

In this Issue

Message from the President	1
MAHC Board & Committees	2-3
Corporate Transparency Act Update	4-5
Michigan Homeowners Energy Policy Act	6-7
News from Illinois	8
HUD 30-Day Rule	9-10
Resources	11
Mission Statement	12
Rochdale Principles	12

A Message from the President

Welcome to 2025! This past year MAHC continued its education mission by conducting special training sessions around the Midwest and celebrating all things cooperative at our annual conference in the Bahamas.



Amidst a tropical background of sun and sand, board members and professionals shared their insights and best practices for ensuring a cooperative’s success.

I know our attendees were eager to take what they learned back to their cooperatives and apply their newfound knowledge.

Georgetown Cooperative held its annual MAHC Certified Cooperative Specialist course in October 2024, and I am pleased to announce that we have 12 more Certified Cooperative Specialists in MAHC. Thanks to all of our attendees who are new leaders in the cooperative housing community, and thanks to all of our trainers for taking time out of their schedules to conduct the sessions.

From fall to winter, MAHC moves with the seasons, but we definitely don’t let winter keep us from our fulfilling our mission. We’re busy planning for this year’s annual conference on the sunny island of the Dominican Republic at the Paradisus Palm Real Golf & Spa Resort, May 18-21. We have a lot to do to prep for this event, and we’d love to see you! Our annual conference offers excellent opportunities for you to learn new skills and connect with your fellow MAHC members. And what better place to do all this than in the Caribbean!

During these long days of winter, don’t forget to check on your neighbors. A wave as you pass through with your shovel on a snowy day, dropping off groceries, or a phone call or a text can go a long way to making them feel connected to your community.

Here’s to a great 2025 for everyone!

Jerome Rayford

Jerome Rayford, President
Midwest Association of Housing Cooperatives

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SCOTUS GRANTS BIDEN ERA JUSTICE DEPARTMENT’S EMERGENCY STAY APPLICATION BUT ANOTHER NATIONWIDE INJUNCTION REMAINS IN EFFECT

In the waning hours of 2024, the Biden-era Justice Department filed an emergency application with the U.S. Supreme Court to stay (put on hold) the nationwide preliminary injunction of the Corporate Transparency Act (CTA), its reporting deadlines and enforcement ordered by the U.S. District Court for the Eastern District of Texas in Texas Top Cop Shop on Dec. 3, 2024. On Thursday, January 23, 2025, SCOTUS granted the government’s emergency application leaving millions of small business owners and hundreds of thousands of volunteer Board members stunned at this most recent decision from the highest court in America. The impact of this Order means that millions of American businesses and volunteer Board members serving America’s nonprofit housing cooperatives are once again required to report to FINCEN in accordance with the Corporate Transparency Act or face substantial monetary fines and/or jail time from the Department of Treasury’s enforcement division.

But hold your horses a moment here because there is another suit out of Texas from the Eastern District Smith v. U.S. Department of the Treasury that is still in play and has not been appealed yet. This means that the nationwide injunction is still in place. FINCEN is still accepting voluntary reporting but at this time is still paused despite the order issued by SCOTUS in the Texas Top Cop Shop case entered on January 23, 2025:

On January 23, 2025, the Supreme Court granted the government’s motion to stay a nationwide injunction issued by a federal judge in Texas (Texas Top Cop Shop, Inc. v. McHenry—formerly, Texas Top Cop Shop v. Garland). As a separate nationwide order issued by a different federal judge in Texas (Smith v. U.S. Department of the Treasury) still remains in place, reporting companies are not currently required to file beneficial ownership information with FinCEN despite the Supreme Court’s action in Texas Top Cop Shop. Reporting companies also are not subject to liability if they fail to file this information while the Smith order remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership information reports.

Continued on page 5

MAHC’s Newsletter Committee



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The MAHC Messenger

Continued from page 4

See <https://www.fincen.gov/boi>. (Second emphasis added). On January 7, 2025, the Texas Court in *Smith v. United States Department of the Treasury*, No. 6:24-cv-336-JDK (E.D. Texas, Tyler Div. 2025), signed a nationwide injunction and issued an opinion stating that the CTA was likely unconstitutional in its application. The Court further noted that the “CTA regulates private companies formed under state law, not the channels or instrumentalities of interstate commerce” which forms the basis for the Biden Administration’s support for collecting sensitive personal information of millions of small business owners and thousands and thousands of individual volunteer Directors of nonprofit housing cooperative corporations. So, despite SCOTUS granting the emergency stay, the government remains enjoined from enforcing the CTA.

There are many moving pieces at this juncture in addition to the various court proceedings still in play. At the time of publication, the new Administration’s appointee for Secretary of Treasury is slated for confirmation in the coming days not to mention the current President’s power to enact an Executive Order specifically addressing the congressional overreach into State sovereignty and business regulations traditional left to the States. The government Defendants in the *Smith* case have not otherwise moved for any appeal or reconsideration on the January 7, 2025 injunction so until such time as an appeal is heard in the Fifth Circuit or another emergency motion is filed with SCOTUS changes the *Smith* injunction, the CTA is stayed from enforcement.

In the interim, reporting companies that are utilizing their legal counsel to assist with the filing of Beneficial Ownership Information, are nevertheless encouraged to continue to submit reporting information to their legal counsel with the caveat that such information be held until such time as further ordered by either the Fifth Circuit or SCOTUS, unless they voluntarily wish to have their information filed with FINCEN.

*April E. Knoch, Esq.
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Benefits of MAHC Membership

ANNUAL CONFERENCE-Our Annual Conference provides an opportunity for our member cooperatives to attend classes on a variety of subjects and to network with housing cooperators from other areas. Our Annual Conference is held in fun-filled destinations that allow attendees to relax after a day of intensive class participation. The Annual Conference features CCS and New Board Member training sessions. This is definitely a must-attend event!

WORKSHOPS-MAHC Task Force Workshops cover topics including Membership Selection, Financial Management, Cooperative Communications, Serving on the Board, Membership Orientation, Intro to Co-ops, Management Contracts, and much more.

HOUSING HANDBOOK-MAHC publishes the Cooperative Housing Handbook frequently referred to as the “Co-op Bible”. This handbook is a must have for those involved in the production, governance, management or routine operations of a housing cooperative.

CERTIFICATION-MAHC is the only organization to provide Certified Cooperative Specialist (CCS) training for board members. The workbook, training, testing materials, and professional instructors create a dynamic and pertinent Co-op educational experience.

THE HOMEOWNERS' ENERGY POLICY ACT

Public Act 68 of 2024: The Homeowners' Energy Policy Act (HEPA)

On July 8, 2024, Governor Whitmer signed into law Public Act 68 (HB 5028), the Homeowners' Energy Policy Act ("Act"), which will take effect in early 2025. The Act's intention is to limit homeowners' associations' ability to deny or restrict the development and installation of solar panels and other energy-efficient improvements. This is because many of these types of solar energy systems or other energy-saving improvements have not traditionally been permitted by the bylaws and governing documents of most homeowners associations.

Under the Act, the legislature failed to provide a definition of a homeowners association. This has caused confusion as to the applicability of the Act, and whether the Act is applicable to housing cooperative corporations. Housing cooperative corporations are inherently different than homeowners associations and condominium associations.

In a case where our office represented the housing cooperative, the Michigan Court of Appeals clarified the distinction between a Cooperative and Condominium Associations in *Jeffrey-Moise v. Williamsburg Towne Houses Coop., Inc.* In this context, a Condominium Association and a homeowners association represent similar concepts of owning title to real property versus owning a share in a corporation, such as with housing cooperatives.

The basic difference between condominium and cooperative housing is that the individual purchasing a condominium takes title to the condominium unit while the individual purchasing a membership in a cooperative owns stock in a cooperative corporation and receives a lease for a specific unit for which the individual pays a regular amount to the corporation as [631] a proportionate share of the operating expenses of the cooperative. See 5 Michigan Civil Jurisprudence, Condominiums and Cooperative Housing, § 1. 336 Moise, Mich. App. 616, 630. (2021).

In contrast, Michigan condominiums are governed by the Condominium Act, MCL 559.101, et seq., which provides that a condominium unit is the "portion of the condominium project designed and intended for separate ownership and use, as described in the master deed," MCL 559.104(3), in which the purchaser is a co-owner who enjoys "an exclusive right to his condominium unit and has such rights to share with other co-owners the common elements of the condominium project as are designated by the master deed," MCL 559.163.

Conclusion: HEPA Doesn't Apply to Housing Cooperatives

A Michigan housing cooperative corporation is not a condominium association or a homeowners association. HEPA's intention is to regulate and restrict homeowners' associations and homeowners' association agreements as in its statement of purpose, which is to create "[a]N ACT to invalidate certain provisions in homeowners' association agreements[...]" The Act's intention is to limit the ability of homeowners association agreements to restrict energy efficient endeavors and installations by the homeowners subject to specific homeowners' association agreements. It's arguable if the act even applies to Condominium Associations, but more likely, only applies to homeowners associations with very few common elements and who are potentially subject to traditional restrictive covenants.

The MAHC Messenger

THE HOMEOWNERS' ENERGY POLICY ACT:

Continued from page 6

And while Michigan cooperatives may appear similar to condominiums or HOAs in structure and governance, they are fundamentally different in the bedrock principle that their members are shareholders in a corporation. As such, it cannot be HEPA's intention to allow shareholders in a Michigan cooperative to make significant modifications to shared property without the oversight or approval of their Board of Directors and the Cooperative's governing documents, even if for energy-efficient modifications. Further, the plain language of HEPA itself supports its intention to regulate homeowners' associations, not cooperative shareholders or their co-op's Board of Directors. While legislation could be adopted by Michigan's legislature that follows in the footsteps of HEPA and seek to apply similar restrictions to housing cooperatives, the Homeowners' Energy Policy Act as drafted cannot stretch that far. Michigan Cooperatives should seek legal counsel if and when HEPA related issues arise in the governance of their communities.

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MAHC Messenger

The views and opinions expressed herein are those of the author(s) and contributors and should not necessarily be reflected as those of the Midwest Association of Housing Cooperatives.

The purpose of this publication is to serve as informational only and not to engage in disbursement of legal advice. If you require legal assistance please consult an attorney. If you have questions or comments please submit them to the editor at the email address listed in this publication.



Looking for something about all things cooperative? Check out MAHC's Certified Cooperative Specialist program and become a cooperative expert! Contact MAHC to find out more.

The MAHC Messenger

NEWS FROM ILLINOIS!

In 2024 MAHC IL VP, Christine Johnson, began an initiative to bring together local properties, mostly Cooperatives to join educational forums.

First was a forum with representatives from three different Attorney firms, which took place on June 13, 2024, at Noble Square Cooperative's, Robinson room, located at 1165 N. Milwaukee Ave, Chicago, IL.



The hot topics were:

- Ever changing eviction rules
- Changes to new member qualifications
- How to retrieve background checks from outside of the USA
- The CTA Corporate Transparency Act

Second was a forum focusing on the fluctuating Insurance Markets with representatives from three Insurance Agencies. This forum took place on November 13, 2024, at the same location as the previous forum.



The hot topics were:

- Focus on the huge rate increases that seem to plague all Multi-Family Properties.
- When to open a claim and when not to.
- The impact weather has had on the insurance markets.

These well attended forums not only delivered quite a bit of great information from the guest speakers, but it also brought together Cooperatives from the Chicago area to get to know each other and share knowledge.

Although, year 2024 will soon come to an end, Christine Johnson notes more forums coming together in the coming year of 2025.



*Christine Johnson
MAHC Illinois VP*



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The MAHC Messenger

HUD New 30-Day Rule

In response to the number of evictions for non-payment after the COVID lockdowns, HUD issued an interim rule requiring certain housing program recipients to issue a 30-day notice for non-payment instead of the 14-day notice of non-payment. The interim rule became a proposed rule published on December 1, 2023 and was to remain in effect until such time as HUD issued a final rule. On December 13, 2024, HUD released its final rule regarding the provision of a 30-day notice for non-payment of monthly housing charges for select federally subsidized projects with an effective date of January 13, 2025 despite its required application in the interim.

The final rule requires affected housing cooperatives to issue a written notice to program recipients at least 30 days before a formal judicial eviction is filed due to nonpayment of monthly housing charges if they live in public housing or one of several project-based monthly housing charges assistance (PBRA) properties. The final rule applies only to evictions for nonpayment of monthly housing charges. Covered programs include:

- Section 8 Project-Based Monthly housing charges Assistance; and,
- Certain Section 202 Supportive Housing for the Elderly programs; and,
- Section 811 Supportive Housing for Persons with Disabilities programs.

The final rule does not however, apply to Housing Choice Vouchers (HCVs) or Project-Based Vouchers (PBVs). The rule does not extend protections to evictions pursued due to other occupancy violations or for material noncompliance. This rule also does not create, expand, or retract any existing legal requirements for submitting VAWA notifications and requisite HUD forms to affected residents, therefore existing VAWA notification requirements must continue to be adhered to.

Along with adopting the interim rule provisions, HUD's final rule added some new requirements for affected housing cooperatives when issuing a non-payment notice. The final rule requires that the 30-

day notice include instructions on how recipients can cure occupancy violations for nonpayment of carrying charges, though HUD refers to it as monthly housing charges. These instructions would allow affected recipients to clearly understand how to avoid the commencement of a formal judicial eviction proceeding for non-payment of monthly housing charges. Instructions on how the affected recipient can cure the nonpayment violation would include the alleged amount of carrying charges owed, any other arrearages allowed by the HUD program, and the date by which the affected recipient must pay the carrying charges and arrearages to avoid the filing of an eviction action in State court against the affected recipient's household. The final rule also requires the cooperative to include information on how the affected recipient can recertify their income and how affected recipients can request a minimum monthly housing charges hardship exemption if applicable.

The proposed rule requires affected cooperatives to provide the 30-day notice in accessible formats to ensure effective communication with individuals with disabilities and in a form to allow meaningful access for individuals with limited English proficiency (LEP) and to comply with Title VI nondiscrimination requirements of the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act of 1973.

Additionally, HUD suggests the 30-day notice advise individuals of their right to request reasonable accommodations, include information on how individuals with disabilities can request reasonable accommodation, and include a point of contact for reasonable accommodation requests. There are instances in which a Member may be entitled to a reasonable accommodation in cases of non-payment of monthly housing charges. For example, if a housing provider usually requires monthly housing charges be paid on the 1st of the month, but a Member receives disability-related government assistance later in the month, the housing provider may be required to accept a Member's request to pay monthly housing charges on this later date as a reasonable accommodation.

Continued on page 10

Continued from page 9

Lastly, this final rule requires the 30-day notice include an itemized amount, which is separated by month, of alleged monthly housing charges owed by the Member, along with any other arrearages allowed by HUD and included in the occupancy agreement which must also be separated by month, and the date by which the Member must pay the amount of monthly housing charges owed before a formal judicial eviction can be filed for nonpayment of monthly housing charges. The arrearages, which might include late fees or other fees, must also be itemized separately from the alleged monthly housing charges amount owed by the affected recipient.

This is important because if the affected recipient pays the full amount of the alleged carrying charges owed but not the arrearages, the nonpayment will still be considered cured, and an eviction for nonpayment cannot be filed. This means that if there are late charges, legal fees/costs, carrying charges and separate fines assessed, if the affected resident pays the outstanding carrying charges, but not the late fees or fines, the cooperative may not proceed with the non-payment eviction action. HUD emphasizes that the protections in this rule do not apply to other types of evictions that result from non-monthly housing charges lease violations, such as nonpayment of arrearages (such as late charges, fines, and legal fees), if allowed under the applicable HUD program and specified in the lease.

HUD indicates it will issue revised leases soon and covered housing cooperative will have 14 months to use them. HUD Occupancy Handbook 4350.3 REV-1 CHG-3 dictates that cooperatives subject to regulatory tenancy requirements use a HUD-approved occupancy agreement in lieu of a model lease. Occupancy agreements for assisted cooperatives must incorporate the cooperative's policy on unit transfers and the Model Lease paragraphs covering recertification, termination of assistance, and fraud penalties. Cooperatives subject to the final rule should be prepared to amend their occupancy agreements to come into compliance with HUD's Final Rule, or, minimally, adopt an Occupancy Agreement Addendum incorporating the required language for the 30-day notice including the new rights of affected recipients in receipt of the 30-day notice under the final rule.

HUD advised that it will issue sample notice language but affected housing cooperative may also draft their own notices as long as they include the required elements. We strongly encourage affected properties to reach out to their cooperative attorney to assist with the new required compliance language as well as the necessary occupancy agreement amendments. Further, affected cooperatives should discuss the potential issues created by the shortcomings of HUD's final rule and how it could impact future operations with both their cooperative attorney and their Property Manager/Management Agent.

*April E. Knoch, Esq.
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Join us in the Dominican Republic

May 18-21, 2025

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Registration Open!

Go to www.mahc.coop



Resources

Website & Office

www.mahc.coop
10882 Beech-Daly Rd.,
Taylor, MI 48180

Other Web Resources

National Association of Housing Cooperatives
www.nahc.coop

Direct Learning

Contact the MAHC office for more information about on-site training opportunities!

National Coop Law Center

www.nationalcooperativelawcenter

Registration is Open!

MAHC 2025 ANNUAL CONFERENCE

May 18-21, 2025

**Check our website for info
www.mahc.coop**

Our Mission Statement

To support and champion the cause of quality housing through education, legislative actions, partnership, and advocacy for Housing Cooperatives



Rochdale Principles

People coming together to work toward the betterment of society. During the 19th century, the Industrial Revolution created tremendous upheaval, often to the detriment of workers. What required many hours of hand-skilled labor now took half the time with machines. Hand weavers were one of the groups who suffered the most as looming machines and textile factories could turn out products and materials faster than traditional hand weavers. A group of tradespeople and weavers, said “Enough” and formed their own organization, developing their guiding principles which became the foundation of the cooperative movement and these principles are still in use today, with some minor modifications.

- 1. Voluntary and Open Membership—Membership is open to all individuals free from discrimination**
- 2. Democratic Member Control—equal votes for members-one member/one vote**
- 3. Members’ Economic Participation—Maintaining economic cooperation through equitable contribution and sharing of economic responsibilities and benefits**
- 4. Autonomy and Independence—Cooperatives exist as autonomous organizations owned by their members**
- 5. Education, Training and Information—Helps members increase productivity**
- 6. Cooperation Among Cooperatives—Working with fellow cooperatives at the local, state and national level**
- 7. Concern for Community—Looking after members of the community**