

April 27, 2015

Hi Rachel,

Thank you for making your valuable time available to meet with Enalays staff this past Friday to discuss the Enalays streamline permitting system for building departments.

As we discussed during our meeting, the Conflict of Interest Topic continues to interfere with moving the HERS industry ahead on many fronts including the area of permitting. As such, I want to outline and reiterate USERA's position which refutes Gavin's interpretation of Code 1673 (j) and the definition of "Independent Entity". Furthermore, I really appreciate your open mindedness and fairness relating to this matter and your desire to help the industry get this right according to code.

Independent Entity means having no **financial interest in**, and **not advocating or recommending the use of any product or service** as a **means of gaining increased business** with, firms or persons specified in Section 1673(j).

1673(j) Conflict of Interest.

- (1) Providers shall be independent entities from Raters.
- (2) Providers and Raters shall be independent entities from the builder and from the subcontractor installer of energy efficiency improvements field verified or diagnostically tested.
- (3) Providers and Raters shall be independent entities from any firm or person that performs work on the home for a California Home Energy Audit or a California Whole-House Home Energy Rating.

EXCEPTION to Section 1673(j)(3):

California Whole-House Home Energy Raters, who are working as or for a Building Performance Contractor certified under an Energy Commission-approved Building Performance Contractor program as part of a Provider's Rating System as specified in Section 1674(e) of the regulations and in the HERS Technical Manual, shall not be required to be an independent entity from the person(s) or firm(s) performing the work on a home. This exception shall not apply to California Field Verification and Diagnostic Testing Raters performing field verification and diagnostic testing of newly constructed homes or alterations to existing homes to verify compliance with the requirements of Title 24, Part 6.

Excerpt from the Residential Appendix RA2.7

"The Third Party Quality Control Program shall meet the requirements imposed on a HERS Rater specified in the Commission's HERS Program regulations (California Code of Regulations, Title 20, Division 2, Chapter 4, Article 8, Sections 1670 -1675), including the requirement to be an independent entity from the builder, the HERS Rater that provides independent field verifications, and the subcontractor installer as specified by Section 1673(j). **However, a Third Party Quality Control Program may have business relationships with installers participating in the program to advocate or promote the program and an installer's participation in the program, and to advocate or promote products that the Third Party Quality Control Program sells to installers as part of the Program.**

1) I can appreciate Gavin's verbal explanation that an independent entity means that the builder and rater can have no financial interest in each other. My understanding from Gavin is that original written code was meant for new construction and the Builders and Raters relationships to prevent collusion. As unclear and confusing as the language might be as it pertains to new construction, the intent and language is very clear as it pertains to change outs and the relationship the installer and rater should not have and how that differs from the specific language that was created to allow the TPQCP to have with installers. As we discussed in our conference call with Gavin and USERA staff, the conflict of interest statement shows up twice in Section 1673 (j) -1673 and reconfirms the definition in the Residential Appendix RA2.7 further proving that there is clear definition that a rater cannot for hire be directed by the contractor or building owner to pull permits as a service to gain increased business. Even if the service is offered for FREE, there is no doubt that it is linked to the acquiring of, or the maintaining of, the current HERS rating services being offered by the rater.

2) I would like to further have the Commission take into consideration that if a HERS Rater provides services or work on behalf of the installing contractor or the home or business owner that this does in fact constitute another direct conflict of interest. By offering such services, the Rater has entered into an employee employer type of relationship taking direction for hire with the contractor and or building owner and in doing so gives up their perceived independence.

EXAMPLE:

If a home owner or the contractor, or an "Authorized Representative" of the contractor is allowed to pull the permit according to code, then doesn't the rater acting as an "Authorized Representative" lose or forfeit their independence?

I appreciate the commission's consideration of these very critical points.

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