

Manufactured Housing: A Study of Power and Reform in Industry Regulation

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Abstract

This article is a case study of the National Commission on Manufactured Housing and its attempt to reform the regulatory system. It describes the importance of manufactured housing as an affordable alternative to site-built housing and tells how efforts to reform the regulatory system through a consensus process initially succeeded but ultimately failed.

The article shows that while the consensus process was essential to get agreement among conflicting parties, consensus will hold only when all parties are sufficiently dissatisfied with the status quo to endure the cost of change. While the short-term prospects for reform are dim, the long-term prospects are more promising, as a few large manufacturers offer better warranties and as programs devolve from the federal government to the states.

Keywords: Affordability; Manufactured housing; Regulation

Introduction

One of the great secrets in the housing field is the role of manufactured housing (formerly known as mobile homes) in providing affordable housing in the United States. Manufactured housing placements account for approximately one in five of the total of single-family completions plus manufactured homes installed each year. According to the U.S. Census Bureau, manufactured housing is the fastest growing type of housing nationally. Approximately 15 million Americans live in more than 7 million manufactured homes. One reason for their significant market share is their affordability: In 1992, the average cost of a new manufactured home without land was \$28,400. Even with land and installation, the cost is still well below that of the typical newly constructed site-built home.

Despite its significant role in the single-family housing market, manufactured housing is largely ignored by conventional mortgage lenders and is zoned out of many urban and suburban communities. Although the product has evolved to the point that much of it closely resembles site-built housing, it still suffers

from its “trailer park” image and is perceived by many as an inferior product.

For manufactured housing to become an even greater housing resource for families of modest means, it must overcome both its image and industry resistance to reforms of the regulatory system.

The purpose of this article is to bring manufactured housing into the center of the policy debate on affordable housing, exploring the dynamics of the policy-making process as it was carried out by the National Commission on Manufactured Housing. The following observations are central to this article:

1. Manufactured housing is important because it is more affordable than site-built housing.
2. Regulations govern its quality and affordability to a significant extent.
3. Given a widespread shortage of affordable housing options, regulatory reform should be regarded as a policy imperative.
4. Deep and long-standing differences exist between the manufactured housing industry and those who claim to represent the interests of its consumers.
5. A careful examination of the dynamics of the failed attempt to reach consensus on regulatory reform can offer valuable lessons for the next attempt.

Manufactured housing must be seen in relation to the overall housing market. According to the American Housing Survey, 6 percent of households lived in manufactured housing in 1991, up from under 5 percent in 1980. Many analysts view manufactured housing and site-built housing as different housing types with distinct and largely independent markets. 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 a third of other housing units. According to the Manufactured Housing Institute, manufacturers produced more than 300,000 manufactured homes in 1994, representing potential retail sales of more than \$8 billion. Some of these homes replaced other manufactured housing that had deteriorated or become obsolete.

Manufactured housing also plays a significant role in the second-home market: For example, in 1991 13.3 percent of manufactured homes, but only 4.3 percent of single-family homes, were occupied as second homes. Manufactured homes are no longer confined to rental communities: The percentage has fallen from 43 percent in 1981 to 37 percent in 1990. In addition, multi-section homes accounted for 47 percent of all homes sold in 1993, compared with 27 percent in 1983 (National Commission on Manufactured Housing 1994). These data suggest that if there are indeed two markets, they are beginning to overlap, at least with regard to the higher end manufactured housing units.

Reform activity in the manufactured housing industry must be seen in a political context. The industry took the initiative by seeking congressional legislation in 1990. In response to that failed attempt, Congress established the National Commission on Manufactured Housing, placing representatives of the disputing parties on the commission and directing them to come back to Congress and to the U.S. Department of Housing and Urban Development (HUD) with recommendations. Congressional staff made it clear that consensus was necessary as a basis for congressional action on reform. Given the congressional charge, some have questioned whether the commission was formed for purely political reasons and whether reform was not doomed from the start. In the view of the author (who was also a participant in the reform process once the commission got under way), the likelihood of achieving reform was not great, but not impossible. The commission was formed to solve a political problem: Congress had been caught in the cross fire between the industry and representatives who claimed to speak for consumers. It is not clear whether Congress believed that the commission could reach consensus. At least one member of the commission, who had considerable contact with congressional staff, believed that Congress did not expect much from the commission. As this article will show, the commission was able, with considerable difficulty, to develop a consensus in its interim report to Congress dated March 1, 1994. However, the interests of the various parties, including conflicting interests within the industry (which is not significantly dissatisfied with the status quo), caused the consensus to break apart before the commission's final report was issued.

The prospects for reform over the short term are dim, given the antiregulatory atmosphere in both Congress and the administration. Over the long term, the prospects are better, for three reasons. First, a few large manufacturers are upgrading their warranties to include a five-year structural warranty;

competition will force other manufacturers to follow. Second, states are improving their oversight and regulation of manufactured home installation. Third, the possible dissolution of HUD and the move toward giving greater responsibility to the states make it likely that at some point there will be consideration of moving the function of establishing and enforcing codes out of HUD and back to the states. If this were to happen, many states would likely choose to make manufactured housing subject to state and local codes, like all other housing, returning the industry to its pre-1974 status, before there was a preemptive HUD code. If such action looks imminent, both the industry and consumer representatives will probably decide to support the reforms set forth in the commission's interim report as a more affordable prospect than state and local codes.

This article describes the reform process developed by the commission, showing how consensus was initially reached and subsequently fell apart, and discusses the conditions under which reform can occur. Given the affordable housing crisis in the United States, manufactured housing has a critical role to play. Upgrading the regulatory system is necessary for manufactured housing to achieve its full potential as an affordable housing alternative.

The regulatory system

Manufactured housing is subject to a regulatory system quite different from the regulations for other types of housing. Rather than state and local building codes, manufactured housing is regulated by the 1974 National Manufactured Housing Construction and Safety Standards Act. Under this law, HUD established and maintains a national building code for manufactured housing, which preempts all state and local building codes. A national code benefits the industry by making it possible for manufacturers to ship homes for siting in any state.

There are two major defects in the manufactured housing regulatory system. First, the code is administered by HUD, which under the best of circumstances has difficulty updating it in a timely manner. As a result, the code is out of date in many respects. For example, it references other construction documents that are outdated and some that are no longer in print. Second, the regulatory system is seriously deficient in providing consumer protection. There is no requirement in federal law for either the manufacturer or the retailer to provide any kind of

warranty. Furthermore, the HUD code does not cover installation of the home. A defective installation can cause major problems to the structure, to the point of rendering the home unlivable.

Manufacturers dislike two features of the current regulatory system. First, the HUD code requires that each home have a “permanent chassis.” The chassis typically includes two I-beams that run the length of the home (four I-beams for a double-wide home). This requirement adds to the cost of the home because the I-beams are not recyclable and basements must be excavated deeper to allow for the beams. The permanent chassis requirement also makes stacking units into multistory homes impractical. If this requirement were lifted, manufacturers would strengthen the wooden floor system so that the I-beams could be used for transporting the unit and then removed when the home is installed on a permanent foundation. The added cost of beefing up the floor would be significantly less than the cost of including the I-beams as a permanent part of the structure.

Second, federal law requires the manufacturer to notify homeowners of defects in a class of homes. For example, a manufacturer may have produced a significant number of units of a certain model type that includes a plumbing configuration that generates frequent leaks. The law does not, however, require the manufacturer to repair the defect unless it “presents an unreasonable risk of injury or death to occupants.” Thus, the notification requirement is a burden on the manufacturer and does little to resolve the homeowners’ problems, unless the manufacturer is subject to state warranty laws.

National Commission on Manufactured Housing

The industry initiated an effort in 1990 to amend the federal law to eliminate the permanent chassis requirement and the notification-of-defects procedure. These changes were included in the Hiler Amendment, named after Indiana Congressman John Hiler, who introduced the bill in the U.S. House of Representatives. However, consumer organizations—such as the American Association of Retired Persons (AARP), Consumers Union, and the National Foundation of Manufactured Homeowners—had not been consulted, and they opposed the amendment. The Hiler Amendment passed the House but was never introduced in the Senate. The conference committee shelved it and instead established the National Commission on Manufactured Housing, with instructions to report back to Congress and HUD. Congressional

staff made clear to the commissioners that congressional action would occur only if the commission were able to come up with consensus recommendations.

The commission was established with 17 members, including the secretary of HUD and eight appointees each made by the House and Senate Housing Subcommittee chairmen and ranking minority members. The commissioners are listed below:

1. Helen Boosalis, Board of Directors, AARP, Lincoln, NE (Chairman)
2. William H. Lear, Vice President—General Counsel and Secretary, Fleetwood Enterprises, Inc., Riverside, CA (First Vice Chairman)
3. Jennifer Soldati, Executive Director, New Hampshire Trial Lawyers Association, Concord, NH (Second Vice Chairman)
4. Mary Beth Bowman, Director, Arkansas Manufactured Home Commission, Little Rock, AR
5. Shirley Burley, Treasurer, Hampton Township, Bay City, MI
6. William Connolly, Director, New Jersey Division of Codes and Standards, Trenton, NJ
7. Thomas L. Eckman, Conservation Manager, Northwest Power Planning Council, Portland, OR
8. Honorable Ellen A. Harley, Representative, Pennsylvania House of Representatives, Harrisburg, PA
9. Edward J. Hussey, Jr., Vice President, Liberty Homes, Inc., Goshen, IN
10. John H. Jensen, Treasurer and Finance Committee Member, National Foundation of Manufactured Homeowners, Redmond, WA
11. Patrick Kennedy, President, Integrity Homes Brokers, Inc., Skaneateles, NY
12. Steven J. Logan, General Manager and President, Waverlee Homes, Inc., Hamilton, AL

13. Michelle Meier, Counsel for Government Affairs, Consumers Union, Washington, DC
14. David R. Scarponi, Owner and Operations Manager, Linco, Inc., Brunswick, ME
15. Michael A. Stegman, Assistant Secretary, Policy Development and Research, U.S. Department of Housing and Urban Development, Washington, DC
16. Rod Taylor, President, South Village, Inc., Topeka, KS
17. Leonard G. Wehrman, Co-Founder, National Foundation of Manufactured Homeowners, Daly City, CA

The congressional appointments weighted the commission against the industry: Only 6 members represented industry interests (Lear, Hussey, Kennedy, Logan, Scarponi, and Taylor), while 11 represented consumer interests or were public officials, who for the most part supported consumer interests. The HUD secretary's designee chose not to vote on policy issues, since there would not be enough time to consult within HUD and arrive at official positions. Besides, with HUD as a designated recipient of the commission's interim and final reports, it would be inappropriate for HUD's representative to vote.

When votes split within the commission, the 10 consumers and public officials usually were on one side and the 6 industry representatives on the other. Although the industry was in the minority on the commission, congressional insistence on consensus as the basis for any reform legislation ensured that industry representatives could veto any change they did not support. Some segments of the industry were apprehensive about the commission from the very beginning, fearing that it would do the industry more harm than good. One industry representative on the commission stated that the industry had hoped the commission would never be activated.

The consensus process

The first major decision facing the commission was the hiring of an executive director. A number of commissioners had been personally involved in the fight over the Hiler Amendment, and the trust level between industry representatives and the other commission members was not high. A division developed over the two finalists for the executive director position: One candidate

was perceived as being on the industry's side and the other on the consumers' side. Rather than start right off with a split vote, the commission decided to reopen the selection process. A new candidate was found who had no experience with manufactured housing and thus was not perceived as being biased one way or the other. He insisted as a condition of employment that there be virtual unanimity in support of his selection and that the commission commit itself to developing a consensus interim report for submission to Congress by March 1, 1994—in time to allow for the development of legislation in 1994, while the commission was still in existence.

With the assistance of the executive director, 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 issues assigned to the commission by Congress were divided between two committees, each of which represented the full diversity of opinion on the commission. The staff prepared option papers on each issue for discussion by the committees, and later the full commission. The commission held public hearings in different parts of the country and solicited testimony from affected parties.

Congress required the commission to examine and make recommendations on nine issues. Three of the issues related to construction standards, and two related to the inspection process and how it is funded. The other issues were the permanent chassis requirement, the implications of any changes recommended by the commission on state regulation of modular housing, the impact of the manufactured housing system on the actuarial soundness of federal mortgage insurance and secondary market programs, and the extent to which manufacturers comply with state warranty requirements. (Interested readers are referred to the final report of the commission for a full discussion of these issues.)

Several commissioners expressed concern that the issues were interrelated in ways that required tradeoffs, and thus they could not be negotiated individually. The commission began by identifying nine problems in the regulatory system, including HUD's inadequacy as a regulator, consumers' lack of comparative product information or recourse for defects in a home, and a lack of accountability by any party in the system. HUD's historical function has been as a program, not a regulatory agency, and it is not adequately staffed to carry out regulatory functions.

Furthermore, the federal regulatory process is cumbersome as a vehicle for administering and updating a housing code. The issue of lack of accountability stems from two features of the manufactured housing system. First, while HUD controls oversight of the production process, installation of the home is not covered. Some but not all states have installation standards. Moreover, there are roughly 4,600 independent retailers, over which manufacturers have little or no control. Manufacturers do not cover installation in their warranties; they view installation as a retailer issue. Retailers rarely provide a warranty, and turnover is high as small, poorly capitalized retailers move in and out of the business. Improper installation can result in structural damage to the home, and the consumer may be hard pressed to obtain redress. Once these problems were identified and articulated by the commission, it became clear that recommendations would have to involve substantial reform.

As the process progressed, there were rumblings of dissatisfaction within the industry. The two industry associations had representatives on the commission. The Manufactured Housing Institute (MHI) is the larger of the two; it represents manufacturers, retailers, insurers, financiers, and others with a financial interest in manufactured housing. The Association for Regulatory Reform (ARR) at that time represented only manufacturers, and it is a much smaller organization (although it is seeking to broaden its membership). There has historically been some tension between the two organizations. For example, it was ARR that initiated the 1990 reform effort that resulted in the Hiler Amendment. MHI did not feel congressional action was advisable at the time and entered the picture only to avoid a public split within the industry. The MHI staff approached the commission process as collaborative rather than combative. Before any decisions were made by the commissioners, ARR's president expressed the opinion to congressional staff and others that a minority report would be required, based on a perception that the commission staff did not adequately reflect manufacturers' interests.

In response to this situation, the executive director met with the two manufacturer representatives on the commission. He expressed concern that the industry seemed largely satisfied with the status quo and resistant to change. He suggested that if the industry was unwilling to support change, the commission should be aborted. The two commissioners agreed to meet with the other industry representatives on the commission to develop a unified position; they did not feel that aborting the commission was appropriate.

Commission consensus

Industry representatives on the commission met with staff from MHI and ARR to develop an industry position on key issues before the commission. The commission chairman asked that a spokesperson for the industry and another for consumers each make a proposal covering the major issues. After initially agreeing, the industry spokesperson decided against making a presentation because he felt that it would be a strategic mistake to reveal how much the industry was willing to concede. As a result, the first comprehensive proposal was placed before the commission by the consumer spokesperson. The proposal included a 10-year insurance-backed structural warranty covering both the manufacture and installation of a home, a consensus committee requiring a balance of interests to update the HUD code, and strengthening of the enforcement system. The industry representatives on the commission found the proposal unacceptable and countered with one of their own.

Negotiations continued until January 1994, when the consumer caucus decided to proceed with its own recommendations in the interim report, because it felt that the industry had not made sufficient concessions to consumer needs. The interim report was passed on a 9-6-1 vote (HUD's representative abstained; one commissioner was absent), and the industry representatives prepared a minority report.

Immediately after the January meeting, MHI staff approached the commission staff, asking if it would be possible to use the February meeting to make another attempt to obtain consensus. The commission staff prepared a memo to all commissioners setting forth the perceived positions of each side and proposing a middle ground that could, it was hoped, meet the needs of both sides. MHI circulated the memo widely within the industry. At the February commission meeting, a consensus was reached that included a five-year structural warranty on manufacture and installation of a home, a consensus process with a balance of interests for updating the HUD code, and modest changes to the enforcement system. The consensus included removal of the permanent chassis requirement for homes to be located on private property and elimination of the notification requirement for classes of homes with defects (numerous homes of the same model discovered to have a common problem). The commission voted 13-0-3 in favor of the consensus agreement. Three commissioners abstained, and one was absent.

Based on the February consensus, the interim report prepared in January was scrapped, and a new report was prepared and submitted to HUD and Congress on March 1, 1994. In March, the commissioners met with HUD Secretary Henry Cisneros, who commended them on the consensus and expressed his commitment to reform legislation in 1994. Staff from the commission, AARP, and MHI met with staff from the House and Senate Housing Subcommittees to brief them on the consensus and offer assistance in developing legislative language for inclusion in the 1994 housing legislation. Congressional staff advised the commission to hire an attorney to draft legislation, since they did not have the time or resources to do so.

Breakdown of consensus

Commissioners representing the industry participated in a number of industry-sponsored meetings to report on the commission's recommendations. Resistance quickly developed to the five-year structural warranty covering installation. Retailers typically provide no warranty now. Many are small and poorly capitalized, and they were simply unwilling to agree to this change. Manufacturers were unwilling to cover installation in their warranty, since they have little or no control over the independent retailers who in most cases are responsible for installation of the homes.

In the meantime, draft legislation was prepared and sent to the commissioners before the April meeting. At that meeting, industry representatives reported on the resistance they were encountering and agreed to continue to try to find a way to honor the consensus reached in February. They expressed anxiety about the legislative package, indicating that there was not time to reach agreement on legislation for 1994. The commission agreed to have the staff revise the draft legislation on the basis of written comments to be submitted by commissioners.

Commission staff sent the revised draft of the legislation to all commissioners before the May meeting. At that meeting, the commissioners representing the industry reported that they would no longer support the five-year structural warranty on installation and proposed instead a one-year installation warranty. They also stated that they opposed legislation in 1994. The majority decided to move ahead with legislation, since that had been the commission's objective from the beginning. Five of the six industry representatives walked out of the meeting at this point, returning only to vote against the legislation and the

final report. The legislation was approved on a 9-6-1 vote, and the final report was approved on a 10-6-1 vote.

MHI and ARR mounted a lobbying effort with Congress to make sure there would be no legislation in 1994. Their campaign succeeded. The industry representatives on the commission prepared a minority report that not only expressed opposition to legislation in 1994 but also attacked most of the agreements reached in February and included in the interim report to Congress and HUD in March.

Power relationships among interest groups

Although the industry was outnumbered on the commission, it was not without power in shaping the commission's recommendations to Congress and HUD. MHI is a multimillion-dollar national association funded largely by manufacturers according to the volume of their production of homes. MHI also has state organizations, funded by fees from both manufacturers and retailers. ARR is much smaller but has a full-time lobbying staff in Washington. The industry generated more than \$7 billion in sales in 1992 and has considerable political influence in high-volume areas such as the southeastern states. The contrast between the staff resources available to industry representatives and those available to consumer representatives was evident at commission meetings, where typically six or more industry association employees were present, including an engineer who was often called on for advice. On the consumer side, one AARP employee usually attended.

Three consumer organizations were represented on the commission. AARP is the largest and most powerful. While the focus of AARP's attention is on health care and Social Security, manufactured housing is a significant interest, because approximately 2 million persons aged 65 or older live in manufactured housing (Foremost Insurance Group 1993). Furthermore, 36 percent of purchasers of new manufactured homes are age 50 or older. AARP provided support by releasing a research staff member to the commission for a year at no cost. AARP is not organized to reach special constituencies such as owners of manufactured housing; however, the *AARP Bulletin*, which reaches 34 million households, has included two articles on the commission.

Consumers Union represents consumers before Congress and prepares a wide variety of consumer reports, but it lacks a

grassroots organizational base. Manufactured housing has not been the subject of any of its consumer reports. The organization was represented on the commission because a member of its staff had been active in the fight to defeat the Hiler Amendment.

The National Foundation of Manufactured Homeowners has organizations in more than 20 states. It is a voluntary organization with no paid staff and minimal financial resources. Most of the energy of this organization goes into landlord-tenant issues involving mobile home parks.

Industry impact on reform

The industry's success in derailing legislation in 1994 was a function of several factors: (1) the ability of MHI and ARR to mobilize their membership quickly and exercise influence on Congress, (2) the inability of the consumer organizations to mobilize their constituency quickly and effectively, and (3) the unwillingness of Congress to legislate without consensus among the affected parties.

Although the industry favors some legislative changes to the manufactured housing program, such as removal of the requirements for permanent chassis and for notification of defects, it is not significantly dissatisfied with the status quo. As one manufacturing representative testifying before the commission said, "If it isn't broken, don't fix it." The industry has had the benefit of federal preemption since the HUD code was implemented in 1976. The 1974 legislation that created the HUD code originally had a one-year warranty covering manufacture and installation of the home, with joint and several liability by the manufacturer and retailer. This provision was struck from the legislation before enactment. It is noteworthy that 20 years later, the issue over which the industry bolted from the commission consensus was the warranty. Meanwhile, site-built housing has seen significant improvement in warranty protection: Nearly half the new homes sold are covered by a 10-year insurance-backed structural warranty.

Consumer impact on reform

In the end, reform may rest with consumers. If the consumer organizations can exercise the kind of discipline and effort that the industry organizations have displayed, Congress and HUD will act. The consumers lack the financial resources the industry

has, but they are not without some tactical advantages. The current HUD leadership seems to favor consumer interests, and the high percentage of elderly persons in manufactured housing will focus the attention of Congress, which traditionally listens to the elderly and responds to their issues.

Conclusion

The experience of the commission offers several lessons on how (and how not) to go about reforming the manufactured housing regulatory system. Congress wisely ensured that all affected parties were represented on the commission and rightly required the commission to provide an interim report by March 1994, in time to allow for preparation of reform legislation for enactment in 1994. The commission wisely decided against hiring an executive director perceived to favor either consumers or industry, and it rightly adopted a set of procedures and a timetable for action aimed at achieving consensus on all major issues in time for its interim report to Congress. Consensus was reached after a substantial effort by commissioners on both sides of the debate and substantial involvement of staff from both MHI and AARP in working out the compromise reflected in the interim report. The consensus failed to hold in large part because the industry was not unhappy with the status quo, at least not unhappy enough to endure the wrath of the retailers over the proposed five-year structural warranty on installation of the home.

A clear lesson of this experience is that the status quo cannot be so comfortable that the will to change is undermined. One way to solve this problem is to put a sunset provision into the law, so that Congress has to act periodically to continue the status quo. For example, if the preemptive HUD code had a five-year sunset provision, all affected parties would have an incentive to work together either to extend the code with any necessary modifications or to phase it out in an orderly fashion. In a sense, the current political situation—with the scope of HUD's mission and even its existence at stake and the move to give programs back to the states—may fulfill the same function as a sunset provision.

The commission performed a useful role by carrying out negotiations among the affected parties and reaching a consensus on major issues. Even though the consensus broke apart later, the commission's interim report to Congress and HUD remains a reasonable proposal for action because it represents a balance of interests between the industry and its consumers. The industry

united to oppose legislation in 1994, but the fact that there was a consensus at all suggests that some elements within the industry recognize that change is appropriate and that the proposed changes will help the industry in the long run. Needed reforms to the regulatory system have been identified and, if adopted, will help bring manufactured housing to its full potential as an affordable housing alternative. Adoption of reforms may also help overcome the public perception that manufactured housing is an inferior product. Given the potential that manufactured housing holds for meeting the affordable housing needs of the United States, regulatory reform should be a high priority for all housing policy makers.

Author

Robert W. Wilden is a retired federal employee; for 16 years he was director of HUD's Section 202 program for housing the elderly and disabled, and he served as executive director of the National Commission on Manufactured Housing from April 1993 through September 1994.

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