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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3282 and 3284

[Docket No. FR-6234-A-01]

RIN: 2502-AJ57

Manufactured Housing Program: Minimum Payments to the States; Advanced Notice of Proposed Rulemaking and Request for Public Comment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Advanced notice of proposed rulemaking and request for public comment.

SUMMARY: This advanced notice of proposed rulemaking (ANPR) informs of and seeks public comment on changes that HUD is considering for the minimum payments that HUD distributes to states that participate in the Manufactured Housing Program as State Administrative Agencies (SAAs). HUD is considering two changes intended to achieve more equitable payments that more appropriately reflect state responsibilities and to incentivize continued and new state partnerships: First, HUD is considering payment to each SAA for its participation as partners in each of the various program elements, including SAA roles, participation in joint monitoring, and for administering installation and dispute resolution programs. Second, HUD is considering a change in annual funding from minimum end of Fiscal Year lump sum payments to payments for each operational element at the end of each Fiscal Year, and a sunset provision for states to strategize and plan for this change. HUD is seeking public comment on questions related to these changes and will consider the comments in developing a proposed rule to further streamline and enhance the minimum payment formula. This ANPR will also be shared with the Manufactured Housing Consensus Committee (MHCC) and the relevant MHCC subcommittee and all state partners for feedback and comments prior to

moving forward in the rulemaking process. A Proposed Rule developed in consideration of this ANPR will also be shared with the MHCC prior to moving forward in the rulemaking process in accordance with statutory requirements.

DATES: Comments due **[Insert 60 days from date of publication in the FEDERAL REGISTER].**

ADDRESSES: Interested persons are invited to submit comments regarding this ANPR. Comments should refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of comments by mail: Comments may be submitted by mail to the HUD Regulations Division, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410-8000; telephone: (202) 708-2625 (this is not a toll-free number), (800) 481-9895 (this is a toll-free number). Hearing- or speech-impaired individuals may access these numbers through TTY by calling the Federal Relay Service at (800) 877-8339 (this is a toll-free number).

2. Electronic submission of comments: Comments may be submitted electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of this ANPR.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

3. Public inspection of public comments: All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at (202) 402-5731 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877-8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Teresa B. Payne, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 Seventh Street SW, Room 9164, Washington, DC 20410; telephone number 202–402–5365. (This is not a toll-free number.) Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8389. (This is a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

HUD is considering streamlining and enhancing the minimum payment formula to provide more equitable payments to State Administrative Agencies (SAAs) that more appropriately reflect the responsibility of the corresponding state and better encourage states to participate to the maximum extent possible in the Federal-State manufactured housing partnership program. First, HUD is considering payment to each SAA for its participation as partners in various program elements, including SAA roles, participation in joint monitoring, and for administering installation and dispute resolution programs. Second, HUD is considering a change in annual funding from minimum end of Fiscal Year lump sum payments to payments for each operational element at the end of each Fiscal Year, and a sunset provision for states to strategize and plan for this change.

Elsewhere in today's issue of the Federal Register, HUD published a final rule that would revise HUD's regulations at 24 CFR 3282.307 and 3284.10 on minimum payments to states to provide more equitable and fair payments to states. HUD continues to seek solutions to the issue of inequitable payments between states and to encourage states to participate in the Federal-state manufactured housing partnership program to the maximum extent possible. Due to the preemptive nature of this building regulatory program and the geographical distribution of home production facilities combined with interstate commerce, Federal-state partnerships are integral to achieving the purposes of the National Manufactured Home Construction and Safety Standards Act of 1974 and to protecting the residents and general public. This ANPR will also be shared with the MHCC and the relevant MHCC subcommittee and all state partners for feedback and comments prior to moving forward in the rulemaking process. A Proposed Rule developed in consideration of this ANPR will also be shared with the MHCC prior to moving forward in the rulemaking process in accordance with statutory requirements (42 U.S.C. 5403(b)(3)).

Compensating state partners has been a cornerstone of HUD's commitment to its state partners. In accordance with section 620 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act), 42 U.S.C. 5401–5426, HUD regulations provide for

HUD to establish and collect from manufactured home manufacturers a reasonable fee to, among other things, provide funding for states that offsets the costs of administering various responsibilities states choose to execute as identified in the respective state plan. 42 USC 5419(a)(1)(B). States that participate in the federal program as SAAs are currently compensated through a formula calculation. 42 USC 5419(e)(3). Currently, some SAAs with either fully or conditionally approved State plans receive an additional end-of-Fiscal-Year lump sum payment in the amounts which are not less than the total allocated amount, based on the fee distribution system in effect on December 27, 2000. 42 USC 5419(e)(3). Under the distributions included in this ANPR, eligible states would continue to receive fee distribution amounts which are not less than the allocated amounts in effect on December 27, 2000.

The Manufactured Housing Improvement Act of 2000 amended the National Manufactured Housing Construction and Safety Standards Act of 1974. Since then, HUD's payments to SAAs have consisted of evaluating each fully-approved SAA's total annual payment and ensuring that such total payment does not fall below the total HUD payments to the fully-approved SAA for Calendar Year 2000. 42 USC 5419(e)(3).

Elsewhere in today's issue of the Federal Register is a final rule by HUD, which would move the baseline payment to the amounts paid to the states in Fiscal Year 2014 (FY14) to ensure payments do not go below the Calendar Year 2000 (CY00) payments, and now also includes states that have conditionally approved state plans to address previous inequities. This final rule followed from a proposed rule published December 16, 2016 (81 FR 91083) and the public comments received in response.

However, HUD believes that even with these changes there may be even more equitable approaches to ensure SAA compensation in compliance with statutory provisions. While the current formula establishes a payment that allows each SAA to obtain a minimum level of funding, that minimum funding level does not align workload with financial resource needs. For example, some states are still being provided funding under the statutory minimums, even though those states no longer have any operating manufacturing plants. Further, even with minimum payments now being based on production and shipment numbers that existed in FY14, minimum payments do not reflect workload due to changing dynamics of production and shipments. The updated regulation related to supplemental payment at the end of the fiscal year paid to eligible states is based on FY14 production outputs, and no other factors albeit update to the calculation based on CY00 production outputs. Therefore, HUD is considering an allocation of financial resources more closely based on the workload needs arising from the various levels of participation that any given state may experience or elect.

HUD is soliciting comment on potential action related to its partial funding of state programs in accordance with 42 USC 5419(e)(3), which directs that states do not receive less than the formula distribution amounts that were in place for production states ($2.50 per transportable section) and location states ($9.00 per transportable section) in CY00. Elsewhere in today's issue of the Federal Register, HUD published a final rule that would substantially increase the payment to production states from $2.50 per transportable section to $14.00 per transportable section. HUD is also now considering payment to each SAA for its participation as partners in various program elements, including SAA roles, participation in joint monitoring, and for administering installation and/or dispute resolution programs.

HUD is considering this change to better reinforce HUD's commitments to HUD-state partnerships while incentivizing states to maintain current partnerships and consider additional partnerships and participation in all aspects of the program. It is important to understand that these payments are distinct from any HUD funding to SAAs provided through formula distribution calculated from production and shipments. It is also important to understand that based on statute, only SAAs with state plans are eligible for funding, therefore, those states that may choose to operate individual optional programs such as Dispute Resolution and or Installation, would not get payments unless the state becomes an SAA.

This change from minimum end of Fiscal Year lump sum payments to payments for each operational element at the end of each Fiscal Year would occur over an established time period, such as 5 or 10 years. HUD is considering a sunset of the supplemental payment(s) over a to-be-determined time frame to better incentivize states to participate to the maximum extent possible in the manufactured housing program that was initially created as a Federal-state partnership.

HUD's current partnership elements include states that have chosen to partner as:

- State Administrative Agencies with manufacturers located in the state (SAAM)
- State Administrative Agencies without manufacturers located in the state (SAAL)
- State Administrative Agencies that partner with HUD to participate in Joint Monitoring (JM)
- States that partner with HUD to administer Dispute Resolution (DR)
- States that partner with HUD to administer Installation Oversight (IN)

HUD is considering the provision of lump sum annual payments for each partnership element to help offset the costs of standing up and operating each aspect in addition to the $9 and $14.00 that will be paid for location and production through a final rule being published elsewhere in today's issue of the Federal Register. HUD is contemplating setting the annual payments for each element within the following ranges:

- SAAM: $5,000 - $8,000

- SAAL: $5,000 - $8,000
- JM: $5,000 - $8,000
- DR: $3,000 - $5,000
- IN: $5,000 - $7,000

In addition, because the work related to the oversight of installation of new manufactured homes is generally dependent on the number of home installations in each state, HUD is considering augmenting the per-unit formula up to $2.00 per transportable section to account for installation oversight work for each transportable section with a manufacturer-reported first destination in a state that administers a HUD-approved installation program.

Using FY21 as an example, production and shipments are estimated to be 5% to 8% above production and shipments for FY20. Therefore, in this following examples, FY21 total production and shipments are estimated to be around 150,000 to 158,000 transportable sections.

Hypothetical State A

State A is an SAA with production within the state and participates in the program as an SAAM and SAAL but does not participate as a state partner for JM, IN, or DR state. Production for the plants within this state are estimated to be about 4,500 transportable sections in FY21 and shipments within or to this state are estimated to be 2,500 transportable sections in FY21. Therefore, according to HUD's formula payments, payment to State A in FY21 would be comprised of:

- Production: 4,500 transportable sections x $14 per section = $63,000, and
- Shipments: 2,500 transportable sections x $9 per section = $22,500

In addition to the formula payments above, State A would receive an FY21 year end payment for participation as an SAAM and SAAL, comprised of the following:

- SAAM: $5,000 - $8,000, and
- SAAL: $5,000 - $8,000

Since FY21 is within the to be determined sunset period, State A would also receive a year end supplemental payment that would initially be calculated based on the FY14 total payment minus the sum of formula and participation payments: FY14 total payment – ($63,000 + $22,500 + $10,000 to $16,000[1]).

The end of year supplemental would continue to be paid through the sunset period, though in potentially reduced amounts (see Question 3).

After the sunset period, the year-end supplemental payment would be discontinued entirely and payments to the state would reflect potential increases in production and shipments as well as any additional program participation payment for program elements the state may choose and is approved to conduct within the HUD-state partnership (including Joint Monitoring at $5,000 to $8,000, Dispute Resolution at $3,000 to $5,000, and Installation at $5,000 to $7,000). In addition, if State A were to partner as an Installation state, aside from the Installation program element payment of $5,000 to $7,000, the state would receive up to $5,000 for per-section installation fees based on the number of transportable sections shipped within and to the state (2,500 transportable sections x up to $2 per section).

<u>Hypothetical State B</u>

State B is an SAA state that does not have any production within the state but otherwise fully participates in the program as an SAAL, JM, DR, and IN state. Shipments to this state are

[1] Depending on the established participation payment for each of the SAAM and SAAL elements, the participation payment for State A is expected to be $5,000 to $8,000 or SAAM plus $5,000 to $8,000 for SAAL, totaling a payment range of $10,000 to $16,000.

estimated to be 3,500 transportable sections in FY21 Therefore, according to HUD's formula payments, payment to State B would be comprised of:

- Production: 0 transportable sections x $14 = $0
- Shipments: 3,500 transportable sections x $9 = $31,500

In addition to the formula payments above, State B would receive an FY21 year end payment for participation, comprised of the following:

- SAAL: $5,000 - $8,000
- JM: $5,000 - $8,000
- DR: $3,000 - $5,000
- IN: $5,000 - $7,000
- Per-section Installation Fee: Up to $7,000 (3,500 transportable sections x up to $2 per section)

Since FY21 is within the to be determined sunset period, State B would continue to receive a year end supplemental payment that would initially be calculated based on the FY14 total payment minus the sum of formula and participation payments: FY14 total payment – ($31,500 + $18,000 to $28,000[2] + up to $7,000[3]).

The end of year supplemental would continue to be paid through the sunset period, though in potentially reduced amounts (see Question 3).

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[2] Depending on the established participation payment for each of the SAAL, JM, DR, and IN elements, the participation payment for State B would be expected to be $5,000 to $8,000 for SAAL plus $5,000 to $8,000 for Joint Monitoring plus, $3,000 to $5,000 for Dispute Resolution plus $5,000 to $7,000 for Installation, totaling a payment range of $18,000 to $28,000.

[3] The per section Installation Fee would total up to $7,000 (3,500 transportable sections x up to $2 per section).

After the sunset period, the year-end supplemental payment would be discontinued entirely and payments to the state would reflect potential increases in shipments and installations as well as production payments if a plant were to begin production within the state.

II. Request for Public Comment

HUD seeks public feedback on any elements of this ANPR. In particular, HUD seeks information and recommendations on the following issues:

1. Should HUD change from a minimum annual payment structure to a payment structure that is based on an eligible state's participation in the federal program? Are the activities proposed by HUD for incorporation into the payment structure appropriate? Are there activities that should be added to or removed from that list? Provide the reasoning for your response.
2. Should HUD provide a uniform annual funding amount associated with each partnership element? Is the range of funding proposed by HUD for each partnership element appropriate? What amounts within the ranges proposed by HUD are appropriate:
    a. For incenting existing SAA states to continue participation in each partnership element?
    b. For incenting existing SAA states to implement additional partnership elements?
3. Can a state determine its budgeting needs and establish and implement additional partnership elements to retain maximum compensation within a 5 or 10-year sunset period? Would another time frame be more appropriate? By what means, if any, should the remaining supplemental payment be phased out during the sunset period? For example, should the supplemental payment (calculated after subtracting payments for

production and state participation) be reduced by a particular percentage each year (20% in year 2, 40% in year 3, and so on)? Provide the reasoning for your responses.

4. Will states that are not currently SAAs be incentivized to become SAAs? If so, will those states also be incentivized to become active participants to the maximum extent possible in each aspect of the manufactured housing program? Provide the reasoning for your response.
5. Should HUD consider payments to states that are not SAAs? If so, what instrument needs to be implemented to enable such payments? Provide the reasoning for your response.
6. Should HUD augment the per-unit formula to account for each transportable section with a manufacturer-reported first destination in a state that administers a HUD-approved installation program? What are states' costs of overseeing installation, and if HUD were to help offset those costs, what amount of payment per transportable unit would help to meaningfully offset those costs?

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