

**WESTCHESTER COUNTY FAIR AND AFFORDABLE HOUSING
IMPLEMENTATION PLAN**
August 9, 2010

Appendix I-(i): A copy of HUD's October 23, 2009 comments on County's May 29 draft AI



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410

October 23, 2009

Susan Tolchin
Deputy County Executive
Westchester County Government
148 Martine Avenue
White Plains, NY 10601

Dear Ms. Tolchin:

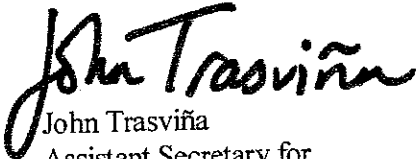
As you requested, the Department of Housing and Urban Development has reviewed Westchester County's May 8, 2009, draft Analysis of Impediments to Fair Housing Choice (AI) to provide recommendations for improvement. The Department recognizes that the County is committed to developing an AI that will provide a strong framework for building inclusive and diverse communities throughout the County and ensure compliance with the County's obligations under the Stipulation and Order of August 10, 2009. To help guide the County's revisions of its AI to meet these goals, the Department provides the recommendations set forth in the attachment.

As you know, an AI involves "a comprehensive review" of a "jurisdiction's laws, regulations, and administrative policies, procedures, and practices;" an "assessment of how those laws, etc. affect the location, availability, and accessibility of housing;" an "assessment of conditions, both public and private, affecting fair housing choice for all protected classes;" and an "assessment of the availability of affordable, accessible housing in a range of unit sizes." Fair Housing Planning Guide, 2-7.

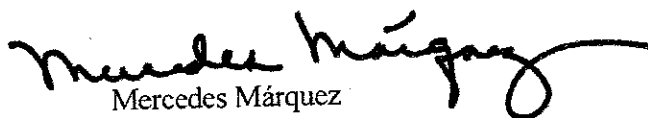
Broadly, the draft AI Westchester County provided should be revised to reflect a more detailed analysis of the barriers to fair housing choice, particularly discrimination and segregation on the basis of race and national origin, and should identify specific action plans to overcome each of those identified barriers. HUD's Fair Housing Planning Guide provides additional specific suggestions. The Department wants to remind you that the Stipulation and Order requires the County to undertake certain actions, such as affirmative marketing, fair housing outreach, and promotion of "source of income" protection.

The Department is available for further discussions to help clarify any recommendations articulated in the attachment as the County completes its analysis and identification of actions to overcome impediments to fair housing choice. The Department looks forward to working with the County through this process.

Sincerely,



John Trasviña
Assistant Secretary for
Fair Housing and Equal Opportunity



Mercedes Márquez
Assistant Secretary for
Community Planning and Development

cc: James Johnson, Debevoise & Plimpton LLP

Enclosure

Department of Housing and Urban Development's Comments on the County of Westchester's May 8, 2009 Draft Analysis of Impediments to Fair Housing Choice

An Analysis of Impediments to Fair Housing Choice (AI) involves "a comprehensive review" of a "jurisdiction's laws, regulations, and administrative policies, procedures, and practices;" an "assessment of how those laws, etc. affect the location, availability, and accessibility of housing;" an "assessment of conditions, both public and private, affecting fair housing choice for all protected classes;" and an "assessment of the availability of affordable, accessible housing in a range of unit sizes." Fair Housing Planning Guide, 2-7.

The County of Westchester's May 8, 2009 draft AI should reflect a more detailed analysis of the barriers to fair housing choice, including discrimination and segregation on the basis of race and national origin, and should identify specific action plans to overcome each of those identified barriers.

I. Strategically Identifying Impediments and Actions

A. Examine and Address Discrimination and Segregation

The County of Westchester's¹ efforts to affirmatively further fair housing (AFFH) should be built on an AI that provides specific and focused analysis and discussion of the impediments to fair housing choice, including housing discrimination, lending discrimination, steering, and segregation. The AI should identify the specific factors that impede equal housing opportunity, particularly based on race and national origin, such as legal barriers and prohibited acts under the Fair Housing Act. In addition, the AI should provide detailed action plans to overcome each impediment identified.

Suggestions/recommendations:

- ⇒ The AI should more thoroughly identify acts and patterns of discrimination on the basis of race, color, national origin, religion, sex, disability, or familial status. The AI should include a plan to address discriminatory acts by housing providers, real estate professionals, lending institutions, developers, and others and to respond to complaints of such housing discrimination.
- ⇒ The analysis should look beyond acts of intentional housing discrimination to address impediments that have a disparate effect on residents based on their race, color, national origin, religion, sex, disability, or familial status.

¹ For the purposes of this letter, and unless otherwise noted, the terms "Westchester," "Westchester County," "the County," "Urban County," and "the Consortium" are used interchangeably to refer to the Urban County CDBG Consortium. This Urban County comprises 40 of the full County's 45 municipalities and encompasses over 55 percent of the full County's population. Yonkers, New Rochelle, Mount Vernon, White Plains, and the Town of Mount Pleasant are not participants in the Urban County.

- ⇒ The AI should specifically examine and propose ways to address residential segregation, particularly segregation by race and national origin. Such an analysis should look to historic patterns of residential segregation and factors perpetuating such segregation, including data on residential, transportation, and employment patterns. (See Section II.B).
- ⇒ The AI should identify the way in which zoning and development laws and administrative practices by the County or local jurisdictions discriminate and/or perpetuate segregation and ways to overcome such discriminatory measures. In this regard, the AI should address the specific laws, regulations, and policies of the County and local governments. (See below Section I.C).
- ⇒ The AI should explain how it will develop a comprehensive education and outreach program to address factors leading to discrimination and segregation. (See Section III.D).
- ⇒ The AI should explain how the County will work with local lending institutions to identify and specifically address impediments to lending and mortgage availability for minority homebuyers, including lending discrimination, predatory mortgage lending, redlining, foreclosure, and underlying mortgage availability.

B. Analyze and Address Fair Housing Choice Beyond Affordable Housing

Promoting and making available affordable housing is necessary but not sufficient to meet the requirement to AFFH. As the draft AI recognizes, AFFH actions and affordable housing activities are not equivalent. The draft AI includes a comprehensive analysis of the lack of affordable housing, which while important, does not fully explain what has contributed to, perpetuated, or exacerbated barriers to equal housing opportunities for protected classes. For example, in Chapter 4, *Assessment of Current Fair Housing Activities*, the AI discusses affordable housing infrastructure, land acquisition, and local zoning practices without any discussion of the relationship between these development issues and fair housing choice. Similarly, the AI analyzes the need for workforce housing without explaining the nexus between workforce housing development and AFFH. The AI should address what is needed beyond the mere availability of affordable housing in order to promote fair housing choice. Indeed, the Stipulation and Order specifically requires that the AI analyzes “impediments based on race.”

Suggestions/recommendations:

- ⇒ The AI should draw specific research- or data-based links between lack of affordable housing and segregation patterns in order to demonstrate why and how that the lack of affordable housing is an impediment to fair housing choice. It also should tie proposed actions back to the impact on fair housing, by explaining how the lack of affordable housing affects specific populations that currently face limited housing opportunities.
- ⇒ The AI should more thoroughly examine factors that affect the ability of underrepresented groups to locate and obtain affordable and accessible housing. Factors that should be analyzed include but are not limited to the following:
 - Local policies and practices (See Sections I.C and II.C);

- Fair housing enforcement;
 - Transportation;
 - Employment;
 - Education and affordable child care; and
 - Other public services.
- ⇒ The AI should include specific action plans to ensure that affordable housing development opens up access to housing opportunities for underrepresented groups. Examples include actions required under the Stipulation and Order, such as
- Mobility counseling;
 - Affirmative marketing (See Section III.A);
 - Source of income protection (See Section III.B); and
 - Fair housing education and outreach (See Section III.D).

Coordination with Local Housing Choice Voucher Program Administrators and Public Housing Agencies to improve mobility of Housing Choice Vouchers is another example. (See Section III.C).

- ⇒ The AI should contain plans for developing municipal services, housing amenities, transportation options, and other incentives or amenities, targeted to address the deficiencies in resources, to effectively attract individuals and families that are underrepresented in certain areas. The AI should outline how the County will coordinate with local jurisdictions inside the Urban County and throughout the region, housing providers, and developers to advance such services and amenities.
- ⇒ The AI should explain how the County will meet the housing needs of persons with disabilities. For example, the AI mentions that that “due to the lack of affordable and accessible housing [] some persons with disabilities are forced to move into nursing homes.” The AI should include actions to overcome this problem as well as any others.

C. Analyze and Address Barriers Imposed by Local Policies and Practices

The AI should address impediments, resources, and opportunities at the local level. The draft AI identifies local zoning as one of the biggest impediments to fair housing choice. It does not, however, set a concrete plan for addressing this impediment. The Stipulation and Order requires the County to analyze and address municipal policies and practices that present barriers to fair housing choice. Such an analysis should address the impact of zoning and development laws and administrative practices in the County and its participating jurisdictions on fair housing choice and present a clear action plan for overcoming such barriers.

Suggestions/recommendations:

- ⇒ The AI should identify specific impediments that different localities, townships, or communities face or have imposed. In particular, the barriers in areas of highest racial concentration should be identified and analyzed.
- ⇒ The AI should address specific laws, regulations, and policies of local governments in addition to County laws. These include local zoning and regulatory policies, which may serve as barriers to housing choice, such as discretionary approvals, occupancy standards based solely on number of bedrooms, requirements for large lot size, high minimum square footage requirements, and definitions of “family” that exclude extended family members. The analysis of specific local policies, practices, and procedures should also include a more detailed discussion of effective policies that AFFH, such as inclusionary zoning laws. (See Section II.C).
- ⇒ The Stipulation and Order requires the AI to analyze municipal resistance to the development of affordable housing that may have led to regulatory barriers and to identify actions to overcome such resistance.
- ⇒ The AI should also thoroughly analyze resources at the local level, such as active non-profit organizations addressing fair housing issues.
- ⇒ The County should coordinate the efforts of local jurisdictions to successfully improve fair housing choice. This coordination should start with the AI process and other strategic planning processes and include coordination and agreements between the County and local jurisdictions. (See Section I.D)
- ⇒ The County should identify the responsibilities of local jurisdictions in promoting affordable housing, anti-discrimination, and integration. In particular, the AI should identify action items for the areas of highest racial concentration.

D. Analysis and Action Plans Should Incorporate a Regional Approach

In analyzing and addressing the impediments to fair housing choice within the Urban County, the County should look to factors and influences throughout the surrounding region. In addition, the solutions set forth in the AI should include more specific plans to coordinate with communities and governments beyond the borders of the Urban County. It is likely that Westchester will not be able to adequately address issues of discrimination and segregation without a regional approach.²

Suggestions/recommendations:

- ⇒ The AI should more thoroughly explore how the County’s impediments to fair housing choice are influenced by factors throughout the region, including regional residential

² More information on the regional approach may be found in the Fair Housing Planning Guide, Chapter 2, p. 11-12.

patterns, job market, and public transportation options. For example, the summaries of the AIs from the four entitlement communities (Mount Vernon, New Rochelle, White Plains, Yonkers) could be integrated into the analysis of impediments, identifying how residential and commuting patterns and job markets of these neighboring communities affect housing choice within the Urban County.

- ⇒ The AI should include an analysis of regional demographic and survey data. The County should explore why certain groups live in communities outside the Urban County but are underrepresented within the Urban County and how such segregated patterns can be remedied. This analysis should include, but also must extend beyond, issues of affordability.
- ⇒ Such regional factors should be taken into account when developing actions to overcome impediments to fair housing choice. For example, Westchester should look for opportunities to address the underrepresentation of minority residents in some areas of the County in a way that also addresses the concentration of minority communities in neighboring jurisdictions.
- ⇒ Westchester County should coordinate with other local governments in the region in order to carry out the necessary action items. This coordination could take the form of:
 - *A regional AI.* Local government entities can partner to compile a regional AI. The partnering governments could agree to share resources to address patterns of segregation and to build inclusive and diverse communities. This approach has been used by other partnerships. See, e.g., <http://metro council.org/planning/housing/FairHousingSummary.pdf>; http://www.anokacounty.us/v1_departments/div-governmental-services/dept-community-dev/pdf/AI%202009%20DRAFT%20Vol%201.pdf; <http://www.accessclarkcounty.com/depts/Finance/crm/Documents/FairHousingAIPlanFinal.pdf>;
 - *Cooperation by neighboring municipalities, public housing agencies, transportation authorities, and other relevant partners to support implementation of Westchester's AI.* To demonstrate a coordinated effort, Westchester can include letters of support and/or joint plans to address fair housing choice in its AI; or
 - *Plan for regional coordination.* Westchester could provide a detailed plan for how it will coordinate with regional municipalities, authorities, and private housing providers.
- ⇒ The AI should identify existing fair housing resources (e.g., enforcement organizations, non-profit organizations, inclusionary zoning laws) in other areas throughout the region, as well as best practices and opportunities for improvement.

II. Effective Data Collection and Analysis

A. Improve Survey Methodology and Data Collection

The discussion of methodology, strategic analysis, and public input in the draft AI should be expanded and improved. The AI should include information on what data or research was used, whose input was considered, and how conclusions were reached. Further, the Stipulation and Order requires that the County “commit to collecting the data and undertaking other actions necessary to facilitate the implementation of [the] Stipulation and Order.”

Suggestions/recommendations:

- ⇒ The AI should describe the methodology used in data collection, surveys, and other research used in compiling the AI. This should include how the samples were selected and who made the decisions on topics to be studied and why.
- ⇒ The County should present whatever additional data or research is necessary to explain current housing and segregation patterns. The impediments discussed in the AI should thoroughly analyze factors that are perpetuating segregated housing patterns. In addition to analyzing segregation indices, the analysis should explore any reasons why residents in surrounding municipalities have difficulty or are reluctant to move to Westchester County. Analysis of data on employment trends and public transportation should be included.
- ⇒ The AI should include consistent data and analyses across all jurisdictions in the Urban County. For example, in Chapter 3, survey responses were provided by some but not all cooperating jurisdictions.
- ⇒ All data should indicate whether it is from the Urban County or the entire County (including the Entitlement Cities and Mount Pleasant). Wherever possible, both sets of data should be presented and clearly identified. For example, Chapter 2 discusses demographic information without sufficiently distinguishing between the demographics of the Urban County and the non-participating jurisdictions.
- ⇒ The data should clearly identify whether people residing in institutions are included in the demographic information provided.
- ⇒ The AI should analyze data to understand and address impediments to fair housing choice caused by private as well as public action.
- ⇒ Surveys and interviews should be scientifically designed and given to a random or stratified sample. Online surveys should only be used as anecdotal information unless they are able to meet these criteria.
- ⇒ The County should consider conducting surveys and interviews with residents throughout the County, residents of neighboring areas, and potential County residents. Surveys

should not be limited to certain groups and organizations.

- ⇒ Surveys and interviews should ensure that the respondents understand fair housing protections and protected classes before answering questions about what discrimination they have witnessed.
- ⇒ Surveys and interviews should request respondents' demographic data, including race, age, sex, national origin, familial status, religion, disability status, source of income, and current residency.
- ⇒ Surveys should be sufficiently in-depth to provide relevant data. For example, the lender survey referenced in the draft AI does not ask for the demographics of clients served, completed real estate sales, or the reasons sales were not completed.
- ⇒ Surveys should be translated to relevant languages to ensure consideration of data from Limited English Proficient (LEP) populations. Bilingual interviewers should be used or oral interpreters made available when interviewing persons who are LEP.
- ⇒ The data discussed should include tenant selection procedures and patterns for assisted housing providers.

B. Conduct Detailed Analysis of All Data

For the data provided in the AI to effectively explain impediments to fair housing choice and help design solutions, the analysis of these data should be detailed and comprehensive. While the draft AI presents data regarding demographics, housing development patterns, discrimination complaints, and other information, it does not sufficiently analyze the data for the County to explain impediments and design actions to address these impediments.

Suggestions/recommendations:

- ⇒ Wherever data are presented, there should be *analysis* of the data that shows and explains specific impediments to fair housing choice. For example, in addition to providing maps on demographic patterns in the County, Westchester should describe the different factors that led to those patterns, what perpetuates the patterns, and how they can be ameliorated. The AI should include an analysis of the way residential patterns have developed in the region over time, and examine how this history influences current residents, potential residents, policy makers, and others.
- ⇒ Statistical data should be presented and analyzed so that comparison is possible across various data sets. For example, the analysis could compare geographic patterns of concentrations of minority groups and the relationship between concentrations of minority groups and other factors, such as foreclosure rates and loan denials.
- ⇒ Divergent data should be explained. For example, the results of the surveys regarding

housing discrimination discussed in Chapter 3 and Appendix D show big differences between the survey responses from the nonprofit sector and the responses from the real estate/property management sector in the perceptions of the prevalence of discrimination, but no explanation of these differences is provided.

- ⇒ The AI should more thoroughly analyze the data regarding public education quality and achievement, employment opportunities, available public transportation options, and municipal services and the effects of those opportunities on housing choice.
- ⇒ The AI should include an analysis of the data regarding the ability of New York State Division of Human Rights, the Westchester County Human Rights Commission, and Westchester Residential Opportunities to receive, investigate, and resolve complaints of housing discrimination.
- ⇒ The “Complaints Received by Community” charts for the New York State Division of Human Rights, the Westchester County Human Rights Commission, and Westchester Residential Opportunities should provide more specific breakdowns of fair housing complaints. The breakdowns should be listed by community (or zip code), and within each identified community (or zip code), by basis (e.g. race/color, national origin, family status, disability), and by disposition. This would enable the County to better focus on problems within specific areas.
- ⇒ The maps reflecting areas of minority concentration should clearly identify municipalities and should be accompanied by a discussion of the implications of these minority concentrations.
- ⇒ The tables in the appendices, in many cases, have small numbers that have been converted to percentages. Percentages of such small numbers cannot provide meaningful analysis. However, the tables in Appendix G could benefit from percentages.

C. Address Locational Differences in Data and Analysis

In order to fully understand the impediments Westchester County faces, and in order to craft successful solutions to those impediments, the County should be geographically specific in its data collection, analysis, and proposed solutions. The AI currently presents impediments and proposed actions in general, global terms. To identify effective solutions, the analysis of impediments and proposed actions should be location-specific. For example, available information indicates that minorities are concentrated in Sleepy Hollow, Port Chester, and Ossing Village and are underrepresented in Hastings on Hudson, Pound Ridge, Lewisboro, and North Salem. The impediments, and any successful solutions, are going to be different in these different communities. Analysis of the demographics, residential patterns, policies, practices, resources, and opportunities in particular jurisdictions should be used to build effective location-specific solutions.

Suggestions/recommendations:

- ⇒ Data should be collected and analyzed in a manner that reflects the situation at the community, township, and municipal levels.
- ⇒ Strategic analysis of this data, including the identification of impediments to fair housing choice, should be conducted at the local level in order to accurately capture any impediments unique to certain areas or communities.
- ⇒ The AI should identify existing fair housing resources (e.g., enforcement organizations, non-profit organizations, or inclusionary zoning laws) as well as best practices and opportunities for improvement by municipality.

D. Expand Public Input

Public input is critical for developing a strong AI, its methodology, and its results. The process should provide for public input from a broad range of communities and stakeholders in and around the County.

Suggestions/recommendations:

- ⇒ Input should be sought from a range of advocacy groups that represent minority and low-income communities.
- ⇒ All segments of the resident and potential resident populations including tenants and homeowners from a wide-range of localities and protected classes should be invited to attend public meetings on the AI at convenient times and at places accessible to the general public.
- ⇒ The County should obtain input from officials and members of the public who reside in all Urban County municipalities, particularly those with minority concentration/underrepresentation, to ensure all interests are represented.
- ⇒ Public meetings should be accessible for LEP populations and persons with hearing and/or sight impairments or other disabilities. This includes wider publicity of the meeting times and locations, as well as translations during the meetings.

III. Additional Recommendations**A. Affirmatively Market Affordable Housing**

Affirmative fair housing marketing plans (AFHMPs) are a means of promoting inclusive and diverse communities through advertising, education, and marketing.³ The draft AI mentions

³ AFHMPs are required for housing developments in certain HUD programs. For a description of possible contents of an AFHMP, see HUD's regulations at 24 C.F.R. § 200.620.

fair housing outreach but does not thoroughly discuss the County's affirmative marketing practices and their effectiveness. The County should take additional measures to ensure the efficacy of AFHMPs and make these plans a central part of its action agenda. Indeed, the Stipulation and Order obligates the County to affirmatively market and require developers to affirmatively market the affordable housing units developed pursuant to the Stipulation.

Suggestions/recommendations:

- ⇒ The AI should include a discussion of developers and non-for-profit housing organizations that have committed to comply with AFHMPs.
- ⇒ The AI should include a plan for ensuring that all AFHMPs effectively reach underrepresented communities. This plan should include an assessment of what AFHMPs are in place and how effective they are. For housing providers, management companies and rental associations that are not required to follow AFHMPs, the County should assess their marketing and outreach strategies.
- ⇒ The AI should include an action plan to establish partnerships between housing providers, local governments, and local media outlets to develop and market appropriate housing incentives to attract housing applicants to new housing market areas. The County should reach out to minority-owned media outlets and to media outlets that publish in languages other than English.
- ⇒ The AI should include a regional affirmative marketing plan that targets areas of racial and ethnic minority concentration in the County.
- ⇒ Efforts should include specific actions to ensure appropriate marketing to LEP residents and potential residents.
- ⇒ The County should include a plan for compiling best practices in AFHMPs to assist developers.

B. Promote and Implement Source of Income Protection

The Stipulation and Order requires the County to “promote through the County Executive, legislation currently before the Board of Legislators to ban source-of-income discrimination in housing.”

Suggestions/recommendations:

- ⇒ The AI should include a plan to promote and implement the requirement to ban source-of-income discrimination in the County.

C. Coordinate with Local Housing Choice Voucher Program Administrators and Public Housing Agencies to Improve Mobility of Housing Choice Vouchers

The County should engage with Housing Choice Voucher (HCV) program administrators and Public Housing Agencies (PHAs) in the region in the development of its AI. This would enhance the County's analysis of difficulties in using HCV and in developing solutions to address those impediments. The Stipulation and Order requires the County to identify and analyze the potential need for mobility counseling, and the steps the County will take to provide such counseling.

Suggestions/recommendations:

- ⇒ The County should coordinate with local HCV program administrators and with PHAs around the region to develop the AI and in particular to identify impediments confronting HCV holders in seeking housing throughout the County. This should include an analysis of agreements that are already in place that could assist in this effort.
- ⇒ The County should foster agreements with local HCV program administrators, PHAs, and municipalities to encourage mobility and portability of HCVs.
- ⇒ Housing counseling services should be coordinated with housing subsidies to encourage and help families move to communities that provide better opportunities for housing, jobs, schools, and other services.
- ⇒ The County should also provide incentives to HCV holders to move from areas with concentrated minority communities to inclusive and diverse communities.
- ⇒ The County, local HCV program administrators, and PHAs should collaborate to set reasonable rents and payment standards at sufficient levels for renting in these areas and to extend the search time for HCV holders seeking to rent throughout the County.
- ⇒ The active partnership among the County, local governments, PHAs, real estate agents, and housing providers could include a program in mobility counseling and provide other rental search services.

D. Address Fair Housing Public Awareness

The realization of fair housing choice depends on the public understanding and awareness of fair housing rights. In addition, housing providers, public employees, lenders, and real estate agents should understand their fair housing responsibilities. The AI should include a more comprehensive plan to educate residents and potential residents of their rights under local and federal fair housing laws.

Suggestions/recommendations:

- ⇒ Public education and outreach efforts should provide information about the role of the Westchester County Human Rights Commission, including the range of offered services and office hours for counseling and filing complaints.
- ⇒ The AI should also address how the County plans to educate public officials, housing providers, developers, and others of their responsibilities to protect and promote fair housing choice.
- ⇒ The AI should include ways the County can partner with public, private, and non-profit entities to promote public awareness.
- ⇒ Public awareness efforts should include appropriate provisions for LEP members of the public.
- ⇒ The AI's public awareness provisions should acknowledge and promote the idea that all housing is covered by the Fair Housing Act, not just County-funded housing.
- ⇒ The action plans should include partnerships with state or local fair housing agencies and real estate organizations, rental management associations, and private housing providers to develop education programs on fair housing rights for housing providers, tenants, and housing applicants.
- ⇒ The AI mentions that some landlords fear renting to those who are LEP because they are afraid of prosecution for renting to illegal immigrants. The County should provide educational outreach to housing providers, real estate agents, and the general public on the LEP community to correct this misconception.