GREATER NEW ORLEANS
FAIR HOUSING ACTION CENTER

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
UNDER LAW

PEOPLE'S ANALYSIS OF IMPEDIMENTS (AI) TO FAIR HOUSING

FOR NEW ORLEANS

DECEMBER 2011

People's Analysis of Impediments (AI) for New Orleans

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The **Greater New Orleans Fair Housing Action Center** is a private, non-profit civil rights organization established to eradicate housing discrimination throughout the greater New Orleans area.
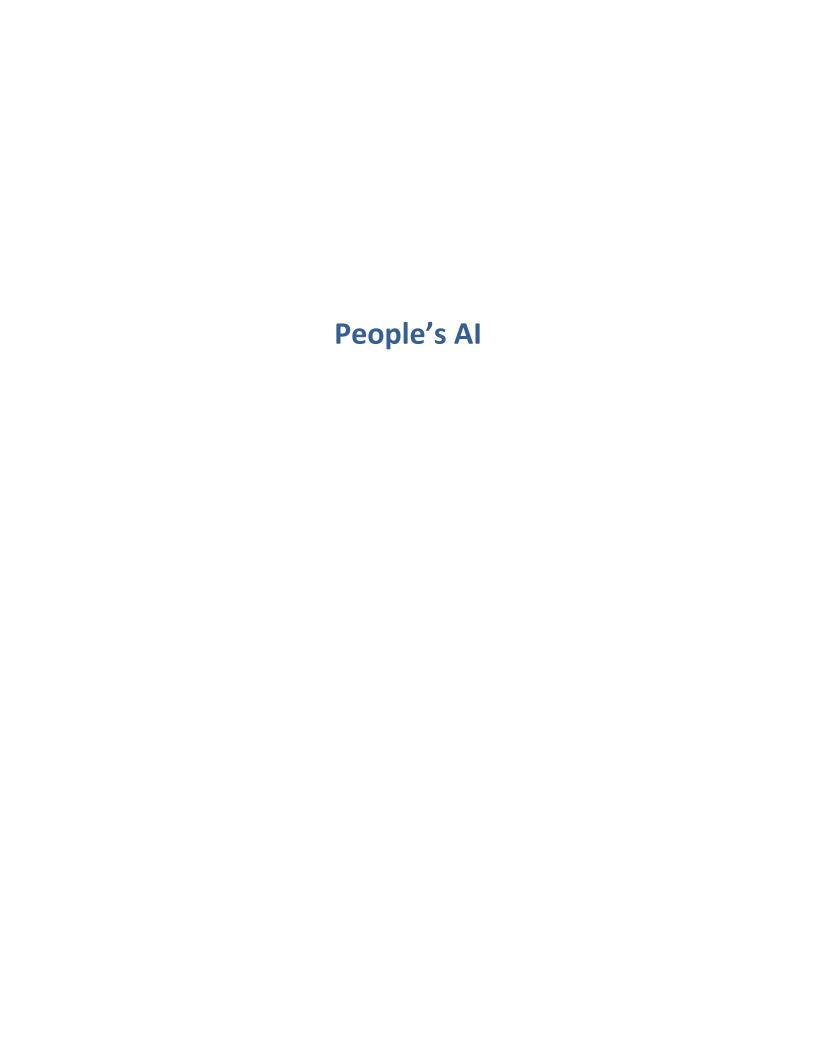
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People's AI Working Group

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People's AI

Executive Summary

This "People's AI" includes discussion about methods for conducting an effective Analysis of Impediments (AI), an assessment of New Orleans's 2010 Analysis of Impediments, and recommendations for actions the City of New Orleans should consider adopting in order to overcome some impediments. The methods and actions summarized in this report are based on extensive review of fair housing literature, cases, and complaints, as well as discussions with community members and leaders, housing developers, fair housing experts and advocates, and government officials. This report will be helpful to any city or state officials who wish to gather community input in the AI process and hope to avoid costly revisions or litigation.

I.   Background on Affirmatively Furthering Fair Housing (AFFH)

The 1968 Fair Housing Act requires the Department of Housing and Urban Development (HUD) and all federal departments and agencies to administer housing and urban development programs and activities "in a manner affirmatively further fair housing."[a] The obligation to affirmatively further fair housing (AFFH) is "to do more than simply refrain from discriminating (and from purposely aiding discrimination by others)" and reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases."[b]

Recipients of federal housing assistance also have an obligation to AFFH, and this obligation extends to all housing and housing-related activities in the recipient's jurisdictional area whether publicly or privately funded.[c]

Since the Fair Housing Act was passed more than 40 years ago, there has been very little enforcement of the AFFH requirement by HUD until recently. However, in September 2010, in response to a report by the Government Accountability Office, HUD's Assistant Secretary stated that affirmatively furthering fair housing is a "policy priority."[d] This new commitment to AFFH enforcement had actually started in early 2009 after a landmark decision in a case which addresses in depth the AFFH duty – *US ex rel. Anti-Discrimination Center v. Westchester Cty*.[e] In this case, a federal judge found that the central goal of the AFFH obligation is "to end housing discrimination and segregation," and emphasized that HUD's 1995 *Fair Housing Planning Guide* was persuasive authority for the AFFH requirements.[f]

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[a] 42 U.S.C. § 3608(e)(5). See also, 42 U.S.C. §3608(d).
[b] *NAACP v. Sec'y of Housing and Urban Development*, 817 F.2d 149, 155 (1st Cir. 1987).
[c] *HUD Fair Housing Planning Guide*, 1-3 (hereinafter HUD Planning Guide or Guide). Available at: www.hud.gov/offices/fheo/images/fhpg.pdf.
[d] *Housing and Community Grants: HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans.* Government Accountability Office (GAO) Report to Congressional Requesters, September 2010, 45: Appendix II: Comments from the Department of Housing and Urban Development.
[e] 668 F. Supp. 2d 548 (S.D.N.Y. 2009). This decision followed an earlier 2007 decision denying a motion to dismiss. United States ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester Cty., 495 F. Supp. 2d 375, 376 (S.D.N.Y. 2007).
[f] Id. at 564.

The extent of the AFFH obligation has not been defined by statute. However, as a condition of receiving these federal funds, communities are required to certify that they will affirmatively further fair housing.[g] Specifically, recipients of federal housing assistance must do the following:

1. Identify barriers to fair housing choice and racial integration within the jurisdiction (this is the AI);
2. Take actions to overcome the effects of any barriers identified in the AI; and
3. Maintain records of the analysis and actions taken.[h]

II.   How to Affirmatively Further Fair Housing

While HUD's 1995 Fair Housing Planning Guide includes numerous suggestions for producing the required analysis of impediments to fair housing choice, each recipient community is able to conduct the study that fits within the broad guidelines HUD offers. However, a jurisdiction like New Orleans that is required to produce an AI should seek to comply with the purpose and spirit of the Fair Housing Act and the Housing and Community Development Act of 1974 and with principles enunciated in the Westchester County case. The recommended approach is to gather and analyze a wide variety of information – including demographics and policies and practices pertinent to fair housing choice – and then apply sound planning and fair housing principles to this information to identify both current and potential impediments to fair housing choice and craft recommendations to overcome them.

At the outset, the role of community organizations in the preparation of an AI is crucial. The introduction to the Guide stresses that "all affected people in the community must be at the table and participate in making those decisions. The community participation requirement will never be more important to the integrity, and ultimately, the success of the process."[i]

The initial task in preparing an AI is assembling extensive information about fair housing and then carefully analyzing this data to identify impediments to fair housing choice. The Guide explicitly notes the following data that needs to be compiled:

1) public policies, practices, and procedures involving housing and housing-related activities;
2) zoning and land use policies, tax assessment/abatement practices;
3) the nature and extent of fair housing complaints/suits or other data that may be relevant to a jurisdiction's achievement of fair housing choice;
4) demographic patterns;
5) Home Mortgage Disclosure Act (HMDA) data;
6) results of testing;
7) results of Fair Housing Initiative Program (FHIP) grants; and
8) patterns of occupancy in Section 8, Public and Assisted Housing, and private rental housing.[j]

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[g] See 24 C.F.R. § 570.601(a)(2); 24 CFR § 91.225(a).
[h] See 24 C.F.R. 91.325, 24 C.F.R. 570.601.
[i] HUD Planning Guide, i.
[j] Id. at 2-9.

In addition, review of existing studies that evaluate fair housing, access to housing or related housing problems facilitates the recognition of impediments within the jurisdiction.

There are various ways to gather and analyze such information, but basic to any such analysis is an emphasis on a "fair housing perspective."[k] A good example of such an AI is one prepared for Naperville, IL.[l] The key components of the Naperville AI (which won a Best Practices Award from the Illinois chapter of the American Planning Association) which closely track the outline provided by HUD's Fair Housing Planning Guide are:

1) An overview of the local jurisdiction, looking particularly at demographics, including poverty rates, minority concentration, schools, transportation, and employment;
2) Private sector compliance issues, including fair housing complaints and mortgage lending practices;
3) Public sector compliance issues, including land use and zoning controls and treatment of proposals to build affordable housing; and
4) The Identification of Impediments and possible solutions, including private and public sector impediments and an analysis of the jurisdiction's makeup in a free housing market without discrimination.

Public actions can have some of the most profound impacts of all on fair housing choice. An adequate AI is not complete without a full analysis of the following:

1) Building, occupancy, and health and safety codes
2) Policies and actions affecting the approval of sites and other building requirements used in the approval process for the construction of assisted and private housing
3) Decisions and activities causing displacement of residents and businesses, particularly post-Katrina revitalization efforts, property tax increases, demolition of assisted housing (especially of the major public housing developments in New Orleans: B.W. Cooper, C.J. Peete, Lafitte, and St. Bernard), and relocation policies and practices (particularly those affecting areas of the city such as the Lower Ninth Ward and New Orleans East, which have been slow to rebuild in part as a function of these policies)
4) Creation of job and training opportunities that affect, or can be affected by, the location of housing opportunities
5) Policies that restrict the provision of housing and community development resources to areas of minority concentration
6) Planning, financing, and administrative actions related to the provision of public transportation services that can improve access to job, training opportunities, housing and community services

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[k] Id. at 2-20.
[l] *Analysis of Impediments to Fair Housing Choice in the City of Naperville, Illinois 2007*. Available at: www.planningcommunications.com/ai/naperville_ai_2007.pdf or www.naperville.il.us/emplibrary/Boards_and_Commissions/fhacanalysisofimpediments.pdf. This AI was the winner of an Illinois APA 2009 Best Practices Award.

7) Promotion of coordination and cooperation among jurisdictions in surrounding metropolitan or regional areas in planning and carrying out housing and housing-related activities

8) Interdepartmental coordination in planning and executing housing, community development, community services, and transportation programs

9) Policies and practices affecting the representation of racial, ethnic, and religious minorities and of people with disabilities on planning and zoning boards and commissions

10) Public housing agency (PHA) and other housing assistance provider policies and procedures[m]

III.   Assessment of the New Orleans AI

Following the categories outlined above, this section takes a close look at the 2010 New Orleans Analysis of Impediments to Fair Housing Choice. While the New Orleans AI does have some strengths, the impediments listed on pages 83-84 of the AI are insufficient and lack substance. There are two primary causes for this. The first is an incomplete assembly and analysis of fair housing information. Particularly egregious omissions include data, information, or analysis about:

1) Housing, employment, and income by race and for people with disabilities;

2) The concentration of affordable housing and the accessibility of affordable housing to jobs, public transit, and other opportunities and amenities;

3) The availability of land for multi-family residential development;

4) Homelessness;

5) Prior and current actions the City has taken to affirmatively further fair housing;

6) Building and zoning codes;

7) Resident displacement and relocation, particularly through the demolition of the "Big Four" public housing developments, and in light of ongoing plans to redevelop the Iberville;

8) Post-Katrina rebuilding efforts and the challenges around these efforts, especially as they affect current and former residents of the Lower Ninth Ward and New Orleans East; and

9) Other public actions that affect fair housing choice.

Without a full analysis of these factors, the list of impediments will inevitably be (and is) incomplete.

The second cause is an inadequate connection between the analysis that does exist in the body of the AI, including its analysis of fair housing studies, fair housing cases and complaints, and the Fair Housing Survey, and the listed conclusions. Examples of where the AI includes an analysis but fails to include the results of this analysis in its list of impediments include:

1) Minority concentration in certain neighborhoods;

2) Inaccurately attributing predatory lending and high loan denial rates for women and minorities to insufficient financial literacy;

3) A failure to fully identify the problem of discrimination in rental markets; and

4) NIMBYism.

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[m] HUD Planning Guide, 4-5, 4-6, 5-5, and 5-6.

Given the dearth of information about impediments, it is no surprise that the suggested actions for New Orleans to consider are also severely lacking. Without a full analysis of impediments, it is difficult to shape policies that affirmatively further fair housing. For instance, if the displacement of residents from public housing is not included as an impediment, the City cannot identify a corresponding action to address this problem. If NIMBYism in high-opportunity neighborhoods is not identified as a barrier and fully understood, then the City cannot develop a plan to address it.

However, a number of best practices in housing policy would, if adopted, go a long way towards creating more integrated communities and more housing and economic opportunities for minority residents. These include:

1) Inclusionary housing
2) Fair share agreements
3) Source of income non-discrimination statute
4) Reasonable accommodations request process for supportive housing providers
5) Housing mobility program
6) Higher density zoning, particularly in high-opportunity areas
7) Housing trust fund, particularly for affordable housing development in high-opportunity areas

IV.   Recommendations

Based on best practices, guidance from the HUD Fair Housing Planning Guide, and a careful review of New Orleans' current AI, the following recommendations are provided to the City of New Orleans:

1) Plan and implement a meaningful community participation process to inform the AI.
2) Revise the current AI or conduct a new AI that adequately incorporates data and information on the components described in this report, analyzes impediments that contribute to racial segregation in particular, and addresses the critiques presented in this report. In particular, the City should analyze *public sector* impediments (see page 10 of this report). A good example of the breadth and type of analysis that should be completed can be found in the Naperville AI.
3) Perform an AI that looks specifically at New Orleans rather than drawing from state-wide information and conclusions.
4) Present the identified impediments in the AI in a clear, organized way.
5) Identify actions that the City can adopt to address each of the impediments identified in the AI.
6) Upon developing a meaningful AI, utilize the findings to design and implement the City's Consolidated Plan.

Table of Contents

I. Background

This "People's AI" includes discussion about methods for conducting an effective Analysis of Impediments (AI), an assessment of New Orleans's 2010 Analysis of Impediments, and recommendations for actions the City of New Orleans should consider adopting in order to overcome some impediments. The methods and actions summarized in this report are based on extensive review of fair housing literature, cases, and complaints, as well as discussions with community members and leaders, housing developers, fair housing experts and advocates, and government officials. This report will be helpful to any city or state officials who wish to gather community input in the AI process and hope to avoid costly revisions or litigation.

A. Affirmatively Furthering Fair Housing (AFFH) Requirement

The 1968 Fair Housing Act requires the Department of Housing and Urban Development (HUD) and all federal departments and agencies to administer housing and urban development programs and activities "in a manner affirmatively further fair housing,"[1] This means that "[a]ction must be taken to fulfill, as much as possible, the goal of open integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunities the Act was designed to combat."[2] Furthermore, the AFFH obligation is "to do more than simply refrain from discriminating (and from purposely aiding discrimination by others)" and reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases."[3]

Recipients of federal housing assistance also have an obligation to AFFH. HUD regulations require such recipients to certify that they will affirmatively further fair housing,[4] and impose mandatory requirements on the recipients not only to certify their compliance with fair housing laws, but actually to comply.[5] While the recipient's AFFH obligation arises in connection with the receipt of federal housing assistance, it is not restricted to the design and operation of HUD-funded programs at the State or local level. Rather, the AFFH obligation extends to all housing and housing-related activities in the recipient's jurisdictional area whether publicly or privately funded.[6]

B. Enforcement by the Department of Housing and Urban Development (HUD)

Since the Fair Housing Act was passed more than 40 years ago, there has been very little enforcement of the AFFH requirement by HUD until recently. HUD rarely questioned recipients on the AFFH duty and

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[1] 42 U.S.C. § 3608(e)(5). See also, 42 U.S.C. §3608(d).

[2] *Otero v. New York City Housing Authority*, 484 F.2d 1122, 1134 (2d Cir. 1973)

[3] *NAACP v. Sec'y of Housing and Urban Development*, 817 F.2d 149, 155 (1st Cir. 1987).

[4] See 24 C.F.R. § 570.601(a)(2); 24 CFR § 91.225(a).

[5] *Langlois v. Abington Housing Authority*, 234 F.Supp.2d 33, 73, 75 (D.Mass. 2002); *Otero v. New York City Housing Auth.*, 484 F.2d 1122, 1125 (2d Cir. 1973).

[6] *HUD Fair Housing Planning Guide*, 1-3 (hereinafter HUD Planning Guide or Guide). Available at: www.hud.gov/offices/fheo/images/fhpg.pdf.

virtually never terminated or threatened to terminate funding. In 2010 the Government Accountability Office (GAO) conducted a full investigation of the AFFH process and found critical deficiencies. The report found that HUD regulations do not establish requirements for updating AIs or their format and that grantees are not required to submit AIs to the Department for review. Furthermore, it identified critical deficiencies in HUD's enforcement of the AFFH requirement. The GAO report included several recommendations for improving enforcement, including expeditiously completing a new, comprehensive regulation pertaining to the AFFH requirements.[7]

HUD is well aware of these deficiencies. In a 2009 internal study of AIs, it found that many were outdated or incomplete and that the Department's AFFH oversight was very limited.[8] In January 2010, HUD's Assistant Secretary for Fair Housing and Equal Opportunity testified before Congress that the Department was working on a proposed regulation to enhance AFFH compliance.[9] In September 2010, in response to the GAO report, HUD's Assistant Secretary stated that affirmatively furthering fair housing is a "policy priority" and that HUD had already reviewed the AIs of more than 300 recipient jurisdictions.[10]

This new commitment to AFFH enforcement had actually started in early 2009 after a landmark decision in a case which addresses in depth the AFFH duty – *US ex rel. Anti-Discrimination Center v. Westchester Cty.*[11] In this case, a federal judge found that the central goal of the AFFH obligation is "to end housing discrimination and segregation," and emphasized that HUD's 1995 *Fair Housing Planning Guide* was persuasive authority for the AFFH requirements.[12] Within a few weeks of the court's ruling, HUD signaled a new commitment to more vigorous enforcement when it intervened in the Westchester County case and helped negotiate a far-ranging consent decree focused on the AFFH duty. The consent decree included a $62.5 million settlement, requiring the county to develop 750 units of affordable housing in the whitest towns and villages in Westchester, and to affirmatively market them to people of color. In addition, the settlement requires the county to conduct a new AI and to consider all fair housing impediments.

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[7] *Housing and Community Grants: HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans.* Government Accountability Office (GAO) Report to Congressional Requesters, September 2010, at 1. The GAO reviewed a representative sample of 441 AIs out of the 1200 AIs submitted and found that 29 percent were out of date (prepared before 2004). The GAO also closely reviewed 60 up-to-date AIs (submitted from 2005 to 2010) and found that although many had listed impediments and actions to overcome these impediments, the vast majority did not include a timeframe for implementing the recommendations or signatures of top officials. This led the GAO to conclude that the AIs as currently structured are not effective fair housing planning tools.

[8] U.S. Department of Housing and Urban Development, Policy Development Division, Office of Policy Development and Research, "Analysis of Impediments Study" (Washington, D.C., 2009).

[9] John D. Trasvina, Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, statement before the Subcommittee on Housing and Community Opportunity, Committee on Financial Services, U.S. House of Representatives, *Housing Fairness Act of 2009*, Hearing on H.B. 476—Jan. 20, 2010.

[10] GAO Study, 45: Appendix II: Comments from the Department of Housing and Urban Development.

[11] 668 F. Supp. 2d 548 (S.D.N.Y. 2009). This decision followed an earlier 2007 decision denying a motion to dismiss. United States ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester Cty., 495 F. Supp. 2d 375, 376 (S.D.N.Y. 2007).

[12] Id. at 564.

Shortly after this settlement, HUD's Deputy Secretary stated that the agency would begin to "hold people's feet to the fire" on civil rights certifications.[13] HUD's oversight of the Westchester decree reflects this new commitment. It has included the rejection of Westchester's AI in December 2009, finding that "although the AI provides data and identifies many issues central to furthering fair housing choice," it failed "to make any material link between those impediments and the actions the County will take to overcome them."[14] Specifically, HUD wanted the county to provide strategies on how it will: overcome exclusionary zoning practices, identify the effects that the location of affordable housing will have on segregation patterns in the area, promote fair housing choice of voucher holders and other low-income and minority households, increase the availability of affordable housing for families with children, and combat local opposition to affordable housing development.[15] Subsequently in May 2011 HUD again rejected Westchester's revised AI.

HUD continues its work on an AFFH regulation designed to toughen and clarify substantive and procedural requirements.   Moreover, since the Westchester decision, the agency has become increasingly active in reviewing recipients' AFFH certifications and performance. Notable instances include (1) St. Bernard Parish, Louisiana, where HUD threatened to withhold hurricane recovery funds to rebuild a hospital because St. Bernard had adopted a series of racially discriminatory ordinances with respect to multifamily housing; (2) the State of Texas, where HUD rejected the state's plan to spend $1.7 billion in disaster recovery money, in part because its seven-year old AI did not comply with federal requirements; and (3) Marin County, California where HUD's review of the use and expenditure of HUD Community Development Block Grant (CDBG) and HOME funds disclosed a failure to meet its AFFH and resulted in an agreement to promote access and overcome barriers to affordable housing for minorities and persons with disabilities. At the present time, approximately fifteen AFFH-related complaints are pending before HUD.

C. General Principles

1. Certification

The extent of the AFFH obligation has not been defined by statute. However, as a condition of receiving these federal funds, communities are required to certify that they will affirmatively further fair housing.[16] Every voucher for funds that a community submitted to HUD "implicitly certified" that the community is affirmatively furthering fair housing.[17]

HUD regulations define the requirement on recipients of federal housing assistance as follows:

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[13] *New York Times*, "Integration Faces a New Test in the Suburbs," (August 22, 2009).

[14] Letter to Kevin Plunkett sent December 21, 2010 from John D. Trasvina, Assistant Secretary for Fair Housing and Equal Opportunity and Mercedes M. Márquez, Assistant Secretary for Community Planning and Development.

[15] John Jordan. HUD to Westchester County: Improve Fair Housing Plan. Construction News Online (January 1, 2011). Available at: http://cicnysb.firstdaystory.com/full.php?sid=1736&current_edition=2011-01-01.

[16] See 24 C.F.R. § 570.601(a)(2); 24 CFR § 91.225(a).

[17] *U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County,* 668 F. Supp. 2d 548, at 566 (S.D.N.Y. 2009).

a) Identify barriers to fair housing choice and racial integration within the jurisdiction (this is the AI);

b) Take actions to overcome the effects of any barriers identified in the AI; and

c) Maintain records of the analysis and actions taken.[18]

2. HUD's *Fair Housing Planning Guide*

In 1995, HUD produced a *Fair Housing Planning Guide* designed to provide guidance to recipients of federal housing assistance and organizations that a recipient may appoint[19] on these requirements. It first interprets the broad objectives of the above regulation to mean:

- Analyze and eliminate housing discrimination in the jurisdiction;
- Promote fair housing choice for all persons;
- Provide opportunities for inclusive patterns of housing occupancy regardless of race, color, religion, sex, familial status, disability and national origin;
- Promote housing that is structurally accessible to, and usable by, all persons, particularly persons with disabilities; and
- Foster compliance with the nondiscrimination provisions of the Fair Housing Act.[20]

At the present time HUD considers the 1995 Guide somewhat out-dated and this is one of the reasons it is drafting a regulation to better define the duty to AFFH. However, because a regulation has not been published or adopted, preparation of an AI must still rely to a certain extent on the Guide.

a) Definition of "Analysis of Impediments"

The Guide defines an Analysis of Impediments as a review of impediments to fair housing choice in the public and private sector, including:

1. A comprehensive review of a jurisdiction's laws, regulations, and administrative policies, procedures, and practices.

2. An assessment of how those laws, regulations, and practices affect the location, availability, and accessibility of housing.

3. An assessment of conditions, both public and private, affecting fair housing choice for all protected classes. The protected classes are: race, color, religion, sex, national origin, disability, and familial status (i.e., households with children).

4. An assessment of the availability of affordable, accessible housing in a range of unit sizes.[21]

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[18] See 24 C.F.R. 91.325, 24 C.F.R. 570.601.
[19] HUD Planning Guide at 2-11. "The AI can be conducted by the jurisdiction, local colleges, universities, local fair housing and industry groups, or any combination thereof."
[20] HUD Planning Guide, 1-3.
[21] Id. at 2-7.

b) Definition of "Impediment"

Central to an AI is a careful examination of the impediments or barriers to fair housing that affect the classes of persons protected by the Fair Housing Act. This is clear in the Guide's general definition of impediments to fair housing as follows:

1. Any actions, omissions, or decisions taken because of race, color, religion, sex, disability, familial status, or national origin which restrict housing choices or the availability of housing choices
2. Any actions, omissions, or decisions which have the effect of restricting housing choices or the availability of housing choices on the basis of race, color, religion, sex, disability, familial status, or national origin.[22]

c) Emphasis on Race

The recent *Westchester* decision puts special emphasis on the "requirement to consider race" in an AI:

> The HUD Guide's suggestion that the AI is to focus on acts, omissions, and decisions that restrict housing choice for protected classes, and that the grantee should analyze the degree of segregation within its jurisdiction, are firmly rooted in the statutory and regulatory framework and case law reviewed in *Anti-Discrimination Center. See* 495 F. Supp. 2d at 384-86 (reviewing fair housing statutes and case law underlying the obligation to AFFH and finding goal of HUD grant programs is 'to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases' (citation omitted)).[23]

The court makes specific note of the HUD Guide's suggestion that the AI contain a housing profile describing "the degree of segregation and restricted housing by race, ethnicity, disability status, and families with children; [and] how segregation and restricted housing supply occurred."[24] The court also notes the important difference between affordable housing and fair housing:

> The HUD Guide explains that while it is often the case that minorities are disproportionately represented among the low-income population, simply providing affordable housing for the low-income population 'is not in and of itself sufficient to affirmatively further fair housing.' This unsurprising statement is grounded in the statutory and regulatory framework behind the obligation to AFFH, which as already discussed, is concerned with addressing whether there are independent barriers to protected classes exercising fair housing choice. As a matter of logic, providing more affordable housing for a low income racial minority will improve its housing stock but may do little to change any pattern of discrimination or segregation. Addressing that pattern would at a minimum necessitate an analysis of where the additional housing is placed.[25]

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[22] Id. at 2-8.
[23] 668 F. Supp. 2d 548, at 564 (S.D.N.Y. 2009).
[24] Id. at 563.
[25] Id. at 564-5.

II. How to Affirmatively Further Fair Housing

While HUD's 1995 Guide includes numerous suggestions for producing the required analysis of impediments to fair housing choice, each recipient community is able to conduct the study that fits within the broad guidelines HUD offers. However, a jurisdiction like New Orleans that is required to produce an AI should seek to comply with the purpose and spirit of the Fair Housing Act and the Housing and the 1974 Community Development Act and with principles enunciated in the Westchester County case. The recommended approach is to extensively gather and analyze a wide variety of information – including such information as demographics and policies and practices pertinent to fair housing choice – and then apply sound planning and fair housing principles to this information to identify both current and potential impediments to fair housing choice and craft recommendations to overcome them. A key means of identifying impediments to fair housing choice is to engage in an effective public process.

A. Community Participation

At the outset, the role of community organizations in the preparation of an AI is crucial and is particularly important to the concept of a People's AI. The introduction to the Guide stresses that "all affected people in the community must be at the table and participate in making those decisions. The community participation requirement will never be more important to the integrity, and ultimately, the success of the process."[26]

The body of the Guide emphasizes that the "AI structure should provide for effective, ongoing relationships with *all* elements of the community with clear and continuous exchanges of concerns, ideas, analysis, and evaluation results."[27] It also offers models for community participation and lists organizations to include in the process, including fair housing organizations, other governments in the metropolitan area or region, advocacy groups, housing providers, banks and other financial institutions, educational institutions, and other organizations, such as church groups and block clubs, that can present neighborhood-specific impediments to fair housing choice.[28] AI drafters should also encourage the participation of the general public in drafting the AI. Jurisdictions should look to collect perspectives from diverse population groups, including those with disabilities, to obtain an accurate view of what the challenges are in obtaining adequate housing.

To facilitate community participation, jurisdictions should make draft AIs publicly available and conduct public meetings, hearings, and planning sessions that are accessible to everyone. It is also very helpful for jurisdictions to interview and/or survey residents and key players in the housing development field such as affordable housing developers, public officials, and leaders of housing services and fair housing organizations, and then include the results of this outreach in their AI.

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[26] HUD Planning Guide, i.
[27] Id. at 2-12.
[28] Id. at 2-13 to 2-14.

The importance of community participation in the AI process is illustrated in the recent compliance agreement that HUD entered into with Marin County, CA, which explicitly includes a provision that requires participation by racial and ethnic minorities and persons with disabilities throughout the AI planning process.[29]

B. Assemble and Analyze Fair Housing Information

The initial task in preparing an AI is assembling extensive information about fair housing and then carefully analyzing this data to identify impediments to fair housing choice. The Guide puts great emphasis on such information and its importance to the identification of the existence, nature, extent, and causes of all fair housing problems and the resources available to solve them, stating that "without this information, [fair housing planning] will fall short of measurable results."[30] The Guide explicitly notes the following data that needs to be compiled:

1) public policies, practices, and procedures involving housing and housing-related activities;
2) zoning and land use policies, tax assessment/abatement practices;
3) the nature and extent of fair housing complaints/suits or other data that may be relevant to a jurisdiction's achievement of fair housing choice;
4) demographic patterns;
5) Home Mortgage Disclosure Act (HMDA) data;
6) results of testing;
7) results of Fair Housing Initiative Program (FHIP) grants; and
8) patterns of occupancy in Section 8, Public and Assisted Housing, and private rental housing.[31]

In addition, review of existing studies that evaluate fair housing, access to housing or related housing problems facilitates the recognition of impediments within the jurisdiction.

There are various ways to gather and analyze such information, but basic to any such analysis is an emphasis on a "fair housing perspective."[32] A good example of such an AI is one prepared for Naperville, IL, and below we follow the organization and analysis of data and information in that AI.[33] The key components of the Naperville AI (which won a Best Practices Award from the Illinois chapter of the American Planning Association) which closely track the outline provided by HUD's Fair Housing Planning Guide are:

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[29] Agreement for Voluntary Compliance between the U.S. Department of Housing and Urban Development and the County of Marin, November 19, 2010, 5-6. Available at:
http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_7736.pdf.
[30] HUD Planning Guide, 2-8.
[31] Id. at 2-9.
[32] Id. at 2-20.
[33] *Analysis of Impediments to Fair Housing Choice in the City of Naperville, Illinois 2007*. Available at:
www.planningcommunications.com/ai/naperville_ai_2007.pdf or
www.naperville.il.us/emplibrary/Boards_and_Commissions/fhacanalysisofimpediments.pdf. This AI was the winner of an Illinois APA 2009 Best Practices Award.

1) An overview of the local jurisdiction, looking particularly at demographics, including:
   a. Population growth, poverty rates, racial composition, minority concentration by Census tract, housing tenure,
   b. Public schools;
   c. Transportation;
   d. Employment;
   e. Racial composition of workers; and
   f. Availability of land for residential development, including zoning and housing for people with disabilities.
2) Private sector compliance issues, including:
   a. Fair housing complaints and studies;
   b. Home mortgage lending practices;
   c. Home appraisal practices; and
   d. Practices by real estate firms, developers, leasing firms, and real estate advertisers.
3) Public sector compliance issues, including:
   a. Land use controls and building codes as they relate to residential care homes and affordable housing,
   b. Treatment of proposals to build affordable housing,
   c. Accessing information about fair housing.
4) The Identification of Impediments and possible solutions, including:
   a. An analysis of the jurisdiction's makeup in a free housing market without discrimination,
   b. Private sector impediments, and
   c. Public sector impediments.

1. Overview of the Jurisdiction

The starting point for analyzing the impediments to fair housing in a community is an in depth demographic analysis focused on the level of racial or ethnic segregation in a jurisdiction. Such an analysis should contain a thorough and detailed examination in several broad subjects with a focus on the racial, ethnic and disability composition of the population, and should compare the present degree of segregation with that which existed in the past to determine any progress or retrogression in the level of segregation or isolation by race, ethnicity or disability. Especially relevant in such a demographic analysis is the degree of racial or ethnic segregation of the jurisdiction in the metropolitan area and within the jurisdiction itself. For example, to measure the level of segregation in Naperville, the AI identifies those tracts with high racial minority concentrations that were determined to be greater than would be expected in a free housing market without discrimination and concludes that this discrepancy indicates that housing discrimination is a likely cause of such segregated patterns.

Useful demographic information includes population and job growth, poverty rates and income by race, racial composition, minority concentrations, racial composition of workers and public schools, availability of land for residential and multi-family development, residents reporting disabilities, and

housing tenure.[34] Other important data may include location of jobs and job training opportunities and how this relates to the location of low-income and multi-family housing, the availability of public transportation options, and housing costs.[35] The use of maps is particularly effective in illustrating the relationship among jobs, housing, and transportation, as well as the concentration of racial minorities and assisted housing.[36]

2. Private Sector Impediments

Private sector dynamics often are a source of impediments to fair housing choice. Jurisdictions should analyze data that demonstrates the level of discrimination that may violate the Fair Housing Act and ways in which practices in the private sector lead to such discrimination. These practices, though they may be facially neutral, are discriminatory if they have the intent or effect of limiting the housing options of ethnic minorities or persons with disabilities, for instance.

The practices to which jurisdictions should pay particular attention include, but are not limited to:

1) Banking and insurance policies and practices pertaining to the financing, sale, purchase, rehabilitation, and rental of housing
2) The sale and rental of housing and real estate practices such as blockbusting, deed restrictions, trust or lease provisions, conversions of apartments to all adult- occupancy, inaccessible design, or management firm "occupancy quotas"
3) Availability of programs that may be used to provide financial assistance to modify privately owned housing to make it accessible to persons with disabilities and their families and dissemination of information about such programs
4) The discriminatory provision of housing brokerage services.[37]

HUD provides guiding questions on pages 5-23 to 5-27 of its Fair Housing Planning Guide.

The Naperville AI looks to some additional sources as well, including fair housing complaints (local and federal); fair housing studies and testing; home mortgage lending practices; home appraisal practices; and practices by real estate firms, developers, and real estate advertisers.[38]

3. Public Sector Impediments

HUD discusses a number of "possible actions or omissions in the public sector (including public housing, community development, transportation, and community services) that may affect housing choice" for

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[34] Naperville Analysis of Impediments, 10-35.
[35] HUD Planning Guide, 2-27.
[36] Id. at 2-28.
[37] Id. at 5-20.
[38] Naperville Analysis of Impediments, 36-46.

minorities, families with children, and persons with disabilities.[39] Jurisdictions should determine if these actions or omissions are "influenced by public policies, practices, and procedures" such as:

1. **Codes**: Building, occupancy, and health and safety codes
2. **Zoning, approvals, and siting**: Policies and actions affecting the approval of sites and other building requirements used in the approval process for the construction of assisted and private housing, including:
   o Zoning, lot size requirements, restrictions on the number of unrelated persons in dwellings based on size of unit or number of bedrooms, and other factors
   o Provision of essential municipal services, such as water, sewage, electricity, public transportation, and roads
   o Real estate property tax assessments affecting the cost of new construction
   o Physical access and location of housing for persons with disabilities
3. **Displacement and relocation**: Decisions and activities causing displacement of residents and businesses, particularly post-Katrina revitalization efforts (a report by PolicyLink cited in the AI describes the "large scale displacement of many residents and the inadequate funds offered to rebuild the housing stock within New Orleans"[40]), property tax increases; demolition of assisted housing (especially of the major public housing developments in New Orleans: B.W. Cooper, C.J. Peete, Lafitte, and St. Bernard); and relocation policies and practices (particularly those affecting areas of the city such as the Lower Ninth Ward and New Orleans East, which have been slow to rebuild in part as a function of these policies)
4. **Job creation and job training**: Creation of job and training opportunities that affect, or can be affected by, the location of housing opportunities
5. **Minority concentration**: Policies that restrict the provision of housing and community development resources to areas of minority concentration
6. **Public transportation**: Planning, financing, and administrative actions related to the provision of public transportation services that can improve access to job, training opportunities, housing and community services
7. **Regional coordination**: Promotion of coordination and cooperation among jurisdictions in surrounding metropolitan or regional areas in planning and carrying out housing and housing-related activities
8. **Interdepartmental coordination** in planning and executing housing, community development, community services, and transportation programs
9. **Board and commission representation**: Policies and practices affecting the representation of racial, ethnic, and religious minorities and of people with disabilities on planning and zoning boards and commissions
10. **Public housing agency (PHA)** and other housing assistance provider policies and procedures for:
    o Selecting individuals and families to receive the benefits of federal, state, or local publicly assisted housing programs that provide rental or ownership opportunities for lower-income persons and families
    o Advertising rental vacancies to the public and establishing and maintaining waiting lists

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[39] HUD Planning Guide, 5-4.
[40] Id. at 66.

       o   Assisting certificate and voucher holders to find suitable rental units throughout the jurisdiction.[41]

HUD provides guiding questions to identify public sector impediments to fair housing choice in its Fair Housing Planning Guide, pages 5-6 to 5-8, 5-11 to 5-12, 5-13 to 5-20, and 5-28 to 5-31.

In its section on "Public Sector Compliance Issues," the Naperville AI focuses on land use controls and building codes, including restrictions on residential care homes, affordable housing, treatment of proposals to build affordable housing, and access to fair housing information from the City.[42]

C. Impediments and Possible Solutions

Of course, the whole purpose of the analysis above is to provide information that will inform the identification of impediments to fair housing choice and then to design and implement strategies, or actions, to overcome these impediments. Without a careful review of data, it will be impossible to effectively identify impediments and relevant solutions.

According to the Naperville AI, "[o]ne of the most insightful and objective tools for determining whether impediments to fair housing choice exist is to compare the actual racial composition of a city with what the racial composition would be in a free housing market undistorted by discrimination. In a free housing market economy, household income, not race nor ethnicity, determines who lives in the community."[43] In other words: "When the actual proportions of minorities are significantly less than the proportions that would exist in a free housing market, it is very likely that factors other than income, social class, or personal choice, are influencing who lives in the community."[44] Furthermore, "researchers have concluded 'that race and ethnicity (not just social class) remain major factors in steering minority families away from some communities and toward others.'"[45] The Naperville AI goes on to summarize the impediments that it identifies from analysis of the data and other information gathered and then recommends solutions and actions, one by one. Each impediment is described again with some detail and then matched with a recommendation, or an action to overcome that impediment. The AI describes 19 impediments and provides 19 recommendations, with 15 sub-recommendations.[46]

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[41] HUD Planning Guide, 4-5, 4-6, 5-5, and 5-6.
[42] Naperville Analysis of Impediments, 47-59.
[43] Id. at 60.
[44] Id.
[45] Id.
[46] Id. at 64-77.

III. Assessment of the New Orleans AI

Following the categories outlined above, this section takes a close look at the 2010 New Orleans Analysis of Impediments to Fair Housing Choice. While the New Orleans AI does have some strengths, it is severely inadequate. Below is a critique of the New Orleans AI based on input from a Working Group composed of community leaders, housing developers, and advocates.

A. Community Participation

Strengths:
1. In its fair housing survey, the State of Louisiana received 133 responses in the City of New Orleans. These included 28 advocates and 17 housing developers.[47]
2. The AI summarizes some of the barriers and constraints most often cited by survey respondents, including the lack of availability and affordability of housing, discrimination in the rental markets, lack of understanding of tenant rights and landlord responsibilities, lack of fair housing enforcement, the NIMBYism which thwarts fair housing choice in areas of opportunity and perpetuates segregation, and government actions that are non-inclusive or counterproductive to affordable housing efforts.[48]
3. Some of the input from the survey appears to be included in the summary of impediments on pages 83-84 of the AI, including the implementation of local land use codes and/or zoning regulations which prevent development of affordable housing that will increase fair housing choice, the imposition of construction moratoriums, and discrimination in rental markets.

Critiques:
1. **Definition of impediments**: The AI quickly disregards much of the information derived from the survey based on an inaccurate definition of "impediments to fair housing choice." For instance, the City concludes that "the lack of available and affordable housing is an important housing planning issues, but not necessarily a fair housing issue." The City asserts that this is "not typically [an impediment] to fair housing choice, as defined previously, unless the action is due to protected class status.[49] This demonstrates that the City has a fundamental misunderstanding of the definition of an impediment to fair housing choice. HUD defines impediments as not only actions taken *because* of protected status, but also any "actions, omissions, or decisions which the *effect of restricting housing choices or the availability of housing choices*" on the basis of protected status (emphasis added).[50]
2. **Identified impediments**: Despite receiving lengthy input from a significant number of survey respondents about the impediments to fair housing choice, the City does not meaningfully draw on this information in its brief summary of impediments listed on pages 83-84 of the AI. For instance, it does not include NIMBYism and government actions that are non-inclusive and/or

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[47] 2010 Analysis of Impediments for Fair Housing Choice, City of New Orleans, 74.
[48] Id. at 75.
[49] Id.
[50] HUD Planning Guide, 2-8.

counterproductive to affordable housing efforts, the lack of affordable housing (particularly in low-poverty neighborhoods), or lack of enforcement.

3. **Community forums**: The State held ten housing forums to get input from the public. However, only one forum was held in the City of New Orleans,[51] providing limited local input about what residents believe to be impediments to fair housing choice and how they felt the draft AI addressed these impediments. Forums should be held in various New Orleans neighborhoods in order to accommodate those who may have difficulty traveling, including seniors and people with disabilities. They should also be held at a time that is convenient for those who work full time (the forum in New Orleans was held on a Monday at 10:00 AM, when many people will be at work).[52]

B. Community Profile – Demographics

Strengths:
1. The New Orleans AI includes maps that illustrate minority concentrations in the city.[53]
2. The AI describes changes in the population of people with disabilities.[54]

Critiques:
1. **Racial concentration**: The New Orleans AI does not contain an analysis like that done in the Naperville AI (discussed above): what the racial composition would be "in a free housing market undistorted by discrimination"[55] that can shed light on how significant racial discrimination is in New Orleans.
2. **Data by race**: Although the AI describes unemployment, household income, poverty status, housing tenure, overcrowding, and cost burden, they are not analyzed by race. In order to effectively identify the barriers to fair housing choice for minority groups, it is crucial that the City first know whether some groups are disproportionately low-income, renters rather than homeowners, living in crowded or unsanitary conditions, and paying an unaffordable amount of their income towards rent or housing costs.
3. **Disabilities**: Similarly, unemployment, household income, poverty status, housing tenure, and cost burden are not analyzed for people with disabilities. It is therefore impossible to know how significant the barriers to fair housing choice are for people with disabilities (including, physical, intellectual, and developmental disabilities).
4. **Assisted housing**: The AI does not indicate whether affordable housing opportunities are supported by public transit options or are in close proximity to employment opportunities. Enabling people to live near their work minimizes the length of their commutes and helps minimize air pollution and gas consumption. It also allows people to spend more time with their

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[51] New Orleans Analysis of Impediments, 14.
[52] Id. at 103.
[53] Id. at 18-20.
[54] Id. at 21
[55] Naperville Analysis of Impediments, 60.

families.[56] It fails to note whether affordable housing is concentrated in low-income or minority communities (it is).

5. **Public schools**: The AI does not include an analysis of the population of the public schools by race. This information is "significant to fair housing because researchers have long known that changes in school racial composition can foreshadow changes in the racial composition of the surrounding community. The challenge to fair housing derives from the way potential Caucasian home seekers perceive the 'quality of schools' as a major factor in choosing a home." Moreover, nationally, "when the student body of a public school has become mostly African American, the school and surrounding neighborhood have nearly always 'resegregated,' changed from nearly all-white to nearly all-black over an average of 13 years."[57]

6. **Transportation and jobs**: The AI provides no analysis of access to public transit, particularly for low-income households, and how it relates to access to quality jobs. The AI does not describe usage rates of public transit by race or analyze the proximity of public transit to employment opportunities.

7. **Employment**: The AI does not describe the racial composition of workers by race and whether minorities are finding jobs in the City of New Orleans or elsewhere as compared to whites.

8. **Availability of land for residential development**: In order to engage in effective fair housing planning, it is critical that the City know how much land is available (i.e., vacant and adequately zoned) for residential development, and particularly for multi-family housing development. Multi-family housing is more likely to be affordable to low-income residents. The AI may refer to the City's Master Plan, Comprehensive Zoning Ordinance, and other relevant development and planning documents.

9. **Homelessness**: The AI does not include any analyses on the quantity and concentration of the homeless population in the City of New Orleans (a footnote on page 16 points out that the American Community Survey "overlooks … the homeless") and does not describe any services that would address the problems of homelessness in the area and region.[58]

C. Private Practices: Loans

Strengths:

1. The AI describes home purchase loan denial rates by gender and race, noting that blacks and Hispanics had significantly higher denial rates than whites, and that denial rates for females were consistently higher than for males.[59]

2. The AI maps denial rates by race, noting that in some areas of the city, the denial rates were over 80% for blacks and Hispanics, and 76% for Asians.[60]

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[56] Naperville Analysis of Impediments, 24.

[57] Id. at 17.

[58] A report by Unity of Greater New Orleans, *Homelessness in Greater New Orleans: A Report on Progress toward Ending Homelessness In the Years After the Nation's Largest Housing Disaster* (available at http://unitygno.org/wp-content/uploads/2011/06/PIT-2011-Report.pdf), shows that the number of unsheltered homeless in Orleans and Jefferson Parishes on any given night averages 6,687. Moreover, 79% of the homeless population is disabled, nearly double the homeless average of 40%, implying that it may be more difficult for people with disabilities to find housing in New Orleans than in other places.

[59] New Orleans Analysis of Impediments, 39.

3. The AI shows that even when correcting for income, denial rates for minority groups were much higher than for whites.
4. The AI describes high-interest (or predatory) loans by race, showing that blacks were significantly more likely to receive these loans than whites and therefore have a higher risk of foreclosure.
5. The AI maps these high-interest loans by race, showing that in some areas, 82% of loans to blacks, 79% of loans to Hispanics, and 75% of loans to Asians were predatory.

Critiques:

Identified impediments: Despite the data which is highly indicative of lending discrimination as being a central impediment, the AI's summary of impediments to fair housing choice described on pages 83-84 inexplicably blames the denial rates and the predatory loans on "lack of sufficient financial literacy," ignoring its in-depth analysis of lending data. Evidence cited in the AI that even when controlling for income, minorities experienced higher denial rates and extremely high rates of sub-prime loans sub-prime loans to blacks (at a rate of 82% in some areas of the city) indicates that the problem may have less to do with financial literacy than with discrimination. Identification of lending discrimination as an impediment and recommending monitoring, testing, enforcement, and other measures to ensure that lenders are complying with the law is far more important to removing barriers to fair housing choice than education designed to ensure that consumers understand the terms of their loans.

D. Private Practices: Fair Housing Complaints and Studies and Fair Housing Survey

Strengths:

1. The New Orleans AI reviews a number of regional studies about discrimination in housing, including an NAACP report in 2006 that concluded that "residential segregation in New Orleans contributed to a disproportionate impact of [Hurricane Katrina] on minority communities" and that "policies put in place one year after the storm had the potential to re-establish the segregation that existed prior to the storm thereby limiting the opportunities for personal growth and development available to the African American community."[61] The AI also cites another study that found discrimination "based on [a] caller's accent, command of the English language or other verbal cues that reveal the potential race of [a housing] applicant."[62]
2. The AI has an in-depth description of fair housing cases and enforcement actions that demonstrate that discrimination that violates the Fair Housing Act remains a significant impediment to fair housing choice. Included are cases brought by private parties and the federal DOJ, as well as complaints made to HUD and Louisiana DOJ, including a suit against websites that allowed discriminatory advertisements for housing. The AI also describes cases in surrounding communities, such as St. Bernard Parish and Lafayette.[63]

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[60] Id. at 40-42.
[61] Id. at 64.
[62] Id.
[63] Id. at 70-73.

3. The AI also describes discrimination against Section 8 voucher holders (who are overwhelmingly African American), discrimination based on national origin (as indicated by accent or control of the English language, for instance), and discrimination based on family status. In fact, the AI states that most of the 253 fair housing complaints filed in the City of New Orleans with HUD and the Louisiana Department of Justice from 2000 to 2009 were based on race, disability, and family status.[64]

Critiques:
1. **Identified impediments**: Despite the wealth of information about discrimination that violates the Fair Housing Act from reports cited in the AI, the level of discrimination evident in recent enforcement actions, and input from survey respondents, most of this is ignored in the few private sector impediments identified on pages 83-84 of the AI. Impediment #4 simply states: "Discrimination in rental markets, including failure to make reasonable accommodation." Again inexplicably, there is no specific mention of racial discrimination as an impediment.
2. **Local context:** Although the New Orleans AI analyzes some national and regional trends, it fails to assess national trends in a way that contextualizes *local* impediments to fair housing choice.

E. Public Sector

Strengths:
1. The only section that approximates a discussion on public sector impediments is the summary of governmental fair housing entities and their complaint processes, such as the Louisiana Department of Justice, Public Protection Division, and the City of New Orleans Human Relations Commission.[65]
2. The Fair Housing Survey administered by the State included a section on "State and Local Government Policies and Activities Related to Fair Housing." The results may indicate that a substantial number of respondents thought that "state or local government may have taken planning, financing, or administrative action that may have adversely affected fair housing choice," were "aware of … fair housing non-compliance issues with … public housing authorities," could "think of … state or local codes or regulations, including building, occupancy, health or safety codes, that may represent barriers to fair housing choice," and could "think of … public administrative actions or policies, including tax policy, that may represent barriers to fair housing choice."[66]
3. The AI recognizes the relevance of public sector impediments in its discussion of fair housing cases: "the Kenner city council was accused of violating the Fair Housing Act when it enacted a yearlong ban on the development of multi-family housing units, or any housing with five or more units."[67]

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[64] Id. at 70.
[65] Id. at 59.
[66] Id. at 76.
[67] Id. at 68.

Critiques:

1. **Impediments identified**: Perhaps the most glaring problem with the New Orleans AI is a near complete omission of any explicit discussion about public sector practices, as recommended by HUD's Fair Housing Planning Guide (see page 10 of this report) and included in high-quality AIs, such as the Naperville AI. The Fair Housing Survey input about public sector impediments is not adequately reflected in the short list of impediments on pages 83-84 of the AI. Only "Implementation of local land use codes and/or zoning regulations, or the use of construction moratoriums and householder ordinances that may not be in the spirit of affirmatively furthering fair housing" is listed, without any explanation of specific code provisions.

2. **Prior and current AFFH actions**: HUD's Fair Housing Planning Guide urges jurisdictions to "have full knowledge of all the activities that have recently been completed or are underway to affirmatively further fair housing."[68] The New Orleans AI includes a short list of fair housing agencies and programs, but does not assess how the programs have been implemented.[69] For instance, the AI describes the components and award amounts of a 2006 FHIP program meant for outreach to Katrina survivors, but says nothing about the results and outcomes.[70] Moreover, the AI includes no information that indicates that it is following up on a previous AI or evaluating actions taken as a result of its last AI process.

3. **Relevant public agencies**: The AI does not specifically discuss which agencies are charged with implementing policies that affirmatively further fair housing, despite references to some of these agencies and their failures by Fair Housing Survey respondents and by studies cited in the AI. Relevant agencies include the Housing Authority of New Orleans (mentioned only twice in the summary of a study on page 68), as well as the New Orleans Redevelopment Authority, the Finance Authority of New Orleans, the New Orleans Office of Community Development, and the City Planning Department, none of which are mentioned at all in the AI. Although the AI's authors recognize the importance of government agencies, such as the Louisiana Housing Finance Agency and the Louisiana Office of Community Development, which are discussed at length, they include no such discussion about local agencies, which play a critical role in providing (or limiting) housing opportunities.

F. Impediments and Possible Solutions

1. Impediments

As discussed above, the impediments listed on pages 83-84 of the AI are insufficient and lack substance. There are two primary causes for this. The first is an incomplete assembly and analysis of fair housing information. Particularly egregious omissions include data, information, or analysis about:

a) Housing, employment, and income by race and for people with disabilities;
b) The concentration of affordable housing and the accessibility of affordable housing to jobs, public transit, and other opportunities and amenities;

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[68] HUD Planning Guide, 2-19.
[69] New Orleans Analysis of Impediments, 51-59.
[70] Id. at 53.

c) The availability of land for multi-family residential development;
d) Homelessness;
e) Prior and current actions the City has taken to affirmatively further fair housing;
f) Building and zoning codes;
g) Resident displacement and relocation, particularly through the demolition of the "Big Four" public housing development, and in light of ongoing plans to redevelop the Iberville;
h) Post-Katrina rebuilding efforts for residents and evacuees, and the challenges around these efforts, especially as they affect current and former residents of the Lower Ninth Ward and New Orleans East; and
i) Other public actions that affect fair housing choice.

Without a full analysis of these factors, the list of impediments will inevitably be (and is) incomplete.

The second cause is an inadequate connection between the analysis that does exist in the body of the AI, including its analysis of fair housing studies, fair housing cases and complaints, and the Fair Housing Survey, and the listed conclusions. Even a comparison to the impediments listed for the State of Louisiana is indicative of the shortcomings in the New Orleans list; the State lists nine impediments in three broad categories,[71] while the City's list includes just five impediments. Examples of where the AI includes an analysis but then fails to include the results of this analysis in its list of impediments include:

a) Minority concentration in certain neighborhoods;
b) Inaccurately attributing predatory lending and high loan denial rates for women and minorities to insufficient financial literacy;
c) A failure to fully identify the problem of discrimination in rental markets; and
d) NIMBYism.

2. Solutions or Actions to Overcome Impediments

Given the dearth of information about impediments, it is no surprise that the suggested actions for New Orleans to consider are also severely lacking. Without a full analysis of impediments, it is difficult to shape policies that affirmatively further fair housing. For instance, if the displacement of residents from public housing is not included as an impediment, the City cannot identify a corresponding action to address this problem. If NIMBYism in high-opportunity neighborhoods is not identified as a barrier and fully understood, then the City cannot develop a plan to address it.

However, a number of best practices in housing policy would, if adopted, go a long way towards creating more integrated communities and more housing and economic opportunities for minority residents. A summary of these policies is forthcoming. They include:

a) Inclusionary housing
b) Fair share agreements
c) Source of income non-discrimination statute

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[71] New Orleans Analysis of Impediments, 79-80.

d) Reasonable accommodations request process for supportive housing providers
e) Housing mobility program
f) Higher density zoning, particularly in high-opportunity areas
g) Housing trust fund, particularly for affordable housing development in high-opportunity areas

Even when using the impediments that the AI does identify, however, it is unclear how, or if, each of the impediments correlates with each of the solutions offered. For instance, the AI identifies "discrimination in rental markets" as an impediment, but the suggested actions do not include enforcement activities to address this discrimination. Similarly, the AI identifies the "[i]mplementation of local land use codes and/or zoning regulations" as an impediment but does not suggest any zoning changes.

On the other hand, the Naperville AI carefully lays out, one by one, each impediment with a corresponding solution (see pages 64-77 of that AI). The impediments and solutions draw directly from the discussion in the AI. The New Orleans AI ought to follow the same structure. It is a question not only of creating greater opportunity for residents, but also of complying with Fair Housing Act's requirement to affirmatively further fair housing.

IV. Recommendations

Based on best practices, guidance from the HUD Fair Housing Planning Guide, and a careful review of New Orleans' current AI, the following recommendations are provided to the City of New Orleans:

1. Plan and implement a meaningful community participation process to inform the AI.
2. Revise the current AI or conduct a new AI that adequately incorporates data and information on the components described in this report, analyzes impediments that contribute to racial segregation in particular, and addresses the critiques presented in this report. In particular, the City should carefully analyze *public sector* impediments (see page 10 of this report). A good example of the breadth and type of analysis that should be completed can be found in the Naperville AI.
3. Perform an AI that looks specifically at New Orleans rather than drawing from state-wide information and conclusions.
4. Present the identified impediments in the AI in a clear, organized way.
5. Identify actions that the City can adopt to address each of the impediments identified in the AI.
6. Upon developing a meaningful AI, utilize the findings to design and implement the City's Consolidated Plan.