: As discussed in the minority report, the 5-year retailer warranty for defects in structural systems arising from transportation or installation performed, arranged or contracted by the retailer is unacceptable.
- Page 45, paragraph 3: In cases where the homebuyer undertakes his or her own site preparation, it needs to be made clear that footers should be included in site preparation. Furthermore, if the homebuyer fails to provide a proper site preparation certification the retailer should not be required to provide even a 1-year installation warranty.
- Page 45: In the last paragraph, the report should still include the proposal to require manufacturers to provide a 10-year, insurance-backed warranty as an alternative.
- Page 47, the third full paragraph: The sentence stating, "HUD would be required to make a determination of conformance (of the state recovery fund) based on the statutory requirements," illustrates HUD's increased role under these recommendations for the warranty and recovery fund programs. States would no longer have the flexibility to establish their own warranty requirements and recovery funds. To increase HUD's

role in these areas is counterproductive. At a minimum, the existing state recovery funds should be grandfathered.

- Page 47, last paragraph: The mandatory requirement for private reinsurance after seven years should be deleted as unnecessary and too costly.
- Page 48, paragraph 1: The final report recommendations should contain the following sentence which was included in the draft final report: "Further, the funds would not be liable for judgments derived from litigation." The minority also proposes providing for some nominal charge to whoever initiates the arbitration process.
- Page 48, paragraph 2: The final report recommends that HUD contract with the Administrative Conference of the United States to assist the states in designing ADR systems. This recommendation is not contained in the interim report and gives HUD an unnecessary additional responsibility. The states are quite capable of designing their own ADR systems.
- Page 49: See above comments on opposition to 5-year retailer warranty.
- Page 50, Recommendation No. 3.2: See above opposition to Consensus Committee developing minimum warranty requirements. This Recommendation now states that these are "requirements" not "guidelines," which is inconsistent with the interim report. Moreover, the degree of governmental intrusion into the market place reflected by this recommendation is both excessive and unwarranted.
- Page 50, Recommendation No. 3.3: See above comments regarding the claims process.
- Page 51, Recommendation No. 3.4: The state recovery funds should not be required to be approved by HUD and should not be required to be reinsured after seven years.
- Page 51, Recommendation No. 3.5: If a state has licensing requirements for manufacturers and retailers, there is no need for a separate registration.
- Page 51, Recommendation No. 3.6: This data collection and dissemination recommendation should be deleted as unnecessary and another costly requirement for HUD to perform.
- Page 51, Recommendation No. 3.7: HUD should not be charged with the responsibility of making determinations as to whether existing recovery fund or bonding programs are preempted. They should be automatically grandfathered.

3.4. The Permanent Chassis Requirement.

- Page 52: In the second sentence of the third full paragraph beginning, "Opposition to the proposed Hiler Amendments . . ." after "Federal regulation" at the end of this sentence add "because of the competitive threat."
- Page 53, paragraph 1: The minority believes the savings to the buyer with a removable chassis floor system to be greater than the amounts stated.
- Page 53: In the last paragraph of this section, it should be added that the Commission also recognized the aesthetic value of allowing the removal of the chassis.
- Page 53, Recommendation No. 4.1: The minority objects to the change from the interim report to the final report which ties removal of the permanent chassis to homes permanently sited *on land owned by the homeowner*. The minority's reasons are explained above.

3.3. Installation Standards and Inspection.

- Page 54, paragraph 2: Delete the following unsupported comment: "That obviously reflects a very small percentage of consumer complaints . . ." because it is unsupported.
- Page 54, paragraph 3: This paragraph should also include a discussion of the standardized installation manual created in North Carolina, which has been useful.
- Page 55, last paragraph: At the end of the last sentence add "and a number of states do."
- Page 56, paragraph 5: The minority objects to the inclusion in the final report of the paragraph not contained in the draft final report about HUD undertaking review of its longstanding position regarding its lack of authority to regulate installation. The Commission must base its recommendations on how HUD is now interpreting its authority over installation.
- Page 56, last paragraph and page 57, paragraph 1: These paragraphs have been substantially changed by the majority from the language of the interim report and draft final report. As discussed above, the minority strongly opposes the establishment of an installation standard to be included in the HUD Code and permitting the HUD Secretary to determine the minimum number of installation inspections to be performed by SAAs.
- Page 57: Recommendations Nos. 5.1 and 5.5 have been substantially revised from the interim and draft final reports. (See above for the discussion on these recommendations.) Furthermore, states with existing installation standards should be grandfathered.

3.6. Design Reviews and Production Surveillance.

- Page 58: The third party inspection system needs to be explained better. The third full paragraph beginning with the words, "An area of concern . . ." illustrates the lack of accurate representation of this system.

3.7. Enforcement.

- Page 60, paragraph 2: The 7000 consumer complaints annually should be placed in the proper perspective. There are seven million homes sited, so these complaints represent 1/10 of 1% of all manufactured homes sited.
- Page 61, paragraph 3: The minority disagrees with the conclusive statements in this paragraph. Permitting individual manufacturers to develop test protocols prevents delay which cuts costs and relies on the innovation of private enterprise. In addition, the DAPIA Technical Advisory Group was established as an effective and efficient means of handling interpretation issues when HUD failed to respond.
- Page 62, paragraph 2: In the revised final report, the following sentences were added: "In states without an SAA, consumer complaints can be filed with HUD if the homeowner knows to do so. HUD does not, however, maintain specific data on the number and types of consumer problems experienced in non-SAA States." The phrase "if the homeowner knows to do so" should be deleted as mere conjecture. In addition, it is inaccurate to state that HUD does not maintain data on consumer complaints in the non-SAA states. HUD has contracted with NCSBCS to perform the consumer complaint handling function in the non-SAA states and maintaining data on consumer complaints is part of this function.

- Page 62, paragraph 3: Even though notification is the only remedy available under the Act for defects that are not life-threatening, the presence of the duty to notify usually results in correction because of products liability concerns.
- Page 63, last paragraph: The minority objects to the revisions to the final report; not contained in the interim report, which recommends that the Act delegate more authority to the fourteen non-SAA states because it will seriously erode the federal uniform enforcement system as discussed in the minority report. The 15 conditionally approved SAAs already have substantial authority and for all practical purposes are treated by HUD as equivalent to fully approved SAAs.
- Page 64, Recommendation No. 7.1: As discussed above, the minority objects to enabling non-SAA states to assert enforcement authority under the Act. This did not appear in the interim report.
- Page 64, Recommendation No. 7.3: This recommendation should also include the decriminalization of Section 611 of the Act.
- Pages 65, Recommendation No. 7.4: The obligation of states to notify "other states" should be clarified to either "adjacent" or "interested states."

3.8. Transportation and Storage Requirements.

- Page 66, paragraph 3: This paragraph beginning with "Concerns with . . . ." should state that there is an inspection and recertification process for using recycled running gear. Furthermore, it should be stated here that the evidence presented to the Commission was anecdotal and not sufficient to demonstrate any volume of transportation related problems.
- Page 66, paragraph 4: This paragraph beginning with "Determining whether . . ." should state that HUD is currently enforcing Section 3280.903(c) of the standards more strictly.
- Page 67, Recommendation No. 8.2: The minority objects to the revision of the final report to now give the consensus committee the additional responsibility of establishing requirements for the review of transportation loads and testing procedures. Such a requirement was not contained in the interim report.
- Page 67, Recommendation No. 8.3: The final report differs from the interim report in that the recommendation has been changed from "targeted inspections of retailer lots" to "random inspections." The final report should reflect the interim report's language.

3.9. Cost Analysis of the Recommendations.

- As discussed in the minority report, this entire section needs to be revised to discuss the impact on the cost of the home and the incompleteness of the listing on page 77 of the costs of the requirements. For example, it fails to list the additional costs to the SAAs.
- Page 74: This page newly adds an estimated annual budget for the consensus committee which has never been reviewed by the Commission. There has been no opportunity to discuss the validity of the amounts set forth in this budget.
- Page 77, last paragraph: The revised final report adds an ending sentence to the conclusion which should be deleted as totally irrelevant to the report. The reasonableness of the proposed increase in label fees cannot be determined by comparison to manufactured housing trade association dues.

Chapter 3. Recommendations for Implementation

4.1. Legislative Actions.

- Page 79, paragraph 2: The minority objects to stating that it is a goal of the Commission to recommend legislative language for inclusion in the 1994 housing reauthorization bill. This Commission was charged with the responsibility of submitting a report to Congress by August 1, 1994, which should be its priority.
- Page 79, paragraph 3: The last sentence of this paragraph should be deleted because the Commission expires on September 30, 1994.

4.2 HUD Responsibility.

- Pages 79-80: The minority opposes the extent to which the final report recommendations increase HUD's responsibility. It is particularly opposed to the extensive state oversight authority set forth on these pages. For example, the minority disagrees with the following statements:
  - "HUD must also promulgate regulations on warranty performance guidelines developed by the consensus committee."
  - "HUD will need to monitor state legislative actions to establish state recovery funds and uniform claims processes."
  - HUD is responsible to "Oversee States to ensure that SAAs inspect at least 10 percent of the installations of manufactured homes in each State."
  - HUD is responsible to "Monitor States to ensure that SAAs conduct targeted inspections of retailer lots ...."
  - HUD is responsible to "Make monitoring reports, the results of complaint investigations, and other enforcement records available to SAAs and the interested public to a much greater degree than it has done previously ...."
  - HUD is responsible to "Develop and provide to prospective purchasers and homeowners brochures on consumer rights under the Act. These should be developed in cooperation with SAAs, consumer and homeowner organizations, and industry."

  The last responsibility listed above is not found in the final report recommendations nor was it contained in the interim report. The Act and HUD regulations already require a consumer manual to be provided with each home. The HUD regulations require this manual to contain an explanation about the Act and its protections as well as what warranty protections are provided. Therefore, this additional HUD responsibility is unnecessary.

Due to time constraints and lack of staff, a full minority report could not be included in the final report. A report setting forth the minority Commissioners' proposals based on the Commission's proceedings will be submitted under separate cover.

APPENDIX B
Commission Meetings and Testimony

The National Commission on Manufactured Housing held meetings during most months of its existence in its attempt to meet the statutory mandate of making recommendations on issues that Congress had identified. Four stages of progress marked these meetings: organizational, information-gathering, synthesis and decisionmaking, and final report preparation.

The information-gathering stage was particularly important to the process because the Commission's work was bound to have consequences for many groups and individuals. During the public comment periods, testimony was presented by groups representing homeowners and consumers; the manufactured housing industry; suppliers; retailers; local, State, and Federal government; Primary Inspection Agencies (PIAs); the modular housing industry; financial institutions; and the general public. Homeowners and consumers were mostly concerned with making manufactured housing safer and more durable and with improving consumer protection and recourse when problems occur. The industry was primarily concerned with being able to produce, without undue regulation, a quality product that was affordable. Both groups shared the goal of promoting affordability through access to better financing terms and through decreasing regulatory barriers to siting and public services.

Every effort was made during this information-gathering stage to hear from all relevant groups to ensure that the Commission received all information necessary for its deliberations. A complete list of hearings, witnesses, and statements received by the Commission appears in Appendix C. Following are summaries of the proceedings and scope of accomplishments for each meeting. The Commission held all meetings in open session, with the public welcome, in conformance with the Federal Advisory Committee Act (P.L. 92-463), except where noted below. During each meeting, a session was held with an "open mike" to allow any interested person to testify. All meetings were held in the Washington, D.C., area, except as otherwise indicated.

January 1993

The first meeting of the Commission was primarily organizational. The Commission elected Helen Boosalis as Chair, William Lear as First Vice Chair, and Jennifer Soldati as Second Vice Chair. Commissioners discussed administrative details, particularly with regard to hiring an executive director and staff. Because the Commission was scheduled to expire on September 30, 1993, the process for a Congressional extension was explained by a representative of the General Services Administration (GSA), which provided administrative support to the Commission.

The Commission formed two committees, one on standards and the other on enforcement and consumer issues, to ensure that it covered all the topics required in the authorizing legislation. Each Commissioner selected the committee that he or she preferred. The committees were balanced, each with Commissioners representing both the industry and consumers.

The question of Commission procedures was raised, and it was decided that Robert's Rules would be used, with the understanding that most decisions could be reached informally and by consensus. A Commissioner's suggestion for a logical order to proceedings was

adopted, where the Commission was first briefed on an issue, which was then referred to the proper committee for discussion and guidance for the staff to prepare an issue paper. Such papers were to be discussed in committee, then by the full Commission. The staff then would be instructed to develop a decision document that would be put to a Commission vote.

February 1993

While organizational activities continued, this meeting started the information-gathering stage of the consensus process. Three panels testified before the Commission. First, staff from the U.S. Department of Housing and Urban Development (HUD), primarily from the Office of Manufactured Housing, described the Federal manufactured housing program. Next, a panel of State Administrative Agency (SAA) representatives from Missouri and North Carolina described the State role within the Federal program. Finally, a panel organized by the Manufactured Housing Institute (MHI) presented an overview of the industry from the standpoint of manufacturers and primary inspection agencies.

March 1993

The March meeting began with the selection of an executive director. Time was allotted for candidate interviewing and Commission discussion of the candidates in closed session. By a unanimous vote, the Commission hired Robert W. Wilden as executive director of the Commission, to begin in mid-April 1993.

Next, the Commission continued gathering information by hearing testimony from three panels. First, representatives of the Association for Regulatory Reform (ARR), an association of manufacturers, presented their recommendations on reforming the Federal manufactured housing program. ARR's mandate is to represent the views of manufactured home builders in connection with regulatory and legislative matters affecting the construction and utilization of manufactured homes. The president of ARR said the Commission's success would be measured by its ability to produce recommendations that continued to ensure solid workmanship while avoiding costly regulatory waste, and that this outcome could be achieved by focusing on rules and regulatory systems that were truly necessary and subjecting each proposal to a strict cost-benefit analysis. ARR recommended: (1) direct State participation in the manufactured housing inspection program by acting as PIAs, SAAs, or both, and that this participation should be encouraged and facilitated by HUD—this function should be in addition to manufacturers' employing private PIAs, but HUD should perform the monitoring of PIAs and SAAs itself; (2) that HUD should update the Manufactured Home Construction and Safety Standards (MHCSS) on an annual basis, utilizing the consensus process of the Council of American Building Officials (CABO); (3) that the National Manufactured Housing Construction and Safety Standards Act of 1974 act should be amended to transform it from a trailer law to a law for homes by deleting vehicular references; and (4) that manufactured housing receive equal treatment in all federally sponsored home loan and public housing programs.

Representatives from the Farmers Home Administration (FmHA) and the U.S. Department of Energy (DOE) discussed their roles in the manufactured housing program. FmHA has been financing HUD Code homes since 1985, and requires that all be attached to a permanent foundation; fewer than 1 percent of the homes financed annually by FmHA are manufactured homes. FmHA recommended that the thermal performance of HUD Code homes be at least equal to the 1992 Model Energy Code. FmHA stated that extensive redesign is not necessary to achieve this result because the appropriate technology is already being used in the industry. FmHA also recommended that HUD manufactured housing inspec-

tion programs verify conformance with the thermal requirements, and that manufactured housing use the same standard in the development of wind-resistance requirements that is used in most building codes.

The mission of DOE's Office of Building Technology is to lead a national effort to increase the energy efficiency, health, comfort, and value of U.S. housing and commercial buildings through standards mandating levels of efficiency, information and incentive programs, and research. DOE cooperated with HUD in preparing its currently proposed revisions to thermal performance standards for manufactured housing, using a computer program to test a home in different climatic areas with different fuel types and costs for the energy efficient measures. This information was then aggregated by the temperature zones used by HUD in its manufactured home standards. Results indicated that the energy efficiency of manufactured homes can be improved significantly by an initial cost increase of $800 to $1,100 per unit, while lifetime energy savings could reach 2-1/2 times this cost increase.

DOE also supports the development of a national home energy rating system to facilitate comparison shopping and the energy-efficient mortgage program, where savings on energy costs can be used to qualify for a higher mortgage amount. A current program to increase energy efficiency in HUD Code homes in the Northwest provides incentives to manufacturers that build to higher insulation requirements; 18 manufacturers are participating. A weatherization assistance program that assists low-income families in retrofitting their homes is also available.

Both the FmHA and DOE representatives testified that such programs were successful only if pursued cooperatively by State and local governments, utilities, the housing industry, and the financial community.

April 1993

No meeting was held for organizational reasons, to give the executive director time to secure office space and hire staff.

May 1993

Executive Director Robert Wilden was introduced, as was Kym Couture, the deputy director hired effective May 1. The executive director reported that Commission office space had been secured at about half the cost of the originally proposed space, and had been equipped and furnished at no cost. He reported that work on requesting the Commission's Congressional extension was underway, as were efforts to arrange an agreement with the American Association of Retired Persons (AARP) for the services of George Gaberlavage as research director for 1 year at no cost to the Commission.

Led by the executive director, the Commission discussed ways to reach a consensus agreement on the issues it faced. Given the diversity and interests of the Commission members, agreement on key principles was necessary to ensure a constructive process. The Commissioners agreed unanimously to the following principles: commitment to reach consensus, adherence to absolute deadlines, involvement of all affected parties early in the process, constant communication among all parties, and agreement on a common set of ground rules.

The executive director described his role with the Commission to be that of facilitator, not decisionmaker, and that the staff would have a support role that included data gathering, drafting summary and option papers, and providing communications and logistical support. He expressed interest in hiring staff that would include persons with expertise in

codes, engineering, plant management, and manufactured housing from a production standpoint, and asked the Commissioners to seek and recommend applicants. He specifically asked for help in locating someone with experience in the manufacturing process. The executive director proposed that during the next few months he visit individual Commissioners at their home base so that he might better understand their perspectives on the Commission's work, and vice versa.

The executive director discussed the charge to the Commission and declared that whatever recommendations were proposed in the final report, the Commission's mission represented a "window of opportunity" to the manufactured housing program that would not likely recur for another 5 to 10 years.

The following ground rules were negotiated and accepted by unanimous consent: (1) be as skeptical of your own "truth" as you are of the other person's "truth"; (2) say the same thing to everybody; (3) deal with issues, not personalities; (4) concentrate on behavior, not motivation; (5) raise issues when they are timely—once an issue is thoroughly discussed and closed, it should stay closed; (6) restrict issues under consideration to those related to the Commission's charge in the authorizing legislation; (7) always treat others with dignity and respect (disagree without being disagreeable); (8) actively reach out to all affected constituencies at the inception, during, and at the conclusion of the negotiating process; (9) avoid surprises (if you have a problem, alert others as soon as possible); (10) deal directly with persons with whom there is disagreement; (11) hold yourself and each other accountable for following the ground rules; (12) all Commission members are active participants; (13) define a problem before solving it; and (14) deal with objections before making decisions.

The Commission discussed the means to reach all affected parties and to involve them in the Commission process. Those parties with strong vested interests were identified as: (1) consumers and homeowners; (2) manufacturers, suppliers, and lenders; (3) HUD; (4) State and local government; (5) dealers, installers, and transporters; and (6) the National Conference of States on Building Codes and Standards (NCSBCS).

The Commission then identified, discussed, and approved nine issues perceived to be the most important for the Commission to address: (1) revision of standards (regulatory process); (2) enforcement; (3) installation standards; (4) relationship to modular housing; (5) definition of affordable and durable; (6) preemption; (7) warranties; (8) HUD monitoring contract; and (9) response to consumer complaints. Although the Commission included two manufacturers and two homeowners as members, the Commission as a whole agreed on the need to hear from a number of manufacturers and homeowners to understand the problems from different perspectives. It was decided that the June and July Commission meetings would include presentations on perceived problems by consumers, manufacturers, and possibly other stakeholders.

HUD representatives discussed the proposed wind standards that were developed as a result of damage done to manufactured homes by Hurricane Andrew. The Commission decided unanimously to request that HUD extend the comment period on the wind standards for an additional 90 days because it appeared that they might have a substantial impact on the work of the Commission.

Committee meetings were held, committee chairs selected, and staff support assigned. Commissioners Connolly and Jensen were selected to chair the standards committee and the enforcement committee, respectively. The following issues were assigned to the standards committee: (1) defining affordable and durable; (2) revision of standards; (3) installa-

tion standards; (4) preemption; and (5) relation of manufactured to modular housing. The enforcement and consumer committee's issues included: (1) enforcement; (2) monitoring; (3) warranties; and (4) response to consumer complaints.

The Commission agreed to adhere to absolute deadlines in order to achieve consensus. The executive director explained that Congress expected the Commission to come to consensus on key issues in time for legislative action on the next housing bill. The deadline for the committees to complete their work was set for November 1, 1993, leaving December, January, and February for full Commission action before submitting a preliminary report to Congress in early March.

The meeting concluded with a public comment period where a homeowner representative urged the Commission to allow adequate time during the next meeting for consumers and homeowners to speak on whatever manufactured housing issues concerned them.

June 1993

This meeting was held in Portland, Oregon, with the first day devoted to visiting manufacturing plants owned by Fleetwood Enterprises and Golden West Homes. During lunch, Fleetwood representatives made a presentation on the company's customer satisfaction program. They described their program of surveying customer satisfaction and developing a rating system for each of their manufacturing plants on that basis.

The formal meeting began with a debriefing on the plant tours and included a panel of representatives of State Production Inspection Primary Inspection Agency (IPIA) representatives from Washington, Oregon, Texas, and Utah, as well as the quality assurance manager from the Fleetwood plant. There was considerable discussion on the role of the monitoring team, the extent to which the team should inspect individual units in the course of reviewing the quality assurance program, what constitutes "nitpicking" in monitoring situations, and the roles of the IPIAs in ensuring and the monitoring agent in reviewing conformance of the production line with the Design Approval Primary Inspection Agency (DAPIA) approved designs.

The next panel focused on energy efficiency and included a description of the Manufactured Housing Acquisition (MAP) program, in which certain utilities in the Northwest pay the manufacturer $2,500 to include a package of energy-saving features in each home that reduces the cost of electric heat by approximately 50 percent. The panel indicated that it was less expensive for the utilities to pay this subsidy than to build additional generating capacity to cover increased energy needs of homes without upgraded energy conservation measures. Consumers also benefit from the program because, while they pay about $1,000 more for the home, they save that much on electricity over a 3- to 4-year period. The panelists also discussed the increased system of inspections in the plants to ensure that the manufacturer delivers fully on the energy saving features.

A representative from Battelle Pacific Northwest Laboratories discussed the role of lending and appraisal practices and indicated that his research showed that manufactured housing makes less use of Federal programs than site-built housing. He felt that this was attributable to lending practices for manufactured housing that were based on experience 20 years ago, not the housing as it is currently built. He recommended that the HUD Title I program be amended to provide for energy-efficient loans.

A representative of the Washington Manufactured Housing Association described Northwest Pride, an advertising campaign that has created substantial demand for manufactured homes by educating the public on manufactured housing today. The results of a

study conducted by the association were described, showing that manufactured homes in the Northwest have appreciated in value, including those located in parks. This testimony indicated that manufactured housing costs about one-half that of site-built housing in the area, but that the energy standards in the HUD Code were out-of-date for the Northwest; homes buil ‹o the energy-efficiency measures in the HUD Code would result in a product that was perceived to be inferior to site-built housing.

An extensive public hearing session followed. A park owner/developer cited the problems he had in expanding his park an additional 20 spaces when the municipal government tried to impose a charge of $2,000 per space for sewer hookup fees. Although he finally prevailed without paying such fees, he pointed out the difficulty of providing affordable housing when local jurisdictions erect regulatory barriers. Next, the vice president of the Idaho Manufactured Home Owners Federation described the situation in Idaho: most manufactured homeowners in Idaho live in mobile home parks, and their main concern is the 90-day no-cause eviction process available in the State Landlord Tenant Act. Efforts to remove this clause have been unsuccessful. The homeowners' federation has had no cooperation in its efforts from the Idaho Manufactured Housing Association, which represents manufacturers, dealers, and park owners, because there is an adversarial relationship between homeowners and the park owners that pits the industry against the consumers. The Idaho homeowners' group made the following recommendations: (1) do not loosen up on the regulations under the 1974 Act; (2) do not allow chassis removal; (3) mandate that State regulators not be associated with the industry; (4) revise the consumer information requirements in the Act, and include installation standards; (5) investigate why financing is so expensive; (6) require States to have an unbiased hearing officer, advocate, or commission to oversee manufactured housing; (7) provide funding for homeowner groups; and (8) discourage nationwide alliances of industry with park owners.

In his testimony, the volunteer State coordinator of AARP in Idaho echoed some of the above concerns and added: (1) allow chassis removal in some cases; (2) prohibit the same entity from undertaking review of both manufactured home design and construction; (3) require professional engineers and licensed architects to certify that all units meet minimum construction standards; and (4) require written service agreements that establish responsibility of manufacturers to warrant repairs, including transportation and installation.

The Commission heard testimony from a park owner on the difficulties of new park development. He supported legislation that would give residents the right of first refusal if their park becomes available for purchase, and the creation of an ombudsman's office in Washington to deal with landlord-tenant issues. The Commission also heard testimony from a homeowner representative who said that Idaho's manufactured home installation standard has never been put into practice, and that the State Manufactured Homes Advisory Board was supposed to establish a Complaints and Appeal Board but has never done so.

Financing for park residents to buy their parks as well as for home mortgages was discussed during the public comment period, as was legislation supported by the State Legislative Committee of AARP that would provide mediation between park owners and residents, and require park owners to pay for the cost of moving under certain circumstances.

Last to testify was a representative of the Oregon Building Code Agency, which carries out the IPIA and SAA functions in the State. He supported the national preemptive program while making extensive recommendations for changes to the manufactured home construction standards, Federal regulations, and the 1974 Act.

Commission committees met to develop and direct research needs for staff papers on enforcement and the permanent chassis. The meetings were held informally and therefore were not part of the public record.

July 1993

Six panels testified before the Commission. Representatives of the Pennsylvania Manufactured Homeowners of America and the Mobile Home Owners Association of New Jersey, Inc., cited examples of homeowners who have suffered because of the negligence or threat of eviction by their park owner. Informal agreements between dealers and land owners, and discriminatory zoning also contributed to homeowner problems. Recommendations included: (1) retain the permanent chassis requirement because homeowners must be able to move their homes; (2) provide a Federal installation standard; (3) require a 5-year warranty (7 years for roofs) with the option of purchasing a 10-year warranty; (4) improve the Federal consumer-complaint process to ensure that problems in a home are fixed or, if that is not possible, defective elements are replaced; and (5) support States in developing dispute resolution procedures to help homeowners resolve complaints.

A panel organized by MHI described: (1) the demographics of manufactured homeowners; (2) reasons to purchase manufactured housing; (3) placement options on owner's land, land-lease communities, and planned unit developments; (4) public-private partnerships; and (5) increased availability of competitive financing spurred in part by Fannie Mae and Freddie Mac. A representative of the Pennsylvania Manufactured Housing Association described the State's three-day installation school, which requires an exit test; in addition, the Association's "good apple/bad apple" policy provides that "bad apple" dealers and park owners are reported to the Attorney General's office.

Next, SAA representatives from Maryland, Pennsylvania, and Virginia discussed their programs. In Maryland, the SAA concentrates on consumer complaints and installation problems, and recommended that: (1) HUD provide specific installation standards; (2) State agencies inspect the installations; and (3) manufacturers provide specific foundation plans for each home because current manufacturer instructions are often inadequate. The Virginia SAA administrator recommended that: (1) the HUD Code be updated regularly, particularly for smoke detectors, mechanical requirements, and the electrical code; (2) the regulations should be amended to require that manufacturers correct nonconformances; (3) the manufacturers' installation instructions should be clearly presented for each model and not be overly complex; and (4) the warranty requirements should be mandated for manufacturers, dealers, and suppliers. The Pennsylvania SAA representative recommended that: (1) the HUD enforcement regulations be substantially revised; (2) the SAA focus should be on monitoring the manufacturer's quality control and consumer complaint records rather than on getting involved in specific consumer complaints; and (3) HUD needs to establish installation standards.

An ARR panel recommended: (1) that States have the responsibility for licensing and training of installers, and inspecting installations; (2) regular updating of the HUD code; and (3) that HUD should handle monitoring directly, not through a monitoring agent.

The next panel consisted of representatives from HUD's Office of Manufactured Housing who described the monitoring program, which includes IPIA and DAPIA monitoring; the SAA function; the issue of performance versus prescriptive standards; and a potential conflict of interest between DAPIA approval of designs and IPIA inspections to ensure compliance to DAPIA approvals. One HUD official was not convinced that there is always an

independent review of the design and inspection because both are paid by the manufacturer. Other aspects of the HUD program discussed were the monitoring contract with NCSBCS, Subpart I of the enforcement regulations, and consumer complaint handling in the 14 non-SAA States.

A representative from NCSBCS, HUD's monitoring agent, described its functions performed for HUD. Two attorneys from HUD's Program Compliance Division described problems of enforcement under the Act and regulations, specifically concerning the correction of defects, where manufacturers are only required to correct defects when they present an unreasonable risk of injury to or death of the occupant. The potential conflict-of-interest problem with IPIA and DAPIA functions was again discussed, as was HUD's inability to take enforcement actions against retailers that sell nonconforming homes.

Last, an IPIA panel discussed many third-party concerns, especially questions that the perceived conflict of interest with the IPIA and DAPIA could be ended by eliminating any exchange of money between the manufacturer and private PIA, by using an agent of HUD as a clearinghouse for funds, and by establishing a 3-year contract period between the manufacturer and the private PIA. Several private IPIA representatives, however, stated that the perception of a conflict of interest was unfounded, and that third-party certifications were accepted throughout the building regulatory community. It was stated that, under the HUD program, third-party agents were constantly evaluated and monitored by the HUD monitoring agent.

The Commission discussed the distribution of issue papers prepared by staff, and agreed to provide all papers to all Commissioners, not just to those on the committee that would first discuss the issue. In order to meet the March 1, 1994, deadline for submitting the Interim Report to Congress, the executive director stressed that major issues needed to be resolved. If it reached consensus on the Interim Report, the Commission would work with Congressional staff to use the Interim Report as the basis for legislation to be contained in the 1994 housing bill.

In the course of discussing the Interim Report, one Commissioner expressed concern that, by focusing on the individual issues, the Commission was kept from grappling with the systemic problems of manufactured housing. During the ensuing discussion, seven systemic problems with the manufactured housing program were identified: (1) HUD as regulator; (2) the standards-setting process (comparability); (3) unclear Federal-State relationship; (4) high-tech approach to the housing environment; (5) preemption; (6) lack of integration within the industry; and (7) level of accountability. One Commissioner suggested that solutions addressing the nine issues identified in May as the Commission's focal points needed to be evaluated based on whether they fix these systemic problems. Another Commissioner suggested that the systemic problems be refined as the committee work proceeded. There was no disagreement.

The committees met to discuss the enforcement and the permanent chassis options papers developed by staff and a consultant, respectively. In addition, the committees discussed research needs for the next month's staff papers on installation/transportation and revision of the standards.

August 1993

This meeting took place in Portland, Maine, and began with a day-long tour of manufacturing plants and manufactured home rental communities. The formal meeting began with a presentation by the executive vice president of the American Hardboard Association, a trade association of manufacturers of hardboard, a product used as exterior siding on ap-

proximately 15 million manufactured homes. The presentation focused on the product's application and a draft siding application standard, dated March 1993, which was developed by industry in response to a Congressional mandate for HUD to promulgate hardboard standards; HUD has not yet published its hardboard standard. Commissioners questioned the association representative about the durability of hardboard siding and its susceptibility to moisture penetration. A Maine State Senator testified about constituent complaints and homeowner problems with deteriorating hardboard siding, and recommended not prohibiting hardboard siding, but providing additional protections to homeowners. She planned to introduce legislation in the Maine Senate by January 1994 to address these issues.

Next, a representative of a private, nonprofit organization devoted to affordable housing issues in New Hampshire described the agency's main program, that of converting investor-owned mobile home parks into cooperatives. This presentation was followed by representatives of the Mobilehome Owners and Tenants Association of New Hampshire, the National Foundation of Manufactured Homeowners, and the New England Council of Manufactured Home Residents, all of whom discussed difficulties that owners of manufactured housing have in resolving problems. Their recommendations included: (1) requiring at least a 5-year warranty; (2) requiring HUD to respond to consumer complaints in a timely fashion; (3) encouraging resident ownership of mobile home parks; (4) upgrading the quality of materials and workmanship; (5) allowing a removable chassis for units sited on private land, while keeping the chassis for all units located in parks; (6) establishing minimum qualifications for the training and licensing of installers; and (7) improving enforcement.

SAA representatives from Maine and New York discussed the necessity to update the HUD Code and to have installation instructions that are specific and in language installers can understand.

A panel of manufacturers and retailers followed. The executive director of the Maine Manufactured Housing Association described the State's installation standard that took effect March 1, 1993, and a law requiring local jurisdictions to permit manufactured homes on private lots as well as in parks. He testified that the HUD complaint system was not effective and that States should implement the system on a uniform basis, with uniform warranty provisions. He recommended that PIAs be subject to fines and that the HUD standards be strengthened. A retailer of modular and manufactured homes testified that chassis removal would not be detrimental to the modular industry, provided definitions in law and appraisal and mortgage underwriting standards were changed.

The vice president of Skyline Corporation, a manufacturer of HUD Code homes, suggested: (1) that the Commission recommend a uniform installation standard with State and local responsibility for enforcement and inspection, using the MHI/NCSBCS model, which included enforcement, monitoring, inspection, certification of installers, and training for inspectors; and (2) annual updates to the HUD standards. He also indicated that since 1972, before establishment of the Federal program, Skyline has successfully used a third-party agent to review all designs and to inspect homes during construction.

The panels were followed by an extensive public comment session. A consulting engineer, who is a member of the Manufactured Housing Board in Maine and the author of the newly adopted manufactured home installation standard in the State, testified about three principal problems affecting the durability of units in Maine: (1) failed installations; (2) failed floor/frame systems; and (3) failed moisture control systems. He said that the State has dealt with the first problem by adopting installation standards; the second problem occurs because the testing used to approve the floor systems does not adequately predict what is occurring in the field; and the third occurs because the HUD Code is the only "accepted engineering practice" that does not require ventilation of the attic cavity.

An owner of manufactured home parks in Maine and New Hampshire, who is also a member of the Maine Manufactured Housing Board, testified about how the Maine State regulatory agency handles homeowner problems, given the options available in the Federal program. She indicated difficulties with HUD's responsiveness to State concerns and questions. Several owners of manufactured homes in Maine discussed the problems they have had with their homes: roof leaks, disintegrating hardboard siding, popping nails, ill-fitting windows, broken furnaces, electrical problems, pipes that don't drain, flimsy plumbing fixtures, and homes sold for the wrong wind zone.

Following this discussion, but still in public session, the Commission reviewed its reporting responsibilities. The executive director reported that the Interim Report needed to be sent to the Government Printing Office by mid-January for the Commission to meet the March 1 deadline. Therefore, final decisions on issues must be made no later than the January meeting. In response to a Commissioner's question, the executive director reported that the Commission's contact at the GSA had confirmed a conversation with the president of ARR, who asked about the procedure for submitting a minority report. He reportedly felt a minority report would be necessary because the manufacturers would not have their needs met because of the Commission staff, which did not include an industry representative. Several Commissioners expressed concern that anyone was anticipating a minority report at such an early date. In response to another Commissioner's question, a Commissioner representative of ARR gave assurances that ARR did not oppose the Commission's 12-month extension request, and agreed to poll ARR's members for approval for a support letter to the Hill.

The executive director then addressed the upcoming Interim Report to Congress, which he perceived as a fairly brief document and not a markup of the law or the HUD regulations. He suggested that it should describe the Commission's recommendations based on its definition of the problems, and clearly should mention the systemic problems identified in July. He also suggested that the recommendations be approached in the context of how they address the systemic problems; if the Commission chooses not to address them, such reasons should be indicated. The executive director indicated that a clear Interim Report would better enable the Commission to work with the Hill's legislative drafters as they interpret the intent of the Commission's recommendations.

The committees met to continue discussing the enforcement, installation and transportation, and revision of standards options papers.

September 1993

The September meeting initiated the synthesis and decisionmaking stage of Commission work. One presentation was scheduled, a study for the Commission on the current financing of manufactured housing and recommendations for bringing the manufactured housing market in line with financing for conventional housing. The principal of the Hamilton Securities Group, who is a former Federal Housing Commissioner, presented her findings. She explained that Hamilton Securities is a small real estate investment bank that was created to securitize real estate and package pools of mortgages into securities that mutual funds or pension funds can purchase in the bond or stock markets, thereby making such assets much more liquid than individual mortgages sold individually to an investor. The current low interest rates for single-family mortgages and refinancing are made possible by securitization.

The study investigated how the financing of manufactured housing worked, why it was not as efficient as single-family housing or other kinds of securitization, what opportunities

for securitization might be available for manufactured housing, and whether any changes in the codes and standards might have an impact on these opportunities. She stated that her study was not an actuarial study, but an educated guess based on market experience.

The study indicated two reasons why financing of manufactured housing is less efficient than financing site-built single-family housing: (1) manufactured housing does not have the benefits of the support and standardization of the Federal agencies that single-family housing has; and (2) for the most part, manufactured housing is considered personal property, not real estate. A major credit problem is that of negative equity, which is much greater for manufactured housing than site-built housing. Negative equity means the value of the asset is less than the principal amount of the loan secured, and it increases the lender's risk. Based on anecdotal information and talks with market practitioners, the study concluded that part of the negative equity problem is caused by codes and standards. To the extent that the market perceives that manufactured housing is a higher value, longer lasting product, the market will offer more competitive terms.

Extensive discussion with the Commissioners occurred at the end of the presentation. The industry Commission members did not accept many of the findings of the study, stating that they believed financing problems were primarily attributable to siting considerations, not to building codes and standards. The presenter agreed that siting was a major problem, but referred back to her comments on quality and perception of the product as the reasons for hesitancy on the part of many potential lenders to become involved with manufactured housing.

The executive director asked the Commissioners to consider the systemic problems identified at the July Commission meeting as they deliberated in their committees, so that options could be considered in the light of how they address the systemic problems. The committees met to continue discussions on the following issues: revision of the standards, warranties, the affordable/durable issue, preemption, and consumer complaint enforcement. The standards committee reported to the full Commission that it had narrowed its preference for HUD Code standards development to two options: (1) using a consensus standard developed through consensus procedures; or (2) adopting a model building code, such as the Building Officials and Code Administrators, Inc., (BOCA) Code.

A public hearing session included remarks by a representative of MHI, who advocated using a consensus standards approach instead of a model code. He testified that adoption of a model code would jeopardize the preemption clause of the manufactured housing law.

The executive director's report included an update on the Commission's extension status, which Congress had not yet passed. He also distributed a letter from HUD stating that, pursuant of a meeting with MHI, the American Hardboard Association (which testified at the August Commission meeting) postponed the effective date of the hardboard siding application standard beyond the target date of October 1, 1993. A spokesman for MHI stated that the association was asked to clarify some issues in the standard, and he believed the changes would be made in the next 4 months.

October 1993

The meeting was canceled because of a delay in enrollment of H.R. 2517 authorizing an extension of the Commission through September 30, 1994. The Commission suspended operations from October 1 until October 27, 1993, when the bill was signed.

November 1993

The November meeting was held at an isolated retreat center in Airlie, Virginia, and continued the synthesis and decisionmaking stage. The executive director explained that the purpose of the meeting was to reach a working consensus covering four areas: standards, warranties, transportation and installation, and enforcement monitoring. The Commission changed its operation from a committee to a caucus structure, where most Commissioners elected to work with either the industry or the consumer group. The HUD representative chose not to align with either group. The purpose of this change was to allow the industry representatives and the consumer representatives to meet separately to determine their bottom-line needs and to facilitate negotiation and decisionmaking.

The executive director opened the meeting with a discussion of the systemic problems of the existing manufactured housing program identified in July. The Commissioners revisited in their discussion the following systemic problems:

1. HUD as Regulator;
2. Standards-Setting Process;
3. Unclear Federal-State Relationship;
4. High-Tech Approach to a Housing Environment;
5. Preemption;
6. Lack of Integration Within the Industry; and
7. Level of Accountability.

Following this discussion, the lack of consumer information was identified as an important issue and became the eighth systemic problem. No consumer publications addressed manufactured housing, nor did *Consumer Reports* rate the product. The Commissioner representing Consumers Union pointed out that a publication on manufactured housing would not generate enough income to cover expenses, but Consumers Union was nonetheless considering such an issue as a public service. This Commissioner stressed that durability and safety need to be regulated because people were counting on the government to ensure a quality product.

The executive director made a presentation comparing manufactured housing and conventional housing in terms of tax write-offs and access to Federal housing subsidy programs, showing manufactured housing to be at a great disadvantage. Many HUD programs are urban while manufactured housing is primarily a rural product. Demographics for purchasers of both types of housing were discussed, and it was clear that manufactured housing was serving the lowest income population without benefit of Federal subsidy.

The Commission recessed to caucus prior to an evening session, at which the consumer spokesman presented a proposal for reform of the manufactured housing program. The consumers' proposal was organized around eight problem areas: (1) standards; (2) inspections and approvals; (3) installation and transportation; (4) competence, training, and certification; (5) enforcement; (6) warranty; (7) intergovernmental relations; and (8) financing. The consumer proposal included the following recommendations:

Standards

- Establishment of the National Institute of Manufactured Housing Standards to develop the standards.

- Standards that provide for a level of performance equivalent to that required by national model building codes.

Inspections and Approvals

- DAPIA and IPIA systems continued with modifications.
- No agency other than an exclusive State agency may provide both DAPIA and IPIA services to the same manufacturer.

Installation and Transportation

- All installations must be inspected by a qualified local code official, SAA employee, or a HUD-approved third party.
- Manufacturers must provide specific installation designs suitable for use at the actual site or make arrangements for architect/engineer-prepared installation design.
- Dealer must inspect and accept the home after transportation to its lot. Manufacturer is responsible for any transportation damage until the home is accepted by dealer. Dealer is responsible to the buyer for any transportation damage.
- Dealer is responsible for actual installation on the site unless the buyer executes HUD-specified acknowledgment and waiver.

Enforcement

- Enforcement program will be recast to provide for State enforcement with HUD oversight; approved SAAs will have primary responsibility for investigations and subsequent enforcement actions.

Warranty

- Establish a 10-year insurance-backed warranty to replace the existing defect classification and notification system.
- Coverage will include 1 year on all defects, 3 years on mechanical and electrical systems, 5 years on weatherability, and 10 years on structural soundness; equipment manufacturer warranties are applicable where and to the extent that they exceed the specified warranty.
- Manufacturers and retailers are jointly liable for correction of any covered manufacturing or installation defects and jointly covered by any insurance; manufacturer and dealer will privately agree who takes first position.
- Independent alternate dispute resolution (ADR) will be undertaken by SAAs whenever disputes arise between manufacturer/dealer and homeowner regarding a defect or the adequacy of corrections; disputes will be resolved through a mediation/arbitration process that is final and binding on both parties; dispute resolution will be by qualified SAA personnel or organizations such as the American Arbitration Association; and dispute settlers will be free from institutional bias or economic interest.

- Manufacturers/dealers will be required to register with HUD and obtain and maintain warranty coverage as a condition of registration; failure to correct defects results in loss of registration; registration is required to sell; and coverage may be obtained from HUD-approved private plans or a HUD-administered "national plan."

Intergovernmental

- Private right of action regarding noncompliance is established in Federal court.

Financing

- Where homes are labeled as complying with a model code, the Government National Mortgage Administration (GNMA) should be authorized to guarantee pools of manufactured home 30-year mortgages.
- Manufactured housing labeled in accordance with model codes should be given a preference in all Federal programs that assist in the construction of new low- and moderate-income housing wherever it is less expensive and appropriate from a project planning standpoint.

An industry Commission member responded to the consumer proposal by stating that it was the most bureaucratic system he could imagine, to which the consumer spokesman responded that the idea was to create a system that was less bureaucratic, but more responsive and accountable.

After further caucusing, the industry caucus made a counterproposal, which included the following:

Standards

- All standards development will be conducted by a consensus committee.
- The secretariat of the consensus committee will be selected by HUD.
- This consensus committee will maintain and update the HUD standards.
- The consensus committee organization and process will be in accordance with the American National Standards Institute (ANSI) procedures and will seek ANSI certification.

Inspections and Approvals

- The DAPIA and IPIA systems will be continued with modifications.
- The current IPIA inspection system shall be maintained.

Installation and Transportation

- Each State must adopt an installation standard within 3 years, based upon ANSI A225.1 or an equivalent standard.
- States must adopt an appropriate monitoring system to ensure compliance.
- Dealers are responsible for actual installation unless the buyer executes a specific acknowledgment and waiver.

- If the home is transported by the manufacturer, the manufacturer will be responsible for any damage in transportation. If the home is transported by, or the transportation is contracted by the dealer, the dealer will be responsible for any damage in transportation. The dealer will also be responsible for transportation damage done between dealer's sales center and final destination.

Enforcement

- Uniformity of enforcement is essential. The current system should be maintained.
- States should adopt a system of licensing dealers, manufacturers, and installers.
- Enforcement efforts should be directed at serious structural, fire safety, or life safety hazards.
- Defect classification and notification system of Subpart I should be eliminated. Recall and repairs will be required for classes of serious defects and all imminent safety hazards.
- There must be *no* Federal private right of action regarding noncompliance established in Federal court.

Warranties and Dispute Resolution

- Warranty coverage will extend for 1 year on all defects, and 5 years on structural soundness, plumbing, and electrical systems; at the manufacturers' discretion, the warranty may be offered through an insurance policy.
- In conjunction with the elimination of Subpart I, States are to be encouraged to adopt recovery funds and binding alternate dispute resolution systems.
- The recovery fund will be designed for consumers to collect funds for claims against manufacturers, dealers, installers, and transportation companies that have ceased to do business in those States.
- A claim against the recovery fund will go through the dispute resolution system first.

Preemption

- Preemption must be strengthened in two respects: (1) HUD should actively assert preemption against conflicting State or local building codes or standards; and (2) preemption should be extended so that no State or local government may exclude any manufactured home simply by reason of its HUD label. Similar prohibitions concerning rental communities will apply.

Chassis Removal

- The permanent chassis requirement must be eliminated for HUD Code homes permanently sited on privately owned land or land leased long enough to qualify for mortgage financing, where appropriate design and structural modifications have been made to the home.

Financing

- HUD should be encouraged to exercise authority to use manufactured homes in all mortgage insurance programs, the Section 8 rental assistance program, and the Community Development Block Grant and HOME programs.
- Congress should authorize the use of HUD Code homes in its public housing, Section 8 homeownership initiatives, and the Section 202 program for the elderly.

There was disagreement within the Commission as to how similar the consumer and industry proposals were to each other. The industry representatives on the Commission indicated that they viewed them as quite far apart, whereas the consumer members tended to view them as having enough similarities to merit further negotiation. There followed an extended discussion of the enforcement system. At the end of the meeting, the consumer caucus spokesman volunteered to attempt to produce a "blended" proposal for discussion at the next Commission meeting, scheduled for December. The industry caucus spokesman agreed, and the Commission as a whole accepted the offer.

December 1993

The December meeting was canceled upon the request of a Commissioner representing the industry, stating they needed more time to discuss the issues.

January 1994

The Chairman opened the meeting by reminding the Commissioners that the focus of the meeting was to make all the decisions necessary for the Interim Report, and that the Congressional staff hoped the Commission would come to consensus. The plan for the meeting was to negotiate the issues for two days, and on the third day to review the Interim Report draft as prepared and assembled overnight by the staff.

Prior to the meeting, all Commissioners were sent the "blended" paper on reforming the manufactured housing program, as promised at the November meeting. The paper, together with an outline of key issues addressed in the paper, was intended to provide a structure within which negotiations could occur. The industry caucus voiced concerns over the blended paper, stating that many liberties were taken beyond what the industry previously indicated it might consider. The chairman of the Commission pointed out that the paper and outline were just starting points for negotiation, and should be treated as such.

During negotiations, the consumer caucus made concessions to the industry in the areas of:

1. **Warranty.** Consumers accepted the industry caucus's 1/5-year warranty (1 year on all defects, 5 years for electrical and mechanical systems and major structural components), instead of a 1/3/5/10-year warranty (1 year on all defects, 3 years for electrical and mechanical, 5 years for weatherability, and 10 years for major structural).
2. **Installation Standard.** Consumers accepted the industry caucus's preference for ANSI Standard A225.1 as the minimum installation standard, instead of manufacturer installation designs, or registered professional engineer designs, specific to the site.
3. **Inspection System.** Consumers accepted the industry desire to keep the existing system, based on a quality control program, instead of a refocused program that concentrates on actual inspections.

4. **Retroactive DAPIA Approvals.** Consumers accepted retroactive approvals with the condition that the DAPIA must notify the monitoring agent when such changes are made, instead of prohibiting retroactive approvals outright.

5. **Recovery Fund.** Consumers accepted the industry's desire for State-based recovery funds, rather than a national fund.

After the above concessions were made, strong disagreements emerged concerning the remaining warranty issues, particularly covering installations, recovery funds, and the alternate dispute resolution process. The consumer caucus expressed concern that the industry refused to provide a comprehensive warranty, preferring instead to adhere to the industry's original stance as their "bottom line." As stated, the industry's proposal was a 1/5 year warranty, with no coverage for installation and transportation problems.

Following caucuses of both groups, the consumers indicated that too many issues they considered vital were not addressed by the industry, and therefore, consensus would not be reached. The consumers stated that they would not close off discussion of these issues, but expressed the need to produce a substantive Interim Report useful to Congress and delivered within the mandated timeframe; the consumers, therefore, called for a vote. A comprehensive package of reforms was recommended by the consumers, with the recommendation that, if Congress did not pass the reforms, the current Federal preemptive system should be dismantled and the responsibility for ensuring that manufactured housing is safe and sound should be returned to the States. The package included: (1) standards; (2) inspections and approvals; (3) installation and transportation; (4) training and certification; (5) enforcement; (6) warranties; (7) intergovernmental relationships; (8) financing; and (9) manufactured housing program findings. In each case, the roll call votes were nine in favor, six opposed, one absent, with the HUD representative abstaining.

The industry caucus indicated that it would work with the staff of one of its trade associations to prepare a minority report to accompany the majority Interim Report. Commission staff typed and duplicated the draft Interim Report for distribution the following day. After review and discussion of the draft Interim Report, the document was again put to a vote. The vote to accept the Interim Report was nine in favor, six opposed, one absent, and HUD abstaining. A statement from HUD was approved for inclusion in the report.

February 1994

The executive director opened the meeting by explaining that the Commission had one more chance to reach consensus before the Interim Report was due on March 1. Since the January meeting, the Interim Report reflecting the majority's reform proposals to the manufactured housing program had been printed and, if consensus could not be reached, that report would be forwarded to the Congress.

The executive director explained that the opportunity again to pursue consensus came when the industry expressed interest, after the January meeting, in giving it another try. He took the initiative by issuing a memorandum, dated January 21, inviting the Commission to revisit the major issues and to attempt to reach consensus. The memorandum listed the major issues, "bottom line" positions taken by the consumer and industry caucuses, and middle positions that could provide grounds for compromises. Although the memorandum was not read into the public record, the working document is printed here to establish the foundation for the ensuing discussion:

Staff-Perceived "Bottom-Line" Positions of the Caucuses

Standards

Industry. Position set forth by majority in the Interim Report is acceptable, provided "comparability" is dropped or defined in a way that recognizes the importance of affordability, and does not require lock-step changes as model codes change. Drop "permanent chassis" requirement for units placed on private property.

Consumers. Keep comparability/equivalency.

Inspections and Approvals

Industry. Willing to notify HUD of change of PIA and reason for change; not willing to agree to prior HUD approval. Not willing to subject DAPIA retroactive approvals to prior HUD or monitoring agent approval. Not willing to increase the number of inspections to the level proposed by consumer caucus. Not willing to support recertification of used homes at this time.

Consumers. Willing to agree to industry position if needs are met in other areas.

Installation and Transportation

Industry. Willing to accept position of consumer caucus set forth in the Interim Report, provided spot inspections rather than inspection of each unit by the SAA are proposed.

Consumers. Willing to reach agreement with industry if needs are met in other areas.

Training and Certification

Industry. Willing to accept position of consumer caucus set forth in the Interim Report.

Consumers. Proposals by this caucus are acceptable to the industry.

Enforcement

Industry. Unwilling to accept State enforcement with HUD oversight. Willing to allow receiving State the authority to deal with out-of-State manufacturer over a problem home, if the manufacturer is not subject to double jeopardy. Unwilling to accept oversight board. Unwilling to accept private right of action. Amend or eliminate Subpart I.

Consumers. Willing to leave current enforcement system in place for manufacturing plants with industry-accepted changes already agreed to if industry will give in other key areas. Require oversight board.

Warranty

Industry. Willing to accept 1 year for all defects, 5 years for plumbing, electrical, and structure. Unwilling to accept weatherability unless carefully defined and limited, or 5 years on mechanical. Unwilling to accept national recovery fund, although willing to mandate 50 State recovery funds if a way can be found to do so. Want to use ADR to resolve manufacturer/dealer disputes as well as industry/consumer disputes.

Consumers. Must have at least 1 year for all defects and 5 years for plumbing, electrical, mechanical, weatherability. Must be backed by national recovery fund or insurance-backed warranty. Must have ADR. Must cover installation and transportation. If there is a defect, the industry rather than the consumer needs to allocate responsibility for fixing it. Must have strong enforcement.

Suggestions for Reaching Consensus Based on Analysis of Caucus Proposals

Standards

Consensus Process. Construction and safety standards developed and updated through a consensus process. Resulting standards will be made an American National Standard.

Adoption of Standards. HUD required to adopt consensus developed standards or any amendments thereto within 12 months of promulgation; adoption procedure will be an Administrative Procedure Act (APA) process; HUD failure to act would lead to automatic adoption by law.

Consensus Committee. A consensus committee will be organized and administered by a private sector standards-setting organization. Nominations for committee members will be made by the administering organization in conformance with ANSI selection procedures. ANSI interest categories should be modified as follows: "producers" will be called "industry" and should include manufacturers and retailers; "users" will include consumers and public officials; and "general interest" will include architects, engineers, academics, and others with expertise. PIA personnel will be included in the "general interest" category but may not compose more than 20 percent of the members from that category. Members of the "general interest" category, other than PIA personnel, may not have a financial interest in the industry. Nominees should be qualified by background and experience to participate in the work of the committee. The nominations will be forwarded to the Secretary who shall have 60 days to approve or reject the nominations. Reasons for rejection of any nominee(s) should be stated publicly in a letter to the administering organization. The committee should be ANSI accredited.

Choice of Administering Organization. The consensus committee should be administered by one of the following private sector standards-setting organizations: National Institute of Building Sciences (NIBS), American Society for Testing and Materials (ASTM), or Council of American Building Officials (CABO). The Commission will make a recommendation in its final report on which organization it believes would be most appropriate to administer the consensus committee.

Consumer Technical Analyst. A consumer technical analyst should be a part of the consensus committee staff.

Testing Procedures. The consensus committee should establish uniform test or evaluation methodologies that are required to evaluate, adequately and uniformly, compliance with existing or proposed standards. A performance standard should not be applied unless a uniform testing method has been specified.

Binding Interpretations. The consensus committee should issue interpretations of the standards. These interpretations will be binding upon approval by the Secretary. The Secretary will have 60 days to review the proposed interpretation, make recommenda-

tions for the amendments, or reject the interpretation if the Department determines it to be inconsistent with public health and safety or the Act.

Installation Standard. The consensus committee will develop an installation standard using ANSI Standard A225.1 as a starting point. The consensus-developed installation standard will be preemptive.

HUD Authority. The Secretary will have the authority to reject or modify a portion of the standards or any interpretation upon a finding that health and safety would be jeopardized or that such a change is necessary to meet the purposes of the law. Any such rejections or modifications are to be made only through the full APA process.

Emergencies. The Secretary of HUD should have the authority to request the consensus committee to develop interim emergency amendments to the standards, when necessary, to respond to an emergent health or safety issue.

Rationale. The above suggestions remove industry concerns regarding the equivalency/comparability of the standards. They provide for an ANSI-accredited consensus process. Also included are agreements regarding consensus committee balance of interests and technical competence reached prior to the Commission vote on the Interim Report. A consumer technical analyst will be provided to assist consumer members of the committee in evaluating the implications of proposals before the committee. HUD's concerns will be met by having the Secretary approve all nominees for the consensus committee without requiring the Department to initiate the organizational process.

Inspections and Approvals

Inspection System. The current third-party inspection system will remain in place.

PIA Termination and Conflict of Interest. Manufacturers and PIAs (when accepting new work) should be required to notify HUD promptly of a change in the third-party agency and state the specific reason(s) for the change. Future agreements between PIAs and HUD should provide that the PIA has an affirmative duty to report any conflicts of interest (for instance, a DAPIA undertaking design work).

DAPIA Approvals. Retroactive approvals by DAPIAs will not be permitted unless approved by HUD or HUD's monitoring agent.

Quality Assurance Manuals. Requirements for quality assurance manuals should be upgraded to include specific criteria for evaluating acceptable workmanship as the home is being constructed.

Rationale. The suggestions above meet consumer/public official concerns about integrity of the process by requiring disclosure and an explicit PIA reporting requirement. In addition, quality assurance manuals would be upgraded to improve the ability of manufacturer quality control and IPIA personnel to evaluate an acceptable level of workmanship during construction. When combined with increased warranty requirements, these changes should meet consumer/public official caucus demands for a more effective inspection process without placing undue burdens on industry.

Installation and Transportation

Inspection of Installations. SAAs will perform random inspections to ensure compliance with the standard.

Rationale. The cost of inspecting every installation would be prohibitive, particularly in more rural States. Random or spot checking by SAAs would ensure compliance without requiring large increases in personnel.

Enforcement

HUD Authority. HUD will retain primary responsibility and authority for the enforcement system. Current provisions under the Act and regulations for optional State participation in enforcement activities should be maintained.

Enforcement Remedies. The Act should be modified to provide HUD with a full range of enforcement remedies including administrative assessment of civil penalties and cease and desist orders. A definition of primary inspection agencies should be included in the Act and penalties under Section 621 decriminalized.

Subpart I Requirements. Eliminate requirements for notification of defects under Subpart I. Where a serious defect or imminent safety hazard is discovered, States should be required to notify the manufacturer, other States, and HUD to facilitate investigation and any necessary enforcement actions. A definition of serious defect will be provided in the Commission's Final Report.

Enforcement Information and Oversight Subcommittee. Monitoring reports, the results of complaint investigations, and other enforcement records are public records and should be accessible to SAAs and interested citizens. Monitoring reports should be referred to a subcommittee of the consensus committee for peer review. The subcommittee will make non-binding recommendations to the Secretary for corrective action. Because its recommendations are advisory, the subcommittee would not operate under strict due process procedures but would provide an opportunity for affected parties to present their views. The subcommittee should be smaller in size than the full consensus committee, but should reflect the same balance of interests in its membership.

Rationale. The above suggestions would meet industry concerns by maintaining the current enforcement system. However, the suggestions attempt to meet consumer/public official concerns by enhancing HUD's ability to undertake enforcement actions through the provision of administrative civil penalties. Further, optional State enforcement provisions of the Act and regulations would be maintained. Industry concerns are met by eliminating notification requirements for defects under Subpart I. Consumers will continue to be protected against serious defects. Less severe problems will be handled through the enhanced warranty. Industry concerns regarding the oversight board are met by making the oversight board a subcommittee of the consensus committee.

Warranty

Terms and Coverage. Manufacturers and dealers should be required to provide a joint warranty under the Act. Coverage includes:

1 year for all defects

2 years for appliances or original equipment manufacturer warranty, whichever is longer

5 years for mechanical and electrical systems

5 years for weatherability

5 years for structural soundness

Defects covered under the warranty for weatherability shall include:

Rainwater, snow or air leaks in roofs, walls, floors, siding, windows or doors

Inadequate or missing thermal insulation, air gaps greater than 1/8 inch

Insufficient attic, roof space, or crawlspace ventilation

Deteriorated, cracked, or missing siding so as to form an incomplete envelope

Repair of weatherability defects includes repair of items necessary to restore their weatherability functions and repair of other components of the real property damaged by the weatherability defects.

Defects shall be repaired within 30 days of receipt of written notice and 5 days in emergency situations. The warranty shall cover defects regardless of whether they arise as a result of faulty design, construction, transportation, or installation.

Performance Standards. The code developed by the consensus committee should include standards for the level of quality of materials, performance, and workmanship prescribed by the warranty.

Claims Process. A claims process will be established that allows the homeowner to file a claim with one entity and ensures correction within a reasonable time. Manufacturers and dealers will have first opportunity to correct the defect. If the defect is not corrected satisfactorily, an alternate dispute resolution process would be initiated. Under the ADR process, an impartial dispute settler would investigate the problem and issue a ruling identifying the party responsible for correcting the defect, the items that need to be corrected, and the time period for correction.

National Recovery Fund. A national recovery fund administered by the States should be established under the Act. The fund should cover claims of homeowners if a manufacturer or dealer goes out of business or if the manufacturer or dealer refuses to make repairs under the warranty dispute resolution process. The recovery fund will be financed by charges levied at the time of sale on manufacturers and dealers and based on actuarial factors. Funds collected will be held in trust outside of the Federal budget and should be used only for purposes of the fund.

Manufacturer/Dealer Registration. All manufacturers and dealers will be required to register with the national recovery fund. Registration will be required to sell homes. Revocation of registration should be mandatory if a manufacturer or dealer fails to correct a defect that has been determined to be its responsibility.

Data Collection and Dissemination. The fund will collect, aggregate, and distribute claims data to all SAAs by types of defect, frequency, and location by manufacturer, plant, model, or system. SAAs and HUD will use data to assist monitoring of IPIA performance.

Preemption. States with recovery funds and bonding programs equal to or exceeding Federal program requirements would not be preempted. HUD would be required to make such determinations in conformance with statutory guidelines.

Rationale. The above suggestions meet consumer/public official concerns by providing a long-term comprehensive warranty and a national recovery fund. Industry concerns are met by limiting the warranty to 5 years and providing an ADR process.

This memorandum served as the framework for negotiations. The Commissioners expressed their opinions and concerns on each point. Because of industry concerns and industry resistance to a national recovery fund, consumer representatives agreed to drop the requirement for a national recovery fund, and agreed instead to State recovery funds. Following the day-long session of negotiations by the Commissioners, the staff prepared a new draft Interim Report, incorporating the positions that had been decided. See Appendix D of this report for the entire Interim Report submitted to Congress on March 1, 1994, with a complete list of consensus recommendations made by the Commission.

The Commissioners reviewed the draft Interim Report and fully discussed the "systemic problems" of manufactured housing. Revisions were made to the descriptions of some of the problems as listed in the Interim Report, primarily to allay the industry's general concern about the negative tone of the descriptions.

Consensus was reached on the major issues, with some details still to be worked out between the consumer and industry caucuses. The Interim Report, as amended, was accepted by a roll call vote of 13 in favor (Commissioners Bowman, Burley, Connolly, Eckman, Hussey, Jensen, Kennedy, Lear, Logan, Scarponi, Taylor, Wehrman, and Boosalis), 0 opposed, 1 absent (Commissioner Harley), and 3 abstentions (Commissioners Meier and Soldati and the HUD representative).

March 1994

The Commission submitted its Interim Report to the Congress on March 1, 1994. The March Commission meeting began with a discussion of the legislative process. An industry representative on the Commission expressed concern about the timing of legislation this year, and suggested that loose ends be resolved first, with a discussion of the legislative process to follow. Discussion of the legislative process was deferred until the end of the meeting.

The Commission discussed warranty issues to clarify the responsibility of the retailer for structural problems resulting from installation in years 2 through 5 of the warranty. Industry representatives on the Commission reported encountering resistance from retailers on the proposed 5-year structural warranty on installation. They reported that retailers, who now provide no warranty, would be willing to accept a 1-year installation warranty, but would not be willing to provide a 5-year warranty on the structure for installation-related problems. A retailer member of the Commission acknowledged, however, that "the consumer is left in this gray area again" if, 3 years after purchase, a structural problem arises and the manufacturer determines that it is a set-up problem. The Commissioners discussed the likelihood that an installation problem might not appear in the first year of the warranty; a manufacturer member indicated that it would be rare for such a problem not to show up in the first year. Several homeowner members disagreed. Another industry member indicated that improper installation occurs in part because there is no money to finance a proper installation, so "the dealers might cheat and the factory stands still while they cheat." Industry members agreed to work within the industry to try to develop, before the April Commission meeting, a solution to the issue of warranting the installation for structural integrity.

The next issue discussed was that of weatherability coverage under the warranty. A Commissioner representing the industry stated that it would be covered under the 1 year warranty. The discussion turned to heating/cooling equipment coverage under the warranty, and a distinction was made between the actual equipment and the air distribution system. There was general agreement that suppliers warrant furnaces for 1 year, although some suppliers have gone to 2 years, and an industry representative said that manufacturers are

unwilling to warrant furnaces beyond the equipment manufacturer warranty. The issue of inadequate heating performance because of an undersized furnace, according to industry members of the Commission, was defined as negligence in manufacture, with no time limit on fixing the problem and no need for warranty coverage. Most agreed that the ductwork or air distribution system was covered under the structural warranty, and the industry representatives agreed to explore that issue further.

Commission staff provided a cost analysis on State recovery funds, which was followed by extensive Commission discussion. A number of Commissioners believed that the costs estimated by staff represented a worst-case scenario and would not be so high in reality.

During the afternoon session, the Commissioners went by bus to HUD, where they met with Secretary Henry G. Cisneros and Assistant Secretaries Michael A. Stegman and Nicholas P. Retsinas. The Commission chairman presented the Interim Report to the Secretary, who commended the Commission for reaching consensus and indicated his support for the Commission's work. Secretary Cisneros stated that HUD would respond quickly to the Interim Report and would work with the Commission to achieve legislation this year. He also said that he owned a manufactured home that he uses as a vacation home. The Secretary stressed that he was aware of the recent improvements made to manufactured housing, and that he regarded it as an important resource in providing homeownership opportunities to American families, including those with modest incomes.

After the meeting with Secretary Cisneros, the Commission reconvened and discussed a proposed definition of "serious defect." After extensive discussion, the Commission voted unanimously to approve the following definition: "Serious defect means a failure to comply with any applicable Federal manufactured home construction and safety standard that creates a defect in the performance, construction, compliance, or material of a manufactured home that constitutes a safety hazard or that affects the home to the extent it becomes unsafe or otherwise unlivable."

The Commission then discussed and agreed on proposed guidelines for maintaining consensus, which included supporting the Interim Report recommendations in all dealings with the public, clarifying recommendations for the Final Report rather than renegotiating specific agreements, and refraining from acts intended to unravel the consensus.

Then, discussion turned once again to the structural warranty on installation. An industry representative on the Commission indicated that, because of the lack of warranties now, the concept is new to many people. He indicated that there were three major industry meetings in the next 4 weeks, and that he and other industry members would be present at those meetings to try to garner support from manufacturers and retailers for the Commission's recommendations. One Commissioner, a public official, summed up by saying that the installation issue is not new, and that it stands out as an area where Commission action is most justified. He stressed that Commission testimony and discussion indicated that there are more problems with installation than with the manufacturing process. He suggested that if the installation problem were not addressed through an accountability mechanism, such as the 5-year warranty, then it should be addressed through a much more intensive inspection system.

The Commission returned to a discussion of weatherability. The Commissioner spokesman for the consumer caucus stated that their main concern about weatherability beyond the first year was leaks attributable to a structural defect. The Commissioner spokesman for the industry caucus said he believed that such leaks would be covered under the 5-year structural warranty. The spokesman for the consumer caucus stated that the 1-year war-

ranty on weatherability would then be acceptable, provided structurally caused leaks were indeed covered under the structural warranty.

The Commission returned to the issue of heating/cooling under the warranty, and the industry spokesman agreed that the air distribution system would be covered under the 5-year warranty. The furnace itself would be covered for 1 or 2 years, depending on the supplier's warranty.

The next issue discussed was performance guidelines for the warranty. The consumer spokesman indicated that the underlying concern was that there be uniformity both over the years and across the country in warranty coverage. Two issues were of concern: (1) reaching agreement on the performance requirements; and (2) that such guidelines would be communicated in legislation or the Final Report. He agreed to work on this issue with the spokesman for the industry caucus and report back with a recommendation in April.

Commission staff presented information on the alternate dispute resolution issue, described the process, and recommended principles for guiding the design of the process. After discussion, the Commission agreed by consensus that the recommended principles be included in the Commission's Final Report.

An industry representative raised a concern about enforcement. A motion was made and passed to add the following new sentence to the Enforcement section, item # 4, in the Interim Report recommendations: "Committees would review the performance of participants in the enforcement system, especially the SAAs, PIA staff, and individuals performing HUD's monitoring function, to ensure that those individuals and organizations are performing their duties in a reasonable and effective manner."

The Commission discussed the administration of the consensus committee, and agreed to invite representatives from CABO, NIBS, and ASTM to make brief presentations at the May meeting if they were interested. There was also discussion about whether consumer members of the consensus committee could receive a stipend, and the staff agreed to do research on the subject.

The executive director reported that the "recommendations" section of the Final Report would be drafted and sent to Commissioners 1 week before the April Commission meeting. He also indicated that there would be informal conversation with Congressional staff regarding who would begin drafting legislative language to implement the Interim Report.

April 1994

The April meeting in Raleigh, NC, began with a day-long tour of a manufactured housing plant and two manufactured housing subdivisions. The formal meeting the next day opened with a panel of witnesses representing the SAAs from Michigan, North Carolina, Texas, and Virginia. Panelists provided the following comments on the Commission's Interim Report: (1) keep the Commission's recommendations from being burdensome to both the industry and consumers; (2) allow State systems to continue to operate successfully; (3) update the construction standards in a timely manner; (4) training of personnel is very important; and (5) States need to get straight answers from HUD. After the presentations were completed, the Commission had an extensive discussion with all panelists on the issues they raised.

Next was a presentation by a professor in the College of Human Ecology at Michigan State University who is also a housing specialist with the Cooperative Extension Service. Her

remarks centered on three issues affecting the housing crisis: housing affordability, quality, and availability. She related those issues to the role that manufactured housing can play in alleviating the housing crisis.

An industry panel representing State manufactured housing associations from Alabama, Michigan, North Carolina, and Texas, along with a representative of the Oakwood Homes Corporation in North Carolina, made presentations regarding their views of the Interim Report recommendations. Their comments included that: (1) States need as much flexibility as possible in the manufactured housing program to protect consumers; (2) alternatives to the warranty must be considered; (3) the consensus approach to standards development is correct; (4) the recovery funds need to be considered closely in light of their costs, values, and benefits; and (5) the financing recommendations were appreciated. After all presentations were complete, there was extensive discussion among the panelists and the Commissioners.

Three North Carolina homeowners testified about problems faced by homeowners, with emphasis on landlord-tenant problems in manufactured housing rental communities.

Next, the Commission turned to resolving open issues and discussing the legislation. The executive director reported that an attorney had been hired to draft the legislation, which had been sent to Commissioners 9 days prior to the meeting. Congressional staff had indicated that they did not have the time or resources to prepare the legislative language, and suggested that the Commission employ somebody with experience to do the writing. The industry spokesman indicated that he did not feel there was sufficient time to review the draft adequately and approve it at this meeting, and he also expressed his feeling that it was improper for the Commission to become involved in the legislative process prior to the completion of the Final Report. The consumer spokesman pointed out that the Commission had planned since its first meetings to make its policy decisions by January, 1994, so that there would be time to translate the Commission's recommendations into legislation for consideration in 1994. He indicated that a give-and-take process involving the Commission, HUD, and Congress was necessary to ensure that the Commission's recommendations were accurately translated into legislative language. The Commission agreed to move forward by discussing the major issues, with the understanding that the legislation would be redrafted based on these discussions. The resulting draft would be sent to the Commissioners before the May meeting. The industry spokesman reserved the right to object and to urge the industry organizations to object if a legislative package with which he was uncomfortable went forward.

The HUD representative on the Commission stated that he expected HUD's formal comments on the Interim Report to be submitted to the Commission shortly.

The Commission next discussed the retailer's 5-year structural warranty for damage attributable to installation. Industry representatives reported that retailers continued to have objections to the warranty. They indicated that States wanted flexibility on this matter, suggesting that the 5-year retailer warranty include the options of: (1) 100 percent inspection by the State, or its designee, with installation problems in years 2 through 5 covered under a State recovery fund in lieu of requiring the retailer to warrant after the first year; and (2) allowing the States to require joint and several liability between the manufacturer and the retailer in years 2 through 5. If the State adopted neither of these options, the retailer would be responsible for the full 5-year warranty. The spokesman for the consumer caucus indicated that this proposal was acceptable to consumers.

The Commission then discussed the transferability of the warranty and agreed that the warranty would be transferable between owners during the 5-year period of coverage, but not if the home were moved from its original site. Concerning inspections of retailer lots, there was

general agreement that inspections averaging once every 2 years were appropriate, with the understanding that problem cases would get more attention, and others might get less.

There was a discussion of supplier versus manufacturer warranties for materials used in manufactured home construction. It was agreed that the warranties would be independent of each other, and if a product were installed improperly and failed as a result, the manufacturer's warranty rather than the supplier's warranty should cover the problem.

The Commission discussed providing a stipend for consumer members of the consensus committee. Based on legal research, there appeared to be no bar to such payments. The Commission agreed to recommend that consumer members of the consensus committee who are not compensated for their work on the committee receive a stipend of $100 per day for each day the committee meets.

Other agreements reached by the Commission were that the Final Report should state that the consensus committee would not be subject to the Federal Advisory Committee Act, and that any damage to a home caused by a defect should be covered under the warranty.

Warranty performance guidelines were discussed, and agreement was reached to have the consensus committee develop the items that would be covered, as well as exclusions. The industry expressed concern that the consensus committee not create prescriptive requirements that totally foreclose manufacturer and retailer flexibility in warranty drafting. In response, the Commission approved the following language for inclusion in the Final Report:

Warranty Performance Guidelines

The validity of any homeowner's claim under the warranty shall be determined on the basis of a good industry practice which assures quality materials and workmanship. The consensus committee shall develop minimum guidelines for the level of quality [of] materials, performance and workmanship to assist SAAs and other dispute settlers in resolving warranty claims and minimizing the need for litigation. The consensus committee may create a subcommittee or working group to undertake the initial development of the guidelines. The warranty performance guidelines are not intended as prescriptive requirements under the HUD Code. They shall not be interpreted by HUD as replacing, modifying, or supplementing current or future performance standards.

The goal of warranty performance guidelines is to assure the consumers benefit from warranties that meet at least minimum standards of coverage and do not include unreasonable exclusions, and which are uniformly interpreted and administered. It is the Commission's intention that manufacturers and retailers retain reasonable flexibility both in drafting their warranties and in providing coverage for items not required by statute. States have flexibility in requiring coverage for items not required by Federal statute. The performance guidelines do not cover damage due to failure to carry out required homeowner maintenance as set forth in the manufacturer's consumer manual, or homeowner abuse of the home. An example of warranty terms is attached.

The Commission then returned to a clarification of the installation warranty. The industry voiced concern over site preparation, and the Commission agreed to add the following to the current consensus-developed installation warranty:

In cases where the home buyer undertakes (his) own site preparation, the retailer has the right to ask the home buyer for an engineering certification, contractor certificate, or building inspector certification, that preparatory work is in accordance with code and

regulations. If the home buyer fails to provide such certification to the retailer, the warranty is limited to 1 year. Written disclosure of correct site preparation and these limitations to the customer must be made by retailer before sale. Retailers will be required to offer conforming installation. If offer and disclosure are not made, the warranty is for 5 years. If the homeowner chooses to install the unit himself, then there is no installation warranty.

Next, the Commission discussed the legislation. An industry spokesman objected to the tone of the "Findings" section of the legislation, feeling it to be too negative. He suggested including some positive findings to provide balance. The Commission agreed to consider including such statements when the industry provided them.

An industry spokesman questioned including the word "installation" in the definition of "Federal manufactured home construction and safety standard" in the statute. He interpreted that as federalizing the installation standard, which, he said, was not his recollection of the events. His interpretation was that there would be a model installation standard, but because the Interim Report recommended that the consensus committee assume the role of secretariat of ANSI Standard A225.1, participation would be voluntary by the States. According to the consumer caucus members, this understanding was counter to their interpretation and intent. They believed that the ANSI standard would be a minimum Federal standard that would preempt State standards that failed to meet or exceed it.

After caucusing, the industry representative stated there were two problems related to the installation standard. The first had to do with States that already had installation standards, which might be forced to redo their standards if they were less than the preemptive installation standard. The second problem was ANSI A225.1 itself, which had recently been changed and might not be appropriate as a mandatory minimum standard. His recommendation was to have the consensus committee establish a minimum installation standard without reference to ANSI A225.1, and to grandfather States with existing installation standards. After discussion, it was agreed that HUD would determine whether a given State's installation standard met the Federal preemptive installation standard; if not, the preemptive Federal standard would apply. States would have 2 years to amend their regulations, and 4 years to amend their laws from the time the Federal installation standard took effect. The Commission also agreed to have the consensus committee develop the installation standard, rather than reference the ANSI standard. The industry spokesman indicated that he believed this agreement could be acceptable to the industry.

The HUD Representative questioned the inclusion of the terms IPIA, DAPIA, and PIA in the statute, stating that HUD would likely oppose identifying specific entities in the statute. It was agreed to defer the issue until the Commission received HUD's formal comments.

The Commission then discussed the ADR process and recovery fund issues. A proposal by industry to charge the homeowner a nominal fee for the ADR process was discussed and rejected. It was decided to place a cap on claims to the recovery fund, either the cost of repair or the value of the home, whichever was the lesser. Access to the courts and the tie-in of recovery funds to the ADR and litigation processes also were considered, but not resolved. The Commission agreed that the ADR process, as written in the draft legislation, did not clearly reflect the Commission's intentions, and that more work needed to be done on the entire ADR/recovery fund issue. The Commissioners decided that the discussion would be continued at the next meeting, when a reworked proposal would be available.

With review of the legislation only partially completed at the conclusion of the meeting, it was decided that all Commissioner comments on the legislation should be forwarded to

the Commission staff within 1 week, by the following Friday. Comments on the Recommendations section of the Final Report would be due at the Commission office in 2 weeks to allow for re-drafts of both documents to be sent to the Commissioners well in advance of the May meeting.

May 1994

This meeting was the last working session of the Commission because of the deadline for completing action on the Final Report and the legislative language to implement the Commission's recommendations. Comments received on the legislative language, including HUD comments, had been distributed to the Commission 12 days before the meeting, as had a draft of the Final Report. A revised draft of the legislation had been sent to the Commissioners 20 days before the meeting. The Chairman reiterated the plan to vote on the final draft of legislative language before the end of the day. Caucus time was available for industry and consumer representatives to determine their positions on key issues. An industry member of the Commission again expressed reservations about proceeding with legislative language before the Commission had completed the Final Report. The executive director indicated that it was important to ensure that agreement was maintained on key issues before proceeding through the entire legislative package.

The consumer and industry caucuses met and returned with lists of major issues of concern. Of the issues raised by both caucuses to be resolved during discussion of the legislation, the following emerged as primary for both groups: HUD's role regarding installation, ADR, State recovery funds, and warranties; a seamless warranty; preemption; and the consensus process. The chairman decided to proceed first with the discussion of the warranty. An industry spokesman objected, preferring instead to discuss the new industry concern over the perceived increase in HUD's role, based on the HUD comments submitted earlier. The Chairman proceeded with the discussion of the warranty.

The industry caucus, after consultation with manufacturers and retailers during the previous month, declared its support for its pre-consensus position in the initial November 1993 proposal, which supports the terms and conditions of the Fleetwood 1/5-year warranty, with no warranty coverage after the first year for installation. An industry spokesman expressed that even though they had negotiated a 5-year warranty covering installation, the industry itself would not support a 5-year installation warranty. A consumer member recalled the negotiations for reaching consensus when the 10-year warranty was proposed by the consumers and compromised down to 5 years in the Interim Report.

Another consumer member proposed to the industry members that the Commission continue to discuss finalizing the legislative language, based on the Interim Report, accepting the fact that there would be opposition from retailer interest group members. An industry spokesman stated that if the warranty revisions relieving retailers of warranty responsibilities after the first year were not changed in the legislation and Final Report, then the industry would need to submit a minority report to accompany the Commission's Final Report to Congress.

During discussions, three alternatives to the 5-year installation warranty were discussed: 100 percent inspection by the States with backing by a State recovery fund for years 2 through 5, joint and several liability by the manufacturer and retailer, and different breakdowns of the 5-year time period for which the retailer and manufacturer would be responsible, such as the retailer for the first 2 years, and the manufacturer the remaining 3. All were unacceptable to the industry. Also during the discussions, the HUD representative reiterated the Department's support for the principle of the Interim Report, which was 5-year coverage for faulty installation.

After caucusing, an industry spokesman stated that the industry's opposition was based upon the timing of providing legislation to Congress, and that it was premature to move forward with legislation. He moved that the Commission not go forward with legislation this year. The motion was defeated by a vote of nine to six, with one absent and one abstention. Another industry spokesman responded to the vote by saying that the industry was not prepared to have any further discussion on the draft legislation as it existed.

A consumer spokesman requested that a vote be taken on the retailer installation warranty that provided for 5-year seamless coverage. The vote was nine in favor, six opposed, one absent, and one abstention. A consumer representative asked why the manufacturer representatives voted against the provision they had heartily endorsed for months. The manufacturer representatives explained that the main issue for them was moving on the legislation this year. The response from a consumer member was that "what you're trying to do is postpone the most important of our work tasks until we no longer exist, and naturally, we have a bit of a problem with that." The Commission proceeded with a line-by-line discussion of the legislation. In response, the industry representatives announced that they would not remain to discuss legislation and thereby adjourned to work on the Final Report. For the remainder of the meeting, one industry member remained for the full discussion, and another returned with proxy votes on the third day.

The remaining Commissioners spent the rest of the day reviewing the legislation. Prior to the May meeting, staff had prepared and distributed a document that outlined the line-by-line comments, suggestions, and criticisms received from the Commissioners since the April meeting. Most, but not all, of the suggested changes received from both industry and consumer members had been incorporated into this document. The Commissioners remaining in the meeting expressed the desire to create a legislative document that was faithful to the Interim Report recommendations. To complement such a legislative document, they elected to create, for submission to Congress, a separate list of recommendations of any changes they wanted to recommend outside the consensus agreement. Separate roll call votes were taken on accepting the amended legislation and the list of new recommendations. The votes were nine in favor (Commissioners Bowman, Burley, Connolly, Eckman, Jensen, Meier, Soldati, Wehrman, and Boosalis), six opposed (Commissioners Hussey, Kennedy, Lear, Logan, Scarponi, and Taylor), one absent (Commissioner Harley), and one abstention (HUD representative) in each case.

The Commissioners moved to a review of the Final Report. The intent of the remaining Commissioners was also to craft a Final Report that was faithful to the Interim Report agreements. On the morning of the third day, representatives from the three standards-developing organizations mentioned in the Interim Report—ASTM, CABO, and NIBS—gave brief presentations on their interest and ability to administer the consensus committee process. After discussion, the Commissioners selected NIBS as the organization it recommended to administer the consensus committee; the roll call vote was 10 in favor (Commissioners Bowman, Burley, Connolly, Eckman, Harley, Jensen, Meier, Soldati, Wehrman, and Boosalis), 5 opposed (Commissioners Hussey, Kennedy, Lear, Logan, and Taylor), and 2 abstentions (Commissioner Scarponi and the HUD representative).

Prior to the meeting's adjournment, a vote was taken to accept the Final Report language with the stipulation that the changes made by the Commissioners be incorporated into the document. The vote was 10 in favor (Commissioners Bowman, Burley, Connolly, Eckman, Harley, Jensen, Meier, Soldati, Wehrman, and Boosalis), six opposed (Commissioners Hussey, Kennedy, Lear, Logan, Scarponi, and Taylor), and 1 abstention (HUD representative). A three-member committee of Commissioners was appointed by the Chairman to review the Final Report after the changes were made and before it was sent to the Government Printing Office.

Panel III: Manufactured Housing Industry

Jerry C. Connors, President, Manufactured Housing Institute, Arlington, Virginia

Walter Wells, President, Schult Homes Corporation, Middlebury, Indiana

Panel IV: Role of Inspection Agencies

R.F. (Ray) Tucker, P.E., President, Resources, Applications, Designs and Controls, Inc., Gardena, California

Mark Luttich, Director, Division of Housing and Recreational Vehicles, Department of Health, Lincoln, Nebraska

Washington, D.C.
March 11–12, 1993

Public Witness

Deborah Chapman, President and Founder, Pennsylvania Manufactured Home Owners Association of America, Lancaster, Pennsylvania

Panel I: Manufactured Housing Industry

Danny Ghorbani, President, Association for Regulatory Reform, Washington, D.C.

Ralph Camp, Vice President, Production, Mascot Homes, Inc., Grambling, South Carolina

Thomas Underwood, Executive Vice President, Palm Harbor Homes, Inc., Dallas, Texas

James Shea, Jr., Vice Chairman, Fairmont Homes, Inc., Nappanee, Indiana

Panel II: Related Federal Programs

Matt Felber, Branch Chief, Special Programs, Farmers Home Administration, U.S. Department of Agriculture, Washington, D.C.

John P. Millhone, Deputy Assistant Secretary, Building Technologies Conservation and Renewable Energy, U.S. Department of Energy, Washington, D.C.

Panel III: Retail Financing

Larry Gilmore, Oakwood Acceptance, Inc., Greensboro, North Carolina

APPENDIX C
Commission Hearings, Witnesses, and Statements Received

Washington, D.C.
January 7–8, 1993

Garth Reiman, Minority Staff Director, Subcommittee on Housing and Urban Affairs, Committee on Banking, Housing, and Urban Affairs, United States Senate, Washington, D.C.

Calvin Snowden, Coordinator, External Services, General Services Administration, Washington, D.C.

G. Robert Fuller, Director, Manufactured Housing and Construction Standards Division, Office of Manufactured Housing and Regulatory Functions, U.S. Department of Housing and Urban Development, Washington, D.C.

Washington, D.C.
February 11–12, 1993

Panel I: Overview of Federal Manufactured Housing Program
U.S. Department of Housing and Urban Development

David C. Nimmer, Director, Office of Manufactured Housing and Regulatory Functions

G. Robert Fuller, Director, Manufactured Housing and Construction Standards Division, Office of Manufactured Housing and Regulatory Functions

Philip W. Schulte, Jr., Chief, Compliance Branch, Office of Manufactured Housing and Regulatory Functions

Peter S. Race, Assistant General Counsel, Program Compliance Division, Office of General Counsel

Stuart I. Margulies, Chief, State Administrative Agency and Consumer Liaison Branch, Office of Manufactured Housing and Regulatory Functions

Robert J. Coyle, Director, Title I Insurance Division, Office of Manufactured Housing and Regulatory Functions

Panel II: The Role of the States in the Federal Manufactured Housing Program

James Phillips, Director, Department of Manufactured Housing, Recreational Vehicle and Modular Units, Missouri Public Service Commission, Jefferson City, Missouri

David Goins, Administrator, Manufactured Housing Division, Department of Insurance, Raleigh, North Carolina

Panel IV: Secondary Mortgage Markets

Michael Daly, Executive Vice President, Government National Mortgage Association, Washington, D.C.

Grace Huebscher, Corporate Vice President, National Cooperative Bank, Washington, D.C.

Panel V: Alternatives for Preemptive Regulatory Systems

Philip Schneider, Director, Technical Programs, National Institute of Building Sciences, Washington, D.C.

Washington, D.C.
May 6- 7, 1993

Jack Brady, Acting Deputy Assistant Secretary, Single Family Housing, U.S. Department of Housing and Urban Development, Washington, D.C.

G. Robert Fuller, Director, Manufactured Housing and Construction Standards Division, Office of Manufactured Housing and Regulatory Functions, U.S. Department of Housing and Urban Development, Washington, D.C.

Portland, Oregon
June 10-12, 1993

Panel I: Special Northwest Manufactured Housing Support Programs

Stephen Onisko, Chairperson, Manufactured Housing Technical Advisory Group, Bonneville Power Administration, Portland, Oregon

Dr. Alan Lee, Staff Scientist, Battelle Pacific Northwest Laboratory, Richland, Washington

Joan Brown, Executive Director, Northwest Pride Program, Washington Manufactured Housing Association, Olympia, Washington

Curtis Richards, General Manager, Guerdon Industries, Lake Oswego, Oregon

Panel II: The Roles of Production Inspection Primary Inspection Agencies (IPIAs) and Design Approval Primary Inspection Agencies (DAPIAs) in the Federal Manufactured Housing Program

Dan Wolfenbarger, Construction Compliance Inspection Chief, State of Washington, Olympia, Washington

Dana Roberts, Manager, Salem Operations, Building Codes Division , State of Oregon, Salem, Oregon

Mike Goettl, IPIA Lead Inspector, Salem Operations, Building Codes Division, State of Oregon, Salem, Oregon

Patrick Lewis, IPIA Administrator, Manufactured Structures and Parks Programs, Oregon Building Codes Agency, Salem, Oregon

Don Korenek, Inspector, Texas Department of Licensing and Regulation, Arlington, Texas

Edward Short, Manufactured Housing and Recreational Vehicle Coordinator, Division of Occupational and Professional Licensing, Department of Commerce, Salt Lake City, Utah

Al Rust, Quality Assurance Manager, Fleetwood Homes, Woodburn, Oregon

Mike Zieman, Resources, Applications, Designs and Controls, Inc., Gardena, California

Public Witnesses

Otto Gaither, Park Owner/Developer, Vancouver, Washington

Penny Fletcher, Vice President, Idaho Manufactured Homeowners Federation, Boise, Idaho

Jack Richmond, State Volunteer Coordinator, American Association of Retired Persons, Boise, Idaho

Wendell Verdine, Park Owner, Seattle, Washington

Ward Sinsel, President, Idaho Manufactured Home Owners Association, Boise, Idaho

Nicky Phillips Baker, President, Washington State Mobile Home Owners of America Association, Washington

Dwayne Osburn, Oregon State Legislative Committee, American Association of Retired Persons, West Linn, Oregon

Alexandria, Virginia
July 14–16, 1993

Panel I: Homeowners' Panel

Deborah J. Chapman, President, Pennsylvania Manufactured Homeowners of America, Inc., Lancaster, Pennsylvania

Jeri E. Stumpf, Vice President, Pennsylvania Manufactured Homeowners of America, Inc., Lancaster, Pennsylvania

Robert Ryley, Administrative Director, Mobile Home Owners Association of New Jersey, Inc., Jackson, New Jersey

Panel II: Manufactured Housing Industry

Jerry Connors, President, Manufactured Housing Institute, Arlington, Virginia

Judith Thornton, Executive Director, New Jersey Manufactured Housing Association, Trenton, New Jersey

James Moore, Executive Vice President, Pennsylvania Manufactured Housing Association, New Cumberland, Pennsylvania

Panel III: State Administrative Agencies

Kanti Patel, Chief, Department of Housing and Community Development, Maryland Code Administration, Crownsville, Maryland

Curtis McIver, Associate Director, Office of Code Enforcement, Department of Housing and Community Development Richmond, Virginia

John F. Boyer, Jr., Chief, Division of Manufactured Housing, Department of Community Affairs, Harrisburg, Pennsylvania

Panel IV: Manufactured Housing Industry

Danny D. Ghorbani, President, Association for Regulatory Reform, Washington, D.C.

Thomas Underwood, Executive Vice President, Palm Harbor Homes, Inc., Dallas, Texas

James F. Shea, Jr., Vice Chairman, Fairmont Homes, Inc., Nappanee, Indiana

John Doeden, Partner, K2-Engineering, Inc., Goshen, Indiana

Panel V: U.S. Department of Housing and Urban Development

G. Robert Fuller, Director, Manufactured Housing and Construction Standards Division, Office of Manufactured Housing and Regulatory Functions, U.S. Department of Housing and Urban Development, Washington, D.C.

Philip W. Schulte, Jr., Chief Compliance Branch, Office of Manufactured Housing and Regulatory Functions, U.S. Department of Housing and Urban Development, Washington, D.C.

Stuart I. Margulies, Director, State and Consumer Liaison Division, Office of Manufactured Housing and Regulatory Functions, U.S. Department of Housing and Urban Development, Washington, D.C.

Ashok Goswami, Director, Housing and Building Technology Division, National Conference of States on Building Codes and Standards, Herndon, Virginia

Peter S. Race, Assistant General Counsel, Program Compliance Division, Office of General Counsel, U.S. Department of Housing and Urban Development, Washington, D.C.

Panel VI: Primary Inspection Agencies

Patrick G. Lewis, Program Manager and Chief Inspector, Manufactured Sructures and Parks Programs, Oregon Building Codes Agency, Salem, Oregon

Robert A. Johnson, Vice President, Hilborn, Werner, Carter & Associates, Clearwater, Florida

Mike Slifka, Vice President, PFS Corp., Madison, Wisconsin

Ned Myers, President, Progressive Engineering, Inc., Goshen, Indiana

R.F. (Ray) Tucker, P.E., President, Resources, Applications, Designs and Controls, Inc., Carson, California

Thomas R. Arnold, President, T.R. Arnold & Associates, Inc., Elkhart, IN.

John Pabian, Underwriters' Laboratories, Inc., Northbrook, Illinois

Portland, Maine
August 18–20, 1993

C. Curtis Peterson, Executive Vice President, American Hardboard Association, Palatine, Illinois

Honorable Beverly Bustin, Assistant Senate Majority Leader, Maine State Senate, Augusta, Maine

Panel I: Cooperative Financing

Paul Bradley, Project Director, New Hampshire Community Loan Fund, Concord, New Hampshire

Panel II: Consumers and Homeowners

Florence Quast, President, Mobilehome Owners and Tenants Association of New Hampshire and, **President,** National Foundation of Manufactured Homeowners, Concord, New Hampshire

Doris Levesque, Executive Director, Mobilehome Owners and Tenants Association of New Hampshire and **President,** New England Council of Manufactured Home Residents, Concord, New Hampshire

Panel III: State Administrative Agencies

Dave Preble, Executive Director, Manufactured Housing Board, Department of Professional and Financial Regulation, Augusta, Maine

Richard Norton, Director, Mobile Home Section, Division of Housing and Community Renewal, Bronx, New York

Panel IV: Manufacturers and Retailers

Robert Howe, Executive Director, Maine Manufactured Housing Association, Augusta, Maine

Donna Trembley, President, Images Housing Concepts, Inc., Rochester, New Hampshire

Richard Rogee, Owner, Lamplighter Homes, Fort Edward, New York

Don Barrow, Vice President, Skyline Corporation, Elkhart, Indiana

Public Witnesses

Robert T. Gore, Professional Engineer, Member, Maine Manufactured Housing Board, Acton, Maine

Paul Mullins, Member, Board of Directors, Mobile Home Federation of Massachusetts

Theresa Defosses, Vice Chair, Maine Manufactured Housing Board Scarborough, Maine

Timothy Lee, Lee Housing Consultants

Mary Benjamin, Homeowner, Casco, Maine

Marietta Morin, Homeowner, Augusta, Maine

Linna Michaud, Homeowner, Brunswick, Maine

Alexandria, Virginia
September 21–23, 1993

C. Austin Fitts, Managing Partner, Hamilton Securities Group, Washington, D.C.

Timothy Lee, Lee Housing Consultants

Frank Walter, Vice President, Technical Activities, Manufactured Housing Institute, Arlington, Virginia

Airlie, Virginia
November 17–19, 1993

No presentations, witnesses, or statements received

Alexandria, Virginia
January 5–7, 1994

No presentations, witnesses, or statements received

Alexandria, Virginia
February 3–4, 1994

No presentations, witnesses, or statements received

Alexandria, Virginia
March 3–4, 1994

No presentations, witnesses, or statements received

Raleigh, North Carolina
April 13–15, 1994

Panel I: Regulatory Panel

Brian Fannon, Commissioner, Michigan Manufactured Housing Commission, Farmington Hills, Michigan

Curtis McIver, Associate Director, Office of Code Enforcement, Department of Housing and Community Development, Richmond, Virginia

Bobbie Hill, Enforcement Manager for Buildings and Accessibility, Manufactured Housing Division, Department of Licensing and Regulation, Austin, Texas

Owen Tharrington, Deputy Commissioner, Manufactured Housing Division, Department of Insurance, Raleigh, North Carolina

Presentation on Affordable Housing Needs

Susan Mireley, College of Human Ecology, Michigan State University, East Lansing, Michigan

Panel II: Manufactured Housing Industry

Tim DeWitt, Executive Director, Michigan Manufactured Housing Association, Okemos, Michigan

Will Ehrle, President, Texas Manufactured Housing Association, Austin, Texas

Larry Dinkins, Oakwood Homes Corporation, Greensboro, North Carolina

Steve Rogers, Executive Director, Alabama Manufactured Housing Institute, Montgomery, Alabama

Wesley Layton, Vice President, North Carolina Manufactured Housing Association, Rocky Mount, North Carolina

Panel III: Consumers

Harry Rogers, President, North Carolina Manufactured Homeowners Association, Hendersonville, North Carolina

George Scott, Director, North Carolina Manufactured Homeowners Association, Hendersonville, North Carolina

Mr. Fickley, Homeowner, Hendersonville, North Carolina

Alexandria, Virginia
May 24–26, 1994

David Harris, President, National Institute of Building Sciences, Washington, D.C.

Richard Kuchnicki, Chief Executive Officer, Council of American Building Officials, Falls Church, Virginia

Kenneth Pearson, Vice President, Technical Committee Operations, American Society for Testing and Materials, Philadelphia, Pennsylvania

Robert J. Vondrasek, Assistant Vice President, Engineering Services, National Fire Protection Association, Quincy, Massachusetts

Statements Received

R.F. (Ray) Tucker, P.E., President, Resources, Applications, Designs and Controls, Inc., Gardena, California (March 2, 1993)

Jerry C. Connors, President, Manufactured Housing Institute, Arlington, Virginia (March 9, 1993)

Jerry C. Connors, President, Manufactured Housing Institute, Arlington, Virginia (March 10, 1993)

G. Robert Fuller, Director, Manufactured Housing and Construction Standards Division, Office of Manufactured Housing and Regulatory Functions, U.S. Department of Housing and Urban Development, Washington, D.C. (March 11, 1993)

Peter S. Race, Assistant General Counsel, Program Compliance Division, Office of General Counsel, U.S. Department of Housing and Urban Development, Washington, D.C. (March 11, 1993)

Stuart I. Margulies, Chief, State Administrative Agency and Consumer Liaison Branch, Office of Manufactured Housing and Regulatory Functions,U.S. Department of Housing and Urban Development, Washington, D.C. (March 11, 1993)

Robert C. Wible, Executive Director, National Conference of States on Building Codes and Standards, Herndon, Virginia (March 31, 1993)

Patricia A. McLachlan, SAA Program Manager, Department of Community Development, Olympia, Washington (June 12, 1993)

David R. Tompos, P.E., Vice President/ General Manager, NTA, Inc., Nappanee, Indiana (July 21, 1993)

R.F. (Ray) Tucker, P.E., President, Resources, Applications, Designs and Controls, Inc., Gardena, California (July 30, 1993)

Beverly Bustin, Assistant Senate Majority Leader, Maine State Senate Augusta, Maine (August 19, 1993)

Florence Quast, President, Mobilehome Owners and Tenants Association of New Hampshire; and, President, National Foundation of Manufactured Homeowners, Concord, New Hampshire (August 19, 1993)

David C. Nimmer, Director, Office of Manufactured Housing and Regulatory Functions, U.S. Department of Housing and Urban Development, Washington, D.C. (August 24, 1993)

Peter S. Race, Assistant General Counsel, Program Compliance Division, Office of General Counsel, U.S. Department of Housing and Urban Development, Washington, D.C. (December 3, 1993)

G. Robert Fuller, Director, Manufactured Housing and Construction Standards Division, Office of Manufactured Housing and Regulatory Functions, U.S. Department of Housing and Urban Development, Washington, D.C. (December 9, 1993)

Judith E. Kuhn, Legal Counsel, Plumbers Local 75, Milwaukee, Wisconsin (December 10, 1993)

Ashok K. Goswami, Director, Housing and Building Technology Division, National Conference of States on Building Codes and Standards, Herndon, Virginia (December 16, 1993)

Sherry L. Voss, Homeowner, Athens, Georgia (March 10, 1994)

APPENDIX D
Text of the Interim Report of the National Commission on Manufactured Housing*

I. INTRODUCTION

A. Legislative History and Purpose

The National Commission on Manufactured Housing was created by Congress pursuant to section 943 of P.L. 101-625, the Cranston-Gonzalez National Affordable Housing Act of 1990. The purpose of the Commission is "to develop recommendations for modernizing the National Manufactured Housing Construction and Safety Standards Act of 1974".

B. Composition of Commission

The Commission is composed of 16 members appointed by Congress and one representing the U.S. Department of Housing and Urban Development (HUD). Commissioners were appointed by Congress from the following categories: state and local elected officials, manufactured housing industry, consumer organizations, building code officials and homeowners. Appointments to the Commission were completed in May, 1992. Members of the Commission are:

Elected Officials:

Shirley Burley, Treasurer, Hampton Township, MI

Honorable Ellen Harley, Pennsylvania House of Representatives, King of Prussia, PA

Steve Logan, Government Affairs Director, Regional Universities, Hamilton, AL

Honorable Jennifer Soldati, New Hampshire House of Representatives, Concord, NH

Industry:

Edward Hussey, Jr., Vice President, Liberty Homes, Inc., Goshen, IN

Patrick Kennedy, President, Integrity Homes Brokers, Inc., Skaneateles, NY

William Lear, Vice President and General Counsel, Fleetwood Enterprises, Riverside, CA

Rod Taylor, President, South Village, Inc., Topeka, KS

*Text of the report is reprinted as submitted on March 1, 1994.

Consumer:

Helen Boosalis, Member, Board of Directors, American Association of Retired Persons, Lincoln, NE

Mary Beth Bowman, Director, Arkansas Manufactured Home Commission, Little Rock, AR

Tom Eckman, Conservation Manager, Northwest Power Planning Council, Portland, OR

Michelle Meier, Counsel for Government Affairs, Consumers Union, Washington, DC

Building Code Official:

William Connolly, Director, Division of Housing and Development, New Jersey Department of Community Affairs, Trenton, NJ

David Scarponi, Chief Executive Officer, Linco, Inc., Brunswick, ME

Homeowners:

John H. Jensen, Redmond, WA

Leonard G. Wehrman, Vice President, National Foundation of Manufactured Home Owners, Daly City, CA

HUD Representative:

Lawrence L. Thompson, General Deputy Assistant Secretary for Policy Development and Research, HUD, Washington, DC (Acting Representative for Michael A. Stegman)

C. Statutory Functions

P.L. 101-625 requires the Commission to "study and investigate the National Manufactured Housing Construction and Safety Standards Act of 1974 and current construction and safety regulatory standards applicable to manufactured housing." Further, it requires the Commission to "assess the effectiveness" of the Act and "develop an action plan containing specific recommendations for legislative and regulatory revisions to the present law". In conducting this study, Congress required the Commission to examine and make recommendations on the following issues:

- Deletion of the reference to the permanent chassis in the existing definition of a manufactured home and the effect of such a change on the affordability and durability of manufactured homes;
- The implications for State regulatory jurisdiction over modular housing, in the event of changes in definitions and standards relating to manufactured housing;
- The need for additional and revised standards applicable to manufactured housing, including but not limited to standards in the areas of construction, installation, thermal insulation, energy efficiency, and fire safety;
- The current system of inspections of manufactured housing and enforcement of applicable standards and recommend improvements to the system;
- The need for independent financing of inspection agencies to insure the autonomy of regulators;
- The impact of the manufactured housing program under title I of the National Housing Act on the actuarial soundness of Federal mortgage insurance and secondary market programs, and the impact that proposed changes to current law would have on financing of these homes;
- A system for reviewing and updating applicable (construction and safety) standards on an annual basis.

Public Law 102-550, the Housing and Community Development Act of 1992, requires the Commission to examine and make recommendations on the following additional issues:

- The extent to which manufacturers in compliance with Federal standards do and should comply with State implied or expressed warranty requirements;
- The feasibility of expanding and establishing standards governing manufactured homes sales including transportation and on-site set up.

D. Reporting Requirements

The Commission is required, under provisions of Public Law 101-625, as amended by the Housing Programs Extension Act of 1993, to submit an interim report to the Secretary of Housing and Urban Development and the Congress by March 1, 1994. This report shall describe the activities of the Commission and make any

evaluations and recommendations "that may be made by the Commission, at such time".

Public Law 101-625, as amended by the Housing Programs Extension Act of 1993, requires the Commission to submit a final report to the Secretary of Housing and Urban Development and the Congress by August 1, 1994. The final report is required to contain the evaluations and recommendations specified in the authorizing statute, as noted in the previous paragraphs. Operating authority for the Commission expires on September 30, 1994.

II. REVIEW OF ACTIVITIES

A. Overview of Commission Meetings

The National Commission on Manufactured Housing first convened in Washington, D.C. on January 7 - 8, 1993. As authorized under P.L. 101-625, the Commission selected Helen Boosalis as Chairperson. The Commission also established a schedule for hearings and began the process of recruiting an executive director.

During 1993, the Commission held extensive hearings on all aspects of manufactured housing and the federal manufactured housing program. Witnesses included representatives from the U.S. Department of Housing and Urban Development and other federal agencies, national and state manufactured housing associations, manufacturers and retailers, state regulatory and administrative agencies, primary inspection agencies, homeowner associations and individual homeowners, HUD's monitoring agent, materials suppliers, financing and secondary market institutions, and research organizations. In June and August, field hearings were held in Portland, Oregon and Portland, Maine. The Commission visited several manufacturing facilities in conjunction with these field hearings to observe the manufacturing and inspection processes. It also visited several manufactured home communities and retail centers. In addition to hearing testimony from invited witnesses, the Commission provided a public comment period at each of its meetings in order to increase the opportunity for public comment on Commission actions and to solicit the widest possible range of views.

In March 1993, the Commission hired Robert W. Wilden as Executive Director. Recognizing the need for additional time to conduct its work, the Commission directed staff to seek an extension of the Commission's authorization through September 30, 1994. Legislation extending the Commission (P.L. 103-120) was signed into law on 10/27/93. The staff also initiated a program of research to provide options papers for the Commission on the congressionally mandated issue areas noted earlier in this report.

B. **Identification of Systemic Problems**

The Commission identified a number of systemic problems in the present regulatory system for manufactured housing that recommendations in this Interim Report are intended to address.

1. HUD AS REGULATOR

- HUD's mission is to set standards and assure compliance; HUD has not done either adequately
- HUD lacks staff and resources to do an adequate job
- Regulatory process is overly centralized, not consistent with intent of Act to encourage state involvement in enforcement

2. STANDARD SETTING PROCESS (COMPARABILITY)

- Process is cumbersome, not timely
- System doesn't work as well as it should; federal government not adept at setting and administering a building code
- Comparability of HUD code to model building codes is unclear

3. FEDERAL/STATE AGENCY RELATIONSHIP UNCLEAR

- Division of responsibility is unclear
- Tendency of each agency is to blame the other
- Inappropriate delegation of responsibility between the federal government and the states
- Problems go unresolved; lack of clear accountability

4. ROCKET SCIENCE APPROACH TO HOUSING ENVIRONMENT

- Performance nature of the standards requires complex engineering analysis by manufacturers and leads to conflicts among manufacturers, design approval agencies, inspection agencies and the HUD monitoring contractor over code compliance

5. PREEMPTION

- HUD is the single regulator, with no other checks or balances in the system
- State/local government is perceived to have no power or stake in preemptive system
- State inability to protect consumer in event HUD fails to do its job
- Incomplete preemption and divided responsibility

6. DIVISION OF RESPONSIBILITY WITHIN INDUSTRY

- If problems arise, purchaser may have to deal with four separate entities: manufacturer, retailer, transporter, installer
- Lack of clear responsibility and accountability when problems arise

7. LEVEL OF ACCOUNTABILITY

- Lack of accountability by all parties: HUD, state, manufacturer, retailer, third party inspection agencies (Primary Inspection Agencies, or PIAs)
- System allows each party to place blame elsewhere
- Lack of safety net for consumer when manufacturer or retailer goes out of business

8. LACK OF ADEQUATE CONSUMER INFORMATION

9. UNFAIR TREATMENT OF RESIDENTS OF MANUFACTURED HOUSING BY STATE AND LOCAL GOVERNMENTS IN RELATION TO ZONING, MUNICIPAL SERVICES AND TAXATION

III. RECOMMENDATIONS

Recommendations included below were approved by the Commission on February 4, 1994. There was a single vote by the Commission to approve this Interim Report. The vote was 13 in favor, none opposed and 3 abstentions. The voting was as follows:

In Favor:	Boosalis, Bowman, Burley, Connolly, Eckman, Hussey, Jensen, Kennedy, Lear, Logan, Scarponi, Taylor, Wehrman
Opposed:	None
Abstained:	Meier, Soldati, Thompson
Absent:	Harley

The Commission recommends that the statement of purpose in the HUD Act be amended as follows:

"Congress recognizes the vital role of manufactured housing in meeting the nation's housing needs. Manufactured homes provide a significant resource of affordable homeownership and rental housing accessible to all Americans, especially first-time home buyers, low-and moderate-income families, and the elderly. Despite the importance of manufactured housing, the current law does not reflect the evolution of manufactured housing as an affordable housing option. In order to promote the quality, affordability, and availability of manufactured housing, Congress declares the following purposes for this title:

> To enhance quality, manufactured housing should meet standards of safety, quality and durability that yield levels of performance comparable to other forms of housing.
>
> To promote innovation and affordability, new manufacturing standards should encourage cost-effective construction techniques that also minimize the long-term operating costs of manufactured housing to consumers.
>
> To expand the availability of this important homeownership opportunity, all levels of government should develop financing, zoning, and public services policies that remove regulatory barriers to equivalence between manufactured housing and other types of housing.
>
> To encourage state-federal partnership within our federal system to enable each level of government to do what it does best and eliminate duplication and gaps between them.

To achieve the goals of quality, innovation, affordability, and availability, Congress also declares that the purposes of this title are to establish a balanced consensus process for the development and revision of federal construction and safety standards for manufactured homes; to strengthen warranty protections and increase access to affordable financing for the purchasers of manufactured homes; to assure uniform and effective enforcement of federal construction and safety standards for manufactured homes; and to remove regulatory barriers to the use of innovative construction technologies."

A. Standards

1) Consensus Process - Consistent with the purposes of the Act, HUD construction and safety standards shall be updated on a two year cycle through a consensus process. Resulting standards shall be submitted for approval as an American National Standard.

2) Adoption of Standards - HUD shall be required to adopt, modify or reject consensus developed standards or any amendments thereto within 12 months of promulgation; adoption procedure will be an Administrative Procedure Act (APA) process; HUD failure to act within the stated period would lead to automatic adoption by law.

3) Consensus Committee - A consensus committee shall be organized and administered by a private sector standards setting organization. Committee members shall be appointed by the administering organization in conformance with ANSI selection procedures. American National Standards Institute (ANSI) interest categories shall be modified as follows: "producers" shall be called "industry" and shall include manufacturers, suppliers and retailers; "users" shall include consumers and public officials; and "general interest" shall include architects, engineers, academics and others with expertise. PIA personnel shall be included in the "general interest" category but may not compose more than 20 percent of members from that category. Members of the "general interest" category, other than PIA personnel, shall not have a financial interest in the industry. Nominees shall be qualified by background and experience to participate in the work of the committee. The Committee shall be ANSI accredited.

4) Choice of Administering Organization - The consensus committee should be administered by one of the following private sector standards setting organizations: National Institute of Building Sciences (NIBS), American Society for Testing and Materials (ASTM) or Council of American

Building Officials (CABO). The Commission will make a recommendation in its final report on which organization it believes would be most appropriate to administer the consensus committee.

5) Consumer Technical Analyst - A consumer technical analyst shall be a part of the consensus committee staff.

6) Testing Procedures - The consensus committee shall establish uniform test or evaluation methodologies that are required to adequately and uniformly evaluate compliance with existing or proposed standards. HUD, its monitoring agent or a DAPIA may request the consensus committee to develop or evaluate the validity of a test method.

7) Binding Interpretations - The consensus committee shall issue interpretations of the standards. These interpretations shall be binding upon approval by the Secretary. The Secretary shall have 60 days to review the proposed interpretation, make recommendations for amendments, or reject the interpretation if the Department determines it to be inconsistent with public health and safety or other purposes of the Act.

8) Installation Standard - The consensus committee shall assume the role of secretariat of ANSI Standard A225.1.

9) HUD Authority - The Secretary shall have the authority to reject or modify a portion of the standards or any interpretation upon a finding that health and safety would be jeopardized or that such action is necessary to meet the purposes of the law. Any such rejections or modifications are to be made only through the full APA process. This does not modify the 12 month provision included in item number two of this section.

10) Emergencies - The Secretary of HUD shall have authority at any time to request that consensus committee to develop interim emergency amendments to the standards, when necessary, to respond to an emergency health or safety issue.

B. Inspections and Approvals

1) Inspection System - The current third party inspection system will remain in place. IPIAs shall be required to develop plant-specific inspection plans that will focus the inspection effort on fundamental structural and system issues.

2) PIA Termination - Manufacturers and PIAs shall be required to promptly notify HUD of a change in the third party agency and state the specific reason(s) for the change.

3) DAPIA Approvals - When DAPIAs issue retroactive approvals, they shall be required to notify the monitoring agent, flag the retroactive approval, and state what was approved and why.

4) Quality Assurance Manuals - Requirements for quality assurance manuals shall be upgraded.

C. Installation and Transportation

1) Inspection of Installations - At least 10 percent of the installations in each state shall be inspected by SAA personnel or an appropriate building official to assure compliance with the installation standards.

(2) Transportation and Storage Guidelines - The manufacturer shall prepare transportation and storage guidelines to assure that the unit will remain in compliance with the standards under ordinary transportation and storage circumstances, when necessary.

(3) Standard to Specify Transportation Loads - The consensus committee shall review transportation loads and testing procedures in order to assure that manufactured homes arrive still in conformance with the standards.

(4) SAA Inspection of Retailer Lots - Targeted inspections of retailer lots shall be a mandatory activity for SAAs. In states without an SAA, HUD or the Secretary's monitoring agent shall carry out such inspections.

D. Enforcement

1) HUD authority - HUD shall retain primary responsibility and authority for the enforcement system. Current provisions under the Act and regulations for optional state participation in enforcement activities shall be maintained. The state of siting as well as the state of manufacture would have enforcement authority. The first SAA to open a case shall have primary jurisdiction. Primary jurisdiction may be transferred by mutual agreement.

2) Enforcement Remedies - A definition of primary inspection agencies shall be included in the Act; penalties under section 621 shall be decriminalized and extended to cover violations by the PIAs.

3) Subpart I Requirements - Eliminate requirements for notification of defects under Subpart I. Where a serious defect or imminent safety hazard is discovered, states shall be required to notify the manufacturer, other states and HUD to facilitate investigation and any necessary enforcement actions including, where appropriate, notification of the consumer and correction by the manufacturer. A definition of "serious defect" will be provided in the Commission's final report.

4) Enforcement Information & Oversight - Monitoring reports, the results of complaint investigations, and other enforcement records are public records and should be accessible to SAAs and interested citizens. HUD should establish committees to review the monitoring process and provide peer review by state and private PIAs of monitoring reports. The committees should make non-binding recommendations to the Secretary for corrective action. Since its recommendations are advisory, the committee reviewing monitoring reports on DAPIAs,IPIAs & SAAs would not operate under strict due process procedures but would provide an opportunity for affected parties to present their views.

E. Warranty

1) Term and Coverage - Manufacturers and retailers should be required to each provide a warranty for their respective functions under the Act. Coverage shall include:

1 year for all defects, including transportation arranged by the manufacturer

1 year for appliances

1 year by retailer for installation and transportation arranged by retailer; 5 years as installation or such transportation affects structural integrity

5 years for plumbing, electrical, and structural systems within the dwelling unit provided by the manufacturer

weatherability (The Commission will recommend the term of coverage in the final report)

heating and cooling equipment (The Commission will recommend the term of coverage in the final report)

duct systems and heating and cooling performance (The Commission will recommend the term of coverage in the final report)

Defects covered under the warranty for weatherability shall include (except leaks caused by severe weather events such as hurricanes, tornadoes, and severe icing):

Rainwater or snow leaks in roofs, walls, floors, siding, windows, or doors, based on a reasonable level of occupant care and maintenance as prescribed in the manufacturer's consumer manual.

Repair of weatherability defects includes repair of items necessary to restore their weatherability functions and repair of other components of the structure damaged by the weatherability defects.

Defects shall be repaired within 60 days of receipt of written notice and 5 days in emergency situations. The warranty shall cover defects regardless of whether they arise as a result of faulty design, construction, transportation, or installation.

2) Performance Standards - The Commission shall recommend standards for the level of quality of materials, performance and workmanship prescribed by the warranty in its final report.

3) Claims Process - A claims process shall be established which allows the homeowner to file a claim with one entity and assures correction within a reasonable time. Manufacturers and retailers will have first opportunity to correct the defect. If the defect is not corrected satisfactorily, an alternate dispute resolution process (ADR) would be initiated. Under the alternate dispute resolution process, an impartial dispute settler would investigate the problem and issue a ruling identifying the party responsible for correcting the defect, the items that need to be corrected, and the time period for correction. An ADR determination favorable to the consumer shall result in prompt correction of the defect. The Commission will address further details related to appeals, damages recoverable, access to the courts, and other such issues in the final report.

4) State Recovery Funds - State recovery funds should be established under the Act. The funds should cover claims of homeowners if manufacturers or retailers go out of business or if the manufacturer or retailer refuses to make repairs under the warranty after the ADR process. The state recovery funds will be financed by charges levied on manufacturers, retailers, and others based on actuarial factors. State recovery funds must fulfill federal statutory requirements in the following areas:

- minimum warranty coverages
- registration as enforcement mechanism
- actuarial soundness
- uniform claims process
- reinsurance obtained after 7 years
- ADR mechanism
- a time limit for implementation of remedies

If a state has not enacted legislation within 4 years and implemented a state recovery fund within 5 years, HUD should contract with a private entity, preferably within that state, to administer all the functions of the state recovery fund program.

5) Manufacturer/Retailer Registration - All manufacturers and retailers will be required to register with the SAA or contract agent for the recovery fund in each state. Registration shall be required to sell homes. Revocation of registration shall be mandatory if a manufacturer or retailer fails to correct a defect which has been determined to be their

responsibility. Suspension of registration may be rescinded if the manufacturer or retailer repays the recovery fund.

6) Data Collection & Dissemination - HUD shall aggregate and distribute to the SAAs claims data collected by state recovery funds on types of defect, frequency, and location by manufacturer, plant, model or system. HUD will use data to assist monitoring of IPIA performance.

7) Preemption - States with existing recovery funds and bonding programs equal to or exceeding federal program requirements would not be preempted. HUD would be required to make such determinations in conformance with statutory guidelines.

F. Training

1) The Secretary will establish voluntary educational requirements for manufacturer quality control personnel and dealer installation inspection personnel, and mandatory educational requirements for PIA technical personnel, SAA personnel and any federal or contract staff having technical functions or enforcement decision making authority.

2) Educational requirements will include completion of specified training, and successful completion of a minimum competence examination.

3) Continuing education requirements will be established.

4) Secretary and the monitoring agent will develop and implement training programs for monitoring agent, PIA and SAA personnel; such programs will be made available to manufacturers and dealer personnel at cost.

5) Costs of the training of SAA, PIA, and federal personnel will be met through a specifically dedicated portion of the label fees.

G. Preemption

1) The definition of a manufactured home under the Act should be modified to eliminate the requirement that permanently sited homes be "built on a permanent chassis" subject to standards developed by the consensus committee.

2) The Act should be amended to provide that a state or local government may not exclude any manufactured home, simply by reason of its HUD label, from installation on land where other residential uses are permitted. Similar requirements should govern manufactured housing rental communities when densities do not exceed zoning designations.

3) The Act should prohibit the use of state or local subdivision ordinances to deny equitable provision of tax assessments and municipal services, including but not limited to water, sewerage, street lighting and road maintenance, to manufactured housing communities.

4) The Act should be amended to make it clear that any state or local codes or regulations covering any area of regulation included in the Manufactured Home Construction and Safety Standards (MHCSS) are preempted.

H. Financing

1) Where homes are labeled as complying with the revised standard, the Government National Mortgage Association (GNMA) should be authorized to guarantee pools of manufactured home 30-year mortgages; GNMA guarantees timely payment of principal and interest to holders of securities; the guarantee is backed by the full faith and credit of the United States.

2) Where standard 30-year GNMA-backed mortgages do not bring interest rates for rental park housing complying with the revised standard down to levels comparable to site built housing, a GNMA special assistance mortgage purchase program (GNMA "tandem plan") should be authorized and funded. In such programs GNMA purchases mortgages at below market rates which are then resold at market rates. GNMA absorbs the loss. This clearly would represent a revival of federally assisted new construction housing but at a subsidy cost which would be a fraction of the old section 8 and public housing programs.

3) Direct, upfront subsidies linked to further energy related upgrades should be available. These subsidies might be modeled on those currently in operation for manufactured housing in the Northwest.

4) HUD should be encouraged to exercise existing authority to use manufactured homes in all mortgage insurance programs, the Section 8 rental assistance program, and the CDBG and HOME programs.

5) Congress should authorize the use of HUD Code homes in its public housing and Section 8 home ownership initiatives.

6) HUD and the Veterans' Administration should be directed to make the FHA and VA manufactured home program viable, including lower down payment requirements to encourage greater home ownership by low and moderate income families.

7) GNMA should be directed to end the moratorium on Title I lenders.

8) HUD should be encouraged to simplify administration of the Title I and Title II program so that bank participation will be increased.

9) HUD should be encouraged to make the Title I and Title II programs available to assist resident purchase of manufactured housing communities.

I. Funding the Program

The Commission will recommend appropriate funding mechanisms to support programs under the Act. A dedicated fund should be established within HUD that prevents the commingling of manufactured housing label fees with other departmental funds and permits the Office of Manufactured Housing to utilize the fund for program management with appropriate controls. Relief should be provided from arbitrary travel and other administrative restrictions that prevent the Department from carrying out the purposes of the Act.

IV. CONCLUSION

The recommendations set forth in this report provide a basic framework for a revitalized and credible national manufactured housing program. They represent a determined effort by the Commission to serve the public interest by expanding the role of manufactured housing in providing affordable homeownership. In the remaining seven months of its existence, the Commission intends to work closely with the Congress and the HUD to develop appropriate legislative language and administrative procedures to implement its recommendations.

A. Timetable for Completion

1. March 1 through June 15, 1994

   a. Commission work with HUD and Congress in drafting of legislative proposals to implement Commission recommendations in Interim Report.

   b. Commission prepares Final Report for submission to Government Printing Office by June 15.

2. June 15 through September 30, 1994

   a. Commission submits Final Report to Congress by August 1, 1994.

   b. Commission works with HUD and Congress on implementing Commission recommendations in Interim and Final Reports.

   c. Commission closes down by September 30, 1994.

V. GLOSSARY OF ACRONYMS

ADR - Alternate Dispute Resolution

ANSI - American National Standards Institute

APA - Administrative Procedure Act

ASTM - American Society for Testing and Materials

CABO - Council of American Building Officials

DAPIA - Design Approval Primary Inspection Agency

GNMA - Government National Mortgage Association

HUD - U.S. Department of Housing and Urban Development

IPIA - Production Inspection Primary Inspection Agency

MHCSS - Manufactured Home Construction and Safety Standards

ACRONYMS (continued)

OSIA - On-site Inspection Agency

PIA - Primary Inspection Agency

SAA - State Administrative Agency

VI. APPENDIX

A. STATEMENT OF HUD

The Department applauds the Commission for reaching consensus on ways to strengthen the regulation of manufactured housing in the United States and ensure that manufactured housing meets its full potential as a source of affordable housing for low- and moderate-income American families.

Representatives of HUD have attended all meetings of the Commission and have actively participated in its deliberations. However, the Department takes no position at this time on the recommendations presented in this interim report. As soon as feasible after the official receipt by the Secretary, the Department will carefully consider the report and communicate its views to the Commission.

B. STATEMENT OF COMMISSIONER MEIER

I have withheld my support for the package of recommendations included in this report for several reasons. First, there are a number of critical issues related to the warranty program that are still outstanding, including the duration of certain warranty coverage, the creation of standards to determine whether a warranty claim even exists, and the rights of consumers to pursue their warranty rights in court. It is impossible to assess the merits of the warranty program described in this report without these critical issues and others related to the dispute resolution process and recovery fund are resolved.

Second, I have grave concerns about the report's recommendations on the permanent chassis" issue.

Finally, I am concerned about the reform recommendations excluded from the report. The HUD program needs a comprehensive overhaul, while the recommendations included here reflect a piecemeal approach and a compromise among Commissioners with diverse interests. As the outstanding issues concerning the warranty program are resolved, we will learn whether the recommendations included here will move us in the right direction.

APPENDIX E
Sample Warranties

Sample 1-Year Warranty on All Defects

Homes shall be constructed in accordance with acceptable trade practices and shall be warranted separately by the manufacturer and retailer, based on assigned liabilities, to be free under normal use from manufacturing, transportation, or installation defects in workmanship or materials. Deficiencies attributable to poor workmanship, the use of inferior materials, transportation, or installation within 1 year of the date of the original retail delivery or the date of first occupancy, whichever comes first, shall be repaired or replaced by the manufacturer or retailer, whichever has express responsibility.

Items covered by the manufacturer's warranty include:

Floors:	carpet, pad, floor tile, nail pops, underlayment, subflooring, finished flooring, floors popped.
Walls:	open cracks, stains, numerous nail pops, panels popped, peeling wallcovering not due to occupant negligence, popped interior and exterior molding and trim, missing thermal insulation, exterior joints with missing caulk, buckled or deteriorated exterior siding.
Ceilings:	open cracks, stains, panels popped.
Roofs:	underlayment, missing or damaged shingles, uneven roofs causing excessive ponding of water, roof vents and flashing, vent stacks, gutters and downspouts.
Doors:	cracked glass or door, doors that don't operate or lock properly.
Windows:	cracked panes, windows that don't operate or lock properly, missing caulk, permanent clouding between insulated glass panes, screens.
Lighting:	light fixtures, switches, plug outlets, cover plates, ceiling fans, ceiling and exhaust fans, circuit breakers.
Plumbing:	faucets, shower stalls, tubs, sinks, toilets, valves, caulking.
Appliances:	all appliances provided by manufacturer, including furnace and water heater, and all appliances provided by retailer.
Miscellaneous:	counter tops, cabinets, drawers, hardware (door pulls, knobs, towel bars, etc.), accessories provided by manufacturer.
Weatherability:	rainwater and snow leaks in roofs, walls, siding, windows, or doors, based on reasonable level of occupant care and maintenance.

Items covered by the retailer's warranty include:

- Defects attributable to improper transportation or installation provided by retailer.
- Defects in the home's foundation, support, anchoring, or crawl space enclosure or ventilation system.

Sample 5-Year Warranty on Major Structural Components

Homes shall be warranted by the manufacturer to be free from any defects caused by the materials in the assembly of plumbing, electrical, air distribution, or structural systems. Homes shall be constructed to be structurally sound and to transfer all design, live, and dead loads to the support system without sagging or failure. Load-bearing components must perform their load-bearing functions. Failure to perform its intended function means: 1) item has stopped working completely; 2) item no longer meets reasonable trade requirements or specifications for its intended use; 3) continued use is dangerous or unsanitary; or 4) item works so inefficiently that continued use is impossible or impractical. Deficiencies attributable to major structural defects within 5 years of the date of the original retail delivery or the date of first occupancy, whichever comes first, shall be repaired or replaced by the manufacturer.

Items covered by the manufacturer's warranty include:

- Chassis or other provided substructure
- Floor system, including joists, decking, and subfloor diaphragms
- Beams, girders, lintels, columns
- Load-bearing walls and partitions, including interior drywall or panels designed for lateral bracing, exterior sheathing and/or siding designed for lateral loading
- Roof framing systems, including trusses, sheathing, and attic ventilation
- Ceiling diaphragms, including interior drywall
- Water and drain piping, gas/oil piping, fittings, connections within the dwelling unit provided by manufacturer
- Electrical wiring, fittings, connections, junction boxes, panel box(es) within the dwelling unit provided by manufacturer
- Air distribution ductwork, duct insulation, connections

Items covered by the retailer's warranty include:

- Installation defects as they affect structural integrity
- Transportation defects as they affect structural integrity

Items excluded as major structural defects:

- Additions, alterations, or changes made by occupant
- Movement caused by flood or earthquake
- Damage caused by lightning or unnaturally high winds from tornadoes and hurricanes
- Damage due to fire unrelated to structural components
- Damage caused by severe icing or frozen pipes

APPENDIX F
List of Options Papers

Analysis of Energy Use for Heating and Cooling in HUD-Code Manufactured Homes, September 20, 1993 (prepared by Steven Winter Associates, Inc.)

Cost Analysis Between Manufactured and Modular Housing, September 20, 1993 (prepared by Steven Winter Associates, Inc.)

Comparison of a "Typical" Manufactured Home to Requirements of the Uniform Building Code (UBC) and the Southern Building Code (SBC), August 26, 1993 (included in Appendix of Revision of Standards Options Paper; prepared by Professional Design Group/ Austin Technical Services)

Revised Draft Enforcement I Options Paper, November 9, 1993 (included HUD monitoring; staff prepared)

Draft Enforcement II Options Paper, October 29, 1993 (included consumer complaint handling; staff prepared)

Revised Draft Revision of Standards Options Paper, September 10, 1993 (staff prepared)

The Potential Effect of Code and Warranty Upgrades on the Affordability of Manufactured Housing, September 15, 1993 (prepared by The Hamilton Securities Group, Inc.)

Revised Draft Installation/Transportation Options Paper, November 3, 1993 (staff prepared)

Draft Warranty Options Paper, September 15, 1993 (staff prepared)

Affordability/Durability Paper, October 22, 1993 (staff prepared)

Draft Preemption Paper, October 29, 1993 (staff prepared)

Manufactured Housing: A Research Report Evaluating the Issues Concerning the Permanent Chassis Versus the Removable Chassis, June 28, 1993 (prepared by McCollum Associates, Inc.)

APPENDIX G
Biographies of Commissioners and Staff

Helen Boosalis, Chairman

Helen Boosalis, Chairman, is a Senate appointee to the Commission representing consumers. A former mayor of Lincoln, Nebraska, she currently serves on the Board of Directors of the American Association of Retired Persons (AARP) and has been actively involved in many housing issues. Following 16 years on Lincoln's City Council, Ms. Boosalis was elected Mayor in 1975 and re-elected to a second 4-year term in 1979. She was the first woman elected as chief executive of any major American city. Her vision was to push Lincoln from being just a nice, clean Midwestern city to one also of vitality, energy, and greater equality. She accomplished her goal by opening up government, promoting citizen responsibility, and sharing power. In 1981, she became the first woman elected as president of the U.S. Conference of Mayors. After her decision not to seek a third term as mayor, she was appointed by then-Governor Bob Kerrey to be director of Nebraska's Department on Aging. Since 1986, she has been a volunteer/activist and currently serves on numerous boards and commissions, including the Boards of AARP, the National Trust for Historic Preservation, and the National Arbor Day Foundation. Recently, she was appointed to the Consumer Affairs Advisory Council of the U.S. Securities and Exchange Commission.

Mary Beth Bowman

Mary Beth Bowman has been director of the Arkansas Manufactured Home Commission since 1982. As director, she is responsible for the administration of the Federal Manufactured Home Construction and Safety Standards Code and regulatory requirements for manufactured housing, handling consumer complaints, and for representing the manufactured housing issues before the State Legislature and the U.S. Congress. From 1976-1981, Ms. Bowman was director of the Community Development Department for the City of Malvern, Arkansas, and an associate with Clayton Commercial Development in Louisiana and Arkansas. She serves on the board of the National Conference of States on Building Codes and Standards and was president of the organization from 1987-1989. In 1985, she was selected to serve as Chair of the State Task Force on the Federal Manufactured Housing Program, which produced a document entitled, "Fulfilling the Public's Trust." Ms. Bowman served two terms on the National Manufactured Housing Advisory Council, which was appointed by the Secretary of Housing and Urban Development. In 1987, she was the guest speaker on housing at the World Congress of Building Officials in London, England. She has a M.S. degree in Social Agency Counseling from Henderson State University in Arkansas.

Shirley Burley

Shirley Burley has been treasurer of Hampton Township of Bay City, Michigan since 1980, and is a manufactured home owner and resident. She testified before the U.S. Congress during hearings in 1990 in favor of modernizing the Manufactured Housing Construction Safety and Standards Act (MHCSS). She has also been an active member of the Michigan Mobile Home Commission, serving as vice chair of the Commission and Chair of the State Ordinance Review Committee. Ms. Burley was a delegate to the 1976 Democratic National Convention, and was the United Auto Workers State General Board Member for 1972-1978.

She has won numerous awards, including the Dale Carnegie Human Relations Award and Special Achievement Award in 1985, and was the American Business Womens' Association "Woman of the Year" in 1986. Ms. Burley is a graduate of Michigan State University, receiving her degree from the School of Labor in Labor Leadership. In 1985, she completed a 3-year program at the Michigan State University Municipal Treasurers' Institute.

William Connolly

William Connolly is director of the New Jersey Division of Codes and Standards, New Jersey's State Construction Code Agency. He serves on the Board of Directors of the National Conference on State Building Codes and Standards and is chairman of the Industrialized Building Commission. A registered architect, Mr. Connolly has been with the State of New Jersey for 20 years. He has also held the position of director of New Jersey's Division of Housing and Development, and served 2 years in construction operations with the Army Corps of Engineers, including 1 year in the Republic of Vietnam. Mr. Connolly has been the New Jersey delegate member to the National Conference of States on Building Codes and Standards for 19 years, and is a director and past president of that organization. He also serves as a director and treasurer of the National Institute of Building Sciences. Mr. Connolly is a member of the American Institute of Architects and BOCA, where he served as chairman of the State Code Administrators Committee and the Ad Hoc Committee on Group Residences. He also served as the first Chairman of the Board of Governors of the National Certification Program for Construction Code Inspectors, and currently chairs the Industrialized Buildings commission, a multi-State compact that coordinates State oversight of factory-built buildings. He also served for a number of years as chairman of the planning boards for two municipalities, and as a member of the City of Plainfield's Downtown Policy Committee. He earned his Bachelor of Architecture degree from the University of Notre Dame.

Thomas L. Eckman

Thomas L. Eckman is the conservation manager for the Northwest Power Planning Council. His primary responsibilities include the assessment of the energy conservation potential in the Pacific Northwest region, the integration of conservation resources into the resource portfolio for the region's electric utility system, and the development of a regional plan for conservation acquisition. He also assists the Bonneville Power Administration and the region's public and private utilities and regulatory agencies to develop, implement, and evaluate conservation acquisition programs as part of their integrated resource planning effort. Mr. Eckman joined the Council staff in 1982 as a conservation analyst. He was the principal staff person charged with the development of the Council's Model Conservation Standards for new residential and commercial buildings. Prior to joining the Council, Mr. Eckman was the senior energy policy analyst for Mathematical Sciences Northwest, a private consulting firm. He has served on the faculty of Central Washington University, and as an adjunct professor of environmental studies for Western Washington University. Mr. Eckman has a M.S. degree in Environmental Studies/Environmental Education and a B.S. degree in Forestry from Southern Illinois University.

Ellen A. Harley

The Honorable Ellen A. Harley, is a member of the Pennsylvania General Assembly, representing the 149th legislative district in Montgomery County. Representative Harley serves on the Health and Welfare, State Government, and Urban Affairs Committees, where she is

sub-committee chair of the Sub-Committee on Second Class Cities and Counties, and the Select Committee on Land Use and Growth Management. Representative Harley holds a Masters degree in City and Regional Planning from the University of Pennsylvania, and is the only City and Regional Planner in the Pennsylvania Legislature. Representative Harley has authored major reform legislation on manufactured housing issues in Pennsylvania. She is a former representative and financial consultant to the University of Pennsylvania.

Edward J. Hussey, Jr.

Edward J. Hussey, Jr., is vice president of Liberty Homes, Inc., in Goshen, Indiana.

John H. Jensen

John H. Jensen, a manufactured home owner and park resident from Redmond, Washington, is treasurer and a finance committee member of the National Foundation of Manufactured Homeowners. He has been active with the Mobile Homeowners of America, Inc., a Washington State organization, for 20 years, and currently serves as its senior consultant. Mr. Jensen graduated from the Boeing School of Aeronautics in 1936 with Aircraft Instrumental credentials, and worked for United Air Lines in Cheyenne and San Francisco throughout World War II. He was employed by the Bendix Corporation as Field Service Engineer/ Facility Manager. He retired in the Seattle area at the completion of the development, flight testing, and final roll out of the Boeing 747.

Patrick Kennedy

Patrick Kennedy is president of Integrity Homes Brokers in Skaneateles, New York, a manufactured home retail center. He is active in the New York Manufactured Housing Association.

William H. Lear, First Vice Chairman

William H. Lear is vice president-general counsel and secretary of Fleetwood Enterprises, Inc., the Nation's largest producer of manufactured housing and recreational vehicles. He has also served Fleetwood as chief legal officer since 1971. Mr. Lear was founder and co-chair of the Coordination Council on Manufactured Housing Finance, serves as a member and is a past chairman of the Government Affairs Committee of the Manufactured Housing Institute, and was recently the recipient of the Jack E. Wells Award of the California Manufactured Housing Institute. His background includes private law practice and other corporate legal assignments, and he has been an occasional lecturer and author on manufactured housing legal and industry subjects. Mr. Lear received a B.A. degree magna cum laude from Yale University with honors in history, and a J.D. degree from the Duke University School of Law.

Steven J. Logan

Steven J. Logan is general manager and president, Waverlee Homes, Inc., Hamilton, Alabama. He formerly served as member of the House of Representatives in the Alabama State Legislature from 1987-1991 where he served on the Banking and Rules Committee. Mr. Logan is active in local industry development, and has been involved with the manu-

factured housing industry for more than 30 years. He has also served on the Alabama Manufactured Housing Board. He received his B.S. degree from the University of North Alabama and did graduate work at the University of Alabama at Tuscloosa, Alabama.

Michelle Meier

Michelle Meier is counsel for government affairs for the Washington, D.C., office of Consumers Union, the nonprofit consumer organization that publishes *Consumer Reports*, a monthly magazine with approximately 5.1 million subscribers. The Washington Office of Consumers Union is involved in legislative, judicial, and regulatory proceedings. Since joining Consumers Union in 1984, Ms. Meier has represented the consumer interest on housing, banking, consumer finance, and other issues before Congress, Executive branch agencies, and the courts. She helped develop and push through the 1987 check hold law, the 1988 home equity legislation, and the lower-income housing programs included in the savings and loan bailout legislation of 1989. Ms. Meier served as a member of the Federal Reserve Board's Consumer Advisory Council in 1989-1991. During 1992-1993, she served on the board of the National Community Reinvestment Coalition. In addition to testifying before congressional committees, Ms. Meier frequently speaks before various groups and to the national and local media about the problems consumers face in the financial services marketplace. Ms. Meier is a graduate of American University's Washington College of Law in Washington, D.C., and the University of Cincinnati in Ohio.

David R. Scarponi

David R. Scarponi has been the owner and operations manager of Linco, Inc., a 300-unit manufactured home community in Brunswick, Maine, since 1957. He served on Maine's Manufactured Housing Board from 1981-1989. Prior to that, he served on the Brunswick Town Council for 13 years (5 years as Chairman), and the Maine State Housing Advisory Committee. Mr. Scarponi has also served on the Maine State Manufactured Housing Commission. He is a veteran of the U.S. Navy, 1948-1958.

Jennifer Soldati, Second Vice Chairman

Jennifer Soldati is the executive director of the New Hampshire Trial Lawyers Association. Ms. Soldati formerly served in the New Hampshire House of Representatives where she was the House Democratic Whip. As a State Representative, Ms. Soldati served on numerous committees, including the Committees on Ways and Means, State-Federal Relations, Rules and State Institutions, and Housing. As an advocate for the development and preservation of affordable housing, Ms. Soldati was instrumental in opening the public debate in New Hampshire on issues related to manufactured housing.

Michael A. Stegman

Michael A. Stegman is Assistant Secretary for Policy Development and Research for the U.S. Department of Housing and Urban Development, and has been designated by Secretary Henry G. Cisneros as his representative to the Commission. Dr. Stegman is a nationally known public policy and urban studies academician. Prior to his HUD appointment, he was Gary C. Boshamer Professor at the University of North Carolina at Chapel Hill, where he chaired the Department of City and Regional Planning and the Ph.D. curriculum in Public Policy Analysis. He has conducted research and taught graduate courses in na-

tional housing policy and investment analysis for 26 years. He has been a housing consultant to States and localities, and has led workshops and seminars for housing and elected officials across the Nation. Dr. Stegman served on the Urban Land Institute's advisory panel to help Los Angeles create a revitalization strategy for riot-torn South Central Los Angeles. From 1979 to 1981, he was HUD Deputy Assistant Secretary for Research for then-Assistant Secretary Donna Shalala. He chaired the President's Rural Housing Task Force, and was a member of the White House Inter-Agency Working Group on Small Communities and Rural Development Policy. Books authored by Dr. Stegman include: More Housing, More Fairly; The Public Housing Homeownership Demonstration Assessment; and Non-Federal Housing Programs: How States and Localities Are Responding to Federal Cutbacks. He received his B.A. degree in political science from Brooklyn College and his M.A. and Ph.D. degrees in city planning from the University of Pennsylvania.

Rod Taylor

Rod Taylor began his career in manufactured housing in 1963, bringing 30 years of experience in the manufactured housing industry to the Commission. He managed two dealerships in north central Kansas before moving to Topeka in 1965, where he managed Doug's Mobile Homes until 1968, when he purchased the business. In 1980, this company was incorporated as Doug's Mobile World, Inc. He also serves as president of South Village, Inc., a 358-site manufactured home community that he acquired in 1980; in 1989, he formed a partnership with the acquisition of Ridgewood Estates, a 277-site manufactured home community. In addition, Mr. Taylor owns and operates the Rod Taylor Insurance Agency, and is active in State and local associations. He has served as vice president of the Kansas Manufactured Housing Association and vice president of the Greater Topeka Housing Association. As the request of Governor Mike Hayden, he served on the Kansas Dealer Review Board. He is a member of the Manufactured Home Committee for the City of Topeka, the Greater Topeka Chamber of Commerce, and is a charter member of the Better Business Bureau of northeast Kansas. He is currently chairman of the Metropolitan Topeka Airport Authority, on which has served for 8 years.

Leonard G. Wehrman

Leonard G. Wehrman is a manufactured home owner and resident of Daly City, California. Mr. Wehrman has represented the general interests of owners of manufactured homes for the past 25 years to industry and government officials all across the Nation. He co-founded of the National Foundation of Manufactured Homeowners, Inc. in 1975, and has aided many State homeowner associations in their efforts. He was elected vice president for industry and government relations for the National Foundation in 1982, and was director of the Golden State Mobilhome Owners League, Inc. from 1973-1977. He was consumer chairman for the Department of Housing and Urban Development Manufactured Home Advisory Council from 1982-1984. Mr. Wehrman is a recipient of the National Conference of States on Building Codes and Standards Outstanding Achievement Award in 1990. He joined the U.S. Navy in 1943 and is a retired veteran of World War II and the Korean conflict.

Commission Staff

Robert W. Wilden, Executive Director

Robert Wilden served as director of the Assisted Elderly and Handicapped Housing Division at the U.S. Department of Housing and Urban Development (HUD) for 17 years prior to coming to the Commission. During this period, he oversaw the funding of more than 240,000 units of housing for the elderly and handicapped, providing loans and subsidies valued at more than $10 billion. He came to HUD in 1969, and served as a program analyst in the Office of Housing until he became a division director in 1974. Prior to coming to HUD, he was the associate pastor of the Second Presbyterian Church in St. Louis, Missouri. He graduated from Occidental College, Los Angeles, California, with a B.A. in philosophy in 1958, and received a Masters in Divinity from the Harvard Divinity School in 1961.

Kym A. Couture, Deputy Director

Kym Couture served during the Reagan and Bush Administrations at HUD where she held the appointed positions of assistant for congressional relations, acting deputy assistant secretary for congressional relations, and legislative officer. Ms. Couture worked closely with Congress on behalf of the Department in developing and presenting Administration positions concerning authorization legislation for three major housing bills. Prior to coming to HUD, she served as the executive director of the Davis County Housing Authority in Utah, and as a housing specialist in the State of Utah, Department of Community Development. Ms. Couture graduated from the Utah State University in 1975 with a B.A. in Theatre Arts.

George J. Gaberlavage, Research Director

George Gaberlavage is a senior analyst with the Public Policy Institute of the American Association of Retired Persons (AARP). He served as the Commission's director of research under the auspices of AARP's Community Service Assignment Program and the Intergovernmental Personnel Act. Mr. Gaberlavage joined the Public Policy Institute in April 1986, and specializes in housing issues, having published numerous articles. Previously, he served as senior Federal liaison with the National Association of Regional Councils. From 1972 to 1978, he was a legislative assistant to U.S. Representative Frank Thompson, Jr., of New Jersey. Mr. Gaberlavage received a Master of Public Administration in Public Policy from The American University, Washington, D.C., in 1977. He graduated from the State University of New York, University College at Fredonia, in 1972 with a B.A. in Political Science.

Zebulon X. Hall, Office Assistant

Zebulon Hall was a volunteer at Mid-County Youth Services, Inc., in Seat Pleasant, Maryland, and the Center for Community Development in Capital Heights, Maryland, prior to joining the Commission staff. He received his B.A. in Political Science from the University of Maryland at College Park in 1993, and is interested in pursuing a career in Urban Planning.

Gail L. Hartwigsen, Policy Specialist

Gail Hartwigsen was the assistant director for the National Council on Seniors Housing at the National Association of Home Builders (NAHB) before joining the Commission staff. She oversaw the education, publication, and public policy programs for the Council, and also served as staff resource person for information on accessibility and housing design. Prior to this, she served as program manager for the National Institutes on Senior Housing and Community-based Long-term Care at the National Council on the Aging. For 9 years, Dr. Hartwigsen was a faculty member at Arizona State University, published widely in professional journals, and had a weekly local newspaper column.

Dr. Hartwigsen received her Ph.D. in Human Ecology-Human Environment and Design from Michigan State University in 1980, her M.A. in Housing and Interior Design from the University of Connecticut in 1974, and a B.A. in Home Economics Education from Glassboro State College, New Jersey, (now Rowan State College) in 1972.

Katherine L. McQueen, Policy Specialist

Kate McQueen served as the director of technical services at the National Conference of States on Building Codes and Standards (NCSBCS), where she managed technical studies and code research. She also served as manager of technical services at NCSBCS, where she oversaw the development and maintenance of a computer database of building codes throughout the United States. She also has served as an electrical inspector in Fairfax County, Virginia, an electrician in Maine and Virginia, and an electronics technician fabricating electronic circuitry for wind dynamos in Maine. Ms. McQueen received an A.A.S. in Electrical Technology from the Southern Maine Technical College in 1981, an M.A. in International Relations from the University of Pennsylvania in 1973, and a B.A. in Political Science from DePauw University in 1971. She is a certified building official and a licensed master electrician.

Carmelita R. Pratt, Administrative Officer

Carmelita Pratt served as the administrative officer for the National Commission on Severely Distressed Public Housing and as an assistant in the Office of Alumni-University Relations at Georgetown University prior to joining the Commission staff. She graduated with a B.S. in psychology from Central State University in Wilberforce, Ohio, in 1985.

APPENDIX H
Proposed National Manufactured Housing Construction and Safety Standards Act of 1994

The following document includes the existing Act in its entirety. Language that the Commission recommended be deleted from the Act is struck out (e.g. ~~strikeout~~). Language that the Commission recommended be added is shaded (e.g., shade).

The National Manufactured Housing Construction and Safety Standards Act

Title VI of The Housing and Community Development Act of 1974
As Amended By: 1977 Housing and Community Development Act (P.L. 95-128)
1978 Housing and Community Development Act (P.L. 95-557)
1979 Housing and Community Development Act (P.L. 96-153)
1980 Housing and Community Development Act (P.L. 96-339)
1987 Housing and Community Development Act (P.L. 100-242)
1992 Housing and Community Development Act (P.L. 102-550)

Title VI — MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

Short Title

Sec. 601. This title may be cited as the "National Manufactured Housing Construction and Safety Standards Act of ~~1974~~ 1994."

Findings

The Congress finds that —

(1) manufactured housing is a key asset in meeting the nation's need for affordable housing, especially for low and moderate income families and individuals;

(2) manufactured housing has evolved into an affordable housing option; and

(3) the production and sale of quality manufactured housing will be enhanced —

(A) by replacing the currently cumbersome process for updating the manufac tured home construction and safety standards with a process similar to that used by nationally recognized consensus committees;

(B) by making improved warranty protection available to homeowners;

(C) by improving inspection and enforcement of manufactured home construc tion and safety standards;

(D) by establishing installation standards;

(E) by increasing access to affordable financing for purchasers of manufactured homes;

(F) by prohibiting discrimination by all levels of government in zoning and the provision of local government services in order to remove regulatory barriers that deny equal treatment for manufactured housing compared to other types of housing;

(G) by encouraging technical innovation; and
(H) by streamlining the regulatory process.

Statement of Purpose

~~Sec. 602. The Congress declares that the purposes of this title are to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents and to improve the quality and durability of manufactured homes. Therefore, the Congress determines that it is necessary to establish Federal construction and safety standards for manufactured homes and to authorize manufactured home safety research and development.~~

Sec. 602. Congress recognizes the vital role of manufactured housing in meeting the nation's housing needs. Manufactured homes provide a significant resource of affordable homeownership and rental housing accessible to all Americans, especially first-time homebuyers, low and moderate income families, and the elderly. In order to promote the quality, affordability, and availability of manufactured housing, Congress declares that the purposes of this title are —

(1) to enhance quality, manufactured housing should meet standards of safety, quality and durability that yield levels of performance comparable to other forms of housing;

(2) to encourage innovative and cost effective construction techniques that also minimize the long-term operating costs of manufactured housing to homeowners;

(3) to develop financing, zoning, and the provision of local government services that remove regulatory barriers that deny equal treatment for manufactured housing compared to other types of housing;

(4) to encourage state-federal partnerships within our federal system that would enable each level of government to do what it does best while eliminating duplication and gaps between them;

(5) to establish a balanced consensus process for the development and revision of national construction and safety standards for manufactured homes;

(6) to strengthen warranty protections and increase access to affordable financing for the purchasers of manufactured homes;

(7) to assure uniform and effective enforcement of national construction and safety standards for manufactured homes; and

(8) to remove regulatory barriers to the use of innovative construction technologies.

Definitions

Sec. 603. As used in this title, the term—

(1) "manufactured home construction" means all activities relating to the design, assembly and manufacture of a manufactured home including but not limited to those relating to durability, quality, and safety;

(2) ~~"dealer"~~ "retailer" means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale;

(3) "defect" includes any ~~defect~~ imperfection or flaw in the performance, construction, components, or material of a manufactured home ~~that renders the home or any part thereof not fit for the ordinary use for which it was intended~~;

(4) "serious defect" means any noncompliance with national manufactured home construction and safety standards that results in a defect in the performance, construction, or material of a manufactured home that constitutes a safety hazard or that affects the home to the extent it becomes unsafe or otherwise unlivable;

~~(4) "distributor" means any person engaged in the sale and distribution of manufactured homes for resale;~~

(5) "manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes for resale;

(6) "Manufactured Home" means a structure, transportable in one or more sections which, ~~in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or~~, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems ~~contained therein~~ designed for the home; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this title; and except that a removable chassis may be utilized in the case of a home that is installed on a permanent foundation on the homeowner's land if the home meets standards specifically developed under this title for the design and construction of homes from which the chassis is to be removed ;

(7) ~~"Federal~~ National manufactured home construction and safety standard" means a reasonable standard for the construction, design, transportation, installation and performance of a manufactured home which meets the needs of the public including the need for quality, durability, and safety;

~~(8) "manufactured home safety" means the performance of a manufactured home in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the design or construction of such manufactured home, or any unreasonable risk of death or injury to the user or to the public if such accidents do occur;~~

~~(9)~~ (8) ~~"imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury;~~ "safety hazard" means an unreasonable risk of death or significant personal injury that is proximately caused by—

(A) an error in design, construction, assembly, or installation of the manufactured home by the manufacturer; or

(B) the failure to comply with a national manufactured home construction and safety standard;

~~(10)~~ (9) "purchaser" means the first person purchasing a manufactured home in good faith for purposes other than resale;

~~(11)~~ (10) "Secretary" means the Secretary of Housing and Urban Development;

~~(12)~~ (11) "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa; ~~and~~

~~(13)~~ (12) "United States district courts" means the Federal district courts of the United States and the United States courts of the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa; ~~.~~

(13) "alternate dispute resolution" or "ADR" means the process prescribed in this title for resolution of disputes between purchasers of manufactured homes and manufacturers or retailers related to the warranties under section 605;

(14) "consensus standards development process" means the maintenance and revision of the national manufactured home construction and safety standards by a consensus committee as set forth herein which—

(A) is balanced in membership to include all interested parties without domination by any single interest category; and

(B) guarantees a fair opportunity for the expression and consideration of various positions;

(15) "installation" means the construction of the foundation system, whether temporary or permanent, and the placement or erection of a manufactured home or manufactured home components on the foundation system, and includes supporting, blocking, leveling, securing, anchoring, plumbing and electrical connections, and where applicable connection of multiple or expandable sections or components, the installation of air conditioning, and minor adjustments;

(16) "inspection and enforcement agency" means a State or private organization that has been approved by the Secretary to enforce compliance in design, construction, and installation with the National manufactured home construction and safety standards;

(17) "recovery fund" means a fund administered by a State, or its designee, or a private organization selected by the Secretary from within the State if practicable, which is dedicated for the purpose of compensating purchasers for valid unsatisfied claims against manufacturers or retailers arising out of the warranty provisions of this title;

(18) "site preparation" means the preparation or corrective work necessary on a parcel of land to accommodate a manufactured home, and may include grading, filling, soil compaction, soil stabilization, drainage, or erosion control;

(19) "transportation" means the transporting of a manufactured home(s) or manufactured home components from the manufacturing facility to a retailer or location selected by the purchaser, by the manufacturer, retailer, or their respective agent(s) and the transporting of a manufactured home(s) or manufactured home components from the retailer by the retailer or his agent(s) to the site where used by the home purchaser where applicable.

~~Federal~~ National Manufactured Home Construction and Safety Standards

Sec. 604.~~(a) The Secretary, after consultation with the Consumer Product Safety Commission, shall establish by order appropriate Federal manufactured home construction and safety standards. Each such Federal manufactured home standard shall be reasonable and shall meet the highest standards of protection, taking into account existing State and local laws relating to manufactured home safety and construction.~~

a)(1) The Secretary shall establish, by order, appropriate national manufactured home construction and safety standards, including installation standards, that shall be reasonable, practicable, and stated in objective terms and that shall set standards of protection for the provision of safety, quality, durability, and energy efficiency that yield levels of performance comparable to other forms of housing. The Secretary may issue orders amending or revoking such standards. The Secretary shall issue such orders as part of the consensus standards development process described in this section. The Secretary is authorized to issue orders which are not part of the consensus process during any period when the Secretary determines that the consensus process is not in compliance with the provisions of this Act.

(2) Not later than 60 days after the date of enactment of this title, the Secretary shall contract with the National Institute of Building Sciences (NIBS) to adminis-

ter the consensus process and to appoint the members of a consensus committee. The cost of administering the consensus process shall be paid out of fees collected pursuant to this title. The consensus committee shall be exempt from the Federal Advisory Committee Act. All meetings shall be open to the public, and advance notice of such meetings shall be provided.

(3) The members of the consensus committee shall be appointed in accordance with selection procedures for consensus committees promulgated by the American National Standards Institute (ANSI). The ANSI interest categories shall be modified to the extent necessary—

(A) to include manufacturers, suppliers, and retailers in the 'producer' category;

(B) to include exclusively homeowners, consumers, and public officials in the 'user' category; and

(C) to include inspection and enforcement agency personnel in the 'general interest' category, except that private agency personnel shall not constitute more than 20 percent of the members of the 'general interest' category.

Members of the consensus committee shall be qualified by background and experience to participate in the work of the committee, but members in the 'user' and 'general interest' categories, other than private inspection and enforcement agency personnel, shall not have a financial interest in the manufactured home industry. The private sector standards setting organization that administers the consensus process shall apply to ANSI to obtain accreditation of the consensus committee as an American National Standards Developer.

(4) The consensus committee shall be provided reasonable staff resources by the administering organization and its staff shall include one consumer technical analyst.

(5) The consensus committee shall consider revisions to the national manufactured home construction and safety standards, and through the National Institute of Building Sciences, shall submit revised standards to the Secretary at least once during every two-year period. NIBS shall publish the revised standards, and notice of its submission to the Secretary, in the Federal Register. This notice shall describe the circumstances under which the revised standards could become effective. The consensus committee also shall submit its standards to ANSI for qualification as an American National Standard.

(6) The Secretary shall either adopt, reject or modify the standards submitted by the consensus committee. A final order adopting these standards with or without modification shall be issued by the Secretary no later than 12 months after the date the standards are submitted to the Secretary by the consensus committee, and shall be publish in the Federal Register pursuant to the Administrative Procedure Act as a final rule. The final rule shall take effect 180 days after publication. If the Secretary determines that any portion of the standards should be rejected or modified because they would jeopardize health or safety or are inconsistent with a purpose of this title, a notice to that effect shall be published in the Federal Register no later than 12 months after the date the standards are submitted to the Secretary by the consensus committee.

(7) If the Secretary fails to take final action under para. 6 and publish notice of the action in the Federal Register within the required 12-month period, the recommendations of the consensus committee shall take effect within 180 days of the 12-month period and the requirements of section 553 of title 5, USC shall be deemed to have been satisfied. Within 10 days after the expiration of the 12-month period, the

National Institute of Building Sciences shall publish in the Federal Register notice of HUD's failure to act, the revised standards, and the effective date of the revised standards.

(8) The Secretary shall have authority at any time to request that the consensus committee develop interim emergency amendments to the standards, when necessary, to respond to an emergency health or safety issue. The consensus committee shall have 60 days to submit amendments.

(9) Upon request and after a finding that such an interpretation is reasonably necessary, the consensus committee shall submit to the Secretary written interpretations of the national manufactured home construction and safety standards. These interpretations shall become binding upon approval by the Secretary. The Secretary's approval of any interpretation may be conditioned upon the modification of the interpretation. The Secretary may reject an interpretation in its entirety upon a finding that the interpretation would jeopardize public health or safety or is inconsistent with the purposes of this title. If the Secretary fails to take any of the above actions within 60 days of receipt of an interpretation from the consensus committee, the Secretary's approval shall be presumed and the interpretation shall become binding.

(10) The consensus committee shall develop minimum warranty performance requirements for the level of quality of materials, performance, and workmanship to assist in resolving warranty claims.

(b) All orders issued under this section shall be issued after notice and an opportunity for interested persons to participate are provided in accordance with the provisions of section 553 of title 5, United States Code.

(c) Each order establishing a Federal manufactured home construction and safety standard shall specify the date such standard is to take effect, which shall not be sooner than one hundred and eighty days or later than one year after the date such order is issued, unless the Secretary finds for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

(d) ~~Wherever a national manufactured home construction and safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.~~

A State or local unit of government shall not establish or continue in effect any standards or regulation which relates to or affects the construction, safety, or installation of manufactured housing after the effective date of this amendatory Act. The standards required by this title and the regulations promulgated by the Secretary are deemed complete and exhaustive and as such supersede and preempt State and local law and regulation. However a State may establish, continue in effect, and enforce installation standards when the Secretary has determined that such installation standards equal or exceed the minimum National installation standards.

~~(e) The Secretary may by order amend or revoke any Federal manufactured home construction or safety standard established under this section. Such order shall specify the date on which such amendment or revocation is to take effect, which shall not be sooner than one hundred and eighty days or later than one year from the date the order is issued, unless the Secretary finds, for good cause shown, that an earlier or later date is in the public interest, and publishes his reasons for such finding.~~

~~(f)~~ (e) ~~In establishing standards under this section, the Secretary~~ The consensus committee, in recommending standards and issuing interpretations, and the Secretary in establishing standards under this section shall—

(1) consider relevant available manufactured home construction and safety data, including the results of the research, development, testing, and evaluation activities conducted pursuant to this title, and those activities conducted by private organizations and other governmental agencies to determine how to best protect the public;

(2) consult with such State or interstate agencies (including legislative committees) as they deem appropriate;

(3) consider whether any such proposed standard is reasonable for the particular type of manufactured home or for the geographic region for which it is prescribed;

(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;

(6) consider cost-effective energy conservation performance standards that are designed to ensure the lowest total of construction and operating costs; and

(7) when establishing energy conservation standards, consider the design and factory construction techniques of manufactured homes and provide for alternative practices that result in net estimated energy consumption equal to or less than the specified standards.

~~(g) The Secretary shall issue an order establishing initial Federal manufactured home construction and safety standards not later than one year after the date of enactment of this Act.~~

~~(h)~~ (f) The Secretary shall exclude from the coverage of this title any structure having a permanent chassis which the manufacturer certifies, in a form prescribed by the Secretary, to be:

(1) designed only for erection or installation on a site-built permanent foundation;

(2) not designed to be moved once so erected or install;

(3) designed and manufactured to comply with a nationally recognized model building code or an equivalent local code, or with a State or local modular building code recognized as generally equivalent to building codes for site-built housing, or with minimum property standards adopted by the Secretary pursuant to title II of the National Housing Act; and

(4) to the manufacturer's knowledge is not intended to be used other than on a site-built permanent foundation.

~~(i)(1) The Federal manufactured home construction and safety standards established by the Secretary under this section shall include preemptive energy conservation standards in accordance with this subsection.~~

~~(2) The energy conservation standards established under this subsection shall be cost-effective energy conservation performance standards designed to ensure the lowest total of construction and operating costs.~~

~~(3) The energy conservation standards established under this subsection shall take into consideration the design and factory construction techniques of manufactured homes and shall provide for alternative practices that result in net estimated energy consumption equal to or less than the specified standards.~~

(g)(1) Based on a finding of need, the consensus committee shall establish uniform test or evaluation methodologies that will adequately and uniformly evaluate compliance with existing or proposed standards. The Secretary or other interested persons may request the consensus committee to develop or evaluate the validity of a test method.

(2)(A) The consensus committee shall establish requirements for review of transportation loads and testing procedures in order to assure that when manufactured homes reach retailer and installation sites they remain in conformance with the national manufactured home construction and safety standards.

(B) Each manufacturer of manufactured homes shall prepare transportation and storage requirements designed to assure that the home will remain in conformance with such standards under ordinary transportation and storage practices.

~~(i)~~ (h) The Secretary shall develop a new standard for hardboard panel siding on manufactured housing taking into account durability, longevity, consumer's costs for maintenance and any other relevant information pursuant to subsection (e). The Secretary shall consult with the National Manufactured Home Advisory Council and the National Commission on Manufactured Housing in establishing the new standard. The new performance standard developed shall ensure the durability of hardboard sidings for at least a normal life of a mortgage with minimum maintenance required. Not later than 180 days from the date of enactment of this subsection, the Secretary shall update the standards for hardboard siding.

~~**National Manufactured Home Advisory Council**~~

~~Sec.605. (a) The Secretary shall appoint a National Manufactured Home Advisory Council with the following composition: eight members selected from among consumer organizations, community organizations, and recognized consumer leaders; eight members from the manufactured home industry and related groups including at least one representative of small business; and eight members selected from government agencies including Federal, State, and local governments. Appointments under this subsection shall be make without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service, classification, and General Schedule pay rates. The Secretary shall publish the names of the members of the Council annually and shall designate which members represent the general public.~~

~~(b) The Secretary shall, to the extent feasible, consult with the Advisory Council prior to establishing, amending, or revoking any manufactured home construction or safety standard pursuant to the provisions of this title.~~

~~(c) Any member of the National Manufactured Home Advisory Council who is appointed from outside the Federal Government may be compensated at a rate not to exceed $100 per diem (including travel time) when engaged in the actual duties of the Advisory Council. Such members, while away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.~~

Warranties and State Recovery Funds

Sec. 605.(a)(1) The manufacturer shall provide a written warranty to the purchaser of a new manufactured home that the home is constructed to the standards promulgated by the Secretary and that the home is free from defects in materials and

workmanship. The warranty shall cover the correction of defects which result from the design or construction and from the transportation, installation and storage of the home, except as warranted by the retailer pursuant to subsection (3) of this section, by appropriate repair or replacement of components or of the home itself if necessary.

(2) The manufacturer's warranty shall cover all defects which become evident within one year of the date the new manufactured home is delivered to the purchaser, except as covered by the retailer's warranty provided for in subsection (3) of this section. In addition, the manufacturer's warranty shall cover for a period of five years from the date of delivery to the purchaser those defects in the plumbing, electrical, air distribution, and structural systems which become evident in a five year period, except as covered by the retailer's warranty provided for in subsection (4) of this section.

(3) The retailer shall provide a written warranty to the purchaser of a new manufactured home that the home is installed at the initial homesite in accordance with the applicable installation standards and that any appliances or equipment added by the retailer and included with the sale of the home are properly installed and are free from defects in materials or workmanship. The retailer warranty shall cover for one year from the date of delivery to the purchaser those defects of the home which result from the installation of the home or transportation to the homesite arranged or contracted by the retailer.

(4) The retailer warranty shall also cover for five years from the date of delivery to the purchaser those defects affecting the structural integrity of the home which result from the installation of the home or transportation to the homesite arranged or contracted by the retailer.

(5) The retailer's warranty is further limited as follows:

(i) no retailer warranty is provided if the purchaser receives clear and conspicuous notice of the consequences of installing the unit himself or herself and chooses that option;

(ii) in the case where a homebuyer chooses to undertake his own site preparation, the retailer may limit the installation warranty to one year if all of the following conditions are met:

(a) the retailer offers a conforming installation, including site preparation;

(b) the retailer before the sale provides written disclosure of correct site preparation and any limitations on the warranty; and

(c) the retailer requires the homebuyer to provide an engineering certification, contractor certificate, or building inspection certification that site work is in accordance with code or regulations and the homebuyer fails to provide such a certification to the retailer.

(6) The provisions of this section are valid only so long as the home remains installed at the initial homesite.

(7) Written notice of defects shall be submitted to the manufacturer or retailer no later than 30 days after the close of the warranty period. The warranty shall provide that defects, and any consequential damages arising therefrom, will be repaired within 60 days of the receipt of written notice, or within 5 days in emergency situations.

(8) The warranty shall give the homeowner the right to full correction of any defect in the item or system covered by the warranty, and any damage directly caused to the home by the defect, or the costs of such correction.

(b)(1) State recovery fund programs shall be established for each State, which shall be responsible—

(A) for creating and administering an alternate dispute resolution process ("ADR") to resolve disputes arising from warranties required by this section; and

(B) for compensating purchasers of manufactured homes whose valid claims arising from warranties required by this section have not been honored by the responsible manufacturer or retailer. Compensation shall occur upon completion of the ADR process, or final judgement by a court.

(2) The Secretary shall only approve a State recovery fund program and such program shall only continue—

(A) if the ADR process meets the following requirements—

(i) the dispute settler is independent and has no financial ties to any party;

(ii) there is no cost to the purchaser;

(iii) the availability of the ADR process is prominently displayed and advertised;

(iv) the process includes two steps: the first is required informal dispute settlement; second, if the first step does not resolve the dispute, the homeowner may elect to proceed to a formal dispute resolution process or litigation under subsection (d).

(v) judicial appeals of the results of the formal dispute resolution process are limited to factual, legal, or procedural errors made by the dispute settler that are material to the decision;

(vi) the ADR process is evaluated periodically; and

(vii) such additional requirements as the Secretary prescribes pursuant to paragraph (4) of this subsection;

(B) if a State recovery fund is established which meets the following requirements—

(i) the fund is used to cover claims of purchasers under the warranties required by this section where the responsible manufacturer or retailer is no longer in business or refuses to honor claims after the completion of the ADR process or the judicial process initiated under subsection (d);

(ii) the fund is financed by charges levied on manufacturers and retailers of manufactured homes and on related industry parties;

(iii) the charges are sufficient to fully support the cost of operating the fund, as determined by an independent firm using conservative actuarial analysis;

(iv) private reinsurance of the fund is required as soon as practicable and in no event later than 7 years from the date of approval.

(v) a uniform claims process is established which provides for the expeditious satisfaction of claims; and

(vi) the fund may only cover the actual reasonable cost of repairs or the value of the home, whichever is the lesser;

(C) if manufacturers and retailers of manufactured homes are required to register with the entity administering the recovery fund in each State as a precondition to the sale of manufactured homes in the State; and if failure to correct a warranty defect under this section after the completion of the ADR process results in a suspension of registration until the manufacturer or retailer repays the recovery fund in the State of siting for any payments made by the fund to purchasers.

(3) If a State has not enacted any necessary legislation to establish a state recovery fund and related ADR process within four years from the effective date of this act, or has not implemented a state recovery fund program and related ADR process within five years from such date, the Secretary shall carry out all the functions of a State program through contract with a private organization, from within the State if practicable.

(4)(A) Within 180 days of enactment, the Administrative Conference of the U.S. shall publish recommendations on additional rules, principles and procedures to govern the ADR process consistent with the requirements and principles set forth in subsection (2)(A). The Secretary shall take these recommendations into account in developing the regulations under subparagraph (B).

(B) Within 360 days of enactment, the Secretary shall publish regulations to govern the ADR process established by this section. These regulations shall ensure that the ADR process adheres to the requirements and principles set forth in subsection (2)(A).

(C) State recovery funds shall provide and the Secretary shall collect, aggregate, and distribute to the State agencies authorized pursuant to section 623 of this title and to any agent of the Secretary data collected under State recovery fund programs on the types of defects and their frequency by manufacturer, plant, model or system.

(D) The purchaser of a manufactured home may bring an action in any court of competent jurisdiction to assert a claim arising from the warranties required under subsection (a) during the period that begins 30 days after filing the claim and no later than 180 days after the conclusion of the informal portion of the ADR process. Such an action constitutes an election of remedies and terminates the ADR proceeding.

(E) Nothing in this section shall abrogate or in any way affect any rights the purchaser may have under other laws or instruments. The warranty provisions of subsection (a) shall be effective in any State 180 days after the date of promulgation by the Secretary, whether or not the State recovery fund program has been established and approved.

Judicial Review of Orders

Sec. 606. (a)(1) In a case of actual controversy as to the validity of any order under section 604, any person who may be adversely affected by such order when it is effective may at any time prior to the sixtieth day after such order is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for judicial review of such order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his order, as provided in section 2112 of title 28, United States Code.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to review the order in accordance with the provisions of sections 701 through 706 of title 5, United States Code, and to grant appropriate relief.

(4) The judgement of the court affirming or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(5) Any action instituted under this subsection shall survive, notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(6) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

(b) A certified copy of the transcript of the transcript of the record and proceedings under this section shall be furnished by the Secretary to any interested party at his request and payment of the costs thereof, and shall be admissible in any criminal, exclusion of imports, or other proceeding arising under or in respect of this title, irrespective of whether proceedings with respect to the order have previously been initiated or become final under subsection (a).

Public Information

Sec. 607 (a) Whenever any manufacturer is opposed to any action of the Secretary under section 604 or under any other provision of this title on the grounds of increased cost or for other reasons, the manufacturer shall submit such cost and other information (in such detail as the Secretary may by rule or order prescribe) as may be necessary in order to properly evaluate the manufacturer's statement.

(b) Such information shall be available to the public unless the manufacturer establishes that it contains a trade secret or that disclosure of any portion of such information would put the manufacturer at a substantial competitive disadvantage. Notice of the availability of such information shall be published promptly in the Federal Register. If the Secretary determines that any portion of such information contains a trade secret or that the disclosure of any portion of such information would put the manufacturer at a substantial competitive disadvantage, such portion may be disclosed to the public only in such manner as to preserve the confidentiality of such trade secret or in such combined or summary form so as not to disclose the identity of any individual manufacturer, except that any such information may be disclosed to other officers or employees concerned with carrying out this title or when relevant in any proceeding under this title. Nothing in this subsection shall authorize the withholding of information by the Secretary or any officer or employee under his control from the duly authorized committees of the Congress.

(c) If the Secretary proposes to establish, amend, or revoke a Federal manufactured home construction and safety standard under section 604 on the basis of information submitted pursuant to subsection (a), he shall publish a notice of such proposed action, together with the reasons therefor, in the Federal Register at least thirty days in advance of making a final determination, in order to allow interested parties an opportunity to comment.

(d) For purposes of this section, "cost information" means information with respect to alleged cost increases resulting from action by the Secretary, in such a form as to permit the public and the Secretary to make an informed judgment on the validity of the manufacturer's statements. Such term includes both the manufacturer's cost and the cost to retail purchasers.

(e) Nothing in this section shall be construed to restrict the authority of the Secretary to obtain or require submission of information under any other provision of this title.

Research, Testing, Development, and Training

Sec. 608. (a) The Secretary shall conduct research, testing, development, and training necessary to carry out the purposes of this title, including, but not limited to—

(1) collecting data from any source for the purpose of determining the relationship between manufactured home performance characteristics and (A) accidents involving manufactured homes, and (B) the occurrence of death, personal injury, or damage resulting from such accidents;

(2) procuring (by negotiation or otherwise) experimental and other manufactured homes for research and testing purposes; and

(3) selling or otherwise disposing of test manufactured homes and reimbursing the proceeds of such sale or disposal into the current appropriation available for the purpose of carrying out this title.

(b) The Secretary is authorized to conduct research, testing, development, and training as authorized to be carried out by subsection (a) of this section by contracting for or making grants for the conduct of such research, testing, development, and training to States, interstate agencies, and independent institutions.

Cooperation with Public and Private Agencies

Sec. 609. The Secretary is authorized to advise, assist, and cooperate with other Federal agencies and with State and other interested public and private agencies, in the planning and development of—

(1) manufactured home construction and safety standards; and

(2) methods for inspecting and testing to determine compliance with manufactured home standards.

Prohibited Acts

Sec. 610. (a) No person shall—

(1) make use of any means of transportation or communication affecting interstate or foreign commerce or the mails to manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into the United States, any manufactured home which is manufactured on or after the effective date of any applicable Federal manufactured home construction and safety standard under this title and which does not comply with such standard, except as provided in subsection (b), where such manufacture, lease, sale, offer for sale or lease, introduction, delivery, or importation affects commerce;

(2) fail or refuse to permit access to or copying of records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under section 614;

(3) fail to furnish notification of and correct any serious defect as required by section 615;

(4) fail to issue a certification required by section 616, or issue a certification to the effect that a manufactured home conforms to all applicable Federal manufactured home construction and safety standards, if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect;

(5) fail to comply with a final order issued by the Secretary under this title;

(6) issue a certification pursuant to subsection ~~(h)~~ (g) of section 604, if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect;

(7) fail to provide warranties or honor terms of warranties as set forth in sec. 605 of this title; or

(8) install a manufactured home in a manner which does not comply with the national standards or State installation standards, whichever is applicable, pursuant to section 604(f) of this title. This paragraph shall only apply to manufacturers, retailers and persons in the business of installing manufactured homes.

(b)(1) Paragraph (1) of subsection (a) shall not apply, except for the purpose of the manufacturer's warranty, to the sale, the offer for sale, or the introduction or delivery for introduction in interstate commerce of any manufactured home after the first purchase of it in good faith for purposes other than resale.

(2) For purposes of section 611, paragraph (1) of subsection (a) shall not apply, except for the purpose of the manufacturer's warranty, to any person who establishes that he did not have reason to know in the exercise of due care that such manufactured home is not in conformity with applicable Federal manufactured home construction and safety standards, or to any person who prior to such first purchase holds a certificate issued by the manufacturer or importer of such manufactured home to the effect that such manufactured home conforms to all applicable Federal manufactured home construction and safety standards, unless such person knows that such manufactured home does not so conform.

(3) A manufactured home offered for importation in violation of paragraph (1) of subsection (a) shall be refused admission into the United States under joint regulations issued by the Secretary of the Treasury and the Secretary, except that the Secretary of the Treasury and the Secretary may, by such regulations, provide for authorizing the importation of such manufactured home to the United States upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such manufactured home will be brought into conformity with any applicable Federal manufactured home construction or safety standard prescribed under this title, or will be exported from, or forfeited to, the United States.

(4) The Secretary of the Treasury and the Secretary may, by joint regulations, permit the importation of any manufactured home after the first purchase of it in good faith for purposes other than resale.

(5) Paragraph (1) of subsection (a) shall not apply in the case of a manufactured home intended solely for export, and so labeled or tagged on the container, if any, which is to be exported.

(c) Compliance with any Federal manufactured home construction or safety standard issued under this title does not exempt any person from any liability under common law.

Civil and Criminal Penalties

Sec. 611. (a) Whoever violates any provision of section 610, or any regulation or final order issued ~~thereunder, shall be liable to the United States for a civil penalty of not to exceed $1,000~~ under this title, shall be liable, after an opportunity for a hearing, to the Secretary for a civil penalty not to exceed $5,000 for each such violation. Each violation of a provision of section 610, or any regulation or order issued thereunder shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed $1,000,000 for any related series of violations occurring within one year from the date of the first violation.

(b) An individual or a director, officer, or agent of a corporation who knowingly and willfully violates section 610 in a manner which threatens the health or

safety of any purchaser shall be fined not more than ~~$1,000~~ $100,000 or imprisoned not more than one year, or both.

Injunctive Relief

Sec. 612. (a) The United States district courts shall have jurisdiction, for cause shown and subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this title, or to restrain the sale, offer for sale, or the importation into the United Sates, of any manufactured home which is determined, prior to the first purchase of such manufactured home in good faith for purposes other than resale, not to conform to applicable Federal manufactured home construction and safety standards prescribed pursuant to this title or to contain ~~a defect which constitutes an imminent safety hazard~~ a serious defect, upon petition by the appropriate United States attorney or the Attorney General on behalf of the United States. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views and the failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this title, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(c) Actions under subsection (a) of this section and section 611 (b) may be brought in the district wherein any act or transaction constituting the violation occurred, or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.

(d) In any action brought by the United States for (a) of this section or section 611, subpoenas by the United States for witnesses who are required to attend at United States district court may run into any other district.

(e) It shall be the duty of every manufacturer offering a manufactured home for importation into the United States to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions, and requirements may be made for and on behalf of such manufacturer, and to file such designation with the Secretary, which designation may from time to time be changed by like writing, similarly filed. Service of all administrative and judicial processes, notices, orders, decisions, and requirements may be made upon such manufacturer by service upon such designated agent at his office or usual place of residence with like effect as if made personally upon such manufacturer, and in default of such designation of such agent, service of process or any notice, order, requirement, or decision in any proceeding before the Secretary or in any judicial proceeding pursuant to this title may be made by mailing such process, notice, order, requirement, or decision to the Secretary by registered or certified mail.

Noncompliance with Standards

Sec. 613. (a) If the Secretary or a court of appropriate jurisdiction determines that any manufactured home does not conform to applicable Federal manufactured home construction and safety standards, or that it contains ~~a defect which constitutes an imminent safety hazard~~ a serious defect, after the sale of such manufactured home

by a manufacturer to a ~~distributor or a dealer~~ retailer and prior to the sale of such manufactured home by such ~~distributor or dealer~~ retailer to a purchaser—

(1) the manufacturer shall immediately repurchase such manufactured home from such ~~distributor or dealer~~ retailer at the price paid by such ~~distributor or dealer~~ retailer, plus all transportation charges involved and a reasonable reimbursement of not less than 1 per centrum per month of such price paid prorated from the date of receipt by certified mail of notice of such nonconformance of the date of repurchase by the manufacturer; or

(2) ~~the manufacturer, at his own expense, shall immediately furnish the purchasing distributor or dealer the required conforming part or parts or equipment for installation by the distributor or dealer on or in such manufactured home, and for the installation involved the manufacturer shall reimburse such distributor or dealer for the reasonable value of such installation plus a reasonable reimbursement of not less than 1 per centrum per month of the manufacturer's or distributor's selling price prorated from the date of receipt by certified mail of notice of such nonconformance to the date such vehicle is brought into conformance with applicable Federal standards, so long as the distributor or dealer proceeds with reasonable diligence with the installation after the required part or equipment is received. The value of such reasonable reimbursements as specified in paragraphs (1) and (2) of this subsection shall be fixed by mutual agreement of the parties, or, failing such agreement, by the court pursuant to the provisions of subsection (b).~~ The manufacturer, at its expense, shall furnish to the purchasing retailer, for installation by the retailer, the part, parts, or equipment necessary to correct such serious defect or failure to comply with an applicable national manufactured home construction and safety standard, and for the installation involved the manufacturer shall reimburse such retailer for the reasonable value of such installation plus a reasonable reimbursement of not less than 1 percent per month of the selling price of the manufacturer prorated from the date of receipt by certified mail of notice of such serious defect or such failure to comply to the date such serious defect or failure to comply is corrected, so long as the retailer proceeds with reasonable diligence with the installation after the required part or equipment is received.

(b) If any manufacturer fails to comply with the requirements of subsection (a), then the ~~distributor or dealer, as the case may be,~~ retailer to whom such manufactured home has been sold may bring an action seeking a court injunction compelling compliance with such requirements on the part of such manufacturer. Such action may be brought in any district court in the United States in the district in which such manufacturer resides, or is found, or has an agent, without regard to the amount in controversy, and the person bringing the action shall also be entitled to recover any damage sustained by him, as well as all court costs plus reasonable attorneys' fees. Any action brought pursuant to this section shall be forever barred unless commenced within three years after the cause of action shall have accrued.

Inspection of Manufactured Homes and Records

Sec. 614. (a) The Secretary is authorized to conduct such inspections and investigations as may be necessary to promulgate or enforce Federal manufactured home construction and safety standards established under this title or otherwise to carry out his duties under this title. He shall furnish the Attorney General and, when appropriate, the Secretary of the Treasury any information obtained indicating noncompliance with such standards for appropriate action.

(b)(1) For purposes of enforcement of this title, persons duly designated by the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized—

(A) to enter, at reasonable times and without advance notice, any factory, warehouse, or establishment in which manufactured homes are manufactured, stored, or held for sale; and

(B) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, any such factory, warehouse, or establishment, and to inspect manufactured homes in the possession of manufacturers or retailers and such books, papers, records, and documents as are set forth in subsection (c). Each such inspection shall be commenced and completed with reasonable promptness.

(2) The Secretary is authorized to contract with State and local governments and private inspection organizations to carry out his functions under this subsection.

(3) The Secretary shall establish criteria for approval and certification of inspection and enforcement agencies, which may be private parties or State agencies. In accordance with contracts entered into with the Secretary, the inspection and enforcement agencies shall perform inspections of facilities of manufacturers and manufactured homes, and shall review the plans of manufacturers for conformity with the national manufactured home construction and safety standards established under this title. The Secretary shall publish a list of all inspection and enforcement agencies approved and certified under the criteria established under this subsection.

(4) Each manufacturer shall select from the list of approved inspection and enforcement agencies under paragraph (2) an agency (or agencies) with which it will contract to approve plans and conduct the inspections authorized under this title, except that in cases in which a State agency has been approved as the exclusive independent agency for the inspection of homes, the manufacturer shall contract with such agency. A manufacturer shall promptly notify the Secretary if it replaces its inspection and enforcement agency (or agencies) with another agency (or agencies) and shall state the specific reasons for the change.

(5) The Secretary shall maintain a file for each inspection and enforcement agency in which the Secretary shall collect any monitoring reports on the performance of the inspection and enforcement agency conducted by or for the Secretary pursuant to this paragraph and any submissions by the agency to the Secretary during each calendar year. The Secretary shall review, at least annually, each inspection and enforcement agency and its file for the preceding year or years. If the Secretary determines that an inspection and enforcement agency has not performed its duties under this title or implementing regulations or that it does not possess the qualified personnel or financial stability to continue to perform its responsibilities, the Secretary shall remove it from the list of approved inspection and enforcement agencies or otherwise limit its use or authority as an inspection and enforcement agency.

(6) The Secretary shall establish voluntary educational requirements for manufacturer quality control personnel and retailer installation inspection personnel, and mandatory educational requirements for inspection and enforcement agency technical personnel, SAA personnel and any Federal or contract staff having technical functions.Educational requirements shall include completion of specified training, and successful completion of a minimum competence examination.

(c) For the purpose of carrying out the provisions of this title, the Secretary is authorized—

(1) to hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require by subpena or otherwise, the attendance

and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records, as the Secretary or such officer or employee deems advisable. Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(2) to examine and copy any documentary evidence of any person having materials or information relevant to any function of the Secretary under this title;

(3) to require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under this title. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe;

(4) to request from any Federal agency any information he deems necessary to carry out his functions under this title, and each such agency is authorized and directed to cooperate with the Secretary and to furnish such information upon request made by the Secretary, and the head of any Federal agency is authorized to detail, on a reimbursable basis, any personnel of such agency to assist in carrying out the duties of the Secretary under this title; and

(5) to make available to the public any information which may indicate the existence of a defect which relates to manufactured home construction or safety or of the failure of a manufactured home to comply with applicable manufactured home construction and safety standards. The Secretary shall disclose so much of other information obtained under this subsection to the public as he determines will assist in carrying out this title; but he shall not (under the authority of this sentence) make available or disclose to the public any information which contains or relates to a trade secret or any information the disclosure of which would put the person furnishing such information at a substantial competitive disadvantage, unless he determines that it is necessary to carry out the purpose of this title. Monitoring reports, the results of complaint investigations, and other enforcement records shall be public records and shall be accessible to the State agencies designated pursuant to section 623 of this title and, subject to the limitations described in subsection (b), to the general public.

(d) Any of the district courts of the United Sates within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena or order of the Secretary issued under paragraph (1) or paragraph (3) of subsection (c) of this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) Each manufacturer of manufactured homes shall submit the building plans for every model of such manufactured homes to the Secretary or his designee for the purpose of inspection under this section. The manufacturer must certify that each such building plan meets the Federal construction and safety standards in force at that time before the model involved is produced.

(f) Each manufacturer~~, distributor, and dealer~~ and retailer of manufactured homes shall establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require to enable him to determine whether such manufacturer~~, distributor, or dealer~~ or retailer has acted or is acting in compliance with this title and ~~Federal~~ national manufactured home construction and safety standards prescribed pursuant to this title and shall, upon request of a person duly designated by the Secretary, permit such person to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer;

~~distributor, or dealer~~ or retailer has acted or is acting in compliance with this title and manufactured home construction and safety standards prescribed pursuant to this title.

(g) Each manufacturer of manufactured homes shall provide to the Secretary such performance data and other technical data related to performance and safety as may be required to carry out the purposes of this title. These shall include records of tests and test results which the Secretary may require to be performed. The Secretary is authorized to require the manufacturer to give notification of such performance and technical data to —

(1) each prospective purchaser of a manufactured home before its first sale for purposes other than resale, at each location where any such manufacturer's manufactured homes are offered for sale by a person with whom such manufacturer has a contractual, proprietary, or other legal relationship and in a manner determined by the Secretary to be appropriate, which may include but is not limited to, printed matter (A) available for retention by such prospective purchaser, and (B) sent by mail to such prospective purchaser upon his request; and

(2) the first person who purchases a manufactured home for purposes other than resale, at the time of such purchase or in printed matter placed in the manufactured home.

(h) All information reported to or otherwise obtained by the Secretary or his representative pursuant to subsection (b), (c), (e), (f), or (g) which contains or relates to a trade secret, or which, if disclosed, would put the person furnishing such information at a substantial competitive disadvantage, shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this title or when relevant in any proceeding under this title. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control from the duly authorized committees of the Congress. Nothing in this section shall authorize the manufacturer to withhold the design of the home from the affected homeowner.

Notification and Correction of Serious Defects

Sec. 615. (a) Every manufacturer of manufactured homes ~~shall furnish notification of any defect in any manufactured home produced by such manufacturer which he~~ which determines, in good faith, ~~relates to Federal manufactured home construction or safety standard or~~ that any manufactured home produced by the manufacturer contains or may contain a serious defect ~~which constitutes an imminent safety hazard to the purchaser of such manufactured home~~, shall furnish notification of the serious defect to the purchaser of the manufactured home within a reasonable time after ~~such~~ the manufacturer has discovered ~~such~~ the serious defect.

(b) The notification required by subsection (a) shall be accomplished—

(1) by mail to the ~~first~~ purchaser (not including any ~~dealer or distributor~~ retailer of such manufacturer) of the manufactured home containing the serious defect, and to any subsequent purchaser to whom any warranty on such manufactured home has been transferred;

(2) by mail to any other person who is a registered owner of such manufactured home and whose name and address has been ascertained pursuant to procedures established under subsection (f); ~~and~~

(3) by mail or other more expeditious means to the ~~dealer or dealers~~ retailer or retailers of such manufacturer to whom such manufactured home was delivered; ~~;~~

(4) by mail to the Secretary; and
(5) by mail to all State agencies approved pursuant to section 623.

~~(c) The notification required by subsection (a) shall contain a clear description of such defect or failure to comply, an evaluation of the risk to manufactured home occupants' safety reasonably related to such defect, and a statement of the measures needed to repair the defect. The notification shall also inform the owner whether the defect is a construction or safety defect which the manufacturer will have corrected at no cost to the owner of the manufactured home under subsection (g) or otherwise, or is a defect which must be corrected at the expense of the owner.~~

(c) The notification required by subsection (a) shall contain a clear description of such serious defect, an evaluation of the risk to the safety of the occupants of the manufactured home reasonably related to the serious defect, a statement of the measures needed to repair the serious defect, and a statement that such repairs are at no cost to the owner.

(d) Every manufacturer of manufactured homes shall furnish to the Secretary a true or representative copy of all notices, bulletins, and other communications to the ~~dealers~~ retailers of such manufacturer or purchasers of manufactured homes of such manufacturer regarding any serious defect in any such manufactured home produced by such manufacturer. The Secretary shall disclose to the public so much of the information contained in such notices or other information obtained under section 614 as he deems will assist in carrying out the purposes of this title, but he shall not disclose any information which contains or relates to a trade secret, or which, if disclosed, would put such manufacturer at a substantial competitive disadvantage, unless he determines that it is necessary to carry out the purposes of this title.

(e) ~~If the Secretary determines that any manufactured home—~~

~~(1) does not comply with an applicable Federal manufactured home construction and safety standard prescribed pursuant to section 604; or~~

~~(2) contains a defect which constitutes and imminent safety hazard;~~

~~then he shall immediately notify the manufacturer of such manufactured home of such defect or failure to comply.~~ If the Secretary determines that any manufactured home contains or may contain a serious defect, the Secretary shall immediately notify the manufacturer of the manufactured home of each such serious defect. The notice shall contain the findings of the Secretary and shall include all information upon which the findings are based. The Secretary shall afford such manufacturer an opportunity to present his views and evidence in support thereof, to establish that there is no ~~failure of compliance~~ serious defect. If after such presentation by the manufacturer the Secretary determines that such manufactured home ~~does not comply with applicable Federal manufactured home construction or safety standards, or contains a defect which constitutes an imminent safety hazard~~ contains or may contain a serious defect, the Secretary shall direct the manufacturer to furnish the notification specified in subsections (a) and (b) of this section.

(f) Every manufacturer of manufactured homes shall maintain a record of the name and address of the first purchaser of each manufactured home (for purposes other than resale), and to the maximum extent feasible, shall maintain procedures for ascertaining the name and address of any subsequent purchaser thereof and shall maintain a record of names and addresses so ascertained. Such records shall be kept for each home produced by a manufacturer. The Secretary may establish by order procedures to be followed by manufacturers in establishing and maintaining such records, including procedures to be followed by ~~distributors and dealers~~ retailers to assist manufacturers to secure the information required by this subsection. Such pro-

cedures shall be reasonable for the particular type of manufactured home for which they are prescribed.

(g) ~~A manufacturer required to furnish notification of a defect under subsection (a) or (e) shall also bring the manufactured home into compliance with applicable standards and correct the defect or have the defect corrected within a reasonable period of time at no expense to the owner, but only if—~~

~~(1) the defect presents an unreasonable risk of injury or death to occupants of the affected manufactured home or homes;~~

~~(2) the defect can be related to an error in design or assembly of the manufactured home by the manufacturer.~~ A manufacturer required to furnish notification under subsection (a) or (e) of a serious defect shall also correct the serious defect in the manufactured home within a reasonable period of time at no expense to the owner.

The Secretary may direct the manufacturer to make such corrections after providing an opportunity for oral and written presentation of views by interested persons. Nothing in this section shall limit the rights of the purchaser or any other person under any contract or applicable law.

(h) The manufacturer shall submit his plan for notifying owners of the serious defect and for repairing such serious defect (if required under subsection (g)) to the Secretary for his approval before implementing such plan. Whenever a manufacturer is required under subsection (g) to correct a serious defect, the Secretary shall approve with or without modification, after consultation with the manufacturer of the manufactured home involved, such manufacturer's remedy plan including the date when, and the method by which, the notification and remedy required pursuant to this section shall be effectuated. Such date shall be the earliest practicable one but shall not be more than sixty days after the date of discovery or determination of the serious defect ~~or failure to comply~~, unless the Secretary grants an extension of such period for good cause shown. ~~and publishes a notice of such extension in the Federal Register.~~ Such manufacturer is bound to implement such remedy plan as approved by the Secretary.

(i) Where a serious defect ~~or failure to comply~~ in a manufactured home cannot be adequately repaired within sixty days from the date of discovery or determination of the serious defect, the Secretary may require that the manufactured home be replaced with a new or equivalent home without charge, or that the purchase price be refunded in full, less a reasonable allowance for depreciation based on actual use if the home has been in the possession of the owner for more than one year.

Certification of Conformity with Construction and Safety Standards

Sec. 616. Every manufacturer of manufactured homes shall furnish to the ~~distributor or dealer~~ retailer at the time of delivery of each such manufactured home produced by such manufacturer certification that such manufactured home conforms to all applicable ~~Federal~~ national construction and safety standards. Such certification shall be in the form of a label or tag permanently affixed to each such manufactured home.

~~**Consumer's Manual; Contents**~~
Consumer Information and Installation Manuals

Sec. 617. The Secretary shall develop ~~guidelines~~ requirements for a ~~consumer's manual to be provided to manufactured home purchasers by the manufacturer~~ consumer's manual and an installation manual to be provided to manufactured home

purchasers by the manufacturer or the retailer prior to the execution of the sales contract. ~~These manuals should~~ The consumer's manual shall contain guidelines for purchase and walk-through inspection and shall identify and explain the purchasers' responsibilities for operation, maintenance, and repair of their manufactured homes. The consumer's manual shall also contain information on homeowner's rights under the warranty, and the manufacturer or retailer shall provide the homebuyer with a copy of the manufacturer's and retailer warranties as well as product warranties. The installation manual shall contain necessary installation instructions. The installation and consumer's manuals shall be written in an objective and easy-to-understand manner, and they shall be periodically updated to reflect any substantial changes in products, procedures, and requirements.

Effect upon Antitrust Laws

Sec. 618. Nothing contained in this title shall be deemed to exempt from the antitrust laws of the United States any conduct that would otherwise be unlawful under such laws, or to prohibit under the antitrust laws of the United States any conduct that would be lawful under such laws. As used in this section, the term "antitrust laws" includes, but is not limited to the Act of July 2, 1890, as amended; the Act of October 14, 1914, as amended; the Federal Trade Commission Act (15 U.S.C. 41 et seq.); and sections 73 and 74 of the Act of August 27, 1894, as amended.

Use of Research and Testing Facilities of Public Agencies

Sec. 619. The Secretary, in exercising the authority under this title, shall utilize the services, research and testing facilities of public agencies and independent testing laboratories to the maximum extent practicable in order to avoid duplication.

Inspection and Enforcement Fees

Sec. 620. (a) ~~In carrying out the inspections required under this title, the~~ Secretary ~~may~~ shall establish and impose on manufactured home manufacturers~~, distributors, and dealers~~ and retailers such ~~reasonable~~ fees as may be necessary to offset ~~the~~ expenses incurred ~~by him~~ in conducting ~~such inspections, and the Secretary may use any fees collected to pay expenses incurred in connection with such inspections, except that this section shall not apply in any State which has in effect a State plan under section 623.~~ all activities authorized or required pursuant to this title and for the expenses of administering the consensus process. Nothing in this section shall limit a State's right to assess additional fees as deemed necessary to fulfill their responsibilities under this title.

(b) Fees collected pursuant to this title shall be deposited in a dedicated fund and used by the Secretary to carry out the purposes of this title. The use of these fees by the Secretary for staffing, monitoring, oversight, field investigations, training, and related travel shall not be subject to general or specific limitations on appropriated funds. The Secretary shall provide an annual report to Congress indicating expenditures in these categories.

Failure to Report Violations; Penalties

Sec. 621. Any person, other than an officer or employee of the United States, or a person exercising inspection functions under a State plan pursuant to section 623 but including an employee or official or a private organization that is an inspection and enforcement agency, who knowingly and willfully fails to report to the Secretary or an appropriate SAA a violation of any construction or safety standard established under section 604 within 15 days of discovery may be assessed, by the Secretary, after an opportunity for a hearing, a civil penalty of up to $5,000 per violation with a maximum of $1,000,000 for any related series of violations occurring within one year from the date of the first violation. ~~fined up to $1,000 or imprisoned for up to one year or both.~~ The Secretary shall establish committees to review the monitoring process and provide peer review of monitoring reports by States and private inspection and enforcement agencies. The committees should make non-binding recommendations to the Secretary for corrective action. The committees shall not be subject to provisions of the Federal Advisory Committee Act.

Prohibition on Waiver of Rights

Sec. 622. The rights afforded manufactured home purchasers under this title may not be waived, and any provision of a contract or agreement entered into after August 22, 1974, to the contrary shall be void.

State Enforcement

Sec. 623. (a) Each State may exercise the investigational and enforcement authority of the Secretary pursuant to sections 610, 611, 612, 614, 615 and 621 of this title and may designate a state agency to carry out such functions. Nothing in this title shall prevent any State agency or court from asserting jurisdiction under State law over any manufactured home construction or safety matter ~~issue with respect to which no Federal~~ which does not fall within an area of regulation under the national manufactured home construction and safety standard ~~has been~~ established pursuant to the provisions of section 604.

(b) Any State which, ~~at any time,~~ desires to ~~assume responsibility~~ receive funding for the enforcement of manufactured home safety and construction standards under subsection (a) ~~relating to any issue with respect to which a Federal standard has been established under section 604,~~ shall submit to the Secretary a State plan for enforcement of such standards.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgment—

~~(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State;~~

~~(2) provides for the enforcement of manufactured home safety and construction standards promulgated under section 604;~~

~~(3) provides for a right of entry and inspection of all factories, warehouses, or establishments in such State in which manufactured homes are manufactured and for the review of plans, in a manner which is identical to that provided in section 614;~~

(1) provides for a minimum level of installation inspections, as prescribed by the Secretary;

(2) provides that inspections of retailer lots shall be carried out to assure that the manufactured homes on such lots are in compliance with national standards;

~~(4) provides for the imposition of the civil and criminal penalties under section 611;~~

~~(5) provides for the notification and correction procedures under section 615;~~

~~(6) provides for the payment of inspection fees by manufacturers in amounts adequate to cover the costs of inspections;~~

~~(7)~~ (3) contains satisfactory assurances that the State agency or agencies have ~~or will have the legal authority and~~ qualified personnel necessary for the enforcement of such standards;

~~(8)~~ (4) give satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards;

~~(9) requires manufacturers, distributors, and dealers in such State to make reports to the Secretary in the same manner and to the same extent as if the State plan were not in effect;~~

~~(10)~~ (5) provides that the State agency or agencies will make such reports to the Secretary in such form and containing such information as the Secretary shall from time to time require; and

~~(11)~~ (6) complies with such other requirements as the Secretary may by regulation prescribe for the enforcement of this title.

(d) If the Secretary rejects a plan submitted under subsection (b), he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing.

(e) After the Secretary approves a State plan submitted under subsection (b), he may, but shall not be required to, exercise his authority under this title with respect to enforcement of manufactured home construction and safety standards in the State involved.

(f) The Secretary shall, on the basis of reports submitted by the designated State agency and his own inspections, make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. ~~Such evaluation shall be made by the Secretary at least annually for each State, and the results of such evaluation and the inspection reports on which it is based shall be promptly submitted to the appropriate committees of the Congress.~~ Whenever the Secretary finds, ~~after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan or~~ that the State ~~plan~~ has failed to carry out its enforcement function, the Secretary may suspend approval of the State plan. Within 30 days of issuance of an order suspending the State plan, the State may request a hearing in which it may present to the Secretary why it should continue to receive funding. ~~become inadequate, he shall notify the State agency or agencies of his withdrawal of approval of such plan. Upon receipt of such notice by such State agency or agencies such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce manufactured home standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.~~

(g) Where a serious defect is discovered, a State agency shall be required to notify the manufacturer, other States and the Secretary.

(h) The State in which a manufactured home is manufactured shall have primary jurisdiction to enforce the national manufactured home construction and safety standards (except the installation standards) with respect to that manufactured home, except that the State in which the manufactured home is initially installed shall have primary jurisdiction on any installed home and may agree to transfer jurisdiction to the State of manufacture. No two States shall exercise jurisdiction simultaneous over the same defect in the same home.

(i) The Secretary, or his designee, shall have authority to enforce the installation requirements under section 623(c)(4) if a State declines to submit a State plan.

Grants to States

Sec. 624. (a) The Secretary is authorized to make grants to the Sates which have designated a State agency under section 623 to assist them—

(1) in identifying their needs and responsibilities in the area of manufactured home construction and safety standards; or

(2) in developing State plans under section 623.

(b) The Governor of each State shall designate the appropriate State agency for receipt of any grant made by the Secretary under this section.

(c) Any State agency designated by the Governor of a State desiring a grant under this section shall submit an application therefor to the Secretary. The Secretary shall review and either accept or reject such application.

(d) The Federal share for each State grant under subsection (a) of this section may not exceed 90 per centrum of the total cost to the State in identifying its needs and developing its plan. In the event the Federal share for all States under such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

Rules and Regulations

Sec. 625. The Secretary is authorized to issue, amend, and revoke such rules and regulations as he deems necessary to carry out this title.

Reports to Congress

Sec. 626.~~(a)~~ The Secretary shall prepare and ~~submit to the President for~~ transmittal to the Congress on July 1 of every other year a comprehensive report on the administration of this title for the two preceding calendar years. ~~Such report shall include but not be restricted to (1) a thorough statistical compilation of the accidents, injuries, deaths and property losses occurring in or involving manufactured homes in such years; (2) a list of Federal manufactured home construction and safety standards prescribed or in effect in such years; (3) the level of compliance with all applicable Federal manufactured home standards; (4) a summary of all current research grants and contracts together with a description of the problems to be studied in such research; (5) an analysis and evaluation, including relevant policy recommendations, of research activities completed and technological progress achieved during such years; (6) a statement of enforcement actions including judicial decisions, settlements, defect notifications, and pending litigation commenced during such years; and (7) the extent to which technical information was disseminated to the scientific community and consumer-oriented information was made available to manufactured home owners and prospective buyers.~~

~~(b) The report required by subsection (a) of this section shall contain such recommendations for additional or revised legislation as the Secretary deems necessary to promote the improvement of manufactured home construction and safety and to strengthen the national manufactured home program.~~

~~(c) In order to assure a continuing and effective national manufactured home construction and safety program, it is the policy of Congress to encourage the adop-~~

~~tion of State inspection of used manufactured homes. Therefore, to that end the Secretary shall conduct a thorough study and investigation to determine the adequacy of manufactured home construction and safety standards and manufactured home inspection requirements and procedures applicable to used manufactured homes in each State, and the effect of programs authorized by this title upon such standards, requirements, and procedures for used manufactured homes, and report to Congress as soon as practicable, but not later than one year after August 22, 1974, the results of such study, and recommendations for such additional legislation as he deems necessary to carry out the purposes of this title. Such report shall also include recommendations by the Secretary relating to the problems of disposal of used manufactured homes.~~

Authorization of Appropriations

Sec. 627. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

Effective Date

Sec. 628. ~~The provisions of this title shall take effect upon the expiration of 180 days following August 22, 1974.~~ Except as otherwise provided in this title, the provisions of this title shall be effective upon the expiration of the 180-day period beginning on the date of enactment of this Act.

A BILL

To amend the National Manufactured Housing Construction and Safety Standards Act of 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the "Manufactured Housing Amendments Act of 1994".

SECTION 2. AFFORDABLE FINANCING FOR MANUFACTURED HOMES

(a) USE OF MANUFACTURED HOUSING IN HUD PROGRAMS.—The Secretary of Housing and Urban Development should be encouraged to exercise existing authority to use manufactured homes in all mortgage insurance programs, the Section 8 rental assistance program, and the CDBG and HOME programs.

(b) PURCHASE OF MANUFACTURED HOME RENTAL COMMUNITIES BY RESIDENTS.—

(1) Section 207 of the National Housing Act (12 U.S.C. 1713) is amended:

(A) by inserting the following paragraph after paragraph (b)(1):

"(2) a cooperative corporation, condominium association, or other entity approved by the Secretary which is organized to enable homeowners to purchase the manufactured home community or park in which they reside; or"

(B) in paragraph (b)(2) by striking "(2)" and inserting "(3)";

(C) by striking the period at the end of paragraph (c)(3) and inserting "; and

"(4) not to exceed limits to be established by the Secretary in accordance with the relevant provisions of Section 213(b) of the National Housing Act for resident purchases of manufactured home communities or parks."

(c) **GOVERNMENT NATIONAL MORTGAGE ASSOCIATION—SPECIAL ASSISTANCE.**—The Federal National Mortgage Association Charter Act (12 U.S.C. 1716) is amended by adding the following new section:

"SPECIAL ASSISTANCE FUNCTION—GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

"SEC.305.(a) Notwithstanding any other provision of this Act, the Department of Housing and Urban Development is authorized to insure, and the Government National Mortgage Association is authorized to purchase, pursuant to commitments or otherwise, mortgages or other loans financing the purchase of manufactured homes pursuant to title I or title II of the National Housing Act and Chapter 37 of title 38 of the United States Code.

"(b) The Association may issue to the Secretary of the Treasury its obligations in an amount outstanding at any one time sufficient to enable the Association to carry out its functions under this section, such obligations to mature not more than five years from their respective dates of issue, to be redeemable at the option of the Association before maturity in such manner as may be stipulated in such obligations. Each such obligation shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of the obligation of the Association. The Secretary of the Treasury is authorized to purchase any obligations of the Association to be issued under this section, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include any purchases of the Association's obligations hereunder.

"(c) The Association shall enter into commitments to purchase mortgages under this section to the extent of or in such amounts as provided in any funding limitation approved in appropriation Acts. There is authorized to be appropriated such sums as may be necessary to cover the costs (as such term is defined in section 502 of the Congressional Budget Act of 1974) of purchases made by the Association under this Act.".

SECTION 3. PROHIBITION OF DISCRIMINATION AGAINST MANUFACTURED HOMES.

(a) PROHIBITED ACTS.—A State or unit of general local government—

(1) shall not exclude the installation of a manufactured home on land where other residential uses are permitted solely by being built to the HUD Code or by reason of the label or tag permanently affixed to the manufactured home pursuant to section 616 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5415);

(2) shall not exclude a manufactured housing rental community from being located on land if densities do not exceed zoning designations; and

(3) shall not use subdivision ordinances to deny equitable treatment with respect to tax assessments and the provision of municipal services (such as water, sewerage, street lighting, and road maintenance) to a manufactured housing rental community when compared to residential housing not located in subdivisions.".

(b) DEFINITIONS.—As used in this section, the term—

(1) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any of the territories and possessions of the United States;

(2) "manufactured home" shall have the same meaning as in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402); and

(3) "manufactured housing rental community" means a grouping of manufactured homes on a site in which a resident either rents the land on which the manufactured home is located or rents both such land and the manufactured home.

(c) ENFORCEMENT BY PRIVATE PERSONS.—Violations of the prohibitions provided by this section may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one year after the alleged discriminatory practice occurred. The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award the plaintiff actual damages and punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff.

(d) EFFECTIVE DATE.—This section shall be effective upon the expiration of the 360-day period beginning on the date of enactment of this Act.

SECTION 4. SEPARABILITY.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

MHARR Written Testimony

ATTACHMENT B

"The complete text of attachment B has been submitted for the hearing record in hard-copy format"

MINORITY REPORT

National Commission on Manufactured Housing

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MINORITY REPORT

NATIONAL COMMISSION ON MANUFACTURED HOUSING

INTRODUCTION

This report is submitted as a supplement to the "Comments of Minority Commissioners" section contained in the Final Report of the National Commission on Manufactured Housing ("Commission" or "National Commission"), published on August 1, 1994. Its purpose is to set forth, clearly and succinctly, areas of agreement and divergence between the Commission's minority and majority factions, and to explain the bases and principles underlying the minority's ultimate vote in opposition to the Commission's Final Report. Significantly, it also sets forth the minority's own proposals and recommendations concerning the various issues addressed by the Commission, in order to serve the public interest and to balance the public record of the Commission's proceedings.

At the very outset, the minority Commissioners wish to stress that their opposition to the Commission's Final Report was not a pre-ordained or unavoidable result. When the Commission began its deliberations in early 1993, each of the minority Commissioners made an express commitment to work within the Commission to achieve a reasonable consensus. Over the Commission's lifetime, this commitment was reflected on a number of different levels. It was reflected by the extensive information supplied to the Commission regarding the industry and its methods of operation. It was reflected by the minority Commissioners' attendance at every meeting

f the Commission and their participation in endless hours of discussions. It was also eflected in the time spent by minority Commissioners to review and produce written omments regarding multiple drafts of legislation, position papers and reports. Most nportantly, though, the minority's commitment to reasonable compromise is lemonstrated by the fact that time after time, starting in November 1993, the minority Commissioners returned to negotiations with the majority faction after being confronted with unreasonable and often inflammatory majority proposals.

The minority's commitment to a workable consensus should not come as a surprise to those acquainted with the history of the Commission. The manufactured housing industry has universally recognized for some time that its regulatory statute -- the National Manufactured Home Construction and Safety Standards Act of 1974 ("Act" or "1974 Act") -- needs to be updated and modernized in order to keep pace with the evolution of manufactured housing and the changing needs of its consumers. As a result, a broad cross-section of the industry supported reform legislation -- the so-called "Hiler Amendments" -- introduced in Congress in 1990. Among other things, these amendments would have mandated a two-year warranty for purchasers of new manufactured homes. Although the Hiler Amendments were approved by the House of Representatives, they were deleted from then-pending housing legislation by a House-Senate Conference Committee, and replaced with a provision authorizing the Commission. Notwithstanding this change in focus, the industry supported the Commission concept as a singular opportunity to bring about the much needed

modernization of the 1974 Act and to move manufactured housing toward the 21st century.

The manufactured housing industry and its Commission representatives, accordingly, had every reason and incentive to work within the Commission framework toward a consensus agreement that would have modernized the 1974 Act without sacrificing the fundamental affordability of manufactured homes. Yet, the Commission failed to achieve such a consensus, and while the minority has no desire to engage in pointless blame-mongering, this failure to reach a unified position is germane to potential future legislation. As a result, it must be fully examined and, more importantly, understood by both the public and governmental decision makers.

It has been suggested by some that the Commission failed to reach a consensus because "the industry" reversed its position on "accepting accountability to homeowners."[1] This accusation, however, is simply untrue. First, the underlying premise that the industry is unwilling to accept accountability to consumers is demonstrably false. If the industry were not willing to accept accountability, it would not have embraced federal regulation in 1974. If the industry were not willing to accept accountability, it would not have actively supported numerous state installation laws and recovery fund programs. Even more to the point, though, if the industry were not willing to accept accountability to consumers, the free market would not have allowed it to survive and prosper some 70 years beyond its genesis, with a share of the single family housing market that exceeds 25%.[2] These observations, moreover, are

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1 See, "Introduction by the Chairman, "Final Report, National Commission on Manufactured Housing (August 1, 1994) ("Final Report") at p. vi.

2 Id. at p 1.

upported by evidence presented to the Commission which showed that the industry as whole is responsive to consumer concerns and that lapses in service are the xception rather than the rule.

Second, contrary to the majority's assertion, there never was a consensus on a omprehensive or "seamless" five year warranty. The warranty discussion contained in he Commission's Interim Report was simply an outline of broad principles, with ignificant details omitted, because an agreement could not be reached prior to the March 1, 1994 deadline for submission of that report. Significantly, at that time, both ndustry and non-industry Commissioners indicated that a final consensus on an extended limited warranty provision would depend upon the resolution of those details.[3] The minority's rejection of the majority faction's warranty recommendation, consequently, does not entail a "reversal" of the industry's position. It represents, rather, a final judgment on a proposal that was not fully developed at the time of the Interim Report.

Unfortunately, the majority's narrow focus on warranty coverage also tends to gloss over and grossly oversimplify the actual reasons for the Commission's inability to reach a full consensus. Although useful rhetorically to cast the industry in the role of the "spoiler," the simple reality is that a consensus did not elude the Commission

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[3] See e.g., "Statement of Commissioner Meier," Final Report (incorporating a reprint of the Interim Report of the National Commission on Manufactured Housing - March 1, 1994) at p. 157: "...There are a number of critical issues related to the warranty program that are still outstanding, including the duration of certain warranty coverage, the creation of standards to determine whether a warranty claim even exists, and the rights of consumers to pursue their warranty rights in court. It is impossible to assess the merits of the warranty program described in this report without these critical issues and other related to the dispute resolution process and recovery fund are resolved." (Emphasis added.)

because of a dispute over one discrete issue. Rather, the minority -- comprised of four industry representatives, one elected official and one state building code official -- objected to significant inter-related elements of the majority faction's "bottom line" proposal, which rendered that proposal unacceptable as a package. The corollary of this observation, of course, is that the minority can and does support certain aspects of the Commission's ultimate recommendation, such as the concept of consensus standards-development. In the view of the minority Commissioners, however, such positive elements are regrettably outweighed by various proposals that could have a harmful if not devastating impact upon the fundamental affordability of manufactured housing.

The minority, accordingly, voted to dissent from the Final Report for the philosophical, procedural and policy-based reasons set forth below. The minority's own proposals are subsequently explained in greater detail in the section-by-section analysis which follows.

REASONS AND BASES FOR THE MINORITY'S DISSENT

1. The Majority Failed to Adequately Assess the Cost Impact of its Proposals --

Manufactured housing is universally regarded as affordable housing, and as the nation's most affordable route to home ownership, with all of its attendant social and economic benefits. Manufactured housing, moreover, in its present form, is affordable per se to lower and moderate-income Americans, without the need for costly taxpayer-financed subsidies. Precisely because manufactured homes serve the housing needs of families with modest incomes, however, the industry (and Congress, as shown below) is particularly sensitive to regulatory requirements that could either intentionally or unintentionally increase the cost of its homes to potential purchasers. In this regard, it is important to bear in mind that even modest price increases can have a disproportionate impact on the purchasing ability of lower-income, marginally qualified home buyers.

In view of the critical importance of affordability in this context, the Commission should have conducted an empirical analysis of the cost impact of its proposals, both individually and cumulatively. Such an analysis, however, was never done. Consequently, even though the Commission's August 1, 1994 Report talks about affordability and the supposedly minimal cost impact of the majority's recommendations, such declarations are not supported by actual evidence in the Commission's public record. The lack of any such analysis, moreover, is confirmed by a May 4, 1994 letter from the Secretary of Housing and Urban Development ("Secretary"), Henry G. Cisneros, to the Chairman of the Commission, stating:

> The Department is concerned by the absence of a complete assessment of the label fees and home cost increases that would be associated with the changes advocated in the report. Because any cost increases should be justified by improvements in the quality of the homes, it is difficult to endorse or evaluate fully all the Commission's recommendations without a reliable estimate of the impact on housing affordability.[4]

Although the Commission majority did subsequently develop partial cost figures regarding the manufactured housing label fee,[5] it has never assembled or published information concerning the overall impact of its recommendations on the cost of manufactured homes at the consumer level. Moreover, even the partial label fee figures appear to be largely conjectural -- an observation rendered all the more ominous by the fact that that majority's legislative proposal would delete the current requirement that the label fee imposed by HUD be "reasonable." Put simply, then, the majority had no reliable cost analysis when it initially developed its proposals and still lacked such information when it adopted those proposals. Like the Secretary, though, the minority cannot endorse or support proposals that are the economic equivalent of a shot in the dark.

Indeed, the industry, HUD and manufactured housing consumers are currently in the process of learning about the pitfalls that can occur when sweeping regulatory changes are adopted without a proper economic analysis. In the wake of Hurricane Andrew, HUD rushed ahead with administrative proceedings to increase the wind resistance requirements of the federal standards for manufactured homes. Although a

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4 See, Minority Report, Attachment 1.

5 Under the 1974 Act, no new manufactured home may be sold in the United States without a Department of Housing and Urban Development ("HUD") label certifying compliance with the Federal Manufactured Home Construction and Safety Standards. Pursuant to Section 620 of the Act, 42 U.S.C. subpart 5419, HUD currently charges manufacturers a "label fee" of $24.00 per "floor" in order to finance its enforcement system.

preliminary regulatory impact analysis showed a cost-to-benefit ratio of 6 to 1 for HUD's rule as proposed, and industry representatives predicted that the rule would have a severe impact on the affordability of manufactured housing, HUD proceeded to promulgate the rule, on the strength of a "revised" regulatory impact analysis which suddenly showed a 1.3 to 1 cost-to-benefit ratio. This "revision" was based largely on decreased "social" and governmental spending that, ostensibly, would result from the new standard. Now that the rule is in effect, though, it is quickly becoming apparent that the industry's predictions were accurate -- the smallest, most affordable manufactured homes are effectively outlawed by the new wind standard, and are being phased out of the markets affected by the rule. The overall cost to consumers of the remaining homes which can be built in compliance with the new rules has consequently been increased by as much as 25% - 40%. This results in a severe economic impact on those consumers least able to afford housing, the very individuals the Department of Housing and Urban Development was originally organized to assist. Reliable economic information, accordingly, is a necessary precondition to the minority's consideration of substantive legislative or regulatory changes.

2. The Majority Proposal Will Necessarily Increase the Cost of the Manufactured Housing Regulatory System by Creating Multiple New Layers of Bureaucracy --

The Final Report purports to eschew "heavy-handed" regulation as "a method of generating positive change."[6] Yet, even a cursory review of the majority's proposal shows that it will add multiple new layers of bureaucracy and other requirements to a regulatory system that is already needlessly complex and burdensome.

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6 See, Final Report at p. 9.

Specifically, in addition to the present components of the federal regulatory system, which include each manufacturer's supervisory personnel, each manufacturer's quality control department, Design Approval Primary Inspection Agencies ("DAPIAs"), Production Inspection Primary Inspection Agencies ("IPIAs"), a monitoring contractor to inspect the inspectors (at present the National Conference of States on Building Codes and Standards -- "NCSBCS"), State Administrative Agencies ("SAAs") to process consumer complaints, and HUD itself, the Commission majority would mandate: installation standards,[7] warranty standards,[8] training standards,[9] removable chassis standards,[10] testing protocols,[11] installation inspections,[12] retail lot inspections,[13] mandatory registration of manufacturers and retailers,[14] peer review committees,[15] up to 50 state recovery fund boards,[16] Alternate Dispute Resolution ("ADR") arbitrators,[17] and at least two new contractors -- the National Institute of Building Sciences ("NIBS") and the Administrative Conference of the United States ("ACUS").[18] Although the minority agrees that some of the functions reflected in these recommendations are desirable and proper -- for example, state installation standards and installation enforcement -- the Commission never analyzed methods of streamlining the current regulatory system

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7 See, recommendation 5.1.
8 See, recommendation 3.2.
9 See, recommendation 9.1
10 See, recommendation 4.1.
11 See, recommendation 2.6.
12 See, recommendation 5.5.
13 See, recommendation 8.3.
14 See, recommendation 3.5.
15 See, recommendation 7.5.
16 See, recommendation 3.4.
17 See, recommendation 3.3.
18 See, recommendations 2.3 and 3.3.

to root out the types of waste and bureaucracy that increase compliance costs and the ultimate cost of manufactured housing to consumers and, in fact, is recommending a substantial increase in bureaucracy. The result is a burdensome maze of regulatory structures that goes well beyond anything currently in place for other types of housing.

3. The Majority's Recommendations Regarding Enforcement are Internally Inconsistent --

At another level, the minority cannot support the majority faction's recommendations regarding enforcement, because the solutions that have been proposed do not follow logically from the deficiencies identified by the Commission as a whole. For example, one of the fundamental deficiencies of the current federal program set forth in the majority's delineation of so-called "Systemic Problems," is HUD's administration and superintendence of enforcement under the Act. The final Report, accordingly, states:

> ...HUD has been responsible for establishing and updating the manufactured housing standards....known as the HUD Code. HUD is also responsible for enforcing the Code. HUD has not done either adequately.[19]

Yet, the majority's proposal would devolve substantial new authority and functions upon HUD, including: ultimate control over warranty standards; development of an ADR system; administration of recovery fund programs in states that do not assume that responsibility; ultimate control over installation standards; installation inspections in non-SAA states; retail lot inspections in non-SAA states; and the development of training standards for IPIA, DAPIA and SAA personnel, among others. The majority's

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19 See, Final Report at p. 6 (emphasis added).

cure for HUD's "inadequate" superintendence of the federal enforcement system, consequently, is an enhancement of HUD's role. The result of this substantially enlarged bureaucracy, predictably, will be a level of performance that remains inadequate, only on a larger scale, and with a greater detrimental impact on all participants in the system.

In a similar manner, the Final Report criticizes HUD's delegation of significant governmental regulatory authority to private contractors that are not bound by the same due process constraints as the agency itself:

> Over time...HUD has either delegated much of its authority to its monitoring agency or not exercised its role as a regulator. The result is a lack of checks and balances within the regulatory system...[20]

This type of delegation, and its effects on the federal regulatory system, have long been a major source of concern for the manufactured housing industry.

A review of the Commission's Final Report, however, clearly demonstrates that the role of HUD's monitoring contractor (and other contractors as well) would be significantly expanded under the new regulatory regime proposed by the majority. Specifically, new authority and functions would be delegated to the monitoring contractor with respect to installation inspections, retail lot inspections, and the administration of certain recovery funds. The majority, therefore, while recognizing the systemic problems caused by HUD's rank delegation of governmental authority, essentially prescribes more of the same, without effective safeguards for other participants in the regulatory system.

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[20] See, Final Report at p. 7 (emphasis added).

4. **The Majority's Recommendations Would Inappropriately Federalize Significant Aspects of Manufactured Housing Regulation --**

While decrying what it perceives to be an inadequate state role in the current enforcement system, the majority's proposal would nevertheless extend federal regulatory authority to at least two critical areas that traditionally have been the province of state law and state regulation. These areas are warranty requirements and installation oversight.

The manufactured housing industry has long been on record as supporting state installation standards and state law-based warranties and warranty enforcement. This is not simply because such functions have traditionally been assumed at the state level, but because state governments and their local subdivisions, by their very nature, are in a better position than federal regulators to assess conditions and needs that may vary greatly, and to tailor appropriate systems and remedies to meet those needs. Indeed, there was substantial evidence presented to the Commission concerning successful state programs in these areas that could have served as models for other jurisdictions.

In fact, throughout negotiations and in the Interim Report, the majority agreed that installation standards and installation oversight should be state-based to take advantage of local experience with these functions. Instead, the Commission majority opted for the creation of a minimum federal installation standard and federal warranty requirements, with matching federal inspections in non-SAA states. This arrangement however, implicates a number of concerns raised above, as well as considerations of affordability. First, any expansion of federal authority in this area necessarily devolves additional responsibilities and functions upon HUD. As noted above, however, the

Commission found HUD's regulatory performance to be inadequate. Second, this expansion of federal authority will inevitably result in the delegation of additional functions to the Secretary's monitoring contractor, with its attendant problems as identified by the Commission. Third, any "minimum" federal installation standard will, by definition, need to be sufficiently stringent to meet the worst prevailing site conditions in any state in which it may apply. As a result, unless a significant number of states opt out of federal regulation, consumers in states and localities with favorable installation conditions will have to bear the cost of a standard designed to deal with poor site conditions. In this manner, the regulatory system will lose an important degree of flexibility and, with it, the affordability that such flexibility promotes.

Consequently, while the minority supports appropriate installation and warranty laws at the state level, it cannot endorse the federalization of all of these issues.

5. Aspects of the Majority Proposal Would Undermine the Performance Character of the HUD Code --

Although the majority, in the Final Report, acknowledges the importance of performance standards in maintaining the affordability of manufactured housing,[21] its recommendations concerning testing protocols and warranty criteria threaten to undermine the performance character of the HUD Code.

Performance standards, together with federal preemption and uniform enforcement procedures, are the driving force behind the affordability of manufactured housing. Performance criteria, unlike prescriptive standards, allow manufacturers to

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[21] See, Final Report at p. 32: "One area of savings for HUD Code units, and one that the Commission wishes to preserve, is the performance nature of the HUD Code, which permits.....manufacturer[s] to innovate in a way that the model building codes generally do not."

develop innovative, cost-effective methods to achieve a given result. This freedom, in turn, has led to progressive building technologies and methodologies that have not only preserved the fundamental affordability of manufactured housing over the years, but have actually expanded the features and styles of homes available to consumers at a reasonable price. The concept of performance standards, accordingly, has been proven sound both economically and technologically.

While the success of performance standards in fostering a unique combination of innovation and affordability in manufactured homes is self-evident, this has never deterred traditional critics of the federal regulatory system from advocating the wholesale replacement of the current HUD Code with one of the nations' prescriptive model building codes. The prevalence of such unfounded bias against performance standards is starkly reflected in the Final Report, which quotes "one Commissioner" as stating:

> I was leaning toward a model code, and my reasons are twofold. One is, I know there are model codes. There's a model code process, and it's been working and functioning...and two, the fact that model codes have been adopted by so many jurisdictions around the country...tells me that there's some integrity in these codes.[22]

The underlying implication of this statement, of course, is that the HUD Code lacks "integrity." In the face of overwhelming evidence demonstrating the effectiveness of the performance standards contained in the HUD Code, however, the majority could not legitimately justify the direct replacement of the current performance criteria with a prescriptive code.

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22 See, Final Report at p. 40.

Instead, the majority has resorted to a form of regulatory sleight of hand that will leave the appearance of a performance code intact, while simultaneously undermining the efficacy of that code with a substrata of prescriptive requirements. These requirements are specifically mandated by recommendations 2.6 and 3.2 of the Final Report:

> 2.6 The consensus committee shall establish...uniform test or evaluation methodologies that will adequately evaluate compliance of specially designed materials or assemblies with the manufactured home standards.
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> * * *
>
> 3.2 ...the consensus committee shall develop minimum requirements for the level of quality of materials, performance, and workmanship to assist SAAs and other dispute settlers in resolving warranty claims...[23]

Although these mandates are couched in terms of "evaluation methodologies" and "performance guidelines," and the majority admonishes HUD that they are not intended to replace current performance standards, the practical effect of this change will be to constrain innovation (through a chilling effect on experimentation) and to move the HUD Code closer to the prescriptive national model codes, with their attendant higher costs. Research and development functions should be left in the hands of individual manufacturers in the private sector and not be a function of the government.

This concern, moreover, is firmly based on historical precedent. Regrettably, the majority's "guideline" and "protocol" recommendations are reminiscent -- and perhaps in a general manner, modeled upon -- the now abandoned Acceptable Quality Level ("AQL") criteria once enforced by HUD and its monitoring contractor. The AQL system was essentially a standard within a standard -- a compilation of prescriptive criteria

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[23] See, Final Report at pp. 42, 50 (emphasis added).

(i.e., number of nails - spacing between fasteners) developed by the monitoring contractor without notice and comment rulemaking proceedings -- that was used by the contractor to assess compliance with the HUD Code in manufacturing plant audits. Although ostensibly just a guideline or evaluation mechanism, the AQL code, during it time, became a de facto prescriptive standard which IPIAs and manufacturers had to comply with in order to avoid being cited for non-conformance with the HUD standards.[24] The result, predictably, was a loss of the type of innovative flexibility that the HUD Code was designed to protect.

HUD ultimately abandoned the AQL system in the early 1990s in the face of mounting public criticism. Now, though, the Commission majority, through its recommendations, would retroactively legitimate and institutionalize the concept underlying AQL -- that some type of intermediate guideline or criteria is necessary to evaluate compliance with the ultimate standards. In the view of the minority, however, this concept is not sustainable either legally, technologically, or in terms of cost.

Put simply, the minority cannot and will not endorse a stealth reversal of the fundamental character of the HUD Code.

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[24] The practical impact of the AQL criteria is reflected in an April 11, 1985 memorandum to IPIAs and manufacturers from James C. Nistler, then Deputy Assistant Secretary for Single Family Housing. In the memorandum, Mr. Nistler admits that the HUD Office of General Counsel "Had question[s] as to whether...directives [of the AQL system] should have been published in the Federal Register" as standards. To address this problem Mr. Nistler stated that the criteria "should be treated...as recommendations rather than mandatory requirements." The same memorandum, however, contained a not-so-veiled threat" "the Department regularly assesses the adequacy of IPIA performance. * * * Adherence to the recommendations contained in the [AQL criteria} will ensure that this IPIA will receive an acceptable rating. * * * My staff will be taking a close look at the performance of both manufacturers and their IPIAs and, where necessary, will take enforcement actions to ensure that all aspects of the HUD regulations are followed." (Emphasis added).

6. Various Majority Recommendations Concerning State Regulatory Authority Could Harm the Preemptive Character of the HUD Code --

As noted above, the preemptive nature of the HUD Code is one of the three principal characteristics of the federal manufactured housing program that promotes affordability. By preempting most state laws and regulations affecting the construction of manufactured housing, the 1974 Act permits manufacturers to produce homes to a single standard of acceptability, rather than a shifting patchwork of differing state and local requirements. The legislative history of the 1974 Act clearly demonstrates that Congress was aware of the need for a single code of acceptability, and intended the Act's preemption provision to be construed broadly.[25] This intent, moreover, has been confirmed by the one court that has considered the preemptive effect of the HUD Code in detail. The court in Liberty Homes, Inc. v. Department of Industry, Labor and Human Relations, 374 N.W. 2d 142 (Wis. App. 1985), Aff'd., 401 N.W. 2d 805 (Wis. 1987), accordingly, stated:

> We have no doubt that a narrow reading of the 'same aspect of performance' test [contained in the Act's preemption language] is inconsistent with the intent of Congress regarding the scope of HUD's standards. (Emphasis added.)

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[25] For example, Senator Brock, one of the principal proponents of the 1974 Act stated with respect to a predecessor bill: "A single standard for mobile home construction will allow manufacturers to market their products on a national basis without having to build to a variety of state and local standards. If states are permitted to promulgate standards which differ or exceed a Federal standard they are, in effect, forcing manufacturers to build as many different products as there are states. A single standard will allow producers to make a universal product. This approach accommodates the elimination of costly production line changes which otherwise add to the cost of the home. A preliminary benefit of any standardization is the resultant reduction of unit cost. Any Federal standards should seek to realize and pass this benefit to the home buying public." (Cong. Rec. S. 7782, May 15, 1972). (Emphasis in original quote.)

Contrary to the clear intent of Congress, however, the majority's recommendations would create expansive exemptions to the general preemptive effect of the federal standards. Specifically, under the majority's proposal, state governments would be free to maintain installation standards and recovery fund programs with requirements equal to or exceeding those to be developed at the federal level. In addition, the majority's warranty proposal would permit state governments to impose separate warranty requirements, over and above those to be prescribed pursuant to federal law.

The difficulty with such exceptions is twofold. First, the creation of broad exemptions to any general principle necessarily undermines the vitality of the principle. Put somewhat differently, courts in the future, seeing broad classes of exemptions to the preemptive language of the 1974 Act, will be less likely to give that language the expansive and protective effect that it was intended to have. Second, these exemptions are unnecessary and unwarranted ab initio, because the aspects of regulation that they address should be left in the hands of the states to begin with. Very simply, if these aspects are not federalized, there will be no need for the proposed exemptions. As noted below in greater detail, this is a far preferable course of action in the view of the minority.

7. The Final Report Lacks a Sufficient Basis in Documented Fact --

A further significant deficiency of the Final Report is that it rests, in substantial part, on limited anecdotal information or, in some instances, upon no information at all. Indeed, the very same Commissioners who correctly observe that others have fallen prey to outdated prejudices and perceptions regarding manufactured housing,[26] show

themselves, through key aspects of the Final Report, to be hostage to the very same unsubstantiated notions.

Given the breadth and scope of the new regulatory structures recommended by the majority, one would expect to find the public record of the Commission's hearings littered with consumer complaints regarding substandard or poorly constructed homes. Yet, this was decidedly not the case. Out of some 15.4 million Americans living in the nation's approximately 7 million manufactured homes, a grand total of 14 manufactured housing residents actually appeared before the Commission, or offered a written statement.[27] Of these, only four witnesses were ordinary citizens not associated with a homeowner's association, and the homeowner groups that did appear represented only six states[28] -- four of which, according to HUD statistics, have extremely limited manufactured housing populations (i.e., Massachusetts, New Hampshire and New Jersey).[29] When this testimony is analyzed, moreover, the most prevalent source of complaints appears to be landlord-tenant relations in manufactured housing rental communities, while actual structural complaints were minimal. This point is particularly significant because the structural integrity of manufactured homes is the entire focus of the HUD Code, and similarly, should have been the focus of the Commission.

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[26] See, e.g., Final Report at p. 10: "The Commission also believes that over the long term, these changes will improve the public's perception of manufactured housing and help to overcome the notion that it is an inferior product compared with site-built housing."

[27] See, Final Report, Appendix C at pp. 130-139.

[28] i.e., Idaho, Massachusetts, New Hampshire, New Jersey, North Carolina and Pennsylvania.

[29] See, Final Report at p. 5, Figure 5. Indeed, the only represented state with a significant manufactured home population is North Carolina, and the Commission met there only at the insistence of industry Commissioners.

From such observations, a number of important conclusions may be drawn. First, the Commission failed to adequately investigate the needs, concerns, priorities and objectives of actual homeowners in relation to the issues set forth in its Congressional mandate.[30] Any suggestion by the majority that it comprehends, much less considered, the concerns of 15 million plus manufactured home occupants based on the testimony of a statistically insignificant number of residents -- less than one-one hundredth of one percent of the total manufactured housing population -- is ludicrous on its face. Second, the distinct absence of any great outpouring of consumer complaints tends to confirm industry research showing a generally high purchaser satisfaction level. With 15.7 million manufactured home occupants nationwide, one would expect a considerably higher degree of consumer participation in the work of the Commission if either manufactured homes or the current regulatory system were as deficient as their critics contend.

Although the minority certainly recognizes that actual manufactured home residents are not necessarily the only source of such empirical information, they clearly are the most important source, and the dearth of consumer testimony before the Commission, in a number of instances, leaves the majority with little more than its own prejudices to go on. This is particularly important because such empirical information, most likely, would have shown that actual structural problems in manufactured homes are few in number and minimal in nature. In short, it would have shown that the majority's sweeping recommendations are largely unnecessary.

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[30] To the extent that inquiries were made, however, consumers were found to be largely satisfied with their homes, as such. The same evidence also demonstrated that the current regulatory system has produced well-built, affordable homes.

A case in point is the majority's seeming obsession with the concept of "comparability." At one point in the Final Report, for example, the majority states:

> ...The standards-setting process must be altered in a way that... yields levels of product performance comparable to other forms of housing.[31]

Significantly, though, there was never any evidence presented to the Commission regarding the current performance comparability of manufactured homes and other types of housing. The majority, instead, simply assumes, based on its own preconceptions, that the two are not comparable in performance and then proceeds from there. Lost in this logical jump, however, are important predicate questions -- in addition to the penultimate issue of whether performance comparability already exists. These include: (i) whether comparability is even possible; (ii) whether comparability is possible at a reasonable price level; (iii) whether comparability is possible for all models and types of manufactured homes; (iv) how "comparability" is to be defined and determined; (v) whether "comparable" site-built models even exist; and (vi) whether "comparability" is a proper objective per se, as opposed, for example to a mandate requiring manufactured homes to be "safe, decent and sanitary," as required by many other housing statutes.[32] All of these are critical questions for housing that is designed to be affordable. Yet, the Commission never reached them, as well as many others touching other aspects of the federal program. If the Commission had taken the necessary actions to consider the issue of comparability completely and fairly, it would have found that most manufactured homes are comparable to site-built housing in

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31 See, Final Report at p. 33.

32 See, e.g. 42 U.S.C. Subpart 12702, Section 102 of the Cranston-Gonzalez National Affordable Housing Act of 1990.

terms of performance and the only ones that are not -- the most affordable single-section models -- are not comparable because there is no similar type of site-built housing to compare them to.

In the final analysis, then, the majority's reliance on such a palpably thin base of empirical evidence for its sweeping recommendations is indefensible, and undermines the credibility of the Final Report.

Regrettably, one of the principal reasons that the Commission did not obtain more empirical evidence is that testimony was elicited based on staff recommendations. The practice of the Commission, over 18 months of deliberations, was to allow its staff to draft "options" papers and position papers regarding the Commission's areas of inquiry. Ultimately, these papers and other staff-generated reports framed the Commission's discussions, as well as its receipt of evidence. A review of the staff biographies contained in the Final Report, however, shows that none of the Commission staffers had any background in, or prior knowledge of, the manufactured housing industry. The biographies also indicate, moreover, that certain staff members could have had a pre-existing bias in favor of greater regulation, given their previous organizational affiliations. Clearly, such potential preconceptions should be borne in mind by anyone reviewing the Final Report.

8. Certain Majority Recommendations Memorialize a Potentially Inappropriate Selection Process --

A review of the majority's recommendations show that those proposals -- if adopted -- would have the effect of increasing the regulatory functions performed by HUD's monitoring contractor, NCSBCS,[33] in areas including training, installation,

inspections and retail lot inspections, among others. Of course, the cost of these new functions would undoubtedly be added to the sums provided by its four-year HUD contract. In addition, the majority would mandate the award of a federal contract to NIBS -- to the tune of an estimated $800,000.00 per year -- to manage and administer the Commission's proposed consensus committee.

Two majority Commissioners are members of the NCSBCS board of directors, and have at least a political interest in maintaining and expanding that organization's functions, potentially at the expense of more workable or less costly alternative approaches. The Commission majority voted to recommend a sole-source contract for NIBS (in the Commission's legislative proposal) before three other nationally-recognized organizations were even able to make a presentation,[34] and even though at least one of those competing organizations -- CABO -- has maintained a manufactured home standards consensus committee for some seven years at no cost to the government, American taxpayers or, most importantly, consumers of manufactured housing. Indeed, CABO's president recently questioned this selection process in a letter to HUD Secretary Henry G. Cisneros. That letter states, in part:

> In your May 4, 1994 letter to the National Commission on Manufactured Housing, you supported the National Institute of Building Sciences to perform the functions CABO has been performing. We were very surprised to learn of a change in HUD's position, especially since CABO was selected through a public process with notification through the Federal Register.

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[33] NCSBCS' contract was renewed in 1993. It has been HUD's monitoring contractor continuously since the inception of the federal program in 1976.

[34] These organizations were: CABO (The Council of American Building Officials), ASTM (The American Society for Testing and Materials), and the National Fire Protection Association.

> NIBS is not a standards developing organization and therefore lacks the experience or expertise necessary to perform the function of maintaining the FMHCSS. It is our understanding that the enabling legislation that created NIBS intended that NIBS be involved in standards development only if an existing codes or standards developer was not able or willing to undertake an activity such as the FMHCSS.
>
> CABO has processed proposed changes to the FMHCSS in accordance with CABO consensus procedures and at no cost to the taxpayer since 1988. CABO has proposed to the National Commission on Manufactured Housing that it would maintain the FMHCSS under ANSI consensus procedures as they recommend.[35]

At a minimum, these documented facts are troubling to the minority and may entail unnecessary, politically motivated costs which, ultimately, will be passed along to American taxpayers and residents of manufactured housing.

9. The Majority's Legislative Proposal Exceeds the Scope of the Commission's Statutory Mandate --

The minority, in addition to all of the foregoing reasons, has dissented from the majority's Final Report because it includes a legislative proposal that is not authorized by the Commission's enabling statute. By its terms, Public Law 101-625 directs the Commission "to develop an action plan containing specific recommendations for legislative and regulatory revisions to the present law." It says nothing, however, about developing proposed legislation per se. Indeed, the only request for actual legislative language, by the Commission chairman's own admission, came from "Congressional Staff," who had no authority whatsoever to determine how the Commission's resources (i.e., taxpayer funds) would be utilized. In short, the development of a legislative proposal by the Commission was an ultra vires act.

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35 See, Supplemental Minority Report, Attachment 2 (emphasis in original).

Furthermore, the majority's legislative proposal was assembled and approved prior to the completion of the Commission's Final Report. This had the unfortunate practical impact of shifting the Commission's dialogue away from the essential building blocks of a reasonable consensus, and toward the minutiae of legislative craftsmanship. In effect, then, the attention focused on the majority's legislative packaged helped to seal the Commission's ultimate fragmented vote.

10. Summary

The Commission minority, accordingly, did not vote against the majority's slate of proposals because of the anticipated effect of one discrete recommendation. Its vote, rather, reflects substantive policy differences with the majority over the proper role of governmental regulation in this context, as well as specific concerns over the individual and cumulative cost impact of the majority's recommendations, and certain procedures followed by the Commission. As demonstrated below, however, substantial areas of agreement were, in fact, disclosed by the Commission's deliberations. As a result, its efforts were not entirely in vain. Indeed, these areas of agreement could ultimately form the nucleus of appropriate modernization legislation if implemented properly, with due regard for the unique affordability of manufactured housing.

REVIEW AND ANALYSIS OF MAJORITY PROPOSALS

1. PURPOSE OF THE ACT

A. Majority Recommendation

The Commission recommends that the statement of purpose in the National Manufactured Housing Construction and Safety Standards Act should be amended to read:

1.1 Congress recognizes the vital role of manufactured housing in meeting the Nation's housing needs. Manufactured homes provide a significant resource of affordable homeownership and rental housing accessible to all Americans, especially first-time homebuyers, low- and moderate-income families, and the elderly. In order to promote the quality, affordability, and availability of manufactured housing, Congress declares that the purposes of this title are:

- To enhance quality, manufactured housing should meet standards of safety, quality, and durability that yield levels of performance comparable to other forms of housing.

- To encourage innovative and cost-effective construction techniques that also minimize the long-term operating costs of manufactured housing to homeowners.

- To develop financing, zoning, and the provision of local government services that remove regulatory barriers which deny equal treatment for manufactured housing compared to other types of housing.

- To encourage State-Federal partnership within the Federal system that would enable each level of government to do what it does best while eliminating duplication and gaps between them.

- To establish a balanced consensus process for the development and revision of national construction and safety standards for manufactured homes.

- To strengthen warranty protections and increase access to affordable financing for the purchasers of manufactured homes.

- To ensure uniform and effective enforcement of national construction and safety standards for manufactured homes.

- To remove regulatory barriers to the use of innovative construction technologies.

B. **Analysis of Majority Recommendation**

General Comments: The industry has maintained for some time that the 1974 Act's current statement of purpose is hopelessly outdated and prejudicial to the continued growth and evolution of manufactured homes as a medium of affordable housing. For example, the present Statement of Purpose inappropriately refers to injuries and deaths resulting from manufactured home "accidents" -- a clear reflection of the statute's derivation from prior automobile safety legislation. The 1974 Act, however, has nothing to do with "accidents" such as might affect a motor vehicle. The 1974 Act is a housing statue, and its terminology should reflect that purpose.

Similarly, the current statement's directive to "improve" manufactured housing is outdated and prejudicial. Although such a directive might have been appropriate in 1974, today's manufactured housing has been improved to the point that (in most cases as noted above) it is, in fact, comparable in performance to site-built housing. There is no need, accordingly, to retain the present language, with its negative implication that manufactured homes are inferior, and need to be "improved." It is preferable rather, to speak in positive terms, of maintaining the quality and durability of today's manufactured homes while preserving their inherent affordability.

The revision proposed by the Commission majority, while flawed in the particulars outlined below, nevertheless represents a significant improvement, which could form the basis for a consensus recommendation.

Specific Objections and Recommendations:

(i) The Commission proposal represents an improvement over current law because it deletes outmoded references to "deaths" and "injuries" resulting from manufactured home "accidents," and because it incorporates specific references to "affordability," among other things. A further reference to affordability, however, should be included in the delineated purposes of the Act, preferably at the outset of the second delineated purpose, as recommended in the minority's initial comments. Similarly, a reference to "availability" should be included in the third delineated purpose.

(ii) As noted above, the concept of "comparability" between manufactured housing and other types of house was never adequately explored by the Commission. As a result, the reference to comparability should be deleted from the first delineated purpose, pending a thorough analysis of this issue and possible alternative formulations, such as a mandate for "safe, decent and sanitary" manufactured homes.

(iii) The phrase "that would enable each level of government to do what it does best" should be deleted from the fourth delineated purpose. Such language lacks any inherent meaning and could lead to future distortions in the balance between State and Federal authority.

C. **Recommendation**

1.1 Congress recognizes the vital role of manufactured housing in meeting the Nation's housing needs. Manufactured homes provide a significant resource of affordable homeownership and rental housing accessible to all Americans especially first-time homebuyers, low- and moderate-income families, and the elderly. In order to promote the quality, affordability, and availability of manufactured housing, Congress declares that the purpose of this title are:

- That manufactured housing, wherever possible, should meet standards that yield safe, decent and sanitary homes.

- To encourage innovation and affordability, new manufactured housing standards should encourage cost-effective construction techniques that also minimize the long-term operating costs of manufactured housing to homeowners.

- To expand the availability of manufactured housing, all levels of government should develop financing, zoning, and public services policies that remove regulatory barriers to the equal treatment of manufactured housing and other types of housing.

- To encourage State-Federal partnership and cooperation within the Federal system, that would eliminate duplication and gaps between them.

- To establish a balanced consensus process for the development and revision of national construction and safety standards for manufactured homes.

- To strengthen warranty protections and increase access to affordable financing for the purchasers of manufactured homes.

- To ensure uniform and effective enforcement of national construction and safety standards for manufactured homes.

- To remove regulatory barriers to the use of innovative construction technologies.

2. PROCEDURES AND PROCESS FOR STANDARDS DEVELOPMENT, REVISION, ADOPTION AND INTERPRETATION

A. Majority Recommendation

The Commission recommends to the Congress that:

2.1 Consistent with the purposes of the Act, the manufactured home construction and safety standards shall be updated on a 2-year cycle through a consensus process, and the resulting standards shall be submitted for approval as an American National Standard.

2.2 HUD shall be required to adopt, modify, or reject the consensus-developed standards within 12 months of submission to the Department, using the Administrative Procedure Act (APA) process.

HUD's failure to act within the stated time period would lead to automatic adoption by law.

2.3 A consensus committee to develop the consensus standards shall be organized and administered by the National Institute of Building Sciences (NIBS). The committee shall operate in conformance with procedures established by the American National Standards Institute (ANSI). The ANSI interest categories shall be modified for these purposes to include manufacturers, retailers, and suppliers in the "producer" category, to include exclusively homeowners, consumers and public officials in the "user" category, and to include Primary Inspection Agency (PIA) personnel in the "general interest" category, but constituting no more than 20 percent of that category.

2.4 Members of the consensus committee shall be qualified by background and experience to participate in the work of the committee. Members of the "user" and "general interest" categories, other than PIA personnel, shall not have a financial interest in the manufactured housing industry. The committee shall apply to ANSI for accreditation as an American National Standards Developer. The committee shall not be subject to the provisions of the Federal Advisory Committee Act.

2.5 The consensus committee shall have staff resources that include one consumer technical analyst.

2.6 The consensus committee shall establish, based on a finding of need, uniform test or evaluation methodologies that will adequately evaluate compliance of specially designed materials or assemblies with the manufactured home standards. HUD or other interested parties may request the committee to develop or evaluate the validity of a test method.

2.7 The consensus committee shall issue written interpretations of the manufactured home construction and safety standards, upon request and after a finding of necessity, that become binding upon approval by the Secretary. The Secretary may reject or modify an interpretation upon a finding that it would jeopardize public health or safety or is inconsistent with the purposes of the Act. If such action does not occur within 60 days of receipt of an interpretation from the consensus committee, approval is presumed and the interpretation becomes binding.

2.8 HUD shall have the authority to request the consensus committee to develop, at any time in its 2-year cycle, emergency amendments to the standards to respond to an emergency health or safety issue.

C. **Analysis of Majority Recommendation**

General Comments: The minority generally supports the concept of consensus standards-development in order to improve the quality and timeliness of HUD Code additions and modifications. This position is consistent with the industry's long-established policy of support for the consensus committees administered by CABO and others. The minority Commissioners, however, object to the circumstances surrounding the selection of NIBS as the committee's administrative body, and would urge Congress to ignore that particular recommendation.

Specific Objections and Recommendations:

(i) Recommendation 2.2: In the event that HUD fails to act within the specified 12-month period, a consensus committee recommendation is "automatically adopted," the Act must clearly provide that the right of interested parties to appeal, pursuant to Section 606(a), 42 U.S.C. subpart 5405(a) is preserved. If not, affected parties will lose an important procedural right that they now possess.

(ii) Recommendations 2.3, 2.4: The minority fully supports the concept of a balanced consensus committee. These recommendations, accordingly, require further detailed study to ensure that a proper balance is achieved. In addition, the minority believes that the committee's status with respect to the Federal Advisory Committees Act ("FACA") merits further analysis before a final decision is made.

(iii) Recommendation 2.3: Again, the minority objects to the selection of NIBS for the reasons set forth above. An appropriate administrative organization should be selected pursuant to normal government contracting procedures designed to ensure full and fair competition among appropriately qualified offerors.

(iv) Recommendation 2.6: The minority, as noted above, objects to testing protocols insofar as they could potentially subvert the performance character of the HUD Code. HUD must ensure that any protocols developed by the consensus committee do not in any way subvert the performance character of the code.

(v) Recommendation 2.7: This recommendation concerning interpretations would be acceptable if it were to include a provision akin to APA (Administrative Procedure Act) requirements at the HUD level. Otherwise, interested parties would lose important procedural rights that they now possess.[36]

C. **Recommendation**

2.1 Consistent with the purposes of the Act, the manufactured home construction and safety standards shall be updated on a 2-year cycle through a consensus process, and the resulting standards shall be submitted for approval as an American National Standard.

2.2 HUD shall be required to adopt, modify, or reject the consensus-developed standards within 12 months of submission to the Department using the Administrative Procedure Act (APA) process. HUD's failure to act within the stated time period would lead to automatic adoption by law, subject, however, to the appeal rights set forth in 42 U.S.C. Section 5405.

2.3 A consensus committee to develop the consensus standards shall be organized and administered by a qualified national organization selected by HUD pursuant to standard government contracting procedures designed to ensure full and fair competition. The committee shall operate in conformance with procedures established by the American National Standards Institute (ANSI).

2.4 Members of the consensus committee shall be qualified by background and experience to participate in the work of the committee. Members of the "user" and "general interest" categories, other than PIA personnel, shall not have a significant financial interest in the manufactured housing industry. The committee shall apply to ANSI for accreditation as an American National Standards Developer.

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36 See, 24 C.F.R. Section 113 (Interpretative Bulletins).

2.5 The consensus committee shall issue written interpretations of the manufactured home construction and safety standards, upon request and after a finding of necessity, that shall become binding upon approval by the Secretary. The Secretary may reject or modify an interpretation upon a finding that it would jeopardize public health or safety or is inconsistent with the purposes of the Act, subject to full APA procedures.

2.6 HUD shall have the authority to request the consensus committee to develop, at any time in its 2-year cycle, emergency amendments to the standards to respond to an emergency health or safety issue.

3. WARRANTY AND RECOVERY FUND PROTECTIONS FOR HOMEOWNERS

A. Majority Recommendation

The Commission recommends the following:

3.1 **Term and Coverage**. Manufacturers and retailers shall be required to each provide a warranty for their respective functions under the Act. Coverage shall include:

- One-year for all defects, including transportation arranged by the manufacturer, and weatherability. Defects covered under the warranty for weatherability shall include (except leaks caused by severe weather events such as hurricanes, tornadoes, and severe icing): Rainwater or snow leaks in roofs, walls, floors, siding, windows, or doors, based on a reasonable level of occupant care and maintenance as prescribed in the manufacturer's consumer manual. Repair of weatherability defects includes repair of items necessary to restore their weatherability functions and repair of other components of the structure damaged by the weatherability defects;

- One-year for appliances; and

- One-year by the retailer for installation and transportation arranged by retailer; five years as installation or such transportation affects structural integrity.

  In cases where the homebuyer undertakes his or her own site preparation, the retailer has the right to ask the homebuyer for an engineering certification, contractor certificate, or building inspection certification that preparatory work is in accordance with code or regulations. If the homebuyer fails to provide such certification to the retailer, the warranty is limited to one year. Written disclosure of correct site preparation and these limitations to the customer must be made by the retailer before sale. Retailers will be required to offer

conforming installation. If the offer and disclosure are not made, the warranty is for five years.

If the homebuyer chooses to install the unit himself, there is no installation warranty.

- Five years for plumbing, electrical, air distribution and structural systems within the dwelling unit provided by the manufacturer.

  Defects shall be repaired within 60 days of receipt of written notice and 5 days in emergency situations. The warranty shall cover defects regardless of whether they arise as a result of faulty design, construction, transportation or installation.

  Manufacturers and retailers should retain reasonable flexibility both in drafting their warranties and in providing coverage for items not required by statute. States should have flexibility in requiring coverage for items not covered by Federal statue.

3.2 **Performance Guidelines**. The validity of any homeowner's claim under the warranty shall be determined on the basis of good industry practice that ensures quality of materials and workmanship. The consensus committee shall develop minimum requirements for the level of quality of materials, performance, and workmanship to assist SAAs and other dispute settlers in resolving warranty claims and minimizing the need for litigation. The consensus committee shall be mindful that it does not create absolute requirements that totally foreclose manufacturer and retailer flexibility in the drafting of warranties. The consensus committee may create a subcommittee or working group to undertake the initial development of the guidelines. The warranty performance guidelines are not intended to be interpreted by HUD as replacing, modifying or supplementing current or future performance construction standards.

The goal of warranty performance guidelines is to assure that consumers benefit from warranties that meet at least minimum standards of coverage, which do not include unreasonable exclusions, and which are uniformly interpreted and administered. The performance guidelines do not cover damage due to failure to carry out required homeowner maintenance as set forth in the manufacturer's consumer manual, or homeowner abuse of the home. (See Appendix E for Sample Warranty Terms.)

3.3 **Claims Process**. A claims process shall be established that allows the homeowner to file a claim with one entity and that ensures correction within a reasonable time. Manufacturers and retailers will have first opportunity to correct the defect. If the defect is not corrected satisfactorily, an alternate dispute resolution (ADR) process would be

initiated. Under the ADR process, an impartial dispute settler would investigate the problem and issue a ruling that identifies the party responsible for correcting the defect, the items to be corrected and the time period for correction. An ADR determination favorable to the consumer shall result in prompt correction of the defect.

State ADRs must fulfill Federal statutory requirements in the following areas:

- The dispute settler is independent and has no financial ties to any party;
- There is not cost to the homeowner;
- The availability of the ADR process is prominently displayed and advertised;
- The process includes two steps: The first is required informal dispute settlement; second, if the first step does not resolve the dispute, the homeowner may elect to proceed to a formal dispute resolution process or litigation;
- Resolution is accomplished within 30 days;
- Judicial appeals of the results of the formal dispute resolution process are limited to factual, legal or procedural errors made by the dispute settler that are material to the decision; and
- The ADR process is evaluated periodically.

HUD should contract with the Administrative Conference of the United States (ACUS) to develop rules, principles, and procedures to assist the States in designing the ADR process.

3.4 **State Recovery Funds**. State recovery funds should be established under the Act. The funds should cover claims of homeowners if manufacturers or retailers go out of business or if the manufacturer or retailer refuses to make repairs under the warranty after such responsibility has been determined. Claims will be paid only upon completion of the ADR or the judicial process. The State recover funds will be financed by charges levied on manufacturers, retailers and related industry parties based on actuarial factors. State recovery funds must fulfill Federal statutory requirements in the following areas:

- Registration of Manufacturers and retailers as an enforcement mechanism

- Actuarial soundness
- Uniform claims process
- Private reinsurance obtained within 7 years
- Funds cover only the actual reasonable cost of repairs or the value of the home, whichever is less
- A time limit for implementation of remedies

If a State has not enacted legislation within 4 years and implemented a State recovery funds within 5 years, HUD shall contract with a private entity, preferably within the State, to administer all functions of the State recovery fund program.

3.5 **Manufacturer and Retailer Registration**. All manufacturers and retailers shall be required to register with the SAA or contract agent for the recovery fund in each State. Registration shall be required to sell homes. Revocation of registration shall be mandatory if a manufacturer or retailer fails to correct a defect that has been determined to be its responsibility. Suspension of registration may be rescinded if the manufacturer or retailer repays the recovery fund.

3.6 **Data Collection and Dissemination**. HUD shall aggregate and distribute to the SAAs claims data collected by State recovery funds on types of defect, frequency, and location by manufacturer, plant, model or system. HUD will use such data to assist in the monitoring of Production Inspection Primary Agency (IPIA) performance.

3.7 **Preemption**. States with existing recovery funds and bonding programs equal to or exceeding Federal program requirements would not be preempted. HUD shall be required to make such determinations in conformance with statutory guidelines.

B. **Analysis of Majority Recommendation**

General Comments: Although the minority Commissioners generally agree with the concept of an extended limited warranty, the Commission was unable to reach a consensus regarding the specific content of such a warranty. For purposes of future discussion, however, the minority would submit the following suggestions. First, warranty protection in all of its aspects should remain a state function and the domain

of state law. Second, any extended warranty should be implemented incrementally, over a period of years, in order to soften the economic impact of any such change on the multitude of small businesses which largely comprise the manufactured housing industry. Third, the benchmark for warranty claims should be the HUD standards themselves where applicable, and reasonable industry practice as established by competent evidence in other contexts, rather than a separate set of "guidelines." The possibility of utilizing insurance backed warranty to cover manufacturers obligations or any warranty obligation imposed at any level on retailers and installers should not be foreclosed. Other observations and recommendations are set forth below.

Specific Objections and Recommendations:

(i) Recommendation 3.1: The specific terms and coverage of warranty protection, in the view of the minority, requires further detailed study, including a complete cost analysis.

(ii) Recommendation 3.2: The minority objects to warranty guidelines, as noted above, insofar as they would undermine the performance character of the HUD Code.

(iii) Recommendation 3.3: Although the minority Commissioners support the concept of ADR, they would recommend as follows. First, ADR should be a complete precondition to litigation, in order to avoid costly court battles. The majority's election of remedies provision effectively insures that many disputes will continue to be litigated. Second, some degree of cost sharing should occur between the parties in order to discourage frivolous claims. Third, no need has been shown for the proposed contract

with the Administrative Conference of the United States. Numerous ADR programs are in existence nationwide, and could serve as models for the recommended system.

(iv) Recommendation 3.4: The minority supports the concept of state-based recovery funds, subject to further study of funding requirements, and the deletion of the currently proposed requirement for reinsurance. Such recovery funds, though, should cover only situations in which a manufacturer or retailer has gone bankrupt or out of business. This type of focus is consistent with recovery funds established for other types of housing.

(v) Recommendation 3.6: In the view of the minority, any data dissemination must be subject to general federal law and regulations regarding privacy and confidentiality.

(vi) Recommendation 3.7: The minority objects to broad exemptions to the preemptive effect of the Act. Such an exemption would be unnecessary in any event if warranty coverage and enforcement were properly left to the states.

C. **Recommendation**

3.1 **Term and Coverage**. States should be encouraged to adopt manufactured housing warranty laws and should include the following requirements.

Coverage shall include:

- One year for all defects, including transportation arranged by the manufacturer, and weatherability. Defects covered under the warranty for weatherability shall include (except leaks caused by severe weather events such as hurricanes, tornadoes and severe icing): Rainwater or snow leaks in roofs, walls, floors, siding, windows, or doors, based on a reasonable level of occupant care and maintenance as prescribed in the manufacturer's consumer manual. Repair of weatherability defects includes repair of items

necessary to restore their weatherability functions and repair of other components of the structure damaged by the weatherability defects;

- One year for appliances; or as otherwise provided by their manufacturer;

- Five years for structural systems within the dwelling unit provided by the manufacturer;

- One year by the retailer for installation and transportation arranged by the retailer.

Defects shall be repaired within 60 days of receipt of written notice and five days in emergency situations. The warranty shall cover defects regardless of whether they arise as a result of faulty design, construction, transportation or installation.

In cases where the homebuyer undertakes his or her own site preparation, the retailer has the right to ask the homebuyer for an engineering certification, contractor certificate, or building inspection certification that preparatory work is in accordance with code regulations.

If the homebuyer chooses to install the unit himself, there is no installation warranty.

Manufacturers and retailers should retain the ability to offer insurance backed warranty programs to fulfill any warranty obligations provided by the statute.

Manufacturers and retailers should retain reasonable flexibility both in drafting their warranties and in providing coverage for items not required by statute.

3.2 **Claims Process**. A claims process shall be established pursuant to state law that allows the homeowner to file a claim with one entity and that ensures correction within a reasonable time. Manufacturers and retailers will have first opportunity to correct the defect. If the defect is not corrected satisfactorily, an alternate dispute resolution process (ADR) would be initiated. Under the ADR process, an impartial dispute settler would investigate the problem and issue a ruling that identifies the party responsible for correcting the defect, the items to be corrected, and the time period for correction. An ADR determination favorable to the consumer shall result in prompt correction of the defect.

State ADRs should meet requirements in the following areas:

- The dispute settler is independent and has no financial ties to any party;

- ADR is a prerequisite to any litigation;
- Resolution is accomplished within 30 days;
- Judicial appeals of the results of the formal dispute resolution process are limited to factual, legal or procedural errors made by the dispute settler that are material to the decision; and
- The ADR process is evaluated periodically.

3.3 **State Recovery Funds**. State governments should be encouraged to establish manufactured housing recovery funds. The funds should cover claims of homeowners if manufacturers or retailers are declared bankrupt or go out of business. Claims will be paid only upon completion of the ADR or the judicial process. The State recovery funds will be financed by reasonable charges levied on manufacturers, retailers and related industry parties based on actuarial factors. State recovery funds must fulfill requirements in the following areas:

- Registration of manufacturers and retailers
- Actuarial soundness
- Uniform claims process
- Funds cover only the actual reasonable cost of repairs or the value of the home, whichever is less
- A time limit for implementation of remedies

3.4 **Manufacturer and Retailer Registration**. All manufacturers and retailers shall be required to register with the SAA or administrator of the recovery fund in each State. Registration shall be required to sell homes. Revocation of registration shall be mandatory if a manufacturer or retailer fails to correct a defect that has been determined to be its responsibility. Suspension of registration may be rescinded if the manufacturer or retailer repays the recovery fund.

3.5 **Data Collection and Dissemination**. HUD may aggregate and distribute to the SAAs claims data collected by State recovery funds on types of defects, frequency, and location by manufacturer, plant, model or system, subject to federal law and regulations covering the dissemination of documents and information.

4. PERMANENT CHASSIS REQUIREMENT

A. Majority Recommendation

4.1 The definition of a manufactured home under the Act should be modified to eliminate the requirement that homes permanently sited on land owned by the homeowner be "built on a permanent chassis," subject to specific standards developed by the consensus committee.

B. Analysis of Majority Recommendation

General Comments: The manufactured housing industry has maintained for some time that the 1974 Act's permanent chassis requirement has needlessly restricted technological development, as well as the utilization of affordable manufactured housing. The minority, accordingly, supports this recommendation, except for its limitation to permanently sited homes. The minority, rather, continues to adhere to the Interim Report consensus recommendation, which does not contain this important and unnecessary constraint.

C. Recommendation

4.1 The definition of a manufactured home under the Act should be modified to eliminate the requirement that permanently sited homes be "built on a permanent chassis," subject to standards developed by the consensus committee.

5. INSTALLATION STANDARDS AND INSPECTION

A. Majority Recommendation

The Commission recommends that:

5.1 The consensus committee shall develop and maintain minimum installation standards as part of the national manufactured home construction and safety standards.

5.2 Manufacturers shall provide an installation manual to purchasers, which shall contain necessary installation instructions. Such manuals shall be easily understood and shall be periodically updated to reflect substantial changes in products, procedures and requirements.

5.3 The Design Approval Primary Inspection Agency (DAPIA) shall continue to review and approve the manufacturer's installation instructions.

5.4 Any State may establish and enforce installation standards that equal or exceed the minimum national standards.

5.5 The States shall provide for a minimum level of installation inspections, as described by HUD.

B. **Analysis of Majority Recommendation**

General Comments: The minority Commissioners agree with their colleagues within the majority, that installation is a critical issue. The evidence before the Commission clearly established that installation deficiencies are the leading cause of consumer complaints. This evidence, moreover, comports with the industry Commissioners' own experience. As a result, both the manufactured housing industry and the minority Commissioners support state-based installation standards, with corresponding state-based enforcement mechanisms. The minority, however, strenuously objects to the federalization of these functions. Both in the Interim Report and the negotiations leading to the promulgation of that report the majority agreed that installation standards and enforcement were least handled at the state level.

Specific Objections and Recommendations:

(i) Recommendations 5.1, 5.5: The development and enforcement of installation standards should remain a state function because state governments are more cognizant of local site conditions. Moreover, the federalization of installation standards and enforcement would lead to yet further inappropriate delegations of HUD's authority. Various standards are already being enforced at the state level, and could readily be adopted in other jurisdictions as model legislation.

(ii) Recommendation 5.2: The reference to manuals being "easily understood" should be deleted. What is or is not "easily understandable" is inherently subjective, and an invitation to litigation. The manuals should be written in a clean and concise manner designed to provide the information necessary for proper installation of the home.

(iii) Recommendation 5.4: Again, the minority objects to expansive preemption exemptions because they would undermine the broader preemptive effect of the 1974 Act. Such exemptions, moreover, are unnecessary in any event, because the exempted functions should remain in state hands ab initio.

C. **Recommendation**

5.1 State governments should be encouraged to develop minimum installation standards for manufactured homes.

5.2 Manufacturers shall provide an installation manual to purchasers, which shall contain necessary installation instructions. Such manuals shall be periodically updated to reflect substantial changes in products, procedures and requirements. The manuals shall be written to the extent possible, in a clear manner designed to convey the information necessary for installation of the home.

5.3 The Design Approval Primary Inspection Agency (DAPIA) shall continue to review and approve the manufacturer's installation instructions.

5.4 Each State should provide for an appropriate level of installation inspections in order to ensure compliance with its installation standards.

6. DESIGN REVIEWS AND PRODUCTION SURVEILLANCE

A. Majority Recommendation

The Commission recommends to Congress that the third-party inspection system remain in place, with the following improvements to the program.

6.1 IPIAs shall be required to develop plant-specific inspection plans that focus the inspection effort on fundamental structural and system issues.

6.2 When DAPIAs issue retroactive approvals, they shall be required to notify HUD's monitoring agent, flag the retroactive approval, and state the provision that was approved and the reason for the retroactive approval.

6.3 Requirements for quality assurance manuals shall be upgraded to be more in line with international standards for quality control, such as the International Standards Organization (ISO) 9000 series, to improve the international competitiveness of the manufactured housing industry.

B. **Analysis of Majority Recommendation**

General Comments: The minority generally concurs with the maintenance of the status quo in this area, subject to its concerns regarding the excessive delegation of HUD's authority to its monitoring contractor. As the Commission correctly observed, this level of delegation often leads to compliance disputes, where manufacturers lack proper due process protections. Accordingly, HUD should use it best efforts, consistent with the purposes of the 1974 Act, to reduce its reliance on the monitoring contractor.

Furthermore, the industry Commissioners must note that they have some concerns with HUD's procedures for bidding and awarding the monitoring contract. The current contractor has held its position continuously since the inception of federal regulation in 1976. At least one other national organization has contended that HUD's contract solicitations are designed to meet the strengths of the incumbent contractor, NCSBCS. Without commenting on the validity of this contention, the minority believes that HUD's contracting procedures should be investigated and reviewed by Congress. In the interim, however, HUD should be required to take all necessary steps to ensure full and fair competition in its monitoring contract solicitations.

C. **Recommendation**

Same as majority recommendation.

7. ENFORCEMENT

A. Majority Recommendation

The Commission recommends the following with regard to enforcement:

7.1 **HUD Authority**. HUD shall retain primary responsibility and authority for the enforcement system. Current provisions under the Act and regulations for optional State participation in enforcement activities shall be strengthened, to enable States to assert some authority without establishing an SAA. The State of siting as well as the State of manufacture would have enforcement authority. The first SAA to open a case shall have primary jurisdiction. Primary jurisdiction may be transferred by mutual agreement.

7.2 **PIA Termination**. Manufacturers and PIAs shall be required to promptly notify HUD of a change in the third-party agency and state the specific reason(s) for the change.

7.3 **Enforcement Remedies**. A definition of primary inspection agencies should be included in the Act; penalties under Section 621 shall be decriminalized and extended to cover violations by the PIAs. Potential fines should be increased to $5,000 per violation with a maximum of $1 million for any series of violations. Civil penalties under Section 611 should be raised from $1,000 to $5,000 per violation. Fines for willful violations by corporate officers should be increased from $1,000 to $100,000. Civil penalties under Section 611 should be handled administratively as with other Departmental civil penalties.

7.4 **Subpart I Requirements**. Requirements for notification of defects alone under Subpart I shall be eliminated. Where a serious defect or safety hazard is discovered, States shall be required to notify the manufacturer, other States and HUD to facilitate investigation and any necessary enforcement actions including notification of the consumer and correction by the manufacturer. Serious defects shall be defined as "any nonconformance with national manufactured home construction and safety standards that results in a defect in the performance, construction or material of a manufactured home that constitutes a safety hazard or that affects the home to the extent it becomes unsafe or otherwise unlivable."

7.5 **Enforcement Information and Oversight**. Monitoring reports, the results of complaint investigations and other enforcement records are public records and should be accessible to SAAs and interested citizens. HUD should establish committees to review the monitoring process and provide peer review by State and private PIAs of monitoring reports. The committees should review the performance of participants in the

enforcement system, specifically the SAAs, IPIAs, DAPIAs, and those individuals performing HUD's monitoring function, to ensure that they are performing their duties in a reasonable and effective manner. The committees should make nonbinding recommendations to the Secretary for corrective action. The committee shall not be subject to provisions of the Federal Advisory Committee Act.

7.6 **Travel Funds**. A dedicated fund should be established within HUD that prevents the commingling of manufactured housing label fees with other Departmental funds and permits the Office of Manufactured Housing to utilize the fund for program management with appropriate controls. The use of these fees by the Secretary for staffing, monitoring, oversight, field investigations, training and related travel shall not be subject to general or specific limitations on appropriated funds.

B. **Analysis of Majority Recommendation**

General Comments: In the view of the minority Commissioners, the current enforcement system is flawed largely by HUD's unchecked delegation of authority to its monitoring contractor. Beyond the establishment of appropriate restraints on such delegation, however, and the need for the limitation of needless and costly paperwork under Subpart I of HUD's regulations, the minority considers the HUD enforcement system to be workable and effective. This was borne out, moreover, by testimony before the Commission, which pointed to very few structural complaints.

Specific Objections and Recommendations:

(i) Recommendation 7.1: The minority objects to any provision which would allow state governments to assume any type of enforcement authority without appropriate SAA legislation. Such legislation is needed to protect the due process rights of all interested parties and to establish a legal benchmark for state authority. Anything less would be reckless and, most likely, unlawful.

(ii) Recommendation 7.2: The minority supports notification of PIA changes as a reasonable adjunct to the third-party inspection system.

(iii) Recommendation 7.3: The minority objects to the proposed increase in fines and civil penalties. These recommendations lack any evidentiary support whatsoever in the Commission's record and, as last minute additions to the Final Report, appear to be little more than a parting shot at the industry for its ultimate refusal to endorse the majority's full slate of proposals. In view of these unwarranted increases, the minority, similarly, cannot support the majority's proposal for decriminalization of the Act's penalties and the administrative assessment of those penalties. Such recommendations would undermine the due process protections currently available to parties charged with violations -- protections which take on an even greater significance in view of the proposed monetary increases. Put differently, the minority will support decriminalization only if current due process protections remain in the 1974 Act.

(iv) Recommendation 7.4: The minority supports this recommendation as far as it goes, as a proper measure to reduce needless paperwork and unnecessary costs. The definition of the term "serious defect," however, should be given further consideration in view of the purposes of the 1974 Act.

(v) Recommendation 7.5: As noted previously, the minority believes that the disclosure of any documents must be governed by general federal law, including the Federal Privacy Act. No showing was made before the Commission of a compelling

need to treat such documents any differently than other enforcement records compiled by the federal government.

With respect to peer review committees, the minority acknowledges the Commission's effort to create some type of remedy for the difficulties posed by HUD's delegation of significant regulatory authority to its monitoring contractor. The difficulty with this proposal, however, is twofold. First, it deals only with the symptoms of the problem, not the problem itself. Both testimony before the Commission and before Congress in 1990, spoke to unilateral decisions made by the monitoring contractor regarding compliance issues. It also addressed the AQL system of prescriptive requirements that was never the subject of proper notice and comment rulemaking. If the majority were serious about dealing with this issue, it would not propose delegating even greater authority to contractors. A real solution to this problem would be restrictions upon the delegation of certain types of functions and authority. Second, the remedy itself does not go far enough. The minority Commissioners' direct experience with the Federal Regulatory Program indicates that voluntary peer review will accomplish nothing, because professional differences of opinion will not be resolved through a dialogue among equals. What is needed is a mandatory grievance process with an authoritative decision-maker, whose determination would be final. Of course, such a process would need to guarantee the procedural rights of all participants.

C. **Recommendation**

7.1 **PIA Termination.** Manufacturers and PIAs shall be required to promptly notify HUD of a change in the third-party agency and state the specific reason(s) for the change.

7.2 **Enforcement Remedies**. A definition of primary inspection agencies should be included in the Act; penalties under Section 531 shall be decriminalized and extended to cover violations by the PIAs.

7.3 **Subpart I Requirements**. Requirements for notification of defects alone under Subpart I shall be eliminated. Where a serious defect or safety hazard is discovered, States shall be required to notify the manufacturer, other States and HUD to facilitate investigation and any necessary enforcement action including notification of the consumer and correction by the manufacturer.

7.4 **Enforcement Information and Oversight**. Monitoring reports, the results of complaint investigations and other enforcement records should be accessible subject to general federal law and regulations concerning information and document disclosure. HUD shall establish a grievance procedure to monitor actions. This process shall also be available for review of the performance of other participants in the enforcement system, specifically the SAAs, IPIAs, DAPIAs and those individuals performing HUD's monitoring function, to ensure that they are performing their duties in a reasonable and effective manner. The said process shall provide for participation by all interested parties and shall provide the Secretary mandatory corrective action or relief.

7.5 **Delegation**. HUD shall undertake a complete analysis of its inspection monitoring system, to reduce its dependence on private contractors and to limit and control the delegation of governmental authority to such contractors.

8. TRANSPORTATION AND STORAGE REQUIREMENTS

A. Majority Recommendation

The Commission recommends that:

8.1 The manufacturer shall prepare transportation and storage requirements when necessary to ensure that the unit will remain in compliance with the standards under ordinary transportation and storage practices.

8.2 The consensus committee shall establish requirements for the review of transportation loads and testing procedures to ensure that manufactured homes reach retailer and installation sites in conformance with the national manufactured home construction and safety standards.

8.3 Random inspections of retailer lots, as prescribed by the Secretary, shall be a mandatory activity for SAAs. In States without an SAA, HUD or its designee shall carry out such inspections.

B. **Analysis of Majority Recommendation**

General Comments: Transportation is not and should not be a major issue for he Commission. This is reflected by the fact that the Commission heard virtually no estimony with respect to transportation-induced faults in manufactured homes. Suffice t to state, then, that the minority supports recommendation 8.1 concerning manufacturer prepared transportation and storage instructions. The minority also supports recommendation 8.2 subject, however, to its comments regarding "testing protocols." The minority, however, objects to the mandatory character of Recommendation 8.3, to the extent that it would expand the responsibilities of HUD's monitoring contractor. All such inspections, rather, should be conducted by SAAs or appropriate state officials.

C. **Recommendation**

8.1 The manufacturer shall prepare transportation and storage guidelines when necessary to ensure that the unit will remain in compliance with the standards under ordinary transportation and storage practices.

8.2 The consensus committee shall establish requirements for the review of transportation loads and testing procedures to ensure that manufactured homes reach retailer and installation sites in conformance with the national manufactured home construction and safety standards.

8.3 Random inspections of retailer lots, as prescribed by the Secretary, shall be conducted by SAAs or other appropriate state authorities.

9. **TRAINING**

A. **Majority Recommendation**

The Commission recommends the following with regard to training:

9.1 The Secretary shall establish voluntary educational requirements for manufacturer quality control personnel and retailer installation inspection personnel, and mandatory educational requirements for PIA technical personnel, SAA personnel and any Federal or contract staff having technical functions.

9.2 Educational requirements will include successful completion of specified training and a minimum competence examination.

9.3 The Secretary will establish continuing education requirements.

9.4. The Secretary or his designee will develop and implement training programs for the monitoring agent, PIA and SAA personnel. Such programs will be made available to manufacturers and retailer personnel at cost.

9.5 Costs of the training of SAA, PIA and Federal personnel will be met through a specifically dedicated portion of the label fees.

B. **Analysis of Majority Recommendation**

General Comments: The minority generally supports these recommendations, subject, however, to the proviso that participants in the enforcement program be barred from simultaneously seeking any contract to provide such training. Further, the minority objects to the funding mechanism proposed in Recommendation 9.5. Training costs should properly be offset by a user fee, paid by the party being trained as an operational cost of business or cost of performing its official functions.

C. **Recommendation**

9.1 The Secretary shall establish voluntary educational requirements for manufacturer quality control personnel and retailer installation inspection personnel and mandatory education requirements for PIA technical personnel, SAA personnel, and any Federal or contract staff having technical functions.

9.2 Educational requirements will include successful completion of specified training and a minimum competence examination.

9.3 The Secretary will establish continuing education requirements.

9.4 The Secretary or his designee will develop and implement training programs for the monitoring agent, PIA, and SAAs personnel; such programs will be made available to all such parties at cost.

9.5 The Secretary may contract for such training services, but may not contract with any participant in the regulatory system, or any affiliate, subsidiary, or party related in any way to such a participant.

10. REMOVING REGULATORY BARRIERS AND DISCRIMINATORY PRACTICES AT THE STATE AND LOCAL LEVELS

A. Majority Recommendation

The Commission recommends that:

10.1 The Act should be amended to provide that a State or local government may not exclude any manufactured home, simply by reason of its HUD label, from installation on land when other residential uses are permitted. Similar requirements should govern manufactured housing rental communities when densities do not exceed zoning designations.

10.2 The Act should prohibit the use of State or local government ordinances to deny equitable treatment with respect to tax assessments and the provision of municipal services (such as water, sewerage, street lighting and road maintenance) to manufactured housing rental communities.

B. Analysis of Majority Recommendation

General Comments: The minority supports these recommendations because many manufactured housing rental community residents are currently denied municipal services that are routinely available to other homeowners. This phenomenon improperly treats such manufactured housing residents as second class citizens. The Commission's recommendations are in accord with national policy regarding affordable housing and should be adopted.

C. Recommendation

Same as majority recommendation.

11. FINANCING OF MANUFACTURED HOME PURCHASES

A. Majority Recommendation

The Commission recommends that:

11.1 HUD exercise existing authority to use manufactured homes in all mortgage insurance programs, the Section 8 rental assistance program and the Community Development Block Grant and HOME programs;

Congress continue to authorize the use of HUD Code homes in its Public Housing and Section 8 homeownership initiatives.

11.2 Direct, upfront subsidies linked to further energy-related upgrades be made available. These subsidies might be modeled on those currently in operation for manufactured housing in the Northwest.

11.3 Where homes are labeled as complying with the revised construction standard, the Government National Mortgage Association (Ginnie Mae) shall be authorized to guaranty pools of manufactured home 30-year mortgages; Ginnie Mae guarantees timely payment of principal and interest to holders of securities; and the guaranty is backed by the full faith and credit of the United States.

11.4 Where standard 30-year Ginnie Mae-backed mortgages do not bring interest rates for homes complying with the revised standards down to levels comparable to those for site-built housing because they are located in manufactured housing communities, a Ginnie Mae special assistance mortgage purchase program (Ginnie Mae tandem plan) shall be authorized and funded.

11.5 Congress amend the Section 207(m) program to assist resident purchase of manufactured housing rental communities.

11.6 HUD simplify the Section 203(b) program, so that bank participation will be increased.

11.7 HUD revise the Title I program to simplify its administration so that bank participation will be increased.

11.8 HUD direct Ginnie Mae to end the moratorium on Title I lenders.

11.9 Congress direct HUD and the U.S. Department of Veterans Affairs to make their respective manufactured home programs viable, including lower down payment requirements to encourage greater homeownership by low- and moderate-income families.

11.10 Congress direct the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) to establish secondary market programs for conventional personal property manufactured home loans.

B. **Analysis of Majority Recommendation**

General Comments: The minority supports these recommendations in order to increase the availability of manufactured housing as a source of affordable

homeownership. The term, "revised," however should be deleted from Recommendations 11.3 and 11.4.

C. **Recommendation**

Same as majority recommendation, subject to the general comments above.

CONCLUSION

For all of the reasons set forth above, the minority Commissioners believe that their recommendations effectively address the real problems facing the manufactured home regulatory system, as contrasted with the problems perceived by the majority. Moreover, the minority believes that its recommendations will address these problems while preserving the inherent and critical affordability of manufactured housing. Finally the minority Commissioners hope that these additional comments will illuminate the actual difficulties facing the industry and consumers of affordable housing, and in this manner, lead the reader to a better understanding of the issues facing the Commission.[37]

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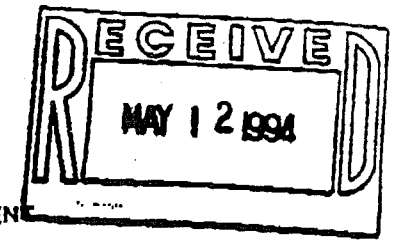
[37] All comments herein are in addition to those set forth in Appendix A, "Comments of Minority Commissioners on the Final Report of the National Commission on Manufactured Housing," Final Report at pp. 84-99. Nothing contained herein is intended to supersede or retract any statement contained in that document.

IMENT 1



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410-0001

May 4, 1994

Ms. Helen Boosalis
Chair
National Commission on
Manufactured Housing
301 N. Fairfax Street
Alexandria, VA 22314

Dear Madam Chair:

Thank you for the opportunity to review the Interim Report of the National Commission on Manufactured Housing. I believe that the Commission, in its recommendations, has set forth a bold and comprehensive plan for restructuring the regulation of manufactured housing that will promote higher quality affordable homes. The Report will also strengthen HUD's role to ensure that a consumer's investment in a manufactured home offers him or her high quality, affordable housing.

The Department of Housing and Urban Development (HUD) strongly supports the overwhelming majority of Commission recommendations for change. These recommendations will greatly improve HUD's Manufactured Home Construction and Safety Standards program and the Department's ability to ensure that consumers are adequately protected. In particular, the Department strongly supports a strengthened warranty system and a consensus-based process for the development of standards, and HUD looks forward to working with the Commission and the Congress to ensure enactment of these measures in 1994.

However, the Department is concerned by the absence of a complete assessment of the label fees and home cost increases that would be associated with the changes advocated in the Report. Because any cost increases should be justified by improvements in the quality of the homes, it is difficult to endorse or evaluate fully all the Commission's recommendations without a reliable estimate of the impact on housing affordability. Finally, the Department has a number of comments and proposed modifications on some of the Commission's recommendations. These concerns are detailed in the attachment to this letter, organized under the section headings of the Report.

The Department will work closely with the Commission and its staff in the coming months to further develop your recommendations and resolve any remaining issues as you prepare to issue the Final Report. I am grateful to all the Commission members and staff for their efforts to develop this platform for reform.

Finally, I would like to take this opportunity personally to thank you for the many hours you have devoted to this effort. Because of your dedication, persistence and negotiating skill, it has been possible to fashion a broad-based agreement for fundamental change among the diverse interests represented on the Commission. Your effort is truly appreciated.

Sincerely,

Henry Cisneros

Henry G. Cisneros

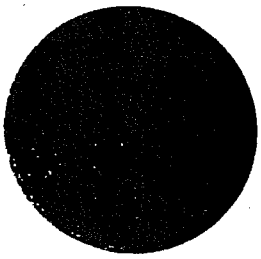
Enclosure

ACHMENT 2

BUILDING OFFICIALS AND CODE
ADMINISTRATORS INTERNATIONAL, Inc.

SOUTHERN BUILDING CODE
CONGRESS INTERNATIONAL, Inc.

INTERNATIONAL CONFERENCE OF
BUILDING OFFICIALS



Council of American Building Officials

5203 LEESBURG PIKE • FALLS CHURCH, VA 22041
(703) 931-4533 • FAX (703) 379-1546

RICHARD P. KUCHNICKI
CHIEF EXECUTIVE OFFICER

July 7, 1994

Secretary Henry G. Cisneros
Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

Dear Mr. Cisneros:

The Council of American Building Officials (CABO) was notified by the attached June 19, 1987 letter from then HUD Assistant Secretary Thomas T. Demery that it was requested "...to develop and maintain model standards for reference in whole, or in part, as Federal Manufactured Home Construction and Safety Standards (FMHCSS), and at no obligatory expense to this Department." We have, we believe, performed as requested in the years since as evidenced by the enclosed copy of the CABO Manufactured Home Construction and Safety Standards 1989, 1990, 1991, 1992, 1993 and 1994 Amendments. We have not heard to the contrary from HUD.

In your May 4, 1994 letter to the National Commission on Manufactured Housing, you supported the National Institute of Building Sciences to perform the functions CABO has been performing. We were very surprised to learn of a change in HUD's position, especially since CABO was selected through a public process with notification through the Federal Register.

NIBS is not a standards developing organization and therefore lacks the experience or expertise necessary to perform the function of maintaining the FMHCSS. It is our understanding that the enabling legislation that created NIBS intended that NIBS be involved in standards development only if an existing codes or standards developer was not able or willing to undertake an activity such as the FMHCSS.

CABO has processed proposed changes to the FMHCSS in accordance with CABO consensus procedures and at no cost to the taxpayer since 1988. CABO has proposed to the National Commission on Manufactured Housing that it would maintain the FMHCSS under ANSI consensus procedures as they recommended.

Council of American Building Officials

We are requesting an appointment with you to ascertain whether it is now HUD's intent to discontinue using CABO to develop and maintain the model standards. We have been unable to make contact with HUD's Manufactured Housing staff in order to determine future intentions regarding CABO's development and maintenance of the model standards and therefore hope that an early meeting can be arranged.

Sincerely,

Richard P. Kuchnicki

Richard P. Kuchnicki
Chief Executive Officer

RPK:lvm

c: Phil Herrington
Jon Traw
Paul Heilstedt
William Tangye

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

OFFICE OF GENERAL COUNSEL

ATTACHMENT C

January 11, 2010

Honorable Travis W. Childers
1708 Longworth House Office Building
Washington, DC 20515

Dear Congressman Childers:

Thank you for your letter to Secretary Donovan dated December 2, 2009, regarding the non-career Administrator position for the manufactured housing program administered by the U.S. Department of Housing and Urban Development. HUD strongly believes that a well managed manufactured housing program is important to the nation.

The Manufactured Housing Improvement Act of 2000 (the Act) governs HUD's manufactured housing program. The purpose of the Act is to, among other things, protect the quality, durability, safety and affordability of manufactured homes and establish Federal construction standards for manufactured homes. Section 620(a) of the Act grants the Secretary the authority to collect fees from manufactured home manufacturers and use the money to offset the expenses incurred by the Secretary in carrying out the Act. Section 620(a)(1) enumerates seven broad categories of expenses that the fees could be used to offset, including the funding of a noncareer Administrator.

The Act, in particular Section 620(a)(1), contains no express or implied requirement for the Secretary to appoint a noncareer Administrator. In contrast to the funding of a noncareer Administrator, many of the expenses listed in Section 620 have cross citations to parts of the Act that mandate the Secretary to take action. Other than Section 620, nothing in the Act discusses an Administrator position.

At this time, the Department has determined that it is not in HUD's or the public's interest to appoint a noncareer Administrator for the manufactured housing program. HUD has capable staff currently fulfilling this important mission. Moreover, as the Secretary and FHA Commissioner, David Stevens, discussed in recent testimony before the House Financial Services Committee, HUD's top priority is addressing the foreclosure crisis. The limited FHA appointments that HUD is able to make have focused on personnel who can address this priority on a broader basis.

HUD appreciates the critical role that manufactured housing plays in providing affordable housing to the American people and is well aware of the precarious financial position of the manufactured housing industry. HUD is committed to increasing financing opportunities for the industry through full implementation of the new FHA rules for Title I and Title II financing pursuant to the Housing and Economic Recovery Act of 2008. FHA has announced major revisions to its Title I program and Ginnie Mae continues to work with manufactured housing lenders to revise its Title I securitization program in accordance with FHA's recently released program rules. In addition, HUD is exploring opportunities to expand the use of FHA's 207 program, which provides FHA-insured financing for space in a manufactured home court or park. The Department also believes that the efforts to publish updates to the relevant standards and regulations and to improve quality control practices will assist the industry by attracting lenders back to manufactured housing. To explore additional opportunities to support the industry, Commissioner Stevens recently discussed with Congressman Donnelly of Indiana the possibility of organizing a summit meeting of national lenders on manufactured home financing.

We look forward to working with you in maintaining a strong manufactured housing program at HUD.

Sincerely,

Helen R. Kanovsky

Helen R. Kanovsky
General Counsel

ATTACHMENT D

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-1000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

JUN 22 2010

The Honorable Bennie Thompson
U.S. House of Representatives
Washington, DC 20515

Dear Representative Thompson:

Thank you for meeting with HUD staff on May 12, 2010 to discuss concerns that you have regarding the Department's implementation of the Manufactured Housing Improvement Act of 2000 (2000 Act). The 2000 Act significantly amended the Manufactured Housing Construction and Safety Standards Act (the Act) by creating new mandates for manufactured home installation and dispute resolution. Other significant amendments included a requirement that the Secretary establish the Manufactured Housing Consensus Committee (MHCC) and an authorization for the Secretary to appoint a non-career Administrator of the manufactured housing program. Though budget restrictions have prevented the Department from fully implementing the new installation and dispute resolution programs, HUD believes that it has otherwise implemented the requirements of the 2000 Act.

Please accept this letter as HUD's response to the list that you have provided for 2000 Act Reforms that you would like to see implemented at HUD.

1. **Appointed Program Administrator** – Current program administrator is a career employee (Section 620(a)(1)(C)).

Though HUD did appoint a non-career Administrator in 2002, it is true that career staff have been directing the manufactured housing program since 2005. The Department has discussed the non-career Administrator issue with both the Manufactured Housing Institute (MHI) and the Manufactured Housing Association for Regulatory Reform (MHARR) on several occasions. This position is specifically exempted from HUD limitations on full-time equivalent career positions. However, HUD has advised both groups, Departmental leadership has provided a limited number of non-career "Schedule C" appointments that can be made in the Office of Housing. As a result, the Department is not able to move forward on the Administrator's position at the present time. HUD has capable staff currently fulfilling this important mission. However, I will be happy to reconsider the appointment of a non-career Administrator should more Schedule C positions become available.

MHARR has argued that the 2000 Act requires HUD to make this appointment. HUD General Counsel Helen Kanovsky has provided MHARR with a carefully considered opinion on this issue. Her opinion noted that Section 620(a) of the Act grants the Secretary the authority to collect fees from manufactured home manufacturers and use the money to offset the expenses incurred by the Secretary in carrying out the Act. Section 620(a)(1) enumerates seven broad categories of expenses that the fees could be used to offset, including the funding of a non-career Administrator. Section 620(a)(2) states that the Secretary may use fee money to pay for the seven expenses listed.

The General Counsel's opinion concluded that the Act, in particular Section 620(a) (1), contains no expressed or implied requirement for the Secretary to appoint a non-career Administrator. Outside of Section 620, nothing in the Act discusses an Administrator position. In contrast to the funding of a non-career Administrator, many of the expenses listed in Section 620 have cross citations to the relevant part of the Act that mandates the Secretary to take action.

2. **Role, Authority and Functionality of the MHCC** – The role, authority and operation of the MHCC, the centerpiece reform of the 2000 Act, have been significantly limited, restricted and downgraded (Section 604(a)(3)(A)(i) and (ii)).

The MHCC is established in Section 604(a)(3) of the 2000 Act. The MHCC essentially replaced the National Manufactured Home Advisory Council which had been established in previous Section 605. The legislative history of the 2000 Act describes the MHCC as "designed to develop and recommend additions, revisions, and interpretations to the Manufactured Home Construction and Safety Standards and enforcement regulations to the Secretary of HUD" (House Report 106-553). Section 604(a)(3)(A), the purposes clause, confirms that the MHCC is established to provide the Secretary with recommendations regarding the construction and safety standards and enforcement regulations. The purposes clause makes no mention of MHCC authority for "oversight and review" of the federal program. In fact, Section 604(a)(3)(A)(iv) specifically describes the MHCC as "an advisory committee not composed of federal employees." Accordingly, the MHCC has been chartered as a federal advisory committee, subject to the Federal Advisory Committee Act (FACA). That being said, the program office and program counsel have worked extensively with the MHCC on a broad range of standards and regulations. Since the MHCC first met in August 2002, there have been 186 meetings of the MHCC, its subcommittees and task groups.

HUD published an interpretive rule regarding the MHCC in the Federal Register on February 5, 2010. This rule clarifies the statutory language regarding what matters that are subject to MHCC review. Since the Department first chartered the MHCC as a federal advisory committee in 2002, HUD's consistent position has been that Congress did not intend the MHCC to be more than a HUD advisory committee for standards and regulations. As a private advisory body not composed of federal employees, the MHCC does not have HUD's responsibilities for public safety and consumer protection. The Department must, therefore, remain free of the MHCC process to make program decisions that would not be considered rules under the Administrative Procedure Act (APA). HUD's lawyers have found nothing in the 2000 Act or the Congressional Record that authorizes a broader, more governmental role for the MHCC.

The Department has also approved a new MHCC charter and new MHCC bylaws in January. The program office developed the new charter and bylaws during several months of discussions with the Federal Advisory Secretariat at the General Services Administration (GSA) and HUD's Office of Ethics Counsel. GSA staff, who monitor all of the nearly one thousand federal advisory committees, are the experts in this field. After carefully reviewing the 2000 Act, GSA agreed with HUD that, despite the complex rulemaking process that HUD and the MHCC must observe, Congress did not intend for the MHCC to be anything other than a federal advisory committee. GSA was especially helpful in pointing out provisions in the previous organizing documents that were either unnecessary or otherwise out-of-step with normal federal advisory committee practice. As a federal advisory committee, the members of the MHCC are essentially part-time HUD volunteers who play a vital part in updating HUD's standards and regulations. The Department hopes these new rules will allow it to run a tighter ship and, hopefully, get HUD on the same kind of three-year revision cycle that most other code bodies observe.

3. **Federal Preemption** – Enhanced federal preemption has not been implemented. (Section 604(d)) Examples included state and local sprinkler requirements and discriminatory state and local installation mandates (see item 4, below).

HUD does, in fact, take a broad and liberal view with regard to preemption of state and local standards when they actually conflict with HUD's Manufactured Home Construction and Safety Standards (construction and safety standards). Whenever the program office receives information suggesting that a local jurisdiction is trying to enforce its own construction or safety standard on an element of performance addressed by HUD's construction and safety standards, a letter is written to that jurisdiction informing it that such local laws are subject to federal preemption under the Act.

Federal preemption is established in 604(d). If a home is built to the HUD code, state and local building authorities may not apply their own codes that are "applicable to the same element of performance" to that home. HUD understands that federal preemption of state and local codes is one of the biggest competitive advantages that the HUD-code manufactured housing industry has over site-built and modular housing. HUD further understands that maintaining the viability of federal preemption is critical to the entire HUD-code business model. For preemption to work, however, 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. Otherwise, local code authorities are free to enforce their own code provisions. You can, therefore, expect to see the Department and the MHCC concentrating on maintaining preemption by updating the elements of performance addressed by the construction and safety standards.

A good example is the new fire sprinkler standard that HUD recently submitted to the MHCC for its 120-day review. Fire sprinkler systems are being increasingly required by state and local governments for all new single family homes. Though HUD has general fire safety standards, HUD has no standard for mechanical fire suppression. HUD has long held that state and local sprinkler requirements are, therefore, not preempted, leaving state and local government free to dictate all elements of the sprinkler system that a manufactured home must have in order to be sited in the jurisdiction. The standard that HUD has proposed will change all of that. First, during the MHCC review process, and then again during public the comment period for the proposed rule, industry experts will have the chance to work with HUD to develop a cost-effective sprinkler

system that can be installed during the production process. And this standard would only apply in those jurisdictions that require fire sprinklers. That's an important point, since some are concerned that HUD intends to require fire sprinklers in all manufactured homes.

Your concern regarding state and local installation requirements is addressed in number 4 below.

4. **Re-Codification of Installation** - Undermines federal preemption and the statutory jurisdiction and role of the MHCC. Lack of preemption allows states and localities to discriminate against HUD Code homes and continue to treat them as "trailers". This also impacts the availability of private consumer financing.

The term "re-codification" is an apparent reference to the Department's decision to publish the installation standards and the installation program regulations mandated by the 2000 Act in new parts of the Code of Federal Regulations (CFR). Some have been concerned that this decision diminished the scope of the federal preemption provision in Section 604(d) of the Act. A decision by HUD regarding publication of implementing regulations could not diminish the force and effect of an Act of Congress. More importantly, the 2000 Act added language to Section 604(d) that specifically guarantees that the federal installation standards will *not* preempt state installation standards:

> Subject to Section 605, there is reserved to each State the right to establish standards for the stabilizing and support systems of manufactured homes sited within that State, and for the foundations on which manufactured homes sited within that State are installed, and the right to enforce compliance with such standards . . .

Furthermore, the legislative history includes this statement from House Banking and Financial Services Chairman Leach: "The revisions to Section 604 would . . . reinforce the proposition that installation standards and regulations remain under the *exclusive authority* of each state." (Dec. 5, 2000, Cong. Rec. H11987 (emphasis added). In Additional Views that were included in the House Report on the bill, Ranking Member LaFalce noted that ". . . for the first time, we will be setting a national *minimum* installation standard . . ." H. Rpt. 106-553 pg. 182. (emphasis added). In earlier floor remarks, Rep. LaFalce had said: "States that wish to have their own installation standards may continue to do so, as long as they provide protections comparable to the model standards." (Oct. 24, 2000, Cong. Rec. H10685)

HUD chose to codify the installation standards and regulations in new parts of the CFR as a matter of administrative necessity, in order to maintain the clear distinctions that the Act makes between installation and construction. The regulatory structure that Congress has provided in Section 605 (42 U.S.C. 5404) for enforcement of the installation standards is entirely different from the enforcement authority that it previously gave HUD for the construction and safety standards. Primary enforcement authority for installation is found only in Section 605 itself which provides limited authority to enforce consumer interests while adding entirely new requirements regarding the licensing and training of installers. Given the relatively broad enforcement authority that the Act

provides for construction and safety program, HUD considers separate publication of these standards and regulations as fundamental to maintaining the regulatory separation necessary to administer two such different programs.

You are also concerned that HUD's decision to publish the installation standards and regulations in a new part of the CFR deprived the MHCC of "jurisdiction" over these program rules. As a HUD federal advisory committee, it is doubtful that the MHCC has "jurisdiction" as such over any aspect of the HUD manufactured housing program. More importantly, HUD added provisions to both the installation standards and regulations specifically to provide the MHCC with continued rulemaking involvement equal to that established in Section 604(a)(3)(A) of the Act for the construction and safety standards and regulations (See 24 CFR 3285.1(c) and 24 CFR 3286.15).

You also expressed concern about consumer financing. As an executive at both Freddie Mac and Wells Fargo, I witnessed the steep decline in financing available for manufactured housing during the last decade. Since coming to HUD, I have looked for ways to reverse that trend. The Department worked with Congressman Donnelly of Elkhart and arranged a top-level meeting of the lending and manufactured housing industries. This meeting provided the industry with an excellent opportunity to appeal to senior figures at major lending institutions to increase their financing of manufactured homes.

5. **Re-Codification of Dispute Resolution** - Undermines federal preemption and the statutory jurisdiction of the MHCC (Section 623(g)).

The term "re-codification" is an apparent reference to the Department's decision to publish the dispute resolution regulations mandated by the 2000 Act in new parts of the Code of Federal Regulations (CFR). The dispute resolution program regulations establish a federal forum for the resolution of manufactured housing disputes pursuant to Section 623 of the 2000 Act. As provided in 623(g)(2), these regulations also allowed HUD to approve state dispute resolution programs so long as they meet certain requirements. To date, HUD has approved 27 such state programs. The states may not maintain their own dispute resolution programs without HUD's approval.

As with the installation standards and regulations, HUD chose to publish the dispute resolution program regulations in a new part of the CFR as a matter of administrative necessity to maintain the clear distinction between the program's enforcement of the installation and construction standards, and HUD's administration of a forum for the resolution of disputes among private parties. Since the dispute resolution process is entirely separate and distinct from elements of performance addressed by HUD's construction and safety standards, it is does not appear that this decision affects federal preemption.

You are also concerned that HUD's decision to publish the dispute resolution regulations in a new part of the CFR deprived the MHCC of "jurisdiction" over these program rules. As a HUD federal advisory committee, HUD does not believe that the MHCC has "jurisdiction" as such over any aspect of the HUD manufactured housing program. And, similar to the installation standards and regulations, HUD specifically added language to the dispute resolution regulations to provide the MHCC with continued rulemaking involvement equal to that established in Section 604(a)(3)(A) of the Act for the construction and safety standards and regulations. (See 24 CFR 3288.305)

6. **MHCC Role in Interpretation of Standards and Regulations** – Significant interpretations continue to be issued without MHCC involvement. HUD has construed relevant sections of the 2000 Act so that MHCC involvement is not triggered, even by major changes to program procedures and practices. No interpretation has been officially brought to the MHCC since the passage of the 2000 Act (Sections 604(b)(2),(3) and (6)).

The Department has engaged extensively with the MHCC on all phases of rulemaking. As mentioned above in response to "Role and Authority of the MHCC", there have been meetings of the MHCC, its subcommittees and task groups. And, as mentioned in response to "Re-Codification of Installation" and "Re-codification of Dispute Resolution" above, HUD added provisions to both of these rules that provide the MHCC continued rulemaking involvement equal to that established in Section 604(a)(3)(A) of the Act for the construction and safety standards and regulations.

Once rules are published, however, enforcement of those rules is the responsibility of the Department, not the MHCC. It is a fundamental tenet of administrative law that the agency that promulgates a rule may interpret that rule as necessary for enforcement purposes. Indeed, the courts defer to an agency's interpretation so long as it is reasonable. Section 604(a)(3)(A) of the 2000 Act authorizes the MHCC to propose interpretations of the construction and safety standards and regulations to the Secretary. Section 604(b)(2) of the 2000 Act authorizes the MHCC to propose interpretive bulletins to the Secretary to clarify the meaning of a construction and safety standard or regulation. However, neither section suggests that HUD must suspend enforcement of its standards and regulations while the MHCC develops such proposals. If the MHCC disagrees with an enforcement decision made by HUD, then the MHCC may propose its own interpretation or interpretive bulletin for the Secretary's consideration.

The interpretive rule regarding the MHCC process that HUD published on February 5, 2010 was discussed in number 2 above (Section 604(a)(3)(D)(i)).

7. **Composition of the MHCC** – Statutory language is in dire need of clarification as it has been a source of serious disputes between HUD and the industry.

The Department is not certain which disputes this concern refers to. In the past, some have asked that the language in the 2000 Act regarding membership in the "producers" category be clarified. This would be an issue for Congress to address. More recently, the White House decided last year that lobbyists should be barred from serving on federal advisory committees. Accordingly, the Department has decided not to appoint representatives of MHARR and MHI to the MHCC. MHARR has objected to this decision.

Though MHI and MHARR themselves no longer have votes, the industry is well represented on the MHCC. Manufacturers are represented by members from Cavco, Clayton, Cavalier, Champion and ScotBilt. Also on the MHCC are two retailers, one of whom previously owned and operated manufacturer Burlington Homes, and the former Vice President of Technical Activities for MHI.

8. **Third-Party Administering Organization** – Long interruptions in MHCC administration (Section 604(a)(2)(B)).

Since forming the MHCC in 2002, the Department has maintained a contract with the National Fire Protection Association (NFPA) as the MHCC's Administering Organization (AO). The NFPA is recognized as one of the foremost experts at maintaining the consensus process established by the American National Standards Institute (ANSI). The 2002 Act requires HUD to follow ANSI procedures and even to apply to ANSI for accreditation. That application was denied for a number of reasons; the most significant one was the lack of the ANSI required appeals process.

Since 2002, there have been two gaps in NFPA's service: 1) when the original contact expired before the procurement process for the new contract was completed; and 2) when HUD's Office of Procurement suspended service to review the form of certain payments. During both gaps in service, HUD's manufactured housing program office assumed the AO's responsibilities which included scheduling of teleconference meetings, preparation of meeting minutes, and distribution of numerous documents. While the MHCC members themselves expressed appreciation for the efforts of the program office, others complained that HUD would use these gaps in service to undermine the MHCC. HUD now can say that this concern was completely unwarranted.

9. **New and Advanced Technology** – Current restrictions discourage the use of innovation technologies to dramatically increase home value.

The Department is not certain which restrictions discourage the use of innovative technologies to dramatically increase home values. HUD freely accepts and often grants applications to use innovative technologies not recognized by its construction and safety standards under its rules for "Alternative Construction" of manufactured homes (24 CFR 3282.14). In the past, some have complained that the Act itself has artificial restraints that limit the technological evolution of manufactured housing. That complaint has typically referred to the Act's definition of "manufactured home" which requires construction to be on "a permanent chassis" (Section 603(6)). The Department believes that permission to remove the frame would, therefore, be a legislative issue for Congress, not HUD, to address.

10. **By-Passing MHCC in the Final Stages of Rulemaking** – Changes to MHCC recommended consensus standards and regulations have been made without further MHCC involvement (Sections 604(a)(4) and (5)).

You are apparently concerned that the Department has made improper changes to MHCC-approved standards immediately prior to final publication in order to alter their meaning. This must apply to the construction and safety standards rule that became effective in May 2006, as it is the only such rule published to date. All final rules are subject to a review process both within the Department and then by OMB prior to their publication in the Federal Register. In virtually every case, some small changes are made to the rule at the request of these reviewing authorities. These changes rarely affect the substance of the rule, but if they do, the APA requires the Department to clearly identify them along with all other changes to the substance of the rule as originally proposed. HUD knows of no such changes made immediately prior to publication of the final rule that you may be concerned about.

11. **Procedures for Advancing MHCC Proposed Standards and Regulations** – Needs to be updated and substantially improved to speed the processing of MHCC recommended consensus standards and regulations (Sections 604(a)(4) and (5)).

HUD agrees completely with this concern. That is why the Department approved a new MHCC charter and new MHCC bylaws in January 2010. As mentioned in HUD's response to 2 above, GSA was especially helpful in pointing out provisions in the previous organizing documents that were either unnecessary or otherwise out-of-step with normal federal advisory committee practice. As mentioned in HUD's response to 3 above, the Department fully understands that maintaining the viability of federal preemption is critical to the entire HUD-code business model. The Department hopes that the new MHCC processes and procedures will both increase efficiency and allow HUD and the MHCC to concentrate on maintaining preemption by updating the elements of performance addressed by the construction and safety standards.

In the past, some have complained that language in the 2000 Act for MHCC submissions to the Secretary has caused unnecessary procedural delays. Section 604(a)(4)(A)(ii) requires that the MHCC submit proposed revised standards "in the form of a proposed rule, including an economic analysis." However, it was recognized early on by all involved that the MHCC is not equipped to present the Secretary with a fully developed rule package. As a result, it was agreed that the MHCC would only prepare the rule itself. The AO would then collect the necessary supporting information and the Department would prepare the proposed rule for the MHCC's approval. While this system has worked well, the Department would not disagree with a decision by Congress to remove the form requirement from Section 604(a)(4)(ii).

12. **Authority to Increase Label Fee** – Must require specific, advance congressional approval (Sections 620(d)(1) and 620(e)(2)).

Your concern seems to be that the Act should be clarified to require specific appropriations and detailed justifications for label fee increases. This is another issue to be raised with Congress rather than HUD. Be advised, however, that the language that Congressional appropriators have included each year since passage of the 2000 Act (" . . . fees pursuant to such 620 shall be modified as necessary to ensure such a final fiscal year . . . appropriation") has given HUD the authorization necessary to publish a rule proposing to raise manufactured housing label fee in order to support the appropriated level. The last such increase was in 2002 when the HUD fee for each unit of production was raised from $25 to $39.

13. **Subpart I Reform** – Changes required by the 2000 Act (Section 602(b)(8)) need to be addressed further. Current Subpart I needs to be amended and modernized as recommended to the Secretary by the MHCC.

The Department fully agrees that Subpart I needs to be addressed. By way of background, Subpart I implements obligations that Congress placed primarily on manufacturers in Sections 613 and 615 of the Act to provide consumer notification and correction when manufactured homes are found not to comply with the construction and safety standards. Congress based those sections on the recall provisions of the National Traffic and Motor Vehicle Safety Act. Though the 2000 Act made changes to several other sections of the Act, the only change Congress made to Sections 613

and 615 in the 2000 Act was to substitute the term "retailer" for "dealer" in a few places where it appeared. Congress even retained the reference to a manufactured home as a "vehicle" in Section 613(a)(2). It is, therefore, apparent that Congress intended for the enforcement practices required by Sections 613 and 615 to continue.

Program staff and program counsel worked extensively with the MHCC to develop a proposed revision of Subpart I. Though HUD agreed with most of the proposal submitted by the MHCC, there were certain provisions that were either not supported by the Act or that, in HUD's judgment, would have been bad consumer protection policy. HUD's biggest objection to the MHCC proposal was the attempt to shift the manufacturer's statutory responsibilities for notification and correction to retailers and other parties. HUD has prepared a proposed rule revising Subpart I which is currently in the clearance process.

14. **HUD Authority to Access User Fee in Default States** - Already addressed and corrected by HUD.

As your note suggests, this has been addressed by HUD. The language necessary to authorize user fee financing has been added to the program's appropriation. As a result, it does not appear that an amendment to the Act will be necessary.

IMPORTANT NOTE: Since the inception of the federal manufactured housing program in 1976, the Secretary's monitoring contractor – with significant authority over enforcement functions and activities (see Section 603(20)) – has been the same entity, with the same principals (although the corporate name has changed several times). Repeated solicitations have been tailored to the capabilities of the incumbent contractor, resulting in minimal or no competition, making this a de facto sole source contract without the safeguards and protections required by law – and likely the only HUD program that has had the same contractor under the same contract practices for more than 30 years. In order to fully reform the HUD program, lessen or eliminate its biases, and ensure that it has access to the fresh ideas and new thinking that it needs, the monitoring contract must be opened to genuine competition that is full, fair and robust.

HUD Response: The contractor that you are referring to is the Institute for Building Technology and Safety (IBTS). IBTS is a 501(c)(3) organization. Its five-member board includes representatives from the National League of Cities, the Council of State Governments, the International City/County Management Association, the National Governors' Association, and the National Association of Counties. While this same organization (under different names over a period of time) has performed the monitoring function for over 30 years, it has always done so under the competitive bidding processes required and specified under the Federal Acquisitions Regulations (FAR). IBTS and its predecessors have always provided exemplary service to HUD.

As required by Section 620(a)(2) the 2000 Act, the Department has completed and awarded separate contracts for services such as training and electronic data management. These functions had previously been part of a larger umbrella contract held by IBTS predecessor Housing and Building Technology. Under new restrictions imposed by Section 620(a)(2), a contractor is only

eligible for one contract related to this program. However, there is nothing in the 2000 Act that prevents a contractor from continuing to be awarded any single contract for any single set of services required by the HUD manufactured housing program.

The monitoring contractor's primary function is to conduct performance monitoring of the HUD agents who inspect manufactured home design and production. The contractor also maintains a library of all manufactured housing design pages, oversees production and distribution of HUD compliance labels, collects HUD compliance label fees, and verifies missing label information as requested by lenders, zoning officials and others. These functions are highly specialized, and it should come as no surprise that so few bids have been received when this contract has been competed over the years. Given the restrictions that the 2000 Act placed on manufactured housing program contracts, the Department does not expect to see an increase in bidders going forward. Sharp reductions in HUD's monitoring contract budget in recent years may also have discouraged prospective bidders.

I hope this information addresses the items raised in the material that you provided HUD staff in your meeting.

Sincerely,

David H. Stevens
Assistant Secretary for Housing –
Federal Housing Commissioner

ATTACHMENT E

5. Potential Partners or Sponsors:
6. Estimated Operating Cost of Pilot:
7. Estimated Impact on Program Costs:
8. Pilot Implementation Issues:

[FR Doc. 2011–25651 Filed 10–4–11; 8:45 am]
BILLING CODE P

OFFICE OF MANAGEMENT AND BUDGET

Final Guidance on Appointment of Lobbyists to Federal Boards and Commissions

AGENCY: Office of Management and Budget.

ACTION: Notice of Final Guidance.

SUMMARY: The Office of Management and Budget (OMB) is issuing final guidance to Executive Departments and agencies concerning the appointment of federally registered lobbyists to boards and commissions. On June 18, 2010, President Obama issued "Lobbyists on Agency Boards and Commissions," a memorandum directing agencies and departments in the Executive Branch not to appoint or re-appoint federally registered lobbyists to advisory committees and other boards and commissions. The Presidential Memorandum further directed the Director of OMB to "issue proposed guidance to implement this policy to the full extent permitted by law." Proposed guidance was posted on November 2, 2010 and the final guidance was formulated after review of the comments received to the proposed guidance. The Presidential Memorandum is available at *http://www.whitehouse.gov/the-press-office/presidential-memorandum-lobbyists-agency-boards-and-commissions.*

DATES: *Effective Date:* The final guidance will be effective 30 days from the date of issuance in the **Federal Register.**

A. Final Guidance

On June 18, 2010, President Obama signed a Presidential Memorandum directing agencies in the Executive Branch not to appoint or re-appoint federally registered lobbyists to advisory committees and other boards and commissions. That memorandum directed the Office of Management and Budget to propose implementing guidance, which follows in the form of questions and answers:

Q1: Who is affected by the policy directed in the June 18, 2010 Presidential Memorandum (the "Memorandum")?

A1: This policy applies to federally registered lobbyists and does not apply to individuals who are registered as lobbyists only at the state level. A lobbyist for purposes of the Memorandum is any individual who is subject to the registration and reporting requirements of the Lobbying Disclosure Act of 1995 (LDA), as amended, 2 U.S.C. 1605, at the time of appointment or reappointment to an advisory board or commission. Agencies may rely on appropriate searches of databases maintained by the House of Representatives and the Senate in identifying federally registered lobbyists.[1] Alternatively, agencies may consider including in their recruitment process for appointing members a way of obtaining written certification from the individual that he or she is not a federally registered lobbyist.

Any individual who previously served as a federally registered lobbyist may be appointed or re-appointed only if he or she has either filed a bona fide de-registration or has been de-listed by his or her employer as an active lobbyist reflecting the actual cessation of lobbying activities or if they have not appeared on a quarterly lobbying report for three consecutive quarters as a result of their actual cessation of lobbying activities.

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 the Memorandum applies only to federally registered lobbyists and does not apply to non-lobbyists employed by organizations that lobby.

Q3: What entities constitute "boards and commissions" under the policy?

A3: The policy directed in the Memorandum applies to any committee, board, commission, council, delegation, conference, panel, task force, or other similar group (or subgroup) created by the President, the Congress, or an Executive Branch department or agency to serve a specific function to which appointment is required, regardless of whether it is subject to the Federal Advisory Committee Act, as amended (5 U.S.C. App.). Appointment includes appointment required or permitted by law or regulation, including appointment at the discretion of the department or agency. Additionally, the ban also applies to established workgroups and subcommittees for boards and commissions, which may or may not require formal appointment.

Q4: Does the policy apply to non-Federal members of delegations to international bodies?

A4: Yes, delegations organized to present the United States' position to international bodies are considered to be boards or commissions for the purposes of this policy, regardless of whether they constitute advisory committees for purposes of the Federal Advisory Committee Act, as amended (5 U.S.C. App.). Therefore, agencies should not appoint federally registered lobbyists to these delegations.

Q5: Which "members" of those boards and commissions are covered by the policy?

A5: The policy applies to all members of boards and commissions who are not full-time Federal employees, including both those who have been designated to serve in a representative capacity on behalf of an interested group or constituency and those who have been designated to serve as Special Government Employees, and who are appointed by the President or an Executive Branch agency or official. However, the policy is not intended to be inconsistent with provisions of Federal law or international agreements. Accordingly, even where provisions exist that allow private organizations to designate their representatives or require their consultation on appointments, the appointing authority should, to the extent permissible by law, require such organizations to agree to the appointment of individuals who are not federally registered lobbyists.

Members of boards and commissions do not include individuals who are invited to attend meetings of boards or commissions on an ad hoc basis.

Q6: How does the policy apply if a statute or presidential directive provides for appointments to be made by State Governors or by members of Congress?

A6: While the discretion of appointing authorities outside of the Executive Branch will be respected, those appointing authorities should be encouraged to appoint individuals who are not federally registered lobbyists whenever possible.

Q7: How does the policy apply when a statute or presidential directive requires the appointment of a specific representative from an organization and that representative is a federally registered lobbyist?

A7: The policy does not supersede board or commission membership requirements established by statute or presidential directive. However, committee charters in effect at the time of the new policy that require a lobbyist to be appointed as a member of the committee should, wherever possible and at the earliest possible time, be amended to conform to the policy, consistent with statutes and presidential directives.

Q8: How will the guidance affect lobbyists who were serving on boards and commissions at the time the policy was established?

A8: The prohibition on the appointment of federally registered lobbyists to boards and commissions established by the Memorandum applies to appointments and re-appointments made after June 18, 2010. In order to ensure that there is no disruption of ongoing work of boards and commissions, federally registered lobbyists who already were serving on boards and commissions on that date may serve out the remainder of their terms, but may not be reappointed so long as they remain registered lobbyists.

Q9: Does this policy also restrict the participation of lobbyists as members of a subcommittee or other work group that performs preparatory work for its parent board or commission?

A9: Yes, the policy does not permit the appointment of federally registered lobbyists to a subcommittee or any other subgroup that performs preparatory work for a parent board or commission, whether or not its members

[1] Lobbying Disclosure, Office of the Clerk, U.S. House of Representatives: *http://lobbyingdisclosure.house.gov;* LDA Reports, U.S. Senate: *http://www.senate.gov/legislative/Public_Disclosure/LDA_reports.*htm.

are appointed in the same manner as are members to the parent committee. The goal of the Memorandum is to restrict the undue influence of lobbyists on Federal government through their membership on boards and commissions, which would include subcommittees and other bodies regardless of whether those positions require formal appointment.

Q10: Does this policy also restrict the participation of lobbyists as witnesses or experts who appear before boards and commissions or submit advice or materials to them?

A10: No, lobbyists may still appear before or otherwise communicate with a board or commission to provide testimony, information, or input in the same manner as non-lobbyists who are not members of or appointees to the board, commission, or any of its subgroups, to the extent permitted by law and regulation. The purpose of the policy is to prevent lobbyists from being in privileged positions in government. It is not designed to prevent lobbyists or others from petitioning their government. When lobbyists do testify, boards and commissions should make reasonable efforts to ensure that they hear a balance of perspectives and are not gathering information or advice exclusively from registered lobbyists.

Q11: What should an agency do if it appoints to a board or commission an individual who is not a federally registered lobbyist at the time of appointment, but who, after appointment, becomes a federally registered lobbyist?

A11: Agencies should make clear to all board and commission members, whether appointed as representatives or Special Government Employees, that their conduct of activities that would require them to be federally registered lobbyists after appointment would necessitate their resignation or removal from membership on boards or commissions. The appointing officers or their delegates shall ensure, at least annually, that board or commission members are not federally registered lobbyists and, upon reappointment of the members, either shall require each member to certify that he or she is not a federally registered lobbyist or shall check the Federal lobbyist databases to confirm that each member has not registered as a lobbyist since appointment. If an agency finds that, following appointment to a board or commission, a member subsequently has become a federally registered lobbyist or has engaged in activities that would require registration, the agency shall request the resignation of the member.

Q12: Will there be any waivers available for circumstances in which a federally registered lobbyist possesses unique or exceptional value to a board or commission?

A12: The policy makes no provisions for waivers, and waivers will not be permitted under this policy.

Office of Management and Budget

Boris Bershteyn,

General Counsel, Office of Management and Budget.

[FR Doc. 2011–25736 Filed 10–4–11; 8:45 am]

BILLING CODE P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: October 2011

TIME AND DATES: All meetings are held at 2:30 p.m.

Tuesday, October 4;
Thursday, October 6;
Tuesday, October 11;
Wednesday, October 12;
Thursday, October 13;
Tuesday, October 18;
Wednesday, October 19;
Thursday, October 20;
Tuesday, October 25;
Wednesday, October 26;
Thursday, October 27.

PLACE: Board Agenda Room, No. 11820, 1099 14th St., NW., Washington, DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider "the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto." See also 5 U.S.C. 552b(c)(10).

Dated: October 3, 2011.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2011–25856 Filed 10–3–11; 4:15 pm]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by December 5, 2011 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION: Request for Clearance for Additional Survey of Master Teaching Fellows (MTFs) as Part of the Evaluation of the National Science Foundation's (NSF) Robert Noyce Teacher Scholarship (Noyce) Program.

Title of Collection: Evaluation of the Robert Noyce Teacher Scholarship Program.

OMB Control No.: 3145–0217.

Expiration Date of Approval: June 30, 2014.

Abstract: The National Science Foundation (NSF) received clearance for the evaluation of the Robert Noyce Teacher Scholarship Program on June 13, 2011 through OMB Control Number: 3145–0217. This included collecting primary data via surveys and interviews with Principal Investigators, Faculty, Noyce Recipients, and K–12 Principals.

The Noyce program operates within NSF's Division of Undergraduate Education, and bridges the higher education and the K–12 system. The Noyce Program encourages talented

ATTACHMENT F

House of Representatives

Atlanta, Georgia

JOHN LINDER
Representative, District 44
5039 Winding Branch Drive
Dunwoody, Georgia 30338
Telephone: 404-642-1663
394-2614

COMMITTEES:
BANKS & BANKING
DEFENSE & VETERANS AFFAIRS
LEGISLATIVE & CONGRESSIONAL REAPPORTIONMENT

November 12, 1987

Honorable Samuel R. Pierce
The Secretary
U. S. Department of Housing and Urban Development
Washington, D.C. 20410-0001

Dear Secretary Pierce,

On April 1 of this year I received a letter from you informing me that I had been selected to serve as a government sector representative on the Department's National Manufactured Home Advisory Council. I nearly declined the selection, as I have done so on other occasions, but since Georgia is such a large player in this market I decided to accept.

I made a mistake. I hereby resign the two year appointment. It would be unfair to do so, though, without sharing with you the reasons for this decision.

I read all of the materials sent to me by the Council. I also read the material from the industry. I expected that there were the makings here of a "turf battle" in the meetings last month. I am familiar with them from my experience as a state representative. Boy was I wrong. This was not a "turf battle". The meeting was an outright assault on the industry for its previous successes in getting OMB to rule against the tougher energy standards proposed by your department for the last three years. (It is worth pointing out here that most of us were kept in the dark regarding this battle. The "undercurrent" was vouchsafed to me over cocktails Thursday evening by one of the cognoscenti.)

The meeting started Thursday on a rude arrogant tone and went downhill from there. A vote to approve the agenda was postponed because a motion was made to amend it. That vote was never taken. A vote on the bylaws was postponed due to a motion to amend them. The chair did not tolerate motions. We were informed, as though we were a nursery school group, that the Secretary and the Chairman set the agenda and the Council had no role in the matter.

The iron fisted, arrogant, one man rule of our chairman could be compared Carl Vinson at the height of his power, but that would be unfair to Carl Vinson. In the hundreds of committee meetings I have attended over the years as a member I have never been so insulted as I was in this meeting.

The entire afternoon on Thursday was spent listening to the Chairman cutting off comments and instructing us on what we could and could not discuss. No comments were allowed from the interested parties in the audience.

Friday things got worse. The agenda appeared in an expanded version. Still no vote. The chairman felt compelled to evaluate and clarify all comments from any sector. He apparently did not believe that the rest of us were equipped to make our own judgements.

Two presentations were given, one to make the preordained point that increased energy standards would actually decrease the cost of a home over its life. Another, by the FHA, to suggest that if energy standards were increased they would finance the homes. In all it was a shoddy exercise to get even with an industry that obviously did not toe the line.

I can understand Mr. Demery's anger at losing in OMB. But I question the Chairman's fairness in stating that the industry did not bargain in good faith when it made its case to OMB. It may be that Mr. Demery believes that his word is the final say. However, there are many opportunities in government to argue one's case. Most of us know that OMB is also a part of the Reagan administration.

I am sure you have more important things to do than listen to this. So do I. That is why I am resigning. It may be that you need mute props to sit in silent witness to this grade B movie being played at the expense of an industry. But count me out. I have more important things to occupy my time.

Sincerely,

John Linder

John Linder

cc: President Reagan
Mr. Thomas T. Demery
Mr. James C. Nistler
Mr. Mark Homan
Members of the Council
Honorable Sam Nunn
Honorable Wyche Fowler
Honorable Pat Swindall

ATTACHMENT G

COALITION TO ADVANCE MANUFACTURED HOUSING

June 1, 2004

ANALYSIS OF HUD'S INTERPRETATION OF THE ROLE AND AUTHORITY OF THE MANUFACTURED HOUSING CONSENSUS COMMITTEE

I. INTRODUCTION

On February 17, 2004, the Manufactured Housing Consensus Committee ("MHCC" or "Committee") established by the Manufactured Housing Improvement Act of 2000 ("2000 Act") wrote to the Secretary of the Department of Housing and Urban Development ("HUD" or "Department") seeking the Department's opinion regarding the scope and extent of the Committee's jurisdiction to initiate or review actions of the Secretary pertaining to the federal regulation of manufactured housing pursuant the National Manufactured Housing Construction and Safety Standards Act of 1974 as amended ("Act"). In relevant part the Committee's letter stated:

> "It is the Committee's opinion that the terms 'procedural and enforcement regulations' cited in subsections 604(b)(1) and (2) and 'procedural or enforcement regulations' cited in subsection (b)(3) refer to "any...regulations, inspections, monitoring or other enforcement activities that constitutes a statement of general or particular applicability to implement, interpret, or prescribe law or policy by the Secretary," as stipulated in subsection (b)(6), and as such, must be submitted to the Committee as per subsection 604(b)(3). * * * The Committee members desire this issue to be resolved and hereby formally request that a definitive interpretation be made by HUD."

(Emphasis in original).

On May 7, 2004, HUD responded to this request with an opinion letter setting forth its official construction of the 2000 Act with respect to the authority of the Committee. The essential thrust of HUD's interpretation is that the jurisdiction of the MHCC is limited to the consideration of (i) construction and safety standards; (ii) procedural and enforcement regulations that "seek to assure compliance with the construction and safety standards;" and (iii) interpretative bulletins construing either the standards or "procedural and enforcement regulations" as defined by HUD under category (ii). HUD's rationale for this interpretation is summarized in its letter as follows:

> "Not all manufactured housing program activities are subject to MHCC review under the section 604 procedures. The scope of section 604 is necessarily limited, since a private body cannot by law perform inherently governmental functions, such as making operational and administrative judgments related to budget requests program expenditures, particular enforcement cases, and procurement decisions. In section 604, Congress provided ... extra-APA [Administrative Procedure Act] procedures only for construction and safety standards, procedural and enforcement regulations, and interpretative bulletins issued to clarify the meaning of any construction and safety standard or procedural and enforcement regulation. * * * Congress did not expressly define 'procedural and enforcement regulations' in section

Manufactured Housing Institute
2101 Wilson Blvd. · Suite 610
Arlington · VA · 22201
703.558.0400 · FAX 703.558.0401
www.mfghome.org

Manufactured Housing Association
For Regulatory Reform
1331 Pennsylvania Avenue · NW · Suite 508
Washington · DC · 20004
202.783.4087 · FAX 202.783.4075

604(b) of the Act or elsewhere. With respect to the manufactured housing program, though, the term 'procedural and enforcement regulations' has historically referred to regulations that seek to assure compliance with the construction and safety standards. It is consistent with the [2000 Act ... to continue to apply the term 'procedural and enforcement regulations' to regulations assuring compliance with the construction and safety standards."

(Emphasis added).

HUD's response, accordingly, construes the role and authority of the MHCC much more narrowly than the Committee itself, as expressed in its inquiry letter of February 17, 2004. HUD asserts that this constrained jurisdiction is consistent with the language and structure of the 2000 Act. A careful analysis of the 2000 Act, however, based on the rules of statutory construction that a court would actually apply in resolving this issue, demonstrates that HUD's interpretation is plainly erroneous and would strip the Committee of authority that Congress clearly intended it to have. Because the Consensus Committee is the cornerstone of the reforms that Congress sought to achieve in the 2000 Act, it is absolutely essential that this matter be addressed properly by HUD.

II. ANALYSIS

As a statutory creation of Congress, the role and jurisdiction of the MHCC is wholly defined by the Act by which it was established. The scope of its jurisdiction is thus determined by the express language of the 2000 Act, according to its plain meaning. See, O'Kane v. Apfel, 224 F.3d 686 (7th Cir. 2000) (When interpreting congressional statutes, Court looks first at the plain language of the statute.) There are, however, judicially-recognized rules of construction that guide the basic analysis of any statute -- several of which are applicable in this instance.

At the outset, courts have universally recognized that a statute must be construed in such a fashion that every word is given effect. See, e.g., United States v. Nordic Village, Inc., 112 S.Ct. 1011, 117 L.Ed. 2d 181 (1992)(Statute must, if possible, be construed in such a fashion that every word has some operative effect); Beisler v. Commissioner of Internal Revenue, 814 F.2d 1304 (9th Cir. 1987)(Court must give effect to all words used by Congress). Furthermore, remedial legislation, such as the 2000 Act, is to be construed liberally, in order to fully effectuate its statutory purpose. See, e.g., Hull Co. v. Hauser's Foods, Inc., 924 F.2d 777 (8th Cir. 1991). Indeed, where a statute, such as the 2000 Act, is passed by Congress to cure a perceived defect in a prior law, such as the non-mandatory nature of the former Advisory Council -- the statutory predecessor to the MHCC -- and HUD's failure to properly consult with it, the curative legislation is entitled to "particular deference." See, Counsel v. Dow, 849 F.2d 731, 738 (2d Cir. 1988). It does not appear, however, that HUD's construction of the 2000 Act comports with any of these requirements.

Insofar as there is no dispute as to the Committee's authority to initiate and review proposed standards, this analysis will focus exclusively on the MHCC's jurisdiction with respect to matters other than federal manufactured home construction and safety standards.[1]

As HUD correctly notes in its document, the jurisdiction of the Consensus Committee regarding matters other than standards, per se, is primarily defined by sections 604(b)(1), (b)(2), (b)(3) and (b)(6) of the 2000 Act. Those sections provide, in relevant part:

---

[1] There can be no dispute, as set forth in greater detail below, that the model installation standard being designed by the Consensus Committee is in fact a "manufactured home construction and safety standard" as defined by the Act and that the MHCC has continuing authority to submit proposals within this area.

"(1) Regulations -
The Secretary may issue procedural and enforcement regulations and revisions to existing regulations as necessary to implement the provisions of this chapter. The consensus committee may submit to the Secretary proposed procedural and enforcement regulations and recommendations for the revision of such regulations.

(2) Interpretative Bulletins -
The Secretary may issue interpretative bulletins to clarify the meaning of any Federal manufactured home construction and safety standard or procedural and enforcement regulation. The consensus committee may submit to the Secretary proposed interpretative bulletins to clarify the meaning of any Federal manufactured home construction and safety standard or procedural and enforcement regulation.

(3) Review by Consensus Committee -
Before issuing a procedural or enforcement regulation or an interpretative bulletin -

(A) The Secretary shall -

(i) submit the proposed procedural or enforcement regulation or interpretative bulletin to the consensus committee; and

(ii) provide the consensus committee with a period of 120 days to submit written comments to the Secretary on the proposed procedural or enforcement regulation or the interpretative bulletin.

(4) Changes -
Any statement of policies, practices, or procedures relating to construction and safety standards, regulations inspections, monitoring, or other enforcement activities that constitutes a statement of general or particular applicability to implement, interpret or prescribe law or policy by the Secretary is subject to subsection (a) of this subsection or this subsection. Any change adopted in violation of Subsection (a) of this section or this subsection is void."
(Emphasis added).

It is important to note that nowhere under section 604 -- (a) or (b) -- may any proposal, recommendation or comment of the MHCC become law or official policy without some further action by the Secretary -- either via approval or modification.

A. The Scope of Section 604 is Not Limited by the Doctrine of Delegation of Governmental Functions

HUD's first argument to constrain the jurisdiction of the Consensus Committee is presented without support as a fait accompli, as follows: "The scope of section 604 is necessarily limited, since a private body cannot by law perform functions, such as making operational and administrative judgments related to budget requests, program expenditures, particular enforcement cases, and procurement decisions."

At the outset, it is inaccurate to characterize the Consensus Committee as a "private body." The Consensus Committee is a statutory Federal advisory committee established by Congress. As an advisory committee, the Consensus Committee is bound not only by the provisions of the 2000 Act, but by the Federal Advisory Committees Act ("FACA") as well, and is not purely "private" in nature.

Regardless of whether the Consensus Committee is "private" or quasi-governmental, however, it is erroneous to assert that the Consensus Committee's authority must be limited under section 604 in order to avoid an improper delegation of governmental authority. The reason, quite simply, is because section 604 does not delegate any final authority to the Consensus Committee on any issue. Even with respect to

construction and safety standards under section 604(a), the role of the Consensus Committee is to submit either its own proposals or comments on proposals made by the Secretary. None of the proposals or comments of the Consensus Committee get to be law or official HUD policy unless they are approved -- either as submitted or modified -- by the Secretary. All final decision-making authority remains with the Secretary. The same is true under section 604(b). All final decision-making authority remains with the Secretary.

Because all final decision-making authority under section 604 is vested in the Secretary, restrictions on the jurisdiction of the Consensus Committee are not necessary to prevent an un-constitutional delegation of inherently governmental authority. The product of the consensus process in all cases is a recommendation to the Secretary, which the Secretary, a governmental official, is free to accept, modify, or reject. Because the Secretary retains this ultimate authority, there is no delegation-based reason to limit the role of the Consensus Committee as HUD attempts to do now. Indeed, at the time the 2000 Act was being crafted by Congress, HUD lobbied against the automatic adoption of MHCC proposals after a set period of time, precisely on the basis of improper delegation. Having succeeded in retaining full final authority, however, HUD now wants to argue that allowing the MHCC to present consensus-developed recommendations regarding budgets, expenditures and contracting, among others, would result in an improper delegation. As long as the Act provides for final HUD authority, though -- which it does -- there is no possibility of an improper delegation on any issue.

Thus, while the Consensus Committee has no proper role within quasi-judicial proceedings conducted by HUD, there is no delegation-based reason for the Committee to be excluded from reviewing or commenting on any of the other quasi-legislative tasks mentioned by HUD, such as budgets, expenditures and procurement issues.

B. The Consensus Committee has Broad Authority Under the 2000 Act to Submit Proposed Regulations and Provide Pre-Promulgation Review and Comment to HUD

Once HUD's unwarranted delegation argument is dispensed with, the authority of the Consensus Committee becomes a pure question of the meaning and construction of the 2000 Act, aided by the judicial cannons of statutory construction.

HUD maintains in its letter that Congress did not expressly define the term "procedural and enforcement regulations" for purposes of section 604(b). In the absence of such a definition, HUD simply declares that "the term 'procedural and enforcement regulation' has historically referred to regulations that seek to assure compliance with the construction and safety standards." HUD buttresses its contention that the Committee may only address regulations seeking to assure compliance with the standards by noting that section 604 is titled "Federal Manufactured Home Construction and Safety Standards." These arguments, however, ignore both the structure of the 2000 Act as well as the impact of seemingly minor, yet significant, language variations in the 2000 Act.

Under section 604(b), the MHCC has two types of powers. The first is the power to propose "procedural and enforcement regulations" and interpretative bulletins. The second is the power to review and comment upon a broad range of program matters (as more fully described below) prior to any official action by HUD regarding such matters.

(1). Power to Propose

Under 604(b)(1) and (b)(2), the MHCC has the authority to propose "procedural and enforcement regulations" and interpretative bulletins clarifying either a standard or a "procedural and enforcement regulation." While the term "procedural and enforcement regulation" is not defined within the 2000 Act, "Manufactured Home Procedural and Enforcement Regulations" is the precise title of the regulations promulgated by HUD at 24 C.F.R. 3282. Congress, under pertinent judicial authority, is presumed to have

had knowledge of these regulations -- and their contents -- when it adopted the 2000 Act. See, Flora-Miramontes v. I.N.S., 212 F.3d 1133 (9th Cir. 2000) (In interpreting statutes, Court of Appeals assumes that Congress knows the law). By using words that are identical to the title of Part 3282, Congress plainly intended for the Consensus Committee to be able to propose regulations concerning any topic or subject addressed by Part 3282, or that properly should be included within Part 3282[2], including, but not limited to: federal preemption; alternative construction; inspection and certification requirements; dealer and distributor (now retailer) responsibilities; State Administrative Agencies; payments to the states; Primary Inspection Agencies; consumer complaint handling; and monitoring, among others. Conversely, there is nothing whatsoever in the 2000 Act which states -- or even suggests -- that Congress intended for the Consensus Committee to be precluded from proposing any regulation that would fall within the scope and purview of the existing "procedural and enforcement regulations," or that Congress when it referred to "procedural and enforcement regulations," intended to refer to anything more restricted than the Part 3282 procedural and enforcement regulations and regulations of the same type implementing new areas of responsibility assigned to HUD and the MHCC under the 2000 Act.

(2). Power of Pre-Promulgation Review and Comment

The second power provided to the MHCC under 604(b) is the pre-promulgation power to review and comment on certain proposed actions of the Secretary. Section 604(b)(3) provides that the Secretary must submit any proposed "procedural or enforcement regulation" or proposed interpretative bulletin to the Committee for review and comments that the Secretary must then consider. Although the Committee in its inquiry letter to HUD noted the distinction between the terms "procedural and enforcement regulations" in 604(b)(1) and (b)(2), and procedural or enforcement regulations" in 604(b)(3), HUD's response letter ignores the distinction between the exact conjunctive reference to Part 3282 "procedural and enforcement regulations" in the sections governing the types of proposals the Committee may submit to the Secretary, and the disjunctive "or" reference to the types of regulations that the Secretary must present to the Committee for review.

One cannot, consistent with the rules of statutory interpretation, simply ignore the distinction between the "and" and "or" language. Significantly, the term "procedural and enforcement" is used in both sections (b)(1) and (b)(2), dealing with proposals that the Committee can initiate, while "procedural or enforcement is used twice in section (b)(3), dealing with regulations and interpretations that must be submitted to the Committee for pre-promulgation review and comment. The use of "and" in two different places and the use of "or" in two different places in 604(b)(3) -- defining a different type of power from 604(b)(1) and (b)(2) -- cannot be presumed to be an accidental drafting error, or somehow irrelevant or meaningless. Rather, the "or" language in section 604(b)(3) must be given its common and ordinary meaning. See, Ruben v. Department of Health and Human Services, 22 Cl. Ct. 264 (1991)(Ordinarily, unless strict grammatical construction frustrates legislative intent, the term "or" in a statute is given a disjunctive interpretation, so that portions of the statute before and after the word "or" are treated as disconnected).

In order to give the word "or" meaning, the necessary conclusion is that the Committee's pre-promulgation review and comment jurisdiction under section 604(b)(3) is broader than its power to propose under sections 604(b)(1) and (b)(2). Under the plain meaning of the word "or," section 604(b)(3) requires the Secretary to submit any proposal dealing with either procedural or enforcement matters to the Committee for review and comment. The Committee's review power, accordingly, is not limited merely to those topics and subjects embraced by the 3282 procedural and enforcement regulations. Rather, it extends to all

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[2] Congress must be presumed to have anticipated that new regulations -- of the same type as already contained in Part 3282 -- designed to implement the new areas of responsibility assigned to HUD by the 2000 Act including, but not limited to, installation and dispute regulation, would likewise be included in Part 3282. Any effort by HUD to codify such procedural and enforcement regulations outside of Part 3282, in order to defeat the jurisdiction of the Consensus Committee, should be rejected by the Committee as contrary to the letter and spirit of the 2000 Act.

regulations relating either to program procedures or enforcement matters. Thus the Committee is entitled to review regulations pertaining to such matters as payments to the states (affects enforcement); installation programs (affects enforcement); dispute resolution (procedural); and the program budget (affects enforcement), among others.

This broad construction of section 604(b)(3) review and comment authority is bolstered and supported by section 604(b)(6), not limited by that section as HUD suggests. HUD asserts that: "The phrase 'construction and safety' at the beginning [of 604(b)(6)] and the phrase "or other enforcement activities at the end...limit the statements that are subject to the section 604(a) or (b) procedures. This limiting language and the context and placement of this section...subject only statements on the construction and safety standards and the enforcement of construction and safety standards to being found void if they are not issued in accordance with the applicable procedures." Once again, in relevant part, 604(b)(6) states:

> "Any statement of policies, practices, or procedures relating to construction and safety standards, regulations, inspections, monitoring or other enforcement activities that constitutes a statement of general or particular applicability to implement, interpret, or prescribe law or policy by the Secretary is subject to subsection (a) of this section or this subsection [(b)]. Any change adopted in violation [of this requirement] is void."

(Emphasis added).

Section (b)(6) was included in 604 to act as a catchall provision. It was intended -- as discussed in negotiations (described in the legislative history of the 2000 Act) that industry and consumer representatives participated in -- to make certain that virtually any change in the policies, practices or procedures of the federal program would be subject to pre-promulgation MHCC review and comment. This addition to the 2000 Act was designed to avoid the repetition of situations in the past that had seen HUD routinely adopt policy and practice changes without public notice or comment. It was intended to ensure at least some level of balanced input by program participants in a broad range of program decisions. Because of this intent, the wording of section (b)(6) is necessarily broad. Its reach extends beyond formal regulations and interpretative bulletins, as addressed in sections (b)(1)-(b)(3), to deal with program "policies, practices and procedures."

HUD makes much of this section as being a limitation, but when reviewed in context, it is extremely broad. Under 604(b)(6) the "policies, practices and procedures" subject to MHCC review need only "relate to" the categories that follow. Put differently, the policy, practice or procedure need only pertain to, impact, affect, or concern the categories that follow. And the categories that follow are broader than the prior language of (b)(1)-(b)(3). Thus, 604(b)(6) refers not to "procedural and enforcement regulations" as in 604(b)(1) and (b)(2) or "procedural or enforcement regulations," as in 604(b)(3), but all regulations, as well as "standards...inspections, monitoring, or other enforcement activities."

Clearly, if Congress had wanted to limit the scope of 604(b)(1)-(b)(3), as HUD contends, it would have placed the limitations within those sections, not in a later section that is clearly designed to be a catchall for various administrative actions that might not fall within the precise definitions of (b)(1)-(b)(3), but that Congress nevertheless believed should be reviewed and commented upon by the MHCC. To suggest that the catchall somehow limits previous sections effectively turns the 2000 Act on its head and subverts its plain language and intent.

C. Limitations on the Committee's Authority Are Not Implicit in Sections 605, 607 or 625

HUD also asserts that Congress' direction to the MHCC in section 605(b)(1) to develop a model installation standard somehow limits its authority. HUD thus states: "Specific statutory authorization for the MHCC's involvement would be unnecessary if Congress intended the MHCC to have a role in every activity under the Act."

The rejoinder to this argument is simple. Installation standards are, by their nature, "standards" pertaining to the performance of a manufactured home. Under section 604(a), the MHCC could have

proposed installation standards on its own irrespective of section 605. Section 605 was included because Congress envisioned a specific timetable and federalism-based approach to the development and implementation of State and federal installation programs that it felt it needed to set out in exacting detail. Again, industry and consumer representatives participated in these discussions. In no way, however, does the specific mandate to the MHCC to develop a model installation standard somehow limit the scope of its authority to propose any new federal standard that it wishes within the statutory definition of "federal manufactured home construction and safety standard." Nor does it have anything to do with the scope of the Committee's pre-promulgation review and comment authority.

HUD similarly contends that the scope of the Committee's authority is limited by section 607(a) of the Act, which states in relevant part:

> "Whenever any manufacturer is opposed to any action of the Secretary under section [604] of this title or under any other provisions of this chapter on the grounds of increased cost or for other reasons, the manufacturer shall submit to the Secretary such cost and other information ... as may be necessary in order to properly evaluate the manufacturer's statement. The Secretary shall submit such cost and other information to the consensus committee for evaluation."

(Emphasis added).

It is difficult to understand HUD's argument on this score because this section requires HUD to convey cost and other information received from manufacturers objecting to an action of the Secretary under section 604 "or any other provision of this chapter" -- that is, to any other provision of the entire Act. If the Consensus Committee did not have broad review and comment jurisdiction, over virtually all program activities, it would have no need for any information pertaining any provision of "this chapter" other than section 604, which addresses standards, regulations and interpretative bulletins. The fact that the Secretary is required to convey information to the Consensus Committee concerning all provisions of the Act is confirmation of the MHCC's broad jurisdiction, not a limitation.

Finally, HUD maintains that Congress' failure to amend section 625 of the Act proves that "Congress did not intend the enhanced rulemaking procedures established in section 604 to apply to every rule issued under the program."

Section 625 simply states: "The Secretary is authorized to issue, amend, and revoke such rules and regulations as he deems necessary to carry out this chapter." Congress did not amend this section because it did not have to. The plain meaning of this section is entirely consistent with section 604 as amended. As noted previously, section 604 vests all final decision-making authority in the Secretary, as it must. The Secretary thus has the final authority to issue amend or revoke every standard or regulation that is part of the program. The Secretary has the power to accept, reject or modify any Committee proposal. All the final authority is the Secretary's, but the Secretary, in exercising that power, must comply with section 604, including, but not limited to, allowing for consensus-developed comments to be presented for his consideration. The power provided to the Secretary in section 625, accordingly, is still there and does not need to be amended. Indeed it cannot be amended. It is simply subject to the procedural requirement of the consensus process. Section 625 contains nothing that is inconsistent with that process.

III. CONCLUSION

The proper functioning of the MHCC is a critical component of the reforms that Congress intended to implement through the 2000 Act. That Act, as demonstrated above, gave the Consensus Committee broad authority, as a balanced representative group, comprised of all interests affected by the federal program, to submit proposals, recommendations and pre-promulgation expert comments to the Secretary. In many respects, the Consensus Committee is the statutory guardian of the national policy objectives that Congress set forth in the new Statement of Purpose contained in the 2000 Act. To restrict the jurisdiction of the Consensus Committee would undermine the fundamental purpose of the 2000 Act -- to transform the

respects, the Consensus Committee is the statutory guardian of the national policy objectives that Congress set forth in the new Statement of Purpose contained in the 2000 Act. To restrict the jurisdiction of the Consensus Committee would undermine the fundamental purpose of the 2000 Act -- to transform the original Manufactured Housing Act from a law designed to regulate "trailers," as a type of specialty vehicle, to a law for housing. The Consensus Committee was designed to open HUD's program activities, standards, regulations, procedures, enforcement, contracting, monitoring, inspections and other facets -- to the maximum extent possible -- to the transparency and accountability of direct participant and public involvement, something that had been largely absent during its first quarter century.

HUD's interpretation of the Committee's authority threatens to undermine its fundamental role as envisioned by Congress. It threatens to remove significant aspects of the program from even so much as the Committee's ability to provide pre-promulgation comments to the Secretary.

HUD should withdraw its interpretation, before it undermines the role and authority of the Consensus Committee and damages the legitimacy of the program itself. Instead, HUD should implement the 2000 Act in the broad and liberal spirit that was intended by Congress.

June 1, 2004

ATTACHMENT H

Manufactured Housing Consensus Committee
NFPA 1 Batterymarch Park Quincy, MA 02269
Phone: + 1(617) 984-7404 *Fax*: +1 (617) 984-7110 www.nfpa.org

February 17, 2004

Honorable Alfonso Jackson
Acting Secretary
Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, DC 20410-8000

Dear Secretary Jackson:

At its December 9-11, 2003, meeting in Phoenix, Arizona, the Manufactured Housing Consensus Committee (hereinafter "Committee") held an informative discussion with the HUD manufactured housing program staff concerning the intent of subsections 604(b)(1), (2), (3) and (6) of the Manufactured Housing Improvement Act of 2000, during which an important issue was left unsettled. These provisions authorize the Secretary to issue procedural and enforcement regulations and revisions to existing regulations, as well as interpretative bulletins, as necessary to implement the provisions of this title. These same provisions also authorize the Committee to submit proposed procedural and enforcement regulations and recommendations for revisions of such regulations as well as proposed interpretative bulletins to clarify the meaning of any Federal manufactured home construction and safety standard or procedural and enforcement regulation. Subsection 604(b)(3) provides, among other things, that before issuing a procedural or enforcement regulation or an interpretative bulletin, the Secretary shall submit the proposed procedural or enforcement regulation, or interpretative bulletin, to the Committee and provide the Committee with a period of 120 days to submit written comments to the Secretary.

It is the Committee's opinion that the terms "procedural and enforcement regulations" cited in subsections 604(b)(1) and (2) and "procedural or enforcement regulations" cited in subsection 604(b)(3) refer to "any... regulations, inspections, monitoring or other enforcement activities that constitutes a statement of general or particular applicability to implement, interpret, or prescribe law or policy by the Secretary," as stipulated in subsection 604(b)(6), and as such, must be submitted to the Committee as per subsection 604(b)(3). This opinion could neither be confirmed nor refuted by HUD staff during the discussion.

The Committee members desire this issue to be resolved and hereby formally request that a definitive interpretation be made by HUD. On behalf of the entire Committee and in my capacity as Chairman, this letter seeks your interpretation of the Committee's understanding of subsection 604(b) the Act, as outlined in the above paragraphs.

This letter has been considered by the full Committee at its meeting held by teleconference on February 13, 2004, where it was voted unanimously to submit the letter in accordance with the Committee's Bylaws.

Sincerely,

Dana C. Roberts, Chairman
Manufactured Housing Consensus Committee

ATTACHMENT I

Manufactured Housing Consensus Committee
NFPA 1 Batterymarch Park Quincy, MA 02269
Phone: + 1(617) 984-7404 *Fax*: +1 (617) 984-7110 www.nfpa.org

August 13, 2004

William A. Matchneer
US Department of Housing and Urban Development
Robert C. Weaver Building
451 Seventh St., SW
Washington, DC 20410

Dear Mr. Matchneer:

During the August 2004 meeting of the MHCC, the Committee endorsed a resolution put forth by the Manufactured Housing Association for Regulatory Reform (MHARR). This resolution concerns the departments interpretation of Section 604(b) of the Manufactured Housing Improvement Act (MHIA) of 2000. Seventeen voting members of the MHCC were present and they voted 13-4 to endorse the resolution during a roll call vote on 11 August 2004.

At the request of the MHCC, the resolution is enclosed for the departments review and potential action. Thank you for your time in this matter.

Sincerely,

8 13 04

Robert E. Solomon, P.E.
Assistant Vice President – NFPA
Project Manager, Manufactured Housing Improvement Act
Administering Organization

RES:jtm

C: MHCC

Enclosure: MHARR Resolution

RESOLUTION

WHEREAS, the Manufactured Housing Consensus Committee ("MHCC") requested by letter dated February 17, 2004 that HUD clarify the scope of the MHCC's authority under section 604(b) of the Manufactured Housing Improvement Act of 2000 ("2000 Act") regarding consensus consideration of proposed regulations and other matters affecting the federal regulatory program for manufactured housing; and

WHEREAS, HUD, on May 7, 2004, issued a written interpretation of the 2000 Act limiting the MHCC's authority to the consideration of proposed standards and regulations directly affecting the enforcement of the standards, but simultaneously stating that HUD would voluntarily consult the MHCC on certain other matters; such as the development of a model national installation standard; and

WHEREAS, the MHCC believes that HUD and the federal manufactured housing program would benefit from consensus-developed recommendations regarding other regulations and other matters as envisioned by Congress, such as budgeting, contracting, priorities for services and updating regulations, among others; and

WHEREAS, the MHCC believes that there is a clear congressional intent and legal basis in the 2000 Act for the MHCC to participate in reviewing HUD proposals and providing consensus-developed recommendations concerning such other regulations and matters;

NOW BE IT RESOLVED by the MHCC that the Department of Housing and Urban Development should withdraw its May 7, 2004 interpretation of the scope of the MHCC's authority and issue a revised interpretation that is consistent with the 2000 Act and Congress' intent regarding the full scope of that authority.

ATTACHMENT J

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

RECD MAY 12 2004

MAY 7 2004

Mr. Dana C. Roberts
Chairman
Manufactured Housing Consensus Committee
National Fire Protection Association
1 Batterymarch Park
Quincy, MA 02269-7422

Dear Mr. Roberts:

On behalf of Secretary Jackson, thank you for your letter from the Manufactured Housing Consensus Committee (the MHCC or Committee) concerning the working relationship between the Department of Housing and Urban Development and the MHCC, and various provisions in section 604 (42 U.S.C. 5403) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act), as amended by the Manufactured Housing Improvement Act of 2000 (the MHI Act).

As Assistant Secretary Weicher stated at several points during the Roundtable discussion on April 20, 2004, he and the HUD manufactured housing program staff are committed to working as partners with the Committee on a broad range of issues affecting the manufactured housing program and the Department's administration of it. Since final appointment of the initial members and the filing of the necessary documentation to establish the MHCC, HUD has funded at a cost of approximately $215,000, and directly or indirectly provided technical and legal support for seven face-to-face full committee meetings and 31 committee and subcommittee meetings by conference calls.

Through MHCC meetings, the Department has received key programmatic and practical input from the MHCC and its individual members not only on construction and safety standards and installation standards as mandated by the Act, but also in areas such as preemption of State and local requirements and the installation and dispute resolution programs. HUD has also sought input from the MHCC pursuant to section 604(b) for proposed rules on On-Site Construction and Fees Paid to the States. As I assume the position of Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Assistant Secretary Weicher, the program staff, and I look forward to developing and improving our working relationship with the Committee to help expand the range of affordable, quality housing available to all Americans.

The Committee has raised important questions concerning its statutory role under the Act. I am pleased to respond.

Overview of Section 604 Rulemaking Procedures

In section 604 of the Act, Congress provided special rulemaking processes for revisions to construction and safety standards and for issuance of procedural and enforcement regulations and interpretative bulletins. The provisions adopted by Congress in section 604 supplement the requirements of the Administrative Procedure Act (the APA). The usual APA rulemaking requirements continue to apply to every rulemaking under the Act, including those where the enhanced procedures in section 604 apply.

Not all manufactured housing program activities are subject to MHCC review under the section 604 procedures. The scope of section 604 is necessarily limited, since a private body cannot by law perform inherently governmental functions, such as making operational and administrative judgments related to budget requests, program expenditures, particular enforcement cases, and procurement decisions. In section 604, Congress provided the extra-APA procedures only for construction and safety standards, procedural and enforcement regulations, and interpretative bulletins issued to clarify the meaning of any construction and safety standard or procedural and enforcement regulation. Through your letter, the MHCC provided its opinion of the meaning of the terms "procedural and enforcement regulations" and "procedural or enforcement regulations," and requested HUD's interpretation of these terms.

Congress did not expressly define "procedural and enforcement regulations" in section 604(b) of the Act or elsewhere. With respect to the manufactured housing program, though, the term "procedural and enforcement regulations" has historically referred to regulations that seek to assure compliance with the construction and safety standards. These generally have been codified in 24 CFR part 3282, long-titled "Manufactured Home Procedural and Enforcement Regulations." Further, Congress placed the new rulemaking requirements in section 604, which is entitled "Federal Manufactured Home Construction and Safety Standards."

It is consistent with the MHI Act, therefore, to continue to apply the term "procedural and enforcement regulations" to regulations assuring compliance with the construction and safety standards. This is borne out by the legislative history of the MHI Act, which describes the consensus committee as being "designed to develop and recommend additions, revisions, and interpretations to the Federal Manufactured Home Construction and Safety Standards and enforcement regulations to the Secretary of HUD." (House Report 106-553, page 68.)

Section 604(b)(6)

The Department's interpretation of the applicability of the section 604(b)(2)-(b)(3) procedures is fully consistent with section 604(b)(6). This section clarifies that statements that are APA-like rules on the construction and safety standards and regulations, inspections, monitoring, or other activities for enforcement of the construction and safety standards must be issued under the additional MHCC prepublication review-and-comment procedures, or the statements will be void. Section 604(b)(6) provides:

> **Changes.** Any statement of policies, practices, or procedures relating to construction and safety standards, regulations, inspections, monitoring, or other enforcement activities that constitutes a statement of general or particular applicability to implement, interpret, or prescribe law or policy by the Secretary is subject to subsection (a) or [subsection (b)]. Any change adopted in violation of subsection (a) or [subsection (b)] is void.

Before any statement is subject to either section 604(a) or section 604(b), section 604(b)(6) specifies the statement must relate to "construction and safety standards, regulations, inspections, monitoring or other enforcement activities" and must "constitute[ ] a statement of general or particular applicability to implement, interpret, or prescribe law or policy." The "constitute a statement of general or particular applicability" language is basically the language used to define a "rule" under the APA, at 5 U.S.C. 551. Therefore, in addition to applying only when the statement is significant enough to be deemed a rule under the APA, section 604(b)(6), by its terms, applies only if the statement relates to "construction and safety standards, regulations, inspections, monitoring, or other enforcement activities."

The phrase "construction and safety" at the beginning, and the phrase "or other enforcement activities" at the end of the language quoted above limit the statements that are subject to the section 604(a) or (b) procedures. This limiting language and the context and placement of this section (the title and subject matter of section 604 is Federal Manufactured Home Construction and Safety Standards) subject only statements on the construction and safety standards and the enforcement of construction and safety standards to being found void if they are not issued in accordance with the applicable procedures.

Other Roles for the Committee Under the Act

In the MHI Act, Congress also specified roles for the MHCC beyond the construction and safety standards and their enforcement. Under section 605(b)(1), the MHCC is required to develop and submit to the Department proposed model manufactured home installation standards. This is an important responsibility, and the Department appreciates the hard and valuable work of the Committee on the installation standards. Further, so it can evaluate cost and other information, the Committee is presented with such information as is submitted to HUD by a manufacturer opposed to any action of the Secretary under the Act. HUD is required to submit this information to the MHCC under section 607(a). The references to the MHCC in sections 605 and 607 further delineate the Committee's authority, and indicate that the procedures of section 604 are limited to construction and safety standards and the enforcement of construction and safety standards. Specific statutory authorization for the MHCC's involvement in these two areas would be unnecessary if Congress intended the MHCC to have a role in every activity under the Act.

HUD will continue to take seriously the thoughts and recommendations from the MHCC regarding any manufactured housing regulation. As noted previously, the Department has evidenced its confidence in the MHCC and its desire to draw on the expertise of the Committee by seeking its views in areas not specifically required by the statute, such as the preemption of State and local requirements, the installation program, and the dispute resolution program.

Section 625 Rulemaking and Other Areas of Rulemaking Under the Act

Congress did not intend the enhanced rulemaking procedures established in section 604 to apply to every rule issued under the program. In amending the Act, Congress did not revise the Secretary's general rulemaking authority under section 625. The retention of broad rulemaking authority in section 625 indicates that Congress intended a distinction between regulations using section 604 procedures, and regulations related to other program activities that would still be issued under section 625 authority.

In addition, Congress specifically carved out other areas of rulemaking that are outside the section 604 processes. For example: modification of the amount of the fee (section 620(d)(2) of the Act, "pursuant to rulemaking in accordance with section 553 of title 5, United States Code"); establishment of the dispute resolution program (section 623(g)(1), "after notice and opportunity for public comment in accordance with section 553 of title 5, United States Code"); and establishment of the installation standards (section 605(b)(4), after receiving proposed model standards submitted by the consensus committee and "notice and opportunity for public comment in accordance with section 553 of title 5, United States Code").

Section 604(b)(1) underscores the broad authority given HUD and the narrower scope of the MHCC's activities. By authorizing the Secretary "to issue procedural and enforcement regulations and revisions to existing regulations as necessary to implement the provisions of this title," the first sentence of 604(b)(1) reiterates part of the Secretary's general rulemaking authority under section 625 to implement the entire Act. The second sentence of section 604(b)(1) does not confer to the MHCC this broad scope of authority to address the entire Act, but refers only to the MHCC's authority to recommend "procedural and enforcement regulations and recommendations for the revision of such regulations."

Conclusion

As directed by Congress, the Department has followed, and will continue to follow, the section 604(a) procedures for each rulemaking relating to MHCC recommendations for proposed revised construction and safety standards, and the section 604(b) procedures for issuance of each procedural and enforcement regulation and each interpretative bulletin that clarifies the meaning of any construction and safety standard or procedural and enforcement regulation. The only exceptions will be if the Secretary determines that the Department should take a particular action under the procedures established in section 604(b)(5) for extraordinary situations.

In addition, with the Committee's assistance, we will continue to look for other ways to cooperate and increase the flow of information between the Department and the Committee. In particular, because of the constraints on both the MHCC and HUD in the language in section 604(a) of the Act, we will need to work together to refine an effective method for timely revising the construction and safety standards and publishing the revisions in final rules.

Assistant Secretary Weicher appreciates the efforts made by the MHCC to understand its statutory role, and the sacrifices made by members of the MHCC to participate in the consensus process. At the same time, we understand your concerns regarding the level of coordination between HUD and the Committee. The Committee's work is extremely valuable and we look forward to working together to improve coordination and improve the regulation of the manufactured housing industry.

Sincerely,

Gary M. Cunningham
Deputy Assistant Secretary for Regulatory Affairs
and Manufactured Housing

ATTACHMENT K

& Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 141–301 for use of TOPMAX (ractopamine hydrochloride) and COBAN (monensin, USP) single-ingredient Type A medicated articles to formulate two-way combination Type C medicated feeds for finishing hen and tom turkeys. The NADA is approved as of December 11, 2009, and the regulations in 21 CFR 558.500 are amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.500, add paragraphs (e)(3)(iii) and (e)(3)(iv) to read as follows:

§ 558.500 Ractopamine.

* * * * *

(e) * * *

(3) * * *

Ractopamine in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(iii) 4.6 to 11.8 (5 to 13 ppm)	Monensin 54 to 90	Finishing hen turkeys: As in paragraph (e)(3)(i) of this section; and for the prevention of coccidiosis in growing turkeys caused by *Eimeria adenoeides*, *E. meleagrimitis* and *E. gallopavonis*.	Feed continuously as sole ration during the last 7 to 14 days prior to slaughter. See § 558.355(d).	000986
(iv) 4.6 to 11.8 (5 to 13 ppm)	Monensin 54 to 90	Finishing tom turkeys: As in paragraph (e)(3)(ii) of this section; and for the prevention of coccidiosis in growing turkeys caused by *Eimeria adenoeides*, *E. meleagrimitis* and *E. gallopavonis*.	Feed continuously as sole ration during the last 14 days prior to slaughter. Feeding ractopamine to tom turkeys during periods of excessive heat can result in increased mortality. See § 558.355(d).	000986

Dated: February 1, 2010.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–2427 Filed 2–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3280 and 3282

[Docket No. FR–5343–IN–01]

RIN 2502–AI77

Federal Manufactured Home Construction and Safety Standards and Other Orders: HUD Statements That Are Subject to Consensus Committee Processes

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interpretive rule.

SUMMARY: The National Manufactured Housing Construction and Safety Standards Act of 1974 provides that certain classes of statements by HUD relating to manufactured housing requirements are subject to proposal, review, and comment processes involving a consensus committee. The consensus committee includes representatives of manufactured housing producers and users, as well as general interest and public officials. This rule interprets the statutory requirement to clarify the types of statements that are subject to the proposal, review, and comment processes.

DATES: *Effective Date:* February 5, 2010.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9164, Washington, DC 20410; telephone number 202–708–6401 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) ("the Act"), as amended by the Manufactured Housing Improvement Act of 2000 (Title VI, Pub. L. 106–659), provides for the establishment and revision of Federal construction and safety standards for manufactured housing, as well as for procedural and enforcement regulations and interpretive bulletins related to implementation of these standards.

Section 604(a) of the Act provides, among other things, the process for the development, proposal, and issuance of revisions of Federal construction and safety standards, which govern the construction, design, and performance of a manufactured home. Section 604(a) establishes a consensus committee, which is comprised of representatives of manufactured housing producers and

users, as well as general interest and public officials. Section 604(a)(3)(A) provides that the consensus committee shall:

(i) Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured 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 regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b) of this section;

(iii) Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation; and

(iv) Be deemed to be an advisory committee not composed of Federal employees. HUD has by regulation expanded the role of the consensus committee beyond that required under the Act. Although the Act provided that the consensus committee was to develop the original proposed model installation standards for manufactured housing, HUD has provided in 24 CFR 3285.1(c) that whenever HUD proposes to revise the model installation standards, it will also seek input and comment from the consensus committee. Similarly, HUD has provided in 24 CFR 3288.305 that it will seek input from the consensus committee whenever it proposes to revise the manufactured housing dispute resolution regulations.

In accordance with section 604(a) of the Act, the consensus committee may submit to HUD proposals to revise the Federal construction and safety standards, and HUD may either publish recommended standards for notice and public comment, or publish a standard along with its reasons for rejecting the standard. Upon consideration of any public comments, the consensus committee must provide HUD with any proposed revised standards, which HUD must in turn publish with either a description of the circumstances under which the proposed revised standard could become effective or, alternatively, HUD's reasons for rejecting the proposed revised standard. HUD must then adopt, modify, or reject any proposed standards through procedures and within the time frames specified in subsection 604(a).

Section 604(b) of the Act provides, among other things, the process for issuance of "other orders," which consist of procedural and enforcement regulations and interpretive bulletins. Interpretive bulletins clarify the meaning of Federal manufactured home construction and safety standards, procedural regulations, and enforcement regulations. Before HUD issues a procedural regulation, enforcement regulation, or interpretive bulletin, it must submit its proposed regulation or interpretive bulletin to the consensus committee for review and comment. HUD may accept or reject any consensus committee comments, but upon doing so, it must publish for public notice and comment the proposed regulation or interpretive bulletin, along with the consensus committee's comments and HUD's responses to the consensus committee's comments. The consensus committee may also submit its own proposed procedural regulations, enforcement regulations, and interpretive bulletins to HUD. Upon receiving such a proposal from the consensus committee, HUD must either approve the proposal and publish it for public notice and comment, or reject the proposal and publish it along with its reasons for the rejection and any recommended modifications.

Section 604(b)(6) of the Act is entitled "Changes" and reads in its entirety as follows:

> Any statement of policies, practices, or procedures relating to construction and safety standards, regulations, inspections, monitoring, or other enforcement activities that constitutes a statement of general or particular applicability to implement, interpret, or prescribe law or policy by the Secretary is subject to [section 604(a)] or this [section 604(b)]. Any change adopted in violation of [section 604(a)] or this [section 604(b)] is void.

Some questions have arisen within the consensus committee over what statements by HUD fall within the scope of section 604(b)(6). For example, some have asserted that the consensus committee has broad jurisdiction and authority over all aspects of HUD's manufactured housing program, such that HUD's internal budgets, contract decisions, and determinations whether to take enforcement action must be made or approved in advance by the consensus committee. HUD is concerned that such assertions may lead to confusion among members of the public, which is routinely invited to attend consensus committee meetings, with regard to the consensus committee's role. Accordingly, HUD is issuing this interpretive rule to clarify the scope of section 604(b)(6)'s coverage.

II. This Interpretive Rule

This rule interprets the scope of section 604(b)(6) to clarify the types of statements by HUD to which the section applies. HUD notes that in specifying which statements "relating to construction and safety standards, regulations, inspections, monitoring, or other enforcement activities" are subject to section 604(a) or (b), section 604(b)(6) uses language that is nearly identical to that found in the Administrative Procedure Act's (5 U.S.C. 551 *et seq.*) (the APA) definition of a "rule." The APA definition states, in pertinent part:

> "Rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." (5 U.S.C. 551(4))

Over the 63 years since enactment of the APA, courts have developed extensive case law interpreting the APA's definition of a rule. (*See, e.g.,* Jeffery S. Lubbers, *A Guide to Federal Agency Rulemaking,* 4th ed., (2006), pp. 49–126.) HUD will not attempt to summarize this case law in this interpretive rule, but views section 604(b)(6) as demonstrating Congress's intent to incorporate the APA's definition of a rule as developed by the courts, except to the extent that section 604(b)(6) deviates substantively from the APA definition. HUD notes that the only substantive difference between the scope of section 604(b)(6) and the APA's definition of a rule is that section 604(b)(6) excludes from coverage statements describing agency organization. Although section 604(b)(6) does not repeat the APA definition's express provision that the statement be one "of future effect," HUD does not interpret this difference as a substantive one, since virtually any statement that "implements, interprets, or prescribes law or policy" is necessarily a statement of future effect. Finally, the scope of section 604(b)(6) is limited by its own terms to statements relating to manufactured housing "construction and safety standards, regulations, inspections, monitoring, or other enforcement activities" that amount to a "change." Statements relating to other matters, including interpretation of other matters covered by the Act, statements that merely summarize or repeat the substance of prior statements or practices, and statements that merely provide guidance, are beyond the scope of section 604(b)(6).

Accordingly, HUD interprets the scope of section 604(b)(6) to include only statements by HUD that:

(1) Relate to manufactured housing construction and safety standards, regulations, inspections, monitoring, or other enforcement activities;

(2) Meet the definition of a "rule" under the APA and applicable case law, except that statements describing agency organization are not included; and

(3) Constitute a change from prior HUD statements or practice on the same subject matter.

III. Findings and Certifications

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

List of Subjects

24 CFR Part 3280

Fire prevention, Housing standards.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements.

Dated: January 27, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–2571 Filed 2–4–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–8115]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.**

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

ATTACHMENT L

CC 61271 [illegible]

U. S. Department of Housing and Urban Development
Washington, D.C. 20410-0500

OFFICE OF GENERAL COUNSEL

February 9, 1995

MEMORANDUM FOR: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner, H

FROM: Nelson A. Díaz, General Counsel, C

SUBJECT: Authority of States Under the National Manufactured Housing Construction and Safety Standards Act of 1974 to Require the Placement of Sprinklers in Manufactured Homes

INTRODUCTION:

This memorandum is in response to your December 29, 1994, request for advice and guidance from the Office of General Counsel as to whether states and localities can enact laws requiring sprinklers in manufactured homes built under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., ("Act").

ISSUES PRESENTED:

1. Are states and localities preempted from requiring sprinklers in manufactured homes built under the Manufactured Home Construction and Safety Standards ("Federal Standards")?

2. If states are not preempted from requiring sprinkler systems, do the states have the authority to single out manufactured housing by requiring that only manufactured housing have sprinkler systems?

SUMMARY OF FINDINGS AND OPTIONS:

1. Subpart C of the Federal Standards, which contains the fire safety standards, has no provisions directly addressing sprinkler systems or categories that would include sprinkler systems. Since the Federal Standards do not cover that aspect of performance in manufactured homes, the states may establish such requirements until the Department establishes standards. The Department has the option to allow states to adopt such requirements or can enact specific Federal Standards that will result in preemption. The specific standard could be as simple as stating that sprinkler systems are not required in manufactured homes or could provide for optional use of sprinklers.

2. Under Section 623(a) of the Act, any state may assert jurisdiction under state law over any manufactured home construction or safety issue with respect to which no Federal Standard has been established. Accordingly, a state could direct that only manufactured homes contain sprinklers. However, the Department has the option to enact a standard concerning sprinkler systems. If the Department does enact such a standard, a state would not be authorized to assert jurisdiction over sprinklers in manufactured homes regardless of the state's regulation of sprinklers in other forms of housing.

LEGAL ANALYSIS:

1. Do the Federal Standards Preempt State Sprinkler Requirements?

Federal law may preempt state law in any of three ways.[1] First, Congress may explicitly define the extent to which it intends to preempt state law. Second, even in the absence of express preemptive language, Congress may indicate an intent to occupy an entire field of regulation, in which case the states must leave all regulatory activity in that area to the Federal Government. Finally, if Congress has not displaced state regulation entirely, it may nonetheless preempt state law to the extent that the state law actually conflicts with the federal law. Such a conflict arises when compliance with both state and federal law is impossible, or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

In Section 604(d) of the Act, 42 U.S.C. § 5403(d), Congress explicitly defined the extent to which it intended that the Federal Standards preempt state standards. In that section, Congress stated the following:

> Whenever a Federal manufactured home construction and safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such home which is not identical to the Federal manufactured home construction and safety standard. (Emphasis added).

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[1] See Michigan Canners & Freezers Ass'n v. Agricultural Marketing and Bargaining Board, 467 U.S. 461, 469 (1984).

From the language used in Section 604(d), it is clear that Congress did not intend to occupy the entire field of regulation for manufactured housing. Instead, a state construction and safety standard relating to manufactured housing is preempted only where there exists a nonidentical Federal Standard applicable to the "same aspect of performance." Therefore, the issue presented to the Department is whether there is a Federal Standard applicable to the same aspect of performance of a state requirement for sprinkler systems in manufactured homes.

No federal court cases involving the Act have addressed what constitutes the same aspect of performance. However, federal courts, in two important cases, have interpreted the term "aspect of performance" as used in the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. § 1381 et seq. ("NTMVSA"). The NTMVSA was the statute from which the National Manufactured Housing Construction and Safety Standards Act of 1974 was modeled and contains the same preemption language.[2] The cases involving preemption under the NTMVSA are Chrysler Corp. v. Rhodes, 416 F.2d 319 (1st Cir. 1969) and Chrysler Corp. v. Tofany, 419 F.2d 499 (2nd Cir. 1969).

In Rhodes the question was whether a New Hampshire regulation prohibiting the sale of cars equipped with a "Super Lite" as a supplementary light for night driving was preempted by standards under the NTMVSA that regulated "lamps, reflective devices, and associated equipment." The NTMVSA standards had no provisions directly addressed to the "Super Lite." Chrysler, however, claimed that the New Hampshire regulation was preempted by the standards and the NTMVSA. It argued that the "purpose and scope" section of the standards established the "aspect of

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[2] Section 102(d) of the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. § 1392(d), provides the following:

> Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment, any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard.

performance" for purposes of preemption under the NTMVSA.[3] The Court rejected Chrysler's argument and held that,

> [w]hile the purpose and scope section of a federal standard may well be a starting point in defining `aspect of performance,' the inquiry cannot end there. In [the Court's], view, resort must be had to specific requirements and categories of the standard in order to give meaning to the vaguely-worded purpose and scope provision." 416 F.2d at 325.

The Court, finding no specific requirements and categories which would encompass the "Super Lite," held that the New Hampshire regulation was not preempted. Id.

Tofany was related to Rhodes, but was heard before the Second Circuit Court of Appeals. Again, the issue centered around the "Super Lite" and New York and Vermont's attempt to restrain the sale of vehicles equipped with it. Chrysler, in addition to its previous argument, urged that Congress' primary objective in adopting the NTMVSA was uniformity of regulation. Again, the Court rejected this argument and said that, although uniformity through national standards is desirable, it is a secondary objective when the intent of the NTMVSA is to reduce traffic accidents. If safety is furthered by a traditional type of state regulation under the police power, a narrow construction of the preemptive effect of the NTMVSA and its standards is required. 419 F.2d at 511. Unlike the First Circuit in Rhodes, the Second Circuit was willing to concede that the NTMVSA standards did cover the "Super Lite," but held that the coverage was severely limited by the specific standards. They held that the NTMVSA standard was concerned with the effects of the "Super Lite" on the operation of the lights required on the vehicle and not with the effects of the "Super Lite" on drivers of other vehicles. Since the latter was the basis of concern for the New

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[3] The "Purpose and Scope" section of the applicable NTMVSA standards reads as follows:

> This standard specifies requirements for lamps, reflective devices, and associated equipment, for signalling and to enable safe operation in darkness and other conditions of reduced visibility.

Chrysler argued that the "aspect of performance" addressed by the NTMVSA standard was "safe operation in darkness." Chrysler claimed that the New Hampshire regulation covering the Super Lite was preempted because it also related to safe operation in darkness.

York and Vermont regulations and since these regulations furthered Congress' intent under the NTMVSA, the state regulations were not preempted. Id. at 510-511

By analogy to the NTMVSA, a conclusion can be drawn on the effect of the term "aspect of performance" in the preemption section of National Manufactured Housing Construction and Safety Standards Act of 1974. 24 C.F.R. § 3280.201 of the Federal Standards provides the "scope" of the standards relating to fire safety by stating the following:

> The purpose of [the] subpart is to set forth requirements that will assure reasonable fire safety to occupants by reducing fire hazards and by providing measures for early detection.

Even though the stated purpose of the subpart is to set forth requirements to "assure reasonable fire safety," the rest of Subpart C, which contains the fire safety standards, has no provisions directly addressing sprinkler systems. Moreover, the fire safety standards fail to contain even a category that could be interpreted to include sprinkler systems such as "fire extinguishing equipment." Instead of extinguishing or subduing fires, the Federal Standards, as noted above, are concerned with "reducing fire hazards" and "providing measures for early detection."[4] Because the Federal Standards fail to contain specific requirements or categories relating to sprinklers and because the Federal Standards' basic concerns are with reducing fire hazards and providing measures for early detection instead of fire extinguishment, the Federal Standards would not preempt a state requirement for sprinklers under the tests set forth in Rhodes and Tofany.

In addition to the explicit limits of preemption set by Congress in the Act, Congress stated that the purpose of the Act is "to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents. . . ." 42 U.S.C. § 5401. A state requirement for sprinklers in manufactured homes would not frustrate that purpose or stand as an obstacle to the

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[4] The limit of the scope and categories contained in the Federal Standards for fire safety standards is further noted in the subsection titles for Subpart C. Those pertinent subsection titles are as follows: Sec. 3280.203, Flame-spread limitations and fire protective requirements; Sec. 3280.204, Kitchen cabinet protection; Sec. 3280.205, Carpeting; Sec. 3280.206, Firestopping; Sec. 3280.207, Requirements for foam plastic thermal insulating materials; Sec. 3280.208, Fire detection equipment; and Sec. 3280.209, Fire testing.

accomplishment and execution of the full purposes and objectives of Congress under the Act. Nor would it be impossible for a manufacturer to comply with both the Federal Standards and a state requirement for sprinklers in manufactured homes. Accordingly, such a state requirement is not preempted by the Federal Standards.

A letter from one of the manufactured housing industry's trade associations, the Association for Regulatory Reform ("ARR"), was included in the materials attached to your request for advice on this issue. ARR's letter responded to the Department's letter to West Stockbridge, Massachusetts, concerning that town's interest in requiring sprinklers in manufactured homes. In doing so, the ARR letter criticized the Department's reliance on Rhodes and Tofany and offered a case decided under the Act by the Wisconsin Court of Appeals. The case, captioned Liberty Homes v. Dept. of Industry, 374 N.W.2d 142 (Wis. App. 1985), aff'd, Liberty Homes, Inc. v. Dept. of Industry, (Wis. 1987)[5], was offered as proof that state sprinkler requirements should be preempted under the Act. We disagree that Liberty provides better guidance on this issue than Rhodes and Tofany.

In Liberty, the Wisconsin Court of Appeals decided a preemption issue that involved a rule issued in 1980 by the Wisconsin Department of Industry, Labor and Human Relations ("DILHR"). The rule established a 0.4 parts per million ("ppm") maximum permissible formaldehyde concentration in the ambient indoor air of new manufactured homes offered for retail in the State of Wisconsin. It also required that tests be performed inside manufactured homes to determine the presence and concentration of formaldehyde. Homes were to be tested with carpeting, furniture, draperies and other furnishings, which might emit formaldehyde, in place. The pertinent issue before the Wisconsin Court was whether the Wisconsin formaldehyde standards were preempted by the new Federal Standards on formaldehyde subsequently issued by the Department.

In 1985, the Department's formaldehyde standards went into effect. Like the Wisconsin standards, the Federal Standards were also concerned about the indoor ambient level of formaldehyde. However, the Federal Standards regulated the emission rates of

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[5] Contrary to ARR's assertion, the Supreme Court of Wisconsin did not address the issue of preemption and the interpretation of "aspect of performance." The court affirmed the lower court's method of reviewing the validity of the state agency's rulemaking process.

plywood and particle board materials[6] by requiring testing of plywood and particle board products in chambers before the products are incorporated into the structure of manufactured home. 24 C.F.R. § 3280.406. When adopting the formaldehyde standards, the Department specifically stated that, "[i]t is HUD's intention that these standards preempt State and local formaldehyde standards in accordance with the Act (42 U.S.C. 5403(d))." 49 Fed. Reg. 31996 at 31997 (August 9, 1984).

In the Liberty case, DILHR argued that the Court should adopt a narrow reading of the phrase "same aspect of performance."[7] 374 N.W.2d at 153. DILHR emphasized the facial differences between the Wisconsin and Federal Standards. They noted that the Wisconsin standard regulated the concentration of formaldehyde inside a manufactured home, while the Federal Standards did not. Nor did the Federal Standards attempt to regulate all manufactured products which contribute to formaldehyde emissions.

The Wisconsin Court of Appeals held that the narrow reading of the "same aspect of performance" test is inconsistent with the intent of Congress regarding the scope of the Federal Standards.[8] The Court noted that the narrow reading proposed by DILHR "fails adequately to recognize that the Department's announced goal is the same as Wisconsin's: an indoor ambient formaldehyde level not exceeding .4 parts per million." 374 N.W. 2d at 154. The distinguishing factor the Court found was that the state would attain that goal by directly prohibiting a higher

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[6] The HUD standards set limits of 0.2 parts per million emission of formaldehyde from plywood and 0.3 parts per million emission of formaldehyde from particleboard.

[7] The Wisconsin Court mentions Rhodes and Tofany as a footnote, implying that DILHR relied on the cases for its argument. However, the Court did not go into a detailed analysis of the cases. It merely stated that it had found two cases interpreting "same aspect of performance" in other federal statutes, cited the cases and further stated, "[t]he Tofany court split on the question whether that phrase should be interpreted narrowly or broadly for purposes of determining the preemptive effect of regulations." 374 N.W.2d 153, note 9.

[8] As a basis for this statement, the Wisconsin Court quoted 42 U.S.C. § 5403(a), which requires HUD to adopt manufactured home standards that "shall be reasonable and shall meet the highest standards of protection, taking into account existing State and local laws relating to manufactured home safety and construction." The Court then said, "If HUD adopts standards of protection meeting those requirements, no room is left for a state standard addressing the same problem." 374 N.W.2d at 154.

concentration in the ambient air when the Department believed that its product standards would result in a 0.4 ppm indoor level.[9] Id. The Court concluded that the Department and Wisconsin had "adopted standards regarding construction or safety applicable to `the same aspect of performance' of manufactured homes. . . ." Id. Because the state and Federal Standards were not identical, the Court found the Federal Standards nullified the state standards after the Federal Standards went into effect.

The Liberty case does not dispose of the issue at hand. The Department expressly stated that by issuing the formaldehyde standards it intended to "preempt State and local formaldehyde standards in accordance with the Act (42 U.S.C. 5403(d))." 49 Fed. Reg. at 31997. No such comment was made in the Federal Register when the fire safety standards were first published as a Final Rule, 40 Fed. Reg. 40261 (September 2, 1975), or in the Notice of Proposed Rulemaking, 40 Fed. Reg. 26930 (June 25, 1975). Such comment was also not made in the Federal Register when the fire safety standards were amended and published as a Final Rule in 1984, 49 Fed. Reg. 31996 (August 9, 1984)[10], or as Notice of Proposed Rulemaking, 48 Fed. Reg. 37137 (August 16, 1983). Nor was there any discussion comparing the merits of early detection and reduction of fire hazards with the merits of fire extinguishment[11]. The Final Rule and Notice of Proposed

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[9] The Court further noted that HUD referred to .4 parts per million as its "target level." 374 N.W. 2d at 154, citing, 49 Fed. Reg. at 31999. "[T]o achieve its `target level,' HUD adopted product standards after taking into account the pros and cons of both product and ambient standards and the views of many commenters, especially state agencies. HUD found that product test values reasonably correlate to formaldehyde levels in homes, products can be tested easily under standardized conditions which avoid problems connected with ambient standards, and violations of a product standard can be discovered before material is installed in a home." Id., citing 49 Fed. Reg. 31997.

[10] It is interesting to note that the Department made its comment regarding the preemptive effects of its formaldehyde standards in the same Federal Register issue in which it published its amendments to its fire safety standards. 49 Fed. Reg. 31996-32013 (August 9, 1984). Thus, it had the opportunity to assure the preemptive effect of the fire safety standards in the same manner.

[11] Comments were requested in the Notice of Proposed Rulemaking issued June 25, 1975 on five stated alternatives to the proposed standard for a 200 flame spread rating on mobile home interiors. Of the five alternatives, one proposed to require homes to be equipped with sprinkler protection in each of the habitable rooms. 40 Fed. Reg. at 26932-26933. In the Final Rule issued September 2, 1975, only one comment relating to this alternative was mentioned.

Rulemaking relating to formaldehyde emission testing, however, did discuss the merits of product testing as compared to inside ambient level testing. See 49 Fed. Reg. at 31997 and 48 Fed. Reg. at 37139, respectively. The fact that the Department looked into the two approaches with some degree of detail seems to have influenced the Liberty Court in its decision. See 374 N.W.2d at 154.

The ruling in Liberty probably would have been the same had the First Circuit decided it under the narrow Rhodes' analysis. Wisconsin's formaldehyde standard clearly fell under the "same requirements and categories" of the Federal Standard--acceptable formaldehyde emissions. Both the State of Wisconsin and the Department sought a targeted ambient level of emission of no more than 0.4 ppm. Only the approaches to achieving that target were different. On the other hand, a state law requiring sprinklers does not fall under the "same requirements and categories" as the Federal Standards relating to fire safety. As noted above, the Department's fire safety standards contain no requirements for sprinklers and fail to contain even a category that could be interpreted to include sprinkler systems such as "fire extinguishing equipment." Instead, the Federal Standards are concerned with "reducing fire hazards" and "providing measures for early detection."

That comment requested that dry type fire extinguishing systems be considered as an acceptable substitute for the fire protection measures specified by the Proposed Rule in the kitchen range area. The Final Rule's preamble indicated that the Department would "consider amending the standards to permit the installation of such a system if it can be conclusively demonstrated that the system will provide protection equivalent or superior to that . . . provided by the standard . . . .". 40 Fed. Reg. at 40264. The issue was not later addressed in the issuance of Corrections and Proposed Amendments to the Standards, 40 Fed. Reg. 52706 (November 11, 1975), or the issuance of Final Rule adopting the Corrections and Amendments to the Standards, 40 Fed. Reg. 58752 (December 18, 1975). In the Advance Notice of Proposed Rulemaking to amend the standards issued in 44 Fed. Reg. 32711 (June 7, 1979), the Department did request comments on the question, "should . . . fire extinguishers be required?" Id. at 32712. However, the question was never answered in the following Notice of Proposed Rulemaking, 48 Fed. Reg. 37137 (August 16, 1983) or the Final Rule, 49 Fed. Reg. 31996 (August 9, 1984).

Thus, by relying on the Rhodes[12] and Tofany decisions, a conclusion can be drawn that state requirements for sprinklers in manufactured homes are not preempted by the Manufactured Home Construction and Safety Standards.

2. If States are not Preempted from Requiring Sprinkler Systems, do the States have the Authority to Require that only Manufactured Housing have Sprinkler Systems?

States are not preempted under the Act from establishing a requirement for sprinklers in manufactured homes because the Federal Standards fail to address the issue. Accordingly, it makes no difference under the Act whether or not the requirement is directed only to manufactured homes and not to all dwellings. Section 623(a) of the Act, 42 U.S.C. § 5422(a), specifically provides that any state may assert jurisdiction under state law over any manufactured home construction or safety issue with respect to which no Federal Standard has been established. Therefore, until the Department establishes standards that address sprinklers, a state may single out manufactured housing and require that only manufactured housing be equipped with sprinkler systems. Once the Department establishes such standards, a state would not be authorized to assert jurisdiction over sprinklers in manufactured homes regardless of the state's regulation of sprinklers in other forms of housing.

CONCLUSION:

Subpart C of the Federal Standards, which contains the fire safety standards, has no provisions directly addressing sprinkler systems or even categories that would include sprinkler systems. Moreover, the Federal Standards' basic concerns are with reducing fire hazards and providing measures for early detection instead of the concern that would be addressed by requiring sprinklers--fire extinguishment. Accordingly, under both Rhodes and Tofany, the Federal Standards do not cover the same aspect of performance as would a requirement for sprinkler systems. Since the Federal

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[12] A third case, Woods v. General Motors Corp., held that a common law defective design claim for failure to provide airbags would establish a design standard related to the "same aspect of performance" as the Federal standard but not identical to the Federal standard, and thus preempted by the NTMVSA. The Woods' Court relied heavily on Rhodes and held that the common law claim addressed the "same aspect of performance " no matter how narrowly one defines that term because the pertinent standards under the NTMVSA specifically included passive restraints as an option. Woods v. General Motors Corp., 865 F. 2d 395 (1st Cir. 1988), cert. denied, 494 U.S. 1065 (1990).

Standards do not cover that aspect of performance in manufactured homes, the states may establish such requirements until the Department enacts standards.

The Department has the option to allow states to adopt such requirements or can enact specific Federal Standards that will result in preemption. The specific standard could be as simple as stating that sprinkler systems are not required in manufactured homes or could provide for optional use of sprinklers.

Under the Act, any state may assert jurisdiction under state law over any manufactured home construction or safety issue with respect to which no Federal Standard has been established. Accordingly, a state could direct that only manufactured homes contain sprinklers. However, if the Department does enact such a standard covering this aspect of performance, a state would not be authorized to assert jurisdiction over sprinklers in manufactured homes regardless of the state's regulation of sprinklers in other forms of housing.

ATTACHMENT M

U. S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

DEC 19 1995

OFFICE OF THE ASSISTANT SECRETARY
FOR HOUSING-FEDERAL HOUSING COMMISSIONER

Mr. Danny D. Ghorbani
President
Association for Regulatory Reform
1331 Pennsylvania Avenue
Suite 508
Washington, D.C. 20004

Dear Mr. Ghorbani:

Thank you for your letter and Petition for Reconsideration ("Petition") of the Department's letter to the Michigan Mobile Home Commission dated July 6, 1995. Neither the National Manufactured Housing Construction and Safety Standards Act of 1974 ("Act") nor the Manufactured Home Procedural and Enforcement Regulations provide authority for a petition to reconsider and withdraw such a letter. However, the Department has reviewed a number of the issues that you raised in the Petition and, after this review, has decided not to withdraw the letter.

The Department's July 6, 1995, letter merely provides the Department's view of the preemptive provisions of the Act and is, at best, an "interpretative rule" under the Administrative Procedure Act ("APA"). As an interpretative rule, the letter is not subject to the APA's rule making requirements. It is consistent with the reasoning in the West Stockbridge letters and does not adversely affect the rights of manufacturers. Manufacturers continue to have the right to seek injunctive relief against any locality to stop the imposition of a requirement for sprinklers that they think is unauthorized by the Act. For these reasons, we believe the July 6, 1995, letter is not procedurally defective. We also believe that the letter is merely an explanation of Section 604(d) of the Act, 42 U.S.C. § 5403(d), and is substantively correct in that it reflects Federal case law[1] in the area of preemption of state safety laws.

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[1] See the First Circuit case of Chrysler Corp. v. Rhodes and the Second Circuit case of Chrysler v. Tofany. The Liberty Homes v. DILHR Wisconsin State Court case discussed in the Petition can be distinguished from one that would involve sprinklers. In that case, the Department's standards were clearly intended to cover the same aspect of performance--the indoor level of formaldehyde emissions in manufactured homes.

Moreover, it reflects what appears to be the favored trend in this Country and in Congress--a deference of power by the Federal Government to State Government when it is unclear that the power in question is vested in the Federal Government. Without the Department's clear authority over this aspect of performance, the decisions on sprinklers in homes should be made by states and localities based on their perceived needs for the health and safety of their citizens, not on rules imposed by the Federal Government.

We do, however, find it appropriate to better explain the basis of the Department's position. Accordingly, we have sent the Michigan Mobile Home Commission a follow-up letter providing a more detail explanation for the Department's interpretation. A copy of that letter is enclosed for your information.

Sincerely yours,

Nicolas P. Retsinas

Nicolas P. Retsinas
Assistant Secretary for Housing -
Federal Housing Commissioner

Enclosure

ATTACHMENT N

revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPS effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on January 10, 1997.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs; identified as follows:

** * * Effective January 30, 1997*

De Queen, AR, J. Lynn Helms Sevier County, NDB or GPS RWY 8, Amdt 4A CANCELLED

De Queen, AR, J. Lynn Helms Sevier County, NDB RWY 8, Amdt 4A

Holdenville, OK, Holdenville Muni, NDB or GPS RWY 17, Amdt 3 CANCELLED

Holdenville, OK, Holdenville Muni, NDB RWY 17, Amdt 3

Houston, TX, Ellington Field, VOR or TACAN or GPS RWY 22, Amdt 2 CANCELLED

Houston, TX, Ellington Field, VOR or TACAN RWY 22, Amdt 2

[FR Doc. 97–1577 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3282

[Docket No. FR–4192–N–01]

Manufactured Housing Construction and Safety Standards: Notice of Internal Guidance on Preemption

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of staff guidance.

SUMMARY: The Office of Consumer and Regulatory Affairs in HUD has developed guidelines to assist its staff in addressing preemption issues concerning the National Manufactured Housing Construction and Safety Standards Act of 1974. Because of the interest of outside persons in the subject generally, HUD has decided to publish these internal guidelines to assist regulated entities and consumers in understanding the guidelines under which HUD will be operating. These guidelines are not binding on either HUD or the public and are published for informational purposes only.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, Room 9156, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 708–6401, or on e-mail through Internet at David_R._Williamson@hud.gov. For hearing and speech-impaired persons, the telephone number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339. (Other than the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The staff guidelines reproduced in this notice are internal guidance to assist the HUD office administering the manufactured housing program in answering questions from the public as to whether particular State or local laws or regulations are preempted by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (the Act). The guidelines are based upon the Act and its implementing regulations in 24 CFR parts 3280, 3282, and 3800 and do not provide new interpretations of the Act

or create new HUD policy. The guidelines were developed to assist HUD staff in giving uniform and timely responses to the public, including consumers and affected industries, and State and local governments on preemption issues.

HUD is publishing these guidelines because of the interest in preemption questions that has been expressed by members of these groups. HUD welcomes comments on these guidelines. Anyone wishing to comment on these guidelines may do so by submitting written comments to the attention of the person listed in the "For Further Information Contact" section of this notice.

The internal guidelines that were prepared are as follows:

Guidelines for Analyzing Situations Involving Preemption Under the Manufactured Home Construction and Safety Standards Act

I. Introduction

These guidelines have been prepared to assist in answering questions from the public as to whether particular State or local laws or regulations are preempted by the Act. These guidelines are based upon the National Manufactured Housing Construction and Safety Standards Act and its implementing regulations and are not intended to add new interpretations to the Act or to create new HUD policy.

II. Statutory And Regulatory Background

The Act establishes a national set of construction standards for manufactured housing. To ensure that State or local governments did not enact or allow to continue conflicting construction standards, Congress provided that no State or local government could establish a standard dealing with an aspect of performance that is not identical to those standards established under the Act (section 604(d)). However, where there is no Federal standard, the States are free to act (section 623(a)).

HUD has interpreted these statutory provisions in its regulations implementing the Act (24 CFR 3282.11). In accordance with the Act, the regulation bars States from imposing a manufactured home standard regarding construction and safety that covers the same aspects of performance governed by a Federal standard. More generally, States may not take any action that could interfere with the Federal superintendence of the industry as established by the Act (24 CFR 3282.11).

The Act does not impose a duty on HUD to make any determinations as to the applicability of the preemption provision, to investigate preemption issues, or to render advisory opinions regarding preemption questions. Further, a State is not specifically prohibited under section 610 of the Act from implementing a provision that is preempted, nor is there any requirement under the Act for the Secretary to enforce the preemption provision. Generally, enforcement of preemption requirements is left up to the Courts. Where an issue is unclear, it is appropriate for the Courts to decide whether a State or local requirement is preempted.

To the extent possible, HUD wishes to be responsive to inquiries of consumers, the industry, and State or local governments on the applicability of preemption. These responses should be considered as an effort by HUD to advise the public of its construction of the statute and the rules which it administers, and to give its opinion as to the applicable law and the particular facts.

III. Guidelines for Specific Situations

Most inquiries can be responded to merely by discerning if there is a specific Federal standard which addresses the same aspect of performance as the State standard. If so, the Federal law preempts the State law. In a significant number of cases, however, the determination is not as clear and requires either an engineering or legal analysis, or both. There are four general areas of inquiry which are frequently raised:

A. Installation

There is no specific Federal standard that deals with the installation of manufactured homes. As such, standards as to the installation of manufactured homes can be regulated by local or State governments and are not preempted under the Act.

It is possible, however, that a local installation rule may hinder the implementation of Federal standards. For example, the implementation of a local rule may conflict with a requirement of a Federal construction standard for plumbing or water hookup. In such cases, the local rule is preempted.

B. Zoning

Normally, zoning issues fall outside the scope of the preemption provisions of sections 604 of the Act. There may be limited instances, however, in which the Federal definition of "manufactured home" could fall within the broad definitions applied to prefabricated or factory built homes under the local zoning ordinance. Such homes are treated differently depending on the building code under which they are constructed.

Generally, the enforcement of a local ordinance regulating the location of manufactured homes has not been subjected to the regulatory authority of the Act because such enforcement rests on the locality's right to determine proper land use. In addition, a locality is free to adopt and enforce ordinances that regulate the appearance and dimensions of homes so long as the criteria established by such ordinances do not have the effect of excluding manufactured homes based on the construction and safety standards to which they were built. Such regulation of aesthetics protects property values, preserves the character and integrity of communities and neighborhoods, and assures architectural compatibility.

If a locality, however, is attempting to regulate, and even exclude, certain manufactured homes through zoning enforcement that is based solely on a construction and safety code different from that prescribed by the Act, the locality lacks such authority. Thus, a locality cannot accept structures meeting the Federal definition of manufactured homes which comply with different standards, such as the local or State Building Code, and exclude or restrict manufactured homes that are aesthetically the same but only meet the Federal standards. By excluding or restricting only manufactured homes built to the Federal standards, and accepting manufactured homes built to other codes, the locality is establishing standards different than the Federal standards.

A locality is not in conflict with the preemptive provisions of the Act if, without regard to construction standards, it treats all structures that meet the Federal definition of Manufactured Homes the same under local zoning laws.

C. State Enforcement

A number of questions have arisen as to when a State's enforcement of manufactured housing standards are preempted by Federal law. HUD's regulations at 24 CFR 3282.11 (c) and (d) set forth a clear standard as to the appropriateness of State enforcement of its manufactured home standards. The Federal regulations prohibit a State from establishing a code enforcement system for manufactured homes which is outside, or goes beyond, those enforcement procedures specifically set forth in the Federal regulations. "The test of whether a State rule or action is

valid or must give way is whether the State rule can be enforced, or the action taken, without impairing the Federal superintendence of the manufactured home industry as established by the Act" (24 CFR 3282.11(d)). There are several specific situations:

1. A State, as a State Administrative Agency (SAA) under section 623 of the Act, can enforce the Federal standards. It may also enforce State standards which are identical to the Federal standards. Such actions would not be preempted. However, the State's system of enforcing these standards must be identical to the enforcement procedures in the Federal regulations. "No State may establish * * * procedures or requirements * * * which * * * require remedial actions which are not required by the Act and the regulations" (24 CFR 3282.11(c)).

2. A State may enforce its own consumer protection or warranty laws as to defects in individual homes. As such, a State may require a manufacturer to correct non-compliances and defects in response to individual consumer complaints. Such acts would not be preempted by Federal law (24 CFR 3282.11(d)).

3. Notwithstanding the above, however, there are limitations on a State's actions to correct individual homes. These are situations in which State action would interfere with Federal superintendence of the manufactured home industry.

(a) *Imminent safety hazards or serious defects.* Where it appears that there is an imminent safety hazard or a serious defect, the State is required to refer the matter to HUD for enforcement (24 CFR 3282.405(b) and 3282.407(a)).

(b) *Class of manufactured homes.* Where it appears that the same defect exists in a class of manufactured homes and the State is *not* the State in which the homes were produced, then the State is required to refer the matter to the SAA in the State in which the homes were produced or to HUD (if there is no SAA in the State of production) for enforcement. Further, if a class of defective homes is produced in more than one state, HUD is responsible for the enforcement actions. If the homes were all manufactured in the State, the State may take actions, consistent with the Federal regulations, with regard to the noncompliance and defects (24 CFR 3282.405(b) and 3282.407(a)(3)).

(c) *Prior HUD enforcement.* Where HUD has already taken action to have a class of serious defects corrected, then the State is preempted from taking corrective actions of its own pursuant to the Act (24 CFR 3282.404(e)).

D. Utility Companies

There have been a few utility companies which have attempted to impose their own construction or safety standards on manufactured homes as a requirement for connection to their services. The Act, by its express terms, prohibits only "State or political subdivisions of a State" from establishing standards that conflict with the Federal standards (section 604(d)). Accordingly, if the utility company is owned or controlled by a political subdivision, its standards are preempted by the Federal standards. If the utility is privately owned, its standards would not be preempted.

E. State Construction and Safety Standards

1. *Aspects of performance.* Additional questions arise in situations in which the State or locality attempts to apply its own building or safety code to the manufactured home. Under section 604 of the Act, State law is preempted whenever there is a State performance standard regarding construction and safety that is not identical to an established Federal standard. On the other hand, section 623 of the Act provides that Federal law does not preempt State construction or safety standards for which a Federal standard had not been established. Thus, for there to be Federal preemption, there must be a specific aspect of a Federal performance standard which duplicates a local standard.

Federal preemption cannot be based upon a general purpose of the Act, or the need for national uniformity in the manufactured housing industry. The courts have applied this "aspect of performance" standard in analogous situations by focusing not on the purpose or scope of the Act, but, rather, on the specific requirements of an established Federal standard. If the Federal standard is encompassed or impacted by the State requirement, the State law is preempted.

2. *Superintendence.* It is also possible that a State or local law may be preempted even though the local rule does not meet the differing aspect of performance standard. As stated above, 24 CFR 3282.11(d) sets forth an additional standard of preemption. A State rule must give way if it impairs the Federal superintendence of the manufactured home industry as established by the Act.

Thus, for example, a local requirement that all homes be constructed on site, while not covering any aspect of performance, would be so fundamentally in conflict with the Federal standards as to impair the Federal superintendence of the manufactured home program. Such a requirement would be preempted under the HUD regulations.

The scope of this regulatory provision is limited by the language "as established by the Act". This language limits the Federal superintendence of the industry, since section 604(d) of the Act limits the preemption of standards to only those issues dealing with the same aspects of performance.

Authority: 42 U.S.C. 3535(d) and 5401 et seq.

Dated: January 14, 1997.

Stephanie A. Smith,

General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–1646 Filed 1–22–97; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8710]

RIN 1545–A073

Revisions of the Section 338 Consistency Rules With Respect to Target Affiliates That Are Controlled Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the consistency rules under section 338 of the Internal Revenue Code of 1986 that are applicable to certain cases involving controlled foreign corporations. The final regulations substantially revise and simplify the stock and asset consistency rules. The final regulations include the provisions of the consistency rules applicable to controlled foreign corporations contained in recent proposed and temporary regulations. The final regulations would affect taxpayers that own controlled foreign corporations.

EFFECTIVE DATE: These regulations are effective January 20, 1997.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Allison at (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final Income Tax Regulations (26 CFR part 1) under section 338 of the Internal Revenue Code.

ATTACHMENT D

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

MAY 10 2010

MEMORANDUM FOR: Primary Inspection Agencies

FROM: Elizabeth Cocke, Deputy Administrator, Office of Manufactured Housing Programs, Office of Housing

SUBJECT: **Field Guidance – Certification Reports and Updating Certification Records**

As you are all aware, over the past two years HUD has been taking a closer look at the quality assurance manuals and quality assurance programs required for plant certification. Quality assurance has always been the central element of a plant certification. But we have found that the quality assurance manuals at most plants need to be updated in order to comply with the regulations at 3282.203. As a result, the certification reports that were based on those quality assurance manuals also need to be updated.

As part of this exercise, we have already circulated checklist guidance on quality assurance manual contents and standard operating procedure (SOP) guidance on the quality assurance assessment process. We are issuing this guidance to assist IPIAs in preparing new certifications or updates to existing plant certification reports, which should represent a careful evaluation of the plant's entire quality assurance program. The expectation is that the plant has established a "golden QA system" rather than simply producing a single "golden home". To emphasize this concept, the Department has started referring to IPIA plant certification reports as Initial Certification or Certification Update. You are hereby invited to do the same.

After the QA manual has been approved by the DAPIA, near the end of Phase III of the SOP, the IPIA and the manufacturer should be ready to conclude the quality assurance evaluation process. The manufacturer should implement all of the updated quality procedures and the IPIA should evaluate the effectiveness of those procedures. Once the IPIA is satisfied that all provisions of QA Manual have been successfully implemented, the IPIA should prepare a Certification or Certification Update

The IPIA's report should compile all observable information and data documented in Phase III and concluded in Phase IV in a comprehensive evaluation report for HUD. The IPIA should then summarize the QA Manual requirements that have been changed or added during the process and assure HUD that the changes are in-place and functioning effectively. The IPIA

may include portions of previous evaluation reports as long as appropriate verifications are made for modifications to the QA Manual or in the production process.

Upon completion of the quality assurance evaluation, the IPIA should submit the completed Certification or Certification Update report to HUD. HUD will review the report and may ask for a conference call with the IPIA to discuss the findings in the report. If HUD determines that the report is not sufficient to support the certification of the plant, HUD will request specific additional information from the IPIA.

Once HUD is satisfied that the plant's quality assurance program is such that the plant is capable of producing manufactured homes that conform to the construction and safety standards on a continuing basis, HUD will issue a letter to the manufacturer and the IPIA indicating the plant has been certified.

The following information should be included in the Certification or Certification Update Report:

1. **Plant Specific Information**
   - Plant Name / Production Line / Location (Address)
   - IPIA and DAPIA agency
   - Dates of evaluation (beginning and end)
   - Product Line
     Single and/or multi wide units
     Wind load zone
     Roof load
     Thermal zone
     Production rate
   - Date of Approval of QA Manual that the Certification Update is based on (a work process description, inspection checklist, and the accountable personnel by job title should be attached to the report).
   - Identification of IPIA personnel conducting the plant evaluation and preparing the Certification Update.

2. Basis for Evaluation Statement

The report should include a narrative description that explains the IPIA's basis for concluding that the manufacturer has effectively implemented the QA manual. The narrative description should summarize how the following QA Manual attributes were assessed, what issues were resolved, and what conclusions the IPIA has drawn from its assurance. The report should clearly distinguish which aspects or elements of the quality system are acceptable from the previous certification report and those aspects that have been changed or added.

This narrative section of the report describes how the QA manual attributes were reviewed and accepted and is expected to be based on activities completed in Phase III. If it is determined that additional modifications or changes are required during the completion of the process, those issues should also be included in the report.

Due to the ongoing nature and continual assurances made in Phase III, it is anticipated that the assurance evaluation process should be completed quickly. The IPIA is to verify that all of the following QA elements in HUD's Quality Assurance Checklist distributed on September 3, 2009, have been adequately addressed, are compatible with the manufacturer's quality assurance manual and have been effectively and consistently implemented:

A. The station-by-station description of the manufacturing process includes off line assembly areas and minimum control points. (VII-A)[1]
B. The quality control inspections required at each station and at off line work areas and is effective. (VII-B)
C. The manufacturing process and the quality control inspections are compatible. (VII-C)
D. There is a complete method to ensure that required documents are shipped with the home. (VII-D)
E. The description of the manufacturer's QA program is complete and accurate. (VII-E)
F. The organizational chart is accurate and addresses the accountable personnel by job title. (VII-F)
G. The functional obligations, responsibilities and authority of the quality control personnel; including method(s) to ensure accountability for inspections. (VII-G)
H. - K. Testing procedures are in compliance with the Standards and are clearly defined. (VII-H-K)
L. - O. Special procedures are provided, as appropriate, for application of liquid vapor retarder, blown insulation foam adhesives, and glue set times. (VII-L-O)
P. Test equipment calibration and criteria for replacement of equipment is provided. (VII-P)
Q. The training program indicates criteria and triggers for when training is required. (VII-Q)
R. Purchasing, receiving and storage of materials for material control are provided and effective. (VII-R)
S. Procedures for acceptance and verification of roof trusses are effective. (VII-S)

3. Conclusion Statement

The IPIA should provide a statement that it has concluded the evaluation process and is satisfied that the manufacturer, by following its quality system, is capable of producing compliant homes on a continuing basis.

Sample statement:

This is to certify that (*IPIA AGENCY*) audited the (*MANUFACTURER AND LOCATION*) manufactured home facility to assess the implementation, adequacy, and effectiveness of the quality assurance manual as indicated above. Through comprehensive audit and

[1] Please refer to Quality Manuel Field Guidance for the details of each listed attributes.

inspection of all Quality Assurance Manual elements identified in HUD's checklist guidance, (*IPIA Agency*) concludes that the manufacturer is conforming to the DAPIA approved designs and has implemented adequate and effective quality control procedures. The quality assurance manual with the DAPIA approvals current on MM/DD/YYYY was used as the basis for the (*IPIA Agency*) assurance evaluation.

As of this date (*IPIA Agency*) is satisfied that the manufacturer can produce conforming homes based on our assurance of the implementation of the QA program production of ____ transportable sections per day. This conclusion is based on the assurances described in Section 3 of this report.

Signed and dated by the IPIA supervisor at the agency.

I trust this guidance will provide the information many of the primary inspection agencies have requested.

Cc: IBTS, SAAs, MHI, MHARR

ATTACHMENT P

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

March 3, 2010

MEMORANDUM FOR: Primary Inspection Agencies

FROM: William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing

SUBJECT: **Field Guidance – Compliance with 24 CFR 3282.203(c) and (d) Not Voluntary**

It has come to our attention that certain manufacturers have received some remarkably bad advice regarding the Department's quality assurance regulations at 24 CFR 3282.203(c) and (d): that they are voluntary. Compliance with these sections is the primary condition on which every plant certification is based. As such, compliance with these sections is the lynchpin for the entire HUD process.

The manufacturers that have repeated this advice to us have also resisted, at least initially, the Department's offer to update their compliance with these regulations through a process of cooperative assistance. As you all know, the Department has been concentrating on enforcement of the quality assurance regulations for the past two years. In our judgment, effective quality assurance is the best way to assure the public that the homes produced under your supervision comply with HUD's construction and safety standards. And because the Department had not previously been emphasizing compliance with these regulations, we have chosen to do so through a process of cooperative assistance to manufacturers rather than traditional enforcement. Many manufacturers have found HUD's emphasis on the quality assurance regulations to be helpful and have thanked us for helping to improve their production processes and finish quality while reducing warranty costs.

Thus far, our cooperative assistance process has served all parties well. At HUD's request, the quality assurance experts at IBTS have been assisting both the PIAs and the manufacturers in updating quality assurance manuals and quality assurance practices. If necessary, however, we can do this the hard way through traditional compliance audits and enforcement actions. The choice is entirely up to your manufacturer clients.

You should provide your manufacturer clients with a copy of this guidance.

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

BEFORE THE

HOUSE OF REPRESENTATIVES APPROPRIATIONS SUBCOMMITTEE ON TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT AND RELATED AGENCIES

April 2011
Washington, D.C.

I. INTRODUCTION

As is now readily apparent, the financial aspects (i.e., budget, revenues, expenditures and appropriations) of the U.S. Department of Housing and Urban Development's (HUD) federal manufactured housing program have spiraled out of control, resulting in a steep decline of the industry and its ability to provide the affordable non-subsidized home ownership that Americans -- and particularly lower and moderate-income homebuyers want and need. It is therefore, incumbent on both houses of Congress, as detailed below, to closely scrutinize funding requests for this program to bring it back under proper congressional oversight and control, and to assure that relevant laws enacted by Congress to ensure the affordability and parity of manufactured homes with other types of housing are properly implemented by federal regulators.

The Manufactured Housing Association for Regulatory Reform ("MHARR") is a Washington, D.C.-based national trade association representing the views and interests of producers of manufactured housing regulated by HUD pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401, et seq., as amended by the Manufactured Housing Improvement Act of 2000. MHARR was founded in 1985 and represents primarily smaller and medium-sized producers of manufactured housing from all regions of the United States.

Manufactured housing has historically been the nation's leading source of inherently affordable, non-subsidized home-ownership. It provides a quality home at a price that nearly every American can afford without government subsidies or risky financing schemes. Manufactured housing is also a uniquely American industry, that has historically provided hundreds of thousands of jobs in manufacturing plants, retail centers communities and related industries (e.g., suppliers, installers, insurers and others) throughout the nation's heartland.

But the manufactured housing industry -- a key part of the American housing market for over 70 years -- is in danger of disappearing, with devastating consequences for affordable housing, employment, and job creation, particularly in rural America. Over the past decade, manufactured home production has declined by more than 86% (from 373,143 units in 1998 to 50,046 in 2010), nearly 75% of the industry's production facilities have closed (from 430 to fewer than 110), together with more than 7,500 retail centers. This represents a dramatic loss of affordable housing opportunities for millions of lower and moderate-income Americans, while more than 200,000 jobs have been lost throughout the manufactured housing industry.

The decline of the manufactured housing industry began long before the decline of the broader housing market, and has been much more severe. This disparity is principally a result of two factors. The first is a costly and unjustified expansion of HUD regulation, in the face of rapidly diminishing production. This expansion of in-plant regulation, imposed through de facto mandates and increased program staff, has unnecessarily increased regulatory compliance costs ultimately paid by consumers,

effectively excluding large numbers of potential homebuyers from the market. This same regulatory expansion, by disproportionately impacting smaller, independent manufacturers, is also destroying competition within the industry and underwriting the domination of the market by a few large conglomerates, to the detriment of consumers.

Second, this regulatory expansion, imposed by circumventing and/or undermining key program reforms mandated by Congress on a bi-partisan basis in the Manufactured Housing Improvement Act of 2000, has ensured the continuing status of manufactured homes as "trailers," thus fueling discrimination against manufactured homes and manufactured home purchasers in public and private financing, placement, zoning and other matters, leaving the industry and consumers with virtually no available financing and facing other severe restrictions.

Most importantly, for purposes of the appropriations process, the HUD program has been able to engage in this unwarranted regulatory expansion because of an artificially inflated budget which has been exploited by program regulators without adequate or effective oversight either within HUD or by Congress in recent years.

By way of background, the HUD manufactured housing program was conceived by Congress as a self-funding residential construction standards and enforcement program, and until 2008, the HUD program was funded exclusively by user fees paid by producers of HUD-regulated manufactured housing. Beginning in FY 2009, however, HUD sought and received a direct appropriation of $5.4 million in general revenue funds, supposedly to implement the new federal installation and alternate dispute resolution (ADR)(i.e., expanded consumer protection) programs mandated by the 2000 law. HUD presented this to the industry as a "one-time" request, specifically to implement these two new programs, leading industry groups to concur with the request.

In FY 2010, however, HUD violated its "one-time" pledge and requested an additional $9 million direct appropriation. Furthermore, this infusion of millions of dollars in tax funds has not been used to implement the new programs of the 2000 law -- which, by law, were to have been in place by December 27, 2005 -- but have been repeatedly postponed and, to this date, remain, at best, only partially functional. Instead, these funds have been used to impose a needless "make-work" regulatory expansion, as noted above and, with it, an increase in the size of HUD program staff and the duties and functions of its entrenched inspection "monitoring" contractor (which has held this contract since 1976 under different entity names, but with the same principals), all at a time of dramatically reduced -- and still falling -- industry production levels. At the same time, revenue allocated to the states, which were intended to serve as the first-line of protection for consumers residing in both new and existing homes numbering in the millions, has been significantly reduced (from $ 6.6 million projected for FY 2005, to $3.7 million projected for 2011), leading a number of states to consider withdrawing from the HUD program -- a move that would be detrimental to both the industry and homebuyers.

And now, in its budget request for FY 2012, with all indications showing continued weakness in the manufactured housing market, HUD is still seeking $14.0 million in total program budget authority. This involves yet another $7.0 million direct appropriation of general revenue funds and an announced label fee increase from $39.00 to $60.00 per home section. In support of these amounts, HUD claims that it needs $3.8 million for an "installation inspect and enforcement" contract and $1.4 million to fund a contract for "dispute resolution enforcement."

These are the same contracts, however, that HUD requested tax revenues to fund in 2009 and 2010 (see, e.g., HUD's 2009 program budget justification at p. F-7: "The projected costs of [installation and dispute resolution contracts] will account for approximately 40 percent of the fiscal year 2009 budget."), but did not award, while it used the additional funds provided by Congress to needlessly expand regulation and program staff, and increase funding for its inspection "monitoring" contractor, which has held this position (albeit under different entity names, but with the same principals) under de facto sole source awards since the inception of federal regulation 34 years ago. In fact, there is no legitimate basis for a budget of this size or for a further infusion of taxpayer dollars at a time when industry production continues to decline, manufacturing jobs and industry businesses continue to disappear, and the federal government faces a large deficit.

Accordingly, Congress should carefully scrutinize HUD's pending FY 2012 budget request for the federal manufactured housing program and should insist on full accountability from HUD regarding its use of all appropriated funds and specific justification for the expenditure of these funds and on the full and proper implementation of the 2000 law, as detailed below, and pursue the recommendations set forth below in the Conclusion section of this document.

II. BUDGET ISSUES UNDER SECTION 620(a)(1)

- Section 620 of the Act, as amended by the 2000 law, provides that the Secretary of HUD "may establish and collect from manufactured home manufacturers a reasonable fee ... to offset expenses incurred by the Secretary in ... carrying out the responsibilities of the Secretary under this title...." Thus, the establishment of a fee is permissive. But, once a fee has been established -- as it has -- the funds derived from that fee are to by used under section 620(a)(1) of the law to fund seven specific non-discretionary "responsibilities" of the Secretary listed in subsections (A) through (G). Budget issues arising from and/or relating to these specific "responsibilities" are addressed in order, below.

A. IMPROPER EXPANSION OF PRODUCTION REGULATION

- Section 620(a)(1)(A) provides for the use of the authorized fee paid by manufacturers

to conduct "inspections and monitoring." Section 620(c), however, as amended by the 2000 law, prohibits HUD from using "any fee collected under this section" for "any purpose or activity not specifically authorized by this title."

- Section 604(b) of the 2000 law specifically requires HUD to bring proposed regulations or amendments to the Manufactured Housing Consensus Committee (MHCC) for consensus review and input, followed by notice and comment rulemaking.

- Section 604(b)(6) of the 2000 law, further requires HUD to bring any change to "policies practices, or procedures relating to ... inspections, monitoring, or other enforcement activities" to the MHCC for consensus review and input, followed by notice and comment rulemaking. The section further provides that "any change adopted in violation" of its requirements "is void."

- Starting in 2008, HUD has systematically imposed on manufacturers an extremely costly de facto expansion of in-plant regulation (through unnecessary increases in program staff) without complying with the requirements of either section 604(b) generally or section 604(b)(6) specifically. Indeed, HUD, through a February 5, 2010 "interpretive rule," issued with no opportunity for public comment, has effectively read section 604(b)(6) out of the law completely.

- Although introduced as a system of "voluntary cooperation" regarding in-plant procedures, this program was deemed mandatory by HUD in a March 2010 ruling. In November 2010 HUD began steps to enforce the elements of this program through mandatory three-days plant audits by its "monitoring contractor" and through the notice, correction and recall provisions of Subpart I of HUD's Procedural and Enforcement Regulations.

- Absent compliance with section 604(b) and section 604(b)(6), the imposition of this program of de facto expanded regulation and enforcement is not an activity "specifically authorized" by applicable law. As a result, its costs -- including additional amounts paid to contractors for inspections, oversight or enforcement -- should not be funded by any program label fees. Nor should any label fees actually expended for such purposes be offset by any other appropriated funds.

B. INADEQUATE STATE FUNDING

- As specifically provided by the original 1974 law, State Administrative Agencies (SAAs) are the first line of protection for homebuyers living in a growing number of both new and existing manufactured homes. The law envisions -- and is based upon -- a federal-state partnership for the enforcement of the federal standards.

- The states, unlike revenue-driven HUD contractors, are responsible and accountable

to their citizens based on broad societal and economic considerations, including, jobs, the benefits of home ownership, the availability of affordable housing, affordable communities and proper housing for all citizens, among others.

- To ensure state participation in this partnership, section 620(a)(1)(B) of the law requires HUD to "provid[e] funding to the states for the administration and implementation of approved state plans...."

- The proposed HUD FY 2012 budget, however, as with the last three HUD budgets, keeps funding for the states flat (at approximately half the FY 2005 funding level -- $3.7 million in 2012, as contrasted with $6.6 million in 2005), while artificially and unnecessarily increasing contractor funding (and program staff), even though the responsibilities of SAAs are more extensive than the monitoring contractor -- which deals only with a declining annual number of new homes -- and even though proposed amendments to HUD's consumer protection regulations, published in the Federal Register on February 15, 2011, would substantially increase the responsibilities of state SAAs. Accordingly, a number of states are considering withdrawing from the HUD program, which would further concentrate regulatory and enforcement authority in the hands of HUD and its contractors, to the detriment of both the industry and homebuyers.

- Thus, at the same time that HUD has propped-up and artificially inflated the functions performed by its monitoring contractor and payments to that contractor, HUD has failed to properly fund state participation in the HUD program.

C. NON-CAREER PROGRAM ADMINISTRATOR

- HUD has refused to appoint a non-career Administrator for the federal manufactured housing program -- which is critical to ensuring the full and proper implementation of the 2000 law and the parity of manufactured homes with other types of housing -- because, HUD maintains, the appointment of such an Administrator is discretionary under the "may" language of section 620(a)(1). This interpretation of the 2000 law, however, is incorrect.

- The law, as amended in 2000, grants the Secretary of HUD permissive authority under section 620(a)(1) to establish a "reasonable fee" to fund specific program functions if the Secretary wishes. If such a fee is established, however, as it has been (i.e., the HUD label fee), the use of that fund, to offset expenses in connection with statutory HUD "responsibilities" listed in subsections (620)(a)(1)(A)-(G), is non-discretionary.

- Section 620(a)(1)(C) establishes "providing funding for a non-career administrator ... to administer the manufactured housing program" as one of those non-discretionary "responsibilities" of the Secretary, just as in subsection 620(a)(1)(A) it establishes "conducting inspections and monitoring" as a non-discretionary "responsibility" of

the Secretary. This mandate for an appointed non-career Administrator, was designed to ensure proper accountability and transparency for a program responsible for the nation's only source of inherently affordable, non-subsidized housing.

- Despite this non-discretionary "responsibility," the HUD manufactured housing program has not had a non-career administrator since 2004. Since that time, the program has been managed by career employees and regulators, while HUD has blamed a lack of funds and authority to hire a non-career appointee for this position, even though the program budget has nearly doubled while industry production has declined by a factor of more than 86%.

D. UNWARRANTED EXPANSION OF PROGRAM STAFF

- Section 620(a)(1)(D) provides for the use of the authorized fee paid by manufacturers to provide "the funding for salaries and expenses of employees of the Department to administer the manufactured housing program."

- This provision was designed to encourage -- and provide a funding basis for -- HUD to use its own employees to carry out most program functions, rather than relying on revenue-driven contractors, such as the entrenched monitoring contractor of 34 years, which operates (albeit under different entity names) under a de facto sole-source contract.

- Due to HUD's make-work expansion of in-plant regulation (see, Section IIA, above), however, HUD has not only increased the staff of the manufactured housing program to 14 employees, its highest level ever, but has also systematically increased the functions of -- and payments to -- its monitoring contractor, even though manufactured housing production has declined by a factor of more than 86%.

E. MANUFACTURED HOUSING CONSENSUS COMMITTEE

- Section 620(a)(1)(E) provides for the use of the authorized fee paid by manufacturers to administer the Manufactured Housing Consensus Committee (MHCC) established by the 2000 law.

- The MHCC was designed as a centerpiece reform of the 2000 law, to ensure accountability, transparency and consensus "buy-in" from program stakeholders in order to minimize disputes and related lawsuits that would otherwise need to be addressed by HUD, the Administration, Congress or the courts, and assure reasonable, cost-effective regulation that is critical to industry competitiveness and the lower and moderate-income consumers the industry serves.

- Instead, disputes are proliferating, as the independence, role and authority of the

MHCC are being emasculated by HUD regulators.

- Among other things, HUD career regulators: (1) have refused to trigger the MHCC consensus process for regulations as required by section 604(b) of the 2000 law; (2) have read the "catch-all" provision (section 604(b)(6)) requiring MHCC consideration of all new policies and practices affecting enforcement out of the 2000 law through an "interpretive rule" issued without allowing any public comment; (3) have improperly taken control of the MHCC's agenda, focus and procedures; (4) have undermined the balance of the MHCC required by law through politicized appointments, by unilaterally selecting the current chairman, by gerrymandering the composition of MHCC subcommittees, and by excluding collective industry representation while appointing four Board members and executives of the same consumer group and two former HUD employees/contractors to the Committee; and (5) have attempted to improperly suppress stakeholder and public participation in MHCC deliberations.

- HUD maintains that these restrictions are required by the Federal Advisory Committee Act (FACA), but that statute does not mandate such restrictions, as is demonstrated by a review of the bylaws of other FACA committees. Moreover, FACA, by its express terms, is superseded by contrary provisions in the authorizing legislation for specific advisory committees. In this case, section 604 of the 2000 law specifically describes the role, authority, functions and operation of the MHCC. To the extent that those provisions conflict with FACA, they are controlling.

F. FAILURE TO ENSURE PARITY OF MANUFACTURED HOUSING

- Section 620(a)(1)(F) provides for the use of the fee paid by manufacturers to facilitate "the acceptance of the quality, durability, safety and affordability of manufactured housing within the Department."

- This provision reflects the single over-riding purpose of the 2000 law -- to ensure the status of manufactured homes as legitimate "housing" for all purposes, thereby completing the transition of manufactured housing from the "trailers" of the Cold War era to legitimate "housing."

- HUD regulators, however, have not made any effort -- known to MHARR -- to advance manufactured housing as an equal participant in all HUD housing programs and, by failing to fully and properly implement the 2000 law, continue to treat manufactured homes as "trailers," thus fueling and intensifying discrimination that is crippling the industry.

- For example, discrimination against manufactured homes is manifest in the Federal Housing Administration (FHA) Title I manufactured housing program, which imposes mandates on manufactured housing loan originators that are much harsher

than corresponding requirements for other types of homes. "Mortgagee Letters" issued by the Government National Mortgage Association (GNMA), a HUD agency, on June 1, 2010 and November 1, 2010 (APM 10-18) require Title I issuers to maintain: (1) a net worth valuation of $10 million, plus 10% of the dollar amount of all manufactured home mortgage backed securities outstanding; (2) 10% of the outstanding balance of the issuer's commitment line balance; and (3) 10% of the outstanding balance of all pools funded by the issuer). These requirements are significantly higher than parallel requirements for issuers providing loans on other types of homes costing hundreds of thousands of dollars, effectively restrict competition for Title I lending to only one or two existing issuers and have discouraged new issuers from entering the Title I manufactured housing market.

G. FAILURE TO PROPERLY IMPLEMENT 2000 LAW PROGRAMS

- Section 620(a)(1)(G) provides for the use of the fee paid by manufacturers for "the administration and enforcement" of the federal installation standards and the federal dispute resolution system in "default" states that do not adopt their own programs under state law.

- Under section 605(c)(2)(B) and section 623(c)(12) of the 2000 law, both of these programs were to have been operational by December 2005. Yet, according to the latest information available from HUD, neither has been fully implemented and, to date, no significant implementation contracts have been awarded, even though HUD has included funding for contractors for both programs in its budget requests since at least 2008. Instead, additional funding provided by Congress, including millions of dollars in tax revenue, has been diverted from the implementation of these programs and other reform provisions of the 2000 law and have instead been misdirected to the expansion of de facto in-plant regulation described above.

- Indeed, HUD acknowledged in a February 4, 2010, Federal Register notice delaying the planned substitution of an MHCC-approved foundation rule for the current FHA foundation handbook -- a change that would provide substantial cost savings for consumers -- that it had been "delayed" in implementing the federal installation standards in default states, and in other statements, has blamed this delay on inadequate budget resources.

III. ANNOUNCED LABEL FEE INCREASE -- SECTIONS 620(d)-(e)

- Section 620(d) of the 2000 law provides that "the amount of any fee collected under this section may only be modified as specifically approved in advance in an annual appropriations Act."

- Section 620(e)(2) further provides that "amounts from any fee collected under this

section shall be available for expenditure only to the extent approved in advance in an annual appropriations Act"

- HUD's proposed FY 2012 program budget includes a label fee increase of over 50% -- from $39.00 per section to $60.00 per section -- in addition to an appropriation of general revenue funds in the amount of $7 million. HUD provides no specific justification for a label fee increase of this magnitude, or a $7 million direct appropriation, other than its unsupported assertion that its responsibilities remain unchanged notwithstanding a 48% decline in industry production -- and corresponding drop in label fee revenues -- just since 2007. The facts, however, do not support this claim.

- HUD's assertion that the magnitude of its responsibilities remains "unchanged" despite a nearly 50% drop in industry production since 2007 is unsupportable. In 2007, the industry produced 95,752 HUD Code homes. In 2010, the industry produced 50,046 HUD Code homes, according to figures compiled by HUD's own monitoring contractor. Accordingly, the program's raw oversight burden today is nearly half what it was in 2007.

- This decline should have meant lower program expenditures between 2007 and proposed FY 2012. Instead, the FY 2007 appropriation of $6.510 million grew to $16 million in 2009 and 2010, and now a requested $14 million for FY 2012.

- This increase is caused by and attributable to HUD's de facto expansion of in-plant regulation and unnecessary staff increases, as detailed above, which increase manufacturer compliance costs without providing any corresponding benefits for consumers, while substantially and unnecessarily increasing the functions, duties and responsibilities of the HUD program staff and "monitoring" contractor.

- Thus, the proposed program FY 2012 budget would increase payments to the monitoring contractor to $3.3 million, as compared with $3.2 million in 2011 and $3.15 million in 2009 even though production has substantially declined through this period, again, with no corresponding benefits to consumers. By contrast, HUD has substantial decreased funding for state SAAs -- from $6.6 million to $3.7 million -- although these SAAs are responsible for a growing number of new and existing homes within their respective states.

- In an effort to justify these funding increases, HUD has maintained since 2008 that it needs additional funds to implement the installation and dispute resolution programs mandated by the 2000 law. Those programs, by law, were to have been implemented by December 2005, but still have not been fully implemented today, and to date no significant implementation contracts have been awarded. Instead, additional funding provided by Congress, including millions of dollars in tax revenue, have been diverted from the implementation of these programs and other reform provisions of the 2000 law and have instead been misdirected to the expansion of de facto in-plant

regulation described above, as well as unnecessary increases in HUD program staffing levels.

- Accordingly, any appropriations bill providing further funding for the HUD program should expressly reject any proposed increase in the HUD label fee if general revenue funding is provided. In addition, any such bill should require a full accounting by HUD for all funds expended from 2007 to date and an explanation of HUD's failure to date to fully implement the installation and dispute resolution programs required by the 2000 law.

IV. CONCLUSION

Given repeated misleading and inaccurate justifications offered in connection with prior HUD budget requests, given the misallocation of fee and general revenue resources to purposes other than those identified in previous budgets and appropriation requests, and given repeated HUD violations of the 2000 law in connection with its unwarranted and costly expansion of in-plant regulation, which has increased program expenditures without any justification at a time of severe industry contraction, Congress, should specifically condition the approval of a 2012 funding authorization for the HUD program on the following: (1) a full and specific accounting from HUD for the use of all funds appropriated for the manufactured housing program from 2007 to the present; (2) a designation of specific amounts to be used to fund an appointed, non-career program Administrator, and a legislative directive to carry out this responsibility of the Secretary under section 620 of the 2000 law; (3) a provision which prohibits HUD from enacting a label fee increase if its requested general revenue funding is authorized; (4) a directive to increase funding provided to the states; (5) a provision prohibiting further staff hiring during FY 2012; (6) investigation and oversight of HUD's improper expansion of in-plant regulation and all costs associated with that expansion; and (7) investigation and oversight regarding HUD's contract practices, including its 34-year de facto sole-source contract (albeit under different entity names) with the program "monitoring" contractor.

Attachments:
1. HUD Program Excerpt - 2012 Proposed HUD Budget
2. Chart - Sustained Decline of the Manufactured Housing Industry
3. HUD Program Budget Justifications Excerpts: 2005, 2009 - 2011

ATTACHMENT R

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112TH CONGRESS *1st Session* | HOUSE OF REPRESENTATIVES | REPORT 112–___

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES PROGRAMS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2012, AND FOR OTHER PURPOSES

, 2011.—Ordered to be printed

Mr. Rogers of Kentucky, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 2112]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2112), making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Consolidated and Further Continuing Appropriations Act, 2012".

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. References.
Sec. 4. Statement of appropriations.

DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2012

DIVISION B—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS ACT, 2012

DIVISION C—TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2012

DIVISION D—FURTHER CONTINUING APPROPRIATIONS, 2012

SEC. 3. REFERENCES.

Except as expressly provided otherwise, any reference to "this Act" contained in any division of this Act shall be treated as referring only to the provisions of that division.

SEC. 4. STATEMENT OF APPROPRIATIONS.

The following sums in this Act are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2012.

OTHER ASSISTED HOUSING PROGRAMS

RENTAL HOUSING ASSISTANCE

For amendments to or extensions for up to 1 year of contracts under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) and section 236(f)(2) of the National Housing Act (12 U.S.C. 1715z-1) in State-aided, noninsured rental housing projects, $1,300,000, to remain available until expended.

RENT SUPPLEMENT

(RESCISSION)

Of the amounts recaptured from terminated contracts under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) and section 236 of the National Housing Act (12 U.S.C. 1715z-1) $231,600,000 are rescinded: *Provided*, That no amounts may be rescinded from amounts that were designated by the Congress as an emergency requirement pursuant to the Concurrent Resolution on the Budget or the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

PAYMENT TO MANUFACTURED HOUSING FEES TRUST FUND

For necessary expenses as authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 et seq.), up to

$6,500,000, to remain available until expended, of which $4,000,000 is to be derived from the Manufactured Housing Fees Trust Fund: *Provided*, That not to exceed the total amount appropriated under this heading shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund pursuant to section 620 of such Act: *Provided further*, That the amount made available under this heading from the general fund shall be reduced as such collections are received during fiscal year 2012 so as to result in a final fiscal year 2012 appropriation from the general fund estimated at not more than $2,500,000 and fees pursuant to such section 620 shall be modified as necessary to ensure such a final fiscal year 2012 appropriation: *Provided further*, That for the dispute resolution and installation programs, the Secretary of Housing and Urban Development may assess and collect fees from any program participant: *Provided further*, That such collections shall be deposited into the Fund, and the Secretary, as provided herein, may use such collections, as well as fees collected under section 620, for necessary expenses of such Act: *Provided further*, That notwithstanding the requirements of section 620 of such Act, the Secretary may carry out responsibilities of the Secretary under such Act through the use of approved

service providers that are paid directly by the recipients of their services.

FEDERAL HOUSING ADMINISTRATION

MUTUAL MORTGAGE INSURANCE PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

New commitments to guarantee single family loans insured under the Mutual Mortgage Insurance Fund shall not exceed $400,000,000,000, to remain available until September 30, 2013: *Provided*, That during fiscal year 2012, obligations to make direct loans to carry out the purposes of section 204(g) of the National Housing Act, as amended, shall not exceed $50,000,000: *Provided further*, That the foregoing amount in the previous proviso shall be for loans to nonprofit and governmental entities in connection with sales of single family real properties owned by the Secretary and formerly insured under the Mutual Mortgage Insurance Fund. For administrative contract expenses of the Federal Housing Administration, $207,000,000, to remain available until September 30, 2013, of which up to $71,500,000 may be transferred to and merged with the Working Capital Fund: *Provided further*, That to the extent guaranteed loan commitments exceed $200,000,000,000 on or before April 1, 2012, an additional $1,400 for administrative contract expenses shall be available for each $1,000,000 in additional guaranteed

ATTACHMENT 5

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-9000

GOVERNMENT NATIONAL
MORTGAGE ASSOCIATION

November 1, 2010

APM 10-18

MEMORANDUM FOR: All Participants in Ginnie Mae Programs

FROM: Theodore W. Tozer, President

SUBJECT: New Ginnie Mae Title I Manufactured Home Loan Program to Launch October 1, 2010

As previously published in APM 10-07, *New Ginnie Mae Title I Manufactured Home (MH) Loan MBS Program*, dated June 10, 2010, Ginnie Mae is pleased to announce its support for FHA's new Title I Manufactured Home Loan Program. Effective with issuances on or after October 1, 2010, Issuers may pool manufactured home loans electronically through Ginnie*NET*. Corresponding FHA Guidance can be found in Title I Mortgagee Letters TI-481 and TI-484.

Eligible collateral for the Ginnie Mae II custom pool type, "C MH" shall only include FHA Title I home loans whose loan application dates occur on or after June 1, 2009. Manufactured home loans whose loan application dates occur prior to June 1, 2009, will be ineligible for pooling within the "C MH" pool type, and will not be eligible for pooling within any Ginnie Mae security beyond a September 2010 issuance.

As a reminder, Ginnie Mae would like to once again highlight several important program guidelines for the new "C MH" pool type:

Issuer Eligibility	All institutions that want to participate in the new Ginnie Mae II Manufactured Home Loan MBS Program must submit an application for consideration as an MH Issuer. Issuers that are currently approved to issue MH securities must re-apply and meet new program eligibility requirements.
Unique ID	Newly-approved Issuers will be assigned a 4-digit Ginnie Mae ID that will only be eligible for MH pooling.
Adjusted Net Worth	All approved Issuers must meet and maintain a minimum adjusted net worth valuation (as calculated in accordance with the HUD Audit Guide), of $10mm plus 10 percent of each of the following: a) 10 percent of the dollar amount of all MH MBS outstanding, b) 10 percent of the outstanding balance of the Issuer's Commitment line balance, and c) 10 percent of the outstanding balance of all pools funded by the Issuer.
MH Collateral	Issuers must provide, at pooling, the MH loan application date. Missing or incorrect loan application dates will return a fatal edit through Ginnie*NET*. Issuers must correct the loan application date and resubmit the pool.

MH Pool Type	Effective with MH issuance on or after October 1, 2010, the only eligible pool type is the "C MH" pool type.
Eligible MH Security Spread	For all manufactured home loans pooled as collateral for the "C MH" pool type, the securities rate must be at least 3.25 percent lower than the lowest face rate on the loans, but not more than 4.75 percent lower than the highest face rate of the security.
Guarantee fee	The guarantee fee for MH MBS remains at 30 bps, and each pool must contain at least eight loans. The minimum pool balance, at origination, will increase to $1 million.
MH Loan Servicing	MH loans must be serviced by the Issuer of Record; MH subservicing is strictly prohibited.
Immediate Pool Transfers at Issuance ("PIIT")	Ginnie Mae II "C MH" pools are ineligible for PIIT pooling.
Accounting Methods	Issuers must use the "Concurrent Date" ("CD") accounting method for all "C MH" pools; Internal Reserve ("IR") accounting is ineligible.

Applicable changes to the Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Rev.1, ("Guide") are currently posted under the "What's New" section of the Ginnie Mae website, and was incorporated into the Guide on October 1, 2010.

If you have any questions regarding this memorandum, please contact your Ginnie Mae Account Executive in the Office of Mortgage-Backed Securities at (202) 708-1535.

Attachments

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.

1. Name:	2. Organization or organizations you are representing:
John Bostick	Manufactured Housing Association For Regulatory Reform (MHARR)

3. Business Address and telephone number:

[redacted]

4. Have you 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?	5. Have any of the organizations you are representing 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?
☐ Yes ☒ No	☐ Yes ☒ No

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.

* I am testifying on behalf on MHARR

7. Signature:

John Bostick

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

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.

1. Name:	2. Organization or organizations you are representing:
EDWARD J. HUSSEY	MANUFACTURED HOUSING ASSOCIATION FOR REGULATORY REFORM

3. Business Address and telephone number:

[redacted]

4. Have you 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?	5. Have any of the organizations you are representing 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?
☐ Yes ☒ No	☐ Yes ☒ No

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.

7. Signature:

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