

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 91 and 92**

[Docket No. FR-4832-I-01]

RIN 2501-AC93

HOME Investment Partnerships Program; American Dream Downpayment Initiative**AGENCY:** Office of the Secretary, HUD.**ACTION:** Interim rule.

SUMMARY: This interim rule establishes regulations for a new downpayment assistance component under the HOME Investment Partnerships Program, referred to as the American Dream Downpayment Initiative (ADDI). Through the ADDI, HUD will make formula grants to participating jurisdictions under the HOME Investment Partnerships Program for the purpose of assisting low-income families achieve homeownership. This interim rule codifies the statutory formula for allocation of ADDI funds to HOME participating jurisdictions, identifies eligible activities and costs under the ADDI, and establishes other applicable requirements.

DATES: *Effective Date:* April 29, 2004.*Comment Due Date:* June 1, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Electronic comments may be submitted through Regulations.gov (www.regulations.gov). Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Virginia Sardone, Director, Program Policy Division, Office of Affordable Housing Programs, Room 7164, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-7000; telephone (202) 708-2470. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 800-877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:**I. Background**

The HOME Investment Partnerships Program (HOME Program) is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) (NAHA). Through the HOME Program, HUD allocates funds by formula among eligible state and local governments to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing for very low-income and low-income families. Generally, HOME funds must be matched by nonfederal resources. State and local governments that become participating jurisdictions may use HOME funds to carry out multiyear housing strategies through acquisition, rehabilitation, and new construction of housing, and through tenant-based rental assistance. Participating jurisdictions may provide assistance in a number of eligible forms, including grants, loans, advances, equity investments, interest subsidies, and other forms of assistance that HUD approves. HUD's regulations for the HOME Program are located in 24 CFR part 92.

The American Dream Downpayment Act (title I of Pub. L. 108-186, approved December 16, 2003) (ADDI statute) established a separate formula under the HOME Program by which HUD allocates funds to states that are participating jurisdictions under the HOME Program and to participating jurisdictions within those states for the purpose of making downpayment assistance to low-income families who are first-time homebuyers for the purchase of single family housing that will serve as the family's principal residence. The ADDI statute revised section 271 of NAHA to establish specific statutory requirements for administration of ADDI, including the allocation of funds.

With respect to allocation of funds, the ADDI statute establishes a formula that is based primarily on the need for assistance to homebuyers (but does not include the prior commitment requirement from the Fiscal Year (FY) 2003 formula), as measured by the percentage of low-income households residing in rental housing within the participating jurisdiction. This formula will govern the allocation of ADDI funds for FY2004 (and subsequent fiscal years). Among other requirements, the ADDI statute also establishes the definitions applicable to the ADDI, authorizes the use of ADDI funds for certain rehabilitation costs completed in conjunction with ADDI downpayment assistance, establishes new Consolidated Plan requirements, and

prescribes other requirements regarding the allocation and use of ADDI funds. Through the statutory requirement that participating jurisdictions have a plan for conducting targeted outreach to public housing tenants and to families receiving rental assistance from public housing agencies, the ADDI statute envisions that among the low-income families who will move from rental to homeownership, are those who are currently public housing residents or receiving rental assistance. ADDI provides a much-needed resource to participating jurisdictions to assist low-income families achieve the dream of homeownership.

Prior to the enactment of the ADDI statute, the Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7, approved February 20, 2003) authorized and appropriated FY2003 funds for assistance to homebuyers under the HOME Program. The Consolidated Appropriations Resolution, 2003 requires that the FY2003 ADDI funds be made available in accordance with a formula, to be established by HUD, that considers a participating jurisdiction's need for, and prior commitment to, assistance to homebuyers. With the exception of consideration of "prior commitment" to assistance to homebuyers, the formula established by the ADDI statute satisfies the formula to be established for allocating FY2003 funds to participating jurisdictions for assistance to homebuyers, as described in Section H of the preamble.

II. This Interim Rule

This interim rule amends HUD's regulations for the HOME Program to establish the policies and procedures governing the ADDI. The ADDI regulations will be contained in a new subpart M of 24 CFR part 92. This interim rule establishes the formula for allocation of ADDI funding to HOME participating jurisdictions, identifies eligible activities and costs under the ADDI, and establishes other applicable requirements.

To the greatest extent possible, this interim rule establishes a single set of regulatory requirements for FY2003 ADDI funds and those appropriated for subsequent fiscal years. To assist the public in determining the differences in the applicable regulatory requirements, section IV of this preamble contains a chart that provides a side-by-side comparison of the ADDI requirements based on the source of funds.

This section of the preamble provides an overview of the specific regulatory provisions established by this interim rule:

A. Definitions

This interim rule codifies the definitions that apply to the ADDI in § 92.2, which contains the definitions applicable to the HOME Program. The definitions currently contained in § 92.2 apply to the ADDI. In addition, the interim rule establishes several new definitions that will apply to the ADDI.

As noted above, the purpose of the ADDI is to make downpayment assistance for the purchase of a principal residence available to low-income families who are first-time homebuyers. The current HOME Program regulations contain definitions and requirements regarding “low-income families” and “principal residence” that apply to the ADDI. Specifically, § 92.2 defines the term “low-income families” to mean families whose annual incomes do not exceed 80 percent of the median income for the area as determined by HUD, with adjustments for smaller and larger families. Further, the current HOME Program regulations at § 92.254(a) (3) and (4) establish “principal residence” requirements applicable to homeownership assistance, which would also apply to the ADDI.

In addition to the definitions currently contained in the current HOME Program regulations, the following definitions will apply to the ADDI:

1. *First-time homebuyer.* ADDI downpayment assistance may only be used to assist low-income families who are “first-time homebuyers.” Section 104 of NAHA defines the term “first-time homebuyer” for purposes of the HOME Program. This definition is no longer codified in the HOME regulations since the “first-time homebuyer” requirement that was originally applicable to the HOME Program was removed by statutory amendment. Given enactment of the ADDI, HUD is again codifying the statutory definition of “first-time homebuyer” in § 92.2. Accordingly, this interim rule provides that the term “first-time homebuyer” means an individual and his or her spouse who have not owned a home during the three-year period prior to purchase of a home with ADDI assistance.

In accordance with section 104 of NAHA, the term “first-time homebuyer” includes an individual who is a “displaced homemaker” or “single parent” and who, even if while a homemaker or married, owned a home with his or her spouse or resided in a home owned by the spouse. Section 104 of NAHA establishes statutory definitions of the terms “displaced

homemaker” and “single parent,” and this interim rule codifies these definitions in § 92.2. Specifically, the interim rule provides that a “displaced homemaker” means an individual who: (1) Is an adult; (2) has not worked full-time full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and (3) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment. A “single parent” is defined to mean an individual who: (1) Is unmarried or legally separated from a spouse; and (2) has one or more minor children for whom the individual has custody or joint custody, or is pregnant.

2. *Single family housing.* ADDI assistance may be used for the purchase and rehabilitation of single family housing. The ADDI statute establishes a definition of the term “single family housing” that closely tracks the definition currently used in § 92.254 of the HOME Program regulations. (Section 92.254 contains the affordability requirements for HOME Program homeownership assistance.) To reflect the broadened applicability of this defined term, the interim rule moves the definition of “single family housing” from § 92.254 to the HOME Program definitions section at § 92.2. Specifically, the interim rule defines “single family housing” to mean a one-to four-family residence, condominium unit, cooperative unit, combination of manufactured housing and lot, or manufactured housing lot.

3. *State.* Under the HOME Program, the term “state” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the state with regard to the provisions of this part. The ADDI statute, however, establishes a separate definition of “state” that excludes Puerto Rico. Accordingly, this interim rule clarifies that, for purposes of the ADDI (beginning with FY2004 ADDI funding), the term “state” does not include the Commonwealth of Puerto Rico.

B. Eligible Activities

ADDI funds may be used for downpayment assistance towards the purchase of single family housing by low-income families who are first-time homebuyers. ADDI funds may also be used for the rehabilitation of the housing acquired with ADDI assistance. Home repair or rehabilitation costs include items: (1) Identified in an

appraisal or home inspection; or (2) are completed within one year of the purchase of the home and are necessary to bring the housing into compliance with health and safety housing codes, including the reduction of lead paint hazards and the remediation of other home health hazards. The amount of ADDI funds used for rehabilitation may not exceed 20 percent of the participating jurisdiction’s ADDI formula allocation.

C. Eligible Project Costs

ADDI funds may be used for eligible project costs, including: (1) The costs of acquiring single family housing; (2) the eligible development hard costs for rehabilitation projects described in § 92.206(a) of the HOME Program regulations; (3) the costs for reduction of lead paint hazards and the remediation of other home health hazards; and (4) specified related “soft costs” (*i.e.*, reasonable and necessary costs incurred by the homebuyer or participating jurisdiction associated with the financing of single family housing). ADDI funds may not be used for any costs related to new construction of housing or rental assistance.

D. Forms of Investment

ADDI provides low-income families homeownership assistance to enable them to achieve the personal and financial benefits of homeownership. A participating jurisdiction may invest ADDI funds as interest-bearing loans or advances, non-interest bearing loans or advances, interest subsidies consistent with the purposes of the ADDI, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with the ADDI. Each participating jurisdiction has the right to establish the terms of assistance, subject to the requirements of the ADDI regulations. It is expected that the ADDI funds will not result in a diminution of private sector efforts to increase homeownership.

E. Minimum and Maximum Amount of Assistance

The minimum amount of ADDI funds in combination with HOME funds that must be invested in a project is \$1,000. The amount of ADDI assistance provided to any family may not exceed the greater of six percent of the purchase price of a single family housing unit or \$10,000. Participating jurisdictions may choose to provide families less than the maximum amount in order to assist as many families as possible.

F. Limitations on Subrecipients and Contractors

The ADDI statute prohibits seller-financed organizations from participating in the ADDI as subrecipients or contractors. Specifically, a participating jurisdiction may not use any amount of its ADDI grant to provide funding to an entity or organization that provides downpayment assistance if the activities of that entity or organization are financed in whole or in part, directly or indirectly, by contributions, service fees, or other payments from the sellers of housing, whether or not made in connection with the sale of specific housing acquired with ADDI funds.

Some seller-financed organizations have artificially inflated the interest fees charged to homebuyers in excess of the amount necessary to compensate sellers for their payment of certain closing charges or contributions to the cost of the downpayment. The intent of the statutory prohibition, which is codified by this interim rule, is to curb this predatory lending practice. The prohibition on the participation by seller-financed organizations will help to ensure that ADDI funds are used to assist low-income homebuyers and not diverted to these potentially predatory transactions.

G. ADDI Allocation Formula

HUD will provide ADDI funds to participating jurisdictions in amounts determined by the statutory allocation formula. The formula is codified in § 92.604 of this interim rule. In accordance with the formula, HUD will provide ADDI funds to each state in an amount that is equal to the percentage of the national total of low-income households residing in rental housing in the state, as determined on the basis of the most recent available U.S. census data. HUD notes that the ADDI statute does not include any provision for providing ADDI funds to insular areas.

HUD will further allocate to each local participating jurisdiction located within a state an amount equal to the percentage of the state-wide total of low-income households residing in rental housing in such participating jurisdiction, as determined on the basis of the most recent available U.S. census data. These allocations will be made only if the local participating jurisdiction: (1) Has a total population of 150,000 individuals or more (as determined on the basis of the most recent available U.S. census data); or (2) would receive an allocation of \$50,000 or more. An allocation that would otherwise be made to a local

participating jurisdiction that does not meet either of these two requirements will revert back to the state in which the participating jurisdiction is located. A consortium with members in more than one state will receive an allocation from each state in which a member of the consortium is located, if the consortium meets one of these threshold requirements.

In calculating ADDI formula allocations, HUD must rely on special tabulation data provided by the U.S. Census Bureau that measures the number of low-income households residing in rental housing in each participating jurisdiction. The U.S. Census Bureau adjusts all special tabulation data in order to protect respondent confidentiality. Due to these adjustments, the special tabulation data sometimes does not correspond exactly to the information provided on the more widely available Summary File 3 (SF3) data set prepared by the U.S. Census Bureau. The SF3 provides comprehensive population and housing information from the Decennial Census Sample Characteristics form (the census "long form"). To address any discrepancies, HUD will adjust the special tabulation data at the census tract level so that it matches the SF3 data.

H. Allocation of FY2003 ADDI Funds

As noted above in this preamble, the Consolidated Appropriations Resolution, 2003 requires that in allocating FY2003 ADDI funds, HUD must consider two factors—the participating jurisdiction's need for, and prior commitment to, assistance to homebuyers. This interim rule addresses these requirements applicable to FY2003 ADDI funds as follows:

1. *Need.* The need of the participating jurisdiction for assistance to homebuyers is measured by its ADDI formula allocation, as described in § 92.604. The allocation of FY2003 ADDI funds to local participating jurisdictions is subject to the same population and allocation amount thresholds that apply to the allocation of FY2004 (and subsequent fiscal year) ADDI funds. Specifically, a local participating jurisdiction will receive an FY2003 ADDI fund allocation only if the participating jurisdiction has a total population of 150,000 individuals or more, or if it would receive an allocation of \$50,000 or more.

2. *Prior commitment.* Only those participating jurisdictions that have demonstrated prior commitment to assistance to homebuyers will receive FY2003 ADDI funds. A participating jurisdiction has demonstrated prior

commitment to homebuyers if it has previously committed funds to such purpose under the HOME program, the Community Development Block Grants (CDBG) program, mortgage revenue bonds, or existing funding from state and local governments.

I. Reallocations

If any funds allocated to a participating jurisdiction under the ADDI become available for reallocation, the funds will be reallocated in the next fiscal year to participating jurisdictions in accordance with the formula described in § 92.604.

J. Consolidated Plan

In order to receive an ADDI Formula allocation, a participating jurisdiction must address the use of the ADDI funds in its Consolidated Plan submitted in accordance with 24 CFR part 91. Because the FY2003 ADDI funds are being awarded in FY2004, the participating jurisdiction's Consolidated Plan will cover both FY2003 and FY2004 ADDI funds.

As noted above in this preamble, the ADDI statute established new Consolidated Plan requirements regarding the use of ADDI funds. This interim rule amends HUD's Consolidated Plan regulations to conform to the new statutory requirements. The interim rule requires that a participating jurisdiction that will receive ADDI funding must provide certain information in its Consolidated Plan. The participating jurisdiction must provide an action plan that includes:

1. A description of the planned use of the ADDI funds;
2. A plan for conducting targeted outreach to residents and tenants of public and manufactured housing, and to other families assisted by public housing agencies, for the purpose of ensuring that the ADDI funds are used to provide downpayment assistance for such residents, tenants, and families; and
3. A description of the actions to be taken to ensure the suitability of families receiving ADDI assistance to undertake and maintain homeownership, such as provision of housing counseling to homebuyers.

These requirements are intended to provide suitable public housing tenants and families receiving rental assistance the opportunity to move from dependence on rental housing assistance to homeownership. HUD anticipates that ADDI funds will be used in conjunction with other programs designed to assist such families achieve homeownership, such as the voucher

homeownership option under HUD's Housing Choice Voucher Program (see 24 CFR part 982, subpart M).

In furtherance of the goals of the ADDI, HUD encourages participating jurisdictions to provide some form of pre-or post-purchase housing counseling in conjunction with ADDI assistance. HUD's study on homebuyer activity through the HOME Program indicates that a large majority (between 85 and 94 percent, depending on the type of program) of HOME-funded homebuyer programs require some form of homeownership counseling. The study indicates that participating jurisdictions and counselors have concluded that a combination of group and individual housing counseling is optimal for homebuyer programs. A copy of the study, entitled "Study of Homebuyer Activity through the HOME Investments Partnerships Program" is available for download at <http://www.huduser.org/publications/hsgfin/homebuy.html>.

K. Eligible Administrative Costs and Planning Costs

This interim rule amends § 92.207 of the HOME program regulations to clarify that a participating jurisdiction may expend HOME funds for payment of reasonable administrative and planning costs associated with the use of ADDI funds. Because FY2003 ADDI funds are HOME funds set aside for downpayment assistance, for only FY2003 the administrative cost amount may not exceed 10 percent of the sum of the regular HOME allocation plus the ADDI allocation. While ADDI funds may not be used for administrative costs, HOME funds may be used for such purpose.

L. Applicability of Other Provisions

The interim rule also specifies the other provisions of the HOME Program regulations that apply to the ADDI. Unless otherwise noted in new subpart M, other HOME Program requirements do not apply to the ADDI. The ADDI statute specifies the statutory HOME

requirements that apply to the ADDI. Where HUD has been granted the discretion to determine the applicability of particular requirements, it has attempted to exclude those HOME requirements that are either incompatible with downpayment assistance or rehabilitation (such as, for example, requirements concerning rental projects) or that would be unduly burdensome in the administration of such assistance.

The following provides an overview of the HOME Program regulations that apply to the ADDI.

1. *General provisions.* The general provisions contained in subpart A of 24 CFR part 92 apply to the ADDI.

2. *Program requirements.* Certain program requirements contained in subpart E of 24 CFR part 92 apply to the ADDI. Specifically, the private-public partnership provisions (§ 92.200), the distribution of assistance requirements (§ 92.201), the income determination requirements (§ 92.203), and the requirements regarding pre-award costs (§ 92.212) apply to the ADDI. The matching contribution requirements contained in §§ 92.218–92.222 apply to FY 2003 ADDI funds only.

3. *Project requirements.* Certain project requirements contained in subpart F of 24 CFR part 92 apply to the ADDI. Specifically, the interim rule clarifies that the maximum per-unit subsidy limits and the subsidy layering requirements contained in § 92.250 apply to the total HOME and ADDI funds in a project. Further, the interim rule provides that housing assisted with ADDI funds must meet the property standards contained in § 92.251. In addition, housing assisted with ADDI funds is required to meet the affordability requirements contained in § 92.254(a) and (c). If a project receives both HOME and ADDI funds, the total of HOME and ADDI funds in the project is used for calculating the period of affordability described in § 92.254(a)(4) and applied to resales (§ 92.254(a)(5)(i)) and recaptures (§ 92.254(a)(5)(ii)).

4. *Other federal requirements.* The interim rule provides that the federal requirements contained in subpart H of 24 CFR part 92 regarding nondiscrimination, minority outreach, environmental review, labor, lead-based paint abatement, conflicts of interest, and consultant activities are applicable to the ADDI. The other federal requirements contained in subpart H, regarding affirmative marketing and Executive Order 12372 (entitled "Intergovernmental Review"), do not pertain to downpayment assistance or rehabilitation and, therefore, do not apply to the ADDI.

The ADDI statute exempts FY2004 and subsequent fiscal year ADDI funds from the uniform displacement, relocation, and acquisition requirements contained in § 92.353 implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4201–4655) and the implementing regulations at 49 CFR part 24. However, the displacement, relocation, and acquisition requirements do apply to FY2003 ADDI funds.

5. *Program administration.* Generally, the program administration requirements contained in subpart K of 24 CFR part 92 are applicable to the ADDI, except for those few requirements that are incompatible with downpayment assistance, rehabilitation, or other requirements of the interim rule.

6. *Performance Review and sanctions.* HUD will review the performance of participating jurisdictions in carrying out its responsibilities under the ADDI, in accordance with the policies and procedures contained in subpart L of 24 CFR part 92.

IV. Side-by-Side Comparison of ADDI Requirements Based on Source of Funds

The following chart provides a side-by-side comparison of the ADDI requirements based on the source of funds:

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	ADDI FY2003 Funds (Consolidated Appropriations Resolution, 2003)¹	ADDI FY2004-2007 Funds (ADDI Statute)¹	HOME Allocation (NAHA)¹
FORMULA	Need ² for, and prior commitment to, assistance to homebuyers	Need ² by state; then, by local participating jurisdiction. Funds to local participating jurisdictions with populations of more than 150,000 or allocation greater than \$50,000 only	HOME Formula
INELIGIBLE PARTICIPATING JURISDICTIONS³		The Commonwealth of Puerto Rico and local participating jurisdictions in Puerto Rico	
ELIGIBLE HOMEBUYERS	Must be "first-time" homebuyer	Must be "first-time" homebuyer	No "first-time" homebuyer requirement
ELIGIBLE USES OF FUNDS	Downpayment assistance	Downpayment assistance and rehab. Rehab must be completed within 1 year of purchase	All HOME eligible activities. Rehab property standards must be met within 2 years of purchase
USE OF FUNDS FOR ADMINISTRATIVE COSTS⁴	Not eligible to pay admin costs; included in calculating 10% HOME admin limit	Not eligible to pay admin costs; not included in calculating 10% HOME admin limit	10% of HOME funds may be used for HOME admin and the costs of administering ADDI
ASSISTANCE CAPS	Subject to HOME maximum per-unit subsidy	Per-family limit: the greater of \$10,000 or 6% of purchase price. Also subject to HOME maximum per-unit subsidy when	Subject to HOME maximum per-unit subsidy

		used in combination with HOME funds	
MATCH	Match requirement	No match requirement	Match requirement
Uniform Relocation Act (URA)	Subject to URA	Not subject to URA	Subject to URA
PROGRAM INCOME	Program income generated under ADDI treated as HOME program income	Program income generated under ADDI treated as HOME program income	HOME program income requirements
REALLOCATIONS	No reallocation of funds is possible since the 3-year statutory limit on availability of appropriations will result in any funds recaptured after 24 months for failure to meet the commitment deadline being returned to Treasury	Funds reallocated as part of the next fiscal year's ADDI formula distribution	HOME reallocation requirements
Community Housing Development Organizations (CHDOs)	Not subject to CHDO set-aside; not an eligible use of set-aside funds	Not subject to CHDO set-aside; not an eligible use of set-aside funds	15% of HOME allocation set aside for CHDO projects; D/A not an eligible CHDO set-aside activity
CONSOLIDATED PLAN	2004 Action Plan must address the use of FY2003 ADDI funds	Two new narratives ("outreach" and "suitability") required beginning with the 2004 Action Plan in order to be eligible for ADDI funding; the Action Plan must also address the use of ADDI funds	No change

NOTES:

1. Statutory source of requirements.
2. "Need": The percentage of low-income households residing in rental housing based on census data.
3. Insular areas are not included in the definition of PJ in the HOME Program. Therefore, insular areas will not receive ADDI funding in FY2004 and subsequent allocations. Funds allocated to insular areas in FY2003 were 0.2 percent of the combined HOME/ADDI appropriation.
4. Project soft-costs for the delivery of ADDI-funded downpayment assistance and (except for FY2003 ADDI funding) rehabilitation are eligible uses of ADDI funds.

BILLING CODE 4210-29-C**V. Justification for Interim Rulemaking**

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is "impractical, unnecessary, or contrary to the public interest" (see 24 CFR 10.1). For the following reasons, HUD has determined that it would be contrary to the public interest to delay the effectiveness of this rule in order to solicit prior public comments.

As noted throughout this preamble, the ADDI statute establishes very specific requirements governing the allocation and eligible uses of ADDI funds. For example, the ADDI statute prescribes the formula that must be used to allocate ADDI funds, specifies the statutory HOME requirements that apply to the ADDI, establishes the eligible uses of ADDI funds, and specifies several limits and thresholds on the allocation and use of ADDI funds (for example, the thresholds for allocating funds to local participating jurisdictions and the cap on the amount of downpayment assistance that may be provided to homebuyers). To a large extent, this interim rule merely codifies the statutory policies and procedures mandated by the ADDI statute, and HUD would not have the discretion to modify these requirements in response to public comment.

HUD has more flexibility in defining the two statutory factors for the allocation of FY2003 ADDI funds. However, since these factors will only govern a single fiscal year of ADDI funding, HUD has attempted (as much

as possible consistent with statutory authority) to use a single set of formula factors for allocating ADDI funds. Given the limited applicability of the FY2003 requirements, to delay issuance of an effective rule to solicit prior public comment on these factors would be of limited use, impose additional complexity and administrative burden into the ADDI, and unnecessarily delay the allocation of FY2003 ADDI funds to participating jurisdictions.

In other areas where HUD has been granted discretion, HUD has attempted to minimize the administrative burden imposed on participating jurisdiction by incorporating the ADDI into the existing regulatory framework for the HOME Program. Accordingly, the interim rule imposes few, if any, unfamiliar requirements on HOME participating jurisdictions.

Although HUD believes that good cause exists to publish this rule for effect without prior public comment, HUD recognizes the value of public comment in the development of its regulations. HUD has, therefore, issued these regulations on an interim basis and has provided the public with a 60-day comment period. HUD welcomes comments on the regulatory amendments made by this interim rule. The public comments will be addressed in the final rule.

VI. Findings and Certifications*Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Order). Any changes made to the rule

subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Information Collection Requirements

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2506-0171. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and

does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons. First, the majority of jurisdictions that are statutorily eligible to receive HOME formula allocations are relatively larger cities, counties or states. The interim rule will not impose any new regulatory requirements on participating jurisdictions, since the ADDI will operate within the existing regulatory framework of the HOME Program. Rather, the interim rule establishes the policies and procedures that HUD will use to make formula grants to participating jurisdictions under the new ADDI.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the HOME Program is 14.239.

List of Subjects

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

■ Accordingly, HUD amends 24 CFR parts 91 and 92 as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 1. The authority citation for 24 CFR part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601-3619, 5301-5315, 11331-11388, 12701-12711, 12741-12756, and 12901-12912.

■ 2. Add § 91.220(g)(2)(iv) to read as follows:

§ 91.220 Action plan.

* * * * *

(g) * * *

(2) * * *

(iv) If the participating jurisdiction will receive funding under the American Dream Downpayment Initiative (ADDI) (*see* 24 CFR part 92, subpart M), it must include:

(A) A description of the planned use of the ADDI funds;

(B) A plan for conducting targeted outreach to residents and tenants of public and manufactured housing and to other families assisted by public housing agencies, for the purposes of ensuring that the ADDI funds are used to provide downpayment assistance for such residents, tenants, and families; and

(C) A description of the actions to be taken to ensure the suitability of families receiving ADDI funds to undertake and maintain homeownership.

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■ 3. Add § 91.320(g)(2)(iv) to read as follows:

§ 91.320 Action plan.

* * * * *

(g) * * *

(2) * * *

(iv) If the state will receive funding under the American Dream Downpayment Initiative (ADDI) (*see* 24 CFR part 92, subpart M), it must include:

(A) A description of the planned use of the ADDI funds;

(B) A plan for conducting targeted outreach to residents and tenants of public and manufactured housing and to other families assisted by public

housing agencies, for the purposes of ensuring that the ADDI funds are used to provide downpayment assistance for such residents, tenants, and families; and

(C) A description of the actions to be taken to ensure the suitability of families receiving ADDI funds to undertake and maintain homeownership, such as provision of housing counseling to homebuyers.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 4. The authority citation for 24 CFR part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701-12839.

■ 5. In § 92.2, add definitions of the terms “ADDI funds,” “displaced homemaker,” “first time homebuyer,” “single family housing,” and “single parent” in alphabetical order, and revise the definition of “state”, to read as follows:

§ 92.2 Definitions.

* * * * *

ADDI funds means funds made available under subpart M through allocations and reallocations.

* * * * *

Displaced homemaker means an individual who:

(1) Is an adult;

(2) Has not worked full-time full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and

(3) Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

* * * * *

First-time homebuyer means an individual and his or her spouse who have not owned a home during the three-year period prior to purchase of a home with assistance under the American Dream Downpayment Initiative (ADDI) described in subpart M of this part. The term first-time homebuyer also includes an individual who is a displaced homemaker or single parent, as those terms are defined in this section.

* * * * *

Single family housing means a one-to four-family residence, condominium unit, cooperative unit, combination of manufactured housing and lot, or manufactured housing lot.

Single parent means an individual who:

(1) Is unmarried or legally separated from a spouse; and

(2) Has one or more minor children of whom the individual has custody or joint custody, or is pregnant.

* * * * *

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the state with regard to the provisions of this part; however, for purposes of the American Dream Downpayment Initiative (ADDI) described in subpart M of this part, the term "state" does not include the Commonwealth of Puerto Rico (except for FY2003 ADDI funds).

* * * * *

■ 6. In § 92.207, revise the introductory paragraph to read as follows:

§ 92.207 Eligible administrative and planning costs.

A participating jurisdiction may expend, for payment of reasonable administrative and planning costs of the HOME program and ADDI, an amount of HOME funds that is not more than ten percent of the sum of the Fiscal Year HOME basic formula allocation plus any funds received in accordance with § 92.102(b) to meet or exceed participation threshold requirements that Fiscal Year. A state that transfers any HOME funds in accordance with § 92.102(b) must exclude these funds in calculating the amount it may expend for administrative and planning costs. A participating jurisdiction may also expend, for payment of reasonable administrative and planning costs of the HOME program and the ADDI described in subpart M of this part, a sum up to ten percent of the program income deposited into its local account or received and reported by its state recipients or subrecipients during the program year. A participating jurisdiction may expend such funds directly or may authorize its state recipients or subrecipients, if any, to expend all or a portion of such funds, provided total expenditures for planning and administrative costs do not exceed the maximum allowable amount. Reasonable administrative and planning costs include:

* * * * *

■ 7. Revise the first sentence of § 92.250(a) to read as follows:

§ 92.250 Maximum per-unit subsidy amount and subsidy layering.

(a) *Maximum per-unit subsidy amount.* The total amount of HOME funds and ADDI funds that a participating jurisdiction may invest on

a per-unit basis in affordable housing may not exceed the per-unit dollar limitations established under section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the area in which the housing is located. ***

* * * * *

■ 8. In § 92.254, revise paragraph (a)(1) and the second sentence in paragraph (a)(2)(iii), to read as follows:

§ 92.254 Qualification as affordable housing: homeownership.

(a) * * *

(1) The housing must be single family housing.

(2) * * *

(iii) * * * The participating jurisdiction must set forth the price for different types of single family housing for the jurisdiction. ***

* * * * *

■ 9. Add Subpart M to read as follows:

Subpart M—American Dream Downpayment Initiative

Sec.

92.600 Purpose.
92.602 Eligible activities.
92.604 ADDI allocation formula.
92.606 Reallocations.
92.608 Consolidated plan.
92.610 Program requirements
92.612 Project requirements.
92.614 Other Federal requirements.
92.616 Program administration.
92.618 Performance reviews and sanctions.

§ 92.600 Purpose.

This subpart describes the requirements for the HOME Program American Dream Downpayment Initiative (ADDI). Through the ADDI, HUD makes formula grants to participating jurisdictions that qualify for allocations to assist low-income families achieve homeownership in accordance with the provisions of this subpart. Unless otherwise noted in this subpart, the HOME Program requirements contained in subparts B through L of this part do not apply to the ADDI.

§ 92.602 Eligible activities.

(a) *Eligible activities.* ADDI funds may only be used for:

(1) Downpayment assistance towards the purchase of single family housing by low-income families who are first-time homebuyers; and

(2) Rehabilitation that is completed in conjunction with the home purchase assisted with ADDI funds. The rehabilitation assisted with ADDI funds, including the reduction of lead paint hazards and the remediation of other home health hazards, must be

completed within one year of the purchase of the home. Total rehabilitation shall not exceed 20 percent of the participating jurisdiction's ADDI fiscal year formula allocation. FY2003 ADDI funds may not be used for rehabilitation.

(b) *Eligible project costs.* ADDI funds may be used for the following eligible costs:

(1) *Acquisition costs.* The costs of acquiring single family housing.

(2) *Rehabilitation costs.* The eligible development hard costs for rehabilitation projects described in § 92.206(a) and the costs for reduction of lead paint hazards and the remediation of other home health hazards. FY2003 ADDI funds may not be used for rehabilitation.

(3) *Related soft costs.* Reasonable and necessary costs incurred by the homebuyer or participating jurisdiction and associated with the financing of single family housing acquisition and rehabilitation. These costs include, but are not limited to:

(i) Costs to process and settle the financing for purchase of a home, such as private lender origination fees, credit report fees, fees for title evidence, fees for recordation and filing of legal documents, attorneys fees, and private appraisal fees.

(ii) Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups.

(iii) Costs to provide information services, such as fair housing information to prospective homeowners.

(iv) Staff and overhead costs directly related to carrying out the project, such as work specifications preparation, loan processing inspections, and other services related to assisting a potential homebuyer (e.g., housing counseling), which may be charged to project costs only if the individual purchases single family housing with ADDI assistance.

(v) Costs of environmental review and release of funds (in accordance with 24 CFR part 58) that are directly related to the project.

(4) *Ineligible costs.* ADDI funds may not be used for the development costs (hard costs or soft costs) of new construction of housing or for rental assistance.

(c) *Forms of investment.* A participating jurisdiction may invest ADDI funds as interest-bearing loans or advances, non-interest bearing loans or advances, interest subsidies consistent with the purposes of this subpart, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with this subpart. Each participating jurisdiction has the right to

establish the terms of assistance, subject to the requirements of this subpart.

(d) *Minimum amount of assistance.* The minimum amount of ADDI funds in combination with HOME funds that must be invested in a project is \$1,000.

(e) *Maximum amount of assistance.* The amount of ADDI funds provided to any family shall not exceed the greater of six percent of the purchase price of the single family housing or \$10,000. This limitation does not apply to FY2003 ADDI funds.

(f) *Limitation on subrecipients and contractors.* A participating jurisdiction may not provide ADDI funds to an entity or organization that provides downpayment assistance, if the activities of that entity or organization are financed in whole or in part, directly or indirectly, by contributions, service fees, or other payments from the sellers of housing, whether or not made in conjunction with the sale of specific housing acquired with ADDI funds.

§ 92.604 ADDI allocation formula.

(a) *General.* HUD will provide ADDI funds to participating jurisdictions in amounts determined by the formula described in this section.

(b) *Allocation to states that are participating jurisdictions.* HUD will provide ADDI funds to each state in an amount that is equal to the percentage of the national total of low-income households residing in rental housing in the state, as determined on the basis of the most recent available U.S. census data (as adjusted by HUD).

(c) *Local participating jurisdictions.* Subject to paragraph (d) of this section, HUD will further allocate to each local participating jurisdiction located within a state an amount equal to the percentage of the state-wide total of low-income households residing in rental housing in such participating jurisdiction, as determined on the basis of the most recent available U.S. census data (as adjusted by HUD).

(d) *Limitation on allocations to local participating jurisdictions.* (1) Allocations under paragraph (c) of this section shall be made only if the local participating jurisdiction:

(i) Has a total population of 150,000 individuals or more, as determined on the basis of the most recent available U.S. census data (as adjusted by HUD); or

(ii) Would receive an allocation of \$50,000 or more.

(2) Any allocation that would have otherwise been made to a local participating jurisdiction that does not meet the requirements of paragraph (d)(1) of this section shall revert back to

the state in which the participating jurisdiction is located.

(e) *Consortia with members in more than one state.* A consortium with members in more than one state will receive an allocation if the consortium meets the requirements described in paragraph (d) of this section.

(f) *Allocation of FY2003 ADDI funds.* For the allocation of FY2003 ADDI funds, HUD will consider a participating jurisdiction's need for, and prior commitment to, assistance to homebuyers. Puerto Rico is a "state" for FY2003 ADDI funds.

(1) *Need.* The need of the participating jurisdiction for assistance to homebuyers is measured by its ADDI formula allocation, as calculated under paragraphs (b) through (e) of this section.

(2) *Prior commitment.* Only those participating jurisdictions that have demonstrated prior commitment to assistance to homebuyers will receive FY2003 ADDI funds. A participating jurisdiction has demonstrated prior commitment to homebuyers if it has previously committed funds to such purpose under the HOME program, the Community Development Block Grants (CDBG) program, mortgage revenue bonds, or existing funding from state and local governments.

§ 92.606 Reallocations.

If any funds allocated to a participating jurisdiction under § 92.604 become available for reallocation, the funds shall be reallocated in the next fiscal year in accordance with § 92.604.

§ 92.608 Consolidated plan.

To receive an ADDI formula allocation, a participating jurisdiction must address the use of the ADDI funds in its consolidated plan submitted in accordance with 24 CFR part 91.

§ 92.610 Program requirements.

The following program requirements contained in subpart E of this part apply to the ADDI:

(a) *Private-public partnership.* The private-public partnership provisions contained in § 92.200 apply to the ADDI.

(b) *Distribution of assistance.* The distribution of assistance requirements contained in § 92.201 apply to the ADDI.

(c) *Income determinations.* The income determination requirements contained in § 92.203 apply to the ADDI.

(d) *Pre-award costs.* The requirements regarding pre-award costs contained in § 92.212 apply to the ADDI.

(e) *Matching contribution requirement.* The matching contribution

requirements contained in §§ 92.218 through 92.222 apply to FY2003 ADDI funds only.

§ 92.612 Project requirements.

The following project requirements contained in subpart F of this part apply to the ADDI:

(a) *Maximum per-unit subsidy amount and subsidy layering.* The maximum per-unit subsidy limits and subsidy layering requirements contained in § 92.250 apply to the total HOME and ADDI funds in a project.

(b) *Property standards.* Housing assisted with ADDI funds must meet the property standards contained in § 92.251.

(c) *Qualification as affordable housing.* Housing assisted with ADDI funds must meet the affordability requirements contained in § 92.254(a) and (c). If a project receives both HOME and ADDI funds, the total of HOME and ADDI funds in the project is used for calculating the period of affordability described in § 92.254(a)(4) and applied to resales (§ 92.254(a)(5)(i)) and recaptures (§ 92.254(a)(5)(ii)).

(d) *Faith-based organizations.* Faith-based organizations are eligible to participate in the ADDI as subrecipients or contractors as provided in § 92.257.

§ 92.614 Other Federal requirements.

(a) The following Federal requirements contained in subpart H of this part apply to the ADDI:

(1) *Other Federal requirements and nondiscrimination.* The Federal and nondiscrimination requirements contained in § 92.350 apply to the ADDI.

(2) *Environmental review.* The environmental review requirements contained in § 92.352 apply to the ADDI.

(3) *Labor.* The labor requirements contained in § 92.354 apply to ADDI.

(4) *Lead-based paint.* The lead-based paint prevention and abatement requirements contained in § 92.355 apply to the ADDI.

(5) *Conflict of interest.* The conflict of interest requirements contained in § 92.356 apply to the ADDI.

(6) *Consultant activities.* The requirements regarding consultant activities contained in § 92.358 apply to the ADDI.

(b) The following Federal requirements contained in subpart H of this part do not apply to the ADDI:

(1) *Affirmative marketing.* The affirmative marketing requirements contained in § 92.351(a).

(2) *Displacement, relocation, and acquisition.* The displacement, relocation, and acquisition requirements

implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4201–4655) and the implementing regulations at 49 CFR part 24, contained in § 92.353 do not apply to ADDI, except the requirements do apply to FY2003 ADDI funds.

(3) *Executive Order 12372*. The requirements of Executive Order 12372 (entitled “Intergovernmental Review”) described in § 92.357.

§ 92.616 Program administration.

The following program administration requirements contained in subpart K of this part apply to the ADDI:

(a) *HOME Investment Trust Fund*. The requirements regarding the HOME Investment Trust Fund contained in § 92.500 apply to the ADDI, with the exception of paragraphs (c)(2) and (d)(1)(A).

(b) *HOME Investment Partnership Agreement*. The requirements regarding HOME Investment Partnership Agreements contained in § 92.501 apply to the ADDI.

(c) *Program disbursement and information system*. The requirements regarding program disbursement and information systems contained in § 92.502 apply to the ADDI.

(d) *Program income, repayments and recaptured funds*. The requirements

regarding program income, repayments, and recaptured funds contained in § 92.503 apply to the ADDI, except the program income and recaptured funds must be deposited in the participating jurisdiction’s HOME investments trust fund local account and used in accordance with the HOME program requirements.

(e) *Participating jurisdiction responsibilities and written agreements*. The requirements regarding participating jurisdiction responsibilities and written agreements contained in § 92.504 apply to the ADDI, with the modification that the written agreement is not required to cover any HOME requirement that is not applicable to the ADDI.

(f) *Applicability of uniform administrative requirements*. The uniform administrative requirements contained in § 92.505 apply to the ADDI.

(g) *Audit*. The audit requirements contained in § 92.506 apply to the ADDI.

(h) *Closeout*. The closeout requirements contained in § 92.507 apply to the ADDI.

(i) *Recordkeeping*. The project records must include records demonstrating that the family qualifies as a first-time homebuyer. The recordkeeping requirements contained in § 92.508

apply to the ADDI, with the exception of the following paragraphs:

- (1) Paragraph (a)(1);
- (2) Paragraphs (a)(2)(iv), (a)(2)(v), (a)(2)(vi), (a)(2)(xi), and (a)(2)(xii);
- (3) Paragraphs (a)(3)(vi), (a)(3)(vii), (a)(3)(viii), (a)(3)(ix), and (a)(3)(xiii);
- (4) Paragraph (a)(4);
- (5) Paragraphs (a)(7)(i)(B), (a)(7)(i)(C), (a)(7)(ii)(A), and (a)(7)(ix) (in addition, the requirements of paragraph (a)(7)(iv) apply to FY2003 ADDI funds only); and
- (6) Paragraphs (c)(1) and (c)(3) (in addition, the requirements of paragraph (c)(5) apply to FY2003 ADDI funds only).

(j) *Performance reports*. The requirements regarding performance reports contained in § 92.509 apply to the ADDI.

§ 92.618 Performance reviews and sanctions.

HUD will review the performance of participating jurisdictions in carrying out its responsibilities under the ADDI in accordance with the policies and procedures contained in subpart L of this part.

Dated: March 10, 2004.

Alphonso Jackson,
Acting Secretary.

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