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IMO Comments on FHIC AI (Analysis of Impediments)

Institute on Metropolitan Opportunity
University of Minnesota Law School

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Institute on Metropolitan Opportunity

Comments on the Draft FHIC 2014 Analysis of Impediments for the Twin Cities Region

The draft Analysis of Impediments to Fair Housing Choice completed by the Fair Housing Implementation Council is entirely inadequate.¹ It is a series of tables and charts, followed by a handful of pages of vaguely-described impediments and action steps. It is a hodgepodge of copy-paste drafting that eschews the analysis required by federal law in favor of ambiguously presented summary statistics. Among its most notable omissions are its failure to discuss segregation in a substantive fashion, and its refusal to analyze the role of public sector in creating impediments to fair housing. It is particularly shocking that such a substandard AI would come forward after the region has spent the last two years assembling data and analysis in the FHEA process.

In its current state, the draft Twin Cities regional AI is deficient to such an extent that it cannot conceivably fulfill its prescribed statutory role in the Affirmatively Further Fair Housing (AFFH) certification process. Unless these deficiencies are corrected, it is therefore impossible for the entitlement jurisdictions relying upon this AI to accurately certify that they are complying with the HUD AFFH requirements.

I. Role of the AI in the AFFH Certification Process

As a component of its Fair Housing Act obligations, HUD requires HOME and CDBG grantees to certify that they are Affirmatively Furthering Fair Housing (AFFH). In order to fulfill these requirements, a grant recipient must take three steps:²

1. Conduct an AI identifying obstacles to fair housing choice within its jurisdiction and making recommendations to reduce or remove those obstacles
2. Take appropriate actions to overcome the effects of the identified impediments
3. Monitor these actions and maintain records showing they were taken

¹ Fair Housing Implementation Council, 2014 Analysis of Impediments to Fair Housing Choice: Twin Cities Region (Public Comment Draft), available at <http://www.housinglink.org/files/2014-FHIC-AI-Public-Comment-Draft.pdf> [hereinafter FHIC AI].

² U.S. Department of Housing and Urban Development, Fair Housing Planning Guide 1-2, 1-3 (1996), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=fhpg.pdf> [hereinafter FHPG].

The AI serves as the catalyst for this three-step process. The AI documents existing impediments to fair housing, determines their relative severity, and explores remedies, as well as discussing other actions a grantee may have undertaken affirmatively further fair housing. Without an accurate AI, it is impossible for entitlement jurisdictions to proceed to Step 2, because they lack information about which impediments they should be taking action against or what strategies would be most effective in reducing those impediments.

The overarching goal of HUD’s fair housing policies, the AFFH certification process, and by extension the AI, is to “eliminat[e] racial and ethnic segregation, illegal physical and other barriers to persons with disabilities and other discriminatory practices in housing.”³

HUD’s Fair Housing Planning Guide lays out, in voluminous detail, the parameters of a successful AI. Although the Guide does not mandate a particular format, and of course does not require that every jurisdiction find the same set of impediments, it does clearly describe specific areas that must be investigated in order to uncover all significant impediments to fair housing. Moreover, it makes the clear the depth of analysis that entitlement jurisdictions must conduct.

For example, in its opening pages, the Guide summarizes the tasks an AI must accomplish – a summary that is repeated in the opening pages of the FHIC draft document:

The AI is a review of impediments to fair housing choice in the public and private sector. The AI involves:

- A comprehensive review of a State or Entitlement jurisdiction’s laws, regulations, and administrative policies, procedures, and practices.
- An assessment of how those laws affect the location, availability, and accessibility of housing.
- An evaluation of conditions, both public and private, affecting fair housing choice for all protected classes.
- An assessment of the availability of affordable and accessible housing in a range of unit sizes.

As this summary indicates, HUD places great emphasis on *comprehensive* analysis and evaluation of trends and findings. The AI is not meant to function as a depository of facts or data but as an analytic document that synthesizes facts and data into concrete conclusions about the regional causes of housing segregation and housing

³ *Id.* at 1-1.

discrimination. This is bolstered elsewhere in the Guide, where HUD specifies that “[t]he scope of the AI is broad” and that it “covers *the full array* of public and private policies, practices, and procedures affecting housing choice.”⁴ Through the AI, “jurisdictions must become *fully aware of the existence, nature, extent, and causes of all fair housing problems and the resources available to solve them* [and a] properly completed AI provides this information.”⁵ In part, this entails becoming “familiar with all studies that apply to their community and region,” and “carefully consider[ing] the conclusions and recommendations of other housing studies prior to deciding what to study in the AI.”⁶

HUD encourages jurisdictions, where possible, to undertake “metrowide” or regional fair housing planning. It notes a number of advantages to this approach, including its ability to allow jurisdictions to “overcome spatial separation and segregation” and “affirmatively further fair housing throughout the metropolitan area” by integrating the policies of local jurisdictions.⁷

Conducting an AI is no small task. AIs in many jurisdictions frequently run into the hundreds of pages, much of which is spent on complex discussion of specific local housing trends. They frequently include dense appendices of qualitative and quantitative background research, which informed this discussion.⁸ Unfortunately, these successful AIs bear no resemblance to the FHIC’s draft document.

It is essential to recognize that promulgating an inadequate AI can have severe consequences for HUD grantees, including a loss of funding and severe penalties running into the many millions of dollars. This was demonstrated in a recent landmark federal court case. In *United States ex rel. Anti-Discrimination Center v. Westchester County*, a federal court found that a New York county, by certifying to HUD it had affirmatively furthered fair housing after producing a badly deficient AI, was committing fraud against the United States government.⁹ In a settlement, the County agreed to pay penalties exceeding \$62 million dollars – a sum greater than the total of its HUD grants over the five year period covered by the deficient AI.

The FHIC AI is deeply and unambiguously insufficient. The following sections will describe some of the document’s most severe deficiencies.

II. The FHIC AI Contains No Analysis Whatsoever

⁴ *Id.* at 2-8 (emphasis added).

⁵ *Id.* at 2-8 (emphasis added).

⁶ *Id.* at 2-18, 2-19.

⁷ *Id.* at 2-11.

⁸ See, e.g., Portland Housing Bureau, 2011 Analysis of Impediments to Fair Housing, available at <http://www.portlandoregon.gov/phb/60788>; City and County of Denver, Analysis of Impediments to Fair Housing Choice, available at <http://www.denvergov.org/Portals/690/documents/DenverAnalysisOfImpedimentsToFairHousingChoice.pdf>.

⁹ *United States ex rel. Anti-Discrimination Center v. Westchester County*, 668 F.Supp.2d 548 (2009) [hereinafter *Westchester II*].

The most pervasive flaw in the FHIC AI is its complete lack of analytic content. Rather than evaluating the condition of fair housing in the Twin Cities region, it instead provides a smattering of data and statistics related to housing opportunity and discrimination, unaccompanied by the in-depth analysis that HUD requires from an AI. The entire draft can be summed up in four words: “But where’s the beef?”

The vast majority of the FHIC draft consists of background data on the demographic makeup of entitlement jurisdictions and summary data of housing complaints. This information is presented devoid of context or discussion and cannot be plausibly be said to constitute any sort of analytic thinking.

The demographic section – which the HUD Guide says should only be used as “background data” – alone makes up approximately 50 percent of the substantive material of the document.¹⁰ Moreover, this data is presented in a format that is minimally useful: tables of summary statistics of each entitlement jurisdiction (e.g., the percent of each jurisdiction that is a member of various racial or ethnic groups). Only a handful of lines in the entire document acknowledge or discuss the contents of these tables; they are essentially presented without further comment. There is no data at all about geographic subdivisions below the city and county level, meaning that intra-jurisdictional disparities are effectively invisible in these summary tables. Though the AI professes to be “regional,” it includes no data about cities that are not members of the FHIC, meaning that there is no indication of disparities among or within over one hundred of the region’s incorporated municipalities. Also included are a number of school district maps, which simply overlay racial composition of census tracts over school district boundaries. But because they are accompanied by no figures whatsoever about racial or demographic composition of the districts, schools, or census tracts, and because census tracts can be of varying density, it is impossible to even roughly approximate the composition of actual school districts – much less individual schools – with these maps alone. They are, in a word, useless.

HUD recommends that an AI include an “evaluation of [the] jurisdiction’s current fair housing legal status,” including a summary of complaints and current discrimination suits, reasons for trends and patterns, and discussion of fair housing concerns or problems.¹¹ The draft AI includes nearly 20 pages of summary statistics of fair housing complaints in the region, but once again, this section it contains absolutely no substantive discussion of those complaints. Rather than attempting to discern or explain trends, it takes the entirely neutral approach of summarizing complaints by their protected class basis, issue, location, resolution, etc. The task of identifying patterns or revealing their origins is, for all intents and purposes, left to the reader.

The draft’s “identification of impediments” section is equally deficient. HUD’s Guide makes clear that this section is ordinarily meant to be the heart of the document, where all previous analysis is synthesized into a detailed list of specific impediments within the jurisdiction. The Guide’s recommended AI format subdivides the section into

¹⁰ FHPG at 2-30.

¹¹ *Id.* at 2-30, 2-31.

subject matter groups, “zoning and site selection,” “neighborhood revitalization, municipal and other services, employment-related-transportation linkage,” “sale of subsidized housing and possible displacement,” “property tax policies,” “planning and zoning boards,” “building codes,” “fair housing enforcement,” and “visitability in housing.”

FHIC’s draft AI instead disposes of the list of impediments with a single short section comprised of less than three full pages, on which ten impediments are listed in outline form, each described in a single sentence. (The document’s “executive summary” includes a list of the impediments and recommendations; embarrassingly, this is not as summary at all but the entirety of the AI’s “identification of impediments,” reprinted in full at the beginning of the text. In other words, the identified impediments are so brief and so cursory that they can masquerade as their own summary.) There is absolutely no discussion at all of the nature or extent of each impediment, or the causes of any impediment. There is also absolutely no discussion of how these impediments were identified, or how they connect to the statistical or survey work that constitute the bulk of the AI. Many of the identified impediments are unacceptably vague; for instance, Impediment 10 says only “NIMBY-ism with regard to siting and placement of affordable housing,” making no attempt to answer the all-important questions of where, when, who, and how often.

The recommendations suffer from the same vagueness. They are, once again, minimal both in description and content. Most only consist of a single sentence or line. None include any discussion of how they were chosen or developed, or whether other strategies were considered and rejected. Many are imprecise enough that they are likely to prove entirely useless to entitlement jurisdictions; for example, confronted with Impediment 5 – “Housing choices for people of color are impacted by perceptions about school performance and neighborhood safety” – the AI recommends that, unhelpfully, that jurisdictions “[d]evelop outreach and education strategies based on results of paired testing.” This sort of highly speculative recommendation, in which jurisdictions are called upon to research problems on their own, and then develop an independent solution with no real input from the AI, is the norm. Many recommendations begin with phrases such as “[e]xplore concepts,” “[e]ncourage practices” “[r]eview strategies,” and “[d]evelopment of partnerships.”

Failure to lay out recommendations in sufficient detail, as well as an overreliance on vague recommendations that require future research or discussion, short-circuits the entire AFFH certification process. Jurisdictions cannot undertake unreasonably broad remedies, or monitor their performance of actions that have been left undefined, inevitably resulting in a failure to complete steps two and three of the AFFH process. Many of the suggested remedies (e.g., education, outreach, and partnership building) are by their nature difficult or impossible to concretely monitor. A skeptical observer might infer that this is part of an intentional tactic to stymy HUD’s fair housing aims: devising nebulous remedies in order to satisfy HUD requirements without making any real, effective, or measurable commitments to remedy segregation or alter living patterns.

The impermissible lack of analysis in the FHIC AI mirrors the flaw that doomed Westchester County’s AI in the *Westchester* court case. The lawsuit in *Westchester* was founded on the plaintiffs’ claim that the County failed to “engage in any independent analysis or exploration of impediments, and refused to identify or analyze community resistance to integration on the basis of race and national origin as an impediment.”¹² The plaintiffs argued that the County had a duty to consider race and racial segregation in its AI, which it had violated. The County attempted to counter this argument by referencing charts and tables in the AI which addressed race. The court ultimately sided with the plaintiffs, responding that analysis “certain demographic data as to the racial makeup of County and municipality populations does not in any way show that the County conducted any analysis as to how this demographic data related to the existence or lack of race-based impediments to fair housing choice.”¹³

In the present case, the AI consists of *virtually nothing but* “certain demographic data as to the . . . makeup” of the jurisdictions in question. In other words, the AI “does not in any way show that the [FHIC] conducted any analysis” related to *any element of* fair housing choice. If the Westchester County AI fails because it omitted an essential assessment of racial segregation, the FHIC AI must also fail – for omitting the very act of assessment.

III. The FHIC AI Completely Ignores the Public Sector as a Source of Impediments

The Fair Housing Planning Guide makes clear that any AI should conduct a very searching analysis of “public activities, practices, and procedures involving housing and housing-related activities.”¹⁴ This requirement is unambiguous; indeed, HUD’s recommendations envision analysis of the public sector taking up half or more of the final document.

According to HUD, government “actions or omissions” that should be addressed in an AI include straightforward factors like housing or zoning codes, but also indirect government actions such as job creation efforts, patterns in the provision of services, and redevelopment activities. The Guide also places an emphasis on intra-governmental interactions – both horizontal, between different municipalities, and vertical, between agencies with overlapping authority.¹⁵

Special attention is given to issues surrounding site selection. The Guide is unambiguous on the subject: “[i]f fair housing objectives are to be achieved, the goal must be to avoid high concentrations of low-income housing.”¹⁶ It also recognizes the

¹² United States ex rel. Anti-Discrimination Center v. Westchester County, 495 F.Supp.2d 375, 377 (2007) (internal quotation omitted) [hereinafter *Westchester I*].

¹³ *Westchester II* at 564.

¹⁴ FHPG at 2-9.

¹⁵ *Id.* at 5-5.

¹⁶ *Id.* at 5-6

considerable challenge of doing so: “many communities feel strongly that housing for [low-income, homeless, and disabled] persons should be provided but ‘not in my backyard.’”¹⁷ Additionally, it identifies jurisdictional divisions as a major obstacle to providing less concentrated subsidized housing: “in metropolitan areas, serious consideration should be given to ways [communities] can participate in cooperative, interjurisdictional planning for construction of assisted housing.”¹⁸

The Guide suggests several specific questions to guide this inquiry. These include “Are there concentrations of low- and moderate-income housing in one more localities or neighborhoods within the jurisdiction’s geographic area?” and “Has the jurisdiction adopted policies and procedures that promote the placement of new or rehabilitated housing for lower-income households . . . in a wide spectrum of neighborhoods?”¹⁹

It is also suggested that an AI consider actual demographic trends among public housing occupants; for instance, whether “there [is] a pattern in or more assisted housing developments of concentration of tenants by race or ethnicity,” or if there is a “pattern, by location and family type, of minority and nonminority certificate and voucher holders who rent units under the Section 8 . . . voucher housing assistance program.”²⁰

HUD’s Guide includes a number of “example” impediments, which demonstrate the type of public sector “actions or omissions” that should appear in an AI. These include the absence of an enforcement mechanism for correcting housing site selection disparities,²¹ zoning ordinances in suburban communities that prevent construction of multifamily housing,²² failure to support the local fair housing agencies,²³ and even apathy and status quo bias among political and community leaders.²⁴

In other words, HUD’s guidance makes clear that an analysis of the public sector is an essential – if not the most essential – component of an AI. But the FHIC draft document, in effect, writes government activity out of fair housing. The following is a complete summary of the AI’s treatment of government impediments to fair housing:

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 5-6, 5-7.

²⁰ *Id.* at 5-13, 5-14.

²¹ “The State does not have an enforceable site selection policy for affordable housing that will compel its major cities to select sites for affordable housing located outside of minority or low-income areas or allocate such housing on a metropolitanwide basis.” *Id.* at 3-13.

²² “The suburban jurisdictions of the State’s major cities have exclusionary zoning ordinances that preclude the construction of affordable multifamily housing and keep out lower-income and minority persons.” *Id.* at 3-11.

²³ “The local fair housing agencies are under-funded and ill-equipped to enforce their local fair housing ordinances.” *Id.* at 3-13.

²⁴ “The AI also documents the results of extensive interviews with all segments of the real estate community and community leaders of all races and ethnic groups; these interviews and surveys reveal that all parties concerned feel comfortable with the status quo of segregated housing patterns, racial hostility as it relates to housing issues, and the lack of any resolve to tackle these problems.” *Id.* at 3-12.

- One map, unaccompanied by any discussion or analysis, depicting “Access to Social Services and Basic Necessities and Concentrated Areas of Poverty”²⁵
- One survey question, unaccompanied by any discussion or analysis, asking whether “Government Agencies . . . provide interpreters for housing meetings”²⁶
- One listed impediment, which reads in its entirety “Development processes in local government can limit construction of affordable housing and housing for people with disabilities”²⁷

This approach is utterly inadequate. One map and one survey question could not conceivably lead to a fuller understanding of the complex interactions between public policy and fair housing. Moreover, the identified impediment is general to the point of meaninglessness, and self-evident: it should be obvious that development processes “can” limit construction of affordable housing. The question, of course, is whether this has in fact occurred in the Twin Cities, and if so, where, how often, to what degree, and in what respect. But the information to evaluate these questions is completely absent from the AI and nothing in the document suggests any attempt was made to acquire it or answer them.

The failure to include an evaluation of government policies is especially bizarre in light of the fact that, on its very first page, the draft AI quotes the HUD Guide, noting that “[a]n AI involves . . . [a] *comprehensive* review of a State or Entitlement jurisdiction’s laws, regulations, and administrative policies, procedures and practices.”²⁸ But the remainder of the document contains absolutely no analysis that fits this description. It does not address the role of subsidized housing policy in altering housing patterns or contributing to concentrations of poverty; it does not directly discuss the role of regional land use or housing policy in creating or sustaining living patterns; it does not analyze zoning regulations, housing investments, or any other element of local housing policy.

The only *direct* mention of specific laws, regulations, or policies comes in a more positive light, in the section entitled “Assessment of Current Fair Housing Activities.”²⁹ Even this section, however, is minimalistic and cursory, with the same defects as the rest of the AI: it simply summarizes information without providing analysis, commentary, or placing it in a regional context.

The section makes no effort to comprehensively evaluate the fair housing activities of the various jurisdictions, or even investigate in even moderate detail what those activities consisted of. The descriptions of specific policies being implemented by jurisdictions are often perfunctory, stating, for example, only that Carver County “[c]onducted agency-wide Fair Housing training,” or that Washington County

²⁵ FHIC AI at 51.

²⁶ *Id.* at 68.

²⁷ *Id.* at 93.

²⁸ *Id.* at 5 (emphasis added).

²⁹ *Id.* at 54-59.

“[p]articipated in Fair Housing testing with ‘secret shoppers’ at random properties,” without any further explanation of the activity or its results. (Dakota County’s work is described in slightly greater detail than any other jurisdiction; this appears to be because those passages are copied verbatim from the County Development Authority’s public website.)

The AI’s failure to comment on the breadth, effectiveness, or sufficiency of this or any other jurisdiction’s activities is especially alarming because even the AI’s minimalistic approach demonstrates that the vast majority of Twin Cities jurisdictions have made little or no effort to support fair housing. For instance, the AI’s entire description of Anoka County’s fair housing activities is only 24 words long and consists of two minor undertakings: “Advertis[ing] Fair Housing Month in April every year” and “Promot[ing] Fair Housing on website.”

This section also includes the document’s only specific acknowledgement of city-level laws and policies. Understanding local laws is essential to conducting a successful AI: while describing potential impediments that should be investigated, the HUD Fair Housing Planning Guide addresses “zoning and site selection” as the very first avenue of inquiry.³⁰ On this topic, the Guide lists no fewer than 19 detailed questions that an AI’s drafters should explore.³¹ The FHIC draft, by comparison, dedicates only eight lines of text to two zoning changes in one city, Woodbury. (Six of these discuss a change designed to allow church congregations “to start holding their worship services and other events in commercial areas,” a strange inclusion given the explicitly residential aims of fair housing policy.)

This abbreviated summary of local policies is especially troubling, as Woodbury is only home to 66,000 of the region’s approximately 3.5 million citizens. Seven other regional cities – including Minneapolis and Saint Paul, which together constitute one-fifth of the regional population – are FHIC members and therefore relying upon this AI in order to certify to HUD that they have met their AFFH obligations. None of these other cities’ fair housing policies, zoning laws, or regulations are discussed *in any fashion whatsoever* in this draft document.

The exclusion of the public sector from the regional AI is astonishing and unacceptable. To the extent that segregation and the concentration of poverty exist within the region, they cannot be understood without reference to the overlapping laws and regulations that constrain and encourage development in particular localities, the subsidies that provide a large share of the housing occupied by low-income and nonwhite families, and the broad housing policies developed by major regional public bodies, including the two central cities and the regional government. These omissions are especially baffling because housing policy in the Twin Cities region is unusually cooperative, controlled in part by a regional authority with an explicit statutory role in facilitating a “fair share” model of affordable housing construction. While some entitlement jurisdictions may be able to plead ignorance with regards to the ways that

³⁰ FHPG at 2-31

³¹ *Id.* at 5-6, 5-7, 5-8.

public policy can affect residential demographics, the Twin Cities are engaged in a public, coordinated effort to change living patterns throughout the metropolitan area by relying upon centralized policy development.³² Somehow, none of this merits evaluation in the AI.

During recent years, IMO has produced extensive commentary on virtually every major housing policy document drafted in the Twin Cities region. For use during the finalization of the FHIC AI, this commentary is included in Appendices II-VIII and incorporated by reference. This commentary would provide an adequate starting point for an analysis of public sector involvement in housing.

IV. The AI Does Not Perform Any Direct Analysis of Regional Racial Segregation

One of the most important aims of the Fair Housing Act, and the AFFH process to which it has given rise, is remedying entrenched segregation, particularly racial and ethnic segregation. The centrality of racial segregation in fair housing has been confirmed by HUD itself, which opens its Fair Housing Planning Guide with a reaffirmation of its commitment to “eliminating racial and ethnic segregation.”³³ It has also been confirmed by numerous federal courts, such as in *Otero v. NYC Housing Authority*, where the Second Circuit Court of Appeals held that the Fair Housing Act was intended to accomplish “the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups.”³⁴ Justice Stephen Breyer, writing for the First Circuit in *NAACP v. HUD*, has said that the Act “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.”³⁵

The recent *Westchester* case applies the question of racial segregation directly to the development of an AI. The court in *Westchester* held that “[i]n identifying impediments to fair housing choice, [a HUD grantee] must analyze impediments erected by race discrimination or segregation.”³⁶ Quoting from the Fair Housing Planning Guide, the same court explained further: “HUD’s suggested AI format includes 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.”³⁷ Those suggestions are more than simple persuasive authority: “The HUD Guide’s suggestion that . . . the grantee should analyze the degree of segregation within its jurisdiction, are firmly rooted in the statutory and regulatory framework.”³⁸

³² See, e.g., Metropolitan Council, Housing Policy Plan, available at <http://www.metrocouncil.org/Housing/Planning/Housing-Policy-Plan.aspx>.

³³ FHPG at 1-1.

³⁴ *Otero v. N.Y. City Housing Authority*, 484 F.2d 1122, 1133-34 (2d Cir. 1973).

³⁵ *NAACP v. Sec. of HUD*, 817 F.2d 149, 155 (1st Cir. 1987).

³⁶ *Westchester II*, 668 F.Supp.2d 548, 552 (2009).

³⁷ *Id.* at 555 (internal quotations omitted).

³⁸ *Id.* at 564.

The draft AI ignores these precedents and only touches on the problem of segregation obliquely. Although it includes several tables and maps indicating that Minneapolis and Saint Paul contain significant racial concentrations (e.g., 45 percent of all census tracts in Saint Paul are racially concentrated), and that this represents a major regional disparity (e.g., five of the seven counties covered by the AI contain no racially concentrated census tracts), the document does not acknowledge or discuss that this represents racial segregation that must be remedied.³⁹ None of the ten brief impediments reference discuss segregation or racial concentrations of poverty, or, for that matter, the concentration of any protected class. If anything, one recommendation seems neutral or even skeptical of the value of pursuing integration, suggesting only that jurisdictions “[a]nalyze how nationwide deconcentration strategies and best practices related to housing and transportation impact fair housing protected classes.”⁴⁰ Remarkably, the word “segregation” only appears four times in the entire document – once in an appendix of community comments, twice in a summary of a report detailing Twin Cities segregation, and once, ironically, in a summary of *Westchester* itself.

An AI cannot reduce racial segregation if it refuses to discuss segregation as a housing impediment. HUD grantees are not permitted to take a neutral stance towards ongoing racial concentration – they are required by the Fair Housing Act to break down the barriers that have prevented racial groups from freely intermixing. The FHIC AI, however, maintains a detached agnosticism towards the problem of racial segregation, failing to explore its exact dimensions or devise targeted measures to reduce it. Tellingly, a major increase or reduction in the degree of regional racial isolation would appear to have no bearing on any of its recommended action steps; the AI’s proposed solutions are simply disconnected from the segregated status quo.

Again, the material reproduced in Appendices II-VIII discuss regional racial segregation extensively would provide a sound starting point for any revisions to the FHIC AI.

V. FHIC Was Notified of AI Requirements and Had Access to Sufficient Resources to Conduct a Valid AI

The FHIC AI’s extraordinary deficiency is especially alarming because the parties involved in its construction have had every opportunity to do better. The Twin Cities region is currently concluding the process of producing a Fair Housing Equity Assessment, which has been coordinated by the Metropolitan Council, the regional entity charged with developing metrowide housing policy. Although this equity assessment is not itself without flaws, it nonetheless does directly address the issues of racial segregation and public sector involvement in fair housing. Unlike the draft AI, it also conducts analysis rather than simply presenting data, in order to generate a more cohesive understanding of the causes of housing inequality. HUD recognizes the value of this sort of preexisting store of information, and its Guide to drafting an AI, it states that

³⁹ FHIC AI at 12-14

⁴⁰ *Id.* at 93.

“[j]urisdictions should not waste effort restudying and reanalyzing problems for which good information already exists.”⁴¹ The FHIC, however, opted to not rely upon the FHEA document or utilize the resources it produced. Its AI only mentions the FHEA in passing and does appear not incorporate any of its work, even when doing so could help fill obvious deficiencies in the AI.

FHIC was clearly notified, in advance, of the required elements of its AI. A memorandum provided to the drafters described these requirements – with special emphasis on the need to analyze public sector impediments to fair housing and to address racial segregation. This memorandum is incorporated by reference into these comments, and included as Appendix I below.

The earlier memorandum also described in summary form a number of governmental impediments to fair housing, none of which have been acknowledged in the present AI draft. These include:

- **A severely segregative distribution of affordable housing.** Up to 92 percent of very-low income subsidized housing units are located in the two central cities, which contain the region’s most significant areas of racial concentration.
- **The Metropolitan Council’s housing policy.** The Council maintains a regional affordable housing policy which assigns heavier targets to racially segregated municipalities. It also negotiates Livable Community Act housing goals with individual cities; these have historically been reduced in affluent white suburbs in response to suburban noncompliance, and increased in the central cities and racially diverse suburbs.
- **The regional Low Income Housing Tax Credit (LIHTC) system.** A disproportionate share of regional housing tax credits are awarded to projects in the central cities. The state distributes credits through a “suballocator” system which ensures the central cities have a disproportionately large minimum share of LIHTC. In addition, the central cities and Minnesota Housing Finance Agency maintain Qualified Allocation Plans which tend to award credits to developers who are building affordable housing in low-income, segregated neighborhoods.

This list is merely meant as a demonstration of key regional impediments and is incomplete. The vast array of local zoning laws, housing programs, and administrative policies also impact fair housing in the Twin Cities; once again, many of these are discussed in extensive detail in the various appendices following these comments. Some FHIC members directly control major housing policy instruments – for instance, the Minneapolis Community Planning and Economic Development agency’s Affordable Housing Trust Fund, which distributes millions of dollars a year to build subsidized low-

⁴¹ FHPG at 2-18.

income units within the city. The FHIC AI gives no inkling that these policies even exist, much less that they may create or affect impediments to fair housing.

The AI drafting process also failed to utilize a number of other readily available resources, leading to a large number of additional deficiencies. Problems include:

- **The FHIC did not consult local civil rights organizations such as the NAACP.** This is in spite of the HUD Fair Housing Planning Guide encouraging AI drafters to “use existing organizational relationships,” specifically noting that “fair housing groups . . . have proven to be effective in uncovering and addressing housing discrimination.”⁴²
- **The AI does not communicate the results of previous AI recommendations.** Monitoring results is required by the three-step AFFH process. Discussing these results would strengthen the AI’s analysis. Nor does the current AI lay out an oversight plan so that the results of its recommendations can inform future studies.
- **The AI does not analyze housing occupancy data, or patterns of occupancy among Section 8 recipients.** A number of housing agencies maintain data on the demographics of the occupants of their low-income subsidized units. This data is a valuable resource for revealing the effectiveness of particular fair housing approaches and uncovering existing segregation. In addition, US Census data includes information about the number of Section 8 voucher beneficiaries in particular census tracts – information which reveals major concentrations in many Twin Cities neighborhoods. Both sources are ignored.
- **The AI does not utilize university resources.** The University of Minnesota includes a number of policy-oriented centers and institutes engaged in the study of fair housing and housing policy. These were not consulted in the drafting of the AI.
- **The FHIC did not coordinate with state agencies.** The Minnesota Housing Finance Agency and the Metropolitan Council both work heavily in the housing sector in the Twin Cities region. Rather than working alongside these agencies, the FHIC chose instead to conduct a separate AI, fragmenting government resources and undermining the final product.
- **The AI does not identify the participants in its stakeholder engagement sessions.** This is problematic because fair housing discussions are frequently dominated by parties with an economic interest in building affordable housing, such as housing developers. This can lead to a process that focuses too heavily on the provision of housing and ignores impediments to housing choice, as was the case in *Westchester*.

⁴² FHPG at 2-15.

For these reasons, and the other reasons laid out above, the FHIC draft AI is badly inadequate. In order to fulfill its role as the basis of an AFFH certification, it must be substantially revamped and extended, with a new emphasis on analysis, reducing segregation, and comprehensively evaluating public *and* private sector impediments to fair housing. Any other outcome would endanger the hundreds of millions of dollars in HUD funding that rely upon the FHIC's ability to produce an acceptable analysis of impediments.