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HOUSING AND COMMUNITY GRANTS

HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans

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Why GAO Did This Study

Pursuant to the Fair Housing Act, Department of Housing and Urban Development (HUD) regulations require grantees, such as cities, that receive federal funds through the Community Development Block Grant (CDBG) and HOME Investment Partnerships Program (HOME) to further fair housing opportunities. In particular, grantees are required to prepare planning documents known as Analyses of Impediments (AI), which are to identify impediments to fair housing (such as restrictive zoning or segregated housing) and actions to overcome them. HUD has oversight responsibility for AIs. This report (1) assesses both the conformance of CDBG and HOME grantees AIs' with HUD guidance pertaining to their timeliness and content and their potential usefulness as planning tools and (2) identifies factors in HUD's requirements and oversight that may help explain any AI weaknesses.

GAO requested AIs from a representative sample of the nearly 1,200 grantees, compared the 441 AIs received (95 percent response based on final sample of 466) with HUD guidance and conducted work at HUD headquarters and 10 offices nationwide.

What GAO Recommends

GAO recommends that, through regulation, HUD require grantees to update their AIs periodically, follow a specific format, and submit them for review. HUD neither agreed nor disagreed with the recommendations but noted recent efforts to improve compliance and oversight.

View GAO-10-905 or key components.
For more information, contact Orice Williams Brown at (202) 512-8678 or williamso@gao.gov.

What GAO Found

On the basis of the 441 AIs reviewed, GAO estimates that 29 percent of all CDBG and HOME grantees' AIs were prepared in 2004 or earlier, including 11 percent from the 1990s, and thus may be outdated. HUD guidance recommends that grantees update their AIs at least every 5 years. GAO also did not receive AIs from 25 grantees, suggesting that, in some cases, the required documents may not be maintained, and several grantees provided documents that did not appear to be AIs because of their brevity and lack of content. GAO reviewed 60 of the current AIs (those dating from 2005 through 2010) and found that most of these documents included several key elements in the format suggested in HUD's guidance, such as the identification of impediments to fair housing and recommendations to overcome them. (See table below for common impediments identified in 30 of these 60 current AIs.) However, the vast majority of these 60 AIs did not include time frames for implementing their recommendations or the signatures of top elected officials, as HUD guidance recommends, raising questions about the AI's usefulness as a planning document. As a result, it is unclear whether the AI is an effective tool for grantees that receive federal CDBG and HOME funds to identify and address impediments to fair housing.

HUD's limited regulatory requirements and oversight may help explain why many AIs are outdated or have other weaknesses. Specifically, HUD regulations do not establish requirements for updating AIs or their format, and grantees are not required to submit AIs to the department for review. A 2009 HUD internal study on AIs, department officials, and GAO's work at 10 offices identified critical deficiencies in these requirements. For example, HUD officials rarely request grantees' AIs during on-site reviews to assess their compliance with overall CDBG and HOME program requirements, limiting the department's capacity to assess AIs' timeliness and content. While HUD initiated a process to revise its AI regulatory requirements in 2009, what the rule will entail or when it will be completed is not clear. In the absence of a department-wide initiative to enhance AI requirements and oversight, many grantees may place a low priority on ensuring that their AIs serve as effective fair housing planning tools.

Commonly Cited Impediments to Fair Housing in Selected AIs

Impediment	Description of impediment
Zoning and site selection	• Building and zoning codes, which may contain lot requirements such as minimum street frontage and front yard setbacks, and amenities (e.g., landscaping), that can affect the feasibility of developing low- and moderate-income housing.
Public services	• Inadequate public services, such as schools, in areas where minorities or people with disabilities may live.
Lending policies and practices	• Less favorable mortgage lending terms from private lenders, such as higher interest rates, for minority borrowers than are generally available for nonminority borrowers with similar risk characteristics.

Source: GAO analysis of 30 current AIs.

_____ **United States Government Accountability Office**

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United States Government Accountability Office
Washington, DC 20548

September 14, 2010

Congressional Requesters

The Fair Housing Act (FHAct) of 1968, as amended, prohibits discrimination in the sale, rental, and financing of housing on the basis of race or color, religion, sex, national origin, familial status, or disability.[1] Section 808(e) (5) of the FHAct also requires the Department of Housing and Urban Development (HUD) to administer its housing and urban development programs, including formula grant programs such as the Community Development Block Grant program (CDBG) and HOME Investment Partnerships Program (HOME), in a manner that affirmatively furthers fair housing (AFFH)—that is, that eliminates housing discrimination, promotes fair housing choice, and fosters compliance with the nondiscrimination provisions of the FHAct.[2] In fiscal year 2009, these programs provided over $5 billion in funding to nearly 1,200 eligible communities and jurisdictions and the median grant size was about $1.4 million. To help fulfill the AFFH requirement, HUD regulations require grant recipients, such as municipalities and counties, to

- prepare a planning document known as an Analysis of Impediments to Fair Housing Choice (AI), which is to identify any potential impediments to fair housing choice within the jurisdiction (such as exclusive zoning laws or segregated housing patterns);

- take appropriate actions to overcome the effects of any impediments identified in the AI, such as revising zoning ordinances; and

- maintain records reflecting the analysis and actions taken.

  HUD views the AI as a tool that serves as the foundation for fair housing planning by municipalities, counties, and other grantees that receive federal funds through their participation in the CDBG, HOME, and other grant programs. The department is also responsible for overseeing and

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[1]Pub. L. No. 90-284, title VIII, 82 Stat. 81 (1968), as amended, *codified at* 42 U.S.C. §§ 3601-3619.

[2]This review covers only the CDBG program, which provides block grants to states, cities, and counties for a variety of affordable housing activities, and the HOME program, which supports the production of affordable housing. Other HUD formula grant programs that must comply with AFFH requirements include the Housing Opportunities for Persons with AIDS (HOPWA) program, and the Emergency Shelter Grants (ESG) program.

enforcing grantees' compliance with AFFH requirements and guidance, including those pertaining to their AIs.

Grantees' compliance with AFFH requirements and the effectiveness of HUD's oversight and enforcement have been called into question through litigation and reports and testimonies for some years. In August 2009, the Department of Justice and HUD announced a fair housing settlement with Westchester County in New York, a CDBG grantee that was required to conduct an AI. A federal district court had concluded that the county was aware that racial and ethnic segregation and discrimination persisted in its municipalities, but its AI made no mention of these practices or any plan to address them. The litigation ended in an agreement that required the county to invest $51.6 million in affordable housing over the next 7 years and to undertake and fund marketing, public education, and other outreach efforts to promote fair and affordable housing.[3] Further, fair housing groups have conducted studies and stated in testimony that many grantees fail to prepare substantive AIs and that HUD's oversight and enforcement of the AI requirements have been minimal.[4] In 2009, HUD completed an internal study, which found that many AIs were outdated or appeared to have been prepared in a cursory fashion and found that the department's oversight was limited.[5] Associations that represent grantees, such as the U.S. Conference of Mayors, have stated that their members are committed to furthering fair housing but have noted a variety of challenges involved in doing so, including limited funding for conducting the AIs and a lack of clear HUD guidance on preparing an AI. HUD officials have stated that the department has not always fulfilled its obligation to assist

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[3]U.S. Department of Housing and Urban Development, "HUD and Justice Department Announce Landmark Civil Rights Agreement in Westchester County" (news release, Aug. 10, 2009); DOJ, "Westchester County Agrees to Develop Hundreds of Units of Fair and Affordable Housing in Settlement of Federal Lawsuit" (news release, Aug. 10, 2009).

[4]National Fair Housing Alliance, "Analysis of Impediments to Fair Housing Study" (1997); and "Still Separate and Unequal: The State of Fair Housing In America" (written testimony submitted by William R. Tisdale, Metropolitan Milwaukee Fair Housing Council, July 15, 2008).

[5]See 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). According to HUD officials who conducted the study, the goal was to assess the extent to which the AIs were produced in accordance to HUD's 1996 *Fair Housing Planning Guide*. The study focused on a number of issues, including the timeliness of submissions of the AIs, and also categorized the impediments to fair housing choice as outlined in the AIs.

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grantees in meeting AFFH requirements but is in the process of developing a rule that will provide the guidance grantees need.[6]

Given your questions about grantees' compliance with AFFH requirements, particularly the quality of their AIs, and HUD's oversight activities, you asked that we conduct a review of relevant issues. Specifically, our report (1) assesses both the conformance of CDBG and HOME grantees' AIs with HUD guidance pertaining to their timeliness and content, as well as the AIs' potential usefulness as fair housing planning tools, and (2) identifies factors that may help explain any potential weaknesses in grantees AIs, particularly factors related to HUD's regulatory requirements and oversight and enforcement approaches.

To address the first objective, we selected a representative sample of 473 CDBG and HOME grantees from the total population of 1,209 fiscal year 2009 program participants and requested their most recent AIs. We received AIs from 441 of the 466 grantees in our final sample, for a response rate of 95 percent.[7] We reviewed these 441 AIs to, among other things, estimate the extent to which all CDBG and HOME program grantees had updated their AIs in accordance with HUD guidance and an internal department study on AI compliance.[8] Further, we analyzed a nonrepresentative subset of 60 of the 281 current AIs we received (those prepared from 2005 through 2010 that were among the total of 441 AIs provided) to determine whether grantees or an external party had prepared the documents, and compared them with HUD guidance to determine whether they followed the department's recommended format. Finally, we reviewed 30 AIs from this nonrepresentative subset to

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[6]For example, John D. Transvina, 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.

[7]The initial sample of 473 was reduced to 466, after we determined that 7 grantees were not required to prepare AIs. For example, while HUD's fiscal year 2009 program list contained these 7 grantees, HUD officials said that, in fact, some of them were incorrectly labeled as program participants that year.

[8]All national estimates for percentage of outdated AIs reported from the survey results have a margin of error within plus and minus 5 percentage points at the 95 percent confidence level.

categorize commonly identified types of potential impediments to fair housing choice.[9]

For the second objective, we reviewed HUD's policies, procedures, and guidance for overseeing and enforcing the AFFH requirement, particularly pertaining to AIs, as well as information on resource levels for these activities. We also reviewed the 2009 internal HUD study on AI compliance and oversight; annual reports that grantees are required to submit to HUD that, among other items, may discuss AFFH activities; public testimony by senior HUD officials; and documentation and data on enforcement activity. In addition, we interviewed HUD officials at headquarters and in three regional and seven field offices that we selected on the basis of varying criteria, including the size of the jurisdiction, as measured by the number of grantees within each jurisdiction; geographic location; and potential risk of nonconformance, as measured by the estimated incidence of outdated or missing AIs. Appendix I provides more details about our objectives, scope, and methodology.

We conducted this performance audit from October 2009 to September 2010, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

A number of HUD's large grant programs are subject to the AFFH requirement. These programs include the following:

- *CDBG program:* The CDBG program is authorized by Title I of the Housing and Community Development Act of 1974, as amended. The program provides annual grants to states, metropolitan areas, and urban counties to fund an extensive array of community development activities, such as providing decent housing and a suitable living environment and expanding economic opportunities that primarily benefit Americans of

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[9]Both the 60 and 30 current AIs were selected to be reflective of the sample of 281 current AIs in terms of geographic diversity and grant size.

modest financial means. The CDBG program was funded at about $3.6 billion in fiscal year 2009, making CDBG the largest grant program, with the largest number of grantees.

- *HOME program:* The HOME program is the largest government-sponsored affordable housing production program. HOME was authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, and provides grants to states and localities, often in partnership with local nonprofit groups. These grants are used to fund a wide range of activities that build, buy, and rehabilitate affordable housing for rent or sale and provide direct rental assistance to low-income people. The program was funded at about $1.8 billion in fiscal year 2009.

- *HOPWA program:* HOPWA is intended to address the urgent housing needs of low-income Americans living with HIV/AIDs, who are disproportionately represented in low-income minority communities. HOPWA funds may be used for a wide range of housing, social services, program planning, and development costs. HOPWA funds also may be used for health care and mental health services, chemical dependency treatment, nutritional services, case management, assistance with daily living, and other supportive services. HOPWA was funded at about $310 million in fiscal year 2009.

- *ESG program:* The ESG provides homeless persons with basic shelter and essential supportive services. It also provides short-term homeless prevention assistance to persons at imminent risk of losing their own housing due to eviction, foreclosure, or utility shutoffs. The ESG was funded at about $1.7 billion, in fiscal year 2009.

AI Requirement Established in HUD Regulations

To help ensure that grantees receiving funds through the CDBG and other formula grant programs are meeting the AFFH requirements, HUD regulations require them to prepare and maintain AIs. HUD defines the AI as a comprehensive review of potential impediments and barriers to the right to be treated fairly when seeking housing. The AI is expected to cover public and private policies, practices, and procedures affecting housing choice and assess how they all affect the location, availability, and accessibility of housing. Grantees are also to develop strategies and actions to overcome these barriers based on history, circumstances, and experiences. In effect, the AI is a tool that is intended to serve as the basis for fair housing planning; provide essential information to policymakers, administrative staff, housing providers, lenders, and fair housing advocate; and assist in building public support for fair housing efforts. Grantees may use a portion of their CDBG and other grant funds to prepare their AIs,

and AIs may be prepared by the grantees themselves or under contract with external parties, such as fair housing groups, consultants, universities, or others.

While HUD regulations require grantees to prepare AIs, other requirements pertaining to these local planning documents are limited. For example, HUD has not issued regulations specifying how often grantees should update their AIs or the specific elements that should be included in them. HUD regulations also do not require grantees to submit their AIs to the department for review and approval. Instead, CDBG and HOME grantees are to annually certify to HUD that they are meeting AFFH requirements, which include having prepared an AI, taking steps to address identified impediments, and maintaining records of their actions. HUD generally accepts grantees annual AFFH certifications, including that they have prepared AIs, and will not initiate further reviews unless evidence to the contrary emerges from complaints or through the department's routine monitoring activities.

While HUD has not issued regulations that specifically define when the grantees' must update their AIs, or what elements they must include, it has issued recommended guidance on these subjects. As discussed in this report, for example, HUD has issued guidance recommending that grantees update their AIs every 3 to 5 years. In 1996, HUD also issued a fair housing guide, which included a suggested format for AIs and other important fair housing planning elements (see table 1). The format and elements include an introduction and executive summary; jurisdictional and background data, such as demographic data and analysis; and an evaluation of the jurisdiction's current fair housing legal status, such as a listing and description of fair housing related complaints that have been filed and their status or resolution. Further, the suggested format and other elements include a listing of the impediments identified, proposed actions and time frames to overcome them, and the signatures of top elected officials.

Table 1: HUD's Suggested Format for AI

Suggested element	Description
Introduction and executive summary of the analysis	Explains who conducted the AI and identifies the participants and methodology used, funding source, and summaries of impediments found and actions to address them.
Jurisdictional background data	Includes demographic, income, employment, housing profile, maps, and other relevant data.
Evaluation of jurisdiction's current fair housing legal status	Discusses fair housing complaints and compliance reviews that have resulted in a charge or finding of discrimination, fair housing discrimination suits filed by the Department of Justice or private plaintiffs, the reasons for any trends or patterns in complaints and enforcement, and other fair housing concerns.
Identification of impediments to fair housing choice	Identifies impediments to fair housing.
Conclusions and recommendations for overcoming impediments	Summarizes any impediments identified in the analysis and presents recommendations to overcome identified impediments.
Time frames for implementing actions to overcome impediments	Sets out the time frame for completing each action or set of actions to serve as milestones toward achieving the actions.
Signature page	Includes the signature of a chief elected official, such as a mayor.

Source: HUD 1996 *Fair Housing Planning Guide.*

Note: HUD's 1996 *Fair Housing Planning Guide* suggested format included one other element, description of current public and private fair housing programs and activities in the jurisdiction, which was not included in our review. While the fair housing guidance's suggested AI format does not include time frames for implementing recommendations to address identified impediments, time frames are discussed elsewhere in the guide as a component of fair housing planning.

Grantees' AFFH Activities May Also Be Addressed in Other Required Reports to HUD

Although HUD does not require grantees to submit their AIs to the department for review and approval, it does require them to periodically submit other reports on their overall use of CDBG and other grant program funds, such as HOME, HOPWA, and ESG. In some cases, HUD specifically requires that grantees include in these reports information about their AFFH activities. These AFFH activity reports include the following:

- *Consolidated Plan (ConPlan):* The ConPlan, which grantees must file with HUD for review and approval every 5 years, is a planning document that identifies low- and moderate-income housing needs within a community and specifies how grantees intend to use federal funds to address those needs. According to HUD, the purpose of the ConPlan is to enable grantees to shape the various housing and community development programs into effective, coordinated neighborhood and community development strategies. Within their ConPlans, grantees are to provide their AFFH certifications annually, as described here.

- *Annual Action Plan:* Grantees are required to submit an Annual Action Plan. These annual plans lay out how the grantees plan to achieve the overall objectives in their consolidated plans in the coming fiscal year.

- *Consolidated Annual Performance and Evaluation Report (CAPER):* Within 90 days at the end of the program year, grantees that have approved ConPlans must file a CAPER with HUD, which reports on the progress they have made in carrying out the activities described in their Annual Action Plans. The CAPER must include, among other things, actions taken to affirmatively further fair housing. HUD is responsible for reviewing the accuracy of the CAPER. Because HUD does not require grantees to submit AIs, the CAPER serves as the main document that department officials use to learn about grantees' fair housing activities and accomplishments.

HUD's AFFH Oversight Structure Involves Two Offices and Numerous Regional and Field Offices

Two HUD offices share responsibility for overseeing CDBG and HOME grantees' compliance with AFFH requirements, including those pertaining to their AIs: the Office of Community Planning and Development (CPD) and the Office of Fair Housing and Equal Opportunity (FHEO). CPD is responsible for helping ensure that grantees are in overall compliance with CDBG and other grant program requirements. For example, CPD is responsible for ensuring that grantees spend federal funds on approved activities, such as affordable housing creation and community development. To carry out their oversight activities, CPD staff are to review and approve grantees' ConPlans, Annual Action Plans, and CAPERs and conduct on-site monitoring reviews of a limited sample of high-risk grantees each year to assess their compliance with various program requirements, including those pertaining to AFFH. HUD has the authority to disapprove a ConPlan if the grantee's AFFH certification is inaccurate or missing. Disapproval of a ConPlan may result in withholding CDBG and other formula grant funds until the grantee submits an adequate AFFH certification within an established time frame. While CPD serves as HUD's main liaison with grantees, FHEO maintains final authority to determine and resolve matters involving fair housing compliance, including the AFFH requirement. In carrying out their responsibilities, FHEO staff may use the results of CPD's oversight activities, such as its reviews of grantees' reports and on-site monitoring reviews. FHEO staff also are to independently review grantee reports, such as their CAPERs, and may conduct on-site monitoring reviews of grantees on a limited basis.

HUD maintains 10 regional offices and 81 field offices. CPD and FHEO staff are located in approximately 44 of the field offices, which have primary responsibility for monitoring and enforcing AFFH requirements,

including those pertaining to AIs. Field and regional office staff generally consult with CPD and FHEO officials in HUD's headquarters offices on key decisions and activities, including whether to disapprove a grantee's ConPlan or AI.

Many Grantees' AIs Are Outdated or Otherwise Out of Conformance with HUD Guidance and Thus There Is Limited Assurance They Serve as Effective Fair Housing Planning Tools

While we estimate that the majority of grantees have current AIs in accordance with HUD guidance, many others may be outdated per the guidance. Specifically, we estimate that 29 percent of all AIs were prepared in 2004 or earlier, including 11 percent that date from the 1990s. Because many grantees' AIs are outdated, they may not provide a reliable basis to identify and mitigate current impediments to fair housing that may exist within their communities. We also (1) did not receive AIs from 25 grantees despite repeated requests that they provide them, which suggests that, in some cases, grantees may not maintain the documents as is required; and (2) several grantees provided documents with their status as AIs not clear due to their brevity and lack of content. While the majority of grantees may have current AIs, we question the usefulness of many such AIs as fair housing planning documents. We reviewed a subset of current AIs we received (those dating from 2005 through 2010) for a variety of reasons, including to gain insights into the types of impediments they identified and to determine whether they included the key elements identified by HUD in its 1996 fair housing guidance. [10] The most commonly cited impediments to fair housing choice were zoning restrictions, inadequate public services in low-and moderate-income areas, lending discrimination, and a lack of public awareness about fair housing rights. Further, we found that current AIs generally contained several basic elements suggested in HUD's guidance, such as demographic data and analysis, and recommendations to overcome identified impediments. However, a significant majority of the current AIs did not identify time frames for implementing the recommendations or contain the signatures of top elected officials as is also suggested in HUD's guidance. As a result, these AIs may not provide a reliable basis for measuring the grantees' progress in overcoming impediments or reasonable assurance that top elected officials endorse the recommendations in the AI and are accountable for implementing them. In sum, our review found limited assurances that grantees are placing needed emphasis on preparing AIs as

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[10]As discussed in this section, we reviewed 30 current AIs to identify commonly cited impediments in them. We also reviewed 60 current AIs, including these 30 to determine their authorship and to assess their conformance with the suggested elements of the format in HUD's 1996 *Fair Housing Planning Guide*.

effective planning tools to identify and address potential impediments to fair housing as required by statutes governing the CDBG and HOME programs and HUD regulations and guidance. [11]

An Estimated 29 Percent of AIs Are Outdated and Thus May Not Provide a Reliable Basis for Identifying and Mitigating Current Impediments to Fair Housing
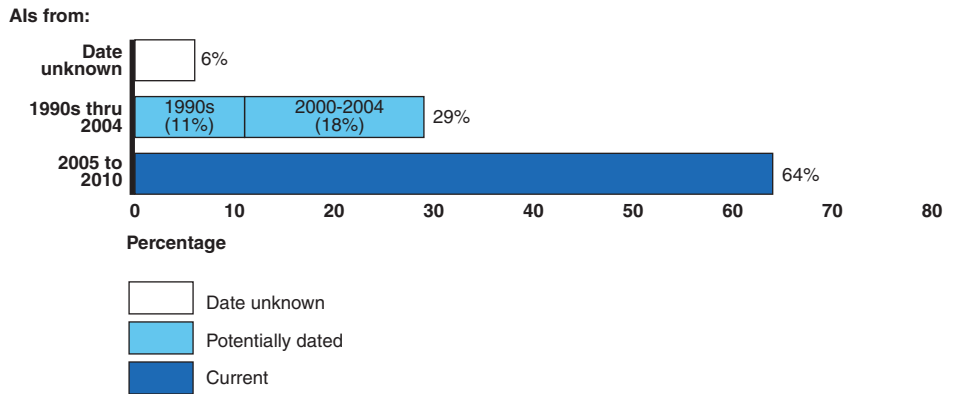
We estimate that while 64 percent of all grantees have current AIs, 29 percent may be outdated having been prepared in 2004 or earlier (including 11 percent from the 1990s), and the date for 6 percent could not be determined (fig. 1). While HUD has not officially defined what constitutes an outdated AI through regulation, it has issued guidance that addresses how often an AI should be updated. Using HUD's guidance and interviews with department officials as criteria, we define an AI as outdated if it was completed in 2004 or earlier. Specifically, HUD's 1996 Fair Housing Planning Guide—the main reference document for grantees in developing AIs—suggests that grantees conduct or update them at least every 3 to 5 years, in part to be consistent with the consolidated planning cycle.[12] On February 14, 2000 and again on September 2, 2004, HUD issued memorandums to all CPD and FHEO officials to remind grantees to update their AIs annually when necessary, but especially at the beginning of a new consolidated 5-year planning cycle. In addition, HUD's 2009 study on grantees' AI conformance concluded that the grantees with AIs dating from the 1990s may place a low priority to them and that such AIs should be updated.[13]

[11] Section 104(b)(2) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304) requires, among other things, that each CDBG grantee certify to HUD's satisfaction that the grantee will AFFH. Section 105 of the Cranston-Gonzalez National Affordable Housing Act, (42 U.S.C. 12705) established a requirement of a comprehensive housing strategy as a condition of a grantee receiving grants from HUD, primarily CDBG and HOME programs. The strategy includes a certification that grantees receiving the HUD grants will AFFH.

[12] U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, *Fair Housing Planning Guide: Volume 1* (Washington, D.C.: 1996).

[13] 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).

Figure 1: Estimated Completion Dates of CDBG and HOME Program Grantees' AIs

AIs from:

Date unknown — 6%

1990s thru 2004 — 1990s (11%) | 2000-2004 (18%) — 29%

2005 to 2010 — 64%

Percentage

Legend:
- Date unknown
- Potentially dated
- Current

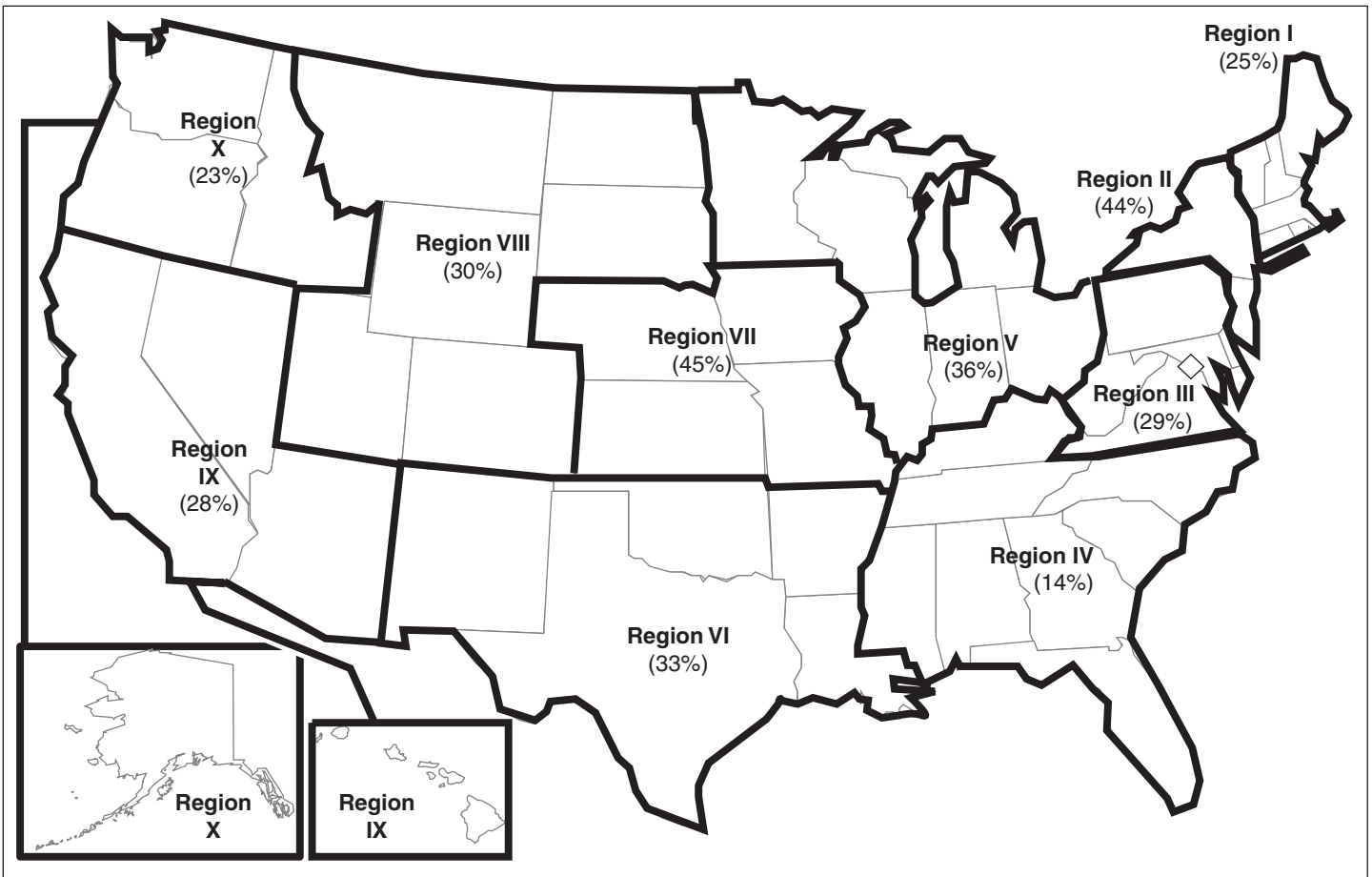Source: GAO analysis of GAO data.

Note: Percentages do not add to 100 due to rounding.

The incidence of outdated AIs was generally consistent across the country and among both large and small grantees.[14] Figure 2 shows the percentage of grantees with outdated AIs in each of the geographic areas covered by HUD's 10 regional offices, which ranged from a low of 14 percent in Region IV to a high of 45 percent in Region VII. Despite the variation, only one region had a statistically significant difference between its percentage of outdated AIs and the percentage at the national level.[15]

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[14]We defined grantees that received less than $500,000 as small and those receiving $500,000 or more as large. We found that grantees that received less than $500,000 of CDBG and HOME funds did not produce significantly more outdated AIs than those that received more funds. Grant size is a proxy for the size of the grantee, because funds are allotted based on population, among other factors.

[15]All regional estimates for the percentage of outdated AIs reported from the survey results have a margin of error within plus and minus 15 percentage point at the 95 percent confidence level.

Figure 2: Estimated Percentages of Outdated AIs, by HUD Region

Sources: GAO analysis of GAO data; Art Explosion (map).

HUD's 2009 internal study on AI conformance also concluded that many grantees' AIs were outdated.[16] Specifically, in examining the timeliness of 45 AIs in its sample, HUD found that about 18 percent (8) were produced before 2000 and had not yet been updated. While the HUD study provides

[16]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).

some insights into the AIs, its findings cannot be generalized to the entire population because of limitations in its sampling methodology.[17]

Because many grantees' AIs are outdated, they may not provide a reliable basis for identifying and mitigating impediments to fair housing. For example, HUD's 1996 fair housing guidance suggests that grantees use demographic data from the U.S. Census Bureau when preparing their AIs and to update these planning documents as new census data becomes available. Updated census data could indicate demographic trends within a jurisdiction that might be useful in preparing an AI, such as whether particular areas of a jurisdiction are becoming progressively more or less segregated over time and the potential reasons thereof. Moreover, according to one FHEO field office official, grantees should update their AIs every 5 years per the guidance, because the impediments to fair housing in a particular community evolve and change, and new issues can occur on a continuing basis. Another FHEO field office official said that an AI dated from the 1990s would not be considered current under any circumstances. The official said that grantees should update their AIs periodically to adjust to the development of potential impediments to fair housing choice within their communities. For example, the official noted that, subprime mortgage lending grew substantially during the 2000s, and subprime mortgage lenders potentially disproportionately targeted minority borrowers, which resulted in many foreclosures among such groups.[18] Without taking steps to update their AIs, whether grantees that receive federal funds through the CDBG, HOME, and other grant programs are sufficiently focused on overcoming current impediments to fair housing that may exist within their communities is unclear.

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[17]These limitations include the use of unweighted population estimates.

[18]Subprime lending generally involves the origination of mortgages to borrowers who may represent greater default risks than prime borrowers, due for example to lower credit scores, on terms that may increase the potential for default. For example, a common subprime mortgage product would be an adjustable rate mortgage in which the interest rate increases substantially after the expiration of a lower "teaser" rate. Some have alleged that subprime mortgage originators disproportionately targeted minority borrowers earlier in this decade, which resulted in disproportionate foreclosure rates amongst such borrowers in recent years.

We Did Not Receive AIs from 25 Grantees and the Brevity and Lack of Content of Others Raised Questions about Whether They Were AIs

We did not receive AIs from 25 grantees, despite intensive follow up efforts that included multiple e-mails and phone calls to appropriate officials. Representatives from some of these grantees offered several reasons for not providing the requested AIs. For example, representatives from two grantees said that they could not find their AIs, and a representative from another said an AI had not been prepared. Further, representatives from 8 grantees stated that they had already sent us their AIs, although we have no record of receiving them. We cannot definitively determine that all these grantees are out of compliance with statutes and HUD regulations requiring grantees to maintain AIs. However, the failure of these grantees to provide AIs, together with the results of HUD's 2009 study that also found that some grantees did not provide AIs as requested, raises questions about whether some jurisdictions may be receiving federal funds without preparing the documents required to demonstrate that they have taken steps to affirmatively further fair housing.[19]

Our analysis of the 441 AIs we received from grantees also indicates that the documents ranged in length from several hundred pages with supporting graphs and other materials to a few pages of content.[20] For example, one grantee's AI contained 64 tables illustrating a wide variety of information, ranging from a breakdown of the grantee's population by race, ethnicity, and poverty status to the rates at which low-income applicants in the grantee were denied conventional loans. While AIs may consist of many pages, length does not necessarily indicate the quality of these documents. For example, some lengthy AIs we reviewed had reports attached, including their CAPERS, that grantees were required to submit to HUD separately. On the other end of the spectrum, we identified five documents whose status as AIs was unclear based on their brevity and limited content. Specific examples are as follows:

- One grantee provided a four-page survey of residents within the community on fair housing issues.

- One grantee provided a two-page document that largely discussed its progress in implementing a local statute pertaining to community preservation and that contained two sentences describing a fair housing impediment.

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[19]As discussed in this report, HUD field office officials also identified at least one grantee that received funds without having prepared an AI.

[20]We analyzed the length of all the AIs we received (current, outdated, and undated).

- One grantee provided a three-page document that contained descriptions of activities designed to help the homeless and other special needs groups and described the actions that the grantee took to address barriers to affordable housing.

- One grantee provided a four-page description of the community itself, and it did not identify impediments to fair housing.

- One grantee provided a two-page e-mail that identified one impediment to fair housing choice, and in follow up conversations an official from this grantee, confirmed that the document constituted its AI.

   Given the brevity and lack of content in these documents, they may not constitute AIs as required by the CDBG and HOME statutes and HUD regulations.

Analysis of Current AIs Indicates That Authorship and Types of Identified Impediments to Fair Housing Vary Widely

While many AIs are outdated or, in some cases, grantees may not maintain the documents as required by HUD, we did estimate that 64 percent of grantees have prepared current AIs. To gain insights into current AIs, we reviewed a subset of 60 of the 281 such documents that we received for a variety of reasons, including to determine their authorship.[21] HUD's 1996 guidance suggests that AIs may be authored by grantees, fair housing or industry groups, universities or colleges, or any combination thereof. Our analysis indicates that grantees, through their community development and planning offices, for example, had prepared about half of the 60 current AIs we reviewed (table 2). In 9 of the 60 cases we reviewed, the grantee had contracted with a fair housing organization; in 9 of the 60 cases with a private consulting firm; and in 4 cases with a university or college. In about 6 of the cases, the AI did not identify the author, or the author's identity was not clear.

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[21]While this subset is not generalizable to the population of all grantees, we used several criteria in drawing it to help ensure that it reflected the characteristics of AIs that we received. For example, we chose the subset on a weighted geographic basis to help ensure that it reflected grantees located across HUD's 10 regional offices. We also sought to help ensure that the subset reflected jurisdictions' size as based on CDBG and HOME grant amounts in fiscal year 2009.

Table 2: Authorship of 60 Current AIs

Author type	Number
Grantee	29
Consulting firm	9
Fair housing organization	9
University or college	4
Mixed (more than one author type)	2
Other (e.g., housing task force)	1
Cannot determine author	6
Total	**60**

Source: GAO analysis of 60 AIs that were prepared from 2005 through 2010.

We also reviewed 30 of the 60 current AIs to identify the types of impediments to fair housing choice that had been identified by the grantees.[22] While these grantees cited a variety of potential impediments in their AIs, at least half identified four types of impediments (table 3): (1) zoning and site selection, (2) neighborhood revitalization, (3) lending policies and practices, and (4) fair housing informational programs.[23]

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[22]In selecting the 30 AIs to review, we included both large and small grantees from each of HUD's 10 regional offices. We identified all impediments and coded them from 1 to 13 based on the categories described in HUD's 1996 *Fair Housing Planning Guide*. A second reviewer then verified the coding. Appendix I contains more information on our methodology.

[23]Other impediments that grantees cited included tenant selection procedures used by public housing agencies and other assisted/insured housing providers, sales of subsidized housing and possible displacement, property tax policies, planning and zoning boards, building codes, and fair housing enforcement. See chapter 5 of HUD's *Fair Housing Planning Guide* (1996).

Table 3: Most Commonly Cited Impediments to Fair Housing in Selected AIs

Impediments	Description of impediments
Zoning and site selection	• Building and zoning codes, which may contain lot requirements such as minimum street frontage and front yard setbacks, and amenities (e.g., landscaping), that can affect the feasibility of developing low- and moderate-income housing. • Placement of new or rehabilitated housing for low-and moderate-income groups in areas that already have high concentrations of this type of housing or have zoning requirements that encourage such concentrations.
Neighborhood revitalization, municipal and other services, employment-housing transportation linkage	• Inadequate public services in low-and moderate-income areas, where many African-American, Hispanics, and people with disabilities may live, including schools, recreational facilities, social service programs, parks, roads, transportation, street lighting, trash collection, and police protection.
Lending policies and practices	• Less favorable mortgage lending terms from private lenders, such as higher interest rates, for African-Americans or other minority borrowers than are generally available for nonminority borrowers with similar risk characteristics.
Informational programs	• Lack of access to information about the rights and responsibilities associated with fair housing, potentially creating an environment favorable to discriminatory practices.

Source: GAO analysis of 30 current AIs.

We also identified specific examples of each of these four impediments and the grantees' planned actions to address them as described here.

- *Zoning and site selection.* One AI we reviewed, which was prepared on behalf of several grantees by a regional planning unit within a local university, identified some of their established or planned land use policies as potential impediments to fair housing. For example, the AI found that some of the grantees had minimum lot-size requirements for building single-family residences that could limit housing affordability. The AI noted that a 1-acre minimum lot size, for example, would create land costs that would make owning or renting homes on such lots unaffordable to low-income families. Further, the AI noted that some of the grantees were considering requiring that all new homes be constructed of brick, a requirement that could substantially increase construction costs compared with siding and make the homes unaffordable to low-income families. To address these potential impediments, the AI recommended that the grantees (1) ensure that a sufficient portion of their communities were zoned for multifamily construction and that lot sizes for single-family housing were small enough to keep single-family housing affordable and (2) consider the potential impact on housing affordability, including on minority families, before adopting building codes that require all-brick construction.

- *Neighborhood revitalization, municipal and other services, employment-housing transportation linkage.* One AI prepared by a private nonprofit

fair housing organization on behalf of several grantees noted that the area's transportation system was inadequate to service the needs of all residents. The AI concluded that residents who wanted or needed to use public transportation were obliged to limit their residences to the jurisdictions in which their jobs were located even if they wanted to live elsewhere. To address this impediment, the AI recommended that the grantees support a regional transportation system that not only provided services to low- and moderate-income households throughout the area but also met the needs of employers in geographic areas that were not currently served.

- *Lending policies and practices.* An AI for a large county comprising several grantees included a review of data required under the Home Mortgage Disclosure Act (HMDA). [24] The analysis found that mortgage lenders in the jurisdiction denied the applications of upper-income black applicants at a rate that was three times higher than the rate for equally situated white applicants. Further, the AI found that the loan denial rate for Hispanic mortgage applicants was twice as high as that of equally situated white applicants. The AI recommended that the grantees contract with a consultant to prepare and conduct training for mortgage lenders to encourage their voluntary compliance with fair housing laws. Finally, the AI recommended that the grantees continue to monitor HMDA data to determine if the educational programs had a positive effect on loan denial rates for minorities.

- *Fair housing informational programs.* An AI for a county concluded that, because the grantee received few complaints from residents about fair housing, there might be a lack of public knowledge about fair housing rights and responsibilities. The AI suggested that because residents might not be aware of such issues, landlords and others involved in the real estate business could feel that they had more leeway in dealing with potential home buyers and renters. As a result, the AI recommended that

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[24]Pub. L. No. 94-200, title III, 89 Stat. 1125, *codified at* 12 U.S.C. §§ 2801–2810. HMDA requires lending institutions to collect and publicly disclose information about housing loans and applications for such loans, including the loan type and amount, property type, and income level and other characteristics of borrowers (such as ethnicity, race, and sex). All federally insured or regulated banks, credit unions, and savings associations with total assets exceeding $39 million, as of December 31, 2008, with a home or branch office in a metropolitan statistical area that originated any secured home purchase loans or refinancing are required to file HMDA data. Regulation C, 12 C.F.R. §§ 203.3(e)(1), 203.4 (2009); *see also* Home Mortgage Disclosure, 73 *Fed. Reg.* 78616 (Dec. 23, 2008) (establishing an adjustment from $37 million to $39 million). Further, most mortgage lending institutions located in a metropolitan statistical area must file HMDA data. 12 C.F.R. §§ 203.3(e)(2), 204.4 (2009).

the grantee should promote fair housing education through public workshops, presentations at schools and libraries, public service announcements in English and Spanish, and the distribution of fair housing literature at all county facilities and events.

Lack of Time Frames for Implementing Recommendations and the Signatures of Top Elected Officials Raises Questions about the Usefulness of Many Current AIs as Planning Documents

While current AIs may identify a variety of potential impediments to fair housing and strategies to overcome them, questions exist about the status of many such AIs as local planning documents. As part of our review, we found that the 60 current AIs generally included five of the seven key elements in the suggested format for AIs contained in HUD's 1996 fair housing guidance (table 4). Specifically, four of these elements were present in over 55 of the 60 grantees' AIs: jurisdictional background data, evaluation of fair housing legal status, identifications of impediments to fair housing choice, and conclusions and recommendations. The introduction and executive summary were present in 52 of the grantees' AIs. However, we found that only 12 of the AIs included time frames for implementing recommendations for overcoming impediments and that only 8 AIs included the signatures of top elected officials.

Table 4: HUD's Key Elements Represented in 60 Current AIs

Suggested elements to be included in the AI	Number
Introduction and executive summary of the analysis	52
Jurisdictional background data	57
Evaluation of jurisdiction's current fair housing legal status	56
Identification of impediments to fair housing choice	58
Conclusions and recommendations for overcoming impediments	56
Time frames for implementing actions for overcoming impediments	12
Signature page	8

Source: GAO analysis of a subset of 60 randomly selected current AIs.

Note: HUD's 1996 *Fair Housing Planning Guide* suggested format included one other element, description of current public and private fair housing programs and activities in the jurisdiction, which was not included in our review. While the fair housing guidance's suggested AI format does not include time frames for implementing recommendations to address identified impediments, time frames are discussed elsewhere in the guide.

The lack of time frames for implementing proposed actions among a substantial majority—48 of the subset of 60 current AIs we reviewed—is potentially significant. HUD's guidance on including estimated time frames for implementing recommendations is generally consistent with our view that time frames are an important component of effective strategic and

other planning process. Recognizing the importance of specific time frames, officials from one HUD field office we contacted routinely provided technical advisory notices to aid grantees that were preparing or updating their AIs. These notices recommend, among other things, that grantees include benchmarks and timetables for implementing actions in their AIs. In the absence of established time frames in AIs, determining whether grantees are achieving progress in implementing recommendations to overcome identified impediments is difficult.

Further, our finding that 52 of the 60 current AIs did not include the signatures of top elected officials raises questions as to whether the officials endorse the analyses and support suggested actions in the AIs and are accountable for implementing them. These questions may be particularly significant with respect to the 25 AIs identified in table 2 that were prepared by an external party under contract, such as a fair housing group or consultant, rather than by the grantee through one of its agencies. Our review indicates that none of these 25 AIs had been signed by the grantees' top elected officials. While HUD field office officials we contacted said the lack of these signatures did not necessarily mean that the grantees did not plan to implement the actions described in the documents, other HUD officials disagreed. For example, officials from two field offices said that the lack of such signatures suggested that the grantees may not endorse the analysis and recommendations in the AIs. Officials from one of these field offices said that, in the absence of the signature of a top elected official, an AI had little value as a planning document. We note that HUD requires authorizing grantee officials to sign documents that, among other things, certify that their ConPlans identify community development and housing needs, contain specific short- and long-term objectives to address such needs, and certify that the grantee is following its department-approved plan. This is not an uncommon accountability model for compliance-based regulatory structures.[25] Without the signatures of top elected officials, it is not clear that grantees have established plans to identify and address impediments to fair housing within their jurisdictions.

We identified an example of an AI that lacked time frames for addressing impediments and had not been signed by a top elected official and that did not appear to be functioning as an effective planning document. This AI,

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[25]For example, the Sarbanes-Oxley Act of 2002 requires senior officials of public companies to sign a certification that the companies financial statements are correct.

which was prepared under contract by a fair housing group, had 15 specific recommendations, including conducting fair lending "testing" and establishing an effective code enforcement program.[26] We contacted the CDBG representative for this grantee, who said that he believed that the AI contained just two recommendations. The official also stated that, due to other priorities, the grantee had not yet had time to implement either of these two recommendations and did not have immediate plans to do so.

HUD's 2009 study also raises questions about the usefulness of many AIs as planning documents to identify and address potential impediments to fair housing. As discussed previously, this study concluded that many of the AIs in its sample dated from the 1990s, which HUD said indicated that these grantees place a low priority on the documents. According to the HUD study, moreover, many of the AIs reviewed did not conform to the department's guidance and appeared to have been prepared in a cursory fashion. In sum, our findings that many AIs are outdated, may not be prepared as required, or lack time frames and signatures, together with the findings of HUD's study, raise significant questions as to whether the AI is effectively serving as a tool to help ensure that all grantees are committed to identifying and overcoming potential impediments to fair housing choice as required by statutes governing the CDBG and HOME programs and HUD regulations.

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[26]Fair housing testing may involve the use of individuals posing as renters or buyers to determine whether housing providers are complying with fair housing laws.

HUD's Limited Regulatory Requirements and Oversight and Enforcement Approaches May Help Explain Why Many AIs Are Outdated or Contain Other Weaknesses

HUD's AI requirements and oversight and enforcement approaches have significant limitations that likely contribute to our findings that many such documents are outdated or contain other weaknesses. In particular, HUD's regulations have not established standards for updating AIs or the format that they must follow, and grantees are not required to submit their AIs to the department for review. According to HUD's 2009 internal report on AI compliance, and CPD and FHEO officials, the limited regulatory requirements pertaining to AIs and limited resources and competing priorities adversely affect the department's capacity to help ensure the effectiveness of AIs as fair housing planning documents. Moreover, our work involving 10 HUD field offices identified specific instances that illustrate the limitations in the department's AI oversight and enforcement approaches and the need for corrective actions.[27] For example, we found that HUD officials rarely request grantees' AIs during on-site monitoring reviews or receive complaints from the public about such documents, which means that the department often has minimal information about the status of grantees' AIs in terms of their timeliness and content. Conversely, while we identified instances where certain field offices took proactive steps to help ensure the integrity of the AI process, such as one office's efforts to better ensure that grantees update their AIs periodically, these initiatives were not common. Recognizing the limitations in its AI requirements and oversight and enforcement approaches, in 2009, HUD initiated a process to update relevant regulations, but it is not clear what issues any revised regulatory requirements will address or when they will be completed. HUD has also developed plans to address limited staffing resources that may have undermined its capacity to oversee grantees' AIs or implement any new regulatory initiatives, but it is unclear how effective the initiatives will be. We note that some proposals that have been made, such as a requirement that grantees submit their AIs to HUD for review, would not necessarily involve a significant commitment of staff resources and could have important benefits. In the absence of a department-wide initiative to strengthen AI requirements and oversight and enforcement, many grantees may place a low priority on ensuring that their AIs serve as effective planning tools.

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[27]During our review, we interviewed officials from 3 HUD regional offices and 7 field offices. To facilitate the discussion in the report, we use the term "field office" to cover all 10 of the offices we contacted.

HUD Regulations Do Not Establish Standards for the Timeliness of AIs or their Format, and Grantees Are Not Required to Submit Them for the Department's Review

As discussed previously, HUD's regulatory requirements pertaining to AIs are limited. While HUD regulations require grantees to prepare AIs, they do not specify when grantees must update them or the specific format they must follow. Moreover, HUD's regulations do not require grantees to submit their AIs to the department on a routine basis for review to help ensure their effectiveness as a tool to identify and address impediments to fair housing. Instead, pursuant to statutes governing the CDBG and HOME program, grantees are required to annually self-certify by attesting to HUD that they are in compliance with the department's AFFH requirements, including those pertaining to the AI. Specifically, the self-certification, which is generally a one-page document, attests that the grantee has completed an AI, has taken steps to overcome the impediments identified in the AI, and maintains records of its efforts. In general, HUD officials, pursuant to department regulations, are to accept these self-certifications as sufficient evidence that the grantee has an AI and is acting to implement its recommendations.

While HUD does not require grantees to submit their AIs on a routine basis, CPD and FHEO officials, who share AFFH oversight and enforcement responsibilities, use several approaches to monitor their overall compliance with AFFH requirements, including those requirements that pertain to AIs. Specifically, these approaches, while limited, can involve CPD or FHEO officials obtaining grantees' AIs and following up as may be deemed necessary. The following efforts describe how HUD generally carries out these responsibilities:

- *Reviews of grantee reports and plans that, among other things, are to address AFFH compliance.* HUD CPD and FHEO officials are to regularly review documents that grantees annually submit on their overall plans and performance in complying with CDBG and other grant program requirements. For example, at the end of the fiscal year, grantees are required to submit their CAPER to HUD, which discusses their progress in meeting their objectives for the use of CDBG and other grant funds. As part of the CAPER, HUD requires grantees to include a description of actions taken to AFFH. If determined necessary by a HUD reviewer of either the Annual Action Plan or the CAPER, the department could request that a grantee provide its AI for review and analysis.

- *On-site monitoring reviews to assess grantee compliance with HUD requirements, which can include reviews of AFFH documentation, such as AIs.* Under HUD policy, CPD field officials are to conduct a limited number of risk-based, on-site monitoring reviews each year to assess grantees compliance with a variety of CDBG and other grant requirements.

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In some cases, FHEO officials may join CPD officials on these monitoring reviews or conduct independent monitoring reviews. HUD headquarters establishes annual criteria for assessing risk each year and the percentage of on-site monitoring reviews to be conducted. The criteria can include the amount of the CDBG or HOME grant, the amount of time that has passed since the last on-site review, and employee turnover in grantee offices responsible for implementation of CDBG and other grant programs. CPD officials generally were directed to visit at least 10 to 15 percent of the grantees under their jurisdiction annually. As part of these reviews, CPD may request that grantees provide copies of their most recent AIs. CPD staff or FHEO staff may review these AIs and follow up with the grantees where deemed warranted.

- *Reviews as part of a complaint.* HUD may also receive complaints about grantees' AFFH compliance from a range of sources, including individuals, fair housing groups, or federal, state, or local agencies. In conducting investigations in response to such complaints, CPD or FHEO staff may request that grantees provide their AIs as deemed appropriate.

If HUD officials identify concerns with grantees AIs through these processes, they can take several different actions. These actions include

- technical assistance, such as training workshops, to complete an AI;

- a "Special Assurance" document, which HUD may draft in order to outline a number of tasks that a grantee must do to fulfill requirements, including describing actions to overcome the effects of identified impediments, and creating a timetable for accomplishing these actions; these assurances usually are signed by the grantee's chief elected official to signify cooperation; and

- withholding CDBG and HOME funding by disapproving a grantee's ConPlan for failure to comply with requirements, including completion of an AI. According to HUD officials, this action is a last resort and rarely used.

HUD's 2009 Study, CPD and FHEO Officials and Our Work at 10 Field Offices Have Identified Limitations in the Department's Capacity to Help Ensure That AIs Serve as Effective Planning Tools

HUD's 2009 internal study, CPD and FHEO officials in headquarters and field offices, as well as our analysis involving 10 field offices have identified significant limitations in the department's long-standing AI requirements and oversight and enforcement approaches. HUD officials also cited staffing resource constraints as undermining their oversight capacity and ability to implement corrective measures. Regarding HUD's 2009 study, it concluded that the department's limited AI regulatory requirements and oversight processes contributed to the study's findings that many AIs were outdated or otherwise did not conform with the department' 1996 fair housing guidance. To better ensure that grantees conform with HUD guidance, the report suggested requiring grantees to submit their AIs for review and approval. The report noted that, because grantees are not currently required to submit AIs to HUD, a possible first step could simply be to implement a submission requirement. However, the report also noted that HUD would have to dedicate sufficient resources to conduct reviews of AIs and develop appropriate criteria for assessing them. The study suggested that HUD consider both (1) requiring grantees to post their AIs on the Internet and (2) compiling all submitted AIs to be posted online at a single clearing house Web site to enhance transparency and increase public awareness of the documents. Further, the study suggested that HUD update its fair housing guidance and provide additional technical assistance to grantees to help ensure they prepare more effective AIs. For example, the study suggested that HUD assist grantees in obtaining the data necessary to prepare AIs and provide relevant training. However, HUD officials said the department has not yet acted to implement the recommendations in the study.

While HUD has not yet acted on the recommendations in the 2009 internal study, senior headquarters officials cited limited regulatory requirements as adversely affecting oversight efforts. In the absence of specific regulatory requirements, CPD officials said it is difficult for field offices to ensure that grantees update their AIs within specified time frames or conform to a specific format in preparing the documents, including the signatures of top elected officials. In contrast, the CPD staff noted that there are specific regulatory requirements pertaining to grantees ConPlans, Annual Action Plans, and CAPERs, including when these documents must be prepared and what must be included, which facilitates their oversight efforts. Additionally, CPD and FHEO officials in HUD's headquarters cited limited resources and competing regulatory priorities as limiting oversight of grantees' AIs and AFFH compliance generally and potentially posing challenges to any new regulatory initiatives. CPD officials said that obtaining and reviewing grantees' AIs is a low priority for field office staff due to competing demands and limited resources, and

additional resources and technical expertise would be required for staff to review and approve AIs as suggested in the department's internal study.

CPD and FHEO officials from the 10 HUD field offices we contacted also commented about limited AFFH regulatory requirements and oversight approaches. For example, officials from 7 of the 10 field offices told us that because grantees are not required to submit their AIs, verifying whether grantees had AIs or had updated them was difficult. Some field office staff officials also said that, because grantees are not required to submit their AIs, their capacity to assess grantees' overall compliance with AFFH requirements is limited. For example, without requiring grantees to submit their AIs, the officials said that they could not verify whether the potential impediments to fair housing choice that may be cited in other documents, such as the grantees' 5-year ConPlan and CAPERs, were the same impediments listed in their AIs. One field office officials suggested that HUD require grantees to submit their AIs as part of their 5-year consolidated plans to enable them to verify that the two documents were consistent. Officials from several field offices also recommended that HUD revise its regulations to require that AIs meet certain standards for timeliness and completeness, which they said would enhance their abilities to oversee and enforce the program.

Further, CPD and FHEO field office officials agreed with HUD headquarters officials that declining resources and competing priorities had limited their ability to assess grantees' AIs or AFFH compliance generally. Representatives from all of the 10 HUD offices we contacted said that their staff levels had decreased recently while their workload had increased, especially with the implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act).[28] For example, FHEO and CPD officials in several field offices told us that they were losing staff due to retirements and promotions. One FHEO Field Office Director said that it had one official currently available to monitor 54 entitlement grantees' compliance with all relevant statutes and regulations, including those pertaining to AFFH, within the office's jurisdiction. Additionally, CPD and FHEO officials in one office commented that, at one time they had enough staff to regularly send both a CPD and FHEO representative on on-site monitoring reviews, but with staff reductions over the years, they are no

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[28]HUD received over $13 billion dollars in Recovery Act funding, including $1 billion to support projects within the Community Development Block Program which HUD staff must implement and oversee. See Pub. L. No. 111-5, American Recovery and Reinvestment Act of 2009, 123 Stat. 115 (2009).

longer able to continue this practice. Field office officials also stated that work priorities were often shifting, making it difficult for them to consistently focus on one aspect of CDBG and other grant program compliance.

We identified the following specific examples that illustrate how HUD's limited oversight and enforcement program on a nationwide basis may have contributed to many AIs being outdated or not otherwise in full conformance with department guidance, and further support the need for corrective actions to address these limitations:

- *Our review of CAPERs for a group of grantees with outdated AIs raises questions about the value of such reports as a means of assessing AFFH compliance.* As discussed previously, HUD's annual reviews of CAPERs and other required grantee reports are a key means by which department officials assess AFFH compliance in the absence of a requirement that grantees routinely submit their AIs for review. We selected a nongeneralizable sample of 30 grantees with outdated AIs from the 441 grantees that sent us AIs.[29] We requested that HUD provide the most recently available CAPER report for each of these 30 grantees to help us determine what information these reports contain about the grantees' AIs, and the department provided 27 CAPERs. In 17 of the 27 cases, the grantees mentioned that they had an AI but did not specify the AI's date. In such cases, HUD field offices that rely on CAPER reviews to help assess AFFH compliance may not be aware AIs are outdated unless they specifically follow up with the grantee to find out the date of its AI. In 10 cases, the grantees' CAPERs disclosed the date of their AI which, in some cases, was from the 1990s. The extent to which HUD officials identify such disclosures in CAPERs or follow up on them was not clear.

- *Field offices' CPD on-site monitoring programs and complaint review processes provide a limited basis for assessing grantees' AIs and taking follow up actions as may be required.* We obtained data from 7 of the 10 field offices we contacted regarding the number of CPD on-site grantee

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[29]While this subset is not generalizable to all grantees with outdated AIs, we used criteria in drawing it to help ensure that they reflected the diversity seen in the sample of grantees with outdated AIs in our original sample. Specifically, we chose the subset on a weighted geographic basis to help ensure that it included grantees located across HUD's 10 regional offices. We also sought to ensure that the subset reflected grantees in terms of the size of CDBG grants they received in fiscal year 2009. We selected between one and four grantees per HUD region weighted slightly more toward grantees with larger grants since they were more prevalent grantees with AIs completed prior to 2005 in all but two HUD regions.

reviews they conducted in 2009 and the number of times they obtained or reviewed AIs during such monitoring. As table 5 indicates, CPD field office officials reported collecting or reviewing AIs in 17 of the 88 reviews. Moreover, officials from these 7 field offices said they rarely if ever receive public complaints about a grantee's AI. Given the absence of public complaints, which could be due to the fact that there may be a general public unawareness that grantees are required to prepare AIs, the complaint process does not appear to provide a systematic basis for HUD to identify potential limitations in grantees' AIs and follow up with them as necessary.

Table 5: CPD On-site Reviews in 2009 for Selected HUD Field Offices and Number of Times Grantees AIs Were Reviewed or Obtained

HUD office	Number of grantees	Number of CPD on-site grantee monitoring reviews	Number of AI's that are reviewed and/or obtained
Office 1	23	2	0
Office 2	54	32	0
Office 3	21	19	2
Office 4	18	6	2
Office 5	25	3	3
Office 6	29	4	4
Office 7	105	22	6
Total	**275**	**88**	**17**

Source: GAO analysis of CPD monitoring data from seven field offices.

- *Our visits to field offices located in the two HUD regions with the highest incidence of outdated AIs illustrate some of the inherent limitations in the department's oversight and enforcement processes.* According to an FHEO official in one of these offices, historically, it has generally been unaware of the current state of a grantee's AIs, because the grantees did not routinely submit them. In 2010, this official said the field office requested that all of the grantees under its jurisdiction submit their AIs, so that the office could gain a better perspective on the timeliness of the AIs. In one case, the official said that the office learned that a grantee that had been certifying its AFFH compliance for several years did not have an AI. At the other field office, we identified instances where it accepted AFFH certifications under questionable circumstances. For example, in one case, representatives from a grantee told us that they could not find its AI. When we asked field office officials about this circumstance, they said that the grantee had provided a two-page summary of an AI that it completed in 1996. Field office officials said that

they viewed the summary as sufficient evidence that the grantee had completed an AI. Moreover, in distributing CDBG and other grant funds each year, this field office sends routine communications which, among other things, remind grantees to update their AIs periodically. While this is a potentially positive step, the field office does not appear to take any additional steps to ensure that AIs are not outdated. For example, we identified at least one grantee subject to the field office's jurisdiction that has received such communications for four consecutive years, but its AI was prepared in the 1990s.

While our analysis generally verified that there are limitations in HUD's overall AI oversight and enforcement approaches that require corrective action, we identified practices in certain field offices that appear designed to better ensure that AIs are effective planning documents and that grantees fulfill overall AFFH requirements. As discussed previously, in 2010, one HUD field office we contacted independently requested that all grantees within its jurisdiction provide their AIs for review, which allowed FHEO officials to determine that many such AIs were outdated, and one grantee did not have an AI. In another example, officials from one field office said that they maintain ongoing communications with grantees to, among other things, determine the date they completed their AIs. In cases where an AI is determined to be outdated, officials told us that they work closely with the grantee through technical assistance to bring the AI up to date. We corroborated the field office's assertion by reviewing the AIs we received from grantees under its jurisdiction and found that all of the grantees had sent us updated AIs. Another field office has established procedures to use special assurance agreements, which were discussed previously, to help ensure that grantees revise AIs that may have identified deficiencies. However, these initiatives by individual field offices appear to be isolated examples within HUD's general approach to AI and AFFH oversight, which provides limited assurances that AIs serve as effective planning tools to identify and address impediments to fair housing.

HUD Has Taken Steps to Begin to Address Regulatory, Oversight, and Resource Limitations, but These Efforts Are Ongoing

Recognizing the limitations in AI and AFFH requirements and its oversight processes, in 2009, HUD initiated a process to review and revise its existing regulations. In 2009, HUD officials held several "listening sessions" with key stakeholders, such as grantees and fair housing groups, to help identify approaches to enhance the AI and AFFH processes. In January 2010, HUD's Assistant Secretary for Fair Housing and Equal Opportunity testified that the department was working on a proposed

regulation to enhance AFFH compliance.[30] According to a senior HUD attorney, revising the AFFH regulation is a priority for HUD, and the proposed rule may cover a variety of topics, including enhancements to the guidance provided to grantees on preparing AIs and improvements in the department's oversight and enforcement approaches. However, until the rule is proposed, it is not clear what topics it will address. The HUD attorney also said that the department's tentative time frame for publishing a proposed rule to revise AFFH requirements is in December of 2010. However, the attorney also said that this proposed time frame had not been finalized and was subject to change.

HUD has also established initiatives to help address staffing limitations that, as discussed previously, may have affected its overall CDBG and other grant program oversight and enforcement approaches, including those pertaining to AIs and AFFH requirements, as well as its capacity to implement any new regulatory initiatives. For example, on March 26, 2010, the HUD Secretary sent out a memorandum on the agency's Targeted Recruitment Strategy for fiscal years 2010-2012. In this document, the Secretary described a strategy for addressing HUD's need to identify qualified individuals for its talent pipeline over the next three fiscal years. The Secretary stated that this strategy would incorporate the utilization of various federal programs that are designed to recruit and retain students to positions in the federal government, such as the Presidential Management Fellows Program, the Student Career Experience Program; and the Student Temporary Employment Program. During our review, a CPD official said that the office recently announced a buyout for certain officials and that CPD was "moving more aggressively to recruit and hire approximately 50 new employees in the next 3 months with the skills to provide grant oversight, assess grantee and community needs," among other activities.

While the effects of these plans and initiatives remain to be seen, we note that some of the proposals to enhance HUD's AI and AFFH oversight and enforcement approaches would not necessarily involve a significant commitment of additional staff resources. In particular, requiring grantees to submit their AIs for review, without necessarily approving them, would allow CPD and FHEO officials to perform a variety of basic tasks to better

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[30]John D. Transvina, 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.

ensure their quality. These tasks could include verifying whether AIs (1) have been prepared as required, (2) updated in accordance with HUD guidance, (3) include all elements suggested in the 1996 fair housing guidance, and (4) are consistent with AFFH discussions in other key documents, particularly CAPERs. If HUD officials identified any areas of concern with grantees' AIs through such analysis, they could follow up as necessary, through technical assistance, enforcement actions, or other activities as may be necessary, to better ensure that AI serve as effective tools to identify and overcome impediments to fair housing. Moreover, the resource demands could also be mitigated if grantees submitted their AIs on a periodic basis over a period of time rather than all at once within a specified period.

Conclusions

While HUD regulations have required the preparation of AIs for many years, whether they serve as an effective tool for grantees that receive federal funds through the CDBG and other programs to identify and address impediments to fair housing within their jurisdictions is unclear. We estimate that 29 percent of all AIs are outdated, including 11 percent that were prepared in the 1990s. Given that many AIs are outdated, they do not likely serve as effective planning documents to identify and address current potential impediments to fair housing choice. Moreover, some grantees may not prepare AIs, and others sent us cursory documentation as their AIs which, on the basis of their content, do not appear to be AIs. While we estimate that 64 percent of grantees have prepared current AIs, the usefulness of many such AIs as planning documents is uncertain. Our review of a subset of 60 current AIs indicates that, while many of them identify potential impediments to fair housing choice and contain recommendations to overcome them, the vast majority also lack time frames for implementing identified recommendations or the signatures of top elected officials, both of which are necessary to establish clear accountability to carrying out the AFFH intent. Without time frames, judging a grantees' progress in overcoming identified impediments is difficult and, without the signatures of top elected officials, determining whether responsible officials endorse the recommendations in the AIs and are accountable for ensuring their implementation is unclear. Absent any changes in the AI process, they will likely continue to add limited value going forward in terms of eliminating potential impediments to fair housing that may exist across the country.

HUD's limited approach to establishing AI regulatory requirements, and its limited oversight and enforcement approaches, may help explain the various weaknesses in the documents that we have identified. Beyond

requiring grantees to prepare AIs, and certify annually that they have done so and are addressing identified impediments, HUD requirements with respect to AIs are minimal. Specifically, grantees are not required through regulation to update their AIs periodically, include certain information, follow a specific format in preparing AIs, or submit them to HUD for review. These limitations are not new or unknown to HUD officials, yet little progress has been made to address them. While HUD officials said that the department is working on a regulation to enhance grantees' compliance with AFFH requirements since 2009, what the regulation will ultimately entail, or when it will be completed is unclear. In the meantime, grantees will continue to have considerable flexibility in determining when to update their AIs and what information to include in them, which could lead to continued weaknesses in these fair housing planning documents.

We recognize that HUD faces resource challenges and competing priorities in carrying out its overall CDBG and other grant program responsibilities, including those pertaining to AFFH and AIs. However, depending on how any changes are structured, resources could be better leveraged to provide more coverage for overseeing grantees. For example, while HUD officials expressed concerns about the resources and technical expertise necessary to approve AIs, a grantee submission requirement itself could have several significant benefits without necessarily involving a significant commitment of staff resources. Specifically, a submission requirement could allow HUD staff to verify basic items, such as whether grantees have prepared AIs as required, and whether such AIs have been updated and conform to an established format, and are consistent with other critical reports, such as CAPERs. Moreover, a submission requirement would provide enhanced incentives for grantees to better ensure that their AIs serve as effective planning tools to identify potential impediments to fair housing and to overcome them. Failure to require that grantees submit their AIs on a regular basis will likely continue to result in many grantees not updating the documents in a timely manner or adhering to any guidance or requirements.

Recommendations for Executive Action

To better ensure that grantees' AIs serve as an effective tool for grantees to identify and address impediments to fair housing, we recommend that HUD expeditiously complete its new regulation pertaining to the AFFH requirements. In so doing, we also recommend that HUD address three existing limitations. First, we recommend that HUD establish standards for grantees to follow in updating their AIs and the format that they should follow in preparing the documents. Second, to facilitate efforts to measure grantees' progress in addressing identified impediments to fair housing

and to help ensure transparency and accountability, we recommend, as part of the AI format, HUD require grantees to include time frames for implementing recommendations and the signatures of responsible officials. And finally, we recommend HUD require, at a minimum, that grantees submit their AIs to the department on a routine basis and that HUD staff verify the timeliness of the documents, determine whether they adhere to established format requirements, assess the progress that grantees are achieving in addressing identified impediments, and help ensure the consistency between the AIs and other required grantee reports, such as the CAPERs.

Agency Comments and Our Evaluation

We provided a draft of this report to HUD for its review and comment. We received written comments from HUD's Assistant Secretary for Fair Housing and Equal Opportunity, which are reprinted in appendix II. HUD also provided technical comments, which we have incorporated as appropriate.

In its written comments, HUD highlighted its recent actions to affirmatively further fair housing. Among the recent initiatives to enhance its AFFH compliance and oversight cited in HUD's written comments were the following:

- *HUD's renewed commitment to AFFH.* In fiscal year 2010, HUD said it had strengthened and clarified the AFFH requirements for grantees that are not specifically exempt in the FY 2010 Notice of Funding Availability and General Section. According to HUD, to meet this requirement, applicants for funding through these programs must now address how their proposed activities will help overcome impediments to fair housing choice as outlined in relevant AIs. HUD stated that by establishing AFFH as a policy priority within HUD's discretionary funding programs, will allow the department to encourage grantees to undertake comprehensive and innovative strategies to affirmatively further fair housing. For example, HUD may take steps to reward grantees for participating in regional efforts to promote integration or decreasing the concentration of poverty.

- *Increasing the level of AFFH review and technical assistance.* According to HUD, since the beginning of fiscal year 2010, FHEO regional and field offices have increased the level review of grantee's AIs within their jurisdictions. The letter also stated that some offices have requested grantees to submit their AIs whereas other offices are doing so on a risk basis. Moreover, HUD stated that, since January 2010, it has increased its training of grantees regarding their AFFH compliance requirement. This

training covers the AI and the importance of its completion, what information should be included in the AI including race and ethnicity data, who should complete the AI, the consequences of not completing the AI, and how to report fair housing activities.

- *Improving HUD's capacity for monitoring and enforcing AFFH compliance.* HUD stated that it is exploring ways to find greater efficiencies and reduce staff time spent on routine administrative matters and to dedicate more time to AFFH oversight. This is to include additional training for HUD on AFFH oversight. Specifically, HUD said it is designing training at its National Fair Housing Academy on reviewing submissions to better ensure consistent and valid review criteria. HUD said it is also developing uniform standards for its staff of review of grantees' Annual Action Plans and Consolidated Plans for compliance with AFFH certifications.

While we commend HUD for recognizing the need to take steps to improve its oversight of AFFH compliance, many of the key challenges we found in our report do not appear to be addressed by its current plans. Specifically, we note that HUD did not address the status of its planned AFFH rulemaking efforts, including standards for grantees to follow in updating their AIs and the format that they should follow in preparing the documents, such as including the time frames for implementing recommendations and the signature of responsible officials. Further, HUD did not discuss any plans to require, at a minimum, that grantees submit their AIs to the department on a routine basis to help ensure grantees compliance with requirements and guidance pertaining to these documents. In the absence of such regulatory requirements, the usefulness of requiring AIs as a tool to affirmatively further fair housing is diminished.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees, to the Secretary of Housing and Urban Development, and other interested parties. The report also will be available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staff members have any questions regarding this report, please contact me at (202) 512-8678 or williamso@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix III.

Orice Williams Brown
Director, Financial Markets
    and Community Investment

List of Congressional Requesters

The Honorable Barney Frank
Chairman
Committee on Financial Services
House of Representatives

The Honorable Melvin L. Watt
Chairman
Subcommittee on Domestic Monetary Policy and Technology
Committee on Financial Services
House of Representatives

The Honorable Luis V. Gutierrez
Chairman
Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services
House of Representatives

The Honorable Maxine Waters
Chairwoman
Subcommittee on Housing and Community Opportunity
Committee on Financial Services
House of Representatives

The Honorable Gregory W. Meeks
Chairman
Subcommittee on International Monetary Policy and Trade
Committee on Financial Services
House of Representatives

The Honorable Dennis Moore
Chairman
Subcommittee on Oversight and Investigations
Committee on Financial Services
House of Representatives

The Honorable Joe Baca
The Honorable Michael E. Capuano
The Honorable André Carson
The Honorable Emanuel Cleaver
The Honorable Keith Ellison
The Honorable Al Green

The Honorable Rubén Hinojosa
The Honorable Paul W. Hodes
The Honorable Carolyn B. Maloney
The Honorable Carolyn McCarthy
The Honorable Gwen Moore
House of Representatives

Appendix I: Objectives, Scope, and Methodology

The objectives of our report are to (1) assesses both the conformance of Community Development Block Grant (CDBG) and HOME Investment Partnerships Program (HOME) grantees' Analysis of Impediments (AI) with Department of Housing and Urban Development (HUD) guidance pertaining to their timeliness and content as well as the AIs' potential usefulness as fair housing planning tools and (2) identify factors that may help explain any potential weaknesses in grantees AIs, particularly factors related to HUD's regulatory requirements and oversight and enforcement approaches.

To address the first objective, we made a document request of a representative sample of CDBG and HOME grantees asking that they submit their most recent AI to us. Although there are four HUD formula grant programs to which the AFFH documentation requirements apply, our work focused on CDBG and HOME, the two largest of such programs as measured by grant amount.

Prior to launching the AI document request, we obtained contact information on CDBG and HOME grantees from HUD's fiscal year 2009 CDBG program contacts Web site.[1] We verified that the most up-to-date contact information was the HUD's Office of Community Planning and Development (CPD) Community Connections, the clearinghouse of information for CPD. From the total population of 1,209 fiscal year 2009 program participants on HUD's Web site, which includes all 1,209 CDBG grantees and 97 percent (634 of 650) of all HOME grantees, we selected a random sample of 473 CDBG and HOME grantees.[2] Using a two-way stratification, we stratified the population by HUD's 10 regions and grantee's grant size (less than $500,000 and $500,000 or more). We independently selected a random sample of 48 grantees from each of 10 HUD regions (with the exception of Region VII where there were only 41 grantees in the population).

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[1]U.S. Department of Housing and Urban Development, Community Development Block Grant, http://www.comcon.org/programs/contact_cdbg.html, accessed in November 2009.

[2]There were originally 1,209 CDBG and HOME grantees in the population. We chose a representative sample of 473 grantees from this population. However, HUD later informed us that 7 of the 473 grantees in our sample did not need to prepare an AI for various reasons (e.g., the jurisdiction was no longer a CDBG program participant). Because we can assume that the 7 out-of-scope grantees discovered in our sample represent an even larger number in the population, we estimated a new population count at the stratum level based on the number of out-of-scope grantees and the number of grantees sampled. Using this estimate, we adjusted the universe of CDBG and HOME grantees from 1,209 to 1,190.

In January 2010, we sent out an initial e-mail to all 473 identified officials
and requested that grantees provide their most recent AIs to us. To ensure
a high response rate, we e-mailed follow-up requests to nonrespondents
approximately 2 and 4 weeks after the initial e-mail. As a result of this
follow-up, we learned that 7 grantees in our initial sample were out of the
scope of our study and subsequently excluded them, thereby reducing our
sample to 466 grantees.[3] We then conducted intensive follow up with the
remaining nonrespondents, making repeated attempts to acquire the
requested AIs through multiple phone calls and e-mails conducted by
contractors hired specifically for this phase of the document request
effort. Despite repeated attempts to follow up with nonrespondents, 25
grantees did not submit an AI (see table 6 for rationales provided by
officials from these 25 grantees).

Table 6: Reasons Grantees Offered for Not Sending AIs to GAO

Reason cited for not sending GAO an AI	Number of grantees
Could not find the AI	2
Never prepared an AI	1
In the process of developing an AI	2
Regional HUD Office has the AI, and the grantee's office did not	1
Claimed to have sent an AI, but we have not yet received it to date	8
Asked us to call back but did not send us an AI	2
Wrong grantee contact information	4
Grantees did not respond to phone calls and e-mails over a 2-month period	5
Total	**25**

Source: GAO analysis of grantees' response to our request for their AIs.

Upon conclusion of the document request effort, we received AIs from 441
grantees for a response rate of 95 percent.[4] Following is a summary of
information from which we obtained the response rate:

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[3]Excluded grantees were considered out-of-scope if they were either not CDBG program
grantees or it was determined that they did not need to produce an AI.

[4]Based on the number of jurisdictions in our starting sample, the raw response rate was 93
percent. We later determined that seven jurisdictions did not need to prepare an AI for
various reasons, including that they were no longer participants in the CDBG program.
Eliminating these jurisdictions reduced the sample size from 473 to 466 and resulted in an
adjusted response rate of 95 percent.

- Total population of AI: 1,209

- Sample size: 473

- Number of nonrespondents: 25

- Out-of-scope respondents: 7

- Estimated in-scope total population: 1,190

- In-scope respondents: 441

- Response rate: 94.6 percent.

  We conducted this AI request from January to March 2010.

Analysis of Sample of 441 AIs from CDBG/HOME Grantees

To estimate the percentage of grantees with outdated and current AIs, the sample data were weighted to make them representative of the population of grantees from which the sample is drawn. Our sample is stratified by region (10 HUD regions) and grant size (less than $500,000 and $500,000 or more in fiscal year 2009), with equal numbers of grantees being selected from each of 10 HUD regions.[5] Since in our sample the probability of a grantee being selected varied by stratum, we assigned different weights, or sampling weights, to grantees in different strata when estimating population statistics (percentages) for the combined groups.[6]

[5]We independently selected a random sample of 48 grantees from each of 10 HUD regions (with the exception of Region VII where there were only 41 grantees in population).

[6]We calculated the weights as:

$$w_h = \frac{N_h}{n_h}$$

where, wh denotes the weight for the stratum (h=1, 2, …,20); Nh denotes the population for the hth stratum; and nh denotes the total number of survey responses for the hth stratum. We calculated the ratio estimate of the overall population as:

$$R = (\Sigma_h w_h \Sigma_i y_{hi}) / (\Sigma_h w_h \Sigma_i x_{hi})$$

where, wh denotes the sample weight for the hth stratum; yhi represents the ith response of the variable y response the in the hth stratum; xhi represents the ith response of the variable x in the hth stratum; and R denotes a population estimate of the ratio.

To assess the precision of our estimates, we calculated 95 percent confidence intervals for each measure.[7] Calculated from sample data, a confidence interval gives an estimated range of values that is likely to include the true measure of the population. For the estimated percentage of outdated AIs, we calculated a lower and upper bound at the 95 percent confidence level (there is a 95 percent probability that the actual percentage falls within the lower and upper bounds) of grantees by HUD region and by grant size category using raw data and the appropriate sampling weights.[8] We used the standard errors of the estimates to calculate whether any differences between the grantees by region and grant size were statistically significant at the 95 percent confidence level.

To evaluate the timeliness of AIs, we relied on HUD criteria, including the 1996, 2000, and 2004 guidance that recommended that they be updated every 3 to 5 years, and annually as necessary, and the findings of a 2009 internal HUD study on AI compliance, which concluded that AIs completed in the 1990s are outdated. Specifically, using a data collection instrument (DCI), we systematically noted the publication dates of all 441 AIs and also noted if no date was mentioned in the AI. We also collected information on the author's name, if available, and the number of pages. Based on this, we categorized 64 percent AIs as current.

Analysis of Sample of 60 Current AIs

Further, to gain more information on the contents of AIs categorized as current (AIs completed from 2005 through 2010), we reviewed a nonrepresentative subset of 60 current AIs to determine the extent to which they contained sections that the HUD guidance suggests to include in AIs: (1) executive summary/introduction, (2) grantee's background data, (3) current fair housing legal status, (4) identified impediments, (5) recommendations, (6) time frames, and (7) signatures by chief elected officials. We chose the subset on a weighted geographic basis to ensure

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[7]Since our estimates were calculated from a stratified sample, we obtained the 95 percent confidence intervals of our population estimates by using methods detailed in: W.G. Cochran, *Sampling Techniques*, 3rd ed., Wiley Series in Probability and Mathematical Statistics, section 5.4 (New York, N.Y.: John Wiley & Sons, 1977), 95-96 and in: M.H. Hansen, W.N. Hurwitz, and W.G. Madow, *Sample Survey Methods and Theory*, *Methods and Applications*, Wiley Publications in Statistics, section 5.4 (New York, N.Y.: John Wiley & Sons, Inc., 1953), 1: 189-194.

[8]All regional estimates for percentage of outdated AIs reported from the survey results have a margin of error within plus and minus 15 percentage points at the 95 percent confidence level.

that it was reflective of the geographic distribution of the current AIs and reflected grantees in terms of the distribution of fiscal year 2009 grant sizes within region. We selected between five and seven grantees per HUD region weighted slightly more toward grantees with larger grants because they were more prevalent among the grantees with current AIs. As such, per region, we selected between one and three grantees with grant sizes less than $500,000 in fiscal year 2009 and between three and four grantees with grant sizes of $500,000 or more. While we took steps to help ensure that the 60 current AIs were reflective of the diversity in content in such documents by basing the selection on such factors as the grantees' geographic location and grant size, they are not representative of either all current AIs in our sample or of all current AIs generally.

Analysis of Sample of 30 Current AIs

Finally, we reviewed 30 of the nonrepresentative subset of 60 current AIs to identify the types of potential impediments to fair housing choice that are commonly identified in such documents and to provide specific examples of such impediments. We selected a subset of 30 of the 60 current AIs and restricted our analysis to impediments summarized only in one of three possible sections of the AI: introduction, executive summary, or conclusion. To generate the sample of 30 current AIs from the larger subset of 60, we selected 3 current AIs from each region, 1 from small grantees (fiscal year 2009 grant amounts of less than $500,000), and 2 from large grantees since this weighting is reflective both of the overall distribution of grantees and of those with current AIs in which large grantees are more prevalent. During the course of our analysis, 5 of the original 30 were replaced with AIs from other similar grantees (based on regions and grant size) from the subset of 60 AIs because they did not list impediments in any of the three sections. While we took steps to ensure that these 30 AIs were reflective of the diversity of the population of such documents, they are not representative of current AIs in our sample or of all AIs.

Qualitative analyses were conducted to identify and code impediments listed in the 30 AIs. One GAO analyst identified the impediments described in either the introduction, executive summary, or conclusion of the AI and coded them from 1 to 13 using the types of possible impediments to fair housing choice described in HUD's 1996 *Fair Housing Planning Guide.* A second analyst independently verified them by reviewing the codes assigned by the first reviewer and then either indicating agreement with the first reviewer's codes or assigning a different code for later discussion with the first reviewer. If disagreements occurred, the GAO analysts discussed their differences and came to an agreement. Each AI contained

a list of multiple impediments that were usually coded into one category each. Sometimes, however, individual impediments were coded into more than one category or multiple impediments within one AI were coded into the same category.

Then, we compared the findings of our analysis of AIs' timeliness and assessment of the contents of AIs categorized as current with the results of HUD's 2009 AI study. We interviewed HUD officials from both headquarters and 10 field offices to gather their views on grantee's compliance to the affirmatively further fair housing (AFFH) requirement.

To address the second objective, we reviewed and analyzed HUD's policies, procedures, and guidance for overseeing and enforcing the AFFH requirement, particularly pertaining to AIs, as well as gathering information on staff resource levels for doing this. We gathered information from select field offices on how they interpret and implement existing AFFH regulations and guidance and conducted a limited review of annual reports that are required by grantees for submission to HUD. Additionally, we obtained and reviewed data from 7 of the 10 field offices we contacted on the number of times CPD staff obtained and/or reviewed AIs during on-site grantee monitoring reviews in 2009. The other 3 field offices did not provide the data as requested.

To assess the extent to which HUD's general processes are sufficient in their design and implementation to help ensure grantees' compliance with AFFH documentation requirements, we reviewed the 2009 internal HUD study on AI compliance and oversight, obtained a senior HUD official's public testimony on the issue, and interviewed HUD officials at the HUD headquarters and officials in 3 of 10 regional offices and 7 of 81 field offices. We selected offices in a way that emphasized geographic diversity and the representation of jurisdictions with a large number of grantees or at greater risk of noncompliance as measured by the estimated incidence of grantees having submitted outdated or no AIs. During these site visits, we conducted a file review of compliance documents for grantees that were on file and met with several officials to discuss current enforcement and oversight activities, as well as the potential limitations to enforcing and overseeing AFFH activities.

Analysis of Sample of 30 CAPERS from Grantees with Outdated AIs

To assess the usefulness of required AFFH documents for supervising grantee compliance for objective 2, we reviewed other required AFFH documents including 30 Consolidated Annual Performance and Evaluation Reports (CAPER) that grantees are required to submit annually to lay out

grantees' progress in meeting their objectives for the use of CDBG and other funds. The purpose of the limited CAPER review was to determine the extent to which the CAPER included information about the status of the AI document, including the AI date, if any, the depth of discussion regarding the AI in the CAPER, and other information related to the timeliness of the AI. Specifically, we randomly drew a nongeneralizable sample of 30 grantees from the subset of 71 outdated AIs completed prior to 2003 in the original sample of 473 grantees and contacted HUD to obtain the latest CAPER for these 30 grantees.[9] The subset was chosen on a weighted geographic basis to reflect the 10 HUD regions and size of CDBG/HOME grants received in fiscal year 2009. Between 1 and 4 AIs were selected from each region with slightly more from grantees with large awards ($500,000 or more) since these were more prevalent in the original sample and in the subset of outdated AIs. GAO has previously reported on internal control standards, as well as HUD's oversight of the CDBG program and federal fair lending. We consulted these reports as necessary to draw conclusions about HUD's AFFH oversight program.

We conducted this performance audit from October 2009 to September 2010, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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[9]By using 2003 instead of 2005 as cutoff, we are applying a more stringent definition of "outdated" than previously as a way of targeting grantees that likely relied on demographic data that were 20 years old (e.g., 1990 census data).

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

ASSISTANT SECRETARY FOR
FAIR HOUSING AND EQUAL OPPORTUNITY

SEP 0 3 2010

Orice Williams
Director, Financial Markets and
  Community Investments
U.S. General Accounting Office
Washington, DC 20548

Re: HUD Response to GAO Draft Audit Report No. 250496

Dear Ms. Williams,

The U.S. Department of Housing and Urban Development appreciates the Government Accountability Office's (GAO's) attention to the Department's Affirmatively Furthering Fair Housing (AFFH) mission and welcomes this opportunity to comment on GAO's "Review of Grantee Compliance and HUD Enforcement of AFFH Requirements."

The Department's statutory responsibility to affirmatively further fair housing is an important civil rights authority intended to address years of racial discrimination and the legacy of segregation. HUD is committed to providing effective training, assistance, oversight, and enforcement to ensure that all recipients carry out their responsibility to affirmatively further fair housing.

HUD's Renewed Commitment to AFFH

We have made significant changes to ensure that communities receiving HUD funds are affirmatively furthering fair housing. This year, through HUD's Fiscal Year 2010 Notice of Funding Availability and General Section (General Section), the Department strengthened and clarified the AFFH requirement for any grantee not specifically exempted. To meet this requirement, an applicant for HUD funding must address how its proposed activities will help overcome impediments to fair housing choice that are identified in the "Analysis of Impediments to Fair Housing Choice" (AI) produced by the state and/or local government(s) in which the program activities occur, the effects of those impediments, and any other impediments in housing or urban development activities that the applicant identifies. In addition, the applicant must address at least one of the following objectives: (1) help overcome any impediments to fair housing choice related to the assisted program or activity itself; (2) promote racially, ethnically, and socioeconomically diverse communities; or (3) promote housing-related opportunities that

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overcome the effects of past discrimination because of race, color, national origin, religion, sex, disability, and familial status.

Through the General Section, the Department also has made AFFH a "policy priority" within HUD discretionary funding programs. This will allow the Department to encourage grantees to undertake comprehensive and innovative strategies to affirmatively further fair housing. Specifically, HUD may award additional points to applicants for certain competitive grants that engage in activities that go beyond the minimum affirmatively furthering fair housing requirements and undertake activities such as participating in regional strategies to promote integration, decreasing the concentration of poverty, and promoting visitability for persons with disabilities.

Increased Review and Technical Assistance for AFFH Compliance

Since the start of FY2010, FHEO regional and field offices have increased the level of review of recipients' AIs within their jurisdictions. Some offices are requesting and reviewing AIs as part of their assessment of the FY2010 Consolidated Plans, Annual Action Plans and Consolidated Annual Performance Evaluations Reports (CAPERs). Others offices are selecting AIs of recipients with a higher risk under our internal risk assessment protocol. This fiscal year, the Department has reviewed the AIs of <u>more than 300 recipient jurisdictions</u>.

Similar to GAO, we have found that many of these AIs are out of date or insufficient. We are educating recipients on how to comply with their affirmatively furthering fair housing responsibilities. Since January of this year, the Department has increased its training of recipients concerning compliance with the requirement to affirmatively further fair housing. The training covers the AI and the importance of its completion; what information should be included in the AI, including race and ethnicity data and data regarding other protected classes; who should participate in creating the AI; the consequences of not completing the AI; and how to report fair housing activities.

In addition to group training, the Department has provided technical assistance to all types of jurisdictions that receive HUD funding, including cities, counties, and states. There are times when education and technical assistance are not enough and the Department has used enforcement and other actions to bring recipients into compliance with their affirmatively furthering fair housing responsibilities. In this regard, in accordance with program requirements, the Department also has required recipients to provide further assurances, including a commitment to provide an updated, more comprehensive AI, in order for HUD to accept their certification that they will affirmatively further fair housing. Certifying to affirmatively further fair housing is a requirement for the receipt of certain HUD funds.

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AI monitoring also is incorporated into HUD monitoring handbooks and checklists used for grantee compliance monitoring by the Office of Community Planning and Development (CPD). See, for example, the Community Planning and Development Monitoring Handbook, HUD Handbook 6509.2 REV-6, Chapter 22, and the AI monitoring checklists contained in Community Planning and Development Monitoring Handbook Exhibits 22-1, 22-2, and 22-3.

Improving HUD's Capacity for Monitoring and Enforcing AFFH Compliance

As detailed in the GAO Report, we are striving to better use our existing resources to promote and enhance compliance with the AFFH requirement. We have identified areas where we can target activities in order to maximize the effect of our civil rights statutes. We are exploring where we can find greater efficiencies and reduce staff time on routine or administrative matters so that more time can be dedicated to affirmatively furthering fair housing.

To strengthen staff skills, we are making investments in the capacity of staff in relation to affirmatively furthering fair housing. At HUD's National Fair Housing Training Academy, we are designing training for staff on reviewing submissions to ensure consistent and valid review criteria. To assist in the review of Annual Action Plans and Consolidated Plans for compliance with the AFFH certifications, we are developing uniform standards of review for use by all FHEO staff. This will streamline the assessment of recipients and indicate the appropriate remedy for any deficiency found.

We will also enhance compliance reviews of recipients of HUD funding under various civil rights authorities, including Title VI and Section 504 of the Rehabilitation Act of 1973, to include considerations of whether those recipients are furthering fair housing. We will strategically use our authority to review a variety of recipients and maximize the effect of each review. We believe these reviews will send a clear message to all funded recipients that HUD takes its and their AFFH obligations seriously.

Again, we appreciate the opportunity to comment on the draft report. Should you or your staff have any questions or require additional information please contact Janet Hostetler at (202) 708-4252.

Sincerely,

John Trasviña
Assistant Secretary

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Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

In addition to the individual named above, Wesley Phillips, Assistant Director; Farah B. Angersola; Emily Chalmers; William Chatlos; Jennifer Cheung; Pamela Davidson; Laurie Ellington; Delores Hemsley; Simin Ho; Fred Jimenez; Reginald Jones; John McGrail; Mark Molino; and Dae Park made significant contributions to this report.