
AFFIRMATIVELY FURTHERING FAIR HOUSING
And
THE ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE (AI)

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WHAT IS "AFFIRMATIVELY FURTHERING FAIR HOUSING"?

"Affirmatively furthering fair housing" is rooted in Title VIII of the Civil Rights Act of 1968 (also known as the Fair Housing Act of 1968).

[Section 808(e)(5)]

"AFFH" is the widely used shorthand for "affirmatively furthering fair housing".

Although AFFH applies to ***all*** federal agencies that provide housing and community development assistance, the only meaningful guidance comes from programs run by HUD.

Local and state governments and public housing agencies (PHAs) must "certify" (pledge in writing) that they are affirmatively furthering fair housing.

CDBG, HOME, and other Community Planning and Development Programs

"Affirmatively Furthering Fair Housing" is defined in these regs as a jurisdiction:

1. Having an Analysis of Impediments (barriers) to fair housing choice, called an "AI";
2. Taking appropriate actions to overcome the effects of impediments; *and*,
3. Keeping records reflecting the analysis and showing the actions taken.

CDBG entitlement jurisdiction regulations [24CFR570.601(a)(2)]
CDBG states and small cities regulations [24CFR487(b)]
ConPlan regulations for entitlement jurisdictions [24CFR91.225(a)(1)]
ConPlan regulations for states and small cities [24CFR91.325(a)(1)]

Public Housing and Vouchers

"Affirmatively Furthering Fair Housing" is defined in these regs as a public housing agency:

1. Examining its programs;
2. Identifying any impediments to fair housing choice in those programs;
3. Addressing those impediments in a reasonable fashion in view of available resources;
4. Working with local jurisdictions to carry out any of their AFFH work; *and*,
5. Keeping records showing the analysis and actions.

The Public Housing Agency Plan regulations [24CFR903.2(2)(2) and 903.7(o)(3)]

WHAT IS AN "ANALYSIS OF IMPEDIMENTS" or an "AI"?

HUD's Office of Fair Housing and Equal Opportunity (FHEO) has a *Fair Housing Planning Guide* which **defines an AI** as:

1. A comprehensive review of a jurisdiction's laws, regulations, and administrative policies, procedures, and practices.
 2. An assessment of how those laws, regs, 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*.
 4. An assessment of the availability of affordable, accessible housing in a range of unit sizes.
- [*Fair Housing Planning Guide*, page 2-7]

*The "protected classes" are: race, color, religion, gender, disability, national origin, and familial status (in other words, households with children).

An "impediment" can be an action or an inaction which restricts housing choice, or which has the effect of restricting housing choice.

Some policies or practices might seem neutral, but really do deny or limit housing availability.

[*Fair Housing Planning Guide* pages 2-7 & 2-17]

The HUD *Fair Housing Planning Guide* explains that analyzing fair housing impediments and taking appropriate actions means:

- Eliminating housing discrimination in the jurisdiction.
- Promoting fair housing choice for all.
- Providing housing opportunities for people of all races, colors, religions, genders, disabilities, national origins and family types (eg, families with children).
- Promoting housing that is structurally usable by all people, particularly those with disabilities.
- Fostering compliance with the nondiscrimination features of the Fair Housing Act.

[*Fair Housing Planning Guide* page 1-3]

Obvious impediments include outright discrimination based on race or ethnicity, refusing to rent to families with children, and insurance practices that reinforce segregated housing patterns.

Less obvious impediments include lack of large rental units, inadequate multi-lingual marketing, zoning that limits multifamily housing, and insufficient public transportation to areas with affordable housing.

WHERE CAN I FIND THE AI?

AIIs are not sent in to HUD, and they are not a formal piece of any CDBG document such as the Annual Action Plan* or the ConPlan♦.

There is no specific term for a PHA's analysis of impediments.

AIIs are their own separate documents – which are available to the public.

A September 2, 2004 Policy Memo from HUD (reissuing a February 14, 2000 Memo) states that a jurisdiction "may" include in its Annual Action Plan, the actions it plans to take in the upcoming year to overcome the effects of impediments to fair housing. But, this is only a "may", not a "must"; plus, many jurisdictions do not know this Policy Memo exists. Anyway, such a list is still not an AI.

Some jurisdictions point to a part of their ConPlan or Action Plan called "barriers to affordable housing" and claim that to be the AI. The law requires such a discussion, but this is not an AI. Examples of barriers to affordable housing in the law are tax policies and building fees.

The name of the agency or department which will have an AI varies from locality to locality. The office that primarily runs your CDBG program should have a copy for you. Your PHA should have a copy of its own analysis. However, if these offices act like you are speaking Martian when you ask for a copy of the AI, ask the FHEO rep (Fair Housing and Equal Opportunity) at your HUD Regional Office to help you shake the AI loose from the jurisdiction.

** An Annual Action Plan is a document that a jurisdiction must prepare each year and make available to you. It lists all of the activities the jurisdiction will fund with CDBG and HOME dollars in the upcoming year.*

♦ A ConPlan (Consolidated Plan) is a long-term (usually 5 years) statement of lower income people's housing and community development needs. Because lower income people's needs are unlimited, the ConPlan must also show what the jurisdiction's priorities are for dealing with the most acute needs. The ConPlan must describe the sources of money available and the local programs that will address the priority needs over the next 5 years.

WHEN ARE AIIs WRITTEN?

According to HUD's *Fair Housing Guide*, AIIs must be updated in cycle with the timeframe of a ConPlan. So, theoretically, if your jurisdiction has to come up with a new ConPlan every five years, then it should also revise its AI at the same time.

[*Fair Housing Planning Guide* page 2-7]

However, the more recent HUD Policy Memo (September 2, 2004) says that jurisdictions "should" update their AIIs "where appropriate...to reflect the current fair housing situation in their communities." That Memo adds that an AI should be updated "annually where necessary".

The Policy Memo implies that jurisdictions which don't make "appropriate revisions to update" their AIIs could face problems. You might want to be sure that your jurisdiction's dusty old AI is up to date and reflects all of the impediments that you are aware of.

IS THERE ANY PUBLIC PARTICIPATION WITH AN AI?

Unfortunately, the regs do not directly tie public participation in CDBG/ConPlan or the PHA Plan with the AI. The regs are basically silent.

However, the *Fair Housing Planning Guide* offers a few words that you might be able to use:

"Since the FHP [Fair Housing Plan] is a component of the ConPlan, the citizen participation requirements for the ConPlan apply."

[*Fair Housing Planning Guide* pages 2-5, 3-3, and 4-3]

The introduction to the *Fair Housing Planning Guide* stresses that:

"...all affected people in the community must be at the table and participate in making decisions [about the problems and their solutions]. The community participation requirement will never be more important to the integrity, and ultimately, the success of the process."

[*Fair Housing Planning Guide* page i]

Later, the *Fair Housing Planning Guide* suggests that before developing actions to eliminate the effects of impediments, a jurisdiction "should...ensure that diverse groups in the community are provided a real opportunity to take part in the process of developing actions to be taken".

[*Fair Housing Planning Guide* page 2-21]

HUD "encourages jurisdictions to schedule meetings [for public comment and input] to coincide with those for the ConPlan."

[*Fair Housing Planning Guide* page 2-26]

MONITORING COMPLIANCE *see next page*

MONITORING COMPLIANCE

Before the Start of the CDBG Program Year

In order to get CDBG, HOME, public housing or voucher funds, jurisdictions or PHAs must "certify", pledge in writing, that they are "affirmatively furthering fair housing".

[24CFR91.225(a)(1)], [24CFR91.325(a)(1)],
[24CFR570.601(a)(2)], [24CFR487(b)],
[24CFR903.7(o)]
[*Fair Housing Planning Guide*, page 1-4]

All CDBG/ConPlan and PHA Plan "Annual Action Plans" require this written "certification", signed by the "authorized official". There must be evidence that supports this pledge, and it must be available to the public.

HUD can disapprove a ConPlan (and therefore receipt of CDBG and HOME) if a certification is "inaccurate", and can disapprove a PHA Plan if it is "not consistent with laws and regulations".

ConPlan regs [24CFR91.500(b)(3)],
PHA Plan regs [24CFR903.23(c)]

The September 2, 2004 Policy Memo gives examples of "inaccurate":

1. There is no AI;
2. The AI is substantially incomplete;
3. No actions were taken to overcome the impediments;
4. The actions taken were "plainly inappropriate" to address impediments;
5. There are no records.

Another situation which could cause HUD to look more carefully at an AI is the failure to make "appropriate revisions to update the AI". (September 2, 2004 Memo)

This can be an important advocacy handle in years between new ConPlans and PHA Plans.

If you know that there are major changes in conditions for people who are members of protected classes, make sure the AI is revised to show those changed conditions.

In general, if you think that your jurisdiction's AI is inadequate, or that the jurisdiction has not taken reasonable actions to overcome impediments to fair housing, be sure to write a complaint to the HUD FHEO Regional Office.

CDBG regs allow a certification to be challenged if there is evidence that a policy, practice, standard, or method of administration, although it seems neutral, really has the effect of significantly denying or adversely affecting fair housing for persons of a particular race, color, religion, sex, or national origin. PHA Plan regs also claim that a certification can be challenged.

[24CFR570.904(a)(1)(ii)]
[24CFR903.23(b)]
[24CFR903.25]

MONITORING COMPLIANCE, *continues*

MONITORING COMPLIANCE, *continued*

At the End of the CDBG/HOME Program Year

In Annual Performance Reports related to the ConPlan, called "CAPERs", jurisdictions must include a summary of the impediments to fair housing, and they must have a description of the actions taken in the past year to overcome the effects of impediments.

ConPlan regs [24CFR91.520(a)]

Again, if you think that the actions taken to overcome impediments to fair housing were inadequate, it is important to write a complaint to your jurisdiction, and to send a copy to the HUD FHEO Regional Office.

RECORDS TO BE KEPT

Records Required by CDBG

1. Documents showing the impediments and the actions carried out by the jurisdiction with CDBG and other money to remedy or lessen impediments.
2. Data showing the extent to which people have applied for, participated in, or benefited from any program funded in whole or in part with CDBG.
3. Data indicating the race, ethnicity, and gender of those displaced as a result of the use of CDBG, plus the address and census tract of the housing to which they were relocated.

[24CFR570.506(g)]

Records Suggested by the Fair Housing Planning Guide

1. Transcripts of public meetings or forums and public comments or input.
2. A list of groups participating in the process.
3. A description of the financial support for fair housing, including funds or services provided by the jurisdiction.

[Fair Housing Planning Guide page 2-26]

A February 9, 2007 Joint Memorandum from the Assistant Secretaries for FHEO and CPD (Community Planning and Development, which administers CDBG and HOME) suggests that a jurisdiction keep for the record: copies of local fair housing laws and ordinances; the full history of the development of its AI; options available for overcoming impediments; a list of those consulted; planned actions and actions taken; and issues that came up when actions were carried out.

OTHER RESOURCES

HUD's Office of Fair Housing and Equal Opportunity (FHEO) <http://www.hud.gov/offices/fheo/promotingfh.cfm>.

HUD's *Fair Housing Planning Guide*, Vol. 1 (#HUD-1582B-FHEO) is available at <http://www.hud.gov/offices/fheo/images/fhpg.pdf>.

[Vol. 2 (#HUD-1582A-FHEO) is out of print. It was less useful because it was mainly samples.]

HUD's Office of Affordable Housing has a good chapter summarizing the *Fair Housing Planning Guide*, "Affirmatively Furthering Fair Housing" (page 18) in *Fair Housing for HOME Participants* <http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/2005/200510.pdf>

September 2, 2004 Memorandum from HUD's Community Planning and Development Office (CPD), <http://www.hud.gov/offices/fheo/library/finaljointletter.pdf>

February 9, 2007 Joint Memorandum from Assistant Secretaries for CPD and FHEO, <http://www.hud.gov/offices/fheo/promotingfh/fairhousing-cdbg.pdf>.

Link to FHEO Regional Offices, <http://www.hud.gov/offices/fheo/fheodir.cfm>.

National Fair Housing Alliance: "Guideline for Evaluating the Analysis of Impediments", <http://www.nationalfairhousing.org/LinkClick.aspx?fileticket=zg%2bdm9qWEuc%3d&tabid=3916&mid=7865.202.898.1661> or www.nationalfairhousing.org

