

**PERSISTENT IMPEDIMENTS AND THE
GEOGRAPHY OF “AFFIRMATIVELY FURTHERING” FAIR HOUSING:
THE CASE OF ERIE COUNTY, NEW YORK**

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“I am happy to inform all of the people living their Suburban Lifestyle Dream that you will no longer be bothered or financially hurt by having low-income housing built in your neighborhood... Your housing prices will go up based on the market, and crime will go down. I have rescinded the Obama-Biden AFFH Rule. Enjoy!” Donald Trump, tweet, July 29, 2020.

ABSTRACT: *Despite the passage of the Fair Housing Act in 1968, segregation and discrimination remain key characteristics of the American housing system. The Act sought to reverse decades of private and public sector policies that contributed to segregated neighborhoods and the exclusion of protected classes from equal access to housing. Under the Act, communities receiving funds from US Department of Housing and Urban Development (HUD) are required to “affirmatively further fair housing” (AFFH). This paper examines the AFFH mandate as operationalized by HUD grantees in Erie County, NY, by evaluating six Analysis of Impediments (AI) to Fair Housing reports prepared from 2004 to 2020 across various grantee geographies. Grantees were required to conduct an AI to identify public and private sector policies, regulations, and actions that represented barriers to accessing fair housing and develop actions to overcome them. This paper finds that in Erie County, the AI was an effective tool for identifying impediments across time and space. However, this paper also finds that the AI was not an effective tool for enforcement of recommended proposed actions to overcome the identified impediments. Finally, the paper concludes that the fragmented geography of multiple municipal grantees within Erie County is likely a contributing factor to the persistence of policies and practices that maintain racial segregation and concentrated poverty in Erie County. At a time when HUD is rewriting the regulatory AFFH framework, it can learn from the shortcomings of the AI in Erie County to make new fair housing planning mechanisms more effective.*

Keywords: *fair housing, analysis of impediments, segregation, affordable housing*

AFFIRMATIVELY FURTHERING FAIR HOUSING

Extensive research has documented how discriminatory public and private practices have created, embedded, and exacerbated segregation and concentrated poverty in the American housing system (Ondrich, Ross, and Yinger 2001; Kaplan and Valls 2007; Murchie and Pang 2018). One commonly cited policy is redlining, a process whereby lending institutions denied mortgages to potential borrowers who sought homes in neighborhoods classified as “hazardous” on maps created by the Home Ownership Loan Corporation (HOLC) in the 1930s (Rothstein 2017). “Hazardous” neighborhoods generally had the largest share of racial and ethnic minorities in a given region, resulting

in limited capital reinvestment in those spaces while embedding racial segregation. Empirically, the vast majority of mortgage insurance issued by the Federal Housing Administration, and later Veterans Administration, insured white households. This was supported by explicit and legal discrimination by mortgage underwriting criteria, which contributed to significant outmigration of white households from city centers to the suburbs (Aaronson, Hartley, and Mazumder 2021). Locally, municipalities across the country adopted exclusionary zoning laws, which remain a key tool to exclude low-income households from suburban communities (Whittemore 2021).

Numerous discriminatory practices in banking and real estate reinforced the government's segregative impact. Developers of suburban housing often used racially restrictive covenants that only permitted homes to be sold or resold to white owners (Gotham 2000). Real estate agents routinely steered Black households to homes to buy and rent only in Black neighborhoods, refusing to show them units in white neighborhoods (Galster 1990).

Collectively, these practices and regulatory systems across the public and private sectors formed the foundation upon which racial and ethnic segregation and the concentration of poverty was built in American cities in the post-World War II era. Restated more simply: housing was the medium through which the spatial ordering of race and income was operationalized.

Responding to these practices, Congress enacted the Fair Housing Act on April 11, 1968 (Fair Housing Act, 1968), just days after the assassination of civil rights leader Dr. Martin Luther King Jr., a vociferous opponent of racial discrimination and segregation. The Act was grounded in two foundational principles, "prohibiting discrimination on the basis of race (and other protected classes) and promoting racial integration as a positive social good" (Gurian and Allen 2010). The Act's first principle, commonly known as the non-discrimination objective, placed prohibitions on discriminated based on race, ethnicity, religion, and national origin (and subsequently sex, familial status, and disability status). The Act's second principle, commonly known as the non-segregation objective, is less well known.

Affirmatively Furthering Fair Housing

A lesser-known provision of the Fair Housing Act is the requirement that, "All executive departments and agencies ... administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner *affirmatively to further* the purposes of" the Fair Housing Act. This mandate, commonly known as "affirmatively furthering fair housing, or the "AFFH mandate," reflects the Act's non-segregation objective.

The mandate to affirmatively further fair housing (AFFH), then, requires any local government receiving federal funds for housing and urban development to also AFFH. However, the mandate to AFFH did not come out of the 1968 Fair Housing Act with a definition or explanation of how federal departments and agencies, and their grantees, would assess and enforce fair housing. So those receiving federal housing funds generally certified to HUD they were taking steps to AFFH, often done through mandated reporting by grantees to HUD.

In 1994, President Clinton released an executive order in an effort to formalize a process to AFFH for grantees, which stated that recipients of HUD funding had to certifying that they were AFFH by conducting, within their jurisdiction, an analysis of impediments to fair housing choice (Patterson 2018). Despite this mandate, no clear direction was given as to what constituted appropriate actions to address identified impediments, which contributed to identified impediments not being addressed as discussed below.

From that time until 2015, the AI was the mandated means by which grantees affirmatively furthered fair housing. In 2015, the Obama Administration issue the first substantive federal regulation interpreting the AFFH mandate, this time proffering a definition of what AFFH actually meant and replacing the AI with a new report called the Assessment of Fair Housing (AFH). The AFH was piloted by a small number of grantees in the subsequent years before it was withdrawn by President Trump's HUD in 2018 prior to it repealing the 2015 rule, definition, and mandates in 2020. In effect, Trump's repeal returns grantees to the pre-AI era where they could simply make a statement certifying they were complying with their AFFH obligations. President Biden has proposed a new rule, which is expected to be released for public comment in early 2023 (Abraham et al 2022; Wyly 2021).

Despite the current lack of clarity on how grantees must affirmatively further fair housing moving forward, this paper assesses six Analyses of Impediments to Fair Housing Choice in Erie County completed from 2004 to 2020, across multiple HUD grantee jurisdiction. The paper seeks to answer two questions. First, was the AI an effective tool

in identifying impediments to fair housing choice? Second, is the Analysis of Impediments an effective tool in actually overcoming the obstacles identified?

THE GEOGRAPHY OF FAIR HOUSING, RACIAL SEGREGATION, AND CONCENTRATED POVERTY IN ERIE COUNTY

HUD regulations define which cities are entitled to Community Development Block Grant (CDBG) funding from HUD. These include principal cities in a Metropolitan Statistical Area (MSA), other municipalities with at least 50,000 residents, and urban counties with populations of 200,000 people, exclusive of the population of the communities with 50,000 or more residents (US HUD, n.d.).

Erie County is home to 44 incorporated municipal governments, each granted the power of home rule under New York State law. Under home rule, these local governments have unilateral authority to adopt land use, zoning, and development standards as they see fit, regardless of their potential or actual impacts on other communities. The following section describes the six HUD grantees in Erie County (Figure 1), which grants they administer, and how they address fair housing.

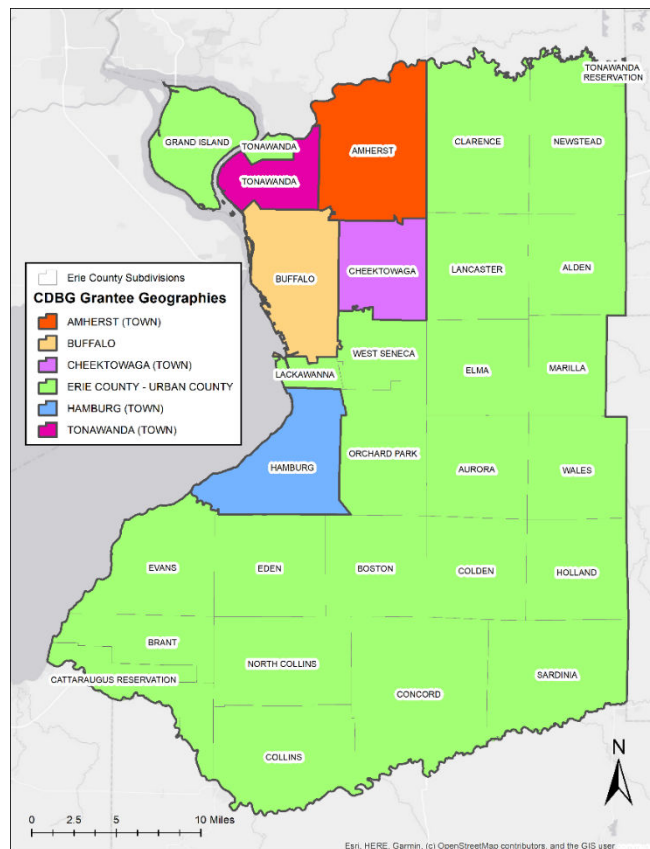


Figure 1. HUD Grantees in Erie County, NY.

Erie County – Entitled Urban County

Erie County is an entitled urban county and the coordinating jurisdiction for HUD funding and grants for 34 municipalities within the County. In this role, the County is responsible for preparing the Consolidated Plan and “affirmatively furthering fair housing,” which in the recent past has meant prepared an Analysis of Impediments to Fair Housing Choice for the 34 represented communities. In this role, the County partners with local town and

municipal governments and a variety of non-profits to address housing and economic development using its annually allocated HUD funds. The County receives funding for three HUD programs: Community Development Block Grant (CDBG), Home Investment Partnership Program (HOME), and the Emergency Shelter Grant (ESG). The County uses its funds for infrastructure projects in low-moderate income areas; for economic development projects; supporting low-moderate income homeowners with home rehabilitation projects; low-moderate income rental unit rehabilitation; and supporting rural transit.

In 2018, Erie County adopted a Fair Housing Law that prohibits discrimination on the basis of race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation, gender identity, military status, familial status or immigration and citizenship status. The County has contracted with a nonprofit agency to assist with enforcing the law, while also requiring all local governments to have an identified Fair Housing Officer. A website provides information on the law and the contact information for the Fair Housing Officer for each of the 44 municipalities in the County (Erie County, n.d.). In effect, this housing law covers all communities and residents in the County. Additionally, the Town of West Seneca, a member of the Urban County, adopted a fair housing law in 1979, the earliest adopted law in the County.

City of Buffalo

The City of Buffalo is the entitled principal city within the Buffalo-Cheektowaga MSA. The City receives funding for the CDBG, ESG, HOME, and Housing Opportunities for Persons with AIDS (HOPWA) grants. The City of Buffalo has a Fair Housing Ordinance, adopted in 2006, amended in 2015, intended to protect residents from discrimination based on the same characteristics as the County law. Additionally, it requires landlords with more than 20 units to affirmatively promote fair housing practices along with requiring a certificate of occupancy indicating they acknowledge and have received a copy of the Fair Housing Ordinance.

Towns of Amherst, Cheektowaga, Tonawanda

The towns of Amherst, Cheektowaga, and Tonawanda are addressed collectively, although each is an entitlement community. Each of the communities receives and administers a CDBG grant and via a consortium agreement with HUD shares a HOME grant, which the Town of Amherst receives, administers, and monitors. The Town of Tonawanda also received an ESG grant. Generally, each community uses funds for various projects and programs in low-moderate income areas, including for home rehabilitation, lead remediation, blight eradication, first time homebuyer assistance, and other community programs. In some cases, communities may identify needs to focus on, for example, in Cheektowaga where housing rehabilitation and infrastructure improvements have been recent priorities. None of these communities have their own Fair Housing Law, instead falling under the County's law.

Town of Hamburg

The Town of Hamburg receives an annual CDBG grant and has generally used the funds for infrastructure work in low-moderate incomes areas within the town. Hamburg has been one of the leading proponents of fair housing in the county, adopting the second local fair housing law in 1986, and subsequently amending it in 2005 and 2016. In addition to ensuring access to fair housing for the same list of protected populations as the County ordinance, the Hamburg ordinance provides a density bonus for multi-family projects that include affordable housing and prohibits the clustering of low-income projects (Town of Hamburg n.d.)

Since the Fair Housing Act sought to disassemble the mechanisms creating and reinforcing racial segregation, a brief review of the current geographic distribution of race and poverty within the six grantee geographies in Erie County is warranted. Buffalo-Cheektowaga remains one of the most Black-white racially segregated regions in America (Weaver 2019; Blatto 2018). Without belaboring the point with measures of income inequality and racial segregation, Table 1 offers a snapshot of race and poverty for each of the six entitlement geographies. Decades after the passage of the Fair Housing Act, the Black population in Erie County remains segregated in the City of Buffalo, where the overall poverty rate far exceeds suburban rates.

Table 1: HUD Grants (2021) and Selected Demographic Data (2017-2021 5-year ACS)

Grantee	Total Grant (2021)	Population	Poverty Rate	White Alone	Black/ African American Alone	Asian Alone	Other Races
Erie County - Urban County	\$7,814,377	323,031	7.3%	300,288 (93.0%)	7,758 (2.4%)	2,558 (3.9%)	12,427 (0.7%)
City of Buffalo	\$31,854,435	276,011	27.6%	132,016 (47.8%)	91,783 (33.3%)	18,509 (6.7%)	33,703 (12.2%)
Town of Amherst	\$4,995,702	128,783	9.3%	101,445 (78.8%)	7,481 (5.8%)	12,573 (9.8%)	7,284 (5.6%)
Town of Cheektowaga	\$1,056,863	89,518	10.0%	72,487 (81.0%)	10,099 (11.3%)	1,817 (2.0%)	5,115 (5.7%)
Town of Hamburg	\$443,505	59,764	6.2%	57,217 (95.7%)	624 (1.0%)	302 (0.5%)	1,621 (2.8%)
Town of Tonawanda	\$1,871,784	72,608	8.9%	63,315 (87.2%)	4,045 (5.6%)	1,586 (2.2%)	3,662 (5.0%)

AFFIRMATIVELY FURTHERING FAIR HOUSING IN ERIE COUNTY – THE ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING ERA 2004-2020

To satisfy the AFFH mandate, the six entitled grantees conducted Analyses of Impediments to Fair Housing Choice, at various geographic scales, from 2004 to 2020 (Table 2). Erie County and the towns of Amherst, Cheektowaga, and Tonawanda prepared joint AIs in 2008 and 2015, with Hamburg joining the effort in 2015 and 2020 after it prepared its own in 2010. The City of Buffalo prepared its own AI in 2004 and 2014. Finally, in 2020, all six grantees collaborative prepared the first regional, county-wide AI. Together, these represent a comprehensive assessment of barriers to fair housing across all Erie County communities since 2004.

Method of Assessing the AI

A 2010 report by the US Government Accountability Office raised serious questions about the efficacy of AIs to accomplished their intended objectives. In response to a congressional request, the GAO reviewed 441 AIs—a representative sample of the approximately 1200 grantee jurisdictions nationwide—to evaluate “their potential usefulness as planning tools” (GAO 2010), ultimately concluding that it was “unclear whether the AI is an effective tool...to identify and address impediments to fair housing.”

Table 2. Analyses of Impediments to Fair Housing, 2004-2020

Year	Erie County Urban County	Amherst	Cheektowaga	Tonawanda	Hamburg	Buffalo
2020	X	X	X	X	X	X
2015	X	X	X	X	X	
2014						X
2010					X	
2008	X	X	X	X		
2004						X

To assess impediments to fair housing within Erie County, the authors conducted a detailed review of all six AIs. They focused on the sections that identified and discussed impediments to fair housing in both the public and private sectors, along with the Actions Plans or strategies recommended to mitigate those impediments. Guidance on categorizing impediments was taken from *Fair Housing Planning Guide Volume 1*, published by HUD’s Office of Fair Housing and Equal Opportunity (HUD, n.d.). Additionally, the authors’ experience preparing the 2020 AI and in

their professional experience as planning and public policy practitioners guided categorization of identified impediments. For example, two early AIs used different terms to identify a similar issue. One stated that public housing was segregated (Buffalo 2004) and two stated that poverty was being concentrated (Buffalo 2014, Buffalo 2004). These are outcomes of zoning and development regulations and therefore categorized as such.

To undertake this assessment, the authors created an Microsoft Excel matrix that identified impediments to fair housing and action plans or recommendations to mitigate these barriers. Starting with the categories of impediments from the 2020 AI in the first column, and each subsequent AI across the top row, impediments identified in prior AIs were assigned to these categories. Where a new category or type of impediment was identified in a prior AI, that new category was added to the matrix. The matrix thus reveals how many times an impediment was identified across the six AIs.

If the AI is an effective tool for affirmatively furthering fair housing and overcoming barriers, it is reasonable to assume that identified impediments in prior AIs would no longer appear in subsequent AIs, indicative of the removal of a given barrier as recommended strategies to mitigate them were implemented. If an impediment(s) appeared in multiple AIs, it may suggest the AI is at once useful at routinely identifying impediments while simultaneously suggesting the mandate to conduct an AI lacks an effective enforcement mechanism.

The analysis found a number of impediments in Erie County were consistently raised across space and time. Two impediments, however, were identified in all six AIs: zoning and development regulations and public transit, which are discussed below. This is consistent with the GAO Report (2010), which found in their review of 441 AIs conducted from the 1990s through 2010 that four common impediments were found in more than half of the AIs, two of which were “zoning and site selection” and “neighborhood revitalization, municipal and other services, employment-housing transportation” linkage.” In other words, the findings here that the most common impediments were zoning and development regulations and public transit, align with the general findings of the GAO.

Additionally, a number of impediments were identified multiple times, in various jurisdictions. These including concerns over “not in my backyard” (NIMBY) opposition to affordable housing and group homes; discriminatory mortgage lending; a lack of limited English proficiency (LEP) support; and an overall deterioration in the quality and condition of affordable housing.

At the same time, while many impediments were identified multiple times across reports, some barriers to fair housing have been addressed with specific government action. For example, in 2018, Erie County passed a new fair housing law prohibiting source of income discrimination, intended to address the impediment of landlords who discriminate against housing voucher holders. It is too soon to measure the effects of the new law, or whether Erie County is adequately enforcing the law.

Zoning and Development Regulations

Exclusionary zoning is ‘one of the most common and most pervasive barriers to affordable housing in America’ (Knapp et al. 2007). Although housing markets are complex, and it is difficult to isolate one factor that increases costs, research has shown that land use policies do have an impact on housing prices (Mills, Epple, and Vigdor 2006). The most significant effects arise from minimum lot size, minimum lot width, and minimum floor area. Generally, large lot, single-family zoning is a form of exclusionary zoning that results in larger, more expensive homes being constructed, limiting the development of multi-family and other types of units that are more affordable. Other standards that were found to increase the cost of housing included yard setbacks, off-street parking requirements, open space requirements, and the width of street rights-of-way, pavements, planting strips, and sidewalks (Casella and Meck 2009). As one might expect in a region of 44 individual municipalities, each empowered with home rule authority to set land use and zoning standards, these regulations represent a significant barrier to fair housing choice within the broader housing market. In each instance, six times, the AIs identified numerous zoning and development regulatory barriers that limit choice, often by limiting or outright outlawing the development of appropriate types of housing.

An example of this type of impediment is the requirement that buildings housing persons with disabilities—often group homes where multiple people live in a supportive enforcement—obtain a restricted use permit. Such permit requirements make it costlier and more burdensome to develop supportive housing for people with disabilities (City of Buffalo 2004). This issue was later raised in a discussion of private sector impediments, where the lack of private rentals for people with disabilities was raised. The implication is that onerous requirements like obtaining a

government-issued restricted use permit likely limited development of units for people with disabilities. In 2014, in the last AI it prepared by itself, the City of Buffalo again identified the same impediment to group homes as in the 2004 AI (City of Buffalo 2014). Yet again, in a discussion on private sector obstacles, it identified the lack of development of units for persons with disabilities, again something at least in part due to the restricted use permit within the zoning code.

Likewise, an AI prepared by the Urban County and the Towns of Amherst, Cheektowaga, and Tonawanda identified multiple zoning impediments (Erie County 2008). These included the rigidity of existing zoning that limits the development of affordable housing; the lack of inclusionary zoning that would result in affordable housing production; and restrictions or burdensome requirements for manufactured and mobile homes, which offer more affordable housing options than traditional single family detached homes. In 2010, in its own AI, the Town of Hamburg identified large lot requirements for residential structures as an impediment to the development of more affordable types of housing, stating that “increased minimum lot size requirements have the perhaps unintended effect of raising construction costs of new housing and, over time, contributing to higher costs of maintenance and higher property” (Town of Hamburg 2010).

In an AI prepared by the Urban County, and the Towns of Amherst, Cheektowaga, and Tonawanda, and the addition of the Town of Hamburg, a number of zoning and development standards were identified as impediments (Erie County 2015). This included identification of zoning provisions that discriminate against protected classes, in particular peoples with disabilities and in Tonawanda, the code limits the number of unrelated people who can live together at three persons.

In the 2020 regional AI, completed by all grantees and the entire county, a more thorough and detailed examination of zoning was undertaken, evaluating a number of local zoning codes after stakeholders identified zoning regulations and the development review process as critical obstacles to addressing various housing needs (Erie County 2020). The report found that “the biggest impediment to affordable housing across Erie County is the policies and regulations that make it much more difficult to build multi-family, townhomes, duplexes, and even higher density single family homes” (Erie County 2020). In particular, zoning ordinances in suburban communities were identified as a barrier, primarily through large minimum lot sizes, architectural reviews, parking requirements, and other barriers. Additionally, some of the communities’ land use plans restricted multi-family development by identifying minimal areas where it could be built. One town allowed multi-family on only 2.3% of the land within the Town, and another has only two parcels identified for multi-family housing. Despite being repeatedly identified as an impediment to fair housing choice across multiple AIs, many suburban communities in Erie County have not revised their ordinances to allow for more affordable housing options to be developed, or to address barriers to uses such as group homes.

Public Transit

The second category of impediment that was persistently identified across all six AIs was public transit. Transit access is recognized as necessary to “ensure members of vulnerable groups have equal opportunities to employment, services and goods...” (Welch 2013). Low-income families have a much higher reliance on public transit (Paulley et al. 2006), so for example providing affordable housing in the suburbs may not be adequate if this housing is inaccessible to employment and other necessary services. Increasing development near transit, and expanding transit to growing employment centers in the suburbs “...allows families to reduce their combined cost of place (i.e., the costs of housing, utilities, and transportation), helping them better afford essential health care, education, and food expenses” (Haughey and Sherriff 2010).

The 2008 Erie County AI identified public transit to the suburban communities as a potential impediment given changing employment patterns pushing jobs out of the City of Buffalo and inner ring suburbs. The Town of Hamburg 2010 AI identified the lack of public transit in the southern part of the town to be an impediment, despite it not be an issue in other parts of the community. Both the 2014 City of Buffalo and 2015 Erie County AI’s identified transit as a challenge, especially related to access to suburban communities. The 2020 AI, incorporating all communities in Erie County, again recognized transit access as an impediment, stating that “the lack of transit outside the urban core” was a critical impediment to housing choice. The Partnership for the Public Good report *Poverty in Buffalo: Causes, Impacts, Solutions* (Magavern et al. 2018) found that 58 percent of jobs in the region were inaccessible without an automobile, highlighting the importance of housing which is accessible to public transit.

Transit is primarily provided by Niagara Frontier Transportation Authority (NFTA), with para-transit and other providers serving disabled and rural residents. This system works well within City of Buffalo and inner ring suburbs, with most low-income residents having ½ mile access to a transit stop. However, service to the more suburban communities, where jobs are migrating, is a much greater challenge. Despite recognition as a persistent impediment over time, limited public transit remains a barrier for low-income residents and persons with disabilities. As noted, simply providing affordable housing cannot be separated from employment and the spatial disconnect between affordable housing and employment in Erie County is exacerbated by lack of transit accessibility to the outer ring suburbs.

FINDINGS AND DISCUSSION

This paper assesses the effectiveness of the Analysis of Impediments to Fair Housing Choice as a tool to identify impediments to fair housing choice in Erie County, New York and assess, generally, whether it meaningfully affirmatively furthered fair housing by eliminating barriers to fair housing. As detailed here, it finds that the AI has been an effective tool for identifying impediments across time and space. However, the AI was not an effective tool for enforcement of proposed actions to overcome the identified impediments. The fragmented geography of multiple municipal grantees within Erie County is likely a contributing factor to the persistence of policies and practices that maintain racial segregation and concentrated poverty in Erie County. At a time when HUD is revising the regulatory AFFH framework, this paper anticipates HUD can learn from the shortcomings of the AI in Erie County.

Effective Assessment Tool but Lacking Enforcement

As undertaken in Erie County, at various geographic scales from 2004 to 2020, the Analysis of Impediments proved to be an effective tool to identify impediments to fair housing choice. For instance, the regional AI in 2020 identified numerous impediments identified in the prior five AIs. A critical component of this AI was the use of 10, two-hour stakeholder meetings, which brought in stakeholders representing all stakeholders across the entire county. That regional stakeholder engagement approach resulted in detailed discussions of issues facing various stakeholders, from people with disabilities to non-profit housing providers. Deep, meaningful, and intentional community engagement likely makes for a “no stone unturned” identification of impediments and makes it unlikely issues are missed. For example, one of the authors hosted the meeting with the disability advocates group, which was attended by a gentleman using a wheelchair, who is a vocal advocate for the disabled. He highlighted to the group that one key challenge that is largely missed is that housing for persons with disability might include a wheelchair ramp in front of the house. However, units within the structure might not be wheelchair accessible. These discussions informed the specificity of the impediments identified.

Nevertheless, despite its effectiveness at identifying impediments, the AI is not an enforcement tool and enforcement of the action plans and recommendations, simply, does not exist in an active and ongoing manner. Erie County, as the coordinator and manager of HUD funds for 34 municipalities, has limited authority to mandate responsive actions within individual municipalities. Its authority is generally limited to County powers. For instance, Erie County passed a Fair Housing Law was passed in 2018. It lacks authority to pass any laws at the municipal level in any the dozens of jurisdictions within its geography. Most concerning, it has little authority to address exclusionary zoning ordinances, which may be the most pervasive barrier to affordable housing (Knapp et al. 2007).

In the past, HUD did not require grantees to submit their completed AIs to HUD for review. The now-repealed Obama-era rule did require HUD to review and accept or reject AFH reports, but the rule was not in effect long enough to know if the AFH would function similarly to an AI, as a checkbox without federal oversight or consequences for failure to comply.

Geographic Impediments to Overcoming the Impediments

This paper also concludes that a critical impediment to overcoming impediments is geographic. The fragmentation of local governments, and hence HUD grantees, represents a significant obstacle to meaningfully affirmatively further fair housing and thus eliminating barriers for protected class.

Local governments operate in their own self-interest, reflecting the principals and values of their voters (Barnett 2020). This self-interest is evident in the regulations that guide the type, manner, and form of residential development in their community. Given the identification of zoning and development standards as impediments in

Erie County, and in jurisdictions across the country according to the 2010 GAO report, the fragmentation of governance is a significant impediment to overcoming these barriers. A local community that only permits large lot, single family detached homes is making an explicit statement that it intends to be a community of homeowners. By the nature of that regulation, the community restrict access to only those with the fiscal ability to purchase a home, excluding renters, aside from the rare single family home renter. If that same community also restricts or intentionally makes it difficult to develop group homes to support people with disabilities or multifamily to provide housing opportunities for low-income households, they simply encircle their community with an invisible and exclusionary wall. More importantly, if a large number, or all, local governments outside a segregated central city with high poverty exclude multi-family and group homes, collectively they have the effect of restricting choice to a large part of the population, which embeds segregation and concentrates poverty in a central city or a small number of communities that do permit these uses.

In other words, a fragmented system of local governments, operating in their own self-interest, can have the collective effort of creating near-insurmountable systemic barriers to fair housing. HUD and its grantees, operating within this balkanized system, actually reinforce and incentivize fragmented, non-regional-scale decision-making and, inarguably, are not affirmatively furthering fair housing.

Although unlikely, if HUD funds were allocated with incentives to cooperate and actual opportunities and programs to pool funding to spend where it is most needed, rather than giving each grantee cash to spend in its own jurisdictional boundaries, then there is at least a possibility of doing things differently and experiencing different outcomes.

To suggest a regional approach to affirmative furthering fair housing would be to defy the laws of tradition and the history of home rule jurisdiction where each municipality has authority within its boundaries. However, one constant remains evident in decades of racial segregation and concentrated poverty in Erie County, and that is home rule and the self-serving regulatory framework of local governments, which in themselves simply reflect the stated values of their voters, in embedding an unfair, inequitable housing system. The to-be-released guidance on how grantees will AFFH moving forward represents an opportunity to mitigate this if HUD can attach meaningful enforcement tools to the process to ensure action is taken to ameliorate identified impediments. In a related paper, the authors make three recommendations to enhance enforcement in the forthcoming new rule: random and predictive audits; a public complaint process; and (3) incremental sanctions for noncompliance (Abraham et al. 2022).

As HUD prepares to release a proposed new AFFH rule, it also remains clear that the AFFH mandate, in whatever form it takes, will remain a politically divisive issue susceptible to the ideology of any given American president. However, it remains from AIs undertaken in Erie County that some form of assessment of barriers and obstacles to fair housing, at the appropriate scale and with community engagement, can be useful identifying impediments. However, without a meaningful and substantive enforcement mechanism, impediments will remain persistent. Further, the scale of geographic analysis should be at the forefront of the discussion, despite the politically daunting prospect of requiring local governments to take affirmative steps to reduce segregation in the face of overwhelming local support for self-serving housing policy and nature of home rule.

Author Notes: Jason Knight, Christopher Holtkamp, and Russell Weaver prepared the 2020 Analysis of Impediments to Fair Housing for the six grantees in Erie County.

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