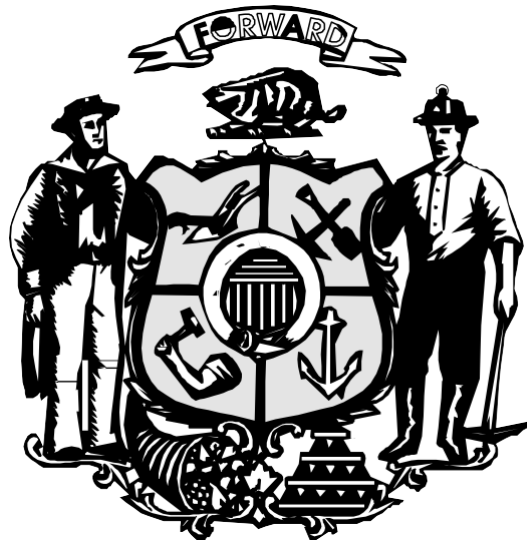


STATE OF WISCONSIN

Fair Housing Plan



Update to the
2020-2024
Consolidated
Plan

Analysis of Impediments to Fair
Housing and Actions to Overcome
Them

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Abbreviations

ADA	Americans with Disabilities
ARRA	American Recovery and Reinvestment Act of 2009
BOCA	Building Officials and Code Administrators
CDBG	Community Development Block Grant
CFR	Code of Federal Regulations
CRF	Consumer Rescue Funds
DATCP	Department of Agriculture, Trade, and Consumer Protection (State)
DCF	Department of Children and Families (State)
DEHCR	Division of Energy, Housing and Community Resources (State)
DFI	Department of Financial Institutions (State)
DHS	Department of Health Services (State)
DOA	Department of Administration (State)
DIR	Division of Intergovernmental Relations (State)
DSPS	Department of Safety and Professional Services (State)
DVA	Department of Veterans Affairs (State)
DWD	Department of Workforce Development (State)
ERD	Equal Rights Division (State)
FIRREA	Federal Institutions Reform, Recovery, and Enforcement Act
FTC	Federal Trade Commission
HMDA	Home Mortgage Disclosure Act
HOEPA	Home Ownership and Equity Protection Act
HOPWA	Housing Opportunities for Persons with AIDS
HUD	Housing and Urban Development, U.S. Department of
IBC	International Building Code
ICC	International Code Council
LIHTC	Low Income Housing Tax Credit
MMFHC	Metropolitan Milwaukee Fair Housing Council
MSA	Metropolitan Statistical Area
NCRC	National Community Reinvestment Coalition
OCI	Office of the Commissioner of Insurance (State)
RESPA	Real Estate Settlement Procedures Act
TID	Tax Incremental Districts
TIF	Tax Incremental Financing
TILA	Truth in Lending Act
TTY	Teletypewriters
UFAS	Uniform Federal Accessibility Standards
USC	United States Code
WHEDA	Wisconsin Housing and Economic Development Authority

Fair Housing Plan

ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING AND ACTIONS TO OVERCOME THEM

INTRODUCTION | WHAT IS FAIR HOUSING?

Fair housing is the right to choose housing free from unlawful discrimination. Discrimination, in this sense, is any housing practice or action that is unlawful under Title VIII of the Civil

Fair housing is having the choice to live where you want to live and where you can afford to live without the fear or threat of discrimination.

Rights Act of 1968, as amended. Title VIII, commonly referred to as the Fair Housing Act, specifically provides that “...no person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential

real estate-related transactions...”. Furthermore, fair housing choice for Wisconsin residents is the ability of persons of similar incomes to have available to them the same housing choices regardless of race, color, religion, sex, disability, familial status, natural origin, ancestry, age, lawful source of income, marital status, and sexual orientation or status as a victim of domestic abuse, sexual assault, or stalking.

Historical Overview

The State of Wisconsin’s 2020-2024 Fair Housing Plan is a requirement of the U.S. Department of Housing and Urban Development (HUD) and has been developed in conjunction with Wisconsin’s 2020-2024 Consolidated Plan. States and communities that receive Community Development Block Grants (CDBG) prepare Consolidated Plans for HUD. These plans detail the jurisdictions’ housing and community development needs, the strategies they will undertake to address these needs and the annual action plan for each year that the Plan is in effect. For Wisconsin, the Consolidated Plan serves as the State’s application to HUD for program funds of Small Cities Community Development Block Grants (CDBG), HOME Investment Partnerships (HOME), Emergency Shelter Grants (ESG), and Housing Opportunities for Persons with AIDS (HOPWA). A number of cities and metropolitan counties within Wisconsin prepare their own Consolidated and Fair Housing Plans because they receive CDBG funding directly from HUD.¹ These cities and

¹ Cities: Appleton, Beloit, Eau Claire, Fond du Lac, Green Bay, Janesville, Kenosha, La Crosse, Madison, Milwaukee, Neenah, Oshkosh, Racine, Sheboygan, Superior, Waukesha, Wausau, Wauwatosa, and West Allis. Counties: Dane, Milwaukee, and Waukesha.

metropolitan counties are sometimes referred to as CDBG entitlement areas, whereas the funding for the Wisconsin small cities program is administered by the State of Wisconsin and they are sometimes referred to as non-entitlement areas.²

In 1995, HUD issued a Final Rule concerning the preparation of Consolidated Plans. Included in this rule was a requirement that each jurisdiction develop a formal Fair Housing Plan. This Plan is to include an analysis of impediments to fair housing, and a proposed set of measurable remedies to overcome these impediments.

Impediments to fair housing are defined as actions, decisions, or omissions that:

- restrict, or may potentially restrict, housing choices upon the basis of race, color, religion, sex, disability, familial status, or national origin
- are counterproductive, or potentially counterproductive, to fair housing choice
- have the indirect effect of restricting fair housing choice.

This Fair Housing Plan is a summary of the analysis and update that the Division of Energy, Housing and Community Resources conducted in conjunction with the 2020-2024 Consolidated Plan. HUD's publication, *The Fair Housing Planning Guide* served as the basis for developing this document.

Wisconsin's Fair Housing Plan also satisfies the state requirement to develop a state housing strategy plan that discusses fair housing issues.³

State Agency Contact

For further information concerning the Consolidated and Fair Housing Plans contact:

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Purpose of the Plan

The purpose of the Fair Housing Plan is to set the stage for community change that will remove systematic impediments to fair housing while helping create and improve the climate of fair housing choice in the state of Wisconsin. The Plan will:

- provide documentation of the fair housing planning process;

² See map in Appendix A on page 109.

³ Wis. Stat. §16.302(2)(d)

- ❑ educate and raise awareness among the public, public officials, advocacy groups, and housing providers;
- ❑ establish the need for the proposed actions;
- ❑ indicate appropriate actions and their intended outcomes;
- ❑ identify the need for community partners that can offer resources or accept responsibility for parts of the Plan; and
- ❑ provide for periodic review, evaluation, and revision of the Plan as part of the Consolidated Planning Process

PART ONE | ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE

In this section, the State of Wisconsin's Division of Energy, Housing and Community Resources reviews:

- ❑ state statutes, policies, and administrative rules that impact the housing field,
- ❑ data on housing discrimination complaints,
- ❑ demographic and economic characteristics of Wisconsin,
- ❑ state agencies that affect fair housing policy either directly or indirectly, and
- ❑ current state actions in the arena of fair housing

As mentioned in the introduction, a number of Wisconsin cities and metropolitan counties are also required to prepare and carry out Fair Housing Plans. It should be noted that the State's analysis is more "broad brush" than entitlement communities. For example, whereas an entitlement community may be addressing local zoning regulations, the State is reviewing only the state statutes that enable all Wisconsin communities to enact zoning regulations. In addition, the State does not oversee or review the Fair Housing Plans of the entitlement communities within its borders.

Fair Housing Law Overview

Federal Fair Housing Act

The federal Fair Housing Act prohibits discrimination in the sale or rental of housing, residential real estate-related transactions, and the provision of brokerage services.⁴ The traditional grounds for discrimination prohibited by the federal Fair Housing Act passed in 1968 are those of race and color, national origin, religion, and sex. The provisions of the Fair Housing Amendments Act of 1988 added disability and familial status to these grounds. Each of these prohibited grounds for discrimination is a characteristic that defines a "protected class" of persons who are protected by the law from discrimination based on that characteristic.

⁴ 42 U.S.C. § 3604 – 3606

FAIR HOUSING ACCESSIBILITY GUIDELINES

The Fair Housing Amendments Act establishes seven design and construction requirements for all covered multifamily dwellings consisting of four or more units designed and constructed for first occupancy on or after March 13, 1991.⁵

Accessible Design Requirements

- ☐ An accessible building entrance on an accessible route
- ☐ Accessible common and public use areas
- ☐ Interior and exterior doors that are wide enough to allow access for people in wheelchairs
- ☐ An accessible route into and through the dwelling unit
- ☐ Light switches, electrical outlets, thermostats and other environmental controls in accessible locations
- ☐ Reinforced walls in bathrooms for later installation of grab bars
- ☐ Kitchens and bathrooms that are maneuverable in a wheelchair

HUD has established guidelines to provide technical guidance and, although not mandatory, provide a safe harbor for compliance with the Fair Housing Act's accessibility requirements, which are mandatory. However, these documents with guidelines represent safe harbors only when used in their entirety.⁶ According to HUD, designers and builders that choose to depart from all or some of the provisions of a specific safe harbor bear the burden of demonstrating that their actions result in compliance with the Act's design and construction requirements.⁷

Guides that HUD has declared as safe harbor for compliance: ⁸

- "Final Fair Housing Accessibility Guidelines" (56 FR 9472-9515), published in 1991
- "Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines" (59 FR 33362-33368), published in 1994
- "Fair Housing Act Design Manual," published in 1998
- "Accessible and Usable Buildings and Facilities" (ANSI A117.1), published in 1986 in conjunction with the Fair Housing Act, HUD's regulations, and the Guidelines for the scoping requirements
- "Accessible and Usable Buildings and Facilities" (CABO/ANSI A117.1), published in 1992 in conjunction with the Fair Housing Act, HUD's regulations, and the Guidelines for the scoping requirements
- "Accessible and Usable Buildings and Facilities" (ICC/ANSI A117.1), published in 1998 in conjunction with the Fair Housing Act, HUD's regulations, and the Guidelines for the scoping requirements

⁵ Fair Housing Accessibility First. Available at www.fairhousingfirst.org.

⁶ "Design and Construction Requirements; Compliance With ANSI A117.1 Standards; Final Rule." Federal Register. Volume 73 No. 207.

⁷ Id.

⁸ Id.

- “Accessible and Usable Buildings and Facilities” (ICC/ANSI A117.1), published in 2003 in conjunction with the Fair Housing Act, HUD’s regulations, and the Guidelines for the scoping requirements
- “Code Requirements for Housing Accessibility (CRHA),” published by the International Code Council (ICC) in October 2000
- 2000 International Building Code (IBC), as amended by the 2001 Supplement to the International Building Code (2001 IBC Supplement);
- 2003 International Building Code (IBC), published by the International Building Code Council (ICC)⁹
- 2006 International Building Code, published by ICC in January 2006, with a January 31, 2007, erratum to correct the text missing from Section 1107.7.5 and interpreted in accordance with the relevant 2006 IBC Commentary

The accessibility guidelines in the Wisconsin Commercial Building Code, which adopted the IBC and as updated by 2017 Wisconsin Acts 59, 198, 243, 317, 329, 330 and 331, substantially are equivalent to federal accessibility guidelines.

Wisconsin Open Housing Law

Chapter 106, Subchapter III of the Wisconsin State Statutes, the Open Housing Law, demonstrates the principles of Wisconsin’s fair housing law:

106.50 EQUAL RIGHTS. (1) INTENT. *IT IS THE INTENT OF THIS SECTION TO RENDER UNLAWFUL DISCRIMINATION IN HOUSING. IT IS THE DECLARED POLICY OF THIS STATE THAT ALL PERSONS SHALL HAVE AN EQUAL OPPORTUNITY FOR HOUSING REGARDLESS OF SEX, RACE, COLOR, SEXUAL ORIENTATION, DISABILITY, RELIGION, NATIONAL ORIGIN, MARITAL STATUS, FAMILY STATUS, STATUS AS A VICTIM OF DOMESTIC ABUSE, SEXUAL ASSAULT, OR STALKING, LAWFUL SOURCE OF INCOME, AGE OR ANCESTRY AND IT IS THE DUTY OF THE POLITICAL SUBDIVISIONS TO ASSIST IN THE ORDERLY PREVENTION OR REMOVAL OF ALL DISCRIMINATION IN HOUSING THROUGH THE POWERS GRANTED UNDER SS. §66.0125 AND §66.1011. THE LEGISLATURE HEREBY EXTENDS THE STATE LAW GOVERNING EQUAL HOUSING OPPORTUNITIES TO COVER SINGLE-FAMILY RESIDENCES WHICH ARE OWNER-OCCUPIED. THE LEGISLATURE FINDS THAT THE SALE AND RENTAL OF SINGLE-FAMILY RESIDENCES CONSTITUTE A SIGNIFICANT PORTION OF THE HOUSING BUSINESS IN THIS STATE AND SHOULD BE REGULATED. THIS SECTION SHALL BE CONSIDERED AN EXERCISE OF THE POLICE POWERS OF THE STATE FOR THE PROTECTION OF THE WELFARE, HEALTH, PEACE, DIGNITY AND HUMAN RIGHTS OF THE PEOPLE OF THIS STATE.*

The five protected characteristics under state law from discrimination, but are not protected under federal law, are age, ancestry, lawful source of income, marital status, and sexual orientation and status as a victim of domestic abuse, sexual assault, or stalking.

⁹ 2003 IBC was given conditional safe harbor status that required the ICC to publish and distribute a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, “ICC interprets Section 1104.1, and specifically the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies.”

Subsection 66.1011(1) prevents political subdivisions – cities, villages, towns and counties – from passing local ordinances that would undercut state law and encourages them to enact local non-discrimination ordinances as “a matter...of local interest...” This subsection also gives political subdivisions the opportunity to pass more inclusive anti-discrimination ordinances through the “The Wisconsin Bill of Human Rights.”¹⁰ “The Wisconsin Bill of Human Rights” refers to the formation of social development commissions and empowers them to “study, analyze and recommend solutions for...discrimination in housing” and other areas.

Section 106.50 proscribes housing discrimination in sales, rentals, and leasing of existing housing, new construction, and house lots; financing (including loans for home improvements, repairs or maintenance); advertising; and insurance.

Unlike federal law, Wisconsin’s fair housing law covers single-family residences that are owner-occupied because “...the sale...of single-family residences constitutes a significant portion of the housing business in this state...”¹¹

Protected Classes

Wisconsin’s classes of protected persons are more extensive than those covered in the federal Fair Housing Act. Wisconsin considers ancestry, marital status, age, sexual orientation, status as a victim of domestic abuse, sexual assault, or stalking, and lawful source of income as protected classes in which the federal Fair Housing Act does not recognize as protected classes. **Table 1** shown on the following page notes the differences and similarities of the definitions for the protected classes in Wisconsin and federal legislation.

¹⁰ Wis. Stat. §§ 66.0125

¹¹ Wis. Stat. § 106.50(1)

TABLE 1: COMPARISON OF PROTECTED CLASS DEFINITIONS

Federal Class	State Class	Similarities and Differences
Race	Race	Federal and State are the same
Color	Color	Federal and State are the same
Sex	Sex	Federal and State are the same
National Origin	National Origin	Federal and State are the same
Religion	Religion	Federal and State are the same
-	Marital Status*	Not applicable
-	Ancestry*	Not applicable
Disability	Disability	Wisconsin's definition of "disability" is very similar to the federal "handicap" definition reading, a physical or mental impairment that substantially limits one or more major life activities, a record of having such an impairment or being regarded as having such an impairment. ¹² The sole difference lies in the inclusion in the state statute of "...controlled substance analog, as defined in § 961.01 (4m), unless the individual is participating in a supervised drug rehabilitation program," which is excluded from the state's definition of disability. ¹³
Family Status	Family Status	Wisconsin's definition is broader than the federal one. Both laws protect parents or other persons who have legal custody of minors, those who are pursuing legal custody of a minor, and pregnant women. Wisconsin extends protections to "a person [who] is in the process of securing...periods of physical placement or visitation rights of a minor child";..."[a person whose] household includes one or more adults or minor children in his or her legal custody or physical placement or with whom he or she has visitation rights"; and "a [person whose] household includes one or more adults or minor children placed in his or her care under a court order, under guardianship..." ¹⁴
-	Victim of domestic abuse, sexual assault, or stalking*	Not applicable
-	Age*	A member of a protected class who is at least 18 years old ¹⁵

* Classes only protected under Wisconsin State Law

¹² Kitten v. DWD [247 Wis. 2d 661, 634 N.W.2d 583, 2001 WI App. 218] confirms that one cannot discriminate based on perception of disability.

¹³ Wis. Stat. § 106.50(g)

¹⁴ Wis. Stat. § 106.50(1m)(k)

¹⁵ Wis. Stat. § 106.50(1m)(am)

(Continued from Previous Page)		
Federal Class	State Class	Similarities and Differences
-	Sexual Orientation*	Having a preference for heterosexuality, homosexuality or bisexuality, having a history of such a preference or being identified with such a preference ¹⁶
-	Lawful Source of Income*	Includes, but is not limited to, lawful compensation or lawful remuneration in exchange for goods or services provided; profit from financial investments; any negotiable draft, coupon or voucher representing monetary value such as food stamps; social security; public assistance; unemployment compensation or worker's compensation payments. ¹⁷ However, federal rent vouchers are not clearly within the meaning of Wisconsin's "lawful source of income" definition. ¹⁸

Prohibited Discriminatory Actions in Wisconsin

Sales, Rentals, and Leases. Actions generally prohibited by Wisconsin's Open Housing Law, if based on the characteristics described above as prohibited grounds for discrimination, include:

- ☐ Refusing to rent, sell, or negotiate for housing
- ☐ Making housing unavailable
- ☐ Setting different prices, terms, conditions, or privileges for the sale, lease or rental of housing
- ☐ Providing different housing services or facilities
- ☐ Falsely representing that housing is available for inspection, rental or sale
- ☐ Refusing to renew a lease, causing the eviction of a tenant from rental housing
- ☐ Engaging in harassment of a tenant
- ☐ Denying anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing
- ☐ Attempting to induce a person to sell or rent housing by representations regarding the present or prospective entry into the neighborhood of a person of a particular economic status or a member of a protected class

Mortgage Lending. The Open Housing Law generally prohibits the following actions related to mortgage lending based on the characteristics described above as prohibited grounds for discrimination:

- ☐ Refusal to make a mortgage loan
- ☐ Refusal to provide information regarding loans
- ☐ Imposing different terms or conditions on a loan, such as different interest rates, points, or fees
- ☐ Discrimination in appraising or brokering of residential property

¹⁶ Wis. Stat. §111.32(13m)

¹⁷ Wis. Admin. Code DWD § 220.02(8)

¹⁸ See note to Wis. Stat. § 106.50 (2014); Knapp v. Eagle Property Management Corp. 54 F.3d 1272 (1995).

- ☐ Refusal to purchase a loan
- ☐ Setting different terms or conditions for purchasing a loan
- ☐ Refusal to make provision of other financial assistance for purchasing, constructing, improving, repairing or maintaining housing
- ☐ Refusal to make provision of other financial assistance secured by residential real estate.

Miscellaneous. The following discriminatory actions are explicitly prohibited by Wisconsin's Open Housing Law:

- ☐ Refusal to permit inspection for sale, lease, financing or rental of housing
- ☐ Refusing to contract to construct housing or negotiate or discuss the terms thereof
- ☐ Refusing to insure against hazards, or by exacting different terms, conditions or privileges for housing.

Advertising. Wisconsin Open Housing Law prohibits advertising or making any statement that indicates a limitation or preference based on race or color, national origin, religion, sex, disability, or familial status. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

Interference with Exercise of Rights. It is illegal under the Wisconsin Open Housing Law to threaten, coerce, intimidate, or interfere with anyone exercising a fair housing right or assisting others who exercise that right.

Additional Protections for People with Disabilities. Both Wisconsin's Open Housing Law and the federal Fair Housing Act have special clauses to allow people with disabilities the "full enjoyment" of housing.

Segregating, Separating, Excluding or Treating Unequally Prohibited. Persons with disability may not be segregated, separated, excluded or treated unequally in the sale or rental of housing. These prohibitions also extend to the terms, conditions or privileges of housing transactions or the provision of services or facilities in connection with such housing.

Reasonable Modification. Under the fair housing laws, a property owner must permit reasonable modifications of the existing unit, at the expense of the person with a disability, if it is necessary for the "fullest enjoyment" of housing. The property owner may grant permission to make reasonable modifications contingent upon an agreement to restore the interior to its original state at the end of tenancy. In addition, the property owner may require the tenant to pay the amount estimated to restore the unit into an interest bearing escrow account; interest and funds not used to restore the unit to its original state must be returned to the tenant.

Reasonable Accommodation. Federal and state fair housing laws require property owners to make reasonable accommodations in rules, policies, practices, or

services when necessary for the “full enjoyment” of housing, unless it would pose an undue hardship on the owner. The most common requests for reasonable accommodation are regarding parking and waiving no pet policies for animals assisting persons with disabilities. Furthermore, reasonable accommodation has been applied to pets that provide emotional support to people with mental disabilities.¹⁹

Exemptions from Federal and State Fair Housing Law

Federal Exemptions:

- ❑ Any single-family house sold or rented by an owner if they do not own more than three single-family houses at one time
- ❑ Religious organizations can limit the sale, rental or occupancy of dwellings, which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons of the same religion, unless membership in such religion is restricted on account of race, color, or national origin
- ❑ Private clubs can limit the rental or occupancy of lodgings which it owns or operates for other than a commercial purpose to its members or from giving preference to its members
- ❑ Housing primarily intended and operated for older persons, under certain conditions, may be restricted to persons over a certain age
- ❑ Persons convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance.

State Exemptions:

- ❑ Housing primarily intended and operated for older persons, under certain conditions, may be restricted to persons over a certain age
- ❑ A person may exact different or more stringent terms or conditions for financing housing based on the age of the individual applicant for financing if the terms and conditions are reasonably related to the individual applicant
- ❑ The development of housing designed specifically for person with disabilities and preference in favor of persons with disabilities in relation to such housing
- ❑ Housing can be restricted from an individual whose tenancy would constitute a direct threat to the safety of other tenants or persons employed on the property or whose tenancy would result in substantial physical damage to the property of others, if the risk of direct threat or damage cannot be eliminated or sufficiently reduced through reasonable accommodations. A claim that an individual's tenancy poses a direct threat or a substantial risk of harm or damage must be evidenced by behavior by the individual that caused harm or damage, that directly threatened harm or damage, or that caused a reasonable fear of harm or damage to other tenants, persons employed on the property, or the property. No claim that an individual's tenancy would constitute a direct threat to the safety of other persons or would result in

¹⁹ HUD v. Dutra et al. 1996 WL 657690 (HUDALJ)

substantial damage to property may be based on the tenant's status as a victim of domestic abuse, sexual assault, or stalking.

- A family with “too many” people may be turned away, if a reasonable government requirement limits the number of occupants for the dwelling unit. Advertisements for a person of the same sex as the individual who seeks a person to share the dwelling unit for which the advertisement or written notice is placed.

Comparison of Wisconsin and Federal Fair Housing Law

There are some differences and similarities between Wisconsin's Open Housing Law and the federal Fair Housing Act. The categories listed below highlight and describe in detail these fair housing law similarities and differences at the state and federal level.

Categories of Housing. Under federal law, single-family housing sold or rented by its owner, owner-occupied housing of four or less units and housing operated by organizations and private clubs that limit occupancy to members, are exempt from the provisions of the Fair Housing Act (with some exceptions, particularly concerning advertising). Wisconsin's law specifically includes single-family housing.

Making New Multifamily Housing Accessible for the Disabled. “Covered multifamily housing” under federal law contains four or more units; under state law, it contains three or more units.

Physically Disabled Persons Housing Requirements. In addition to federal law regarding new construction standards, under state law, lever door handles and single lever controls on plumbing must be added at no cost to the renter if requested in “covered multifamily housing.”

Multifamily Housing.

New Construction. Under the federal Fair Housing Act, all new construction of covered multifamily dwellings for first occupancy are required to have the accessible design features specified in the Act. A “covered multifamily dwelling” consists of a building with four or more units. The units on the ground floor are required to be accessible and any other floors served by an elevator are also required to be accessible. On the other hand, according to Wisconsin's Open Housing law, all new construction for covered multifamily housing with three or more dwelling units must meet the design standards specified in Section 101.132(2).

Remodeling. The Fair Housing Act does not contain a provision specifically for accessible design requirements of remodeled covered multifamily dwellings.²⁰ However, Wisconsin's law states that for housing with three or more dwelling units that if more than 50% of the interior square footage is remodeled, the entire housing shall conform to the state accessibility standards. If 25% to 50% of the interior square footage is remodeled, then the remodeled part shall conform to the state accessibility standards. If less than 25% of the interior square footage is remodeled, the remodeling is not subject to the standards unless the alteration involves work on doors, entrances, exits or toilet rooms, in which case the doors, entrances, exits or toilet rooms shall conform to the state accessibility standards.

The State Law's Lack of Equivalency with Federal Law

The federal Fair Housing Act permits HUD to refer housing discrimination complaints that it receives to state or local units of government if HUD has certified these jurisdiction's fair housing laws as "substantially equivalent" to federal law. Substantial equivalence permits state and local jurisdictions to receive federal funds for processing complaints, as well as for outreach and training. Through Federal Fiscal Year 1992, HUD had certified the State of Wisconsin's Open Housing Law as substantially equivalent to federal law.

However, as a result of the 1988 amendments to the Fair Housing Act, HUD de-certified Wisconsin as substantially equivalent in early 1993. The main difference was that the State's statutes "do not specifically provide...in every case, complainants...with the legal representation at agency expense[,] whether their cases proceed in the administrative forum or, by election, in state court."²¹ Under federal law, if a housing discrimination complainant reaches the civil court level, the complainant and / or respondent may apply for a court-appointed attorney "if in the opinion of the court such person is financially unable to [retain an attorney]." Also, according to state law a civil action must commence within one year after the alleged violation occurred or terminated and under the federal Fair Housing Act, an aggrieved person may commence a civil action no later than two years after the occurrence or termination of the alleged discriminatory housing practice.²²

After consultation with regional HUD officials, modifications were made to the Wisconsin Open Housing Law to provide for referral of cases to the Department of Justice for representation of complainants after a finding of probable cause by the department. These revisions were made as part of the 2005-2007 Biennial Budget and were intended to make Wisconsin law equivalent to federal law. The revised Open Housing Law requires representation for the complainant by the Attorney General in cases where both the Department of Workforce Development and the Attorney General find probable cause.

²⁰ The Supreme Court case, *Olmstead v. L.C. and E.W.* (1999), however, mandates that states and communities that provide services for people with disabilities ensure that they live in the least restrictive environment possible.

²¹ State of Wisconsin Legislative Audit Bureau, *An Evaluation of Fair Housing Services*

²² Letter from HUD's Office of Fair and Equal Opportunity to the Wisconsin Department of Workforce Development Equal Right Division. January 30, 2007.

Representation by the Attorney General is provided for administrative and civil hearings, where the complainant elects to do so. In addition, at the request of the Department of Workforce Development the Attorney General will file a petition for a temporary injunction.

Although the Equal Rights Division had submitted the proposed changes to HUD before it passed, the Equal Rights Division did not receive a response from HUD indicating that other issues with the law were of concern until February 21, 2006. HUD sent the Division a letter detailing the changes needed to Wisconsin's law to gain substantial equivalence. In order to secure substantial equivalency, many of the changes suggested in the HUD letter would require additional legislative action. The Division of Equal Rights is not aware of any legislative efforts to modify Wisconsin's Open Housing Law to secure equivalency since receiving the HUD letter. The lack of equivalence means that Wisconsin has not and will not receive federal funding for fair housing enforcement and training from HUD on fair housing enforcement issues until legislative action is taken to modify the Open Housing Law.

Administration Enforcement and Complaints

Federal Complaints. Fair housing law is enforced primarily in response to complaints initiated by individuals who feel that they have been unfairly discriminated against in their search for housing. Complaints may be filed under federal or state law, as described below. Some areas of the state are served by a fair housing council, an organization that can help persons understand their rights under the law and the options they have to pursue a complaint.

Federal Enforcement. A person alleging a violation under the federal Fair Housing Act has the following two general options for proceeding. A benefit of the first option described below is that the federal government pays for the proceeding if HUD's Office of Fair Housing and Equal Opportunity does not dismiss the complaint, whereas a person choosing the second option does so at his or her own expense.

- ☐ A person may file a complaint with HUD no later than one year after the alleged discrimination occurred. HUD will then investigate the claim and determine whether it finds reasonable cause to believe that discrimination occurred. If HUD does find reasonable cause to believe that discrimination occurred, it will issue a charge on behalf of the person who filed the complaint (the complainant), and the complainant will not have to pay the costs of pursuing a legal remedy. Either the complainant or the person who is accused of discrimination (the respondent) can then choose to proceed in federal court or in an administrative hearing conducted by a HUD administrative law judge.
- ☐ A person may file a civil action suit at his or her own expense in federal district court or state court no later than two years after the alleged discrimination occurred. This option is only available if an administrative law judge has not yet started a hearing.

If the first option described above is chosen and HUD conducts the administrative hearing, HUD attorneys will litigate the case on behalf of the complainant; the complainant may intervene in the case and be represented by his or her own attorney. If the administrative law judge decides that discrimination occurred, the respondent may be ordered to do any of the following:

- ☐ Compensate the complainant for actual damages, including humiliation, and pain and suffering
- ☐ Provide injunctive or other equitable relief, for example, to make the housing available
- ☐ Pay the federal government a civil penalty to vindicate the public interest
- ☐ Pay reasonable attorney's fees and costs.

If one of the parties chooses federal court instead of an administrative hearing after HUD finds reasonable cause to believe that discrimination occurred, the U.S. Attorney General will file a suit in federal district court and litigate it on behalf of the complainant. One possible reason for choosing federal court is that, in addition to ordering the damages that an administrative law judge could order in an administrative hearing to compensate the complainant, a federal court can award punitive damages to the complainant--i.e., damages intended to punish and deter discrimination.

State Complaints. A person alleging a violation under Wisconsin's Open Housing Law may file a complaint with the Department of Workforce Development's Equal Rights Division no later than one year after the alleged discrimination occurred.

State Enforcement. Wisconsin's Open Housing Law authorizes the Department of Workforce Development's Equal Rights Division the primary responsibility for administering and enforcing Wisconsin's Fair Housing Law. The Department of Workforce Development also provides technical assistance regarding fair housing to local government, private, and nonprofit organizations.

The Equal Rights Division will investigate the claim. Unlike HUD at the federal level, which need only find reasonable cause to believe that discrimination occurred, the Equal Rights Division must find probable cause to believe that discrimination occurred before it can issue a charge on behalf of the complainant. If it finds such probable cause, at that point either the complainant or the respondent can choose to have the charge decided in a civil action filed by the complainant in circuit court, or have the complaint decided after a hearing held by an administrative law judge of the Equal Rights Division.

One possible reason for choosing to file in circuit court is that a court can award a type of remedy to the complainant (punitive damages, described above under federal law) beyond those that can be awarded by the administrative law judge of the Department of Workforce Development's Equal Rights Division. Information on how to file a fair housing complaint with the Department of Workforce Development's Equal Rights Division, as well as the

discrimination complaint form for doing so, is available at the following website:

https://dwd.wisconsin.gov/er/civil_rights/housing/housing.htm

Other Federal Laws

There are other federal laws beyond the Fair Housing Act that impact housing and seek to eliminate discrimination. Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in programs and activities receiving federal financial assistance. The Age Discrimination Act of 1975 prohibits discrimination based on age in programs or activities receiving federal financial assistance. The Architectural Barriers Act of 1968 requires buildings financed by the federal government (including through a grant or loan) to be accessible. Similarly, Section 504 of the 1973 Rehabilitation Act requires that recipients of federal funds not bar participation based on a disability, including housing. Facilities covered under either the Architectural Barriers Act or Section 504 must conform to the Uniform Federal Accessibility Standards (UFAS), the accessibility standards that have been adopted by various federal agencies, including HUD. Furthermore, Title II and Title III of the Americans with Disabilities Act (ADA) apply to housing. Title II requires state and local units of government to make new and existing housing facilities accessible and Title III applies to places of public accommodation, thus requiring rental and sales offices to be accessible. These federal laws expand accessibility for people with disabilities in facilities covered under these laws.

Demographic and Economic Characteristics

Fair Housing Implications

The State of Wisconsin's housing conditions are created by a complex combination of conditions, including illegal discrimination in the housing market, geographic preferences of residents, demographic changes, and shifts in the number and structure of households and the larger economy. In this section, the State of Wisconsin's demographic, economic, and social characteristics will be assessed as they relate to fair housing impediments.

Documents used to complete this section of the Analysis include data from the decennial census, the American Community Survey, the U.S. Department of Labor's Bureau of Labor Statistics, and Wisconsin Realtors Association.

Notes on Racial and Ethnic Categories

Where available, this Fair Housing Plan will analyze racial and ethnic demographic data taken from the U.S. Census Bureau's American Community Survey. The Census Bureau asks people to self-report their race using the following categories:

- ☐ White
- ☐ Black or African American
- ☐ American Indian and Alaska Native

- ☐ Asian
- ☐ Native Hawaiian and Other Pacific Islander
- ☐ Some other race
- ☐ Two or more races

Hispanic or Latino is an ethnicity, not a racial category, as people with Hispanic ancestry can be of any race. For most racial and ethnic data, the Census Bureau typically reports on two ethnic categories:

- ☐ Hispanic or Latino
- ☐ White, not Hispanic or Latino

In tables and figures this Fair Housing Plan will report on all 9 of the above racial and ethnic categories used by the Census Bureau. Generally, in the narrative “Some other race” and “Two or more races” will not be given the same level of discussion as other racial categories because an adequate analysis of these two groups is beyond the capacity of this report.

When necessary to conserve space in tables and figures, Black or African American will be referred to as Black and Hispanic or Latino as Hispanic. American Indian and Alaska Native will be referred to as Native American and Native Hawaiian and Other Pacific Islander as simply Pacific Islander.

In Wisconsin, some racial groups, such as Pacific Islanders, are so small that adequate estimates are not always available. Finally, caution should be used when interpreting data based on the above racial and ethnic categories as the subgroups within them can often be quite heterogeneous. For example, Hmong-American and Japanese-American persons would both typically report under the category of “Asian” on the ACS, but may have very different average educational attainments. Therefore, speaking about the average Asian’s educational attainment can mask large differences at the subgroup level (see page 34 for further discussion of this).

The State of Wisconsin in Context

In order to evaluate the State of Wisconsin’s demographic characteristics, it is important to look broadly at census, county and place data to cover both rural and urban areas.

Although the State does not oversee or review the Fair Housing Plans of entitlement communities²³ within its borders, it is nearly impossible in many cases to separate many entitlement cities from the data without extracting the county as a whole from the analysis. Extracting all the counties of entitlement cities in Wisconsin would significantly limit the data available to only a few counties and make a broad overview of the state’s rural populations within the omitted counties hard to capture. Thus, in most cases unless otherwise noted,

²³ **Entitlement Cities:** Appleton, Beloit, Eau Claire, Fond du Lac, Green Bay, Janesville, Kenosha, La Crosse, Madison, Milwaukee, Neenah, Oshkosh, Racine Sheboygan, Superior, Waukesha, Wausau, Wauwatosa, and West Allis; **Entitlement Counties:** Dane, Milwaukee, and Waukesha. See map in Appendix A.

the demographic and economic data utilized in this section is for the State of Wisconsin as a whole which includes both entitlement and non-entitlement jurisdictions.

Furthermore, it is important to look at the entire Upper Midwest, consisting of Illinois, Indiana, Michigan, Minnesota, and Wisconsin, to provide a larger context for analysis and to serve as a comparison to the State. **Table 2** summarizes the population in 2000, 2010 and 2013 for the Upper Midwest states.

TABLE 2: POPULATION DISTRIBUTION IN THE UPPER MIDWEST

	2000	2010	2016 Estimates
Upper Midwest	38,721,376	40,188,985	43,796,245
State of Wisconsin	5,363,675	5,686,986	5,778,708
Wisconsin CDBG Non-Entitlement Communities	2,836,604	3,038,542	3,056,445

Source: 2000 Census, 2010 Census, 2016 ACS

In 2016, the State of Wisconsin's population was estimated to be 5,778,708, which is an increase of about 7.7% from 2000. The population of Wisconsin, excluding all CDBG entitlement communities, was estimated to be 3,056,445, which is a 7.2% increase from 2000. In comparison, the Upper Midwest experienced a 13.1% population gain during this time.

Racial Composition

Many indicators reveal that both the State of Wisconsin as a whole and the CDBG non-entitlement areas of the State are growing more diverse, though their racial composition differs as **Table 3** shows:

- ❑ Blacks or African Americans are the largest racial minority in the State of Wisconsin making up 348,773 of the population (6.1%), but there are only 28,850 individuals in the non-entitlement areas of the state (0.5%).
- ❑ Hispanics or Latinos make up 333,413 of the population of the State of Wisconsin (5.8%). Though only 91,959 reside in the non-entitlement areas of the State they are the largest minority group in the non-entitlement areas (3.0%).

TABLE 3: POPULATION BY RACE AND ETHNICITY IN WISCONSIN

Race / Ethnicity	WI Non-entitlement Communities	Percentage	State of WI	Percentage
Total	3,056,445	100.0%	5,778,708	100.0%
Not Hispanic	2,964,486	97.0%	5,686,749	94.2%
White	2,836,110	92.8%	4,697,726	83.0%
Black	28,850	0.9%	348,773	6.1%
Native American	33,260	1.1%	48,237	1.0%
Asian or Pacific Islander	34,817	1.1%	128,996	2.4%
Other	1,365	0.1%	4,056	0.1%
2 or more races	30,084	1.0%	78,769	1.6%
Hispanic	91,959	3.0%	333,413	5.8%

Source: 2010 Census, 2016 ACS

An examination of demographic changes between 2000 and 2016 reveals significant racial shifts occurring in the State as shown in **Table 4**:

- ❑ Hispanics or Latinos experienced the most pronounced increase in population between 2000 and 2016 increasing by 42.1% in the State and by 98.5% in the non-entitlement areas.
- ❑ Asians, Blacks or African Americans, and persons of 2 or more races had significant growth in the non-entitlement areas.

TABLE 4: POPULATION CHANGE FROM 2000 TO 2016 BY RACE AND ETHNICITY

	WI Non-entitlement Jurisdictions			State of Wisconsin		
	2000	2016	% Change	2000	2016	% Change
Total	2,836,604	3,056,445	7.2%	5,363,675	5,778,708	7.2%
Non-Hispanic	2,791,957	2,964,486	5.8%	5,170,754	5,686,749	9.1%
White	2,705,960	2,836,110	4.6%	4,681,630	4,697,726	0.3%
Black	16,820	28,850	41.7%	300,245	348,773	13.9%
Native American	29,882	33,260	10.2%	43,980	48,237	8.8%
Asian or Pacific Islander	19,510	34,817	44%	87,995	128,996	31.8%
Other	1,066	30,084	96.5%	3,637	4,056	10.3%
2 or more races	18,124	91,959	80.3%	51,921	78,769	34.1%
Hispanic	44,647	91,959	98.5%	192,921	333,413	42.1%

Source: 2000 Census, 2010 Census, 2016 ACS

In short, the State of Wisconsin has become home to increasingly large numbers of people – African American, Hispanics and Latinos, Asians and other people of color, many of them families with children – who have been most vulnerable to illegal housing discrimination, both historically and in the present.

While the number of racial and ethnic minorities in the CDBG non-entitlement areas of Wisconsin is growing, most minorities in Wisconsin continue to be concentrated in the metropolitan cities in Wisconsin:

- ☐ 73.0% of all Asian or Pacific Islanders in Wisconsin live in CDBG entitlement jurisdictions
- ☐ 72.4% of Hispanics or Latinos live in entitlement jurisdictions
- ☐ 91.7% of Black or African Americans live in entitlement jurisdictions, and 66.5% live in the city of Milwaukee

A common measure for minority segregation is to use a Dissimilarity Index to measure “the degree to which the minority group is distributed differently than whites across census tracts. They range from 0 (complete integration) to 100 (complete segregation) where the value indicates the percentage of the minority group that needs to move to be distributed exactly like whites.”²⁴ According to the Lewis Mumford Center for Comparative Urban and Regional Research, “A value of 60 (or above) is considered very high... [v]alues of 40 or 50 are usually considered a moderate level of segregation.”²⁵ Utilizing 2010-2014 American Community Survey data, the Milwaukee-Waukesha-West Allis metropolitan area had the nation’s highest “black-white neighborhood Segregation level for 2010-2014” with a level of 81 according to William H. Frey.

The existence of residential segregation is evidence that these individuals and groups continue to face impediments to fair housing choice. In decades past, legally sanctioned discriminatory housing practices created segregated and unequal communities. Although discrimination is no longer legal, it is still an endemic problem. Wisconsin’s residential segregation persists due to ongoing discrimination, long-standing housing patterns, current

²⁴ William H. Frey, Brookings Institution and University of Michigan Social Science Data Analysis Network’s analysis of 2005-9 American Community Survey and 2000 Census Decennial Census tract data.

²⁵ Lewis Mumford Center for Comparative Urban and Regional Research. University of Albany.

and historic institutional barriers and economic disparities. Racial residential segregation has contributed to economic disadvantage by reducing minorities' access to jobs, transportation, education and retail establishments, as evidenced by many indicators of racial disparity that exist throughout Wisconsin.

Although the causes of segregation are complex, it is possible to identify three main factors that contribute to the concentration of minority populations. These factors have been identified by social scientists, urban planners and civil rights organizations in virtually every segregated metropolitan area: (1) **Discrimination**: A significant factor accounting for segregated housing patterns is a range of discriminatory practices on the part of various actors in the housing industry and government housing policy. (2) **Economics**: Housing costs tend to be higher in the suburbs and minority income tends to be lower than that of the majority population. (3) **Choice**: Some families choose to live in neighborhoods that are racially or ethnically homogeneous.²⁶

Prior to the passage of the Fair Housing Act of 1968, various forms of discrimination and institutional racism were legal throughout the US and in Wisconsin: racially restrictive covenants²⁷, redlining by banks and insurance companies²⁸, discrimination in real estate and rental practices, racially segregated public housing, blockbusting²⁹, Federal Housing Administration³⁰ and Veterans Administration mortgages, urban renewal³¹, freeway construction, white flight³², central city disinvestment, and exclusionary zoning³³/NIMBYism³⁴ by the suburban communities. Over a century of legalized discrimination and institutionalized racism created a system in which racial segregation was often the result.

²⁶ Jackson 1985; Massey and Denton 1993; Yinger 1996.

²⁷ Racially restrictive covenants required buyers of property contractually to sell their homes only to people of particular races.

²⁸ Redlining is a practice in which banks and/or insurance companies do not offer their products or services, or offer inferior products or services, within predominantly minority neighborhoods.

²⁹ Blockbusting is the practice of inducing homeowners to sell their properties by making representations regarding the entry or prospective entry of persons of a particular race or national origin into the neighborhood.

³⁰ Underwriting guidelines for Federal Housing Administration (FHA) mortgages required that "properties shall continue to be occupied by the same social and racial classes" through the 1930s and FHA practices solidified dual housing markets for whites and blacks that persist today in cities across the country (Bradford 1979; Bradford and Cincotta 1992).

³¹ Urban renewal, referred to by many as "Negro Removal," uprooted entire minority communities with little or no consideration or concern regarding the impact on the existing residents. Moreover, those plans often resulted in the discriminatory taking of property, thus stripping wealth and equity from these communities (Written testimony of Cheryl Ziegler, Director, Housing and Community Development Project Lawyers' Committee for Civil Rights Under Law, Before the Charleston City Council)

³² The departure of white families usually from urban neighborhoods undergoing racial integration or from cities implementing school desegregation

³³ Exclusionary zoning are laws that establish maximum density and minimum lot size requirements restrict opportunities for low-income households, thus effectively discriminating against minorities.

³⁴ NIMBY is an acronym for "Not In My Back Yard." A term for a person who resists unwanted development, in this case, any development that may attract person of other races or classes.

As in other states, segregation has been detrimental to the State of Wisconsin in multiple ways. It creates a continuous cycle of racial disparity. Housing segregation leads directly to inferior schools for minorities. Employment opportunities are denied to minorities who are isolated, often in declining and dangerous neighborhoods.³⁵ Access to quality health care and other vital services also declines dramatically in segregated environments.

Discriminatory housing practices and the consequent segregation of housing patterns reduce homeownership opportunities for minorities and depresses the market values of the homes they do own. Compared to the housing wealth that whites have accumulated, the costs of such discrimination to African Americans and Hispanics has been estimated to reach \$600 billion nationwide.³⁶ A study conducted in 2016 researching the differences in housing equity in the United States found that Black and Hispanic mortgage holders are notably more disadvantaged than white mortgage holders.³⁷ What Albouy and Zabek find is a clear U-shaped pattern in housing inequality (measured in terms of housing values) over the previous 80-year period. Housing inequality was high in 1930 at the onset of the Depression. It then declined, alongside income inequality, during the Great Compression and suburban boom of the 1950s and 1960s. It started to creep back up again after the 1970s. There was a huge spike by the 1990s, followed by a leveling off in 2000, and then another significant spike by 2012, in the wake of the recovery from the economic crisis of 2008 and the accelerating back-to-the-city movement.

By 2012, the level of housing inequality in the U.S. looked much the same as it did in the '30s. Now as then, the most expensive 20 percent of owner-occupied homes account for more than half of total U.S. housing value.

Not only do the negative effects of segregation hurt the minority communities in Wisconsin, but the overall state economy can be impacted by segregation as well. Ensuring equal access to housing that is linked to high performing schools, sustainable employment, transportation infrastructure, and childcare is essential for securing an economically viable and sustainable state as a whole. Housing is a critical and fundamental element that contributes to expanded social and economic opportunity for individuals and families. When it is affordable and linked to these other opportunities, it can serve as a conduit to improved life outcomes and an improved region. It is important that we concentrate on the causes and the consequences of segregation in order to create policies that effectively address the problem.

³⁵ Massey and Denton 1993

³⁶ Yinger 1995

³⁷ Albouy and Zabek. "Housing Inequality." January 2016.

Household Profiles

Throughout much of the U.S., an increase in households is occurring at a rate that exceeds population growth. This is due to a variety of factors, including the growing number of single person and single parent households, longer life expectancies and the rate of divorce. One result of this trend is smaller household size. Wisconsin housing patterns are consistent with this trend, as the State experienced an increase in number of households from 2000 to 2016. The State underwent an increase in the proportion of 1-2 person households while the percentage of 3 or more person households decreased.

Changes in household size however are not race-neutral. Minority family households in Wisconsin are more likely to include children. Twenty seven percent of the State of Wisconsin's children are minorities, whereas 17% of the total population is minority.³⁸ Thus, with more children who are minorities, minority households tend to be larger than white households as detailed below in [Table 6](#).

TABLE 6: TOTAL HOUSEHOLD SIZE BY RACE

State	Average	White	Black	Asian	Hispanic	Native American	Pacific Islander
Illinois	2.59	2.47	2.67	2.92	3.78	3.18	2.80
Indiana	2.52	2.48	2.55	2.79	3.49	2.68	3.08
Michigan	2.49	2.45	2.55	2.97	3.23	2.65	2.74
Minnesota	2.48	2.40	2.83	3.48	3.60	2.97	3.00
Wisconsin	2.43	2.37	2.69	3.36	3.43	2.86	2.85

Source: 2010-2012 ACS

As a result of their larger size, minority households are more likely to require larger housing units. For example, white households have an average household size of about 2.37 persons in the State of Wisconsin. In contrast, African Americans have an average of about 2.69 persons per household, Hispanics have an average household size of 3.43 persons, and Asians have an average household size of about 3.36 persons. Housing policy that effectively ensures fair housing choice should create housing stock appropriate for the household sizes of each of these groups.

Moreover, discrimination and household size must be considered together. Though prohibited by local, state and federal fair housing laws, discrimination based on race and familial status (presence of minor children in a household) are two of the most common types of illegal housing discrimination. Minority families, then, are especially vulnerable to these dual inequities, which sometimes are perpetrated in concert. In addition, female-headed households made up 27% of all of Wisconsin's family households in 2016.³⁹ Many of these families were comprised of people of color. These households may experience

³⁸ U.S. Census Bureau. 2012-2016 American Community Survey.

³⁹ 2016 American Community Survey.

discrimination in the housing market, including predatory lending, because of their race, gender, marital status and presence of children in the household.

Another obstacle faced by racial and ethnic minorities is overcrowded housing conditions. The traditional U.S. Census definition of an overcrowded household is a household that has more persons than the number of rooms it occupies excluding bathrooms and hallways. While overcrowding has worsened for many groups in the years since the recession, there has been an overall decrease in households living in overcrowded housing conditions since 2000. As can be seen in **Table 7** the largest decreases in overcrowding were among two or more races and Hispanic households which have had very high rates of overcrowding. The higher rate of overcrowding among all minorities when compared to white, non-Hispanic households is an indicator that many minority families still face obstacles to fair housing choice.

TABLE 7: PERCENT OF HOUSEHOLDS LIVING IN OVERCROWDED CONDITIONS BY RACE AND ETHNICITY

Race / Ethnicity	2005-07	2012	2016
White	0.9%	1.3%	1.2%
Black	3.6%	4.2%	4.0%
Native American	4.5%	3.3%	4.2%
Asian	12.6%	11.3%	11.2%
Pacific Islander	4.5%	N/A	9.1%
Some Other race	11.4%	10.0%	11.3%
2 or More races	2.2%	5.3%	4.3%
White, not Hispanic	0.8%	1.0%	1.0%
Hispanic	9.9%	10.7%	9.4%

Source: 2016 ACS, 2010-12 ACS, 2005-07 ACS

Homeownership

One effect of the housing and financial crises on Wisconsin households was a drop in homeownership rates. According to the American Community Survey, home ownership rates have decreased for almost all racial and ethnic groups in Wisconsin between 2005-2007 and 2010-2012 as shown in **Table 8**. Home ownership rates, the percentage of total housing units that are owner occupied, vary among racial and ethnic groups as well as the change in rates these groups experienced.

- White, non-Hispanic homeownership decrease 1.3% to a rate of 72.2%
- Black or African American homeownership dropped 5% to a rate of 29.5%
- Native American homeownership dropped 1.7% to a rate of 49.9%
- Asian homeownership decreased 5.5% to a rate of 46.9%
- Hispanic or Latino homeownership dropped 1.3% to rate of 41.5%

TABLE 8: HOMEOWNERSHIP BY RACE FROM 2010-2012 TO 2014-2016

Race / Ethnicity	2010-2012		2014-2016	
	Housing Units	% Owner Occupied	Housing Units	% Owner Occupied
White	2,057,533	71.4%	2,071,028	83.0%
Black	122,291	29.5%	130,312	16.8%
Native American	18,184	49.9%	18,616	35.7%
Asian	37,395	46.9%	44,213	48.3%
Some Other race	24,772	39.8%	34,905	27.6%
2 or More races	22,900	44.1%	27,924	40.0%
White, Non-Hispanic	1,999,699	72.2%	2,008,199	79.6%
Hispanic or Latino	86,778	41.5%	104,715	31.7%

Source: 2014-2016 ACS, 2010-12 ACS

The rate of homeownership is higher across all racial and ethnic groups living in Wisconsin's CDBG non-entitlement areas than for the State as a whole. Despite higher rates of homeownership among minority populations in the non-entitlement areas, sizeable racial disparities still exist when compared to non-Hispanic white households in [Table 9](#). This minority homeownership gap is between 19-35% depending upon the racial or ethnic group.

TABLE 9: HOMEOWNERSHIP BY RACE AND ETHNICITY FOR WISCONSIN NON-ENTITLEMENT AREAS

Race / Ethnicity	Total	% Owner Occupied
White	1,181,323	77%
Black	5,248	43%
Native American	12,179	55%
Asian	8,504	59%
Pacific Islander	198	47%
Some Other race	5,482	43%
2 or More races	7,616	59%
White, not Hispanic	1,166,026	78%
Hispanic or Latino	21,421	47%

Source: 2014-2016 ACS

Furthermore, according to 2014-2016 American Community Survey, homeownership rates in Wisconsin fall below those in other Upper Midwest states, as shown in [Table 10](#).

TABLE 10: HOMEOWNERSHIP RATE BY RACE IN THE UPPER MIDWEST

	Illinois	Indiana	Michigan	Minnesota	Wisconsin
White	73.9%	74.0%	77.2%	76.2%	83.0%
Black	39.9%	38.9%	44.4%	23.3%	16.8%
Native American	57.4%	61.7%	60.5%	46.0%	35.7%
Asian	59.7%	49.6%	58.5%	55.3%	48.3%
Pacific Islander	51.6%	58.8%	56.0%	44.7%	38.6%
Some Other Race	48.4%	46.3%	55.3%	38.4%	27.6%
2 or More Races	52.5%	54.7%	56.2%	50.3%	40.0%
White, Non-Hispanic	75.6%	74.4%	77.7%	76.9%	79.6%
Hispanic or Latino	52.9%	52.7%	54.2%	42.2%	31.7%

Source: 2014-2016 ACS, 2010-12 ACS

As home equity is often foundational for educational, employment, and business opportunities, racial and ethnic disparities in homeownership can disadvantage minority households and create barriers to fair housing choice, and participation in the State of Wisconsin's economic life.

Age Distribution

The median age in the State of Wisconsin is 38.7 years, which is older than the United States' median age of 37.3. [Table 11](#) lists the median age by state for the Upper Midwest.

TABLE 11: MEDIAN AGE BY STATE

	Illinois	Indiana	Michigan	Minnesota	Wisconsin
Median Age	37.4	37.4	39.5	37.8	39.1

Source: 2016 ACS

The median age in Wisconsin varies significantly by race and ethnicity as is shown in [Table 12](#). The significantly younger median age of minority households presents many implications for future and current housing needs. Currently, larger units are needed to accommodate larger families with children, many of whom are minorities. In addition, such families are at high risk of facing illegal housing discrimination. Further, the younger median age of persons of color suggests that many of these persons are children, likely not yet owning or renting their own housing. Future ramifications of the younger median age are also clear. As the children of these families become adults, they will likely continue and amplify the trends their parents and grandparents catalyzed: strong needs for affordable housing, larger housing units and fair housing services.

TABLE 12: MEDIAN AGE BY RACE IN WISCONSIN

Race / Ethnicity	Median Age
White	39.9
Black	25.2
Native American	27.1
Asian	24.6
Pacific Islander	25.7
Some Other Race	26.2
2 or More Races	15.8
White, Non-Hispanic	39.9
Hispanic or Latino	23.4

Source: 2017 ACS

Disability

The overall rate of disability among Wisconsin's residents is 11.8%.⁴⁰ Disability is experienced at different levels depending upon age and the racial or ethnic group. African Americans and Native Americans report higher rates of disabilities. **Table 13** gives the percentage of persons reporting disability by race or ethnicity.

TABLE 13: PERCENTAGE WITH DISABILITY BY RACE/ETHNICITY

Race / Ethnicity	
White	11.8%
Black or African American	15.5%
Native American	15.7%
Asian	6.2%
Some Other Race	8.7%
2 or More Races	11.7%
White, not Hispanic	11.9%
Hispanic or Latino	8.9%

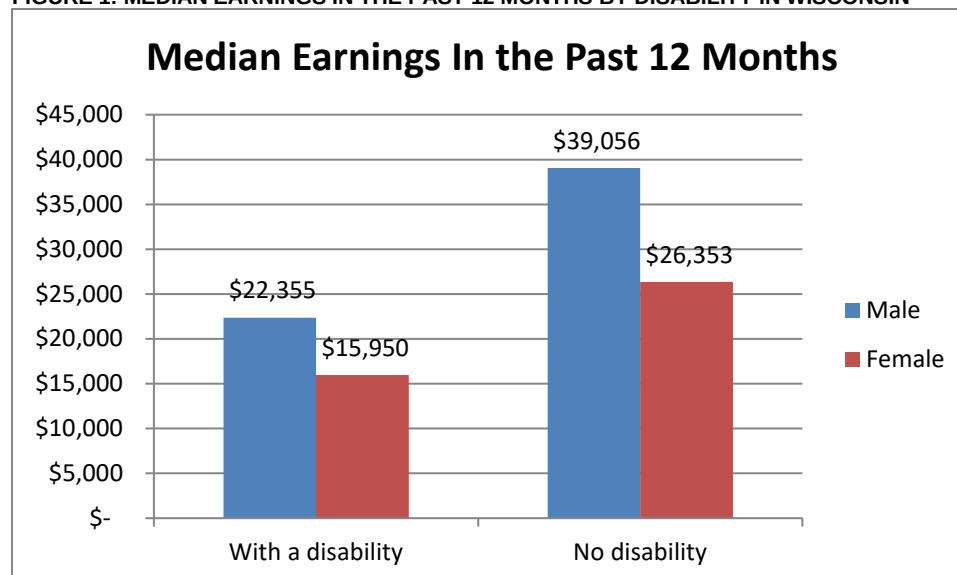
Source: 2016 ACS

These matters have multiple fair housing implications. In 2005, HUD released a publication that assessed the various levels and types of discrimination of people with disabilities. This study claims that not enough people know about the prevalence of housing discrimination against people with disabilities, "Only slightly more than half of Americans know that it is illegal for landlords to refuse to make reasonable accommodation for persons with

⁴⁰ Includes the non-institutionalized population over the age of five from the 2016 American Community Survey

disabilities or to permit reasonable modification to a housing unit.”⁴⁵ Thus, it is important for the State of Wisconsin to partner with local governments, nonprofits, and private developers to help these partners create a wide variety of affordable, accessible housing stock for people with disabilities. Housing affordability, not just accessibility, matters for persons with disabilities because those with a disability typically earn significantly less than those without a disability as **Figure 1** shows.⁴⁶

FIGURE 1: MEDIAN EARNINGS IN THE PAST 12 MONTHS BY DISABILITY IN WISCONSIN



Source: 2012-16 ACS

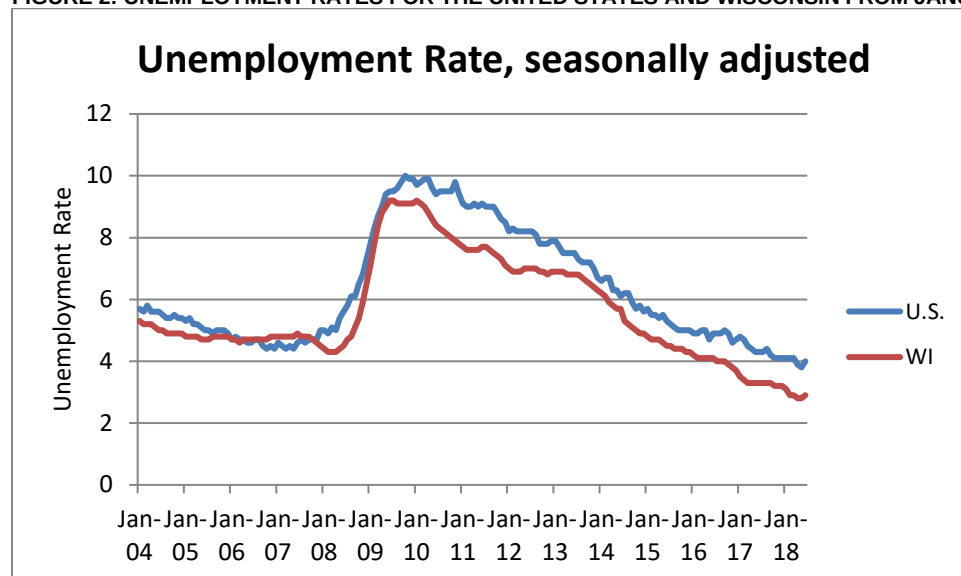
Income and Employment

In June of 2016, Wisconsin had approximately 3.4 million residents in its labor force; of whom approximately 2.7 million were employed. The unemployment rate of 3.8 percent, is significantly reduced from 5.0 percent in June of 2014. In Wisconsin, women have a lower unemployment rate than men. African-Americans (12% unemployment), Native Americans (11.2% unemployment), and other minority races (8.7%) have the highest rates of unemployment, while Asians and non-Hispanic or Whites have the lowest unemployment rates.

Of the working age population age 16 to 64, labor force participation is lowest among females across racial and ethnic groups, with the exception of Black females who have a higher employment rate than Black males. White males and females have the lowest non-participation rates, followed by Asian and Hispanic or Latino males. **Figure 2** shows the seasonally adjusted unemployment rate for both Wisconsin and the United States. Wisconsin's unemployment rate has consistently remained lower than the national unemployment rate.

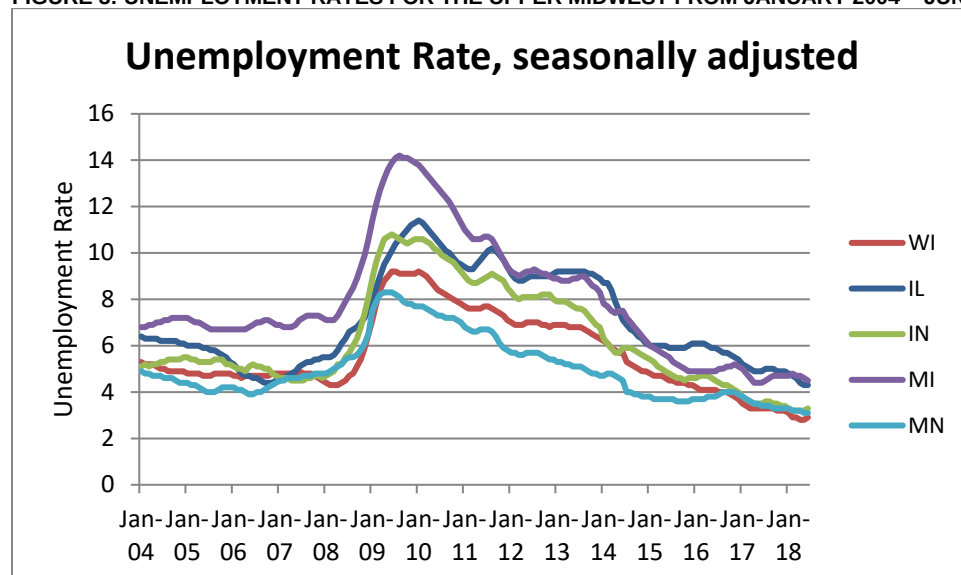
⁴⁵ Turner, Herbig, Kaye, Fenderson, and Levy. "Discrimination Against People with Disabilities: Barriers at Every Step." 2005

⁴⁶ Affordable housing is housing for which the occupant pays no more than 30% of his income.

FIGURE 2: UNEMPLOYMENT RATES FOR THE UNITED STATES AND WISCONSIN FROM JANUARY 2004 – JUNE 2018

Source: U.S. Department of Labor. Bureau of Labor Statistics. Labor Force Statistics.

Figure 3 shows that when compared to other states in the Upper Midwest, Wisconsin has typically had the second lowest unemployment rate with only Minnesota's rate being lower.

FIGURE 3: UNEMPLOYMENT RATES FOR THE UPPER MIDWEST FROM JANUARY 2004 – JUNE 2018

Source: U.S. Department of Labor. Bureau of Labor Statistics. Labor Force Statistics.

The rate of unemployment and the duration of unemployment experienced by persons in Wisconsin vary between racial and ethnic groups. The unemployment rate among Whites and Asians in Wisconsin is 3.8% and 3.0% respectively. Among Black and Hispanic persons that rate is 10.6% and 3.3%. **Table 14** compares the unemployment rates of racial and ethnic groups in Wisconsin with the other states in the Upper Midwest. In **Table 15** the mean and median number of weeks of unemployment is compared between racial and ethnic groups in Wisconsin and the Upper Midwest.

TABLE 14: UNEMPLOYMENT RATE BY RACE AND ETHNICITY FOR UPPER MIDWEST IN 2016

	Illinois	Indiana	Michigan	Minnesota	Wisconsin
White	5.0%	4.1%	4.1%	3.0%	3.8%
Black	12.7%	8.9%	10.1%	8.8%	10.6%
Asian	2.6%	N/A%	2.6%	N/A%	3.0%
Hispanic	6.7%	4.6%	6.1%	5.3%	3.3%

Source: Bureau of Labor Statistics, Geographic Profile 2016

TABLE 15: NUMBER OF WEEKS UNEMPLOYED BY RACE AND ETHNICITY FOR UPPER MIDWEST IN 2016

	Illinois		Indiana		Michigan		Minnesota		Wisconsin	
	Mean	Median	Mean	Median	Mean	Median	Mean	Median	Mean	Median
White	31.2	12.8	17.4	6.7	22.6	8.2	13.9	7.2	22.6	8.6
Black	36.5	18.1	17.4	10.1	37.1	13.0	18.6	9.0	47.0	19.6
Asian	31.9	25.2	N/A	N/A	36.8	17.9	N/A	N/A	35.8	41.4
Hispanic	28.8	10.7	12.1	6.5	20.9	11.1	5.8	4.1	21.1	3.3

Source: Bureau of Labor Statistics, Geographic Profile 2016

People with disabilities also experience many workforce disadvantages. They are more likely than people without disabilities to have incomes below the poverty line and to be unemployed.⁴¹ Fewer than half (41.1 percent) of people in the United States with a disability between the ages of 21 and 64 were employed at the end of 2010.⁴² People with a non-severe disability were less likely to be employed than people with no disability, 71.2 percent and 79.1 percent, respectively.⁴³ Wisconsin's numbers likely track with these national figures.

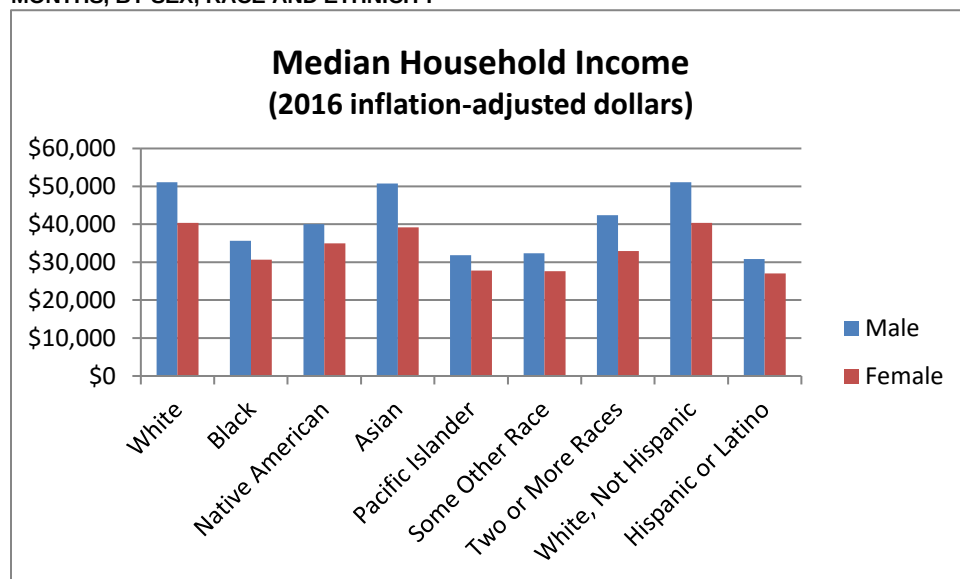
On average African Americans, Hispanics and Native Americans and Pacific Islanders earn significantly less per year than whites, and males earn more on average than females in almost every racial and ethnic group. **Figure 4** gives the median earnings, in 2016 inflation-adjusted dollars, by race, ethnicity and sex of full-time, year-round workers 16 years and over. The largest sex disparity is within Asian workers. Men earned \$50,779 while women earned only \$39,169.

⁴¹ Matthew W. Brault, "Current Population Reports," Americans with Disabilities: 2010 Household Economic Studies.

⁴² Id., pg. 20

⁴³ Id., pg. 20

FIGURE 4: MEDIAN EARNINGS FOR WISCONSIN EMPLOYEES WHO WORKED FULL-TIME, YEAR ROUND IN THE PAST 12 MONTHS, BY SEX, RACE AND ETHNICITY

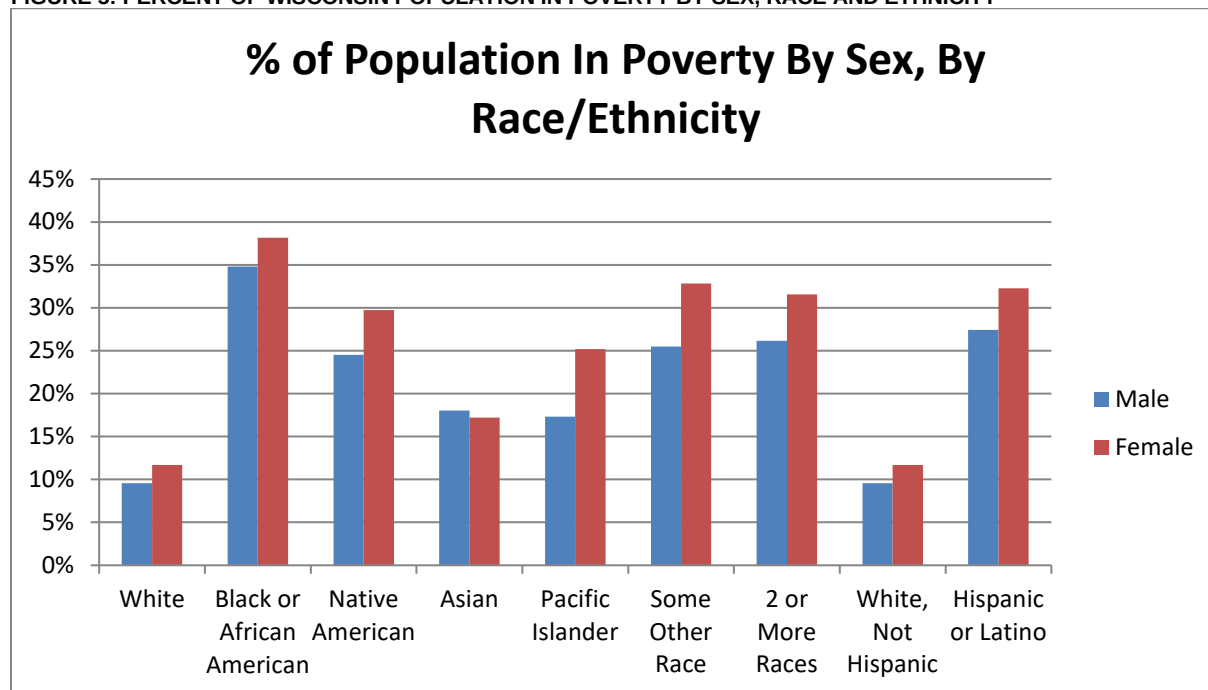


Source: 2016 ACS

The percentage of the population living in poverty also varies by race, ethnicity and sex.

Figure 5 shows that while only 9% of white, non-Hispanic males have incomes below the poverty line, for African American and Hispanic females the poverty rate is 40% and 30% respectively.

FIGURE 5: PERCENT OF WISCONSIN POPULATION IN POVERTY BY SEX, RACE AND ETHNICITY



Source: 2016 ACS

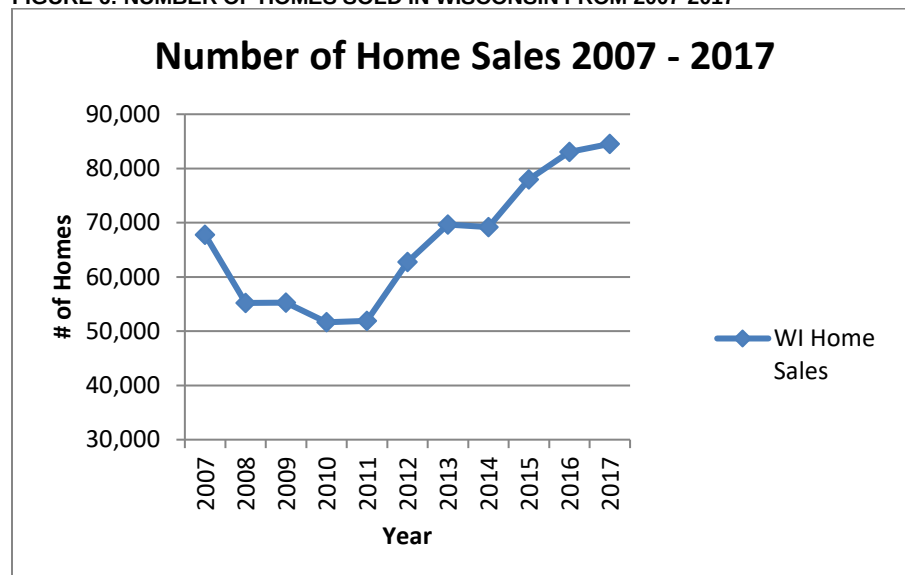
Given the relatively higher unemployment rates and lower incomes of people with

disabilities, African Americans, Hispanics, Native Americans, and Pacific Islanders, the need for affordable housing for these populations is urgent. If people with disabilities and minorities are unable to access homeownership opportunities and have highly limited choices within the rental market due to a combination of discrimination and income-related factors, they effectively are marginalized as members of Wisconsin communities.

Housing Supply Characteristics

According to data obtained from the Wisconsin Realtors Association, in 2007 there were 67,756 home sales in Wisconsin. The number of home sales decreased each year through 2010 when sales reached only 51,242. **Figure 6** shows that in recent years the number of home sales has increased up to 84,531 sales for 2017.

FIGURE 6: NUMBER OF HOMES SOLD IN WISCONSIN FROM 2007-2017

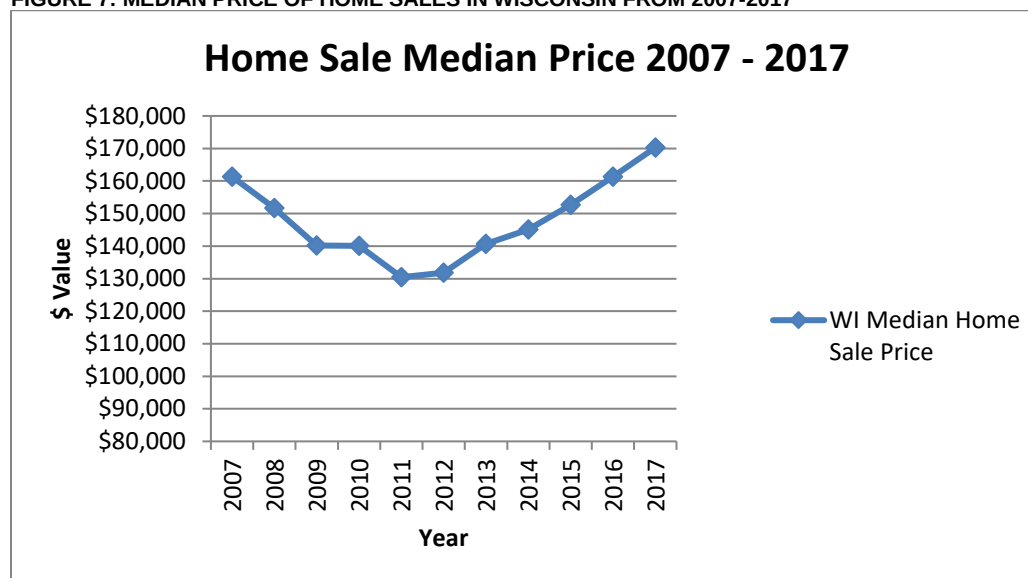


Source: Wisconsin Realtors Association, Wisconsin Housing Statistics 2007-2017

In 2013 home values also started to pick up slightly as the median home sale price increased \$10,183 from 2011 to \$140,642 which has continued to increase every year as **Figure 7** shows. Moreover, the gains of the recent housing recovery have not been equally experienced by all communities. Communities with large concentrations of African American and Hispanic or Latino populations were the hardest-hit by the housing crisis and a significant portion of these families are still “underwater,” meaning they owe more on their mortgages than their homes are worth.⁴⁴ A further examination of disparities in the financial recovery of racial and ethnic minorities will be discussed in a later section on lending trends in Wisconsin.

⁴⁴ Dreier, Peter, Bhatti, Saqib, Call, Rob, Schwartz, Alex, & Squires, Gregory. “Underwater America: How the So-Called Housing “Recovery” is Bypassing Many American Communities,” *Haas Institute for a Fair and Inclusive Society* (2014). Page 6.

FIGURE 7: MEDIAN PRICE OF HOME SALES IN WISCONSIN FROM 2007-2017



Source: Wisconsin Realtors Association, Wisconsin Housing Statistics 2007-2017

TABLE 16: HOUSING UNITS BY YEAR STRUCTURE BUILT

Year Built	Number	Percent
2010 or later	66,228	2.5%
2000 – 2009	345,697	13.1%
1990 – 1999	366,778	13.9%
1980 – 1989	257,715	9.8%
1970 – 1979	389,032	14.8%
1960 – 1969	254,843	9.7%
1950 – 1959	293,722	11.2%
1940 – 1949	156,961	6.0%
1939 or earlier	555,229	21.1%
Total:	2,695,462	100.00%

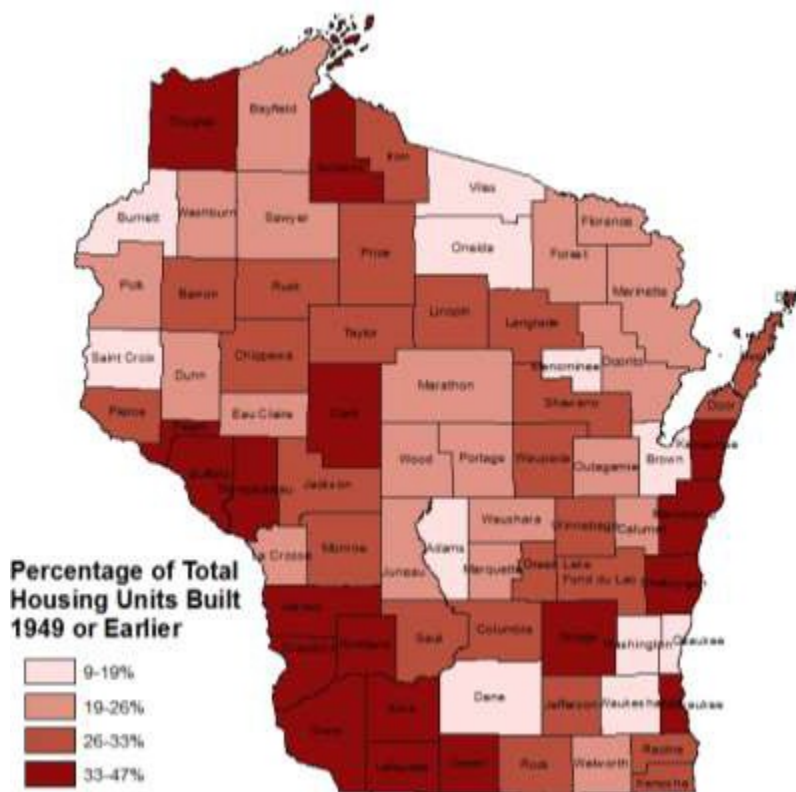
Source: 2017 ACS

Housing in the State is also older than the median age in other upper midwest states or the country as a whole. Approximately 27.1% of Wisconsin's housing was constructed before 1950; 20.9% was built between 1950 and 1969; and 52.0% was built after 1970, according to [Table 16](#). The median year that all structures were built in Wisconsin's is 1971, which is older than the United States' median year that housing structures were built of 1976. In general, older housing stock is often less expensive, but it is more likely to be in disrepair, be inaccessible to people with disabilities, or have greater maintenance needs. Older housing may also have a negative impact on the health of its occupants in a variety of ways, but especially in regard to the presence of lead paint. The harmful effects of lead poisoning, especially in children, are well documented.

The map of Wisconsin in [Figure 8](#) shows the percentage of total housing units built in 1949 or earlier by county. The areas with the largest percentage of aging housing stock are in the

southwestern and rural Wisconsin. The areas with the “newest” housing stock are located in the growing metropolitan areas.

FIGURE 8: AGE OF HOUSING STOCK BY REGION



According to [Table 17](#), Wisconsin’s housing is primarily composed of two- and three-bedroom units, which together make up 70% of the total housing units. The prevalence of two- and three-bedroom units is problematic, given the need for larger housing units, particularly by many larger Hispanic and Asian families.

TABLE 17: HOUSING UNIT SIZE

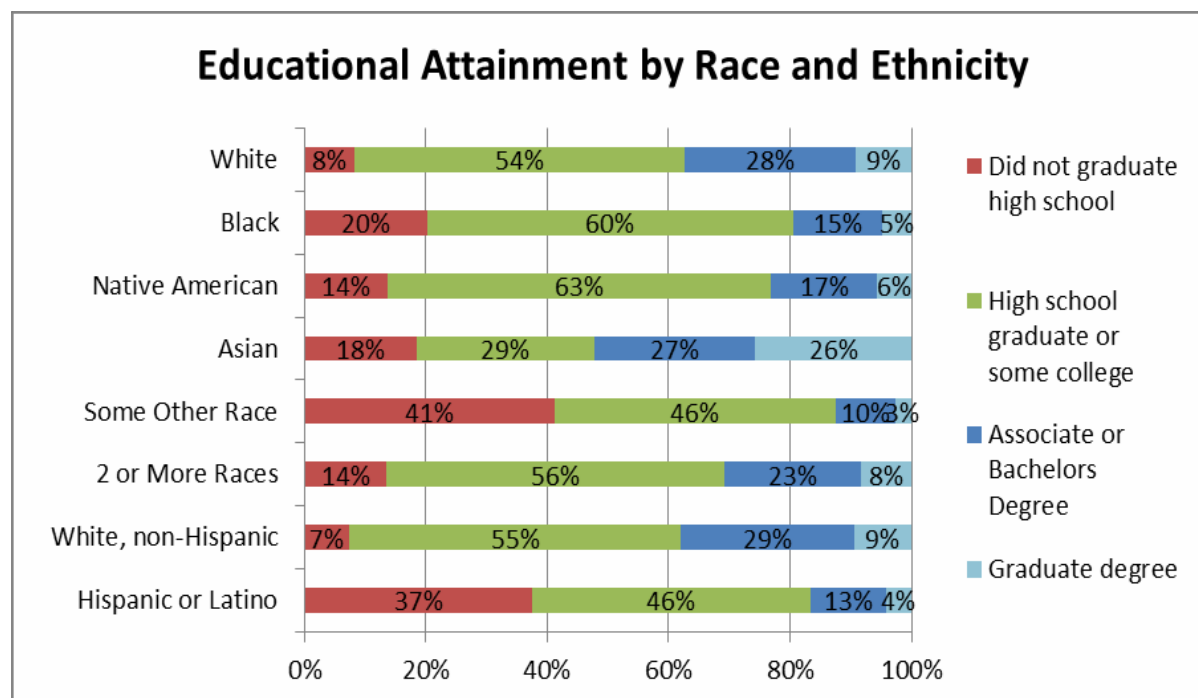
Bedrooms	Number	Percent
None	49,847	1.9%
1	259,676	9.8%
2	763,240	28.8%
3	1,089,350	41.1%
4	392,778	14.8%
5 or more	94,706	3.6%
Total	2,649,597	100.0%

Sources: 2016 ACS

Education

Wisconsin residents' educational attainment varies by race and ethnicity according to **Figure 9**. While only 7% of whites did not graduate high school in Wisconsin, that number is 20% for African Americans and 37% for Latinos (for the 46,000 residents who reported "some other race" it is even higher, 41%).

FIGURE 9: EDUCATIONAL ATTAINMENT FOR THE POPULATION 25 YEARS AND OVER BY RACE



Source: 2016 ACS

Educational attainment among Asian Americans in Wisconsin differs from other racial and ethnic groups in important ways. On the one hand, 18% of Asian Americans did not graduate high school, which is higher than that of whites or Native Americans. On the other hand, over half (53%) of Asian Americans have either a college or graduate degree, far greater than any other racial or ethnic group in Wisconsin. In terms of education, some Asian American groups have higher levels of educational attainment than the national average while other Asian American groups have significantly lower levels of educational attainment than the national average.⁴⁵ In fact, Cambodians, Hmong, and Laotians have the highest rate of having a less than high school education (Japanese have the smallest) and the lowest rates of having either a college degree or advanced degree. Regarding educational attainment, Asian Indians have the highest rates, 64.4% have college degrees while 12.5% have an advanced degree.⁴⁶

⁴⁵ Stacey J. Lee. "The Truth and Myth of the Model Minority: The Case of Hmong Americans." 2007.

⁴⁶ Le, C.N. "Socioeconomic Statistics and Demographics." July 2009.

Ability to Speak English (Linguistic Isolation)

A household in which no one speaks English well is *linguistically isolated*. Linguistic isolation hinders a person's ability to integrate economically, academically and socially into our society and has stranded many non-English speakers in low-wage menial jobs. In Wisconsin only 3.2% of all households have no one who speaks English only or can speak English very well. However, when looking at households that speak Spanish, Indo-European (over 400 languages), or Asian and Pacific Island languages the percentage of these households that are linguistically isolated is much higher as can be seen in [Table 18](#).

TABLE 18: NO ONE AGE 5 AND OVER SPEAKS ENGLISH ONLY OR SPEAKS ENGLISH VERY WELL

Households Speaking	Percentage of households with no one who speaks English only or very well
Spanish	26.7%
Other Indo-European languages	14.3%
Asian and Pacific Island languages	31.7%
Other languages	8.8%

Source: 2016 ACS

Table 19 lists the percentage of the population 5 years and over that speaks English less than “very well” by race and ethnicity. Among Asian Americans the figure is 32.9% and among Hispanics it is 30.8%. This has important fair housing implications. A population that is both minority and does not speak English well may face discrimination based on national origin as well as other challenges related to obtaining housing, like communicating effectively with a rental agent, real estate agent, mortgage lender or insurance agent.

TABLE 19: ABILITY TO SPEAK ENGLISH FOR THE POPULATION 5 YEARS AND OVER BY RACE AND ETHNICITY

Race/Ethnicity	Total	Speaks English < "very well"	Percentage
White	4,686,777	84,362	1.8%
Black	334,265	4,680	1.4%
Native American	87,033	1,044	1.2%
Asian	143,089	45,359	31.7%
Pacific Islander	1,305	16	1.2%
Some Other Race	113,363	35,823	36.8%
2 or More Races	94,244	3,823	4.1%
Hispanic or Latino	333,413	89,021	26.7%

Source: 2016 ACS

Victims of Sexual Assault and Domestic Violence

Domestic violence is difficult to track as victims of domestic violence do not often report incidences to law enforcement because they often fear for their safety or because they lack access to needed resources and/or support. Sexual violence is similarly difficult to track, however according to the 2010 National Intimate Partner and Sexual Violence Survey, sexual violence is a significant public health problem that affects over 1.7 million people in Wisconsin.⁵³ Many providers collect data regarding domestic and sexual violence (for example: law enforcement, hospitals, and domestic and sexual violence advocacy agencies). Because domestic violence is under-reported and falls under varying definitions, domestic violence data is difficult to analyze.⁵⁴

In consultation with the Department of Children and Families, these statistics regarding victims of domestic violence, dating violence, sexual assault and stalking were provided:

- 805,000 Wisconsin women have been attacked, raped, or stalked by an intimate partner.⁵⁵
- In the *reporting* period October 1, 2012 – September 30, 2013, 38,270 victims of domestic violence and their children received services from a Wisconsin domestic abuse program. This includes 7,446 persons who received safe shelter.
- In the same reporting period, 3,000 adults were turned away due to the shelter being full. Many of the shelter turn aways occur in urban areas, but increasingly, rural programs, such as those in Antigo, Superior, and Baraboo have had to turn victims away due to the shelter being full. The ESG program funds domestic violence shelters across the state. Funding is contingent on the number of clients served, which helps direct funding to areas where it is needed most.
- Domestic abuse programs reported 292,450 contacts of supportive counseling and advocacy for adult victims of domestic abuse in the last reporting period. This is a 5.2% increase over the previous year.
- Although the average shelter stay is approximately 30 days, domestic abuse programs report more victims needing to stay for periods of three to six months or longer before they can obtain the resources to live independently.
- In the 2013 Domestic Violence Counts, a one-day, unduplicated census count of adults and children seeking services, Wisconsin programs served 2,072 victims, with 924 in safe shelter. 188 persons were turned away due to shelters being full.⁵⁶

⁵³ Smith, S.G., Chen, J., Basile, K.C., Gilbert, L.K., Merrick, M.T., Patel, N., Walling, M., & Jain, A., *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 State Report*, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 2017.

⁵⁴ *The Burden of Sexual Violence in Wisconsin*, 2010

⁵⁵ *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 State Report*

⁵⁶ *Domestic Violence Counts: 2013 Census Reports*, National Network to End Domestic Violence.

Discrimination in Wisconsin

Extent of Discrimination

A major impediment to advancing fair housing is that the extent of discrimination is not known. Currently, our only measure of discrimination in housing is complaint data; this data is not an accurate measure of discrimination. Compared to a conservative estimate of 4 million annual fair housing violations, the aggregate number of complaints documented and investigated is small.⁵⁷ The National Fair Housing Alliance estimates that 4 million incidents of housing discrimination occur annually in the 2014 Fair Housing Trends Report; however, the National Fair Housing Alliance reported that HUD and state agencies process only slightly more than 8,000 complaints annually.⁵⁸ Private fair housing groups, with average staff size of five, while few in number and largely underfunded, year after year continue to process more fair housing complaints, educate more consumers, and train more industry providers than any other entity in the nation, including state and federal agencies charged with enforcing the federal Fair Housing Act.⁵⁹

Which direction would we prefer complaint data to move? An increase in complaint data could indicate an increase in discrimination or it could indicate an increase in reporting due to greater knowledge of fair housing laws. A decrease in complaints could indicate less occurrences of discrimination or could be due to individuals not reporting violations. For example, because there have been so few Latino-focused community-based organizations involved in fair housing outreach, education, and testing, one explanation for the large gap between acts of discrimination and fair housing complaints by Hispanics is a lack of cultural awareness of the civil rights enforcement system in general and the fair housing system in particular.⁶⁰ If some ethnic and minority groups are unaware of resources available to them, they are less likely to report housing discrimination. It seems reasonable to presume that in accordance with national fair housing complaints and the lack of reported incidents, not all of Wisconsin's fair housing violations are reported either. The reasons for underreporting range from fear of retaliation, believing that reporting will not make a difference, feeling that they have little or no legally-accepted proof that discrimination occurred against them, and not wanting to go through the steps of filing a complaint. In addition, sometimes people are discriminated against and may not realize it. It is especially difficult to detect or prove discrimination in steering, the practice of showing different groups different neighborhoods for housing.

⁴⁷ "Expanding Opportunity: Systemic Approaches to Fair Housing." National Fair Housing Alliance, August 13, 2014. pg. 15.

⁴⁸ *Id.*, pg. 16

⁴⁹ *Id.*, pg. 14

⁵⁰ Janis Bowdler and Charles Kamasaki. "Creating a Fair Housing System that Works for Latinos." *Fragile Rights within Cities: Government, Housing, and Fairness*. 2007. pg. 238.

In 2012, HUD contracted with the Urban Institute to complete studies on discrimination in housing. This study consisted of paired-testing of the initial phase of securing housing that examined discrimination nationally in metropolitan areas focusing on Blacks, Hispanics, and Asian renters and homebuyers. Although none of the sample metropolitan areas were in Wisconsin, similar patterns of discrimination may exist in Wisconsin. Measurement of the discriminatory treatment shown to minority renter and homebuyer testers is summarized in **Table 20** and **Table 21** below.

TABLE 20: MINORITY HOMESEEEKERS TOLD ABOUT FEWER HOUSING UNITS⁶¹

Told About Fewer Units (Compared to Whites)	Renting	Buying
Blacks	11.4%	17.0%
Hispanics	12.5%	0%*
Asians	9.8%	15.5%

*Paired testing differences favored neither whites nor Hispanics.

TABLE 21: MINORITY HOMESEEEKERS SHOWN FEWER HOUSING UNITS⁶²

Shown Fewer Housing Units (Compared to Whites)	Renting	Buying
Blacks	11.4%	17.0%
Hispanics	12.5%	0%*
Asians	9.8%	15.5%

*Paired testing differences favored neither whites nor Hispanics

Another HUD study from 2005 measured the extent of discrimination for those with disabilities in Chicago. The study mainly focused on differential treatment for hearing impaired individuals inquiring about apartments using teletypewriters (TTY) and for individuals in wheelchairs viewing the apartments.

The study found that those with disabilities already face more difficulties in finding housing; one-third of advertised rentals in Chicago were not accessible for unit inspection. The study only tested units that appeared to be accessible for a site visit.

Paired testing⁶³ was used to determine if hearing impaired individuals experience consistent adverse treatment when inquiring about apartments over the telephone. Hearing impaired individuals can use TTY, whereby an operator acts as the intermediary, reading what the hearing impaired individual writes, and typing what the other individual says. At the

⁶¹ U.S. Department of Housing and Urban Development. "Housing Discrimination Against Racial and Ethnic Minorities. 2012, pg. xi.

⁶² Id.

⁶³ Paired testing is a methodology in which two testers assume the role of applicants with equivalent social and economic characteristics who differ only in terms of the characteristic being tested for discrimination, such as race, disability status, or marital status.

beginning of the conversation the operator explains the TTY process to the receiver of the phone call. When TTY calls were accepted less information was given. In the study, users of TTY experienced consistent adverse treatment 49.5 percent of the time.

Testing was conducted to determine the amount of discrimination experienced by wheelchair users in the initial rental phase. Areas covered in the study included amount of information given, being shown the unit, willingness to grant reasonable modification, and willingness to grant reasonable accommodation for parking. Over 25 percent of wheelchair users were told about fewer available units. 30 percent were denied inspection of units, 17 percent of rental unit owners refused to allow reasonable modifications, and 19 percent refused to make a reasonable accommodation for parking. In this study, 30.3 percent of the time wheelchair users experienced some form of discrimination.

The series of studies conducted by the Urban Institute on behalf of HUD indicate that discrimination in housing still exists. The study found that those with disabilities were discriminated against more than minority groups. These studies highlight the need for continued work on fair housing issues and that special attention may need to be paid to fair housing issues for those with disabilities.

Housing Discrimination Complaint Data

Analysis of data on housing discrimination is made difficult because of Wisconsin's lack of substantial equivalence to federal fair housing law. This lack of equivalence means that HUD and the State Department of Workforce Development (DWD) no longer have a work-sharing agreement. Someone could file a complaint with both the State's Equal Rights Division of the Department of Workforce Development and HUD's Fair Housing Enforcement Center, and both cases could be continuing concurrently without the enforcement agencies knowing it. In short, there is a potential for duplication. Furthermore, it is impossible to eliminate the duplication because of confidentiality concerns.

Complaint data would not be complete without including the number and types of complaints filed by the Metropolitan Milwaukee Fair Housing Council (MMFHC). As a nonprofit organization dedicated to furthering fair housing in Wisconsin, MMFHC processes complaints from all over the state with the help of its satellite offices the Fair Housing Center of Greater Madison (FHCGM) and the Fair Housing Center of Northeast Wisconsin (FHCNW). MMFHC counsels clients on their options for administrative and judicial remedy, assists clients in filing complaints with administrative enforcement agencies and makes referrals to attorneys. In addition, MMFHC conducts investigations into systemic forms of discrimination in the housing market and maintains a pool of volunteers who assist in fair housing enforcement activities. MMFHC does refer some discrimination complaints to other fair housing agencies when deemed appropriate as reflected below in [Table 22](#).

TABLE 22: MMFHC HOUSING DISCRIMINATION COMPLAINTS REFERRED TO OTHER AGENCIES IN 2016

64

Referral Agency	# of Complaints Referred:
U.S. Department of Housing and Urban Development	3
Wisconsin Equal Rights Division	3
U.S. Department of Justice	0
Attorney ⁶⁵	12

From 2006 to 2013 HUD's Fair Housing Enforcement Center, Wisconsin DWD's Equal Rights Division and MMFHC received a combination of 2,774 housing complaints. In 2013, the three fair housing organizations received a total of 345 housing complaints. As **Figure 10** shows, the number of complaints received by all three organizations has fluctuated over the past eight years but there is no consistent pattern or trend that can be generalized to all of them. DWD and MMFHC both experienced decreases in the number of complaints with the fewest complaints reported in 2009, but the decrease was only 20% for DWD while it was more than 75% for MMFHC. In recent years the number of complaints received by DWD and MMFHC has risen, while for HUD the number of complaints has decreased. Given the number of factors involved it is difficult if not impossible to make generalizations about any trends in discrimination complaints across all three organizations.

FIGURE 10: NUMBER OF HOUSING DISCRIMINATION COMPLAINTS IN WISCONSIN FROM 2006-2013



Source: HUD, DWD-ERD and MMFHC internal reports of discrimination complaints

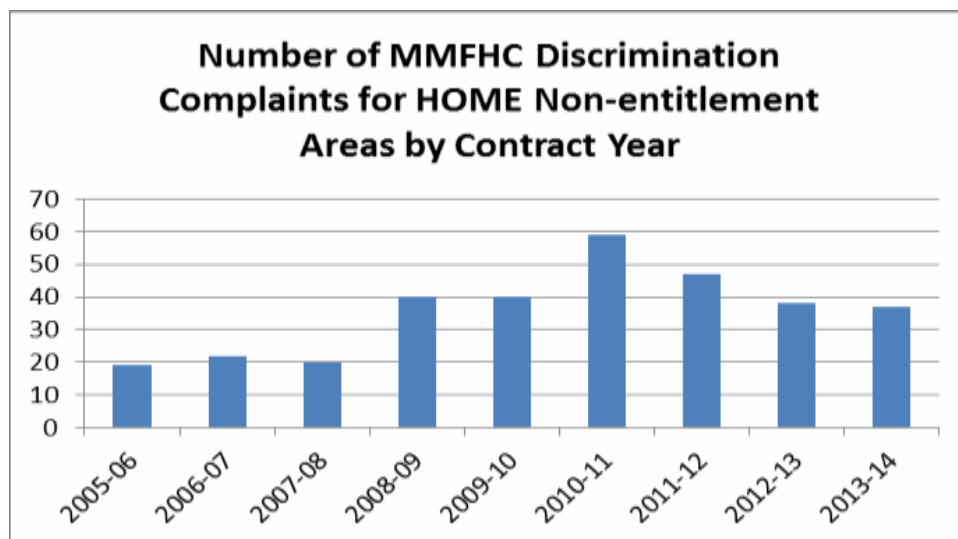
Figure 11 shows the number of discrimination complaints MMFHC received during a contract year (July 1st – June 30th) from HOME non-entitlement areas.⁶⁶ It should be noted

⁵⁴ 2016 Annual Report, MMFHC.

⁵⁵ This includes referrals to staff attorneys at Disability Rights Wisconsin, an agency with which MMFHC has a partnership to conduct inter-agency referrals when appropriate.

that the decreases and increases in total MMFHC complaints received are very different from the trends in complaints received for the non-entitlement areas.

FIGURE 11: NUMBER OF MMFHC DISCRIMINATION COMPLAINTS FROM HOME NON-ENTITLEMENT AREAS BY CONTRACT YEAR



Source: MMFHC internal report of discrimination complaints

State and Local Resources in the Arena of Fair Housing

State Agency Activities

DEPARTMENT OF WORKFORCE DEVELOPMENT EQUAL RIGHTS DIVISION | BUREAU OF CIVIL RIGHTS

The Department of Workforce Development (DWD) enforces the State's anti-discrimination laws in housing, public accommodations, and employment through its Equal Rights Division's Bureau of Civil Rights. This division receives, investigates, and attempts to conciliate, and makes determinations of discrimination, harassment in the workplace (including sexual harassment), retaliation protection and family and medical leave complaints. The Bureau also provides educational services on civil rights laws.

DEPARTMENT OF ADMINISTRATION DIVISION OF ENERGY, HOUSING AND COMMUNITY RESOURCES

The Division of Energy, Housing and Community Resources (DEHCR) administers federal housing, homelessness, public facility, and economic development programs: Community Development Block Grant (CDBG) Small Cities, Home Investment Partnerships (HOME), Neighborhood Stabilization Program (NSP),

⁵⁶ The HOME program non-entitlement areas differ from CDBG. Excluded "entitlements" or "participating jurisdictions" are as follows: Cities: Eau Claire, Green Bay, Kenosha, La Crosse, Madison, Milwaukee, and Racine. Counties: Dane, Jefferson, Milwaukee, Ozaukee, Rock, Washington, and Waukesha. See map in Appendix B on page 110.

Emergency Solutions Grant/Housing Program/Homeless Prevention (ESG/HP/HPP), Continuum of Care Supportive Housing Programs and Housing Opportunities for People with AIDS (HOPWA). In addition, the Division administers state-funded programs: HCRI Homebuyer Program, State Shelter Subsidy Grants (SSSG), and Shelter Plus Care (S+C), which provide services for adults who have a serious mental illness or co- occurring substance abuse disorders and are homeless.

Fair housing is an important element of the Division of Energy, Housing and Community Resources programs. DEHCR views its role in achieving this goal as affirmatively creating opportunities for low- and moderate- income households to live where they choose.

DEHCR requires grant recipients to take positive actions to further fair housing. When the Division staff conducts application training sessions, they often include materials explaining fair housing practices and actions that can be taken to promote fair housing and its access. The application for CDBG housing requires all applicants to identify actions they will take to further fair housing if they receive a grant. Grantees are required in their contracts to carry out the fair housing activities they propose in their grant applications; these actions are then reported to the Division in the grantee quarterly report.

HOME grantees are required to adopt and follow an affirmative marketing plan; these grantees must demonstrate active efforts in outreach when units become available. DEHCR reviews affirmative marketing efforts through monitoring visits. In addition, under the Rental Housing Development component of HOME, community housing development organizations (CHDOs) must not over-saturate an area within their jurisdiction with affordable housing projects; rather affordable housing opportunities should be dispersed throughout communities.

The Division, through its vendor, the Metropolitan Milwaukee Fair Housing Council, provides fair housing complaint intake and testing and offers fair housing workshops. The Division also co-sponsors and helps plan an annual fair housing lunch or conference in conjunction with the Wisconsin Fair Housing Network. The Division also sponsors the fair housing essay and poster contest for school-aged youth.

DEPARTMENT OF FINANCIAL INSTITUTIONS

The Department of Financial Institutions (DFI) has several divisions, and the Office of Credit Unions is attached to the DFI for administrative purposes. The Division of Banking (DOB) regulates state-chartered banks, savings and loans associations, and savings banks in Wisconsin, the DOB licenses and regulates mortgage bankers, mortgage brokers and loan originators. The Securities Division of the DFI regulates the securities industry in Wisconsin, and corporations that conduct business in Wisconsin are registered with the

Division of Corporate and Consumer Affairs. The Office of Credit Unions regulates state chartered credit unions.

The Department of Financial Institutions is the enforcement agency for Wisconsin Chapter 428. This department receives, investigates, and attempts to conciliate complaints related to high-cost lending and other lending issues.

DEPARTMENT OF HEALTH SERVICES

The Department of Health Services (DHS) licenses and regulates community living arrangements. DHS's administrative code for community based residential facilities requires that they comply with regulations promulgated under the Americans with Disabilities Act (ADA) to assure access for disabled persons. In addition, municipalities that are considering special zoning permission for a new community living arrangement may call upon DHS staff to review plans and provide advance approval or disapproval.

DHS also prioritizes community-based care for people with mental illness, physical disabilities or developmental disabilities, and for elderly people. The Department has focused on relocating people from state institutions and nursing homes to small-scale living arrangements with supportive services since 2006. From that time until 2016, the number of individuals with developmental and physical disabilities and frail elderly persons relocated from institutions to community settings totaled 6,609, and an additional 1,500 people were diverted from admission to a nursing home through DHS's outreach and community planning efforts.⁶⁷ **Table 23** lists the total number of relocations and diversions for persons with developmental disabilities, frail elders and persons with physical disabilities by state fiscal year.

⁵⁷ "SFY 2016 Report on Relocations and Diversions from Institutions," Department of Health Services.

TABLE 23: DHS COMMUNITY RELOCATIONS AND DIVERSIONS, STATE FISCAL YEAR 2006 TO 2016⁶⁸

SFY	Persons with Developmental Disabilities*	Frail Elders		Persons with Physical Disabilities		Total	
	Relocations	Relocations	Diversions	Relocations	Diversions	Relocations	Diversions
2006	372	409	98	152	47	933	145
2007	176	484	107	240	57	900	164
2008	52	438	133	222	50	712	183
2009	54	379	134	188	62	621	196
2010	81	477	95	216	29	774	124
2011	20	223	95	136	25	379	120
2012	38	270	90	117	20	425	110
2013	64	284	84	111	15	459	99
2014	49	293	109	160	20	502	129
2015	35	288	136	112	34	435	170
2016	25	329	52	121	8	475	60
Total	960	3,874	1,133	1,775	367	6,609	1,500
GRAND TOTAL						8,109	

**Note: DHS does not operate a specific diversion initiative for people with developmental disabilities, but new placements into institutions are limited and new people are enrolled in home and community-based programs each year on a regular basis, essentially diverting them from institutional care.*

Source: "SFY 2016 Report on Relocations and Diversions from Institutions." DHS.

The Department of Health Services and Department of Workforce Development have compiled a list of limited English proficiency resources including places to find interpreters for medical and general purposes, and translations specialists focusing on translating written documents. DHS Affirmative Action/Civil Rights Compliance Office works with the Department's contractors and vendors to ensure compliance with federal and state laws, regulations and departmental policies and procedures prohibiting discrimination in employment and service delivery. The Office develops and administers the Department's Civil Rights Compliance Plan for contractors/vendors to comply with their federal Title VI responsibilities. The Office also investigates discrimination complaints.

DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

As noted in several topics in the discussion on state statutes and administrative codes, the Department of Safety and Professional Services oversees the licensing and actions of significant players in the field of housing. The particular professions under their purview are real estate.

Regulation and Licensing has made a significant commitment to training real estate agents on fair housing issues, both in the pre-licensing phase and in biennial requirements for continuing education. In addition, the Department has spelled out penalties for violations of fair housing laws.

Regulation and Licensing also handles licensure and certification of appraisers. The Department sets continuing education requirements for licensed and certified appraisers. In addition, the Department may discipline licensed and certified appraisers who violate state regulations.

WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY

The Wisconsin Housing and Economic Development Authority, or WHEDA, is a quasi-public organization, established under State Statute Chapter 234. WHEDA oversees three major federal affordable housing programs: the Low-Income Housing Tax Credit (LIHTC) program, the Housing Trust Fund and project-based assistance in the Section 8 program. In addition, WHEDA provides loans with more favorable terms to individuals and multifamily developments for low-to moderate income housing.

WHEDA issues a Qualified Allocation Plan, which sets the criteria of the LIHTC program. The Internal Revenue Service, which administers LIHTC at the federal level, requires that local communities provide "comment" on the LIHTC-assisted project.

WHEDA will notify local officials of the proposed development and solicit comments. The allocation plan states, "While credit cannot be denied to a development based solely on such comment, WHEDA will consider this information and in its sole discretion may utilize such comment in its decision-making process." In addition, developers must provide a market analysis completed by an independent third party that demonstrates need for the project and discloses all other affordable housing projects in the particular target area.

Furthermore, WHEDA awards additional points in its scoring system for small and/or scattered site developments, for mixed-income projects, for developments with accessible design, for units that will house large families and for supportive housing. These incentives promote greater diversification in assisted housing, minimize concentration, and increase housing opportunities for families and disabled people.

WHEDA encourages greater home ownership by providing various types of home loans at below market rates to low-to-moderate income individuals and families. They promote increased access to funds and increase the affordability of housing for protected classes.

In overseeing Section 8 project-based assistance in the state, WHEDA follows all current HUD guidelines. Additionally, WHEDA is a member of the Wisconsin Fair Housing Network. WHEDA also furthers fair housing by forming partnerships with other agencies to address impediments to fair housing.

DEPARTMENT OF VETERANS' AFFAIRS

The Department of Veterans' Affairs offers many benefits to Wisconsin resident veterans, including loans for income-eligible veterans that generally have below market rates for home purchase, construction, purchase and rehabilitation, and home improvement. Veterans' service offices in each county assist veterans in completing paperwork and local lending institutions process and service the loans. Also, there are three veteran homes in Wisconsin located in Union Grove, Chippewa Falls and King. These homes offer low cost care with a slate of services including recreational activities, nursing, managed care assistance, meals and snacks, activities, pharmacy services, therapies, housekeeping, laundry, services to Wisconsin veterans and their spouses.⁷⁰ Each of these sites also sponsor transitional facilities for homeless veterans.

Administrative code VA 1.13 expressly prohibits discrimination against any veteran on the basis of age, race, color, sex, national origin, disability, ancestry, sexual orientation, political affiliation or beliefs, and arrest or conviction records. These prohibitions are stated on all DVA publications, as well as statements indicating DVA is an equal opportunity and fair housing lender.

OFFICE OF THE COMMISSIONER OF INSURANCE

As noted in several topics in the discussion on state statutes and administrative codes, the Office of the Commissioner of Insurance (OCI) oversees the licensing and actions of those involved in the insurance industry. Homeowner and renter insurance both are important aspects of housing; discrimination in insurance is expressly prohibited in State administrative code. In addition, the Office of the Commissioner of Insurance tries to provide information to everyone in the state on insurance matters: to further this goal OCI has converted its website to English/Spanish.

⁵⁸ "Wisconsin's Veterans Home at King." Wisconsin Department of Veterans Affairs.

DEPARTMENT OF CHILDREN AND FAMILIES

Although the Department of Children and Families does not provide direct housing-related resources, some of the programs such as Temporary Assistance for Needy Families (TANF) and Wisconsin Works (W-2) affect a family's ability to rent or own a home. The goal of Wisconsin Works (W-2) is to provide necessary and appropriate services to prepare individuals to work, and to obtain and maintain viable, self-sustaining employment, which will promote economic growth. W-2 is one of several work-based programs designed to ensure that everyone in Wisconsin shares in our economic opportunities. W-2 offers a wide array of supportive services provided by community resources, the business community, advocate groups and government. The W-2 agencies operating in Wisconsin consist of a mix of private (for-profit or non-profit) and public (county government) agencies. W-2 is also part of a larger effort in Wisconsin: to help all citizens share in the employment goals of self-sufficiency for families and to create a world class workforce in Wisconsin.

Local Resources

FAIR HOUSING COUNCIL

A fair housing council is an organization that helps persons understand their rights under the fair housing law and the different options they have to pursue a complaint. Fair housing councils may also conduct investigations using "testing," a method of investigating complaints that compares treatment of various persons seeking housing to determine whether differences in treatment are occurring that may constitute discrimination. Such testing has the potential to yield significant evidence in later administrative hearings or court proceedings. A fair housing council may also refer persons to attorneys experienced in fair housing issues and, in some cases, can itself be a plaintiff.

Metropolitan Milwaukee Fair Housing Council. In Wisconsin, the Metropolitan Milwaukee Fair Housing Council, Inc. (MMFHC) can provide information on whether a particular area of the state is served by a fair housing council. Its primary service area southeast Wisconsin area includes Milwaukee, Ozaukee, Racine, Washington and Waukesha Counties. Its telephone number is (414) 278-1240 and website at www.fairhousingwisconsin.com includes information on its satellite offices, which are the Fair Housing Center of Northeast Wisconsin and the Fair Housing Center of Greater Madison. Any of MMFHC's fair housing centers can be reached through its toll-free statewide complaint intake line, 1-877-647-FAIR(3247).

Fair Housing Center of Greater Madison. The Metropolitan Milwaukee Fair Housing Council serves Dane County through a Madison satellite office, the Fair Housing Center of Greater Madison. This office has been in operation since 1998. The phone number for the Fair Housing Center of Greater Madison (608) 257-0853 or 1-877-647-FAIR(3247).

Fair Housing Center of Northeast Wisconsin. The Metropolitan Milwaukee Fair Housing Council serves northeast Wisconsin through an Appleton satellite office, the Fair Housing

Center of Northeast Wisconsin. This office serves Brown, Calumet, Outagamie and Winnebago Counties, and has been in operation since 2002. The phone number for the Fair Housing Center of Northeast Wisconsin is (920) 560-4620 or 1-877-647-FAIR(3247).

An Evaluation of Wisconsin's Procedures, Policies and Practices in Relation to Fair Housing

State Laws Relating to Fair Housing in Wisconsin

BLIGHTED AREA, URBAN REDEVELOPMENT, AND URBAN RENEWAL LAWS

Following passage of the federal Housing Act of 1949, Wisconsin passed several laws in the 1950s to address blighted areas, urban redevelopment, and urban renewal (and to grant cities direct access to federal funds made available for these purposes). Taken together, these statutes—§66.1331, §66.1301 through §66.1324, §66.1333 and §66.1337—give municipalities the authority to take public action to redevelop areas within their borders that they define as “blighted”. The blighted area statute provides a definition, with language similar among all three statutes:

any area (including a slum area) in which a majority of the structures are residential... and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of these factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare. (§66.1333(3)(a))

To date, the State has yet to define several terms (for example, what density of population triggers use of the powers granted under this law). As with other planning-related laws, the state’s “home rule” history prevails. Language from the blighted areas law is typical: “A city may exercise all powers necessary or convenient to carry out and effectuate the purposes and provisions of this section...”

As stated earlier, these statutes give municipalities the authority to take public action to redevelop substandard areas. The blighted areas law emphasizes public takings (condemnation and eminent domain); the urban redevelopment and urban renewal statute emphasizes giving municipalities the power to compel private owners to preserve and rehabilitate property in slum areas; and the urban redevelopment statute emphasizes public/private partnership to redevelop areas. Municipalities are empowered to establish redevelopment (or community development) authorities to undertake planning and actions through the blight elimination and slum clearance statute (§66.1333(3)).

An anti-discrimination clause found within each of these laws protects certain classes (“Persons otherwise entitled to any right, benefit, facility, or privilege under this section may not

be denied the right, benefit, facility, or privilege in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation, status as a victim of domestic abuse, sexual assault, or stalking... or national origin.” 66.1331(2m)) In addition, the housing authority must meet the housing needs of those displaced by redevelopment. The language of the blighted area law is representative, requiring municipalities to determine that housing of affordability levels equal to any housing that is destroyed is available:

66.1331(7) Housing for displaced families. *The housing authority shall formulate a feasible method for the temporary relocation of persons living in areas that are designated for clearance and redevelopment. The housing authority and the local legislative body shall assure that decent, safe and sanitary dwellings substantially equal in number to the number of substandard dwellings to be removed in carrying out the redevelopment are available, or will be provided, at rents or prices within the financial reach of the income groups displaced.*

In short, these protections should be adequate to mitigate any disparate impact of urban redevelopment and renewal.

LOCAL HOUSING AUTHORITIES

The State authorizes municipalities to form housing authorities (§66.1201 through §66.1213). The county housing authority section incorporates the requirements and definitions of the city section. The governing board of a city, village, and town must pass a resolution accepting the authority of the county housing authority prior to the authority establishing a project within the municipality’s borders. In addition, municipalities may establish a community development authority that incorporates the functions of both housing assistance and community development activities (§66.1335).

Subsection 66.1201 (2m) states that housing authorities must not discriminate against certain protected classes:

66.1201(2m) Discrimination. *Persons otherwise entitled to any right, benefit, facility or privilege under ss. 66.1201 to 66.1211 may not be denied the right, benefit, facility, or privilege in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation, status as a victim of domestic abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u), or national origin.*

One will note that certain classes are absent, particularly the federal- and state-protected classes of disability and family status, as well as the state protected classes of age, ancestry, marital status, and lawful source of income. However, §106.50, given its language (see page 5), provides over-arching protections to all protected classes cited there. In addition, since much of a housing authority’s projects and subsidized housing originate from federal government financing, federal nondiscrimination clauses would apply.

There are no regulations under state law that prevents a housing authority from concentrating its housing developments in particular areas of its jurisdiction. However, the state permits local control in two ways: the city council must approve its housing authority's projects (§66.1201(9)(a-b)), and local planning commissions have oversight, to a limited degree, of the site-locating process. Note that the housing authority is to submit its plans to the planning commission for "advice", not for approval or rejection:

66.1211 (3) Project submitted to planning commission. *Before any housing project of the character designated in s. 66.1201 (9) (a) is determined by the authority, or any real estate acquired or agreed to be acquired for the project or the construction of any of the buildings begins or any application made for federal loan or grant for the project, the extent of the project and the general features of the proposed layout indicating in a general way the proposed location of buildings and open spaces shall be submitted to the planning commission, if any, of the city or political subdivision in which the proposed project is located, for the advice of the planning commission on the proposed location, extent, and general features of the layout.*

One subsection in the housing authority law permits local communities to liquidate their subsidized housing projects:

66.1201(25) Liquidation and disposal of housing projects. *(a) In any city or village the council or village board by resolution or ordinance, or the electors by referendum... may require the authority to liquidate and dispose of a project held and operated under ss. 66.1201 to 66.1211 or 66.1331.*

Furthermore, it is not clear that these units need to be replaced in the local market.

In summary, the State's tradition of "home rule," reflected in the statutes on housing authorities, permits communities to reject low-income housing. A community's refusal to accept a low-income housing project—or, in the extreme case, a vote to liquidate housing projects—could expose itself to a judicial challenge on the grounds of disparate impact.

In addition, the Division of Energy, Housing and Community Resources is required by the federal Quality Housing and Work Responsibility Act of 1998 to review and certify public housing authority Five-Year and Annual Plans for consistency with the State Consolidated Plan. DEHCR provides certification of the plans of public housing authorities and for applicants of HUD grants.

COMPREHENSIVE PLANNING

The State of Wisconsin began implementing the Comprehensive Planning law in November of 1999, an effort that includes a framework for planning for local governments, new funding initiatives and encouragement for state agency coordination with local plans. This legislation was developed primarily to address existing barriers to comprehensive land-use planning for local governments and to encourage effective planning and implementation

activities between local governments, counties, regions and the state. Comprehensive Planning requires all aspects of planning, including housing and economic development, be analyzed in accordance with other local level planning. However, Comprehensive Planning “does not mandate how a community should grow, rather it requires public participation at the local level in deciding a vision for the community’s future.”⁷¹

The Comprehensive Planning Law has been amended several times since its adoption in 1999. “First, the consistency requirement was amended to reduce the number of land use regulations that must be consistent with a comprehensive plan to zoning, subdivision regulations, and official mapping. In May 2010, the consistency requirement was further specified to apply to only ordinances and amendment ordinances enacted after 2009.”⁷²

As part of the comprehensive planning process, local governments are required to analyze the impact of ordinances and amendment to ordinances (enacted after 2009) on the development of various types of housing. According to Wisconsin State Statute 66.1001(2)(b), this housing component of the local comprehensive plan must include:

A compilation of objectives, policies, goals, maps and programs of the local governmental unit to provide an adequate housing supply that meets existing and forecasted housing demand in the local governmental unit. The element shall assess the age, structural, value and occupancy characteristics of the local governmental unit’s housing stock. The element shall also identify specific policies and programs that promote the development of housing for residents of the local governmental unit and provide a range of housing choices that meet the needs of persons of all income levels and of all age groups and persons with special needs, policies and programs that promote the availability of land for the development or redevelopment of low-income and moderate-income housing, and policies and programs to maintain or rehabilitate the local governmental unit’s existing housing stock.

The Comprehensive Planning law included provisions for the development of the model Traditional Neighborhood and Conservation Subdivision Ordinances by January 1, 2001 through the University of Wisconsin Extension to be approved by the state legislature. As of January 1, 2002, every city and village with a population of at least 12,500 is encouraged to enact a traditional neighborhood development ordinance; however, it is not required to be mapped. The legislation defines a “conservation subdivision” as: a housing development in rural setting that is characterized by compact lots, common open space and where the natural features of land are maintained to the greatest extent possible. Furthermore, it

⁵⁹ State of Wisconsin, Department of Administration, “Wisconsin’s Comprehensive Planning Legislation: Legislative Guide Document.” Division of Intergovernmental Relations. (September 2010), pg. 1.

⁶⁰ Id.

defines a “traditional neighborhood development” as: a compact, mixed-use neighborhood where residential, commercial and civic buildings are within close proximity to each other. In this way the Comprehensive Planning law can have an impact on reducing the barriers to affordable housing.

In 2017, Wisconsin Act 243 was enacted which requires all local communities to prepare a Housing Affordability Analysis, which is a report of the municipality's implementation of the housing element of the municipality's comprehensive plan under s. 66.1001. s. 66.10013 (2) (e) requires municipalities to perform “An analysis of the municipality's residential development regulations, such as land use controls, site improvement requirements, fees and land dedication requirements, and permit procedures. The analysis shall calculate the financial impact that each regulation has on the cost of each new subdivision. The analysis shall identify ways in which the municipality can modify its construction and development regulations, lot sizes, approval processes, and related fees ...” These models, coupled with the required analysis, will assist local governments by providing model implementation goals that could potentially lead to forwarding affordable housing goals of local communities and the State.

TAX INCREMENTAL FINANCING

Tax Incremental Financing (TIF) has been used to expand the economic base of municipalities by eliminating blighted areas, encouraging redevelopment and mixed-use development, and expanding industry in the state of Wisconsin. Municipalities establish Tax Incremental Districts (TIDs) that may need public improvements to allow private development to occur. The Department of Revenue certifies an initial tax base for the TID as improvements occur the tax base of the TID will increase. During the life of the TID the taxes over the amount of the initial tax base are used to pay for public improvements within the TID.

Section 66.1105(6)(g)3 allows municipalities to extend the life of a TID for one year after paying off the district's project costs for affordable housing purposes. 75% of any tax increments received during the extension must be used to benefit affordable housing in the municipality. The remainder of the increments collected during the extension must be used to improve the municipality's housing stock.

BUILDING CODES (OCCUPANCY STANDARDS)

While building codes might seem far afield from fair housing concerns, they intersect at the issue of occupancy standards.

In the 1988, amendments to the Fair Housing Act, section 3607(b)(1) permits all levels of government to establish “reasonable” occupancy limitations for housing units. The issue this section raises is whether an occupancy standard—for example, a certain minimum square footage per person or per bedroom, or maximum persons per bedroom—creates the potential for discrimination against large families, thus violating the familial status provision of the Fair Housing Act.

The occupancy standard has been a debatable topic for a number of years. HUD's guidance in March 1991, issued by General Counsel Frank Keating, said that, “Specifically,

[HUD] believes that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act.”⁷³ A subsequent task force recommended “that HUD establish some sort of maximum occupancy standard, based on the square footage of the apartment or of its sleeping area, or devise some other ‘safe harbor’ mechanism to

⁶¹ quoted in “Discrimination and Occupancy Limits: Finding a Middle Ground,” by Harry J. Kelly III, in *Journal of Affordable Housing and Community Development*, Fall/Winter 1994-95. Reprinted in *Today’s Fair Housing Rules: What You Don’t Know Can Hurt You*.

protect landlords from litigation”, but “the task force... was unable to agree on any specific square footage limitation.”⁷⁴

Then, in July 1995, new HUD General Counsel Nelson Diaz issued a memorandum basing instructions to HUD field offices on the model code that the Building Officials and Code Administrators (BOCA) produces. The BOCA code bases occupancy guidance on square footage rather than number of bedrooms. However, HUD halted the use of these guidelines after protests from the National Apartment Association and others.

Finally, in 1998 HUD officially adopted the standards from the Keating memo as a general guideline for occupancy standards (63 FR 70256). HUD guidelines state 2 people per bedroom as a standard, but will consider the size of bedrooms, configuration of the unit, other physical limitations of housing, state and local law, and other relevant factors to determine if occupancy standards are reasonable. Furthermore, the Keating memo states, “An occupancy policy which limits the number of children per unit is less likely to be reasonable than one which limits the number of people per unit.”

Neither the Wisconsin Uniform Dwelling Code [SPS 320-25 (one and two family)] nor the Wisconsin Commercial Building Code [SPS 361-65 (multifamily)] establish occupancy standards for one and two-family dwellings or multifamily dwellings.

In most cases the occupancy guidelines from HUD would be more restrictive than the Uniform Dwelling Code or the Commercial Building Code. The states standards may be more restrictive in the case of small bedrooms, but the Keating memo considers the size of bedrooms, thus a landlord could make a reasonable argument for occupancy standards based on the specific unit.

BUILDING CODES (ENERGY CONSERVATION)

The state promotes energy conservation in the private sector through building codes promulgated by the Department of Safety and Professional Services (DSPS). The codes relating to commercial buildings, historic buildings, and rental residential units include explicit energy conservation codes; the Commercial Building Code also incorporates the entire International Energy Conservation Code, developed by the International Code Council. In many other portions of the building codes, such as the design standards for one- and two-family dwellings, DSPS considers energy conservation in setting specific standards. In some instances, such as lighting standards for commercial buildings, the statutes direct DSPS to consider energy efficiency in designing standards.

In SPS 322.02(2) of the Uniform Dwelling Code, the purpose of the energy conservation codes is “...to allow the designer [of housing units] the option of using various methods to

⁶² Kelly, Harry J. “Discrimination and Occupancy Limits: Finding a Middle Ground,” *Journal of Affordable Housing and Community Development*, Fall/Winter 1994-95. Reprinted in *Today's Fair Housing Rules: What You Don't Know Can Hurt You*.

demonstrate compliance with thermal performance requirements...” In SPS 363.001 of the Commercial Building Code, which applies to multifamily housing units, the purpose of energy conservation codes is to provide “...flexibility to permit the use of innovative approaches and techniques to achieve the effective use of energy...” With the energy-conscious state building codes in place, affordable housing developers have the flexibility of increasing the efficiency of the housing units for low-income people, which in turn may lead to utility bill savings.

MANUFACTURED HOUSING

State laws related to manufactured housing (including mobile homes) are found in a number of statutes. Certain chapters apply to construction, dealers, and rental of mobile homes and sites within mobile home parks. Each of these areas will be addressed separately.

Fair housing concerns with construction relate, similar to single family and multi-family building codes, to any square footage per person standards, which might be used to preclude large families from renting a manufactured home. Section 101.94 of the State statutes says that new manufactured homes that are made or sold in the state must conform to the United States Code 42 USC 5401 to 5425 and HUD 24 CFR parts 3280 to 3283. Part 3280.109 specifies room requirements of 50 square feet of floor area for all bedrooms and 70 square feet of floor area for bedrooms designed for two people with an additional 50 square feet for each person in excess of two.

Mobile home retailers and salespersons are licensed by the Department of Safety and Professional Services. While the Federal Fair Housing Act is not specific, “dwellings” is broad enough to encompass mobile homes. The State statutes give DSPS power to suspend, revoke, or deny a mobile home license based on a dealer or salesperson “[h]aving violated any law relating to the sale, distribution or financing of mobile homes.”

The rental of mobile homes and sites within mobile home parks also falls under the jurisdiction of fair housing laws, although the language in the governing State statute is indirect. The fourth subsection asserts that “An operator [of a mobile home park] may refuse to enter into an initial lease with a prospective resident or mobile home occupant for any other lawful reason.” Being that discrimination against a protected class would be unlawful, a park operator is thus subject to fair housing laws. In addition, Wisconsin’s Open Housing Law (§106.50(1m)(L)) explicitly includes mobile homes in the definition of housing. Further, Wisconsin regulations on mobile home parks can be found in Wisconsin Administrative Codes, Chapter ATCP 125.

In summary, state laws provide adequate protection and recourse for protected classes in the sale, purchase, and rental of manufactured homes.

ZONING

The state maintains control over some local residential zoning through the Platting Lands statute, Chapter 236.

Various state agencies need to review subdivision proposals when “(a) The act of division creates 5 or more parcels or building sites of 1 1/2 acres each or less in area; or (b) Five or more parcels or building sites of 1 1/2 acres each or less in area are created by successive divisions within a period of 5 years.” The Department of Administration reviews plans for layout and certification, and the Department of Transportation reviews plans for compliance with safe road access to state trunk highways and connecting highways (TRANS 233). In addition, the Department of Natural Resources reviews plans to protect against pollution if the subdivision is within 500 feet of the “ordinary high-water mark” of any navigable stream, lake, or other waterway.

However, for the most part, residential zoning decisions are the domain of municipalities and counties in Wisconsin. Municipalities (cities, villages, and towns) and counties are granted authority to establish subdivision ordinances through planning agencies that are more restrictive than the segment quoted above, and for subdivisions not included in the segment above (that is, parcels or building sites greater than 1 1/2 acres, or divisions into fewer than 5 parcels). Furthermore, cities are given authority to develop master plans, including zoning ordinances, which “shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the municipality which will, in accordance with existing and future needs, best promote public health, safety, morals, order, convenience, prosperity or the general welfare, as well as efficiency and economy in the process of development” (§62.23(3)(a)).

Certain restrictions, found at §62.23(7)(i), exist on cities regarding any efforts to block community living arrangements for the disabled:

- Incorporated places have the authority to establish comprehensive zoning plans for unincorporated areas outside and contiguous to their borders (within 3 miles of the corporate limits of cities of 10,000 or more, or 1 1/2 miles of cities and villages of 10,000 or less).

IMPACT FEES

A number of communities in Wisconsin impose impact fees on new residential development in the effort to cover broad-based costs for improvements and public facilities that can (potentially) slow down a boom in new housing starts. The State Legislature, in 1994, passed an act to develop more regularity in impact fees across its communities, with an allowance made for communities to waive impact fees for low-income housing. The State enacted legislation regulating impact fees in 1994 (§66.0617), which took effect in the middle of 1995. This statute includes a requirement that municipalities that wish to charge impact fees for new land development assess “the cumulative effect of all proposed and existing impact fees on the availability of affordable housing within the municipality.”

(§66.0617(4)(a)3) Furthermore, communities may, under certain circumstances, exempt low-cost housing development from its impact fees. (§66.0617(7))

The fact that no state agency is authorized to administer this statute has made it difficult to assess its effect. Several University of Wisconsin System researchers have been studying development patterns in the metropolitan Milwaukee area, where sixteen communities had impact fees in 1993. There is no clear evidence to indicate that impact fees are increasing segregation (other than on the basis of economics). However, one researcher noted that, in general, communities are not waiving impact fees for affordable housing. As a result, many expensive projects are being proposed, and so little buildable land is left, that municipalities are not concerned with affordable housing development.

Research is split on whether impact fees encourage or thwart growth. Impact fees may encourage growth by allowing municipalities to provide public infrastructure that enables further growth. On the other hand, impact fees may discourage growth by increasing the cost of development. Affordable housing development is more sensitive to cost increases. The Government Accountability Office conducted a small survey that showed approximately half of the cities and counties in Wisconsin imposed impact fees on new development.⁷⁵ Although the state statute allows impact fees to be waived for affordable housing developments, it is not known how often local governments waive fees.

COMMUNITY RESIDENTIAL FACILITIES

Wisconsin law defines a number of different types of adult community residential facilities (Section 50.01):

- **Adult family homes:** “A place where 3 or 4 adults who are not related to the operator reside and receive care, treatment or services that are above the level of room and board and that may include up to 7 hours per week of nursing care per resident.”
- **Community-based residential facilities:** “A place where 5 or more adults who are not related to the operator or administrator and who do not require care above intermediate level nursing care reside and receive care, treatment or services that are above the level of room and board but that include no more than 3 hours of nursing care per week per resident.”
- **Nursing homes:** “A place where 5 or more persons who are not related to the operator or administrator reside, receive care or treatment and, because of their mental or physical condition, require access to 24-hour nursing services, including limited nursing care, intermediate level nursing care and skilled nursing services.”
- **Residential Care Apartment Complex or RCAC:** “[A] place where 5 or more adults reside that consists of independent apartments, each of which

⁶³ “Survey of Local Growth Issues.” Government Accountability Office. RCED-00-272. September 2000.

has an individual lockable entrance and exit, a kitchen, including a stove, and individual bathroom, sleeping and living areas, and that provides, to a person who resides in the place, not more than 28 hours per week of services that are supportive, personal and nursing services.” Detailed regulatory requirements for RCACs are contained in the administrative rule DHS 89.

Section 62.23(7)(i) guides the location of community living arrangements within Wisconsin’s cities. The following restrictions apply to: group homes for children; foster homes for children operated by corporations, child welfare agencies, churches, associations, or public agencies (but not to those operated by foster parents who use the home as their principal domicile), and community based residential facilities.

- **Distance standard:** A minimum distance between community living arrangements of 2,500 feet is required, with local prerogative allowed to reduce this distance.
- **Capacity standard:** In each city, the capacity of community living arrangements shall not exceed 25 or one percent of the city’s population, whichever is greater; within each city, the capacity shall not exceed 25 in each aldermanic district or one percent of the district’s population, whichever is greater.
- **Zoning standard:** Any community living arrangement with a capacity of eight or fewer persons (including adult family homes) is entitled to locate in any residential zone, without the need to obtain special zoning permission. Those of nine to fifteen residents may locate in residential zones not restricted to one- and two-family homes. Those serving 16 or more persons must apply for special zoning permission in any areas zoned for residential use.

Relative to all of these standards, the law grants local communities the power to make exceptions. Thus, a municipality could reduce the distance standard, increase the aggregate capacity, and/or approve zoning variances. An additional subsection permits the Department of Health Services or the Department of Children and Families to ask the state’s Attorney General to enforce these standards.

Furthermore, cities may review annually the “effect” a community living arrangement has “on the health, safety or welfare of the residents of the city.” The common council has the power to force the community living arrangement to close “[i]f the common council determines that the existence in the city of a licensed adult family home or a community living arrangement poses a threat....” Special zoning permission would be required for the facility’s continued operation. As a check on any perceived egregious local actions, the law provides for the facility’s option to seek judicial review.

Finally, facilities serving residents with HIV or AIDS may not be deemed to be a threat to the community solely on the basis that one or more residents has AIDS or is HIV-positive.

Section 46.03(22)(e) work to prohibit local zoning restrictions and deed covenants that might be attempts to restrict community living arrangements:

(e) If a community living arrangement is required to obtain special zoning permission..., the department [of health services] shall, at the request of the unit of government responsible for granting the special zoning permission, inspect the proposed facility and review the program proposed for the facility. After such inspection and review, the department shall transmit to the unit of government responsible for granting the special zoning permission a statement that the proposed facility and its proposed program have been examined and are either approved or disapproved by the department.

In summary, these standards provide certain fair housing protections for the disabled. The distance and capacity standards prevent the concentration of housing for the disabled in particular areas of a city. The zoning and deed covenant sections prevent attempts at discrimination against such housing. Finally, the zoning standards thwart NIMBYism. Furthermore, the involvement of the Attorney General and the Department of Health Services or the Department of Children and Families promises a fairly consistent response to local antagonisms. In fact, these laws on community living arrangements are the only instances in which the state has overridden local zoning authority.

On the other hand, the standards could be seen as having a discriminatory impact in other ways. The distance standard potentially limits the number of community living arrangements and thus the overall aggregate capacity of housing for the disabled. The capacity standard could permit a community to say, once it has reached 25 or one percent, that it has done its duty and should not allow further community living arrangements, even if need in the community is greater than the thresholds.

HOUSING CORPORATIONS

Wisconsin Statutes section 182.004 provides guidance on the formation and conduct of housing corporations. The law requires that, with regard to a housing corporation's plan to plat a subdivision, the local public land commission or city planning commission must grant its approval. In addition, if the subdivision is within six miles of a city with 150,000 or more residents, these cities' planning commissions must approve. Approval must also be received from the local health department.

Other sections cover the dollar value of work the corporation may do itself, leasing and selling of land and improvements, issuance and transfer of stock. All housing built must be owner-occupied, with the exception that multi-family buildings may be leased to a stockholder who may sublease the part not occupied by the stockholder.

Absent from this section is any discussion of fair housing, which raises the question: Could a housing corporation include a restrictive covenant that excludes members of protected classes?

Such a situation came to light in another state. In New Mexico, a nonprofit corporation that serves people with AIDS and HIV leased a home in a subdivision that had a restrictive covenant, limiting use of homes to “single family residences.” Thus, neighbors maintained that the disabled residents of the group home were not a family, and thus the lease should be voided and the group home could be prevented from opening.⁷⁶

If a group of persons formed a housing corporation for their own purposes, without intending to sell lots to others, it appears possible that they could create a restrictive covenant that excludes classes that are protected under the Fair Housing Act and Wisconsin’s Open Housing Law. However, any future transaction of any property would fall under Section 106.50. In addition, the housing corporation would likely face a legal challenge similar to the one in New Mexico.

HOUSING COOPERATIVES

Housing cooperatives may be formed under Wisconsin’s general statute governing cooperatives, Chapter 185. Similar to housing corporations, cooperatives set their own membership (or shareholder) policies, establishing through bylaws “the designation, qualifications, requirements, method of acceptance, and incidents of membership.”

Nothing in the law concerning cooperatives prevents discrimination in the criteria for membership. However, if a housing cooperative were to open its membership to the general public, it would be subject to the Fair Housing Act and the Open Housing Law.

Additionally, Section 185.03(8) states that cooperatives may “Make and alter bylaws, consistent with its articles and the laws of this state, for the administration and regulation of its affairs.”

TENANT/LANDLORD LAW

Wisconsin’s statutes pertaining to tenant/landlord law are found in Chapters 704, 710 and 799 (the latter two covering the judicial eviction process and possession) and further described in the Department of Agriculture, Trade and Consumer Protection’s administrative code ATPC 134. In addition, administrative code ATPC 125 regulates tenant/landlord relationship for mobile home parks. In 2013, Wisconsin Act 76 was passed making changes to the regulation of landlords and tenants, including in the areas of evictions and towing practices, and created state-wide prohibitions against the enactment of local ordinances which would place certain limitations or requirements on landlords. While the law generally eased the regulatory burden upon landlords seeking to evict tenants there are specific protections for victims of domestic abuse, sexual assault or stalking—a protected class under Wisconsin fair housing law.

⁶⁴ “Subdivision Restrictive Covenant Can’t Be Enforced Against Home for Persons with AIDS.” *Housing and Development Reporter*. March 11, 1996. pp. 692-93. Note that, under Wisconsin’s statutes regarding community-based residential facilities for disabled people (described earlier), a similar covenant would be voided.

Section §704.14 requires landlords to include specific language in all residential rental agreements notifying tenants of certain domestic abuse protections.

(1) As provided in section 106.50(5m)(dm) of the Wisconsin statutes, a tenant has a defense to an eviction action if the tenant can prove that the landlord knew, or should have known, the tenant is a victim of domestic abuse, sexual assault, or stalking and that the eviction action is based on conduct related to domestic abuse, sexual assault, or stalking...

In addition, section §704.16 allows tenants to terminate their tenancy when there is an imminent threat of serious physical harm to the tenant or the tenant's child and the tenant provides the landlord with proper notice and documentation.

REAL ESTATE MORTGAGE FINANCING

In Wisconsin, the Department of Financial Institutions regulates the lending practices of state-chartered banks, savings banks, and savings and loan associations. The department also licenses and regulates mortgage banks, mortgage brokers, and loan originators. The Office of Credit Unions regulates the lending practices of state-chartered credit unions.

Numerous state statutes (186, 220, 221, 214 and 215) govern banks, savings banks, credit unions, and savings and loan associations. In all cases, the commissioners are charged with enforcing all laws related to their particular financial institutions. The statutes do not make particular reference to non-discrimination in lending. However, certain administrative codes prohibit discrimination.

Savings banks and S&Ls have similar administrative codes entitled "Fairness in Lending" (DFI-SB 8 and DFI-SL 8, respectively). The purpose of each is to require the institutions "to give every applicant an equal opportunity to obtain a loan by evaluating the applicant's credit-worthiness on an individual basis without referring to presumed characteristics of a group or neighborhood." (8.01) Underwriting practices that "utilize lending standards that have no economic basis and are discriminatory in effect" are barred. In addition, discrimination is illegal on the basis of all state-protected classes (except age, sexual orientation, status as a victim of domestic abuse, sexual assault, or stalking, and lawful source of income). Furthermore, a financial institution may not "deny or vary the terms of a written loan application on the grounds that a specific parcel of real estate proposed as security for a mortgage loan is located within a given geographic area." Finally, a section in each code states, "There shall be a presumption of discrimination...if a written loan application is rejected or the loan commitment contains terms other than those originally applied for and the reason for the rejection or modification is not indicated to the applicant in writing."

The Wisconsin Consumer Act (DFI-WCA1), effective September 17, 2005, expanded the bases of discrimination for consumer lending by banks which previously only prohibited discrimination on the basis of sex or marital status. The new rule makes discrimination on a

prohibited basis in the granting or extension of credit an unconscionable credit practice. The rule now defines prohibited basis to include sex, marital status, age provided the applicant has the capacity to enter into a binding contract, race, creed, religion, color, disability, national origin, ancestry, sexual orientation, or membership in the military forces of the United States or this state; that all or part of the applicant's income derives from any public assistance program; and that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law.

DFI-CU 54.01 permits credit unions to make loans to their members secured by real estate in accordance with applicable state or federal rules, regulations and statutes. The administrative code for credit unions does not mention specific enforcement or penalties for discrimination in mortgage financing.

Mortgage bankers, loan originators and mortgage brokers are subject to penalties at §224.77 if they discriminate against a protected class (including all State classes). Specific penalties are to be applied for race-based discrimination (suspension of registration for at least 90 days on the first offense, and revocation of registration on the second offense).

In summary, the state's laws governing mortgage financing are consistent with or exceed Federal fair housing laws.

REAL ESTATE TRANSACTIONS

The regulation of real estate transactions, real estate brokers, and salespersons regarding fair housing is addressed in Wisconsin State Statutes, Chapter 452, and through the Department of Safety and Professional Services' administrative codes.

Section 452.14 permits the State's Department of Safety and Professional Services to take disciplinary action against real estate brokers and salespersons that violate Federal or State fair housing laws if they have:

452.14 (3) (jm) *Intentionally encouraged or discouraged any person from purchasing or renting real estate in a particular area on the basis of race. If the board finds that any licensee has violated this paragraph, the board shall, in addition to any temporary penalty imposed under this subsection, apply the penalty provided in s. 452.17(4) [suspension of not less than 90 days for first offense and revocation of license for second offense];*

(n) *Treated any person unequally solely because of sex, race, color, handicap, national origin, ancestry, marital status, lawful source of income, or status as a victim of domestic abuse, sexual assault, or stalking, as defined in s. 106.50(1m)(u).*

Section 452.23 provides an explicit responsibility to adhere to the state's Open Housing Law and federal handicapped discrimination laws concerning disclosures:

452.23 (1) *No licensee may disclose to any person in connection with the sale, exchange, purchase, or rental of real property information, the disclosure of which constitutes unlawful discrimination in housing under s. 106.50 or unlawful discrimination based on handicap under 42 USC 3604, 3605, 3606 or 3617.*

These responsibilities are repeated in Administrative Code REEB 24.03:

REEB 24.03 Competent Services: Discrimination Prohibited. *Licensees may not discriminate against, nor deny equal services to, nor be a party to any plan or agreement to discriminate against any person in any manner unlawful under applicable federal, state or local fair housing law. (NOTE: The primary references for federal and state fair housing laws are the 1988 amendments to the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968) and Chapter 106, Subchapter II, Stats.)*

Finally, under Administrative Code REEB 25, real estate brokers and salespersons are required to receive extensive training in fair housing law and nondiscrimination, under the topics of business ethics, consumer protection, and fair housing law. Also, 12 hours of continuing education is required every two years.

In summary, the State has made an extensive effort through its licensing procedure to ensure real estate brokers and salespersons are fully aware of fair housing requirements and to understand stiff penalties shall occur for violations.

INSURANCE

The sale of insurance of all types, including property insurance, is regulated by more than thirty Wisconsin statutes. These statutes empower the State Commissioner of Insurance to issue regulations governing the conduct of insurance companies and agents.

Those regulations, mostly found at Ins. 6, create a number of prohibitions. Early in the regulations (Ins. 6.09 (3) (a)), it is stated: "Every borrower [of mortgage financing] in the state should be afforded a reasonable opportunity to purchase any policy of insurance... for the purpose of providing insurance coverage on real or personal property..."

Discrimination in risk ratings is proscribed through both statute and regulation. Section 625.12(2) reads:

Classification. *Risks may be classified in any reasonable way for the establishment of rates and minimum premiums, except that no classifications may be based on race, color, creed or national origin.... Subject to s. 632.365, rates thus produced may be modified for individual risks in accordance with rating plans or schedules that establish reasonable standards for measuring probable variations in hazards, expenses, or both. Rates may also be modified for individual risks under s. 625.13 (2).*

Furthermore, Administrative code Ins 6.54 and 6.55 prohibits discrimination in risk ratings on residential properties of one to four units on the basis of the owners' past criminal record, physical disability, age, marital status, sex, sexual orientation, or "moral" character unless an insurer can offer "credible information" supporting such a distinction.

One federally protected class (family status) and three state classes (ancestry, lawful source of income, and status as a victim of domestic abuse, sexual assault, or stalking) are not explicitly covered anywhere else in the statutes or regulations. In addition, under the administrative code, it is not clear what is to occur with regard to larger residential complexes. However, the State's Open Housing Law may cover these other classes and larger complexes. In these exceptions, it appears that an aggrieved person would need to pursue amends through Department of Workforce Development's Equal Rights Division, rather than through the Commissioner of Insurance.

Other sections of the insurance regulations provide other protections. Refusing to issue, limiting, canceling, or not renewing a policy based upon the geographic location of a property could be viewed as discriminatory, unless the insurer can show "a business purpose" in not providing coverage.

Penalties available to the Commissioner for violation of state statutes and administrative codes include seeking injunctions or restraining orders through the courts; civil forfeiture; criminal penalties; revocation, suspension, or limitation of license.

Finally, the Commissioner requires agents wishing to sell property insurance to undergo a pre-licensing training that includes Fair Rating Practices, Ethical Marketing Practices, the Fair Credit Reporting Act, and Wisconsin prohibited classifications of risk. Licensed agents must obtain 24 credit hours every two years; while specific courses are not required, options include continuing education in non-discriminatory practices.

WHEDA STATEWIDE TAX DEFERRAL AND ABATEMENT PROGRAMS

Wisconsin has several laws that provide for tax deferral or abatements on residential properties administered by the Wisconsin Housing and Economic Development Authority (WHEDA).

A property tax deferral program for elderly homeowners (65 years of age or older) and veterans with "lower incomes" (less than \$20,000 per year currently) offers a maximum annual loan of \$3,525. The elderly person must own the home—which can have up to four units—and liens and judgments can be no more than 33% of the assessed value of the home. Mobile homes are excluded. Owners, successors, or assigns are not liable for more

than the loan, interest, and fee amount at time of sale. In the 2013-14 program year ending June 30, 2014, 24 individuals received a total of \$63,100 in loans averaging \$2,629.⁶⁵

Under the homestead credit (§71.51-71.55), a credit for property taxes (or a portion of rent paid and treated as payment of property taxes) is available to lower-income Wisconsin households. Up to \$1,168 can be taken as a credit. In 2018, it was available to households with income levels below \$24,680.⁶⁶

For taxable years beginning after December 31, 2013, the supplement to the federal historic rehabilitation credit (§71.07(9m)) provides a 20% supplement to the 20% federal historic rehabilitation credit for rehabilitating certified historic structures used for business purposes. In addition, the state historic rehabilitation credit (§71.07(9r)) provides a 25% income tax credit for preserving or rehabilitating an owner-occupied personal residence.

In sum, these tax credits and abatements, which are meant to address certain social and environmental purposes, do not restrict housing opportunities for people in protected classes. In fact, they may be viewed as expanding housing opportunities. Low-income elderly homeowners, who may be disabled, and low-income families (whether renters or owners) will not be displaced due to rising property taxes. The historic preservation credits are often applied to mixed-use buildings that are generally dilapidated and may increase the number of rental or ownership units available in a community.

Other Fair Housing Issues

PREDATORY LENDING

Predatory lending impedes fair housing because predatory lenders often target minorities and senior citizens, which threatens affordable homeownership for these groups. The issue of predatory lending may create confusion, because the definition of predatory lending is not consistent; predatory lending encompasses a variety of situations, and there is not always agreement on which situations constitute an instance of predatory lending. The following definitions of predatory lending demonstrate the range of practices that may be included.

⁶⁵ State of Wisconsin, Legislative Fiscal Bureau, "Property Tax Deferral Loan Program," *Informational Paper 23*, (January 2015).

⁶⁶ State of Wisconsin, Legislative Fiscal Bureau, "Homestead Tax Credit," *Informational Paper 22*, (January 2017).

“[A]n unsuitable loan designed to exploit vulnerable and unsophisticated borrowers. Predatory loans are a subset of sub-prime loans.

A predatory loan has one or more of the following features:

- **charges more in interest and fees than is required to cover the added risk of lending to borrowers with credit imperfections,**
- **contains abusive terms and conditions that trap borrowers and lead to increased indebtedness,**
- **does not take into account the borrower’s ability to repay the loan, and**
- **often violates fair lending laws by targeting women, minorities and communities of color.”⁶⁷**

“[A] range of practices, including charging excessive fees and interest rates, making loans without regard to borrowers’ ability to repay, or refinancing loans repeatedly over a short period of time without any economic gain for the borrower.”⁶⁸

The inclusion of subprime loans as predatory loans is a mistake. All subprime loans are not predatory loans, but all predatory loans occur in the subprime market. Subprime loans are

All subprime loans are not predatory loans, but all predatory loans occur in the subprime market.

loans that are offered to borrowers with imperfect credit. Subprime loans usually have a higher rate of interest to compensate lenders for the greater risk of these loans. The subprime loan market enables more individuals to receive home loans; these loans do not become

predatory until there are predatory practices attached to the loans or the lender is charging an excessive rate of interest (one that charges an excessive risk premium). Charging an excessive risk premium may be considered predatory; Freddie Mac and Fannie Mae have both stated that many consumers were charged a higher rate of interest than required, because consumers were eligible for prime loans, but received subprime loans.⁶⁹

Nonetheless, subprime loans are a valid lending product, and are not synonymous with predatory loans.

⁶⁷ National Community Reinvestment Coalition, *Anti-Predatory Lending Toolkit*, March 2002, p. 4.

⁶⁸ Government Accountability Office. “Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending: Statement of David G. Wood, Director, Financial Markets and Community Investment.” GAO-04-412T. February 24, 2004. p. 1.

⁶⁹ National Community Reinvestment Coalition. *Anti-Predatory Lending Toolkit*. March 2002. p. 8.

Predatory lending is harmful to all consumers, but especially to minorities and senior citizens, groups targeted by predatory lenders. Additionally, predatory lending can harm entire neighborhoods; the increased foreclosures can decrease property values in the neighborhood. Wisconsin and the federal government both have predatory lending laws that may help to further fair housing.

RESPONSIBLE HIGH COST MORTGAGE LENDING

Federal Regulations. The Home Ownership and Equity Protection Act of 1994 (HOEPA) is a federal law that specifically targets high-cost mortgage lending and is part of the Truth in Lending Act (TILA). Other federal consumer protection laws, while not written to combat predatory lending have been used to reduce predatory lending. These include, but are not limited to the Federal Trade Commission Act (FTC Act), TILA generally, and the Real Estate Settlement Procedures Act (RESPA). In 2010, in response to national housing and financial crises, the Dodd-Frank Wall Street Reform and Consumer Protection Act was passed making massive changes to United States financial regulation and consumer protection. The Dodd-Frank Act amended both TILA and RESPA and created a new federal agency, the Consumer Financial Protection Bureau (CFPB), which consolidated much of federal consumer financial protection authority into one place. One of the major units within the CFPB is an Office of Fair Lending and Equal Opportunity. Titles X and XIV are the sections of the Dodd-Frank Act most directly related to issues of fair housing and predatory lending are formally known as the Consumer Financial Protection Act of 2010, and the Mortgage Reform and Anti-Predatory Lending Act respectively. A full analysis of the Dodd-Frank Act is beyond the state of Wisconsin's Fair Housing Plan's scope or resources. The following will focus only on the State of Wisconsin's regulation of high cost mortgages.

State Regulations. In April of 2004, Wisconsin enacted 2003 Wisconsin Act 257, which became effective February 1, 2005. This Act includes Subchapter II of Chapter 428, Wis. Stats., which is titled "Responsible High Cost Mortgage Lending," and applies to covered loans where the total points and fees exceed six percent of the total loan amount, and all loans covered under HOEPA. Hereafter, we will refer to 2003 Wisconsin Act 257 as "Wisconsin Chapter 428." Wisconsin Administrative Code DFI-Bkg 46 also applies to the type of loans covered by Wisconsin Chapter 428. Wisconsin Chapter 428 excludes residential mortgage transactions (loans which finance the "acquisition or initial construction of the dwelling"). The prohibitions offered under this law are listed in **Table 25** below:

TABLE 25: COMPARISON OF RESPONSIBLE HIGH-COST LENDING LAWS

Term	Definition	Comments
Balloon Payments	A loan with a larger payment at the end of the loan term. Wisconsin law defines this as a loan in which the lender requires a payment that is more than twice as large as the average of all earlier scheduled payments.	State law prohibits balloon payments of all term lengths but allows bridge loans of less than one year for the "acquisition or construction" of a primary dwelling. State law also allows balloon payments to allow for irregular income of the borrower.
Call Provision	The lender terminates the loan prior to the original maturity date and demands the loan be repaid in full.	State law prohibits call provisions except when the customer fails to make required payments under the terms of the loan, there is fraud or material misrepresentation by the customer in connection with the loan, an act or omission by the customer that adversely affects the lender's or assignee's security for the loan or any right of the lender or assignee in such security. WI Chapter 428 also has an exception that allows a provision in the loan agreement permitting the lender or assignee to make demand for payment in full after the sale of the real property that is pledged as security for the loan.
Negative Amortization	A payment schedule with regular periodic payments that cause the principal balance to increase.	State law prohibits loans with negative amortization; however, allows negative amortization with customer consent for temporary forbearance or loan restructuring.
Default Interest Rate	An increase in the interest rate after default.	Prohibits an increase in the interest rate due to default.
Advance Payments	A payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds.	State law prohibits advance payments.
Repayment Ability	Engage in a pattern or practice of extending credit to a consumer based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment.	State law prohibits lending without consideration of repayment ability of the consumer. In addition, it presumes a violation has occurred if the lender engages in a pattern or practice of making covered loans without verifying and documenting the customer's repayment ability. The State of Wisconsin has clear guidelines on determining repayment ability and methods of verification (DFI-Bkg 46).
Existing Covered Loan Refinancing	Within one year of having extended credit, refinancing any loan to the same borrower into another loan unless the refinancing is in the borrower's interest. A creditor (or assignee) is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement (whether or not the existing loan is satisfied and replaced by the new loan) and charging a fee.	State laws prohibit refinancing (including through subsidiaries) loans within a year of the original loan unless it is beneficial for the consumer. Wisconsin makes an exception for bridge loans.

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Term	Definition	Comments
Payments to Home Improvement Contractors	Pay a contractor under a home improvement contract from the proceeds of a covered mortgage, other than: (i) By an instrument payable to the consumer or jointly to the consumer and the contractor; or (ii) at the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor prior to the disbursement.	State law prohibits making payments directly to contractors.
Single Premium Credit Insurance Products	"A lender may not finance, directly or indirectly, through a covered loan, or finance to the same customer within 30 days of making a covered loan, any individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance product on a prepaid single premium basis sold in conjunction with a covered loan. This prohibition does not include contracts issued by a government agency or private mortgage insurance company to insure the lender against loss caused by a customer's default and does not apply to individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance premium calculated and paid on a monthly or other periodic basis."	This provision is from Wisconsin Chapter 428
Subsidized Low-Rate Loans Refinancing	"A lender may not knowingly replace or consolidate a zero-interest rate or other subsidized low-rate loan made by a governmental or nonprofit lender with a covered loan within the first 10 years of the zero-interest rate or other subsidized low-rate loan unless the current holder of the loan consents in writing to the refinancing."	This provision is from Wisconsin Chapter 428
Default Recommendation	"No lender, licensed lender, mortgage loan originator, mortgage banker, or mortgage broker may recommend or encourage an individual to default on an existing loan or other obligation before and in connection with the making of a covered loan that refinances all or any portion of that existing loan or obligation."	This provision is from Wisconsin Chapter 428

(Continued From Previous Page)		
Term	Definition	Comments
Prepayment Penalties	A penalty for paying all or part of the principal before the date on which the principal is due.	State law does not allow prepayment penalties for refinancing with the original lender. It does allow a prepayment penalty, for 3 years after consummation that does not exceed 60 days of interest at the contract rate on the amount prepaid in connection with a fixed-rate loan of more than \$25,000 where the borrower pays more than 20% of the original loan amount. In addition, state law prohibits a lender from including a pre-payment penalty unless the lender offers the option of choosing a loan product without a prepayment penalty. The terms of the offer must be in writing, must contain specific wording and be initiated by the consumer.

Wisconsin Chapter 428 prohibits single premium credit insurance, loan default recommendation, and unless certain conditions are met, subsidized low-rate loan refinancing. In addition, the requirement of lenders offering consumers a loan product without a prepayment penalty increases awareness of these penalties and gives consumers more choice.

Wisconsin Chapter 428 requires disclosures to consumers. Disclosure requirements aid consumers by increasing knowledge of the loan requirements. State law requires disclosures warning consumers that they could lose their home if they default on the loan and that consumers are not required to complete the loan. Wisconsin Chapter 428 requires that disclosure statements be provided that advise consumers to comparison shop, consult a credit counselor or financial advisor, find out about escrow services for property taxes and homeowner's insurance, and not to accept any advice to not pay existing creditors. State law requires lenders to provide these disclosure statements to borrowers at least 3 days prior to finalizing the loan.

In Wisconsin Chapter 428, balloon payments are capped to ensure that payments do not more than double the average of previous payments and bans any lenders from issuing covered loans that amortize negatively except as a result of temporary forbearance or loan restructuring consented to by the consumer. Section 428.203(1), "no lender may make a covered loan to a customer that requires, or that permits the lender to require, a payment that is more than twice as large as the average of all earlier scheduled payments. This subsection, however, does not apply to a loan under which the payment schedule is adjusted to account for seasonal or irregular income of the customer or to a bridge loan with a maturity of less than one year that the customer obtains for facilitating the acquisition or construction of a dwelling as the customer's principal dwelling."

Predatory lending is often characterized by making loans without regard for a consumer's ability to repay the loan. Both laws prohibit lenders from making loans without considering the repayment ability of consumers. The following provision is in Wisconsin Chapter 428.

428.203(6) Repayment ability. *No lender may make covered loans to customers based on the customer's collateral without regard to the customer's ability to repay, including the customer's current or expected income, current obligations, and employment. A lender is presumed to have violated this subsection if the lender engages in a pattern or practice of making covered loans without verifying and documenting the customer's repayment ability.*

Chapter DFI-Bkg 46 of the Wisconsin Administrative Code defines methods of assessing consumers' ability to repay. Lenders should assess ability to repay based on a debt-to-income ratio of fifty percent or less and adequate monthly residual income (defined in 38 CFR 36.4337(e)). If only one of these two requirements is met then lenders may consider compensating factors.⁷⁰ The lender must verify a borrower's ability to repay by having the borrower submit a personal income and expense statement (acceptable personal income and expense statements include a Fannie Mae or a Freddie Mac uniform residential loan application), a tax return, pay stub, accounting statement or other similar statement, and the lender must obtain the borrower's credit report. Requiring that ability to repay loans be examined and verified should result in less targeting of individuals who cannot repay.

Furthermore, at least 3 business days before making a covered loan to a customer, a lender shall ensure that the customer has been given a notice, in writing and in a clear and conspicuous format with the following information:

- Notification to the borrower that they can lose their home and any money that they have put into it if they do not meet their obligations under this loan.
- Notification to the borrower that they have the right to shop around and compare loan rates and fees.
- Notification to the borrower that they are not required to complete a loan agreement because they have signed a loan application.
- Property tax and homeowner's insurance are the borrower's responsibility.
- Payments on existing debts contribute to credit ratings and the borrower should not accept any advice to ignore regular payments to existing creditors.

The Department of Financial Institutions ("DFI") is given authority to investigate violations and enforce the responsible high cost mortgage lending state statute. The department may commence an investigation anytime that the department has reason to believe that there has been or will be a violation of the statute. Also, the following provision applies when 5 or more persons file a complaint.

⁷⁰ Excellent long-term credit, conservative use of consumer credit, minimal consumer debt, long term employment, significant liquid assets, down payment or the existence of equity in refinancing loans, little or no increase in shelter expense, military benefits, satisfactory homeownership experience, high residual income, low debt to income ratio, tax credits of a continuing nature, and tax benefits of home ownership (38 CFR 36.4337(c)(5)).

428.210(2)(b) Investigations. *If 5 or more persons file a verified complaint with the department alleging that a person has violated this subchapter, the department shall immediately commence an investigation . . .*

The department may impose restitution, fines, suspension of license, and “any additional conditions that the department considers reasonable” for violations.

While Wisconsin Chapter 428 provides the Department of Financial Institutions with investigative and enforcement powers relating to predatory lenders, it also protects fair lenders by offering a safe harbor. Safe harbor is offered for those who act in good faith and amend the illegal terms within 60 days of discovery of the violation and act prior to an investigation by the department.

Certain federally chartered financial institutions may not be required to comply with Wisconsin Chapter 428 because they may be subject to only national regulations applicable to predatory lending. The Government Accountability Office cited a limitation of state predatory lending laws: “However, a state law may not apply to all mortgage lenders within the state. The Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration has asserted that federal law preempts some state predatory lending laws for the institutions they regulate, stating that federally chartered lending institutions should be required to comply with a single uniform set of national regulations.”⁷¹ Additionally, the section of Wisconsin Chapter 428 set forth in the next indented paragraph pertains to parity for specific state chartered financial institutions:

428.211 Exemption for depository institutions. *This subchapter does not apply to any state chartered or federally chartered bank, trust company, savings and loan association, savings bank, or credit union, or to any subsidiary of such a bank, trust company, savings and loan association, savings bank, or credit union.*

Despite the fact that certain financial institutions may not be required to comply with Wisconsin Chapter 428, this legislation may help to reduce predatory lending in Wisconsin. Given the added disclosure requirements, lenders must clearly make borrowers aware of their loan type and terms, responsibilities as a borrower to repay the loan, and the right to shop around for mortgage loans. Thus, borrowers can make an informed decision when purchasing a loan and as a result, the number of predatory loans should decrease.

CONSUMER LENDING

The administrative code (DFI-WCA 1.85) on discrimination in the granting of credit prohibits discrimination on the basis of age, race, creed, religion, color, disability, marital status, sex, national origin, ancestry, sexual orientation, or membership in the military forces of the

⁷¹ “Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending,” Government Accountability Office, GAO-04-280, January 2004, pg. 2.

United States or Wisconsin, anyone on public assistance, and anyone who has in good faith exercised any right under the Consumer Credit Protection Act or any state law. This code makes it illegal for lending institutions to deny credit, increase the charge for credit, restrict the amount or use of credit, implement a different application procedure or credit criteria based on discrimination of the aforementioned classes. Currently, a complainant will seek remedy from the Equal Rights Division under the Open Housing Law if their issue is housing related. The Department of Financial Institutions deals with all credit complaints including housing. It is possible that both agencies would have jurisdiction in enforcing the code, but complaints are rarely filed with both state agencies.

PREDATORY APPRAISALS

During the loan process homes are appraised to protect the lender and buyer. Neither party should desire that the value of the home be less than the price paid. A false high appraised value puts both parties at risk; the buyers will not be gaining equity in their home and the lenders will not have collateral for the full value of the loan.

An appraisal is an “analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in or aspects of real estate.”⁷² A fair appraisal contains an accurate description of the property and an analysis of comparable home sales in the area.⁷³ Appraisals may be different based on valuation method used and properties used for comparison. False appraisals may inaccurately describe the property, use home sales that are not comparable, or overlook flaws in the property to arrive at a higher appraisal value. One false appraisal may affect the appraisal values of all homes in the neighborhood because the false appraisal may be used for comparison.

The appraiser’s fee is not based on the appraised value of the home and thus it is not obvious that appraisers would have a reason for overstating property values. Reports by Dēmos and the National Community Reinvestment Coalition found that appraisers face intense pressures to falsely appraise homes. Appraisers identified pressure tactics in an online appraiser’s petition. These included the withholding of business for appraisers who refuse to inflate values, guarantee a predetermined value, ignore deficiencies in the property, refusing to pay for an appraisal that does not meet the selling price, and black listing honest appraisers in order to use “rubber stamp” appraisers. The online appraisers petition which calls for repercussions for those who pressure appraisers to make false appraisals has been signed by over 11,000 appraisers, approximately 150 appraisers from Wisconsin.⁷⁴

Though predatory appraisals can be a problem for anyone, the National Community Reinvestment Coalition found that of their cases involving suspected predatory appraisals,

⁷² Wis. Stat. §458.01

⁷³ National Community Reinvestment Coalition. *Predatory Appraisals: Stealing the American Dream.*, June 2005.

⁷⁴ Appraisers Petition. Available at www.appraiserspetition.com/.

minorities and low-income consumers were targeted.⁷⁵ Predatory appraisals decrease fair housing by targeting groups that are already vulnerable.

Federal Regulations for Appraisals. The Federal Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Title XI was enacted to protect federal financial interests “by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.”⁷⁶ Title XIV of the Dodd-Frank Act made various changes to the federal regulation of appraisal and valuation issues which will not be examined here.⁷⁷ Additional improvements needed in the federal regulation of residential appraisals are outlined in two reports from 2012 by the U.S. Government Accountability Office.⁷⁸

State Regulations for Appraisals. In Wisconsin, the Department of Safety and Professional Services licenses or certifies appraisers (SPS 81-87) in compliance with Title XI. Requirements consist of educational attainments, successful passage of a national and state exam, and experience requirements. All certifications and licensures require successful completion of a 15-hour uniform standard of professional appraisal practice course and examination. Additionally, 28 hours of continuing education are required biennially, including a 7-hour course on the uniform standard of professional appraisal practice. The Department of Safety and Professional Services ensures that certified and licensed appraisers meet minimum qualifications.

Appraisers in Wisconsin are not required to be licensed or certified, but it is illegal to falsely identify oneself as a certified or licensed appraiser. Appraisers who are not licensed or certified cannot perform appraisals for federally related transactions, which would encompass a large number of transactions, but may be able to perform appraisals for residential property loans at or below \$250,000.

Wisconsin and the Appraiser Standards Board dictate that certified and licensed appraisers must act ethically and professionally. Wisconsin administrative code SPS 86 references the “Uniform Standards of Professional Appraisal Practice.” Also, Wisconsin requires certified and licensed appraisers to take courses on these standards, which prohibit fraudulent appraisals and basing the appraised value on “characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is

⁷⁵ National Community Reinvestment Coalition. *Predatory Appraisals: Stealing the American Dream*. June 2005.

⁷⁶ Federal Institutions Reform, Recovery and Enforcement Act of 1989. 12 USC 3331.

⁷⁷ For a concise analysis of Dodd-Frank Act changes to appraisal regulation see William Pittenger, “A Brief Look at the Dodd-Frank Act.” *Real Estate Issues* (vol. 35, no. 3, 2010/2011), pg. 3.

⁷⁸ GAO, “Residential Appraisals: Regulators Should Take Actions to Strengthen Appraisal Oversight,” June 28, 2012; GAO, “Residential Appraisals: Appraisal Subcommittee Needs to Improve Monitoring Procedures.” January 12, 2012.

necessary to maximize value.” Wisconsin specifically prohibits appraisers from fraudulent appraisals.

458.20 Contingent fees. *No certified appraiser or licensed appraiser may accept a fee for conducting an appraisal that is contingent upon the appraiser reporting a predetermined estimate, analysis, opinion or conclusion or contingent upon the consequences resulting from the appraisal services.*

The Department of Safety and Professional Services may discipline any certified or licensed appraiser who engages in unethical conduct, engages in conduct that shows a lack of knowledge or ability to apply professional principles or skills, or bases appraisal value on the racial composition of the area (§458.26). Disciplinary actions include suspension or revocation of certificate and the requirement of additional education courses. Wisconsin clearly prohibits certified and licensed appraisers from predatory appraisals.

The weaknesses with Wisconsin law is that there are no clear rules prohibiting others from pressuring appraisers to make fraudulent appraisals and it is not clear that the prohibitions of predatory appraisals would apply to appraisers who are not certified or licensed.

Assessors. Assessors value all real estate for the purpose of imposing property taxes. In the state of Wisconsin residential property is assessed at market value.

70.32(1) *Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual provided under s. 73.03 (2a) from actual view or from the best information that the assessor can practicably obtain, **at the full value which could ordinarily be obtained therefore at private sale.** In determining the value, the assessor shall consider recent arm's-length sales of the property to be assessed if according to professionally acceptable appraisal practices those sales conform to recent arm's-length sales of reasonably comparable property; recent arm's-length sales of reasonably comparable property; and all factors that, according to professionally acceptable appraisal practices, affect the value of the property to be assessed.*

This may allow buyers to use the assessed value as a benchmark for the market value of the property. This will not be useful for newly constructed homes, unless the property assessment was done after the building was completed. Tax rolls are public record and are often available on the Internet.

The total assessed value of the community is required to be within 10% of the full value at least once every four years. If the Department of Revenue determines that assessed value has not been within 10% of full value in the past four years, special education for assessors in that area will be required. If in the following year assessed value is not within 10% of full value the department will require special supervision for the tax assessment (§70.05).

LENDING TRENDS IN WISCONSIN

The Home Mortgage Disclosure Act (HMDA) requires certain lending institutions to collect and publicize data on loan applicants. This data allows differences in lending patterns to be exposed.

Currently, HMDA data is only available for Metropolitan Statistical Areas (MSAs). There are 15 MSAs in Wisconsin; three of these cross into Minnesota or Illinois. Aggregate data from the 12 MSAs that are completely in Wisconsin was used to examine differences in denial rates among racial and ethnic groups. It should be noted that each of the 12 MSAs used in this analysis is a CDBG entitlement area. Thus, this is a non-random sample of loan applicant data from entitlement areas and therefore may not reflect what is occurring in Wisconsin as a whole or in the non-entitlement areas of the state.

Sub-tables 5-1 through 5-6 of Table 10 were used to examine differences in loan denial rate by race for different loan types: FHA, FSA/RHS, and VA home-purchase loans, conventional home-purchase loans, home refinancing loans, home improvement loans, and non-occupant loans. Refinancing loans were applied for the most, followed by home-purchase loans in 2017.

Minorities applied for loans less often than whites, which may make it easier for the denial rate to be skewed. Also, for certain minority groups such as Native Hawaiians and Other Pacific Islanders, data was not reported for many of the smaller MSAs, but this does not necessarily mean that members from this minority group did not apply for any of the loans studied. Therefore, the numbers reported from HMDA should be seen as a low estimate since there was a large amount of data missing. Keeping these limitations in mind, whites have the lowest denial rate for three of the five loan types in [Table 26](#); African-Americans have the highest loan denial rate in all loan categories except for home refinancing. The table below does not take into account differences in income, which is an important factor in loan approval decisions.

TABLE 26: LOAN APPLICATION DATA BY RACE OF APPLICANT AND LOAN TYPE

Income and Race	Number of Apps. Received	% of Applicants	Number of Apps. Denied	Denial Rate
<i>Table 5-1 DISPOSITION OF APPLICATIONS FOR FHA, FHS/RHS, AND VA HOME-PURCHASE LOANS, 1 TO 4 FAMILY HOMES AND MANUFACTURED HOME DWELLINGS</i>				
American Indian / Alaskan Native	58	0.44%	11	18.97%
Asian	310	2.36%	46	14.84%
Black / African-American	844	6.41%	176	20.85%
Hispanic / Latino	768	5.84%	106	13.8%
Native Hawaiian /Other Pacific	20	0.15%	4	20.00%
White	10,100	76.76%	939	9.3%
2 or More Races	10	0.08%	2	20.00%
Race Not Available	268	2.04%	141	52.61%
Joint (White / Minority)	780	5.93%	26	3.33%
Total	13,158		1461	11.1%
<i>Table 5-2: DISPOSITION OF APPLICATIONS FOR CONVENTIONAL HOME-PURCHASE LOANS, 1- TO 4-FAMILY AND MANUFACTURED HOME DWELLINGS</i>				
American Indian / Alaskan Native	119	0.22%	15	12.61%
Asian	1853	3.4%	159	8.58%
Black / African-American	1187	2.18%	201	16.93%
Hispanic / Latino	1840	3.37%	230	12.5%
Native Hawaiian / Other Pacific	58	0.11%	2	3.45%
White	45,297	83.08%	2633	5.81%
2 or More Races	16	0.03%	n/a	n/a
Race Not Available	825	1.51%	50	6.06%
Joint (White / Minority)	3330	6.11%	326	9.79%
Total	54,525		3616	6.63%
<i>Table 5-3: DISPOSITION OF APPLICATIONS TO REFINANCE LOANS ON 1- TO 4-FAMILY AND MANUFACTURED HOME DWELLINGS</i>				
American Indian / Alaskan Native	148	0.26%	38	25.68%
Asian	848	1.5%	200	23.58%
Black / African-American	1439	2.54%	472	32.8%
Hispanic / Latino	1563	2.76%	456	29.17%
Native Hawaiian / Other Pacific	67	0.12%	20	29.85%
White	46,388	81.79%	7544	16.26%
2 or More Races	14	0.02%	7	50.00%
Race Not Available	725	1.28%	117	16.14%
Joint (White / Minority)	5523	9.74%	1294	23.43%
Total	56,715		10,148	17.89%

(Continued from Previous Page)				
Income and Race	Number of Apps. Received	% of Applicants	Number of Apps. Denied	Denial Rate
Table 5-4 DISPOSITION OF APPLICATIONS FOR HOME IMPROVEMENT LOANS, 1- TO 4-FAMILY AND MANUFACTURED HOME DWELLINGS				
American Indian / Alaskan Native	67	0.59%	26	38.81%
Asian	165	1.45%	56	33.94%
Black / African-American	500	4.4%	265	53.0%
Hispanic / Latino	359	3.16%	133	37.05%
Native Hawaiian / Other Pacific	11	0.1%	3	27.27%
White	9295	81.75%	1638	17.62%
2 or More Races	6	0.05%	3	50.0%
Race Not Available	120	1.06%	32	26.67%
Joint (White / Minority)	847	7.45%	278	32.82%
Total	11,370		2434	21.41%
TABLE 5-6: DISPOSITION OF APPLICATIONS FROM NONOCCUPANTS FOR HOME-PURCHASE, HOME IMPROVEMENT, OR REFINANCING LOANS, 1- TO 4-FAMILY AND MANUFACTURED HOME DWELLINGS				
American Indian / Alaskan Native	10	0.12%	4	40.0%
Asian	303	3.74%	60	19.8%
Black / African-American	297	3.67%	91	30.64%
Hispanic / Latino	240	2.96%	54	22.5%
Native Hawaiian / Other Pacific	13	0.16%	1	7.69%
White	6496	80.17%	767	11.81%
2 or More Races	4	0.05%	3	75.0%
Race Not Available	111	1.37%	16	14.41%
Joint (White / Minority)	629	7.76%	123	19.55%
Total	8103		1119	13.81%

Source: HMDA MSA / MD Aggregate Tables 2017

Loan denial rate differences were examined by race and income level for home refinancing and home purchase loans. Taking into account differences in income, there are still differences in loan denial rates by race. Whites are less likely to be denied a loan than other races and have the lowest denial rates for conventional loans in all five of the income categories when comparing available data in [Table 27](#).

TABLE 27: CONVENTIONAL HOME-PURCHASE LOAN APPLICATION DATA BY RACE OF APPLICANT AND INCOME

Race / Ethnicity	# of Apps. Received	% of Applicants	# of Apps. Denied	Denial Rate
LESS THAN 50% OF MSA MEDIAN				
American Indian / Alaskan Native	24	0.48%	7	29.17%
Asian	241	4.78%	44	18.26%
Black / African-American	216	4.29%	64	29.63%
Hispanic / Latino	480	9.53%	93	19.38%
Native Hawaiian / Other Pacific	7	0.14%	0	0%
White	3800	75.41%	572	15.05%
Joint (White / Minority)	1	0.02%	0	0%
2 or More Races	18	0.36%	3	16.67%
Race Not Available	252	5.0%	62	24.6%
Total	5039		845	16.77%
50-79% OF MSA MEDIAN				
American Indian / Alaskan Native	36	0.3%	4	11.11%
Asian	329	2.73%	35	10.64%
Black / African-American	361	3.0%	56	15.51%
Hispanic / Latino	625	5.19%	79	12.64%
Native Hawaiian / Other Pacific	15	0.12%	1	0.07%
White	9929	82.47%	669	6.74%
Joint (White / Minority)	6	0.05%	0	0.00%
2 or More Races	87	0.72%	6	6.9%
Race Not Available	652	5.42%	82	12.58%
Total	12,040		932	7.74%
80-99% OF MSA MEDIAN				
American Indian / Alaskan Native	14	0.19%	1	7.14%
Asian	215	2.97%	11	5.12%
Black / African-American	200	2.76%	25	12.5%
Hispanic / Latino	270	3.73%	26	9.63%
Native Hawaiian / Other Pacific	7	0.10%	2	0%
White	6018	83.06%	339	5.63%
Joint (White / Minority)	2	0.03%	0	0%
2 or More Races	97	1.34%	9	9.28%
Race Not Available	422	5.82%	54	12.8%
Total	7245		465	6.42%

(Continued from Previous Page)				
Race / Ethnicity	# of Apps. Received	% of Applicants	# of Apps. Denied	Denial Rate
100-119% OF MSA MEDIAN				
American Indian / Alaskan Native	13	0.21%	0	0%
Asian	219	3.48%	12	5.48%
Black / African-American	111	1.76%	14	12.61%
Hispanic / Latino	141	2.24%	10	7.09%
Native Hawaiian / Other Pacific Islander	9	0.14%	0	0%
White	5314	84.48%	259	4.87%
Joint (White / Minority)	3	0.05%	0	0%
2 or More Races	106	1.69%	9	8.49%
Race Not Available	374	5.95%	31	8.29%
Total	6290		335	5.33%
120% OR MORE OF MSA MEDIAN				
American Indian / Alaskan Native	32	0.13%	3	9.38%
Asian	849	3.55%	57	6.71%
Black / African-American	299	1.25%	42	14.05%
Hispanic / Latino	324	1.36%	22	6.79%
Native Hawaiian / Other Pacific Islander	20	0.08%	1	5.0%
White	20,236	84.63%	794	3.92%
Joint (White / Minority)	4	0.02%	0	0%
2 or More Races	517	2.16%	23	4.45%
Race Not Available	1630	6.82%	97	5.95%
Total	23,911		1039	4.35%

Source: HMDA Application Data 2017 - Table 5-2

TABLE 28: REFINANCE LOAN APPLICATION DATA BY RACE OF APPLICANT AND INCOME

Race / Ethnicity	# of Apps. Received	% of Applicants	# of Apps. Denied	Denial Rate
LESS THAN 50% OF MSA MEDIAN				
American Indian / Alaskan Native	22	0.35%	9	40.91%
Asian	110	1.77%	46	41.82%
Black / African-American	295	4.75%	116	39.32%
Hispanic / Latino	357	5.74%	144	40.34%
Native Hawaiian / Other Pacific	11	0.18%	7	63.64%
White	4,780	76.90%	1,524	31.88%
Joint (White / Minority)	4	0.06%	0	0.00%
2 or More Races	33	0.53%	9	27.27%
Race Not Available	604	9.72%	212	35.10%
Total	6,216		2,067	33.25%
50-79% OF MSA MEDIAN				
American Indian / Alaskan Native	53	0.42%	15	28.30%
Asian	173	1.37%	54	31.21%
Black / African-American	430	3.41%	156	36.28%
Hispanic / Latino	523	4.14%	162	30.98%
Native Hawaiian / Other Pacific	18	0.14%	3	16.67%
White	10,086	79.89%	2,039	20.22%
Joint (White / Minority)	3	0.02%	1	33.33%
2 or More Races	97	0.77%	25	25.77%
Race Not Available	1,242	9.84%	342	27.54%
Total	12,625		2,797	22.15%
80-99% OF MSA MEDIAN				
American Indian / Alaskan Native	20	0.25%	3	15.00%
Asian	135	1.68%	30	22.22%
Black / African-American	198	2.46%	63	31.82%
Hispanic / Latino	230	2.86%	64	27.83%
Native Hawaiian / Other Pacific	5	0.06%	3	60.00%
White	6,558	81.48%	1,015	15.48%
Joint (White / Minority)	4	0.05%	4	100.00%
2 or More Races	69	0.86%	11	15.94%
Race Not Available	830	10.31%	212	25.54%
Total	8,049		1,405	17.46%

(Continued from Previous Page)				
Race / Ethnicity	# of Apps. Received	% of Applicants	# of Apps. Denied	Denial Rate
100-119% OF MSA MEDIAN				
American Indian / Alaskan Native	23	0.32%	5	21.74%
Asian	106	1.49%	22	20.75%
Black / African-American	155	2.17%	37	23.87%
Hispanic / Latino	171	2.40%	36	21.05%
Native Hawaiian / Other Pacific	8	0.11%	1	12.50%
White	5,845	81.99%	796	13.62%
Joint (White / Minority)	1	0.01%	1	100.00%
2 or More Races	105	1.47%	23	21.90%
Race Not Available	715	10.03%	151	21.12%
Total	7,129		1,072	15.04%
120% OR MORE OF MSA MEDIAN				
American Indian / Alaskan Native	30	0.13%	6	20.00%
Asian	324	1.43%	48	14.81%
Black / African-American	361	1.59%	100	27.70%
Hispanic / Latino	282	1.24%	50	17.73%
Native Hawaiian / Other Pacific	25	0.11%	6	24.00%
White	19,119	84.24%	2,170	11.35%
Joint (White / Minority)	2	0.01%	1	50.00%
2 or More Races	421	1.85%	49	11.64%
Race Not Available	2,132	9.39%	377	17.68%
Total	22,696		2,807	12.37%

Source: HMDA Application Data 2017 - Table 5-3

HMDA data excludes factors that would be considered in a loan decision, such as debt to income ratio, credit score, and financial reserves. Without this additional information it is difficult to equate these disparities with discrimination. Further data would be needed to explain these differences.

The HMDA data does not explain why minorities are a greater target for predatory lenders and thus file for foreclosures at higher rates than their white counterparts. In addition to the higher denial rates of loan applications among racial and ethnic minorities there is another aspect of the HMDA data that is important to observe. **Table 29** compares the change in the number of loan applications from 2007 to 2012 by race and by loan type.

TABLE 29: NUMBER OF LOAN APPLICATIONS RECEIVED BY RACE OF APPLICANT AND LOAN TYPE IN 2007 AND 2012

Income and Race	2017 Apps. Received	2012 Apps. Received	Percent Change
<i>Table 5-1 DISPOSITION OF APPLICATIONS FOR FHA, FHS/RHS, AND VA HOME-PURCHASE LOANS, 1 TO 4 FAMILY HOMES</i>			
American Indian / Alaskan Native	58	23	152%
Asian	310	243	28%
Black / African-American	844	420	101%
Hispanic / Latino	768	401	92%
Native Hawaiian / Other Pac. Islander	20	14	43%
White	10,100	8,772	15%
2 or More Races	10	6	67%
Race Not Available	268	158	70%
Joint (White / Minority)	780	393	98%
Total	13,158	10,421	26%
<i>Table 5-2: DISPOSITION OF APPLICATIONS FOR CONVENTIONAL HOME-PURCHASE LOANS, 1- TO 4-FAMILY AND MANUFACTURED HOME DWELLINGS</i>			
American Indian / Alaskan Native	119	81	47%
Asian	1853	826	124%
Black / African-American	1187	491	142%
Hispanic / Latino	1840	808	128%
Native Hawaiian / Other Pac. Islander	58	33	76%
White	45,297	27,615	64%
2 or More Races	16	5	220%
Race Not Available	825	429	92%
Joint (White / Minority)	3330	1410	136%
Total	54,525	31,696	72%
<i>Table 5-3: DISPOSITION OF APPLICATIONS TO REFINANCE LOANS ON 1- TO 4-FAMILY AND MANUFACTURED HOME DWELLINGS</i>			
American Indian / Alaskan Native	148	506	-71%
Asian	848	2600	-58%
Black / African-American	1439	5084	-72%
Hispanic / Latino	1563	2477	-37%
Native Hawaiian / Other Pac. Islander	67	409	-84%
White	46,388	157,784	-71%
2 or More Races	14	2046	-99%
Race Not Available	725	1881	-61%
Joint (White / Minority)	5523	9797	-44%
Total	56,715	182,587	-69%

Income and Race	2017 Apps. Received	2012 Apps. Received	Percent Change
<i>Table 5-4 DISPOSITION OF APPLICATIONS FOR HOME IMPROVEMENT LOANS, 1- TO 4-FAMILY AND MANUFACTURED HOME DWELLINGS</i>			
American Indian / Alaskan Native	67	60	12%
Asian	165	131	26%
Black / African-American	500	335	49%
Hispanic / Latino	359	191	88%
Native Hawaiian / Other Pac. Islander	11	7	57%
White	9,295	8,975	4%
2 or More Races	6	0	100%
Race Not Available	120	124	-3%
Joint (White / Minority)	847	934	-9%
Total	11,370	10,757	6%
<i>TABLE 5-6: DISPOSITION OF APPLICATIONS FROM NONOCCUPANTS FOR HOME-PURCHASE, HOME IMPROVEMENT, OR REFINANCING LOANS, 1- TO 4-FAMILY AND MANUFACTURED HOME DWELLINGS</i>			
American Indian / Alaskan Native	10	31	-68%
Asian	303	336	-10%
Black / African-American	297	299	-1%
Hispanic / Latino	240	253	-5%
Native Hawaiian / Other Pac. Islander	13	16	-19%
White	6,496	11,157	-42%
2 or More Races	4	0	100%
Race Not Available	111	180	-38%
Joint (White / Minority)	629	897	-30%
Total	8,103	13,169	-38%

Source: HMDA Application Data 2017

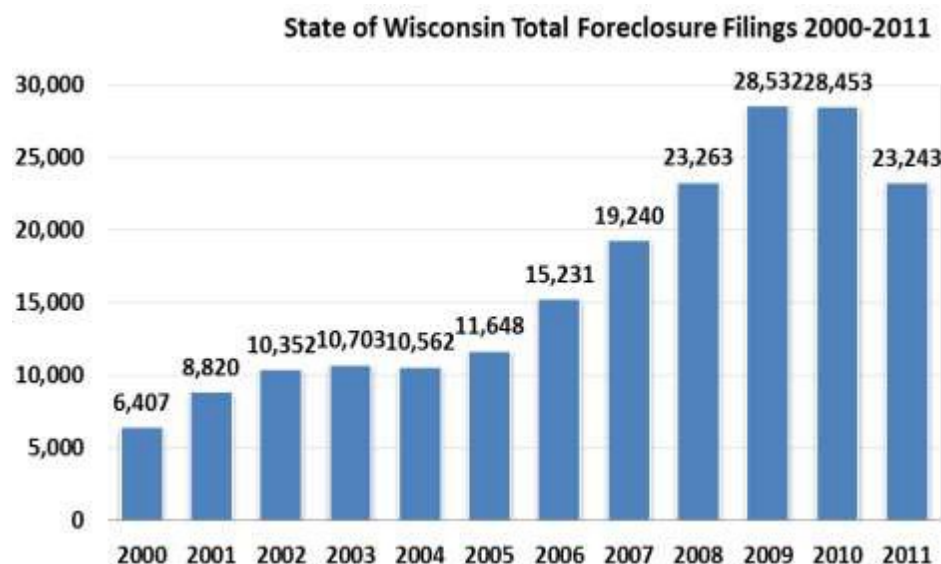
The change in the number of Black and Hispanic loan applications between 2007 and 2012 is quite different from that of white loan applications across all five loan types. Applications for government-backed FHA, FHS/RHS, and VA home-purchase loans (Table 5-1) generally increased among all racial and ethnic groups. However, while the number of white loan applications increased 102%, the increase among Hispanic applications was 67% and for African Americans the growth was 33%. Conventional home purchase loans (Table 5-2) dropped among virtually all groups between 2007 and 2012. The number of white applicants dropped by 46% while the number of Black and Hispanic applicants both dropped by approximately 90%. Among refinance loan applications Black and Hispanic applications each dropped by 56% while the number of white applicants actually increased by 40%.

The disparities between the change in the number of loan applications among racial and ethnic minorities when compared to whites does not demonstrate direct discrimination, but it does illustrate that the effects of the housing and financial crises have hit minorities, particularly African American and Latinos, the hardest. This data indicates that financial devastation experienced by Blacks and Hispanics has left them in a disproportionately weakened financial position to be able to apply for a home loan.

SUBPRIME LENDING AND FORECLOSURES

During the recent national housing and financial crises, Wisconsin experienced a growth in foreclosures in its housing market. As shown in [Figure 12](#), the number of foreclosures grew four-fold from 2000 to 2011 in Wisconsin.

FIGURE 12: NUMBER OF FORECLOSURES IN WISCONSIN FROM 2000 TO 2011



Source: UW Extension Housing and Foreclosure data

However, beginning in 2011, foreclosure rates declined. In fact, the Wisconsin Realtors Association reported that foreclosure rates “are at their lowest levels since 2000, well before the housing crisis emerged.”⁷⁹¹ Why are foreclosures an issue for fair housing? One impact foreclosures have on fair housing is through subprime loans. Several studies have documented pervasive racial discrimination in the distribution of subprime loans.⁸⁰ Many foreclosures are a result of subprime loans, which are eight times more likely to default than conventional loans and carried a 72 percent greater risk of foreclosure than

⁷⁹¹ Wisconsin Realtors Association. *Record Year for Wisconsin Housing Market* January, 23, 2017

⁸⁰ “2009 Fair Housing Trends Report.” National Fair Housing Alliance. pg. 38-39.

⁸¹ *Id.*, pg. 38.

fixed-rate mortgages.⁸¹ The majority of the foreclosures in the country have stemmed from subprime loans. Many borrowers who ended up with subprime loans in fact qualified for fixed rate loans in the prime market.⁸² The National Fair Housing Alliance reported in their 2009 Fair Housing Trends Report:

One...study found that borrowers of color are more than 30 percent more likely to receive a higher-rate loan than white borrowers even after accounting for differences in creditworthiness. Another study found that high-income African Americans in predominantly Black neighborhoods were three times more likely to receive a subprime purchase loan than low-income, white borrowers. More recently, an analysis of loan, credit, and census data has shown that even after controlling for percent minority, low credit scores, poverty, and median home value, "racial segregation is clearly linked with the proportion of subprime loans originated at the metropolitan level." This research supports the conclusion that racial segregation is itself an important determinant of subprime lending. The resulting flood of high cost loans in communities of color has artificially elevated the costs of homeownership for residents of those neighborhoods.

African American borrowers and the communities in which they live have suffered devastating setbacks as foreclosures caused by unaffordable and unsustainable loans have stripped many residents of homeownership and depleted their other wealth as well. Many communities are just now recouping the lost wealth associated with the recent housing crisis.

In Wisconsin, mortgage foreclosures are conducted judicially in accordance with Wis. Stat. chapter 846.⁸³ The entire process takes between four and 18 months, depending on several factors.⁸⁴ Such factors include, but are not limited to, the type of real estate, the size of the land parcel, the occupancy status of the borrower(s) and the mortgaged premises, and whether the creditor decides to seek a deficiency judgment. On the other hand, rent contracts between tenants and landlords are severed when the owner of a rental unit files for foreclosure. Banks and other lenders are not required to provide notice to tenants when commencing or completing foreclosure actions.

ONLINE HOUSING MARKET

The National Fair Housing Alliance (NFHA) claims, "Although newspapers have been held liable under the Fair Housing Act for publishing discriminatory housing advertisements with statements such as 'no kids,' or 'couples only,' the publishers of similar ads on the Internet have not been held to the same legal standard."⁸⁵ In 2017, NFHA and several of its local fair housing organization members reported more than 2,600 cases of familial

⁸² Id., pg. 39

⁸³ Mark Richard Cummisford. "Advising Clients Facing Foreclosure ." *Wisconsin Lawyer*. December 2007.

⁸⁴ Id.

⁸⁵ "For Rent: No Kids! How Internet Housing Advertisements Perpetuate Discrimination." National Fair Housing Alliance. August 11, 2009. pg. 2.

⁸⁶ National Fair Housing Alliance. 2018 Fair Housing Trends Report, pg. 52

discrimination.⁸⁶ NFHA claims, "...refusing to rent to families with children is acceptable and even legal. In order to fulfill the promise of equal housing opportunity for everyone, there must be parity between print and Internet housing advertisements."⁸⁷

The most common Fair Housing Act violation that NFHA and its members found on the Internet was advertising discriminating against families with children.⁸⁸ An example of discriminatory language found in an ad for a two-bedroom unit based in Chicago includes the language "Couples preferred."⁸⁹ In Wisconsin, the NFHA report found one fair housing discrimination case in Milwaukee during its investigation. Internet sites provide a convenient forum for illegal housing discrimination.⁹⁰ Under current court decisions, these websites are not considered to be publishers and thus can neither be held liable under the Fair Housing Act nor be required to screen out illegal housing advertisements. Only the individual landlords who create and post discriminatory ads online can be held responsible.

PART TWO | SUMMARY OF IMPEDIMENTS TO FAIR HOUSING CHOICE

An impediment to fair housing is anything that may hinder or prevent a person from having equal access to housing because of membership in a protected class defined by federal and Wisconsin fair housing law. State and federal protected classes include race, religion, national origin, color, sex, disability, familial status, age, ancestry, sexual orientation, marital status, legal source of income and status as a victim of domestic abuse, sexual assault, or stalking. Impediments may take the form of a governmental entity's policy, practice or procedure, housing industry practices, or other societal factors.

This section describes fair housing impediments faced by State of Wisconsin residents. These impediments were identified through research and interviews with fair housing representatives from around the state. Impediments are organized into two interrelated categories: federal and state impediments and private market impediments. Some impediments fall under more than one category; however, are listed in one location for the sake of space considerations. In some cases, the State of Wisconsin exercises direct control over the conditions that give rise to a particular impediment; in other cases, the State's role in addressing an impediment may be indirect. Notwithstanding these differences, the State has a responsibility to help dismantle each of the identified impediments.

⁸⁷ For Rent: No Kids! How Internet Housing Advertisements Perpetuate Discrimination." National Fair Housing Alliance. August 11, 2009. pg. 2.

⁸⁸ Id., pg. 5

⁸⁹ Id., pg. 5

⁹⁰ Id., pg. 6

State and Federal Government -Related Impediments

Lack of State Law's Equivalence to Federal Law

Because the State's Open Housing Law did not include the provision of legal representation for the complainant or respondent in discrimination cases that proceed to administrative hearings or court, HUD has not certified Wisconsin as a "substantially equivalent" jurisdiction.

Wisconsin Open Housing Law revisions made as part of the 2005-2007 Biennial Budget attempted to make Wisconsin law equivalent to federal law. The revised Open Housing Law requires representation for the complainant by the Attorney General in cases where both the Department of Workforce Development and the Attorney General find probable cause. Representation by the Attorney General is provided for administrative and civil hearings, where the complainant elects to do so. In addition, at the request of the Department of Workforce Development the Attorney General will file a petition for a temporary injunction. Following the law changes, Wisconsin applied to HUD for substantial equivalency but it was not approved.

Local Land-Use Regulations

Wisconsin's tradition of "home rule", embodied in the State Constitution, means that municipalities control most zoning and land use decisions (the location and use of sites of community residential facilities and environmental regulations are exceptions). Some experts have expressed concerns that "home rule" allows communities to use ordinances to keep affordable and multifamily housing—frequently the routes by which lower-income, often minority, households enter a community—from being developed. For example, in *State Financial Bank v. City of South Milwaukee*, the City of South Milwaukee rezoned a parcel to single family use in which Lake Bluff Housing Partners wanted to create a low-income multifamily housing project while the low-income housing project was being discussed as a potential use.⁹¹ Lake Bluff had previously acquired vested rights in the commercial zoning of the property prior to the zoning change and the City of South Milwaukee failed to serve notice and an opportunity for a hearing. The Milwaukee County Circuit Court, Wisconsin Court of Appeals, Wisconsin Supreme Court, and United States District Court all ruled that the City of South Milwaukee must grant Lake Bluff its building permits. The City of South Milwaukee case exemplifies how communities in Wisconsin exercise the notion of "home rule" by changing their zoning ordinances to prevent unwanted uses including the creation of low-income and multifamily housing.

In addition, several studies conclude that the use of impact fees for new development raises the cost of new housing and increases the value of existing housing, thus generally

⁹¹ *State Fin. Bank v. City of S. Milwaukee*, 2007 U.S. Dist. LEXIS 41623 (E.D. Wis., June 6, 2007)

reducing affordability.⁹² In short, zoning and impact fees can have the effect of “disparate impact”. Policies that appear neutral on their face may actually increase segregation.

Private Market Impediments

Lack of Equal Housing Opportunity in the Mortgage Lending Market

The mortgage lending market is complex with multiple impediments to fair housing as described in sub-sections below.

In general, discrimination in mortgage lending prevents or impedes home seekers from obtaining the financing normally required to purchase a home. Racial discrimination in the home loan industry can be based either on the race of the loan seeker or on the racial composition of the neighborhood where the home being purchased is located.⁹⁴

Discrimination in the home loan industry can take numerous forms, including: outright denial of a loan; discouraging a loan seeker from applying; less favorable rates and terms; long processing times; and exclusionary underwriting guidelines. Loan policies can also have a discriminatory effect on minorities when qualifying standards are more stringent than warranted to secure a loan. Discrimination can also occur external to the lending institution itself, specifically, in the appraisal of the home, in the underwriting of private mortgage insurance, and in the practices of the secondary loan market. The lack of loan origination offices in minority and central city areas is also a form of redlining.

In addition to these relatively well-known forms of discrimination, there are new indicators of discriminatory or unequal conditions:

Predatory Lending Practices. Many of Wisconsin’s communities were made vulnerable to predatory lending practices as a result of deregulation of the banking industry in the late 1990s, along with the lending vacuum created when banks left predominantly minority and/or low-income neighborhoods.

While the effects of past predatory lending can still be seen across the state and loans with abusive terms have created hardships among thousands of vulnerable households, recently enacted Wisconsin and federal laws have all but eliminated any new predatory loan activities from occurring. Stronger regulatory standards and heightened consumer awareness have improved lending practices in the state.

Predatory Appraisals. Predatory appraisals, whether due to collusion between appraisers and lenders or due to pressure put on appraisers by a third party, decrease the affordability of housing by increasing fees that are based on the value of the home, and can result in decreased equity from homeownership. Legal protection against predatory appraisals is

⁹² Gregory S. Burge, Arthur C. Nelson, and John Matthews. “Effects of Proportionate-Share Impact Fees.” pg. 3.

⁹³ This latter form of discrimination is commonly referred to as mortgage redlining.

limited. Appraisers are required by statute and professional ethics guidelines to appraise properties honestly, rather than on a predetermined basis.

Accessible Housing Supply

An inadequate supply of accessible housing in Wisconsin is frequently cited by disability rights advocates as a top concern. Reliable data is not available on the actual number of accessible housing units in the private market. According to the 2012-2016 American Community Survey, 11.8% of Wisconsin civilian non-institutionalized population has a disability.

A 1988 amendment to the Federal Fair Housing Act requires multi-family residences built for first occupancy after March 13, 1991 to have a variety of basic accessibility features, such as doorways and hallways of a certain width, an accessible entrance, accessible environmental controls, and bathrooms and kitchens with floor space that allows wheelchair access. Over 74% of Wisconsin's housing was built before 1990, and therefore is not required to meet federal accessibility guidelines, unless it is multi-family and federally funded or financed.

Wisconsin's large proportion of older housing stock exacerbates its lack of accessible housing. The median year that all structures were built in Wisconsin's was 1974, which is older than the United States' median of 1978. Older housing units are more likely to have inaccessible characteristics such as narrow halls and doorways, small bathrooms, and steps. However, they are also more likely to be affordable. Newer homes are more likely to have accessible features, but their better condition means they are less likely to be affordable. This is a critical quandary, because a disproportionate number of persons with disabilities have low income. In addition to the need for affordable and accessible housing, disability advocates have indicated that there is a particular need for accessible housing with three or more bedrooms.

Finally, a lack of accessible housing impacts not only the people who would seek to live in such housing, but also those who wish to have access to the homes of friends, relatives or professional associates. Accessible housing is also "visitable" housing, enabling people with disabilities to have the same capacity as those without disabilities to visit the homes of other people and participate as full members of a community.

Participating as full members of the community often includes the ability of a person with a disability to have a service animal that assists the person with daily tasks while renting a home. HUD claims that an animal qualifies as a reasonable accommodation if: (1) An individual has a disability, as defined in the Fair Housing Act or Section 504, (2) the animal is needed to assist with the disability, (3) the individual who requests the reasonable accommodation demonstrates that there is a relationship between the disability and the

assistance that the animal provides.⁹⁴ Wisconsin's Open Housing law requires those who need a service dog in their rental unit to upon request display credentials issued by a school recognized by the department as accredited to train animals for individuals with impaired vision, hearing, or mobility.

Substandard Housing and Overcrowded Housing Conditions

Assessments of the state's housing stock often address affordability without taking housing quality or other conditions, such as overcrowding, into account. Similar to a lack of affordable housing, substandard housing and overcrowded housing conditions are fair housing impediments. Overcrowded housing conditions have a disparate impact on minorities, families with children, and people with disabilities.

The age of a housing unit is not an absolute predictor of housing quality. However, it can be assumed that the older the housing structure, the greater the likelihood of code compliance problems. Some 61% of Wisconsin's housing units were built before 1960 and many of these units may be in some state of disrepair.

Although overcrowding in Wisconsin decreased from 2000 to 2017 overall, it still predominantly exists in minority populations.⁹⁵ In 2017, almost 11% of both Hispanics and Asians experienced overcrowding whereas only 1% of white, non-Hispanic householders experienced overcrowding.

According to the 2010-2012 American Community Survey, in owner occupied housing, more than 78 percent of the units had three or more bedrooms. However, in rental housing, 74 percent of the rental housing stock had two or fewer bedrooms. As discussed in another section from the 2010-2012 American Community Survey data, Hispanics and Asians have considerably larger households than whites in the Wisconsin. When combined with income-related considerations, the result is that these households face much greater risk of overcrowding than white households.

Language Barriers

Wisconsin is home to approximately 470,836 people who speak English as a second language (ESL) that have varying levels of competency in the English language.⁹⁶ It is possible that this population will continue to increase due to immigration. The ESL population is a double concern due to their English language skills and because the ESL population tends to be lower-income, and thus have limited resources. Households with limited English language capacity are less likely to be aware of their rights and of resources available to aid in cases of housing discrimination. In addition, these households may not

⁹⁴ U.S. Department of Housing and Urban Development., "Pet Ownership for the Elderly and Persons with Disabilities; Final Rule." 24 CFR Part 5. October 27, 2008.

⁹⁵ The U.S. Census defines a household as overcrowded if it includes more persons than the number of rooms it occupies.

⁹⁶ U.S. Census Bureau. 2012-2016 American Community Survey.

be aware of other housing resources available, putting these households at a disadvantage in securing housing. Even households where English is spoken well may find it easier to understand documents available in their first language.

PART THREE | ACTION PLAN / STRATEGIES TO OVERCOME BARRIERS TO FAIR HOUSING

The most critical elements of the “Analysis of Impediments to Fair Housing” are the recommendations that are provided for local communities to address and remedy the barriers identified in previous sections. These recommendations, which are listed in no particular order of priority, should be used as a starting point for the State of Wisconsin to implement a comprehensive fair housing action plan.

Lack of State Law’s Equivalence to Federal Law

Because the State’s Open Housing Law did not include the provision of legal representation for the complainant or respondent in discrimination cases that proceed to administrative hearings or court, HUD has not certified Wisconsin as a “substantially equivalent” jurisdiction. This could result in less reporting of fair housing violations to the State as well as a potential loss of federal funds for administration, enforcement, education and outreach available to substantially equivalent jurisdictions.

ACTIONS

- Wisconsin Open Housing Law revisions made as part of the 2005-2007 Biennial Budget may make Wisconsin law equivalent to federal law:
 - o The revised Open Housing Law requires representation for the complainant by the Attorney General in cases where both the Department of Workforce Development and the Attorney General find probable cause.
 - o Representation by the Attorney General is provided for administrative and civil hearings, where the complainant elects to do so.
 - o At the request of the Department of Workforce Development, the Attorney General will file a petition for a temporary injunction.
 - o Following the law changes, Wisconsin applied to HUD for substantial equivalency but it was not approved.
- CDBG grantees are required to adopt a Fair Housing ordinance and to affirmatively further their Fair Housing ordinance by doing a minimum of three Fair Housing activities during the contractual period.
- CDBG-Housing staff will conduct education for all grantees on Fair Housing laws and requirements during the Application and Implementation Trainings.

Local Land Use Regulations

Wisconsin's tradition of "home rule", embodied in the State Constitution, means that municipalities control most zoning and land use decisions (the siting of community residential facilities and environmental regulations are exceptions). The concern is that "home rule" allows communities to use ordinances to keep affordable and multifamily housing—frequently the routes by which lower-income, often minority, households enter a community—from being developed. In addition, the use of impact fees for new development raises the cost of new housing and increases the value of existing housing, thus generally reducing affordability. In short, zoning and impact fees can have the effect of "disparate impact". Policies that appear neutral on their face may actually increase segregation.

ACTIONS

- State HOME recipients' success in promoting their program locally and providing affordable housing opportunities to all racial and ethnic groups will continue to be monitored through the HOME Program Progress Dashboard. The percentage of non-white households in HOME rental, homebuyer, and homeowner rehab projects will continue to be tracked and compared with Census estimates of the ethnic and minority population for the Wisconsin Balance of State (the category that closely aligns with the State's jurisdiction).
- The HOME Rental Housing Development (RHD) program will continue to fund projects with three, four, or occasionally, more bedrooms throughout the Balance of State area. HOME RHD partners with WHEDA Low-Income Housing Tax Credits (LIHTC) on many of these projects.
- The Housing Trust Fund (HTF) program will fund projects with three, four, or occasionally, more bedrooms throughout the state. HTF, as administered by WHEDA, partners with Low-Income Housing Tax Credits (LIHTC) and RHD on many of these projects.
- The scoring system for the WHEDA Low-Income Housing Tax Credit program applications includes preference points for developing large family units (3-bedroom or larger), units intended for occupancy by residents with special needs, and units with accessible design.

Lack of Equal Housing Opportunity in the Mortgage Lending Market

Predatory Lending Practices. Predatory lenders target minorities and senior citizens and give these consumers loans with abusive terms that make long-run homeownership impossible. While the effects of past predatory lending can still be seen across the state and loans with abusive terms have created hardships among thousands of vulnerable households, recently enacted Wisconsin and federal laws have all but eliminated any new predatory loan activities from occurring. Stronger regulatory standards and heightened consumer awareness have improved lending practices in the state.

ACTIONS

- DFI continues to closely monitor mortgage bankers, brokers, and originators.
- DEHCR staff will continue to support homebuyer education which includes predatory lending training. This homeowner education is required for all households receiving homebuyer assistance.
- DEHCR will contract with a fair housing organization, such as the Metropolitan Milwaukee Fair Housing Council (MMFHC), to provide information and training on Fair Lending Laws and practices.

Predatory Appraisals. Predatory appraisals, whether due to collusion between appraisers and lenders or due to pressure put on appraisers by a third party, decrease the affordability of housing by increasing fees that are based on the value of the home, and can result in decreased equity from homeownership. Legal protection against predatory appraisals is limited. Appraisers are required by statute and professional ethics guidelines to appraise properties honestly, rather than on a predetermined basis.

ACTIONS

- Homebuyers that receive funds through HOME, CDBG, or other Administration programs will be required to have an option to receive homebuyer education. This will help educate homebuyers on the purchase process, including the appraisal.
- Licensed appraisers must take and pass a real estate appraisal exam. A handbook has been prepared by the Department of Safety and Professional Services to help applicants prepare for the exam. Among the subjects covered are social, governmental, legal and regulatory aspects of real estate markets.

Housing Stock

There is a scarcity of housing units in Wisconsin for people with mobility impairments and people with large families.

ACTIONS

- Homes built with HOME Single-Family funds will have first floor visitability. To be considered visitable homes must have one no-step entrance, doors and hallways wide enough to allow passage, and one useable bathroom on the first floor. This will help increase the stock of housing that has some accessibility for people with mobility impairments.
- The WIHousingSearch.org website will continue to list the number of bedrooms and the level of accessibility (when provided by property managers) for units. Categories of accessibility include none required, accessible to visitors, partially accessible, mostly accessible, or fully accessible, and possibly adaptable. This allows renters who require accessible features to search for these units based on the level of

accessibility needed and provides a central location for large families to learn about availability.

- The Division will strongly encourage all property owners to list them on the WIHousingSearch.org website, which is a free service partially funded by the Division. The site provides free state-wide advertising of affordable rental housing in a searchable database that is also free to anyone seeking affordable rental housing. The site also provides helpful information about social service agencies providing housing and other counseling services.
- State-administered housing programs will address the need for rental units for larger families through the HOME housing programs, including RHD, as well as the HTF which continue to fund projects with three, four, or occasionally, more bedrooms.
- The WHEDA LIHTC program provides preference points for developing large family units (3-bedroom or larger), units intended for occupancy by residents with special needs, and units with accessible design.

Language Barriers

For people whom English is not their first language, receiving information about fair housing laws and housing in general is difficult. Wisconsin has a significant population of people who speak Spanish or Hmong as their first language.

ACTIONS

- Some of DEHCR's grantees have access to interpreters to help conduct outreach and translate information for non-English speaking persons. They also produce non- English language program brochures.

Other Actions

Wisconsin Fair Housing Network. Division of Energy, Housing and Community Resources staff will remain active in the Wisconsin Fair Housing Network's regular meetings and annual statewide event.

Grantee Training. DEHCR staff provided training, technical assistance and program materials to its recipients on fair housing and equal opportunity issues, affirmative marketing and the use of local women-owned and minority-owned businesses as suppliers of goods and services.

Grantee Requirements. CDBG grantees are required to perform 3 activities to affirmatively further fair housing throughout their contractual period. Appropriate display of fair housing posters are checked during DEHCR monitoring visits.

Contract for Statewide Fair Housing Activities. DEHCR will continue to contract for a variety of fair housing related activities in both HOME entitlement and non-entitlement areas. DEHCR is currently under contract with the Metropolitan Milwaukee Fair Housing Council (MMFHC) for the provision of these services, including:

- *Statewide Complaint Intake, Investigation and Referrals.* The Department contracts with MMFHC to receive and process complaints regarding discrimination based on race/color, national origin, sex, religion, disability, familial status, age, marital status, lawful source of income, sexual orientation, ancestry and status as a victim of domestic abuse, sexual assault or stalking.
- *Fair Housing Testing.* MMFHC conducts fair housing testing activities, including in HOME non-entitlement areas.
- *Fair Housing and Fair Lending Education.* The Department contracts with MMFHC to provide technical assistance, conduct workshops, and distribute materials on fair housing and fair lending through Wisconsin.
- *Referral Services for Clients with Non-Fair Housing Inquiries.* MMFHC provides referral services to clients with questions on topics such as rent abatement, breaking a lease or repair-related concerns, including those in HOME non-entitlement areas.
- *Technical Assistance in Fair Housing.* MMFHC provides technical assistance throughout Wisconsin, including instances in HOME non-entitlement areas, to residents, housing providers and social service agencies. This assistance provides clarification of fair housing law, information on legal and/or administrative interpretation of the law, information on the nature and extent of housing discrimination and demographic data.

Other Fair Housing-Related Contracts. DEHCR will continue to make other fair housing-related awards as funds are available. All agencies receiving homelessness funds are required to provide data regarding the demographics of the populations receiving services.

Publicize Contact Information to File a Fair Housing Complaint. The Division will publicize the phone numbers and email addresses to file a fair housing complaint. Formal complaints can be filed through the State's Equal Rights Division or the U.S. Department of Housing and Urban Development.

Legislative Review. DEHCR will review proposed legislation and new or revised laws including their impact on fair housing. In addition, DEHCR will complete housing impact statements as required by State Statute 227.115 and the Legislative Reference Bureau.

Online Resource Guide. Through WIHousingSearch.org, individuals can access an online guide to housing and other resources in Wisconsin. The online guide includes non-profit agencies that offer help to individuals including fair housing, transportation, employment, social services, mental health, homeownership, landlord-tenant, public housing, transitional housing, emergency preparedness/recovery, and resources for the homeless, disabled, veterans and those with children.

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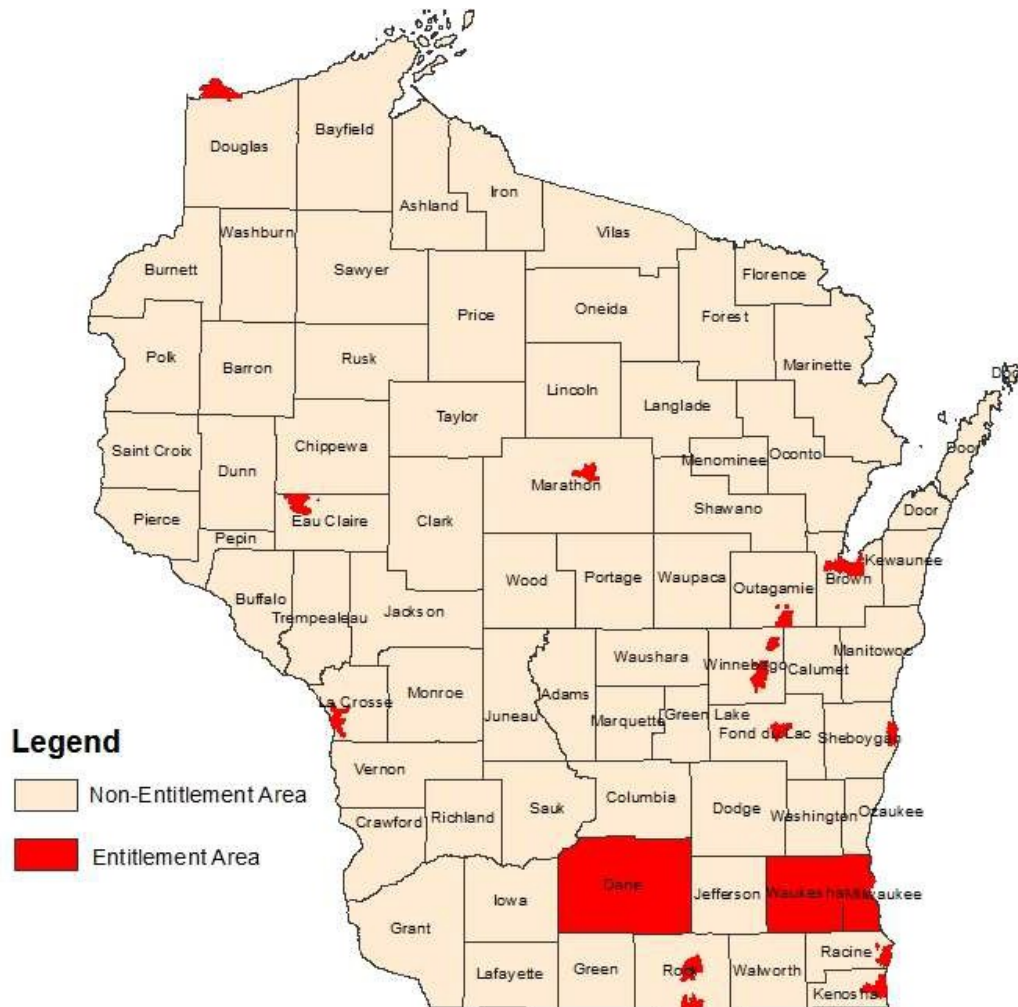
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FAIR HOUSING PLAN APPENDICES

Appendix A: CDBG Entitlement and Non -Entitlement Areas



Entitlement Areas are cities and urban counties which receive CDBG funding directly from HUD. Non-entitlement Areas fall into the "state administered" program, under which HUD provides CDBG funds to States to distribute to non-entitlement areas.

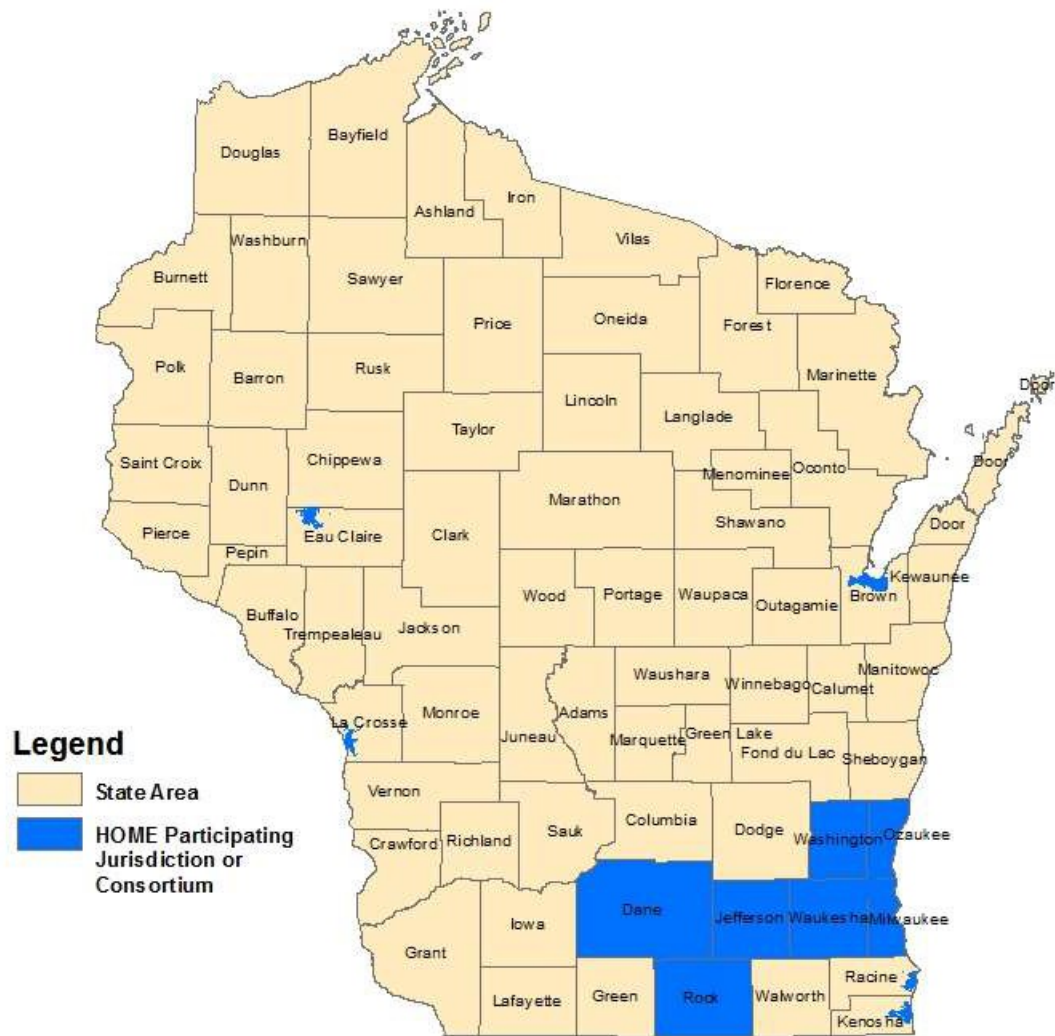
CDBG Entitlement Cities

-Appleton	-Janesville	-Neenah
-Beloit	-Kenosha	-Oshkosh
-Eau Claire	-La Crosse	-Racine
-Fond Du Lac	-Madison	-Sheboygan
-Green Bay	-Milwaukee	-Superior

CDBG Entitlement Counties

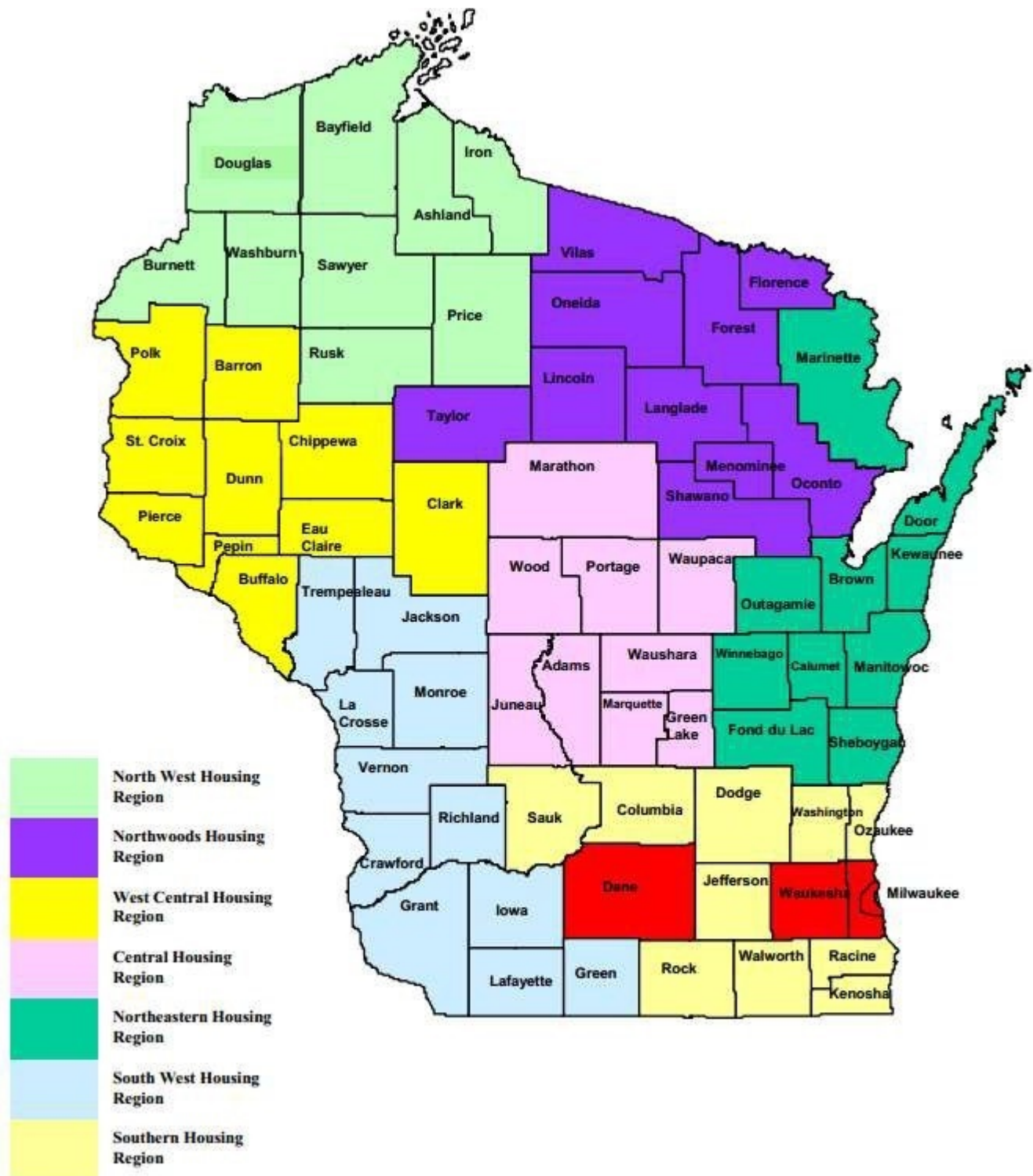
-Waukesha	-Dane
-Wausau	-Milwaukee
-Wauwatosa	-Waukesha
-West Allis	

Appendix B: HOME Participating Jurisdictions, Consortia, and State Areas



HOME Participating Jurisdictions and Consortia are cities and urban counties which receive HOME funding directly from HUD. State Areas fall into the "state administered" program, under which HUD provides HOME funds to States to distribute to non HOME PJs and Consortia.		
HOME Participating Jurisdiction Cities		HOME Consortia
-Eau Claire	-Madison	-Dane County
-Green Bay	-Milwaukee	-Janesville Consortium (Rock County)
-Kenosha	-Racine	-Milwaukee County
-La Crosse		-Waukesha County Consortium (Waukesha, Jefferson, Washington, Ozaukee Counties)

Appendix C: CDBG Housing Regions



Updated 11/28/2018